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APR 25 1989

HOUSE FILE 780

BY COMMITTEE ON APPROPRIATIONS

APPROPRIATIONS CALENDAR

(SUCCESSOR TO HSB 6)

Passed House, Date 4-27-89 (P.1889) Passed Senate, Date 5/3/89 (P.1889)
 Vote: Ayes 87 Nays 12 Vote: Ayes 47 Nays 0
 Approved May 26, 1989

A BILL FOR

1 An Act relating to substance abuse treatment and narcotics law
 2 enforcement and creating a new department of drug control,
 3 making certain appropriations, providing penalties, and
 4 providing an effective date.

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

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HF 780

4296 amended
4276 strike sec. 1, 2, 3, 4, 5, 27
4308 amended
then 8

Section 1. NEW SECTION. 80E.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Director" means the director of the department of drug control.

2. "Department" means the department of drug control.

Sec. 2. NEW SECTION. 80E.2 DEPARTMENT ESTABLISHED.

There is established a department of drug control to coordinate all statewide narcotics enforcement efforts, coordinate all state and federal substance abuse treatment grants and programs, coordinate all statewide substance abuse prevention and education programs in communities and schools, and engage in such other related activities as required by law.

Sec. 3. NEW SECTION. 80E.3 DIRECTOR OF DEPARTMENT.

The chief administrative officer for the department is the director. The director shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The director shall be selected primarily for administrative ability. The director shall not be selected on the basis of political affiliation and shall not engage in political activity while holding the office. The salary of the director shall be fixed by the governor within salary guidelines or a range established by the general assembly.

Sec. 4. NEW SECTION. 80E.4 POWERS AND DUTIES OF THE DIRECTOR.

1. The director shall:

a. Plan, direct, coordinate, and execute the functions vested in the department.

b. Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department and each program, subprogram, and activity of the department in accordance with section 8.23.

1 c. Submit an annual report to the governor and general
2 assembly concerning the activities and programs of the
3 department. The report shall include an assessment of needs
4 with respect to programs related to substance treatment and
5 narcotics enforcement.

6 d. Employ personnel as necessary to carry out the
7 functions vested in the department consistent with chapter 19A
8 unless the positions are exempt from that chapter.

9 e. Devote full time to the duties of the director's
10 office.

11 f. Maintain an office at the state capitol complex which
12 is open at all reasonable times for the conduct of public
13 business.

14 g. Adopt rules in accordance with chapter 17A as necessary
15 or desirable for the operation, organization, or
16 reorganization of the department.

17 2. All powers and duties vested in the director may be
18 delegated by the director to an employee of the department,
19 but the director retains the responsibility for an employee's
20 acts within the scope of the delegation.

21 3. The director and other officers and employees of the
22 department are entitled to receive, in addition to salary,
23 their actual and necessary travel and related expenses
24 incurred in the performance of official business.

25 Sec. 5. NEW SECTION. 80E.5 DIVISIONS ESTABLISHED --
26 DEPUTY DIRECTOR AND ADMINISTRATORS APPOINTED BY THE DIRECTOR.

27 1. The following divisions are established within the
28 department:

29 a. Narcotics enforcement division which is responsible for
30 coordinating all statewide narcotics enforcement efforts,
31 training local law enforcement personnel in narcotics
32 enforcement, and providing investigative assistance to other
33 federal and local law enforcement personnel and agencies.

34 b. Substance abuse treatment division which is responsible
35 for coordinating all state and federal substance abuse

1 treatment grants and programs, licensing substance abuse
2 treatment facilities, and monitoring and assisting local
3 providers of community-based substance abuse programs.

4 c. Substance abuse prevention and education division which
5 is responsible for coordination and monitoring of all local
6 and statewide prevention and education programs relating to
7 substance abuse.

8 2. The director shall appoint a deputy director who shall
9 be in charge of the department in the absence of the director.
10 The appointment shall be based on the appointee's training,
11 experience, and capabilities.

12 3. The director shall appoint an administrator for each
13 division established under subsection 1. The director shall
14 make the appointment based on the appointee's training,
15 experience, and capabilities. Each administrator has the
16 responsibility of administering the programs assigned to the
17 division under subsection 1 and other programs assigned by the
18 director. Each administrator shall carry out the duties and
19 responsibilities of office under the general direction and
20 supervision of the director.

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21 Sec. 6. NEW SECTION. 80E.6 DRUG CONTROL ADVISORY COUNCIL
22 ESTABLISHED -- MEMBERSHIP -- DUTIES.

23 1. An Iowa drug control advisory council is established
24 which shall consist of the following eight members:

- 25 a. The director of the department of corrections.
- 26 b. The director of the department of education.
- 27 c. The director of the Iowa department of public health.
- 28 d. The commissioner of public safety.
- 29 e. The director of the department of human services.
- 30 f. A prosecuting attorney.
- 31 g. A licensed substance abuse treatment specialist.
- 32 h. A law enforcement officer.

33 The prosecuting attorney, licensed substance abuse
34 treatment specialist, and law enforcement officer shall be
35 appointed by the governor for four-year terms beginning and

1 ending as provided in section 69.19. A vacancy on the
2 commission shall be filled for the unexpired term in the same
3 manner as the original appointment was made.

4 2. The council shall make policy recommendations to the
5 director concerning the administration and development of
6 programs administered by the department.

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

12 4. The council shall hold an organizational meeting within
13 thirty days of the beginning of a new regular term for one or
14 more of its members. The council shall organize by electing a
15 chairperson, vice chairperson, secretary, and any other
16 officers deemed necessary or desirable. The council shall
17 meet at least quarterly throughout the year.

18 5. A majority of the members of the council constitutes a
19 quorum, and a majority of a quorum may act in any matter
20 within the jurisdiction of the council, unless a more
21 restrictive rule is adopted by the council.

22 Sec. 7. NEW SECTION. 80E.7 NARCOTICS ENFORCEMENT
23 ADVISORY COUNCIL.

24 1. An Iowa narcotics enforcement advisory council is
25 established which shall consist of the following seven
26 members:

27 a. Two members representing the Iowa association of chiefs
28 of police and peace officers.

29 b. Two members representing the Iowa state policemen's
30 association.

31 c. Two members representing the Iowa state sheriffs' and
32 deputies' association.

33 d. The commissioner of public safety or the commissioner's
34 designee, who shall serve as chairperson of the council.

35 Members under paragraphs "a", "b", and "c" shall be

1 appointed by the governor, subject to senate confirmation, for
2 four-year terms beginning and ending as provided in section
3 69.19. Appointments shall be made on the basis of experience,
4 knowledge, and ability in the field of narcotics enforcement.
5 A vacancy on the council shall be filled for the unexpired
6 term in the same manner as the original appointment was made.
7 No more than four members shall belong to the same political
8 party. The members of the council shall be paid a per diem of
9 fifty dollars per day and their reasonable and necessary
10 expenses when conducting council business.

11 2. The council shall adopt all necessary rules of
12 operation pursuant to chapter 17A.

13 3. The council shall oversee and recommend policy for the
14 operation and conduct of the narcotics enforcement division of
15 the department.

16 4. The council shall meet in closed session to be updated
17 as to the status of all operations being, or to be, conducted
18 by the narcotics enforcement division. The record of the
19 closed session is exempt from the provisions of chapter 22.

20 5. The council shall recommend policy changes and
21 alternatives to the drug control advisory council established
22 in section 80E.6.

23 Sec. 8. TRANSFER OF PERSONNEL AND PROGRAMS.

24 1. The division of substance abuse in the Iowa department
25 of public health and the programs administered by the division
26 are transferred to the department of drug control. The
27 transfer includes seventeen full-time equivalent positions in
28 the division of substance abuse in the Iowa department of
29 public health and includes the governor's alliance on
30 substance abuse.

31 2. The division of narcotics in the department of public
32 safety and the programs and activities of the division are
33 transferred to the department of drug control. The transfer
34 includes twenty-three full-time equivalent positions in the
35 division of narcotics.

1 3. An education program consultant within the bureau of
2 instruction and curriculum of the department of education
3 involved with substance abuse education programs is
4 transferred to the department of drug control. The transfer
5 includes one full-time equivalent position.

6 Sec. 9. Notwithstanding any other provisions of law, the
7 treasurer of state before making allotments of the moneys
8 within the Iowa plan fund pursuant to section 99E.32,
9 subsection 1, for the fiscal year beginning July 1, 1989,
10 shall transfer to the Iowa law enforcement academy the
11 following amount, to be used for the purposes designated:

12 For the administration of a drug enforcement training
13 program for law enforcement officers, as defined in section
14 80B.3, subsection 3, including, but not limited to, training
15 for the detection of gang and juvenile activity and the
16 apprehension of gang members and juvenile delinquents, subject
17 to the limitation that the academy shall not pay for more than
18 fifty percent of the cost of training of any officer,
19 including salary and other benefits, with the remaining fifty
20 percent to be paid by the law enforcement officer's local
21 jurisdiction:

22 \$ 300,000

23 As a condition, limitation, and qualification of this
24 appropriation, the law enforcement officers to be trained
25 under this program shall be selected by the Iowa narcotics
26 enforcement advisory council in closed session. The record of
27 the closed session is exempt from chapter 22. When the
28 council has reached a decision, it shall convene in open
29 meeting and announce such decision. No more than four law
30 enforcement officers participating in this training shall be
31 employed by law enforcement agencies located in the same
32 county. The training program shall be for a period of one
33 year and an officer participating in this program shall
34 perform, after receiving initial instruction and training at
35 the law enforcement academy, duties as directed by the

4300 1 department of public safety within the division of criminal
2 investigation and bureau of identification, relating to the
3 department's responsibility for the enforcement of all laws
4 and rules relating to any controlled substance or counterfeit
5 substance as provided in sections 80.27 through 80.34.

6 Sec. 10. There is appropriated from the general fund of
7 the state to the office of the attorney general for the office
8 of the prosecuting attorneys training coordinator for the
9 fiscal year beginning July 1, 1989, and ending June 30, 1990,
10 the following amount, or so much thereof as is necessary, to
11 be used for the purposes designated:

12 For the development and administration of a drug
13 enforcement and prosecution training program for prosecuting
14 attorneys as defined in section 13A.1, subsection 4, and for
15 not more than the following full-time equivalent positions:
16 \$ 100,000
17 FTEs 1.0

4308 18 Sec. 11. There is appropriated from the general fund of
19 the state to the department of public safety for the fiscal
20 year beginning July 1, 1989, and ending June 30, 1990, the
21 following amount, or so much thereof as is necessary, to be
22 used for the purposes designated:

23 1. For the division of narcotics for the salaries and
24 support of the following additional full-time equivalent
25 positions:
26 \$ 839,680
27 FTEs 14.0

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

32 2. For the division of criminal investigation and bureau
33 of identification for equipment and salaries and support for
34 the following additional full-time equivalent positions:
35 \$ 153,288

1 FTEs 4.0

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

5 Sec. 12. There is appropriated from the general fund of
6 the state to the department of corrections for the fiscal year
7 beginning July 1, 1989, and ending June 30, 1990, the
8 following amount, or so much thereof as is necessary, to be
9 used for the purposes designated:

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

13 \$ 1,000,000

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14 Sec. 13. The governor shall appoint the director of the
15 department of drug control by February 1, 1990, who shall be
16 confirmed by the senate prior to March 1, 1990. The confirmed
17 appointee shall assume the duties of the director on March 1,
18 1990, for the purpose of completing a plan of operation and
19 coordination in establishing the department in the most
20 efficient and expedient manner possible.

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21 Sec. 14. Section 204.401, subsections 1 and 2, Code 1989,
22 are amended by striking the subsections and inserting in lieu
23 thereof the following:

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24 1. Except as authorized by this chapter, it is unlawful
25 for any person to manufacture, deliver, sell or offer for
26 sale, or possess with the intent to manufacture or deliver,
27 sell or offer for sale, a controlled substance, a counterfeit
28 substance, or a simulated controlled substance, or to act
29 with, enter into a common scheme or design with, or conspire
30 with one or more other persons to manufacture, deliver, sell
31 or offer for sale, or possess with the intent to manufacture
32 or deliver, sell or offer for sale, a controlled substance, a
33 counterfeit substance, or a simulated controlled substance.

34 a. Violation of this subsection, with respect to the
35 following controlled substances, counterfeit substances, or

1 simulated controlled substances is a class "B" felony, and
2 notwithstanding section 902.9, subsection 1, shall be punished
3 by confinement for no more than fifty years and a fine of not
4 more than one million dollars:

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

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

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

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

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

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

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

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

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

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

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

35 (1) More than one hundred grams but not more than one

1 kilogram of a mixture or substance containing a detectable
2 amount of heroin.

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

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

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

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

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

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

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

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

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

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

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

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

35 (a) Coca leaves, except coca leaves and extracts of coca

1 leaves from which cocaine, ecgonine, and derivatives of
2 ecgonine or their salts have been removed.

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

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

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

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

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

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

4303/17 (6) Any other controlled substance classified in schedule
18 I, II, or III.

430/19 d. Violations of this subsection, with respect to any
20 other controlled substances, counterfeit substances, or
21 simulated controlled substances classified in schedule IV or
22 V, or less than fifty kilograms of marijuana, or any other
23 amount of such substances, is a class "D" felony, and in
24 addition to the provisions of section 902.9, subsection 4,
25 shall be punished by a fine of not less than one thousand
26 dollars nor more than five thousand dollars.

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

32 f. A person in the immediate possession or control of an
33 offensive weapon, as defined in section 724.1, while
34 participating in a violation of this subsection, shall be
35 sentenced to three times the term otherwise imposed by law,

1 and no such judgment, sentence, or part thereof shall be
2 deferred or suspended.

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

11 Sec. 15. Section 204.406, Code 1989, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

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

16 a. Unlawfully distributes a substance listed in schedule I
17 or II, which is a narcotic or cocaine, to a person under
18 eighteen years of age commits a class "B" felony and shall
19 serve a minimum term of confinement of five years. However,
20 if the substance was distributed in or on, or within one
21 thousand feet of, the real property comprising a public or
22 private elementary or secondary school, the person shall serve
23 a minimum term of confinement of ten years.

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

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

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

33 a. Unlawfully distributes a counterfeit substance listed
34 in schedule I or II which is a narcotic or cocaine, or a
35 simulated controlled substance represented to be a narcotic or

1 cocaine classified in schedule I or II, to a person under
2 eighteen years of age commits a class "B" felony. However, if
3 the substance was distributed in or on, or within one thousand
4 feet of, the real property comprising a public or private
5 elementary or secondary school, the person shall serve a
6 minimum term of confinement of ten years.

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

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

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

4308 > 26 Sec. 16. Section 204.410, Code 1989, is amended to read as
27 follows:

28 204.410 ACCOMMODATION OFFENSE.

29 In a prosecution for unlawful delivery or possession with
30 intent to deliver marijuana, if the prosecution proves that
31 the defendant violated the provisions of section 204.401,
32 subsection 1, by proving that the defendant delivered or
33 possessed with intent to deliver one ounce or less of
34 marijuana, the defendant is guilty of an accommodation offense
35 and rather than being sentenced as if convicted for a

1 violation of section 204.401, subsection 1, paragraph "b" "d",
2 shall be sentenced as if convicted of a violation of section
3 204.401, subsection 3. An accommodation offense may be proved
4 as an included offense under a charge of delivering or
5 possessing with the intent to deliver marijuana in violation
6 of section 204.401, subsection 1. This section does not apply
7 to hashish, hashish oil, or other derivatives of marijuana as
8 defined in section 204.101, subsection 17.

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9 Sec. 17. NEW SECTION. 808B.1 DEFINITIONS.

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

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

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

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

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

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

28 (1) Furnished to the subscriber or user by a communica-
29 tions common carrier in the ordinary course of its business
30 and being used by the subscriber or user in the ordinary
31 course of the subscriber's or user's business.

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

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

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

7 6. "Investigative or law enforcement officer" means a
8 peace officer of this state or one of its political subdivi-
9 sions or of the United States who is empowered by law to
10 conduct investigations of or to make arrests for criminal
11 offenses, the attorney general, or a county attorney
12 authorized by law to prosecute or participate in the
13 prosecution of criminal offenses.

14 7. "Oral communication" means an oral communication ut-
15 tered by a person exhibiting an expectation that the communi-
16 cation is not subject to interception, under circumstances
17 justifying that expectation.

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

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

27 Sec. 18. NEW SECTION. 808B.2 UNLAWFUL ACTS -- PENALTY.

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

31 a. Willfully intercepts, endeavors to intercept, or pro-
32 cures any other person to intercept or endeavor to intercept,
33 a wire communication or oral communication.

34 b. Willfully uses, endeavors to use, or procures any other
35 person to use or endeavor to use an electronic, mechanical, or

1 other device to intercept any oral communication when either
2 of the following applies:

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

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

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

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

19 2. a. It is not unlawful under this chapter for an
20 operator of a switchboard, or an officer, employee, or agent
21 of a communications common carrier, whose facilities are used
22 in the transmission of a wire communication, to intercept,
23 disclose, or use that communication in the normal course of
24 employment while engaged in an activity which is a necessary
25 incident to the rendition of service or to the protection of
26 the rights or property of the carrier of the communication.
27 However, communications common carriers shall not use service
28 observing or random monitoring except for mechanical or
29 service quality control checks.

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

35 c. It is not unlawful under this chapter for a person not

1 acting under color of law to intercept a wire communication or
2 oral communication if the person is a party to the com-
3 munication or if one of the parties to the communication has
4 given prior consent to the interception, unless the communica-
5 tion is intercepted for the purpose of committing a criminal
6 or tortious act in violation of the Constitution or laws of
7 the United States or of any state or for the purpose of
8 committing any other injurious act.

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9 Sec. 19. NEW SECTION. 808B.3 COURT ORDER FOR
10 INTERCEPTION BY SPECIAL AGENTS.

430911 The attorney general or a county attorney may apply to any
12 district court of this state for an order authorizing the
13 interception of wire communications or oral communications,
14 and the court may grant, subject to this chapter, an order
15 authorizing the interception of wire communications or oral
16 communications by special state agents having responsibility
17 for the investigation of the offense as to which application
18 is made, when the interception may provide or has provided
19 evidence of the commission of felony offenses involving
20 dealing in controlled substances, as defined in section
21 204.101, subsection 6.

22 Sec. 20. NEW SECTION. 808B.4 PERMISSIBLE DISCLOSURE AND
23 USE.

24 1. A special state agent who, by any means authorized by
25 this chapter, has obtained knowledge of the contents of a wire
26 communication or oral communication, or has obtained evidence
27 derived from a wire communication or oral communication, may
28 disclose the contents to another investigative or law en-
29 forcement officer to the extent that the disclosure is
30 appropriate to the proper performance of the official duties
31 of the officer making or receiving the disclosure.

32 2. An investigative or law enforcement officer who, by any
33 means authorized by this chapter, has obtained knowledge of
34 the contents of a wire communication or oral communication or
35 has obtained evidence derived from a wire communication or

1 oral communication may use the contents to the extent the use
2 is appropriate to the proper performance of the officer's
3 official duties.

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

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

17 5. If a special state agent, while engaged in intercepting
18 a wire communication or oral communication in the manner
19 authorized, intercepts a communication relating to an offense
20 other than those specified in the order of authorization, the
21 contents of the communication, and the evidence derived from
22 the communication, may be disclosed or used as provided in
23 subsections 1 and 2. The contents of and the evidence derived
24 from the communication may be used under subsection 3 when
25 authorized by a court if the court finds on subsequent
26 petition that the contents were otherwise intercepted in
27 accordance with this chapter. The petition shall be made as
28 soon as practicable.

29 Sec. 21. NEW SECTION. 808B.5 APPLICATION AND ORDER.

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

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

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

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

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

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

1 applications.

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

6 2. The court may require the applicant to furnish ad-
7 ditional testimony or documentary evidence in support of the
8 application.

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

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

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

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

24 d. There is probable cause for belief that the facilities
25 from which, or the place where, the wire communications or
26 oral communications are to be intercepted are being used, or
27 are about to be used, in connection with the commission of the
28 offense, or are leased to, listed in the name of, or commonly
29 used by the person whose communications are to be intercepted.

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

33 a. The identity of the person, if known, whose communi-
34 cations are to be intercepted.

35 b. The nature and location of the communications

1 facilities as to which, or the place where, authority to
2 intercept is granted.

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

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

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

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

25 6. An order entered under this section shall not authorize
26 the interception of a wire communication or oral communication
27 for a period longer than is necessary to achieve the objective
28 of the authorized interception, or in any event longer than
29 thirty days. The thirty-day period shall commence on the date
30 specified in the order upon which the commencement of the
31 interception is authorized or ten days after the order is
32 entered, whichever is earlier. An extension of an order may
33 be granted, but only upon application for an extension made in
34 accordance with subsection 1 and the court making the findings
35 required by subsection 3. The period of extension shall be no

1 longer than the authorizing court deems necessary to achieve
2 the purposes for which it was granted and in no event longer
3 than thirty days. Every order and its extension shall contain
4 a provision that the authorization to intercept shall be
5 executed as soon as practicable, shall be conducted in such a
6 way as to minimize the interception of communications not
7 otherwise subject to interception under this section and
8 sections 808B.1 through 808B.4, 808B.6, and 808B.7, and shall
9 terminate upon attainment of the authorized objective, or in
10 any event in thirty days.

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

4205 17 8. The contents of a wire communication or oral
18 communication intercepted by a means authorized by this
19 chapter shall, if possible, be recorded on tape or wire or
20 other comparable device. The recording of the contents of a
21 wire communication or oral communication under this subsection
22 shall be done in a way which will protect the recording from
23 editing or other alterations. Immediately upon the expiration
24 of the period of the order, or extensions of it, the
25 recordings shall be made available to the court issuing the
26 order and shall be sealed under the court's directions.
27 Custody of the recordings shall be in accordance with the
28 court order. Recordings shall be kept for ten years and
29 thereafter shall not be destroyed except upon an order of the
30 court. Duplicate recordings may be made for disclosure or use
31 pursuant to section 808B.4, subsections 1 and 2. The presence
32 of a seal, or a satisfactory explanation for its absence, is a
33 prerequisite for the disclosure or use of the contents of a
34 wire communication or oral communication or evidence derived
35 from a communication under section 808B.4, subsection 3.

43051 Applications made and orders granted under this chapter
2 shall be sealed by the court. Custody of the applications and
3 orders shall be in accordance with the directives of the
4 court. The applications and orders shall be disclosed only
5 upon a showing of good cause before a court and shall be kept
6 for ten years and thereafter shall not be destroyed except on
7 order of the court.

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

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

15 a. The names of other parties to intercepted communica-
16 tions if the court determines disclosure of the names to be in
17 the interest of justice.

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

19 (1) The date of the application.

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

23 (3) Whether, during the period, wire or oral communica-
24 tions were or were not intercepted.

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

31 10. The contents of an intercepted wire communication or
32 oral communication or evidence derived from the wire
33 communication or oral communication shall not be received in
34 evidence or otherwise disclosed in a trial, hearing, or other
35 proceeding in a federal or state court unless each party, not

1 less than ten days before the trial, hearing, or proceeding,
2 has been furnished with a copy of the court order, and
3 accompanying application, under which the interception was
4 authorized. This ten-day period may be waived by the court if
5 it finds that it was not possible to furnish the party with
6 the above information ten days before the trial, hearing, or
7 proceeding and that the party will not be prejudiced by the
4309>8 delay in receiving the information.

43079 11. An aggrieved person in a trial, hearing, or proceeding
10 in or before any court, department, officer, agency, regula-
11 tory body, or other authority of this state, may move to
12 suppress the contents of an intercepted wire communication or
13 oral communication, or evidence derived from the wire
14 communication or oral communication, on the grounds that the
15 communication was unlawfully intercepted, the order of
16 authorization under which it was intercepted was insufficient
17 on its face, or the interception was not made in conformity
18 with the order of authorization. The motion shall be made
19 before the trial, hearing, or proceeding unless there was no
20 opportunity to make the motion or the person was not aware of
21 the grounds of the motion. If the motion is granted, the
22 contents of the intercepted wire communication or oral
23 communication, or evidence derived from the wire communication
24 or oral communication, shall be treated as having been
25 obtained in violation of this chapter. The court, upon the
26 filing of the motion, may make available to the aggrieved
27 person or the person's attorney for inspection portions of the
28 intercepted communication or evidence derived from the
29 communication as the court determines to be in the interests
30 of justice.

430931 12. In addition to any other right to appeal, the attorney
32 general or any county attorney may appeal from an order
33 granting a motion to suppress made under subsection 11 or the
34 denial of an application for an order of approval, if the
35 attorney general or county attorney certifies to the court

1 granting the motion or denying the application that the appeal
2 is not taken for purposes of delay. The appeal shall be made
3 within thirty days after the date the order was entered or
4 application was denied and shall be diligently prosecuted.

5 Sec. 22. NEW SECTION. 808B.6 REPORTS TO STATE COURT
6 ADMINISTRATOR.

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

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

12 b. The kind of order or extension applied for.

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

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

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

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

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

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

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

29 b. The kind of order or extension applied for.

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

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

35 e. The offense specified in the order or application, or

1 extension of an order.

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

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

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

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

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

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

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

17 i. The number of trials resulting from such interceptions.

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

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

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

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

29 3. In March of each year the state court administrator
30 shall transmit to the general assembly a full and complete
31 report concerning the number of applications for orders
32 authorizing the interception of wire communications or oral
33 communications and the number of applications, orders, and
34 extensions granted or denied during the preceding calendar
35 year. The report shall include a summary and analysis of the

1 data required to be filed with the state court administrator
2 by the attorney general, county attorneys, and the courts.

3 Sec. 23. NEW SECTION. 808B.7 CONTENTS OF INTERCEPTED
4 WIRE OR ORAL COMMUNICATION AS EVIDENCE.

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

14 Sec. 24. NEW SECTION. 808B.8 CIVIL DAMAGES AUTHORIZED --
4305 15 CIVIL AND CRIMINAL IMMUNITY.

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

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

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

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

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

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

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

4305 > 34 Sec. 25. NEW SECTION. 808B.9 REPEAL.

4308 > 35 This chapter is repealed effective July 1, 1994.

4386 1 Sec. 26. Section 204.414, Code 1989, is repealed.

2 Sec. 27. Sections 1 through 6 and section 8 of this Act
3 are effective July 1, 1990.

4 EXPLANATION

5 This bill establishes a new department of drug control and
6 consolidates certain substance abuse and narcotic programs in
7 that department. Three divisions are established in the
8 department including the narcotics enforcement division, the
9 substance abuse treatment division, and the substance abuse
10 prevention and education division. Programs and personnel
11 relating to substance abuse and narcotics enforcement are
12 transferred from the Iowa department of public health, the
13 department of public safety, and the department of education
14 to the new department effective July 1, 1990. An advisory
15 council is established to make policy recommendations to the
16 director concerning the administration and development of
17 programs under the direction of the department. A second
18 advisory council is established to oversee and advise the
19 narcotics enforcement division of the new department.

20 Appropriations are made to the department of public safety,
21 the attorney general, and the Iowa law enforcement academy for
22 additional personnel and equipment specifically related to law
23 enforcement training and providing more officers and other
24 personnel directly related to narcotics enforcement.

25 Appropriations are made to the department of corrections for
26 correctional substance abuse treatment programs.

27 The bill imposes longer sentences to be determined by the
28 amount of the controlled substance involved and imposes longer
29 sentences where a violation of section 204.401 (controlled
30 substances) occurs and a firearm or offensive weapon is used.

31 The bill imposes a minimum ten year term of confinement for
32 distributing controlled substances in or on, or within one
33 thousand feet of a public or private school. The bill
34 prohibits a person from acting or conspiring with, entering
35 into a common scheme with, or recruiting another person for

1 the purpose of delivering a controlled substance to persons
2 under eighteen years of age. Such violations are punished as
3 class "D" felonies.

4 The bill also provides procedures and requirements for the
5 issuance of court orders for the interception of wire or oral
6 communications by electronic, mechanical, or other devices
7 when the interception may provide or has provided evidence of
8 the commission of felony offenses involving dealing in
9 controlled substances, as defined in section 204.101,
10 subsection 6.

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HOUSE FILE 780

H-4290

1 Amend House File 780 as follows:

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

4 "Section 1. Notwithstanding any other provisions
5 of law, the treasurer of state before making
6 allotments of the moneys within the Iowa plan fund
7 pursuant to section 99E.32, subsection 1, for the
8 fiscal year beginning July 1, 1989, shall transfer to
9 the Iowa law enforcement academy the following amount,
10 to be used for the purposes designated:

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

22 \$ 300,000

23 As a condition, limitation, and qualification of
24 this appropriation, the law enforcement officers to be
25 trained under this program shall be selected by the
26 Iowa narcotics enforcement advisory council in closed
27 session. The record of the closed session is exempt
28 from chapter 22. When the council has reached a
29 decision, it shall convene in open meeting and
30 announce such decision. No more than four law
31 enforcement officers participating in this training
32 shall be employed by law enforcement agencies located
33 in the same county. The training program shall be for
34 a period of one year and an officer participating in
35 this program shall perform, after receiving initial
36 instruction and training at the law enforcement
37 academy, duties as directed by the department of
38 public safety within the division of criminal
39 investigation and bureau of identification, relating
40 to the department's responsibility for the enforcement
41 of all laws and rules relating to any controlled
42 substance or counterfeit substance as provided in
43 sections 80.27 through 80.34.

44 Sec. 2. There is appropriated from the general
45 fund of the state to the office of the attorney
46 general for the office of the prosecuting attorneys
47 training coordinator for the fiscal year beginning
48 July 1, 1989, and ending June 30, 1990, the following
49 amount, or so much thereof as is necessary, to be used
50 for the purposes designated:

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

6 \$ 100,000
7 FTEs 1.0

8 Sec. 3. There is appropriated from the general
9 fund of the state to the department of public safety
10 for the fiscal year beginning July 1, 1989, and ending
11 June 30, 1990, the following amount, or so much
12 thereof as is necessary, to be used for the purposes
13 designated:

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

17 \$ 839,680
18 FTEs 14.0

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

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

27 \$ 153,288
28 FTEs 4.0

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

33 Sec. 4. There is appropriated from the general
34 fund of the state to the department of corrections for
35 the fiscal year beginning July 1, 1989, and ending
36 June 30, 1990, the following amount, or so much
37 thereof as is necessary, to be used for the purposes
38 designated:

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

42 \$ 1,000,000

43 Sec. 5. Section 204.401, subsections 1 and 2, Code
44 1989, are amended by striking the subsections and
45 inserting in lieu thereof the following:

46 1. Except as authorized by this chapter, it is
47 unlawful for any person to manufacture, deliver, sell
48 or offer for sale, or possess with the intent to
49 manufacture or deliver, sell or offer for sale, a
50 controlled substance, a counterfeit substance, or a

1 simulated controlled substance, or to act with, enter
2 into a common scheme or design with, or conspire with
3 one or more other persons to manufacture, deliver,
4 sell or offer for sale, or possess with the intent to
5 manufacture or deliver, sell or offer for sale, a
6 controlled substance, a counterfeit substance, or a
7 simulated controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

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1 than one hundred thousand dollars:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 (d) Any compound, mixture, or preparation which

1 contains any quantity of any of the substances
2 referred to in subparagraph subdivisions (a) through
3 (c).

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

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

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

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

14 d. Violations of this subsection, with respect to
15 any other controlled substances, counterfeit
16 substances, or simulated controlled substances
17 classified in schedule IV or V, or less than fifty
18 kilograms of marijuana, or any other amount of such
19 substances, is a class "D" felony, and in addition to
20 the provisions of section 902.9, subsection 4, shall
21 be punished by a fine of not less than one thousand
22 dollars nor more than five thousand dollars.

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

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

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

44 Sec. 6. Section 204.406, Code 1989, is amended by
45 striking the section and inserting in lieu thereof the
46 following:

47 204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

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

50 a. Unlawfully distributes a substance listed in

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1 schedule I or II, which is a narcotic or cocaine, to a
2 person under eighteen years of age commits a class "B"
3 felony and shall serve a minimum term of confinement
4 of five years. However, if the substance was
5 distributed in or on, or within one thousand feet of,
6 the real property comprising a public or private
7 elementary or secondary school, the person shall serve
8 a minimum term of confinement of ten years.

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

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

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

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

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

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

44 3. It is unlawful for a person to deliver a
45 controlled substance to another person in order to act
46 with, enter into a common scheme or design with,
47 conspire with, or recruit the other person for the
48 purpose of delivering a controlled substance to one or
49 more persons under eighteen years of age. A person
50 who violates this subsection with respect to a

1 controlled substance classified in schedule I, II,
2 III, IV, or V is guilty of a class "D" felony.

3 Sec. 7. Section 204.410, Code 1989, is amended to
4 read as follows:

5 204.410 ACCOMMODATION OFFENSE.

6 In a prosecution for unlawful delivery or
7 possession with intent to deliver marijuana, if the
8 prosecution proves that the defendant violated the
9 provisions of section 204.401, subsection 1, by
10 proving that the defendant delivered or possessed with
11 intent to deliver one ounce or less of marijuana, the
12 defendant is guilty of an accommodation offense and
13 rather than being sentenced as if convicted for a
14 violation of section 204.401, subsection 1, paragraph
15 "b" "d", shall be sentenced as if convicted of a
16 violation of section 204.401, subsection 3. An
17 accommodation offense may be proved as an included
18 offense under a charge of delivering or possessing
19 with the intent to deliver marijuana in violation of
20 section 204.401, subsection 1. This section does not
21 apply to hashish, hashish oil, or other derivatives of
22 marijuana as defined in section 204.101, subsection
23 17.

24 Sec. 8. Section 246.513, subsection 1, unnumbered
25 paragraph 1, Code 1989, is amended to read as follows:

26 The department of corrections in cooperation with
27 judicial district departments of correctional services
28 shall establish in each judicial district bed space
29 for the confinement and treatment of offenders
30 convicted of violating chapter 321J who are sentenced
31 to the custody of the director. The department of
32 corrections shall develop standardized assessment
33 criteria for the assignment of offenders to a facility
34 established pursuant to this section. The offender
35 shall be assigned by the director to a facility
36 pursuant to section 321J.2, subsection 2, paragraph
37 "c". The offenders shall first be assigned to the
38 Iowa medical classification facility at Oakdale for
39 classification and-after-classification-may-be
40 assigned-to if the offender fails to satisfactorily
41 perform in a treatment program conducted in a
42 residential facility operated by any a judicial
43 district department of correctional services. The
44 offender shall be assigned to an institution following
45 classification. The facilities established shall meet
46 all the following requirements:

47 Sec. 9. Section 321J.2, subsection 2, paragraph c,
48 Code 1989, is amended to read as follows:

49 c. A class "D" felony for a third offense and each
50 subsequent offense and shall be imprisoned in the

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1 county jail for a determinate sentence of not more
2 than one year but not less than thirty days, or
3 committed to the custody of the director of the
4 department of corrections, and assessed a fine of not
5 less than seven hundred fifty dollars. The minimum
6 jail term of thirty days cannot be suspended
7 notwithstanding section 901.5, subsection 3, and
8 section 907.3, subsection 3, however, the person
9 sentenced shall receive credit for any time the person
10 was confined in a jail or detention facility following
11 arrest. If a person is committed to the custody of
12 the director of the department of corrections pursuant
13 to this paragraph and the sentence is suspended, the
14 sentencing court shall order that the offender serve
15 the thirty-day minimum term in the county jail. If
16 the sentence which commits the person to the custody
17 of the director of the department of corrections is
18 later imposed by the court, all time served in a
19 county jail toward the thirty-day minimum term shall
20 count as time served toward the sentence which
21 committed the person to the custody of the director of
22 the department of corrections. A person convicted of
23 a second or subsequent offense shall be ordered to
24 undergo a substance abuse evaluation prior to
25 sentencing. If a person is convicted of a third or
26 subsequent offense or if the evaluation recommends
27 treatment, the offender may be committed to the
28 custody of the director of the department of
29 corrections, who, if the sentence is not suspended,
30 shall assign the person to a facility pursuant to
31 section 246.513 or the offender may be committed to
32 treatment in the community under the provisions of
33 section 907.6. If the person cannot be assigned to a
34 facility pursuant to section 246.513 due to
35 insufficient bed space, the person shall be released
36 from custody upon the person's own recognizance, bond,
37 or supervision by the judicial district department of
38 correctional services until space is available.

39 Sec. 10. Section 356.15, Code 1989, is amended to
40 read as follows:

41 356.15 EXPENSES.

42 All charges and expenses for the safekeeping and
43 maintenance of prisoners shall be allowed by the board
44 of supervisors, except those committed or detained by
45 the authority of the courts of the United States, in
46 which cases the United States must pay such expenses
47 to the county, and those committed for violation of a
48 city ordinance, in which case the city shall pay
49 expenses to the county. If a parole or probation
50 violator is committed to a county jail pursuant to

1 section 908.9 or 908.11, the county shall be
2 reimbursed by the department of corrections in
3 accordance with section 906.18. If the violator is
4 granted work release from the county jail, the
5 violator is liable to the county for the cost of the
6 violator's board as provided in section 356.30.
7 However, the state shall reimburse the county for the
8 balance of the cost of confining the violator.

9 Sec. 11. NEW SECTION. 808B.1 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

45 6. "Investigative or law enforcement officer"
46 means a peace officer of this state or one of its
47 political subdivisions or of the United States who is
48 empowered by law to conduct investigations of or to
49 make arrests for criminal offenses, the attorney
50 general, or a county attorney authorized by law to

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1 prosecute or participate in the prosecution of
2 criminal offenses.

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

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

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

18 Sec. 12. NEW SECTION. 808B.2 UNLAWFUL ACTS --
19 PENALTY.

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

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

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

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

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

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

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

50 2. a. It is not unlawful under this chapter for

1 an operator of a switchboard, or an officer, employee,
2 or agent of a communications common carrier, whose
3 facilities are used in the transmission of a wire
4 communication, to intercept, disclose, or use that
5 communication in the normal course of employment while
6 engaged in an activity which is a necessary incident
7 to the rendition of service or to the protection of
8 the rights or property of the carrier of the
9 communication. However, communications common
10 carriers shall not use service observing or random
11 monitoring except for mechanical or service quality
12 control checks.

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

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

29 Sec. 13. NEW SECTION. 808B.3 COURT ORDER FOR
30 INTERCEPTION BY SPECIAL AGENTS.

31 The attorney general or a county attorney may apply
32 to any district court of this state for an order
33 authorizing the interception of wire communications or
34 oral communications, and the court may grant, subject
35 to this chapter, an order authorizing the interception
36 of wire communications or oral communications by
37 special state agents having responsibility for the
38 investigation of the offense as to which application
39 is made, when the interception may provide or has
40 provided evidence of the commission of felony offenses
41 involving dealing in controlled substances, as defined
42 in section 204.101, subsection 6.

43 Sec. 14. NEW SECTION. 808B.4 PERMISSIBLE
44 DISCLOSURE AND USE.

45 1. A special state agent who, by any means
46 authorized by this chapter, has obtained knowledge of
47 the contents of a wire communication or oral
48 communication, or has obtained evidence derived from a
49 wire communication or oral communication, may disclose
50 the contents to another investigative or law en-

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1 enforcement officer to the extent that the disclosure is
2 appropriate to the proper performance of the official
3 duties of the officer making or receiving the
4 disclosure.

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

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

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

28 5. If a special state agent, while engaged in
29 intercepting a wire communication or oral
30 communication in the manner authorized, intercepts a
31 communication relating to an offense other than those
32 specified in the order of authorization, the contents
33 of the communication, and the evidence derived from
34 the communication, may be disclosed or used as
35 provided in subsections 1 and 2. The contents of and
36 the evidence derived from the communication may be
37 used under subsection 3 when authorized by a court if
38 the court finds on subsequent petition that the
39 contents were otherwise intercepted in accordance with
40 this chapter. The petition shall be made as soon as
41 practicable.

42 Sec. 15. NEW SECTION. 808B.5 APPLICATION AND
43 ORDER.

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

50 a. The identity of the special state agent

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

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

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

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

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

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

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

48 3. Upon application the court may enter an ex
49 parte order, as requested or as modified, authorizing
50 interception of wire communications or oral

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1 communications within the territorial jurisdiction of
2 the court, if the court finds on the basis of the
3 facts submitted by the applicant all of the following:

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

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

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

15 d. There is probable cause for belief that the
16 facilities from which, or the place where, the wire
17 communications or oral communications are to be
18 intercepted are being used, or are about to be used,
19 in connection with the commission of the offense, or
20 are leased to, listed in the name of, or commonly used
21 by the person whose communications are to be
22 intercepted.

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

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

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

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

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

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

42 5. Each order authorizing the interception of a
43 wire communication or oral communication shall, upon
44 request of the applicant, direct that a communications
45 common carrier, landlord, custodian, or other person
46 shall furnish to the applicant all information,
47 facilities, and technical assistance necessary to
48 accomplish the interception inconspicuously and with a
49 minimum of interference with the services that the
50 carrier, landlord, custodian, or person is giving to

1 the person whose communications are to be intercepted.
2 Any communications common carrier, landlord,
3 custodian, or other person furnishing facilities or
4 technical assistance shall be compensated by the
5 applicant at the prevailing rates.

6 6. An order entered under this section shall not
7 authorize the interception of a wire communication or
8 oral communication for a period longer than is
9 necessary to achieve the objective of the authorized
10 interception, or in any event longer than thirty days.
11 The thirty-day period shall commence on the date
12 specified in the order upon which the commencement of
13 the interception is authorized or ten days after the
14 order is entered, whichever is earlier. An extension
15 of an order may be granted, but only upon application
16 for an extension made in accordance with subsection 1
17 and the court making the findings required by
18 subsection 3. The period of extension shall be no
19 longer than the authorizing court deems necessary to
20 achieve the purposes for which it was granted and in
21 no event longer than thirty days. Every order and its
22 extension shall contain a provision that the
23 authorization to intercept shall be executed as soon
24 as practicable, shall be conducted in such a way as to
25 minimize the interception of communications not
26 otherwise subject to interception under this section
27 and sections 808B.1 through 808B.4, 808B.6, and
28 808B.7, and shall terminate upon attainment of the
29 authorized objective, or in any event in thirty days.

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

37 8. The contents of a wire communication or oral
38 communication intercepted by a means authorized by
39 this chapter shall, if possible, be recorded on tape
40 or wire or other comparable device. The recording of
41 the contents of a wire communication or oral
42 communication under this subsection shall be done in a
43 way which will protect the recording from editing or
44 other alterations. Immediately upon the expiration of
45 the period of the order, or extensions of it, the
46 recordings shall be made available to the court
47 issuing the order and shall be sealed under the
48 court's directions. Custody of the recordings shall
49 be in accordance with the court order. Recordings
50 shall be kept for ten years and thereafter shall not

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1 be destroyed except upon an order of the court.
2 Duplicate recordings may be made for disclosure or use
3 pursuant to section 808B.4, subsections 1 and 2. The
4 presence of a seal, or a satisfactory explanation for
5 its absence, is a prerequisite for the disclosure or
6 use of the contents of a wire communication or oral
7 communication or evidence derived from a communication
8 under section 808B.4, subsection 3.

9 Applications made and orders granted under this
10 chapter shall be sealed by the court. Custody of the
11 applications and orders shall be in accordance with
12 the directives of the court. The applications and
13 orders shall be disclosed only upon a showing of good
14 cause before a court and shall be kept for ten years
15 and thereafter shall not be destroyed except on order
16 of the court.

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

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

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

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

29 (1) The date of the application.

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

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

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

42 10. The contents of an intercepted wire
43 communication or oral communication or evidence
44 derived from the wire communication or oral
45 communication shall not be received in evidence or
46 otherwise disclosed in a trial, hearing, or other
47 proceeding in a federal or state court unless each
48 party, not less than ten days before the trial,
49 hearing, or proceeding, has been furnished with a copy
50 of the court order, and accompanying application,

1 under which the interception was authorized. This
2 ten-day period may be waived by the court if it finds
3 that it was not possible to furnish the party with the
4 above information ten days before the trial, hearing,
5 or proceeding and that the party will not be
6 prejudiced by the delay in receiving the information.

7 11. An aggrieved person in a trial, hearing, or
8 proceeding in or before any court, department,
9 officer, agency, regulatory body, or other authority
10 of this state, may move to suppress the contents of an
11 intercepted wire communication or oral communication,
12 or evidence derived from the wire communication or
13 oral communication, on the grounds that the
14 communication was unlawfully intercepted, the order of
15 authorization under which it was intercepted was
16 insufficient on its face, or the interception was not
17 made in conformity with the order of authorization.
18 The motion shall be made before the trial, hearing, or
19 proceeding unless there was no opportunity to make the
20 motion or the person was not aware of the grounds of
21 the motion. If the motion is granted, the contents of
22 the intercepted wire communication or oral
23 communication, or evidence derived from the wire
24 communication or oral communication, shall be treated
25 as having been obtained in violation of this chapter.
26 The court, upon the filing of the motion, may make
27 available to the aggrieved person or the person's
28 attorney for inspection portions of the intercepted
29 communication or evidence derived from the
30 communication as the court determines to be in the
31 interests of justice.

32 12. In addition to any other right to appeal, the
33 attorney general or any county attorney may appeal
34 from an order granting a motion to suppress made under
35 subsection 11 or the denial of an application for an
36 order of approval, if the attorney general or county
37 attorney certifies to the court granting the motion or
38 denying the application that the appeal is not taken
39 for purposes of delay. The appeal shall be made
40 within thirty days after the date the order was
41 entered or application was denied and shall be
42 diligently prosecuted.

43 Sec. 16. NEW SECTION. 808B.6 REPORTS TO STATE
44 COURT ADMINISTRATOR.

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

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

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- 1 for.
- 2 b. The kind of order or extension applied for.
- 3 c. The fact that the order or extension was
- 4 granted as applied for, was granted as modified, or
- 5 that an application was denied.
- 6 d. The period of interceptions authorized by the
- 7 order, and the number and duration of any extensions
- 8 of the order.
- 9 e. The offense specified in the order or
- 10 application, or extension of an order.
- 11 f. The identity of the prosecutor making the
- 12 application and the court reviewing and approving the
- 13 request.
- 14 g. The nature of the facilities from which or the
- 15 place where communications were to be intercepted.
- 16 2. In January of each year, the attorney general
- 17 and the county attorneys of this state shall report to
- 18 the state court administrator and to the
- 19 administrative offices of the United States district
- 20 courts all of the following:
- 21 a. The fact that an order or extension was applied
- 22 for.
- 23 b. The kind of order or extension applied for.
- 24 c. The fact that the order or extension was
- 25 granted as applied for, was granted as modified, or
- 26 that an application was denied.
- 27 d. The period of interceptions authorized by the
- 28 order, and the number and duration of any extensions
- 29 of the order.
- 30 e. The offense specified in the order or
- 31 application, or extension of an order.
- 32 f. The nature of the facilities from which or the
- 33 place where communications were to be intercepted.
- 34 g. A general description of the interceptions made
- 35 under such order or extension, including:
- 36 (1) The approximate nature and frequency of
- 37 incriminating communications intercepted.
- 38 (2) The approximate nature and frequency of other
- 39 communications intercepted.
- 40 (3) The approximate number of persons whose
- 41 communications were intercepted.
- 42 (4) The approximate nature, amount, and cost of
- 43 personnel and other resources used in the
- 44 interceptions.
- 45 h. The number of arrests resulting from
- 46 interceptions made under such order or extension, and
- 47 the offenses for which arrests were made.
- 48 i. The number of trials resulting from such
- 49 interceptions.
- 50 j. The number of motions to suppress made with

1 respect to such interceptions, and the number granted
2 or denied.

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

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

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

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

25 Sec. 17. NEW SECTION. 808B.7 CONTENTS OF
26 INTERCEPTED WIRE OR ORAL COMMUNICATION AS EVIDENCE.

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

38 Sec. 18. NEW SECTION. 808B.8 CIVIL DAMAGES
39 AUTHORIZED -- CIVIL AND CRIMINAL IMMUNITY.

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

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

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

49 (1) Actual damages, but not less than liquidated
50 damages computed at the rate of one hundred dollars a

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1 day for each day of violation, or one thousand dollars, whichever is higher.

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

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

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

Sec. 19. NEW SECTION. 808B.9 REPEAL.

This chapter is repealed effective July 1, 1994.

Sec. 20. Section 901.3, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 7. The defendant's potential as a candidate for assignment to a treatment facility pursuant to section 246.513 based upon the standardized assessment criteria developed by the department of corrections. The presentence investigation report shall contain the assessment criteria commencing January 1, 1990.

Sec. 21. Section 905.1, subsection 2, Code 1989, is amended to read as follows:

2. "Community-based correctional program" means correctional programs and services designed to supervise and assist individuals who are charged with or have been convicted of a felony, an aggravated misdemeanor or a serious misdemeanor, or who are on probation or parole in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses, or who have been confined in a county jail as a result of revocation of probation or parole for conviction and sentence of a class "C" or "D" felony or aggravated misdemeanor, or who are contracted to the district department for supervision and housing while on work release.

Sec. 22. NEW SECTION. 906.18 CONFINEMENT OF PAROLE AND PROBATION VIOLATORS BY COUNTIES -- REIMBURSEMENT.

1. A county may enter into a chapter 28E agreement with the department of corrections for the confinement of parole and probation violators pursuant to section 908.9 or 908.11, and the agreement may contain provisions relating to reimbursement to the county for confining the violators, and any other terms the contracting parties deem appropriate.

2. The department of corrections and counties may commence negotiation and execution of the chapter 28E agreements provided in subsection 1 on or after July 1, 1989.

3. Parole and probation violators may be confined

1 in county jails pursuant to sections 908.9 and 908.11
2 commencing January 1, 1990.

3 Sec. 23. Section 907.3, unnumbered paragraph 1,
4 Code 1989, is amended to read as follows:

5 Pursuant to section 901.5, the trial court may,
6 upon a plea of guilty, a verdict of guilty, or a
7 special verdict upon which a judgment of conviction
8 may be rendered, exercise any of the options contained
9 in subsections 1 and 2 of this section. However, this
10 section shall not apply to a forcible felony or
11 violations of section 204.401, subsection 1.

12 Sec. 24. Section 908.9, Code 1989, is amended to
13 read as follows:

14 908.9 DISPOSITION OF VIOLATOR.

15 1. If the parole of a parole violator is revoked,
16 the violator shall remain in the custody of the Iowa
17 department of corrections under the terms of the
18 parolee's original commitment.

19 2. Notwithstanding subsection 1, if the parole of
20 a parole violator, originally committed to the
21 department for conviction of a class "C" or "D"
22 felony, or aggravated misdemeanor, is revoked, the
23 parole revocation officer or board panel shall
24 determine whether the violator is to remain in the
25 custody of the director of the department of
26 corrections under the terms of the parolee's original
27 commitment, or is to be confined in a county jail, for
28 a maximum period of one year, as part of the
29 violator's subsequent plan of parole or work release.
30 A violator shall be confined in a county jail only if
31 the violator is placed on work release, educational
32 work release, or in a community-based correctional
33 program and the county and the department of
34 corrections have entered into a chapter 28E agreement
35 pursuant to section 906.18. A violator assigned to
36 county jail confinement pursuant to this subsection
37 shall be transported directly to the assigned county
38 jail, and shall remain under the jurisdiction of the
39 board of parole and under the supervision and
40 direction of the judicial district department of
41 correctional services. For purposes of this
42 subsection, a violator, who has been committed to the
43 custody of the director of the department of
44 corrections upon the imposition of consecutive
45 sentences for serious misdemeanor violations and the
46 consecutive sentences exceed a total of one year,
47 shall be considered to have been convicted of an
48 aggravated misdemeanor.

49 3. If the parole of a parole violator is not
50 revoked, the parole revocation officer or board panel

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1 shall order the person's release subject to the terms
2 of the person's parole with any modifications that the
3 parole revocation officer or board panel determines
4 proper.

5 Sec. 25. NEW SECTION. 908.9A CUSTODY OF PAROLE
6 OR PROBATION VIOLATOR.

7 A parole or probation violator confined to a county
8 jail pursuant to section 908.9 or 908.11 shall remain
9 committed to the custody of the director of the
10 department of corrections.

11 Sec. 26. Section 908.11, Code 1989, is amended to
12 read as follows:

13 908.11 VIOLATION OF PROBATION.

14 A probation officer or the judicial district
15 department of correctional services having probable
16 cause to believe that any person released on probation
17 has violated the conditions of probation shall proceed
18 by arrest or summons as in the case of a parole
19 violation. The functions of the liaison officer and
20 the board of parole shall be performed by the judge or
21 magistrate who placed the alleged violator on
22 probation if that judge or magistrate is available,
23 otherwise by another judge or magistrate who would
24 have had jurisdiction to try the original offense. If
25 the probation officer proceeds by arrest, any
26 magistrate may receive the complaint, issue an arrest
27 warrant, or conduct the initial appearance and
28 probable cause hearing if it is not convenient for the
29 judge who placed the alleged violator on probation to
30 do so. The initial appearance, probable cause
31 hearing, and probation revocation hearing, or any of
32 them, may at the discretion of the court be merged
33 into a single hearing when it appears that the alleged
34 violator will not be prejudiced thereby. If the
35 violation is established, the court may continue the
36 probation with or without an alteration of the
37 conditions of probation. If the defendant is an adult
38 the court may hold the defendant in contempt of court
39 and sentence the defendant to a jail term while
40 continuing the probation, or may revoke the probation
41 and require the defendant to serve the sentence
42 imposed or any lesser sentence, and, if imposition of
43 sentence was deferred, may impose any sentence which
44 might originally have been imposed. If the defendant
45 was originally committed to the custody of the
46 department of corrections, the defendant's sentence
47 was suspended or deferred, and the defendant has been
48 placed on probation for violation of a class "C" or
49 "D" felony or an aggravated misdemeanor, and a
50 violation of probation has been established, the court

1 may revoke probation and, as an alternative to serving
2 the sentence originally imposed, require the defendant
3 to serve a maximum term of imprisonment of one year in
4 a county jail if the defendant is eligible for work
5 release, educational work release, or a community-
6 based correctional program and the county and the
7 department of corrections have entered into a chapter
8 28E agreement pursuant to section 906.18. A probation
9 violation confined in a county jail pursuant to this
10 section shall remain under the supervision and
11 direction of the violator's probation officer. For
12 purposes of this section, a person who receives
13 consecutive sentences for serious misdemeanor
14 violations, which sentences are not suspended and
15 exceed a total of one year, shall be considered to
16 have committed an aggravated misdemeanor.

17 Sec. 27. The department of education shall develop
18 programs for juveniles designed to provide alternative
19 activities for juveniles in an effort to reduce the
20 participation of the target population in gang
21 activities and other delinquent acts.

22 Sec. 28. The legislative council shall consider
23 establishing a commission to study illegal drug
24 activities in the state of Iowa and efforts to combat
25 this growing problem. If established, the commission
26 shall study the appropriate aid to be provided to
27 state and local law enforcement agencies for the
28 apprehension of persons engaged in unlawful activities
29 relating to drugs, the proper role for state
30 government in coordinating these enforcement
31 activities, the treatment of substance abusers, the
32 relationship between the use of illegal drugs and the
33 commission of criminal offenses not related to illegal
34 drugs in Iowa, and other related matters. The
35 commission should report its findings and
36 recommendations to the legislative council and the
37 general assembly by January 15, 1990.

38 Sec. 29. Section 204.414, Code 1989, is repealed."

39 2. Title page, line 2, by striking the words "and
40 creating a new department of drug control".

By CARPENTER of Polk

HALVORSON of Clayton

HARBOR of Mills

VAN MAANEN of Mahaska

H-4290 FILED APRIL 26, 1989

Withdrawn 4-27-89 (p. 2118)

HOUSE FILE 780

H-4276

1 Amend House File 780 as follows:

2 1. By striking page 1, line 1, through page 6,
3 line 5.

4 2. Page 6, by striking lines 23 through 29 and
5 inserting the following: "No more than four law".

6 3. By striking page 27, line 34, through page 28,
7 line 3.

8 4. Title page, line 2, by striking the words "and
9 creating a new department of drug control".

By HALVORSON of Clayton

CARPENTER of Polk

VAN MAANEN of Mahaska

HARBOR of Mills

H-4276 FILED APRIL 26, 1989

lost 4-27-89 (p 2118)

HOUSE FILE 780

H-4308

1 Amend House File 780 as follows:

2 1. By striking page 1, line 1, through page 6,
3 line 5, and inserting the following:

4 "Section 1. NEW SECTION. 7E.8 SPECIAL ASSISTANT.

5 The governor shall appoint a special assistant to
6 help coordinate all statewide narcotics enforcement
7 efforts, coordinate all state and federal substance
8 abuse treatment grants and programs, coordinate all
9 statewide substance abuse prevention and education
10 programs in communities and schools, and engage in
11 such other related activities as required by law. The
12 special assistant shall work in coordinating the
13 efforts of the department of corrections, the
14 department of education, the Iowa department of public
15 health, the department of public safety, and the
A 16 department of human services. The special assistant
17 shall assist in the development and implementation of
18 local and community strategies to fight substance
19 abuse, including local law enforcement, education, and
20 treatment activities. An annual report shall be
21 submitted to the governor and the general assembly
22 concerning the activities and programs of the special
23 assistant.

24 The report shall include an assessment of needs
25 with respect to programs related to substance
26 treatment and narcotics enforcement."

27 2. Page 7, by striking lines 26 and 27 and
28 inserting the following:

29 "..... \$ 1,118,752
30 FTEs 18.0".

31 3. Page 7, line 29, by striking the word "ten"
32 and inserting the following: "fourteen".

B 33 4. By striking page 7, line 35, through page 8,
34 line 1, and inserting the following:

35 "..... \$ 204,932
36FTEs 6.0".

37 5. Page 8, line 3, by striking the word "four"
38 and inserting the following: "six".

39 6. Page 8, by striking lines 21 through 23 and
40 inserting the following:

41 "Sec. ____ . Section 204.401, Code 1989, is amended
42 by striking the section and inserting in lieu thereof
43 the following:

C 44 204.401 PROHIBITED ACTS -- CONTROLLED SUBSTANCES -
45 - PENALTIES."

46 7. Page 12, by striking line 3 and inserting the
47 following:

48 "2. It is unlawful for any person knowingly or
49 intentionally to possess a controlled substance,
50 counterfeit substance, or simulated controlled

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Page 2

1 substance unless such substance was obtained directly
2 from or pursuant to a valid prescription or order of a
3 practitioner while acting in the course of the
4 practitioner's professional practice, or except as
5 otherwise authorized by this chapter. A person who
6 violates this subsection with respect to possession of
7 the following substances is guilty of the following:

8 a. Marijuana in an amount less than one ounce, is
9 guilty of a serious misdemeanor. Punishment shall be
10 imprisonment in the county jail for not more than six
11 months or a fine of not less than one hundred dollars
12 nor more than one thousand dollars, or by both such
13 imprisonment and fine.

14 b. Marijuana in an amount of one ounce or more, or
15 any amount of any other controlled substance
16 classified in schedule I, II, III, IV, or V is guilty
17 of an aggravated misdemeanor.

18 c. Any of the following controlled substances,
19 counterfeit substances, or simulated controlled
20 substances in the following amounts is guilty of a
21 class "D" felony:

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

24 (2) Five hundred grams or more of any of the
25 following:

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

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

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

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

38 (3) Five grams or more of a mixture or substance
39 described in subparagraph (2) which contains cocaine
40 base.

41 (4) Ten grams or more of phencyclidine (PCP) or
42 more than one hundred kilograms of a mixture or
43 substance containing a detectable amount of
44 phencyclidine (PCP).

45 (5) Ten grams or more of lysergic acid
46 diethylamide (LSD).

47 d. Marijuana in an amount of one ounce or more, or
48 any amount of any other controlled substance
49 classified in schedule I, II, III, IV, or V, if the
50 person violating this subsection has previously been

1 convicted of a violation of the laws of this or any
2 other jurisdiction proscribing delivery, sale,
3 manufacturing, or possession with the intent to
4 deliver or manufacture any controlled substance,
5 counterfeit substance, or simulated controlled
6 substance, is guilty of a class "D" felony.

7 3. If the same person commits two or more acts
8 which are".

9 8. Page 13, by inserting after line 25, the
10 following:

11 "Sec. _____. Section 204.409, subsection 1, Code
12 1989, is amended to read as follows:

13 1. Whenever a person who has not previously been
14 convicted of an offense under this chapter or an
15 offense under a state or federal statute relating to
16 narcotic drugs or cocaine, marijuana, or stimulant,
17 depressant, or hallucinogenic drugs, pleads guilty to
18 or is found guilty of possession of a controlled
19 substance under section 204.401, subsection 3 2, or is
20 sentenced pursuant to section 204.410, the court,
21 without entering a judgment of guilt and with the
22 consent of the accused, may defer further proceedings
23 and place the accused on probation upon terms and
24 conditions as it requires. When a person is placed on
25 probation under this subsection, the person's
26 appearance bond may be discharged at the discretion of
27 the court. Upon violation of a term or condition, the
28 court may enter an adjudication of guilt and proceed
29 as otherwise provided. Upon fulfillment of the terms
30 and conditions, the court shall discharge the person
31 and dismiss the proceedings against the person.
32 Discharge and dismissal under this section shall be
33 without court adjudication of guilt and is not a
34 conviction for purposes of this section or for
35 purposes of disqualifications or disabilities imposed
36 by law upon conviction of a crime, including the
37 additional penalties imposed for second or subsequent
38 convictions under section 204.410. Discharge and
39 dismissal under this section may occur only once with
40 respect to any person."

41 9. Page 14, by inserting after line 8, the
42 following:

43 "Sec. _____. Section 204.411, subsection 3, Code
44 1989, is amended to read as follows:

45 3. This section does not apply to offenses under
46 section 204.401, subsection 3 2.

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

49 A person sentenced pursuant to section 204.401,
50 subsection 1, paragraph ~~"a"~~ or ~~"b"~~ shall is not be

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1 eligible for parole until the person has served a
2 minimum period of confinement of one-third of the
3 maximum indeterminate sentence ~~prescribed-by-law~~
4 imposed by the court.

5 A person sentenced pursuant to section 204.401,
6 subsection 1, paragraph "e" or "f", is not eligible
7 for parole until the person has served a minimum
8 period of confinement of one-third of each term
9 imposed."

C 10 10. Page 27, by inserting after line 35, the
11 following:

12 "Sec. ____ . Section 907.3, unnumbered paragraph 1,
13 Code 1989, is amended to read as follows:

14 Pursuant to section 901.5, the trial court may,
15 upon a plea of guilty, a verdict of guilty, or a
16 special verdict upon which a judgment of conviction
17 may be rendered, exercise any of the options contained
18 in subsections 1 and 2 of this section. However, this
19 section shall not apply to a forcible felony or
20 violations of section 204.401, subsection 1."

21 11. Title page, line 2, by striking the words
22 "and creating a new department of drug control".

By TRENT of Muscatine
BEAMAN of Clarke

H-4308 FILED APRIL 27, 1989

DIVISIONS A, B, & C LOST

4-27-89 (p. 2110, 12, +13)

HOUSE FILE 780

H-4298

1 Amend House File 780 as follows:
2 1. Page 8, by inserting after line 13, the
3 following:
4 "As a condition, limitation, and qualification of
5 this appropriation, \$200,000 shall be used for the
6 licensed substance abuse programs at the correctional
7 facilities at Newton, Clarinda, and Mt. Pleasant, for
8 expanding the program at Mitchellville in order to
9 permit the program to be licensed, and for employment
10 of an additional five full-time counselors and one
11 half-time counselor for the correctional facilities at
12 Clarinda, Newton, Mt. Pleasant, and Luster Heights;
13 \$424,000 shall be used to provide twenty-five
14 additional beds at the correctional facility at Newton
15 for an intensive thirty-day substance abuse treatment
16 program for parole and work release violators who have
17 identified substance abuse problems, and for
18 employment of six additional correctional officers,
19 five additional counselors, and a half-time nurse; and
20 \$376,000 shall be used for the expansion of the
21 treatment alternatives to street crime program
22 currently existing in the first, fifth, and sixth
23 judicial district departments of correctional services
24 and for developing this program in the remaining
25 judicial district departments of correctional
26 services."

By DVORSKY of Johnson
McKINNEY of Dallas
KNAPP of Dubuque

H-4298 FILED APRIL 27, 1989

ADOPTED 427-89 (p. 2113)

HOUSE FILE 780

H-4305

- 1 Amend House File 780 as follows:
 2 1. Page 17, by inserting before line 9 the
 3 following:
 4 "3. An operator of a switchboard, or an officer,
 5 employee, or agent of a communications common carrier,
 6 whose facilities are used in the transmission or
 7 interception of a wire or oral communication shall not
 8 disclose the existence of any transmission or
 9 interception or the device used to accomplish the
 10 transmission or interception with respect to a court
 11 order under this chapter, except as may otherwise be
 12 required by legal process or court order. Violation
 13 of this subsection is a class "D" felony."
 14 2. Page 22, line 28, by striking the word "ten"
 15 and inserting the following: "five".
 16 3. Page 22, by striking line 29 and inserting the
 17 following: "shall then be destroyed unless it is
 18 necessary to keep the recordings due to a continued
 19 legal process or court order, but the recordings shall
 20 not be kept for longer than ten years."
 21 4. Page 22, line 30, by striking the word
 22 "court."
 23 5. Page 23, by striking lines 6 and 7 and
 24 inserting the following: "for five years and shall
 25 then be destroyed unless it is necessary to keep the
 26 applications or orders due to a continued legal
 27 process or court order, but the applications and
 28 orders shall not be kept for longer than ten years."
 29 6. Page 27, line 15, by striking the word
 30 "IMMUNITY" and inserting the following: "IMMUNITY --
 31 INJUNCTIVE RELIEF".
 32 7. Page 27, by inserting before line 34 the
 33 following:
 34 "3. A person whose wire communication or oral
 35 communication is intercepted, disclosed, or used in
 36 violation of this chapter may seek an injunction,
 37 either temporary or permanent, against any person who
 38 violates this chapter."
 39 8. By renumbering as necessary.

By ROSENBERG of Story

H-4305 FILED APRIL 27, 1989

ADOPTED

4-27-89 (p. 2116)

HOUSE FILE 780

H-4306

- 1 Amend House File 780 as follows:
 2 1. Page 28, by striking line 1.
 3 2. Renumber as necessary.

By HALVORSON of Clayton

H-4306 FILED APRIL 27, 1989

LOST

4-27-89 (p. 2117)

HOUSE FILE 780

H-4300

- 1 Amend House File 780, as follows:
 2 1. Page 7, by striking lines 1 and 2 and
 3 inserting the following: "department of public safety
 4 within the narcotics enforcement division relating to
 5 the".

By HALVORSON of Clayton

H-4300 FILED APRIL 27, 1989

ADOPTED 4-27-89 (p. 2112)

HOUSE FILE 780

H-4301

- 1 Amend House File 780 as follows:
 2 1. Page 11, by striking lines 22 and 23 and
 3 inserting the following: "V is an aggravated
 4 misdemeanor. However, violations of this subsection
 5 involving less than fifty kilograms of marijuana, is a
 6 class "D" felony, and in".

By McKINNEY of Dallas

H-4301 FILED APRIL 27, 1989

ADOPTED 4-27-89 (p. 2115)

HOUSE FILE 780

H-4303

- 1 Amend House File 780 as follows:
 2 1. Page 8, lines 25 and 26, by striking the words
 3 "sell or offer for sale,".
 4 2. Page 8, line 27, by striking the words "sell
 5 or offer for sale,".
 6 3. Page 8, lines 30 and 31, by striking the words
 7 "sell or offer for sale,".
 8 4. Page 8, line 32, by striking the words ", sell
 9 or offer for sale,".
 10 5. Page 11, line 17, by inserting after the word
 11 "substance" the following: ", counterfeit substance,
 12 or simulated controlled substance".
 13 6. Page 14, by inserting after line 8, the
 14 following:
 15 "Sec. ____ . Section 204.413, unnumbered paragraph
 16 1, Code 1989, is amended to read as follows:
 17 A person sentenced pursuant to section 204.401,
 18 subsection 1, paragraph "a", or "b", "c", "e", or "f",
 19 shall not be eligible for parole until the person has
 20 served a minimum period of confinement of one-third of
 21 the maximum indeterminate sentence ~~prescribed by law~~
 22 imposed by the court."
 23 7. By renumbering as necessary.

By McKINNEY of Dallas

H-4303 FILED APRIL 27, 1989

ADOPTED 4-27-89 (p. 2115)

HOUSE FILE 780

H-4309

- 1 Amend House File 780 as follows:
- 2 1. Page 17, line 11, by striking the words "or a
3 county attorney" and inserting the following: "shall
4 authorize and prepare any application for an order
5 authorizing the interception of wire communications or
6 oral communications. The attorney general".
- 7 2. Page 17, line 12, by inserting after the word
8 "state" the following: ", or request that the county
9 attorney in the district where application is to be
10 made deliver the application of the attorney
11 general,".
- 12 3. Page 24, line 8, by inserting after the word
13 "information." the following: "If the ten-day period
14 is waived by the court, the court may grant a
15 continuance, or enter such other order as it deems
16 just under the circumstances."
- 17 4. By striking page 24, line 25, through page 25,
18 line 4, and inserting the following: "obtained in
19 violation of this chapter.
- 20 12. An appeal by the attorney general from an
21 order granting a motion to suppress or from the denial
22 of an application for an order of approval shall be
23 pursuant to section 814.5, subsection 2."

By JAY of Appanoose

H-4309 FILED APRIL 27, 1989

ADOPTED

4-27-89 (p.2116)

HOUSE FILE 780

H-4311

- 1 Amend House File 780 as follows:
- 2 1. Page 3, by inserting after line 20, the
3 following:
4 "____. Records of the substance abuse treatment
5 division, and the records of patients of the
6 facilities and program regulated by the division, are
7 confidential and shall not be disclosed or made
8 available to any person other than employees of the
9 division in the discharge of their official duties.
10 Violation of this subsection is a serious
11 misdemeanor."
- 12 2. By renumbering as necessary.

By JAY of Appanoose

H-4311 FILED APRIL 27, 1989

ADOPTED

4-27-89 (p.2111)

APRIL 20, 1989 Page 21

**HOUSE FILE 780
REVISED
FISCAL NOTE**

A fiscal note for **HOUSE FILE 780 - REVISED** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 780 establishes a new Department of Drug Control (DDC) effective July 1, 1990, appropriates funds to the Department of Public Safety (DPS), the Law Enforcement Academy (ILEA), the Attorney General (AG), and the Department of Corrections (DOC) for FY 1990, redefines various offenses and alters sentencing guidelines, and provides procedures and requirements regarding the interception of wire communications.

Assumptions:

1. The new DDC will be funded by the funds associated with the transfers from the Department of Public Health (DPH), Department of Education (DE), and DPS and the continuation of the FY 1990 appropriations in this bill.
2. The divisions, which are being transferred into the new DDC for FY 1991, include the current salaries, support, maintenance, and items used by the divisions prior to the transfer.
3. The FY 1990 figures are based upon the appropriations in this bill and the following assumptions:
 - A. Regarding the redefinition of various offenses and the alteration of sentencing guidelines, the result will probably be more frequent and lengthier prison sentences. There is the potential of deterrent impact, which would result in the reduction of the number of offenses. If deterrent impact is not significant, this bill will increase costs. These sections of the bill could also increase the need for additional prison beds or result in other inmates being paroled more quickly.
 - B. Regarding the procedures and requirements concerning the interception of wire communications, since this bill strengthens the enforcement provisions of prosecutions, the result may be more arrests and convictions.

Fiscal Effect:

<u>EXPENDITURES</u>	<u>FY 1990</u>	<u>FY 1991</u>
ILEA	\$ 300,000	\$ 300,000
AG	100,000	100,000
DOC	1,000,000	1,000,000
DPS	992,968	992,968
DDC new costs	0	195,000
DDC transfers		
DPH	0	7,737,340
DPS	0	1,208,154
DE	0	55,000
2A (above)	?	?
2B (above)	insig	insig
Total	<u>\$2,392,968</u>	<u>\$11,588,462</u>

Sources: Departments of Correction and Human Rights

(LSB 4218hv.2)

FILED APRIL 27, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

Approps.
Do pass per amend. 4073, 5-3
(p.18)

HOUSE FILE 780

BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO HSB 6)

(As Amended and Passed by the House April 27, 1989)

Passed House, Date See Below Passed Senate, Date 5/3/89 (p.8)
Vote: Ayes _____ Nays _____ Vote: Ayes 47 Nays 0

Approved May 26, 1989

Passed per Conference Committee Report
House 5/6/89 (p. 2738) Senate 5/7/89 (p. 2086)
89-4 A BILL FOR 41-0

4079, 4075

1 An Act relating to substance abuse treatment and narcotics law
2 enforcement and creating a new department of drug control,
3 making certain appropriations, providing penalties, and
4 providing an effective date.

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

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House Amendments _____

Deleted Language *

Conference Committee appointed -

Senators - Gronstal (Chair) Doyle, Hagerlo, Hultman, & Walsh

Reps- McKinney, Jeff, Peterson, Trent, & Beaman

4075 amended
Sec. 1, 2, 3, 4, 5, 6

1 Section 1. NEW SECTION. 80E.1 DEFINITIONS.
2 As used in this chapter unless the context otherwise
3 requires:
4 1. "Director" means the director of the department of drug
5 control.
6 2. "Department" means the department of drug control.
7 Sec. 2. NEW SECTION. 80E.2 DEPARTMENT ESTABLISHED.
8 There is established a department of drug control to
9 coordinate all statewide narcotics enforcement efforts,
10 coordinate all state and federal substance abuse treatment
11 grants and programs, coordinate all statewide substance abuse
12 prevention and education programs in communities and schools,
13 and engage in such other related activities as required by
14 law.
15 Sec. 3. NEW SECTION. 80E.3 DIRECTOR OF DEPARTMENT.
16 The chief administrative officer for the department is the
17 director. The director shall be appointed by the governor,
18 subject to confirmation by the senate, and shall serve at the
19 pleasure of the governor. The governor shall fill a vacancy
20 in the office in the same manner as the original appointment
21 was made. The director shall be selected primarily for
22 administrative ability. The director shall not be selected on
23 the basis of political affiliation and shall not engage in
24 political activity while holding the office. The salary of
25 the director shall be fixed by the governor within salary
26 guidelines or a range established by the general assembly.
27 Sec. 4. NEW SECTION. 80E.4 POWERS AND DUTIES OF THE
28 DIRECTOR.
29 1. The director shall:
30 a. Plan, direct, coordinate, and execute the functions
31 vested in the department.
32 b. Annually compile a comprehensive program budget which
33 reflects all fiscal matters related to the operation of the
34 department and each program, subprogram, and activity of the
35 department in accordance with section 8.23.

1 c. Submit an annual report to the governor and general
2 assembly concerning the activities and programs of the
3 department. The report shall include an assessment of needs
4 with respect to programs related to substance treatment and
5 narcotics enforcement.

6 d. Employ personnel as necessary to carry out the
7 functions vested in the department consistent with chapter 19A
8 unless the positions are exempt from that chapter.

9 e. Devote full time to the duties of the director's
10 office.

11 f. Maintain an office at the state capitol complex which
12 is open at all reasonable times for the conduct of public
13 business.

14 g. Adopt rules in accordance with chapter 17A as necessary
15 or desirable for the operation, organization, or
16 reorganization of the department.

17 2. All powers and duties vested in the director may be
18 delegated by the director to an employee of the department,
19 but the director retains the responsibility for an employee's
20 acts within the scope of the delegation.

21 3. The director and other officers and employees of the
22 department are entitled to receive, in addition to salary,
23 their actual and necessary travel and related expenses
24 incurred in the performance of official business.

25 Sec. 5. NEW SECTION. 80E.5 DIVISIONS ESTABLISHED --
26 DEPUTY DIRECTOR AND ADMINISTRATORS APPOINTED BY THE DIRECTOR.

27 1. The following divisions are established within the
28 department:

29 a. Narcotics enforcement division which is responsible for
30 coordinating all statewide narcotics enforcement efforts,
31 training local law enforcement personnel in narcotics
32 enforcement, and providing investigative assistance to other
33 federal and local law enforcement personnel and agencies.

34 b. Substance abuse treatment division which is responsible
35 for coordinating all state and federal substance abuse

1 treatment grants and programs, licensing substance abuse
2 treatment facilities, and monitoring and assisting local
3 providers of community-based substance abuse programs.

4 c. Substance abuse prevention and education division which
5 is responsible for coordination and monitoring of all local
6 and statewide prevention and education programs relating to
7 substance abuse.

8 2. The director shall appoint a deputy director who shall
9 be in charge of the department in the absence of the director.
10 The appointment shall be based on the appointee's training,
11 experience, and capabilities.

12 3. The director shall appoint an administrator for each
13 division established under subsection 1. The director shall
14 make the appointment based on the appointee's training,
15 experience, and capabilities. Each administrator has the
16 responsibility of administering the programs assigned to the
17 division under subsection 1 and other programs assigned by the
18 director. Each administrator shall carry out the duties and
19 responsibilities of office under the general direction and
20 supervision of the director.

21 4. Records of the substance abuse treatment division, and
22 the records of patients of the facilities and program
23 regulated by the division, are confidential and shall not be
24 disclosed or made available to any person other than employees
25 of the division in the discharge of their official duties.
26 Violation of this subsection is a serious misdemeanor.

27 Sec. 6. NEW SECTION. 80E.6 DRUG CONTROL ADVISORY COUNCIL
28 ESTABLISHED -- MEMBERSHIP -- DUTIES.

29 1. An Iowa drug control advisory council is established
30 which shall consist of the following eight members:

- 31 a. The director of the department of corrections.
- 32 b. The director of the department of education.
- 33 c. The director of the Iowa department of public health.
- 34 d. The commissioner of public safety.
- 35 e. The director of the department of human services.

1 f. A prosecuting attorney.

2 g. A licensed substance abuse treatment specialist.

3 h. A law enforcement officer.

4 The prosecuting attorney, licensed substance abuse
5 treatment specialist, and law enforcement officer shall be
6 appointed by the governor for four-year terms beginning and
7 ending as provided in section 69.19. A vacancy on the
8 commission shall be filled for the unexpired term in the same
9 manner as the original appointment was made.

10 2. The council shall make policy recommendations to the
11 director concerning the administration and development of
12 programs administered by the department.

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

18 4. The council shall hold an organizational meeting within
19 thirty days of the beginning of a new regular term for one or
20 more of its members. The council shall organize by electing a
21 chairperson, vice chairperson, secretary, and any other
22 officers deemed necessary or desirable. The council shall
23 meet at least quarterly throughout the year.

24 5. A majority of the members of the council constitutes a
25 quorum, and a majority of a quorum may act in any matter
26 within the jurisdiction of the council, unless a more
27 restrictive rule is adopted by the council.

28 Sec. 7. NEW SECTION. 80E.7 NARCOTICS ENFORCEMENT
29 ADVISORY COUNCIL.

30 1. An Iowa narcotics enforcement advisory council is
31 established which shall consist of the following seven
32 members:

33 a. Two members representing the Iowa association of chiefs
34 of police and peace officers.

35 b. Two members representing the Iowa state policemen's

1 association.

2 c. Two members representing the Iowa state sheriffs' and
3 deputies' association.

4 d. The commissioner of public safety or the commissioner's
5 designee, who shall serve as chairperson of the council.

6 Members under paragraphs "a", "b", and "c" shall be
7 appointed by the governor, subject to senate confirmation, for
8 four-year terms beginning and ending as provided in section
4075 9 69.19. Appointments shall be made on the basis of experience,
10 knowledge, and ability in the field of narcotics enforcement.

11 A vacancy on the council shall be filled for the unexpired
12 term in the same manner as the original appointment was made.
13 No more than four members shall belong to the same political
14 party. The members of the council shall be paid a per diem of
15 fifty dollars per day and their reasonable and necessary
16 expenses when conducting council business.

17 2. The council shall adopt all necessary rules of
18 operation pursuant to chapter 17A.

4075 19 3. The council shall oversee and recommend policy for the
20 operation and conduct of the narcotics enforcement division of
21 the department.

22 4. The council shall meet in closed session to be updated
23 as to the status of all operations being, or to be, conducted
24 by the narcotics enforcement division. The record of the
25 closed session is exempt from the provisions of chapter 22.

4075 26 5. The council shall recommend policy changes and
27 alternatives to the drug control advisory council established
28 in section 80E.6.

4075 29 Sec. 8. TRANSFER OF PERSONNEL AND PROGRAMS.

30 1. The division of substance abuse in the Iowa department
31 of public health and the programs administered by the division
32 are transferred to the department of drug control. The
33 transfer includes seventeen full-time equivalent positions in
34 the division of substance abuse in the Iowa department of
35 public health and includes the governor's alliance on

1 substance abuse.

2 2. The division of narcotics in the department of public
3 safety and the programs and activities of the division are
4 transferred to the department of drug control. The transfer
5 includes twenty-three full-time equivalent positions in the
6 division of narcotics.

7 3. An education program consultant within the bureau of
8 instruction and curriculum of the department of education
9 involved with substance abuse education programs is
10 transferred to the department of drug control. The transfer
11 includes one full-time equivalent position.

12 Sec. 9. Notwithstanding any other provisions of law, the
13 treasurer of state before making allotments of the moneys
14 within the Iowa plan fund pursuant to section 99E.32,
15 subsection 1, for the fiscal year beginning July 1, 1989,

4695 16 shall transfer to the Iowa law enforcement academy the
17 following amount, to be used for the purposes designated:

18 For the administration of a drug enforcement training
19 program for law enforcement officers, as defined in section
20 80B.3, subsection 3, including, but not limited to, training
21 for the detection of gang and juvenile activity and the
22 apprehension of gang members and juvenile delinquents, subject

4695 23 to the limitation that the academy shall not pay for more than
24 fifty percent of the cost of training of any officer,
25 including salary and other benefits, with the remaining fifty
26 percent to be paid by the law enforcement officer's local
27 jurisdiction:

28 \$ 300,000

29 As a condition, limitation, and qualification of this
30 appropriation, the law enforcement officers to be trained
31 under this program shall be selected by the Iowa narcotics
32 enforcement advisory council in closed session. The record of
33 the closed session is exempt from chapter 22. When the
34 council has reached a decision, it shall convene in open
35 meeting and announce such decision. No more than four law

1 enforcement officers participating in this training shall be
2 employed by law enforcement agencies located in the same
3 county. The training program shall be for a period of one
4 year and an officer participating in this program shall
5 perform, after receiving initial instruction and training at
6 the law enforcement academy, duties as directed by the
7 department of public safety within the narcotics enforcement
8 division relating to the department's responsibility for the
9 enforcement of all laws and rules relating to any controlled
10 substance or counterfeit substance as provided in sections
11 80.27 through 80.34.

12 Sec. 10. There is appropriated from the general fund of
13 the state to the office of the attorney general for the office
14 of the prosecuting attorneys training coordinator for the
15 fiscal year beginning July 1, 1989, and ending June 30, 1990,
16 the following amount, or so much thereof as is necessary, to
17 be used for the purposes designated:

18 For the development and administration of a drug
19 enforcement and prosecution training program for prosecuting
20 attorneys as defined in section 13A.1, subsection 4, and for
21 not more than the following full-time equivalent positions:
22 \$ 100,000
23 FTEs 1.0

40%
24 Sec. 11. There is appropriated from the general fund of
25 the state to the department of public safety for the fiscal
26 year beginning July 1, 1989, and ending June 30, 1990, the
27 following amount, or so much thereof as is necessary, to be
28 used for the purposes designated:

29 1. For the division of narcotics for the salaries and
30 support of the following additional full-time equivalent
31 positions:
32 \$ 839,680
33 FTEs 14.0

34 As a condition, limitation, and qualification of this
35 appropriation, the division shall employ an additional ten

1 full-time special agents and an additional four full-time
2 support/clerical staff.

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

6 \$ 153,288
7 FTEs 4.0

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

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11 Sec. 12. There is appropriated from the general fund of
12 the state to the department of corrections for the fiscal year
13 beginning July 1, 1989, and ending June 30, 1990, the
14 following amount, or so much thereof as is necessary, to be
15 used for the purposes designated:

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

4075 19 \$ 1,000,000

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As a condition, limitation, and qualification of this
21 appropriation, \$200,000 shall be used for the licensed
22 substance abuse programs at the correctional facilities at
23 Newton, Clarinda, and Mt. Pleasant, for expanding the program
24 at Mitchellville in order to permit the program to be
25 licensed, and for employment of an additional five full-time
26 counselors and one half-time counselor for the correctional
27 facilities at Clarinda, Newton, Mt. Pleasant, and Luster
28 Heights; \$424,000 shall be used to provide twenty-five
29 additional beds at the correctional facility at Newton for an
30 intensive thirty-day substance abuse treatment program for
31 parole and work release violators who have identified
32 substance abuse problems, and for employment of six additional
33 correctional officers, five additional counselors, and a half-
34 time nurse; and \$376,000 shall be used for the expansion of
35 the treatment alternatives to street crime program currently

1 existing in the first, fifth, and sixth judicial district
2 departments of correctional services and for developing this
3 program in the remaining judicial district departments of
4 correctional services.

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4079 5 Sec. 13. The governor shall appoint the director of the
6 department of drug control by February 1, 1990, who shall be
7 confirmed by the senate prior to March 1, 1990. The confirmed
8 appointee shall assume the duties of the director on March 1,
9 1990, for the purpose of completing a plan of operation and
10 coordination in establishing the department in the most
11 efficient and expedient manner possible.

4087 12 Sec. 14. Section 204.401, subsections 1 and 2, Code 1989,
13 are amended by striking the subsections and inserting in lieu
14 thereof the following:

15 1. Except as authorized by this chapter, it is unlawful
*16 for any person to manufacture, deliver, or possess with the
*17 intent to manufacture or deliver, a controlled substance, a
18 counterfeit substance, or a simulated controlled substance, or
19 to act with, enter into a common scheme or design with, or
20 conspire with one or more other persons to manufacture,
*21 deliver, or possess with the intent to manufacture or deliver
*22 a controlled substance, a counterfeit substance, or a
23 simulated controlled substance.

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

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

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

34 (a) Coca leaves, except coca leaves and extracts of coca
35 leaves from which cocaine, ecgonine, and derivatives of

1 ecgonine or their salts have been removed.

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

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

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

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

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

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

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

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

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

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

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

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

35 (c) Ecgonine, its derivatives, their salts, isomers, and

1 salts of isomers.

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) Five grams or less of a mixture or substance described

1 in subparagraph (2) which contains cocaine base.

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

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

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

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

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

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

30 2. If the same person commits two or more acts which are
31 in violation of subsection 1 and the acts occur in
32 approximately the same location or time period so that the
33 acts can be attributed to a single scheme, plan, or
34 conspiracy, the acts may be considered a single violation and
35 the weight of the controlled substances, counterfeit

1 substances, or simulated controlled substances involved may be
2 combined for purposes of charging the offender.

3 Sec. 15. Section 204.406, Code 1989, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

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

4087 8 a. Unlawfully distributes a substance listed in schedule I
9 or II, which is a narcotic or cocaine, to a person under
10 eighteen years of age commits a class "B" felony and shall
11 serve a minimum term of confinement of five years. However,
12 if the substance was distributed in or on, or within one
13 thousand feet of, the real property comprising a public or
4086 14 private elementary or secondary school, the person shall serve
15 a minimum term of confinement of ten years.

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

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

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

4087 25 a. Unlawfully distributes a counterfeit substance listed
26 in schedule I or II which is a narcotic or cocaine, or a
27 simulated controlled substance represented to be a narcotic or
28 cocaine classified in schedule I or II, to a person under
29 eighteen years of age commits a class "B" felony. However, if
30 the substance was distributed in or on, or within one thousand
31 feet of, the real property comprising a public or private
4086 32 elementary or secondary school, the person shall serve a
33 minimum term of confinement of ten years.

34 b. Unlawfully distributes a counterfeit substance other
35 than a narcotic or cocaine listed in schedule I, II, or III,

1 or a simulated controlled substance represented to be any
2 substance listed in schedule I, II, or III, to a person under
3 eighteen years of age who is at least three years younger than
4 the violator commits a class "C" felony.

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

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

18 Sec. 16. Section 204.410, Code 1989, is amended to read as
19 follows:

20 204.410 ACCOMMODATION OFFENSE.

21 In a prosecution for unlawful delivery or possession with
22 intent to deliver marijuana, if the prosecution proves that
23 the defendant violated the provisions of section 204.401,
24 subsection 1, by proving that the defendant delivered or
25 possessed with intent to deliver one ounce or less of
26 marijuana, the defendant is guilty of an accommodation offense
27 and rather than being sentenced as if convicted for a
28 violation of section 204.401, subsection 1, paragraph "b" "d",
29 shall be sentenced as if convicted of a violation of section
30 204.401, subsection 3. An accommodation offense may be proved
31 as an included offense under a charge of delivering or
32 possessing with the intent to deliver marijuana in violation
33 of section 204.401, subsection 1. This section does not apply
34 to hashish, hashish oil, or other derivatives of marijuana as
35 defined in section 204.101, subsection 17.

1 Sec. 17. Section 204.413, unnumbered paragraph 1, Code
2 1989, is amended to read as follows:

3 A person sentenced pursuant to section 204.401, subsection
4 1, paragraph "a", or "b", "c", "e", or "f", shall not be
5 eligible for parole until the person has served a minimum
6 period of confinement of one-third of the maximum
7 indeterminate sentence prescribed-by-law imposed by the court.

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8 Sec. 18. NEW SECTION. 808B.1 DEFINITIONS.

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

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

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

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

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

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

27 (1) Furnished to the subscriber or user by a communica-
28 tions common carrier in the ordinary course of its business
29 and being used by the subscriber or user in the ordinary
30 course of the subscriber's or user's business.

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

35 b. A hearing aid or similar device being used to correct

1 subnormal hearing to not better than normal hearing.

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

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

13 7. "Oral communication" means an oral communication ut-
14 tered by a person exhibiting an expectation that the communi-
15 cation is not subject to interception, under circumstances
16 justifying that expectation.

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

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

26 Sec. 19. NEW SECTION. 808B.2 UNLAWFUL ACTS -- PENALTY.

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

30 a. Willfully intercepts, endeavors to intercept, or pro-
31 cures any other person to intercept or endeavor to intercept,
32 a wire communication or oral communication.

33 b. Willfully uses, endeavors to use, or procures any other
34 person to use or endeavor to use an electronic, mechanical, or
35 other device to intercept any oral communication when either

1 of the following applies:

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

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

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

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

18 2. a. It is not unlawful under this chapter for an
19 operator of a switchboard, or an officer, employee, or agent
20 of a communications common carrier, whose facilities are used
21 in the transmission of a wire communication, to intercept,
22 disclose, or use that communication in the normal course of
23 employment while engaged in an activity which is a necessary
24 incident to the rendition of service or to the protection of
25 the rights or property of the carrier of the communication.
26 However, communications common carriers shall not use service
27 observing or random monitoring except for mechanical or
28 service quality control checks.

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

34 c. It is not unlawful under this chapter for a person not
35 acting under color of law to intercept a wire communication or

1 oral communication if the person is a party to the com-
2 munication or if one of the parties to the communication has
3 given prior consent to the interception, unless the communica-
4 tion is intercepted for the purpose of committing a criminal
5 or tortious act in violation of the Constitution or laws of
6 the United States or of any state or for the purpose of
7 committing any other injurious act.

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

17 Sec. 20. NEW SECTION. 808B.3 COURT ORDER FOR
18 INTERCEPTION BY SPECIAL AGENTS.

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

34 Sec. 21. NEW SECTION. 808B.4 PERMISSIBLE DISCLOSURE AND
35 USE.

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

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

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

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

29 5. If a special state agent, while engaged in intercepting
30 a wire communication or oral communication in the manner
31 authorized, intercepts a communication relating to an offense
32 other than those specified in the order of authorization, the
33 contents of the communication, and the evidence derived from
34 the communication, may be disclosed or used as provided in
35 subsections 1 and 2. The contents of and the evidence derived

1 from the communication may be used under subsection 3 when
2 authorized by a court if the court finds on subsequent
3 petition that the contents were otherwise intercepted in
4 accordance with this chapter. The petition shall be made as
5 soon as practicable.

6 Sec. 22. NEW SECTION. 808B.5 APPLICATION AND ORDER.

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

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

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

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

33 d. A statement of the period of time for which the inter-
34 ception is required to be maintained. If the nature of the
35 investigation is such that the authorization for interception

1 should not automatically terminate when the described type of
2 communication has been first obtained, a particular
3 description of facts establishing probable cause to believe
4 that additional communications of the same type will
5 subsequently occur.

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

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

18 2. The court may require the applicant to furnish ad-
19 ditional testimony or documentary evidence in support of the
20 application.

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

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

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

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

1 d. There is probable cause for belief that the facilities
2 from which, or the place where, the wire communications or
3 oral communications are to be intercepted are being used, or
4 are about to be used, in connection with the commission of the
5 offense, or are leased to, listed in the name of, or commonly
6 used by the person whose communications are to be intercepted.

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

10 a. The identity of the person, if known, whose communica-
11 tions are to be intercepted.

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

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

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

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

24 5. Each order authorizing the interception of a wire
25 communication or oral communication shall, upon request of the
26 applicant, direct that a communications common carrier,
27 landlord, custodian, or other person shall furnish to the
28 applicant all information, facilities, and technical
29 assistance necessary to accomplish the interception
30 inconspicuously and with a minimum of interference with the
31 services that the carrier, landlord, custodian, or person is
32 giving to the person whose communications are to be
33 intercepted. Any communications common carrier, landlord,
34 custodian, or other person furnishing facilities or technical
35 assistance shall be compensated by the applicant at the

1 prevailing rates.

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

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

29 8. The contents of a wire communication or oral
30 communication intercepted by a means authorized by this
31 chapter shall, if possible, be recorded on tape or wire or
32 other comparable device. The recording of the contents of a
33 wire communication or oral communication under this subsection
34 shall be done in a way which will protect the recording from
35 editing or other alterations. Immediately upon the expiration

1 of the period of the order, or extensions of it, the
2 recordings shall be made available to the court issuing the
3 order and shall be sealed under the court's directions.

4 Custody of the recordings shall be in accordance with the
5 court order. Recordings shall be kept for five years and
6 shall then be destroyed unless it is necessary to keep the
7 recordings due to a continued legal process or court order,
8 but the recordings shall not be kept for longer than ten

* 9 years. Duplicate recordings may be made for disclosure or
10 use pursuant to section 808B.4, subsections 1 and 2. The
11 presence of a seal, or a satisfactory explanation for its
12 absence, is a prerequisite for the disclosure or use of the
13 contents of a wire communication or oral communication or
14 evidence derived from a communication under section 808B.4,
15 subsection 3.

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

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

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

32 a. The names of other parties to intercepted communica-
33 tions if the court determines disclosure of the names to be in
34 the interest of justice.

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

1 (1) The date of the application.

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

5 (3) Whether, during the period, wire or oral communica-
6 tions were or were not intercepted.

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

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

29 11. An aggrieved person in a trial, hearing, or proceeding
30 in or before any court, department, officer, agency, regula-
31 tory body, or other authority of this state, may move to
32 suppress the contents of an intercepted wire communication or
33 oral communication, or evidence derived from the wire
34 communication or oral communication, on the grounds that the
35 communication was unlawfully intercepted, the order of

1 authorization under which it was intercepted was insufficient
2 on its face, or the interception was not made in conformity
3 with the order of authorization. The motion shall be made
4 before the trial, hearing, or proceeding unless there was no
5 opportunity to make the motion or the person was not aware of
6 the grounds of the motion. If the motion is granted, the
7 contents of the intercepted wire communication or oral
8 communication, or evidence derived from the wire communication
9 or oral communication, shall be treated as having been
10 obtained in violation of this chapter.

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

15 Sec. 23. NEW SECTION. 808B.6 REPORTS TO STATE COURT
16 ADMINISTRATOR.

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

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

22 b. The kind of order or extension applied for.

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

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

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

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

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

34 2. In January of each year, the attorney general and the
35 county attorneys of this state shall report to the state court

1 administrator and to the administrative offices of the United
2 States district courts all of the following:

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

4 b. The kind of order or extension applied for.

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

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

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

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

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

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

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

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

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

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

27 i. The number of trials resulting from such interceptions.

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

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

34 l. The information required by paragraphs "b" through "f"
35 with respect to orders or extensions obtained in a preceding

1 calendar year and not yet reported.

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

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

13 Sec. 24. NEW SECTION. 808B.7 CONTENTS OF INTERCEPTED
14 WIRE OR ORAL COMMUNICATION AS EVIDENCE.

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

24 Sec. 25. NEW SECTION. 808B.8 CIVIL DAMAGES AUTHORIZED --
25 CIVIL AND CRIMINAL IMMUNITY --INJUNCTIVE RELIEF.

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

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

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

34 (1) Actual damages, but not less than liquidated damages
35 computed at the rate of one hundred dollars a day for each day

1 of violation, or one thousand dollars, whichever is higher.

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

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

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

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

13 Sec. 26. NEW SECTION. 808B.9 REPEAL.

14 This chapter is repealed effective July 1, 1994.

4075?

15 Sec. 27. Section 204.414, Code 1989, is repealed.

16 Sec. 28. Sections 1 through 6 and section 8 of this Act
17 are effective July 1, 1990.

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HOUSE FILE 780

S-4075

1 Amend House File 780, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking page 1, line 1 through page 4,
4 line 28, and inserting the following:

5 Sec. ____ . NEW SECTION. 80E.1 NARCOTICS
6 ENFORCEMENT".

7 2. Page 5, line 9, by inserting after the figure
8 "69.19." the following: "These members shall not be
9 serving as an officer within their respective
10 associations at the time of appointment or at any time
11 while serving on the advisory council."

12 3. Page 5, line 19, by striking the word
13 "oversee" and inserting the following: "advise".

14 4. By striking page 5, line 26, through page 6,
15 line 11.

16 5. Page 8, by inserting after line 10 the
17 following:

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

23 \$ 59,024
24 FTEs 2.0".

25 6. Page 8, by striking lines 21 through 28 and
26 inserting the following: "appropriation, \$424,000
27 shall be used to provide twenty-five".

28 7. Page 8, line 34, by striking the figure
29 "376,000" and inserting the following: "480,000".

30 8. Page 9, by inserting after line 4, the
31 following:

32 "Sec. ____ . The department of human services, in
33 coordination with the division of criminal and
34 juvenile justice planning of the department of human
35 rights, the juvenile court, and the division of
36 substance abuse of the Iowa department of public
37 health, shall identify the need for additional
38 juvenile substance abuse treatment programs within the
39 state, the necessary reimbursement structure under
40 foster care for such programs to be established and
41 maintained, and the security needs for such programs.
42 The department shall submit to the general assembly a
43 report of its findings no later than January 1, 1990.
44 The department shall make use of this report in
45 providing start-up funds for additional shelter or
46 group home programs within the state, if funds are
47 made available to the department for this purpose."

48 9. Page 15, by striking line 7, and inserting the
49 following: "indeterminate sentence prescribed by law.

50 Sec. ____ . NEW SECTION. 256.40 FINDINGS.

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Page 2

1 Greater collaboration and coordination is necessary
2 among state agencies in addressing the many challenges
3 faced by Iowa in assuring the full development of the
4 state's youth into the productive work force necessary
5 for the twenty-first century. Public policy attention
6 must be placed upon the needs of at-risk adolescents
7 and adolescents in at-risk communities. Iowa youth
8 are at risk of a variety of personal and social
9 problems including drug abuse and dependency, school
10 dropout, juvenile delinquency, adolescent suicide, and
11 adolescent pregnancy, all of which can lead to adult
12 unemployment and welfare dependency. Approaches to
13 such adolescent problems should be dealt with in a
14 comprehensive and coordinated fashion that involves
15 the schools, community programs serving youth, and the
16 private sector in providing positive youth
17 alternatives. The state should play a significant
18 role in aiding in such collaborative efforts within
19 local communities.

20 Sec. ____ . NEW SECTION. 256.41 YOUTH 2000
21 COORDINATING COUNCIL CREATED.

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

25 1. The director of the department of education, or
26 the director's designee.

27 2. The administrator of the division of job
28 training and entrepreneurship assistance of the
29 department of economic development, or the
30 administrator's designee.

31 3. The administrator of the division of children,
32 youth and families in the department of human rights,
33 or the administrator's designee.

34 4. The administrator of the division of substance
35 abuse of the Iowa department of public health, or the
36 administrator's designee.

37 5. The administrator of the division of criminal
38 and juvenile justice planning, or the administrator's
39 designee.

40 6. The administrator of the division of children
41 and youth programs within the department of human
42 services, or the administrator's designee.

43 7. The president of the Iowa association of school
44 boards, or the president's designee.

45 8. The president of the Iowa state education
46 association, or the president's designee.

47 Sec. ____ . NEW SECTION. 256.42 COUNCIL
48 RESPONSIBILITIES.

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

- 1 1. Identify ways in which state agencies can
2 coordinate the delivery of state services for youth
3 within local communities, including ways in which
4 local schools can coordinate services with other youth
5 services programs.
 - 6 2. Identify ways in which state policy should be
7 modified to provide for greater collaboration in
8 addressing youth problems and provide greater
9 efficiency in meeting youth needs.
 - 10 3. Identify program models for use in local
11 communities for after school and summer youth
12 employment efforts involving public-private
13 partnerships to serve as alternatives to school
14 dropout and drug use by youth.
 - 15 4. Assist the department of education in providing
16 oversight and assistance to the school-based youth
17 services education program established pursuant to
18 1989 Iowa Acts, House File 535.
 - 19 5. Subject to the availability of funds for this
20 purpose, award community planning grants for
21 collaborative efforts to establish local drug
22 prevention and youth development programs.
 - 23 6. Provide assistance to local communities and the
24 Iowa department of public health in using substance
25 abuse prevention funds available through federal and
26 foundation funding sources.
 - 27 7. Seek outside funding support for statewide and
28 regional workshops and conferences on collaborative
29 efforts to address youth problems.
 - 30 8. Serve as a clearinghouse on collaborative
31 efforts to provide youth development opportunities for
32 at-risk youth and youth in at-risk communities.
 - 33 9. Report annually to the governor on public
34 policy options available in Iowa to reduce the use of
35 drugs by Iowa's youth and to address other important
36 youth issues.
- 37 Sec. _____. Section 730.5, subsection 2, Code 1989,
38 is amended to read as follows:
- 39 2. Except as provided in subsection 7, an employer
40 shall not require or request employees or applicants
41 for employment to submit to a drug test as a condition
42 of employment, preemployment, promotion, or change in
43 status of employment. An employer shall not request,
44 require, or conduct random or blanket drug testing of
45 employees. However, this section does not apply to
46 preemployment drug tests authorized for peace officers
47 or correctional officers of the state, or to drug
48 tests required under federal statutes laws, or to drug
49 tests conducted pursuant to a nuclear regulatory
50 commission policy statement, or to drug tests

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Page 4

1 conducted to determine if an employee is ineligible to
2 receive workers' compensation under section 85.16,
3 subsection 2."

4 10. Page 29, by inserting after line 14, the
5 following:

6 "Sec. _____. The department of education shall
7 develop programs for juveniles designed to provide
8 alternative activities for juveniles in an effort to
9 reduce the participation of the target population in
10 gang activities and other delinquent acts. The
11 department shall report to the legislative fiscal
12 committee before August 1989 with respect to the
13 programs developed.

14 Sec. _____. The legislative council shall consider
15 establishing a commission to study illegal drug
16 activities in the state of Iowa and efforts to combat
17 this growing problem. If established, the commission
18 shall study the appropriate aid to be provided to
19 state and local law enforcement agencies for the
20 apprehension of persons engaged in unlawful activities
21 relating to drugs, the proper role for state
22 government in coordinating these enforcement
23 activities, the treatment of substance abusers, the
24 relationship between the use of illegal drugs and the
25 commission of criminal offenses not related to illegal
26 drugs in Iowa, and other related matters. The
27 commission should report its findings and
28 recommendations to the legislative council and the
29 general assembly by January 15, 1990."

30 11. Page 29, by striking lines 16 and 17.

31 12. Title page, line 2, by inserting after the
32 word "enforcement" the following: ", correcting a
33 reference to federal laws,".

34 13. Renumber as necessary.

By COMMITTEE ON APPROPRIATIONS
JOE WELSH, Chairperson

S-4075 FILED MAY 3, 1989

ADOPTED 5-3-89 (p.1885)

HOUSE FILE 780

S-4079

1 Amend House File 780, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 8, line 19, by striking the figure
4 "1,000,000" and inserting the following: "904,000".

5 2. Page 9, by striking lines 5 through 11.

6 3. Title page, line 2, by striking the words "and
7 creating a new department of drug control".

8 4. Renumber as necessary.

By DALE TIEDEN

S-4079 FILED MAY 3, 1989

ADOPTED 5-3-89 (p.1885)

HOUSE FILE 780

S-4095

- 1 Amend House File 780 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 6, line 16, by striking the words "law
- 4 enforcement academy" and inserting the following:
- 5 "narcotics enforcement advisory council".
- 6 2. Page 6, line 23, by striking the word
- 7 "academy" and inserting the following: "council".

By JOE WELSH

S-4095 FILED MAY 3, 1989

ADOPTED 5-3-89 (p 1886)

HOUSE FILE 780

S-4096

- 1 Amend House File 780, as amended, passed, and re-
- 2 printed by the House, as follows:
- 3 1. Page 7, by inserting after line 23 the fol-
- 4 lowing:
- 5 "Sec. ____ . There is appropriated from the general
- 6 fund of the state to the department of human services
- 7 for the fiscal year beginning July 1, 1989, and ending
- 8 June 30, 1990, the following amounts, or so much
- 9 thereof as is necessary, to be used for the purposes
- 10 designated:
- 11 For start-up costs associated with the development
- 12 of juvenile emergency shelters and group homes for the
- 13 placement of juveniles who have a high risk of the
- 14 commission of a crime or a delinquent act and who need
- 15 placement out-of-home and need specialized programs
- 16 such as substance abuse or education programs:
- 17 \$ 1,000,000".
- 18 2. Renumber as necessary.

By MICHAEL E. GRONSTAL

S-4096 FILED MAY 3, 1989

ADOPTED 5-3-89 (p 1889)

HOUSE FILE 780

S-4086

1 Amend House File 780, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 13, line 14, by inserting after the word
 4 "school," the following: "the real property
 5 comprising a video arcade, or any other property upon
 6 which is located an establishment intended primarily
 7 for the use of minors and where ten or more minors may
 8 be assembled together at any particular time during
 9 the regular business hours of the establishment,".
 10 2. Page 13, line 32, by inserting after the word
 11 "school," the following: "the real property
 12 comprising a video arcade, or any other property upon
 13 which is located an establishment intended primarily
 14 for the use of minors and where ten or more minors may
 15 be assembled together at any particular time during
 16 the regular business hours of the establishment,".

By TOM MANN, Jr.

S-4086 FILED MAY 3, 1989

ADOPTED

5-3-89 (p. 1880)

HOUSE FILE 780

S-4087

1 Amend House File 780, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. By striking page 9, line 12, through page 13,
 4 line 2, and inserting the following:
 5 "Sec. ____ . Section 204.401, Code 1989, is amended
 6 by adding the following new subsections:
 7 NEW SUBSECTION. 4. A person in the immediate
 8 possession or control of a firearm while participating
 9 in a violation of subsections 1 and 2 shall be
 10 sentenced to two times the term otherwise imposed by
 11 law, and no such judgment, sentence, or part thereof
 12 shall be deferred or suspended.
 13 NEW SUBSECTION. 5. A person in the immediate
 14 possession or control of an offensive weapon, as
 15 defined in section 724.1, while participating in a
 16 violation of subsections 1 and 2, shall be sentenced
 17 to three times the term otherwise imposed by law, and
 18 no such judgment, sentence, or part thereof shall be
 19 deferred or suspended."
 20 2. Page 13, by striking lines 11 through 15 and
 21 inserting the following: "serve a minimum term of
 22 confinement of five years."
 23 3. Page 13, by striking lines 29 through 33 and
 24 inserting the following: "eighteen years of age
 25 commits a class "B" felony."
 26 4. By renumbering as necessary.

By TOM MANN, Jr.

S-4087 FILED MAY 3, 1989

LOST

5-3-89 (p. 1885)

HOUSE FILE 780

S-4028

- 1 Amend House File 780 as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 15, by inserting after line 7, the
- 4 following:
- 5 "Sec. ____ . NEW SECTION. 724.28 APPLICABILITY OF
- 6 CHAPTER.
- 7 The regulation of lawful ownership, possession,
- 8 registration, licensing, transfer, and transportation
- 9 of weapons are subject solely to this chapter."
- 10 2. by renumbering as necessary.

S-4028

FILED May 1, 1989

BY DONALD V. DOYLE

withdrawn 5-3-89 (p-1886)

HOUSE FILE 780

S-4067

- 1 Amend House File 780 as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 15, by inserting after line 7, the
- 4 following:
- 5 "Sec. ____ . NEW SECTION. 724.28 APPLICABILITY OF
- 6 CHAPTER.
- 7 Except as provided in section 110.36, the
- 8 regulation of lawful ownership, possession,
- 9 registration, licensing, transfer, and transportation
- 10 of weapons are subject solely to this chapter."
- 11 2. By renumbering as necessary.

By DONALD V. DOYLE

S-4067 FILED MAY 2, 1989

Out of Order 5-3-89 (p-1886)

SENATE AMENDMENT TO HOUSE FILE 780

H-4408

1 Amend House File 780, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking page 1, line 1 through page 4,
4 line 28, and inserting the following:

5 Sec. ____ . NEW SECTION. 80E.1 NARCOTICS
6 ENFORCEMENT".

7 2. Page 5, line 9, by inserting after the figure
8 "69.19." the following: "These members shall not be
9 serving as an officer within their respective
10 associations at the time of appointment or at any time
11 while serving on the advisory council."

12 3. Page 5, line 19, by striking the word
13 "oversee" and inserting the following: "advise".

14 4. By striking page 5, line 26, through page 6,
15 line 11.

16 5. Page 6, line 16, by striking the words "law
17 enforcement academy" and inserting the following:
18 "narcotics enforcement advisory council".

19 6. Page 6, line 23, by striking the word
20 "academy" and inserting the following: "council".

21 7. Page 7, by inserting after line 23 the fol-
22 lowing:

23 "Sec. ____ . There is appropriated from the general
24 fund of the state to the department of human services
25 for the fiscal year beginning July 1, 1989, and ending
26 June 30, 1990, the following amounts, or so much
27 thereof as is necessary, to be used for the purposes
28 designated:

29 For start-up costs associated with the development
30 of juvenile emergency shelters and group homes for the
31 placement of juveniles who have a high risk of the
32 commission of a crime or a delinquent act and who need
33 placement out-of-home and need specialized programs
34 such as substance abuse or education programs:

35 \$ 1,000,000".

36 8. Page 8, by inserting after line 10 the
37 following:

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

43 \$ 59,024
44 FTEs 2.0".

45 9. Page 8, line 19, by striking the figure
46 "1,000,000" and inserting the following: "904,000".

47 10. Page 8, by striking lines 21 through 28 and
48 inserting the following: "appropriation, \$424,000
49 shall be used to provide twenty-five".

50 11. Page 8, line 34, by striking the figure

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Page 2

1 "376,000" and inserting the following: "480,000".

2 12. Page 9, by inserting after line 4, the
3 following:

4 "Sec. ____ . The department of human services, in
5 coordination with the division of criminal and
6 juvenile justice planning of the department of human
7 rights, the juvenile court, and the division of
8 substance abuse of the Iowa department of public
9 health, shall identify the need for additional
10 juvenile substance abuse treatment programs within the
11 state, the necessary reimbursement structure under
12 foster care for such programs to be established and
13 maintained, and the security needs for such programs.
14 The department shall submit to the general assembly a
15 report of its findings no later than January 1, 1990.
16 The department shall make use of this report in
17 providing start-up funds for additional shelter or
18 group home programs within the state, if funds are
19 made available to the department for this purpose."

20 13. Page 9, by striking lines 5 through 11.

21 14. Page 13, line 14, by inserting after the word
22 "school," the following: "the real property
23 comprising a video arcade, or any other property upon
24 which is located an establishment intended primarily
25 for the use of minors and where ten or more minors may
26 be assembled together at any particular time during
27 the regular business hours of the establishment,".

28 15. Page 13, line 32, by inserting after the word
29 "school," the following: "the real property
30 comprising a video arcade, or any other property upon
31 which is located an establishment intended primarily
32 for the use of minors and where ten or more minors may
33 be assembled together at any particular time during
34 the regular business hours of the establishment,".

35 16. Page 15, by striking line 7, and inserting
36 the following: "indeterminate sentence prescribed by
37 law.

38 Sec. ____ . NEW SECTION. 256.40 FINDINGS.

39 Greater collaboration and coordination is necessary
40 among state agencies in addressing the many challenges
41 faced by Iowa in assuring the full development of the
42 state's youth into the productive work force necessary
43 for the twenty-first century. Public policy attention
44 must be placed upon the needs of at-risk adolescents
45 and adolescents in at-risk communities. Iowa youth
46 are at risk of a variety of personal and social
47 problems including drug abuse and dependency, school
48 dropout, juvenile delinquency, adolescent suicide, and
49 adolescent pregnancy, all of which can lead to adult
50 unemployment and welfare dependency. Approaches to

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Page 3

1 such adolescent problems should be dealt with in a
2 comprehensive and coordinated fashion that involves
3 the schools, community programs serving youth, and the
4 private sector in providing positive youth
5 alternatives. The state should play a significant
6 role in aiding in such collaborative efforts within
7 local communities.

8 Sec. ____ . NEW SECTION. 256.41 YOUTH 2000
9 COORDINATING COUNCIL CREATED.

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

13 1. The director of the department of education, or
14 the director's designee.

15 2. The administrator of the division of job
16 training and entrepreneurship assistance of the
17 department of economic development, or the
18 administrator's designee.

19 3. The administrator of the division of children,
20 youth and families in the department of human rights,
21 or the administrator's designee.

22 4. The administrator of the division of substance
23 abuse of the Iowa department of public health, or the
24 administrator's designee.

25 5. The administrator of the division of criminal
26 and juvenile justice planning, or the administrator's
27 designee.

28 6. The administrator of the division of children
29 and youth programs within the department of human
30 services, or the administrator's designee.

31 7. The president of the Iowa association of school
32 boards, or the president's designee.

33 8. The president of the Iowa state education
34 association, or the president's designee.

35 Sec. ____ . NEW SECTION. 256.42 COUNCIL
36 RESPONSIBILITIES.

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

39 1. Identify ways in which state agencies can
40 coordinate the delivery of state services for youth
41 within local communities, including ways in which
42 local schools can coordinate services with other youth
43 services programs.

44 2. Identify ways in which state policy should be
45 modified to provide for greater collaboration in
46 addressing youth problems and provide greater
47 efficiency in meeting youth needs.

48 3. Identify program models for use in local
49 communities for after school and summer youth
50 employment efforts involving public-private

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Page 4

1 partnerships to serve as alternatives to school
2 dropout and drug use by youth.

3 4. Assist the department of education in providing
4 oversight and assistance to the school-based youth
5 services education program established pursuant to
6 1989 Iowa Acts, House File 535.

7 5. Subject to the availability of funds for this
8 purpose, award community planning grants for
9 collaborative efforts to establish local drug
10 prevention and youth development programs.

11 6. Provide assistance to local communities and the
12 Iowa department of public health in using substance
13 abuse prevention funds available through federal and
14 foundation funding sources.

15 7. Seek outside funding support for statewide and
16 regional workshops and conferences on collaborative
17 efforts to address youth problems.

18 8. Serve as a clearinghouse on collaborative
19 efforts to provide youth development opportunities for
20 at-risk youth and youth in at-risk communities.

21 9. Report annually to the governor on public
22 policy options available in Iowa to reduce the use of
23 drugs by Iowa's youth and to address other important
24 youth issues.

25 Sec. _____. Section 730.5, subsection 2, Code 1989,
26 is amended to read as follows:

27 2. Except as provided in subsection 7, an employer
28 shall not require or request employees or applicants
29 for employment to submit to a drug test as a condition
30 of employment, preemployment, promotion, or change in
31 status of employment. An employer shall not request,
32 require, or conduct random or blanket drug testing of
33 employees. However, this section does not apply to
34 preemployment drug tests authorized for peace officers
35 or correctional officers of the state, or to drug
36 tests required under federal statutes laws, or to drug
37 tests conducted pursuant to a nuclear regulatory
38 commission policy statement, or to drug tests
39 conducted to determine if an employee is ineligible to
40 receive workers' compensation under section 85.16,
41 subsection 2."

42 17. Page 29, by inserting after line 14, the
43 following:

44 "Sec. _____. The department of education shall
45 develop programs for juveniles designed to provide
46 alternative activities for juveniles in an effort to
47 reduce the participation of the target population in
48 gang activities and other delinquent acts. The
49 department shall report to the legislative fiscal
50 committee before August 1989 with respect to the

H-4408

Page 5

1 programs developed.
2 Sec. _____. The legislative council shall consider
3 establishing a commission to study illegal drug
4 activities in the state of Iowa and efforts to combat
5 this growing problem. If established, the commission
6 shall study the appropriate aid to be provided to
7 state and local law enforcement agencies for the
8 apprehension of persons engaged in unlawful activities
9 relating to drugs, the proper role for state
10 government in coordinating these enforcement
11 activities, the treatment of substance abusers, the
12 relationship between the use of illegal drugs and the
13 commission of criminal offenses not related to illegal
14 drugs in Iowa, and other related matters. The
15 commission should report its findings and
16 recommendations to the legislative council and the
17 general assembly by January 15, 1990."
18 18. Page 29, by striking lines 16 and 17.
19 19. Title page, line 2, by inserting after the
20 word "enforcement" the following: ", correcting a
21 reference to federal laws,".
22 20. Title page, line 2, by striking the words
23 "and creating a new department of drug control".
24 21. By renumbering, relettering, or redesignating
25 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-4408 FILED MAY 4, 1989

REFUSED TO CONCUR

54-89(p.2414)
Senate Insisted (5-4-89, p.1927)

HSB 6

Judiciary & Law Enforcement

Succeeded By
SF (HF) 780

HOUSE FILE _____
BY (PROPOSED CIVIL RIGHTS
COMMISSION BILL)

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

A BILL FOR

1 An Act relating to the commencement in the district court of
2 certain civil rights actions involving administrative
3 closures.

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

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1 Section 1. Section 601A.16, subsection 2, Code 1989, is
2 amended to read as follows:

3 2. Upon a request by the complainant, and after the
4 expiration of one hundred twenty days from the timely filing
5 of a complaint with the commission, the commission shall issue
6 to the complainant a release stating that the complainant has
7 a right to commence an action in the district court. A
8 release under this subsection shall not be issued if a finding
9 of no probable cause has been made on the complaint by the
10 administrative law judge charged with that duty under section
11 601A.15, subsection 3, or a conciliation agreement has been
12 executed under section 601A.15, or the commission has served
13 notice of hearing upon the respondent pursuant to section
14 601A.15, subsection 5, or the complaint is closed after
15 administrative review and two years have elapsed since the
16 issuance date of the closure.

17 EXPLANATION

18 This bill prohibits complainants in civil rights cases from
19 commencing actions for relief in district court if the
20 complaint was closed after administrative review by the civil
21 rights commission and two years have elapsed since the
22 closure.

23 BACKGROUND STATEMENT

24 SUBMITTED BY THE AGENCY

25 The Civil Rights Commission proposes a legislative change
26 imposing a time limit for the complainant to commence an
27 action for relief in the district court by seeking an
28 administrative release from the commission. This change has
29 been requested by attorneys for respondents in order to
30 establish a time limit for the complainants to commence an
31 action for relief in the district court. The impact on the
32 Civil Rights Commission would be an enhancement of
33 respondents' perception of the commission's impartiality in
34 handling discrimination cases.

35

REPORT OF THE CONFERENCE COMMITTEE
ON HOUSE FILE 780

To the Speaker of the House of Representatives and the President of the Senate:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and House of Representatives on House File 780, a bill for An Act relating to substance abuse treatment and narcotics law enforcement and creating a new department of drug control, making certain appropriations, providing penalties, and providing an effective date, respectfully make the following report:

1. That the Senate recedes from its amendment, H-4408.

2. That House File 780, as amended, passed, and reprinted by the House, is amended as follows:

1. By striking page 1, line 1, through page 6, line 11, and inserting the following:

"Sec. ____ . NEW SECTION. 80E.1 DRUG ENFORCEMENT AND ABUSE PREVENTION COORDINATOR.

1. A drug enforcement and abuse prevention coordinator shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The coordinator

shall be selected primarily for administrative ability. The coordinator shall not be selected on the basis of political affiliation and shall not engage in political activity while holding the office. The salary of the coordinator shall be fixed by the governor.

2. The coordinator shall:

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

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

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

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

1. An Iowa drug abuse prevention and education advisory

council is established which shall consist of the following nine members:

- a. The drug enforcement and abuse prevention coordinator, who shall serve as chairperson of the council.
- b. The director of the department of corrections, or the director's designee.
- c. The director of the department of education, or the director's designee.
- d. The director of the Iowa department of public health, or the director's designee.
- e. The commissioner of public safety, or the commissioner's designee.
- f. The director of the department of human services, or the director's designee.
- g. A prosecuting attorney.
- h. A licensed substance abuse treatment specialist.
- i. A law enforcement officer.

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

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

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

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

5. A majority of the members of the council constitutes a quorum, and a majority of the total membership of the council

is necessary to act in any matter within the jurisdiction of the council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

..... \$ 50,000

Sec. 200. The governor's alliance on substance abuse, created pursuant to executive order number 32 and in accordance with the federal Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, is transferred from the Iowa department of public health to the drug enforcement and abuse prevention coordinator and shall be under the control and supervision of the coordinator. All state funds shall be transferred to the coordinator and the coordinator shall be responsible for the preparation of federal grant applications for specific grant programs under the federal Anti-Drug Abuse Act of 1986, and the implementation and monitoring of grant programs pursuant to regulations adopted pursuant to the federal Anti-Drug Abuse Act of 1986."

2. Page 6, line 16, by striking the words "law enforcement academy" and inserting the following: "narcotics enforcement advisory council".

3. Page 6, line 23, by striking the word "academy" and inserting the following: "council".

4. Page 8, by inserting after line 10 the following:

"3. For the division of criminal investigation and bureau of identification, for the purchase and use of

deoxyribonucleic acid recording equipment for purposes of DNA profiling, and not more than the following full-time equivalent positions:

..... \$ 59,024
..... FTEs 2.0".

5. By striking page 8, line 21, through page 9, line 11, and inserting the following:

"..... \$ 940,000

As a condition, limitation, and qualification of this appropriation, \$91,000 shall be used for the licensed substance abuse programs at the correctional facilities at Clarinda and Mt. Pleasant for the employment of an additional three full-time counselors; \$424,000 shall be used to provide staffing and support for twenty-five additional beds at the correctional facility at Newton for an intensive thirty-day substance abuse treatment program for parole and work release violators who have identified substance abuse problems, and for employment of four additional correctional officers, one additional transport officer, four additional counselors, and a half-time nurse; \$425,000 shall be used for the expansion of the treatment alternatives to street crime program currently existing in the first, fifth, and sixth judicial district departments of correctional services and for developing this program in the remaining judicial district departments of correctional services; and the department of corrections in consultation with the division of substance abuse in the Iowa department of public health shall conduct an assessment and evaluation of an attitude, motivation, and education program for offenders or ex-offenders, and submit a report of the findings of the assessment and evaluation to the general assembly on or before March 1, 1990.

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

NEW SUBSECTION. 4. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal

convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the court shall order the person exonerated of the offense and the record expunged. Upon entry of an order exonerating the person of the conviction, the record of the conviction shall be expunged by the clerk of the district court."

6. Page 15, by striking line 7 and inserting the following: "indeterminate sentence prescribed by law.

Sec. ____ . NEW SECTION. 256.40 FINDINGS.

It is the intent of the general assembly that greater collaboration and coordination is necessary among state agencies in addressing the many challenges faced by Iowa in assuring the full development of the state's youth into the productive work force necessary for the twenty-first century. Public policy attention must be placed upon the needs of at-risk adolescents and adolescents in at-risk communities. Iowa youth are at risk of a variety of personal and social problems including drug abuse and dependency, adult criminal activities, school dropout, juvenile delinquency, adolescent suicide, and adolescent pregnancy, all of which can lead to adult unemployment and welfare dependency. Approaches to such adolescent problems should be dealt with in a comprehensive and coordinated fashion that involves the family, schools, community programs serving youth, and the private sector in providing positive youth alternatives. The state should play a significant role in aiding in such collaborative efforts within local communities.

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

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

1. The director of the department of education, or the director's designee.
2. The administrator of the division of job training and entrepreneurship assistance of the department of economic development, or the administrator's designee.

3. The administrator of the division of children, youth and families in the department of human rights, or the administrator's designee.

4. The administrator of the division of substance abuse of the Iowa department of public health, or the administrator's designee.

5. The administrator of the division of criminal and juvenile justice planning in the department of human rights, or the administrator's designee.

6. The administrator of the division of children and youth programs within the department of human services, or the administrator's designee.

7. The president of the Iowa association of school boards, or the president's designee.

8. The president of the Iowa state education association, or the president's designee.

9. The drug enforcement and abuse prevention coordinator shall serve as an ex officio and nonvoting member.

Sec. ____ . NEW SECTION. 256.42 COUNCIL RESPONSIBILITIES.

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

1. Identify ways in which state agencies can coordinate the delivery of state services for youth within local communities, including ways in which local schools can coordinate services with other youth services programs.

2. Identify ways in which state policy should be modified to provide for greater collaboration in addressing youth problems and provide greater efficiency in meeting youth needs.

3. Identify program models for use in local communities for after school and summer youth employment efforts involving public-private partnerships to serve as alternatives to school dropout and drug use by youth.

4. Assist the department of education in providing oversight and assistance to the school-based youth services education program established pursuant to 1989 Iowa Acts, House File 535.

5. Subject to the availability of funds for this purpose, award community planning grants for collaborative efforts to establish local drug prevention and youth development programs.

6. Provide assistance to local communities and the Iowa department of public health in using substance abuse prevention funds available through federal and foundation funding sources.

7. Seek outside funding support for statewide and regional workshops and conferences on collaborative efforts to address youth problems.

8. Serve as a clearinghouse on collaborative efforts to provide youth development opportunities for at-risk youth and youth in at-risk communities.

9. Report annually to the governor on public policy options available in Iowa to reduce the use of drugs by Iowa's youth and to address other important youth issues.

Sec. 100. Section 422.7, subsection 12, paragraphs a, b, and c, and unnumbered paragraph 2, Code 1989, are amended by striking the paragraphs.

Sec. 101. Section 422.7, subsection 12, Code 1989, is amended by adding the following new paragraphs:

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

- (1) Has a physical or mental impairment which substantially limits one or more major life activities.
- (2) Has a record of that impairment.
- (3) Is regarded as having that impairment.

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

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

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

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

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

Sec. 102. Section 422.35, subsection 6, unnumbered paragraph 1, and paragraphs a, b, and c, Code 1989, are amended by striking the paragraphs.

Sec. 103. section 422.35, subsection 6, Code 1989, is amended by adding the following new paragraphs:

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

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

- (1) Has a physical or mental impairment which substantially limits one or more major life activities.
- (2) Has a record of that impairment.
- (3) Is regarded as having that impairment.

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

conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 246, division IX.

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

7. Page 29, by inserting after line 14 the following:

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

8. Page 29, by inserting after line 15 the following:

"Sec. _____. Sections 100 through 103 of this Act apply retroactively to January 1, 1989, for tax years beginning on or after that date.

Sec. _____. Section 200 of this Act is effective July 1, 1990."

9. Page 29, by striking lines 16 and 17.

10. Title page, line 2, by striking the words "and creating a new department of drug control,".

11. By renumbering, relettering, or redesignating and correcting internal references as necessary.

ON THE PART OF THE HOUSE:

ON THE PART OF THE SENATE:

WAYNE MCKINNEY, Chairperson

MICHAEL E. GRONSTAL, Chairperson

JACK BEAMAN

DONALD V. DOYLE

DANIEL J. JAY

MARK R. HAGERLA

MICHAEL K. PETERSON

CALVIN O. HULTMAN

BILL TRENT

JOE WELSH

*CCR-780 Filed May 6, 1989
Report Adopted (p. 2738)*

Adopted 5/7/89 (p. 2085)

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

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

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

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

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

136B.3 TESTING AND REPORTING OF RADON LEVEL.

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

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

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

Approved May 26, 1989

*Signed
5/26/89*

CHAPTER 225

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

H.F. 780

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

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

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

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

2. The coordinator shall:

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

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

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

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

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

- a. The drug enforcement and abuse prevention coordinator, who shall serve as chairperson of the council.
- b. The director of the department of corrections, or the director's designee.
- c. The director of the department of education, or the director's designee.
- d. The director of the Iowa department of public health, or the director's designee.
- e. The commissioner of public safety, or the commissioner's designee.
- f. The director of the department of human services, or the director's designee.
- g. A prosecuting attorney.
- h. A licensed substance abuse treatment specialist.
- i. A law enforcement officer.

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

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

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

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

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

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

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

- a. The drug enforcement and abuse prevention coordinator who shall serve as chairperson.
- b. Two members representing the Iowa association of chiefs of police and peace officers.

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- c. Two members representing the Iowa state policemen's association.
- d. Two members representing the Iowa state sheriffs' and deputies' association.
- e. The commissioner of public safety, or the commissioner's designee.

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

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

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

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

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

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

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

..... \$ 50,000

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

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

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

..... \$ 300,000

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

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

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

For the development and administration of a drug enforcement and prosecution training program for prosecuting attorneys as defined in section 13A.1, subsection 4, and for not more than the following full-time equivalent positions:
..... \$ 100,000
..... FTEs 1.0

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

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

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

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

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

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

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

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

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

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

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

..... \$ 940,000

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

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

Sec. 10. Section 123.46, Code 1989 is amended by adding the following new subsection:
NEW SUBSECTION. 4. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the court shall order the person exonerated of the offense and the record expunged. Upon entry of an order exonerating the person of the conviction, the record of the conviction shall be expunged by the clerk of the district court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 15. NEW SECTION. 256.40 FINDINGS.

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

delinquency, adolescence employment and welfare with in a comprehensive programs serving youth state should play a significant role.

Sec. 16. NEW SECTION.

A youth 2000 council consists of the following:

1. The director of
2. The administrator of the department of economic development,
3. The administrator of human rights, or the administrator of health, or the administrator of human resources,
5. The administrator of human services, or
6. The administrator of human services, or
7. The president of the
8. The president of the
9. The drug enforcement commission, or a nonvoting member.

Sec. 17. NEW SECTION.

The youth 2000 council shall:

1. Identify ways in which youth within local communities can work with other youth services,
2. Identify ways in which youth can be involved in addressing youth issues,
3. Identify program areas for employment efforts, dropout and drug use,
4. Assist the department of economic development in providing youth services,
5. Subject to the approval of the council, for collaborative efforts,
6. Provide assistance in addressing substance abuse prevention,
7. Seek outside funding for collaborative efforts,
8. Serve as a clearinghouse for at-risk youth,
9. Report annual use of drugs by Iowa youth.

Sec. 18. Section 2, Code 1989, are amended to read as follows:

Sec. 19. Section 2, Code 1989, are amended to read as follows:

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

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

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

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

Sec. 17. NEW SECTION. 256.42 COUNCIL RESPONSIBILITIES.

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

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

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

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

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

- (1) Has a physical or mental impairment which substantially limits one or more major life activities.
- (2) Has a record of that impairment.
- (3) Is regarded as having that impairment.

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

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 246, division IX.

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

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

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

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

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

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

- (1) Has a physical or mental impairment which substantially limits one or more major life activities.
- (2) Has a record of that impairment.
- (3) Is regarded as having that impairment.

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

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 246, division IX.

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

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

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

1. "Aggrieved person" means a person who was a party to an intercepted wire communication or oral communication or a person against whom the interception was directed.
2. "Contents", when used with respect to a wire communication or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. The identity of the person, if known, whose communications are to be intercepted.
- b. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.
- c. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which the communication relates.
- d. The identity of the agency authorized to intercept the communications, and of the person requesting the application.
- e. The period of time during which interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained.

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

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

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

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

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

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

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

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

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

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

(1) The date of the application.

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

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

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

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

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

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

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

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

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

b. The kind of order or extension applied for.

- c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.
- d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.
- e. The offense specified in the order or application, or extension of an order.
- f. The identity of the prosecutor making the application and the court reviewing and approving the request.
- g. The nature of the facilities from which or the place where communications were to be intercepted.
2. In January of each year, the attorney general and the county attorneys of this state shall report to the state court administrator and to the administrative offices of the United States district courts all of the following:
- a. The fact that an order or extension was applied for.
- b. The kind of order or extension applied for.
- c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.
- d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.
- e. The offense specified in the order or application, or extension of an order.
- f. The nature of the facilities from which or the place where communications were to be intercepted.
- g. A general description of the interceptions made under such order or extension, including:
- (1) The approximate nature and frequency of incriminating communications intercepted.
 - (2) The approximate nature and frequency of other communications intercepted.
 - (3) The approximate number of persons whose communications were intercepted.
 - (4) The approximate nature, amount, and cost of personnel and other resources used in the interceptions.
- h. The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made.
- i. The number of trials resulting from such interceptions.
- j. The number of motions to suppress made with respect to such interceptions, and the number granted or denied.
- k. The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.
- l. The information required by paragraphs "b" through "f" with respect to orders or extensions obtained in a preceding calendar year and not yet reported.
- m. Other information required by the rules of the administrative offices of the United States district courts.
3. In March of each year the state court administrator shall transmit to the general assembly a full and complete report concerning the number of applications for orders authorizing the interception of wire communications or oral communications and the number of applications, orders, and extensions granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the state court administrator by the attorney general, county attorneys, and the courts.

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

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

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

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

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

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

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

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

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

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

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

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

This chapter is repealed effective July 1, 1994.

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

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

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

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

Approved May 26, 1989

CHAPTER 226

HARASSMENT

H.F. 672

AN ACT relating to harassment and providing penalties.

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

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

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

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