

Judiciary Amend for 5575 v Do Pass 3/19 (p.1182)
Way Means 3/19 Do Pass 3/20 (p.1211)

Reprinted

SENATE FILE 2413
BY HUTCHINS

FILED MAR 19 1990

(COMPANION TO LSB 8412YH
BY ARNOULD)

Passed Senate, Date 3/22/90 (p.1253) Passed House, Date 4/3/90 (p.1830)
Vote: Ayes 45 Nays 1 Vote: Ayes 92 Nays 2
Approved May 6, 1990

A BILL FOR

5633 1 An Act relating to certain specific crimes and the disposition of
2 offenders by providing for payment of sexual abuse medical
3 examinations, providing for workers' compensation coverage and
4 the liability of certain persons performing community service,
5 providing for notification of the parents of persons under age
6 eighteen discovered to be in possession of alcohol or drugs,
7 providing for a term of confinement for distribution of
8 illegal drugs within one thousand feet of a public park,
9 providing for the reporting and identification of certain
10 precursor drugs, providing for the disposition of certain
11 juvenile offenders, establishing a family preservation
12 program, establishing institutional reading room requirements,
13 providing for the diversion of certain offenders to treatment
14 facilities, providing that certain persons serving mandatory
15 minimum sentences serve a portion of their sentence on work
16 release, establishing a penalty for certain persons who cause
17 a serious injury to another while operating a motor vehicle,
18 providing for certain offenders to serve their sentence on
19 consecutive days, providing for posttreatment services as a
20 condition of probation, establishing a tax on marijuana and
21 controlled substances, providing an expansion of the business

5633

SF 2413

1 deduction for businesses employing individuals on parole,
2 probation, work release, or convicted of a felony,
3 establishing penalties for participation in criminal gang
4 activity, providing for the nonbailability of certain
5 offenders, providing requirements for presentence
6 investigations, providing for early release of offenders
7 participating in certain treatment or for certain property
8 offenders, making certain changes relating to conditions of
9 parole and work release, authorizing parole and probation
10 officers to discharge certain offenders, making certain
11 changes relating to the victim reparation program,
12 establishing a pilot project for the chemical testing of
13 persons arrested for felony offenses, and providing penalties.

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

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

1 Section 1. Section 13.31, Code Supplement 1989, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 5. Administer payment for sexual abuse
4 medical examinations pursuant to section 709.10.

5 Sec. 2. Section 25A.2, subsection 3, Code Supplement 1989,
6 is amended to read as follows:

7 3. "Employee of the state" includes any one or more
8 officers, agents, or employees of the state or any state
9 agency, including members of the general assembly, and persons
10 acting on behalf of the state or any state agency in any
11 official capacity, temporarily or permanently in the service
12 of the state of Iowa, whether with or without compensation but
13 does not include a contractor doing business with the state.
14 Professional personnel, including physicians, osteopathic
15 physicians and surgeons, osteopathic physicians, optometrists
16 and dentists, who render services to patients and inmates of
17 state institutions under the jurisdiction of the department of
18 human services or the Iowa department of corrections are to be
19 considered employees of the state, whether the personnel are
20 employed on a full-time basis or render services on a part-
21 time basis on a fee schedule or other arrangement. Criminal
22 defendants while performing unpaid community service ordered
23 by the district court, board of parole, or judicial district
24 department of correctional services are to be considered
25 employees of the state.

26 Sec. 3. Section 85.59, unnumbered paragraphs 2, 4, and 5,
27 Code 1989, is amended to read as follows:

28 For purposes of this section, "inmate" includes a person
29 who is performing unpaid community service under sections
30 907-13-and-910-2 the direction of the district court, board of
31 parole, or judicial district department of correctional
32 services, or who is performing a work assignment of value to
33 the state or to the public under chapter 232.

34 If an inmate is permanently incapacitated by injury in the
35 performance of the inmate's work in connection with the

1 maintenance of the institution or in an industry maintained in
2 the institution, while on detail to perform services on a
3 public works project, or is permanently or temporarily
4 incapacitated in connection with the performance of unpaid
5 community service under ~~sections-907.13-and-910.2~~ the
6 direction of the district court, board of parole, or judicial
7 district department of correctional services, or who is
8 performing a work assignment of value to the state or to the
9 public under chapter 232, that inmate shall be awarded only
10 the benefits provided in section 85.27 and section 85.34,
11 subsections 2 and 3. The weekly rate for such permanent
12 disability is equal to sixty-six and two-thirds percent of the
13 state average weekly wage paid employees as determined by the
14 department of employment services under section 96.19,
15 subsection 42, and in effect at the time of the injury.

16 Weekly compensation benefits under this section may be
17 determined prior to the inmate's release from the institution,
18 but payment of benefits to an inmate shall commence as of the
19 time of the inmate's release from the institution either upon
20 parole or final discharge. However, if the inmate is awarded
21 benefits for an injury incurred in connection with the
22 performance of unpaid community service under ~~sections-907.13~~
23 ~~and-910.2~~ the direction of the district court, board of
24 parole, or judicial district department of correctional
25 services, or who is performing a work assignment of value to
26 the state or to the public under chapter 232, weekly
27 compensation benefits under this section shall be determined
28 and paid as in other workers' compensation cases.

29 Sec. 4. NEW SECTION. 123.47B PARENTAL NOTIFICATION --
30 PERSONS UNDER EIGHTEEN YEARS OF AGE.

31 If a peace officer detains a person under the age of
32 eighteen and discovers that the person is in possession of
33 alcoholic liquor, wine, or beer in violation of section
34 123.47, the law enforcement agency of which the peace officer
35 is an employee shall make a reasonable attempt to notify the

1 person's custodial parent or legal guardian of such
2 possession, whether or not the person is arrested or a
5639 3 citation is issued pursuant to section 805.16. A reasonable
4 attempt to notify the person includes but is not limited to a
5 telephone call or notice by first class mail.

6 Sec. 5. NEW SECTION. 204.401A DISTRIBUTION TO PERSONS ON
7 CERTAIN REAL PROPERTY.

8 In addition to any other penalties provided in this
9 chapter, a person who is eighteen years of age or older who
10 unlawfully distributes a substance or counterfeit substance
11 listed in schedule I or II which is a narcotic or cocaine, or
12 a simulated controlled substance represented to be a narcotic
13 or cocaine classified in schedule I or II, to another person
14 who is eighteen years of age or older in or on, or within one
15 thousand feet of the real property comprising a public or
* 16 private elementary or secondary school, or in or on the real
17 property comprising a public park, may, at the judge's dis-
18 cretion, be sentenced up to an additional term of confinement
19 of five years.

20 Sec. 6. Section 204.406, subsection 1, paragraph a, Code
21 Supplement 1989, is amended to read as follows:

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

31 Sec. 7. Section 204.406, subsection 2, paragraph a, Code
32 Supplement 1989, is amended to read as follows:

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, or in or on the real property
6 comprising a public park, the person shall serve a minimum
7 term of confinement of ten years.

8 Sec. 8. NEW SECTION. 204.415 PARENTAL NOTIFICATION --
9 PERSONS UNDER EIGHTEEN YEARS OF AGE.

10 If a peace officer detains a person under the age of
11 eighteen and discovers that the person is in possession of a
12 controlled substance, counterfeit substance, or simulated
13 controlled substance in violation of this chapter, the law
14 enforcement agency of which the peace officer is an employee
15 shall make a reasonable attempt to notify the person's
16 custodial parent or legal guardian of such possession, whether
563917 or not the person is arrested. A reasonable attempt to notify
18 the person includes but is not limited to a telephone call or
19 notice by first class mail.

20 Sec. 9. NEW SECTION. 204B.1 DEFINITIONS.

21 As used in this chapter, unless the context otherwise re-
22 quires:

- 23 1. "Board" means the board of pharmacy examiners.
- 24 2. "Controlled substance" means a controlled substance as
25 defined in section 204.101.
- 26 3. "Practitioner" means a practitioner as defined in
27 section 155A.3.
- 28 4. "Precursor substance" means a substance which may be
29 used as a precursor in the illegal production of a controlled
30 substance and is specified under section 204B.2.
- 31 5. "Recipient" means a person in this state who purchases,
32 transfers, or otherwise receives a precursor substance.
- 33 6. "Vendor" means a person who manufactures, wholesales,
34 retails, or otherwise sells, transfers, or furnishes in this
35 state a precursor substance.

1 Sec. 10. NEW SECTION. 204B.2 REPORTING REQUIRED.

2 1. Effective July 1, 1990, a report to the board shall be
3 submitted in accordance with this chapter by a manufacturer,
4 retailer, or other person who sells, transfers, or otherwise
5 furnishes to any person in this state any of the following
6 substances:

7 a. Anthranilic acid and its salts.

8 b. Benzyl Cyanide.

9 c. Ephedrine, its salts, optical isomers, and salts of
10 optical isomers.

11 d. Ergonovine and its salts.

12 e. Ergotamine and its salts.

13 f. 3,4 - methylenedioxyphenyl-2-propanone.

14 g. N-acetylanthranilic acid and its salts.

15 h. Norpseudoephedrine, its salts, optical isomers, and
16 salts of optical isomers.

17 i. Phenylacetic acid and its salts.

18 j. Phenylpropanolamine, its salts, optical isomers, and
19 salts of optical isomers.

20 k. Piperidine and its salts.

21 l. Pseudoephedrine, its salts, optical isomers, and salts
22 of optical isomers.

23 2. The board shall administer the regulatory provisions of
24 this chapter and may, by rule adopted pursuant to chapter 17A,
25 add a substance to or remove a substance from the list in sub-
26 section 1. In determining whether to add or remove a
27 substance from the list, the board shall consider the
28 following:

29 a. The likelihood that the substance may be used as a pre-
30 cursor in the illegal production of a controlled substance.

31 b. The availability of the substance.

32 c. The appropriateness of including the substance under
33 this chapter or under chapter 204.

34 d. The extent and nature of legitimate uses for the sub-
35 stance.

1 3. On or before November 1 of each year, the board shall
2 inform the general assembly of any substances added, deleted,
3 or changed in the list contained in section 204B.2 and shall
4 provide an explanation of any addition, deletion, or change.

5 Sec. 11. NEW SECTION. 204B.3 IDENTIFICATION REQUIRED.

6 1. Before selling, transferring, or otherwise furnishing
7 any substance specified in section 204B.2 to a person in this
8 state, a vendor shall require proper identification from the
9 purchaser.

10 2. For the purposes of this section, in the case of a
11 face-to-face purchase, "proper identification" means all of
12 the following:

13 a. A motor vehicle operator's license containing the pur-
14 chaser's photograph and residential or mailing address, other
15 than a post office box number, or any other official state-
16 issued identification containing this information.

17 b. The motor vehicle license number of the vehicle owned
18 or operated by the purchaser.

19 c. A letter of authorization from the person who is making
20 the purchase. The letter shall include the person's business
21 license number and business address, a description as to how
22 the substance will be used, and the purchaser's signature.
23 The vendor shall affix the vendor's signature as a witness to
24 the signature and identification of the purchaser.

25 3. The board shall provide by rule for the form of proper
26 identification required for purchases which are not face to
27 face.

28 4. A person who violates this section or rules adopted
29 pursuant to this section commits a simple misdemeanor.

30 Sec. 12. NEW SECTION. 204B.4 VENDOR REPORTING.

31 1. At least twenty-one days prior to the delivery of a
32 precursor substance to a recipient, the vendor shall submit a
33 report of the transaction to the board. The report must
34 contain the identification information specified under section
35 204B.3. However, if regular, repeated transactions of a

1 particular precursor substance occur between the vendor and
2 the recipient, the board may authorize the vendor to report
3 the transactions monthly if either of the following conditions
4 exists:

5 a. A pattern of regular supply of the precursor substance
6 exists between the vendor and the recipient.

7 b. The recipient has established a record of lawfully
8 using the precursor substance.

9 2. A vendor who does not submit a report pursuant to this
10 section commits a serious misdemeanor.

11 Sec. 13. NEW SECTION. 204B.5 RECEIPT OF SUBSTANCE FROM
12 OUTSIDE THE STATE -- PENALTY.

13 1. A vendor, recipient, or other person required to report
14 pursuant to this chapter who receives a precursor substance
15 from a source outside the state shall submit a report to the
16 board pursuant to rules adopted by the board.

17 2. A person who does not submit a report required under
18 this section commits a serious misdemeanor.

19 Sec. 14. NEW SECTION. 204B.6 EXCEPTIONS.

20 The requirements of sections 204B.2 through 204B.5 do not
21 apply to any of the following:

22 1. A licensed pharmacist or other person authorized under
23 chapter 155A to sell or furnish a precursor substance upon the
24 prescription of a practitioner.

25 2. A practitioner who administers or furnishes a precursor
26 substance to a patient.

27 3. A vendor who holds a permit issued by the board and who
28 sells, transfers, or otherwise furnishes a precursor substance
29 to a practitioner or a pharmacy as defined in section 155A.3.

30 4. A sale, transfer, furnishing, or receipt of a drug con-
31 taining ephedrine, phenylpropanolamine, or pseudoephedrine or
32 of a cosmetic containing a precursor substance if the drug or
33 cosmetic is lawfully sold, transferred, or furnished over the
34 counter without a prescription in accordance with chapter
35 203B.

1 Sec. 15. NEW SECTION. 204B.7 REPORTING FORM.

2 1. The board shall adopt rules prescribing a common form
3 for the filing of reports required under this chapter. The
4 rules shall provide that the information which must be
5 submitted shall include but is not limited to all of the
6 following:

7 a. The name of the precursor substance.

8 b. The quantity of the precursor substance sold,
9 transferred, or furnished.

10 c. The date the precursor substance was sold, transferred,
11 or furnished.

12 d. The name and address of the recipient.

13 e. The name and address of the vendor.

14 2. Reports authorized under subsection 1 may be computer-
15 generated and submitted monthly in accordance with rules
16 adopted by the board.

17 Sec. 16. NEW SECTION. 204B.8 MISSING QUANTITY -- RE-
18 PORTING.

19 A person who is required to report to the board pursuant to
20 this chapter or a person listed as an exception under section
21 204B.6 shall report to the board either of the following
22 occurrences within seven days of knowledge of the loss or
23 occurrence:

24 1. Loss or theft of a precursor substance.

25 2. A difference between the amount of a precursor
26 substance shipped and the amount of a precursor substance
27 received. If applicable, the report shall include the name of
28 the person who transported the precursor substance and the
29 date of shipment.

30 Sec. 17. NEW SECTION. 204B.9 SALE, TRANSFER, FURNISHING,
31 OR RECEIPT FOR UNLAWFUL PURPOSE -- PENALTY.

32 1. A person who sells, transfers, or otherwise furnishes a
33 precursor substance with knowledge or the intent that the
34 recipient will use the precursor substance to unlawfully manu-
35 facture a controlled substance commits a class "C" felony.

1 2. A person who receives a precursor substance with intent
2 to use the substance unlawfully to manufacture a controlled
3 substance commits a class "C" felony.

4 Sec. 18. NEW SECTION. 204B.10 FALSE STATEMENT --
5 PENALTY.

6 A person who knowingly makes a false statement in
7 connection with any report or record required to be made under
8 this chapter commits an aggravated misdemeanor.

9 Sec. 19. NEW SECTION. 204B.11 PERMIT REQUIREMENTS --
10 PENALTY.

11 1. A vendor or a recipient who receives a precursor
12 substance from a source outside the state shall obtain a
13 permit for the transaction from the board. However, a permit
14 is not required of a vendor of a drug containing ephedrine,
15 phenylpropanolamine, or pseudoephedrine or of a cosmetic that
16 contains a precursor substance if the drug or cosmetic is
17 lawfully sold, transferred, or furnished either over the
18 counter without a prescription in accordance with chapter 203B
19 or with a prescription pursuant to chapter 155A.

20 2. An application for a permit shall be filed in writing
21 and signed by the applicant, and shall set forth the name of
22 the applicant, the business in which the applicant is engaged,
23 the business address of the applicant, and a full description
24 of any precursor substance sold, transferred, or otherwise
25 furnished or received.

26 3. The board may grant a permit on a form adopted by rule.
27 A permit shall be effective for not more than one year from
28 the date of issuance.

29 4. An applicant shall pay, at the time of filing an
30 application, a permit fee determined by the board.

31 5. A permit granted under this chapter may be annually re-
32 newed on a date to be determined by the board pursuant to
33 rule, upon the filing of a renewal application and the payment
34 of a permit renewal fee.

35 6. Permit fees charged by the board shall not exceed the

1 costs incurred by the board in administering this chapter.

2 7. Selling, transferring, or otherwise furnishing, or re-
3 ceiving a precursor substance without a permit obtained
4 pursuant to this section is a serious misdemeanor.

5 Sec. 20. NEW SECTION. 204B.12 PERMIT -- REFUSAL,
6 SUSPENSION, OR REVOCATION.

7 The board shall refuse, suspend, or revoke a permit upon
8 finding that any of the following conditions exist:

9 1. The permit was obtained through fraud, misrepresenta-
10 tion, or deceit.

11 2. The permittee has violated or has permitted any
12 employee of the permittee to violate any of the laws of this
13 state relating to drugs, controlled substances, cosmetics, or
14 nonprescription drugs, or has violated this chapter, a rule
15 adopted pursuant to this chapter, or any other rule of the
16 board.

17 Sec. 21. Section 232.8, Code 1989, is amended by adding
18 the following new unnumbered paragraph:

19 NEW UNNUMBERED PARAGRAPH. In a proceeding concerning a
20 child who is alleged to have committed a second delinquent act
21 or a second violation excluded from the jurisdiction of the
22 juvenile court, the court or the juvenile court shall
23 determine whether there is reason to believe that the child
24 regularly abuses alcohol or other controlled substance and may
25 be in need of treatment. If the court so determines, the
26 court shall advise appropriate juvenile authorities and refer
27 such offenders to the juvenile court for disposition pursuant
28 to section 232.52A.

29 Sec. 22. NEW SECTION. 232.52A DISPOSITION OF CERTAIN
30 JUVENILE OFFENDERS.

31 In addition to any other order of the juvenile court, a
32 person under age eighteen, who may be in need of treatment as
33 determined under section 232.8, may be ordered to participate
34 in an alcohol education or evaluation program approved by the
35 juvenile court. If recommended after evaluation, the court

1 may also order the person to participate in a treatment
2 program approved by the court. The juvenile court may also
3 require the custodial parent or parents or other legal
4 guardian to participate in an educational program with the
5 person under age eighteen if the court determines that such
6 participation is in the best interests of the person under age
7 eighteen.

5633 8 Sec. 23. NEW SECTION. 246.207 FAMILY PRESERVATION
9 PROGRAM.

x 10 1. The department shall establish a family preservation
11 program at the Iowa correctional institution for women. The
12 program shall include all of the following:

13 a. An institutional child day care facility for the care
14 of children of inmates as provided in this paragraph. The
15 department shall provide institutional child day care services
16 for inmates, which may be provided under contract with a
17 licensed child day care provider, at the institution as
18 follows:

19 (1) For children less than eighteen months of age by
20 January 1, 1992.

21 (2) For children age eighteen months through preschool age
22 by July 1, 1994.

23 (3) For children enrolled in kindergarten through grade 6
24 by July 1, 1997.

25 b. Development of a family support system for inmates and
26 their children, including a follow-up program after release.

27 c. Development of instructional programs in parenting
28 skills for inmates.

29 d. Development of instruction in life management skills
30 for inmates. This instruction program shall include
31 individual plans of action for each inmate involving the areas
32 of finance and career, physical and mental health, education,
33 and family. This program shall qualify when possible for
34 college credit or continuing education units accredited by the
35 north central association of colleges and secondary schools,

1 and shall qualify, when possible, for high school completion
2 credit or other continuing education credit. The program
3 should attempt to aid in developing responsible habits,
4 problem-solving and decision-making abilities, emotional
5 control, job seeking skills, and improved family relations.

6 e. Other goals as determined by the advisory committee.

7 2. a. A family preservation advisory committee is
8 established for the purpose of adopting guidelines and
9 recommending policies relating to the institutional child day
10 care services provided pursuant to this section. Such
11 guidelines shall be adopted to further the treatment,
12 education, and rehabilitation goals of the family preservation
13 program. In addition to any other duties, the committee shall
14 make recommendations to the department and to the general
15 assembly concerning the family preservation program.

16 b. Members of the committee shall be appointed by the
17 governor, subject to senate confirmation, for three-year terms
18 beginning and ending as provided in section 69.19. Members
19 appointed shall include:

20 (1) A former inmate of the facility who was a parent at
21 the time of incarceration.

22 (2) A member of the clergy.

23 (3) A private service provider with experience in
24 providing services to female inmates or a person representing
25 the commission on the status of women.

26 (4) A person with experience in providing child day care
27 services in an institutional or educational setting.

28 (5) A representative of an advocacy group representing the
29 rights of children and families.

30 (6) A person representing the department of corrections.

31 (7) A person representing the judicial district
32 departments of correctional services.

33 (8) A person representing the department of human
34 services.

35 (9) A person representing the department of education.

1 (10) A person representing the board of parole.

2 (11) A person representing the child development program
3 at Iowa state university of science and technology.

4 c. Public and nonstate employee members of the advisory
5 committee shall be reimbursed for their official expenses and
6 may be eligible for per diem compensation pursuant to section
7 7E.6. State employees shall be reimbursed for their official
8 expenses by the employees' respective agencies.

x 9 d. In addition to any other duties, the advisory committee
10 shall recommend for selection the institutional day care
11 provider who will provide services to the correctional
12 institution as provided in this section.

x 13 3. It is the intent of the general assembly that the
14 family relationships of a person committed to the custody of
15 the director of the department of corrections are to be
16 maintained whenever possible. Incarceration shall not be
17 grounds for termination of parental rights absent other
18 appropriate grounds for such action.

19 4. The advisory committee shall make recommendations
20 concerning funding needs of the family preservation program.
21 The committee shall report these recommendations to the
22 chairpersons and ranking members of the justice system
23 appropriations subcommittee and the chairpersons, vice
24 chairpersons, and ranking members of the senate committee on
25 education and committee on judiciary and the house of
26 representatives committee on education and committee on
27 judiciary and law enforcement, by November 30, 1990.

> 28 Sec. 24. NEW SECTION. 246.310A INSTITUTION READING
29 ROOMS.

30 The director shall, as necessary, provide for the provision
31 of suitable space and reading materials for inmates. Such
32 space shall be located so that any visitors, other than those
33 authorized pursuant to section 246.512, shall not be able to
34 view the space or the materials located within that space.

35 Sec. 25. Section 246.513, subsection 1, unnumbered

1 paragraph 1, Code 1989, is amended to read as follows:

2 The department of corrections in cooperation with judicial
 3 district departments of correctional services shall establish
 4 in each judicial district bed space for the confinement and
 5 treatment of offenders convicted of violating chapter 321J who
 6 are sentenced to the custody of the director. The department
 7 of corrections shall develop standardized assessment criteria
 8 for the assignment of offenders to a facility established
 9 pursuant to this section. The offender shall be assigned by
 10 the director to a facility pursuant to section 321J.2,
 11 subsection 2, paragraph "c", unless initial medical treatment
 12 is necessary or there is insufficient space to accommodate the
 13 person. The offenders shall first be assigned to the Iowa
 14 medical classification facility at Oakdale for classification
 15 and-after-classification-may-be-assigned-to if medical
 16 treatment is necessary or if the offender fails to
 17 satisfactorily perform in a treatment program conducted in a
 18 residential facility operated by any a judicial district
 19 department of correctional services. The offender shall be
 20 assigned to an institution following classification. The
 21 facilities established shall meet all the following
 22 requirements:

x 23 Sec. 26. NEW SECTION. 246.902 WORK RELEASE -- PERSONS
 24 SERVING MANDATORY MINIMUM SENTENCE.

25 An inmate serving a mandatory minimum sentence of one year
 26 or more, who is approved to participate in the work release
 27 program, shall serve the final six months of the inmate's
 28 sentence participating in the program.

x 29 Sec. 27. NEW SECTION. 321L.1 MINIMUM SENTENCE FOR
 30 CERTAIN OFFENDERS.

563431 A minimum term of imprisonment in a county jail or
 32 community-based correctional facility imposed on a person
 33 convicted of a second or subsequent offense under section
 34 321J.2, subsection 2, paragraph "b" or "c", shall be served on
 35 consecutive days. However, if the sentencing court finds that

1 service of the full minimum term on consecutive days would
2 work an undue hardship on the person, or finds that there is
3 insufficient jail space to accommodate the person serving the
4 minimum sentence on consecutive days, the court may order the
5 person to serve not less than forty-eight consecutive hours of
6 the minimum term and to perform not less than two hundred
7 forty hours of unpaid community service.

8 Sec. 28. NEW SECTION. 321L.2 TREATMENT OF CERTAIN
9 OFFENDERS.

10 A person ordered to attend a course for drinking drivers,
11 or a substance abuse treatment program, upon successfully
12 completing or attending the course or treatment program, shall
13 be placed on probation for six months and as a condition of
14 probation, shall attend a program providing posttreatment
15 services related to drinking or substance abuse as approved by
16 the court.

17 A defendant who fails to carry out the order of the court
18 or who fails to successfully complete or attend a course for
19 drinking drivers or an ordered substance abuse treatment
20 program shall, in addition to any other condition of
21 probation, attend a program providing substance abuse
22 prevention services or posttreatment services related to
23 substance abuse as ordered by the court. The person shall
24 report to the person's probation officer as ordered concerning
25 proof of attendance at the treatment program or posttreatment
26 program ordered by the court. Failure to attend or complete
27 the program shall be considered a violation of probation and
x 28 is punishable as contempt of court.

5631 29 Sec. 29. NEW SECTION. 421A.1 DEFINITIONS.

30 As used in this chapter, unless the context otherwise
31 indicates:

32 1. "Marijuana" means any marijuana, whether real or
33 counterfeit, as included in section 204.204, that is held,
34 possessed, transported, transferred, sold, or offered to be
35 sold in this state.

1 2. "Controlled substance" means any drug, substance, or
2 immediate precursor whether real or counterfeit, as defined in
3 section 204.101, other than marijuana, that is held,
4 possessed, transported, transferred, sold, or offered to be
5 sold in this state.

6 3. "Dealer" means a person who manufactures, produces,
7 ships, transports, or imports into this state or in any manner
8 acquires or possesses more than forty-two and one-half grams
9 of marijuana, or seven or more grams of a controlled
10 substance, or ten or more dosage units of a controlled
11 substance which is not sold by weight.

12 4. "Director" means the director of revenue and finance.

5631 13 Sec. 30. NEW SECTION. 421A.2 ADMINISTRATION.

14 The director shall administer this chapter. Payments
15 required by this chapter shall be made to the director on a
16 form provided by the director. The director shall collect all
17 taxes under this chapter and deposit them in the general fund
18 of the state.

5631 19 Sec. 31. NEW SECTION. 421A.3 RULES.

20 The director shall adopt rules pursuant to chapter 17A
21 necessary to enforce this chapter. The director shall adopt a
22 uniform system of providing, affixing, and displaying official
23 stamps, official labels, or other official indicia for
24 marijuana and controlled substances on which a tax is imposed.

5631 25 Sec. 32. NEW SECTION. 421A.4 TAX PAYMENT REQUIRED FOR
26 POSSESSION.

27 A dealer shall not possess any marijuana or controlled
28 substance upon which a tax is imposed by section 421A.8 unless
29 the tax has been paid on the marijuana or the controlled
30 substance as evidenced by a stamp or other official indicia.

5631 31 Sec. 33. NEW SECTION. 421A.5 NO IMMUNITY.

32 This chapter does not in any manner provide immunity for a
33 dealer from criminal prosecution pursuant to law.

5631 34 Sec. 34. NEW SECTION. 421A.6 PHARMACEUTICALS.

35 This chapter does not require persons permitted to possess

1 marijuana or a controlled substance under chapter 204 or
2 otherwise lawfully in possession of marijuana or a controlled
3 substance to pay the tax required under this chapter.

563/4 Sec. 35. NEW SECTION. 421A.7 MEASUREMENT.

5 For the purpose of calculating the tax under section
6 421A.8, an ounce of marijuana or a controlled substance is
7 measured by the weight of the substance in the dealer's
8 possession.

563/9 Sec. 36. NEW SECTION. 421A.8 TAX RATE.

10 A tax is imposed on marijuana and controlled substances at
11 the following rates:

12 1. Each gram of marijuana, or each portion of a gram,
13 three dollars and fifty cents.

14 2. Each gram of a controlled substance, or portion of a
15 gram, two hundred dollars.

16 3. Each fifty dosage unit of a controlled substance that
17 is not sold by weight, or portion thereof, two thousand
18 dollars.

563/19 Sec. 37. NEW SECTION. 421A.9 TAX AND CRIMINAL PENALTIES.

20 1. PENALTIES. A dealer violating this chapter is subject
21 to a penalty of one hundred percent of the tax in addition to
22 the tax imposed by section 421A.8. In addition to the tax
23 penalty imposed, a dealer distributing or possessing marijuana
24 or a controlled substance without affixing the appropriate
25 stamps, labels, or other indicia is guilty of a class "D"
26 felony.

27 2. STATUTE OF LIMITATIONS. Notwithstanding section 802.3,
28 an indictment may be found or information filed upon any
29 criminal offense specified in this chapter, in the proper
30 court within six years after the commission of the offense.

563/31 Sec. 38. NEW SECTION. 421A.10 STAMP PRICE.

32 Official stamps, labels, or other indicia to be affixed to
33 all marijuana and controlled substances shall be purchased
34 from the department of revenue and finance. The purchaser
35 shall pay one hundred percent of face value for each stamp,

1 label, or other indicia at the time of the purchase. The
2 department shall make the stamps, labels, or other indicia in
3 denominations in multiples of ten dollars.

56314 Sec. 39. NEW SECTION. 421A.11 PAYMENT DUE.

5 1. STAMPS AFFIXED. When a dealer purchases, acquires,
6 transports, or imports into this state marijuana or a
7 controlled substance on which a tax is imposed by section
8 421A.8, and if the indicia evidencing the payment of the tax
9 have not already been affixed, the dealer shall have the
10 indicia permanently affixed on the marijuana or controlled
11 substance immediately after receiving the marijuana or
12 controlled substance. Each stamp or other official indicia
13 may be used only once.

14 2. PAYABLE ON POSSESSION. Taxes imposed upon marijuana or
15 a controlled substance by this chapter are due and payable
16 immediately upon acquisition or possession of the marijuana or
17 controlled substance in this state by a dealer.

56318 Sec: 40. NEW SECTION. 421A.12 ASSESSMENTS.

19 1. ASSESSMENT PROCEDURE. The director shall assess a tax
20 based on personal knowledge or information available to the
21 director, mail the taxpayer at the taxpayer's last known
22 address or serve the taxpayer in person with, a written notice
23 of the amount of the tax, demand its immediate payment, and,
24 if payment is not immediately made, collect the tax by any
25 method prescribed in chapter 421, except that the director
26 need not await the expiration of the times specified in
27 chapter 421.

28 2. INJUNCTION PROHIBITED. A person shall not bring suit
29 to enjoin the assessment or collection of any taxes, interest,
30 or penalties imposed by this chapter.

31 3. STANDARD OF PROOF. The tax and penalties assessed by
32 the director are presumed to be valid and correctly determined
33 and assessed. The burden is upon the taxpayer to show their
34 incorrectness or invalidity. Any statement filed by the
35 director with the clerk of the district court, or any other

1 certificate by the director of the amount of tax and penalties
2 determined or assessed is admissible in evidence and is prima
3 facie evidence of the facts it contains.

563/ 4 Sec. 41. NEW SECTION. 421A.13 CONFIDENTIAL NATURE OF
5 INFORMATION.

6 The director or an employee of the department of revenue
7 and finance shall not reveal information contained in a report
8 or return required by this chapter. Information contained in
9 such a report or return shall not be used against the dealer
10 in any criminal proceeding, unless independently obtained,
11 except in connection with a proceeding involving taxes due
12 under this chapter from the taxpayer making the return.

563/ 13 Sec. 42. NEW SECTION. 421A.14 INVESTIGATORY POWERS.

14 For the purpose of determining the correctness of any
15 return, determining the amount of tax that should have been
16 paid, determining whether or not the dealer should have made a
17 return or paid taxes, or collecting any taxes under this
18 chapter, the director may examine, or cause to be examined,
19 any books, papers, records, or memoranda, that may be relevant
20 to making such determinations, whether the books, papers,
21 records, or memoranda, are the property of or in the
22 possession of the dealer or another person. The director may
23 require the attendance of any person having knowledge or
24 information that may be relevant, compel the production of
25 books, papers, records, or memoranda by persons required to
26 attend, take testimony on matters material to the
27 determination, and administer oaths or affirmations. Upon
28 demand of the director or any examiner or investigator, the
29 clerk of the district court shall issue a subpoena for the
30 attendance of a witness or the production of books, papers,
31 records, and memoranda. The director may also issue
32 subpoenas. Disobedience of subpoenas issued under this
33 chapter is punishable as a contempt of court by the district
34 court of the county in which the subpoena is issued, or, if
35 the subpoena is issued by the director, by the district court

1 of the county in which the party served with the subpoena is
2 located.

3 Sec. 43. Section 422.7, Code Supplement 1989, is amended
4 by adding the following new subsection:

5 NEW SUBSECTION. 12A. If the adjusted gross income
6 includes income or loss from a business operated by the
* 7 taxpayer, an additional deduction shall be allowed in
8 computing the income or loss from the business if the business
9 hired for employment in the state during its annual accounting
10 period ending with or during the taxpayer's tax year either of
11 the following:

12 a. An individual domiciled in this state at the time of
13 the hiring who meets any of the following conditions:

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

16 (2) Is on parole pursuant to chapter 906.

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

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

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

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

35 The additional deduction shall not be allowed for wages

1 paid to an individual who was hired to replace an individual
2 whose employment was terminated within the twelve-month period
3 preceding the date of first employment. However, if the
4 individual being replaced left employment voluntarily without
5 good cause attributable to the employer or if the individual
6 was discharged for misconduct in connection with the
7 individual's employment as determined by the division of job
8 service of the department of employment services, the
9 additional deduction shall be allowed.

10 A taxpayer who is a partner of a partnership or a
11 shareholder of a subchapter S corporation, may deduct that
12 portion of wages qualified under this subsection paid by the
13 partnership or subchapter S corporation based on the
14 taxpayer's pro rata share of the profits or losses from the
15 partnership or subchapter S corporation.

16 The department shall develop and distribute information
17 concerning the deduction available for businesses employing
18 persons named in paragraphs "a" and "b".

19 Sec. 44. Section 422.35, Code Supplement 1989, is amended
20 by adding the following new subsection:

21 NEW SUBSECTION. 6A. If the taxpayer is a business
x22 corporation, subtract an amount equal to sixty-five percent of
23 the wages paid to individuals, but shall not exceed twenty
24 thousand dollars per individual, named in paragraphs "a" and
25 "b" who were hired for the first time by the taxpayer during
26 the tax year for work done in this state:

27 a. An individual domiciled in this state at the time of
28 the hiring who meets any of the following conditions:

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

31 (2) Is on parole pursuant to chapter 906.

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

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

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

5 This deduction is allowed for the wages paid to the
6 individuals successfully completing a probationary period
7 named in paragraphs "a" and "b" during the twelve months
8 following the date of first employment by the taxpayer and
9 shall be deducted in the tax years when paid.

10 The department shall develop and distribute information
11 concerning the deduction available for businesses employing
12 persons named in paragraphs "a" and "b".

13 Sec. 45. NEW SECTION. 708.11 VEHICULAR ASSAULT.

14 A person commits a class "D" felony when the person
15 unintentionally causes a serious injury to another while
16 operating a motor vehicle while under the influence of alcohol
17 or a drug or a combination of such substances or while having
18 an alcohol concentration of .10 or more, in violation of
19 section 321J.2.

20 Sec. 46. Section 709.10, Code 1989, is amended to read as
21 follows:

22 709.10 COST OF MEDICAL EXAMINATION IN CRIMES OF SEXUAL
23 ABUSE.

24 The cost of a medical examination for the purpose of
25 gathering evidence and the cost of treatment for the purpose
26 of preventing venereal disease shall be borne by the Iowa
27 department of public-health justice.

28 Sec. 47. NEW SECTION. 723A.1 DEFINITIONS.

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

31 1. "Criminal acts" means any of the following or any
32 combination of the following:

33 a. An offense constituting a violation of section 204.401
34 involving a controlled substance, a counterfeit substance, or
35 a simulated controlled substance.

1 b. An offense constituting a violation of chapter 711
2 involving a robbery or extortion.

3 c. An offense constituting a violation of section 708.6
4 involving an act of terrorism.

5 d. An offense constituting a violation of section 708.8.

6 e. An offense constituting a violation of section 720.4.

7 f. Any other offense constituting a forcible felony as
8 defined in section 702.11.

9 2. "Criminal street gang" means any ongoing organization,
10 association, or group of three or more persons, whether formal
11 or informal, having as one of its primary activities the
12 commission of one or more criminal acts, which has an
13 identifiable name or identifying sign or symbol, and whose
14 members individually or collectively engage in or have engaged
15 in a pattern of criminal gang activity.

16 3. "Pattern of criminal gang activity" means the
17 commission, attempt to commit, conspiring to commit, or
18 solicitation of two or more criminal acts, provided the
19 criminal acts were committed on separate dates or by two or
20 more persons who are members of, or belong to, the same
21 criminal street gang.

22 Sec. 48. NEW SECTION. 723A.2 CRIMINAL GANG
23 PARTICIPATION.

24 A person who actively participates in or is a member of a
25 criminal street gang and who willfully aids and abets any
26 criminal act committed for the benefit of, at the direction
27 of, or in association with any criminal street gang, commits a
28 class "D" felony.

x 29 Sec. 49. Section 811.1, Code Supplement 1989, is amended
30 to read as follows:

31 811.1 BAILABLE AND NONBAILABLE OFFENSES.

32 All defendants are bailable both before and after
33 conviction, by sufficient surety, or subject to release upon
34 condition or on their own recognizance, except that the
35 following defendants shall not be admitted to bail:

1 1. A defendant awaiting judgment of conviction and
2 sentencing following either a plea or verdict of guilty of a
3 class "A" felony, murder, felonious assault, sexual abuse in
4 the second degree, sexual abuse in the third degree,
5 kidnapping, robbery in the first degree, arson in the first
6 degree, or burglary in the first degree, or any felony
7 included in section 204.401, subsection 1, paragraph "a".

8 2. A defendant appealing a conviction of a class "A"
9 felony, murder, felonious assault, sexual abuse in the second
10 degree, sexual abuse in the third degree, kidnapping, robbery
11 in the first degree, arson in the first degree, or burglary in
12 the first degree, or any felony included in section 204.401,
13 subsection 1, paragraph "a".

14 3. Notwithstanding subsections 1 and 2, a defendant
15 awaiting judgment of conviction and sentencing following
16 either a plea or verdict of guilty of, or appealing a
17 conviction of, a felony offense under chapter 204 not provided
18 for in subsection 1 or 2, is presumed to be ineligible to be
19 admitted to bail unless the court determines that such release
20 reasonably will not result in the person failing to appear as
21 required and will not jeopardize the personal safety of
22 another person or persons.

23 Sec. 50. Section 901.2, unnumbered paragraph 1, Code
24 Supplement 1989, is amended to read as follows:

25 Upon a plea of guilty, a verdict of guilty, or a special
26 verdict upon which a judgment of conviction of a public
27 offense may be rendered, the court shall receive from the
28 state, from the judicial district department of correctional
29 services, and from the defendant any information which may be
30 offered which is relevant to the question of sentencing. The
31 court may consider information from other sources.

32 Notwithstanding section 13.10, the court may determine if the
33 defendant shall be required to provide a physical specimen to
34 be submitted for DNA profiling if the defendant is to be
35 placed on probation or work release. The court shall consider

1 the deterrent effect of DNA profiling, the likelihood of
2 repeated violations by the defendant, and the seriousness of
3 the offense. When funds have been allocated from the general
4 fund of the state, or funds are provided by other public or
5 private sources, the court shall order DNA profiling. The
6 court shall order a presentence investigation when the offense
7 is a class "B," class "C," or class "D" felony. A presentence
8 investigation for a class "B," class "C," or class "D" felony
9 shall not be waived. The court may order, with the consent of
10 the defendant, that the presentence investigation begin prior
11 to the acceptance of a plea of guilty, or prior to a verdict
12 of guilty. The court may order a presentence investigation
13 when the offense is an aggravated or serious misdemeanor.
14 Notwithstanding section 901.3, a presentence investigation
15 ordered by the court for a serious misdemeanor shall include
16 information concerning only the following:

17 1. The defendant's characteristics, family and financial
18 circumstances, needs, and potentialities, including the
19 presence of any previously diagnosed mental disorder.

20 2. The defendant's criminal record and social history.

21 3. The harm to the victim, the victim's immediate family,
22 and the community, including any completed victim impact
23 statement or statements and restitution plan.

24 Sec. 51. Section 901.3, Code 1989, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 7. The defendant's potential as a
27 candidate for assignment to a treatment facility pursuant to
28 section 246.513 based upon the standardized assessment
29 criteria developed by the department of corrections. The
30 presentence investigation report shall contain the assessment
31 criteria commencing January 1, 1991.

32 Sec. 52. Section 903A.2, unnumbered paragraph 1, Code
33 1989, is amended to read as follows:

34 Each inmate of an institution under the Iowa department of
35 corrections, is eligible for a reduction of sentence of one

1 day for each day of good conduct of the inmate while committed
2 to one of the department's institutions. In addition to the
3 sentence reduction of one day for each day of good conduct,
4 each inmate is eligible for an additional reduction of
5 sentence of up to five days a month if the inmate participates
6 satisfactorily in employment in the institution, in Iowa state
7 industries, in an inmate employment program established by the
8 director, in a substance abuse program established by the
9 director, or in an inmate educational program approved by the
10 director. Reduction of sentence pursuant to this section may
11 be subject to forfeiture pursuant to section 903A.3.

12 Computation of good conduct time is subject to the following
13 conditions:

14 Sec. 53. Section 906.4, Code Supplement 1989, is amended
15 by adding the following new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. The board may establish as a
17 condition of a person's parole or work release that the person
18 perform a specified number of hours of unpaid community
19 service.

20 Sec. 54. Section 906.5, Code Supplement 1989, is amended
21 to read as follows:

22 906.5 RECORD REVIEWED -- RULES.

23 1. Within Except as provided in subsection 2, within one
24 year after the commitment of a person other than a class "A"
25 felon, class "B" felon convicted of murder in the second
26 degree and serving a sentence of more than twenty-five years,
27 or a felon serving a mandatory minimum sentence, other than a
28 class "A" felon, to the custody of the director of the Iowa
29 department of corrections, a member of the board shall
30 interview the person. Thereafter, at regular intervals, not
31 to exceed one year, the board shall interview the person and
32 consider the person's prospects for parole or work release.
33 However, if the registration of a victim prohibits conducting
34 a timely interview as provided in this subsection, the
35 interview may be conducted within a reasonable period of time

1 after the one-year period or interval has expired in order to
2 provide the victim notice as provided in section 910A.10,
3 subsection 1, paragraph "a".

4 Not less than twenty days prior to conducting a hearing at
5 which the board will interview the person, the board shall
6 notify the department of corrections of the scheduling of the
7 interview, and the department shall make the person available
8 to the board at the person's institutional residence as
9 scheduled in the notice. However, if health, safety, or
10 security conditions require moving the person to another
11 institution or facility prior to the scheduled interview, the
12 department of corrections shall so notify the board.

13 2. Within six months after the commitment of a person
14 convicted of an offense under chapter 714, 715A, 716, or 716A,
15 a member of the board shall interview the person as provided
16 in subsection 1. The board shall develop a plan for the
17 purpose of early release of such persons when it is determined
18 that a person convicted of such an offense can be released
19 without detriment to the community or to the person.

20 It is the intent of the general assembly that the board
21 shall implement this plan of early release in an effort to
22 assist in controlling the prison population and assuring
23 prison space for the confinement of offenders whose release
24 would be detrimental to the citizens of this state. The board
25 shall report to the legislative fiscal bureau on a monthly
26 basis concerning the implementation of this plan and the
27 number of inmates paroled pursuant to this plan and the
28 average length of stay of those paroled.

29 2 3. At the time of an interview required under this
30 section, the board shall consider all pertinent information
31 regarding the person, including the circumstances of the
32 person's offense, any presentence report which is available,
33 the previous social history and criminal record of the person,
34 the person's conduct, work, and attitude in prison, and the
35 reports of physical and mental examinations that have been

1 made.

2 3 4. A person while on parole or work release is under the
3 supervision of the district department of correctional
4 services of the district designated by the board of parole.
5 The department of corrections shall prescribe rules for
6 governing persons on parole or work release. The board may
7 adopt other rules not inconsistent with the rules of the
8 department of corrections as the board deems proper or
9 necessary for the performance of its functions.

10 Sec. 55. Section 906.9, Code 1989, is amended to read as
11 follows:

12 906.9 CLOTHING, TRANSPORTATION, AND MONEY.

13 When an inmate is discharged, paroled, or placed on work
14 release, ~~or placed in a community-based correctional program~~
15 ~~under section 246.513,~~ the warden or superintendent shall
16 furnish the inmate, at state expense, appropriate clothing and
17 transportation to the place in this state indicated in the
18 inmate's discharge, parole, or work release plan, ~~or~~
19 ~~community-based corrections assignment.~~ When an inmate is
20 discharged, paroled, or placed on work release, ~~or placed in a~~
21 ~~community-based correctional program under section 246.513,~~
22 the warden or superintendent shall provide the inmate, at
23 state expense, money in accordance with the following
24 schedule:

- 25 1. Upon discharge or parole, one hundred dollars.
- 26 2. Upon being placed on work release, fifty dollars.
- 27 3. Upon going from an educational work release to parole
28 or discharge, fifty dollars.

29 ~~4. Upon being placed in a community-based correctional~~
30 ~~program under section 246.513, fifty dollars.~~

31 Those inmates receiving payment under subsection 2 or 3
32 ~~or 4~~ shall not be eligible for payment under subsection 1
33 unless they are returned to the institution. The warden or
34 superintendent shall maintain an account of all funds expended
35 pursuant to this section.

5641 1 Sec. 56. Section 906.15, Code 1989, is amended to read as
2 follows:

3 906.15 DISCHARGE FROM PAROLE.

4 Unless sooner discharged, a person released on parole shall
5 be discharged when the person's term of parole equals the
6 period of imprisonment specified in the person's sentence,
7 less all time served in confinement. Discharge from parole
8 may be granted prior to such time, when an early discharge is
9 appropriate. The board shall periodically review all paroles,
10 and when ~~it shall determine~~ the board determines that any
11 person on parole is able and willing to fulfill the
12 obligations of a law-abiding citizen without further
13 supervision, ~~it~~ the board shall discharge the person from
14 parole. A parole officer shall periodically review all
15 paroles assigned to the parole officer, and when the parole
16 officer determines that any person assigned to the officer is
17 able and willing to fulfill the obligations of a law-abiding
18 citizen without further supervision, the officer may discharge
19 the person from parole after notification and approval of the
20 district director and notification of the board of parole. In
21 either any event, discharge from parole shall terminate the
22 person's sentence. However, a person convicted of a violation
23 of section 709.3, 709.4 or 709.8 committed on or with a child
24 shall not be discharged from parole until the person's term of
25 parole equals the period of imprisonment specified in the
26 person's sentence, less all time served in confinement.

27 A parole officer or the district director who acts in
28 compliance with this section is acting in the course of the
29 person's official duty and is not personally liable, either
30 civilly or criminally, for the acts of a person discharged
31 from parole by the officer after such discharge, unless the
32 discharge constitutes willful disregard of the person's duty.

561433 1 Sec. 57. Section 907.9, Code 1989, is amended to read as
34 follows:

35 907.9 DISCHARGE FROM PROBATION.

1 At any time that the court determines that the purposes of
2 probation have been fulfilled, the court may order the
3 discharge of a person from probation. At any time that a
4 probation officer determines that the purposes of probation
5 have been fulfilled, the officer may order the discharge of a
6 person from probation after approval of the district director,
7 and notification of the sentencing court and county attorney
8 who prosecuted the case. The sentencing judge, unless the
9 judge is no longer serving or is otherwise unable to, may
10 order a hearing on its own motion, or shall order a hearing
11 upon the request of the county attorney, for review of such
12 discharge. If the sentencing judge is no longer serving or
13 unable to order such hearing, the chief judge of the district
14 or the chief judge's designee shall order any hearing pursuant
x15 to this section. If a hearing is not ordered within thirty
16 days after notification by the probation officer, the person
17 shall be discharged and the probation officer shall notify the
18 state court administrator of such discharge. At the
19 expiration of the period of probation, in cases where the
20 court fixes the term of probation, the court shall order the
21 discharge of the person from probation, and the court shall
22 forward to the governor a recommendation for or against
23 restoration of citizenship rights to that person. A person
24 who has been discharged from probation shall no longer be held
25 to answer for the person's offense. Upon discharge from
26 probation, if judgment has been deferred under section 907.3,
27 the court's criminal record with reference to the deferred
28 judgment shall be expunged. The record maintained by the
29 state court administrator as required by section 907.4 shall
30 not be expunged. The court's record shall not be expunged in
31 any other circumstances.

32 A probation officer who acts in compliance with this
33 section is acting in the course of the person's official duty
34 and is not personally liable, either civilly or criminally,
35 for the acts of a person discharged from probation by the

1 officer after such discharge, unless the discharge constitutes
2 willful disregard of the person's duty.

3 Sec. 58. Section 910.1, subsection 1, Code 1989, is
4 amended to read as follows:

5 1. "Victim" means ~~any~~ a person who has suffered pecuniary
6 damages as a result of the offender's criminal activities.
7 However, for purposes of this chapter, an insurer is not a
8 victim and does not have a right of subrogation. The crime
9 victim reparation program is not an insurer for purposes of
10 this chapter, and the right of subrogation provided by section
11 912.12 does not prohibit restitution to the crime victim
12 reparation program.

13 Sec. 59. Section 910.1, subsection 4, Code 1989, is
14 amended to read as follows:

15 4. "Restitution" means payment of pecuniary damages to a
16 victim in an amount and in the manner provided by the
17 offender's plan of restitution. Restitution ~~shall~~ also
18 ~~include~~ includes the payment of crime victim assistance
19 reimbursements, court costs, court-appointed attorney's fees
20 or the expense of a public defender, and the performance of a
21 public service by an offender in an amount set by the court
22 when the offender cannot reasonably pay all or part of the
23 court costs, court-appointed attorney's fees or the expense of
24 a public defender.

25 Sec. 60. Section 910.2, Code 1989, is amended to read as
26 follows:

27 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
28 SENTENCING COURT.

29 In all criminal cases except simple misdemeanors under
30 chapter 321, in which there is a plea of guilty, verdict of
31 guilty, or special verdict upon which a judgment of conviction
32 is rendered, the sentencing court shall order that restitution
33 be made by each offender to the victims of the offender's
34 criminal activities and, if the court so orders and to the
35 extent that the offender is reasonably able to do so, for

1 crime victim assistance reimbursement, court costs, court-
2 appointed attorney's fees or the expense of a public defender
3 when applicable. However, victims shall be paid in full
4 before restitution is paid for crime victim assistance
5 reimbursement, court costs, court-appointed attorney's fees or
6 for the expense of a public defender. In structuring a plan
7 of restitution, the court shall provide for payments in the
8 following order of priority: victim, crime victim assistance
9 reimbursement, court costs, and court-appointed attorney's
10 fees or the expense of a public defender. When the offender
11 is not reasonably able to pay all or a part of the crime
12 victim assistance reimbursement, court costs, court-appointed
13 attorney's fees or the expense of a public defender, the court
14 may require the offender in lieu of that portion of the crime
15 victim assistance reimbursement, court costs, court-appointed
16 attorney's fees, or expense of a public defender for which the
17 offender is not reasonably able to pay, to perform a needed
18 public service for a governmental agency or for a private,
19 nonprofit agency which provides a service to the youth,
20 elderly or poor of the community. When community service is
21 ordered, the court shall set a specific number of hours of
22 service to be performed by the offender. The judicial
23 district department of correctional services shall provide for
24 the assignment of the offender to a public agency or private
25 nonprofit agency to perform the required service.

26 Sec. 61. Section 910A.7A, Code Supplement 1989, is amended
27 to read as follows:

28 910A.7A NOTIFICATION BY CLERK-OF-THE-SUPREME-COURT
29 DEPARTMENT OF JUSTICE.

30 The ~~clerk-of-the-supreme-court~~ department of justice shall
31 notify a registered victim of all dispositional orders of a
32 case currently on appeal in which the victim was involved.

33 Sec. 62. Section 912.1, subsection 3, Code Supplement
34 1989, is amended to read as follows:

35 3. "Crime" means conduct that occurs or is attempted in

1 this state, poses a substantial threat of personal injury or
2 death, and is punishable as a felony, ~~an aggravated~~
3 ~~misdemeanor,~~ or a ~~serious~~ misdemeanor, or would be so
4 punishable but for the fact that the person engaging in the
5 conduct lacked the capacity to commit the crime under the laws
6 of this state. "Crime" does not include conduct arising out
7 of the ownership, maintenance, or use of a motor vehicle,
8 motorcycle, motorized bicycle, train, boat, or aircraft except
9 for violations of section 321J.2 or when the intention is to
10 cause personal injury or death. A plea or verdict of guilty
11 of a charge under section 321J.2 or a license revocation under
12 section 321J.9 or 321J.12 shall be considered by the
13 department as evidence of a violation of section 321J.2 for
14 the purposes of this chapter.

15 Sec. 63. Section 912.3, subsection 4, Code Supplement
16 1989, is amended to read as follows:

17 4. Request from the department of human services, the
18 divisions of job service and industrial services of the
19 department of employment services, the ~~attorney-general~~
20 department of public safety, the county sheriff departments,
21 the municipal police departments, the county attorneys, or
22 other public authorities or agencies reasonable assistance or
23 data necessary to administer the crime victim reparation
24 program.

25 Sec. 64. Section 912.3, subsection 7, Code Supplement
26 1989, is amended by striking the subsection.

27 Sec. 65. Section 912.5, Code Supplement 1989, is amended
28 by adding the following new subsection:

29 NEW SUBSECTION. 4. To a victim of an act committed
30 outside this state who is a resident of this state, if the act
31 would be compensable had it occurred within this state and the
32 act occurred in a state that does not have an eligible crime
33 victim compensation program, as defined in the federal Victims
34 of Crime Act of 1984, Pub. L. 98-473, section 1403(b), as
35 amended and codified in 42 U.S.C. § 10602(b).

1 Sec. 66. Section 912.6, subsection 1, Code Supplement
2 1989, is amended to read as follows:

56163 1. Reasonable charges incurred for medical care and mental
4 health care not to exceed ten thousand five hundred dollars.
5 Mental health care includes services provided by a
6 psychologist licensed under chapter 154B, a person holding at
7 least a master's degree in social work or counseling and
8 guidance, or a victim counselor as defined in section 236A.1.

9 Sec. 67. Section 912.6, subsections 2 and 3, Code
10 Supplement 1989, are amended by striking the subsections.

11 Sec. 68.

12 A pilot program shall be established for the purpose of
13 determining the extent of drug and alcohol use and abuse among
14 persons arrested for felony offenses, of determining whether
15 there is any correlation between drug and alcohol abuse and
16 crime in this state, for developing data comparing rural and
17 urban areas in this state, and for developing a comparison
18 with similar data collected in other states. The program
19 shall be under the direction of the drug enforcement and abuse
20 prevention coordinator who shall adopt rules in consultation
21 with the department of public safety to accomplish the
22 purposes as provided in this section.

23 A peace officer who arrests a person for a felony offense
24 shall request the withdrawal of specimens of the person's
25 blood, breath, or urine for the purpose of administering one
26 or more tests to determine alcohol concentration or the
27 presence of drugs. The person arrested shall consent to such
28 withdrawal unless the presence of alcohol or a drug in the
29 person is a necessary element of the offense charged. Where
30 the presence of alcohol or a drug in the person is a necessary
31 element of the offense charged, existing provisions relating
32 to the request for, and taking of, a specimen shall apply. If
33 the presence of alcohol or a drug is not a necessary element
34 of the offense charged, the person shall submit to the
35 withdrawal and the specimen shall be taken pursuant to section

1 321J.11. The results of a test taken pursuant to this section
2 shall not be used in any prosecution of the offense charged
3 and shall not be recorded on the criminal record of the person
4 tested or identified in any way such that the person tested
5 can be identified. The test results shall be identified as to
6 the offense charged, the place of the arrest, the type of drug
7 involved, and the concentration level of the drug.

5631>

8 EXPLANATION

9 Section 1 -- This section provides that payment for sexual
10 abuse medical examinations provided for pursuant to section
11 709.10 are to be administered by the victim assistance program
12 in the department of justice.

13 Sections 2 and 3 -- These sections provide for workers'
14 compensation coverage and for liability of persons performing
15 community service.

16 Section 4 -- This section provides that the law enforcement
17 agency employing a peace officer, who stops a person under age
18 18 and discovers that person to be in possession of alcoholic
19 liquor, wine, or beer, shall attempt to notify the person's
20 custodial parent or legal guardian of such possession. The
21 custodial parent or legal guardian are to be notified whether
22 or not an arrest is made or a citation is issued pursuant to
23 section 805.16.

24 Section 5 -- This section provides that in addition to any
25 other applicable penalties, a court may sentence an individual
26 age 18 or older distributing certain controlled substances to
27 an additional term of 5 years if the distribution was to
28 another person age 18 or older and in or on, or within 1,000
29 feet of a secondary or elementary school or in or on the real
30 property comprising a public park.

31 Sections 6 and 7 -- These sections provide a minimum term
32 of confinement of 10 years for a person unlawfully
33 distributing certain substances, counterfeit substances, or
34 simulated controlled substances in a public park.

35 Section 8 -- This section provides that the law enforcement

1 agency employing a peace officer, who stops a person under age
2 18 and discovers that person to be in possession of a
3 controlled substance, counterfeit substance, or simulated
4 controlled substance, shall attempt to notify the person's
5 custodial parent or legal guardian of such possession. The
6 custodial parent or legal guardian is to be notified whether
7 or not an arrest is made.

8 Sections 9--20 -- The bill relates to substances which may
9 be used as a precursor in the illegal production of controlled
10 substances and establishes a new chapter, tentatively numbered
11 204B.

12 Definitions are provided. An initial listing of precursor
13 drugs is provided and the state board of pharmacy examiners is
14 authorized to amend or expand the listing by administrative
15 rule adopted according to certain criteria. The board must
16 annually report and explain any changes in the listing to the
17 general assembly.

18 Certain identification is required for face-to-face
19 transactions of precursor drugs and the board is required to
20 adopt rules requiring forms of identification for other types
21 of transactions. Subject to specified exceptions, vendors of
22 precursor drugs are required to file certain reports in
23 advance of a transaction of a precursor drug. Failure to do
24 so is a serious misdemeanor.

25 A person who receives a precursor drug from outside the
26 state is required to file a report in accordance with rules
27 adopted by the board. Failure to do so is a serious
28 misdemeanor.

29 Certain exceptions to the reporting requirements are
30 provided for pharmacists and other professional practitioners
31 who are authorized to prescribe, administer, or furnish
32 precursor substances.

33 The board is required to adopt administrative rules for a
34 common reporting form according to certain standards.

35 All persons who are involved in transactions of precursor

1 drugs are required to report to the board when there has been
2 a loss or theft of a precursor substance or the amount of a
3 precursor substance shipped is different than the amount
4 received.

5 A person who knowingly provides or receives a precursor
6 substance which will be used to manufacture a controlled
7 substance commits a class "C" felony. A person who knowingly
8 makes a false statement in connection with a required record
9 or report commits an aggravated misdemeanor.

10 Subject to certain exceptions, permits are required for
11 transfers of precursor substances and must be annually
12 renewed. Exceptions are provided. A person who transfers
13 precursor substances without a permit commits a serious
14 misdemeanor. The board is authorized to refuse, suspend, or
15 revoke a permit in accordance with certain standards.

16 Sections 21 and 22 -- These sections provide that the
17 juvenile court may order a person under age 18 charged with an
18 offense involving alcohol, to participate in an alcohol
19 education, evaluation, or treatment program.

20 Section 23 -- This section establishes a family
21 preservation program at the Mitchellville correctional insti-
22 tution for women intended to preserve the families of inmates
23 assigned to the institution. The department of corrections is
24 to establish a child care facility at the Mitchellville
25 institution.

26 Section 24 -- This section provides that reading rooms at
27 the institutions are to be out of sight of visitor areas.

28 Section 25 -- This section provides for the diversion of
29 persons convicted of a third offense OWI from prison to an
30 appropriate treatment facility unless there is no space
31 available or medical treatment is necessary.

32 Section 26 -- This section provides that persons serving
33 mandatory minimum sentences of more than 1 year are to serve
34 the final 6 months of the sentence on work release, if
35 approved.

1 Section 27 -- This section provides that the minimum term
2 of confinement in a county jail or community-based
3 correctional facility imposed on a second or subsequent
4 offender under chapter 321J, operating while under the
5 influence of alcohol or a drug, is to be served on consecutive
6 days unless the court finds that serving the term on
7 consecutive days would work an undue hardship on the person or
8 there is insufficient jail space. If the court makes such a
9 finding, the court may order the person to serve not less than
10 48 consecutive hours of the minimum term and perform not less
11 than 240 hours of unpaid community service.

12 Section 28 -- This section provides for posttreatment
13 services related to substance abuse as a condition of
14 probation related to a second or subsequent offense under
15 chapter 321J.

16 Sections 29--42 -- These sections prohibit the
17 manufacturing, producing, shipping, transporting, or importing
18 of marijuana or controlled substances without paying an
19 imposed tax. The criminal penalty for tax evasion is a class
20 "D" felony and the tax penalty is 100 percent of the required
21 tax on the marijuana or controlled substances. Provisions are
22 made for the sale of official stamps, labels, and other
23 indicia by the director of revenue and finance. Investigatory
24 powers of the director of revenue and finance are specified.

25 Sections 43 and 44 -- These sections expand the deduction
26 for businesses hiring individuals on parole, probation, work
27 release, or convicted of a felony to all businesses.
28 Currently only provided to small businesses (20 employees or
29 less).

30 Section 45 -- This section provides that a person, who is
31 guilty of operating a motor vehicle while under the influence,
32 which causes serious injury to another, commits a class "D"
33 felony. No special incarceration, fine, or treatment
34 requirements apply to this penalty.

35 Section 46 -- See explanation for section 1.

1 Sections 47 and 48 -- These sections provide that a person
2 commits a class "D" felony for actively participating in a
3 pattern of criminal gang activity as a member of a criminal
4 street gang.

5 Section 49 -- This section establishes that persons
6 convicted of controlled substance felonies pursuant to Iowa
7 Code chapter 204 are ineligible for bail.

8 Sections 50 and 51 -- These sections provide that a
9 presentence investigation ordered by a court for a serious
10 misdemeanor offense shall include only certain information and
11 that the presentence investigation report is to contain the
12 standardized assessment criteria beginning January 1, 1991.

13 Sections 52 and 54 -- These sections provide for
14 eligibility for good conduct time for inmates participating
15 satisfactorily in a substance abuse program established by the
16 director of the department of corrections. The department is
17 to also develop a program for the purpose of early release for
18 certain property offenders.

19 Section 53 -- This section provides that the board of
20 parole can establish as a condition of parole or work release
21 that a person perform a specified number of hours of unpaid
22 community service.

23 Section 55 -- This section eliminates "gate" money for
24 persons placed in a community-based correctional facility.

25 Sections 56 and 57 -- These sections provide that parole
26 and probation officers are given the authority to discharge
27 persons assigned to the parole or probation officer, when the
28 officer determines that the person is able and willing to
29 fulfill the obligations of a law-abiding citizen without
30 further supervision and the discharge is approved by the
31 district director, the court, and the prosecuting county
32 attorney.

33 Sections 58--64 -- These sections provide that the crime
34 victim reparation program may receive reimbursement through a
35 plan of restitution, despite its right of subrogation. The

1 bill also establishes that the crime victim assistance program
2 is to be reimbursed prior to the reimbursement for court costs
3 and court-appointed attorney's fees or the expense of a public
4 defender pursuant to a plan of restitution.

5 The Iowa department of justice, rather than the clerk of
6 the supreme court, is required to notify a registered victim
7 of all dispositional orders of a case on appeal.

8 Victims of simple misdemeanors may participate in the crime
9 victim reparation program, and the department of justice is
10 required to request reasonable assistance or necessary data
11 from the department of public safety in administering the
12 program. In addition, section 64 strikes an obsolete
13 reporting requirement, which required the department of
14 justice to report to the governor and the general assembly by
15 January 1, 1984.

16 Section 65 -- This section establishes that the department
17 of justice may order the payment of reparation to victims of
18 acts committed outside of this state, where the victim is a
19 resident of Iowa, the act would be compensable had it occurred
20 in Iowa, and the act occurred in a state that does not have an
21 eligible crime victim compensation program. This change is
22 made for the purpose of bringing the Iowa program into
23 compliance with changes to the specifications for eligible
24 crime victim compensation programs contained in Pub. L. No.
25 100-690, Title VII, subtitle D, section 7125.

26 Sections 66 and 67 -- These sections consolidate several
27 subsections of Iowa Code section 912.6 concerning reparation
28 to victims for economic losses. Whereas under current law,
29 reparation for medical care is capped at \$10,000, and certain
30 types of counseling are capped at \$500, the bill provides that
31 reparation for medical care and mental health care combined
32 shall not exceed \$10,500.

33 Section 68 -- This section establishes a pilot program for
34 the chemical testing of persons arrested for felony offenses.
35 The purpose of the project is to determine the extent of drug

1 and alcohol use and abuse in these individuals. The test
2 shall be given unless the presence of a drug or alcohol in a
3 person is a primary element of the offense for which the
4 person is arrested. Results of the test shall not be used in
5 the prosecution of the offense charged.

6 This bill may include a state mandate as defined in chapter
7 25B.

- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

**SENATE FILE 2413
FISCAL NOTE**

A fiscal note for Senate File 2413 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.

1. Senate File 2413 relates to the criminal code. Sections 1, 46, and 58 through 67 relate to the crime victim assistance program and crime victim reparation programs. The administration of sexual abuse medical investigation is transferred to the Department of Justice. The crime victim reparation program may receive reimbursement through a plan of restitution, and is to be reimbursed prior to reimbursements for court costs and court appointed attorney fees or a public defender. Eligibility for victim claims is expanded. The notification requirement of all dispositional orders of a case on appeal is transferred to the Department of Justice.
2. Sections 4 and 8 provide that law enforcement agencies are required to attempt to notify the parents or legal guardians if a person under 18 years old is stopped for possession of alcohol, beer, wine, liquor, a controlled substance, counterfeit substance, or simulated controlled substance. The attempt at notification is not contingent upon an arrest or a citation.
3. Sections 5, 6, 7, 9 to 20, 27, 45, 47, and 48 make certain activities illegal which are currently legal (creation of new crimes). Section 27 provides that second or subsequent offenders of OWI, alcohol or drugs, shall serve the minimum term of confinement on consecutive days. Exceptions are provided for undue hardship, which if found to be the case, the court may order the offender to serve not less than 48 consecutive hours of the minimum term and perform not less than 240 hours of community service. Permit fees are to be established by the Board of Pharmacy Examiners for the implementation of Sections 9 through 20, but shall not exceed the cost for administering the new Chapter.
4. Sections 21 and 22 provide that the juvenile court may order a person under age 18 with a second delinquent act or a second violation, to participate in an alcohol education, evaluation, or treatment program.
5. Section 23 establishes a Family Preservation Program at the Mitchellville Correctional Facility for women. A child day care facility is required to be established. This facility will serve children under 18 months of age by January 1, 1992, children from the ages of 18 months through preschool by July 1, 1994, and children in kindergarten through grade 6 by July 1, 1997. A family preservation advisory committee is established, and its duties are enumerated.
6. Sections 25, 51, and 55 provide for the diversion of persons convicted of a third offense for OWI from prison to the appropriate treatment facility,

-2-

unless no space is available or medical treatment is necessary. In the latter cases, the offender would be admitted to the Oakdale Correctional Facility. The presentence investigation shall include standardized assessment criteria for assignment to a treatment facility by January 1, 1991. Offenders who are diverted from prison will not receive clothing or gate money. Currently, counties are responsible for transporting these OWI offenders to the Oakdale Correctional Facility.

7. Section 26 provides that persons serving mandatory minimum terms of more than one year are to serve the final six months on Work Release, if approved.
8. Section 28 provides for post-treatment services related to substance abuse as a condition of probation. This Section applies to second or subsequent offenders.
9. Sections 29 to 42 impose a tax on the manufacturing, producing, shipping, transporting, or importing of marijuana or controlled substances. The criminal penalty for tax evasion is a Class D felony, while the tax penalty is 100 percent of the required tax. Provisions are made for the sale of official stamps, labels, and other indicia by the Director of the Department of Revenue and Finance.
10. Sections 43 and 44 expand the deduction for businesses hiring individuals on parole, work release, probation, or convicted of a felony to all businesses. This deduction is currently only provided to small businesses (20 employees or less).
11. Section 49 establishes that persons convicted under Chapter 204.401(1a) are ineligible for bail. Also, offenders convicted of all controlled substance felonies are ineligible for bail, unless the court determines that the offender will appear before the court, and the release of the offender will not jeopardize the safety of others.
12. Section 50 provides that presentence investigations for serious misdemeanor offenses shall only include certain information.
13. Sections 52 and 54 provide for eligibility of good conduct time for inmates who satisfactorily participate in an institutional substance abuse program. The Parole Board is required to develop an early release program for certain property offenders, and is required to report to the Legislative Fiscal Bureau concerning the implementation of this program.
14. Section 53 permits the Parole Board to require a specified number of unpaid community service hours as a condition of probation.
15. Section 56 and 57 authorize a parole or probation officer to discharge persons assigned to him or her for supervision, when the officer determines that the person is able and willing to be a law-abiding citizen without further supervision. The District Director must approve the discharge. Parole and probation officers and District Directors are granted immunity if they act with compliance of these Sections.

16. Section 68 establishes a pilot project for the criminal testing of persons arrested for felony offenses. The program shall be under the direction of the drug enforcement and abuse prevention coordinator. Rules will be adopted in consultation with the Department of Public Safety. A person shall not be tested if the presence of drugs or alcohol is a primary element of the offense for which the person was arrested. Results of the test shall not be used in the prosecution of the offense charged.

Fiscal Impact

Paragraph	Source	Impact
One	Crime Victim Fund	\$83,264 increased costs
Two	Counties	Cannot be estimated
	State General Fund	\$37,625 increased costs
Three	Counties	Cannot be estimated
	State General Fund	Cannot be estimated
Four	State, County and Federal Funds	\$0 to \$2,340,000
Five	State General Fund	\$846,000 per year for operations; \$1,300,000 to \$2,300,000 for construction
Six	Counties	\$40,500 savings
	State General Fund	\$164,110 to \$188,110
Seven	State General Fund	Cannot be estimated
	State and Federal Funds	\$4,934,400
Nine	State General Funds	Additional revenues cannot be estimated \$100,000 increased costs for administration Increased costs for new crimes cannot be estimated
Ten	Community Based Corr.	Increased local revenue cannot be estimated
	State General Fund	Decreased revenue cannot be estimated
Eleven	Counties	Increased costs cannot be estimated
Twelve	State General Fund	\$106,000 savings
Thirteen	State General Fund	\$180,000 increased costs
Fourteen	State General Fund	\$ 40,000 increased costs
Fifteen	State General Fund	Impact cannot be estimated
Sixteen	State General Fund	\$180,000 increased costs

Sources: Department of Corrections
Criminal and Juvenile Justice Planning Division
Judicial Department
Department of Revenue and Finance
Department of Public Safety
Iowa State Association of Counties
Department of Public Health
Department of Human Services

-4-

Department of Justice
Department of Inspections and Appeals
Parole Board

(LSB 8412xs.2, BAL)

FILED MARCH 21, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2413

S-5615

1 Amend Senate File 2413 as follows:

2 1. By striking page 14, line 29, through page 15,
3 line 28, and inserting the following:

4 "Sec. ____ . NEW SECTION. 321L.1 DEFINITIONS.

5 As used in this chapter unless the context
6 otherwise requires:

7 1. "Alcohol concentration" means the number of
8 grams of alcohol per any of the following:

9 a. One hundred milliliters of blood.

10 b. Two hundred ten liters of breath.

11 c. Sixty-seven milliliters of urine.

12 2. "Alcoholic beverage" includes alcohol, wine,
13 spirits, beer, or any other beverage which contains
14 ethyl alcohol and is fit for human consumption.

15 3. "Arrest" includes but is not limited to taking
16 into custody pursuant to section 232.19.

17 4. "Department" means the state department of
18 transportation.

19 5. "Director" means the director of transportation
20 or the director's designee.

21 6. "Motor vehicle license" means any license or
22 permit issued to a person to operate a motor vehicle
23 in this state, including but not limited to an
24 operator, chauffeur, or motorized bicycle license and
25 an instruction or temporary permit.

26 7. "Peace officer" means:

27 a. A member of the highway patrol.

28 b. A police officer under civil service as
29 provided in chapter 400.

30 c. A sheriff.

31 d. A regular deputy sheriff who has had formal
32 police training.

33 e. Any other law enforcement officer who has
34 satisfactorily completed an approved course relating
35 to motor vehicle operators under the influence of
36 alcoholic beverages at the Iowa law enforcement
37 academy or a law enforcement training program approved
38 by the department of public safety.

39 8. "Serious injury" means a bodily injury which
40 creates a substantial risk of death, or which causes
41 serious permanent disfigurement, or which causes
42 protracted loss or impairment of the function of any
43 bodily organ or major bodily member, or which causes
44 the loss of any bodily member.

45 Sec. ____ . NEW SECTION. 321L.2 OPERATING WHILE
46 UNDER THE INFLUENCE OF ALCOHOL OR A DRUG OR WHILE
47 HAVING AN ALCOHOL CONCENTRATION OF .10 OR MORE. (OWI)

48 1. A person commits the offense of operating while
49 intoxicated if the person operates a motor vehicle in
50 this state in either of the following conditions:

S-5615

Page 2

1 a. While under the influence of an alcoholic
2 beverage or other drug or a combination of such
3 substances.

4 b. While having an alcohol concentration as
5 defined in section 321L.1 of .10 or more.

6 2. A person who violates this section commits:

7 a. A serious misdemeanor for the first offense and
8 shall be imprisoned in the county jail for not less
9 than forty-eight hours to be served as ordered by the
10 court, less credit for any time the person was
11 confined in a jail or detention facility following
12 arrest, and assessed a fine of not less than five
13 hundred dollars nor more than one thousand dollars.
14 As an alternative to a portion or all of the fine, the
15 court may order the person to perform not more than
16 two hundred hours of unpaid community service. The
17 court may accommodate the sentence to the work
18 schedule of the defendant.

19 b. An aggravated misdemeanor for a second offense
20 and shall be imprisoned in the county jail or
21 community-based correctional facility not less than
22 seven days, which minimum term cannot be suspended
23 notwithstanding section 901.5, subsection 3 and
24 section 907.3, subsection 3, and assessed a fine of
25 not less than seven hundred fifty dollars.

26 c. A class "D" felony for a third offense and each
27 subsequent offense and shall be imprisoned in the
28 county jail for a determinate sentence of not more
29 than one year but not less than thirty days, or
30 committed to the custody of the director of the
31 department of corrections, and assessed a fine of not
32 less than seven hundred fifty dollars. The minimum
33 jail term of thirty days cannot be suspended
34 notwithstanding section 901.5, subsection 3, and
35 section 907.3, subsection 3, however, the person
36 sentenced shall receive credit for any time the person
37 was confined in a jail or detention facility following
38 arrest. If a person is committed to the custody of
39 the director of the department of corrections pursuant
40 to this paragraph and the sentence is suspended, the
41 sentencing court shall order that the offender serve
42 the thirty-day minimum term in the county jail. If
43 the sentence which commits the person to the custody
44 of the director of the department of corrections is
45 later imposed by the court, all time served in a
46 county jail toward the thirty-day minimum term shall
47 count as time served toward the sentence which
48 committed the person to the custody of the director of
49 the department of corrections. A person convicted of
50 a second or subsequent offense shall be ordered to

S-5615

Page 3

1 undergo a substance abuse evaluation prior to
2 sentencing. If a person is convicted of a third or
3 subsequent offense or if the evaluation recommends
4 treatment, the offender may be committed to the
5 custody of the director of the department of
6 corrections, who, if the sentence is not suspended,
7 shall assign the person to a facility pursuant to
8 section 246.513 or the offender may be committed to
9 treatment in the community under the provisions of
10 section 907.6.

11 3. No conviction for, deferred judgment for, or
12 plea of guilty to, a violation of this section which
13 occurred more than six years prior to the date of the
14 violation charged shall be considered in determining
15 that the violation charged is a second, third, or
16 subsequent offense. For the purpose of determining if
17 a violation charged is a second, third, or subsequent
18 offense, deferred judgments pursuant to section 907.3
19 for violations of this section and convictions or the
20 equivalent of deferred judgments for violations in any
21 other states under statutes substantially
22 corresponding to this section shall be counted as
23 previous offenses. The courts shall judicially notice
24 the statutes of other states which define offenses
25 substantially equivalent to the one defined in this
26 section and can therefore be considered corresponding
27 statutes. Each previous violation shall be considered
28 a separate previous offense without regard to whether
29 each was complete as to commission and conviction or
30 deferral of judgment following or prior to any other
31 previous violation.

32 4. A person shall not be convicted and sentenced
33 for more than one violation of this section if the
34 violation is shown to have been committed by either or
35 both of the means described in subsection 1 in the
36 same occurrence.

37 5. The clerk of court shall immediately certify to
38 the department a true copy of each order entered with
39 respect to deferral of judgment, deferral of sentence
40 or pronouncement of judgment and sentence for a
41 defendant under this section.

42 6. This section does not apply to a person
43 operating a motor vehicle while under the influence of
44 a drug if the substance was prescribed for the person
45 and was taken under the prescription and in accordance
46 with the directions of a medical practitioner as
47 defined in chapter 155A, if there is no evidence of
48 the consumption of alcohol and the medical
49 practitioner had not directed the person to refrain
50 from operating a motor vehicle.

S-5615

Page 4

1 7. In any prosecution under this section, evidence
2 of the results of analysis of a specimen of the
3 defendant's blood, breath, or urine is admissible upon
4 proof of a proper foundation. The alcohol
5 concentration established by the results of an
6 analysis of a specimen of the defendant's blood,
7 breath, or urine withdrawn within two hours after the
8 defendant was driving or in physical control of a
9 motor vehicle is presumed to be the alcohol
10 concentration at the time of driving or being in
11 physical control of the motor vehicle.

12 8. The court shall order a defendant convicted of
13 or receiving a deferred judgment for a violation of
14 this section to make restitution, in an amount not to
15 exceed two thousand dollars, for damages resulting
16 directly from the violation. An amount paid pursuant
17 to this restitution order shall be credited toward any
18 adverse judgment in a subsequent civil proceeding
19 arising from the same occurrence. However, other than
20 establishing a credit, a restitution proceeding
21 pursuant to this section shall not be given
22 evidentiary or preclusive effect in a subsequent civil
23 proceeding arising from the same occurrence.

24 9. In any prosecution under this section, the
25 results of a chemical test may not be used to prove a
26 violation of paragraph "b" of subsection 1 if the
27 alcohol concentration indicated by the chemical test
28 minus the established margin of error inherent in the
29 device or method used to conduct the chemical test
30 does not equal an alcohol concentration of .10 or
31 more.

32 Sec. ____ . NEW SECTION. 321L.3 COURT ORDERED
33 SUBSTANCE ABUSE EVALUATION OR TREATMENT.

34 1. On a conviction for a violation of section
35 321L.2, the court may order the defendant to attend a
36 course for drinking drivers under section 321L.22. If
37 the defendant submitted to a chemical test on arrest
38 for the violation of section 321L.2 and the test
39 indicated an alcohol concentration of .20 or higher,
40 or if the defendant is charged with a second or
41 subsequent offense, the court shall order the
42 defendant, on conviction, to undergo a substance abuse
43 evaluation and the court may order the defendant to
44 follow the recommendations proposed in the substance
45 abuse evaluation for appropriate substance abuse
46 treatment for the defendant. Court-ordered substance
47 abuse treatment is subject to the periodic reporting
48 requirements of section 125.86. If a defendant is
49 committed by the court to a substance abuse treatment
50 facility, the administrator of the facility shall

S-5615

Page 5

1 report to the court when it is determined that the
2 defendant has received the maximum benefit of
3 treatment at the facility and the defendant shall be
4 released from the facility. The time for which the
5 defendant is committed for treatment shall be credited
6 against the defendant's sentence. The court may
7 prescribe the length of time for the evaluation and
8 treatment or it may request that the area school
9 conducting the course for drinking drivers which the
10 person is ordered to attend or the treatment program
11 to which the person is committed immediately report to
12 the court when the person has received maximum benefit
13 from the course for drinking drivers or treatment
14 program or has recovered from the person's addiction,
15 dependency, or tendency to chronically abuse alcohol
16 or drugs. A person committed under this section who
17 does not possess sufficient income or estate to make
18 payment of the costs of the treatment in whole or in
19 part shall be considered a state patient and the costs
20 of treatment shall be paid as provided in section
21 125.44. A defendant who fails to carry out the order
22 of the court or who fails to successfully complete or
23 attend a course for drinking drivers or an ordered
24 substance abuse treatment program shall be confined in
25 the county jail for twenty days in addition to any
26 other imprisonment ordered by the court or may be
27 ordered to perform unpaid community service work, and
28 shall be placed on probation for one year with a
29 violation of this probation punishable as contempt of
30 court.

31 2. As a condition of a suspended sentence or
32 portion of sentence for a second, third, or subsequent
33 offense in violation of section 321L.2, the court upon
34 hearing may commit the defendant for inpatient
35 treatment of alcoholism or drug addiction or
36 dependency to any hospital, institution, or community
37 correctional facility in Iowa providing such
38 treatment. The time for which the defendant is
39 committed for treatment shall be credited against the
40 defendant's sentence. The court may prescribe the
41 length of time for the evaluation and treatment or it
42 may request that the hospital to which the person is
43 committed immediately report to the court when the
44 person has received maximum benefit from the program
45 of the hospital or institution or has recovered from
46 the person's addiction, dependency, or tendency to
47 chronically abuse alcohol or drugs. A person
48 committed under this section who does not possess
49 sufficient income or estate to make payment of the
50 costs of the treatment in whole or in part shall be

S-5615

Page 6

1 considered a state patient and the costs of treatment
2 shall be paid as provided in section 125.44.

3 Sec. . NEW SECTION. 321L.4 REVOCATION OF
4 LICENSE -- IGNITION INTERLOCK DEVICES -- CONDITIONAL
5 TEMPORARY RESTRICTED LICENSE.

6 1. If a defendant is convicted of a violation of
7 section 321L.2 and the defendant's motor vehicle
8 license or nonresident operating privilege has not
9 been revoked under section 321L.9 or 321L.12 for the
10 occurrence from which the arrest arose, the department
11 shall revoke the defendant's motor vehicle license or
12 nonresident operating privilege for one hundred eighty
13 days if the defendant has had no previous conviction
14 under section 321L.2 or revocation under section
15 321L.9 or 321L.12 within the previous six years and
16 for one year if the defendant has had one or more
17 previous convictions or revocations under those
18 sections within the previous six years.

19 2. If the court defers judgment pursuant to
20 section 907.3 for a violation of section 321L.2, the
21 court shall order the department to revoke the
22 defendant's motor vehicle license or nonresident
23 operating privilege for a period of not less than
24 thirty days nor more than ninety days if the
25 defendant's motor vehicle license or nonresident
26 operating privilege has not been revoked under section
27 321L.9 or 321L.12 for the occurrence from which the
28 arrest arose. The court shall immediately require the
29 defendant to surrender to it all Iowa licenses or
30 permits held by the defendant, which the court shall
31 forward to the department with a copy of the order
32 deferring judgment.

33 3. a. Upon a plea or verdict of guilty of a third
34 or subsequent violation of section 321L.2, the court
35 shall order the department to revoke the defendant's
36 motor vehicle license or nonresident operating
37 privilege for a period of six years. The court shall
38 require the defendant to surrender to it all Iowa
39 licenses or permits held by the defendant, which the
40 court shall forward to the department with a copy of
41 the order for revocation.

42 b. After two years from the date of the order for
43 revocation, the defendant may apply to the court for
44 restoration of the defendant's eligibility for a motor
45 vehicle license. The application may be granted only
46 if all of the following are shown by the defendant by
47 a preponderance of the evidence:

48 (1) The defendant has completed an evaluation and,
49 if recommended by the evaluation, a program of
50 treatment for chemical dependency and is recovering,

S-5615

Page 7

1 or has substantially recovered, from that dependency
2 on or tendency to abuse alcohol or drugs.

3 (2) The defendant has not been convicted, since
4 the date of the revocation order, of any subsequent
5 violations of section 321L.2 or 123.46, or any
6 comparable city or county ordinance, and the defendant
7 has not, since the date of the revocation order,
8 submitted to a chemical test under this chapter that
9 indicated an alcohol concentration as defined in
10 section 321L.1 of .10 or more, or refused to submit to
11 chemical testing under this chapter.

12 (3) The defendant has abstained from the excessive
13 consumption of alcoholic beverages and the consumption
14 of controlled substances, except at the direction of a
15 licensed physician or pursuant to a valid
16 prescription.

17 (4) The defendant's motor vehicle license is not
18 currently subject to suspension or revocation for any
19 other reason.

20 c. The court shall forward to the department a
21 record of any application submitted under paragraph
22 "b" and the results of the court's disposition of the
23 application.

24 4. Upon a plea or verdict of guilty of a violation
25 of section 321L.2 which involved a personal injury,
26 the court shall determine in open court, from
27 consideration of the information in the file and any
28 other evidence the parties may submit, whether a
29 serious injury was sustained by any person other than
30 the defendant and, if so, whether the defendant's
31 conduct in violation of section 321L.2 caused the
32 serious injury. If the court so determines, the court
33 shall order the department to revoke the defendant's
34 motor vehicle license or nonresident operating
35 privilege for a period of one year in addition to any
36 other period of suspension or revocation. The
37 defendant shall surrender to the court any Iowa
38 license or permit and the court shall forward it to
39 the department with a copy of the order for
40 revocation.

41 5. Upon a plea or verdict of guilty of a violation
42 of section 321L.2 which involved a death, the court
43 shall determine in open court, from consideration of
44 the information in the file and any other evidence the
45 parties may submit, whether a death occurred and, if
46 so, whether the defendant's conduct in violation of
47 section 321L.2 caused the death. If the court so
48 determines, the court shall order the department to
49 revoke the defendant's motor vehicle license or
50 nonresident operating privilege for a period of six

S-5615

Page 8

1 years. The defendant shall surrender to the court any
2 Iowa license or permit and the court shall forward it
3 to the department with a copy of the order for
4 revocation.

5 6. If a license or permit to operate a motor
6 vehicle is revoked or denied under this section or
7 section 321L.9 or 321L.12, the period of revocation or
8 denial shall be the period provided for such a
9 revocation or until the defendant reaches the age of
10 eighteen whichever period is longer.

11 7. On a conviction for or as a condition of a
12 deferred judgment for a violation of section 321L.2,
13 the court may order the defendant to install ignition
14 interlock devices of a type approved by the
15 commissioner of public safety on all motor vehicles
16 owned or operated by the defendant which, without
17 tampering or the intervention of another person, would
18 prevent the defendant from operating the motor vehicle
19 with an alcohol concentration greater than a level set
20 by rule of the commissioner of public safety. The
21 commissioner of public safety shall adopt rules to
22 approve certain ignition interlock devices and the
23 means of installation of the devices, and shall
24 establish the level of alcohol concentration beyond
25 which an ignition interlock device will not allow
26 operation of the motor vehicle in which it is
27 installed. The order shall remain in effect for a
28 period of time as determined by the court which shall
29 not exceed the maximum term of imprisonment which the
30 court could have imposed according to the nature of
31 the violation. While the order is in effect, the
32 defendant shall not operate a motor vehicle which does
33 not have an approved ignition interlock device
34 installed. If the defendant's motor vehicle license
35 or nonresident operating privilege has been revoked,
36 the department shall not issue a temporary permit or a
37 motor vehicle license to the person without
38 certification that approved ignition interlock devices
39 have been installed in all motor vehicles owned or
40 operated by the defendant while the order is in
41 effect. A defendant who fails within a reasonable
42 time to comply with an order to install an approved
43 ignition interlock device may be declared in contempt
44 of court and punished accordingly. A person who
45 tampers with or circumvents an ignition interlock
46 device installed under a court order while an order is
47 in effect commits a serious misdemeanor.

48 8. A person whose motor vehicle license has been
49 revoked under this chapter and who is not eligible for
50 a temporary restricted license under this chapter may

S-5615

Page 9

1 petition the court for an order to the department to
2 require the department to issue a temporary restricted
3 license to the person. The court shall determine if
4 the temporary restricted license is necessary for the
5 person to maintain the person's present employment.
6 If the court determines that the temporary restricted
7 license is necessary for the person to maintain the
8 person's present employment, the court shall order the
9 department to issue to the person a temporary
10 restricted license conditioned upon the person's
11 certification to the court of the installation of
12 approved ignition interlock devices in all motor
13 vehicles that it is necessary for the person to
14 operate to maintain the person's present employment.
15 If the person operates a motor vehicle which does not
16 have an approved ignition interlock device or if the
17 person tampers with or circumvents an ignition
18 interlock device, in addition to other penalties
19 provided, the person's temporary restricted license
20 shall be revoked.

21 Sec. ____ . NEW SECTION. 321L.5 PRELIMINARY
22 SCREENING TEST.

23 When a peace officer has reasonable grounds to
24 believe that a motor vehicle operator may be violating
25 or has violated section 321L.2, or the operator has
26 been involved in a motor vehicle collision resulting
27 in injury or death, the peace officer may request the
28 operator to provide a sample of the operator's breath
29 for a preliminary screening test using a device
30 approved by the commissioner of public safety for that
31 purpose. The results of this preliminary screening
32 test may be used for the purpose of deciding whether
33 an arrest should be made and whether to request a
34 chemical test authorized in this chapter, but shall
35 not be used in any court action except to prove that a
36 chemical test was properly requested of a person
37 pursuant to this chapter.

38 Sec. ____ . NEW SECTION. 321L.6 IMPLIED CONSENT TO
39 TEST.

40 1. A person who operates a motor vehicle in this
41 state under circumstances which give reasonable
42 grounds to believe that the person has been operating
43 a motor vehicle in violation of section 321L.2 is
44 deemed to have given consent to the withdrawal of
45 specimens of the person's blood, breath, or urine and
46 to a chemical test or tests of the specimens for the
47 purpose of determining the alcohol concentration or
48 presence of drugs, subject to this section. The
49 withdrawal of the body substances and the test or
50 tests shall be administered at the written request of

S-5615

Page 10

1 a peace officer having reasonable grounds to believe
2 that the person was operating a motor vehicle in
3 violation of section 321L.2, and if any of the
4 following conditions exist:

5 a. A peace officer has lawfully placed the person
6 under arrest for violation of section 321L.2.

7 b. The person has been involved in a motor vehicle
8 accident or collision resulting in personal injury or
9 death.

10 c. The person has refused to take a preliminary
11 breath screening test provided by this chapter.

12 d. The preliminary breath screening test was
13 administered and it indicated an alcohol concentration
14 as defined in section 321L.1 of .10 or more.

15 e. The preliminary breath screening test was
16 administered and it indicated an alcohol concentration
17 of less than .10 and the peace officer has reasonable
18 grounds to believe that the person was under the
19 influence of a drug other than alcohol or a
20 combination of alcohol and another drug.

21 2. The peace officer shall determine which of the
22 three substances, breath, blood, or urine, shall be
23 tested. Refusal to submit to a chemical test of urine
24 or breath is deemed a refusal to submit, and section
25 321L.9 applies. A refusal to submit to a chemical
26 test of blood is not deemed a refusal to submit, but
27 in that case, the peace officer shall then determine
28 which one of the other two substances shall be tested
29 and shall offer the test. If the peace officer fails
30 to offer a test within two hours after the preliminary
31 screening test is administered or refused or the
32 arrest is made, whichever occurs first, a test is not
33 required, and there shall be no revocation under
34 section 321L.9.

35 3. Notwithstanding subsection 2, if the peace
36 officer has reasonable grounds to believe that the
37 person was under the influence of a drug other than
38 alcohol or a combination of alcohol and another drug,
39 a urine test may be required even after a blood or
40 breath test has been administered. Section 321L.9
41 applies to a refusal to submit to a chemical test of
42 urine requested under this subsection.

43 Sec. ____ . NEW SECTION. 321L.7 DEAD OR
44 UNCONSCIOUS PERSONS.

45 A person who is dead, unconscious, or otherwise in
46 a condition rendering the person incapable of consent
47 or refusal is deemed not to have withdrawn the consent
48 provided by section 321L.6, and the test may be given
49 if a licensed physician certifies in advance of the
50 test that the person is dead, unconscious, or

S-5615

Page 11

1 otherwise in a condition rendering that person
2 incapable of consent or refusal.

3 Sec. ____ . NEW SECTION. 321L.8 STATEMENT OF
4 OFFICER.

5 A person who has been requested to submit to a
6 chemical test shall be advised by a peace officer of
7 the following:

8 1. If the person refuses to submit to the test,
9 the person's license or operating privilege will be
10 revoked by the department for the applicable period
11 under section 321L.9.

12 2. If the person submits to the test and the
13 results indicate an alcohol concentration as defined
14 in section 321L.1 of .10 or more, the person's license
15 or operating privilege will be revoked by the
16 department for the applicable period under section
17 321L.12.

18 This section does not apply in any case involving a
19 person described in section 321L.7.

20 Sec. ____ . NEW SECTION. 321L.9 REFUSAL TO SUBMIT
21 -- REVOCATION.

22 If a person refuses to submit to the chemical
23 testing, a test shall not be given, but the
24 department, upon the receipt of the peace officer's
25 certification, subject to penalty for perjury, that
26 the officer had reasonable grounds to believe the
27 person to have been operating a motor vehicle in
28 violation of section 321L.2, that specified conditions
29 existed for chemical testing pursuant to section
30 321L.6, and that the person refused to submit to the
31 chemical testing, shall revoke the person's motor
32 vehicle license and any nonresident operating
33 privilege for a period of two hundred forty days if
34 the person has no previous revocation within the
35 previous six years under this chapter; and five
36 hundred forty days if the person has one or more
37 previous revocations within the previous six years
38 under this chapter; or if the person is a resident
39 without a license or permit to operate a motor vehicle
40 in this state, the department shall deny to the person
41 the issuance of a license or permit for the same
42 period a license or permit would be revoked, subject
43 to review as provided in this chapter. The effective
44 date of revocation shall be twenty days after the
45 department has mailed notice of revocation to the
46 person by certified mail or, on behalf of the
47 department, a peace officer offering or directing the
48 administration of a chemical test may serve immediate
49 notice of intention to revoke and of revocation on a
50 person who refuses to permit chemical testing. If the

S-5615

Page 12

1 peace officer serves that immediate notice, the peace
2 officer shall take the Iowa license or permit of the
3 driver, if any, and issue a temporary license
4 effective for only twenty days. The peace officer
5 shall immediately send the person's license to the
6 department along with the officer's certificate
7 indicating the person's refusal to submit to chemical
8 testing.

9 Sec. ____ . NEW SECTION. 321L.10 TESTS PURSUANT TO
10 WARRANTS.

11 1. Refusal to consent to a test under section
12 321L.6 does not prohibit the withdrawal of a specimen
13 for chemical testing pursuant to a search warrant
14 issued in the investigation of a suspected violation
15 of section 707.5 if all of the following grounds
16 exist:

17 a. A traffic accident has resulted in a death or
18 personal injury reasonably likely to cause death.

19 b. There are reasonable grounds to believe that
20 one or more of the persons whose driving may have been
21 the proximate cause of the accident was violating
22 section 321L.2 at the time of the accident.

23 2. Search warrants may be issued under this
24 section in full compliance with chapter 808 or they
25 may be issued under subsection 3.

26 3. Notwithstanding section 808.3, the issuance of
27 a search warrant under this section may be based upon
28 sworn oral testimony communicated by telephone if the
29 magistrate who is asked to issue the warrant is
30 satisfied that the circumstances make it reasonable to
31 dispense with a written affidavit. The following
32 shall then apply:

33 a. When a caller applies for the issuance of a
34 warrant under this section and the magistrate becomes
35 aware of the purpose of the call, the magistrate shall
36 place under oath the person applying for the warrant.

37 b. The person applying for the warrant shall
38 prepare a duplicate warrant and read the duplicate
39 warrant, verbatim, to the magistrate who shall enter,
40 verbatim, what is read to the magistrate on a form
41 that will be considered the original warrant. The
42 magistrate may direct that the warrant be modified.

43 c. The oral application testimony shall set forth
44 facts and information tending to establish the
45 existence of the grounds for the warrant and shall
46 describe with a reasonable degree of specificity the
47 person or persons whose driving is believed to have
48 been the proximate cause of the accident and from whom
49 a specimen is to be withdrawn and the location where
50 the withdrawal of the specimen or specimens is to take

S-5615

Page 13

1 place.

2 d. If a voice recording device is available, the
3 magistrate may record by means of that device all of
4 the call after the magistrate becomes aware of the
5 purpose of the call. Otherwise, the magistrate shall
6 cause a stenographic or longhand memorandum to be made
7 of the oral testimony of the person applying for the
8 warrant.

9 e. If the magistrate is satisfied from the oral
10 testimony that the grounds for the warrant exist or
11 that there is probable cause to believe that they
12 exist, the magistrate shall order the issuance of the
13 warrant by directing the person applying for the
14 warrant to sign the magistrate's name on the duplicate
15 warrant. The magistrate shall immediately sign the
16 original warrant and enter on its face the exact time
17 when the issuance was ordered.

18 f. The person who executes the warrant shall enter
19 the time of execution on the face of the duplicate
20 warrant.

21 g. The magistrate shall cause any record of the
22 call made by means of a voice recording device to be
23 transcribed, shall certify the accuracy of the
24 transcript, and shall file the transcript and the
25 original record with the clerk. If a stenographic or
26 longhand memorandum was made of the oral testimony of
27 the person who applied for the warrant, the magistrate
28 shall file a signed copy with the clerk.

29 h. The clerk of court shall maintain the original
30 and duplicate warrants along with the record of the
31 telephone call and any transcript or memorandum made
32 of the call in a confidential file until a charge, if
33 any, is filed.

34 4. Search warrants issued under this section shall
35 authorize and direct peace officers to secure the
36 withdrawal of blood specimens by medical personnel
37 under section 321L.11. Reasonable care shall be
38 exercised to ensure the health and safety of the
39 persons from whom specimens are withdrawn in execution
40 of the warrants. If a person from whom a specimen is
41 to be withdrawn objects to the withdrawal of blood,
42 and the person is capable of giving a specimen of
43 breath, and a direct breath testing instrument is
44 readily available, the warrant may be executed by the
45 withdrawal of a specimen of breath for chemical
46 testing.

47 5. The act of any person knowingly resisting or
48 obstructing the withdrawal of a specimen pursuant to a
49 search warrant issued under this section constitutes a
50 contempt punishable by a fine not exceeding one

S-5615

Page 14

1 thousand dollars or imprisonment in a county jail not
2 exceeding one year or by both such fine and
3 imprisonment. Also, if the withdrawal of a specimen
4 is so resisted or obstructed, sections 321L.9 and
5 321L.16 apply.

6 6. Nonsubstantive variances between the contents
7 of the original and duplicate warrants shall not cause
8 a warrant issued under subsection 3 of this section to
9 be considered invalid.

10 7. Specimens obtained pursuant to warrants issued
11 under this section are not subject to disposition
12 under section 808.9 or chapter 809.

13 8. Subsections 1 to 7 of this section do not apply
14 where a test may be administered under section 321L.7.

15 9. Medical personnel who use reasonable care and
16 accepted medical practices in withdrawing blood
17 specimens are immune from liability for their actions
18 in complying with requests made of them pursuant to
19 search warrants or pursuant to section 321L.11.

20 Sec. ____ . NEW SECTION. 321L.11 TAKING SAMPLE FOR
21 TEST.

22 Only a licensed physician, licensed physician
23 assistant as defined in section 148C.1, medical
24 technologist, or registered nurse, acting at the
25 request of a peace officer, may withdraw a specimen of
26 blood for the purpose of determining the alcohol
27 concentration or the presence of drugs. However, any
28 peace officer, using devices and methods approved by
29 the commissioner of public safety, may take a specimen
30 of a person's breath or urine for the purpose of
31 determining the alcohol concentration or the presence
32 of drugs. Only new equipment kept under strictly
33 sanitary and sterile conditions shall be used for
34 drawing blood.

35 The person may have an independent chemical test or
36 tests administered at the person's own expense in
37 addition to any administered at the direction of a
38 peace officer. The failure or inability of the person
39 to obtain an independent chemical test or tests does
40 not preclude the admission of evidence of the results
41 of the test or tests administered at the direction of
42 the peace officer. Upon the request of the person who
43 is tested, the results of the test or tests
44 administered at the direction of the peace officer
45 shall be made available to the person.

46 Sec. ____ . NEW SECTION. 321L.12 TEST RESULT
47 REVOCATION.

48 Upon certification, subject to penalty for perjury,
49 by the peace officer that there existed reasonable
50 grounds to believe that the person had been operating

S-5615

Page 15

1 a motor vehicle in violation of section 321L.2, that
2 there existed one or more of the necessary conditions
3 for chemical testing described in section 321L.6,
4 subsection 1, and that the person submitted to
5 chemical testing and the test results indicated an
6 alcohol concentration as defined in section 321L.1 of
7 .10 or more, the department shall revoke the person's
8 motor vehicle license or nonresident operating
9 privilege for a period of one hundred eighty days if
10 the person has had no revocation within the previous
11 six years under this chapter, and one year if the
12 person has had one or more previous revocations within
13 the previous six years under this chapter.

14 The effective date of the revocation shall be
15 twenty days after the department has mailed notice of
16 revocation to the person by certified mail. The peace
17 officer who requested or directed the administration
18 of the chemical test may, on behalf of the department,
19 serve immediate notice of revocation on a person whose
20 test results indicated an alcohol concentration of .10
21 or more.

22 If the peace officer serves that immediate notice,
23 the peace officer shall take the person's Iowa license
24 or permit, if any, and issue a temporary license valid
25 only for twenty days. The peace officer shall
26 immediately send the person's driver's license to the
27 department along with the officer's certificate
28 indicating that the test results indicated an alcohol
29 concentration of .10 or more.

30 The results of a chemical test may not be used as
31 the basis for a revocation of a person's motor vehicle
32 license or nonresident operating privilege if the
33 alcohol concentration indicated by the chemical test
34 minus the established margin of error inherent in the
35 device or method used to conduct the chemical test
36 does not equal an alcohol concentration of .10 or
37 more.

38 Sec. ____ . NEW SECTION. 321L.13 HEARING ON
39 REVOCATION -- APPEAL.

40 1. Notice of revocation of a person's motor
41 vehicle license or operating privilege served pursuant
42 to section 321L.9 or 321L.12 shall include a form
43 accompanied by a preaddressed envelope on which the
44 person served may indicate by a checkmark if the
45 person wishes to request a temporary restricted
46 license only or if the person wishes a hearing to
47 contest the revocation. The form shall clearly state
48 on its face that the form must be completed and
49 returned within thirty days of receipt or the person's
50 right to a hearing to contest the revocation is

S-5615

Page 16

1 foreclosed. The form shall also be accompanied by a
2 statement of the operation of and the person's rights
3 under this chapter.

4 2. The department shall grant the person an
5 opportunity to be heard within forty-five days of
6 receipt of a request for a hearing if the request is
7 made not later than thirty days after receipt of
8 notice of revocation served pursuant to section 321L.9
9 or 321L.12. The hearing shall be before the
10 department in the county where the alleged events
11 occurred, unless the director and the person agree
12 that the hearing may be held in some other county, or
13 the hearing may be held by telephone conference at the
14 discretion of the agency conducting the hearing. The
15 hearing may be recorded and its scope shall be limited
16 to the issues of whether a peace officer had
17 reasonable grounds to believe that the person was
18 operating a motor vehicle in violation of section
19 321L.2 and either of the following:

20 a. Whether the person refused to submit to the
21 test or tests.

22 b. Whether a test was administered and the test
23 results indicated an alcohol concentration as defined
24 in section 321L.1 of .10 or more.

25 3. After the hearing the department shall order
26 that the revocation be either rescinded or sustained.
27 If the revocation is sustained, the administrative law
28 judge who conducted the hearing may issue a temporary
29 restricted license to the person whose motor vehicle
30 license or operating privilege was revoked. Upon
31 receipt of the decision of the department to sustain a
32 revocation, the person contesting the revocation has
33 ten days to file a request for review of the decision
34 by the director. The director or the director's
35 designee shall review the decision within fifteen days
36 and shall either rescind or sustain the revocation or
37 order a new hearing. If the director orders a new
38 hearing, the department shall grant the person a new
39 hearing within thirty days of the director's order.

40 4. A person whose motor vehicle license or
41 operating privilege has been or is being revoked under
42 section 321L.9 or 321L.12 may reopen a department
43 hearing on the revocation if the person submits a
44 petition stating that new evidence has been discovered
45 which provides grounds for rescission of the
46 revocation, or prevail at the hearing to rescind the
47 revocation, if the person submits a petition stating
48 that a criminal action on a charge of a violation of
49 section 321L.2 filed as a result of the same
50 circumstances which resulted in the revocation has

S-5615

Page 17

1 resulted in a decision in which the court has held
2 that the peace officer did not have reasonable grounds
3 to believe that a violation of section 321L.2 had
4 occurred to support a request for or to administer a
5 chemical test or which has held the chemical test to
6 be otherwise inadmissible or invalid. Such a decision
7 by the court is binding on the department and the
8 department shall rescind the revocation.

9 5. The department shall stay the revocation of a
10 person's motor vehicle license or operating privilege
11 for the period that the person is contesting the
12 revocation under this section or section 321L.14 if it
13 is shown to the satisfaction of the department that
14 the new evidence is material and that there were valid
15 reasons for failure to present it in the contested
16 case proceeding before the department.

17 6. If the department fails to comply with the time
18 limitations of this section regarding granting a
19 hearing, review by the director or the director's
20 designee, or granting a new hearing, and if the
21 request for a hearing or review by the director was
22 properly made under this section, the revocation of
23 the motor vehicle license or operating privilege of
24 the person who made the request for a hearing or
25 review shall be rescinded. This subsection shall not
26 apply in those cases in which a continuance to the
27 hearing has been granted at the request of either the
28 person who requested the hearing or the peace officer
29 who requested or administered the chemical test.

30 Sec. ____ . NEW SECTION. 321L.14 JUDICIAL REVIEW.

31 Judicial review of an action of the department may
32 be sought in accordance with the terms of the Iowa
33 administrative procedure Act, chapter 17A.
34 Notwithstanding the terms of that chapter, a petition
35 for judicial review may be filed in the district court
36 in the county where the alleged events occurred or in
37 the county in which the administrative hearing was
38 held.

39 Sec. ____ . NEW SECTION. 321L.15 EVIDENCE IN ANY
40 ACTION.

41 Upon the trial of a civil or criminal action or
42 proceeding arising out of acts alleged to have been
43 committed by a person while operating a motor vehicle
44 in violation of section 321L.2, evidence of the
45 alcohol concentration or the presence of drugs in the
46 person's body substances at the time of the act
47 alleged as shown by a chemical analysis of the
48 person's blood, breath, or urine is admissible. If it
49 is established at trial that an analysis of a breath
50 specimen was performed by a certified operator using a

S-5615

Page 18

1 device and methods approved by the commissioner of
2 public safety, no further foundation is necessary for
3 introduction of the evidence.

4 Sec. ____ . NEW SECTION. 321L.16 PROOF OF REFUSAL
5 ADMISSIBLE.

6 If a person refuses to submit to a chemical test,
7 proof of refusal is admissible in any civil or
8 criminal action or proceeding arising out of acts
9 alleged to have been committed while the person was
10 operating a motor vehicle in violation of section
11 321L.2.

12 Sec. ____ . NEW SECTION. 321L.17 CIVIL PENALTY --
13 SEPARATE FUND -- REINSTATEMENT.

14 When the department revokes a person's motor
15 vehicle license or nonresident operating privilege
16 under this chapter, the department shall assess the
17 person a civil penalty of one hundred dollars. The
18 money collected by the department under this section
19 shall be transmitted to the treasurer of state who
20 shall deposit the money in a separate fund dedicated
21 to and used for the purposes of chapter 912 and
22 section 709.10, and for the operation of a missing
23 person clearinghouse and domestic abuse registry by
24 the department of public safety. Notwithstanding
25 section 8.33, any balance in the fund on June 30 of
26 any fiscal year shall not revert to the general fund
27 of the state. A temporary restricted license shall
28 not be issued or a motor vehicle license or
29 nonresident operating privilege reinstated until the
30 civil penalty has been paid.

31 Sec. ____ . NEW SECTION. 321L.18 OTHER EVIDENCE.

32 This chapter does not limit the introduction of any
33 competent evidence bearing on the question of whether
34 a person was under the influence of an alcoholic
35 beverage or a drug, including the results of chemical
36 tests of specimens of blood, breath or urine obtained
37 more than two hours after the person was operating a
38 motor vehicle.

39 Sec. ____ . NEW SECTION. 321L.19 INFORMATION
40 RELAYED TO OTHER STATES.

41 When it has been finally determined under this
42 chapter that a nonresident's privilege to operate a
43 motor vehicle in this state has been revoked or
44 denied, the department shall give information in
45 writing of the action taken to the official in charge
46 of traffic control or public safety of the state of
47 the person's residence and of any state in which the
48 person has a license.

49 Sec. ____ . NEW SECTION. 321L.20 TEMPORARY
50 RESTRICTED LICENSE.

S-5615

Page 19

1 1. The department may, on application, issue a
2 temporary restricted license to a person whose motor
3 vehicle license is revoked under this chapter allowing
4 the person to drive to and from the person's home and
5 specified places at specified times which can be
6 verified by the department and which are required by
7 the person's full-time or part-time employment,
8 continuing health care or the continuing health care
9 of another who is dependent upon the person,
10 continuing education while enrolled in an educational
11 institution on a part-time or full-time basis and
12 while pursuing a course of study leading to a diploma,
13 degree, or other certification of successful
14 educational completion, substance abuse treatment, and
15 court-ordered community service responsibilities if
16 the person's motor vehicle license has not been
17 revoked under 321L.4, 321L.9, or 321L.12 within the
18 previous six years and if any of the following apply:

19 a. The person's motor vehicle license is revoked
20 under section 321L.4, subsection 1, 2, 4, or 6.

21 b. The person's motor vehicle license is revoked
22 under section 321L.9 and the person has entered a plea
23 of guilty on a charge of a violation of section 321L.2
24 which arose from the same set of circumstances which
25 resulted in the person's motor vehicle license
26 revocation under section 321L.9 and the guilty plea is
27 not withdrawn at the time of or after application for
28 the temporary restricted license.

29 c. The person's motor vehicle license is revoked
30 under section 321L.12.

31 However, a temporary restricted license may be
32 issued if the person's motor vehicle license is
33 revoked under section 321L.9, and the revocation is a
34 second revocation under this chapter, and the first
35 three hundred and sixty days of the revocation have
36 expired.

37 2. This section does not apply to a person whose
38 license was revoked under section 321L.4, subsection 3
39 or 5, or to a person whose license is suspended or
40 revoked for another reason.

41 3. A person holding a temporary restricted license
42 issued by the department under this section shall not
43 operate a motor vehicle for pleasure.

44 Sec. . NEW SECTION. 321L.21 DRIVING WHILE
45 LICENSE DENIED OR REVOKED.

46 A person whose motor vehicle license or nonresident
47 operating privilege has been denied or revoked as
48 provided in this chapter and who drives a motor
49 vehicle upon the highways of this state while the
50 license or privilege is denied or revoked commits a

S-5615

Page 20

1 serious misdemeanor. The department, upon receiving
2 the record of the conviction of a person under this
3 section upon a charge of driving a motor vehicle while
4 the license of the person was revoked or denied, shall
5 extend the period of revocation or denial for an
6 additional like period, and the department shall not
7 issue a new license during the additional period.

8 Sec. ____ . NEW SECTION. 321L.22 COURT-ORDERED
9 DRINKING DRIVERS COURSE.

10 1. As used in this section, unless the context
11 otherwise requires:

12 a. "Course for drinking drivers" means an approved
13 course designed to inform the offender about drinking
14 and driving and encourage the offender to assess the
15 offender's own drinking and driving behavior in order
16 to select practical alternatives.

17 b. "Satisfactory completion of a course" means
18 receiving at the completion of a course a grade from
19 the course instructor of "C" or "2.0," or better.

20 2. After a conviction for, or a plea of guilty of,
21 a violation of section 321L.2, the court in addition
22 to its power to commit the defendant for treatment of
23 alcoholism under section 321L.3, may order the
24 defendant, at the defendant's own expense, to enroll
25 in, attend, and successfully complete a course for
26 drinking drivers. The court may alternatively or
27 additionally require the defendant to seek evaluation,
28 treatment or rehabilitation services under section
29 125.33 at the defendant's expense and to furnish
30 evidence of successful completion. A copy of the
31 order shall be forwarded to the department.

32 3. The course provided in this section shall be
33 offered on a regular basis at each area school as
34 defined in section 280A.2. Enrollment in the courses
35 is not limited to persons ordered to enroll, attend
36 and successfully complete the course under subsection
37 2, and any person convicted of a violation of section
38 321L.2 who was not ordered to enroll in a course may
39 enroll in and attend a course for drinking drivers.
40 The course required by this section shall be taught by
41 the area schools under the department of education and
42 approved by the department. The department of
43 education shall establish reasonable fees to defray
44 the expense of obtaining classroom space, instructor
45 salaries, and class materials. A person shall not be
46 denied enrollment in a course by reason of the
47 person's indigency.

48 4. An employer shall not discharge a person from
49 employment solely for the reason of work absence to
50 attend a course required by this section. Any

S-5615

Page 21

1 employer who violates this section is liable for
2 damages which include but are not limited to actual
3 damages, court costs, and reasonable attorney fees.
4 The person may also petition the court for imposition
5 of a cease and desist order against the person's
6 employer and for reinstatement to the person's
7 previous position of employment.

8 5. The department of education shall prepare a
9 list of the locations of the courses taught under this
10 section, the dates and times taught, the procedure for
11 enrollment, and the schedule of course fees. The list
12 shall be kept current and a copy of the list shall be
13 sent to each court having jurisdiction over offenses
14 provided in this chapter.

15 6. The department of education shall maintain
16 enrollment, attendance, successful and nonsuccessful
17 completion data on the persons ordered to enroll,
18 attend and successfully complete a course for drinking
19 drivers. This data shall be forwarded to the court."

20 2. Page 35, by inserting after line 7 the
21 following:

22 "Sec. ____ Chapter 321J is repealed."

23 3. Renumber as necessary.

By CALVIN O. HULTMAN
RICHARD VANDE HOEF
MARK R. HAGERLA

H. KAY HEDGE
RAY TAYLOR

S-5615 FILED MARCH 21, 1990
RULED OUT OF ORDER (y. 1234)

SENATE FILE 2413

S-5575

1 Amend Senate File 2413 as follows:

2 1. Page 25, by inserting after line 31, the
3 following:

4 "Sec. ____ . NEW SECTION. 901.4A SUBSTANCE ABUSE
5 EVALUATION.

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, the court may order the defendant to
9 submit to and complete a substance abuse evaluation,
10 if the court determines that there is reason to
11 believe that the defendant regularly abuses alcohol or
12 other controlled substances and may be in need of
13 treatment. An order made pursuant to this section may
14 be made in addition to any other sentence or order of
15 the court.

16 Sec. ____ . Section 901.5, Code 1989, is amended by
17 adding the following new subsection:

18 NEW SUBSECTION. 8. The court may order the
19 defendant to complete any treatment indicated by a
20 substance abuse evaluation ordered pursuant to section
21 901.4A or any other section."

22 2. Renumber as necessary.

By COMMITTEE ON JUDICIARY
RICHARD VARN, Chairperson

S-5575 FILED MARCH 19, 1990

Adopted 3/21 (p. 1230)

SENATE FILE 2413

S-5620

1 Amend Senate File 2413 as follows:

2 1. Page 15, by inserting after line 28, the
3 following:

4 "Sec. ____ . NEW SECTION. 321L.3 SURRENDER OF
5 REGISTRATION AND PLATES.

6 1. Upon a plea or verdict of guilty of a third or
7 subsequent violation of section 321J.2, the court
8 shall require the defendant to surrender to the
9 director the registration certificate and registration
10 plates of all vehicles registered to the defendant for
11 a period of one hundred eighty days after the date of
12 surrender if the violation is a third violation, and
13 for a period of one year if the violation is a fourth
14 or subsequent violation. The registration certificate
15 and registration plates shall be reissued after the
16 expiration of the period provided in this subsection
17 and upon application made by the defendant. For
18 purposes of this subsection, a conviction for,
19 deferred judgment for, or plea of guilty to, a
20 violation of section 321J.2, which occurred more than
21 six years prior to the date of the most recent
22 violation charged, shall not be considered in
23 determining that the most recent violation is a third
24 offense or subsequent offense.

25 2. The owner of a motor vehicle who allows another
26 person to operate the owner's motor vehicle upon the
27 highways of this state shall be required to surrender
28 to the director the registration certificate and
29 registration plates of the vehicle upon a plea or
30 verdict of guilty of a third or subsequent violation
31 of section 321J.2 which occurred while the person was
32 operating the owner's motor vehicle. The minimum
33 duration of the period of surrender shall be one
34 hundred eighty days if the violation is the person's
35 third violation and shall be one year if the violation
36 is the person's fourth or a subsequent violation. The
37 registration certificate and registration plates shall
38 be reissued after the expiration of the period of
39 surrender and upon application made by the owner."

40 2. Renumber as necessary.

By LINN FUHRMAN
RICHARD VANDE HOEF

RAY TAYLOR
MAGGIE TINSMAN

S-5620 FILED MARCH 21, 1990
RULED OUT OF ORDER (p. 1235)

SENATE FILE 2413

S-5616

1 Amend Senate File 2413 as follows:

2 1. Page 11, by striking lines 17 through 24 and
3 inserting the following: "licensed child day care
4 provider, at the institution for children less than
5 eighteen months of age by January 1, 1992."

By RICHARD DRAKE MAGGIE TINSMAN
CALVIN O. HULTMAN JULIA GENTLEMAN
RICHARD VANDE HOEF

S-5616 FILED MARCH 21, 1990

RULED OUT OF ORDER (S 1233)

SENATE FILE 2413

S-5617

1 Amend Senate File 2413 as follows:

2 1. Page 34, lines 3 and 4, by striking the words
3 "and mental health care".

4 2. Page 34, line 5, by striking the words "Mental
5 health care" and inserting the following: "Reasonable
6 charges incurred for mental health care not to exceed
7 one thousand five hundred dollars which".

By RICHARD DRAKE RICHARD VANDE HOEF
CALVIN O. HULTMAN JULIA GENTLEMAN

S-5617 FILED MARCH 21, 1990

Adopted 3/22 (p. 1251)

SENATE FILE 2413

S-5619

1 Amend Senate File 2413 as follows:

2 1. Page 15, by inserting after line 28, the
3 following:

4 "Sec. ____ . NEW SECTION. 321L.3 PRELIMINARY
5 SCREENING TEST.

6 When a peace officer has reasonable grounds to
7 believe that a motor vehicle operator may be violating
8 or has violated section 321J.2, or the operator has
9 been involved in a motor vehicle collision resulting
10 in injury or death, the peace officer may request the
11 operator to provide a sample of the operator's breath
12 for a preliminary screening test using a device
13 approved by the commissioner of public safety for that
14 purpose. The results of this preliminary screening
15 test may be used for the purpose of deciding whether
16 an arrest should be made and whether to request a
17 chemical test authorized in this chapter, as evidence
18 of the presence of alcohol in the operator, and of
19 compliance with the procedures for requesting a
20 chemical test pursuant to this chapter."

21 2. By renumbering as necessary.

By MAGGIE TINSMAN RICHARD VANDE HOEF
RAY TAYLOR JOHN W. JENSEN
RICHARD F. DRAKE JOY CORNING
JULIA GENTLEMAN WILMER RENSINK
MARK R. HAGERLA NORMAN J. GOODWIN
H. KAY HEDGE

S-5619 FILED MARCH 21, 1990

RULED OUT OF ORDER (S 1235)

SENATE FILE 2413

S-5625

- 1 Amend Senate File 2413 as follows:
2 1. Page 2, by inserting after line 28 the
3 following:
4 "Sec. ____ . Section 106.14, Code 1989, is amended
5 by striking the section and inserting in lieu thereof
6 the following:
7 106.14 OPERATING A WATERCRAFT WHILE INTOXICATED --
8 IMPLIED CONSENT TO TEST.
9 1. As used in this section:
10 a. "Chemical test" means an analysis of a person's
11 blood, breath, urine, or other bodily substance for
12 the determination of the presence of alcohol, a
13 controlled substance, or a drug.
14 b. "Controlled substance" means controlled
15 substance as defined in section 204.101.
16 c. "Intoxicated" means the condition of a person
17 who is under the influence of alcohol, a controlled
18 substance, a drug other than alcohol or a controlled
19 substance, or any combination of alcohol, a controlled
20 substance, a drug other than alcohol or a controlled
21 substance, or a drug, which impairs thought and action
22 and loss of normal control of the person's faculties
23 to an extent which endangers a person.
24 d. "Peace officer" means peace officer as defined
25 in section 801.4.
26 e. "Prima facie evidence of intoxication" includes
27 evidence that, at the time of an alleged violation, a
28 person had an alcohol concentration equal to or in
29 excess of the level specified in section 321J.2,
30 subsection 1, paragraph "b".
31 f. "Relevant evidence of intoxication" includes
32 evidence that, at the time of the alleged violation, a
33 person had an alcohol concentration of at least one-
34 half, but not more than, the level specified in
35 section 321J.2, subsection 1, paragraph "b".
36 g. "Watercraft" means a device for transportation
37 by water including a vessel, water skis, surfboard, or
38 similar device.
39 2. a. A person who operates a watercraft while
40 having an alcohol concentration equal to or in excess
41 of the level specified in section 321J.2, subsection
42 1, paragraph "b", or while intoxicated, commits an
43 aggravated misdemeanor.
44 b. A person who violates this section commits a
45 class "D" felony in either of the following cases:
46 (1) If the person has a previous conviction under
47 this section.
48 (2) If the offense results in serious bodily
49 injury to another person and the court determines that
50 the person who committed the offense caused the

S-5625

Page 2

1 serious injury.

2 c. A person who violates this section commits a
3 class "C" felony if the crime results in the death of
4 another person and the court determines that the
5 person who committed the offense caused the death.

6 d. A person who operates a watercraft after the
7 person has been ordered, pursuant to this section, not
8 to operate a watercraft commits a simple misdemeanor.

9 3. a. In addition to a criminal penalty imposed
10 for a misdemeanor under this section, the court shall
11 order the person not to operate a watercraft for at
12 least one year.

13 b. In addition to a criminal penalty imposed for a
14 felony under this section, the court shall order the
15 person not to operate a watercraft for at least two
16 years.

17 4. a. A person who operates a watercraft in
18 waters over which this state has jurisdiction
19 impliedly consents to submit to the chemical test
20 provisions of this section as a condition of operating
21 a watercraft in this state. If a person refuses to
22 submit to a chemical test under this section, the
23 court shall order the person not to operate a
24 watercraft for at least one year.

25 b. A peace officer who has probable cause to
26 believe that a person has committed an offense under
27 this section shall offer the person the opportunity to
28 submit to a chemical test. However, it is not
29 necessary for the peace officer to offer a chemical
30 test to an unconscious person. A peace officer may
31 offer a person more than one chemical test under this
32 section. However, all tests must be administered
33 within three hours after the officer had probable
34 cause to believe the person violated this section. A
35 person must submit to each chemical test offered by a
36 peace officer in order to comply with the implied
37 consent provisions of this section.

38 c. If the chemical test results in relevant
39 evidence that the person is intoxicated, the person
40 may be arrested for an offense under this section. If
41 the chemical test results in prima facie evidence that
42 the person is intoxicated, the person shall be
43 arrested for an offense under this section.

44 d. A person who refuses to submit to a chemical
45 test may be arrested for an offense under this
46 section.

47 e. At any proceeding under this section, a
48 person's refusal to submit to a chemical test is
49 admissible into evidence.

50 f. If a person refuses to submit to a chemical

S-5625

Page 3

1 test under this section, the peace officer shall
2 inform the person that the person's refusal will
3 result in the suspension of the person's watercraft
4 operation privileges.

5 5. At any proceeding concerning an offense under
6 this section, evidence of the amount by weight of
7 alcohol that was in the blood of the person charged
8 with the offense at the time of the alleged violation,
9 as shown by an analysis of the person's blood, breath,
10 urine, or other bodily substance, is admissible."

11 2. Renumber as necessary.

By JULIA GENTLEMAN
MARK R. HAGERLA
H. KAY HEDGE

RICHARD VANDE HOEF
JACK W. HESTER
JOY CORNING

S-5625 FILED MARCH 21, 1990
LOST (p 1231)

SENATE FILE 2413

S-5623

1 Amend Senate File 2413 as follows:

2 1. Page 14, by striking lines 23 through 28.

3 2. Title page 1, by striking lines 14 through 16
4 and inserting the following: "facilities,

5 establishing a penalty for certain persons who cause".

By CALVIN O. HULTMAN
RICHARD VANDE HOEF
MARK R. HAGERLA
WILMER RENSINK

NORMAN J. GOODWIN
H. KAY HEDGE
RAY TAYLOR

S-5623 FILED MARCH 21, 1990
LOST (p 1234)

SENATE FILE 2413

S-5624

1 Amend Senate File 2413 as follows:

2 1. By striking page 23, line 29, through page 24,
3 line 22, and inserting the following:

4 "Sec. ____ Section 811.1, subsections 1 and 2,

5 Code Supplement 1989, are amended to read as follows:

6 1. A defendant awaiting judgment of conviction and
7 sentencing following either a plea or verdict of
8 guilty of a class "A" felony, murder, felonious
9 assault, sexual abuse in the second degree, sexual
10 abuse in the third degree, kidnapping, robbery in the
11 first degree, arson in the first degree, or burglary
12 in the first degree, or a felony included in chapter
13 204.

14 2. A defendant appealing a conviction of a class
15 "A" felony, murder, felonious assault, sexual abuse in
16 the second degree, sexual abuse in the third degree,
17 kidnapping, robbery in the first degree, arson in the
18 first degree, or burglary in the first degree, or a
19 felony included in chapter 204."

20 2. Renumber as necessary.

By RAY TAYLOR
JOY CORNING

MAGGIE TINSMAN
MARK R. HAGERLA

S-5624 FILED MARCH 21, 1990
LOST (p 1235)

SENATE FILE 2413

S-5621

1 Amend Senate File 2413 as follows:

2 1. Page 23, by inserting after line 28, the
3 following:

4 "Sec. ____ . NEW SECTION. 723A.3 PENALTY
5 ENHANCEMENT.

6 1. A person convicted of a felony committed for
7 the benefit of, at the direction of, or in association
8 with any criminal street gang shall be sentenced to an
9 additional five years imprisonment to be served
10 consecutively to any other term of confinement imposed
11 for the felony. No portion of the additional five-
12 year period shall be suspended or deferred.

13 2. A person convicted of a public offense, other
14 than a felony, committed for the benefit of, at the
15 direction of, or in association with any criminal
16 street gang shall be sentenced to the county jail for
17 an additional period of no less than one hundred and
18 eighty days nor more than one year to be served
19 consecutively to any other term of confinement imposed
20 for the offense. No portion of the additional period
21 of confinement shall be suspended or deferred."

22 2. By renumbering as necessary.

By JIM LIND
RAY TAYLOR

H. KAY HEDGE
MARK R. HAGERLA

S-5621 FILED MARCH 21, 1990

LOST (p. 12372)

SENATE FILE 2413

S-5622

1 Amend Senate File 2413 as follows:

2 1. Page 15, by inserting after line 28 the
3 following:

4 "Sec. ____ . NEW SECTION. 321L.3 DRIVING IMPAIRED.

5 1. A person commits the offense of operating while
6 impaired if the person operates a motor vehicle in
7 this state while impaired as defined in this section.

8 2. For purposes of this-section, "impaired" means
9 a condition of a person where the person has consumed
10 alcohol or a drug, or a combination of the two, and
11 the person has been affected to any degree such that
12 the person is less able than the person would be
13 without consuming the alcohol or drug, either mentally
14 or physically, or both, to exercise clear judgment,
15 sufficient physical control, or due care in the
16 operation of a vehicle."

17 2. Renumber as necessary.

By CALVIN O. HULTMAN
JOHN W. JENSEN
JACK W. HESTER
JOY CORNING

WILMER RENSINK
RICHARD VANDE HOEF
MARK R. HAGERLA
MAGGIE TINSMAN

S-5622 FILED MARCH 21, 1990

RULED OUT OF ORDER (p. 1236)

SENATE FILE 2413

527

Amend Senate File 2413 as follows:

1. By striking page 14, line 29 through page 15, line 7, and inserting the following:

"Sec. ____ . Section 321J.2, subsection 2, Code 1989, is amended by striking the subsection.

Sec. ____ . Section 321J.4, subsection 8, Code 1989, is amended by striking the subsection.

Sec. ____ . Section 321J.13, subsection 5, Code Supplement 1989, is amended by striking the subsection.

Sec. ____ . Section 321J.20, subsection 1, Code 1989, is amended by striking the subsection.

Sec. ____ . NEW SECTION. 321L.1 MINIMUM SENTENCE FOR CERTAIN OFFENDERS.

A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under paragraph "b" or "c" shall be served on consecutive days. However, if the sentencing court finds by clear and convincing evidence that service of the full minimum term on consecutive days would work an undue hardship on the person, the court may order the person to serve not less than forty-eight consecutive hours of the minimum term and to perform not less than two hundred forty hours of unpaid community service."

2. Page 15, by inserting after line 28, the following:

"Sec. ____ . NEW SECTION. 321L.3 TEMPORARY RESTRICTED LICENSE.

A person whose motor vehicle license has been revoked under chapter 321J and who is not eligible for a temporary restricted license under this chapter may petition the court for an order to the department to require the department to issue a temporary restricted license to the person following the expiration of any minimum revocation period provided for under section 321J.20. Notice of and an opportunity to request a hearing on the petition shall be provided to the department and to the prosecuting attorney by the clerk of the district court in the county where the violation resulting in the revocation was committed. If the court determines that any minimum revocation period provided for under section 321J.20 has expired and the temporary restricted license is necessary for the person to maintain the person's employment, the court may order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in

S-5627

Page 2

1 all motor vehicles that it is necessary for the person
2 to operate to maintain the person's employment. If
3 the person operates a motor vehicle which does not
4 have an approved ignition interlock device or if the
5 person tampers with or circumvents an ignition
6 interlock device, in addition to other penalties
7 provided, the person's temporary restricted license
8 shall be revoked.

9 Sec. _____. NEW SECTION. 321L.4 STATEMENT OF
10 OFFICER.

11 A person who has been requested to submit to a
12 chemical test shall be advised by a peace officer of
13 the following:

14 1. If the person refuses to submit to the test,
15 the person's motor vehicle license or operating
16 privilege will be revoked by the department for the
17 applicable period under section 321J.9 and the person
18 will not be eligible for a temporary restricted
19 license until at least the first ninety days of the
20 revocation period have expired.

21 2. If the person submits to the test and the
22 results indicate an alcohol concentration as defined
23 in section 321J.1 of .10 or more, the person's motor
24 vehicle license or operating privilege will be revoked
25 by the department for the applicable period under
26 section 321J.12 and the person will not be eligible
27 for a temporary restricted license until at least the
28 first thirty days of the revocation period have
29 expired.

30 This section does not apply in any case involving a
31 person described in section 321J.7.

32 Sec. _____. NEW SECTION. 321L.5 STAY OF LICENSE
33 REVOCATION BY DEPARTMENT.

34 Notwithstanding the Iowa administrative procedure
35 Act, chapter 17A, the department shall not stay the
36 revocation of a person's motor vehicle license or
37 operating privilege for the period that the person is
38 contesting the revocation under this section or
39 section 321J.14 unless the first ninety days of the
40 revocation period under section 321J.9 or the first
41 thirty days of a revocation period under 321J.12 have
42 expired.

43 Sec. _____. NEW SECTION. 321L.6 TEMPORARY
44 RESTRICTED LICENSE.

45 The department may, on application, issue a
46 temporary restricted license to a person whose motor
47 vehicle license is revoked under chapter 321J allowing
48 the person to drive to and from the person's home and
49 specified places at specified times which can be
50 verified by the department and which are required by

S-5627

Page 3

1 the person's full-time or part-time employment,
2 continuing health care or the continuing health care
3 of another who is dependent upon the person,
4 continuing education while enrolled in an educational
5 institution on a part-time or full-time basis and
6 while pursuing a course of study leading to a diploma,
7 degree, or other certification of successful
8 educational completion, substance abuse treatment, and
9 court-ordered community service responsibilities if
10 the person's motor vehicle license has not been
11 revoked under section 321J.4, 321J.9, or 321J.12
12 within the previous six years and if any of the
13 following apply:

14 a. The person's motor vehicle license is revoked
15 under section 321J.4, subsection 1, 2, 4, or 6.

16 b. The person's motor vehicle license is revoked
17 under section 321J.9, the person has entered a plea of
18 guilty on a charge of a violation of section 321J.2
19 which arose from the same set of circumstances which
20 resulted in the person's motor vehicle license
21 revocation under section 321J.9, the guilty plea is
22 not withdrawn at the time of or after application for
23 the temporary restricted license, and the first ninety
24 days of the revocation period have expired.

25 c. The person's motor vehicle license is revoked
26 under section 321J.12 and the first thirty days of the
27 revocation period have expired.

28 However, a temporary restricted license may be
29 issued if the person's motor vehicle license is
30 revoked under section 321J.9, and the revocation is a
31 second revocation under this chapter, and the first
32 three hundred sixty-five days of the revocation have
33 expired."

34 2. Page 35, by inserting after line 7 the
35 following:

36 "Sec. ____ . REPEAL.

37 Section 321J.8, Code 1989, is repealed."

38 3. Renumber as necessary.

By RAY TAYLOR
MARK R. HAGERLA
H. KAY HEDGE
JULIA GENTLEMAN

JOY CORNING
RICHARD VANDE HOEF
WILMER RENSINK

S-5627 FILED MARCH 21, 1990
RULED OUT OF ORDER (p. 1235)

SENATE FILE 2413

S-5626

1 Amend Senate File 2413 as follows:

2 1. Page 13, by striking lines 16 through 18 and
3 inserting the following: "maintained whenever
4 possible."

By LINN FUHRMAN

S-5626 FILED MARCH 21, 1990
RULED OUT OF ORDER (p. 1233)

SENATE FILE 2413

S-5628

1 Amend Senate File 2413 as follows:

2 1. Page 14, by inserting after line 28 the
3 following:

4 "Sec. ____ . NEW SECTION. 321J.23 PERSONS UNDER
5 AGE TWENTY-ONE.

6 If a person under the age of twenty-one consents to
7 a chemical test under this chapter and the test
8 results indicate an alcohol concentration of more than
9 .04 but less than the level established in section
10 321J.2, subsection 1, the person's motor vehicle
11 license or nonresident operating privilege shall be
12 revoked for a period of one year or until the person
13 reaches eighteen years of age, whichever is longer, if
14 the person is less than eighteen years of age, or for
15 thirty days as provided in section 321L.10 if the
16 person is at least eighteen years of age but less than
17 twenty-one years of age, and sections 321L.10 through
18 321L.19 apply."

19 2. Page 15, by inserting after line 28, the
20 following:

21 "Sec. ____ . NEW SECTION. 321L.3 DEFINITIONS.

22 As used in this chapter unless the context
23 otherwise requires:

24 1. "Alcohol concentration" means the number of
25 grams of alcohol per any of the following:

- 26 a. One hundred milliliters of blood.
- 27 b. Two hundred ten liters of breath.
- 28 c. Sixty-seven milliliters of urine.

29 2. "Alcoholic beverage" includes alcohol, wine,
30 spirits, beer, or any other beverage which contains
31 ethyl alcohol and is fit for human consumption.

32 3. "Arrest" includes but is not limited to taking
33 into custody pursuant to section 232.19.

34 4. "Department" means the state department of
35 transportation.

36 5. "Director" means the director of transportation
37 or the director's designee.

38 6. "Motor vehicle license" means any license or
39 permit issued to a person to operate a motor vehicle
40 in this state.

41 7. "Peace officer" means:

- 42 a. A member of the highway patrol.
- 43 b. A police officer under civil service as
44 provided in chapter 400.
- 45 c. A sheriff.
- 46 d. A regular deputy sheriff who has had formal
47 police training.

48 e. Any other law enforcement officer who has
49 satisfactorily completed an approved course relating
50 to motor vehicle operators under the influence of

S-5628

Page 2

1 alcoholic beverages at the Iowa law enforcement
2 academy or a law enforcement training program approved
3 by the department of public safety.

4 Sec. ____ . NEW SECTION. 321L.4 PRELIMINARY

5 SCREENING TEST.

6 When a peace officer has reasonable grounds to
7 believe that a motor vehicle operator under the age of
8 twenty-one may be or has been operating a motor
9 vehicle while having an alcohol concentration as
10 defined in section 321L.3 of more than .04, the peace
11 officer may request the operator to provide a sample
12 of the operator's breath for a preliminary screening
13 test using a device approved by the commissioner of
14 public safety for that purpose. The results of this
15 preliminary screening test may be used for the purpose
16 of deciding whether an arrest should be made and
17 whether to request a chemical test authorized in this
18 chapter or chapter 321J, as evidence of the presence
19 of alcohol in the operator, and to prove that a
20 chemical test was properly requested of a person
21 pursuant to this chapter or chapter 321J.

22 Sec. ____ . NEW SECTION. 321L.5 IMPLIED CONSENT TO
23 TEST.

24 1. A person under the age of twenty-one who
25 operates a motor vehicle in this state under
26 circumstances which give reasonable grounds to believe
27 that the person has been operating a motor vehicle
28 while having an alcohol concentration of more than .04
29 is deemed to have given consent to the withdrawal of
30 specimens of the person's blood, breath, or urine and
31 to a chemical test or tests of the specimens for the
32 purpose of determining the alcohol concentration,
33 subject to this section. The withdrawal of the body
34 substances and the test or tests shall be administered
35 at the written request of a peace officer having
36 reasonable grounds to believe that the person was
37 operating a motor vehicle while having an alcohol
38 concentration of more than .04.

39 2. The peace officer shall determine which of the
40 three substances, breath, blood, or urine, shall be
41 tested. Refusal to submit to a chemical test of urine
42 or breath is deemed a refusal to submit, and section
43 321N.6 applies. A refusal to submit to a chemical
44 test of blood is not deemed a refusal to submit, but
45 in that case, the peace officer shall then determine
46 which one of the other two substances shall be tested
47 and shall offer the test. If the peace officer fails
48 to offer a test within two hours after the preliminary
49 screening test is administered or refused or the
50 arrest is made, whichever occurs first, a test is not

S-5628

Page 3

1 required, and there shall be no revocation under
2 section 321L.8.

3 Sec. ____ . NEW SECTION. 321L.6 DEAD OR
4 UNCONSCIOUS PERSONS.

5 A person who is dead, unconscious, or otherwise in
6 a condition rendering the person incapable of consent
7 or refusal is deemed not to have withdrawn the consent
8 provided by section 321L.5, and the test may be given
9 if a licensed physician certifies in advance of the
10 test that the person is dead, unconscious, or
11 otherwise in a condition rendering that person
12 incapable of consent or refusal.

13 Sec. ____ . NEW SECTION. 321L.7 STATEMENT OF
14 OFFICER.

15 A person who has been requested to submit to a
16 chemical test shall be advised by a peace officer of
17 the following:

18 1. If the person refuses to submit to the test and
19 is less than eighteen years of age, the person's
20 license or operating privilege will be revoked by the
21 department for one year or until the person's
22 eighteenth birthday, whichever is longer, without
23 eligibility for a temporary restricted license. If
24 the person refuses to submit to the test and is at
25 least eighteen years of age but less than twenty-one
26 years of age, the person's motor vehicle license or
operating privilege will be revoked by the department
for ninety days without eligibility for a temporary
restricted license.

30 2. If the person submits to the test and the
31 results indicate an alcohol concentration as defined
32 in section 321L.3 of more than .04, and the person is
33 under eighteen years of age, the person's license or
34 operating privilege will be revoked by the department
35 for a period of two hundred seventy days, without
36 eligibility for a temporary restricted license.

37 If the person submits to the test and the results
38 indicate an alcohol concentration as defined in
39 section 321L.3 of more than .04, and the person is at
40 least eighteen years of age but less than twenty-one
41 years of age, the person's motor vehicle license or
42 operating privilege will be revoked by the department
43 for thirty days without eligibility for a temporary
44 restricted license.

45 This section does not apply in any case involving a
46 person described in section 321L.6.

47 Sec. ____ . NEW SECTION. 321L.8 REFUSAL TO SUBMIT
48 -- REVOCATION.

49 If a person who is under eighteen years of age
50 refuses to submit to the chemical testing, a test

S-5628

Page 4

1 shall not be given, but the department, upon the
2 receipt of the peace officer's certification, subject
3 to penalty for perjury, that the officer had
4 reasonable grounds to believe the person to have been
5 operating a motor vehicle while having an alcohol
6 concentration of more than .04, and that the person
7 refused to submit to the chemical testing, shall
8 revoke the person's motor vehicle license and any
9 nonresident operating privilege for a period of one
10 year or until the person's eighteenth birthday,
11 whichever is longer.

12 If a person who is at least eighteen years of age
13 but less than twenty-one years of age refuses to
14 submit to the chemical testing, a test shall not be
15 given, but the department, upon the receipt of the
16 peace officer's certification, subject to penalty for
17 perjury, that the officer had reasonable grounds to
18 believe the person to have been operating a motor
19 vehicle while having an alcohol concentration of more
20 than .04, and that the person refused to submit to the
21 chemical testing, shall revoke the person's motor
22 vehicle license and any nonresident operating
23 privilege for a period of ninety days.

24 The effective date of revocation shall be twenty
25 days after receipt of notice of revocation to the
26 person by certified mail or, on behalf of the
27 department, a peace officer offering or directing the
28 administration of a chemical test may serve immediate
29 notice of intention to revoke and of revocation on a
30 person who refuses to permit chemical testing. If the
31 peace officer serves that immediate notice, the peace
32 officer shall take the Iowa license or permit of the
33 driver, if any, and issue a temporary license
34 effective for only twenty days. The peace officer
35 shall immediately send the person's license to the
36 department along with the officer's certificate
37 indicating the person's refusal to submit to chemical
38 testing.

39 Sec. ____ . NEW SECTION. 321L.9 TAKING SAMPLE FOR
40 TEST.

41 Only a licensed physician, licensed physician
42 assistant as defined in section 148C.1, medical
43 technologist, or registered nurse, acting at the
44 request of a peace officer, may withdraw a specimen of
45 blood for the purpose of determining the alcohol
46 concentration. However, any peace officer, using
47 devices and methods approved by the commissioner of
48 public safety, may take a specimen of a person's
49 breath or urine for the purpose of determining the
50 alcohol concentration. Only new equipment kept under

S-5628

Page 5

1 strictly sanitary and sterile conditions shall be used
2 for drawing blood.

3 The person may have an independent chemical test or
4 tests administered at the person's own expense in
5 addition to any administered at the direction of a
6 peace officer. The failure or inability of the person
7 to obtain an independent chemical test or tests does
8 not preclude the admission of evidence of the results
9 of the test or tests administered at the direction of
10 the peace officer. Upon the request of the person who
11 is tested, the results of the test or tests
12 administered at the direction of the peace officer
13 shall be made available to the person.

14 Sec. ____ . NEW SECTION. 321L.10 REVOCATION BASED
15 ON TEST RESULTS.

16 Upon certification, subject to penalty for perjury,
17 by the peace officer that there existed reasonable
18 grounds to believe that the person had been operating
19 a motor vehicle while having an alcohol concentration
20 of more than .04, and that the person submitted to
21 chemical testing and the test results indicated an
22 alcohol concentration of more than .04, the department
23 shall revoke the person's motor vehicle license or
24 nonresident operating privilege for a period of two
25 hundred seventy days if the person is less than
26 eighteen years of age, or for a period of thirty days
27 if the person is at least eighteen years of age but
28 less than twenty-one years of age.

29 The effective date of the revocation shall be
30 twenty days after the receipt of notice of revocation
31 to the person by certified mail. The peace officer
32 who requested or directed the administration of the
33 chemical test may, on behalf of the department, serve
34 immediate notice of revocation on a person whose test
35 results indicated an alcohol concentration of more
36 than .04. If the peace officer serves that immediate
37 notice, the peace officer shall take the person's Iowa
38 license or permit, if any, and issue a temporary
39 license valid only for twenty days. The peace officer
40 shall immediately send the person's motor vehicle
41 license to the department along with the officer's
42 certificate indicating that the test results indicated
43 an alcohol concentration of more than .04.

44 The results of a chemical test shall not be used as
45 the basis for a revocation of a person's motor vehicle
46 license or nonresident operating privilege if the
47 alcohol concentration indicated by the chemical test
48 minus the established margin of error inherent in the
49 device or method used to conduct the chemical test
50 does not equal an alcohol concentration of more than

S-5628

Page 6

1 .04.

2 Sec. ____ . NEW SECTION. 321L.11 HEARING ON

3 REVOCATION -- APPEAL.

4 1. Notice of revocation of a person's motor
5 vehicle license or operating privilege served pursuant
6 to section 321L.8 or 321L.10 shall include a form
7 accompanied by a preaddressed envelope on which the
8 person served may indicate by a checkmark if the
9 person wishes to contest the revocation. The form
10 shall clearly state on its face that the form must be
11 completed and returned within thirty days of receipt
12 or the person's right to a hearing to contest the
13 revocation is foreclosed. The form shall also be
14 accompanied by a statement of the operation of and the
15 person's rights under this chapter.

16 2. The department shall grant the person an
17 opportunity to be heard within forty-five days of
18 receipt of a request for a hearing if the request is
19 made not later than thirty days after receipt of
20 notice of revocation served pursuant to section 321L.8
21 or 321L.10. The hearing shall be before the
22 department in the county where the alleged events
23 occurred, unless the director and the person agree
24 that the hearing may be held in some other county, or
25 the hearing may be held by telephone conference at the
26 discretion of the agency conducting the hearing. The
27 hearing may be recorded and its scope shall be limited
28 to the issues of whether a peace officer had
29 reasonable grounds to believe that the person was
30 operating a motor vehicle while having an alcohol
31 concentration of more than .04 and either of the
32 following:

33 a. Whether the person refused to submit to the
34 test or tests.

35 b. Whether a test was administered and the test
36 results indicated an alcohol concentration of more
37 than .04.

38 3. After the hearing the department shall order
39 that the revocation be either rescinded or sustained.
40 Upon receipt of the decision of the department to
41 sustain a revocation, the person contesting the
42 revocation has ten days to file a request for review
43 of the decision by the director. The director or the
44 director's designee shall review the decision within
45 fifteen days and shall either rescind or sustain the
46 revocation or order a new hearing. If the director
47 orders a new hearing, the department shall grant the
48 person a new hearing within thirty days of the
49 director's order.

50 Sec. ____ . NEW SECTION. 321L.12 JUDICIAL REVIEW.

S-5628

Page 7

1. Judicial review of an action of the department may
2 be sought in accordance with chapter 17A.

3 Notwithstanding the terms of the Iowa administrative
4 procedure Act, chapter 17A, a petition for judicial
5 review may be filed in the district court in the
6 county where the alleged events occurred or in the
7 county in which the administrative hearing was held.

8 Sec. ____ . NEW SECTION. 321L.13 EVIDENCE IN ANY
9 ACTION.

10 Upon the trial of a civil or criminal action or
11 proceeding arising out of acts alleged to have been
12 committed by a person while operating a motor vehicle
13 while having an alcohol concentration of more than
14 .04, evidence of the alcohol concentration in the
15 person's body substances at the time of the act
16 alleged as shown by a chemical analysis of the
17 person's blood, breath, or urine is admissible. If it
18 is established at trial that an analysis of a breath
19 specimen was performed by a certified operator using a
20 device and methods approved by the commissioner of
21 public safety, no further foundation is necessary for
22 introduction of the evidence.

23 Sec. ____ . NEW SECTION. 321L.14 PROOF OF REFUSAL
24 ADMISSIBLE.

25 If a person refuses to submit to a chemical test,
26 proof of refusal is admissible in any civil or
27 criminal action or proceeding arising out of acts
28 alleged to have been committed while the person was
29 operating a motor vehicle while having an alcohol
30 concentration of more than .04.

31 Sec. ____ . NEW SECTION. 321L.15 CIVIL PENALTY --
32 SEPARATE FUND -- REINSTATEMENT.

33 When the department revokes a person's motor
34 vehicle license or nonresident operating privilege
35 under this chapter, the department shall assess the
36 person a civil penalty of one hundred dollars. The
37 money collected by the department under this section
38 shall be transmitted to the treasurer of state who
39 shall deposit the money in a separate fund dedicated
40 to and used for the purposes of chapter 912 and
41 section 709.10. A motor vehicle license or
42 nonresident operating privilege shall not be
43 reinstated until the civil penalty has been paid.

44 Sec. ____ . NEW SECTION. 321L.16 OTHER EVIDENCE.

45 This chapter does not limit the introduction of any
46 competent evidence bearing on the question of whether
47 a person was under the influence of an alcoholic
48 beverage, including the results of chemical tests of
49 specimens of blood, breath or urine obtained more than
50 two hours after the person was operating a motor

S-5628

Page 8

1 vehicle.

2 Sec. ____ . NEW SECTION. 321L.17 INFORMATION
3 RELAYED TO OTHER STATES.

4 When it has been finally determined under this
5 chapter that a nonresident's privilege to operate a
6 motor vehicle in this state has been revoked or
7 denied, the department shall give information in
8 writing of the action taken to the official in charge
9 of traffic control or public safety of the state of
10 the person's residence and of any state in which the
11 person has a license.

12 Sec. ____ . NEW SECTION. 321L.18 TEMPORARY
13 RESTRICTED LICENSE PROHIBITED.

14 A person whose motor vehicle license has been
15 revoked under this chapter is not eligible for a
16 temporary restricted license during the period of
17 revocation.

18 Sec. ____ . NEW SECTION. 321L.19 DRIVING WHILE
19 LICENSE DENIED OR REVOKED.

20 A person whose motor vehicle license or nonresident
21 operating privilege has been denied or revoked as
22 provided in this chapter and who drives a motor
23 vehicle upon the highways of this state while the
24 license or privilege is denied or revoked commits a
25 serious misdemeanor. The department, upon receiving
26 the record of the conviction of a person under this
27 section upon a charge of driving a motor vehicle while
28 the license of the person was revoked or denied, shall
29 extend the period of revocation or denial for an
30 additional like period, and the department shall not
31 issue a new license during the additional period."

32 3. By renumbering as necessary.

By CALVIN O. HULTMAN
RICHARD VANDE HOEF
WILMER RENSINK
RAY TAYLOR

MARK R. HAGERLA
NORMAN J. GOODWIN
H. KAY HEDGE
MAGGIE TINSMAN

S-5628 FILED MARCH 21, 1990
RULED OUT OF ORDER (p 12.34)

SENATE FILE 2413

S-5631

1 Amend Senate File 2413 as follows:

2 1. By striking page 15, line 29 through page 20,
3 line 2, and inserting the following:

4 "Sec. ____ . NEW SECTION. 421A.1 DEFINITIONS.

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

7 1. "Controlled substance" means controlled
8 substance as defined in section 204.101.

9 2. "Counterfeit substance" means a counterfeit
10 substance as defined in section 204.101.

11 3. "Dealer" means any person who ships,
12 transports, or imports into this state or acquires,
13 purchases, possesses, manufactures, or produces in
14 this state any of the following:

15 a. Seven or more grams of a taxable substance
16 other than marijuana, but including a taxable
17 substance that is a mixture of marijuana and other
18 taxable substances.

19 b. Forty-two and one-half grams or more of a
20 substance consisting of or containing marijuana.

21 c. Ten or more dosage units of a taxable substance
22 which is not sold by weight.

23 However, a person who lawfully ships, transports,
24 or imports into this state or acquires, purchases,
25 possesses, manufactures, or produces a taxable
26 substance in this state is not considered a dealer.

27 4. "Department" means the department of revenue
28 and finance.

29 5. "Director" means the director of revenue and
30 finance.

31 6. "Dosage unit" means the unit of measurement in
32 which a substance is dispensed to the ultimate user.
33 Dosage unit includes, but is not limited to, one pill,
34 one capsule, or one microdot.

35 7. "Marijuana" means marijuana as defined in
36 section 204.101.

37 8. "Simulated controlled substance" means a
38 simulated controlled substance as defined in section
39 204.101.

40 9. "Taxable substance" means a controlled
41 substance, a counterfeit substance, a simulated
42 controlled substance, or marijuana, or a mixture of
43 materials that contains a controlled substance,
44 counterfeit substance, simulated controlled substance,
45 or marijuana.

46 Sec. ____ . NEW SECTION. 421A.2 ADMINISTRATION --
47 RULES.

48 The director shall administer this chapter. The
49 director shall collect all taxes, interest, and civil
50 penalties imposed under this chapter and deposit them

S-5631

Page 2

1 in the general fund of the state.

2 The director may adopt rules under chapter 17A that
3 are necessary to enforce this chapter. The director
4 shall adopt a uniform system of providing, affixing,
5 and displaying official stamps, labels, or other
6 official indicia for taxable substances.

7 Sec. ____ . NEW SECTION. 421A.3 TAX PAYMENT
8 REQUIRED FOR POSSESSION -- PAYMENT DUE.

9 A dealer shall not possess, distribute, or offer to
10 sell a taxable substance unless the tax imposed under
11 this chapter has been paid as evidenced by a stamp,
12 label, or other official indicia permanently affixed
13 to the taxable substance.

14 Taxes imposed on taxable substances by this chapter
15 are due and payable immediately upon manufacture,
16 production, acquisition, purchase, or possession by a
17 dealer.

18 If the indicia evidencing the payment of the tax
19 imposed on taxable substances under this chapter have
20 not been affixed, the dealer shall have the indicia
21 permanently affixed on the taxable substance
22 immediately after receiving the taxable substance. A
23 stamp, label, or other official indicia shall be used
24 only once and shall not be used after the date of
25 expiration.

26 Sec. ____ . NEW SECTION. 421A.4 MEASUREMENTS.

27 For purposes of measurements under this chapter,
28 the weight of a taxable substance shall be measured by
29 its weight in metric grams in the dealer's possession.
30 If a taxable substance consists of a mixture
31 containing both marijuana and another substance or
32 combination of substances listed in the definition of
33 taxable substance in section 421A.1, the taxable
34 substance shall be taxed under section 421A.7,
35 subsection 2.

36 Sec. ____ . NEW SECTION. 421A.5 DEFENSE OR
37 IMMUNITY.

38 This chapter does not provide in any manner a
39 defense or affirmative defense to or immunity for a
40 dealer from criminal prosecution pursuant to Iowa law.

41 Sec. ____ . NEW SECTION. 421A.6 PHARMACEUTICALS.

42 This chapter does not require persons lawfully in
43 possession of a taxable substance to pay the tax
44 required under this chapter or to purchase, acquire,
45 or affix the stamps, labels, or other official indicia
46 otherwise required by this chapter.

47 Sec. ____ . NEW SECTION. 421A.7 TAX IMPOSED --
48 RATE OF TAX.

49 An excise tax is imposed on dealers at the
50 following rates:

S-5631

Page 3

1 1. On each gram of marijuana, or each portion of a
2 gram, five dollars.

3 2. On each gram or portion of a gram of any
4 taxable substance sold by weight other than marijuana,
5 two hundred fifty dollars.

6 3. On each ten dosage units of any taxable
7 substance that is not sold by weight, or portion
8 thereof, four hundred dollars.

9 Sec. ____ . NEW SECTION. 421A.8 PRICE OF STAMPS,
10 LABELS, OR OTHER INDICIA.

11 Stamps, labels, or other official indicia to be
12 affixed to a taxable substance indicating the payment
13 of the excise tax shall be obtained and purchased from
14 the department. The dealer shall pay the entire
15 excise tax listed in section 421A.7 at the time of
16 purchase, except as provided in section 421A.13, and
17 receive stamps, labels, or other official indicia for
18 the amount paid. However, the minimum purchase price
19 to be paid for any stamps, labels, or indicia shall be
20 two hundred fifteen dollars.

21 Sec. ____ . NEW SECTION. 421A.9 ASSESSMENTS ARE
22 JEOPARDY ASSESSMENTS.

23 All assessments of taxes made pursuant to this
24 chapter shall be considered jeopardy assessments or
25 collections as provided in section 422.30. The
26 director shall assess a tax, interest, and applicable
27 penalties based on knowledge or information available
28 to the director; mail to the taxpayer at the
29 taxpayer's last known address or serve in person, a
30 written notice of the amount of tax, interest, and
31 penalty; demand its immediate payment; and, if payment
32 is not immediately made, collect the tax, interest,
33 and penalty by any method prescribed in section
34 422.30. The period for examination, determination of
35 amount of tax owed, and assessment is unlimited.

36 A person shall not bring suit to enjoin the
37 assessment or collection of any taxes, interest, or
38 penalties imposed by this chapter.

39 The tax, interest, and penalties assessed by the
40 director are presumed to be valid and correctly
41 determined and assessed. The burden is upon the
42 taxpayer to show any incorrectness or invalidity of an
43 assessment. The burden is upon the taxpayer to prove
44 that the shipment, transportation, importation,
45 acquisition, purchase, possession, manufacture, or
46 production of a taxable substance was lawful if a
47 taxpayer's status as a dealer is disputed. Any
48 statement filed by the director with the clerk of the
49 district court, or any other certificate by the
50 director of the amount of tax, interest, and penalties

S-5631

Page 4

1 determined or assessed is admissible in evidence and
2 is prima facie evidence of the facts contained in the
3 statement.

4 Sec. ____ . NEW SECTION. 421A.10 CONFIDENTIAL

5 NATURE OF INFORMATION.

6 Notwithstanding any law to the contrary, the
7 director or an employee of the department shall not
8 reveal any information obtained from a dealer; nor
9 shall information obtained from a dealer be used
10 against the dealer in any criminal proceeding, unless
11 the information is independently obtained, except in
12 connection with a proceeding involving taxes due under
13 this chapter from the dealer against whom the tax was
14 assessed.

15 A person who violates this section is guilty of a
16 simple misdemeanor.

17 This section does not prohibit the director from
18 publishing statistics that do not disclose the
19 identity of the dealers.

20 A stamp, label, or other official indicia denoting
21 payment of the tax imposed under this chapter shall
22 not be used against a taxpayer in a criminal
23 proceeding, except that such information may be used
24 against the taxpayer in connection with the
25 administration or civil or criminal enforcement of the
26 tax imposed under this chapter or any similar tax
27 imposed by another state or local unit of government.

28 Sec. ____ . NEW SECTION. 421A.11 EXAMINATION OF
29 RECORDS BY DIRECTOR -- SUBPOENAS.

30 For the purpose of determining whether or not the
31 dealer should have paid taxes, determining the amount
32 of tax that should have been paid, or collecting any
33 taxes under this chapter, the director may examine, or
34 cause to be examined, any books, papers, records, or
35 memoranda that may be relevant to making such
36 determinations, whether the books, papers, records, or
37 memoranda are the property of or in the possession of
38 the dealer or another person. The director may
39 require the attendance of any person having knowledge
40 or information that may be relevant, compel the
41 production of books, papers, records, or memoranda by
42 persons required to attend, take testimony on matters
43 material to the determination, and administer oaths or
44 affirmations. Upon demand of the director or an
45 examiner or investigator, the court shall issue a
46 subpoena for the attendance of a witness or the
47 production of books, papers, records, or memoranda.
48 The director may also issue subpoenas. Disobedience
49 of subpoenas issued under this chapter is punishable
50 by the district court of the county in which the

S-5631

Page 5

1 subpoena is issued, or if the subpoena is issued by
2 the director, by the district court of the county in
3 which the party served with the subpoena is located,
4 in the same manner as a contempt of court.

5 The director may petition the district court or a
6 magistrate for an administrative search warrant as
7 authorized by section 808.14 to execute a distress
8 warrant authorized by section 422.26.

9 Sec. ____ . NEW SECTION. 421A.12 CIVIL AND
10 CRIMINAL PENALTIES FOR VIOLATION OF ACT -- INTEREST.

11 A dealer who violates this chapter is subject to a
12 penalty equal to the amount of the tax imposed by
13 section 421A.7, in addition to the tax imposed by that
14 section. The dealer shall pay interest on the tax and
15 penalty at the rate in effect under section 421.7,
16 counting each fraction of a month as an entire month,
17 computed from the date of assessment through the date
18 of payment. The penalty and interest shall be
19 collected as part of the tax.

20 In addition to the civil tax penalty and interest
21 imposed by this section, a dealer distributing,
22 offering to sell, or possessing taxable substances
23 without affixing the appropriate stamps, labels, or
24 other official indicia is guilty of a class "D"
25 felony.

26 A person who possesses, prints, engraves, makes,
27 issues, sells, or circulates a counterfeit taxable
28 substance tax stamp, label, or other official indicia,
29 or places or causes to be placed a counterfeit taxable
30 substance tax stamp, label, or other official indicia
31 on a taxable substance, is guilty of a class "D"
32 felony.

33 A person who uses, sells, offers for sale, or
34 possesses for use or sale a previously used or expired
35 taxable substance tax stamp, label, or other official
36 indicia, or attaches or causes to be attached a
37 previously used or expired taxable substance tax
38 stamp, label, or other official indicia to a taxable
39 substance, is guilty of a class "D" felony.

40 Notwithstanding section 802.3, an indictment may be
41 found or information filed upon any criminal offense
42 specified in this chapter, in the proper court, within
43 six years after the commission of the offense.

44 Sec. ____ . NEW SECTION. 421A.13 CREDIT FOR
45 PREVIOUSLY PAID TAXES.

46 If another state or local unit of government has
47 previously assessed an excise tax on a taxable
48 substance, the taxpayer shall pay the difference
49 between the tax imposed under this chapter and the tax
50 previously paid. If the tax previously paid to the

S-5631

Page 6

1 other state or local unit of government was equal to
2 or greater than the tax imposed under this chapter, no
3 tax is due. The burden is on the taxpayer to show
4 that an excise tax on the taxable substances has been
5 paid to another state or local unit of government.

6 Sec. _____. NEW SECTION. 421A.14 REVISION OF TAX -
7 - REFUNDS.

8 Sections 421.5, 422.26, 422.28, 422.29, 422.73,
9 subsection 2, and 422.74 shall apply to this chapter,
10 except that a refund claim filed later than thirty
11 days from the expiration date of the stamps for which
12 the refund is requested shall not be allowed by the
13 director.

14 Sec. _____. NEW SECTION. 421A.15 AVAILABILITY OF
15 RECORDS AND INFORMATION.

16 The director may request from state, county, and
17 local agencies, information and assistance deemed
18 necessary to administer this chapter. State, county,
19 and local agencies, officers, and employees shall
20 cooperate with the director in identifying dealers and
21 shall, on request, supply the department with
22 available information and assistance which the
23 director deems necessary to administer this chapter,
24 notwithstanding any provisions of law making such
25 information confidential."

26 2. Page 35, by inserting after line 7 the fol-
27 lowing:

28 "Sec. _____.

29 Chapter 421A, as enacted in this Act, takes effect
30 September 1, 1990."

31 3. By renumbering as necessary.

By MICHAEL GRONSTAL

S-5631 FILED MARCH 21, 1990

ADOPTED (p. 1234)

SENATE FILE 2413

S-5632

1 Amend Senate File 2413 as follows:

2 1. Page 13, line 16, by inserting after the word
3 "possible" the following: ", unless the juvenile
4 court determines that such relationships are not in
5 the best interest of the child".

6 2. Page 13, line 18, by inserting after the word
7 "action" the following: ", unless the length of time
8 to be served is such that the parent-child
9 relationship will be effectively severed".

By CHARLES BRUNER

LINN FUHRMAN

S-5632 FILED MARCH 21, 1990

RULED OUT OF ORDER (p. 1235)

SENATE FILE 2413

S-5637

Amend Senate File 2413 as follows:

1. Page 22, by inserting after line 12 the following:

"Sec. ____ . Section 702.11, Code Supplement 1989, is amended to read as follows:

702.11 FORCIBLE FELONY.

A "forcible felony" is any felonious child endangerment, assault, murder, sexual abuse other than sexual abuse in the third degree committed between spouses or in violation of section 709.4, subsection 2, paragraph "c", subparagraph (4), kidnapping, robbery, arson in the first or second degree, or burglary in the first degree."

2. Page 22, by inserting after line 27 the following:

"Sec. ____ . NEW SECTION. 712.1A ARSON IN THE FIRST DEGREE.

Arson in the first degree is arson which results in the death of a person, including the death of a paid or volunteer firefighter. Arson in the first degree is a class "A" felony.

Sec. ____ . Section 712.2, Code 1989, is amended to read as follows:

712.2 ARSON IN THE FIRST SECOND DEGREE.

Arson is arson in the first second degree when the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is property in which the presence of one or more persons can be reasonably anticipated, ~~or the arson results in the death of a fire fighter, whether paid or~~ volunteer.

Arson in the first second degree is a class "B" felony.

Sec. ____ . Section 712.3, Code 1989, is amended to read as follows:

712.3 ARSON IN THE SECOND THIRD DEGREE.

Arson which is not arson in the first or second degree is arson in the second third degree when the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is a building or a structure, or real property of any kind, or standing crops, or is personal property the value of which exceeds five hundred dollars. Arson in the second third degree is a class "C" felony.

Sec. ____ . Section 712.4, Code 1989, is amended to read as follows:

712.4 ARSON IN THE THIRD FOURTH DEGREE.

Arson which is not arson in the first, second, or third degree or arson in the second degree is arson in the third fourth degree. Arson in the third fourth

Page 2

1 degree is an aggravated misdemeanor."

2 3. Renumber as necessary.

By MARK R. HAGERLA

S-5637 FILED MARCH 21, 1990
RULED OUT OF ORDER (j. 1236)

SENATE FILE 2413

S-5633

1 Amend Senate File 2413 as follows:

2 1. Page 11, by striking line 8 through page 13,
3 line 27.

4 2. Title page 1, by striking lines 11 and 12 and
5 inserting the following: "juvenile offenders,
6 establishing institutional reading room
7 requirements,".

By JACK RIFE

S-5633 FILED MARCH 21, 1990
ADOPTED (j. 1233)

SENATE FILE 2413

S-5634

1 Amend Senate File 2413 as follows:

2 1. Page 15, by striking lines 2 and 3, and
3 inserting the following: "work an undue hardship on
4 the person, or finds that sufficient jail space is not
5 available and is not reasonably expected to become
6 available within four months after sentencing to
7 incarcerate the person serving the".

By LINN FUHRMAN

S-5634 FILED MARCH 21, 1990
ADOPTED (j. 1235)

SENATE FILE 2413

S-5639

- 1 Amend Senate File 2413 as follows:
2
3 1. Page 3, line 3, by inserting after the figure
4 "805.16" the following: ", unless the officer has
5 reasonable grounds to believe that such notification
6 is not in the best interests of the person or will
7 endanger that person".
8 2. Page 4, line 17, by inserting after the word
9 "arrested" the following: ", unless the officer has
10 reasonable grounds to believe that such notification
11 is not in the best interests of the person or will
12 endanger that person".

By BEVERLY HANNON
JIM LIND
JOY CORNING

S-5639 FILED MARCH 21, 1990
ADOPTED (J. 1231)

SENATE FILE 2413

S-5640

- 1 Amend the amendment, S-5615, to Senate File 2413 as
2 follows:
3 1. Page 1, by inserting after line 20 the
4 following:
5 "5A. "Impaired" means a condition of a person
6 where the person has consumed alcohol or a drug, or a
7 combination of the two, and the person has been
8 affected to any degree such that the person is less
9 able than the person would be without consuming the
10 alcohol or drug, either mentally or physically, or
11 both, to exercise clear judgment, sufficient physical
12 control, or due care in the operation of a vehicle."
13 2. Page 1, line 48, by inserting after the word
14 "while" the following: "impaired or".
15 3. Page 2, by inserting after line 5 the
16 following:
17 "c. While impaired as defined in section 321L.1."
By CALVIN O. HULTMAN

S-5640 FILED MARCH 21, 1990
RULED OUT OF ORDER (J. 1235)

SENATE FILE 2413

S-5641

- 1 Amend Senate File 2413 as follows:
2 1. By striking page 29, line 1, through page 31,
3 line 2.
4 2. Renumber as necessary.

By RAY TAYLOR

S-5641 FILED MARCH 21, 1990
Revised 0/0 3/22 (J. 1253)

SENATE FILE 2413

S-5638

1 Amend the amendment, S-5615, to Senate File 2413 as
2 follows:

3 1. Page 9, by inserting after line 20, the
4 following:

5 "Sec. ____ . NEW SECTION. 321L.4A SURRENDER OF
6 REGISTRATION AND PLATES.

7 1. Upon a plea or verdict of guilty of a third or
8 subsequent violation of section 321J.2, the court
9 shall require the defendant to surrender to the
10 director the registration certificate and registration
11 plates of all vehicles registered to the defendant for
12 a period of one hundred eighty days after the date of
13 surrender if the violation is a third violation, and
14 for a period of one year if the violation is a fourth
15 or subsequent violation. The registration certificate
16 and registration plates shall be reissued after the
17 expiration of the period provided in this subsection
18 and upon application made by the defendant. For
19 purposes of this subsection, a conviction for,
20 deferred judgment for, or plea of guilty to, a
21 violation of section 321J.2, which occurred more than
22 six years prior to the date of the most recent
23 violation charged, shall not be considered in
24 determining that the most recent violation is a third
25 offense or subsequent offense.

26 2. The owner of a motor vehicle who allows another
27 person to operate the owner's motor vehicle upon the
28 highways of this state shall be required to surrender
29 to the director the registration certificate and
30 registration plates of the vehicle upon a plea or
31 verdict of guilty of a third or subsequent violation
32 of section 321J.2 which occurred while the person was
33 operating the owner's motor vehicle. The minimum
34 duration of the period of surrender shall be one
35 hundred eighty days if the violation is the person's
36 third violation and shall be one year if the violation
37 is the person's fourth or a subsequent violation. The
38 registration certificate and registration plates shall
39 be reissued after the expiration of the period of
40 surrender and upon application made by the owner."

By LINN FUHRMAN
MAGGIE TINSMAN

RICHARD VANDE HOEF
RAY TAYLOR

S-5638 FILED MARCH 21, 1990
RULED OUT OF ORDER (g. 12.35)

SENATE FILE 2413

S-5642

1 Amend the amendment, S-5615, to Senate File 2413 as
2 follows:

3 1. Page 3, by inserting after line 10, the
4 following:

5 "A minimum term of imprisonment in a county jail or
6 community-based correctional facility imposed on a
7 person convicted of a second or subsequent offense
8 under paragraph "b" or "c" shall be served on
9 consecutive days. However, if the sentencing court
10 finds by clear and convincing evidence that service of
11 the full minimum term on consecutive days would work
12 an undue hardship on the person, the court may order
13 the person to serve not less than forty-eight
14 consecutive hours of the minimum term and to perform
15 not less than two hundred forty hours of unpaid
16 community service."

17 2. Page 9, by striking lines 3 through 6 and
18 inserting the following: "license to the person
19 following the expiration of any minimum revocation
20 period provided for under section 321L.20. Notice of
21 and an opportunity to request a hearing on the
22 petition shall be provided to the department and to
23 the prosecuting attorney by the clerk of the district
24 court in the county where the violation resulting in
25 the revocation was committed. If the court determines
26 that any minimum revocation period provided for under
27 section 321L.20 has expired and the temporary
28 restricted".

29 3. Page 9, by striking line 8 and inserting the
30 following: "person's employment, the court may order
31 the".

32 4. Page 9, line 14, by striking the word
33 "present".

34 5. Page 11, line 9, by inserting after the word
35 "person's" the following: "motor vehicle".

36 6. Page 11, line 11, by inserting after the
37 figure "321L.9" the following: "and the person will
38 not be eligible for a temporary restricted license
39 until at least the first ninety days of the revocation
40 period have expired".

41 7. Page 11, line 14, by inserting after the word
42 "person's" the following: "motor vehicle".

43 8. Page 11, line 17, by inserting after the
44 figure "321L.12" the following: "and the person will
45 not be eligible for a temporary restricted license
46 until at least the first thirty days of the revocation
47 period have expired".

48 9. Page 17, by striking lines 9 through 16, and
49 inserting the following:

50 "5. Notwithstanding the Iowa administrative

S-5642

Page 2

1 procedure Act, chapter 17A, the department shall not
2 stay the revocation of a person's motor vehicle
3 license or operating privilege for the period that the
4 person is contesting the revocation under this section
5 or section 321L.14 unless the first ninety days of the
6 revocation period under section 321L.9 or the first
7 thirty days of a revocation period under 321L.12 have
8 expired."

9 10. Page 19, line 17, by inserting after the word
10 "under" the following: "section".

11 11. Page 19, line 28, by inserting after the word
12 "license" the following: ", and the first ninety days
13 of the revocation period have expired".

14 12. Page 19, line 30, by inserting after the
15 figure "321L.12" the following: "and the first thirty
16 days of the revocation period have expired".

17 13. Page 19, line 35, by striking the word
18 "sixty" and inserting the following: "sixty-five".

By RAY TAYLOR
H. KAY HEDGE
MARK R. HAGERLA

S-5642 FILED MARCH 21, 1990
RULED OUT OF ORDER (g. 1235)

SENATE FILE 2413

S-5644

1 Amend Senate File 2413 as follows:

2 1. Page 11, by striking line 10 and inserting the
3 following:

4 "1. In consultation with the department of human
5 services, the child development program at the Iowa
6 state university of science and technology, and the
7 regents center for early development education at the
8 university of northern Iowa, the department of
9 corrections shall establish a pilot family
10 preservation".

11 2. Page 11, by striking lines 13 through 24 and
12 inserting the following:

13 "a. A service within the institution providing
14 ongoing care twenty-four hours per day to children of
15 inmates who have legal custody of a child and enter
16 the institution on or after July 1, 1992, in
17 accordance with this paragraph. The child must be
18 born in the institution or be eighteen months of age
19 or less on or after July 1, 1992. The service may be
20 provided by contracting with a private provider who is
21 licensed to provide the service in accordance with
22 standards for a licensed community residential
23 facility or group living foster care facility. When a
24 child receiving family preservation services is
25 nineteen months of age or older, the department of
26 human services shall make reasonable efforts to place
27 the child in close proximity to the institution. The
28 service shall not be made available to a child of an
29 inmate if the department determines in accordance with
30 administrative rules adopted pursuant to chapter 17A
31 in consultation with the department of human services
32 that either of the following conditions exist:

33 (1) The inmate has been found to have committed
34 sexual or physical abuse of a child.

35 (2) The inmate's presentence investigation report
36 indicates that the inmate has committed physical or
37 sexual abuse of a child."

38 3. Page 11, line 31, by inserting after the word
39 "inmate" the following: "who is participating in the
40 family preservation program".

41 4. Page 12, by striking lines 9 and 10 and
42 inserting the following: "recommending policies
43 relating to the institutional care services provided
44 to children pursuant to this section, including the
45 selection of a contract service provider. The".

46 5. Page 13, by striking lines 9 through 12 and
47 inserting the following:

48 "d. In addition to its other duties, the advisory
49 committee shall make recommendations regarding methods
50 of implementing a family preservation program in the

S-5644

Page 2

1 institution for children who are more than eighteen
2 months of age. The advisory committee may consult
3 with nonprofit foster care providers, a research
4 institution with an interest in this issue, and other
5 interested parties. The advisory committee shall
6 submit the recommendations required by this paragraph
7 and other recommendations it deems necessary, to the
8 general assembly on or before January 1, 1993."

9 6. Page 13, by inserting after line 27 the
10 following:

11 "5. This section is repealed effective July 1,
12 2000."

By MICHAEL E. GRONSTAL
RICHARD F. DRAKE
EUGENE FRAISE
LARRY MURPHY
JOE WELSH

DON E. GETTINGS
RICHARD VARN
WALLY HORN
C. JOSEPH COLEMAN
MAGGIE TINSMAN

S-5644 FILED MARCH 21, 1990
RULED OUT OF ORDER (*p. 1232*)

SENATE FILE 2413

S-5646

1 Amend the amendment, S-5615, Senate File 2413 as
2 follows:

3 1. Page 21, by inserting after line 19 the
4 following:

5 "Sec. ____ . NEW SECTION. 321L.23 PERSONS UNDER
6 AGE TWENTY-ONE.

7 If a person under the age of twenty-one consents to
8 a chemical test under this chapter and the test
9 results indicate an alcohol concentration of more than
10 .04 but less than the level established in section
11 321L.2, subsection 1, the person's motor vehicle
12 license or nonresident operating privilege shall be
13 revoked for a period of one year or until the person
14 reaches eighteen years of age, whichever is longer, if
15 the person is less than eighteen years of age, or for
16 thirty days as provided in section 321M.10 if the
17 person is at least eighteen years of age but less than
18 twenty-one years of age, and sections 321M.10 through
19 321M.19 apply.

20 Sec. ____ . NEW SECTION. 321M.3 DEFINITIONS.

21 As used in this chapter unless the context
22 otherwise requires:

23 1. "Alcohol concentration" means the number of
24 grams of alcohol per any of the following:

- 25 a. One hundred milliliters of blood.
26 b. Two hundred ten liters of breath.
27 c. Sixty-seven milliliters of urine.

28 2. "Alcoholic beverage" includes alcohol, wine,
29 spirits, beer, or any other beverage which contains
30 ethyl alcohol and is fit for human consumption.

31 3. "Arrest" includes but is not limited to taking
32 into custody pursuant to section 232.19.

33 4. "Department" means the state department of
34 transportation.

35 5. "Director" means the director of transportation
36 or the director's designee.

37 6. "Motor vehicle license" means any license or
38 permit issued to a person to operate a motor vehicle
39 in this state.

40 7. "Peace officer" means:

- 41 a. A member of the highway patrol.
42 b. A police officer under civil service as
43 provided in chapter 400.
44 c. A sheriff.
45 d. A regular deputy sheriff who has had formal
46 police training.
47 e. Any other law enforcement officer who has
48 satisfactorily completed an approved course relating
49 to motor vehicle operators under the influence of
50 alcoholic beverages at the Iowa law enforcement

S-5646

Page 2

1 academy or a law enforcement training program approved
2 by the department of public safety.

3 Sec. ____ . NEW SECTION. 321M.4 PRELIMINARY

4 SCREENING TEST.

5 When a peace officer has reasonable grounds to
6 believe that a motor vehicle operator under the age of
7 twenty-one may be or has been operating a motor
8 vehicle while having an alcohol concentration as
9 defined in section 321M.3 of more than .04, the peace
10 officer may request the operator to provide a sample
11 of the operator's breath for a preliminary screening
12 test using a device approved by the commissioner of
13 public safety for that purpose. The results of this
14 preliminary screening test may be used for the purpose
15 of deciding whether an arrest should be made and
16 whether to request a chemical test authorized in this
17 chapter or chapter 321J, as evidence of the presence
18 of alcohol in the operator, and to prove that a
19 chemical test was properly requested of a person
20 pursuant to this chapter or chapter 321J.

21 Sec. ____ . NEW SECTION. 321M.5 IMPLIED CONSENT TO
22 TEST.

23 1. A person under the age of twenty-one who
24 operates a motor vehicle in this state under
25 circumstances which give reasonable grounds to believe
26 that the person has been operating a motor vehicle
27 while having an alcohol concentration of more than .04
28 is deemed to have given consent to the withdrawal of
29 specimens of the person's blood, breath, or urine and
30 to a chemical test or tests of the specimens for the
31 purpose of determining the alcohol concentration,
32 subject to this section. The withdrawal of the body
33 substances and the test or tests shall be administered
34 at the written request of a peace officer having
35 reasonable grounds to believe that the person was
36 operating a motor vehicle while having an alcohol
37 concentration of more than .04.

38 2. The peace officer shall determine which of the
39 three substances, breath, blood, or urine, shall be
40 tested. Refusal to submit to a chemical test of urine
41 or breath is deemed a refusal to submit, and section
42 321M.6 applies. A refusal to submit to a chemical
43 test of blood is not deemed a refusal to submit, but
44 in that case, the peace officer shall then determine
45 which one of the other two substances shall be tested
46 and shall offer the test. If the peace officer fails
47 to offer a test within two hours after the preliminary
48 screening test is administered or refused or the
49 arrest is made, whichever occurs first, a test is not
50 required, and there shall be no revocation under

S-5646

Page 3

1 section 321M.8.

2 Sec. ____ . NEW SECTION. 321M.6 DEAD OR

3 UNCONSCIOUS PERSONS.

4 A person who is dead, unconscious, or otherwise in
5 a condition rendering the person incapable of consent
6 or refusal is deemed not to have withdrawn the consent
7 provided by section 321M.5, and the test may be given
8 if a licensed physician certifies in advance of the
9 test that the person is dead, unconscious, or
10 otherwise in a condition rendering that person
11 incapable of consent or refusal.

12 Sec. ____ . NEW SECTION. 321M.7 STATEMENT OF
13 OFFICER.

14 A person who has been requested to submit to a
15 chemical test shall be advised by a peace officer of
16 the following:

17 1. If the person refuses to submit to the test and
18 is less than eighteen years of age, the person's
19 license or operating privilege will be revoked by the
20 department for one year or until the person's
21 eighteenth birthday, whichever is longer, without
22 eligibility for a temporary restricted license. If
23 the person refuses to submit to the test and is at
24 least eighteen years of age but less than twenty-one
25 years of age, the person's motor vehicle license or
26 operating privilege will be revoked by the department
27 for ninety days without eligibility for a temporary
28 restricted license.

29 2. If the person submits to the test and the
30 results indicate an alcohol concentration as defined
31 in section 321M.3 of more than .04, and the person is
32 under eighteen years of age, the person's license or
33 operating privilege will be revoked by the department
34 for a period of two hundred seventy days, without
35 eligibility for a temporary restricted license.

36 If the person submits to the test and the results
37 indicate an alcohol concentration as defined in
38 section 321M.3 of more than .04, and the person is at
39 least eighteen years of age but less than twenty-one
40 years of age, the person's motor vehicle license or
41 operating privilege will be revoked by the department
42 for thirty days without eligibility for a temporary
43 restricted license.

44 This section does not apply in any case involving a
45 person described in section 321M.6.

46 Sec. ____ . NEW SECTION. 321M.8 REFUSAL TO SUBMIT
47 -- REVOCATION.

48 If a person who is under eighteen years of age
49 refuses to submit to the chemical testing, a test
50 shall not be given, but the department, upon the

S-5646

Page 4

1 receipt of the peace officer's certification, subject
2 to penalty for perjury, that the officer had
3 reasonable grounds to believe the person to have been
4 operating a motor vehicle while having an alcohol
5 concentration of more than .04, and that the person
6 refused to submit to the chemical testing, shall
7 revoke the person's motor vehicle license and any
8 nonresident operating privilege for a period of one
9 year or until the person's eighteenth birthday,
10 whichever is longer.

11 If a person who is at least eighteen years of age
12 but less than twenty-one years of age refuses to
13 submit to the chemical testing, a test shall not be
14 given, but the department, upon the receipt of the
15 peace officer's certification, subject to penalty for
16 perjury, that the officer had reasonable grounds to
17 believe the person to have been operating a motor
18 vehicle while having an alcohol concentration of more
19 than .04, and that the person refused to submit to the
20 chemical testing, shall revoke the person's motor
21 vehicle license and any nonresident operating
22 privilege for a period of ninety days.

23 The effective date of revocation shall be twenty
24 days after receipt of notice of revocation to the
25 person by certified mail or, on behalf of the
26 department, a peace officer offering or directing the
27 administration of a chemical test may serve immediate
28 notice of intention to revoke and of revocation on a
29 person who refuses to permit chemical testing. If the
30 peace officer serves that immediate notice, the peace
31 officer shall take the Iowa license or permit of the
32 driver, if any, and issue a temporary license
33 effective for only twenty days. The peace officer
34 shall immediately send the person's license to the
35 department along with the officer's certificate
36 indicating the person's refusal to submit to chemical
37 testing.

38 Sec. ____ . NEW SECTION. 321M.9 TAKING SAMPLE FOR
39 TEST.

40 Only a licensed physician, licensed physician
41 assistant as defined in section 148C.1, medical
42 technologist, or registered nurse, acting at the
43 request of a peace officer, may withdraw a specimen of
44 blood for the purpose of determining the alcohol
45 concentration. However, any peace officer, using
46 devices and methods approved by the commissioner of
47 public safety, may take a specimen of a person's
48 breath or urine for the purpose of determining the
49 alcohol concentration. Only new equipment kept under
50 strictly sanitary and sterile conditions shall be used

S-5646

Page 5

1 for drawing blood.

2 The person may have an independent chemical test or
3 tests administered at the person's own expense in
4 addition to any administered at the direction of a
5 peace officer. The failure or inability of the person
6 to obtain an independent chemical test or tests does
7 not preclude the admission of evidence of the results
8 of the test or tests administered at the direction of
9 the peace officer. Upon the request of the person who
10 is tested, the results of the test or tests
11 administered at the direction of the peace officer
12 shall be made available to the person.

13 Sec. ____ . NEW SECTION. 321M.10 REVOCATION BASED
14 ON TEST RESULTS.

15 Upon certification, subject to penalty for perjury,
16 by the peace officer that there existed reasonable
17 grounds to believe that the person had been operating
18 a motor vehicle while having an alcohol concentration
19 of more than .04, and that the person submitted to
20 chemical testing and the test results indicated an
21 alcohol concentration of more than .04, the department
22 shall revoke the person's motor vehicle license or
23 nonresident operating privilege for a period of two
24 hundred seventy days if the person is less than
25 eighteen years of age, or for a period of thirty days
26 if the person is at least eighteen years of age but
27 less than twenty-one years of age.

28 The effective date of the revocation shall be
29 twenty days after the receipt of notice of revocation
30 to the person by certified mail. The peace officer
31 who requested or directed the administration of the
32 chemical test may, on behalf of the department, serve
33 immediate notice of revocation on a person whose test
34 results indicated an alcohol concentration of more
35 than .04. If the peace officer serves that immediate
36 notice, the peace officer shall take the person's Iowa
37 license or permit, if any, and issue a temporary
38 license valid only for twenty days. The peace officer
39 shall immediately send the person's motor vehicle
40 license to the department along with the officer's
41 certificate indicating that the test results indicated
42 an alcohol concentration of more than .04.

43 The results of a chemical test shall not be used as
44 the basis for a revocation of a person's motor vehicle
45 license or nonresident operating privilege if the
46 alcohol concentration indicated by the chemical test
47 minus the established margin of error inherent in the
48 device or method used to conduct the chemical test
49 does not equal an alcohol concentration of more than
50 .04.

S-5646

Page 6

1 Sec. ____ . NEW SECTION. 321M.11 HEARING ON
2 REVOCATION -- APPEAL.

3 1. Notice of revocation of a person's motor
4 vehicle license or operating privilege served pursuant
5 to section 321M.8 or 321M.10 shall include a form
6 accompanied by a preaddressed envelope on which the
7 person served may indicate by a checkmark if the
8 person wishes to contest the revocation. The form
9 shall clearly state on its face that the form must be
10 completed and returned within thirty days of receipt
11 or the person's right to a hearing to contest the
12 revocation is foreclosed. The form shall also be
13 accompanied by a statement of the operation of and the
14 person's rights under this chapter.

15 2. The department shall grant the person an
16 opportunity to be heard within forty-five days of
17 receipt of a request for a hearing if the request is
18 made not later than thirty days after receipt of
19 notice of revocation served pursuant to section 321M.8
20 or 321M.10. The hearing shall be before the
21 department in the county where the alleged events
22 occurred, unless the director and the person agree
23 that the hearing may be held in some other county, or
24 the hearing may be held by telephone conference at the
25 discretion of the agency conducting the hearing. The
26 hearing may be recorded and its scope shall be limited
27 to the issues of whether a peace officer had
28 reasonable grounds to believe that the person was
29 operating a motor vehicle while having an alcohol
30 concentration of more than .04 and either of the
31 following:

32 a. Whether the person refused to submit to the
33 test or tests.

34 b. Whether a test was administered and the test
35 results indicated an alcohol concentration of more
36 than .04.

37 3. After the hearing the department shall order
38 that the revocation be either rescinded or sustained.
39 Upon receipt of the decision of the department to
40 sustain a revocation, the person contesting the
41 revocation has ten days to file a request for review
42 of the decision by the director. The director or the
43 director's designee shall review the decision within
44 fifteen days and shall either rescind or sustain the
45 revocation or order a new hearing. If the director
46 orders a new hearing, the department shall grant the
47 person a new hearing within thirty days of the
48 director's order.

49 Sec. ____ . NEW SECTION. 321M.12 JUDICIAL REVIEW.
50 Judicial review of an action of the department may

S-5646

Page 7

1 be sought in accordance with chapter 17A.

2 Notwithstanding the terms of the Iowa administrative
3 procedure Act, chapter 17A, a petition for judicial
4 review may be filed in the district court in the
5 county where the alleged events occurred or in the
6 county in which the administrative hearing was held.

7 Sec. ____ . NEW SECTION. 321M.13 EVIDENCE IN ANY
8 ACTION.

9 Upon the trial of a civil or criminal action or
10 proceeding arising out of acts alleged to have been
11 committed by a person while operating a motor vehicle
12 while having an alcohol concentration of more than
13 .04, evidence of the alcohol concentration in the
14 person's body substances at the time of the act
15 alleged as shown by a chemical analysis of the
16 person's blood, breath, or urine is admissible. If it
17 is established at trial that an analysis of a breath
18 specimen was performed by a certified operator using a
19 device and methods approved by the commissioner of
20 public safety, no further foundation is necessary for
21 introduction of the evidence.

22 Sec. ____ . NEW SECTION. 321M.14 PROOF OF REFUSAL
23 ADMISSIBLE.

24 If a person refuses to submit to a chemical test,
25 proof of refusal is admissible in any civil or
26 criminal action or proceeding arising out of acts
27 alleged to have been committed while the person was
28 operating a motor vehicle while having an alcohol
29 concentration of more than .04.

30 Sec. ____ . NEW SECTION. 321M.15 CIVIL PENALTY --
31 SEPARATE FUND -- REINSTATEMENT.

32 When the department revokes a person's motor
33 vehicle license or nonresident operating privilege
34 under this chapter, the department shall assess the
35 person a civil penalty of one hundred dollars. The
36 money collected by the department under this section
37 shall be transmitted to the treasurer of state who
38 shall deposit the money in a separate fund dedicated
39 to and used for the purposes of chapter 912 and
40 section 709.10. A motor vehicle license or
41 nonresident operating privilege shall not be
42 reinstated until the civil penalty has been paid.

43 Sec. ____ . NEW SECTION. 321M.16 OTHER EVIDENCE.

44 This chapter does not limit the introduction of any
45 competent evidence bearing on the question of whether
46 a person was under the influence of an alcoholic
47 beverage, including the results of chemical tests of
48 specimens of blood, breath or urine obtained more than
49 two hours after the person was operating a motor
50 vehicle.

S-5646

Page 8

1 Sec. ____ . NEW SECTION. 321M.17 INFORMATION
2 RELAYED TO OTHER STATES.

3 When it has been finally determined under this
4 chapter that a nonresident's privilege to operate a
5 motor vehicle in this state has been revoked or
6 denied, the department shall give information in
7 writing of the action taken to the official in charge
8 of traffic control or public safety of the state of
9 the person's residence and of any state in which the
10 person has a license.

11 Sec. ____ . NEW SECTION. 321M.18 TEMPORARY
12 RESTRICTED LICENSE PROHIBITED.

13 A person whose motor vehicle license has been
14 revoked under this chapter is not eligible for a
15 temporary restricted license during the period of
16 revocation.

17 Sec. ____ . NEW SECTION. 321M.19 DRIVING WHILE
18 LICENSE DENIED OR REVOKED.

19 A person whose motor vehicle license or nonresident
20 operating privilege has been denied or revoked as
21 provided in this chapter and who drives a motor
22 vehicle upon the highways of this state while the
23 license or privilege is denied or revoked commits a
24 serious misdemeanor. The department, upon receiving
25 the record of the conviction of a person under this
26 section upon a charge of driving a motor vehicle while
27 the license of the person was revoked or denied, shall
28 extend the period of revocation or denial for an
29 additional like period, and the department shall not
30 issue a new license during the additional period."

31 2. By renumbering as necessary.

By CALVIN O. HULTMAN

S-5646 FILED MARCH 21, 1990
RULED OUT OF ORDER (p. 1235)

SENATE FILE 2413

S-5647

1 Amend Senate File 2413 as follows:

2 1. Page 3, line 16, by inserting after the word
3 "school," the following: "or within the corporate
4 boundary of a city which has been declared to be a
5 drug free zone by the city's governing body,".

6 2. Page 3, line 28, by inserting after the word
7 "school," the following: "or within the corporate
8 boundary of a city which has been declared to be a
9 drug free zone by the city's governing body,".

By RAY TAYLOR

S-5647 FILED MARCH 21, 1990
LOST (p. 1232)

SENATE FILE 2413

S-5650

- 1 Amend Senate File 2413 as follows:
- 2 1. Page 15, by striking line 28 and inserting the
- 3 following: "in addition to any other sanction imposed
- 4 by the court may be punished as contempt of court."

By JULIA B. GENTLEMAN

S-5650 FILED MARCH 21, 1990

WITHDRAWN (p. 155)

SENATE FILE 2413

S-5651

- 1 Amend Senate File 2413 as follows:
- 2 1. Page 20, line 7, by inserting after the word
- 3 "taxpayer" the following: "and if the business does
- 4 not qualify for the adjustment under section 422.7,
- 5 subsection 12,".
- 6 2. Page 21, line 22, by inserting after the word
- 7 "corporation" the following: "and does not qualify
- 8 for the adjustment under section 422.35, subsection
- 9 6".

By MICHAEL E. GRONSTAL

S-5651 FILED MARCH 21, 1990

ADOPTED (p. 1336)

SENATE FILE 2413

S-5653

- 1 Amend Senate File 2413 as follows:
- 2 1. Page 14, by inserting after line 28 the
- 3 following:
- 4 "Sec. _____.
- 5 Section 27 and 28 of this Act, creating a new
- 6 chapter 321L, shall be known and may be cited as
- 7 "Consecutive Days Served in County Jails for
- 8 Convictions of Second and Subsequent Violations of
- 9 Chapter 321J and Treatment for those Convicted."

By MICHAEL E. GRONSTAL

S-5653 FILED MARCH 21, 1990

ADOPTED (p. 1234)

SENATE FILE 2413

S-5654

- 1 Amend Senate File 2413 as follows:
- 2 1. Page 29, by striking lines 1 through 32.
- 3 2. By renumbering as necessary.

By JULIA B. GENTLEMAN

S-5654 FILED MARCH 21, 1990

Lost 3/22 (p. 1251)

SENATE FILE 2413

S-5648

- 1 Amend Senate File 2413 as follows:
 2 1. Page 30, line 15, by inserting after the word
 3 "section." the following: "Following the hearing, the
 4 court shall approve or rescind such discharge."

By RAY TAYLOR
 LINN FUHRMAN

JULIA GENTLEMAN
 MAGGIE TINSMAN

S-5648 FILED MARCH 21, 1990 ~

Adopted 3/22 (g. 1251)

SENATE FILE 2413

S-5649

- 1 Amend Senate File 2413 as follows:
 2 1. Page 3, by inserting after line 5, the
 3 following:
 4 "Sec. ____ Section 204.204, subsection 6, Code
 5 Supplement 1989, is amended by adding the following
 6 new paragraph:
 7 NEW PARAGRAPH. c. Methamphetamine.
 8 Sec. ____ Section 204.206, subsection 4, paragraph
 9 b, Code 1989, is amended by striking the paragraph."

10 2. Page 4, by inserting after line 19, the
 11 following:

12 "Sec. ____ NEW SECTION. 204.416 EXCEPTION TO
 13 NONBAILABLE OFFENSE.

14 Notwithstanding section 811.1, the court, in its
 15 discretion, may admit a person convicted of a
 16 violation of section 204.401, subsection 1 or 2, or of
 17 a violation of section 204.406, to bail if the
 18 prosecuting attorney in the action and the defendant's
 19 counsel jointly petition the court to admit the person
 20 to bail."

21 3. By striking page 23, line 29, through page 24,
 22 line 22, and inserting the following:

23 "Sec. ____ Section 811.1, subsections 1 and 2,
 24 Code Supplement 1989, are amended to read as follows:

25 1. A defendant awaiting judgment of conviction and
 26 sentencing following either a plea or verdict of
 27 guilty of a class "A" felony, murder, felonious
 28 assault, sexual abuse in the second degree, sexual
 29 abuse in the third degree, kidnapping, robbery in the
 30 first degree, arson in the first degree, or burglary
 31 in the first degree, a violation of section 204.401,
 32 subsection 1 or 2, or a violation of section 204.406.

33 2. A defendant appealing a conviction of a class
 34 "A" felony, murder, felonious assault, sexual abuse in
 35 the second degree, sexual abuse in the third degree,
 36 kidnapping, robbery in the first degree, arson in the
 37 first degree, or burglary in the first degree, a
 38 violation of section 204.401, subsection 1 or 2, or a
 39 violation of section 204.406."

40 4. Renumber as necessary.

By RAY TAYLOR

S-5649 FILED MARCH 21, 1990

B-Adopted, A w/o 3/22 (g. 1253)

S-5656

1 Amend Senate File 2413 as follows:

2 1. Page 2, by inserting after line 28 the
3 following:

4 "Sec. ____ . Section 123.47, Code 1989, is amended
5 to read as follows:

6 123.47 PERSONS UNDER LEGAL AGE.

7 A person shall not sell, give, or otherwise supply
8 alcoholic liquor, wine, or beer to any person knowing
9 or having reasonable cause to believe that person to
10 be under legal age, and a person or persons under
11 legal age shall not individually or jointly have
12 alcoholic liquor, wine, or beer in their possession or
13 control; except in the case of liquor, wine, or beer
14 given or dispensed to a person under legal age by the
15 person's parent or guardian for consumption within a
16 the private home of the person's parent or guardian
17 and with the knowledge, and consent, and direct
18 supervision of the person's parent or guardian for
19 beverage or medicinal purposes or as administered to
20 the person by either a physician or dentist for
21 medicinal purposes and except to the extent that a
22 person under legal age may handle alcoholic beverages,
23 wine, and beer during the regular course of the
24 person's employment by a liquor control licensee, or
25 wine or beer permittee under this chapter.

26 Sec. ____ . Section 123.47A, Code 1989, is amended
27 to read as follows:

28 123.47A PERSONS AGE NINETEEN AND TWENTY --
29 PENALTY.

30 A person shall not sell, give, or otherwise supply
31 alcoholic liquor, wine, or beer to any person knowing
32 or having reasonable cause to believe that the person
33 is age nineteen or twenty. A person age nineteen or
34 twenty shall not purchase or possess alcoholic liquor,
35 wine, or beer. However, a person age nineteen or
36 twenty may possess alcoholic liquor, wine, or beer
37 given to the person by the person's parent or guardian
38 for consumption within a the private home of the
39 person's parent or guardian with the knowledge, and
40 consent, and direct supervision of the person's parent
41 or guardian, and a person age nineteen or twenty may
42 handle alcoholic liquor, wine, and beer during the
43 course of the person's employment by a liquor control
44 licensee, or wine or beer permittee. A person, other
45 than a licensee or permittee, who violates this
46 section commits a scheduled violation of section
47 805.8, subsection 10. A licensee or permittee who
48 violates this section is guilty of a simple
49 misdemeanor punishable by a fine of not more than
50 fifty dollars. The penalty provided under this

-1-

S-5656

Page 2

1 section against a licensee or permittee who violates
2 this section is the only penalty which shall be
3 imposed against a licensee or permittee who violates
4 this section."

5 2. By renumbering sections as required.

By WILLIAM W. DIELEMAN

SENATE FILE 2413

S-5658

1 Amend Senate File 2413 as follows:

2 1. Page 22, by inserting after line 12 the
3 following:

4 "Sec. ____ . Section 702.11, Code Supplement 1989,
5 is amended to read as follows:

6 702.11 FORCIBLE FELONY.

7 A "forcible felony" is any felonious child
8 endangerment, assault, murder, sexual abuse other than
9 sexual abuse in the third degree committed between
10 spouses or in violation of section 709.4, subsection
11 2, paragraph "c", subparagraph (4), kidnapping,
12 robbery, arson in the first or second degree, or
13 burglary in the first degree."

14 2. Page 22, by inserting after line 27 the
15 following:

16 "Sec. ____ . NEW SECTION. 712.1A ARSON IN THE
17 FIRST DEGREE.

18 Arson in the first degree is arson which results in
19 the death of a person, including the death of a paid
20 or volunteer firefighter. Arson in the first degree
21 is a class "A" felony.

22 Sec. ____ . Section 712.2, Code 1989, is amended to
23 read as follows:

24 712.2 ARSON IN THE FIRST SECOND DEGREE.

25 Arson is arson in the first second degree when the
26 property which the defendant intends to destroy or
27 damage, or which the defendant knowingly endangers, is
28 property in which the presence of one or more persons
29 can be reasonably anticipated, ~~or the arson results in~~
30 ~~the death of a fire-fighter, whether paid or~~
31 volunteer.

32 Arson in the first second degree is a class "B"
33 felony.

34 Sec. ____ . Section 712.3, Code 1989, is amended to
35 read as follows:

36 712.3 ARSON IN THE SECOND THIRD DEGREE.

37 Arson which is not arson in the first or second
38 degree is arson in the second third degree when the
39 property which the defendant intends to destroy or
40 damage, or which the defendant knowingly endangers, is
41 a building or a structure, or real property of any
42 kind, or standing crops, or is personal property the
43 value of which exceeds five hundred dollars. Arson in
44 the second third degree is a class "C" felony.

45 Sec. ____ . Section 712.4, Code 1989, is amended to
46 read as follows:

47 712.4 ARSON IN THE THIRD FOURTH DEGREE.

48 Arson which is not arson in the first, second, or
49 third degree or arson in the second degree is arson in
50 the third fourth degree. Arson in the third fourth

S-5658

Page 2.

- 1 degree is an aggravated misdemeanor."
 2 3. Page 24, line 5, by inserting after the words
 3 "arson in the first" the following: "or second".
 4 4. Page 24, line 11, by inserting after the words
 5 "arson in the first" the following: "or second".
 6 5. Renumber as necessary.

By MARK R. HAGERLA

S-5658 FILED MARCH 22, 1990

RULED OUT OF ORDER (p. 1253)

SENATE FILE 2413

S-5659

- 1 Amend Senate File 2413 as follows:
 2 1. Page 35, by inserting after line 7, the
 3 following:
 4 "Sec. ____.
 5 The Code editor shall redesignate sections 321L.1
 6 and 321L.2, as enacted in this Act, in a new or
 7 different chapter so that these sections do not
 8 conflict with sections 321L.1 and 321L.2 as enacted
 9 during the 1989 session of the general assembly and as
 10 appear in the 1989 Code Supplement."
 11 2. Renumber as necessary.

By MICHAEL E. GRONSTAL
RICHARD F. DRAKE

S-5659 FILED MARCH 22, 1990

ADOPTED (p. 1252)

SENATE FILE 2413

S-5662

- 1 Amend Senate File 2413 as follows:
 2 1. Page 10, by inserting after line 28, the
 3 following:
 4 "Sec. ____ Section 232.52, Code 1989, is amended
 5 by adding the following new subsection:
 6 NEW SUBSECTION. 8. In addition to any other order
 7 of the juvenile court, if a person under age eighteen
 8 who is found in a judicial proceeding to have
 9 committed a criminal offense involving the possession
 10 or use of alcohol or a controlled substance, or an act
 11 involving alcohol or a controlled substance committed
 12 by a minor which would be a criminal offense if
 13 committed by an adult, the juvenile court may order
 14 the state department of transportation to revoke the
 15 motor vehicle license or delay the time at which a
 16 person would otherwise be eligible for an motor
 17 vehicle license or a learner's permit for a period of
 18 up to one year."
 19 2. Renumber as necessary.

By MAGGIE TINSMAN
RICHARD VARN
MICHAEL E. GRONSTALJOY CORNING
CALVIN O. HULTMAN

S-5662 FILED MARCH 22, 1990

LOST (p. 1253)

House Judiciary 3/23
Amended per 5936, L. Rec. 3/28

SENATE FILE 2413
BY HUTCHINS

(COMPANION TO LSB 8412YH
BY ARNOULD)

(AS AMENDED AND PASSED BY THE SENATE MARCH 22, 1990)

Passed Senate, Date See over for Passed House, Date 4/3/90 (p. 1830)
Vote: Ayes Conferees Nays Committee Vote: Ayes 92 Nays 2
Approved May 6, 1990

A BILL FOR

1 An Act relating to certain specific crimes and the disposition of
2 offenders by providing for payment of sexual abuse medical
3 examinations, providing for workers' compensation coverage and
4 the liability of certain persons performing community service,
5 providing for notification of the parents of persons under age
6 eighteen discovered to be in possession of alcohol or drugs,
7 providing for a term of confinement for distribution of
8 illegal drugs within one thousand feet of a public park,
9 providing for the reporting and identification of certain
10 precursor drugs, providing for the disposition of certain
*11 juvenile offenders, establishing institutional reading room
12 requirements, providing for the diversion of certain offenders
13 to treatment facilities, providing that certain persons
14 serving mandatory minimum sentences serve a portion of their
15 sentence on work release, establishing a penalty for certain
16 persons who cause a serious injury to another while operating
17 a motor vehicle, providing for certain offenders to serve
18 their sentence on consecutive days, providing for
19 posttreatment services as a condition of probation,
20 establishing a tax on marijuana and controlled substances,
21 providing an expansion of the business deduction for

S.F. 2413

1 businesses employing individuals on parole, probation, work
2 release, or convicted of a felony, establishing penalties for
3 participation in criminal gang activity, providing for the
4 nonbailability of certain offenders, providing requirements
5 for presentence investigations, providing for early release of
6 offenders participating in certain treatment or for certain
7 property offenders, making certain changes relating to
8 conditions of parole and work release, authorizing parole and
9 probation officers to discharge certain offenders, making
10 certain changes relating to the victim reparation program,
11 establishing a pilot project for the chemical testing of
12 persons arrested for felony offenses, and providing penalties.

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

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

_____ = New Language by the Senate

* = Language Stricken by the Senate

Conference Committee Appointed

*Senators Spronsted (Chair), Boyle, Vann, Fuchman, & Hagerda (p. 1201)
Rep. Jay (Chair), Peterson, Chazan, & Trent*

Passed a/w Conference Committee Report

*Senate 4/8/90 (p. 1745)
41-4*

*House 4/5/90 (p. 2396)
84-0*

1 Section 1. Section 13.31, Code Supplement 1989, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 5. Administer payment for sexual abuse
4 medical examinations pursuant to section 709.10.

5 Sec. 2. Section 25A.2, subsection 3, Code Supplement 1989,
6 is amended to read as follows:

7 3. "Employee of the state" includes any one or more
8 officers, agents, or employees of the state or any state
9 agency, including members of the general assembly, and persons
10 acting on behalf of the state or any state agency in any
11 official capacity, temporarily or permanently in the service
12 of the state of Iowa, whether with or without compensation but
13 does not include a contractor doing business with the state.
14 Professional personnel, including physicians, osteopathic
15 physicians and surgeons, osteopathic physicians, optometrists
16 and dentists, who render services to patients and inmates of
17 state institutions under the jurisdiction of the department of
18 human services or the Iowa department of corrections are to be
19 considered employees of the state, whether the personnel are
20 employed on a full-time basis or render services on a part-
21 time basis on a fee schedule or other arrangement. Criminal
22 defendants while performing unpaid community service ordered
23 by the district court, board of parole, or judicial district
24 department of correctional services are to be considered
25 employees of the state.

26 Sec. 3. Section 85.59, unnumbered paragraphs 2, 4, and 5,
27 Code 1989, is amended to read as follows:

28 For purposes of this section, "inmate" includes a person
29 who is performing unpaid community service under sections
30 907.13 and 910.2 the direction of the district court, board of
31 parole, or judicial district department of correctional
32 services, or who is performing a work assignment of value to
33 the state or to the public under chapter 232.

34 If an inmate is permanently incapacitated by injury in the
35 performance of the inmate's work in connection with the

1 maintenance of the institution or in an industry maintained in
2 the institution, while on detail to perform services on a
3 public works project, or is permanently or temporarily
4 incapacitated in connection with the performance of unpaid
5 community service under sections-907-13-and-910-2 the
6 direction of the district court, board of parole, or judicial
7 district department of correctional services, or who is
8 performing a work assignment of value to the state or to the
9 public under chapter 232, that inmate shall be awarded only
10 the benefits provided in section 85.27 and section 85.34,
11 subsections 2 and 3. The weekly rate for such permanent
12 disability is equal to sixty-six and two-thirds percent of the
13 state average weekly wage paid employees as determined by the
14 department of employment services under section 96.19,
15 subsection 42, and in effect at the time of the injury.

16 Weekly compensation benefits under this section may be
17 determined prior to the inmate's release from the institution,
18 but payment of benefits to an inmate shall commence as of the
19 time of the inmate's release from the institution either upon
20 parole or final discharge. However, if the inmate is awarded
21 benefits for an injury incurred in connection with the
22 performance of unpaid community service under sections-907-13
23 and-910-2 the direction of the district court, board of
24 parole, or judicial district department of correctional
25 services, or who is performing a work assignment of value to
26 the state or to the public under chapter 232, weekly
27 compensation benefits under this section shall be determined
28 and paid as in other workers' compensation cases.

29 Sec. 4. NEW SECTION. 123.47B PARENTAL NOTIFICATION --
30 PERSONS UNDER EIGHTEEN YEARS OF AGE.

31 If a peace officer detains a person under the age of
32 eighteen and discovers that the person is in possession of
33 alcoholic liquor, wine, or beer in violation of section
34 123.47, the law enforcement agency of which the peace officer
35 is an employee shall make a reasonable attempt to notify the

1 person's custodial parent or legal guardian of such
2 possession, whether or not the person is arrested or a
3 citation is issued pursuant to section 805.16, unless the
4 officer has reasonable grounds to believe that such
5 notification is not in the best interests of the person or
6 will endanger that person. A reasonable attempt to notify the
7 person includes but is not limited to a telephone call or
8 notice by first class mail.

9 Sec. 5. NEW SECTION. 204.401A DISTRIBUTION TO PERSONS ON
10 CERTAIN REAL PROPERTY.

11 In addition to any other penalties provided in this
12 chapter, a person who is eighteen years of age or older who
13 unlawfully distributes a substance or counterfeit substance
14 listed in schedule I or II which is a narcotic or cocaine, or
15 a simulated controlled substance represented to be a narcotic
16 or cocaine classified in schedule I or II, to another person
17 who is eighteen years of age or older in or on, or within one
18 thousand feet of the real property comprising a public or
19 private elementary or secondary school, or in or on the real
20 property comprising a public park, may, at the judge's dis-
21 cretion, be sentenced up to an additional term of confinement
22 of five years.

23 Sec. 6. Section 204.406, subsection 1, paragraph a, Code
24 Supplement 1989, is amended to read as follows:

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

34 Sec. 7. Section 204.406, subsection 2, paragraph a, Code
35 Supplement 1989, is amended to read as follows:

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

11 Sec. 8. NEW SECTION. 204.415 PARENTAL NOTIFICATION --
12 PERSONS UNDER EIGHTEEN YEARS OF AGE.

13 If a peace officer detains a person under the age of
14 eighteen and discovers that the person is in possession of a
15 controlled substance, counterfeit substance, or simulated
16 controlled substance in violation of this chapter, the law
17 enforcement agency of which the peace officer is an employee
18 shall make a reasonable attempt to notify the person's
19 custodial parent or legal guardian of such possession, whether
20 or not the person is arrested, unless the officer has
21 reasonable grounds to believe that such notification is not in
22 the best interests of the person or will endanger that person.

23 A reasonable attempt to notify the person includes but is not
24 limited to a telephone call or notice by first class mail.

25 Sec. 9. NEW SECTION. 204.416 EXCEPTION TO NONBAILABLE
26 OFFENSE.

27 Notwithstanding section 811.1, the court, in its
28 discretion, may admit a person convicted of a violation of
29 section 204.401, subsection 1 or 2, or of a violation of
30 section 204.406, to bail if the prosecuting attorney in the
31 action and the defendant's counsel jointly petition the court
32 to admit the person to bail.

33 Sec. 10. NEW SECTION. 204B.1 DEFINITIONS.

34 As used in this chapter, unless the context otherwise re-
35 quires:

1 1. "Board" means the board of pharmacy examiners.

2 2. "Controlled substance" means a controlled substance as
3 defined in section 204.101.

4 3. "Practitioner" means a practitioner as defined in
5 section 155A.3.

6 4. "Precursor substance" means a substance which may be
7 used as a precursor in the illegal production of a controlled
8 substance and is specified under section 204B.2.

9 5. "Recipient" means a person in this state who purchases,
10 transfers, or otherwise receives a precursor substance.

11 6. "Vendor" means a person who manufactures, wholesales,
12 retails, or otherwise sells, transfers, or furnishes in this
13 state a precursor substance.

14 Sec. 11. NEW SECTION. 204B.2 REPORTING REQUIRED.

15 1. Effective July 1, 1990, a report to the board shall be
16 submitted in accordance with this chapter by a manufacturer,
17 retailer, or other person who sells, transfers, or otherwise
18 furnishes to any person in this state any of the following
19 substances:

20 a. Anthranilic acid and its salts.

21 b. Benzyl Cyanide.

22 c. Ephedrine, its salts, optical isomers, and salts of
23 optical isomers.

24 d. Ergonovine and its salts.

25 e. Ergotamine and its salts.

26 f. 3,4 - methylenedioxyphenyl-2-propanone.

27 g. N-acetylanthranilic acid and its salts.

28 h. Norpseudoephedrine, its salts, optical isomers, and
29 salts of optical isomers.

30 i. Phenylacetic acid and its salts.

31 j. Phenylpropanolamine, its salts, optical isomers, and
32 salts of optical isomers.

33 k. Piperidine and its salts.

34 l. Pseudoephedrine, its salts, optical isomers, and salts
35 of optical isomers.

1 2. The board shall administer the regulatory provisions of
2 this chapter and may, by rule adopted pursuant to chapter 17A,
3 add a substance to or remove a substance from the list in sub-
4 section 1. In determining whether to add or remove a
5 substance from the list, the board shall consider the
6 following:

7 a. The likelihood that the substance may be used as a pre-
8 cursor in the illegal production of a controlled substance.

9 b. The availability of the substance.

10 c. The appropriateness of including the substance under
11 this chapter or under chapter 204.

12 d. The extent and nature of legitimate uses for the sub-
13 stance.

14 3. On or before November 1 of each year, the board shall
15 inform the general assembly of any substances added, deleted,
16 or changed in the list contained in section 204B.2 and shall
17 provide an explanation of any addition, deletion, or change.

18 Sec. 12. NEW SECTION. 204B.3 IDENTIFICATION REQUIRED.

19 1. Before selling, transferring, or otherwise furnishing
20 any substance specified in section 204B.2 to a person in this
21 state, a vendor shall require proper identification from the
22 purchaser.

23 2. For the purposes of this section, in the case of a
24 face-to-face purchase, "proper identification" means all of
25 the following:

26 a. A motor vehicle operator's license containing the pur-
27 chaser's photograph and residential or mailing address, other
28 than a post office box number, or any other official state-
29 issued identification containing this information.

30 b. The motor vehicle license number of the vehicle owned
31 or operated by the purchaser.

32 c. A letter of authorization from the person who is making
33 the purchase. The letter shall include the person's business
34 license number and business address, a description as to how
35 the substance will be used, and the purchaser's signature.

1 The vendor shall affix the vendor's signature as a witness to
2 the signature and identification of the purchaser.

3 3. The board shall provide by rule for the form of proper
4 identification required for purchases which are not face to
5 face.

6 4. A person who violates this section or rules adopted
7 pursuant to this section commits a simple misdemeanor.

8 Sec. 13. NEW SECTION. 204B.4 VENDOR REPORTING.

9 1. At least twenty-one days prior to the delivery of a
10 precursor substance to a recipient, the vendor shall submit a
11 report of the transaction to the board. The report must
12 contain the identification information specified under section
13 204B.3. However, if regular, repeated transactions of a
14 particular precursor substance occur between the vendor and
15 the recipient, the board may authorize the vendor to report
16 the transactions monthly if either of the following conditions
17 exists:

18 a. A pattern of regular supply of the precursor substance
19 exists between the vendor and the recipient.

20 b. The recipient has established a record of lawfully
21 using the precursor substance.

22 2. A vendor who does not submit a report pursuant to this
23 section commits a serious misdemeanor.

24 Sec. 14. NEW SECTION. 204B.5 RECEIPT OF SUBSTANCE FROM
25 OUTSIDE THE STATE -- PENALTY.

26 1. A vendor, recipient, or other person required to report
27 pursuant to this chapter who receives a precursor substance
28 from a source outside the state shall submit a report to the
29 board pursuant to rules adopted by the board.

30 2. A person who does not submit a report required under
31 this section commits a serious misdemeanor.

32 Sec. 15. NEW SECTION. 204B.6 EXCEPTIONS.

33 The requirements of sections 204B.2 through 204B.5 do not
34 apply to any of the following:

35 1. A licensed pharmacist or other person authorized under

1 chapter 155A to sell or furnish a precursor substance upon the
2 prescription of a practitioner.

3 2. A practitioner who administers or furnishes a precursor
4 substance to a patient.

5 3. A vendor who holds a permit issued by the board and who
6 sells, transfers, or otherwise furnishes a precursor substance
7 to a practitioner or a pharmacy as defined in section 155A.3.

8 4. A sale, transfer, furnishing, or receipt of a drug con-
9 taining ephedrine, phenylpropanolamine, or pseudoephedrine or
10 of a cosmetic containing a precursor substance if the drug or
11 cosmetic is lawfully sold, transferred, or furnished over the
12 counter without a prescription in accordance with chapter
13 203B.

14 Sec. 16. NEW SECTION. 204B.7 REPORTING FORM.

15 1. The board shall adopt rules prescribing a common form
16 for the filing of reports required under this chapter. The
17 rules shall provide that the information which must be
18 submitted shall include but is not limited to all of the
19 following:

- 20 a. The name of the precursor substance.
- 21 b. The quantity of the precursor substance sold,
22 transferred, or furnished.
- 23 c. The date the precursor substance was sold, transferred,
24 or furnished.
- 25 d. The name and address of the recipient.
- 26 e. The name and address of the vendor.

27 2. Reports authorized under subsection 1 may be computer-
28 generated and submitted monthly in accordance with rules
29 adopted by the board.

30 Sec. 17. NEW SECTION. 204B.8 MISSING QUANTITY -- RE-
31 PORTING.

32 A person who is required to report to the board pursuant to
33 this chapter or a person listed as an exception under section
34 204B.6 shall report to the board either of the following
35 occurrences within seven days of knowledge of the loss or

1 occurrence:

2 1. Loss or theft of a precursor substance.

3 2. A difference between the amount of a precursor
4 substance shipped and the amount of a precursor substance
5 received. If applicable, the report shall include the name of
6 the person who transported the precursor substance and the
7 date of shipment.

8 Sec. 18. NEW SECTION. 204B.9 SALE, TRANSFER, FURNISHING,
9 OR RECEIPT FOR UNLAWFUL PURPOSE -- PENALTY.

10 1. A person who sells, transfers, or otherwise furnishes a
11 precursor substance with knowledge or the intent that the
12 recipient will use the precursor substance to unlawfully manu-
13 facture a controlled substance commits a class "C" felony.

14 2. A person who receives a precursor substance with intent
15 to use the substance unlawfully to manufacture a controlled
16 substance commits a class "C" felony.

17 Sec. 19. NEW SECTION. 204B.10 FALSE STATEMENT --PENALTY.

18 A person who knowingly makes a false statement in
19 connection with any report or record required to be made under
20 this chapter commits an aggravated misdemeanor.

21 Sec. 20. NEW SECTION. 204B.11 PERMIT REQUIREMENTS --
22 PENALTY.

23 1. A vendor or a recipient who receives a precursor
24 substance from a source outside the state shall obtain a
25 permit for the transaction from the board. However, a permit
26 is not required of a vendor of a drug containing ephedrine,
27 phenylpropanolamine, or pseudoephedrine or of a cosmetic that
28 contains a precursor substance if the drug or cosmetic is
29 lawfully sold, transferred, or furnished either over the
30 counter without a prescription in accordance with chapter 203B
31 or with a prescription pursuant to chapter 155A.

32 2. An application for a permit shall be filed in writing
33 and signed by the applicant, and shall set forth the name of
34 the applicant, the business in which the applicant is engaged,
35 the business address of the applicant, and a full description

1 of any precursor substance sold, transferred, or otherwise
2 furnished or received.

3 3. The board may grant a permit on a form adopted by rule.
4 A permit shall be effective for not more than one year from
5 the date of issuance.

6 4. An applicant shall pay, at the time of filing an
7 application, a permit fee determined by the board.

8 5. A permit granted under this chapter may be annually re-
9 newed on a date to be determined by the board pursuant to
10 rule, upon the filing of a renewal application and the payment
11 of a permit renewal fee.

12 6. Permit fees charged by the board shall not exceed the
13 costs incurred by the board in administering this chapter.

14 7. Selling, transferring, or otherwise furnishing, or re-
15 ceiving a precursor substance without a permit obtained
16 pursuant to this section is a serious misdemeanor.

17 Sec. 21. NEW SECTION. 204B.12 PERMIT -- REFUSAL,
18 SUSPENSION, OR REVOCATION.

19 The board shall refuse, suspend, or revoke a permit upon
20 finding that any of the following conditions exist:

21 1. The permit was obtained through fraud, misrepresenta-
22 tion, or deceit.

23 2. The permittee has violated or has permitted any
24 employee of the permittee to violate any of the laws of this
25 state relating to drugs, controlled substances, cosmetics, or
26 nonprescription drugs, or has violated this chapter, a rule
27 adopted pursuant to this chapter, or any other rule of the
28 board.

29 Sec. 22. Section 232.8, Code 1989, is amended by adding
30 the following new unnumbered paragraph:

31 NEW UNNUMBERED PARAGRAPH. In a proceeding concerning a
32 child who is alleged to have committed a second delinquent act
33 or a second violation excluded from the jurisdiction of the
34 juvenile court, the court or the juvenile court shall
35 determine whether there is reason to believe that the child

1 regularly abuses alcohol or other controlled substance and may
2 be in need of treatment. If the court so determines, the
3 court shall advise appropriate juvenile authorities and refer
4 such offenders to the juvenile court for disposition pursuant
5 to section 232.52A.

6 Sec. 23. NEW SECTION. 232.52A DISPOSITION OF CERTAIN
7 JUVENILE OFFENDERS.

8 In addition to any other order of the juvenile court, a
9 person under age eighteen, who may be in need of treatment as
10 determined under section 232.8, may be ordered to participate
11 in an alcohol education or evaluation program approved by the
12 juvenile court. If recommended after evaluation, the court
13 may also order the person to participate in a treatment
14 program approved by the court. The juvenile court may also
15 require the custodial parent or parents or other legal
16 guardian to participate in an educational program with the
17 person under age eighteen if the court determines that such
18 participation is in the best interests of the person under age
19 eighteen.

* 20 Sec. 24. NEW SECTION. 246.310A INSTITUTION READING
21 ROOMS.

22 The director shall, as necessary, provide for the provision
23 of suitable space and reading materials for inmates. Such
24 space shall be located so that any visitors, other than those
25 authorized pursuant to section 246.512, shall not be able to
26 view the space or the materials located within that space.

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

29 The department of corrections in cooperation with judicial
30 district departments of correctional services shall establish
31 in each judicial district bed space for the confinement and
32 treatment of offenders convicted of violating chapter 321J who
33 are sentenced to the custody of the director. The department
34 of corrections shall develop standardized assessment criteria
35 for the assignment of offenders to a facility established

1 pursuant to this section. The offender shall be assigned by
2 the director to a facility pursuant to section 321J.2,
3 subsection 2, paragraph "c", unless initial medical treatment
4 is necessary or there is insufficient space to accommodate the
5 person. The offenders shall first be assigned to the Iowa
6 medical classification facility at Oakdale for classification
7 and-after-classification-may-be-assigned-to if medical
8 treatment is necessary or if the offender fails to
9 satisfactorily perform in a treatment program conducted in a
10 residential facility operated by any a judicial district
11 department of correctional services. The offender shall be
12 assigned to an institution following classification. The
13 facilities established shall meet all the following
14 requirements:

15 Sec. 26. NEW SECTION. 246.902 WORK RELEASE -- PERSONS
16 SERVING MANDATORY MINIMUM SENTENCE.

17 An inmate serving a mandatory minimum sentence of one year
18 or more, who is approved to participate in the work release
19 program, shall serve the final six months of the inmate's
20 sentence participating in the program.

21 Sec. 27.

22 Sections 28 and 29 of this Act, creating a new chapter
23 321L, shall be known and may be cited as "Consecutive Days
24 Served in County Jails for Convictions of Second and
25 Subsequent Violations of Chapter 321J and Treatment for those
26 Convicted".

27 Sec. 28. NEW SECTION. 321L.1 MINIMUM SENTENCE FOR
28 CERTAIN OFFENDERS.

29 A minimum term of imprisonment in a county jail or
30 community-based correctional facility imposed on a person
31 convicted of a second or subsequent offense under section
32 321J.2, subsection 2, paragraph "b" or "c", shall be served on
33 consecutive days. However, if the sentencing court finds that
34 service of the full minimum term on consecutive days would
35 work an undue hardship on the person, or finds that sufficient

1 jail space is not available and is not reasonably expected to
2 become available within four months after sentencing to
3 incarcerate the person serving the minimum sentence on
4 consecutive days, the court may order the person to serve not
5 less than forty-eight consecutive hours of the minimum term
6 and to perform not less than two hundred forty hours of unpaid
7 community service.

8 Sec. 29. NEW SECTION. 321L.2 TREATMENT OF CERTAIN
9 OFFENDERS.

10 A person ordered to attend a course for drinking drivers,
11 or a substance abuse treatment program, upon successfully
12 completing or attending the course or treatment program, shall
13 be placed on probation for six months and as a condition of
14 probation, shall attend a program providing posttreatment
15 services related to drinking or substance abuse as approved by
16 the court.

17 A defendant who fails to carry out the order of the court
18 or who fails to successfully complete or attend a course for
19 drinking drivers or an ordered substance abuse treatment
20 program shall, in addition to any other condition of
21 probation, attend a program providing substance abuse
22 prevention services or posttreatment services related to
23 substance abuse as ordered by the court. The person shall
24 report to the person's probation officer as ordered concerning
25 proof of attendance at the treatment program or posttreatment
26 program ordered by the court. Failure to attend or complete
27 the program shall be considered a violation of probation and
28 is punishable as contempt of court.

29 Sec. 30. NEW SECTION. 421A.1 DEFINITIONS.

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

32 1. "Controlled substance" means controlled substance as
33 defined in section 204.101.

34 2. "Counterfeit substance" means a counterfeit substance
35 as defined in section 204.101.

1 3. "Dealer" means any person who ships, transports, or
2 imports into this state or acquires, purchases, possesses,
3 manufactures, or produces in this state any of the following:

4 a. Seven or more grams of a taxable substance other than
5 marijuana, but including a taxable substance that is a mixture
6 of marijuana and other taxable substances.

7 b. Forty-two and one-half grams or more of a substance
8 consisting of or containing marijuana.

9 c. Ten or more dosage units of a taxable substance which
10 is not sold by weight.

11 However, a person who lawfully ships, transports, or
12 imports into this state or acquires, purchases, possesses,
13 manufactures, or produces a taxable substance in this state is
14 not considered a dealer.

15 4. "Department" means the department of revenue and
16 finance.

17 5. "Director" means the director of revenue and finance.

18 6. "Dosage unit" means the unit of measurement in which a
19 substance is dispensed to the ultimate user. Dosage unit
20 includes, but is not limited to, one pill, one capsule, or one
21 microdot.

22 7. "Marijuana" means marijuana as defined in section
23 204.101.

24 8. "Simulated controlled substance" means a simulated
25 controlled substance as defined in section 204.101.

26 9. "Taxable substance" means a controlled substance, a
27 counterfeit substance, a simulated controlled substance, or
28 marijuana, or a mixture of materials that contains a
29 controlled substance, counterfeit substance, simulated
30 controlled substance, or marijuana.

31 Sec. 31. NEW SECTION. 421A.2 ADMINISTRATION --RULES.

32 The director shall administer this chapter. The director
33 shall collect all taxes, interest, and civil penalties imposed
34 under this chapter and deposit them in the general fund of the
35 state.

1 The director may adopt rules under chapter 17A that are
2 necessary to enforce this chapter. The director shall adopt a
3 uniform system of providing, affixing, and displaying official
4 stamps, labels, or other official indicia for taxable
5 substances.

6 Sec. 32. NEW SECTION. 421A.3 TAX PAYMENT REQUIRED FOR
7 POSSESSION -- PAYMENT DUE.

8 A dealer shall not possess, distribute, or offer to sell a
9 taxable substance unless the tax imposed under this chapter
10 has been paid as evidenced by a stamp, label, or other
11 official indicia permanently affixed to the taxable substance.

12 Taxes imposed on taxable substances by this chapter are due
13 and payable immediately upon manufacture, production,
14 acquisition, purchase, or possession by a dealer.

15 If the indicia evidencing the payment of the tax imposed on
16 taxable substances under this chapter have not been affixed,
17 the dealer shall have the indicia permanently affixed on the
18 taxable substance immediately after receiving the taxable
19 substance. A stamp, label, or other official indicia shall be
20 used only once and shall not be used after the date of
21 expiration.

22 Sec. 33. NEW SECTION. 421A.4 MEASUREMENTS.

23 For purposes of measurements under this chapter, the weight
24 of a taxable substance shall be measured by its weight in
25 metric grams in the dealer's possession. If a taxable
26 substance consists of a mixture containing both marijuana and
27 another substance or combination of substances listed in the
28 definition of taxable substance in section 421A.1, the taxable
29 substance shall be taxed under section 421A.7, subsection 2.

30 Sec. 34. NEW SECTION. 421A.5 DEFENSE OR IMMUNITY.

31 This chapter does not provide in any manner a defense or
32 affirmative defense to or immunity for a dealer from criminal
33 prosecution pursuant to Iowa law.

34 Sec. 35. NEW SECTION. 421A.6 PHARMACEUTICALS.

35 This chapter does not require persons lawfully in

1 possession of a taxable substance to pay the tax required
2 under this chapter or to purchase, acquire, or affix the
3 stamps, labels, or other official indicia otherwise required
4 by this chapter.

5 Sec. 36. NEW SECTION. 421A.7 TAX IMPOSED --RATE OF TAX.

6 An excise tax is imposed on dealers at the following rates:

7 1. On each gram of marijuana, or each portion of a gram,
8 five dollars.

9 2. On each gram or portion of a gram of any taxable
10 substance sold by weight other than marijuana, two hundred
11 fifty dollars.

12 3. On each ten dosage units of any taxable substance that
13 is not sold by weight, or portion thereof, four hundred
14 dollars.

15 Sec. 37. NEW SECTION. 421A.8 PRICE OF STAMPS, LABELS, OR
16 OTHER INDICIA.

17 Stamps, labels, or other official indicia to be affixed to
18 a taxable substance indicating the payment of the excise tax
19 shall be obtained and purchased from the department. The
20 dealer shall pay the entire excise tax listed in section
21 421A.7 at the time of purchase, except as provided in section
22 421A.13, and receive stamps, labels, or other official indicia
23 for the amount paid. However, the minimum purchase price to
24 be paid for any stamps, labels, or indicia shall be two
25 hundred fifteen dollars.

26 Sec. 38. NEW SECTION. 421A.9 ASSESSMENTS ARE JEOPARDY
27 ASSESSMENTS.

28 All assessments of taxes made pursuant to this chapter
29 shall be considered jeopardy assessments or collections as
30 provided in section 422.30. The director shall assess a tax,
31 interest, and applicable penalties based on knowledge or
32 information available to the director; mail to the taxpayer at
33 the taxpayer's last known address or serve in person, a
34 written notice of the amount of tax, interest, and penalty;
35 demand its immediate payment; and, if payment is not

1 immediately made, collect the tax, interest, and penalty by
2 any method prescribed in section 422.30. The period for
3 examination, determination of amount of tax owed, and
4 assessment is unlimited.

5 A person shall not bring suit to enjoin the assessment or
6 collection of any taxes, interest, or penalties imposed by
7 this chapter.

8 The tax, interest, and penalties assessed by the director
9 are presumed to be valid and correctly determined and
10 assessed. The burden is upon the taxpayer to show any
11 incorrectness or invalidity of an assessment. The burden is
12 upon the taxpayer to prove that the shipment, transportation,
13 importation, acquisition, purchase, possession, manufacture,
14 or production of a taxable substance was lawful if a
15 taxpayer's status as a dealer is disputed. Any statement
16 filed by the director with the clerk of the district court, or
17 any other certificate by the director of the amount of tax,
18 interest, and penalties determined or assessed is admissible
19 in evidence and is prima facie evidence of the facts contained
20 in the statement.

21 Sec. 39. NEW SECTION. 421A.10 CONFIDENTIAL NATURE OF
22 INFORMATION.

23 Notwithstanding any law to the contrary, the director or an
24 employee of the department shall not reveal any information
25 obtained from a dealer; nor shall information obtained from a
26 dealer be used against the dealer in any criminal proceeding,
27 unless the information is independently obtained, except in
28 connection with a proceeding involving taxes due under this
29 chapter from the dealer against whom the tax was assessed.

30 A person who violates this section is guilty of a simple
31 misdemeanor.

32 This section does not prohibit the director from publishing
33 statistics that do not disclose the identity of the dealers.

34 A stamp, label, or other official indicia denoting payment
35 of the tax imposed under this chapter shall not be used

1 against a taxpayer in a criminal proceeding, except that such
2 information may be used against the taxpayer in connection
3 with the administration or civil or criminal enforcement of
4 the tax imposed under this chapter or any similar tax imposed
5 by another state or local unit of government.

6 Sec. 40. NEW SECTION. 421A.11 EXAMINATION OF RECORDS BY
7 DIRECTOR -- SUBPOENAS.

8 For the purpose of determining whether or not the dealer
9 should have paid taxes, determining the amount of tax that
10 should have been paid, or collecting any taxes under this
11 chapter, the director may examine, or cause to be examined,
12 any books, papers, records, or memoranda that may be relevant
13 to making such determinations, whether the books, papers,
14 records, or memoranda are the property of or in the possession
15 of the dealer or another person. The director may require the
16 attendance of any person having knowledge or information that
17 may be relevant, compel the production of books, papers,
18 records, or memoranda by persons required to attend, take
19 testimony on matters material to the determination, and
20 administer oaths or affirmations. Upon demand of the director
21 or an examiner or investigator, the court shall issue a
22 subpoena for the attendance of a witness or the production of
23 books, papers, records, or memoranda. The director may also
24 issue subpoenas. Disobedience of subpoenas issued under this
25 chapter is punishable by the district court of the county in
26 which the subpoena is issued, or if the subpoena is issued by
27 the director, by the district court of the county in which the
28 party served with the subpoena is located, in the same manner
29 as a contempt of court.

30 The director may petition the district court or a
31 magistrate for an administrative search warrant as authorized
32 by section 808.14 to execute a distress warrant authorized by
33 section 422.26.

34 Sec. 41. NEW SECTION. 421A.12 CIVIL AND CRIMINAL
35 PENALTIES FOR VIOLATION OF ACT -- INTEREST.

1 A dealer who violates this chapter is subject to a penalty
2 equal to the amount of the tax imposed by section 421A.7, in
3 addition to the tax imposed by that section. The dealer shall
4 pay interest on the tax and penalty at the rate in effect
5 under section 421.7, counting each fraction of a month as an
6 entire month, computed from the date of assessment through the
7 date of payment. The penalty and interest shall be collected
8 as part of the tax.

9 In addition to the civil tax penalty and interest imposed
10 by this section, a dealer distributing, offering to sell, or
11 possessing taxable substances without affixing the appropriate
12 stamps, labels, or other official indicia is guilty of a class
13 "D" felony.

14 A person who possesses, prints, engraves, makes, issues,
15 sells, or circulates a counterfeit taxable substance tax
16 stamp, label, or other official indicia, or places or causes
17 to be placed a counterfeit taxable substance tax stamp, label,
18 or other official indicia on a taxable substance, is guilty of
19 a class "D" felony.

20 A person who uses, sells, offers for sale, or possesses for
21 use or sale a previously used or expired taxable substance tax
22 stamp, label, or other official indicia, or attaches or causes
23 to be attached a previously used or expired taxable substance
24 tax stamp, label, or other official indicia to a taxable
25 substance, is guilty of a class "D" felony.

26 Notwithstanding section 802.3, an indictment may be found
27 or information filed upon any criminal offense specified in
28 this chapter, in the proper court, within six years after the
29 commission of the offense.

30 Sec. 42. NEW SECTION. 421A.13 CREDIT FOR PREVIOUSLY PAID
31 TAXES.

32 If another state or local unit of government has previously
33 assessed an excise tax on a taxable substance, the taxpayer
34 shall pay the difference between the tax imposed under this
35 chapter and the tax previously paid. If the tax previously

1 paid to the other state or local unit of government was equal
2 to or greater than the tax imposed under this chapter, no tax
3 is due. The burden is on the taxpayer to show that an excise
4 tax on the taxable substances has been paid to another state
5 or local unit of government.

6 Sec. 43. NEW SECTION. 421A.14 REVISION OF TAX --REFUNDS.

7 Sections 421.5, 422.26, 422.28, 422.29, 422.73, subsection
8 2, and 422.74 shall apply to this chapter, except that a
9 refund claim filed later than thirty days from the expiration
10 date of the stamps for which the refund is requested shall not
11 be allowed by the director.

12 Sec. 44. NEW SECTION. 421A.15 AVAILABILITY OF RECORDS
13 AND INFORMATION.

14 The director may request from state, county, and local
15 agencies, information and assistance deemed necessary to
16 administer this chapter. State, county, and local agencies,
17 officers, and employees shall cooperate with the director in
18 identifying dealers and shall, on request, supply the
19 department with available information and assistance which the
20 director deems necessary to administer this chapter,
21 notwithstanding any provisions of law making such information
22 confidential.

23 Sec. 45. Section 422.7, Code Supplement 1989, is amended
24 by adding the following new subsection:

25 NEW SUBSECTION. 12A. If the adjusted gross income
26 includes income or loss from a business operated by the
27 taxpayer, and if the business does not qualify for the
28 adjustment under section 422.7, subsection 12, an additional
29 deduction shall be allowed in computing the income or loss
30 from the business if the business hired for employment in the
31 state during its annual accounting period ending with or
32 during the taxpayer's tax year either of the following:

33 a. An individual domiciled in this state at the time of
34 the hiring who meets any of the following conditions:

35 (1) Has been convicted of a felony in this or any other

1 state or the District of Columbia.

2 (2) Is on parole pursuant to chapter 906.

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

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

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

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

21 The additional deduction shall not be allowed for wages
22 paid to an individual who was hired to replace an individual
23 whose employment was terminated within the twelve-month period
24 preceding the date of first employment. However, if the
25 individual being replaced left employment voluntarily without
26 good cause attributable to the employer or if the individual
27 was discharged for misconduct in connection with the
28 individual's employment as determined by the division of job
29 service of the department of employment services, the
30 additional deduction shall be allowed.

31 A taxpayer who is a partner of a partnership or a
32 shareholder of a subchapter S corporation, may deduct that
33 portion of wages qualified under this subsection paid by the
34 partnership or subchapter S corporation based on the
35 taxpayer's pro rata share of the profits or losses from the

1 partnership or subchapter S corporation.

2 The department shall develop and distribute information
3 concerning the deduction available for businesses employing
4 persons named in paragraphs "a" and "b".

5 Sec. 46. Section 422.35, Code Supplement 1989, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. 6A. If the taxpayer is a business
8 corporation and does not qualify for the adjustment under
9 section 422.35, subsection 6, subtract an amount equal to
10 sixty-five percent of the wages paid to individuals, but shall
11 not exceed twenty thousand dollars per individual, named in
12 paragraphs "a" and "b" who were hired for the first time by
13 the taxpayer during the tax year for work done in this state:

14 a. An individual domiciled in this state at the time of
15 the hiring who meets any of the following conditions:

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

18 (2) Is on parole pursuant to chapter 906.

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

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

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

27 This deduction is allowed for the wages paid to the
28 individuals successfully completing a probationary period
29 named in paragraphs "a" and "b" during the twelve months
30 following the date of first employment by the taxpayer and
31 shall be deducted in the tax years when paid.

32 The department shall develop and distribute information
33 concerning the deduction available for businesses employing
34 persons named in paragraphs "a" and "b".

35 Sec. 47. NEW SECTION. 708.11 VEHICULAR ASSAULT.

1 A person commits a class "D" felony when the person
2 unintentionally causes a serious injury to another while
3 operating a motor vehicle while under the influence of alcohol
4 or a drug or a combination of such substances or while having
5 an alcohol concentration of .10 or more, in violation of
6 section 321J.2.

7 Sec. 48. Section 709.10, Code 1989, is amended to read as
8 follows:

9 709.10 COST OF MEDICAL EXAMINATION IN CRIMES OF SEXUAL
10 ABUSE.

11 The cost of a medical examination for the purpose of
12 gathering evidence and the cost of treatment for the purpose
13 of preventing venereal disease shall be borne by the Iowa
14 department of ~~public-health~~ justice.

15 Sec. 49. NEW SECTION. 723A.1 DEFINITIONS.

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

18 1. "Criminal acts" means any of the following or any
19 combination of the following:

20 a. An offense constituting a violation of section 204.401
21 involving a controlled substance, a counterfeit substance, or
22 a simulated controlled substance.

23 b. An offense constituting a violation of chapter 711
24 involving a robbery or extortion.

25 c. An offense constituting a violation of section 708.6
26 involving an act of terrorism.

27 d. An offense constituting a violation of section 708.8.

28 e. An offense constituting a violation of section 720.4.

29 f. Any other offense constituting a forcible felony as
30 defined in section 702.11.

31 2. "Criminal street gang" means any ongoing organization,
32 association, or group of three or more persons, whether formal
33 or informal, having as one of its primary activities the
34 commission of one or more criminal acts, which has an
35 identifiable name or identifying sign or symbol, and whose

1 members individually or collectively engage in or have engaged
2 in a pattern of criminal gang activity.

3 3. "Pattern of criminal gang activity" means the
4 commission, attempt to commit, conspiring to commit, or
5 solicitation of two or more criminal acts, provided the
6 criminal acts were committed on separate dates or by two or
7 more persons who are members of, or belong to, the same
8 criminal street gang.

9 Sec. 50. NEW SECTION. 723A.2 CRIMINAL GANG
10 PARTICIPATION.

11 A person who actively participates in or is a member of a
12 criminal street gang and who willfully aids and abets any
13 criminal act committed for the benefit of, at the direction
14 of, or in association with any criminal street gang, commits a
15 class "D" felony.

16 Sec. 51. Section 811.1, Code Supplement 1989, is amended
17 to read as follows:

18 811.1 BAILABLE AND NONBAILABLE OFFENSES.

19 All defendants are bailable both before and after
20 conviction, by sufficient surety, or subject to release upon
21 condition or on their own recognizance, except that the
22 following defendants shall not be admitted to bail:

23 1. A defendant awaiting judgment of conviction and
24 sentencing following either a plea or verdict of guilty of a
25 class "A" felony, murder, felonious assault, sexual abuse in
26 the second degree, sexual abuse in the third degree,
27 kidnapping, robbery in the first degree, arson in the first
28 degree, or burglary in the first degree, or any felony
29 included in section 204.401, subsection 1, paragraph "a".

30 2. A defendant appealing a conviction of a class "A"
31 felony, murder, felonious assault, sexual abuse in the second
32 degree, sexual abuse in the third degree, kidnapping, robbery
33 in the first degree, arson in the first degree, or burglary in
34 the first degree, or any felony included in section 204.401,
35 subsection 1, paragraph "a".

1 3. Notwithstanding subsections 1 and 2, a defendant
2 awaiting judgment of conviction and sentencing following
3 either a plea or verdict of guilty of, or appealing a
4 conviction of, a felony offense under chapter 204 not provided
5 for in subsection 1 or 2, is presumed to be ineligible to be
6 admitted to bail unless the court determines that such release
7 reasonably will not result in the person failing to appear as
8 required and will not jeopardize the personal safety of
9 another person or persons.

10 Sec. 52. Section 901.2, unnumbered paragraph 1, Code
11 Supplement 1989, is amended to read as follows:

12 Upon a plea of guilty, a verdict of guilty, or a special
13 verdict upon which a judgment of conviction of a public
14 offense may be rendered, the court shall receive from the
15 state, from the judicial district department of correctional
16 services, and from the defendant any information which may be
17 offered which is relevant to the question of sentencing. The
18 court may consider information from other sources.
19 Notwithstanding section 13.10, the court may determine if the
20 defendant shall be required to provide a physical specimen to
21 be submitted for DNA profiling if the defendant is to be
22 placed on probation or work release. The court shall consider
23 the deterrent effect of DNA profiling, the likelihood of
24 repeated violations by the defendant, and the seriousness of
25 the offense. When funds have been allocated from the general
26 fund of the state, or funds are provided by other public or
27 private sources, the court shall order DNA profiling. The
28 court shall order a presentence investigation when the offense
29 is a class "B," class "C," or class "D" felony. A presentence
30 investigation for a class "B," class "C," or class "D" felony
31 shall not be waived. The court may order, with the consent of
32 the defendant, that the presentence investigation begin prior
33 to the acceptance of a plea of guilty, or prior to a verdict
34 of guilty. The court may order a presentence investigation
35 when the offense is an aggravated or serious misdemeanor.

1 Notwithstanding section 901.3, a presentence investigation
2 ordered by the court for a serious misdemeanor shall include
3 information concerning only the following:

4 1. The defendant's characteristics, family and financial
5 circumstances, needs, and potentialities, including the
6 presence of any previously diagnosed mental disorder.

7 2. The defendant's criminal record and social history.

8 3. The harm to the victim, the victim's immediate family,
9 and the community, including any completed victim impact
10 statement or statements and restitution plan.

11 Sec. 53. Section 901.3, Code 1989, is amended by adding
12 the following new subsection:

13 NEW SUBSECTION. 7. The defendant's potential as a
14 candidate for assignment to a treatment facility pursuant to
15 section 246.513 based upon the standardized assessment
16 criteria developed by the department of corrections. The
17 presentence investigation report shall contain the assessment
18 criteria commencing January 1, 1991.

19 Sec. 54. NEW SECTION. 901.4A SUBSTANCE ABUSE EVALUATION.

20 Upon a plea of guilty, a verdict of guilty, or a special
21 verdict upon which a judgment of conviction may be rendered,
22 the court may order the defendant to submit to and complete a
23 substance abuse evaluation, if the court determines that there
24 is reason to believe that the defendant regularly abuses
25 alcohol or other controlled substances and may be in need of
26 treatment. An order made pursuant to this section may be made
27 in addition to any other sentence or order of the court.

28 Sec. 55. Section 901.5, Code 1989, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 8. The court may order the defendant to
31 complete any treatment indicated by a substance abuse
32 evaluation ordered pursuant to section 901.4A or any other
33 section.

34 Sec. 56. Section 903A.2, unnumbered paragraph 1, Code
35 1989, is amended to read as follows:

1 Each inmate of an institution under the Iowa department of
2 corrections, is eligible for a reduction of sentence of one
3 day for each day of good conduct of the inmate while committed
4 to one of the department's institutions. In addition to the
5 sentence reduction of one day for each day of good conduct,
6 each inmate is eligible for an additional reduction of
7 sentence of up to five days a month if the inmate participates
8 satisfactorily in employment in the institution, in Iowa state
9 industries, in an inmate employment program established by the
10 director, in a substance abuse program established by the
11 director, or in an inmate educational program approved by the
12 director. Reduction of sentence pursuant to this section may
13 be subject to forfeiture pursuant to section 903A.3.

14 Computation of good conduct time is subject to the following
15 conditions:

16 Sec. 57. Section 906.4, Code Supplement 1989, is amended
17 by adding the following new unnumbered paragraph:

18 NEW UNNUMBERED PARAGRAPH. The board may establish as a
19 condition of a person's parole or work release that the person
20 perform a specified number of hours of unpaid community
21 service.

22 Sec. 58. Section 906.5, Code Supplement 1989, is amended
23 to read as follows:

24 906.5 RECORD REVIEWED -- RULES.

25 1. Within Except as provided in subsection 2, within one
26 year after the commitment of a person other than a class "A"
27 felon, class "B" felon convicted of murder in the second
28 degree and serving a sentence of more than twenty-five years,
29 or a felon serving a mandatory minimum sentence, other than a
30 class "A" felon, to the custody of the director of the Iowa
31 department of corrections, a member of the board shall
32 interview the person. Thereafter, at regular intervals, not
33 to exceed one year, the board shall interview the person and
34 consider the person's prospects for parole or work release.
35 However, if the registration of a victim prohibits conducting

1 a timely interview as provided in this subsection, the
2 interview may be conducted within a reasonable period of time
3 after the one-year period or interval has expired in order to
4 provide the victim notice as provided in section 910A.10,
5 subsection 1, paragraph "a".

6 Not less than twenty days prior to conducting a hearing at
7 which the board will interview the person, the board shall
8 notify the department of corrections of the scheduling of the
9 interview, and the department shall make the person available
10 to the board at the person's institutional residence as
11 scheduled in the notice. However, if health, safety, or
12 security conditions require moving the person to another
13 institution or facility prior to the scheduled interview, the
14 department of corrections shall so notify the board.

15 2. Within six months after the commitment of a person
16 convicted of an offense under chapter 714, 715A, 716, or 716A,
17 a member of the board shall interview the person as provided
18 in subsection 1. The board shall develop a plan for the
19 purpose of early release of such persons when it is determined
20 that a person convicted of such an offense can be released
21 without detriment to the community or to the person.

22 It is the intent of the general assembly that the board
23 shall implement this plan of early release in an effort to
24 assist in controlling the prison population and assuring
25 prison space for the confinement of offenders whose release
26 would be detrimental to the citizens of this state. The board
27 shall report to the legislative fiscal bureau on a monthly
28 basis concerning the implementation of this plan and the
29 number of inmates paroled pursuant to this plan and the
30 average length of stay of those paroled.

31 3. At the time of an interview required under this
32 section, the board shall consider all pertinent information
33 regarding the person, including the circumstances of the
34 person's offense, any presentence report which is available,
35 the previous social history and criminal record of the person,

1 the person's conduct, work, and attitude in prison, and the
2 reports of physical and mental examinations that have been
3 made.

4 3 4. A person while on parole or work release is under the
5 supervision of the district department of correctional
6 services of the district designated by the board of parole.
7 The department of corrections shall prescribe rules for
8 governing persons on parole or work release. The board may
9 adopt other rules not inconsistent with the rules of the
10 department of corrections as the board deems proper or
11 necessary for the performance of its functions.

12 Sec. 59. Section 906.9, Code 1989, is amended to read as
13 follows:

14 906.9 CLOTHING, TRANSPORTATION, AND MONEY.

15 When an inmate is discharged, paroled, or placed on work
16 release, ~~or placed in a community-based correctional program~~
17 ~~under section 246.5137~~, the warden or superintendent shall
18 furnish the inmate, at state expense, appropriate clothing and
19 transportation to the place in this state indicated in the
20 inmate's discharge, parole, or work release plan, ~~or~~
21 ~~community-based corrections assignment~~. When an inmate is
22 discharged, paroled, or placed on work release, ~~or placed in a~~
23 ~~community-based correctional program under section 246.5137~~
24 the warden or superintendent shall provide the inmate, at
25 state expense, money in accordance with the following
26 schedule:

- 27 1. Upon discharge or parole, one hundred dollars.
- 28 2. Upon being placed on work release, fifty dollars.
- 29 3. Upon going from an educational work release to parole
30 or discharge, fifty dollars.

31 ~~4. Upon being placed in a community-based correctional~~
32 ~~program under section 246.5137, fifty dollars.~~

33 Those inmates receiving payment under subsection 27 or 37
34 ~~or 4~~ shall not be eligible for payment under subsection 1
35 unless they are returned to the institution. The warden or

1 superintendent shall maintain an account of all funds expended
2 pursuant to this section.

3 Sec. 60. Section 906.15, Code 1989, is amended to read as
4 follows:

5 906.15 DISCHARGE FROM PAROLE.

6 Unless sooner discharged, a person released on parole shall
7 be discharged when the person's term of parole equals the
8 period of imprisonment specified in the person's sentence,
9 less all time served in confinement. Discharge from parole
10 may be granted prior to such time, when an early discharge is
11 appropriate. The board shall periodically review all paroles,
12 and when ~~it shall determine~~ the board determines that any
13 person on parole is able and willing to fulfill the
14 obligations of a law-abiding citizen without further
15 supervision, it the board shall discharge the person from
16 parole. A parole officer shall periodically review all
17 paroles assigned to the parole officer, and when the parole
18 officer determines that any person assigned to the officer is
19 able and willing to fulfill the obligations of a law-abiding
20 citizen without further supervision, the officer may discharge
21 the person from parole after notification and approval of the
22 district director and notification of the board of parole. In
23 either any event, discharge from parole shall terminate the
24 person's sentence. However, a person convicted of a violation
25 of section 709.3, 709.4 or 709.8 committed on or with a child
26 shall not be discharged from parole until the person's term of
27 parole equals the period of imprisonment specified in the
28 person's sentence, less all time served in confinement.

29 A parole officer or the district director who acts in
30 compliance with this section is acting in the course of the
31 person's official duty and is not personally liable, either
32 civilly or criminally, for the acts of a person discharged
33 from parole by the officer after such discharge, unless the
34 discharge constitutes willful disregard of the person's duty.

35 Sec. 61. Section 907.9, Code 1989, is amended to read as

1 follows:

2 907.9 DISCHARGE FROM PROBATION.

3 At any time that the court determines that the purposes of
4 probation have been fulfilled, the court may order the
5 discharge of a person from probation. At any time that a
6 probation officer determines that the purposes of probation
7 have been fulfilled, the officer may order the discharge of a
8 person from probation after approval of the district director,
9 and notification of the sentencing court and county attorney
10 who prosecuted the case. The sentencing judge, unless the
11 judge is no longer serving or is otherwise unable to, may
12 order a hearing on its own motion, or shall order a hearing
13 upon the request of the county attorney, for review of such
14 discharge. If the sentencing judge is no longer serving or
15 unable to order such hearing, the chief judge of the district
16 or the chief judge's designee shall order any hearing pursuant
17 to this section. Following the hearing, the court shall
18 approve or rescind such discharge. If a hearing is not
19 ordered within thirty days after notification by the probation
20 officer, the person shall be discharged and the probation
21 officer shall notify the state court administrator of such
22 discharge. At the expiration of the period of probation, in
23 cases where the court fixes the term of probation, the court
24 shall order the discharge of the person from probation, and
25 the court shall forward to the governor a recommendation for
26 or against restoration of citizenship rights to that person.
27 A person who has been discharged from probation shall no
28 longer be held to answer for the person's offense. Upon
29 discharge from probation, if judgment has been deferred under
30 section 907.3, the court's criminal record with reference to
31 the deferred judgment shall be expunged. The record
32 maintained by the state court administrator as required by
33 section 907.4 shall not be expunged. The court's record shall
34 not be expunged in any other circumstances.

35 A probation officer who acts in compliance with this

1 section is acting in the course of the person's official duty
2 and is not personally liable, either civilly or criminally,
3 for the acts of a person discharged from probation by the
4 officer after such discharge, unless the discharge constitutes
5 willful disregard of the person's duty.

6 Sec. 62. Section 910.1, subsection 1, Code 1989, is
7 amended to read as follows:

8 1. "Victim" means ~~any~~ a person who has suffered pecuniary
9 damages as a result of the offender's criminal activities.
10 However, for purposes of this chapter, an insurer is not a
11 victim and does not have a right of subrogation. The crime
12 victim reparation program is not an insurer for purposes of
13 this chapter, and the right of subrogation provided by section
14 912.12 does not prohibit restitution to the crime victim
15 reparation program.

16 Sec. 63. Section 910.1, subsection 4, Code 1989, is
17 amended to read as follows:

18 4. "Restitution" means payment of pecuniary damages to a
19 victim in an amount and in the manner provided by the
20 offender's plan of restitution. Restitution ~~shall~~ also
21 ~~include~~ includes the payment of crime victim assistance
22 reimbursements, court costs, court-appointed attorney's fees
23 or the expense of a public defender, and the performance of a
24 public service by an offender in an amount set by the court
25 when the offender cannot reasonably pay all or part of the
26 court costs, court-appointed attorney's fees or the expense of
27 a public defender.

28 Sec. 64. Section 910.2, Code 1989, is amended to read as
29 follows:

30 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
31 SENTENCING COURT.

32 In all criminal cases except simple misdemeanors under
33 chapter 321, in which there is a plea of guilty, verdict of
34 guilty, or special verdict upon which a judgment of conviction
35 is rendered, the sentencing court shall order that restitution

1 be made by each offender to the victims of the offender's
2 criminal activities and, if the court so orders and to the
3 extent that the offender is reasonably able to do so, for
4 crime victim assistance reimbursement, court costs, court-
5 appointed attorney's fees or the expense of a public defender
6 when applicable. However, victims shall be paid in full
7 before restitution is paid for crime victim assistance
8 reimbursement, court costs, court-appointed attorney's fees or
9 for the expense of a public defender. In structuring a plan
10 of restitution, the court shall provide for payments in the
11 following order of priority: victim, crime victim assistance
12 reimbursement, court costs, and court-appointed attorney's
13 fees or the expense of a public defender. When the offender
14 is not reasonably able to pay all or a part of the crime
15 victim assistance reimbursement, court costs, court-appointed
16 attorney's fees or the expense of a public defender, the court
17 may require the offender in lieu of that portion of the crime
18 victim assistance reimbursement, court costs, court-appointed
19 attorney's fees, or expense of a public defender for which the
20 offender is not reasonably able to pay, to perform a needed
21 public service for a governmental agency or for a private,
22 nonprofit agency which provides a service to the youth,
23 elderly or poor of the community. When community service is
24 ordered, the court shall set a specific number of hours of
25 service to be performed by the offender. The judicial
26 district department of correctional services shall provide for
27 the assignment of the offender to a public agency or private
28 nonprofit agency to perform the required service.

29 Sec. 65. Section 910A.7A, Code Supplement 1989, is amended
30 to read as follows:

31 910A.7A NOTIFICATION BY ~~CLERK-OF-THE-SUPREME-COURT~~
32 DEPARTMENT OF JUSTICE.

33 The ~~clerk-of-the-supreme-court~~ department of justice shall
34 notify a registered victim of all dispositional orders of a
35 case currently on appeal in which the victim was involved.

1 Sec. 66. Section 912.1, subsection 3, Code Supplement
2 1989, is amended to read as follows:

3 3. "Crime" means conduct that occurs or is attempted in
4 this state, poses a substantial threat of personal injury or
5 death, and is punishable as a felony, ~~an aggravated~~
6 ~~misdemeanor~~, or a ~~serious~~ misdemeanor, or would be so
7 punishable but for the fact that the person engaging in the
8 conduct lacked the capacity to commit the crime under the laws
9 of this state. "Crime" does not include conduct arising out
10 of the ownership, maintenance, or use of a motor vehicle,
11 motorcycle, motorized bicycle, train, boat, or aircraft except
12 for violations of section 321J.2 or when the intention is to
13 cause personal injury or death. A plea or verdict of guilty
14 of a charge under section 321J.2 or a license revocation under
15 section 321J.9 or 321J.12 shall be considered by the
16 department as evidence of a violation of section 321J.2 for
17 the purposes of this chapter.

18 Sec. 67. Section 912.3, subsection 4, Code Supplement
19 1989, is amended to read as follows:

20 4. Request from the department of human services, the
21 divisions of job service and industrial services of the
22 department of employment services, the ~~attorney-general~~
23 department of public safety, the county sheriff departments,
24 the municipal police departments, the county attorneys, or
25 other public authorities or agencies reasonable assistance or
26 data necessary to administer the crime victim reparation
27 program.

28 Sec. 68. Section 912.3, subsection 7, Code Supplement
29 1989, is amended by striking the subsection.

30 Sec. 69. Section 912.5, Code Supplement 1989, is amended
31 by adding the following new subsection:

32 NEW SUBSECTION. 4. To a victim of an act committed
33 outside this state who is a resident of this state, if the act
34 would be compensable had it occurred within this state and the
35 act occurred in a state that does not have an eligible crime

1 victim compensation program, as defined in the federal Victims
2 of Crime Act of 1984, Pub. L. 98-473, section 1403(b), as
3 amended and codified in 42 U.S.C. § 10602(b).

4 Sec. 70. Section 912.6, subsection 1, Code Supplement
5 1989, is amended to read as follows:

*6 1. Reasonable charges incurred for medical care not to
7 exceed ten thousand five hundred dollars. Reasonable charges
8 incurred for mental health care not to exceed one thousand
9 five hundred dollars which includes services provided by a
10 psychologist licensed under chapter 154B, a person holding at
11 least a master's degree in social work or counseling and
12 guidance, or a victim counselor as defined in section 236A.1.

13 Sec. 71. Section 912.6, subsections 2 and 3, Code
14 Supplement 1989, are amended by striking the subsections.

15 Sec. 72.

16 A pilot program shall be established for the purpose of
17 determining the extent of drug and alcohol use and abuse among
18 persons arrested for felony offenses, of determining whether
19 there is any correlation between drug and alcohol abuse and
20 crime in this state, for developing data comparing rural and
21 urban areas in this state, and for developing a comparison
22 with similar data collected in other states. The program
23 shall be under the direction of the drug enforcement and abuse
24 prevention coordinator who shall adopt rules in consultation
25 with the department of public safety to accomplish the
26 purposes as provided in this section.

27 A peace officer who arrests a person for a felony offense
28 shall request the withdrawal of specimens of the person's
29 blood, breath, or urine for the purpose of administering one
30 or more tests to determine alcohol concentration or the
31 presence of drugs. The person arrested shall consent to such
32 withdrawal unless the presence of alcohol or a drug in the
33 person is a necessary element of the offense charged. Where
34 the presence of alcohol or a drug in the person is a necessary
35 element of the offense charged, existing provisions relating

1 to the request for, and taking of, a specimen shall apply. If
2 the presence of alcohol or a drug is not a necessary element
3 of the offense charged, the person shall submit to the
4 withdrawal and the specimen shall be taken pursuant to section
5 321J.11. The results of a test taken pursuant to this section
6 shall not be used in any prosecution of the offense charged
7 and shall not be recorded on the criminal record of the person
8 tested or identified in any way such that the person tested
9 can be identified. The test results shall be identified as to
10 the offense charged, the place of the arrest, the type of drug
11 involved, and the concentration level of the drug.

12 Sec. 73.

13 Chapter 421A, as enacted in this Act, takes effect
14 September 1, 1990.

15 Sec. 74.

16 The Code editor shall redesignate sections 321L.1 and
17 321L.2, as enacted in this Act, in a new or different chapter
18 so that these sections do not conflict with sections 321L.1
19 and 321L.2 as enacted during the 1989 session of the general
20 assembly and as appear in the 1989 Code Supplement.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE AMENDMENT TO
SENATE FILE 2413

S-5888

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "Sec. ____ . Section 22.7, subsection 18, paragraph
6 c, Code Supplement 1989, is amended to read as
7 follows:

8 c. Information contained in the communication is a
9 public record to the extent that it indicates the
10 date, time, specific location, and immediate facts and
11 circumstances surrounding the occurrence of a crime or
12 other illegal act, except to the extent that its
13 disclosure would plainly and seriously jeopardize a
14 continuing investigation, or would pose a clear and
15 present danger to the safety of any person, or would
16 reveal, prior to the filing of an information or
17 indictment as provided in section 802.8, the residence
18 or business address or telephone number of any victim
19 or witness to a violent crime against a person or a
20 crime using a dangerous weapon, as defined in section
21 702.7. In any action challenging the failure of the
22 lawful custodian to disclose any particular
23 information of the kind enumerated in this paragraph,
24 the burden of proof is on the lawful custodian to
25 demonstrate that the disclosure of that information
26 would jeopardize such an investigation, or would pose
27 such a clear and present danger, or would reveal such
28 identifying information prior to the filing of an
29 information or indictment. The communication shall be
30 disclosed after removal of the information which is
31 not to be disclosed pursuant to this paragraph."

32 2. Page 1, line 24, by inserting after the word
33 "services" the following: ", or an inmate providing
34 services pursuant to a chapter 28E agreement entered
35 into pursuant to section 246.703,".

36 3. Page 1, line 32, by inserting after the word
37 "services," the following: "or an inmate providing
38 services pursuant to a chapter 28E agreement entered
39 into pursuant to section 246.703,".

40 4. Page 2, line 7, by inserting after the word
41 "services," the following: "or in connection with the
42 provision of services pursuant to a chapter 28E
43 agreement entered into pursuant to section 246.703,".

44 5. Page 2, line 25, by inserting after the word
45 "services," the following: "or in connection with the
46 provision of services pursuant to a chapter 28E
47 agreement entered into pursuant to section 246.703,".

48 6. By striking page 2, line 29 through page 3,
49 line 8.

50 7. Page 3, line 13, by striking the word

S-5888

Page 2

1 "counterfiet" and inserting the following:

2 "counterfeit".

3 8. Page 3, by striking lines 19 through 21, and
4 inserting the following: "private elementary,
5 vocational, or secondary school, or a public or
6 private college, junior college, or university, or
7 within one hundred feet of a public park, playground,
8 public or private youth center, public swimming pool,
9 or video arcade facility, may, at the judge's
10 discretion, be sentenced up to an additional term of
11 confinement".

12 9. Page 3, by striking lines 31 and 32, and
13 inserting the following: "private elementary,
14 vocational, or secondary school, or a public or
15 private college, junior college, or university, or
16 within one hundred feet of a public park, playground,
17 public or private youth center, public swimming pool,
18 or video arcade facility, the person shall serve a".

19 10. Page 4, by striking lines 8 and 9 and
20 inserting the following: "elementary, vocational, or
21 secondary school, or a public or private college,
22 junior college, or university, or within one hundred
23 feet of a public park, playground, public or private
24 youth center, public swimming pool, or video arcade
25 facility, the person shall serve a minimum".

26 11. Page 4, by striking lines 11 through 24.

27 12. Page 4, by inserting after line 32 the
28 following:

29 "Sec. . . . NEW SECTION. 204.701 DRUG-RELATED
30 OBJECTS USED IN VIOLATION OF CHAPTER.

31 1. As used in this section, "drug-related object"
32 means a raw material, instrument, device, article,
33 contrivance, or other object commonly used to plant,
34 propagate, cultivate, grow, harvest, manufacture,
35 compound, convert, produce, process, prepare, test,
36 analyze, pack, repack, store, contain, conceal,
37 inject, ingest, inhale, or otherwise introduce into
38 the human body a controlled substance. Drug-related
39 object includes but is not limited to:

40 a. Kits commonly used in planting, propagating,
41 cultivating, growing, or harvesting a species of plant
42 which is a controlled substance or from which a
43 controlled substance can be derived.

44 b. Kits commonly used in manufacturing,
45 compounding, converting, producing, processing, or
46 preparing controlled substances.

47 c. Isomerization devices commonly used in
48 increasing the potency of a species of plant which is
49 a controlled substance.

50 d. Testing equipment commonly used in identifying,

S-5888

Page 3

- 1 or in analyzing the strength, effectiveness, or purity
- 2 of a controlled substance.
- 3 e. Scales and balances commonly used in weighing
- 4 or measuring a controlled substance.
- 5 f. Diluents and adulterants, such as quinine
- 6 hydrochloride, mannitol, mannite, dextrose, and
- 7 lactose, commonly used in cutting a controlled
- 8 substance.
- 9 g. Separation gins and sifters commonly used in
- 10 removing twigs and seeds from, or in otherwise
- 11 cleaning or refining, marijuana.
- 12 h. Blenders, bowls, containers, spoons, and mixing
- 13 devices commonly used in compounding a controlled
- 14 substance.
- 15 i. Capsules, balloons, envelopes, and other
- 16 containers commonly used in packaging small quantities
- 17 of a controlled substance.
- 18 j. Containers and other objects commonly used in
- 19 storing or concealing a controlled substance.
- 20 k. Hypodermic syringes, needles, and other objects
- 21 commonly used in parenterally injecting a controlled
- 22 substance into the human body.
- 23 l. Objects commonly used in ingesting, inhaling,
- 24 or otherwise introducing marijuana, cocaine, hashish,
- 25 or hashish oil into the human body, such as:
- 26 (1) Metal, wooden, acrylic, glass, stone, plastic,
- 27 or ceramic pipes with or without screens, permanent
- 28 screens, hashish heads, or punctured metal bowls.
- 29 (2) Water pipes.
- 30 (3) Carburetion tubes and devices.
- 31 (4) Smoking and carburetion masks.
- 32 (5) Roach clips, meaning objects commonly used to
- 33 hold burning material, such as a marijuana cigarette,
- 34 that has become too small or too short to be held in
- 35 the hand.
- 36 (6) Miniature cocaine spoons, and cocaine vials.
- 37 (7) Chamber pipes.
- 38 (8) Carburetor pipes.
- 39 (9) Electric pipes.
- 40 (10) Air-driven pipes.
- 41 (11) Chillums.
- 42 (12) Bongs.
- 43 (13) Ice pipes or chillers.
- 44 2. In determining whether an object is commonly
- 45 used in connection with a controlled substance, a
- 46 court or other authority may consider, in addition to
- 47 all other logically relevant factors, the following:
- 48 a. Statements by an owner or by anyone in control
- 49 of the object concerning its use.
- 50 b. A prior conviction of an owner or of anyone in

S-5888

Page 4

1 control of the object under a state or federal law
2 relating to a controlled substance.
3 c. The proximity of the object, in time and space,
4 to a direct violation of this chapter.
5 d. The proximity of the object to a controlled
6 substance.
7 e. The existence of a residue of a controlled
8 substance on the object.
9 f. Instructions, oral or written, provided with
10 the object concerning its use.
11 g. Descriptive materials accompanying the object
12 which explain or depict its use.
13 h. National and local advertising concerning its
14 use.
15 i. The manner in which the object is displayed for
16 sale.
17 j. Whether the owner, or anyone in control of the
18 object, is a legitimate supplier of similar or related
19 items to the community, such as a licensed distributor
20 or dealer of tobacco products.
21 k. Direct or circumstantial evidence of the ratio
22 of sales of the object to the total sales of the
23 business enterprise.
24 l. The existence and scope of legitimate uses for
25 the object in the community.
26 m. Expert testimony concerning its use.
27 3. a. A person shall not use or possess with
28 intent to use a drug-related object to plant,
29 propagate, cultivate, grow, harvest, manufacture,
30 compound, convert, produce, process, prepare, test,
31 analyze, pack, repack, store, contain, conceal,
32 inject, ingest, inhale, or otherwise introduce into
33 the human body a controlled substance in violation of
34 this chapter. A person who violates this paragraph is
35 guilty of a simple misdemeanor.
36 b. A person shall not deliver, possess with intent
37 to deliver, or manufacture with intent to deliver, a
38 drug-related object intending that the object will be
39 used, and knowing, or under circumstances where one
40 reasonably should know, that the object will be used
41 to plant, propagate, cultivate, grow, harvest,
42 manufacture, compound, convert, produce, process,
43 prepare, test, analyze, pack, repack, store, contain,
44 conceal, inject, ingest, inhale, or otherwise
45 introduce into the human body a controlled substance
46 in violation of this chapter. A person eighteen years
47 of age or older who violates this paragraph by
48 delivering a drug-related object to a person under
49 eighteen years of age who is at least three years
50 younger than the person delivering the drug-related

S-5888

Page 5

1 object is guilty of an aggravated misdemeanor. Any
2 other person who violates this paragraph is guilty of
3 a serious misdemeanor.
4 c. A person shall not deliver, possess with intent
5 to deliver, or manufacture with intent to deliver, a
6 drug-related object which has no common use other than
7 its use in connection with the use of a controlled
8 substance in violation of this chapter, knowing, or
9 under circumstances where one reasonably should know,
10 that the object will be used to plant, propagate,
11 cultivate, grow, harvest, manufacture, compound,
12 convert, produce, process, prepare, test, analyze,
13 pack, repack, store, contain, conceal, inject, ingest,
14 inhale, or otherwise introduce into the human body a
15 controlled substance in violation of this chapter. A
16 person eighteen years of age or older who violates
17 this paragraph by delivering a drug-related object,
18 which has no common use other than its use in
19 connection with the use of a controlled substance in
20 violation of this chapter, to a person under eighteen
21 years of age who is at least three years younger than
22 the person delivering the drug-related object is
23 guilty of an aggravated misdemeanor. Any other person
24 who violates this paragraph is guilty of a serious
25 misdemeanor.

26 d. A person shall not place an advertisement in a
27 newspaper, magazine, handbill, or other publication,
28 intending, and knowing, or under circumstances where
29 one reasonably should know, that the purpose of the
30 advertisement, taken as a whole, is to promote the
31 sale in this state of a drug-related object that will
32 be used to plant, propagate, cultivate, grow, harvest,
33 manufacture, compound, convert, produce, process,
34 prepare, test, analyze, pack, repack, store, contain,
35 conceal, inject, ingest, inhale, or otherwise
36 introduce into the human body a controlled substance
37 in violation of this chapter. A person who violates
38 this paragraph is guilty of a serious misdemeanor."

39 13. Page 9, line 17, by striking the word "--
40 PENALTY" and inserting the following: "-- PENALTY".

41 14. Page 10, by inserting after line 28, the
42 following:

43 "Sec. ____ . Section 232.2, subsection 6, paragraph
44 d, Code Supplement 1989, is amended to read as
45 follows:

46 d. Who has been, or is imminently likely to be,
47 sexually abused by the child's parent, guardian,
48 custodian or other member of the household in which
49 the child resides.

50 Sec. ____ . Section 232.8, subsection 1, unnumbered

S-5888

Page 6

1 paragraph 2, Code 1989, is amended to read as follows:
2 Violations by a child of provisions of chapter 106,
3 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G
4 which would be simple misdemeanors if committed by an
5 adult, and violations by a child of county or
6 municipal curfew or traffic ordinances, ~~and violations~~
7 ~~by a child of section 123.47,~~ are excluded from the
8 jurisdiction of the juvenile court and shall be
9 prosecuted as simple misdemeanors as provided by law.
10 ~~The court may advise appropriate juvenile authorities~~
11 ~~and may refer violations of section 123.47 to the~~
12 ~~juvenile court when there is reason to believe the~~
13 ~~child regularly abuses alcohol and may be in need of~~
14 ~~treatment.--The court shall notify the parents or~~
15 ~~legal guardians of a child who appears before it for a~~
16 ~~violation of section 123.47.~~ A child convicted of a
17 violation excluded from the jurisdiction of the
18 juvenile court under this unnumbered paragraph shall
19 be sentenced pursuant to section 805.8, where
20 applicable, and pursuant to section 903.1, subsection
21 3, for all other violations."

22 15. Page 11, by inserting after line 5, the
23 following:

24 "Sec. ____ . Section 232.19, Code 1989, is amended
25 by adding the following new subsection:

26 NEW SUBSECTION. 3. Notwithstanding any other
27 provision of this chapter, a child shall not be placed
28 in detention as a result of a violation by that child
29 of section 123.47."

30 16. Page 11, line 11, by inserting after the word
31 "alcohol" the following: "or controlled substance".

32 17. Page 11, by inserting after line 19, the
33 following:

34 "Sec. ____ . Section 232.82, Code 1989, is amended
35 to read as follows:

36 232.82 REMOVAL OF SEXUAL OFFENDERS AND PHYSICAL
37 ABUSERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

38 1. Notwithstanding section 561.15, if it is
39 alleged by a person authorized to file a petition
40 under section 232.87, subsection 2, or by the court on
41 its own motion, that a parent, guardian, custodian, or
42 an adult member of the household in which a child
43 resides has committed a sexual offense with or against
44 the child, pursuant to chapter 709 or section 726.2,
45 or a physical abuse as defined by section 232.2,
46 subsection 38, the juvenile court may enter an ex
47 parte order requiring the alleged sexual offender or
48 physical abuser to vacate the child's residence upon a
49 showing that probable cause exists to believe that the
50 sexual offense or physical abuse has occurred and that

S-5888

Page 7

1 substantial evidence exists to believe that the
2 presence of the alleged sexual offender or physical
3 abuser in the child's residence presents a danger to
4 the child's life or physical, emotional, or mental
5 health.

6 2. If an order is entered under subsection 1 and a
7 petition has not yet been filed under this chapter,
8 the petition shall be filed under section 232.87 by
9 the county attorney, the department of human services,
10 or a juvenile court officer within three days of the
11 entering of the order.

12 3. The juvenile court may order on its own motion,
13 or shall order upon the request of the alleged sexual
14 offender or physical abuser, a hearing to determine
15 whether the order to vacate the residence should be
16 upheld, modified, or vacated. The juvenile court may
17 in any later child in need of assistance proceeding
18 uphold, modify, or vacate the order to vacate the
19 residence.

20 Sec. ____ . Section 232.116, subsection 1, Code
21 Supplement 1989, is amended by adding a new paragraph:
22 NEW PARAGRAPH. 1. The court finds that both of
23 the following have occurred:

24 (1) The child has been adjudicated a child in need
25 of assistance pursuant to section 232.96 after finding
26 that the child has been physically or sexually abused
27 as a result of the acts or omissions of a parent.

28 (2) The parent found to have physically or
29 sexually abused the child has been imprisoned for such
30 abuse against the child, the child's sibling, or any
31 other child in the household and the court finds it is
32 unlikely that the parent will be released within five
33 years."

34 18. Page 11, line 22, by striking the word
35 "shall" and inserting the following: "may".

36 19. Page 11, by striking line 23, and inserting
37 the following: "of suitable space and reading
38 material for inmates. For purposes of this section,
39 "suitable reading materials" does not include material
40 depicting or describing the genitals, sex acts,
41 masturbation, excretory functions, or sadomasochistic
42 abuse which the average person, taking the material as
43 a whole and applying contemporary community standards
44 with respect to what is suitable material for inmates,
45 would find appeals to the prurient interest and is
46 patently offensive; and the material, taken as a
47 whole, lacks serious literary, scientific, political,
48 or artistic value. The director shall consider if the
49 availability or possession of the material represents
50 a potential danger to inmates, the community, or to

S-5888

Page 8

1 personnel of the department of corrections. The".

2 20. By striking page 11, line 27, through page
3 12, line 14.

4 21. Page 12, by inserting after line 14, the
5 following:

6 "Sec. _____. Section 246.514, unnumbered paragraph
7 2, Code 1989, is amended to read as follows:

8 "Failure to comply with an order issued pursuant to
9 this section may result in the forfeiture of good
10 conduct time, not to exceed one year, earned up to the
11 time of the failure to comply. If good conduct time
12 has not been earned, the person may be determined to
13 be ineligible by the department to earn good conduct
14 time for a period of up to three months."

15 22. Page 12, by inserting after line 14, the
16 following:

17 "Sec. _____. Section 246.703, Code 1989, is amended
18 by adding the following new unnumbered paragraph:

19 NEW UNNUMBERED PARAGRAPH. The director may enter
20 into a chapter 28E agreement with a county board of
21 supervisors or county conservation board to provide
22 inmate services for environmental maintenance
23 including but not limited to brush and weed cutting,
24 tree planting, and erosion control. The board of
25 supervisors or conservation board shall reimburse the
26 department of corrections for the allowance paid the
27 inmates by the director. The supervision, security,
28 and transportation of inmates used pursuant to the
29 chapter 28E agreement shall be provided by the
30 department of corrections."

31 23. Page 12, by striking line 20, and inserting
32 the following: "sentence performing labor in the
33 program. Duties, if possible, shall consist of
34 physical labor outside in plain view of the public.
35 However, an inmate shall not be required to perform
36 work which is beyond an inmate's physical ability,
37 which constitutes a physical hardship, or which is
38 dangerous or threatening to the inmate's life or
39 health, medically prohibited, or unduly painful."

40 24. Page 12, by inserting after line 20, the
41 following:

42 "Sec. 101. Section 321.85, Code 1989, is amended
43 to read as follows:

44 321.85 STOLEN VEHICLES OR COMPONENT PARTS.

45 1. When a vehicle or component part is seized
46 under section 321.84 or is stolen or embezzled, and is
47 not claimed by the owner before the date on which the
48 person charged with its stealing or embezzling is
49 convicted, the officer having the vehicle or component
50 part in the officer's custody shall, on that date by

S-5888

Page 9

1 certified regular mail, notify the department that the
2 officer has the vehicle or component part in the
3 officer's possession, giving a full and complete
4 description of it, including all vehicle
5 identification numbers and component part numbers. If
6 there is a dispute regarding a claim for the vehicle
7 or component part, the agency holding the vehicle or
8 component part shall conduct an evidentiary hearing to
9 adjudicate the claim.

10 2. If a person claims to be the owner, and there
11 is a dispute as to the claim, the department shall
12 hold an evidentiary hearing within thirty days of
13 receiving the claim. If it is shown that the vehicle
14 or component part is needed as evidence in a criminal
15 prosecution or that further investigation is needed to
16 identify the vehicle or part or its owner, the hearing
17 shall be continued a reasonable amount of time for the
18 completion of the prosecution or investigation. If
19 the person from whom the vehicle or part was seized
20 establishes ownership of a vehicle or part, the
21 vehicle or part shall be returned to the person
22 without imposition of towing or storage fees.

23 3. A claimant may establish ownership of a motor
24 vehicle by demonstrating any of the following:

25 a. That the claimant is the holder of a valid
26 certificate of title, including rebuilt vehicle title,
27 or junking certificate which in fact corresponds to
28 all component parts of the vehicle, or by other
29 competent evidence. Ownership shall not be denied if
30 the only parts bearing numbers not corresponding to
31 the title are those found on the engine, door, or
32 fender of the vehicle unless the numbers are the
33 public vehicle identification number. However, if the
34 claimant cannot establish ownership of the engine,
35 door, or fender pursuant to subsection 4, the part
36 shall not be returned to the claimant. Numbers on
37 motorcycle engine cases are not engine numbers for
38 purposes of this paragraph.

39 b. That the claimant is the owner of all component
40 parts of the vehicle as set forth in subsection 4.

41 c. That the claimant is the legal owner of the
42 vehicle under the laws of another state if the vehicle
43 is registered or titled in that other state.

44 4. A claimant may establish ownership of a
45 component part by demonstrating that the claimant
46 holds a valid certificate of title or junking
47 certificate for the vehicle on which the part was
48 initially installed by the manufacturer, or was placed
49 in accordance with a valid rebuilt vehicle title, or
50 by evidence of a legitimate unbroken chain of

S-5888

Page 10

1 ownership of the part back to the holder of such title
2 or certificate, or by other competent evidence.
3 Ownership of component parts on which the numbers have
4 been altered, defaced, switched, removed, or otherwise
5 disguised shall not be established unless there is
6 sufficient competent or physical evidence identifying
7 it as part of a vehicle owned by the claimant.

8 5. If a claimant establishes ownership of a
9 vehicle, the entire vehicle shall be awarded to the
10 claimant, unless ownership of a door or fender or of
11 the engine is established in another person, in which
12 case that part shall be awarded to that person. If
13 ownership of a vehicle is not established, the
14 component parts shall be awarded to the claimants
15 establishing title to the parts.

16 6. The final decision shall be served by certified
17 mail upon the persons found to be owners of vehicles
18 or parts, and shall notify such persons that the
19 vehicle or part is no longer needed for prosecution or
20 investigation and that they have forty-five days to
21 retrieve the vehicle or part from the agency having
22 custody of the vehicle or part. Failure to do so
23 shall result in the vehicle or part being deemed
24 abandoned for purposes of section 321.89.

25 7. If the ownership of a vehicle or part cannot be
26 established, the agency having custody of the vehicle
27 or part shall proceed as directed in sections 321.86
28 through 321.89.

29 Sec. 102. Section 321.88, Code 1989, is amended to
30 read as follows:

31 321.88 FAILURE OF OWNER TO CLAIM.

32 If the owner does not appear within ~~forty~~ forty-
33 five days, the motor vehicle or component part shall
34 be deemed abandoned and the officer having possession
35 of the motor vehicle or component part shall proceed
36 as provided in section 321.89, subsections 3 and 4.

37 Sec. 103. Section 321.89, Code 1989, is amended by
38 adding the following new subsection:

39 NEW SUBSECTION. 5. Component parts not claimed by
40 an owner as provided in section 321.88 shall be
41 disposed of as provided in subsections 3 and 4."

42 25. Page 12, by striking lines 21 through 26 and
43 inserting the following:

44 "Sec. ____ . NEW SECTION. 321L.1 DEFINITIONS.

45 As used in this chapter unless the context
46 otherwise requires:

47 1. "Alcohol concentration" means the number of
48 grams of alcohol per any of the following:

- 49 a. One hundred milliliters of blood.
50 b. Two hundred ten liters of breath.

S-5888

Page 11

1 c. Sixty-seven milliliters of urine.

2 2. "Alcoholic beverage" includes alcohol, wine,
3 spirits, beer, or any other beverage which contains
4 ethyl alcohol and is fit for human consumption.

5 3. "Arrest" includes but is not limited to taking
6 into custody pursuant to section 232.19.

7 4. "Department" means the state department of
8 transportation.

9 5. "Director" means the director of transportation
10 or the director's designee.

11 6. "Motor vehicle license" means any license or
12 permit issued to a person to operate a motor vehicle
13 in this state, including but not limited to an
14 operator, chauffeur, or motorized bicycle license and
15 an instruction or temporary permit.

16 7. "Peace officer" means:

17 a. A member of the highway patrol.

18 b. A police officer under civil service as
19 provided in chapter 400.

20 c. A sheriff.

21 d. A regular deputy sheriff who has had formal
22 police training.

23 e. Any other law enforcement officer who has
24 satisfactorily completed an approved course relating
25 to motor vehicle operators under the influence of
26 alcoholic beverages at the Iowa law enforcement
27 academy or a law enforcement training program approved
28 by the department of public safety.

29 8. "Serious injury" means a bodily injury which
30 creates a substantial risk of death, or which causes
31 serious permanent disfigurement, or which causes
32 protracted loss or impairment of the function of any
33 bodily organ or major bodily member, or which causes
34 the loss of any bodily member."

35 26. Page 12, line 27, by striking the figure
36 "321L.1" and inserting the following: "321L.1A".

37 27. Page 12, line 32, by striking the figure
38 "321J.2" and inserting the following: "321L.2A".

39 28. Page 13, by striking lines 10 through 28, and
40 inserting the following:

41 "Failure to attend or complete a course for
42 drinking drivers, or a substance abuse treatment
43 program as ordered by the court is punishable as
44 contempt of court."

45 29. Page 13, by inserting after line 28 the
46 following:

47 "Sec. ____ . NEW SECTION. 321L.2A OPERATING WHILE
48 UNDER THE INFLUENCE OF ALCOHOL OR A DRUG OR WHILE
49 HAVING AN ALCOHOL CONCENTRATION OF .08 OR MORE. (OWI)

50 1. A person commits the offense of operating while

S-5888

Page 12

1 intoxicated if the person operates a motor vehicle in
2 this state in either of the following conditions:
3 a. While under the influence of an alcoholic
4 beverage or other drug or a combination of such
5 substances.
6 b. While having an alcohol concentration as
7 defined in section 321L.2 of .08 or more.
8 2. A person who violates this section commits:
9 a. A serious misdemeanor for the first offense and
10 shall be imprisoned in the county jail for not less
11 than forty-eight hours to be served as ordered by the
12 court, less credit for any time the person was
13 confined in a jail or detention facility following
14 arrest, and assessed a fine of not less than five
15 hundred dollars nor more than one thousand dollars.
16 As an alternative to a portion or all of the fine, the
17 court may order the person to perform not more than
18 two hundred hours of unpaid community service. The
19 court may accommodate the sentence to the work
20 schedule of the defendant.
21 b. An aggravated misdemeanor for a second offense
22 and shall be imprisoned in the county jail or
23 community-based correctional facility not less than
24 seven days, which minimum term cannot be suspended
25 notwithstanding section 901.5, subsection 3 and
26 section 907.3, subsection 3, and assessed a fine of
27 not less than seven hundred fifty dollars.
28 c. A class "D" felony for a third offense and each
29 subsequent offense and shall be imprisoned in the
30 county jail for a determinate sentence of not more
31 than one year but not less than thirty days, or
32 committed to the custody of the director of the
33 department of corrections, and assessed a fine of not
34 less than seven hundred fifty dollars. The minimum
35 jail term of thirty days cannot be suspended
36 notwithstanding section 901.5, subsection 3, and
37 section 907.3, subsection 3, however, the person
38 sentenced shall receive credit for any time the person
39 was confined in a jail or detention facility following
40 arrest. If a person is committed to the custody of
41 the director of the department of corrections pursuant
42 to this paragraph and the sentence is suspended, the
43 sentencing court shall order that the offender serve
44 the thirty-day minimum term in the county jail. If
45 the sentence which commits the person to the custody
46 of the director of the department of corrections is
47 later imposed by the court, all time served in a
48 county jail toward the thirty-day minimum term shall
49 count as time served toward the sentence which
50 committed the person to the custody of the director of

S-5888

Page 13

1 the department of corrections. A person convicted of
2 a second or subsequent offense shall be ordered to
3 undergo a substance abuse evaluation prior to
4 sentencing. If a person is convicted of a third or
5 subsequent offense or if the evaluation recommends
6 treatment, the offender may be committed to the
7 custody of the director of the department of
8 corrections, who, if the sentence is not suspended,
9 shall assign the person to a facility pursuant to
10 section 246.513 or the offender may be committed to
11 treatment in the community under the provisions of
12 section 907.6.

13 3. No conviction for, deferred judgment for, or
14 plea of guilty to, a violation of this section which
15 occurred more than six years prior to the date of the
16 violation charged shall be considered in determining
17 that the violation charged is a second, third, or
18 subsequent offense. For the purpose of determining if
19 a violation charged is a second, third, or subsequent
20 offense, deferred judgments pursuant to section 907.3
21 for violations of this section and convictions or the
22 equivalent of deferred judgments for violations in any
23 other states under statutes substantially
24 corresponding to this section shall be counted as
25 previous offenses. The courts shall judicially notice
26 the statutes of other states which define offenses
27 substantially equivalent to the one defined in this
28 section and can therefore be considered corresponding
29 statutes. Each previous violation shall be considered
30 a separate previous offense without regard to whether
31 each was complete as to commission and conviction or
32 deferral of judgment following or prior to any other
33 previous violation.

34 4. A person shall not be convicted and sentenced
35 for more than one violation of this section if the
36 violation is shown to have been committed by either or
37 both of the means described in subsection 1 in the
38 same occurrence.

39 5. The clerk of court shall immediately certify to
40 the department a true copy of each order entered with
41 respect to deferral of judgment, deferral of sentence
42 or pronouncement of judgment and sentence for a
43 defendant under this section.

44 6. This section does not apply to a person
45 operating a motor vehicle while under the influence of
46 a drug if the substance was prescribed for the person
47 and was taken under the prescription and in accordance
48 with the directions of a medical practitioner as
49 defined in chapter 155A, if there is no evidence of
50 the consumption of alcohol and the medical

S-5888

Page 14

1 practitioner had not directed the person to refrain
2 from operating a motor vehicle.

3 7. In any prosecution under this section, evidence
4 of the results of analysis of a specimen of the
5 defendant's blood, breath, or urine is admissible upon
6 proof of a proper foundation. The alcohol
7 concentration established by the results of an
8 analysis of a specimen of the defendant's blood,
9 breath, or urine withdrawn within two hours after the
10 defendant was driving or in physical control of a
11 motor vehicle is presumed to be the alcohol
12 concentration at the time of driving or being in
13 physical control of the motor vehicle.

14 8. The court shall order a defendant convicted of
15 or receiving a deferred judgment for a violation of
16 this section to make restitution, in an amount not to
17 exceed two thousand dollars, for damages resulting
18 directly from the violation. An amount paid pursuant
19 to this restitution order shall be credited toward any
20 adverse judgment in a subsequent civil proceeding
21 arising from the same occurrence. However, other than
22 establishing a credit, a restitution proceeding
23 pursuant to this section shall not be given
24 evidentiary or preclusive effect in a subsequent civil
25 proceeding arising from the same occurrence.

26 9. In any prosecution under this section, the
27 results of a chemical test may not be used to prove a
28 violation of paragraph "b" of subsection 1 if the
29 alcohol concentration indicated by the chemical test
30 minus the established margin of error inherent in the
31 device or method used to conduct the chemical test
32 does not equal an alcohol concentration of .08 or
33 more.

34 Sec. . NEW SECTION. 321L.3 COURT ORDERED
35 SUBSTANCE ABUSE EVALUATION OR TREATMENT.

36 1. On a conviction for a violation of section
37 321L.2A, the court may order the defendant to attend a
38 course for drinking drivers under section 321L.22. If
39 the defendant submitted to a chemical test on arrest
40 for the violation of section 321L.2A and the test
41 indicated an alcohol concentration of .20 or higher,
42 or if the defendant is charged with a second or
43 subsequent offense, the court shall order the
44 defendant, on conviction, to undergo a substance abuse
45 evaluation and the court may order the defendant to
46 follow the recommendations proposed in the substance
47 abuse evaluation for appropriate substance abuse
48 treatment for the defendant. Court-ordered substance
49 abuse treatment is subject to the periodic reporting
50 requirements of section 125.86. If a defendant is

S-5888

Page 15

1 committed by the court to a substance abuse treatment
2 facility, the administrator of the facility shall
3 report to the court when it is determined that the
4 defendant has received the maximum benefit of
5 treatment at the facility and the defendant shall be
6 released from the facility. The time for which the
7 defendant is committed for treatment shall be credited
8 against the defendant's sentence. The court may
9 prescribe the length of time for the evaluation and
10 treatment or it may request that the area school
11 conducting the course for drinking drivers which the
12 person is ordered to attend or the treatment program
13 to which the person is committed immediately report to
14 the court when the person has received maximum benefit
15 from the course for drinking drivers or treatment
16 program or has recovered from the person's addiction,
17 dependency, or tendency to chronically abuse alcohol
18 or drugs. A person committed under this section who
19 does not possess sufficient income or estate to make
20 payment of the costs of the treatment in whole or in
21 part shall be considered a state patient and the costs
22 of treatment shall be paid as provided in section
23 125.44. A defendant who fails to carry out the order
24 of the court or who fails to successfully complete or
25 attend a course for drinking drivers or an ordered
26 substance abuse treatment program shall be confined in
27 the county jail for twenty days in addition to any
28 other imprisonment ordered by the court or may be
29 ordered to perform unpaid community service work, and
30 shall be placed on probation for one year with a
31 violation of this probation punishable as contempt of
32 court.

33 2. As a condition of a suspended sentence or
34 portion of sentence for a second, third, or subsequent
35 offense in violation of section 321L.2A, the court
36 upon hearing may commit the defendant for inpatient
37 treatment of alcoholism or drug addiction or
38 dependency to any hospital, institution, or community
39 correctional facility in Iowa providing such
40 treatment. The time for which the defendant is
41 committed for treatment shall be credited against the
42 defendant's sentence. The court may prescribe the
43 length of time for the evaluation and treatment or it
44 may request that the hospital to which the person is
45 committed immediately report to the court when the
46 person has received maximum benefit from the program
47 of the hospital or institution or has recovered from
48 the person's addiction, dependency, or tendency to
49 chronically abuse alcohol or drugs. A person
50 committed under this section who does not possess

S-5888

Page 16

1 sufficient income or estate to make payment of the
2 costs of the treatment in whole or in part shall be
3 considered a state patient and the costs of treatment
4 shall be paid as provided in section 125.44.

5 Sec. ____ . NEW SECTION. 321L.4 REVOCATION OF
6 LICENSE -- IGNITION INTERLOCK DEVICES -- CONDITIONAL
7 TEMPORARY RESTRICTED LICENSE.

8 1. If a defendant is convicted of a violation of
9 section 321L.2A and the defendant's motor vehicle
10 license or nonresident operating privilege has not
11 been revoked under section 321L.9 or 321L.12 for the
12 occurrence from which the arrest arose, the department
13 shall revoke the defendant's motor vehicle license or
14 nonresident operating privilege for one hundred eighty
15 days if the defendant has had no previous conviction
16 under section 321L.2A or revocation under section
17 321L.9 or 321L.12 within the previous six years and
18 for one year if the defendant has had one or more
19 previous convictions or revocations under those
20 sections within the previous six years.

21 2. If the court defers judgment pursuant to
22 section 907.3 for a violation of section 321L.2A, the
23 court shall order the department to revoke the
24 defendant's motor vehicle license or nonresident
25 operating privilege for a period of not less than
26 thirty days nor more than ninety days if the
27 defendant's motor vehicle license or nonresident
28 operating privilege has not been revoked under section
29 321L.9 or 321L.12 for the occurrence from which the
30 arrest arose. The court shall immediately require the
31 defendant to surrender to it all Iowa licenses or
32 permits held by the defendant, which the court shall
33 forward to the department with a copy of the order
34 deferring judgment.

35 3. a. Upon a plea or verdict of guilty of a third
36 or subsequent violation of section 321L.2A, the court
37 shall order the department to revoke the defendant's
38 motor vehicle license or nonresident operating
39 privilege for a period of six years. The court shall
40 require the defendant to surrender to it all Iowa
41 licenses or permits held by the defendant, which the
42 court shall forward to the department with a copy of
43 the order for revocation.

44 b. After two years from the date of the order for
45 revocation, the defendant may apply to the court for
46 restoration of the defendant's eligibility for a motor
47 vehicle license. The application may be granted only
48 if all of the following are shown by the defendant by
49 a preponderance of the evidence:

50 (1) The defendant has completed an evaluation and,

S-5888

Page 17

1 if recommended by the evaluation, a program of
2 treatment for chemical dependency and is recovering,
3 or has substantially recovered, from that dependency
4 on or tendency to abuse alcohol or drugs.

5 (2) The defendant has not been convicted, since
6 the date of the revocation order, of any subsequent
7 violations of section 321L.2A or 123.46, or any
8 comparable city or county ordinance, and the defendant
9 has not, since the date of the revocation order,
10 submitted to a chemical test under this chapter that
11 indicated an alcohol concentration as defined in
12 section 321L.1 of .08 or more, or refused to submit to
13 chemical testing under this chapter.

14 (3) The defendant has abstained from the excessive
15 consumption of alcoholic beverages and the consumption
16 of controlled substances, except at the direction of a
17 licensed physician or pursuant to a valid
18 prescription.

19 (4) The defendant's motor vehicle license is not
20 currently subject to suspension or revocation for any
21 other reason.

22 c. The court shall forward to the department a
23 record of any application submitted under paragraph
24 "b" and the results of the court's disposition of the
25 application.

26 4. Upon a plea or verdict of guilty of a violation
27 of section 321L.2A which involved a personal injury,
28 the court shall determine in open court, from
29 consideration of the information in the file and any
30 other evidence the parties may submit, whether a
31 serious injury was sustained by any person other than
32 the defendant and, if so, whether the defendant's
33 conduct in violation of section 321L.2A caused the
34 serious injury. If the court so determines, the court
35 shall order the department to revoke the defendant's
36 motor vehicle license or nonresident operating
37 privilege for a period of one year in addition to any
38 other period of suspension or revocation. The
39 defendant shall surrender to the court any Iowa
40 license or permit and the court shall forward it to
41 the department with a copy of the order for
42 revocation.

43 5. Upon a plea or verdict of guilty of a violation
44 of section 321L.2A which involved a death, the court
45 shall determine in open court, from consideration of
46 the information in the file and any other evidence the
47 parties may submit, whether a death occurred and, if
48 so, whether the defendant's conduct in violation of
49 section 321L.2A caused the death. If the court so
50 determines, the court shall order the department to

S-5888

Page 18

1 revoke the defendant's motor vehicle license or
2 nonresident operating privilege for a period of six
3 years. The defendant shall surrender to the court any
4 Iowa license or permit and the court shall forward it
5 to the department with a copy of the order for
6 revocation.

7 6. If a license or permit to operate a motor
8 vehicle is revoked or denied under this section or
9 section 321L.9 or 321L.12, the period of revocation or
10 denial shall be the period provided for such a
11 revocation or until the defendant reaches the age of
12 eighteen whichever period is longer.

13 7. On a conviction for or as a condition of a
14 deferred judgment for a violation of section 321L.2A,
15 the court may order the defendant to install ignition
16 interlock devices of a type approved by the
17 commissioner of public safety on all motor vehicles
18 owned or operated by the defendant which, without
19 tampering or the intervention of another person, would
20 prevent the defendant from operating the motor vehicle
21 with an alcohol concentration greater than a level set
22 by rule of the commissioner of public safety. The
23 commissioner of public safety shall adopt rules to
24 approve certain ignition interlock devices and the
25 means of installation of the devices, and shall
26 establish the level of alcohol concentration beyond
27 which an ignition interlock device will not allow
28 operation of the motor vehicle in which it is
29 installed. The order shall remain in effect for a
30 period of time as determined by the court which shall
31 not exceed the maximum term of imprisonment which the
32 court could have imposed according to the nature of
33 the violation. While the order is in effect, the
34 defendant shall not operate a motor vehicle which does
35 not have an approved ignition interlock device
36 installed. If the defendant's motor vehicle license
37 or nonresident operating privilege has been revoked,
38 the department shall not issue a temporary permit or a
39 motor vehicle license to the person without
40 certification that approved ignition interlock devices
41 have been installed in all motor vehicles owned or
42 operated by the defendant while the order is in
43 effect. A defendant who fails within a reasonable
44 time to comply with an order to install an approved
45 ignition interlock device may be declared in contempt
46 of court and punished accordingly. A person who
47 tampers with or circumvents an ignition interlock
48 device installed under a court order while an order is
49 in effect commits a serious misdemeanor.

50 8. A person whose motor vehicle license has been

1 revoked under this chapter and who is not eligible for
2 a temporary restricted license under this chapter may
3 petition the court for an order to the department to
4 require the department to issue a temporary restricted
5 license to the person. The court shall determine if
6 the temporary restricted license is necessary for the
7 person to maintain the person's present employment.
8 If the court determines that the temporary restricted
9 license is necessary for the person to maintain the
10 person's present employment, the court shall order the
11 department to issue to the person a temporary
12 restricted license conditioned upon the person's
13 certification to the court of the installation of
14 approved ignition interlock devices in all motor
15 vehicles that it is necessary for the person to
16 operate to maintain the person's present employment.
17 If the person operates a motor vehicle which does not
18 have an approved ignition interlock device or if the
19 person tampers with or circumvents an ignition
20 interlock device, in addition to other penalties
21 provided, the person's temporary restricted license
22 shall be revoked.

23 Sec. ____ . NEW SECTION. 321L.5 PRELIMINARY
24 SCREENING TEST.

25 When a peace officer has reasonable grounds to
26 believe that a motor vehicle operator may be violating
27 or has violated section 321L.2A, or the operator has
28 been involved in a motor vehicle collision resulting
29 in injury or death, the peace officer may request the
30 operator to provide a sample of the operator's breath
31 for a preliminary screening test using a device
32 approved by the commissioner of public safety for that
33 purpose. The results of this preliminary screening
34 test may be used for the purpose of deciding whether
35 an arrest should be made and whether to request a
36 chemical test authorized in this chapter, but shall
37 not be used in any court action except to prove that a
38 chemical test was properly requested of a person
39 pursuant to this chapter.

40 Sec. ____ . NEW SECTION. 321L.6 IMPLIED CONSENT TO
41 TEST.

42 1. A person who operates a motor vehicle in this
43 state under circumstances which give reasonable
44 grounds to believe that the person has been operating
45 a motor vehicle in violation of section 321L.2A is
46 deemed to have given consent to the withdrawal of
47 specimens of the person's blood, breath, or urine and
48 to a chemical test or tests of the specimens for the
49 purpose of determining the alcohol concentration or
50 presence of drugs, subject to this section. The

S-5888

Page 20

1 withdrawal of the body substances and the test or
2 tests shall be administered at the written request of
3 a peace officer having reasonable grounds to believe
4 that the person was operating a motor vehicle in
5 violation of section 321L.2A, and if any of the
6 following conditions exist:

7 a. A peace officer has lawfully placed the person
8 under arrest for violation of section 321L.2A.

9 b. The person has been involved in a motor vehicle
10 accident or collision resulting in personal injury or
11 death.

12 c. The person has refused to take a preliminary
13 breath screening test provided by this chapter.

14 d. The preliminary breath screening test was
15 administered and it indicated an alcohol concentration
16 as defined in section 321L.1 of .08 or more.

17 e. The preliminary breath screening test was
18 administered and it indicated an alcohol concentration
19 of less than .08 and the peace officer has reasonable
20 grounds to believe that the person was under the
21 influence of a drug other than alcohol or a
22 combination of alcohol and another drug.

23 2. The peace officer shall determine which of the
24 three substances, breath, blood, or urine, shall be
25 tested. Refusal to submit to a chemical test of urine
26 or breath is deemed a refusal to submit, and section
27 321L.9 applies. A refusal to submit to a chemical
28 test of blood is not deemed a refusal to submit, but
29 in that case, the peace officer shall then determine
30 which one of the other two substances shall be tested
31 and shall offer the test. If the peace officer fails
32 to offer a test within two hours after the preliminary
33 screening test is administered or refused or the
34 arrest is made, whichever occurs first, a test is not
35 required, and there shall be no revocation under
36 section 321L.9.

37 3. Notwithstanding subsection 2, if the peace
38 officer has reasonable grounds to believe that the
39 person was under the influence of a drug other than
40 alcohol or a combination of alcohol and another drug,
41 a urine test may be required even after a blood or
42 breath test has been administered. Section 321L.9
43 applies to a refusal to submit to a chemical test of
44 urine requested under this subsection.

45 Sec. ____ . NEW SECTION. 321L.7 DEAD OR
46 UNCONSCIOUS PERSONS.

47 A person who is dead, unconscious, or otherwise in
48 a condition rendering the person incapable of consent
49 or refusal is deemed not to have withdrawn the consent
50 provided by section 321L.6, and the test may be given

1 if a licensed physician certifies in advance of the
2 test that the person is dead, unconscious, or
3 otherwise in a condition rendering that person
4 incapable of consent or refusal.

5 Sec. ____ . NEW SECTION. 321L.8 STATEMENT OF
6 OFFICER.

7 A person who has been requested to submit to a
8 chemical test shall be advised by a peace officer of
9 the following:

10 1. If the person refuses to submit to the test,
11 the person's license or operating privilege will be
12 revoked by the department for the applicable period
13 under section 321L.9.

14 2. If the person submits to the test and the
15 results indicate an alcohol concentration as defined
16 in section 321L.1 of .08 or more, the person's license
17 or operating privilege will be revoked by the
18 department for the applicable period under section
19 321L.12.

20 This section does not apply in any case involving a
21 person described in section 321L.7.

22 Sec. ____ . NEW SECTION. 321L.9 REFUSAL TO SUBMIT
23 -- REVOCATION.

24 If a person refuses to submit to the chemical
25 testing, a test shall not be given, but the
26 department, upon the receipt of the peace officer's
27 certification, subject to penalty for perjury, that
28 the officer had reasonable grounds to believe the
29 person to have been operating a motor vehicle in
30 violation of section 321L.2A, that specified
31 conditions existed for chemical testing pursuant to
32 section 321L.6, and that the person refused to submit
33 to the chemical testing, shall revoke the person's
34 motor vehicle license and any nonresident operating
35 privilege for a period of two hundred forty days if
36 the person has no previous revocation within the
37 previous six years under this chapter; and five
38 hundred forty days if the person has one or more
39 previous revocations within the previous six years
40 under this chapter; or if the person is a resident
41 without a license or permit to operate a motor vehicle
42 in this state, the department shall deny to the person
43 the issuance of a license or permit for the same
44 period a license or permit would be revoked, subject
45 to review as provided in this chapter. The effective
46 date of revocation shall be twenty days after the
47 department has mailed notice of revocation to the
48 person by certified mail or, on behalf of the
49 department, a peace officer offering or directing the
50 administration of a chemical test may serve immediate

S-5888

Page 22

1 notice of intention to revoke and of revocation on a
2 person who refuses to permit chemical testing. If the
3 peace officer serves that immediate notice, the peace
4 officer shall take the Iowa license or permit of the
5 driver, if any, and issue a temporary license
6 effective for only twenty days. The peace officer
7 shall immediately send the person's license to the
8 department along with the officer's certificate
9 indicating the person's refusal to submit to chemical
10 testing.

11 Sec. ____ . NEW SECTION. 321L.10 TESTS PURSUANT TO
12 WARRANTS.

13 1. Refusal to consent to a test under section
14 321L.6 does not prohibit the withdrawal of a specimen
15 for chemical testing pursuant to a search warrant
16 issued in the investigation of a suspected violation
17 of section 707.5 if all of the following grounds
18 exist:

19 a. A traffic accident has resulted in a death or
20 personal injury reasonably likely to cause death.

21 b. There are reasonable grounds to believe that
22 one or more of the persons whose driving may have been
23 the proximate cause of the accident was violating
24 section 321L.2A at the time of the accident.

25 2. Search warrants may be issued under this
26 section in full compliance with chapter 808 or they
27 may be issued under subsection 3.

28 3. Notwithstanding section 808.3, the issuance of
29 a search warrant under this section may be based upon
30 sworn oral testimony communicated by telephone if the
31 magistrate who is asked to issue the warrant is
32 satisfied that the circumstances make it reasonable to
33 dispense with a written affidavit. The following
34 shall then apply:

35 a. When a caller applies for the issuance of a
36 warrant under this section and the magistrate becomes
37 aware of the purpose of the call, the magistrate shall
38 place under oath the person applying for the warrant.

39 b. The person applying for the warrant shall
40 prepare a duplicate warrant and read the duplicate
41 warrant, verbatim, to the magistrate who shall enter,
42 verbatim, what is read to the magistrate on a form
43 that will be considered the original warrant. The
44 magistrate may direct that the warrant be modified.

45 c. The oral application testimony shall set forth
46 facts and information tending to establish the
47 existence of the grounds for the warrant and shall
48 describe with a reasonable degree of specificity the
49 person or persons whose driving is believed to have
50 been the proximate cause of the accident and from whom

S-5888

Page 23

1 a specimen is to be withdrawn and the location where
2 the withdrawal of the specimen or specimens is to take
3 place.

4 d. If a voice recording device is available, the
5 magistrate may record by means of that device all of
6 the call after the magistrate becomes aware of the
7 purpose of the call. Otherwise, the magistrate shall
8 cause a stenographic or longhand memorandum to be made
9 of the oral testimony of the person applying for the
10 warrant.

11 e. If the magistrate is satisfied from the oral
12 testimony that the grounds for the warrant exist or
13 that there is probable cause to believe that they
14 exist, the magistrate shall order the issuance of the
15 warrant by directing the person applying for the
16 warrant to sign the magistrate's name on the duplicate
17 warrant. The magistrate shall immediately sign the
18 original warrant and enter on its face the exact time
19 when the issuance was ordered.

20 f. The person who executes the warrant shall enter
21 the time of execution on the face of the duplicate
22 warrant.

23 g. The magistrate shall cause any record of the
24 call made by means of a voice recording device to be
25 transcribed, shall certify the accuracy of the
26 transcript, and shall file the transcript and the
27 original record with the clerk. If a stenographic or
28 longhand memorandum was made of the oral testimony of
29 the person who applied for the warrant, the magistrate
30 shall file a signed copy with the clerk.

31 h. The clerk of court shall maintain the original
32 and duplicate warrants along with the record of the
33 telephone call and any transcript or memorandum made
34 of the call in a confidential file until a charge, if
35 any, is filed.

36 4. Search warrants issued under this section shall
37 authorize and direct peace officers to secure the
38 withdrawal of blood specimens by medical personnel
39 under section 321L.11. Reasonable care shall be
40 exercised to ensure the health and safety of the
41 persons from whom specimens are withdrawn in execution
42 of the warrants. If a person from whom a specimen is
43 to be withdrawn objects to the withdrawal of blood,
44 and the person is capable of giving a specimen of
45 breath, and a direct breath testing instrument is
46 readily available, the warrant may be executed by the
47 withdrawal of a specimen of breath for chemical
48 testing.

49 5. The act of any person knowingly resisting or
50 obstructing the withdrawal of a specimen pursuant to a

S-5888

Page 24

1 search warrant issued under this section constitutes a
2 contempt punishable by a fine not exceeding one
3 thousand dollars or imprisonment in a county jail not
4 exceeding one year or by both such fine and
5 imprisonment. Also, if the withdrawal of a specimen
6 is so resisted or obstructed, sections 321L.9 and
7 321L.16 apply.

8 6. Nonsubstantive variances between the contents
9 of the original and duplicate warrants shall not cause
10 a warrant issued under subsection 3 of this section to
11 be considered invalid.

12 7. Specimens obtained pursuant to warrants issued
13 under this section are not subject to disposition
14 under section 808.9 or chapter 809.

15 8. Subsections 1 to 7 of this section do not apply
16 where a test may be administered under section 321L.7.

17 9. Medical personnel who use reasonable care and
18 accepted medical practices in withdrawing blood
19 specimens are immune from liability for their actions
20 in complying with requests made of them pursuant to
21 search warrants or pursuant to section 321L.11.

22 Sec. ____ . NEW SECTION. 321L.11 TAKING SAMPLE FOR
23 TEST.

24 Only a licensed physician, licensed physician
25 assistant as defined in section 148C.1, medical
26 technologist, or registered nurse, acting at the
27 request of a peace officer, may withdraw a specimen of
28 blood for the purpose of determining the alcohol
29 concentration or the presence of drugs. However, any
30 peace officer, using devices and methods approved by
31 the commissioner of public safety, may take a specimen
32 of a person's breath or urine for the purpose of
33 determining the alcohol concentration or the presence
34 of drugs. Only new equipment kept under strictly
35 sanitary and sterile conditions shall be used for
36 drawing blood.

37 The person may have an independent chemical test or
38 tests administered at the person's own expense in
39 addition to any administered at the direction of a
40 peace officer. The failure or inability of the person
41 to obtain an independent chemical test or tests does
42 not preclude the admission of evidence of the results
43 of the test or tests administered at the direction of
44 the peace officer. Upon the request of the person who
45 is tested, the results of the test or tests
46 administered at the direction of the peace officer
47 shall be made available to the person.

48 Sec. ____ . NEW SECTION. 321L.12 TEST RESULT
49 REVOCATION.

50 Upon certification, subject to penalty for perjury,

S-5888

Page 25

1 by the peace officer that there existed reasonable
2 grounds to believe that the person had been operating
3 a motor vehicle in violation of section 321L.2A, that
4 there existed one or more of the necessary conditions
5 for chemical testing described in section 321L.6,
6 subsection 1, and that the person submitted to
7 chemical testing and the test results indicated an
8 alcohol concentration as defined in section 321L.1 of
9 .08 or more, the department shall revoke the person's
10 motor vehicle license or nonresident operating
11 privilege for a period of one hundred eighty days if
12 the person has had no revocation within the previous
13 six years under this chapter, and one year if the
14 person has had one or more previous revocations within
15 the previous six years under this chapter.

16 The effective date of the revocation shall be
17 twenty days after the department has mailed notice of
18 revocation to the person by certified mail. The peace
19 officer who requested or directed the administration
20 of the chemical test may, on behalf of the department,
21 serve immediate notice of revocation on a person whose
22 test results indicated an alcohol concentration of .08
23 or more.

24 If the peace officer serves that immediate notice,
25 the peace officer shall take the person's Iowa license
26 or permit, if any, and issue a temporary license valid
27 only for twenty days. The peace officer shall
28 immediately send the person's driver's license to the
29 department along with the officer's certificate
30 indicating that the test results indicated an alcohol
31 concentration of .08 or more.

32 The results of a chemical test may not be used as
33 the basis for a revocation of a person's motor vehicle
34 license or nonresident operating privilege if the
35 alcohol concentration indicated by the chemical test
36 minus the established margin of error inherent in the
37 device or method used to conduct the chemical test
38 does not equal an alcohol concentration of .08 or
39 more.

40 Sec. ____ . NEW SECTION. 321L.13 HEARING ON
41 REVOCATION -- APPEAL.

42 1. Notice of revocation of a person's motor
43 vehicle license or operating privilege served pursuant
44 to section 321L.9 or 321L.12 shall include a form
45 accompanied by a preaddressed envelope on which the
46 person served may indicate by a checkmark if the
47 person wishes to request a temporary restricted
48 license only or if the person wishes a hearing to
49 contest the revocation. The form shall clearly state
50 on its face that the form must be completed and

S-5888

Page 26

1 returned within thirty days of receipt or the person's
2 right to a hearing to contest the revocation is
3 foreclosed. The form shall also be accompanied by a
4 statement of the operation of and the person's rights
5 under this chapter.

6 2. The department shall grant the person an
7 opportunity to be heard within forty-five days of
8 receipt of a request for a hearing if the request is
9 made not later than thirty days after receipt of
10 notice of revocation served pursuant to section 321L.9
11 or 321L.12. The hearing shall be before the
12 department in the county where the alleged events
13 occurred, unless the director and the person agree
14 that the hearing may be held in some other county, or
15 the hearing may be held by telephone conference at the
16 discretion of the agency conducting the hearing. The
17 hearing may be recorded and its scope shall be limited
18 to the issues of whether a peace officer had
19 reasonable grounds to believe that the person was
20 operating a motor vehicle in violation of section
21 321L.2 and either of the following:

22 a. Whether the person refused to submit to the
23 test or tests.

24 b. Whether a test was administered and the test
25 results indicated an alcohol concentration as defined
26 in section 321L.1 of .08 or more.

27 3. After the hearing the department shall order
28 that the revocation be either rescinded or sustained.
29 If the revocation is sustained, the administrative law
30 judge who conducted the hearing may issue a temporary
31 restricted license to the person whose motor vehicle
32 license or operating privilege was revoked. Upon
33 receipt of the decision of the department to sustain a
34 revocation, the person contesting the revocation has
35 ten days to file a request for review of the decision
36 by the director. The director or the director's
37 designee shall review the decision within fifteen days
38 and shall either rescind or sustain the revocation or
39 order a new hearing. If the director orders a new
40 hearing, the department shall grant the person a new
41 hearing within thirty days of the director's order.

42 4. A person whose motor vehicle license or
43 operating privilege has been or is being revoked under
44 section 321L.9 or 321L.12 may reopen a department
45 hearing on the revocation if the person submits a
46 petition stating that new evidence has been discovered
47 which provides grounds for rescission of the
48 revocation, or prevail at the hearing to rescind the
49 revocation, if the person submits a petition stating
50 that a criminal action on a charge of a violation of

S-5888

Page 27

1 section 321L.2A filed as a result of the same
2 circumstances which resulted in the revocation has
3 resulted in a decision in which the court has held
4 that the peace officer did not have reasonable grounds
5 to believe that a violation of section 321L.2A had
6 occurred to support a request for or to administer a
7 chemical test or which has held the chemical test to
8 be otherwise inadmissible or invalid. Such a decision
9 by the court is binding on the department and the
10 department shall rescind the revocation.

11 5. The department shall stay the revocation of a
12 person's motor vehicle license or operating privilege
13 for the period that the person is contesting the
14 revocation under this section or section 321L.14 if it
15 is shown to the satisfaction of the department that
16 the new evidence is material and that there were valid
17 reasons for failure to present it in the contested
18 case proceeding before the department.

19 6. If the department fails to comply with the time
20 limitations of this section regarding granting a
21 hearing, review by the director or the director's
22 designee, or granting a new hearing, and if the
23 request for a hearing or review by the director was
24 properly made under this section, the revocation of
25 the motor vehicle license or operating privilege of
26 the person who made the request for a hearing or
27 review shall be rescinded. This subsection shall not
28 apply in those cases in which a continuance to the
29 hearing has been granted at the request of either the
30 person who requested the hearing or the peace officer
31 who requested or administered the chemical test.

32 Sec. ____ . NEW SECTION. 321L.14 JUDICIAL REVIEW.
33 Judicial review of an action of the department may
34 be sought in accordance with the terms of the Iowa
35 administrative procedure Act, chapter 17A.
36 Notwithstanding the terms of that chapter, a petition
37 for judicial review may be filed in the district court
38 in the county where the alleged events occurred or in
39 the county in which the administrative hearing was
40 held.

41 Sec. ____ . NEW SECTION. 321L.15 EVIDENCE IN ANY
42 ACTION.

43 Upon the trial of a civil or criminal action or
44 proceeding arising out of acts alleged to have been
45 committed by a person while operating a motor vehicle
46 in violation of section 321L.2A, evidence of the
47 alcohol concentration or the presence of drugs in the
48 person's body substances at the time of the act
49 alleged as shown by a chemical analysis of the
50 person's blood, breath, or urine is admissible. If it

S-5888

Page 28

1 is established at trial that an analysis of a breath
2 specimen was performed by a certified operator using a
3 device and methods approved by the commissioner of
4 public safety, no further foundation is necessary for
5 introduction of the evidence.

6 Sec. ____ . NEW SECTION. 321L.16 PROOF OF REFUSAL
7 ADMISSIBLE.

8 If a person refuses to submit to a chemical test,
9 proof of refusal is admissible in any civil or
10 criminal action or proceeding arising out of acts
11 alleged to have been committed while the person was
12 operating a motor vehicle in violation of section
13 321L.2A.

14 Sec. ____ . NEW SECTION. 321L.17 CIVIL PENALTY --
15 SEPARATE FUND -- REINSTATEMENT.

16 When the department revokes a person's motor
17 vehicle license or nonresident operating privilege
18 under this chapter, the department shall assess the
19 person a civil penalty of one hundred dollars. The
20 money collected by the department under this section
21 shall be transmitted to the treasurer of state who
22 shall deposit the money in a separate fund dedicated
23 to and used for the purposes of chapter 912 and
24 section 709.10, and for the operation of a missing
25 person clearinghouse and domestic abuse registry by
26 the department of public safety. Notwithstanding
27 section 8.33, any balance in the fund on June 30 of
28 any fiscal year shall not revert to the general fund
29 of the state. A temporary restricted license shall
30 not be issued or a motor vehicle license or
31 nonresident operating privilege reinstated until the
32 civil penalty has been paid.

33 Sec. ____ . NEW SECTION. 321L.18 OTHER EVIDENCE.

34 This chapter does not limit the introduction of any
35 competent evidence bearing on the question of whether
36 a person was under the influence of an alcoholic
37 beverage or a drug, including the results of chemical
38 tests of specimens of blood, breath or urine obtained
39 more than two hours after the person was operating a
40 motor vehicle.

41 Sec. ____ . NEW SECTION. 321L.19 INFORMATION
42 RELAYED TO OTHER STATES.

43 When it has been finally determined under this
44 chapter that a nonresident's privilege to operate a
45 motor vehicle in this state has been revoked or
46 denied, the department shall give information in
47 writing of the action taken to the official in charge
48 of traffic control or public safety of the state of
49 the person's residence and of any state in which the
50 person has a license.

S-5888

Page 29

1 Sec. . NEW SECTION. 321L.20 TEMPORARY

2 RESTRICTED LICENSE.

3 1. The department may, on application, issue a
4 temporary restricted license to a person whose motor
5 vehicle license is revoked under this chapter allowing
6 the person to drive to and from the person's home and
7 specified places at specified times which can be
8 verified by the department and which are required by
9 the person's full-time or part-time employment,
10 continuing health care or the continuing health care
11 of another who is dependent upon the person,
12 continuing education while enrolled in an educational
13 institution on a part-time or full-time basis and
14 while pursuing a course of study leading to a diploma,
15 degree, or other certification of successful
16 educational completion, substance abuse treatment, and
17 court-ordered community service responsibilities if
18 the person's motor vehicle license has not been
19 revoked under 321L.4, 321L.9, or 321L.12 within the
20 previous six years and if any of the following apply:

21 a. The person's motor vehicle license is revoked
22 under section 321L.4, subsection 1, 2, 4, or 6.

23 b. The person's motor vehicle license is revoked
24 under section 321L.9 and the person has entered a plea
25 of guilty on a charge of a violation of section
26 321L.2A which arose from the same set of circumstances
27 which resulted in the person's motor vehicle license
28 revocation under section 321L.9 and the guilty plea is
29 not withdrawn at the time of or after application for
30 the temporary restricted license.

31 c. The person's motor vehicle license is revoked
32 under section 321L.12.

33 However, a temporary restricted license may be
34 issued if the person's motor vehicle license is
35 revoked under section 321L.9, and the revocation is a
36 second revocation under this chapter, and the first
37 three hundred and sixty days of the revocation have
38 expired.

39 2. This section does not apply to a person whose
40 license was revoked under section 321L.4, subsection 3
41 or 5, or to a person whose license is suspended or
42 revoked for another reason.

43 3. A person holding a temporary restricted license
44 issued by the department under this section shall not
45 operate a motor vehicle for pleasure.

46 Sec. . NEW SECTION. 321L.21 DRIVING WHILE
47 LICENSE DENIED OR REVOKED.

48 A person whose motor vehicle license or nonresident
49 operating privilege has been denied or revoked as
50 provided in this chapter and who drives a motor

S-5888

Page 30

1 vehicle upon the highways of this state while the
2 license or privilege is denied or revoked commits a
3 serious misdemeanor. The department, upon receiving
4 the record of the conviction of a person under this
5 section upon a charge of driving a motor vehicle while
6 the license of the person was revoked or denied, shall
7 extend the period of revocation or denial for an
8 additional like period, and the department shall not
9 issue a new license during the additional period.

10 Sec. . NEW SECTION. 321L.22 COURT-ORDERED

11 DRINKING DRIVERS COURSE.

12 1. As used in this section, unless the context
13 otherwise requires:

14 a. "Course for drinking drivers" means an approved
15 course designed to inform the offender about drinking
16 and driving and encourage the offender to assess the
17 offender's own drinking and driving behavior in order
18 to select practical alternatives.

19 b. "Satisfactory completion of a course" means
20 receiving at the completion of a course a grade from
21 the course instructor of "C" or "2.0," or better.

22 2. After a conviction for, or a plea of guilty of,
23 a violation of section 321L.2A, the court in addition
24 to its power to commit the defendant for treatment of
25 alcoholism under section 321L.3, may order the
26 defendant, at the defendant's own expense, to enroll
27 in, attend, and successfully complete a course for
28 drinking drivers. The court may alternatively or
29 additionally require the defendant to seek evaluation,
30 treatment or rehabilitation services under section
31 125.33 at the defendant's expense and to furnish
32 evidence of successful completion. A copy of the
33 order shall be forwarded to the department.

34 3. The course provided in this section shall be
35 offered on a regular basis at each area school as
36 defined in section 280A.2. Enrollment in the courses
37 is not limited to persons ordered to enroll, attend
38 and successfully complete the course under subsection
39 2, and any person convicted of a violation of section
40 321L.2A who was not ordered to enroll in a course may
41 enroll in and attend a course for drinking drivers.
42 The course required by this section shall be taught by
43 the area schools under the department of education and
44 approved by the department. The department of
45 education shall establish reasonable fees to defray
46 the expense of obtaining classroom space, instructor
47 salaries, and class materials. A person shall not be
48 denied enrollment in a course by reason of the
49 person's indigency.

50 4. An employer shall not discharge a person from

S-5888

Page 31

1 employment solely for the reason of work absence to
2 attend a course required by this section. Any
3 employer who violates this section is liable for
4 damages which include but are not limited to actual
5 damages, court costs, and reasonable attorney fees.
6 The person may also petition the court for imposition
7 of a cease and desist order against the person's
8 employer and for reinstatement to the person's
9 previous position of employment.

10 5. The department of education shall prepare a
11 list of the locations of the courses taught under this
12 section, the dates and times taught, the procedure for
13 enrollment, and the schedule of course fees. The list
14 shall be kept current and a copy of the list shall be
15 sent to each court having jurisdiction over offenses
16 provided in this chapter.

17 6. The department of education shall maintain
18 enrollment, attendance, successful and unsuccessful
19 completion data on the persons ordered to enroll,
20 attend and successfully complete a course for drinking
21 drivers. This data shall be forwarded to the court."

22 30. Page 13, by inserting after line 28 the fol-
23 lowing:

24 "Sec. ____ . NEW SECTION. 321L.3 SEIZURE OF
25 VEHICLE.

26 Upon a plea or verdict of guilty of a third or
27 subsequent violation of section 321J.2, which occurs
28 while the person's license is suspended or revoked
29 pursuant to chapter 321J, the court shall order the
30 defendant to surrender to the state department of
31 transportation, the motor vehicle operated by the
32 defendant at the time of the third or subsequent
33 violation.

34 However, the court shall stay such order upon proof
35 by the owner or co-owner of the vehicle, if other than
36 the defendant, that the owner or co-owner was not
37 aware that the defendant's motor vehicle license was
38 suspended or revoked pursuant to chapter 321J, or that
39 the defendant operated the motor vehicle without the
40 owner's or co-owner's knowledge or permission."

41 31. Page 20, line 6, by striking the word "--
42 REFUNDS" and inserting the following: "-- REFUNDS".

43 32. Page 22, by inserting after line 34, the
44 following:

45 "Sec. 104. Section 602.6405, subsection 1, Code
46 1989, is amended to read as follows:

47 1. Magistrates have jurisdiction of simple
48 misdemeanors, including traffic and ordinance
49 violations, and preliminary hearings, search warrant
50 proceedings, county and municipal infractions, and

S-5888

Page 32

1 small claims. ~~They-also~~ Magistrates have jurisdiction
2 to exercise the powers specified in sections 644.2 and
3 644.12, and to hear complaints or preliminary
4 informations, issue warrants, order arrests, make
5 commitments, and take bail. ~~They-also~~ Magistrates
6 have jurisdiction over violations of section 123.47
7 involving persons eighteen years of age, and section
8 123.49, subsection 2, paragraph "h". Magistrates have
9 jurisdiction to conduct hearings authorized under
10 section 809.4 and section 809.10, subsection 2."

11 33. By striking page 22, line 35 through page 23,
12 line 6, and inserting the following:

13 "Sec. ____ . Section 707.6A, Code Supplement 1989,
14 is amended to read as follows:

15 707.6A HOMICIDE OR SERIOUS INJURY BY VEHICLE.

16 1. A person commits a class "~~B~~" "C" felony when
17 the person unintentionally causes the death of another
18 by either of the following means:

19 a. Operating a motor vehicle while under the
20 influence of alcohol or a other drug or a combination
21 of such substances or while having an alcohol
22 concentration, as defined in section 321J.1,
23 subsection 1, of ~~with~~ .08 or more, ~~in violation of~~
24 section ~~321J.2~~. Upon a plea or verdict of guilty of a
25 violation of this paragraph, the court shall order the
26 state department of transportation to revoke the
27 defendant's motor vehicle license or nonresident
28 operating privileges for a period of six years. The
29 defendant shall surrender to the court any Iowa
30 license or permit and the court shall forward it to
31 the department with a copy of the revocation order.

32 b. Driving a motor vehicle in a reckless manner
33 with willful or wanton disregard for the safety of
34 persons or property, in violation of section 321.277.

35 2. A person commits an ~~aggravated misdemeanor~~ a
36 class "D" felony when the person unintentionally
37 causes the death of another by operating a motor
38 vehicle in any of the following manners:

39 a. Drag racing, in violation of section 321.278.

40 b. Eluding or attempting to elude a pursuing law
41 enforcement vehicle, in violation of section 321.279.

42 3. A person commits an aggravated misdemeanor when
43 the person unintentionally causes a serious injury, as
44 defined in section 321J.1, subsection 8, by either of
45 the means described in subsection 1 of this section.

46 3 4. As used in this section, "motor vehicle"
47 includes any vehicle defined as a motor vehicle in
48 section 321.1.

49 5. Except for the purpose of sentencing under
50 section 321J.2, subsection 2, a conviction or deferral

S-5888

Page 33

1 of judgment for a violation of this section, where a
2 violation of section 321J.2 is admitted or proved,
3 shall be treated as a conviction or deferral of
4 judgment for a violation of section 321J.2 for the
5 purposes of chapters 321, 321A, and 321J, and section
6 907.3, subsection 1."

7 34. Page 24, by inserting after line 15, the
8 following:

9 "Sec. 105. Section 809.3, subsection 2, Code 1989,
10 is amended to read as follows:

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

27 Sec. 106. Section 809.11, subsections 1 and 2,
28 Code 1989, are amended to read as follows:

29 1. Forfeiture is a civil proceeding. At the
30 hearing the burden is on the state to prove by a
31 ~~preponderance of the~~ clear and convincing evidence
32 that the property is forfeitable. However, forfeiture
33 is not dependent upon a prosecution for, or conviction
34 of, a criminal offense and forfeiture proceedings are
35 separate and distinct from any related criminal
36 action.

37 2. ~~Court-appointed counsel, Counsel shall be~~
38 ~~appointed at the state's expense, is not available in~~
39 ~~forfeiture proceedings for indigent persons having an~~
40 ~~ownership interest exceeding a value of five hundred~~
41 ~~dollars in the property that is subject to the~~
42 ~~forfeiture proceeding. The attorney general or county~~
43 ~~attorney may represent the state in all forfeiture~~
44 ~~proceedings.~~

45 Sec. 107. Section 809.11, Code 1989, is amended by
46 adding the following new subsections:

47 NEW SUBSECTION. 5. At a hearing to determine
48 whether real property should be forfeited, any of the
49 following may be established as affirmative defenses,
50 by the person seeking return of the property:

S-5888

Page 34

- 1 a. That the person, who is not a party to the
2 alleged criminal activity, before becoming aware of
3 the investigation, reported the alleged criminal
4 activity to the appropriate law enforcement agency
5 prior to the seizure of the property.
- 6 b. That the person acted reasonably in attempting
7 to prevent or terminate the unlawful use of the
8 property.
- 9 c. That the person seeking return of the property
10 had no prior knowledge of the criminal activity.
- 11 NEW SUBSECTION. 6. Cash found in close proximity
12 to controlled substances is presumed to be forfeitable
13 property."
- 14 35. Page 24, by inserting after line 15 the
15 following:
16 "Sec. NEW SECTION. 809.17 PROCEEDS APPLIED
17 TO VARIOUS PROGRAMS.
18 Except as provided in section 809.21, proceeds from
19 the disposal of seized or forfeited property pursuant
20 to this chapter shall be divided equally and
21 transferred to the Iowa department of public health
22 for funding of youth education, prevention, and
23 treatment programs for substance abusers, to the
24 department of public safety for funding for law
25 enforcement of drug offenses, and to the department of
26 education for funding of drunk driving prevention and
27 education programs."
- 28 36. Page 25, by striking lines 1 through 9.
- 29 37. Page 26, by striking lines 4 through 7, and
30 inserting the following:
31 "1. A brief personal and social history of the
32 defendant.
33 2. The defendant's criminal record."
- 34 38. Page 26, by inserting after line 33, the
35 following:
36 "Sec. Section 903.1, subsection 3, unnumbered
37 paragraph 1, Code 1989, is amended to read as follows:
38 3. A person under eighteen years of age convicted
39 of a simple misdemeanor under chapter 106, 106A, 109,
40 109A, 110, 110A, 110B, 111, 321, or 321G, section
41 123-47, or a violation of a county or municipal curfew
42 or traffic ordinance, except for an offense subject to
43 section 805.8, may be required to pay a fine, not to
44 exceed one hundred dollars, as fixed by the court, or
45 may be required to perform community service as
46 ordered by the court."
- 47 39. Page 27, line 10, by striking the words
48 "substance abuse" and inserting the following:
49 "treatment".
- 50 40. Page 27, by inserting after line 15, the

S-5888

Page 35

1 following:

2 "Sec. _____. Section 903A.5, unnumbered paragraph 1,

3 Code 1989, is amended to read as follows:

4 An inmate shall not be discharged from the custody
5 of the director of the Iowa department of corrections
6 until the inmate has served the full term for which
7 the inmate was sentenced, less good conduct time
8 earned and not forfeited, unless the inmate is
9 pardoned or otherwise legally released. Good conduct
10 time earned and not forfeited shall apply to reduce a
11 mandatory minimum sentence being served pursuant to
12 section ~~204-4067-204-4137~~ 902.7, 902.8, or 906.5. An
13 inmate shall be deemed to be serving the sentence from
14 the day on which the inmate is received into the
15 institution. However, if an inmate was confined to a
16 county jail or other correctional or mental facility
17 at any time prior to sentencing, or after sentencing
18 but prior to the case having been decided on appeal,
19 because of failure to furnish bail or because of being
20 charged with a nonbailable offense, the inmate shall
21 be given credit for the days already served upon the
22 term of the sentence. The clerk of the district court
23 of the county from which the inmate was sentenced,
24 shall certify to the warden the number of days so
25 served."

26 41. Page 27, by striking lines 16 through 21.

27 42. By striking page 27, line 22, through page
28 29, line 11.29 43. By striking page 35, line 15, through page
30 36, line 11.31 44. Page 36, by inserting after line 11 the
32 following:

33 "Sec. _____. ALTERNATIVE DRUG TESTING FOR OFFICERS.

34 The department of public safety shall develop a
35 plan for the implementation of alternative drug
36 testing programs for law enforcement, parole, and
37 probation officers. The plan shall be submitted to
38 the general assembly by January 15, 1991, in a form
39 which could be adopted and implemented by the
40 department of public safety or individual law
41 enforcement agencies throughout the state."

42 45. Page 36, by striking lines 16 through 20 and
43 inserting the following:

44 "The Code editor shall redesignate chapter 321L as
45 enacted in this Act, in a new chapter or different
46 chapter so that these sections do not conflict with
47 chapter 321L as enacted during the 1989 Session of the
48 General Assembly and as it appears in the 1989 Code
49 Supplement.

50 Sec. _____. Chapter 321J is repealed."

S-5888

Page 36

1 46. Page 36, by inserting after line 20, the
2 following:
3 "Sec. ____.
4 Sections 101 through 107 of this Act apply to any
5 seizure or forfeiture proceeding or action commenced
6 on or after the effective date of this Act."
7 47. Title page, by striking page 1, line 1
8 through page 2, line 12, and inserting the following:
9 "An Act relating to certain criminal offenses,
10 providing for the disposition, confinement, detention,
11 and treatment of certain offenders, providing
12 protections for certain victims or potential victims,
13 providing for the identification of certain precursor
14 drugs, establishing a tax on certain substances,
15 providing certain tax incentives relating to
16 employment of certain offenders, providing for victim
17 reparation, and providing penalties and an effective
18 date."
19 48. By renumbering, relettering, or redesignating
20 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5888 FILED APRIL 4, 1990

REFUSED TO CONCUR 4/4 (p. 1546)

House insisted 4/5 (p. 2041)

**SENATE FILE 2413
AS AMENDED BY THE SENATE
FISCAL NOTE**

A fiscal note for Senate File 2413 as Amended by the Senate 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.

1. Senate File 2413 relates to the criminal code. Sections 1, 48, and 62 through 71 relate to the crime victim assistance program and crime victim reparation programs. The administration of sexual abuse medical investigation is transferred to the Department of Justice. The crime victim reparation program may receive reimbursement through a plan of restitution, and is to be reimbursed prior to reimbursements for court costs and court appointed attorney fees or a public defender. Eligibility for victim claims is expanded. The notification requirement of all dispositional orders of a case on appeal is transferred to the Department of Justice.
2. Sections 4 and 8 provide that law enforcement agencies are required to attempt to notify the parents or legal guardians if a person under 18 years old is stopped for possession of alcohol, beer, wine, liquor, a controlled substance, counterfeit substance, or simulated controlled substance. The attempt at notification is not contingent upon an arrest or a citation.
3. Sections 5, 6, 7, 10 to 21, 27, 28, 47, 49, and 50 make certain activities illegal which are currently legal (creation of new crimes). Section 27 provides that second or subsequent offenders of OWI, alcohol or drugs, shall serve the minimum term of confinement on consecutive days. Exceptions are provided for undue hardship, which if found to be the case, the court may order the offender to serve not less than 48 consecutive hours of the minimum term and perform not less than 240 hours of community service. Permit fees are to be established by the Board of Pharmacy Examiners for the implementation of Sections 9 through 20, but shall not exceed the cost for administering the new Chapter.
4. Sections 22 and 23 provide that the juvenile court may order a person under age 18 with a second delinquent act or a second violation, to participate in an alcohol education, evaluation, or treatment program.
5. Sections 25, 53, and 59 provide for the diversion of persons convicted of a third offense for OWI from prison to the appropriate treatment facility, unless no space is available or medical treatment is necessary. In the latter cases, the offender would be admitted to the Oakdale Correctional Facility. The presentence investigation shall include standardized assessment criteria for assignment to a treatment facility by January 1, 1991. Offenders who are diverted from prison will not receive clothing or gate money. Currently, counties are responsible for transporting these

-2-

OWI offenders to the Oakdale Correctional Facility.

6. Section 26 provides that persons serving mandatory minimum terms of more than one year are to serve the final six months on Work Release, if approved.
7. Section 29 provides for post-treatment services related to substance abuse as a condition of probation. This Section applies to second or subsequent offenders.
8. Sections 30 to 44, and 73 impose a tax on the manufacturing, producing, shipping, transporting, or importing of marijuana or controlled substances. The criminal penalty for tax evasion is a Class D felony, while the tax penalty is 100 percent of the required tax. Provisions are made for the sale of official stamps, labels, and other indicia by the Director of the Department of Revenue and Finance.
9. Sections 45 and 46 expand the deduction for businesses hiring individuals on parole, work release, probation, or convicted of a felony to all businesses. This deduction is currently only provided to small businesses (20 employees or less).
10. Sections 9 and 51 establish that persons convicted under Chapter 204.401(1a) are ineligible for bail. Also, offenders convicted of all controlled substance felonies are ineligible for bail, unless the court determines that the offender will appear before the court, and the release of the offender will not jeopardize the safety of others.
11. Section 52 provides that presentence investigations for serious misdemeanor offenses shall only include certain information.
12. Sections 56 and 58 provide for eligibility of good conduct time for inmates who satisfactorily participate in an institutional substance abuse program. The Parole Board is required to develop an early release program for certain property offenders, and is required to report to the Legislative Fiscal Bureau concerning the implementation of this program.
13. Section 57 permits the Parole Board to require a specified number of unpaid community service hours as a condition of probation.
14. Section 60 and 61 authorize a parole or probation officer to discharge persons assigned to him or her for supervision, when the officer determines that the person is able and willing to be a law-abiding citizen without further supervision. The District Director must approve the discharge. Parole and probation officers and District Directors are granted immunity if they act within compliance of these Sections.
15. Section 72 establishes a pilot project for the criminal testing of persons arrested for felony offenses. The program shall be under the direction of the drug enforcement and abuse prevention coordinator. Rules will be adopted in consultation with the Department of Public Safety. A person shall not be tested if the presence of drugs or alcohol is a primary element of the offense for which the person was arrested. Results of the

-3-

test shall not be used in the prosecution of the offense charged.
Fiscal Impact

Paragraph	Source	Impact
One	Crime Victim Fund	\$55,264 increased costs
Two	Counties	Cannot be estimated
Three	State General Fund	\$37,625 increased costs
	Counties	Cannot be estimated
Four	State General Fund	Cannot be estimated
	State, County and Federal Funds	\$0 to \$2,395,000
Five	Counties	\$40,500 savings
	State General Fund	\$164,110 to \$188,110
Six	State General Fund	Cannot be estimated
Seven	State and Federal Funds	\$4,934,400
	State General Funds	Additional revenues cannot be estimated \$100,000 increased costs for administration Increased costs for new crimes cannot be estimated
Nine	Community Based Corr.	Increased local revenue cannot be estimated
	State General Fund	Decreased revenue cannot be estimated
Ten	Counties	Increased costs cannot be estimated
Eleven	State General Fund	\$106,000 savings
Twelve	State General Fund	\$180,000 increased costs
Thirteen	State General Fund	\$ 40,000 increased costs
Fourteen	State General Fund	Impact cannot be estimated
Fifteen	State General Fund	\$180,000 increased costs

Sources: Department of Corrections
 Criminal and Juvenile Justice Planning Division
 Judicial Department
 Department of Revenue and Finance
 Department of Public Safety
 Iowa State Association of Counties
 Department of Public Health
 Department of Human Services
 Department of Justice
 Department of Inspections and Appeals
 Parole Board

(LSB 8412xs.4, BAL)

FILED MARCH 28, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 2413
AS AMENDED AND PASSED BY THE SENATE - REVISED
FISCAL NOTE**

A revised fiscal note for Senate File 2413 as Amended and Passed by the Senate 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.

1. Senate File 2413 relates to the criminal code. Sections 1, 48, and 62 through 71 relate to the crime victim assistance program and crime victim reparation programs. The administration of sexual abuse medical investigation is transferred to the Department of Justice. The crime victim reparation program may receive reimbursement through a plan of restitution, and is to be reimbursed prior to reimbursements for court costs and court appointed attorney fees or a public defender. Eligibility for victim claims is expanded. The notification requirement of all dispositional orders of a case on appeal is transferred to the Department of Justice.
2. Sections 4 and 8 provide that law enforcement agencies are required to attempt to notify the parents or legal guardians if a person under 18 years old is stopped for possession of alcohol, beer, wine, liquor, a controlled substance, counterfeit substance, or simulated controlled substance. The attempt at notification is not contingent upon an arrest or a citation.
3. Sections 5, 6, 7, 10 to 21, 27, 28, 47, 49, and 50 make certain activities illegal which are currently legal (creation of new crimes). Assuming more offenders will be arrested, this will increase State costs for providing indigent defense. Section 27 provides that second or subsequent offenders of OWI, alcohol or drugs, shall serve the minimum term of confinement on consecutive days. Exceptions are provided for undue hardship, which if found to be the case, the court may order the offender to serve not less than 48 consecutive hours of the minimum term and perform not less than 240 hours of community service. Permit fees are to be established by the Board of Pharmacy Examiners for the implementation of Sections 9 through 20, but shall not exceed the cost for administering the new Chapter.
4. Sections 22 and 23 provide that the juvenile court may order a person under age 18 with a second delinquent act or a second violation, to participate in an alcohol education, evaluation, or treatment program.
5. Sections 25, 53, and 59 provide for the diversion of persons convicted of a third offense for OWI from prison to the appropriate treatment facility, unless no space is available or medical treatment is necessary. In the latter cases, the offender would be admitted to the Oakdale Correctional Facility. The presentence investigation shall include standardized assessment criteria for assignment to a treatment facility by January 1, 1991. Offenders who are diverted from prison will not receive clothing or

-2-

- gate money. Currently, counties are responsible for transporting these OWI offenders to the Oakdale Correctional Facility.
6. Section 26 provides that persons serving mandatory minimum terms of more than one year are to serve the final six months on Work Release, if approved.
 7. Section 29 provides for post-treatment services related to substance abuse as a condition of probation. This Section applies to second or subsequent offenders.
 8. Sections 30 to 44, and 73 impose a tax on the manufacturing, producing, shipping, transporting, or importing of marijuana or controlled substances. The criminal penalty for tax evasion is a Class D felony, while the tax penalty is 100 percent of the required tax. Provisions are made for the sale of official stamps, labels, and other indicia by the Director of the Department of Revenue and Finance.
 9. Sections 45 and 46 expand the deduction for businesses hiring individuals on parole, work release, probation, or convicted of a felony to all businesses. This deduction is currently only provided to small businesses (20 employees or less).
 10. Sections 9 and 51 establish that persons convicted under Chapter 204.401(1a) are ineligible for bail. Also, offenders convicted of all controlled substance felonies are ineligible for bail, unless the court determines that the offender will appear before the court, and the release of the offender will not jeopardize the safety of others.
 11. Section 52 provides that presentence investigations for serious misdemeanor offenses shall only include certain information.
 12. Sections 56 and 58 provide for eligibility of good conduct time for inmates who satisfactorily participate in an institutional substance abuse program. The Parole Board is required to develop an early release program for certain property offenders, and is required to report to the Legislative Fiscal Bureau concerning the implementation of this program.
 13. Section 57 permits the Parole Board to require a specified number of unpaid community service hours as a condition of probation.
 14. Section 60 and 61 authorize a parole or probation officer to discharge persons assigned to him or her for supervision, when the officer determines that the person is able and willing to be a law-abiding citizen without further supervision. The District Director must approve the discharge. Parole and probation officers and District Directors are granted immunity if they act within compliance of these Sections.
 15. Section 72 establishes a pilot project for the criminal testing of persons arrested for felony offenses. The program shall be under the direction of the drug enforcement and abuse prevention coordinator. Rules will be adopted in consultation with the Department of Public Safety. A person shall not be tested if the presence of drugs or alcohol is a primary

-3-

element of the offense for which the person was arrested. Results of the test shall not be used in the prosecution of the offense charged.

Fiscal Impact

Paragraph	Source	Impact
One	Crime Victim Fund	\$55,264 increased costs
Two	Counties	Cannot be estimated
	State General Fund	\$37,625 increased costs
Three	Counties	Cannot be estimated
	State General Fund	\$466,300 to \$732,875
		New crime costs cannot be estimated
Four	State, County and Federal Funds	\$0 to \$2,395,000
Five	Counties	\$40,500 savings
	State General Fund	\$164,110 to \$188,110
Six	State General Fund	Cannot be estimated
Seven	State and Federal Funds	\$4,934,400
Eight	State General Funds	Additional revenues cannot be estimated
		\$100,000 increased costs for administration
		Increased costs for new crimes cannot be estimated
Nine	Community Based Corr.	Increased local revenue cannot be estimated
	State General Fund	Decreased revenue cannot be estimated
Ten	Counties	Increased costs cannot be estimated
Eleven	State General Fund	\$106,000 savings
Twelve	State General Fund	\$180,000 increased costs
Thirteen	State General Fund	\$ 40,000 increased costs
Fourteen	State General Fund	Impact cannot be estimated
Fifteen	State General Fund	\$180,000 increased costs

Sources: Department of Corrections
Criminal and Juvenile Justice Planning Division
Judicial Department
Department of Revenue and Finance
Department of Public Safety
Iowa State Association of Counties
Department of Public Health
Department of Human Services
Department of Justice
Department of Inspections and Appeals
Parole Board

(LSB 8412xs.5, BAL)

FILED MARCH 29, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2413

H-5936

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "Sec. ____ . Section 22.7, subsection 18, paragraph
6 c, Code Supplement 1989, is amended to read as
7 follows:

8 c. Information contained in the communication is a
9 public record to the extent that it indicates the
10 date, time, specific location, and immediate facts and
11 circumstances surrounding the occurrence of a crime or
12 other illegal act, except to the extent that its
13 disclosure would plainly and seriously jeopardize a
14 continuing investigation, or would pose a clear and
15 present danger to the safety of any person, or would
16 reveal, prior to the filing of an information or
17 indictment as provided in section 802.8, the residence
18 or business address or telephone number of any victim
19 or witness to a violent crime against a person or a
20 crime using a dangerous weapon, as defined in section
21 702.7. In any action challenging the failure of the
22 lawful custodian to disclose any particular
23 information of the kind enumerated in this paragraph,
24 the burden of proof is on the lawful custodian to
25 demonstrate that the disclosure of that information
26 would jeopardize such an investigation, or would pose
27 such a clear and present danger, or would reveal such
28 identifying information prior to the filing of an
29 information or indictment. The communication shall be
30 disclosed after removal of the information which is
31 not to be disclosed pursuant to this paragraph."

32 2. By striking page 2, line 29 through page 3,
33 line 8.

34 3. Page 4, by striking lines 11 through 24.

35 4. Page 10, by inserting after line 28, the
36 following:

37 "Sec. ____ . Section 232.2, subsection 6, paragraph
38 d, Code Supplement 1989, is amended to read as
39 follows:

40 d. Who has been, or is imminently likely to be,
41 sexually abused by the child's parent, guardian,
42 custodian or other member of the household in which
43 the child resides.

44 Sec. ____ . Section 232.8, subsection 1, unnumbered
45 paragraph 2, Code 1989, is amended to read as follows:

46 Violations by a child of provisions of chapter 106,
47 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G
48 which would be simple misdemeanors if committed by an
49 adult, and violations by a child of county or
50 municipal curfew or traffic ordinances, ~~and-violations~~

H-5936

Page 2

1 ~~by a child of section 123.47~~, are excluded from the
2 jurisdiction of the juvenile court and shall be
3 prosecuted as simple misdemeanors as provided by law.
4 ~~The court may advise appropriate juvenile authorities~~
5 ~~and may refer violations of section 123.47 to the~~
6 ~~juvenile court when there is reason to believe the~~
7 ~~child regularly abuses alcohol and may be in need of~~
8 ~~treatment. The court shall notify the parents or~~
9 ~~legal guardians of a child who appears before it for a~~
10 violation of section 123.47. A child convicted of a
11 violation excluded from the jurisdiction of the
12 juvenile court under this unnumbered paragraph shall
13 be sentenced pursuant to section 805.8, where
14 applicable, and pursuant to section 903.1, subsection
15 3, for all other violations."

16 5. Page 11, by inserting after line 19, the
17 following:

18 "Sec. ____ . Section 232.82, Code 1989, is amended
19 to read as follows:

20 232.82 REMOVAL OF SEXUAL OFFENDERS AND PHYSICAL
21 ABUSERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

22 1. Notwithstanding section 561.15, if it is
23 alleged by a person authorized to file a petition
24 under section 232.87, subsection 2, or by the court on
25 its own motion, that a parent, guardian, custodian, or
26 an adult member of the household in which a child
27 resides has committed a sexual offense with or against
28 the child, pursuant to chapter 709 or section 726.2,
29 or a physical abuse as defined by section 232.2,
30 subsection 38, the juvenile court may enter an ex
31 parte order requiring the alleged sexual offender or
32 physical abuser to vacate the child's residence upon a
33 showing that probable cause exists to believe that the
34 sexual offense or physical abuse has occurred and that
35 substantial evidence exists to believe that the
36 presence of the alleged sexual offender or physical
37 abuser in the child's residence presents a danger to
38 the child's life or physical, emotional, or mental
39 health.

40 2. If an order is entered under subsection 1 and a
41 petition has not yet been filed under this chapter,
42 the petition shall be filed under section 232.87 by
43 the county attorney, the department of human services,
44 or a juvenile court officer within three days of the
45 entering of the order.

46 3. The juvenile court may order on its own motion,
47 or shall order upon the request of the alleged sexual
48 offender or physical abuser, a hearing to determine
49 whether the order to vacate the residence should be
50 upheld, modified, or vacated. The juvenile court may

H-5936

Page 3

1 in any later child in need of assistance proceeding
2 uphold, modify, or vacate the order to vacate the
3 residence.

4 Sec. _____. Section 232.116, subsection 1, Code
5 Supplement 1989, is amended by adding a new paragraph:
6 NEW PARAGRAPH. 1. The court finds that both of
7 the following have occurred:

8 (1) The child has been adjudicated a child in need
9 of assistance pursuant to section 232.96 after finding
10 that the child has been physically or sexually abused
11 as a result of the acts or omissions of a parent.

12 (2) The parent found to have physically or
13 sexually abused the child has been imprisoned for such
14 abuse against the child, the child's sibling, or any
15 other child in the household and the court finds it is
16 unlikely that the parent will be released within five
17 years."

18 6. Page 11, line 23, by striking the word "and"
19 and inserting the following: "for".

20 7. Page 12, line 3, by striking the word
21 "paragraph" and inserting the following: "paragraphs
22 "b" and".

23 8. Page 12, by inserting after line 20, the
24 following:

25 "Sec. 101. Section 321.85, Code 1989, is amended
26 to read as follows:

27 321.85 STOLEN VEHICLES OR COMPONENT PARTS.

28 1. When a vehicle or component part is seized
29 under section 321.84 or is stolen or embezzled, and is
30 not claimed by the owner before the date on which the
31 person charged with its stealing or embezzling is
32 convicted, the officer having the vehicle or component
33 part in the officer's custody shall, on that date by
34 certified regular mail, notify the department that the
35 officer has the vehicle or component part in the
36 officer's possession, giving a full and complete
37 description of it, including all vehicle
38 identification numbers and component part numbers. If
39 there is a dispute regarding a claim for the vehicle
40 or component part, the agency holding the vehicle or
41 component part shall conduct an evidentiary hearing to
42 adjudicate the claim.

43 2. If a person claims to be the owner, and there
44 is a dispute as to the claim, the department shall
45 hold an evidentiary hearing within thirty days of
46 receiving the claim. If it is shown that the vehicle
47 or component part is needed as evidence in a criminal
48 prosecution or that further investigation is needed to
49 identify the vehicle or part or its owner, the hearing
50 shall be continued a reasonable amount of time for the

H-5936

Page 4

1 completion of the prosecution or investigation. If
2 the person from whom the vehicle or part was seized
3 establishes ownership of a vehicle or part, the
4 vehicle or part shall be returned to the person
5 without imposition of towing or storage fees.

6 3. A claimant may establish ownership of a motor
7 vehicle by demonstrating any of the following:

8 a. That the claimant is the holder of a valid
9 certificate of title, including rebuilt vehicle title,
10 or junking certificate which in fact corresponds to
11 all component parts of the vehicle, or by other
12 competent evidence. Ownership shall not be denied if
13 the only parts bearing numbers not corresponding to
14 the title are those found on the engine, door, or
15 fender of the vehicle unless the numbers are the
16 public vehicle identification number. However, if the
17 claimant cannot establish ownership of the engine,
18 door, or fender pursuant to subsection 4, the part
19 shall not be returned to the claimant. Numbers on
20 motorcycle engine cases are not engine numbers for
21 purposes of this paragraph.

22 b. That the claimant is the owner of all component
23 parts of the vehicle as set forth in subsection 4.

24 c. That the claimant is the legal owner of the
25 vehicle under the laws of another state if the vehicle
26 is registered or titled in that other state.

27 4. A claimant may establish ownership of a
28 component part by demonstrating that the claimant
29 holds a valid certificate of title or junking
30 certificate for the vehicle on which the part was
31 initially installed by the manufacturer, or was placed
32 in accordance with a valid rebuilt vehicle title, or
33 by evidence of a legitimate unbroken chain of
34 ownership of the part back to the holder of such title
35 or certificate, or by other competent evidence.
36 Ownership of component parts on which the numbers have
37 been altered, defaced, switched, removed, or otherwise
38 disguised shall not be established unless there is
39 sufficient competent or physical evidence identifying
40 it as part of a vehicle owned by the claimant.

41 5. If a claimant establishes ownership of a
42 vehicle, the entire vehicle shall be awarded to the
43 claimant, unless ownership of a door or fender or of
44 the engine is established in another person, in which
45 case that part shall be awarded to that person. If
46 ownership of a vehicle is not established, the
47 component parts shall be awarded to the claimants
48 establishing title to the parts.

49 6. The final decision shall be served by certified
50 mail upon the persons found to be owners of vehicles

H-5936

Page 5

1 or parts, and shall notify such persons that the
2 vehicle or part is no longer needed for prosecution or
3 investigation and that they have forty-five days to
4 retrieve the vehicle or part from the agency having
5 custody of the vehicle or part. Failure to do so
6 shall result in the vehicle or part being deemed
7 abandoned for purposes of section 321.89.

8 7. If the ownership of a vehicle or part cannot be
9 established, the agency having custody of the vehicle
10 or part shall proceed as directed in sections 321.86
11 through 321.89.

12 Sec. 102. Section 321.88, Code 1989, is amended to
13 read as follows:

14 321.88 FAILURE OF OWNER TO CLAIM.

15 If the owner does not appear within ~~forty~~ forty-
16 five days, the motor vehicle or component part shall
17 be deemed abandoned and the officer having possession
18 of the motor vehicle or component part shall proceed
19 as provided in section 321.89, subsections 3 and 4.

20 Sec. 103. Section 321.89, Code 1989, is amended by
21 adding the following new subsection:

22 NEW SUBSECTION. 5. Component parts not claimed by
23 an owner as provided in section 321.88 shall be
24 disposed of as provided in subsections 3 and 4."

25 9. Page 22, by inserting after line 34, the
26 following:

27 "Sec. 104. Section 602.6405, subsection 1, Code
28 1989, is amended to read as follows:

29 1. Magistrates have jurisdiction of simple
30 misdemeanors, including traffic and ordinance
31 violations, and preliminary hearings, search warrant
32 proceedings, county and municipal infractions, and
33 small claims. ~~They also~~ Magistrates have jurisdiction
34 to exercise the powers specified in sections 644.2 and
35 644.12, and to hear complaints or preliminary
36 informations, issue warrants, order arrests, make
37 commitments, and take bail. ~~They also~~ Magistrates
38 have jurisdiction over violations of section 123.47
39 involving persons eighteen years of age, and section
40 123.49, subsection 2, paragraph "h". Magistrates have
41 jurisdiction to conduct hearings authorized under
42 section 809.4 and section 809.10, subsection 2."

43 10. By striking page 22, line 35 through page 23,
44 line 6, and inserting the following:

45 "Sec. _____. Section 707.6A, Code Supplement 1989,
46 is amended to read as follows:

47 707.6A HOMICIDE OR SERIOUS INJURY BY VEHICLE.

48 1. A person commits a class "~~D~~" "C" felony when
49 the person unintentionally causes the death of another
50 by either of the following means:

H-5936

Page 6

1 a. Operating a motor vehicle while under the
2 influence of alcohol or a other drug or a combination
3 of such substances or while having an alcohol
4 concentration, as defined in section 321J.1,
5 subsection 1, of .10 or more,~~in violation of section~~
6 ~~321J.2.~~ Upon a plea or verdict of guilty of a
7 violation of this paragraph, the court shall order the
8 state department of transportation to revoke the
9 defendant's motor vehicle license or nonresident
10 operating privileges for a period of six years. The
11 defendant shall surrender to the court any Iowa
12 license or permit and the court shall forward it to
13 the department with a copy of the revocation order.

14 b. Driving a motor vehicle in a reckless manner
15 with willful or wanton disregard for the safety of
16 persons or property, in violation of section 321.277.

17 2. A person commits ~~an aggravated misdemeanor a~~
18 class "D" felony when the person unintentionally
19 causes the death of another by operating a motor
20 vehicle in any of the following manners:

21 a. Drag racing, in violation of section 321.278.

22 b. Eluding or attempting to elude a pursuing law
23 enforcement vehicle, in violation of section 321.279.

24 3. A person commits an aggravated misdemeanor when
25 the person unintentionally causes a serious injury, as
26 defined in section 321J.1, subsection 8, by either of
27 the means described in subsection 1 of this section.

28 3 4. As used in this section, "motor vehicle"
29 includes any vehicle defined as a motor vehicle in
30 section 321.1.

31 5. Except for the purpose of sentencing under
32 section 321J.2, subsection 2, a conviction or deferral
33 of judgment for a violation of this section, where a
34 violation of section 321J.2 is admitted or proved,
35 shall be treated as a conviction or deferral of
36 judgment for a violation of section 321J.2 for the
37 purposes of chapters 321, 321A, and 321J, and section
38 907.3, subsection 1."

39 11. Page 24, by inserting after line 15, the
40 following:

41 "Sec. 105. Section 809.3, subsection 2, Code 1989,
42 is amended to read as follows:

43 2. The application for the return of seized
44 property shall state the specific item or items
45 sought, the nature of the claimant's interest in the
46 property, and the grounds upon which the claimant
47 seeks to have the property immediately returned. Mere
48 ownership is insufficient as grounds for immediate
49 return. ~~The written application shall be specific and~~
50 ~~the claimant shall be limited at the judicial hearing~~

H-5936

Page 7

~~1 to-proof-of-the-grounds-set-out-in-the-application-for
 2 immediate-return. The fact that the property is
 3 inadmissible as evidence or that it may be suppressed
 4 is not grounds for its return. If no specific grounds
 5 are set out in the application for return, or the
 6 grounds set out are insufficient as a matter of law,
 7 the court may enter judgment on the pleadings without
 8 further hearing.~~

9 Sec. 106. Section 809.11, subsections 1 and 2,
 10 Code 1989, are amended to read as follows:

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

19 2. Court-appointed counsel; Counsel shall be
 20 appointed at the state's expense; is not available in
 21 forfeiture proceedings for indigent persons having an
 22 ownership interest exceeding a value of five hundred
 23 dollars in the property that is subject to the
 24 forfeiture proceeding. The attorney general or county
 25 attorney may represent the state in all forfeiture
 26 proceedings.

27 Sec. 107. Section 809.11, Code 1989, is amended by
 28 adding the following new subsections:

29 NEW SUBSECTION. 5. At a hearing to determine
 30 whether real property should be forfeited, any of the
 31 following may be established as affirmative defenses,
 32 by the person seeking return of the property:

33 a. That the person, who is not a party to the
 34 alleged criminal activity, before becoming aware of
 35 the investigation, reported the alleged criminal
 36 activity to the appropriate law enforcement agency
 37 prior to the seizure of the property.

38 b. That the person acted reasonably in attempting
 39 to prevent or terminate the unlawful use of the
 40 property.

41 c. That the person seeking return of the property
 42 had no prior knowledge of the criminal activity.

43 NEW SUBSECTION. 6. Cash found in close proximity
 44 to controlled substances is presumed to be forfeitable
 45 property."

46 12. Page 26, by striking lines 4 through 7, and
 47 inserting the following:

48 "1. A brief personal and social history of the
 49 defendant.

50 2. The defendant's criminal record."

SENATE FILE 2413

H-5992

- 1 Amend Senate File 2413, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. By striking page 12, line 33, through page 13,
- 4 line 7, and inserting the following: "consecutive
- 5 days."

By BEAMAN of Clarke

H-5992 FILED MARCH 30, 1990

Local 4/3 (p. 1821)

SENATE FILE 2413

H-5993

- 1 Amend Senate File 2413, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. By striking page 30, line 3, through page 32,
- 4 line 5.
- 5 2. Renumber as necessary.

By TRENT of Muscatine

H-5993 FILED MARCH 30, 1990

Local 4/3 (p. 1827)

SENATE FILE 2413

H-5995

- 1 Amend Senate File 2413, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 12, by striking lines 15 through 20.
- 4 2. Renumber as necessary.

By TRENT of Muscatine

SHONING of Woodbury

SPENNER of Henry

KISTLER of Jefferson

H-5995 FILED MARCH 30, 1990

Local 4/3 (p. 1756)

SENATE FILE 2413

H-5996

- 1 Amend Senate File 2413, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 25, by striking lines 1 through 9.

By IVERSON of Wright

TYRRELL of Iowa

SPENNER of Henry

KISTLER of Jefferson

H-5996 FILED MARCH 30, 1990

Adopted

SENATE FILE 2413

H-5988

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, line 8, by inserting after the word
4 "mail." the following: "The peace officer shall also
5 notify the state department of transportation which
6 shall suspend the person's motor vehicle operator's
7 license or permit for three months, unless the
8 person's custodial parent or legal guardian provides a
9 written request for the reinstatement of the license
10 or permit."

11 2. Page 4, line 24, by inserting after the word
12 "mail." the following: "The peace officer shall also
13 notify the state department of transportation which
14 shall suspend the person's motor vehicle operator's
15 license or permit for three months, unless the
16 custodial parent or legal guardian provides a written
17 request for the reinstatement of the license or
18 permit."

By BENNETT of Ida

SIEGRIST of Pottawattamie

SPENNER of Henry

LAGESCHULTE of Bremer

H-5988 FILED MARCH 30, 1990

o/o 4/3 (p. 1776)

SENATE FILE 2413

H-5989

1 Amend Senate File 2413 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 12, by inserting after line 14, the
4 following:

5 "Sec. ____ . Section 246.703, Code 1989, is amended
6 by adding the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. The director may enter
8 into a chapter 28E agreement with a county board of
9 supervisors or county conservation board to provide
10 inmate services for environmental maintenance
11 including but not limited to brush and weed cutting,
12 tree planting, and erosion control. The board of
13 supervisors or conservation board shall reimburse the
14 department of corrections for the allowance paid the
15 inmates by the director. The supervision, security,
16 and transportation of inmates used pursuant to the
17 chapter 28E agreement shall be provided by the
18 department of corrections."

19 2. Renumber as necessary.

By HALVORSON of Clayton

SHERZAN of Polk

KNAPP of Dubuque

H-5989 FILED MARCH 30, 1990

Adopted 4/3 (p. 1785)

SENATE FILE 2413

997

Amend Senate File 2413, as amended, passed, and reprinted by the Senate, as follows:

1. Page 3, by inserting after line 8, the following:

"Sec. ____ . Section 123.50, subsection 4, Code Supplement 1989, is amended to read as follows:

4. A person, other than a licensee or permittee or a minor, who violates section 123.47 is guilty of a serious misdemeanor punishable by a minimum fine of one hundred dollars for a first offense, two hundred and fifty dollars for a second offense, and five hundred dollars for a third and subsequent offense, and a maximum fine for any offense of not more than one thousand dollars.

A person age eighteen or under who is guilty of possessing any alcoholic liquor, wine, or beer in violation of section 123.47, in addition to the penalty provided in section 123.90, shall surrender all motor vehicle licenses or permits which the court shall forward to the state department of transportation. The license or permit shall be suspended by the department for a three-month period."

2. Page 12, by inserting after line 20, the following:

"Sec. ____ . NEW SECTION. 321.210B SUSPENSION FOR POSSESSION OF ALCOHOL BY PERSON UNDER LEGAL AGE.

The department shall suspend the motor vehicle license of a person age eighteen or under who is guilty of a violation of section 123.47, as provided in section 123.50, subsection 4."

3. Renumber as necessary.

By SIEGRIST of Pottawattamie
LUNDBY of Linn
BENNETT of Ida
MAULSBY of Calhoun

HESTER of Pottawattamie
KISTLER of Jefferson
SHONING of Woodbury

H-5997 FILED MARCH 30, 1990

June 4/3 (p. 1778)

SENATE FILE 2413

H-5998

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by striking lines 10 through 28, and
4 inserting the following:

5 "Failure to attend or complete a course for
6 drinking drivers, or a substance abuse treatment
7 program as ordered by the court is punishable as
8 contempt of court."

9 2. Page 24, by inserting after line 15 the
10 following:

11 "Sec. ____ . NEW SECTION. 809.17 PROCEEDS APPLIED
12 TO TAXES AND SUBSTANCE ABUSE PROGRAMS.

13 Except as provided in section 809.21, proceeds from
14 the disposal of seized or forfeited property pursuant
15 to this chapter shall be transferred to the Iowa
16 department of public health for funding of youth
17 education, prevention, and treatment programs for
18 substance abusers."

19 3. Page 27, line 10, by striking the words
20 "substance abuse" and inserting the following:
21 "treatment".

22 4. Renumber as necessary.

By ROSENBERG of Story

H-5998 FILED MARCH 30, 1990

Adopted as amended by 6043 4/3 (J.1823)

SENATE FILE 2413

H-6001

1 Amend Senate File 2413 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 12, by inserting after line 20, the
4 following:

5 "Sec. ____ . Section 321J.4, subsection 8, Code
6 1989, is amended by striking the subsection.

7 Sec. ____ . Section 321J.13, subsection 5, Code
8 Supplement 1989, is amended by striking the
9 subsection.

10 Sec. ____ . Section 321J.20, subsection 1, Code
11 1989, is amended by striking the subsection."

12 2. Page 12, by striking line 22, and inserting
13 the following:

14 "The sections of this Act creating a new chapter".

15 3. Page 13, by inserting after line 28, the
16 following:

17 "Sec. ____ . NEW SECTION. 321L.3 TEMPORARY
18 RESTRICTED LICENSE.

19 A person whose motor vehicle license has been
20 revoked under chapter 321J and who is not eligible for
21 a temporary restricted license under this chapter may
22 petition the court for an order to the department to
23 require the department to issue a temporary restricted
24 license to the person following the expiration of any
25 minimum revocation period provided for under section
26 321J.20. Notice of and an opportunity to request a
27 hearing on the petition shall be provided to the
28 department and to the prosecuting attorney by the
29 clerk of the district court in the county where the
30 violation resulting in the revocation was committed.
31 If the court determines that any minimum revocation
32 period provided for under section 321J.20 has expired
33 and the temporary restricted license is necessary for
34 the person to maintain the person's employment, the
35 court may order the department to issue to the person
36 a temporary restricted license conditioned upon the
37 person's certification to the court of the
38 installation of approved ignition interlock devices in
39 all motor vehicles that it is necessary for the person
40 to operate to maintain the person's employment. If
41 the person operates a motor vehicle which does not
42 have an approved ignition interlock device or if the
43 person tampers with or circumvents an ignition
44 interlock device, in addition to other penalties
45 provided, the person's temporary restricted license
46 shall be revoked.

47 Sec. ____ . NEW SECTION. 321L.4 STATEMENT OF
48 OFFICER.

49 A person who has been requested to submit to a
50 chemical test shall be advised by a peace officer of

H-6001

Page 2

1 the following:

2 1. If the person refuses to submit to the test,
3 the person's motor vehicle license or operating
4 privilege will be revoked by the department for the
5 applicable period under section 321J.9 and the person
6 will not be eligible for a temporary restricted
7 license until at least the first ninety days of the
8 revocation period have expired.

9 2. If the person submits to the test and the
10 results indicate an alcohol concentration as defined
11 in section 321J.1 of .10 or more, the person's motor
12 vehicle license or operating privilege will be revoked
13 by the department for the applicable period under
14 section 321J.12 and the person will not be eligible
15 for a temporary restricted license until at least the
16 first thirty days of the revocation period have
17 expired.

18 This section does not apply in any case involving a
19 person described in section 321J.7.

20 Sec. ____ . NEW SECTION. 321L.5 STAY OF LICENSE
21 REVOCATION BY DEPARTMENT.

22 Notwithstanding the Iowa administrative procedure
23 Act, chapter 17A, the department shall not stay the
24 revocation of a person's motor vehicle license or
25 operating privilege for the period that the person is
26 contesting the revocation under this section or
27 section 321J.14 unless the first ninety days of the
28 revocation period under section 321J.9 or the first
29 thirty days of a revocation period under 321J.12 have
30 expired.

31 Sec. ____ . NEW SECTION. 321L.6 TEMPORARY
32 RESTRICTED LICENSE.

33 The department may, on application, issue a
34 temporary restricted license to a person whose motor
35 vehicle license is revoked under chapter 321J allowing
36 the person to drive to and from the person's home and
37 specified places at specified times which can be
38 verified by the department and which are required by
39 the person's full-time or part-time employment,
40 continuing health care or the continuing health care
41 of another who is dependent upon the person,
42 continuing education while enrolled in an educational
43 institution on a part-time or full-time basis and
44 while pursuing a course of study leading to a diploma,
45 degree, or other certification of successful
46 educational completion, substance abuse treatment, and
47 court-ordered community service responsibilities if
48 the person's motor vehicle license has not been
49 revoked under section 321J.4, 321J.9, or 321J.12
50 within the previous six years and if any of the

H-6001

Page 3

1 following apply:

2 a. The person's motor vehicle license is revoked
3 under section 321J.4, subsection 1, 2, 4, or 6.

4 b. The person's motor vehicle license is revoked
5 under section 321J.9, the person has entered a plea of
6 guilty on a charge of a violation of section 321J.2

7 which arose from the same set of circumstances which
8 resulted in the person's motor vehicle license

9 revocation under section 321J.9, the guilty plea is
10 not withdrawn at the time of or after application for
11 the temporary restricted license, and the first ninety
12 days of the revocation period have expired.

13 c. The person's motor vehicle license is revoked
14 under section 321J.12 and the first thirty days of the
15 revocation period have expired.

16 However, a temporary restricted license may be
17 issued if the person's motor vehicle license is
18 revoked under section 321J.9, and the revocation is a
19 second revocation under this chapter, and the first
20 three hundred sixty-five days of the revocation have
21 expired."

22 4. Page 36, by inserting after line 11 the
23 following:

24 "Sec. ____ . REPEAL.

25 Section 321J.8, Code 1989, is repealed."

26 5. Page 36, by striking lines 16 through 20, and
27 inserting the following:

28 "The Code editor shall redesignate chapter 321L, as
29 enacted by this Act, in a new and different chapter so
30 that these sections do not conflict with chapter 321L
31 as enacted during the 1989 Session of the General
32 Assembly and as it appears in the 1989 Code
33 Supplement."

34 6. Renumber as necessary.

By TRENT of Muscatine
GARMAN of Story
CLARK of Cerro Gordo

H-6001 FILED MARCH 30, 1990

Loss 4/3 (f 1790)

SENATE FILE 2413

H-6005

1 Amend Senate File 2413, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 3, by striking lines 19 through 21, and
 4 inserting the following: "private elementary,
 5 vocational, or secondary school, or a public or
 6 private college, junior college, or university, or
 7 within one hundred feet of a public park, playground,
 8 public or private youth center, public swimming pool,
 9 or video arcade facility, may, at the judge's
 10 discretion, be sentenced up to an additional term of
 11 confinement".

12 2. Page 3, by striking lines 31 and 32, and
 13 inserting the following: "private elementary,
 14 vocational, or secondary school, or a public or
 15 private college, junior college, or university, or
 16 within one hundred feet of a public park, playground,
 17 public or private youth center, public swimming pool,
 18 or video arcade facility, the person shall serve a".

19 3. Page 4, by striking lines 8 and 9 and
 20 inserting the following: "elementary, vocational, or
 21 secondary school, or a public or private college,
 22 junior college, or university, or within one hundred
 23 feet of a public park, playground, public or private
 24 youth center, public swimming pool, or video arcade
 25 facility, the person shall serve a minimum".

By RISTLER of Jefferson
 GARMAN OF Story

H-6005 FILED MARCH 30, 1990

Adopted 4/3 (p. 1779)

SENATE FILE 2413

H-6006

1 Amend Senate File 2413 as amended, passed, and
 2 reprinted by the Senate, as follows:

3 1. By striking page 27, line 22, through page 29,
 4 line 11.

5 2. By renumbering as necessary.

By CLARK of Cerro Gordo

H-6006 FILED MARCH 30, 1990

Adopted 4/3 (p. 1826)

SENATE FILE 2413

H-6008

1 Amend Senate File 2413, as amended, passed, and re-
 2 printed by the Senate, as follows:

3 1. Page 11, line 22, by striking the word "shall"
 4 and inserting the following: "may".

By MAULSBY of Calhoun

H-6008 FILED MARCH 30, 1990

Adopted 4/3 (p. 1783)

SENATE FILE 2413

H-5983

- 1 Amend Senate File 2413 as follows:
2 1. Page 3, line 13, by striking the word
3 "counterfiet" and inserting the following:
4 "counterfeit".
5 2. Page 9, line 17, by striking the word "--
6 PENALTY" and inserting the following: "-- PENALTY".
7 3. Page 20, line 6, by striking the word "--
8 REFUNDS" and inserting the following: "-- REFUNDS".
9 4. Page 36, line 20, by inserting after the word
10 "as" the following: "they".

By JAY of Appanoose

H-5983 FILED MARCH 29, 1990

Adopted 4/3 (p. 1778)

Lines 9, 10 placed o/o by adoption of 6009

SENATE FILE 2413

H-5987

- 1 Amend Senate File 2413 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 27, by inserting after line 15, the
4 following:
5 "Sec. ____ . Section 903A.5, unnumbered paragraph 1,
6 Code 1989, is amended to read as follows:
7 An inmate shall not be discharged from the custody
8 of the director of the Iowa department of corrections
9 until the inmate has served the full term for which
10 the inmate was sentenced, less good conduct time
11 earned and not forfeited, unless the inmate is
12 pardoned or otherwise legally released. Good conduct
13 time earned and not forfeited shall apply to reduce a
14 mandatory minimum sentence being served pursuant to
15 section ~~204.4067~~-~~204.4137~~, 902.7, 902.8, or 906.5. An
16 inmate shall be deemed to be serving the sentence from
17 the day on which the inmate is received into the
18 institution. However, if an inmate was confined to a
19 county jail or other correctional or mental facility
20 at any time prior to sentencing, or after sentencing
21 but prior to the case having been decided on appeal,
22 because of failure to furnish bail or because of being
23 charged with a nonbailable offense, the inmate shall
24 be given credit for the days already served upon the
25 term of the sentence. The clerk of the district court
26 of the county from which the inmate was sentenced,
27 shall certify to the warden the number of days so
28 served."

- 29 2. Renumber as necessary.

By BENNETT of Ida
MAULSBY of Calhoun

H-5987 FILED MARCH 30, 1990

Adopted 3/4 (p. 1826)

SENATE FILE 2413

H-6009

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 12, by striking lines 21 through 26 and
4 inserting the following:

5 "Sec. ____ . NEW SECTION. 321L.1 DEFINITIONS.

6 As used in this chapter unless the context
7 otherwise requires:

8 1. "Alcohol concentration" means the number of
9 grams of alcohol per any of the following:

10 a. One hundred milliliters of blood.

11 b. Two hundred ten liters of breath.

12 c. Sixty-seven milliliters of urine.

13 2. "Alcoholic beverage" includes alcohol, wine,
14 spirits, beer, or any other beverage which contains
15 ethyl alcohol and is fit for human consumption.

16 3. "Arrest" includes but is not limited to taking
17 into custody pursuant to section 232.19.

18 4. "Department" means the state department of
19 transportation.

20 5. "Director" means the director of transportation
21 or the director's designee.

22 6. "Motor vehicle license" means any license or
23 permit issued to a person to operate a motor vehicle
24 in this state, including but not limited to an
25 operator, chauffeur, or motorized bicycle license and
26 an instruction or temporary permit.

27 7. "Peace officer" means:

28 a. A member of the highway patrol.

29 b. A police officer under civil service as
30 provided in chapter 400.

31 c. A sheriff.

32 d. A regular deputy sheriff who has had formal
33 police training.

34 e. Any other law enforcement officer who has
35 satisfactorily completed an approved course relating
36 to motor vehicle operators under the influence of
37 alcoholic beverages at the Iowa law enforcement
38 academy or a law enforcement training program approved
39 by the department of public safety.

40 8. "Serious injury" means a bodily injury which
41 creates a substantial risk of death, or which causes
42 serious permanent disfigurement, or which causes
43 protracted loss or impairment of the function of any
44 bodily organ or major bodily member, or which causes
45 the loss of any bodily member."

46 2. Page 12, line 27, by striking the figure
47 "321L.1" and inserting the following: "321L.1A".

48 3. Page 12, line 32, by striking the figure
49 "321J.2" and inserting the following: "321L.2A".

50 4. Page 13, by inserting after line 28 the

H-6009

Page 2

1 following:

2 "Sec. ____ . NEW SECTION. 321L.2A OPERATING WHILE
3 UNDER THE INFLUENCE OF ALCOHOL OR A DRUG OR WHILE
4 HAVING AN ALCOHOL CONCENTRATION OF .08 OR MORE. (OWI)

5 1. A person commits the offense of operating while
6 intoxicated if the person operates a motor vehicle in
7 this state in either of the following conditions:

8 a. While under the influence of an alcoholic
9 beverage or other drug or a combination of such
10 substances.

11 b. While having an alcohol concentration as
12 defined in section 321L.2 of .08 or more.

13 2. A person who violates this section commits:

14 a. A serious misdemeanor for the first offense and
15 shall be imprisoned in the county jail for not less
16 than forty-eight hours to be served as ordered by the
17 court, less credit for any time the person was
18 confined in a jail or detention facility following
19 arrest, and assessed a fine of not less than five
20 hundred dollars nor more than one thousand dollars.
21 As an alternative to a portion or all of the fine, the
22 court may order the person to perform not more than
23 two hundred hours of unpaid community service. The
24 court may accommodate the sentence to the work
25 schedule of the defendant.

26 b. An aggravated misdemeanor for a second offense
27 and shall be imprisoned in the county jail or
28 community-based correctional facility not less than
29 seven days, which minimum term cannot be suspended
30 notwithstanding section 901.5, subsection 3 and
31 section 907.3, subsection 3, and assessed a fine of
32 not less than seven hundred fifty dollars.

33 c. A class "D" felony for a third offense and each
34 subsequent offense and shall be imprisoned in the
35 county jail for a determinate sentence of not more
36 than one year but not less than thirty days, or
37 committed to the custody of the director of the
38 department of corrections, and assessed a fine of not
39 less than seven hundred fifty dollars. The minimum
40 jail term of thirty days cannot be suspended
41 notwithstanding section 901.5, subsection 3, and
42 section 907.3, subsection 3, however, the person
43 sentenced shall receive credit for any time the person
44 was confined in a jail or detention facility following
45 arrest. If a person is committed to the custody of
46 the director of the department of corrections pursuant
47 to this paragraph and the sentence is suspended, the
48 sentencing court shall order that the offender serve
49 the thirty-day minimum term in the county jail. If
50 the sentence which commits the person to the custody

H-6009

Page 3

1 of the director of the department of corrections is
2 later imposed by the court, all time served in a
3 county jail toward the thirty-day minimum term shall
4 count as time served toward the sentence which
5 committed the person to the custody of the director of
6 the department of corrections. A person convicted of
7 a second or subsequent offense shall be ordered to
8 undergo a substance abuse evaluation prior to
9 sentencing. If a person is convicted of a third or
10 subsequent offense or if the evaluation recommends
11 treatment, the offender may be committed to the
12 custody of the director of the department of
13 corrections, who, if the sentence is not suspended,
14 shall assign the person to a facility pursuant to
15 section 246.513 or the offender may be committed to
16 treatment in the community under the provisions of
17 section 907.6.

18 3. No conviction for, deferred judgment for, or
19 plea of guilty to, a violation of this section which
20 occurred more than six years prior to the date of the
21 violation charged shall be considered in determining
22 that the violation charged is a second, third, or
23 subsequent offense. For the purpose of determining if
24 a violation charged is a second, third, or subsequent
25 offense, deferred judgments pursuant to section 907.3
26 for violations of this section and convictions or the
27 equivalent of deferred judgments for violations in any
28 other states under statutes substantially
29 corresponding to this section shall be counted as
30 previous offenses. The courts shall judicially notice
31 the statutes of other states which define offenses
32 substantially equivalent to the one defined in this
33 section and can therefore be considered corresponding
34 statutes. Each previous violation shall be considered
35 a separate previous offense without regard to whether
36 each was complete as to commission and conviction or
37 deferral of judgment following or prior to any other
38 previous violation.

39 4. A person shall not be convicted and sentenced
40 for more than one violation of this section if the
41 violation is shown to have been committed by either or
42 both of the means described in subsection 1 in the
43 same occurrence.

44 5. The clerk of court shall immediately certify to
45 the department a true copy of each order entered with
46 respect to deferral of judgment, deferral of sentence
47 or pronouncement of judgment and sentence for a
48 defendant under this section.

49 6. This section does not apply to a person
50 operating a motor vehicle while under the influence of

H-6009

Page 4

1 a drug if the substance was prescribed for the person
2 and was taken under the prescription and in accordance
3 with the directions of a medical practitioner as
4 defined in chapter 155A, if there is no evidence of
5 the consumption of alcohol and the medical
6 practitioner had not directed the person to refrain
7 from operating a motor vehicle.

8 7. In any prosecution under this section, evidence
9 of the results of analysis of a specimen of the
10 defendant's blood, breath, or urine is admissible upon
11 proof of a proper foundation. The alcohol
12 concentration established by the results of an
13 analysis of a specimen of the defendant's blood,
14 breath, or urine withdrawn within two hours after the
15 defendant was driving or in physical control of a
16 motor vehicle is presumed to be the alcohol
17 concentration at the time of driving or being in
18 physical control of the motor vehicle.

19 8. The court shall order a defendant convicted of
20 or receiving a deferred judgment for a violation of
21 this section to make restitution, in an amount not to
22 exceed two thousand dollars, for damages resulting
23 directly from the violation. An amount paid pursuant
24 to this restitution order shall be credited toward any
25 adverse judgment in a subsequent civil proceeding
26 arising from the same occurrence. However, other than
27 establishing a credit, a restitution proceeding
28 pursuant to this section shall not be given
29 evidentiary or preclusive effect in a subsequent civil
30 proceeding arising from the same occurrence.

31 9. In any prosecution under this section, the
32 results of a chemical test may not be used to prove a
33 violation of paragraph "b" of subsection 1 if the
34 alcohol concentration indicated by the chemical test
35 minus the established margin of error inherent in the
36 device or method used to conduct the chemical test
37 does not equal an alcohol concentration of .08 or
38 more.

39 Sec. ____ . NEW SECTION. 321L.3 COURT ORDERED
40 SUBSTANCE ABUSE EVALUATION OR TREATMENT.

41 1. On a conviction for a violation of section
42 321L.2A, the court may order the defendant to attend a
43 course for drinking drivers under section 321L.22. If
44 the defendant submitted to a chemical test on arrest
45 for the violation of section 321L.2A and the test
46 indicated an alcohol concentration of .20 or higher,
47 or if the defendant is charged with a second or
48 subsequent offense, the court shall order the
49 defendant, on conviction, to undergo a substance abuse
50 evaluation and the court may order the defendant to

H-6009

Page 5

1 follow the recommendations proposed in the substance
2 abuse evaluation for appropriate substance abuse
3 treatment for the defendant. Court-ordered substance
4 abuse treatment is subject to the periodic reporting
5 requirements of section 125.86. If a defendant is
6 committed by the court to a substance abuse treatment
7 facility, the administrator of the facility shall
8 report to the court when it is determined that the
9 defendant has received the maximum benefit of
10 treatment at the facility and the defendant shall be
11 released from the facility. The time for which the
12 defendant is committed for treatment shall be credited
13 against the defendant's sentence. The court may
14 prescribe the length of time for the evaluation and
15 treatment or it may request that the area school
16 conducting the course for drinking drivers which the
17 person is ordered to attend or the treatment program
18 to which the person is committed immediately report to
19 the court when the person has received maximum benefit
20 from the course for drinking drivers or treatment
21 program or has recovered from the person's addiction,
22 dependency, or tendency to chronically abuse alcohol
23 or drugs. A person committed under this section who
24 does not possess sufficient income or estate to make
25 payment of the costs of the treatment in whole or in
26 part shall be considered a state patient and the costs
27 of treatment shall be paid as provided in section
28 125.44. A defendant who fails to carry out the order
29 of the court or who fails to successfully complete or
30 attend a course for drinking drivers or an ordered
31 substance abuse treatment program shall be confined in
32 the county jail for twenty days in addition to any
33 other imprisonment ordered by the court or may be
34 ordered to perform unpaid community service work, and
35 shall be placed on probation for one year with a
36 violation of this probation punishable as contempt of
37 court.

38 2. As a condition of a suspended sentence or
39 portion of sentence for a second, third, or subsequent
40 offense in violation of section 321L.2A, the court
41 upon hearing may commit the defendant for inpatient
42 treatment of alcoholism or drug addiction or
43 dependency to any hospital, institution, or community
44 correctional facility in Iowa providing such
45 treatment. The time for which the defendant is
46 committed for treatment shall be credited against the
47 defendant's sentence. The court may prescribe the
48 length of time for the evaluation and treatment or it
49 may request that the hospital to which the person is
50 committed immediately report to the court when the

H-6009

Page 6

1 person has received maximum benefit from the program
2 of the hospital or institution or has recovered from
3 the person's addiction, dependency, or tendency to
4 chronically abuse alcohol or drugs. A person
5 committed under this section who does not possess
6 sufficient income or estate to make payment of the
7 costs of the treatment in whole or in part shall be
8 considered a state patient and the costs of treatment
9 shall be paid as provided in section 125.44.

10 Sec. ____ . NEW SECTION. 321L.4 REVOCATION OF
11 LICENSE -- IGNITION INTERLOCK DEVICES -- CONDITIONAL
12 TEMPORARY RESTRICTED LICENSE.

13 1. If a defendant is convicted of a violation of
14 section 321L.2A and the defendant's motor vehicle
15 license or nonresident operating privilege has not
16 been revoked under section 321L.9 or 321L.12 for the
17 occurrence from which the arrest arose, the department
18 shall revoke the defendant's motor vehicle license or
19 nonresident operating privilege for one hundred eighty
20 days if the defendant has had no previous conviction
21 under section 321L.2A or revocation under section
22 321L.9 or 321L.12 within the previous six years and
23 for one year if the defendant has had one or more
24 previous convictions or revocations under those
25 sections within the previous six years.

26 2. If the court defers judgment pursuant to
27 section 907.3 for a violation of section 321L.2A, the
28 court shall order the department to revoke the
29 defendant's motor vehicle license or nonresident
30 operating privilege for a period of not less than
31 thirty days nor more than ninety days if the
32 defendant's motor vehicle license or nonresident
33 operating privilege has not been revoked under section
34 321L.9 or 321L.12 for the occurrence from which the
35 arrest arose. The court shall immediately require the
36 defendant to surrender to it all Iowa licenses or
37 permits held by the defendant, which the court shall
38 forward to the department with a copy of the order
39 deferring judgment.

40 3. a. Upon a plea or verdict of guilty of a third
41 or subsequent violation of section 321L.2A, the court
42 shall order the department to revoke the defendant's
43 motor vehicle license or nonresident operating
44 privilege for a period of six years. The court shall
45 require the defendant to surrender to it all Iowa
46 licenses or permits held by the defendant, which the
47 court shall forward to the department with a copy of
48 the order for revocation.

49 b. After two years from the date of the order for
50 revocation, the defendant may apply to the court for

H-6009

Page 7

1 restoration of the defendant's eligibility for a motor
2 vehicle license. The application may be granted only
3 if all of the following are shown by the defendant by
4 a preponderance of the evidence:

5 (1) The defendant has completed an evaluation and,
6 if recommended by the evaluation, a program of
7 treatment for chemical dependency and is recovering,
8 or has substantially recovered, from that dependency
9 on or tendency to abuse alcohol or drugs.

10 (2) The defendant has not been convicted, since
11 the date of the revocation order, of any subsequent
12 violations of section 321L.2A or 123.46, or any
13 comparable city or county ordinance, and the defendant
14 has not, since the date of the revocation order,
15 submitted to a chemical test under this chapter that
16 indicated an alcohol concentration as defined in
17 section 321L.1 of .08 or more, or refused to submit to
18 chemical testing under this chapter.

19 (3) The defendant has abstained from the excessive
20 consumption of alcoholic beverages and the consumption
21 of controlled substances, except at the direction of a
22 licensed physician or pursuant to a valid
23 prescription.

24 (4) The defendant's motor vehicle license is not
25 currently subject to suspension or revocation for any
26 other reason.

27 c. The court shall forward to the department a
28 record of any application submitted under paragraph
29 "b" and the results of the court's disposition of the
30 application.

31 4. Upon a plea or verdict of guilty of a violation
32 of section 321L.2A which involved a personal injury,
33 the court shall determine in open court, from
34 consideration of the information in the file and any
35 other evidence the parties may submit, whether a
36 serious injury was sustained by any person other than
37 the defendant and, if so, whether the defendant's
38 conduct in violation of section 321L.2A caused the
39 serious injury. If the court so determines, the court
40 shall order the department to revoke the defendant's
41 motor vehicle license or nonresident operating
42 privilege for a period of one year in addition to any
43 other period of suspension or revocation. The
44 defendant shall surrender to the court any Iowa
45 license or permit and the court shall forward it to
46 the department with a copy of the order for
47 revocation.

48 5. Upon a plea or verdict of guilty of a violation
49 of section 321L.2A which involved a death, the court
50 shall determine in open court, from consideration of

H-6009

Page 8

1 the information in the file and any other evidence the
2 parties may submit, whether a death occurred and, if
3 so, whether the defendant's conduct in violation of
4 section 321L.2A caused the death. If the court so
5 determines, the court shall order the department to
6 revoke the defendant's motor vehicle license or
7 nonresident operating privilege for a period of six
8 years. The defendant shall surrender to the court any
9 Iowa license or permit and the court shall forward it
10 to the department with a copy of the order for
11 revocation.

12 6. If a license or permit to operate a motor
13 vehicle is revoked or denied under this section or
14 section 321L.9 or 321L.12, the period of revocation or
15 denial shall be the period provided for such a
16 revocation or until the defendant reaches the age of
17 eighteen whichever period is longer.

18 7. On a conviction for or as a condition of a
19 deferred judgment for a violation of section 321L.2A,
20 the court may order the defendant to install ignition
21 interlock devices of a type approved by the
22 commissioner of public safety on all motor vehicles
23 owned or operated by the defendant which, without
24 tampering or the intervention of another person, would
25 prevent the defendant from operating the motor vehicle
26 with an alcohol concentration greater than a level set
27 by rule of the commissioner of public safety. The
28 commissioner of public safety shall adopt rules to
29 approve certain ignition interlock devices and the
30 means of installation of the devices, and shall
31 establish the level of alcohol concentration beyond
32 which an ignition interlock device will not allow
33 operation of the motor vehicle in which it is
34 installed. The order shall remain in effect for a
35 period of time as determined by the court which shall
36 not exceed the maximum term of imprisonment which the
37 court could have imposed according to the nature of
38 the violation. While the order is in effect, the
39 defendant shall not operate a motor vehicle which does
40 not have an approved ignition interlock device
41 installed. If the defendant's motor vehicle license
42 or nonresident operating privilege has been revoked,
43 the department shall not issue a temporary permit or a
44 motor vehicle license to the person without
45 certification that approved ignition interlock devices
46 have been installed in all motor vehicles owned or
47 operated by the defendant while the order is in
48 effect. A defendant who fails within a reasonable
49 time to comply with an order to install an approved
50 ignition interlock device may be declared in contempt

H-6009

Page 9

1 of court and punished accordingly. A person who
2 tampers with or circumvents an ignition interlock
3 device installed under a court order while an order is
4 in effect commits a serious misdemeanor.

5 8. A person whose motor vehicle license has been
6 revoked under this chapter and who is not eligible for
7 a temporary restricted license under this chapter may
8 petition the court for an order to the department to
9 require the department to issue a temporary restricted
10 license to the person. The court shall determine if
11 the temporary restricted license is necessary for the
12 person to maintain the person's present employment.
13 If the court determines that the temporary restricted
14 license is necessary for the person to maintain the
15 person's present employment, the court shall order the
16 department to issue to the person a temporary
17 restricted license conditioned upon the person's
18 certification to the court of the installation of
19 approved ignition interlock devices in all motor
20 vehicles that it is necessary for the person to
21 operate to maintain the person's present employment.
22 If the person operates a motor vehicle which does not
23 have an approved ignition interlock device or if the
24 person tampers with or circumvents an ignition
25 interlock device, in addition to other penalties
26 provided, the person's temporary restricted license
27 shall be revoked.

28 Sec. ____ . NEW SECTION. 321L.5 PRELIMINARY
29 SCREENING TEST.

30 When a peace officer has reasonable grounds to
31 believe that a motor vehicle operator may be violating
32 or has violated section 321L.2A, or the operator has
33 been involved in a motor vehicle collision resulting
34 in injury or death, the peace officer may request the
35 operator to provide a sample of the operator's breath
36 for a preliminary screening test using a device
37 approved by the commissioner of public safety for that
38 purpose. The results of this preliminary screening
39 test may be used for the purpose of deciding whether
40 an arrest should be made and whether to request a
41 chemical test authorized in this chapter, but shall
42 not be used in any court action except to prove that a
43 chemical test was properly requested of a person
44 pursuant to this chapter.

45 Sec. ____ . NEW SECTION. 321L.6 IMPLIED CONSENT TO
46 TEST.

47 1. A person who operates a motor vehicle in this
48 state under circumstances which give reasonable
49 grounds to believe that the person has been operating
50 a motor vehicle in violation of section 321L.2A is

H-6009

Page 10

1 deemed to have given consent to the withdrawal of
2 specimens of the person's blood, breath, or urine and
3 to a chemical test or tests of the specimens for the
4 purpose of determining the alcohol concentration or
5 presence of drugs, subject to this section. The
6 withdrawal of the body substances and the test or
7 tests shall be administered at the written request of
8 a peace officer having reasonable grounds to believe
9 that the person was operating a motor vehicle in
10 violation of section 321L.2A, and if any of the
11 following conditions exist:

12 a. A peace officer has lawfully placed the person
13 under arrest for violation of section 321L.2A.

14 b. The person has been involved in a motor vehicle
15 accident or collision resulting in personal injury or
16 death.

17 c. The person has refused to take a preliminary
18 breath screening test provided by this chapter.

19 d. The preliminary breath screening test was
20 administered and it indicated an alcohol concentration
21 as defined in section 321L.1 of .08 or more.

22 e. The preliminary breath screening test was
23 administered and it indicated an alcohol concentration
24 of less than .08 and the peace officer has reasonable
25 grounds to believe that the person was under the
26 influence of a drug other than alcohol or a
27 combination of alcohol and another drug.

28 2. The peace officer shall determine which of the
29 three substances, breath, blood, or urine, shall be
30 tested. Refusal to submit to a chemical test of urine
31 or breath is deemed a refusal to submit, and section
32 321L.9 applies. A refusal to submit to a chemical
33 test of blood is not deemed a refusal to submit, but
34 in that case, the peace officer shall then determine
35 which one of the other two substances shall be tested
36 and shall offer the test. If the peace officer fails
37 to offer a test within two hours after the preliminary
38 screening test is administered or refused or the
39 arrest is made, whichever occurs first, a test is not
40 required, and there shall be no revocation under
41 section 321L.9.

42 3. Notwithstanding subsection 2, if the peace
43 officer has reasonable grounds to believe that the
44 person was under the influence of a drug other than
45 alcohol or a combination of alcohol and another drug,
46 a urine test may be required even after a blood or
47 breath test has been administered. Section 321L.9
48 applies to a refusal to submit to a chemical test of
49 urine requested under this subsection.

50 Sec. ____ . NEW SECTION. 321L.7 DEAD OR

H-6009

Page 11

1 UNCONSCIOUS PERSONS.

2 A person who is dead, unconscious, or otherwise in
3 a condition rendering the person incapable of consent
4 or refusal is deemed not to have withdrawn the consent
5 provided by section 321L.6, and the test may be given
6 if a licensed physician certifies in advance of the
7 test that the person is dead, unconscious, or
8 otherwise in a condition rendering that person
9 incapable of consent or refusal.

10 Sec. ____ . NEW SECTION. 321L.8 STATEMENT OF
11 OFFICER.

12 A person who has been requested to submit to a
13 chemical test shall be advised by a peace officer of
14 the following:

15 1. If the person refuses to submit to the test,
16 the person's license or operating privilege will be
17 revoked by the department for the applicable period
18 under section 321L.9.

19 2. If the person submits to the test and the
20 results indicate an alcohol concentration as defined
21 in section 321L.1 of .08 or more, the person's license
22 or operating privilege will be revoked by the
23 department for the applicable period under section
24 321L.12.

25 This section does not apply in any case involving a
26 person described in section 321L.7.

27 Sec. ____ . NEW SECTION. 321L.9 REFUSAL TO SUBMIT
28 -- REVOCATION.

29 If a person refuses to submit to the chemical
30 testing, a test shall not be given, but the
31 department, upon the receipt of the peace officer's
32 certification, subject to penalty for perjury, that
33 the officer had reasonable grounds to believe the
34 person to have been operating a motor vehicle in
35 violation of section 321L.2A, that specified
36 conditions existed for chemical testing pursuant to
37 section 321L.6, and that the person refused to submit
38 to the chemical testing, shall revoke the person's
39 motor vehicle license and any nonresident operating
40 privilege for a period of two hundred forty days if
41 the person has no previous revocation within the
42 previous six years under this chapter; and five
43 hundred forty days if the person has one or more
44 previous revocations within the previous six years
45 under this chapter; or if the person is a resident
46 without a license or permit to operate a motor vehicle
47 in this state, the department shall deny to the person
48 the issuance of a license or permit for the same
49 period a license or permit would be revoked, subject
50 to review as provided in this chapter. The effective

H-6009

Page 12

1 date of revocation shall be twenty days after the
2 department has mailed notice of revocation to the
3 person by certified mail or, on behalf of the
4 department, a peace officer offering or directing the
5 administration of a chemical test may serve immediate
6 notice of intention to revoke and of revocation on a
7 person who refuses to permit chemical testing. If the
8 peace officer serves that immediate notice, the peace
9 officer shall take the Iowa license or permit of the
10 driver, if any, and issue a temporary license
11 effective for only twenty days. The peace officer
12 shall immediately send the person's license to the
13 department along with the officer's certificate
14 indicating the person's refusal to submit to chemical
15 testing.

16 Sec. ____ . NEW SECTION. 321L.10 TESTS PURSUANT TO
17 WARRANTS.

18 1. Refusal to consent to a test under section
19 321L.6 does not prohibit the withdrawal of a specimen
20 for chemical testing pursuant to a search warrant
21 issued in the investigation of a suspected violation
22 of section 707.5 if all of the following grounds
23 exist:

24 a. A traffic accident has resulted in a death or
25 personal injury reasonably likely to cause death.

26 b. There are reasonable grounds to believe that
27 one or more of the persons whose driving may have been
28 the proximate cause of the accident was violating
29 section 321L.2A at the time of the accident.

30 2. Search warrants may be issued under this
31 section in full compliance with chapter 808 or they
32 may be issued under subsection 3.

33 3. Notwithstanding section 808.3, the issuance of
34 a search warrant under this section may be based upon
35 sworn oral testimony communicated by telephone if the
36 magistrate who is asked to issue the warrant is
37 satisfied that the circumstances make it reasonable to
38 dispense with a written affidavit. The following
39 shall then apply:

40 a. When a caller applies for the issuance of a
41 warrant under this section and the magistrate becomes
42 aware of the purpose of the call, the magistrate shall
43 place under oath the person applying for the warrant.

44 b. The person applying for the warrant shall
45 prepare a duplicate warrant and read the duplicate
46 warrant, verbatim, to the magistrate who shall enter,
47 verbatim, what is read to the magistrate on a form
48 that will be considered the original warrant. The
49 magistrate may direct that the warrant be modified.

50 c. The oral application testimony shall set forth

H-6009

Page 13

1 facts and information tending to establish the
2 existence of the grounds for the warrant and shall
3 describe with a reasonable degree of specificity the
4 person or persons whose driving is believed to have
5 been the proximate cause of the accident and from whom
6 a specimen is to be withdrawn and the location where
7 the withdrawal of the specimen or specimens is to take
8 place.

9 d. If a voice recording device is available, the
10 magistrate may record by means of that device all of
11 the call after the magistrate becomes aware of the
12 purpose of the call. Otherwise, the magistrate shall
13 cause a stenographic or longhand memorandum to be made
14 of the oral testimony of the person applying for the
15 warrant.

16 e. If the magistrate is satisfied from the oral
17 testimony that the grounds for the warrant exist or
18 that there is probable cause to believe that they
19 exist, the magistrate shall order the issuance of the
20 warrant by directing the person applying for the
21 warrant to sign the magistrate's name on the duplicate
22 warrant. The magistrate shall immediately sign the
23 original warrant and enter on its face the exact time
24 when the issuance was ordered.

25 f. The person who executes the warrant shall enter
26 the time of execution on the face of the duplicate
27 warrant.

28 g. The magistrate shall cause any record of the
29 call made by means of a voice recording device to be
30 transcribed, shall certify the accuracy of the
31 transcript, and shall file the transcript and the
32 original record with the clerk. If a stenographic or
33 longhand memorandum was made of the oral testimony of
34 the person who applied for the warrant, the magistrate
35 shall file a signed copy with the clerk.

36 h. The clerk of court shall maintain the original
37 and duplicate warrants along with the record of the
38 telephone call and any transcript or memorandum made
39 of the call in a confidential file until a charge, if
40 any, is filed.

41 4. Search warrants issued under this section shall
42 authorize and direct peace officers to secure the
43 withdrawal of blood specimens by medical personnel
44 under section 321L.11. Reasonable care shall be
45 exercised to ensure the health and safety of the
46 persons from whom specimens are withdrawn in execution
47 of the warrants. If a person from whom a specimen is
48 to be withdrawn objects to the withdrawal of blood,
49 and the person is capable of giving a specimen of
50 breath, and a direct breath testing instrument is

H-6009

Page 14

1 readily available, the warrant may be executed by the
2 withdrawal of a specimen of breath for chemical
3 testing.

4 5. The act of any person knowingly resisting or
5 obstructing the withdrawal of a specimen pursuant to a
6 search warrant issued under this section constitutes a
7 contempt punishable by a fine not exceeding one
8 thousand dollars or imprisonment in a county jail not
9 exceeding one year or by both such fine and
10 imprisonment. Also, if the withdrawal of a specimen
11 is so resisted or obstructed, sections 321L.9 and
12 321L.16 apply.

13 6. Nonsubstantive variances between the contents
14 of the original and duplicate warrants shall not cause
15 a warrant issued under subsection 3 of this section to
16 be considered invalid.

17 7. Specimens obtained pursuant to warrants issued
18 under this section are not subject to disposition
19 under section 808.9 or chapter 809.

20 8. Subsections 1 to 7 of this section do not apply
21 where a test may be administered under section 321L.7.

22 9. Medical personnel who use reasonable care and
23 accepted medical practices in withdrawing blood
24 specimens are immune from liability for their actions
25 in complying with requests made of them pursuant to
26 search warrants or pursuant to section 321L.11.

27 Sec. ____ . NEW SECTION. 321L.11 TAKING SAMPLE FOR
28 TEST.

29 Only a licensed physician, licensed physician
30 assistant as defined in section 148C.1, medical
31 technologist, or registered nurse, acting at the
32 request of a peace officer, may withdraw a specimen of
33 blood for the purpose of determining the alcohol
34 concentration or the presence of drugs. However, any
35 peace officer, using devices and methods approved by
36 the commissioner of public safety, may take a specimen
37 of a person's breath or urine for the purpose of
38 determining the alcohol concentration or the presence
39 of drugs. Only new equipment kept under strictly
40 sanitary and sterile conditions shall be used for
41 drawing blood.

42 The person may have an independent chemical test or
43 tests administered at the person's own expense in
44 addition to any administered at the direction of a
45 peace officer. The failure or inability of the person
46 to obtain an independent chemical test or tests does
47 not preclude the admission of evidence of the results
48 of the test or tests administered at the direction of
49 the peace officer. Upon the request of the person who
50 is tested, the results of the test or tests

H-6009

Page 15

1 administered at the direction of the peace officer
2 shall be made available to the person.

3 Sec. ____ . NEW SECTION. 321L.12 TEST RESULT
4 REVOCATION.

5 Upon certification, subject to penalty for perjury,
6 by the peace officer that there existed reasonable
7 grounds to believe that the person had been operating
8 a motor vehicle in violation of section 321L.2A, that
9 there existed one or more of the necessary conditions
10 for chemical testing described in section 321L.6,
11 subsection 1, and that the person submitted to
12 chemical testing and the test results indicated an
13 alcohol concentration as defined in section 321L.1 of
14 .08 or more, the department shall revoke the person's
15 motor vehicle license or nonresident operating
16 privilege for a period of one hundred eighty days if
17 the person has had no revocation within the previous
18 six years under this chapter, and one year if the
19 person has had one or more previous revocations within
20 the previous six years under this chapter.

21 The effective date of the revocation shall be
22 twenty days after the department has mailed notice of
23 revocation to the person by certified mail. The peace
24 officer who requested or directed the administration
25 of the chemical test may, on behalf of the department,
26 serve immediate notice of revocation on a person whose
27 test results indicated an alcohol concentration of .08
28 or more.

29 If the peace officer serves that immediate notice,
30 the peace officer shall take the person's Iowa license
31 or permit, if any, and issue a temporary license valid
32 only for twenty days. The peace officer shall
33 immediately send the person's driver's license to the
34 department along with the officer's certificate
35 indicating that the test results indicated an alcohol
36 concentration of .08 or more.

37 The results of a chemical test may not be used as
38 the basis for a revocation of a person's motor vehicle
39 license or nonresident operating privilege if the
40 alcohol concentration indicated by the chemical test
41 minus the established margin of error inherent in the
42 device or method used to conduct the chemical test
43 does not equal an alcohol concentration of .08 or
44 more.

45 Sec. ____ . NEW SECTION. 321L.13 HEARING ON
46 REVOCATION -- APPEAL.

47 1. Notice of revocation of a person's motor
48 vehicle license or operating privilege served pursuant
49 to section 321L.9 or 321L.12 shall include a form
50 accompanied by a preaddressed envelope on which the

H-6009

Page 16

1 person served may indicate by a checkmark if the
2 person wishes to request a temporary restricted
3 license only or if the person wishes a hearing to
4 contest the revocation. The form shall clearly state
5 on its face that the form must be completed and
6 returned within thirty days of receipt or the person's
7 right to a hearing to contest the revocation is
8 foreclosed. The form shall also be accompanied by a
9 statement of the operation of and the person's rights
10 under this chapter.

11 2. The department shall grant the person an
12 opportunity to be heard within forty-five days of
13 receipt of a request for a hearing if the request is
14 made not later than thirty days after receipt of
15 notice of revocation served pursuant to section 321L.9
16 or 321L.12. The hearing shall be before the
17 department in the county where the alleged events
18 occurred, unless the director and the person agree
19 that the hearing may be held in some other county, or
20 the hearing may be held by telephone conference at the
21 discretion of the agency conducting the hearing. The
22 hearing may be recorded and its scope shall be limited
23 to the issues of whether a peace officer had
24 reasonable grounds to believe that the person was
25 operating a motor vehicle in violation of section
26 321L.2 and either of the following:

27 a. Whether the person refused to submit to the
28 test or tests.

29 b. Whether a test was administered and the test
30 results indicated an alcohol concentration as defined
31 in section 321L.1 of .08 or more.

32 3. After the hearing the department shall order
33 that the revocation be either rescinded or sustained.
34 If the revocation is sustained, the administrative law
35 judge who conducted the hearing may issue a temporary
36 restricted license to the person whose motor vehicle
37 license or operating privilege was revoked. Upon
38 receipt of the decision of the department to sustain a
39 revocation, the person contesting the revocation has
40 ten days to file a request for review of the decision
41 by the director. The director or the director's
42 designee shall review the decision within fifteen days
43 and shall either rescind or sustain the revocation or
44 order a new hearing. If the director orders a new
45 hearing, the department shall grant the person a new
46 hearing within thirty days of the director's order.

47 4. A person whose motor vehicle license or
48 operating privilege has been or is being revoked under
49 section 321L.9 or 321L.12 may reopen a department
50 hearing on the revocation if the person submits a

H-6009

Page 17

1 petition stating that new evidence has been discovered
2 which provides grounds for rescission of the
3 revocation, or prevail at the hearing to rescind the
4 revocation, if the person submits a petition stating
5 that a criminal action on a charge of a violation of
6 section 321L.2A filed as a result of the same
7 circumstances which resulted in the revocation has
8 resulted in a decision in which the court has held
9 that the peace officer did not have reasonable grounds
10 to believe that a violation of section 321L.2A had
11 occurred to support a request for or to administer a
12 chemical test or which has held the chemical test to
13 be otherwise inadmissible or invalid. Such a decision
14 by the court is binding on the department and the
15 department shall rescind the revocation.

16 5. The department shall stay the revocation of a
17 person's motor vehicle license or operating privilege
18 for the period that the person is contesting the
19 revocation under this section or section 321L.14 if it
20 is shown to the satisfaction of the department that
21 the new evidence is material and that there were valid
22 reasons for failure to present it in the contested
23 case proceeding before the department.

24 6. If the department fails to comply with the time
25 limitations of this section regarding granting a
26 hearing, review by the director or the director's
27 designee, or granting a new hearing, and if the
28 request for a hearing or review by the director was
29 properly made under this section, the revocation of
30 the motor vehicle license or operating privilege of
31 the person who made the request for a hearing or
32 review shall be rescinded. This subsection shall not
33 apply in those cases in which a continuance to the
34 hearing has been granted at the request of either the
35 person who requested the hearing or the peace officer
36 who requested or administered the chemical test.

37 Sec. ____ . NEW SECTION. 321L.14 JUDICIAL REVIEW.
38 Judicial review of an action of the department may
39 be sought in accordance with the terms of the Iowa
40 administrative procedure Act, chapter 17A.
41 Notwithstanding the terms of that chapter, a petition
42 for judicial review may be filed in the district court
43 in the county where the alleged events occurred or in
44 the county in which the administrative hearing was
45 held.

46 Sec. ____ . NEW SECTION. 321L.15 EVIDENCE IN ANY
47 ACTION.

48 Upon the trial of a civil or criminal action or
49 proceeding arising out of acts alleged to have been
50 committed by a person while operating a motor vehicle

H-6009

Page 18

1 in violation of section 321L.2A, evidence of the
2 alcohol concentration or the presence of drugs in the
3 person's body substances at the time of the act
4 alleged as shown by a chemical analysis of the
5 person's blood, breath, or urine is admissible. If it
6 is established at trial that an analysis of a breath
7 specimen was performed by a certified operator using a
8 device and methods approved by the commissioner of
9 public safety, no further foundation is necessary for
10 introduction of the evidence.

11 Sec. _____. NEW SECTION. 321L.16 PROOF OF REFUSAL
12 ADMISSIBLE.

13 If a person refuses to submit to a chemical test,
14 proof of refusal is admissible in any civil or
15 criminal action or proceeding arising out of acts
16 alleged to have been committed while the person was
17 operating a motor vehicle in violation of section
18 321L.2A.

19 Sec. _____. NEW SECTION. 321L.17 CIVIL PENALTY --
20 SEPARATE FUND -- REINSTATEMENT.

21 When the department revokes a person's motor
22 vehicle license or nonresident operating privilege
23 under this chapter, the department shall assess the
24 person a civil penalty of one hundred dollars. The
25 money collected by the department under this section
26 shall be transmitted to the treasurer of state who
27 shall deposit the money in a separate fund dedicated
28 to and used for the purposes of chapter 912 and
29 section 709.10, and for the operation of a missing
30 person clearinghouse and domestic abuse registry by
31 the department of public safety. Notwithstanding
32 section 8.33, any balance in the fund on June 30 of
33 any fiscal year shall not revert to the general fund
34 of the state. A temporary restricted license shall
35 not be issued or a motor vehicle license or
36 nonresident operating privilege reinstated until the
37 civil penalty has been paid.

38 Sec. _____. NEW SECTION. 321L.18 OTHER EVIDENCE.

39 This chapter does not limit the introduction of any
40 competent evidence bearing on the question of whether
41 a person was under the influence of an alcoholic
42 beverage or a drug, including the results of chemical
43 tests of specimens of blood, breath or urine obtained
44 more than two hours after the person was operating a
45 motor vehicle.

46 Sec. _____. NEW SECTION. 321L.19 INFORMATION
47 RELAYED TO OTHER STATES.

48 When it has been finally determined under this
49 chapter that a nonresident's privilege to operate a
50 motor vehicle in this state has been revoked or

H-6009

Page 19

1 denied, the department shall give information in
2 writing of the action taken to the official in charge
3 of traffic control or public safety of the state of
4 the person's residence and of any state in which the
5 person has a license.

6 Sec. . NEW SECTION. 321L.20 TEMPORARY
7 RESTRICTED LICENSE.

8 1. The department may, on application, issue a
9 temporary restricted license to a person whose motor
10 vehicle license is revoked under this chapter allowing
11 the person to drive to and from the person's home and
12 specified places at specified times which can be
13 verified by the department and which are required by
14 the person's full-time or part-time employment,
15 continuing health care or the continuing health care
16 of another who is dependent upon the person,
17 continuing education while enrolled in an educational
18 institution on a part-time or full-time basis and
19 while pursuing a course of study leading to a diploma,
20 degree, or other certification of successful
21 educational completion, substance abuse treatment, and
22 court-ordered community service responsibilities if
23 the person's motor vehicle license has not been
24 revoked under 321L.4, 321L.9, or 321L.12 within the
25 previous six years and if any of the following apply:

26 a. The person's motor vehicle license is revoked
27 under section 321L.4, subsection 1, 2, 4, or 6.
28 b. The person's motor vehicle license is revoked
29 under section 321L.9 and the person has entered a plea
30 of guilty on a charge of a violation of section
31 321L.2A which arose from the same set of circumstances
32 which resulted in the person's motor vehicle license
33 revocation under section 321L.9 and the guilty plea is
34 not withdrawn at the time of or after application for
35 the temporary restricted license.

36 c. The person's motor vehicle license is revoked
37 under section 321L.12.

38 However, a temporary restricted license may be
39 issued if the person's motor vehicle license is
40 revoked under section 321L.9, and the revocation is a
41 second revocation under this chapter, and the first
42 three hundred and sixty days of the revocation have
43 expired.

44 2. This section does not apply to a person whose
45 license was revoked under section 321L.4, subsection 3
46 or 5, or to a person whose license is suspended or
47 revoked for another reason.

48 3. A person holding a temporary restricted license
49 issued by the department under this section shall not
50 operate a motor vehicle for pleasure.

H-6009

Page 20

1 Sec. ____ . NEW SECTION. 321L.21 DRIVING WHILE
2 LICENSE DENIED OR REVOKED.

3 A person whose motor vehicle license or nonresident
4 operating privilege has been denied or revoked as
5 provided in this chapter and who drives a motor
6 vehicle upon the highways of this state while the
7 license or privilege is denied or revoked commits a
8 serious misdemeanor. The department, upon receiving
9 the record of the conviction of a person under this
10 section upon a charge of driving a motor vehicle while
11 the license of the person was revoked or denied, shall
12 extend the period of revocation or denial for an
13 additional like period, and the department shall not
14 issue a new license during the additional period.

15 Sec. ____ . NEW SECTION. 321L.22 COURT-ORDERED
16 DRINKING DRIVERS COURSE.

17 1. As used in this section, unless the context
18 otherwise requires:

19 a. "Course for drinking drivers" means an approved
20 course designed to inform the offender about drinking
21 and driving and encourage the offender to assess the
22 offender's own drinking and driving behavior in order
23 to select practical alternatives.

24 b. "Satisfactory completion of a course" means
25 receiving at the completion of a course a grade from
26 the course instructor of "C" or "2.0," or better.

27 2. After a conviction for, or a plea of guilty of,
28 a violation of section 321L.2A, the court in addition
29 to its power to commit the defendant for treatment of
30 alcoholism under section 321L.3, may order the
31 defendant, at the defendant's own expense, to enroll
32 in, attend, and successfully complete a course for
33 drinking drivers. The court may alternatively or
34 additionally require the defendant to seek evaluation,
35 treatment or rehabilitation services under section
36 125.33 at the defendant's expense and to furnish
37 evidence of successful completion. A copy of the
38 order shall be forwarded to the department.

39 3. The course provided in this section shall be
40 offered on a regular basis at each area school as
41 defined in section 280A.2. Enrollment in the courses
42 is not limited to persons ordered to enroll, attend
43 and successfully complete the course under subsection
44 2, and any person convicted of a violation of section
45 321L.2A who was not ordered to enroll in a course may
46 enroll in and attend a course for drinking drivers.
47 The course required by this section shall be taught by
48 the area schools under the department of education and
49 approved by the department. The department of
50 education shall establish reasonable fees to defray

H-6009

Page 21

1 the expense of obtaining classroom space, instructor
2 salaries, and class materials. A person shall not be
3 denied enrollment in a course by reason of the
4 person's indigency.

5 4. An employer shall not discharge a person from
6 employment solely for the reason of work absence to
7 attend a course required by this section. Any
8 employer who violates this section is liable for
9 damages which include but are not limited to actual
10 damages, court costs, and reasonable attorney fees.
11 The person may also petition the court for imposition
12 of a cease and desist order against the person's
13 employer and for reinstatement to the person's
14 previous position of employment.

15 5. The department of education shall prepare a
16 list of the locations of the courses taught under this
17 section, the dates and times taught, the procedure for
18 enrollment, and the schedule of course fees. The list
19 shall be kept current and a copy of the list shall be
20 sent to each court having jurisdiction over offenses
21 provided in this chapter.

22 6. The department of education shall maintain
23 enrollment, attendance, successful and unsuccessful
24 completion data on the persons ordered to enroll,
25 attend and successfully complete a course for drinking
26 drivers. This data shall be forwarded to the court."

5. Page 36, by striking lines 16 through 20 and
inserting the following:

"The Code editor shall redesignate chapter 321L as
enacted in this Act, in a new chapter or different
chapter so that these sections do not conflict with
chapter 321L as enacted during the 1989 Session of the
General Assembly and as it appears in the 1989 Code
Supplement.

Sec. ____ Chapter 321J is repealed."

6. Renumber as necessary.

By McKEAN of Jones
HERMANN of Scott

H-6009 FILED MARCH 30, 1990

Adopted 4/3 (p. 1821)

SENATE FILE 2413

H-6010

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 23, by inserting after line 6, the
4 following:

5 "Sec. ____ . NEW SECTION. 708.12 ASSAULT AGAINST A
6 PEACE OR CORRECTIONAL OFFICER.

7 A person who commits an assault, as defined in
8 section 708.1, against a peace officer or correctional
9 officer in the performance of the officer's duty, is
10 guilty of a class "D" felony."

2. Renumber as necessary.

By TYRRELL of Iowa

H-6010 FILED MARCH 30, 1990

Lost 4/3 (p. 1826)

SENATE FILE 2413

H-6011

1 Amend amendment, H-5936, to Senate File 2413, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 43, the
5 following:

6 "For purposes of this paragraph, "imminently
7 likely" includes an immediate threat based on serious
8 threats made, or actions taken, against the child,
9 other members of the household in which the child
10 resides, or other children."

By KREMER of Buchanan

H-6011 FILED MARCH 30, 1990

Loach 4/3 (p. 1773)

SENATE FILE 2413

H-6012

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 4, by inserting after line 32 the
4 following:

5 "Sec. ____ . NEW SECTION. 204.701 DRUG-RELATED
6 OBJECTS USED IN VIOLATION OF CHAPTER.

7 1. As used in this section, "drug-related object"
8 means a raw material, instrument, device, article,
9 contrivance, or other object commonly used to plant,
10 propagate, cultivate, grow, harvest, manufacture,
11 compound, convert, produce, process, prepare, test,
12 analyze, pack, repack, store, contain, conceal,
13 inject, ingest, inhale, or otherwise introduce into
14 the human body a controlled substance. Drug-related
15 object includes but is not limited to:

16 a. Kits commonly used in planting, propagating,
17 cultivating, growing, or harvesting a species of plant
18 which is a controlled substance or from which a
19 controlled substance can be derived.

20 b. Kits commonly used in manufacturing,
21 compounding, converting, producing, processing, or
22 preparing controlled substances.

23 c. Isomerization devices commonly used in
24 increasing the potency of a species of plant which is
25 a controlled substance.

26 d. Testing equipment commonly used in identifying,
27 or in analyzing the strength, effectiveness, or purity
28 of a controlled substance.

29 e. Scales and balances commonly used in weighing
30 or measuring a controlled substance.

31 f. Diluents and adulterants, such as quinine
32 hydrochloride, mannitol, mannite, dextrose, and
33 lactose, commonly used in cutting a controlled
34 substance.

35 g. Separation gins and sifters commonly used in
36 removing twigs and seeds from, or in otherwise
37 cleaning or refining, marijuana.

38 h. Blenders, bowls, containers, spoons, and mixing
39 devices commonly used in compounding a controlled
40 substance.

41 i. Capsules, balloons, envelopes, and other
42 containers commonly used in packaging small quantities
43 of a controlled substance.

44 j. Containers and other objects commonly used in
45 storing or concealing a controlled substance.

46 k. Hypodermic syringes, needles, and other objects
47 commonly used in parenterally injecting a controlled
48 substance into the human body.

49 l. Objects commonly used in ingesting, inhaling,
50 or otherwise introducing marijuana, cocaine, hashish,

H-6012

Page 2

- 1 or hashish oil into the human body, such as:
- 2 (1) Metal, wooden, acrylic, glass, stone, plastic,
3 or ceramic pipes with or without screens, permanent
4 screens, hashish heads, or punctured metal bowls.
- 5 (2) Water pipes.
- 6 (3) Carburetion tubes and devices.
- 7 (4) Smoking and carburetion masks.
- 8 (5) Roach clips, meaning objects commonly used to
9 hold burning material, such as a marijuana cigarette,
10 that has become too small or too short to be held in
11 the hand.
- 12 (6) Miniature cocaine spoons, and cocaine vials.
- 13 (7) Chamber pipes.
- 14 (8) Carburetor pipes.
- 15 (9) Electric pipes.
- 16 (10) Air-driven pipes.
- 17 (11) Chillums.
- 18 (12) Bongs.
- 19 (13) Ice pipes or chillers.
- 20 2. In determining whether an object is commonly
21 used in connection with a controlled substance, a
22 court or other authority may consider, in addition to
23 all other logically relevant factors, the following:
- 24 a. Statements by an owner or by anyone in control
25 of the object concerning its use.
- 26 b. A prior conviction of an owner or of anyone in
27 control of the object under a state or federal law
28 relating to a controlled substance.
- 29 c. The proximity of the object, in time and space,
30 to a direct violation of this chapter.
- 31 d. The proximity of the object to a controlled
32 substance.
- 33 e. The existence of a residue of a controlled
34 substance on the object.
- 35 f. Instructions, oral or written, provided with
36 the object concerning its use.
- 37 g. Descriptive materials accompanying the object
38 which explain or depict its use.
- 39 h. National and local advertising concerning its
40 use.
- 41 i. The manner in which the object is displayed for
42 sale.
- 43 j. Whether the owner, or anyone in control of the
44 object, is a legitimate supplier of similar or related
45 items to the community, such as a licensed distributor
46 or dealer of tobacco products.
- 47 k. Direct or circumstantial evidence of the ratio
48 of sales of the object to the total sales of the
49 business enterprise.
- 50 l. The existence and scope of legitimate uses for

H-6012

Page 3

1 the object in the community.

2 m. Expert testimony concerning its use.

3 3. a. A person shall not use or possess with
4 intent to use a drug-related object to plant,
5 propagate, cultivate, grow, harvest, manufacture,
6 compound, convert, produce, process, prepare, test,
7 analyze, pack, repack, store, contain, conceal,
8 inject, ingest, inhale, or otherwise introduce into
9 the human body a controlled substance in violation of
10 this chapter. A person who violates this paragraph is
11 guilty of a simple misdemeanor.

12 b. A person shall not deliver, possess with intent
13 to deliver, or manufacture with intent to deliver, a
14 drug-related object intending that the object will be
15 used, and knowing, or under circumstances where one
16 reasonably should know, that the object will be used
17 to plant, propagate, cultivate, grow, harvest,
18 manufacture, compound, convert, produce, process,
19 prepare, test, analyze, pack, repack, store, contain,
20 conceal, inject, ingest, inhale, or otherwise
21 introduce into the human body a controlled substance
22 in violation of this chapter. A person eighteen years
23 of age or older who violates this paragraph by
24 delivering a drug-related object to a person under
25 eighteen years of age who is at least three years
26 younger than the person delivering the drug-related
27 object is guilty of an aggravated misdemeanor. Any
28 other person who violates this paragraph is guilty of
29 a serious misdemeanor.

30 c. A person shall not deliver, possess with intent
31 to deliver, or manufacture with intent to deliver, a
32 drug-related object which has no common use other than
33 its use in connection with the use of a controlled
34 substance in violation of this chapter, knowing, or
35 under circumstances where one reasonably should know,
36 that the object will be used to plant, propagate,
37 cultivate, grow, harvest, manufacture, compound,
38 convert, produce, process, prepare, test, analyze,
39 pack, repack, store, contain, conceal, inject, ingest,
40 inhale, or otherwise introduce into the human body a
41 controlled substance in violation of this chapter. A
42 person eighteen years of age or older who violates
43 this paragraph by delivering a drug-related object,
44 which has no common use other than its use in
45 connection with the use of a controlled substance in
46 violation of this chapter, to a person under eighteen
47 years of age who is at least three years younger than
48 the person delivering the drug-related object is
49 guilty of an aggravated misdemeanor. Any other person
50 who violates this paragraph is guilty of a serious

H-6012

Page 4

1 misdemeanor.

2 d. A person shall not place an advertisement in a
3 newspaper, magazine, handbill, or other publication,
4 intending, and knowing, or under circumstances where
5 one reasonably should know, that the purpose of the
6 advertisement, taken as a whole, is to promote the
7 sale in this state of a drug-related object that will
8 be used to plant, propagate, cultivate, grow, harvest,
9 manufacture, compound, convert, produce, process,
10 prepare, test, analyze, pack, repack, store, contain,
11 conceal, inject, ingest, inhale, or otherwise
12 introduce into the human body a controlled substance
13 in violation of this chapter. A person who violates
14 this paragraph is guilty of a serious misdemeanor."

15 2. Renumber as necessary.

By BLACK of Jasper

H-6012 FILED MARCH 30, 1990

Adopted 4/3 (p. 1782)

SENATE FILE 2413

H-6013

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 12, by inserting after line 20 the
4 following:

5 "Sec. ____ . NEW SECTION. 321J.23 PERSONS UNDER
6 AGE TWENTY-ONE.

7 If a person under the age of twenty-one consents to
8 a chemical test under this chapter and the test
9 results indicate an alcohol concentration of more than
10 .02 but less than the level established in section
11 321J.2, subsection 1, the person's motor vehicle
12 license or nonresident operating privilege shall be
13 revoked for a period of one year or until the person
14 reaches eighteen years of age, whichever is longer, if
15 the person is less than eighteen years of age, or for
16 thirty days as provided in section 321L.10 if the
17 person is at least eighteen years of age but less than
18 twenty-one years of age, and sections 321L.10 through
19 321L.19 apply."

20 2. Page 12, by striking line 22, and inserting
21 the following: "The sections in this Act creating a
22 new chapter".

23 3. Page 13, by inserting after line 28, the
24 following:

25 "Sec. ____ . NEW SECTION. 321L.3 DEFINITIONS.

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

28 1. "Alcohol concentration" means the number of
29 grams of alcohol per any of the following:

- 30 a. One hundred milliliters of blood.
31 b. Two hundred ten liters of breath.
32 c. Sixty-seven milliliters of urine.

33 2. "Alcoholic beverage" includes alcohol, wine,
34 spirits, beer, or any other beverage which contains
35 ethyl alcohol and is fit for human consumption.

36 3. "Arrest" includes but is not limited to taking
37 into custody pursuant to section 232.19.

38 4. "Department" means the state department of
39 transportation.

40 5. "Director" means the director of transportation
41 or the director's designee.

42 6. "Motor vehicle license" means any license or
43 permit issued to a person to operate a motor vehicle
44 in this state.

45 7. "Peace officer" means:

- 46 a. A member of the highway patrol.
47 b. A police officer under civil service as
48 provided in chapter 400.
49 c. A sheriff.

50 d. A regular deputy sheriff who has had formal

H-6013

Page 2

1 police training.

2 e. Any other law enforcement officer who has
3 satisfactorily completed an approved course relating
4 to motor vehicle operators under the influence of
5 alcoholic beverages at the Iowa law enforcement
6 academy or a law enforcement training program approved
7 by the department of public safety.

8 Sec. ____ . NEW SECTION. 321L.4 PRELIMINARY
9 SCREENING TEST.

10 When a peace officer has reasonable grounds to
11 believe that a motor vehicle operator under the age of
12 twenty-one may be or has been operating a motor
13 vehicle while having an alcohol concentration as
14 defined in section 321L.3 of more than .02, the peace
15 officer may request the operator to provide a sample
16 of the operator's breath for a preliminary screening
17 test using a device approved by the commissioner of
18 public safety for that purpose. The results of this
19 preliminary screening test may be used for the purpose
20 of deciding whether an arrest should be made and
21 whether to request a chemical test authorized in this
22 chapter or chapter 321J, as evidence of the presence
23 of alcohol in the operator, and to prove that a
24 chemical test was properly requested of a person
25 pursuant to this chapter or chapter 321J.

26 Sec. ____ . NEW SECTION. 321L.5 IMPLIED CONSENT TO
27 TEST.

28 1. A person under the age of twenty-one who
29 operates a motor vehicle in this state under
30 circumstances which give reasonable grounds to believe
31 that the person has been operating a motor vehicle
32 while having an alcohol concentration of more than .02
33 is deemed to have given consent to the withdrawal of
34 specimens of the person's blood, breath, or urine and
35 to a chemical test or tests of the specimens for the
36 purpose of determining the alcohol concentration,
37 subject to this section. The withdrawal of the body
38 substances and the test or tests shall be administered
39 at the written request of a peace officer having
40 reasonable grounds to believe that the person was
41 operating a motor vehicle while having an alcohol
42 concentration of more than .02.

43 2. The peace officer shall determine which of the
44 three substances, breath, blood, or urine, shall be
45 tested. Refusal to submit to a chemical test of urine
46 or breath is deemed a refusal to submit, and section
47 321L.6 applies. A refusal to submit to a chemical
48 test of blood is not deemed a refusal to submit, but
49 in that case, the peace officer shall then determine
50 which one of the other two substances shall be tested

H-6013

Page 3

1 and shall offer the test. If the peace officer fails
2 to offer a test within two hours after the preliminary
3 screening test is administered or refused or the
4 arrest is made, whichever occurs first, a test is not
5 required, and there shall be no revocation under
6 section 321L.8.

7 Sec. ____ . NEW SECTION. 321L.6 DEAD OR
8 UNCONSCIOUS PERSONS.

9 A person who is dead, unconscious, or otherwise in
10 a condition rendering the person incapable of consent
11 or refusal is deemed not to have withdrawn the consent
12 provided by section 321L.5, and the test may be given
13 if a licensed physician certifies in advance of the
14 test that the person is dead, unconscious, or
15 otherwise in a condition rendering that person
16 incapable of consent or refusal.

17 Sec. ____ . NEW SECTION. 321L.7 STATEMENT OF
18 OFFICER.

19 A person who has been requested to submit to a
20 chemical test shall be advised by a peace officer of
21 the following:

22 1. If the person refuses to submit to the test and
23 is less than eighteen years of age, the person's
24 license or operating privilege will be revoked by the
25 department for one year or until the person's
26 eighteenth birthday, whichever is longer, without
27 eligibility for a temporary restricted license. If
28 the person refuses to submit to the test and is at
29 least eighteen years of age but less than twenty-one
30 years of age, the person's motor vehicle license or
31 operating privilege will be revoked by the department
32 for ninety days without eligibility for a temporary
33 restricted license.

34 2. If the person submits to the test and the
35 results indicate an alcohol concentration as defined
36 in section 321L.3 of more than .02, and the person is
37 under eighteen years of age, the person's license or
38 operating privilege will be revoked by the department
39 for a period of two hundred seventy days, without
40 eligibility for a temporary restricted license.

41 If the person submits to the test and the results
42 indicate an alcohol concentration as defined in
43 section 321L.3 of more than .02, and the person is at
44 least eighteen years of age but less than twenty-one
45 years of age, the person's motor vehicle license or
46 operating privilege will be revoked by the department
47 for thirty days without eligibility for a temporary
48 restricted license.

49 This section does not apply in any case involving a
50 person described in section 321L.6.

H-6013

Page 4

1 Sec. ____ . NEW SECTION. 321L.8 REFUSAL TO SUBMIT
2 -- REVOCATION.

3 If a person who is under eighteen years of age
4 refuses to submit to the chemical testing, a test
5 shall not be given, but the department, upon the
6 receipt of the peace officer's certification, subject
7 to penalty for perjury, that the officer had
8 reasonable grounds to believe the person to have been
9 operating a motor vehicle while having an alcohol
10 concentration of more than .02, and that the person
11 refused to submit to the chemical testing, shall
12 revoke the person's motor vehicle license and any
13 nonresident operating privilege for a period of one
14 year or until the person's eighteenth birthday,
15 whichever is longer.

16 If a person who is at least eighteen years of age
17 but less than twenty-one years of age refuses to
18 submit to the chemical testing, a test shall not be
19 given, but the department, upon the receipt of the
20 peace officer's certification, subject to penalty for
21 perjury, that the officer had reasonable grounds to
22 believe the person to have been operating a motor
23 vehicle while having an alcohol concentration of more
24 than .02, and that the person refused to submit to the
25 chemical testing, shall revoke the person's motor
26 vehicle license and any nonresident operating
27 privilege for a period of ninety days.

28 The effective date of revocation shall be twenty
29 days after receipt of notice of revocation to the
30 person by certified mail or, on behalf of the
31 department, a peace officer offering or directing the
32 administration of a chemical test may serve immediate
33 notice of intention to revoke and of revocation on a
34 person who refuses to permit chemical testing. If the
35 peace officer serves that immediate notice, the peace
36 officer shall take the Iowa license or permit of the
37 driver, if any, and issue a temporary license
38 effective for only twenty days. The peace officer
39 shall immediately send the person's license to the
40 department along with the officer's certificate
41 indicating the person's refusal to submit to chemical
42 testing.

43 Sec. ____ . NEW SECTION. 321L.9 TAKING SAMPLE FOR
44 TEST.

45 Only a licensed physician, licensed physician
46 assistant as defined in section 148C.1, medical
47 technologist, or registered nurse, acting at the
48 request of a peace officer, may withdraw a specimen of
49 blood for the purpose of determining the alcohol
50 concentration. However, any peace officer, using

H-6013

Page 5

1 devices and methods approved by the commissioner of
2 public safety, may take a specimen of a person's
3 breath or urine for the purpose of determining the
4 alcohol concentration. Only new equipment kept under
5 strictly sanitary and sterile conditions shall be used
6 for drawing blood.

7 The person may have an independent chemical test or
8 tests administered at the person's own expense in
9 addition to any administered at the direction of a
10 peace officer. The failure or inability of the person
11 to obtain an independent chemical test or tests does
12 not preclude the admission of evidence of the results
13 of the test or tests administered at the direction of
14 the peace officer. Upon the request of the person who
15 is tested, the results of the test or tests
16 administered at the direction of the peace officer
17 shall be made available to the person.

18 Sec. ____ . NEW SECTION. 321L.10 REVOCATION BASED
19 ON TEST RESULTS.

20 Upon certification, subject to penalty for perjury,
21 by the peace officer that there existed reasonable
22 grounds to believe that the person had been operating
23 a motor vehicle while having an alcohol concentration
24 of more than .02, and that the person submitted to
25 chemical testing and the test results indicated an
26 alcohol concentration of more than .02, the department
27 shall revoke the person's motor vehicle license or
28 nonresident operating privilege for a period of two
29 hundred seventy days if the person is less than
30 eighteen years of age, or for a period of thirty days
31 if the person is at least eighteen years of age but
32 less than twenty-one years of age.

33 The effective date of the revocation shall be
34 twenty days after the receipt of notice of revocation
35 to the person by certified mail. The peace officer
36 who requested or directed the administration of the
37 chemical test may, on behalf of the department, serve
38 immediate notice of revocation on a person whose test
39 results indicated an alcohol concentration of more
40 than .02. If the peace officer serves that immediate
41 notice, the peace officer shall take the person's Iowa
42 license or permit, if any, and issue a temporary
43 license valid only for twenty days. The peace officer
44 shall immediately send the person's motor vehicle
45 license to the department along with the officer's
46 certificate indicating that the test results indicated
47 an alcohol concentration of more than .02.

48 The results of a chemical test shall not be used as
49 the basis for a revocation of a person's motor vehicle
50 license or nonresident operating privilege if the

H-6013

Page 6

1 alcohol concentration indicated by the chemical test
2 minus the established margin of error inherent in the
3 device or method used to conduct the chemical test
4 does not equal an alcohol concentration of more than
5 .02.

6 Sec. . . . NEW SECTION. 321L.11 HEARING ON
7 REVOCATION-- APPEAL.

8 1. Notice of revocation of a person's motor
9 vehicle license or operating privilege served pursuant
10 to section 321L.8 or 321L.10 shall include a form
11 accompanied by a preaddressed envelope on which the
12 person served may indicate by a checkmark if the
13 person wishes to contest the revocation. The form
14 shall clearly state on its face that the form must be
15 completed and returned within thirty days of receipt
16 or the person's right to a hearing to contest the
17 revocation is foreclosed. The form shall also be
18 accompanied by a statement of the operation of and the
19 person's rights under this chapter.

20 2. The department shall grant the person an
21 opportunity to be heard within forty-five days of
22 receipt of a request for a hearing if the request is
23 made not later than thirty days after receipt of
24 notice of revocation served pursuant to section 321L.8
25 or 321L.10. The hearing shall be before the
26 department in the county where the alleged events
27 occurred, unless the director and the person agree
28 that the hearing may be held in some other county, or
29 the hearing may be held by telephone conference at the
30 discretion of the agency conducting the hearing. The
31 hearing may be recorded and its scope shall be limited
32 to the issues of whether a peace officer had
33 reasonable grounds to believe that the person was
34 operating a motor vehicle while having an alcohol
35 concentration of more than .02 and either of the
36 following:

37 a. Whether the person refused to submit to the
38 test or tests.

39 b. Whether a test was administered and the test
40 results indicated an alcohol concentration of more
41 than .02.

42 3. After the hearing the department shall order
43 that the revocation be either rescinded or sustained.
44 Upon receipt of the decision of the department to
45 sustain a revocation, the person contesting the
46 revocation has ten days to file a request for review
47 of the decision by the director. The director or the
48 director's designee shall review the decision within
49 fifteen days and shall either rescind or sustain the
50 revocation or order a new hearing. If the director

H-6013

Page 7

1 orders a new hearing, the department shall grant the
2 person a new hearing within thirty days of the
3 director's order.

4 Sec. ____ . NEW SECTION. 321L.12 JUDICIAL REVIEW.

5 Judicial review of an action of the department may
6 be sought in accordance with chapter 17A.

7 Notwithstanding the terms of the Iowa administrative
8 procedure Act, chapter 17A, a petition for judicial
9 review may be filed in the district court in the
10 county where the alleged events occurred or in the
11 county in which the administrative hearing was held.

12 Sec. ____ . NEW SECTION. 321L.13 EVIDENCE IN ANY
13 ACTION.

14 Upon the trial of a civil or criminal action or
15 proceeding arising out of acts alleged to have been
16 committed by a person while operating a motor vehicle
17 while having an alcohol concentration of more than
18 .02, evidence of the alcohol concentration in the
19 person's body substances at the time of the act
20 alleged as shown by a chemical analysis of the
21 person's blood, breath, or urine is admissible. If it
22 is established at trial that an analysis of a breath
23 specimen was performed by a certified operator using a
24 device and methods approved by the commissioner of
25 public safety, no further foundation is necessary for
26 introduction of the evidence.

27 Sec. ____ . NEW SECTION. 321L.14 PROOF OF REFUSAL
28 ADMISSIBLE.

29 If a person refuses to submit to a chemical test,
30 proof of refusal is admissible in any civil or
31 criminal action or proceeding arising out of acts
32 alleged to have been committed while the person was
33 operating a motor vehicle while having an alcohol
34 concentration of more than .02.

35 Sec. ____ . NEW SECTION. 321L.15 CIVIL PENALTY --
36 SEPARATE FUND -- REINSTATEMENT.

37 When the department revokes a person's motor
38 vehicle license or nonresident operating privilege
39 under this chapter, the department shall assess the
40 person a civil penalty of one hundred dollars. The
41 money collected by the department under this section
42 shall be transmitted to the treasurer of state who
43 shall deposit the money in a separate fund dedicated
44 to and used for the purposes of chapter 912 and
45 section 709.10. A motor vehicle license or
46 nonresident operating privilege shall not be
47 reinstated until the civil penalty has been paid.

48 Sec. ____ . NEW SECTION. 321L.16 OTHER EVIDENCE.

49 This chapter does not limit the introduction of any
50 competent evidence bearing on the question of whether

H-6013

Page 8

1 a person was under the influence of an alcoholic
2 beverage, including the results of chemical tests of
3 specimens of blood, breath or urine obtained more than
4 two hours after the person was operating a motor
5 vehicle.

6 Sec. ____ . NEW SECTION. 321L.17 INFORMATION
7 RELAYED TO OTHER STATES.

8 When it has been finally determined under this
9 chapter that a nonresident's privilege to operate a
10 motor vehicle in this state has been revoked or
11 denied, the department shall give information in
12 writing of the action taken to the official in charge
13 of traffic control or public safety of the state of
14 the person's residence and of any state in which the
15 person has a license.

16 Sec. ____ . NEW SECTION. 321L.18 TEMPORARY
17 RESTRICTED LICENSE PROHIBITED.

18 A person whose motor vehicle license has been
19 revoked under this chapter is not eligible for a
20 temporary restricted license during the period of
21 revocation.

22 Sec. ____ . NEW SECTION. 321L.19 DRIVING WHILE
23 LICENSE DENIED OR REVOKED.

24 A person whose motor vehicle license or nonresident
25 operating privilege has been denied or revoked as
26 provided in this chapter and who drives a motor
27 vehicle upon the highways of this state while the
28 license or privilege is denied or revoked commits a
29 serious misdemeanor. The department, upon receiving
30 the record of the conviction of a person under this
31 section upon a charge of driving a motor vehicle while
32 the license of the person was revoked or denied, shall
33 extend the period of revocation or denial for an
34 additional like period, and the department shall not
35 issue a new license during the additional period."

36 4. Page 36, by striking lines 16 through 20 and
37 inserting the following:

38 "The Code editor shall redesignate chapter 321L, as
39 enacted in this Act, in a new or different chapter so
40 that this chapter does not conflict with chapter 321L,
41 as enacted during the 1989 Session of the General
42 Assembly and as it appears in the 1989 Code
43 Supplement."

44 5. By renumbering as necessary.

By GARMAN of Story
CLARK of Cerro Gordo
TRENT of Muscatine

H-6013 FILED MARCH 30, 1990

A- w/d; B- Look 4/3 (p. 1898 & 1825)

SENATE FILE 2413

H-6033

1 Amend the amendment H-5936 to Senate File 2413, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 6, line 5, by striking the figure ".10"
5 and inserting the following: "~~±~~ .08".

By McKEAN of Jones

H-6033 FILED APRIL 2, 1990

Adopted 4/3 (p. 1774)

SENATE FILE 2413

H-6035

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 12, by inserting after line 20, the
4 following:

5 "Sec. ____ . Section 260.6, Code Supplement 1989, is
6 amended by adding the following new unnumbered
7 paragraph:

8 NEW UNNUMBERED PARAGRAPH. A practitioner's license
9 shall be revoked upon the conviction of the
10 practitioner for the crime or crimes of possession,
11 manufacture, or sale of a controlled substance under
12 sections 204.401 through 204.413."

13 2. By renumbering as necessary.

By DIEMER of Black Hawk

CORBETT of Linn

KREMER of Buchanan

ROYER of Page

H-6035 FILED APRIL 2, 1990

Ruled not germane 4/3 (p. 1799)

SENATE FILE 2413

H-6024

- 1 Amend Senate File 2413, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 11, line 11, by inserting after the word
- 4 "alcohol" the following: "or controlled substance".
By TRENT of Muscatine

H-6024 FILED MARCH 30, 1990

Adopted 4/3 (p. 1782)

SENATE FILE 2413

H-6025

- 1 Amend Senate File 2413, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 11, by inserting after line 5, the
- 4 following:
- 5 "Sec. ____ . Section 232.19, Code 1989, is amended
- 6 by adding the following new subsection:
- 7 NEW SUBSECTION. 3. Notwithstanding any other
- 8 provision of this chapter, a child shall not be placed
- 9 in detention as a result of a violation by that child
- 10 of section 123.47."
- 11 2. Renumber as necessary.
By ROSENBERG of Story

H-6025 FILED MARCH 30, 1990

Adopted 4/3 (p. 1783)

SENATE FILE 2413

H-6043

1 Amend the amendment, H-5998, to Senate File 2413,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, line 12, by striking the words "TAXES
5 AND SUBSTANCE ABUSE" and inserting the following:
6 "VARIOUS".
7 2. Page 1, line 15, by inserting after the word
8 "be" the following: "divided equally and".
9 3. Page 1, line 18, by inserting after the word
10 "abusers" the following: ", to the department of
11 public safety for funding for law enforcement of drug
12 offenses, and to the department of education for
13 funding of drunk driving prevention and education
14 programs".

By TRENT of Muscatine
ROSENBERG of Story

H-6043 FILED APRIL 2, 1990

Adopted 4/3 (p. 1822)

SENATE FILE 2413

H-6044

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 23, by striking line 6, and inserting the
4 following: "section 321J.2. The state department of
5 transportation shall immediately revoke the operator's
6 license of a person charged pursuant to this section.
7 The person shall not be issued a temporary license for
8 any time period, including a temporary license issued
9 for twenty days, pursuant to chapter 321J until after
10 disposition of the charge made pursuant to this
11 section."

By SVOBODA of Tama

H-6044 FILED APRIL 2, 1990

Placed o/v 4/3 (p. 1825)

SENATE FILE 2413

H-6039

1 Amend the amendment, H-5998, to Senate File 2413,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, line 12, by striking the words "TAXES
5 AND SUBSTANCE ABUSE" and inserting the following:
6 "VARIOUS".

7 2. Page 1, line 15, by inserting after the word
8 "be" the following: "divided equally and".

9 3. Page 1, line 18, by inserting after the word
10 "abusers" the following: ", to the department of
11 public safety for funding for law enforcement of drug
12 offenses, and to the department of education for
13 funding of programs or treatment ordered pursuant to
14 chapter 321J".

By TRENT of Muscatine

H-6039 FILED APRIL 2, 1990

w/d 4/3 (p. 1822)

SENATE FILE 2413

H-6040

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate as follows:

3 1. Page 36, by inserting after line 11 the
4 following:

5 "Sec. ____ . ALTERNATIVE DRUG TESTING FOR OFFICERS.

6 The department of public safety shall develop a
7 plan for the implementation of alternative drug
8 testing programs for law enforcement, parole, and
9 probation officers. The plan shall be submitted to
10 the general assembly by January 15, 1991, in a form
11 which could be adopted and implemented by the
12 department of public safety or individual law
13 enforcement agencies throughout the state."

14 2. By renumbering as necessary.

By JAY of Appanoose
SHERZAN of Polk

H-6040 FILED APRIL 2, 1990

Adopted 4/3 (p. 1828)

SENATE FILE 2413

H-6051

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 11, by striking line 23, and inserting
4 the following: "of suitable space and reading
5 material for inmates. For purposes of this section,
6 "suitable reading materials" does not include material
7 depicting or describing the genitals, sex acts,
8 masturbation, excretory functions, or sadomasochistic
9 abuse which the average person, taking the material as
10 a whole and applying contemporary community standards
11 with respect to what is suitable material for inmates,
12 would find appeals to the prurient interest and is
13 patently offensive; and the material, taken as a
14 whole, lacks serious literary, scientific, political,
15 or artistic value. The director shall consider if the
16 availability or possession of the material represents
17 a potential danger to inmates, the community, or to
18 personnel of the department of corrections. The".
By TYRELL of Iowa CORBETT of Linn
McKEAN of Jones GARMAN of Story
BRANSTAD of Winnebago HERMANN of Scott
RENKEN of Grundy IVERSON of Wright
BANKS of Plymouth

H-6051 FILED APRIL 3, 1990

ADOPTED (p. 1784)

SENATE FILE 2413

H-6052

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. By striking page 11, line 27, through page 12,
4 line 14.
5 2. By renumbering as necessary.

By SPENNER of Henry TRENT of Muscatine
HERMANN of Scott HALVORSON of Clayton

H-6052 FILED APRIL 3, 1990

ADOPTED (p. 1784)

SENATE FILE 2413

H-6048

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 12, by inserting after line 14, the
4 following:
5 "Sec. ____ . Section 246.514, unnumbered paragraph
6 2, Code 1989, is amended to read as follows:
7 "Failure to comply with an order issued pursuant to
8 this section may result in the forfeiture of good
9 conduct time, not to exceed one year, earned up to the
10 time of the failure to comply. If good conduct time
11 has not been earned, the person may be determined to
12 be ineligible by the department to earn good conduct
13 time for a period of up to three months."
14 2. Renumber as necessary.

By MCKEAN of Jones

H-6048 FILED APRIL 3, 1990

ADOPTED (p. 1785)

SENATE FILE 2413

H-6058

1 Amend Senate File 2413 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Title page, by striking page 1, line 1 through
4 page 2, line 12, and inserting the following: "An Act
5 relating to certain criminal offenses, providing for
6 the disposition, confinement, detention, and treatment
7 of certain offenders, providing protections for
8 certain victims or potential victims, providing for
9 the identification of certain precursor drugs,
10 establishing a tax on certain substances, providing
11 certain tax incentives relating to employment of
12 certain offenders, providing for victim reparation,
13 and providing penalties and an effective date."

By JAY of Appanoose

H-6058 FILED APRIL 3, 1990

ADOPTED (p. 1830)

SENATE FILE 2413

H-6062

1 Amend Senate File 2413, as amended, passed, and re-
2 printed by the Senate, as follows:

3 1. Page 13, by inserting after line 28 the fol-
4 lowing:

5 "Sec. ____ . NEW SECTION. 321L.3 SEIZURE OF
6 VEHICLE.

7 Upon a plea or verdict of guilty of a third or
8 subsequent violation of section 321J.2, which occurs
9 while the person's license is suspended or revoked
10 pursuant to chapter 321J, the court shall order the
11 defendant to surrender to the state department of
12 transportation, the motor vehicle operated by the
13 defendant at the time of the third or subsequent
14 violation.

15 However, the court shall stay such order upon proof
16 by the owner or co-owner of the vehicle, if other than
17 the defendant, that the owner or co-owner was not
18 aware that the defendant's motor vehicle license was
19 suspended or revoked pursuant to chapter 321J, or that
20 the defendant operated the motor vehicle without the
21 owner's or co-owner's knowledge or permission."

22 2. Renumber as necessary.

By JESSE of Jasper
BROWN of Lucas
OSTERBERG of Linn

H-6062 FILED APRIL 3, 1990

ADOPTED (p. 1825)

SENATE FILE 2413

H-6063

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 12, by striking line 20, and inserting
4 the following: "sentence performing labor in the
5 program. Duties, if possible, shall consist of
6 physical labor outside in plain view of the public.
7 However, an inmate shall not be required to perform
8 work which is beyond an inmate's physical ability,
9 which constitutes a physical hardship, or which is
10 dangerous or threatening to the inmate's life or
11 health, medically prohibited, or unduly painful."
By TRENT of Muscatine

H-6063 FILED APRIL 3, 1990
ADOPTED (p. 1785)

SENATE FILE 2413

H-6077

1 Amend Senate File 2413, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 3, by inserting after line 8, the
4 following:
5 "Sec. ____ . Section 123.50, subsection 4, Code
6 Supplement 1989, is amended to read as follows:
7 4. A person, other than a licensee or permittee or
8 a minor, who violates section 123.47 is guilty of a
9 serious misdemeanor punishable by a minimum fine of
10 one hundred dollars for a first offense, two hundred
11 and fifty dollars for a second offense, and five
12 hundred dollars for a third and subsequent offense,
13 and a maximum fine for any offense of not more than
14 one thousand dollars.
15 A person age eighteen or under who is guilty of
16 possessing any alcoholic liquor, wine, or beer in
17 violation of section 123.47, in addition to the
18 penalty provided in section 123.90, shall participate
19 in a substance abuse treatment program as ordered by
20 the court for at least three months."
21 2. Renumber as necessary.

By SVOBODA of Tama

H-6077 FILED APRIL 3, 1990
LOST (p. 1829)

SENATE FILE 2413

H-6071

1 Amend Senate File 2413 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 24, by inserting after the word
4 "services" the following: ", or an inmate providing
5 services pursuant to a chapter 28E agreement entered
6 into pursuant to section 246.703,".

7 2. Page 1, line 32, by inserting after the word
8 "services," the following: "or an inmate providing
9 services pursuant to a chapter 28E agreement entered
10 into pursuant to section 246.703,".

A 11 3. Page 2, line 7, by inserting after the word
12 "services," the following: "or in connection with the
13 provision of services pursuant to a chapter 28E
14 agreement entered into pursuant to section 246.703,".

15 4. Page 2, line 25, by inserting after the word
16 "services," the following: "or in connection with the
17 provision of services pursuant to a chapter 28E
18 agreement entered into pursuant to section 246.703,".

19 5. Page 12, by inserting after line 14, the
20 following:

21 "Sec. ____ . Section 246.703, Code 1989, is amended
22 by adding the following new unnumbered paragraph:

23 NEW UNNUMBERED PARAGRAPH. The director may enter
24 into a chapter 28E agreement with a county board of
25 supervisors or county conservation board to provide
26 inmate services for environmental maintenance

B 27 including but not limited to brush and weed cutting,
28 tree planting, and erosion control. The board of
29 supervisors or conservation board shall reimburse the
30 department of corrections for the allowance paid the
31 inmates by the director. The supervision, security,
32 and transportation of inmates used pursuant to the
33 chapter 28E agreement shall be provided by the
34 department of corrections."

35 6. Renumber as necessary.

By HALVORSON of Clayton
SHERZAN of Polk
KNAPP of Dubuque

H-6071 FILED APRIL 3, 1990

DIVISION A - ADOPTED, DIVISION B - WITHDRAWN (p.1829)

SENATE FILE 2413

S-5896

Amend the House amendment, S-5888, to Senate File 2413, as amended, passed, and reprinted by the Senate, as follows:

4 1. Page 32, by inserting after line 10 the
5 following:

6 "Sec. ____ . Section 702.11, Code Supplement 1989,
7 is amended to read as follows:
8 702.11 FORCIBLE FELONY.

9 A "forcible felony" is any felonious child
10 endangerment, assault, murder, sexual abuse other than
11 sexual abuse in the third degree committed between
12 spouses or in violation of section 709.4, subsection
13 2, paragraph "c", subparagraph (4), kidnapping,
14 robbery, arson in the first or second degree, or
15 burglary in the first degree."

16 2. Page 33, by inserting after line 6, the
17 following:

18 " ____ . Page 23, by inserting after line 14, the
19 following:

20 "Sec. ____ . NEW SECTION. 712.1A ARSON IN THE
21 FIRST DEGREE.

22 Arson in the first degree is arson which results in
23 the death of a person, including the death of a paid
24 or volunteer firefighter. Arson in the first degree
25 is a class "A" felony.

26 Sec. ____ . Section 712.2, Code 1989, is amended to
read as follows:

27 712.2 ARSON IN THE FIRST SECOND DEGREE.

28 Arson is arson in the first second degree when the
29 property which the defendant intends to destroy or
30 damage, or which the defendant knowingly endangers, is
31 property in which the presence of one or more persons
32 can be reasonably anticipated, ~~or the arson results in~~
33 ~~the death of a fire fighter, whether paid or~~
34 ~~volunteer.~~

35 Arson in the first second degree is a class "B"
36 felony.

37 Sec. ____ . Section 712.3, Code 1989, is amended to
38 read as follows:

39 712.3 ARSON IN THE SECOND THIRD DEGREE.

40 Arson which is not arson in the first or second
41 degree is arson in the second third degree when the
42 property which the defendant intends to destroy or
43 damage, or which the defendant knowingly endangers, is
44 a building or a structure, or real property of any
45 kind, or standing crops, or is personal property the
46 value of which exceeds five hundred dollars. Arson in
47 the second third degree is a class "C" felony.

48 Sec. ____ . Section 712.4, Code 1989, is amended to
49 read as follows:
50

S-5896

Page 2

- 1 712.4 ARSON IN THE THIRD FOURTH DEGREE.
- 2 Arson which is not arson in the first, second, or
- 3 third degree or arson in the second degree is arson in
- 4 the third fourth degree. Arson in the third fourth
- 5 degree is an aggravated misdemeanor."
- 6 3. Renumber as necessary.

By DONALD V. DOYLE

S-5896 FILED APRIL 4, 1990

WITHDRAWN (p. 1544)

SENATE FILE 2413

S-5895

- 1 Amend the House amendment, S-5888, to Senate File
- 2 2413, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 1, by striking lines 48 and 49.
- 5 2. Page 2, by striking line 26.
- 6 3. Renumber as necessary.

By JIM LIND

S-5895 FILED APRIL 4, 1990

ADOPTED (p. 1543)

SENATE FILE 2413

S-5901

- 1 Amend the House amendment, S-5888, to Senate File
- 2 2413, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 8, by striking line 40 through page 10,
- 5 line 41.
- 6 2. Page 33, by striking line 7 through page 34,
- 7 line 13.

By MARK R. HAGERLA
RICHARD VANDE HOEF

S-5901 FILED APRIL 4, 1990
ADOPTED (p. 1544)

SENATE FILE 2413

S-5903

- 1 Amend the House amendment, S-5888, to Senate File
- 2 2413, as amended, passed, and reprinted by the Senate,
- 3 as follows:

DIV. 4 1. By striking page 10, line 42, through page 31,
A 5 line 21.

B 6 2. Page 31, by striking lines 22 through 40.

A 7 3. Page 35, by striking lines 49 and 50, and
8 inserting the following: "Supplement."

9 4. Renumber as necessary.

By JULIA B. GENTLEMAN

S-5903 FILED APRIL 4, 1990
DIV.A-ADOPTED, DIV.B-LOST (p. 1545)

SENATE FILE 2413

S-5904

- 1 Amend the House amendment, S-5888, to Senate File
- 2 2413, as amended, passed, and reprinted by the Senate
- 3 as follows:
- 4 1. Page 5, by striking lines 43 through 49.

By JULIA GENTLEMAN

S-5904 FILED APRIL 4, 1990
LOST (p. 1545)

REPORT OF THE CONFERENCE COMMITTEE
ON SENATE FILE 2413

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and the House of Representatives on Senate File 2413, An Act relating to certain specific crimes and the disposition of offenders by providing for payment of sexual abuse medical examinations, providing for workers' compensation coverage and the liability of certain persons performing community service, providing for notification of the parents of persons under age eighteen discovered to be in possession of alcohol or drugs, providing for a term of confinement for distribution of illegal drugs within one thousand feet of a public park, providing for the reporting and identification of certain precursor drugs, providing for the disposition of certain juvenile offenders, establishing institutional reading room requirements, providing for the diversion of certain offenders to treatment facilities, providing that certain persons serving mandatory minimum sentences serve a portion of their sentence on work release, establishing a penalty for certain persons who cause a serious injury to another while operating a motor vehicle, providing for certain offenders to serve their sentence on consecutive days, providing for posttreatment services as a condition of probation,

CCR-2413

Page 2

establishing a tax on marijuana and controlled substances, providing an expansion of the business deduction for businesses employing individuals on parole, probation, work release, or convicted of a felony, establishing penalties for participation in criminal gang activity, providing for the nonbailability of certain offenders, providing requirements for presentence investigations, providing for early release of offenders participating in certain treatment or for certain property offenders, making certain changes relating to conditions of parole and work release, authorizing parole and probation officers to discharge certain offenders, making certain changes relating to the victim reparation program, establishing a pilot project for the chemical testing of persons arrested for felony offenses, and providing penalties, respectfully make the following report:

1. That the House recedes from its amendment, S-5888.

2. That Senate File 2413, as amended, passed, and reprinted by the Senate, is amended as follows:

1. Page 1, line 24, by inserting after the word "services" the following: ", or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 246.703,".

2. Page 1, line 32, by inserting after the word "services," the following: "or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 246.703,".

3. Page 2, line 7, by inserting after the word "services," the following: "or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 246.703,".

4. Page 2, line 25, by inserting after the word "services," the following: "or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 246.703,".

5. Page 2, by striking lines and 32, and inserting the following:

CCR-2413

Page 3

"A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of".

6. Page 2, line 34, by inserting after the figure "123.47" the following: "and if the person is not referred to juvenile court".

7. Page 3, line 13, by striking the word "counterfiet" and inserting the following: "counterfeit".

8. Page 4, by striking lines 13 and 14, and inserting the following:

"A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a".

9. Page 4, line 16, by inserting after the word "chapter," the following: "and if the person is not referred to juvenile court".

10. Page 9, line 17, by striking the word "--PENALTY" and inserting the following: "-- PENALTY".

11. Page 10, by inserting after line 28, the following:

"Sec. ____ . Section 232.2, subsection 6, paragraph d, Code Supplement 1989, is amended to read as follows:

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

Sec. ____ . Section 232.8, subsection 1, unnumbered paragraph 2, Code 1989, is amended to read as follows:

Violations by a child of provisions of chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, and ~~violations by a child of section 123-47,~~ are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. The ~~court may advise appropriate juvenile authorities and may refer violations of section 123-47 to the juvenile court when there is reason to believe the child regularly abuses alcohol~~

CCR-2413

Page 4

~~and may be in need of treatment.---The court shall notify the parents or legal guardians of a child who appears before it for a violation of section 123.47.~~ A child convicted of a violation excluded from the jurisdiction of the juvenile court under this unnumbered paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations."

12. Page 11, by inserting after line 5, the following:

"Sec. ____ . Section 232.19, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding any other provision of this chapter, a child shall not be placed in detention as a result of a violation by that child of section 123.47."

13. Page 11, line 11, by inserting after the word "alcohol" the following: "or controlled substance".

14. Page 11, by inserting after line 19, the following:

"Sec. ____ . Section 232.82, Code 1989, is amended to read as follows:

232.82 REMOVAL OF SEXUAL OFFENDERS AND PHYSICAL ABUSERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

1. Notwithstanding section 561.15, if it is alleged by a person authorized to file a petition under section 232.87, subsection 2, or by the court on its own motion, that a parent, guardian, custodian, or an adult member of the household in which a child resides has committed a sexual offense with or against the child, pursuant to chapter 709 or section 726.2, or a physical abuse as defined by section 232.2, subsection 38, the juvenile court may enter an ex parte order requiring the alleged sexual offender or physical abuser to vacate the child's residence upon a showing that probable cause exists to believe that the sexual offense or physical abuse has occurred and that substantial evidence exists to believe that the presence of the alleged sexual offender or physical abuser in the child's residence presents a danger to the child's life or physical, emotional, or mental health.

2. If an order is entered under subsection 1 and a

CCR-2413

Page 5

petition has not yet been filed under this chapter, the petition shall be filed under section 232.87 by the county attorney, the department of human services, or a juvenile court officer within three days of the entering of the order.

3. The juvenile court may order on its own motion, or shall order upon the request of the alleged sexual offender or physical abuser, a hearing to determine whether the order to vacate the residence should be upheld, modified, or vacated. The juvenile court may in any later child in need of assistance proceeding uphold, modify, or vacate the order to vacate the residence.

Sec. ____ . Section 232.116, subsection 1, Code Supplement 1989, is amended by adding a new paragraph:

NEW PARAGRAPH. 1. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused the child has been imprisoned for such abuse against the child, the child's sibling, or any other child in the household and the court finds it is unlikely that the parent will be released within five years."

15. Page 11, by striking line 23, and inserting the following: "of suitable space for reading material for inmates. For purposes of this section, "suitable reading materials" does not include material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for inmates, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value. The".

CCR-2413

Page 6

16. Page 12, line 3, by inserting after the word "paragraph" the following: ""b" or"".

17. Page 12, by inserting after line 14, the following:
"Sec. ____ . Section 246.703, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The director may enter into a chapter 28E agreement with a county board of supervisors or county conservation board to provide inmate services for environmental maintenance including but not limited to brush and weed cutting, tree planting, and erosion control. The board of supervisors or conservation board shall reimburse the department of corrections for the allowance paid the inmates by the director. The supervision, security, and transportation of inmates used pursuant to the chapter 28E agreement shall be provided by the department of corrections."

18. Page 12, line 19, by inserting after the word "inmate's" the following: "mandatory minimum".

19. By striking page 12, line 20, through page 13, line 28, and inserting the following: "sentence performing labor in the program. Duties, if possible, shall consist of physical labor in plain view of the public. However, an inmate shall not be required to perform work which is beyond an inmate's physical ability, which constitutes a physical hardship, or which is dangerous or threatening to the inmate's life or health, medically prohibited, or unduly painful.

Sec. ____ . Section 321J.2, subsection 2, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under paragraph "b" or "c" shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to

CCR-2413

Page 7

incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve not less than forty-eight consecutive hours of the minimum term and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

Sec. ____ . Section 321J.3, subsection 1, Code 1989, is amended to read as follows:

1. On a conviction for a violation of section 321J.2, the court may order the defendant to attend a course for drinking drivers under section 321J.22. If the defendant submitted to a chemical test on arrest for the violation of section 321J.2 and the test indicated an alcohol concentration of .20 or higher, or if the defendant is charged with a second or subsequent offense, the court shall order the defendant, on conviction, to undergo a substance abuse evaluation and the court may shall order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the area school conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependence or tendency to chronically abuse alcohol or drugs. on successfully completing or attending a

CCR-2413

Page 8

course for drinking drivers or an ordered substance abuse treatment program, the person may be placed on probation for six months and as a condition of probation, shall attend a program providing posttreatment services relating to substance abuse as approved by the court. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend a course for drinking drivers or an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court. In addition to any other condition of probation, the person shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The person shall report to the person's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

Sec. 200. NEW SECTION. 321J.4A SURRENDER OF REGISTRATION AND PLATES.

1. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall issue an impoundment order requiring the surrender to the court of the registration certificate and registration plates of all of the following:

a. All vehicles registered to the defendant, or jointly to the defendant and the defendant's spouse.

b. All vehicles owned by the defendant, or jointly by the

CCR-2413

Page 9

defendant and the defendant's spouse.

c. All vehicles leased to the defendant, or jointly to the defendant and the defendant's spouse. This paragraph does not apply to a rental vehicle which is one of a fleet of two or more vehicles rented for periods of four months or less.

2. For purposes of this subsection, a conviction for, deferred judgment for, or plea of guilty to, a violation of section 321J.2, which occurred more than six years prior to the date of the most recent violation charged, shall not be considered in determining that the most recent violation is a third or subsequent violation.

3. If the court issues an impoundment order, the registration certificate and registration plates shall be surrendered to the court either three days after the order is issued or on the date specified by the court, whichever is later. The court shall forward surrendered registration certificates to the county recorder within seven days after surrender. The court may destroy the surrendered registration plates. Except as provided in subsection 5, new registration plates shall not be issued to the defendant or owner until the driver's license of the violator has been reissued or reinstated. The court shall notify the director within ten days after issuing an impoundment order.

4. a. A defendant or an owner may apply to the director for new registration plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers. Application for and acceptance of special plates constitutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time. The director shall authorize the issuance of special plates if any of the following apply:

(1) A member of the defendant's household has a valid driver's license.

(2) The defendant or owner has a temporary restricted license pursuant to section 321J.20.

The director may issue the special plates on payment of a

CCR-2413

Page 10

fifty dollar fee for each vehicle for which special plates are requested.

b. Until the driver's license of the defendant is reinstated or reissued, the defendant shall inform the department that an impoundment order is in effect when requesting any new registration plates.

5. A registered owner shall not sell a motor vehicle during the time its registration plates and registration certificate have been ordered surrendered or during the time its registration plates bear a special series number, unless the registered owner applies to the department for consent to transfer title to the motor vehicle. If the department is satisfied that the proposed sale is in good faith and for valid consideration, that the registered owner will be deprived of custody and control of the motor vehicle, and that the sale is not for the purpose of circumventing the provisions of this section, the department may certify its consent to the county recorder. The county recorder shall then transfer the registration certificate to the new owner upon proper application and issue new registration plates. After the registration plates and registration certificate have been ordered surrendered to the court under this section, if the title to the motor vehicle is transferred by the cancellation of a conditional sales contract, a sale upon execution, or by decree or order of a court of competent jurisdiction, the department shall order the registration certificate surrendered to the new registered owner. The county recorder shall then transfer the registration certificate and issue new registration plates to the new registered owner.

6. This section is not intended to change or modify taxation of motor vehicles or the time within which a motor vehicle tax must be paid.

7. a. A person who fails to surrender any registration plates or a registration certificate to the court upon demand under this section or who fails to comply with this section is

RCR-2413

Page 11

guilty of a simple misdemeanor and contempt of court.

b. A person who operates a motor vehicle on a street or highway at a time when a court has ordered the surrender of its registration plate and registration certificate is guilty of a simple misdemeanor as a separate and distinct offense from any other penalty imposed in connection with driving while under a license suspension or revocation.

8. The director may adopt such rules as may be necessary or convenient for the implementation and administration of this section.

Sec. ____ . Section 356.26, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The district court may also grant by order to any person sentenced to a county jail the privilege of a sentence of in-home detention where the county sheriff has certified to the court that the jail has an in-home detention program. The department of corrections shall report to the legislative fiscal bureau on a semiannual basis concerning utilization of in-home detention, including the counties which have established such programs and the number of prisoners allowed in-home detention privileges."

20. Page 20, line 6, by striking the word "--REFUNDS" and inserting the following: "-- REFUNDS".

21. Page 22, by inserting after line 34, the following:

"Sec. 104. Section 602.6405, subsection 1, Code 1989, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. ~~They-also~~ Magistrates have jurisdiction to exercise the powers specified in sections 644.2 and 644.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. ~~They-also~~ Magistrates have jurisdiction over violations of section 123.47 involving persons eighteen years of age, section 123.49, subsection 2, paragraph "h".

CCR-2413

Page 12

Magistrates have jurisdiction to conduct hearings authorized under section 809.4 and section 809.10, subsection 2."

22. By striking page 22, line 35 through page 23, line 6, and inserting the following:

"Sec. ____ . Section 707.6A, Code Supplement 1989, is amended to read as follows:

707.6A HOMICIDE OR SERIOUS INJURY BY VEHICLE.

1. A person commits a class "B" "C" felony when the person unintentionally causes the death of another by either of the following means:

a. Operating a motor vehicle while under the influence of alcohol or a other drug or a combination of such substances or while having an alcohol concentration, as defined in section 321J.1, subsection 1, of .10 or more, ~~in violation of section 321J.2.~~ Upon a plea or verdict of guilty of a violation of this paragraph, the court shall order the state department of transportation to revoke the defendant's motor vehicle license or nonresident operating privileges for a period of six years. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the revocation order.

b. Driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.

2. A person commits ~~an aggravated misdemeanor~~ a class "D" felony when the person unintentionally causes the death of another by operating a motor vehicle in any of the following manners:

a. Drag racing, in violation of section 321.278.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279.

3. A person commits an aggravated misdemeanor when the person unintentionally causes a serious injury, as defined in section 321J.1, subsection 8, by either of the means described in subsection 1 of this section.

3 As used in this section, "motor vehicle" includes any

CCR-2413

Page 13

vehicle defined as a motor vehicle in section 321.1.

5. Except for the purpose of sentencing under section 321J.2, subsection 2, a conviction or deferral of judgment for a violation of this section, where a violation of section 321J.2 is admitted or proved, shall be treated as a conviction or deferral of judgment for a violation of section 321J.2 for the purposes of chapters 321, 321A, and 321J, and section 907.3, subsection 1."

23. Page 24, by inserting after line 15, the following:

"Sec. ____ . Section 809.10, subsection 3, Code 1989, is amended to read as follows:

3. Upon a finding by the court that the property is forfeitable, the court ~~shall~~ may as a matter of equity enter an order transferring title to the property to the state.

Sec. ____ . NEW SECTION. 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

Except as provided in section 809.21, proceeds from the disposal of seized or forfeited property pursuant to this chapter may be transferred in whole or in part to the victim reparation fund created in pursuant to chapter 912 at the discretion of the recipient agency, political subdivision, or department."

24. Page 26, by striking lines 4 through 7, and inserting the following:

"1. A brief personal and social history of the defendant.

2. The defendant's criminal record."

25. Page 26, by inserting after line 33, the following:

"Sec. ____ . Section 903.1, subsection 3, unnumbered paragraph 1, Code 1989, is amended to read as follows:

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, ~~section-123-47~~, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay fine, not to exceed one hundred dollars, as fixed by the court or may be required to perform community service as

CCR-2413

Page 14

ordered by the court."

26. Page 27, line 10, by striking the words "substance abuse" and inserting the following: "treatment".

27. Page 27, line 21, by inserting after the word "service." the following: "The board shall not make community service a uniform or mandatory requirement for all or substantially all parolees or work release inmates but shall exercise discretion in ordering community service as a condition of parole or work release. The board shall report to the general assembly on the implementation of community service as a condition of parole or work release. The report shall be submitted on or before January 1, 1991."

28. Page 35, by striking line 16, and inserting the following:

"The department of public safety shall study the feasibility and usefulness of implementing a pilot program for".

29. Page 35, line 22, by striking the word "program" and inserting the following: "study".

30. Page 35, by striking lines 24 through 26, and inserting the following: "prevention coordinator who shall consult with the department of public safety to accomplish the purposes described in this section."

31. By striking page 35, line 27, through page 36, line 11, and inserting the following:

"Sec. ____ . ALTERNATIVE DRUG TESTING FOR OFFICERS.

The department of public safety shall develop a plan for the implementation of alternative drug testing programs for law enforcement, parole, and probation officers. The plan shall be submitted to the general assembly by January 15, 1991, in a form which could be adopted and implemented by the department of public safety or individual law enforcement agencies throughout the state."

32. Page 36, by striking lines 16 through 20, and inserting the following:

"Sec. ____ . Section 200 takes effect July 1, 1991."

CCR-2413

Page 15

33. By renumbering, relettering, and redesignating as necessary.

ON THE PART OF THE SENATE:

ON THE PART OF THE HOUSE:

MICHAEL E. GRONSTAL, Chairperson

DANIEL JAY, Chairperson

LINN FUHRMAN

MICHAEL PETERSON

MARK R. HAGERLA

GARY SHERZAN

RICHARD VARN

BILL TRENT

CCR-2413 FILED APRIL 8, 1990 *Has Adopted 4/8 (p. 2396)*
ADOPTED *(p. 1745)*

SENATE FILE 2413

AN ACT

RELATING TO CERTAIN SPECIFIC CRIMES AND THE DISPOSITION OF OFFENDERS BY PROVIDING FOR PAYMENT OF SEXUAL ABUSE MEDICAL EXAMINATIONS, PROVIDING FOR WORKERS' COMPENSATION COVERAGE AND THE LIABILITY OF CERTAIN PERSONS PERFORMING COMMUNITY SERVICE, PROVIDING FOR NOTIFICATION OF THE PARENTS OF PERSONS UNDER AGE EIGHTEEN DISCOVERED TO BE IN POSSESSION OF ALCOHOL OR DRUGS, PROVIDING FOR A TERM OF CONFINEMENT FOR DISTRIBUTION OF ILLEGAL DRUGS WITHIN ONE THOUSAND FEET OF A PUBLIC PARK, PROVIDING FOR THE REPORTING AND IDENTIFICATION OF CERTAIN PRECURSOR DRUGS, PROVIDING FOR THE DISPOSITION OF CERTAIN JUVENILE OFFENDERS, ESTABLISHING INSTITUTIONAL READING ROOM REQUIREMENTS, PROVIDING FOR THE DIVERSION OF CERTAIN OFFENDERS TO TREATMENT FACILITIES, PROVIDING THAT CERTAIN PERSONS SERVING MANDATORY MINIMUM SENTENCES SERVE A PORTION OF THEIR SENTENCE ON WORK RELEASE, ESTABLISHING A PENALTY FOR CERTAIN PERSONS WHO CAUSE A SERIOUS INJURY TO ANOTHER WHILE OPERATING A MOTOR VEHICLE, PROVIDING FOR CERTAIN OFFENDERS TO SERVE THEIR SENTENCE ON CONSECUTIVE DAYS, PROVIDING FOR POSTTREATMENT SERVICES AS A CONDITION OF PROBATION, ESTABLISHING A TAX ON MARIJUANA AND CONTROLLED SUBSTANCES, PROVIDING AN EXPANSION OF THE BUSINESS DEDUCTION FOR BUSINESSES EMPLOYING INDIVIDUALS ON PAROLE, PROBATION, WORK RELEASE, OR CONVICTED OF A FELONY, ESTABLISHING PENALTIES FOR PARTICIPATION IN CRIMINAL GANG ACTIVITY, PROVIDING FOR THE NONBAILABILITY OF CERTAIN OFFENDERS, PROVIDING REQUIREMENTS FOR PRESENTENCE INVESTIGATIONS, PROVIDING FOR EARLY RELEASE OF OFFENDERS PARTICIPATING IN CERTAIN TREATMENT OR FOR CERTAIN PROPERTY OFFENDERS, MAKING CERTAIN CHANGES RELATING TO CONDITIONS OF PAROLE AND WORK RELEASE, AUTHORIZING PAROLE AND PROBATION OFFICERS TO DISCHARGE CERTAIN OFFENDERS, MAKING CERTAIN CHANGES RELATING TO THE VICTIM REPARATION PROGRAM, ESTABLISHING A PILOT PROJECT FOR

THE CHEMICAL TESTING OF PERSONS ARRESTED FOR FELONY OFFENSES, AND PROVIDING PENALTIES.

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

Section 1. Section 13.31, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Administer payment for sexual abuse medical examinations pursuant to section 709.10.

Sec. 2. Section 25A.2, subsection 3, Code Supplement 1989, is amended to read as follows:

3. "Employee of the state" includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists and dentists, who render services to patients and inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections are to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 20E agreement entered into pursuant to section 246.703, are to be considered employees of the state.

Sec. 3. Section 85.59, unnumbered paragraphs 2, 4, and 5, Code 1989, is amended to read as follows:

For purposes of this section, "inmate" includes a person who is performing unpaid community service under sections

907:13 and 910:2 the direction of the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 246.703, or who is performing a work assignment of value to the state or to the public under chapter 232.

If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution or in an industry maintained in the institution, while on detail to perform services on a public works project, or is permanently or temporarily incapacitated in connection with the performance of unpaid community service under sections-907:13 and 910:2 the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 246.703, or who is performing a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury.

Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under sections-907:13 and 910:2 the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to

section 246.703, or who is performing a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases.

Sec. 4. NEW SECTION. 123.47B PARENTAL NOTIFICATION -- PERSONS UNDER EIGHTEEN YEARS OF AGE.

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of alcoholic liquor, wine, or beer in violation of section 123.47 and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested or a citation is issued pursuant to section 805.16, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first class mail.

Sec. 5. NEW SECTION. 204.401A DISTRIBUTION TO PERSONS ON CERTAIN REAL PROPERTY.

In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older who unlawfully distributes a substance or 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 another person who is eighteen years of age or older in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, or in or on the real property comprising a public park, may, at the judge's discretion, be sentenced up to an additional term of confinement of five years.

Sec. 6. Section 204.406, subsection 1, paragraph a, Code Supplement 1989, is amended to read as follows:

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, or in or on the real property comprising a public park, the person shall serve a minimum term of confinement of ten years.

Sec. 7. Section 204.406, subsection 2, paragraph a, Code Supplement 1989, is amended to read as follows:

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, or in or on the real property comprising a public park, the person shall serve a minimum term of confinement of ten years.

Sec. 8. NEW SECTION. 204.415 PARENTAL NOTIFICATION -- PERSONS UNDER EIGHTEEN YEARS OF AGE.

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, or simulated controlled substance in violation of this chapter, and if the person is not referred to juvenile court the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first class mail.

Sec. 9. NEW SECTION. 204.416 EXCEPTION TO NONBAILABLE OFFENSE.

Notwithstanding section 811.1, the court, in its discretion, may admit a person convicted of a violation of section 204.401, subsection 1 or 2, or of a violation of section 204.406, to bail if the prosecuting attorney in the action and the defendant's counsel jointly petition the court to admit the person to bail.

Sec. 10. NEW SECTION. 204B.1 DEFINITIONS.

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

1. "Board" means the board of pharmacy examiners.
2. "Controlled substance" means a controlled substance as defined in section 204.101.
3. "Practitioner" means a practitioner as defined in section 155A.3.
4. "Precursor substance" means a substance which may be used as a precursor in the illegal production of a controlled substance and is specified under section 204B.2.
5. "Recipient" means a person in this state who purchases, transfers, or otherwise receives a precursor substance.
6. "Vendor" means a person who manufactures, wholesales, retails, or otherwise sells, transfers, or furnishes in this state a precursor substance.

Sec. 11. NEW SECTION. 204B.2 REPORTING REQUIRED.

1. Effective July 1, 1990, a report to the board shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances:

- a. Anthranilic acid and its salts.
- b. Benzyl Cyanide.
- c. Ephedrine, its salts, optical isomers, and salts of optical isomers.
- d. Ergonovine and its salts.
- e. Ergotamine and its salts.

- f. 3,4 - methylenedioxyphenyl-2-propanone.
- g. N-acetylanthranilic acid and its salts.
- h. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- i. Phenylacetic acid and its salts.
- j. Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.
- k. Piperidine and its salts.
- 1. Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- 2. The board shall administer the regulatory provisions of this chapter and may, by rule adopted pursuant to chapter 17A, add a substance to or remove a substance from the list in subsection 1. In determining whether to add or remove a substance from the list, the board shall consider the following:
 - a. The likelihood that the substance may be used as a precursor in the illegal production of a controlled substance.
 - b. The availability of the substance.
 - c. The appropriateness of including the substance under this chapter or under chapter 204.
 - d. The extent and nature of legitimate uses for the substance.
- 3. On or before November 1 of each year, the board shall inform the general assembly of any substances added, deleted, or changed in the list contained in section 204B.2 and shall provide an explanation of any addition, deletion, or change.

Sec. 12. NEW SECTION. 204B.3 IDENTIFICATION REQUIRED.

- 1. Before selling, transferring, or otherwise furnishing any substance specified in section 204B.2 to a person in this state, a vendor shall require proper identification from the purchaser.
- 2. For the purposes of this section, in the case of a face-to-face purchase, "proper identification" means all of the following:

- a. A motor vehicle operator's license containing the purchaser's photograph and residential or mailing address, other than a post office box number, or any other official state-issued identification containing this information.
- b. The motor vehicle license number of the vehicle owned or operated by the purchaser.
- c. A letter of authorization from the person who is making the purchase. The letter shall include the person's business license number and business address, a description as to how the substance will be used, and the purchaser's signature. The vendor shall affix the vendor's signature as a witness to the signature and identification of the purchaser.
- 3. The board shall provide by rule for the form of proper identification required for purchases which are not face to face.
- 4. A person who violates this section or rules adopted pursuant to this section commits a simple misdemeanor.

Sec. 13. NEW SECTION. 204B.4 VENDOR REPORTING.

- 1. At least twenty-one days prior to the delivery of a precursor substance to a recipient, the vendor shall submit a report of the transaction to the board. The report must contain the identification information specified under section 204B.3. However, if regular, repeated transactions of a particular precursor substance occur between the vendor and the recipient, the board may authorize the vendor to report the transactions monthly if either of the following conditions exists:

- a. A pattern of regular supply of the precursor substance exists between the vendor and the recipient.
- b. The recipient has established a record of lawfully using the precursor substance.
- 2. A vendor who does not submit a report pursuant to this section commits a serious misdemeanor.

Sec. 14. NEW SECTION. 204B.5 RECEIPT OF SUBSTANCE FROM OUTSIDE THE STATE -- PENALTY.

1. A vendor, recipient, or other person required to report pursuant to this chapter who receives a precursor substance from a source outside the state shall submit a report to the board pursuant to rules adopted by the board.

2. A person who does not submit a report required under this section commits a serious misdemeanor.

Sec. 15. NEW SECTION. 204B.6 EXCEPTIONS.

The requirements of sections 204B.2 through 204B.5 do not apply to any of the following:

1. A licensed pharmacist or other person authorized under chapter 155A to sell or furnish a precursor substance upon the prescription of a practitioner.

2. A practitioner who administers or furnishes a precursor substance to a patient.

3. A vendor who holds a permit issued by the board and who sells, transfers, or otherwise furnishes a precursor substance to a practitioner or a pharmacy as defined in section 155A.3.

4. A sale, transfer, furnishing, or receipt of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with chapter 203B.

Sec. 16. NEW SECTION. 204B.7 REPORTING FORM.

1. The board shall adopt rules prescribing a common form for the filing of reports required under this chapter. The rules shall provide that the information which must be submitted shall include but is not limited to all of the following:

- a. The name of the precursor substance.
- b. The quantity of the precursor substance sold, transferred, or furnished.
- c. The date the precursor substance was sold, transferred, or furnished.
- d. The name and address of the recipient.
- e. The name and address of the vendor.

2. Reports authorized under subsection 1 may be computer-generated and submitted monthly in accordance with rules adopted by the board.

Sec. 17. NEW SECTION. 204B.8 MISSING QUANTITY -- REPORTING.

A person who is required to report to the board pursuant to this chapter or a person listed as an exception under section 204B.6 shall report to the board either of the following occurrences within seven days of knowledge of the loss or occurrence:

1. Loss or theft of a precursor substance.
2. A difference between the amount of a precursor substance shipped and the amount of a precursor substance received. If applicable, the report shall include the name of the person who transported the precursor substance and the date of shipment.

Sec. 18. NEW SECTION. 204B.9 SALE, TRANSFER, FURNISHING, OR RECEIPT FOR UNLAWFUL PURPOSE -- PENALTY.

1. A person who sells, transfers, or otherwise furnishes a precursor substance with knowledge or the intent that the recipient will use the precursor substance to unlawfully manufacture a controlled substance commits a class "C" felony.

2. A person who receives a precursor substance with intent to use the substance unlawfully to manufacture a controlled substance commits a class "C" felony.

Sec. 19. NEW SECTION. 204B.10 FALSE STATEMENT -- PENALTY.

A person who knowingly makes a false statement in connection with any report or record required to be made under this chapter commits an aggravated misdemeanor.

Sec. 20. NEW SECTION. 204B.11 PERMIT REQUIREMENTS -- PENALTY.

1. A vendor or a recipient who receives a precursor substance from a source outside the state shall obtain a permit for the transaction from the board. However, a permit is not required of a vendor of a drug containing ephedrine,

phenylpropanolamine, or pseudoephedrine or of a cosmetic that contains a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished either over the counter without a prescription in accordance with chapter 203B or with a prescription pursuant to chapter 155A.

2. An application for a permit shall be filed in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any precursor substance sold, transferred, or otherwise furnished or received.

3. The board may grant a permit on a form adopted by rule. A permit shall be effective for not more than one year from the date of issuance.

4. An applicant shall pay, at the time of filing an application, a permit fee determined by the board.

5. A permit granted under this chapter may be annually renewed on a date to be determined by the board pursuant to rule, upon the filing of a renewal application and the payment of a permit renewal fee.

6. Permit fees charged by the board shall not exceed the costs incurred by the board in administering this chapter.

7. Selling, transferring, or otherwise furnishing, or receiving a precursor substance without a permit obtained pursuant to this section is a serious misdemeanor.

Sec. 21. NEW SECTION. 204B.12 PERMIT -- REFUSAL, SUSPENSION, OR REVOCATION.

The board shall refuse, suspend, or revoke a permit upon finding that any of the following conditions exist:

1. The permit was obtained through fraud, misrepresentation, or deceit.

2. The permittee has violated or has permitted any employee of the permittee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated this chapter, a rule adopted pursuant to this chapter, or any other rule of the board.

Sec. 22. Section 232.2, subsection 6, paragraph d, Code Supplement 1989, is amended to read as follows:

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

Sec. 23. Section 232.8, subsection 1, unnumbered paragraph 2, Code 1989, is amended to read as follows:

Violations by a child of provisions of chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, ~~and violations by a child of section 123.47~~ are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. ~~The court may advise appropriate juvenile authorities and may refer violations of section 123.47 to the juvenile court when there is reason to believe the child regularly abuses alcohol and may be in need of treatment. The court shall notify the parents or legal guardians of a child who appears before it for a violation of section 123.47.~~ A child convicted of a violation excluded from the jurisdiction of the juvenile court under this unnumbered paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

Sec. 24. Section 232.8, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. In a proceeding concerning a child who is alleged to have committed a second delinquent act or a second violation excluded from the jurisdiction of the juvenile court, the court or the juvenile court shall determine whether there is reason to believe that the child regularly abuses alcohol or other controlled substance and may be in need of treatment. If the court so determines, the court shall advise appropriate juvenile authorities and refer such offenders to the juvenile court for disposition pursuant to section 232.52A.

Sec. 25. Section 232.19, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding any other provision of this chapter, a child shall not be placed in detention as a result of a violation by that child of section 123.47.

Sec. 26. NEW SECTION. 232.52A DISPOSITION OF CERTAIN JUVENILE OFFENDERS.

In addition to any other order of the juvenile court, a person under age eighteen, who may be in need of treatment as determined under section 232.8, may be ordered to participate in an alcohol or controlled substance education or evaluation program approved by the juvenile court. If recommended after evaluation, the court may also order the person to participate in a treatment program approved by the court. The juvenile court may also require the custodial parent or parents or other legal guardian to participate in an educational program with the person under age eighteen if the court determines that such participation is in the best interests of the person under age eighteen.

Sec. 27. Section 232.82, Code 1989, is amended to read as follows:

232.82 REMOVAL OF SEXUAL OFFENDERS AND PHYSICAL ABUSERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

1. Notwithstanding section 561.15, if it is alleged by a person authorized to file a petition under section 232.87, subsection 2, or by the court on its own motion, that a parent, guardian, custodian, or an adult member of the household in which a child resides has committed a sexual offense with or against the child, pursuant to chapter 709 or section 726.2, or a physical abuse as defined by section 232.2, subsection 38, the juvenile court may enter an ex parte order requiring the alleged sexual offender or physical abuser to vacate the child's residence upon a showing that probable cause exists to believe that the sexual offense or physical abuse has occurred and that substantial evidence exists to believe that the presence of the alleged sexual offender or

physical abuser in the child's residence presents a danger to the child's life or physical, emotional, or mental health.

2. If an order is entered under subsection 1 and a petition has not yet been filed under this chapter, the petition shall be filed under section 232.87 by the county attorney, the department of human services, or a juvenile court officer within three days of the entering of the order.

3. The juvenile court may order on its own motion, or shall order upon the request of the alleged sexual offender or physical abuser, a hearing to determine whether the order to vacate the residence should be upheld, modified, or vacated. The juvenile court may in any later child in need of assistance proceeding uphold, modify, or vacate the order to vacate the residence.

Sec. 28. Section 232.116, subsection 1, Code Supplement 1989, is amended by adding a new paragraph:

NEW PARAGRAPH. 1. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused the child has been imprisoned for such abuse against the child, the child's sibling, or any other child in the household and the court finds it is unlikely that the parent will be released within five years.

Sec. 29. NEW SECTION. 246.310A INSTITUTION READING ROOMS.

The director shall, as necessary, provide for the provision of suitable space for reading material for inmates. For purposes of this section, "suitable reading materials" does not include material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to

what is suitable material for inmates, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value. The space shall be located so that any visitors, other than those authorized pursuant to section 246.512, shall not be able to view the space or the materials located within that space.

Sec. 30. Section 246.513, subsection 1, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The department of corrections in cooperation with judicial district departments of correctional services shall establish in each judicial district bed space for the confinement and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The department of corrections shall develop standardized assessment criteria for the assignment of offenders to a facility established pursuant to this section. The offender shall be assigned by the director to a facility pursuant to section 321J.2, subsection 2, paragraph "b" or "c", unless initial medical treatment is necessary or there is insufficient space to accommodate the person. The offenders shall first be assigned to the Iowa medical classification facility at Oakdale for classification and after classification may be assigned to if medical treatment is necessary or if the offender fails to satisfactorily perform in a treatment program conducted in a residential facility operated by any a judicial district department of correctional services. The offender shall be assigned to an institution following classification. The facilities established shall meet all the following requirements:

Sec. 31. Section 246.703, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The director may enter into a chapter 28E agreement with a county board of supervisors or county conservation board to provide inmate services for environmental maintenance including but not limited to brush

and weed cutting, tree planting, and erosion control. The board of supervisors or conservation board shall reimburse the department of corrections for the allowance paid the inmates by the director. The supervision, security, and transportation of inmates used pursuant to the chapter 28E agreement shall be provided by the department of corrections.

Sec. 32. NEW SECTION. 246.902 WORK RELEASE -- PERSONS SERVING MANDATORY MINIMUM SENTENCE.

An inmate serving a mandatory minimum sentence of one year or more, who is approved to participate in the work release program, shall serve the final six months of the inmate's mandatory minimum sentence performing labor in the program. Duties, if possible, shall consist of physical labor in plain view of the public. However, an inmate shall not be required to perform work which is beyond an inmate's physical ability, which constitutes a physical hardship, or which is dangerous or threatening to the inmate's life or health, medically prohibited, or unduly painful.

Sec. 33. Section 321J.2, subsection 2, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under paragraph "b" or "c" shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve not less than forty-eight consecutive hours of the minimum term and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

Sec. 34. Section 321J.3, subsection 1, Code 1989, is amended to read as follows:

1. On a conviction for a violation of section 321J.2, the court may order the defendant to attend a course for drinking drivers under section 321J.22. If the defendant submitted to a chemical test on arrest for the violation of section 321J.2 and the test indicated an alcohol concentration of .20 or higher, or if the defendant is charged with a second or subsequent offense, the court shall order the defendant, on conviction, to undergo a substance abuse evaluation and the court may ~~shall~~ order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the area school conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. Upon successfully completing or attending a course for drinking drivers or an ordered substance abuse treatment program, the person may be placed on probation for six months and as a condition of probation, shall attend a program providing posttreatment services relating to substance abuse as approved by the court. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part

shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend a course for drinking drivers or an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court. In addition to any other condition of probation, the person shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The person shall report to the person's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

Sec. 35. NEW SECTION. 321J.4A SURRENDER OF REGISTRATION AND PLATES.

1. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall issue an impoundment order requiring the surrender to the court of the registration certificate and registration plates of all of the following:
 - a. All vehicles registered to the defendant, or jointly to the defendant and the defendant's spouse.
 - b. All vehicles owned by the defendant, or jointly by the defendant and the defendant's spouse.
 - c. All vehicles leased to the defendant, or jointly to the defendant and the defendant's spouse. This paragraph does not apply to a rental vehicle which is one of a fleet of two or more vehicles rented for periods of four months or less.
2. For purposes of this subsection, a conviction for, deferred judgment for, or plea of guilty to, a violation of

section 321J.2, which occurred more than six years prior to the date of the most recent violation charged, shall not be considered in determining that the most recent violation is a third or subsequent violation.

3. If the court issues an impoundment order, the registration certificate and registration plates shall be surrendered to the court either three days after the order is issued or on the date specified by the court, whichever is later. The court shall forward surrendered registration certificates to the county recorder within seven days after surrender. The court may destroy the surrendered registration plates. Except as provided in subsection 5, new registration plates shall not be issued to the defendant or owner until the driver's license of the violator has been reissued or reinstated. The court shall notify the director within ten days after issuing an impoundment order.

4. a. A defendant or an owner may apply to the director for new registration plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers. Application for and acceptance of special plates constitutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time. The director shall authorize the issuance of special plates if any of the following apply:

(1) A member of the defendant's household has a valid driver's license.

(2) The defendant or owner has a temporary restricted license pursuant to section 321J.20.

The director may issue the special plates on payment of a fifty dollar fee for each vehicle for which special plates are requested.

b. Until the driver's license of the defendant is reinstated or reissued, the defendant shall inform the department that an impoundment order is in effect when requesting any new registration plates.

5. A registered owner shall not sell a motor vehicle during the time its registration plates and registration certificate have been ordered surrendered or during the time its registration plates bear a special series number, unless the registered owner applies to the department for consent to transfer title to the motor vehicle. If the department is satisfied that the proposed sale is in good faith and for valid consideration, that the registered owner will be deprived of custody and control of the motor vehicle, and that the sale is not for the purpose of circumventing the provisions of this section, the department may certify its consent to the county recorder. The county recorder shall then transfer the registration certificate to the new owner upon proper application and issue new registration plates. After the registration plates and registration certificate have been ordered surrendered to the court under this section, if the title to the motor vehicle is transferred by the cancellation of a conditional sales contract, a sale upon execution, or by decree or order of a court of competent jurisdiction, the department shall order the registration certificate surrendered to the new registered owner. The county recorder shall then transfer the registration certificate and issue new registration plates to the new registered owner.

6. This section is not intended to change or modify taxation of motor vehicles or the time within which a motor vehicle tax must be paid.

7. a. A person who fails to surrender any registration plates or a registration certificate to the court upon demand under this section or who fails to comply with this section is guilty of a simple misdemeanor and contempt of court.

b. A person who operates a motor vehicle on a street or highway at a time when a court has ordered the surrender of its registration plate and registration certificate is guilty of a simple misdemeanor as a separate and distinct offense from any other penalty imposed in connection with driving while under a license suspension or revocation.

8. The director may adopt such rules as may be necessary or convenient for the implementation and administration of this section.

Sec. 36. Section 356.26, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The district court may also grant by order to any person sentenced to a county jail the privilege of a sentence of in-home detention where the county sheriff has certified to the court that the jail has an in-home detention program. The department of corrections shall report to the legislative fiscal bureau on a semiannual basis concerning utilization of in-home detention, including the counties which have established such programs and the number of prisoners allowed in-home detention privileges.

Sec. 37. NEW SECTION. 421A.1 DEFINITIONS.

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

1. "Controlled substance" means controlled substance as defined in section 204.101.
2. "Counterfeit substance" means a counterfeit substance as defined in section 204.101.
3. "Dealer" means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:
 - a. Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.
 - b. Forty-two and one-half grams or more of a substance consisting of or containing marijuana.
 - c. Ten or more dosage units of a taxable substance which is not sold by weight.

However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.

4. "Department" means the department of revenue and finance.

5. "Director" means the director of revenue and finance.

6. "Dosage unit" means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.

7. "Marijuana" means marijuana as defined in section 204.101.

8. "Simulated controlled substance" means a simulated controlled substance as defined in section 204.101.

9. "Taxable substance" means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.

Sec. 38. NEW SECTION. 421A.2 ADMINISTRATION -- RULES.

The director shall administer this chapter. The director shall collect all taxes, interest, and civil penalties imposed under this chapter and deposit them in the general fund of the state.

The director may adopt rules under chapter 17A that are necessary to enforce this chapter. The director shall adopt a uniform system of providing, affixing, and displaying official stamps, labels, or other official indicia for taxable substances.

Sec. 39. NEW SECTION. 421A.3 TAX PAYMENT REQUIRED FOR POSSESSION -- PAYMENT DUE.

A dealer shall not possess, distribute, or offer to sell a taxable substance unless the tax imposed under this chapter has been paid as evidenced by a stamp, label, or other official indicia permanently affixed to the taxable substance.

Taxes imposed on taxable substances by this chapter are due and payable immediately upon manufacture, production, acquisition, purchase, or possession by a dealer.

If the indicia evidencing the payment of the tax imposed on taxable substances under this chapter have not been affixed, the dealer shall have the indicia permanently affixed on the taxable substance immediately after receiving the taxable substance. A stamp, label, or other official indicia shall be used only once and shall not be used after the date of expiration.

Sec. 40. NEW SECTION. 421A.4 MEASUREMENTS.

For purposes of measurements under this chapter, the weight of a taxable substance shall be measured by its weight in metric grams in the dealer's possession. If a taxable substance consists of a mixture containing both marijuana and another substance or combination of substances listed in the definition of taxable substance in section 421A.1, the taxable substance shall be taxed under section 421A.7, subsection 2.

Sec. 41. NEW SECTION. 421A.5 DEFENSE OR IMMUNITY.

This chapter does not provide in any manner a defense or affirmative defense to or immunity for a dealer from criminal prosecution pursuant to Iowa law.

Sec. 42. NEW SECTION. 421A.6 PHARMACEUTICALS.

This chapter does not require persons lawfully in possession of a taxable substance to pay the tax required under this chapter or to purchase, acquire, or affix the stamps, labels, or other official indicia otherwise required by this chapter.

Sec. 43. NEW SECTION. 421A.7 TAX IMPOSED -- RATE OF TAX.

An excise tax is imposed on dealers at the following rates:

1. On each gram of marijuana, or each portion of a gram, five dollars.
2. On each gram or portion of a gram of any taxable substance sold by weight other than marijuana, two hundred fifty dollars.
3. On each ten dosage units of any taxable substance that is not sold by weight, or portion thereof, four hundred dollars.

Sec. 44. NEW SECTION. 421A.8 PRICE OF STAMPS, LABELS, OR OTHER INDICIA.

Stamps, labels, or other official indicia to be affixed to a taxable substance indicating the payment of the excise tax shall be obtained and purchased from the department. The dealer shall pay the entire excise tax listed in section 421A.7 at the time of purchase, except as provided in section 421A.13, and receive stamps, labels, or other official indicia for the amount paid. However, the minimum purchase price to be paid for any stamps, labels, or indicia shall be two hundred fifteen dollars.

Sec. 45. NEW SECTION. 421A.9 ASSESSMENTS ARE JEOPARDY ASSESSMENTS.

All assessments of taxes made pursuant to this chapter shall be considered jeopardy assessments or collections as provided in section 422.30. The director shall assess a tax, interest, and applicable penalties based on knowledge or information available to the director; mail to the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax, interest, and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax, interest, and penalty by any method prescribed in section 422.30. The period for examination, determination of amount of tax owed, and assessment is unlimited.

A person shall not bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by this chapter.

The tax, interest, and penalties assessed by the director are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show any incorrectness or invalidity of an assessment. The burden is upon the taxpayer to prove that the shipment, transportation, importation, acquisition, purchase, possession, manufacture, or production of a taxable substance was lawful if a taxpayer's status as a dealer is disputed. Any statement

filed by the director with the clerk of the district court, or any other certificate by the director of the amount of tax, interest, and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts contained in the statement.

Sec. 46. NEW SECTION. 421A.10 CONFIDENTIAL NATURE OF INFORMATION.

Notwithstanding any law to the contrary, the director or an employee of the department shall not reveal any information obtained from a dealer; nor shall information obtained from a dealer be used against the dealer in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes due under this chapter from the dealer against whom the tax was assessed.

A person who violates this section is guilty of a simple misdemeanor.

This section does not prohibit the director from publishing statistics that do not disclose the identity of the dealers.

A stamp, label, or other official indicia denoting payment of the tax imposed under this chapter shall not be used against a taxpayer in a criminal proceeding, except that such information may be used against the taxpayer in connection with the administration or civil or criminal enforcement of the tax imposed under this chapter or any similar tax imposed by another state or local unit of government.

Sec. 47. NEW SECTION. 421A.11 EXAMINATION OF RECORDS BY DIRECTOR -- SUBPOENAS.

For the purpose of determining whether or not the dealer should have paid taxes, determining the amount of tax that should have been paid, or collecting any taxes under this chapter, the director may examine, or cause to be examined, any books, papers, records, or memoranda that may be relevant to making such determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the dealer or another person. The director may require the attendance of any person having knowledge or information that

may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the director or an examiner or investigator, the court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, or memoranda. The director may also issue subpoenas. Disobedience of subpoenas issued under this chapter is punishable by the district court of the county in which the subpoena is issued, or if the subpoena is issued by the director, by the district court of the county in which the party served with the subpoena is located, in the same manner as a contempt of court.

The director may petition the district court or a magistrate for an administrative search warrant as authorized by section 808.14 to execute a distress warrant authorized by section 422.26.

Sec. 48. NEW SECTION. 421A.12 CIVIL AND CRIMINAL PENALTIES FOR VIOLATION OF ACT -- INTEREST.

A dealer who violates this chapter is subject to a penalty equal to the amount of the tax imposed by section 421A.7, in addition to the tax imposed by that section. The dealer shall pay interest on the tax and penalty at the rate in effect under section 421.7, counting each fraction of a month as an entire month, computed from the date of assessment through the date of payment. The penalty and interest shall be collected as part of the tax.

In addition to the civil tax penalty and interest imposed by this section, a dealer distributing, offering to sell, or possessing taxable substances without affixing the appropriate stamps, labels, or other official indicia is guilty of a class "D" felony.

A person who possesses, prints, engraves, makes, issues, sells, or circulates a counterfeit taxable substance tax stamp, label, or other official indicia, or places or causes to be placed a counterfeit taxable substance tax stamp, label,

or other official indicia on a taxable substance, is guilty of a class "D" felony.

A person who uses, sells, offers for sale, or possesses for use or sale a previously used or expired taxable substance tax stamp, label, or other official indicia, or attaches or causes to be attached a previously used or expired taxable substance tax stamp, label, or other official indicia to a taxable substance, is guilty of a class "D" felony.

Notwithstanding section 802.3, an indictment may be found or information filed upon any criminal offense specified in this chapter, in the proper court, within six years after the commission of the offense.

Sec. 49. NEW SECTION. 421A.13 CREDIT FOR PREVIOUSLY PAID TAXES.

If another state or local unit of government has previously assessed an excise tax on a taxable substance, the taxpayer shall pay the difference between the tax imposed under this chapter and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax imposed under this chapter, no tax is due. The burden is on the taxpayer to show that an excise tax on the taxable substances has been paid to another state or local unit of government.

Sec. 50. NEW SECTION. 421A.14 REVISION OF TAX -- REFUNDS.

Sections 421.5, 422.26, 422.28, 422.29, 422.73, subsection 2, and 422.74 shall apply to this chapter, except that a refund claim filed later than thirty days from the expiration date of the stamps for which the refund is requested shall not be allowed by the director.

Sec. 51. NEW SECTION. 421A.15 AVAILABILITY OF RECORDS AND INFORMATION.

The director may request from state, county, and local agencies, information and assistance deemed necessary to administer this chapter. State, county, and local agencies, officers, and employees shall cooperate with the director in

identifying dealers and shall, on request, supply the department with available information and assistance which the director deems necessary to administer this chapter, notwithstanding any provisions of law making such information confidential.

Sec. 52. Section 422.7, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 12A. If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under section 422.7, subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following:

a. 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.

b. 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.

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" and "b" 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.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

Sec. 53. Section 422.35, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. If the taxpayer is a business corporation and does not qualify for the adjustment under section 422.35, subsection 6, 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" and "b" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. 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.

b. 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.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a" and "b" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

Sec. 54. Section 602.6405, subsection 1, Code 1989, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. They also Magistrates have jurisdiction to exercise the powers specified in sections 644.2 and 644.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. They also Magistrates have jurisdiction over violations of section 123.47 involving persons eighteen years of age, and section 123.49, subsection 2, paragraph "h". Magistrates have jurisdiction to conduct hearings authorized under section 809.4 and section 809.10, subsection 2.

Sec. 55. Section 707.6A, Code Supplement 1989, is amended to read as follows:

707.6A HOMICIDE OR SERIOUS INJURY BY VEHICLE.

1. A person commits a class "B" "C" felony when the person unintentionally causes the death of another by either of the following means:

a. Operating a motor vehicle while under the influence of alcohol or a ~~other~~ drug or a combination of such substances or while having an alcohol concentration, as defined in section 321J.1, subsection 1, of .10 or more, in violation of section 321J.2. Upon a plea or verdict of guilty of a violation of this paragraph, the court shall order the state department of transportation to revoke the defendant's motor vehicle license or nonresident operating privileges for a period of six years. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the revocation order.

b. Driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.

2. A person commits an aggravated misdemeanor a class "D" felony when the person unintentionally causes the death of another by operating a motor vehicle in any of the following manners:

a. Drag racing, in violation of section 321.278.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279.

3. A person commits an aggravated misdemeanor when the person unintentionally causes a serious injury, as defined in section 321J.1, subsection 8, by either of the means described in subsection 1 of this section.

3 4. As used in this section, "motor vehicle" includes any vehicle defined as a motor vehicle in section 321.1.

5. Except for the purpose of sentencing under section 321J.2, subsection 2, a conviction or deferral of judgment for a violation of this section, where a violation of section 321J.2 is admitted or proved, shall be treated as a conviction or deferral of judgment for a violation of section 321J.2 for the purposes of chapters 321, 321A, and 321J, and section 907.3, subsection 1.

Sec. 56. Section 709.10, Code 1989, is amended to read as follows:

709.10 COST OF MEDICAL EXAMINATION IN CRIMES OF SEXUAL ABUSE.

The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be borne by the ~~towa~~ department of ~~publhc-health~~ justice.

Sec. 57. NEW SECTION. 723A.1 DEFINITIONS.

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

1. "Criminal acts" means any of the following or any combination of the following:

a. An offense constituting a violation of section 204.401 involving a controlled substance, a counterfeit substance, or a simulated controlled substance.

b. An offense constituting a violation of chapter 711 involving a robbery or extortion.

c. An offense constituting a violation of section 708.6 involving an act of terrorism.

d. An offense constituting a violation of section 708.8.

e. An offense constituting a violation of section 720.4.

f. Any other offense constituting a forcible felony as defined in section 702.11.

2. "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

3. "Pattern of criminal gang activity" means the commission, attempt to commit, conspiring to commit, or solicitation of two or more criminal acts, provided the criminal acts were committed on separate dates or by two or more persons who are members of, or belong to, the same criminal street gang.

Sec. 58. NEW SECTION. 723A.2 CRIMINAL GANG PARTICIPATION.

A person who actively participates in or is a member of a criminal street gang and who willfully aids and abets any criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang, commits a class "D" felony.

Sec. 59. Section 809.10, subsection 3, Code 1989, is amended to read as follows:

1. Upon a finding by the court that the property is forfeitable, the court ~~shall~~ may as a matter of equity enter an order transferring title to the property to the state.

Sec. 60. NEW SECTION. 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

Except as provided in section 809.21, proceeds from the disposal of seized or forfeited property pursuant to this chapter may be transferred in whole or in part to the victim reparation fund created in pursuant to chapter 912 at the discretion of the recipient agency, political subdivision, or department.

Sec. 61. Section 811.1, Code Supplement 1989, is amended to read as follows:

811.1 BAILABLE AND NONBAILABLE OFFENSES.

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, felonious assault, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 204.401, subsection 1, paragraph "a".

2. A defendant appealing a conviction of a class "A" felony, murder, felonious assault, sexual abuse in the second

degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 204.401, subsection 1, paragraph "a".

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, a felony offense under chapter 204 not provided for in subsection 1 or 2, is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the personal safety of another person or persons.

Sec. 62. Section 901.2, unnumbered paragraph 1, Code Supplement 1989, is amended to read as follows:

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources. Notwithstanding section 13.10, the court may determine if the defendant shall be required to provide a physical specimen to be submitted for DNA profiling if the defendant is to be placed on probation or work release. The court shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the defendant, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds are provided by other public or private sources, the court shall order DNA profiling. The court shall order a presentence investigation when the offense is a class "B," class "C," or class "D" felony. A presentence investigation for a class "B," class "C," or class "D" felony shall not be waived. The court may order, with the consent of the defendant, that the presentence investigation begin prior

to the acceptance of a plea of guilty, or prior to a verdict of guilty. The court may order a presentence investigation when the offense is an aggravated or serious misdemeanor. Notwithstanding section 901.3, a presentence investigation ordered by the court for a serious misdemeanor shall include information concerning only the following:

1. A brief personal and social history of the defendant.
2. The defendant's criminal record.
3. The harm to the victim, the victim's immediate family, and the community, including any completed victim impact statement or statements and restitution plan.

Sec. 63. 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, 1991.

Sec. 64. NEW SECTION. 901.4A SUBSTANCE ABUSE EVALUATION.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court may order the defendant to submit to and complete a substance abuse evaluation, if the court determines that there is reason to believe that the defendant regularly abuses alcohol or other controlled substances and may be in need of treatment. An order made pursuant to this section may be made in addition to any other sentence or order of the court.

Sec. 65. Section 901.5, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 8. The court may order the defendant to complete any treatment indicated by a substance abuse evaluation ordered pursuant to section 901.4A or any other section.

Sec. 66. Section 903.1, subsection 3, unnumbered paragraph 1, Code 1989, is amended to read as follows:

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, section-123+47, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.

Sec. 67. Section 903A.2, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Each inmate of an institution under the Iowa department of corrections, is eligible for a reduction of sentence of one day for each day of good conduct of the inmate while committed to one of the department's institutions. In addition to the sentence reduction of one day for each day of good conduct, each inmate is eligible for an additional reduction of sentence of up to five days a month if the inmate participates satisfactorily in employment in the institution, in Iowa state industries, in an inmate employment program established by the director, in a treatment program established by the director, or in an inmate educational program approved by the director. Reduction of sentence pursuant to this section may be subject to forfeiture pursuant to section 903A.3. Computation of good conduct time is subject to the following conditions:

Sec. 68. Section 906.4, Code Supplement 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The board may establish as a condition of a person's parole or work release that the person perform a specified number of hours of unpaid community service. The board shall not make community service a uniform or mandatory requirement for all or substantially all parolees or work release inmates but shall exercise discretion in ordering community service as a condition of parole or work release. The board shall report to the general assembly on the implementation of community service as a condition of parole or work release. The report shall be submitted on or before January 1, 1991.

Sec. 69. Section 906.5, Code Supplement 1989, is amended to read as follows:

906.5 RECORD REVIEWED -- RULES.

1. Within Except as provided in subsection 2, within one year after the commitment of a person other than a class "A" felon, class "B" felon convicted of murder in the second degree and serving a sentence of more than twenty-five years, or a felon serving a mandatory minimum sentence, other than a class "A" felon, to the custody of the director of the Iowa department of corrections, a member of the board shall interview the person. Thereafter, at regular intervals, not to exceed one year, the board shall interview the person and consider the person's prospects for parole or work release. However, if the registration of a victim prohibits conducting a timely interview as provided in this subsection, the interview may be conducted within a reasonable period of time after the one-year period or interval has expired in order to provide the victim notice as provided in section 910A.10, subsection 1, paragraph "a".

Not less than twenty days prior to conducting a hearing at which the board will interview the person, the board shall notify the department of corrections of the scheduling of the interview, and the department shall make the person available to the board at the person's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the person to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

2. Within six months after the commitment of a person convicted of an offense under chapter 714, 715A, 716, or 716A, a member of the board shall interview the person as provided in subsection 1. The board shall develop a plan for the purpose of early release of such persons when it is determined that a person convicted of such an offense can be released without detriment to the community or to the person.

It is the intent of the general assembly that the board shall implement this plan of early release in an effort to assist in controlling the prison population and assuring prison space for the confinement of offenders whose release would be detrimental to the citizens of this state. The board shall report to the legislative fiscal bureau on a monthly basis concerning the implementation of this plan and the number of inmates paroled pursuant to this plan and the average length of stay of those paroled.

2 3. At the time of an interview required under this section, the board shall consider all pertinent information regarding the person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations that have been made.

3 4. A person while on parole or work release is under the supervision of the district department of correctional services of the district designated by the board of parole. The department of corrections shall prescribe rules for governing persons on parole or work release. The board may adopt other rules not inconsistent with the rules of the department of corrections as the board deems proper or necessary for the performance of its functions.

Sec. 70. Section 906.9, Code 1989, is amended to read as follows:

906.9 CLOTHING, TRANSPORTATION, AND MONEY.

When an inmate is discharged, paroled, or placed on work release, or placed in a community-based correctional program under section 246.513, the warden or superintendent shall furnish the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan, or community-based corrections assignment. When an inmate is discharged, paroled, or placed on work release, or placed in a

~~community-based correctional program under section 246.513;~~
the warden or superintendent shall provide the inmate, at state expense, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.
2. Upon being placed on work release, fifty dollars.
3. Upon going from an educational work release to parole or discharge, fifty dollars.

~~4. Upon being placed in a community-based correctional program under section 246.513, fifty dollars.~~

Those inmates receiving payment under subsection 2, or 3, or 4 shall not be eligible for payment under subsection 1 unless they are returned to the institution. The warden or superintendent shall maintain an account of all funds expended pursuant to this section.

Sec. 71. Section 906.15, Code 1989, is amended to read as follows:

906.15 DISCHARGE FROM PAROLE.

Unless sooner discharged, a person released on parole shall be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles, and when it ~~shall determine~~ the board determines that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, ~~it the board shall~~ discharge the person from parole. A parole officer shall periodically review all paroles assigned to the parole officer, and when the parole officer determines that any person assigned to the officer is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the officer may discharge the person from parole after notification and approval of the district director and notification of the board of parole. In either any event, discharge from parole shall terminate the

person's sentence. However, a person convicted of a violation of section 709.3, 709.4 or 709.8 committed on or with a child shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

A parole officer or the district director who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from parole by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

Sec. 72. Section 907.9, Code 1989, is amended to read as follows:

907.9 DISCHARGE FROM PROBATION.

At any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of a person from probation. At any time that a probation officer determines that the purposes of probation have been fulfilled, the officer may order the discharge of a person from probation after approval of the district director, and notification of the sentencing court and county attorney who prosecuted the case. The sentencing judge, unless the judge is no longer serving or is otherwise unable to, may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section. Following the hearing, the court shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court shall order the discharge of the person from probation, and

the court shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

A probation officer who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

Sec. 73. Section 910.1, subsection 1, Code 1989, is amended to read as follows:

1. "Victim" means any a person who has suffered pecuniary damages as a result of the offender's criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation. The crime victim reparation program is not an insurer for purposes of this chapter, and the right of subrogation provided by section 912.12 does not prohibit restitution to the crime victim reparation program.

Sec. 74. Section 910.1, subsection 4, Code 1989, is amended to read as follows:

4. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution shall also include includes the payment of crime victim assistance reimbursements, court costs, court-appointed attorney's fees or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the

court costs, court-appointed attorney's fees or the expense of a public defender.

Sec. 75. Section 910.2, Code 1989, is amended to read as follows:

910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY SENTENCING COURT.

In all criminal cases except simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities and, if the court so orders and to the extent that the offender is reasonably able to do so, for crime victim assistance reimbursement, court costs, court-appointed attorney's fees or the expense of a public defender when applicable. However, victims shall be paid in full before restitution is paid for crime victim assistance reimbursement, court costs, court-appointed attorney's fees or for the expense of a public defender. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, crime victim assistance reimbursement, court costs, and court-appointed attorney's fees or the expense of a public defender. When the offender is not reasonably able to pay all or a part of the crime victim assistance reimbursement, court costs, court-appointed attorney's fees or the expense of a public defender, the court may require the offender in lieu of that portion of the crime victim assistance reimbursement, court costs, court-appointed attorney's fees, or expense of a public defender for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private, nonprofit agency which provides a service to the youth, elderly or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. The judicial district department of correctional services shall provide for

the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

Sec. 76. Section 910A.7A, Code Supplement 1989, is amended to read as follows:

910A.7A NOTIFICATION BY CLERK-OF-THE-SUPREME-COURT

DEPARTMENT OF JUSTICE.

The clerk-of-the-supreme-court department of justice shall notify a registered victim of all dispositional orders of a case currently on appeal in which the victim was involved.

Sec. 77. Section 912.1, subsection 3, Code Supplement 1989, is amended to read as follows:

3. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321J.2 or when the intention is to cause personal injury or death. A plea or verdict of guilty of a charge under section 321J.2 or a license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this chapter.

Sec. 78. Section 912.3, subsection 4, Code Supplement 1989, is amended to read as follows:

4. Request from the department of human services, the divisions of job service and industrial services of the department of employment services, the attorney-general department of public safety, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim reparation program.

Sec. 79. Section 912.3, subsection 7, Code Supplement 1989, is amended by striking the subsection.

Sec. 80. Section 912.5, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 4. To a victim of an act committed outside this state who is a resident of this state, if the act would be compensable had it occurred within this state and the act occurred in a state that does not have an eligible crime victim compensation program, as defined in the federal Victims of Crime Act of 1984, Pub. L. 98-473, section 1403(b), as amended and codified in 42 U.S.C. § 10602(b).

Sec. 81. Section 912.6, subsection 1, Code Supplement 1989, is amended to read as follows:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars. Reasonable charges incurred for mental health care not to exceed one thousand five hundred dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

Sec. 82. Section 912.6, subsections 2 and 3, Code Supplement 1989, are amended by striking the subsections.

Sec. 83.

The department of public safety shall study the feasibility and usefulness of implementing a pilot program for determining the extent of drug and alcohol use and abuse among persons arrested for felony offenses, of determining whether there is any correlation between drug and alcohol abuse and crime in this state, for developing data comparing rural and urban areas in this state, and for developing a comparison with similar data collected in other states. The study shall be under the direction of the drug enforcement and abuse prevention coordinator who shall consult with the department of public safety to accomplish the purposes described in this section.

Sec. 84. ALTERNATIVE DRUG TESTING FOR OFFICERS.

The department of public safety shall develop a plan for the implementation of alternative drug testing programs for law enforcement, parole, and probation officers. The plan shall be submitted to the general assembly by January 15, 1991, in a form which could be adopted and implemented by the department of public safety or individual law enforcement agencies throughout the state.

Sec. 85.

Chapter 421A, as enacted in this Act, takes effect September 1, 1990.

Sec. 86. Section 35 takes effect July 1, 1991.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2413, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 6, 1990

TERRY E. BRANSTAD
Governor

SF 2413