

# REPRINTED

HOUSE FILE 707  
BY COMMITTEE ON JUDICIARY

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Place On Calendar

(SUCCESSOR TO HSB 222)

Passed House, Date 3/26/97 (p.836) Passed Senate, Date 4/10/97 (p.1104)  
Vote: Ayes 99 Nays 0 Vote: Ayes 45 Nays 3  
Approved May 21, 1997

## A BILL FOR

1 An Act relating to substance abuse evaluation and education, use  
2 of ignition interlock devices, motor vehicle license  
3 revocations and payment of restitution by certain drivers; to  
4 civil liability, forfeiture, and criminal penalties arising  
5 from operation of a motor vehicle by a person whose license is  
6 suspended, denied, revoked, or barred; and providing  
7 penalties.

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

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HF 707

1 Section 1. Section 321.12, Code 1997, is amended to read  
2 as follows:

3 321.12 OBSOLETE RECORDS DESTROYED.

4 The director may destroy any records of the department  
5 which have been maintained on file for three years which the  
6 director deems obsolete and of no further service in carrying  
7 out the powers and duties of the department. However,  
8 operating records relating to a person who has been issued a  
9 commercial driver's license shall be maintained on file in  
10 accordance with rules adopted by the department. Records  
11 concerning suspensions authorized under section 321.210,  
12 subsection 1, paragraph "g", and section 321.210A may be  
13 destroyed six months after the suspension is terminated and  
14 the requirements of section 321.191 have been satisfied.  
15 Records concerning suspensions and surrender of licenses or  
16 registrations required under section 321A.31 for failing to  
17 maintain proof of financial responsibility, as defined in  
18 section 321A.1, may be destroyed six months after the  
19 requirements of sections 321.191 and 321A.29 have been  
20 satisfied.

21 The director shall not destroy any operating records  
22 pertaining to arrests or convictions for operating while  
23 intoxicated, in violation of section 321J.27-which-are-more  
24 than-twelve-years-old.--The-twelve-year-period-shall-commence  
25 with-the-date-of-the-arrest-or-conviction-for-the-offense,  
26 whichever-first-occurs.--However, the director shall not  
27 destroy operating records which pertain to arrests or  
28 convictions for operating while intoxicated after the  
29 expiration of twelve years when the motor vehicle being  
30 operated was a commercial motor vehicle or if all of the  
31 provisions of the court order have not been satisfied.

32 The director shall destroy any operating records pertaining  
33 to revocations for violations of section 321J.2A which are  
34 more than twelve years old.--The twelve-year period shall  
35 commence with the date the revocation of the person's

~~1 operating-privileges-becomes-effective.--This-paragraph-shall  
2 not-apply-to-records-of-revocations-which-pertain-to  
3 violations-of-section-321J.2A-by-persons-operating-a  
4 commercial-motor-vehicle.~~

5 Sec. 2. Section 321.555, subsection 1, paragraph c, Code  
6 1997, is amended to read as follows:

7 c. Driving a motor vehicle while the person's motor  
8 vehicle license is suspended, denied, revoked, or barred.

9 Sec. 3. Section 321J.2, subsections 2 through 5, Code  
10 1997, are amended to read as follows:

11 2. A person who violates ~~this-section~~ subsection 1  
12 commits:

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

24 b. An aggravated misdemeanor for a second offense, and  
25 shall be imprisoned in the county jail or community-based  
26 correctional facility not less than seven days, ~~which-minimum~~  
27 ~~term-cannot-be-suspended-notwithstanding-section-901.57~~  
28 ~~subsection-3-and-section-907.37-subsection-37~~ and assessed a  
29 fine of not less than seven hundred fifty dollars.

30 c. A class "D" felony for a third offense and each  
31 subsequent offense, and shall be imprisoned in the county jail  
32 for a determinate sentence of not more than one year but not  
33 less than thirty days, or committed to the custody of the  
34 director of the department of corrections, and assessed a fine  
35 of not less than seven hundred fifty dollars. ~~The-minimum~~

1 jail-term-of-thirty-days-cannot-be-suspended-notwithstanding  
2 section-901.5, subsection-3, and section-907.3, subsection-3,  
3 however, the person sentenced shall receive credit for any  
4 time the person was confined in a jail or detention facility  
5 following arrest.--If a person is committed to the custody of  
6 the director of the department of corrections pursuant to this  
7 paragraph and the sentence is suspended, the sentencing court  
8 shall order that the offender serve the thirty-day minimum  
9 term in the county jail.--If the sentence which commits the  
10 person to the custody of the director of the department of  
11 corrections is later imposed by the court, all time served in  
12 a county jail toward the thirty-day minimum term shall count  
13 as time served toward the sentence which committed the person  
14 to the custody of the director of the department of  
15 corrections.--A person convicted of a second or subsequent  
16 offense shall be ordered to undergo a substance abuse  
17 evaluation prior to sentencing.--If a A person is convicted of  
18 a third or subsequent offense or if the evaluation recommends  
19 treatment, the offender may be committed to the custody of the  
20 director of the department of corrections, who, if the  
21 sentence is not suspended, shall assign the person to a  
22 facility pursuant to section 904.513 or the offender may be  
23 committed to treatment in the community under the provisions  
24 of section 907.6.

25 2A. a. Notwithstanding the provisions of sections 901.5  
26 and 907.3, the court shall not defer judgment or sentencing,  
27 or suspend execution of any part of the minimum sentence  
28 applicable to the defendant under subsection 2 if any of the  
29 following apply:

30 (1) If the defendant's alcohol concentration established  
31 by the results of an analysis of a specimen of the defendant's  
32 blood, breath, or urine withdrawn in accordance with this  
33 chapter exceeds .15.

34 (2) If the defendant has previously been convicted of a  
35 violation of subsection 1 or a statute in another state

1 substantially corresponding to subsection 1.

2 (3) If the defendant has previously received a deferred  
3 judgment or sentence for a violation of subsection 2 or for a  
4 violation of a statute in another state substantially  
5 corresponding to subsection 2.

6 (4) If the defendant refused to consent to chemical  
7 testing requested in accordance with section 321J.6.

8 b. All persons convicted of an offense under subsection 2  
9 shall be ordered, at the person's expense, to undergo, prior  
10 to sentencing, a substance abuse evaluation pursuant to  
11 chapter 125.

12 c. A minimum term of imprisonment in a county jail or  
13 community-based correctional facility imposed on a person  
14 convicted of a second or subsequent offense under paragraph  
15 "b"-or-"e" subsection 2 shall be served on consecutive days.  
16 However, if the sentencing court finds that service of the  
17 full minimum term on consecutive days would work an undue  
18 hardship on the person, or finds that sufficient jail space is  
19 not available and is not reasonably expected to become  
20 available within four months after sentencing to incarcerate  
21 the person serving the minimum sentence on consecutive days,  
22 the court may order the person to serve ~~not-less-than-forty-~~  
23 ~~eight-consecutive-hours-of~~ the minimum term in segments of at  
24 least forty-eight hours and to perform a specified number of  
25 hours of unpaid community service as deemed appropriate by the  
26 sentencing court.

27 3. ~~No-conviction-for, deferred judgment-for, or plea-of~~  
28 ~~guilty-to, a violation of this section which occurred more~~  
29 ~~than six years prior to the date of the violation charged~~  
30 ~~shall be considered in determining that the violation charged~~  
31 ~~is a second, third, or subsequent offense.~~ For the purpose of  
32 determining if a violation charged is a second, third, or  
33 subsequent offense, deferred judgments entered pursuant to  
34 section 907.3 for violations of this section and convictions  
35 or the equivalent of deferred judgments for violations in any

1 other states under statutes substantially corresponding to  
2 this section shall be counted as previous offenses. The  
3 courts shall judicially notice the statutes of other states  
4 which define offenses substantially equivalent to the one  
5 defined in this section and can therefore be considered  
6 corresponding statutes. Each previous violation on which  
7 conviction or deferral of judgment was entered prior to the  
8 date of the violation charged shall be considered and counted  
9 as a separate previous offense.

10 4. A person shall not be convicted and sentenced for more  
11 than one violation of this section for actions arising out of  
12 the same event or occurrence, even if the violation is shown  
13 to have been committed by either or both of the means  
14 described event or occurrence involves more than one of the  
15 conditions specified in subsection 1 in the same occurrence.

16 5. The clerk of the district court shall immediately  
17 certify to the department a true copy of each order entered  
18 with respect to deferral of judgment, deferral of sentence, or  
19 pronouncement of judgment and sentence for a defendant under  
20 this section.

21 Sec. 4. Section 321J.2, subsection 8, Code 1997, is  
22 amended to read as follows:

23 8. a. The In addition to any other fine or penalty  
24 imposed under this chapter, the court shall order a defendant  
25 convicted of or receiving a deferred judgment for a violation  
26 of this section to make restitution, in an amount not to  
27 exceed two thousand dollars, for damages resulting directly  
28 from the violation, to the victim, pursuant to chapter 910.  
29 An amount paid pursuant to this restitution order shall be  
30 credited toward any adverse judgment in a subsequent civil  
31 proceeding arising from the same occurrence. However, other  
32 than establishing a credit, a restitution proceeding pursuant  
33 to this section shall not be given evidentiary or preclusive  
34 effect in a subsequent civil proceeding arising from the same  
35 occurrence.

1 b. The court may order restitution paid to any public  
2 agency for the costs of the emergency response resulting from  
3 the actions constituting a violation of this section, not  
4 exceeding five hundred dollars per public agency for each such  
5 response. For the purposes of this paragraph, "emergency  
6 response" means any incident requiring response by fire  
7 fighting, law enforcement, ambulance, medical, or other  
8 emergency services. A public agency seeking such restitution  
9 shall consult with the county attorney regarding the expenses  
10 incurred by the public agency, and the county attorney may  
11 include the expenses in the statement of pecuniary damages  
12 pursuant to section 910.3.

13 Sec. 5. Section 321J.3, Code 1997, is amended to read as  
14 follows:

15 321J.3 ~~COURT-ORDERED-SUBSTANCE~~ SUBSTANCE ABUSE EVALUATION  
16 OR TREATMENT.

17 ~~1.--On-a-conviction-for-a-violation-of-section-321J.2, the~~  
18 ~~court-may-order-the-defendant-to-attend-a-course-for-drinking~~  
19 ~~drivers-under-section-321J.22.--If-the-defendant-submitted-to~~  
20 ~~a-chemical-test-on-arrest-for-the-violation-of-section-321J.2~~  
21 ~~and-the-test-indicated-an-alcohol-concentration-of-.20-or~~  
22 ~~higher, or-if-the-defendant-is-charged-with-a-second-or~~  
23 ~~subsequent-offense, the-court-shall-order-the-defendant, on~~  
24 ~~conviction, to-undergo-a-substance-abuse-evaluation-and-the~~  
25 ~~court-shall-order-the-defendant~~

26 1. a. In addition to orders issued pursuant to section  
27 321J.2, subsection 2A, and section 321J.17, the court shall  
28 order any defendant convicted under section 321J.2 to follow  
29 the recommendations proposed in the substance abuse evaluation  
30 for appropriate substance abuse treatment for the defendant.  
31 Court-ordered substance abuse treatment is subject to the  
32 periodic reporting requirements of section 125.86.

33 b. If a defendant is committed by the court to a substance  
34 abuse treatment facility, the administrator of the facility  
35 shall report to the court when it is determined that the

1 defendant has received the maximum benefit of treatment at the  
2 facility and the defendant shall be released from the  
3 facility. The time for which the defendant is committed for  
4 treatment shall be credited against the defendant's sentence.

5 c. The court may prescribe the length of time for the  
6 evaluation and treatment or it may request that the community  
7 college conducting the course for drinking drivers which the  
8 person is ordered to attend or the treatment program to which  
9 the person is committed immediately report to the court when  
10 the person has received maximum benefit from the course for  
11 drinking drivers or treatment program or has recovered from  
12 the person's addiction, dependency, or tendency to chronically  
13 abuse alcohol or drugs.

14 d. Upon successfully completing ~~or-attending~~ a course for  
15 drinking drivers or an ordered substance abuse treatment  
16 program, a court may place the person ~~may-be-placed~~ on  
17 probation for six months and as a condition of probation, the  
18 person shall attend a program providing posttreatment services  
19 relating to substance abuse as approved by the court.

20 e. A person committed under this section who does not  
21 possess sufficient income or estate to make payment of the  
22 costs of the treatment in whole or in part shall be considered  
23 a state patient and the costs of treatment shall be paid as  
24 provided in section 125.44.

25 f. A defendant who fails to carry out the order of the  
26 court ~~or-who-fails-to-successfully-complete-or-attend-a-course~~  
27 ~~for-drinking-drivers-or-an-ordered-substance-abuse-treatment~~  
28 ~~program~~ shall be confined in the county jail for twenty days  
29 in addition to any other imprisonment ordered by the court or  
30 may be ordered to perform unpaid community service work, and  
31 shall be placed on probation for one year with a violation of  
32 this probation punishable as contempt of court.

33 g. In addition to any other condition of probation, the  
34 person shall attend a program providing substance abuse  
35 prevention services or posttreatment services related to



1 substance abuse as ordered by the court. The person shall  
2 report to the person's probation officer as ordered concerning  
3 proof of attendance at the treatment program or posttreatment  
4 program ordered by the court. Failure to attend or complete  
5 the program shall be considered a violation of probation and  
6 is punishable as contempt of court.

7 2. a. ~~As-a-condition-of-a-suspended-sentence-or-portion~~  
8 ~~of-sentence-for~~ Upon a second, ~~third,~~ or subsequent offense in  
9 violation of section 321J.2, the court upon hearing may commit  
10 the defendant for inpatient treatment of alcoholism or drug  
11 addiction or dependency to any hospital, institution, or  
12 community correctional facility in Iowa providing such  
13 treatment. The time for which the defendant is committed for  
14 treatment shall be credited against the defendant's sentence.

15 b. The court may prescribe the length of time for the  
16 evaluation and treatment or it may request that the hospital  
17 to which the person is committed immediately report to the  
18 court when the person has received maximum benefit from the  
19 program of the hospital or institution or has recovered from  
20 the person's addiction, dependency, or tendency to chronically  
21 abuse alcohol or drugs.

22 c. A person committed under this section who does not  
23 possess sufficient income or estate to make payment of the  
24 costs of the treatment in whole or in part shall be considered  
25 a state patient and the costs of treatment shall be paid as  
26 provided in section 125.44.

27 Sec. 6. Section 321J.4, subsection 1, Code 1997, is  
28 amended to read as follows:

29 1. If a defendant is convicted of a violation of section  
30 321J.2 and the defendant's motor vehicle license or  
31 nonresident operating privilege has not been revoked under  
32 section 321J.9 or 321J.12 for the occurrence from which the  
33 arrest arose, the department shall revoke the defendant's  
34 motor vehicle license or nonresident operating privilege for  
35 one hundred eighty days if the defendant has had no previous

1 conviction or revocation under this chapter ~~within-the~~  
2 ~~previous-six-years-and-the.~~ The defendant shall not be  
3 eligible for any temporary restricted license for at least  
4 thirty days after the effective date of the revocation if a  
5 test was obtained, and for at least ninety days if a test was  
6 refused. If the defendant is under the age of twenty-one, the  
7 defendant shall not be eligible for a temporary restricted  
8 license for at least sixty days after the effective date of  
9 revocation.

10 1A. If a defendant is convicted of a violation of section  
11 321J.2, and the defendant's motor vehicle license or  
12 nonresident operating privilege has not already been revoked  
13 under section 321J.9 or 321J.12 for the occurrence from which  
14 the arrest arose, the department shall revoke the defendant's  
15 motor vehicle license or nonresident operating privilege for  
16 one-year two years if the defendant has had one-or-more a  
17 previous convictions conviction or revocations revocation  
18 under this chapter within-the-previous-six-years. The  
19 defendant shall not be eligible for any temporary restricted  
20 license during-the-entire-one-year-revocation-period for at  
21 least one year after the effective date of revocation. The  
22 defendant shall be ordered to install an ignition interlock  
23 device of a type approved by the commissioner of public safety  
24 on all vehicles owned by the defendant if the defendant seeks  
25 a temporary restricted license at the end of the minimum  
26 period of ineligibility. A temporary restricted license shall  
27 not be granted by the department until the defendant installs  
28 the ignition interlock device.

29 Sec. 7. Section 321J.4, subsection 3, Code 1997, is  
30 amended to read as follows:

31 3. a. Upon a plea or verdict of guilty of a third or  
32 subsequent violation of section 321J.2, the court shall order  
33 the department to revoke the defendant's motor vehicle license  
34 or nonresident operating privilege for a period of six years.  
35 The defendant shall not be eligible for a temporary restricted

1 license for at least one year after the effective date of the  
2 revocation. The court shall require the defendant to  
3 surrender to it all Iowa licenses or permits held by the  
4 defendant, which the court shall forward to the department  
5 with a copy of the order for revocation. The defendant shall  
6 be ordered to install an ignition interlock device of a type  
7 approved by the commissioner of public safety on all vehicles  
8 owned by the defendant if the defendant seeks a temporary  
9 restricted license at the end of the minimum period of  
10 ineligibility. A temporary restricted license shall not be  
11 granted by the department until the defendant installs the  
12 ignition interlock device.

13 ~~b.--After two years from the date of the order for~~  
14 ~~revocation, the defendant may apply to the court for~~  
15 ~~restoration of the defendant's eligibility for a motor vehicle~~  
16 ~~license.--The application may be granted only if all of the~~  
17 ~~following are shown by the defendant by a preponderance of the~~  
18 ~~evidence:~~

19 ~~(1)--The defendant has completed an evaluation and, if~~  
20 ~~recommended by the evaluation, a program of treatment for~~  
21 ~~chemical dependency and is recovering, or has substantially~~  
22 ~~recovered, from that dependency or tendency to abuse~~  
23 ~~alcohol or drugs.~~

24 ~~(2)--The defendant has not been convicted, since the date~~  
25 ~~of the revocation order, of any subsequent violations of~~  
26 ~~section 321J.2 or 123.46, or any comparable city or county~~  
27 ~~ordinance, and the defendant has not, since the date of the~~  
28 ~~revocation order, submitted to a chemical test under this~~  
29 ~~chapter that indicated an alcohol concentration as defined in~~  
30 ~~section 321J.1 of .10 or more, or refused to submit to~~  
31 ~~chemical testing under this chapter.~~

32 ~~(3)--The defendant has abstained from the excessive~~  
33 ~~consumption of alcoholic beverages and the consumption of~~  
34 ~~controlled substances, except at the direction of a licensed~~  
35 ~~physician or pursuant to a valid prescription.~~

1 ~~(4)---The defendant's motor vehicle license is not currently~~  
2 ~~subject to suspension or revocation for any other reason.~~

3 ~~c.---The court shall forward to the department a record of~~  
4 ~~any application submitted under paragraph "b" and the results~~  
5 ~~of the court's disposition of the application.~~

6 Sec. 8. Section 321J.4, subsection 5, Code 1997, is  
7 amended to read as follows:

8 5. Upon a plea or verdict of guilty of a violation of  
9 section 321J.2 which involved a death, the court shall  
10 determine in open court, from consideration of the information  
11 in the file and any other evidence the parties may submit,  
12 whether a death occurred and, if so, whether the defendant's  
13 conduct in violation of section 321J.2 caused the death. If  
14 the court so determines, the court shall order the department  
15 to revoke the defendant's motor vehicle license or nonresident  
16 operating privilege for a period of six years. The defendant  
17 shall not be eligible for any temporary restricted license  
18 ~~until the minimum period of ineligibility has expired under~~  
19 ~~this section or section 321J.9, 321J.12, or 321J.20~~ for at  
20 least two years after the revocation. The defendant shall  
21 surrender to the court any Iowa license or permit and the  
22 court shall forward it to the department with a copy of the  
23 order for revocation.

24 Sec. 9. Section 321J.4, subsection 7, Code 1997, is  
25 amended to read as follows:

26 7. a. On a conviction for or as a condition of a deferred  
27 judgment for a violation of section 321J.2, the court may  
28 order the defendant to install ignition interlock devices of a  
29 type approved by the commissioner of public safety on all  
30 motor vehicles owned or operated by the defendant which,  
31 without tampering or the intervention of another person, would  
32 prevent the defendant from operating the motor vehicle with an  
33 alcohol concentration greater than a level set by rule of the  
34 commissioner of public safety.

35 b. The commissioner of public safety shall adopt rules to

1 approve certain ignition interlock devices and the means of  
2 installation of the devices, and shall establish the level of  
3 alcohol concentration beyond which an ignition interlock  
4 device will not allow operation of the motor vehicle in which  
5 it is installed.

6 c. The order to install ignition interlock devices shall  
7 remain in effect for a period of time as determined by the  
8 court which shall not exceed the maximum term of imprisonment  
9 which the court could have imposed according to the nature of  
10 the violation. While the order is in effect, the defendant  
11 shall not operate a motor vehicle which does not have an  
12 approved ignition interlock device installed.

13 d. If the defendant's motor vehicle license or nonresident  
14 operating privilege has been revoked, the department shall not  
15 issue a temporary permit or a motor vehicle license to the  
16 person without certification that approved ignition interlock  
17 devices have been installed in all motor vehicles owned or  
18 operated by the defendant while the order is in effect.

19 e. A defendant who fails within a reasonable time to  
20 comply with an order to install an approved ignition interlock  
21 device may be declared in contempt of court and punished  
22 accordingly.

23 f. A person who tampers with or circumvents an ignition  
24 interlock device installed under a court order while an order  
25 is in effect commits a serious misdemeanor.

26 Sec. 10. Section 321J.4B, Code 1997, is amended to read as  
27 follows:

28 321J.4B MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION --  
29 PENALTY -- LIABILITY OF VEHICLE OWNER.

30 1. For purposes of this section:

31 a. "Immobilized" means the installation of a device in a  
32 motor vehicle that completely prevents a motor vehicle from  
33 being operated, or the installation of an ignition interlock  
34 device of a type approved by the commissioner of public  
35 safety.

1 b. "Impoundment" means the process of seizure and  
2 confinement within an enclosed area of a motor vehicle, for  
3 the purpose of restricting access to the vehicle.

4 c. "Owner" means the registered titleholder of a motor  
5 vehicle; except in the case where a rental or leasing agency  
6 is the registered titleholder, in which case the lessee of the  
7 vehicle shall be treated as the owner of the vehicle for  
8 purposes of this section.

9 2. A motor vehicle is subject to impoundment in the  
10 following circumstances:

11 a. If a person ~~is convicted of a~~ operates a vehicle in  
12 violation of section 321J.2, and if convicted for that  
13 conduct, the conviction would be a second, third, or  
14 subsequent offense of operating while intoxicated, the court  
15 shall order that any motor vehicles owned by the person and  
16 used to commit the offense and any other motor vehicle used  
17 under section 321J.2.

18 b. If a person operates a vehicle while that person's  
19 motor vehicle license or operating privilege has been  
20 suspended, denied, revoked, or barred due to a violation of  
21 section 321J.2.

22 Upon conviction of a defendant for a violation of this  
23 subsection, the clerk of court shall send notice of the  
24 conviction to the impounding authority.

25 3. The motor vehicle operated by the person in the  
26 commission of the any offense included in subsection 2 may be  
27 immediately impounded or immobilized in accordance with this  
28 section. For purposes of this section, "immobilized" means  
29 the installation of a device that completely prevents a motor  
30 vehicle from being operated, or the installation of an  
31 ignition interlock device, of a type approved by the  
32 commissioner of public safety, in a motor vehicle.

33 a. A person or agency taking possession of an impounded or  
34 immobilized motor vehicle shall do the following:

35 (1) Make an inventory of any property contained in the

1 vehicle, according to the agency's inventory procedure. The  
2 agency responsible for the motor vehicle shall also deliver a  
3 copy of the inventory to the county attorney.

4 (2) Contact all rental or leasing agencies registered as  
5 owners of the vehicle, as well as any parties registered as  
6 holders of a secured interest in the vehicle, in accordance  
7 with subsection 12.

8 b. The county attorney shall file a copy of the inventory  
9 with the district court as part of each file related to  
10 criminal charges filed under this section.

11 4. An owner of a motor vehicle impounded or immobilized  
12 under this section, who knows of, should have known of, or  
13 gives consent to the operation of, the motor vehicle in  
14 violation of subsection 2, paragraph "b", shall be:

15 a. Guilty of a simple misdemeanor, and

16 b. Jointly and severally liable for any damages caused by  
17 the person who operated the motor vehicle, subject to the  
18 provisions of chapter 668.

19 5. a. The following persons shall be entitled to  
20 immediate return of the motor vehicle without payment of costs  
21 associated with the impoundment or immobilization of the  
22 vehicle:

23 (1) The owner of the motor vehicle, if the person who  
24 operated the motor vehicle is not a co-owner of the motor  
25 vehicle.

26 (2) A motor vehicle rental or leasing agency that owns the  
27 vehicle.

28 (3) A person who owns the motor vehicle and who is charged  
29 but is not convicted of the violation of section 321.218,  
30 321.561, 321A.32, 321J.2, or 321J.21, which resulted in the  
31 impoundment or immobilization of the motor vehicle under this  
32 section.

33 2. b. The Upon conviction of the defendant for a violation  
34 of subsection 2, paragraph "a", the court may order continued  
35 impoundment, or the immobilization, of the motor vehicle used

1 in the commission of the offense, if the convicted person is  
2 the owner of the motor vehicle, and shall specify all of the  
3 following in the order:

4 a- (1) The motor ~~vehicles~~ vehicle that ~~are~~ is subject to  
5 the order.

6 b- (2) The period of impoundment or immobilization.

7 c- (3) The person or agency responsible for carrying out  
8 the order requiring continued impoundment, or the  
9 immobilization, of the motor vehicle.

10 c. If a the vehicle ~~which-is-to-be-impounded-or~~  
11 ~~immobilized~~ subject to the order is in the custody of a law  
12 enforcement agency, the court shall designate that agency as  
13 the responsible agency. If the vehicle is not in the custody  
14 of a law enforcement agency, the person or agency responsible  
15 for carrying out the order shall be any person deemed  
16 appropriate by the court, including but not limited to a law  
17 enforcement agency with jurisdiction over the area in which  
18 the residence of the vehicle owner is located. The person or  
19 agency responsible for carrying out the order shall determine  
20 whether the motor vehicle shall be impounded or immobilized.

21 3- d. The period of impoundment or immobilization of a  
22 motor vehicle under this section shall be the period of  
23 license revocation imposed upon the person convicted of the  
24 offense or one hundred eighty days, whichever period is  
25 longer. The impoundment or immobilization period shall  
26 commence on the day that the vehicle is actually first  
27 impounded or immobilized.

28 4- e. The clerk of the district court shall send a copy of  
29 the order to the department, the person convicted of the  
30 offense, ~~the-motor-vehicle-owner-if-the-owner-is-not-the~~  
31 ~~person-convicted,~~ and the person or agency responsible for  
32 executing the order for impoundment or immobilization, and any  
33 holders of any security interests in the vehicle.

34 5- ~~If-the-vehicle-to-be-impounded-or-immobilized-is-in-the~~  
35 ~~custody-of-a-law-enforcement-agency,~~ the-agency-shall



1 ~~immobilize or impound the vehicle upon receipt of the order,~~  
2 ~~seize the motor vehicle's license plates and registration, and~~  
3 ~~shall send or deliver the vehicle's license plates and~~  
4 ~~registration to the department.~~

5 6. f. If the vehicle ~~to be impounded or immobilized~~  
6 subject to the court order is not in the custody of a law  
7 enforcement agency, the person or agency designated in the  
8 order as the person or agency responsible for executing the  
9 order shall, upon receipt of the order, promptly locate the  
10 vehicle specified in the order, seize the motor vehicle and  
11 the license plates, and send or deliver the vehicle's license  
12 plates to the department.

13 7. If the vehicle is located at a place other than the  
14 place at which the ~~impoundment or immobilization~~ court order  
15 is to be carried out, the person or agency responsible for  
16 executing the order shall arrange for the vehicle to be moved  
17 to the place of impoundment or immobilization. When the  
18 vehicle is found, is impounded or immobilized, and is at the  
19 place of impoundment or immobilization, the person or agency  
20 responsible for executing the order shall notify the clerk of  
21 the date on which the order was executed. The clerk shall  
22 notify the department of the date on which the order was  
23 executed.

24 8. g. Upon receipt of the a court order for impoundment or  
25 ~~immobilization and seizure of the motor vehicle, if the agency~~  
26 ~~responsible for carrying out the order determines that the~~  
27 ~~motor vehicle is to be impounded~~ for continued impoundment or  
28 immobilization of the motor vehicle, the agency shall review  
29 the value of the vehicle in relation to the costs associated  
30 with the period of impoundment of the motor vehicle specified  
31 in the order. If the agency determines that the costs of  
32 impoundment of the motor vehicle exceed the actual wholesale  
33 value of the motor vehicle, the agency may treat the vehicle  
34 as an abandoned vehicle pursuant to section 321.89. If the  
35 agency elects to treat the motor vehicle as abandoned, the

1 agency shall notify the registered owner of the motor vehicle  
2 that the vehicle shall be deemed abandoned and shall be sold  
3 in the manner provided in section 321.89 if payment of the  
4 total cost of impoundment is not received within twenty-one  
5 days of the mailing of the notice. The agency shall provide  
6 documentation regarding the valuation of the vehicle and the  
7 costs of impoundment. This paragraph shall not apply to  
8 vehicles that are immobilized pursuant to this section or if  
9 subsection ~~15- or -16~~ 12, paragraph "a" or "b", applies.

10 6. Upon conviction of the defendant for a second or  
11 subsequent violation of subsection 2, paragraph "b", the court  
12 shall order, if the convicted person is the owner of the motor  
13 vehicle used in the commission of the offense, that that motor  
14 vehicle be seized and forfeited to the state pursuant to  
15 chapters 809 and 809A.

16 9- 7. a. Upon receipt of a notice of conviction of the  
17 defendant for a violation of subsection 2, the impounding  
18 authority shall seize the motor vehicle's license plates and  
19 registration, and shall send or deliver them to the  
20 department.

21 b. The department shall destroy license plates received  
22 under this section and shall not authorize the release of the  
23 vehicle or the issuance of new license plates for the vehicle  
24 until the period of impoundment or immobilization has expired,  
25 and the fee and costs assessed under subsection 10 have been  
26 paid. The fee for issuance of new license plates and  
27 certificates of registration shall be the same as for the  
28 replacement of lost, mutilated, or destroyed license plates  
29 and certificates of registration.

30 ~~10- 8. a. Except where the person who is convicted of~~  
31 ~~operating while intoxicated and being a second or subsequent~~  
32 ~~offender is not lawfully in possession of the motor vehicle,~~  
33 ~~the owner of any motor vehicle that is impounded or~~  
34 ~~immobilized under this section shall be assessed~~ Upon  
35 conviction for a violation of subsection 2, the court shall

1 assess the defendant, in addition to any other penalty, a fee  
2 of one hundred dollars plus the cost of any expenses for  
3 towing, storage, and any other costs of impounding or  
4 immobilizing the motor vehicle, to be paid to the clerk of the  
5 district court.

6 b. The person or agency responsible for ~~carrying-out-the~~  
7 order impoundment or immobilization under this section shall  
8 inform the court of the costs of towing, storage, and any  
9 other costs of impounding or immobilizing the motor vehicle.  
10 Upon payment of the fee and costs, the clerk shall forward a  
11 copy of the receipt to the department.

12 ~~11-~~ c. If a law enforcement agency impounds or immobilizes  
13 a motor vehicle, the amount of the fee and expenses deposited  
14 with the clerk shall be paid by the clerk to the law  
15 enforcement agency responsible for executing the order to  
16 reimburse the agency for costs incurred for impoundment or  
17 immobilization equipment and, if required, in sending officers  
18 to search for and locate the vehicle specified in the  
19 impoundment or immobilization order.

20 ~~12-~~ 9. Operating a motor vehicle on a street or highway in  
21 this state in violation of an order of impoundment or  
22 immobilization is a serious misdemeanor. A motor vehicle  
23 which is subject to an order of impoundment or immobilization  
24 that is operated on a street or highway in this state in  
25 violation of the order shall be seized and forfeited to the  
26 state under chapters 809 and 809A.

27 ~~13-~~ 10. Once the period of impoundment or immobilization  
28 has expired, the owner of the motor vehicle shall have thirty  
29 days to claim the motor vehicle and pay the all fees and  
30 charges imposed under this section. If the owner or the  
31 owner's designee has not claimed the vehicle and paid the all  
32 fees and charges imposed under this section within seven days  
33 from the date of expiration of the period, the clerk shall  
34 send written notification to the motor vehicle owner, at the  
35 owner's last known address, notifying the owner of the date of

1 expiration of the period of impoundment or immobilization and  
2 of the period in which the motor vehicle must be claimed. If  
3 the motor vehicle owner fails to claim the motor vehicle and  
4 pay the all fees and charges imposed within the thirty-day  
5 period, the motor vehicle shall be forfeited to the state  
6 under chapters 809 and 809A.

7 ~~14.~~ 11. a. (1) During the period of impoundment or  
8 immobilization, ~~a person convicted of the offense of operating~~  
9 ~~while intoxicated which resulted in the impoundment or~~  
10 ~~immobilization~~ the owner of an impounded or immobilized  
11 vehicle shall not sell or transfer the title of the motor  
12 vehicle which is subject to the order of impoundment or  
13 immobilization. The

14 (2) A person convicted of ~~the offense of operating while~~  
15 ~~intoxicated~~ an offense under subsection 2, shall also not  
16 purchase ~~another motor vehicle~~ or register any motor vehicle  
17 during the period of impoundment, or immobilization, or  
18 license revocation.

19 PARAGRAPH DIVIDED. Violation of this paragraph "a" is a  
20 serious misdemeanor.

21 b. If, during the period of impoundment or immobilization,  
22 the title to the motor vehicle which is the subject of the  
23 order is transferred by the foreclosure of a chattel mortgage,  
24 a sale upon execution, the cancellation of a conditional sales  
25 contract, or an order of a court, the court which enters the  
26 order that permits transfer of the title shall notify the  
27 department of the transfer of the title. The department shall  
28 enter notice of the transfer of the title to the motor vehicle  
29 in the previous owner's vehicle registration record.

30 ~~15.~~ 12. Notwithstanding the other requirements of this  
31 ~~section, if the owner of the motor vehicle is not the person~~  
32 ~~who is convicted of the offense which resulted in the issuance~~  
33 ~~of the order of impoundment or immobilization or the owner of~~  
34 ~~the motor vehicle is a motor vehicle rental or leasing~~  
35 ~~company, the owner, the owner's designee, or the rental or~~

1 leasing company shall be permitted to submit a claim for  
2 return of the motor vehicle within twenty-four hours from  
3 receipt of the order for impoundment or immobilization.:

4 a. Upon learning the address or phone number of a rental  
5 or leasing company which owns a motor vehicle impounded or  
6 immobilized under this section, the peace officer, county  
7 attorney, or attorney general shall immediately contact the  
8 company to inform the company that the vehicle is available  
9 for return to the company. ~~The vehicle shall be returned to~~  
10 ~~the owner, owner's designee, or rental or leasing company and~~  
11 ~~the order for impoundment or immobilization shall be rescinded~~  
12 ~~with respect to the particular motor vehicle, if the owner or~~  
13 ~~owner's designee can prove to the satisfaction of the court~~  
14 ~~that the owner did not know or should not have known that the~~  
15 ~~vehicle was to be used in the commission of the offense of~~  
16 ~~operating while intoxicated, or if the rental or leasing~~  
17 ~~company did not know, should not have known, and did not~~  
18 ~~consent to the operation of the motor vehicle used in the~~  
19 ~~commission of the offense of operating while intoxicated. For~~  
20 ~~purposes of this section, unless the person convicted of the~~  
21 ~~offense which results in the imposition of the order for~~  
22 ~~impoundment or immobilization is not in lawful possession of~~  
23 ~~the motor vehicle used in the commission of the offense, an~~  
24 ~~owner of a motor vehicle shall be presumed to know that the~~  
25 ~~vehicle was to be used by the person who is convicted of the~~  
26 ~~offense, in the commission of the offense of operating while~~  
27 ~~intoxicated.~~

28 ~~16.~~ b. Notwithstanding the requirements of this section,  
29 the The holder of a security interest in a vehicle which is  
30 impounded or immobilized pursuant to this section or forfeited  
31 in the manner provided in chapters 809 and 809A shall be  
32 notified of the impoundment, immobilization, or forfeiture  
33 within seventy-two hours of the seizure of the vehicle and  
34 shall have the right to claim the motor vehicle without  
35 payment of any fees or surcharges unless the value of the

1 vehicle exceeds the value of the security interest held by the  
2 creditor.

3 ~~17-~~ c. ~~Notwithstanding the requirements of this section,~~  
4 ~~any~~ Any of the following persons may make application to the  
5 court for permission to operate a motor vehicle, which is  
6 impounded or immobilized pursuant to this section, during the  
7 period of impoundment or immobilization, if the applicant's  
8 motor vehicle license or operating privilege has not been  
9 suspended, denied, ~~or~~ revoked, or barred, and an ignition  
10 interlock device of a type approved by the commissioner of  
11 public safety is installed in the motor vehicle prior to  
12 operation:

13 a- (1) A person, other than the person who committed the  
14 offense which resulted in the impoundment or immobilization,  
15 who is not a member of the immediate family of the person who  
16 committed the offense but is a joint owner of the motor  
17 vehicle.

18 b- (2) A member of the immediate family of the person who  
19 committed the offense which resulted in the impoundment or  
20 immobilization, if the member demonstrates that the motor  
21 vehicle that is subject to the order for impoundment or  
22 immobilization is the only motor vehicle possessed by the  
23 family.

24 For purposes of this section, "a member of the immediate  
25 family" means a spouse, child, or parent of the person who  
26 committed the offense.

27 ~~18-~~ 13. The impoundment, immobilization, or forfeiture of  
28 a motor vehicle under this chapter does not constitute loss of  
29 use of a motor vehicle for purposes of any contract of  
30 insurance.

31 Sec. 11. Section 321J.7, Code 1997, is amended to read as  
32 follows:

33 321J.7 DEAD OR UNCONSCIOUS PERSONS.

34 A person who is dead, unconscious, or otherwise in a  
35 condition rendering the person incapable of consent or refusal

1 is deemed not to have withdrawn the consent provided by  
2 section 321J.6, and the test may be given if a licensed  
3 physician certifies in advance of the test that the person is  
4 dead, unconscious, or otherwise in a condition rendering that  
5 person incapable of consent or refusal. If the certification  
6 is oral, written certification shall be completed by the  
7 physician within twenty-four hours of the test.

8 Sec. 12. Section 321J.9, subsections 1 and 2, Code 1997,  
9 are amended to read as follows:

10 1. If a person refuses to submit to the chemical testing,  
11 a test shall not be given, but the department, upon the  
12 receipt of the peace officer's certification, subject to  
13 penalty for perjury, that the officer had reasonable grounds  
14 to believe the person to have been operating a motor vehicle  
15 in violation of section 321J.2 or 321J.2A, that specified  
16 conditions existed for chemical testing pursuant to section  
17 321J.6, and that the person refused to submit to the chemical  
18 testing, shall revoke the person's motor vehicle license and  
19 any nonresident operating privilege for the following periods  
20 of time:

21 a. ~~Two-hundred-forty-days~~ One year if the person has no  
22 previous revocation ~~within-the-previous-six-years~~ under this  
23 chapter; and

24 b. ~~Five-hundred-forty-days~~ Two years if the person has one  
25 or more previous revocations ~~within-the-previous-six-years~~  
26 under this chapter.

27 2. a. A person whose motor vehicle license or nonresident  
28 operating privileges are revoked ~~for-two-hundred-forty-days~~  
29 under subsection 1, paragraph "a", shall not be eligible for a  
30 temporary restricted license for at least ninety days after  
31 the effective date of the revocation. A person whose motor  
32 vehicle license or nonresident operating privileges are  
33 revoked ~~for-five-hundred-forty-days~~ under subsection 1,  
34 paragraph "b", shall not be eligible for a temporary  
35 restricted license for at least one year after the effective

1 date of the revocation.

2 b. The defendant shall be ordered to install an ignition  
3 interlock device of a type approved by the commissioner of  
4 public safety on all vehicles owned or operated by the  
5 defendant if the defendant seeks a temporary restricted  
6 license at the end of the minimum period of ineligibility. A  
7 temporary restricted license shall not be granted by the  
8 department until the defendant installs the ignition interlock  
9 device.

10 Sec. 13. Section 321J.12, subsection 1, paragraphs a and  
11 b, Code 1997, are amended to read as follows:

12 a. One hundred eighty days if the person has had no  
13 revocation ~~within-the-previous-six-years~~ under this chapter.

14 b. One year if the person has had one or more previous  
15 revocations ~~within-the-previous-six-years~~ under this chapter.

16 Sec. 14. Section 321J.17, Code 1997, is amended to read as  
17 follows:

18 321J.17 CIVIL PENALTY -- DISPOSITION -- LICENSE  
19 REINSTATEMENT.

20 1. When If the department revokes a person's motor vehicle  
21 license or nonresident operating privilege under this chapter,  
22 the department shall assess the person a civil penalty of two  
23 hundred dollars. The money collected by the department under  
24 this section shall be transmitted to the treasurer of state  
25 who shall deposit one-half of the money in the separate fund  
26 established in section 912.14 and one-half of the money shall  
27 be deposited in the general fund of the state. A motor  
28 vehicle license or nonresident operating privilege shall not  
29 be reinstated until the civil penalty has been paid.

30 2. If the department or a court orders the revocation of a  
31 person's motor vehicle license or nonresident operating  
32 privilege under this chapter, the department or court shall  
33 also order the person, at the person's own expense, to do the  
34 following:

35 a. Enroll, attend, and satisfactorily complete a course



1 for drinking drivers, as provided in section 321J.22.

2 b. Submit to evaluation and treatment or rehabilitation  
3 services as provided in chapter 125.

4 A motor vehicle license or nonresident operating privilege  
5 shall not be reinstated until proof of completion of the  
6 requirements of this subsection is presented to the  
7 department.

8 Sec. 15. Section 321J.20, subsection 1, unnumbered  
9 paragraph 1, Code 1997, is amended to read as follows:

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

26 Sec. 16. Section 321J.20, subsection 1, paragraph a, Code  
27 1997, is amended to read as follows:

28 a. The person's motor vehicle license is revoked under  
29 section 321J.4~~-subsection-17-27-47-or-67~~ and the minimum  
30 period of ineligibility for issuance of a temporary restricted  
31 license has expired. This subsection shall not apply to a  
32 revocation ordered under section 321J.4 resulting from a plea  
33 or verdict of guilty of a violation of section 321J.2 that  
34 involved a death.

35 Sec. 17. Section 321J.20, subsection 6, Code 1997, is

1 amended to read as follows:

2 6. Following the certain minimum period periods of  
3 ineligibility, a temporary restricted license under this  
4 section shall not be issued until such time as the applicant  
5 installs an ignition interlock device of a type approved by  
6 the commissioner of public safety on all motor vehicles owned  
7 or operated by the applicant, in accordance with section  
8 321J.47-subsection-7. Installation of an ignition interlock  
9 device under this section shall be required for the period of  
10 time for which the temporary restricted license is issued, ~~but~~  
11 ~~no longer than one year, unless the court order under section~~  
12 ~~321J.47-subsection-7, provides for a longer period of time.~~

13 Sec. 18. Section 321J.21, Code 1997, is amended to read as  
14 follows:

15 321J.21 DRIVING WHILE LICENSE SUSPENDED, DENIED, OR  
16 REVOKED, OR BARRED.

17 1. A person whose motor vehicle license or nonresident  
18 operating privilege has been suspended, denied, or revoked as  
19 provided in, or barred due to a violation of this chapter and  
20 who drives a motor vehicle upon the highways of this state  
21 while the license or privilege is suspended, denied, or  
22 revoked, or barred commits a serious misdemeanor, punishable  
23 with a mandatory fine of one thousand dollars. The

24 2. In addition to the fine, the department, upon receiving  
25 the record of the conviction of a person under this section  
26 upon a charge of driving a motor vehicle while the license of  
27 the person was ~~revoked or~~ suspended, denied, revoked, or  
28 barred shall extend the period of ~~revocation or~~ suspension,  
29 denial, revocation, or bar for an additional like period, and  
30 the department shall not issue a new license during the  
31 additional period.

32 Sec. 19. Section 321J.22, Code 1997, is amended to read as  
33 follows:

34 321J.22 ~~COURT-ORDERED-DRINKING~~ DRINKING DRIVERS COURSE.

35 1. As used in this section, unless the context otherwise

1 requires:

2 a. "Course for drinking drivers" means an approved course  
3 designed to inform the offender about drinking and driving and  
4 encourage the offender to assess the offender's own drinking  
5 and driving behavior in order to select practical  
6 alternatives.

7 b. "Satisfactory completion of a course" means receiving  
8 at the completion of a course a grade from the course  
9 instructor of "C" or "2.0," or better.

10 ~~2. After a conviction for, or a plea of guilty of, a~~  
11 ~~violation of section 321J.2, the court in addition to its~~  
12 ~~power to commit the defendant for treatment of alcoholism~~  
13 ~~under section 321J.3, may order the defendant, at the~~  
14 ~~defendant's own expense, to enroll in, attend, and~~  
15 ~~successfully complete a course for drinking drivers. The~~  
16 ~~court may alternatively or additionally require the defendant~~  
17 ~~to seek evaluation, treatment or rehabilitation services under~~  
18 ~~section 125.33 at the defendant's expense and to furnish~~  
19 ~~evidence of successful completion. A copy of the order shall~~  
20 ~~be forwarded to the department.~~

21 3. 2. The course provided in according to this section  
22 shall be offered on a regular basis at each community college  
23 as defined in section 260C.2. Enrollment in the courses is  
24 not limited to persons ordered to enroll, attend, and  
25 successfully complete the course required under sections  
26 321J.2 and 321J.17, subsection 2, ~~and any person convicted of~~  
27 ~~a violation of section 321J.2 who was not ordered to enroll in~~  
28 ~~a course may enroll in and attend a course for drinking~~  
29 **drivers.** The course required by this section shall be taught  
30 by the community colleges under the department of education  
31 and approved by the department. The department of education  
32 shall establish reasonable fees to defray the expense of  
33 obtaining classroom space, instructor salaries, and class  
34 materials. A person shall not be denied enrollment in a  
35 course by reason of the person's indigency.

1 ~~4~~ 3. An employer shall not discharge a person from  
2 employment solely for the reason of work absence to attend a  
3 course required by this section. Any employer who violates  
4 this section is liable for damages which include but are not  
5 limited to actual damages, court costs, and reasonable  
6 attorney fees. The person may also petition the court for  
7 imposition of a cease and desist order against the person's  
8 employer and for reinstatement to the person's previous  
9 position of employment.

10 ~~5~~ 4. The department of education shall prepare a list of  
11 the locations of the courses taught under this section, the  
12 dates and times taught, the procedure for enrollment, and the  
13 schedule of course fees. The list shall be kept current and a  
14 copy of the list shall be sent to each court having  
15 jurisdiction over offenses provided in this chapter.

16 ~~6~~ 5. The department of education shall maintain  
17 enrollment, attendance, successful and nonsuccessful  
18 completion data on the persons ordered to enroll, attend, and  
19 successfully complete a course for drinking drivers. This  
20 data shall be forwarded to the court.

21 Sec. 20. Section 707.6A, subsection 1, Code 1997, is  
22 amended to read as follows:

23 1. A person commits a class "C" "B" felony when the person  
24 unintentionally causes the death of another by ~~any-of-the~~  
25 ~~following-means:~~

26 ~~a.--Operating~~ operating a motor vehicle while under the  
27 ~~influence-of-alcohol-or-other-drug-or-a-combination-of-such~~  
28 ~~substances-or-while-having-an-alcohol-concentration~~  
29 intoxicated, as defined in prohibited by section 321J.17  
30 subsection 1, of 10 or more 321J.2. Upon a plea or verdict  
31 of guilty of a violation of this paragraph subsection, the  
32 court shall order do the following:

33 a. Order the state department of transportation to revoke  
34 the defendant's motor vehicle license or nonresident operating  
35 privileges for a period of six years. The defendant shall

1 surrender to the court any Iowa license or permit and the  
2 court shall forward ~~it~~ the license or permit to the department  
3 with a copy of the revocation order. The defendant shall not  
4 be eligible for a temporary restricted license for at least  
5 two years after the revocation.

6 b. Order the defendant, at the defendant's expense, to do  
7 the following:

8 (1) Enroll, attend, and satisfactorily complete a course  
9 for drinking drivers, as provided in section 321J.22.

10 (2) Submit to evaluation and treatment or rehabilitation  
11 services as provided in chapter 125.

12 c. A motor vehicle license or nonresident operating  
13 privilege shall not be reinstated until proof of completion of  
14 the requirements of paragraph "b" is presented to the  
15 department.

16 1A. A person commits a class "C" felony when the person  
17 unintentionally causes the death of another by any of the  
18 following means:

19 b. a. Driving a motor vehicle in a reckless manner with  
20 willful or wanton disregard for the safety of persons or  
21 property, in violation of section 321.277.

22 e. b. Eluding or attempting to elude a pursuing law  
23 enforcement vehicle, in violation of section 321.279, if the  
24 death of the other person directly or indirectly results from  
25 the violation.

26 Sec. 21. Section 707.6A, subsection 3, Code 1997, is  
27 amended to read as follows:

28 3. A person commits ~~an-aggravated-misdemeanor~~ a class "D"  
29 felony when the person unintentionally causes a serious  
30 injury, as defined in section 321J.1, subsection 8, by any of  
31 the means described in subsection 1 ~~of this section~~ or 1A.

32 Sec. 22. Section 707.6A, Code 1997, is amended by adding  
33 the following new subsection:

34 NEW SUBSECTION. 6. Notwithstanding the provisions of  
35 sections 901.5 and 907.3, the court shall not defer judgment

1 or sentencing, or suspend execution of any part of the  
2 sentence applicable to the defendant for a violation of  
3 subsection 1, or for a violation of subsection 3 involving the  
4 operation of a motor vehicle while intoxicated if any of the  
5 following apply:

6 a. If the defendant's alcohol concentration established by  
7 the results of an analysis of a specimen of the defendant's  
8 blood, breath, or urine withdrawn in accordance with chapter  
9 321J exceeds .15.

10 b. If the defendant has previously been convicted of a  
11 violation of section 321J.2, subsection 1, or a violation of a  
12 statute in another state substantially corresponding to  
13 section 321J.2, subsection 1.

14 c. If the defendant has previously received a deferred  
15 judgment or sentence for a violation of section 321J.2,  
16 subsection 1, or for a violation of a statute in another state  
17 substantially corresponding to section 321J.2, subsection 1.

18 d. If the defendant refused to consent to chemical testing  
19 requested in accordance with section 321J.6.

20 Sec. 23. Section 809A.3, subsections 4 and 5, Code 1997,  
21 are amended to read as follows:

22 ~~4. A violation of section 321J.4B, subsection 12.~~

23 ~~5. 4.~~ Notwithstanding subsections 1 through 4 3,  
24 violations of chapter 321 or 321J, ~~except section 321J.4B,~~  
25 ~~subsection 12,~~ shall not be considered conduct giving rise to  
26 forfeiture, except for violations of the following:

27 a. A second or subsequent violation of section 321J.4B,  
28 subsection 2, paragraph "b".

29 b. Section 321J.4B, subsection 9.

30 Sec. 24. Section 907.3, subsection 1, paragraph g, Code  
31 1997, is amended to read as follows:

32 g. The offense is a violation of section 321J.2 and  
33 ~~within the previous six years, the person has been convicted~~  
34 ~~of a violation of that section or the person's driver's~~  
35 ~~license has been revoked pursuant to section 321J.4, 321J.9,~~

1 or 321J.2, subsection 1; section 707.6A, subsection 1; or a  
2 violation of section 707.6A, subsection 3, involving operation  
3 of a motor vehicle while intoxicated, and any of the following  
4 apply:

5 (1) If the defendant's alcohol concentration established  
6 by the results of an analysis of a specimen of the defendant's  
7 blood, breath, or urine withdrawn in accordance with chapter  
8 321J exceeds .15.

9 (2) If the defendant has previously been convicted of a  
10 violation of section 321J.2, subsection 1, or a violation of a  
11 statute in another state substantially corresponding to  
12 section 321J.2, subsection 1.

13 (3) If the defendant has previously received a deferred  
14 judgment or sentence for a violation of section 321J.2,  
15 subsection 1, or for a violation of a statute in another state  
16 substantially corresponding to section 321J.2, subsection 1.

17 (4) If the defendant refused to consent to chemical  
18 testing requested in accordance with section 321J.6.

19 Sec. 25. Section 907.3, subsections 2 and 3, Code 1997,  
20 are amended to read as follows:

21 2. At the time of or after pronouncing judgment and with  
22 the consent of the defendant, the court may defer the sentence  
23 and assign the defendant to the judicial district department  
24 of correctional services. The court may assign the defendant  
25 to supervision or services under section 901B.1 at the level  
26 of sanctions which the district department determines to be  
27 appropriate, if an intermediate criminal sanctions plan and  
28 program has been adopted in the judicial district under  
29 section 901B.1. However, the court shall not defer the  
30 sentence for a violation of section any of the following:

31 a. Section 708.2A, if the defendant has previously  
32 received a deferred judgment or sentence for a violation of  
33 section 708.2 or 708.2A which was issued on a domestic abuse  
34 assault, or if similar relief was granted anywhere in the  
35 United States concerning that jurisdiction's statutes which

1 substantially correspond to domestic abuse assault as provided  
2 in section 708.2A. ~~In addition, the court shall not defer a~~  
3 ~~sentence if it is imposed for a conviction for or plea of~~  
4 ~~guilty to a violation of section~~

5 b. Section 236.8 or for contempt pursuant to section 236.8  
6 or 236.14.

7 c. Section 321J.2, subsection 1; section 707.6A,  
8 subsection 1; or a violation of section 707.6A, subsection 3,  
9 involving operation of a motor vehicle while intoxicated, if  
10 any of the following apply:

11 (1) If the defendant's alcohol concentration established  
12 by the results of an analysis of a specimen of the defendant's  
13 blood, breath, or urine withdrawn in accordance with chapter  
14 321J exceeds .15.

15 (2) If the defendant has previously been convicted of a  
16 violation of section 321J.2, subsection 1, or a violation of a  
17 statute in another state substantially corresponding to  
18 section 321J.2, subsection 1.

19 (3) If the defendant has previously received a deferred  
20 judgment or sentence for a violation of section 321J.2,  
21 subsection 1, or for a violation of a statute in another state  
22 substantially corresponding to section 321J.2, subsection 1.

23 (4) If the defendant refused to consent to chemical  
24 testing requested in accordance with section 321J.6.

25 Upon a showing that the defendant is not fulfilling the  
26 conditions of probation, the court may revoke probation and  
27 impose any sentence authorized by law. Before taking such  
28 action, the court shall give the defendant an opportunity to  
29 be heard on any matter relevant to the proposed action. Upon  
30 violation of the conditions of probation, the court may  
31 proceed as provided in chapter 908.

32 3. By record entry at the time of or after sentencing, the  
33 court may suspend the sentence and place the defendant on  
34 probation upon such terms and conditions as it may require  
35 including commitment to an alternate jail facility or a



1 community correctional residential treatment facility for a  
2 specific number of days to be followed by a term of probation  
3 as specified in section 907.7, or commitment of the defendant  
4 to the judicial district department of correctional services  
5 for supervision or services under section 901B.1 at the level  
6 of sanctions which the district department determines to be  
7 appropriate. A person so committed who has probation revoked  
8 shall be given credit for such time served. However, the  
9 court shall not suspend the any of the following sentences:

10 a. The minimum term of two days imposed pursuant to  
11 section 708.2A, subsection 6, paragraph "a", or a sentence  
12 imposed under section 708.2A, subsection 6, paragraph "b";~~and~~  
13 ~~the court shall not suspend a~~

14 b. A sentence imposed pursuant to section 236.8 or 236.14  
15 for contempt.

16 c. A sentence imposed pursuant to a violation of section  
17 321J.2, subsection 1; section 707.6A, subsection 1; or a  
18 violation of section 707.6A, subsection 3, involving operation  
19 of a motor vehicle while intoxicated, if any of the following  
20 apply:

21 (1) If the defendant's alcohol concentration established  
22 by the results of an analysis of a specimen of the defendant's  
23 blood, breath, or urine withdrawn in accordance with chapter  
24 321J exceeds .15.

25 (2) If the defendant has previously been convicted of a  
26 violation of section 321J.2, subsection 1, or a violation of a  
27 statute in another state substantially corresponding to  
28 section 321J.2, subsection 1.

29 (3) If the defendant has previously received a deferred  
30 judgment or sentence for a violation of section 321J.2,  
31 subsection 1, or for a violation of a statute in another state  
32 substantially corresponding to section 321J.2, subsection 1.

33 (4) If the defendant refused to consent to chemical  
34 testing requested in accordance with section 321J.6.

35 Sec. 26. Section 910.1, subsection 4, Code 1997, is

1 amended to read as follows:

2 4. "Restitution" means payment of pecuniary damages to a  
3 victim in an amount and in the manner provided by the  
4 offender's plan of restitution. "Restitution" also includes  
5 fines, penalties, and surcharges, the contribution of funds to  
6 a local anticrime organization which provided assistance to  
7 law enforcement in an offender's case, the payment of crime  
8 victim compensation program reimbursements, payment of  
9 restitution to public agencies pursuant to section 321J.2,  
10 subsection 8, paragraph "b", court costs, court-appointed  
11 attorney's fees, or the expense of a public defender, and the  
12 performance of a public service by an offender in an amount  
13 set by the court when the offender cannot reasonably pay all  
14 or part of the court costs, court-appointed attorney's fees,  
15 or the expense of a public defender.

16 Sec. 27. Section 910.2, Code 1997, is amended to read as  
17 follows:

18 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY  
19 SENTENCING COURT.

20 In all criminal cases in which there is a plea of guilty,  
21 verdict of guilty, or special verdict upon which a judgment of  
22 conviction is rendered, the sentencing court shall order that  
23 restitution be made by each offender to the victims of the  
24 offender's criminal activities, to the clerk of court for  
25 fines, penalties, surcharges, and, to the extent that the  
26 offender is reasonably able to pay, for crime victim  
27 assistance reimbursement, restitution to public agencies  
28 pursuant to section 321J.2, subsection 8, paragraph "b", court  
29 costs, court-appointed attorney's fees, or the expense of a  
30 public defender when applicable, or contribution to a local  
31 anticrime organization. However, victims shall be paid in  
32 full before fines, penalties, and surcharges, crime victim  
33 compensation program reimbursement, public agencies, court  
34 costs, court-appointed attorney's fees, the expenses of a  
35 public defender, or contribution to a local anticrime

1 organization are paid. In structuring a plan of restitution,  
2 the court shall provide for payments in the following order of  
3 priority: victim, fines, penalties, and surcharges, crime  
4 victim compensation program reimbursement, public agencies,  
5 court costs, court-appointed attorney's fees, or the expense  
6 of a public defender, and contribution to a local anticrime  
7 organization.

8 When the offender is not reasonably able to pay all or a  
9 part of the crime victim compensation program reimbursement,  
10 public agency restitution, court costs, court-appointed  
11 attorney's fees, the expense of a public defender, or  
12 contribution to a local anticrime organization, the court may  
13 require the offender in lieu of that portion of the crime  
14 victim compensation program reimbursement, public agency  
15 restitution, court costs, court-appointed attorney's fees,  
16 expense of a public defender, or contribution to a local  
17 anticrime organization for which the offender is not  
18 reasonably able to pay, to perform a needed public service for  
19 a governmental agency or for a private nonprofit agency which  
20 provides a service to the youth, elderly, or poor of the  
21 community. When community service is ordered, the court shall  
22 set a specific number of hours of service to be performed by  
23 the offender which, for payment of court-appointed attorney's  
24 fees or expenses of a public defender, shall be approximately  
25 equivalent in value to those costs. The judicial district  
26 department of correctional services shall provide for the  
27 assignment of the offender to a public agency or private  
28 nonprofit agency to perform the required service.

29 Sec. 28. Section 910.3, Code 1997, is amended to read as  
30 follows:

31 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

32 The county attorney shall prepare a statement of pecuniary  
33 damages to victims of the defendant and, if applicable, any  
34 award by the crime victim compensation program and expenses  
35 incurred by public agencies pursuant to section 321J.2,

1 subsection 8, paragraph "b", and shall provide the statement  
2 to the presentence investigator or submit the statement to the  
3 court at the time of sentencing. The clerk of court shall  
4 prepare a statement of court-appointed attorney's fees, the  
5 expense of a public defender, and court costs, which shall be  
6 provided to the presentence investigator or submitted to the  
7 court at the time of sentencing. If these statements are  
8 provided to the presentence investigator, they shall become a  
9 part of the presentence report. If pecuniary damage amounts  
10 are not available at the time of sentencing, the county  
11 attorney shall provide a statement of pecuniary damages  
12 incurred up to that time to the clerk of court. The statement  
13 shall be provided no later than thirty days after sentencing.  
14 If a defendant believes no person suffered pecuniary damages,  
15 the defendant shall so state. If the defendant has any mental  
16 or physical impairment which would limit or prohibit the  
17 performance of a public service, the defendant shall so state.  
18 The court may order a mental or physical examination, or both,  
19 of the defendant to determine a proper course of action. At  
20 the time of sentencing or at a later date to be determined by  
21 the court, the court shall set out the amount of restitution  
22 including the amount of public service to be performed as  
23 restitution and the persons to whom restitution must be paid.  
24 If the full amount of restitution cannot be determined at the  
25 time of sentencing, the court shall issue a temporary order  
26 determining a reasonable amount for restitution identified up  
27 to that time. At a later date as determined by the court, the  
28 court shall issue a permanent, supplemental order, setting the  
29 full amount of restitution. The court shall enter further  
30 supplemental orders, if necessary. These court orders shall  
31 be known as the plan of restitution.

32 Sec. 29. Section 910.9, unnumbered paragraph 3, Code 1997,  
33 is amended to read as follows:

34 Fines, penalties, and surcharges, crime victim compensation  
35 program reimbursement, public agency restitution, court costs,

1 court-appointed attorney's fees, and expenses for public  
2 defenders, shall not be withheld by the clerk of court until  
3 all victims have been paid in full. Payments to victims shall  
4 be made by the clerk of court at least quarterly. Payments by  
5 a clerk of court shall be made no later than the last business  
6 day of the quarter, but may be made more often at the  
7 discretion of the clerk of court. The clerk of court  
8 receiving final payment from an offender, shall notify all  
9 victims that full restitution has been made, and a copy of the  
10 notice shall be sent to the sentencing court. Each office or  
11 individual charged with supervising an offender who is  
12 required to perform community service as full or partial  
13 restitution shall keep records to assure compliance with the  
14 portions of the plan of restitution and restitution plan of  
15 payment relating to community service and, when the offender  
16 has complied fully with the community service requirement,  
17 notify the sentencing court.

18 Sec. 30. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
19 3, shall not apply to this Act.

20 EXPLANATION

21 This bill amends certain laws relating to the offense of  
22 operating while intoxicated, and related provisions of chapter  
23 321, pertaining to motor vehicles.

24 This bill increases the range for a fine for a first  
25 offense OWI to \$1,500.

26 This bill amends Code section 321J.2, subsection 8, by  
27 removing the \$2,000 limitation on victim restitution owed by a  
28 convicted drunk driver, and making restitution available to  
29 any public agency for the costs of emergency response services  
30 related to the acts underlying the drunk driving conviction,  
31 up to \$500 per agency per response. Related changes are made  
32 to several sections of Code chapter 910, regarding victim  
33 restitution.

34 The bill amends Code section 321J.4 by deleting the six-  
35 year period which a court uses in determining how many total

1 prior OWI convictions a defendant has and what punishment is  
2 therefore applicable. The bill makes a similar change with  
3 regard to license revocations in other portions of chapter  
4 321J. The bill makes a related amendment to Code section  
5 321.12 by deleting the requirement that the department of  
6 transportation destroy records pertaining to OWI arrests or  
7 convictions after 12 years and requiring that such records be  
8 permanently maintained by the department.

9 The bill further amends Code section 321J.4 by providing  
10 that a temporary restricted license or early license  
11 reinstatement shall not be available for persons convicted of  
12 a second OWI for at least one year of a two-year revocation.  
13 Ignition interlock devices are required as a condition for  
14 issuance of a temporary restricted license for any person  
15 convicted of a second or subsequent offense under Code section  
16 321J.2. A conforming amendment is made to section 321J.20. A  
17 similar provision is added in Code section 707.6A for persons  
18 convicted of causing death as a result of an OWI violation,  
19 and conforming amendments are made in Code sections 321J.4 and  
20 321J.20.

21 The bill amends Code section 321J.4B by providing that if a  
22 person is convicted of a second or subsequent offense of  
23 driving a vehicle while that person's license is suspended,  
24 denied, revoked, or barred for a violation of chapter 321J,  
25 then in addition to the applicable criminal penalty, the  
26 vehicle used in commission of the offense shall be subject to  
27 seizure and forfeiture pursuant to chapters 809 and 809A.  
28 Conforming amendments are made to Code section 809A.3. The  
29 bill also establishes a simple misdemeanor offense for any  
30 person who knowingly consents to operation of the person's  
31 vehicle by a person whose license is suspended, denied,  
32 revoked, or barred for a violation of chapter 321J, and  
33 provides for civil liability by such a vehicle owner for  
34 damages caused by the drunk driver.

35 The bill provides that an oral certification of death or

1 unconsciousness of an OWI suspect under Code section 321J.7  
2 must be placed in writing within 24 hours of the oral  
3 certification.

4 The bill increases the penalties for refusal to consent to  
5 chemical testing under Code section 321J.9 to one year for  
6 persons with no previous OWI-related revocation, and two years  
7 for persons with one or more previous OWI-related revocations.

8 The bill amends Code section 321J.17 by requiring that all  
9 persons whose licenses are revoked under chapter 321J complete  
10 a course for drinking drivers and substance abuse evaluation  
11 prior to any reinstatement of the person's license.

12 Conforming amendments are made in Code sections 321J.2,  
13 321J.3, and 321J.22. A similar requirement has been added in  
14 Code section 707.6A for persons convicted of causing a death  
15 in the course of an OWI violation.

16 This bill provides for a mandatory fine of \$1,000 for  
17 driving a motor vehicle when the defendant's license has been  
18 revoked or denied for operating a motor vehicle while  
19 intoxicated under chapter 321J.

20 Penalties for certain crimes related to vehicles have been  
21 increased in section 707.6A. Vehicular homicide due to  
22 operating while intoxicated is changed to a class "B" felony,  
23 and it is a class "D" felony to cause a serious injury.

24 The bill amends Code section 907.3 to eliminate deferred  
25 judgments, deferred sentences, and suspended sentences for OWI  
26 violations in certain cases. Conforming amendments are made  
27 throughout Code chapter 321J and Code section 707.6A.

28 This bill may include a state mandate as defined in Code  
29 chapter 25B. This bill makes inapplicable Code section 25B.2,  
30 subsection 3, which would relieve a political subdivision from  
31 complying with a state mandate if funding for the cost of the  
32 state mandate is not provided or specified. Therefore,  
33 political subdivisions are required to comply with any state  
34 mandate included in this bill.

35

HOUSE FILE 707  
FISCAL NOTE

REQ. BY SENATOR MCKEAN

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The estimate for House File 707 as amended by S-3363 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House file 707, as amended by S-3363, amends certain laws relating to the offense of operating a motor vehicle while intoxicated, and related provisions of chapter 321. The Bill addresses substance abuse evaluations and education, use of ignition interlocking devices, motor vehicle license revocations, civil and criminal penalties, vehicular homicide, and forfeiture of automobiles by persons committing relevant violations.

ASSUMPTIONS

1. Charge, conviction and sentencing patterns, prisoner length of stay, revocation rates, and other relevant policies will not change over the projection period. There will be a six month lag from the law's effective date and the initial impact on the correctional system.
2. There are approximate 5,600 first-time OWI offenders per year, based on FY 1995 Governor's Traffic Safety Bureau data. One half of these offenders have a blood alcohol level exceeding 0.15 and will receive jail sentences. An estimated 300 OWI-2nd offenders and 100 OWI-3rd offenders will be incarcerated. Thirty-eight will be assigned to prison awaiting community placements; 42 will be diverted to community-based corrections residential facilities; and 330 will go to jail.
3. The marginal cost for adding an inmate to prison or to a community based residential facility is \$12 per day. Offenders sent to residential facilities will spend approximately five months at the facility.
4. Data is not currently available to determine the effect of extending the timeframe from six years to 12 years for determining prior OWI convictions. Some of the OWI-1st and OWI-2nd offenses will lead to convictions at a more serious level.
5. Data is not currently available to determine the costs associated with impounding vehicles or the revenues from vehicle forfeitures. The Judicial Department may incur additional costs for processing vehicle impoundment notices. The Judicial Department estimates that each notice will cost approximately \$2.35 to process. The total number of notices that will need to be processed is unknown.
6. Data is not currently available to determine the effect of increasing the financial penalties relating to OWI offenses. It should be noted, however, that as fines and fees accumulate, offenders may feel overwhelmed by the higher fines, resulting in fewer fines being collected.
7. The elimination of deferred and suspended sentences reduces the incentive to plea bargain and may result in more cases going to trial. While no estimate is available for how many cases will go to trial, the Judicial Department estimates that each trial will cost approximately \$1,800. In



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- calendar 1996, approximately 4,700 OWI cases received deferred judgements.
8. Data is not currently available to determine the amount of restitution that would be paid to public agencies for providing emergency responses.
  9. The owner of a vehicle who permits another to drive his or her vehicle in violation of Section 321J commits a simple misdemeanor. This is a new crime, and it is unknown how many cases will occur. The Judicial Department estimates that each case will cost approximately \$100.
  10. The Department of Transportation issued approximately 23,000 OWI revocations during calendar 1996. The Department estimates that it will cost approximately \$12.50 for each notice sent to a driver with a suspended/revoked license that they are eligible to reapply for a license. The total estimated cost is \$290,000 annually from the Road Use Tax Fund. This cost is not anticipated to be a new cost to the Department, however, priorities within the existing workload may need to be adjusted.

CORRECTIONAL IMPACT

The Correctional system will experience the following increases from House File 707, as amended by S-3363:

	CBC Residential Facilities	Prison
FY 1998	15	13
FY 1999	29	24
FY 2002	29	62

Jail admissions are projected to increase by 3,100 offenders annually. Because the length of stay is unknown, the annual impact on population cannot be determined.

FISCAL IMPACT

The estimated fiscal impact of House File 707, as amended by S-3363 is as follows:

STATE GENERAL FUND

	<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2002</u>
Prisons	\$ 57,000	\$ 105,000	\$ 272,000
CBCs	27,000	52,000	52,000
Judicial Dept.	Unknown	Unknown	Unknown
Incr. fines	Unknown	Unknown	Unknown

ROAD USE TAX FUND

DOT Notifications (see Assumption #10)	\$ 0	\$ 0	\$ 0
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LOCAL GOVERNMENTS

Jails

Unknown

Unknown

Unknown

SOURCES

Criminal and Juvenile Justice Planning Division,  
Department of Human Rights  
Department of Corrections  
Department of Transportation  
Judicial Department

(LSB 2472HV.3, TCF)

FILED APRIL 10, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 707  
FISCAL NOTE**

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The estimate for House File 707, as passed by the House, submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House file 707, as passed by the House, amends certain laws relating to the offense of operating a motor vehicle while intoxicated, and related provisions of chapter 321. The Bill addresses substance abuse evaluations and education, use of ignition interlocking devices, motor vehicle license revocations, civil and criminal penalties, vehicular homicide, and forfeiture of automobiles by persons committing relevant violations.

**ASSUMPTIONS**

1. Charge, conviction and sentencing patterns, prisoner length of stay, revocation rates, and other relevant policies will not change over the projection period. There will be a six month lag from the law's effective date and the initial impact on the correctional system.
2. There are approximate 5,600 first-time OWI offenders per year, based on FY 1995 Governor's Traffic Safety Bureau data. One half of these offenders have a blood alcohol level exceeding 0.15 and will receive jail sentences. An estimated 300 OWI-2nd offenders and 100 OWI-3rd offenders will be incarcerated. Thirty-eight will be assigned to prison awaiting community placements; 42 will be diverted to community-based corrections residential facilities; and 330 will go to jail.
3. The marginal cost for adding an inmate to prison or to a community based residential facility is \$12 per day. Offenders sent to residential facilities will spend approximately five months at the facility.
4. Data is not currently available to determine the effect of extending the timeframe from six years to 12 years for determining prior OWI convictions. Some of the OWI-1st and OWI-2nd offenses will lead to convictions at a more serious level.
5. Data is not currently available to determine the costs associated with impounding vehicles or the revenues from vehicle forfeitures. The Judicial Department may incur additional costs for processing vehicle impoundment notices. The Judicial Department estimates that each notice will cost approximately \$2.35 to process. The total number of notices that will need to be processed is unknown.
6. Data is not currently available to determine the effect of increasing the financial penalties relating to OWI offenses. It should be noted, however, that as fines and fees accumulate, offenders may feel overwhelmed by the higher fines, resulting in fewer fines being collected.
7. The elimination of deferred and suspended sentences reduces the incentive to plea bargain and may result in more cases going to trial. While no estimate is available for how many cases will go to trial, the Judicial Department estimates that each trial will cost approximately \$1,800. In

- calendar 1996, approximately 4,700 OWI cases received deferred judgements.
8. Data is not currently available to determine the amount of restitution that would be paid to public agencies for providing emergency responses.
  9. The owner of a vehicle who permits another to drive his or her vehicle in violation of Section 321J commits a simple misdemeanor. This is a new crime, and it is unknown how many cases will occur. The Judicial Department estimates that each case will cost approximately \$100.
  10. The Department of Transportation issued approximately 23,000 OWI revocations during calendar 1996. The Department estimates that it will cost approximately \$12.50 for each notice sent to a driver with a suspended/revoked license that they are eligible to reapply for a license. The total estimated cost is \$290,000 annually from the Road Use Tax Fund. This cost is not anticipated to be a new cost to the Department, however, priorities within the existing workload may need to be adjusted.

**CORRECTIONAL IMPACT**

The Correctional system will experience the following increases from House File 707, as passed by the House:

	CBC Residential Facilities	Prison
FY 1998	15	13
FY 1999	29	24
FY 2002	29	62

Jail admissions are projected to increase by 3,100 offenders annually. Because the length of stay is unknown, the annual impact on population cannot be determined.

**FISCAL IMPACT**

The estimated fiscal impact of House File 707, as passed by the House is as follows:

**STATE GENERAL FUND**

	<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2002</u>
Prisons	\$ 57,000	\$ 105,000	\$ 272,000
CBCs	27,000	52,000	52,000
Judicial Dept.	Unknown	Unknown	Unknown
Incr. fines	Unknown	Unknown	Unknown

**ROAD USE TAX FUND**

DOT Notifications (see Assumption #10)	\$ 0	\$ 0	\$ 0
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**LOCAL GOVERNMENTS**

Jails

Unknown

Unknown

Unknown

SOURCES

Criminal and Juvenile Justice Planning Division,  
Department of Human Rights  
Department of Corrections  
Department of Transportation  
Judicial Department

(LSB 2472HV, TCF)

FILED APRIL 10, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 707  
FISCAL NOTE

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The estimate for House File 707, as amended and passed by the Senate is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House file 707, as amended and passed by the Senate, amends certain laws relating to the offense of operating a motor vehicle while intoxicated, and related provisions of chapter 321. The Bill addresses substance abuse evaluations and education, use of ignition interlocking devices, motor vehicle license revocations, civil and criminal penalties, vehicular homicide, and forfeiture of automobiles by persons committing relevant violations.

ASSUMPTIONS

1. Charge, conviction and sentencing patterns, prisoner length of stay, revocation rates, and other relevant policies will not change over the projection period. There will be a six month lag from the law's effective date and the initial impact on the correctional system.
2. Annually, there are approximately 5,600 first-time OWI offenders with deferred judgments or suspended sentences, 291 second-time OWI offenders with deferred judgments or suspended sentences, and 39 third-time OWI offenders with deferred judgments or suspended sentences. Currently, there are 2,651 jail beds available statewide with approximately 2,280 filled. Many of the unused beds are in smaller counties with jails having from five to ten beds with an average daily population from two to four inmates. Jail space in many of the larger populated counties is either at or exceeds current capacity. The smaller jails where bed space is currently available, are not geographically located to accommodate the jails that are overcrowded. Many counties with larger populations may be required to consider constructing additional jail space. The estimated cost to construct a jail bed is between \$45,000 and \$55,000.
3. The marginal cost for adding an inmate to prison, community-based corrections or jail is \$12 per day. Offenders sent to residential facilities will spend approximately five months at the facility. Offenders sent to jail will serve two days for first-time OWI offenders, second-time OWI offenders will serve seven days, and third-time OWI offenders will serve 30 days.
4. Data is not currently available to determine the effect of extending the timeframe from six years to 12 years for determining prior OWI convictions. Some of the first-time OWI and second-time OWI offenses will lead to convictions at a more serious level.
5. Data is not currently available to determine the costs associated with impounding vehicles or the revenues that may result from vehicle forfeitures.
6. The Judicial Department may incur additional costs for processing vehicle impoundment notices. The Judicial Department estimates that each notice

will cost approximately \$2.35 to process. The total number of notices that will need to be processed is unknown.

7. Data is not currently available to determine the effect of increasing the financial penalties relating to OWI offenses. The average fines levied, based on 1996 court data, for OWI offenses in selected counties, is as follows:

AVERAGE FINES LEVIED

<u>COUNTY</u>	<u>OWI-1st</u>	<u>OWI-2nd</u>	<u>OWI-3rd</u>
Linn	\$509	\$743	\$750
Polk	516	788	762
Pottawattamie	508	750	675
Scott	506	746	750
Woodbury	512	664	841

As fines and fees accumulate, the higher fines could impact the collection rate resulting in fewer fines being collected.

8. The elimination of deferred and suspended sentences reduces the incentive to plea bargain and may result in more cases going to trial. While no estimate is available on how many cases will go to trial, the Judicial Department estimates that each trial will cost approximately \$1,800. In calendar 1996, approximately 4,700 OWI cases received deferred judgments.
9. Data is not currently available to determine the amount of restitution that would be paid to public agencies for providing emergency responses.
10. The owner of a vehicle who permits another to drive his or her vehicle in violation of Section 321J commits a simple misdemeanor. This is a new crime, and the number of cases that will occur is unknown. The Judicial Department estimates that each case will cost approximately \$100 to process.
11. The Department of Transportation issued approximately 23,000 OWI revocations during calendar 1996. The Department estimates that it will cost approximately \$12.50 for each notice sent to a driver with a suspended/revoked license informing them that they are eligible to reapply for a license. The total estimated cost is \$290,000 annually from the Road Use Tax Fund. This cost is not anticipated to be a new cost to the Department, however, priorities within the existing workload may need to be adjusted.

**CORRECTIONAL IMPACT**

The correctional impact of House File 707, as amended and passed by the Senate is as follows:

	<b>CBC Residential Facilities</b>	<b>Prison</b>
FY 1998	15	13
FY 1999	29	24
FY 2002	29	62

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Jail admissions are projected to increase by approximately 5,930 offenders annually.

FISCAL IMPACT

The estimated fiscal impact of House File 707, as amended and passed by the Senate is as follows:

STATE GENERAL FUND

	<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2002</u>
Prisons	\$ 57,000	\$ 105,000	\$ 272,000
CBCs	27,000	52,000	52,000
Judicial Dept. Ops.	Unknown	Unknown	Unknown
Increased Fines	Unknown	Unknown	Unknown

ROAD USE TAX FUND

DOT Notifications (see Assumption #11)	\$ 0	\$ 0	\$ 0
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LOCAL GOVERNMENTS

## Jails:

OWI-1st @ 2 days	\$ 134,000	\$ 134,000	\$ 134,000
OWI-2nd @ 7 days	24,000	24,000	24,000
OWI-3rd @ 30 days	14,000	14,000	14,000
New Construction	Unknown	Unknown	Unknown
Vehicle Impoundment	Unknown	Unknown	Unknown

SOURCES

Criminal and Juvenile Justice Planning Division,  
 Department of Human Rights  
 Department of Corrections  
 Department of Transportation  
 Judicial Department

(LSB 2472hv.4, TCF)

FILED APRIL 16, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR



## HOUSE FILE 707

H-1312

1 Amend House File 707 as follows:

2 1. Page 4, line 6, by striking the word  
3 "chemical".4 2. Page 4, lines 10 and 11, by striking the words  
5 "pursuant to chapter 125".6 3. Page 9, lines 20 and 21, by striking the words  
7 "at least".8 4. Page 23, by inserting before line 16 the  
9 following:10 "Sec. \_\_\_\_ . Section 321J.12, subsection 5, Code  
11 1997, is amended to read as follows:12 5. Upon certification, subject to penalty of  
13 perjury, by the peace officer that there existed  
14 reasonable grounds to believe that the person had been  
15 operating a motor vehicle in violation of section  
16 321J.2A, that there existed one or more of the  
17 necessary conditions for chemical testing described in  
18 section 321J.6, subsection 1, and that the person  
19 submitted to chemical testing and the test results  
20 indicated an alcohol concentration as defined in  
21 section 321J.1 of .02 or more but less than .10, the  
22 department shall revoke the person's motor vehicle  
23 license or operating privilege for a period of sixty  
24 days if the person has had no revocations ~~within the~~  
25 ~~previous six years~~ under section 321J.2A, and for a  
26 period of ninety days if the person has had ~~one or~~  
27 ~~more a previous revocations within the previous six~~  
28 ~~years~~ revocation under section 321J.2A."29 5. Page 24, line 3, by striking the words "as  
30 provided in chapter 125".31 6. Page 28, line 11, by striking the words "as  
32 provided in chapter 125".33 7. Page 29, line 18, by striking the word  
34 "chemical".35 8. Page 30, line 17, by striking the word  
36 "chemical".37 9. Page 31, line 23, by striking the word  
38 "chemical".39 10. Page 32, line 33, by striking the word  
40 "chemical".

41 11. By renumbering as necessary.

By LAMBERTI of Polk

H-1312 FILED MARCH 24, 1997

*A - Adopted**B - Out of Order 3126197 (p. 835)*

## HOUSE FILE 707

H-1378

1 Amend House File 707 as follows:

2 1. By striking page 1, line 1, through page 2,  
3 line 4.

4 2. Page 4, by striking lines 27 through 31, and  
5 inserting the following:

6 "3. No conviction for, deferred judgment for, or  
7 plea of guilty to, a violation of this section which  
8 occurred more than ~~six~~ twelve years prior to the date  
9 of the violation charged shall be considered in  
10 determining that the violation charged is a second  
11 ~~third~~ or subsequent offense. For the purpose of".

12 3. Page 9, by striking lines 1 and 2 and  
13 inserting the following: "conviction or revocation  
14 under this chapter within the previous ~~six~~ twelve  
15 years ~~and-the~~. The defendant shall not be".

16 4. Page 9, line 18, by striking the words "~~within~~  
17 ~~the-previous-six-years~~" and inserting the following:  
18 "within the previous ~~six~~ twelve years".

19 5. Page 22, line 22, by striking the words  
20 "~~within-the-previous-six-years~~" and inserting the  
21 following: "within the previous ~~six~~ twelve years".

22 6. Page 22, line 25, by striking the words  
23 "~~within-the-previous-six-years~~" and inserting the  
24 following: "within the previous ~~six~~ twelve years".

25 7. Page 23, line 13, by striking the words  
26 "~~within-the-previous-six-years~~" and inserting the  
27 following: "within the previous ~~six~~ twelve years".

28 8. Page 23, line 15, by striking the words  
29 "~~within-the-previous-six-years~~" and inserting the  
30 following: "within the previous ~~six~~ twelve years".

31 9. Page 23, by inserting before line 16 the  
32 following:

33 "Sec. \_\_\_\_ . Section 321J.12, subsection 5, Code  
34 1997, is amended to read as follows:

35 5. Upon certification, subject to penalty of  
36 perjury, by the peace officer that there existed  
37 reasonable grounds to believe that the person had been  
38 operating a motor vehicle in violation of section  
39 321J.2A, that there existed one or more of the  
40 necessary conditions for chemical testing described in  
41 section 321J.6, subsection 1, and that the person  
42 submitted to chemical testing and the test results  
43 indicated an alcohol concentration as defined in  
44 section 321J.1 of .02 or more but less than .10, the  
45 department shall revoke the person's motor vehicle  
46 license or operating privilege for a period of sixty  
47 days if the person has had no revocations within the  
48 previous ~~six~~ twelve years under section 321J.2A, and  
49 for a period of ninety days if the person has had one  
50 or more previous revocations within the previous ~~six~~

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Page 2

1 twelve years under section 321J.2A."

2 10. Page 24, lines 24 and 25, by striking the  
3 words "~~within-the-previous-six-years~~" and inserting  
4 the following: "within the previous six twelve  
5 years".

6 11. By striking page 29, line 32, through page  
7 30, line 1, and inserting the following:

8 "g. The offense is a violation of section 321J.2  
9 and, within the previous six twelve years, the person  
10 has been convicted of a violation of that section or  
11 the person's driver's license has been revoked  
12 ~~pursuant to section 321J.4, 321J.9, or 321J.12~~ under  
13 chapter 321J; a violation of section 707.6A,  
14 subsection 1; or a".

15 12. By renumbering, relettering, redesignating,  
16 and correcting internal references as necessary.

By DINKLA of Guthrie

H-1378 FILED MARCH 25, 1997

*Adopted 3/26/97 (p. 834)*

## HOUSE FILE 707

S-3363

1 Amend House File 707, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 1, by inserting before line 1 the  
4 following:  
5 "Section 1. Section 321.12, Code 1997, is amended  
6 to read as follows:  
7 321.12 OBSOLETE RECORDS DESTROYED.  
8 1. The director may destroy any records of the  
9 department which have been maintained on file for  
10 three years which the director deems obsolete and of  
11 no further service in carrying out the powers and  
12 duties of the department, except as otherwise provided  
13 in this section.  
14 2. ~~However,~~ operating Operating records relating  
15 to a person who has been issued a commercial driver's  
16 license shall be maintained on file in accordance with  
17 rules adopted by the department.  
18 3. The following records may be destroyed  
19 according to the following requirements:  
20 a. Records concerning suspensions authorized under  
21 section 321.210, subsection 1, paragraph "g", and  
22 section 321.210A may be destroyed six months after the  
23 suspension is terminated and the requirements of  
24 section 321.191 have been satisfied.  
25 b. Records concerning suspensions and surrender of  
26 licenses or registrations required under section  
27 321A.31 for failing to maintain proof of financial  
28 responsibility, as defined in section 321A.1, may be  
29 destroyed six months after the requirements of  
30 sections 321.191 and 321A.29 have been satisfied.  
31 4. The director shall not destroy any operating  
32 records pertaining to arrests or convictions for  
33 operating while intoxicated, in violation of section  
34 ~~321J.2, which are more than twelve years old. The~~  
35 ~~twelve-year period shall commence with the date of the~~  
36 ~~arrest or conviction for the offense, whichever first~~  
37 ~~occurs. However, the director shall not destroy~~  
38 ~~operating records which pertain to arrests or~~  
39 ~~convictions for operating while intoxicated after the~~  
40 ~~expiration of twelve years when the motor vehicle~~  
41 ~~being operated was a commercial motor vehicle or if~~  
42 ~~all of the provisions of the court order have not been~~  
43 ~~satisfied.~~  
44 ~~---The director shall destroy any~~ or operating records  
45 pertaining to revocations for violations of section  
46 ~~321J.2A which are more than twelve years old. The~~  
47 ~~twelve-year period shall commence with the date the~~  
48 ~~revocation of the person's operating privileges~~  
49 ~~becomes effective. This paragraph shall not apply to~~  
50 ~~records of revocations which pertain to violations of~~  
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Page 2

1 ~~section-321J.2A-by-persons-operating-a-commercial~~  
2 ~~motor-vehicle, except that one conviction or~~  
3 ~~revocation under section 321J.2 or 321J.2A shall be~~  
4 ~~deleted from the operating records during the lifetime~~  
5 ~~of the individual driver if the following conditions~~  
6 ~~are satisfied:~~

7 a. ~~The conviction or revocation occurred when the~~  
8 ~~individual was under the age of twenty-one.~~

9 b. ~~No other convictions or revocations pursuant to~~  
10 ~~chapter 321J were imposed on the individual between~~  
11 ~~the time of the first conviction or revocation under~~  
12 ~~chapter 321J and the time the individual reached the~~  
13 ~~age of twenty-five."~~

14 2. Page 1, by inserting before line 5 the  
15 following:

16 "Sec. \_\_\_\_ . NEW SECTION. 321J.1A PUBLICATION OF  
17 LAW.

18 1. The department of public safety, the governor's  
19 traffic safety bureau, the state department of  
20 transportation, the governor, and the attorney general  
21 shall cooperate in an ongoing public education  
22 campaign to inform the citizens of this state of the  
23 dangers and the specific legal consequences of driving  
24 drunk in this state. The entities shall use their  
25 best efforts to utilize all available opportunities  
26 for making public service announcements on television  
27 and radio broadcasts, and to obtain and utilize  
28 federal funds for highway safety and other grants in  
29 conducting the public education campaign.

30 2. The department shall publish pamphlets  
31 containing the criminal and administrative penalties  
32 for drunk driving, and related laws, rules,  
33 instructions, and explanatory matter. This  
34 information may be included in pamphlets containing  
35 information related to other motor vehicle laws,  
36 published pursuant to section 321.15. Copies of such  
37 pamphlets shall be given wide distribution, and a  
38 supply shall be made available to each county  
39 treasurer."

40 3. Page 1, by striking lines 9 through 19 and  
41 inserting the following:

42 "a. A serious misdemeanor for the first offense  
43 ~~and shall be imprisoned, punishable by all of the~~  
44 ~~following:~~

45 (1) Imprisonment in the county jail or community-  
46 based correctional facility for not less than forty-  
47 eight hours, to be served consecutively, as ordered by  
48 the court, less credit for any time the person was  
49 confined in a jail or detention facility following  
50 arrest, and assessed. Pursuant to subsection 2A, this

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Page 3

1 sentence shall not be deferred or suspended. However,  
2 the court, in ordering service of the sentence and in  
3 its discretion, may accommodate the defendant's work  
4 schedule.

5 (2) Assessment of a fine of not-less-than-five  
6 hundred-dollars-nor-more-than one thousand dollars.  
7 As an alternative to a portion or all of the fine, the  
8 court may order the person to perform not-more-than  
9 two-hundred-hours-of unpaid community service. The  
10 court-may-accommodate-the-sentence-to-the-work  
11 schedule-of-the-defendant.

12 (3) Revocation of the person's motor vehicle  
13 license pursuant to section 321J.4, subsection 1,  
14 section 321J.9, or section 321J.12, which includes a  
15 minimum revocation period of one hundred eighty days,  
16 including a minimum period of ineligibility for a  
17 temporary restricted license of thirty days, and may  
18 involve a revocation period of one year.

19 (4) Assignment to substance abuse evaluation and  
20 treatment, a course for drinking drivers, and, if  
21 available and appropriate, a reality education  
22 substance abuse prevention program pursuant to  
23 subsection 2A."

24 4. Page 1, by striking line 25, and inserting the  
25 following: "fine of not less than seven one thousand  
26 five hundred fifty dollars nor more than five thousand  
27 dollars."

28 5. Page 1, by striking line 31, and inserting the  
29 following: "of not less than seven two thousand five  
30 hundred fifty dollars nor more than seven thousand  
31 five hundred dollars. The-minimum"

32 6. Page 2, line 23, by striking the word  
33 "minimum".

34 7. By striking page 2, line 24, through page 3,  
35 line 3, and inserting the following: "applicable to  
36 the defendant under subsection 2."

37 8. Page 3, by striking line 7 and inserting the  
38 following:

39 "c. Where the program is available and is  
40 appropriate for the convicted person, a person  
41 convicted of an offense under subsection 2 shall be  
42 ordered to participate in a reality education  
43 substance abuse prevention program as provided in  
44 section 321J.24.

45 d. A minimum term of imprisonment in a county jail  
46 or".

47 9. Page 3, by striking lines 22 through 30 and  
48 inserting the following:

49 "3. No-conviction-for,-deferred-judgment-for,-or  
50 plea-of-guilty-to,-a-violation-of-this-section-which

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Page 4

~~1 occurred more than six years prior to the date of the~~  
~~2 violation charged shall be considered in determining~~  
~~3 that the violation charged is a second, third, or~~  
~~4 subsequent offense. For the purpose of~~ In determining  
5 if a violation charged is a second, third, or  
6 subsequent offense, deferred for purposes of criminal  
7 sentencing or license revocation under this chapter:

8 a. Any conviction or revocation deleted from motor  
9 vehicle operating records pursuant to section 321.12  
10 shall not be considered as a previous offense.

11 b. Deferred judgments entered pursuant to previous  
12 versions of section 907.3 for violations of this  
13 section and convictions shall be counted as previous  
14 offenses.

15 c. Convictions or the equivalent of deferred  
16 judgments for".

17 10. Page 4, line 18, by striking the word  
18 "other".

19 11. Page 4, line 20, by striking the words "or  
20 receiving a deferred judgment for" and inserting the  
21 following: "~~or receiving a deferred judgment for~~".

22 12. Page 7, by striking lines 31 and 32 and  
23 inserting the following: "conviction or revocation  
24 under this chapter ~~within the previous six years and~~  
25 ~~the.~~ The defendant shall not be".

26 13. Page 8, by striking line 13, and inserting  
27 the following: "under this chapter ~~within the~~  
28 ~~previous six years.~~ The".

29 14. Page 10, lines 21 and 22, by striking the  
30 words "or as a condition of a deferred judgment for"  
31 and inserting the following: "~~or as a condition of a~~  
32 ~~deferred judgment for~~".

33 15. Page 12, by striking lines 17 through 19 and  
34 inserting the following:

35 "The clerk of court shall send notice of a  
36 conviction of an offense for which the vehicle was  
37 impounded to the impounding authority upon conviction  
38 of the defendant for such offense.

39 Impoundment of the vehicle under this section may  
40 occur in addition to any criminal penalty imposed  
41 under chapter 321 or this chapter for the underlying  
42 criminal offense."

43 16. Page 18, line 14, by striking the word "this"  
44 and inserting the following: "this".

45 17. Page 21, line 2, by striking the words  
46 "twenty-four hours" and inserting the following: "a  
47 reasonable time".

48 18. Page 21, by striking line 17, and inserting  
49 the following: "previous revocation ~~within the~~  
50 ~~previous six years~~ under".

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Page 5

1 19. Page 21, by striking lines 19 through 21 and  
2 inserting the following:

3 "b. ~~Five-hundred-forty-days~~ Two years if the  
4 person has ~~one-or-more had a previous revocations~~  
5 ~~within-the-previous-six-years~~ revocation under this  
6 chapter."

7 20. Page 22, by striking line 8 and inserting the  
8 following: "revocation ~~within-the-previous-six-years~~  
9 under this".

10 21. Page 22, by striking lines 10 through 12 and  
11 inserting the following:

12 "b. One year if the person has had ~~one-or-more a~~  
13 ~~previous revocations-within-the-previous-six-years~~  
14 revocation under this chapter."

15 22. Page 22, by striking lines 15 through 29 and  
16 inserting the following:

17 "5. Upon certification, subject to penalty of  
18 perjury, by the peace officer that there existed  
19 reasonable grounds to believe that the person had been  
20 operating a motor vehicle in violation of section  
21 321J.2A, that there existed one or more of the  
22 necessary conditions for chemical testing described in  
23 section 321J.6, subsection 1, and that the person  
24 submitted to chemical testing and the test results  
25 indicated an alcohol concentration as defined in  
26 section 321J.1 of .02 or more but less than .10, the  
27 department shall revoke the person's motor vehicle  
28 license or operating privilege for a period of sixty  
29 days if the person has had no ~~revocations-within-the~~  
30 ~~previous-six-years~~ previous revocation under section  
31 321J.2A this chapter, and for a period of ninety days  
32 if the person has had ~~one-or-more a~~ previous  
33 ~~revocations-within-the-previous-six-years~~ revocation  
34 under section-321J.2A this chapter."

35 23. Page 23, by inserting before line 18 the  
36 following:

37 "The court or department may request that the  
38 community college conducting the course for drinking  
39 drivers which the person is ordered to attend  
40 immediately report to the court or department that the  
41 person has successfully completed the course for  
42 drinking drivers. The court or department may request  
43 that the treatment program which the person attends  
44 periodically report on the defendant's attendance and  
45 participation in the program, as well as the status of  
46 treatment or rehabilitation."

47 24. Page 24, lines 4 and 5, by striking the words  
48 "within the previous six twelve years" and inserting  
49 the following: "~~within-the-previous-six-years~~".

50 25. Page 26, by inserting before line 35 the

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Page 6

1 following:

2 "Sec. \_\_\_\_\_. Section 321J.24, subsection 1,  
3 paragraph b, Code 1997, is amended to read as follows:

4 b. "Participant" means a person ~~who is sixteen~~  
5 ~~years of age or older but under the age of twenty-one,~~  
6 and who is ordered by the court to participate in the  
7 reality education substance abuse prevention program.

8 Sec. \_\_\_\_\_. Section 321J.24, subsection 2, Code  
9 1997, is amended to read as follows:

10 2. A reality education substance abuse prevention  
11 program is established in those judicial districts  
12 where the chief judge of the judicial district  
13 authorizes participation in the program. Upon a  
14 conviction or adjudication for a violation of section  
15 321J.2, ~~or the entry of a deferred judgment concerning~~  
16 ~~a violation of section 321J.2,~~ the court or juvenile  
17 court, ~~with the consent of the defendant or delinquent~~  
18 ~~child,~~ may order ~~a defendant who is sixteen years of~~  
19 ~~age or older but under the age of twenty-one or~~  
20 ~~delinquent child who is sixteen years of age or older~~  
21 to participate participation in the reality education  
22 substance abuse prevention program as a term and  
23 condition of probation or disposition in addition to  
24 any other term or condition of probation or  
25 disposition required or authorized by law. The court  
26 or juvenile court shall require the defendant or  
27 delinquent child to abstain from consuming any  
28 controlled substance, alcoholic liquor, wine, or beer  
29 ~~before reaching age twenty-one~~ while participating in  
30 the program.

31 Sec. \_\_\_\_\_. Section 321J.25, subsection 4, Code  
32 1997, is amended to read as follows:

33 4. Upon the revocation of the motor vehicle  
34 license or operating privileges of a person who is  
35 fourteen years of age or older for a violation of  
36 section 321J.2A, if the person has had no previous  
37 revocations under either section 321J.2 or section  
38 321J.2A, a person may participate in the substance  
39 abuse awareness program. The state department of  
40 transportation shall notify a potential program  
41 participant of the possibility and potential benefits  
42 of attending a program and shall notify a potential  
43 program participant of the availability of programs  
44 which exist in the area in which the person resides.  
45 The state department of transportation shall consult  
46 with the Iowa department of public health to determine  
47 what programs are available in various areas of the  
48 state. ~~The period of revocation for a person whose~~  
49 ~~motor vehicle license or operating privilege has been~~  
50 ~~revoked under section 321J.2A, shall be reduced by~~

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Page 7

1 ~~fifty-percent-upon-receipt-by-the-state-department-of~~  
2 ~~transportation-of-a-certification-by-a-program~~  
3 ~~provider-that-the-person-has-completed-a-program."~~

4 26. Page 27, by inserting before line 30 the  
5 following:

6 "d. Where the program is available and appropriate  
7 for the defendant, the court shall also order the  
8 defendant to participate in a reality education  
9 substance abuse prevention program as provided in  
10 section 321J.24."

11 27. Page 28, by striking lines 18 through 33 and  
12 inserting the following: "operation of a motor  
13 vehicle while intoxicated."

14 28. Page 29, by inserting before line 9 the  
15 following:

16 "Sec. \_\_\_\_ . Section 811.1, subsections 1 and 2,  
17 Code 1997, are amended to read as follows:

18 1. A defendant awaiting judgment of conviction and  
19 sentencing following either a plea or verdict of  
20 guilty of a class "A" felony, murder, any class "B"  
21 felony included in section 707.6A, felonious assault,  
22 felonious child endangerment, sexual abuse in the  
23 second degree, sexual abuse in the third degree,  
24 kidnapping, robbery in the first degree, arson in the  
25 first degree, or burglary in the first degree, or any  
26 felony included in section 124.401, subsection 1,  
27 paragraph "a".

28 2. A defendant appealing a conviction of a class  
29 "A" felony, murder, any class "B" felony included in  
30 section 707.6A, felonious assault, felonious child  
31 endangerment, sexual abuse in the second degree,  
32 sexual abuse in the third degree, kidnapping, robbery  
33 in the first degree, arson in the first degree, or  
34 burglary in the first degree, or any felony included  
35 in section 124.401, subsection 1, paragraph "a".

36 29. Page 29, lines 11 and 12, by striking the  
37 words "and, within the previous ~~six~~ twelve years," and  
38 inserting the following: "~~and, within the previous~~  
39 ~~six years,~~".

40 30. Page 29, by striking lines 18 through 32 and  
41 inserting the following: "intoxicated."

42 31. By striking page 30, line 23, through page  
43 31, line 3, and inserting the following: "involving  
44 operation of a motor vehicle while intoxicated."

45 32. By striking page 31, line 33, through page  
46 32, line 13, and inserting the following: "of a motor  
47 vehicle while intoxicated."

48 33. Title page, by striking line 7 and inserting  
49 the following: "certain bail restrictions and  
50 penalties."

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Page 8

1 34. By renumbering as necessary.

By COMMITTEE ON JUDICIARY  
ANDY McKEAN, Chairperson

S-3363 FILED APRIL 7, 1997

*Adopted as amended 4/10/97 (p. 1098)*

## HOUSE FILE 707

S-3450

1 Amend the amendment, S-3363, to House File 707, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 4, by inserting before line 22 the  
5 following:  
6 "\_\_\_\_. Page 7, by inserting before line 22 the  
7 following:  
8 "Sec. \_\_\_\_ . Section 321J.3, Code 1997, is amended  
9 by adding the following new subsection:  
10 NEW SUBSECTION. 3. The state department of  
11 transportation, in cooperation with the judicial  
12 department, shall adopt rules, pursuant to the  
13 procedure in section 125.33, regarding the assignment  
14 of persons ordered under section 321J.17 to submit to  
15 substance abuse evaluation and treatment. The rules  
16 shall be applicable only to persons other than those  
17 committed to the custody of the director of the  
18 department of corrections under section 321J.2. The  
19 rules shall be consistent with the practices and  
20 procedures of the judicial department in sentencing  
21 persons to substance abuse evaluation and treatment  
22 under section 321J.2. The rules shall include the  
23 requirement that the treatment programs utilized by a  
24 person pursuant to an order of the department meet the  
25 licensure standards of the division of substance abuse  
26 for the department of public health. The rules shall  
27 also include provisions for payment of costs by the  
28 offenders, including insurance reimbursement on behalf  
29 of offenders, or other forms of funding, and shall  
30 also address reporting requirements of the facility,  
31 consistent with the provisions of sections 125.84 and  
32 125.86. The department shall be entitled to treatment  
33 information contained in reports to the department,  
34 notwithstanding any provision of chapter 125 that  
35 would restrict department access to treatment  
36 information and records."  
37 2. By renumbering or relettering as necessary.

By ANDY McKEAN

S-3450 FILED APRIL 9, 1997

*Adopted 4/10/97 (p. 1097)*

S-3449

1 Amend the amendment, S-3363, to House File 707, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 2, by striking line 2 and inserting the  
5 following: "~~motor-vehicle~~, except for the following:  
6 a. One conviction or".  
7 2. Page 2, line 7, by striking the word "a." and  
8 inserting the following: "(1)".  
9 3. Page 2, line 9, by striking the word "b." and  
10 inserting the following: "(2)".  
11 4. Page 2, by inserting before line 14 the  
12 following:  
13 "b. A conviction or revocation under section  
14 321J.2 shall be deleted from the operating records  
15 twelve years after the date of conviction or the  
16 effective date of revocation."  
17 5. By renumbering, relettering, and correcting  
18 internal references as necessary.

By ANDY MCKEAN

S-3449 FILED APRIL 9, 1997

*Adopted 4/10/97 (p. 1097)*

## SENATE AMENDMENT TO HOUSE FILE 707

H-1692

1 Amend House File 707, as amended, passed, and  
2 reprinted by the House, as follows:

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

5 "Section 1. Section 321.12, Code 1997, is amended  
6 to read as follows:

7 321.12 OBSOLETE RECORDS DESTROYED.

8 1. The director may destroy any records of the  
9 department which have been maintained on file for  
10 three years which the director deems obsolete and of  
11 no further service in carrying out the powers and  
12 duties of the department, except as otherwise provided  
13 in this section.

14 2. ~~However, operating~~ Operating records relating  
15 to a person who has been issued a commercial driver's  
16 license shall be maintained on file in accordance with  
17 rules adopted by the department.

18 3. The following records may be destroyed  
19 according to the following requirements:

20 a. Records concerning suspensions authorized under  
21 section 321.210, subsection 1, paragraph "g", and  
22 section 321.210A may be destroyed six months after the  
23 suspension is terminated and the requirements of  
24 section 321.191 have been satisfied.

25 b. Records concerning suspensions and surrender of  
26 licenses or registrations required under section  
27 321A.31 for failing to maintain proof of financial  
28 responsibility, as defined in section 321A.1, may be  
29 destroyed six months after the requirements of  
30 sections 321.191 and 321A.29 have been satisfied.

31 4. The director shall not destroy any operating  
32 records pertaining to arrests or convictions for  
33 operating while intoxicated, in violation of section  
34 ~~321J.2, which are more than twelve years old. The~~  
35 ~~twelve-year period shall commence with the date of the~~  
36 ~~arrest or conviction for the offense, whichever first~~  
37 ~~occurs. However, the director shall not destroy~~  
38 ~~operating records which pertain to arrests or~~  
39 ~~convictions for operating while intoxicated after the~~  
40 ~~expiration of twelve years when the motor vehicle~~  
41 ~~being operated was a commercial motor vehicle or if~~  
42 ~~all of the provisions of the court order have not been~~  
43 ~~satisfied.~~

44 ~~---The director shall destroy any or~~ operating records  
45 pertaining to revocations for violations of section  
46 ~~321J.2A which are more than twelve years old. The~~  
47 ~~twelve-year period shall commence with the date the~~  
48 ~~revocation of the person's operating privileges~~  
49 ~~becomes effective. This paragraph shall not apply to~~  
50 ~~records of revocations which pertain to violations of~~

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Page 2

1 ~~section-321J.2A-by-persons-operating-a-commercial~~  
2 ~~motor-vehicle, except for the following:~~

3 a. One conviction or revocation under section  
4 321J.2 or 321J.2A shall be deleted from the operating  
5 records during the lifetime of the individual driver  
6 if the following conditions are satisfied:

7 (1) The conviction or revocation occurred when the  
8 individual was under the age of twenty-one.

9 (2) No other convictions or revocations pursuant  
10 to chapter 321J were imposed on the individual between  
11 the time of the first conviction or revocation under  
12 chapter 321J and the time the individual reached the  
13 age of twenty-five.

14 b. A conviction or revocation under section 321J.2  
15 shall be deleted from the operating records twelve  
16 years after the date of conviction or the effective  
17 date of revocation."

18 2. Page 1, by inserting before line 5 the  
19 following:

20 "Sec. \_\_\_\_ . NEW SECTION. 321J.1A PUBLICATION OF  
21 LAW.

22 1. The department of public safety, the governor's  
23 traffic safety bureau, the state department of  
24 transportation, the governor, and the attorney general  
25 shall cooperate in an ongoing public education  
26 campaign to inform the citizens of this state of the  
27 dangers and the specific legal consequences of driving  
28 drunk in this state. The entities shall use their  
29 best efforts to utilize all available opportunities  
30 for making public service announcements on television  
31 and radio broadcasts, and to obtain and utilize  
32 federal funds for highway safety and other grants in  
33 conducting the public education campaign.

34 2. The department shall publish pamphlets  
35 containing the criminal and administrative penalties  
36 for drunk driving, and related laws, rules,  
37 instructions, and explanatory matter. This  
38 information may be included in pamphlets containing  
39 information related to other motor vehicle laws,  
40 published pursuant to section 321.15. Copies of such  
41 pamphlets shall be given wide distribution, and a  
42 supply shall be made available to each county  
43 treasurer."

44 3. Page 1, by striking lines 9 through 19 and  
45 inserting the following:

46 "a. A serious misdemeanor for the first offense  
47 and shall be imprisoned, punishable by all of the  
48 following:

49 (1) Imprisonment in the county jail or community-  
50 based correctional facility for not less than forty-

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Page 3

1 eight hours, to be served consecutively, as ordered by  
2 the court, less credit for any time the person was  
3 confined in a jail or detention facility following  
4 ~~arrest, and assessed.~~ Pursuant to subsection 2A, this  
5 sentence shall not be deferred or suspended. However,  
6 the court, in ordering service of the sentence and in  
7 its discretion, may accommodate the defendant's work  
8 schedule.

9 (2) ~~Assessment of a fine of not less than five~~  
10 ~~hundred dollars nor more than~~ one thousand dollars.  
11 As an alternative to a portion or all of the fine, the  
12 court may order the person to perform ~~not more than~~  
13 ~~two hundred hours of~~ unpaid community service. The  
14 ~~court may accommodate the sentence to the work~~  
15 ~~schedule of the defendant.~~

16 (3) Revocation of the person's motor vehicle  
17 license pursuant to section 321J.4, subsection 1,  
18 section 321J.9, or section 321J.12, which includes a  
19 minimum revocation period of one hundred eighty days,  
20 including a minimum period of ineligibility for a  
21 temporary restricted license of thirty days, and may  
22 involve a revocation period of one year.

23 (4) Assignment to substance abuse evaluation and  
24 treatment, a course for drinking drivers, and, if  
25 available and appropriate, a reality education  
26 substance abuse prevention program pursuant to  
27 subsection 2A."

28 4. Page 1, by striking line 25, and inserting the  
29 following: "fine of not less than seven one thousand  
30 five hundred fifty dollars nor more than five thousand  
31 dollars."

32 5. Page 1, by striking line 31, and inserting the  
33 following: "of not less than seven two thousand five  
34 hundred fifty dollars nor more than seven thousand  
35 five hundred dollars. The minimum"

36 6. Page 2, line 23, by striking the word  
37 "minimum".

38 7. By striking page 2, line 24, through page 3,  
39 line 3, and inserting the following: "applicable to  
40 the defendant under subsection 2."

41 8. Page 3, by striking line 7 and inserting the  
42 following:

43 "c. Where the program is available and is  
44 appropriate for the convicted person, a person  
45 convicted of an offense under subsection 2 shall be  
46 ordered to participate in a reality education  
47 substance abuse prevention program as provided in  
48 section 321J.24.

49 d. A minimum term of imprisonment in a county jail  
50 or".

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Page 4

1 9. Page 3, by striking lines 22 through 30 and  
2 inserting the following:  
3 "~~3. No conviction for, deferred judgment for, or~~  
4 ~~plea of guilty to, a violation of this section which~~  
5 ~~occurred more than six years prior to the date of the~~  
6 ~~violation charged shall be considered in determining~~  
7 ~~that the violation charged is a second, third, or~~  
8 ~~subsequent offense. -- For the purpose of~~ In determining  
9 if a violation charged is a second, ~~third,~~ or  
10 subsequent offense, deferred for purposes of criminal  
11 sentencing or license revocation under this chapter:

12 a. Any conviction or revocation deleted from motor  
13 vehicle operating records pursuant to section 321.12  
14 shall not be considered as a previous offense.

15 b. Deferred judgments entered pursuant to previous  
16 versions of section 907.3 for violations of this  
17 section and convictions shall be counted as previous  
18 offenses.

19 c. Convictions or the equivalent of deferred  
20 judgments for".

21 10. Page 4, line 18, by striking the word  
22 "other".

23 11. Page 4, line 20, by striking the words "or  
24 receiving a deferred judgment for" and inserting the  
25 following: "or-receiving-a-deferred-judgment-for".

26 12. Page 7, by inserting before line 22 the  
27 following:

28 "Sec. \_\_\_\_ . Section 321J.3, Code 1997, is amended  
29 by adding the following new subsection:

30 NEW SUBSECTION. 3. The state department of  
31 transportation, in cooperation with the judicial  
32 department, shall adopt rules, pursuant to the  
33 procedure in section 125.33, regarding the assignment  
34 of persons ordered under section 321J.17 to submit to  
35 substance abuse evaluation and treatment. The rules  
36 shall be applicable only to persons other than those  
37 committed to the custody of the director of the  
38 department of corrections under section 321J.2. The  
39 rules shall be consistent with the practices and  
40 procedures of the judicial department in sentencing  
41 persons to substance abuse evaluation and treatment  
42 under section 321J.2. The rules shall include the  
43 requirement that the treatment programs utilized by a  
44 person pursuant to an order of the department meet the  
45 licensure standards of the division of substance abuse  
46 for the department of public health. The rules shall  
47 also include provisions for payment of costs by the  
48 offenders, including insurance reimbursement on behalf  
49 of offenders, or other forms of funding, and shall  
50 also address reporting requirements of the facility,

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Page 5

1 consistent with the provisions of sections 125.84 and  
2 125.86. The department shall be entitled to treatment  
3 information contained in reports to the department,  
4 notwithstanding any provision of chapter 125 that  
5 would restrict department access to treatment  
6 information and records."

7 13. Page 7, by striking lines 31 and 32 and  
8 inserting the following: "conviction or revocation  
9 under this chapter ~~within-the-previous-six-years-and~~  
10 ~~the.~~ The defendant shall not be".

11 14. Page 8, by striking line 13, and inserting  
12 the following: "under this chapter ~~within-the~~  
13 ~~previous-six-years.~~ The".

14 15. Page 10, lines 21 and 22, by striking the  
15 words "or as a condition of a deferred judgment for"  
16 and inserting the following: "~~or-as-a-condition-of-a~~  
17 ~~deferred-judgment-for~~".

18 16. Page 12, by striking lines 17 through 19 and  
19 inserting the following:

20 "The clerk of court shall send notice of a  
21 conviction of an offense for which the vehicle was  
22 impounded to the impounding authority upon conviction  
23 of the defendant for such offense.

24 Impoundment of the vehicle under this section may  
25 occur in addition to any criminal penalty imposed  
26 under chapter 321 or this chapter for the underlying  
27 criminal offense."

28 17. Page 18, line 14, by striking the word "this"  
29 and inserting the following: "this".

30 18. Page 21, line 2, by striking the words  
31 "twenty-four hours" and inserting the following: "a  
32 reasonable time".

33 19. Page 21, by striking line 17, and inserting  
34 the following: "previous revocation ~~within-the~~  
35 ~~previous-six-years~~ under".

36 20. Page 21, by striking lines 19 through 21 and  
37 inserting the following:

38 "b. ~~Five-hundred-forty-days~~ Two years if the  
39 person has ~~one-or-more~~ had a previous revocations  
40 ~~within-the-previous-six-years~~ revocation under this  
41 chapter."

42 21. Page 22, by striking line 8 and inserting the  
43 following: "revocation ~~within-the-previous-six-years~~  
44 under this".

45 22. Page 22, by striking lines 10 through 12 and  
46 inserting the following:

47 "b. One year if the person has had ~~one-or-more~~ a  
48 ~~previous revocations-within-the-previous-six-years~~  
49 revocation under this chapter."

50 23. Page 22, by striking lines 15 through 29 and

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1 inserting the following:

2 "5. Upon certification, subject to penalty of  
3 perjury, by the peace officer that there existed  
4 reasonable grounds to believe that the person had been  
5 operating a motor vehicle in violation of section  
6 321J.2A, that there existed one or more of the  
7 necessary conditions for chemical testing described in  
8 section 321J.6, subsection 1, and that the person  
9 submitted to chemical testing and the test results  
10 indicated an alcohol concentration as defined in  
11 section 321J.1 of .02 or more but less than .10, the  
12 department shall revoke the person's motor vehicle  
13 license or operating privilege for a period of sixty  
14 days if the person has had no ~~revocations-within-the~~  
15 ~~previous-six-years~~ previous revocation under section  
16 321J.2A this chapter, and for a period of ninety days  
17 if the person has had ~~one-or-more~~ a previous  
18 ~~revocations-within-the-previous-six-years~~ revocation  
19 under section-321J.2A this chapter."

20 24. Page 23, by inserting before line 18 the  
21 following:

22 "The court or department may request that the  
23 community college conducting the course for drinking  
24 drivers which the person is ordered to attend  
25 immediately report to the court or department that the  
26 person has successfully completed the course for  
27 drinking drivers. The court or department may request  
28 that the treatment program which the person attends  
29 periodically report on the defendant's attendance and  
30 participation in the program, as well as the status of  
31 treatment or rehabilitation."

32 25. Page 24, lines 3 and 4, by striking the words  
33 "within the previous ~~six~~ twelve years" and inserting  
34 the following: "~~within-the-previous-six-years~~".

35 26. Page 26, by inserting before line 35 the  
36 following:

37 "Sec. \_\_\_\_ . Section 321J.24, subsection 1,  
38 paragraph b, Code 1997, is amended to read as follows:

39 b. "Participant" means a person ~~who-is-sixteen~~  
40 ~~years-of-age-or-older-but-under-the-age-of-twenty-one,~~  
41 and who is ordered by the court to participate in the  
42 reality education substance abuse prevention program.

43 Sec. \_\_\_\_ . Section 321J.24, subsection 2, Code  
44 1997, is amended to read as follows:

45 2. A reality education substance abuse prevention  
46 program is established in those judicial districts  
47 where the chief judge of the judicial district  
48 authorizes participation in the program. Upon a  
49 conviction or adjudication for a violation of section  
50 321J.2, ~~or-the-entry-of-a-deferred-judgment-concerning~~

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Page 7

1 ~~a-violation-of-section-321J.2,~~ the court or juvenile  
 2 ~~court,~~ ~~with-the-consent-of-the-defendant-or-delinquent~~  
 3 ~~child,~~ may order ~~a-defendant-who-is-sixteen-years-of~~  
 4 ~~age-or-older-but-under-the-age-of-twenty-one-or~~  
 5 ~~delinquent-child-who-is-sixteen-years-of-age-or-older~~  
 6 ~~to-participate~~ participation in the reality education  
 7 substance abuse prevention program as a term and  
 8 condition of probation or disposition in addition to  
 9 any other term or condition of probation or  
 10 disposition required or authorized by law. The court  
 11 or juvenile court shall require the defendant or  
 12 delinquent child to abstain from consuming any  
 13 controlled substance, alcoholic liquor, wine, or beer  
 14 ~~before-reaching-age-twenty-one~~ while participating in  
 15 the program.

16 Sec. \_\_\_\_ . Section 321J.25, subsection 4, Code  
 17 1997, is amended to read as follows:

18 4. Upon the revocation of the motor vehicle  
 19 license or operating privileges of a person who is  
 20 fourteen years of age or older for a violation of  
 21 section 321J.2A, if the person has had no previous  
 22 revocations under either section 321J.2 or section  
 23 321J.2A, a person may participate in the substance  
 24 abuse awareness program. The state department of  
 25 transportation shall notify a potential program  
 26 participant of the possibility and potential benefits  
 27 of attending a program and shall notify a potential  
 28 program participant of the availability of programs  
 29 which exist in the area in which the person resides.  
 30 The state department of transportation shall consult  
 31 with the Iowa department of public health to determine  
 32 what programs are available in various areas of the  
 33 state. ~~The-period-of-revocation-for-a-person-whose~~  
 34 ~~motor-vehicle-license-or-operating-privilege-has-been~~  
 35 ~~revoked-under-section-321J.2A,~~ ~~shall-be-reduced-by~~  
 36 ~~fifty-percent-upon-receipt-by-the-state-department-of~~  
 37 ~~transportation-of-a-certification-by-a-program~~  
 38 ~~provider-that-the-person-has-completed-a-program."~~

39 27. Page 27, by inserting before line 30 the  
 40 following:

41 "d. Where the program is available and appropriate  
 42 for the defendant, the court shall also order the  
 43 defendant to participate in a reality education  
 44 substance abuse prevention program as provided in  
 45 section 321J.24."

46 28. Page 28, by striking lines 18 through 33 and  
 47 inserting the following: "operation of a motor  
 48 vehicle while intoxicated."

49 29. Page 29, by inserting before line 9 the  
 50 following:

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Page 8

- 1 "Sec. \_\_\_\_ Section 811.1, subsections 1 and 2,  
2 Code 1997, are amended to read as follows:  
3 1. A defendant awaiting judgment of conviction and  
4 sentencing following either a plea or verdict of  
5 guilty of a class "A" felony, murder, any class "B"  
6 felony included in section 707.6A, felonious assault,  
7 felonious child endangerment, sexual abuse in the  
8 second degree, sexual abuse in the third degree,  
9 kidnapping, robbery in the first degree, arson in the  
10 first degree, or burglary in the first degree, or any  
11 felony included in section 124.401, subsection 1,  
12 paragraph "a".  
13 2. A defendant appealing a conviction of a class  
14 "A" felony, murder, any class "B" felony included in  
15 section 707.6A, felonious assault, felonious child  
16 endangerment, sexual abuse in the second degree,  
17 sexual abuse in the third degree, kidnapping, robbery  
18 in the first degree, arson in the first degree, or  
19 burglary in the first degree, or any felony included  
20 in section 124.401, subsection 1, paragraph "a".  
21 30. Page 29, lines 11 and 12, by striking the  
22 words "and, within the previous ~~six~~ twelve years," and  
23 inserting the following: "~~and, within the previous~~  
24 ~~six-years,~~".  
25 31. Page 29, by striking lines 18 through 32 and  
26 inserting the following: "intoxicated."  
27 32. By striking page 30, line 23, through page  
28 31, line 3, and inserting the following: "involving  
29 operation of a motor vehicle while intoxicated."  
30 33. By striking page 31, line 33, through page  
31 32, line 13, and inserting the following: "of a motor  
32 vehicle while intoxicated."  
33 34. Title page, by striking line 7 and inserting  
34 the following: "certain bail restrictions and  
35 penalties."  
36 35. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-1692 FILED APRIL 14, 1997

*House Concurred**4/22/97**(P. 1446)**[Signature]*

## HOUSE FILE 707

H-1852

1 Amend the Senate amendment, H-1692, to House File  
2 707, as amended, passed, and reprinted by the House,  
3 as follows:  
4 1. Page 2, by striking lines 2 through 14 and  
5 inserting the following: "~~motor-vehicle~~, except that  
6 a conviction or revocation under section 321J.2".  
7 2. By striking page 2, line 49 through page 3,  
8 line 5, and inserting the following:  
9 "(1) Imprisonment in the county jail for not less  
10 than forty-eight hours, to be served as ordered by the  
11 court, less credit for any time the person was  
12 confined in a jail or detention facility following  
13 arrest, and assessed. However,".  
14 3. Page 3, by striking lines 38 through 40 and  
15 inserting the following:  
16 "\_\_\_\_\_. Page 3, by inserting before line 4 the  
17 following:  
18 "(5) If the offense under chapter 321J results in  
19 bodily injury to a person other than the defendant."  
20 4. Page 4, lines 15 and 16, by striking the words  
21 "previous versions of".  
22 5. Page 4, by striking lines 23 through 25.  
23 6. Page 5, by striking lines 14 through 17.  
24 7. By striking page 6, line 50, through page 7,  
25 line 1, and inserting the following: "321J.2, or the  
26 entry of a deferred judgment concerning a violation of  
27 section 321J.2, the court or juvenile".  
28 8. Page 8, by inserting before line 25 the  
29 following:  
30 "\_\_\_\_\_. Page 29, by striking lines 15 through 18  
31 and inserting the following: "~~321J.9, or 321J.12~~  
32 under chapter 321J, and any of the following apply:"  
33 9. Page 8, by striking lines 25 and 26 and  
34 inserting the following:  
35 "\_\_\_\_\_. Page 29, by inserting before line 33 the  
36 following:  
37 "(5) If the offense under chapter 321J results in  
38 bodily injury to a person other than the defendant."  
39 10. Page 8, by inserting before line 27 the  
40 following:  
41 "\_\_\_\_\_. Page 29, by inserting before line 33 the  
42 following:  
43 "Sec. \_\_\_\_\_. Section 907.3, subsection 1, Code 1997,  
44 is amended by adding the following new paragraph:  
45 NEW PARAGRAPH. j. The offense is a violation of  
46 section 707.6A, subsection 1; or a violation of  
47 section 707.6A, subsection 3, involving operation of a  
48 motor vehicle while intoxicated."  
49 11. Page 8, by striking lines 27 through 29, and  
50 inserting the following:

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Page 2

1 "\_\_\_\_\_. Page 30, by striking lines 21 through 23,  
2 and inserting the following:

3 "c. Section 321J.2, subsection 1, if".

4 12. Page 8, by inserting before line 30 the  
5 following:

6 "\_\_\_\_\_. Page 31, by inserting before line 4 the  
7 following:

8 "(5) If the offense under chapter 321J results in  
9 bodily injury to a person other than the defendant.

10 d. Section 707.6A, subsection 1; or section  
11 707.6A, subsection 3, involving operation of a motor  
12 vehicle while intoxicated."

13 13. Page 8, by striking lines 30 through 32 and  
14 inserting the following:

15 "\_\_\_\_\_. Page 31, by striking lines 31 through 33  
16 and inserting the following: "321J.2, subsection 1,  
17 if any of the following"."

18 14. Page 8, by inserting before line 33 the  
19 following:

20 "\_\_\_\_\_. Page 32, by inserting before line 14 the  
21 following:

22 "(5) If the offense under chapter 321J results in  
23 bodily injury to a person other than the defendant.

24 d. A sentence imposed pursuant to section 707.6A,  
25 subsection 1; or section 707.6A, subsection 3,  
26 involving operation of a motor vehicle while  
27 intoxicated."

28 15. By renumbering as necessary.

By LAMBERTI of Polk

LARSON of Linn

KREIMAN of Davis

CHURCHILL of Polk

MORELAND of Wapello

H-1852 FILED APRIL 22, 1997

ADOPTED

(P. 1445)

HOUSE FILE 707

H-1853

1 Amend the Senate amendment, H-1692, to House File  
2 707, as amended, passed, and reprinted by the House,  
3 as follows:

4 1. Page 3, by inserting after line 10 the  
5 following: "However, in the discretion of the court,  
6 if no personal or property injury has resulted from  
7 the defendant's actions, up to five hundred dollars of  
8 the fine may be waived."

9 2. By renumbering as necessary.

By MILLAGE of Scott

H-1853 FILED APRIL 22, 1997

ADOPTED

(P. 1446)

HOUSE AMENDMENT TO SENATE AMENDMENT TO  
HOUSE FILE 707

S-3695

1 Amend the Senate amendment, H-1692, to House File  
2 707, as amended, passed, and reprinted by the House,  
3 as follows:

4 1. Page 2, by striking lines 2 through 14 and  
5 inserting the following: "motor-vehicle, except that  
6 a conviction or revocation under section 321J.2".

7 2. By striking page 2, line 49 through page 3,  
8 line 5, and inserting the following:

9 "(1) Imprisonment in the county jail for not less  
10 than forty-eight hours, to be served as ordered by the  
11 court, less credit for any time the person was  
12 confined in a jail or detention facility following  
13 arrest,--and--assessed. However,".

14 3. Page 3, by inserting after line 10 the  
15 following: "However, in the discretion of the court,  
16 if no personal or property injury has resulted from  
17 the defendant's actions, up to five hundred dollars of  
18 the fine may be waived."

19 4. Page 3, by striking lines 38 through 40 and  
20 inserting the following:

21 " . Page 3, by inserting before line 4 the  
22 following:

23 "(5) If the offense under chapter 321J results in  
24 bodily injury to a person other than the defendant."

25 5. Page 4, lines 15 and 16, by striking the words  
26 "previous versions of".

27 6. Page 4, by striking lines 23 through 25.

28 7. Page 5, by striking lines 14 through 17.

29 8. By striking page 6, line 50, through page 7,  
30 line 1, and inserting the following: "321J.2, or the  
31 entry of a deferred judgment concerning a violation of  
32 section 321J.2, the court or juvenile".

33 9. Page 8, by inserting before line 25 the  
34 following:

35 " . Page 29, by striking lines 15 through 18  
36 and inserting the following: "321J.9,--or--321J.12  
37 under chapter 321J, and any of the following apply:"

38 10. Page 8, by striking lines 25 and 26 and  
39 inserting the following:

40 " . Page 29, by inserting before line 33 the  
41 following:

42 "(5) If the offense under chapter 321J results in  
43 bodily injury to a person other than the defendant."

44 11. Page 8, by inserting before line 27 the  
45 following:

46 " . Page 29, by inserting before line 33 the  
47 following:

48 "Sec. . Section 907.3, subsection 1, Code 1997,  
49 is amended by adding the following new paragraph:

50 NEW PARAGRAPH. j. The offense is a violation of

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Page 2

1 section 707.6A, subsection 1; or a violation of  
2 section 707.6A, subsection 3, involving operation of a  
3 motor vehicle while intoxicated."  
4 12. Page 8, by striking lines 27 through 29, and  
5 inserting the following:  
6 "\_\_\_\_. Page 30, by striking lines 21 through 23,  
7 and inserting the following:  
8 "c. Section 321J.2, subsection 1, if".  
9 13. Page 8, by inserting before line 30 the  
10 following:  
11 "\_\_\_\_. Page 31, by inserting before line 4 the  
12 following:  
13 "(5) If the offense under chapter 321J results in  
14 bodily injury to a person other than the defendant.  
15 d. Section 707.6A, subsection 1; or section  
16 707.6A, subsection 3, involving operation of a motor  
17 vehicle while intoxicated."  
18 14. Page 8, by striking lines 30 through 32 and  
19 inserting the following:  
20 "\_\_\_\_. Page 31, by striking lines 31 through 33  
21 and inserting the following: "321J.2, subsection 1,  
22 if any of the following,"  
23 15. Page 8, by inserting before line 33 the  
24 following:  
25 "\_\_\_\_. Page 32, by inserting before line 14 the  
26 following:  
27 "(5) If the offense under chapter 321J results in  
28 bodily injury to a person other than the defendant.  
29 d. A sentence imposed pursuant to section 707.6A,  
30 subsection 1; or section 707.6A, subsection 3,  
31 involving operation of a motor vehicle while  
32 intoxicated."  
33 16. By renumbering, relettering, or redesignating  
34 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3695 FILED APRIL 22, 1997

*Senate Concurred*

4/23/97

(P. 1351)

5-3/31/97 Judiciary  
5-4-7-97 Amend/Do Pass 53363

HOUSE FILE 707  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 222)

(As Amended and Passed by the House, March 26, 1997)

Passed House, Date 4/22/97 (p. 1446) Passed Senate, Date 4/10/97 (p. 1104)  
Vote: Ayes 99 Nays 1 Vote: Ayes 45 Nays 3  
Approved May 21, 1997  
Passed 4/23/97 (P. 1352)  
Vote 47-0

A BILL FOR

1 An Act relating to substance abuse evaluation and education, use  
2 of ignition interlock devices, motor vehicle license  
3 revocations and payment of restitution by certain drivers; to  
4 civil liability, forfeiture, and criminal penalties arising  
5 from operation of a motor vehicle by a person whose license is  
6 suspended, denied, revoked, or barred; and providing  
7 penalties.

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

9  
10  
11  
12  
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21

House Amendments \_\_\_\_\_

Deleted Language \*

1 Section 1. Section 321.555, subsection 1, paragraph c,  
2 Code 1997, is amended to read as follows:

3 c. Driving a motor vehicle while the person's motor  
4 vehicle license is suspended, denied, revoked, or barred.

5 Sec. 2. Section 321J.2, subsections 2 through 5, Code  
6 1997, are amended to read as follows:

7 2. A person who violates ~~this-section~~ subsection 1  
8 commits:

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

20 b. An aggravated misdemeanor for a second offense, and  
21 shall be imprisoned in the county jail or community-based  
22 correctional facility not less than seven days, ~~which-minimum~~  
23 ~~term-cannot-be-suspended-notwithstanding-section-901:57~~  
24 ~~subsection-3-and-section-907:37-subsection-37~~ and assessed a  
25 fine of 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 county jail  
28 for a determinate sentence of not more than one year but not  
29 less than thirty days, or committed to the custody of the  
30 director of the department of corrections, and assessed a fine  
31 of not less than seven hundred fifty dollars. ~~The-minimum~~  
32 ~~jail-term-of-thirty-days-cannot-be-suspended-notwithstanding~~  
33 ~~section-901:57-subsection-37-and-section-907:37-subsection-37~~  
34 ~~however,-the-person-sentenced-shall-receive-credit-for-any~~  
35 ~~time-the-person-was-confined-in-a-jail-or-detention-facility~~

1 following arrest:--If a person is committed to the custody of  
2 the director of the department of corrections pursuant to this  
3 paragraph and the sentence is suspended, the sentencing court  
4 shall order that the offender serve the thirty-day minimum  
5 term in the county jail:--If the sentence which commits the  
6 person to the custody of the director of the department of  
7 corrections is later imposed by the court, all time served in  
8 a county jail toward the thirty-day minimum term shall count  
9 as time served toward the sentence which committed the person  
10 to the custody of the director of the department of  
11 corrections:--A person convicted of a second or subsequent  
12 offense shall be ordered to undergo a substance abuse  
13 evaluation prior to sentencing:--If a A person is convicted of  
14 a third or subsequent offense or if the evaluation recommends  
15 treatment, the offender may be committed to the custody of the  
16 director of the department of corrections, who, if the  
17 sentence is not suspended, shall assign the person to a  
18 facility pursuant to section 904.513 or the offender may be  
19 committed to treatment in the community under the provisions  
20 of section 907.6.

21 2A. a. Notwithstanding the provisions of sections 901.5  
22 and 907.3, the court shall not defer judgment or sentencing,  
23 or suspend execution of any part of the minimum sentence  
24 applicable to the defendant under subsection 2 if any of the  
25 following apply:

26 (1) If the defendant's alcohol concentration established  
27 by the results of an analysis of a specimen of the defendant's  
28 blood, breath, or urine withdrawn in accordance with this  
29 chapter exceeds .15.

30 (2) If the defendant has previously been convicted of a  
31 violation of subsection 1 or a statute in another state  
32 substantially corresponding to subsection 1.

33 (3) If the defendant has previously received a deferred  
34 judgment or sentence for a violation of subsection 2 or for a  
35 violation of a statute in another state substantially

1 corresponding to subsection 2.

\* 2 (4) If the defendant refused to consent to testing  
3 requested in accordance with section 321J.6.

4 b. All persons convicted of an offense under subsection 2  
5 shall be ordered, at the person's expense, to undergo, prior  
\* 6 to sentencing, a substance abuse evaluation.

7 c. A minimum term of imprisonment in a county jail or  
8 community-based correctional facility imposed on a person  
9 convicted of a second or subsequent offense under paragraph  
10 "b"-or-"e" subsection 2 shall be served on consecutive days.  
11 However, if the sentencing court finds that service of the  
12 full minimum term on consecutive days would work an undue  
13 hardship on the person, or finds that sufficient jail space is  
14 not available and is not reasonably expected to become  
15 available within four months after sentencing to incarcerate  
16 the person serving the minimum sentence on consecutive days,  
17 the court may order the person to serve ~~not-less-than-forty-~~  
18 ~~eight-consecutive-hours-of~~ the minimum term in segments of at  
19 least forty-eight hours and to perform a specified number of  
20 hours of unpaid community service as deemed appropriate by the  
21 sentencing court.

22 3. No conviction for, deferred judgment for, or plea of  
23 guilty to, a violation of this section which occurred more  
24 than ~~six~~ twelve years prior to the date of the violation  
25 charged shall be considered in determining that the violation  
26 charged is a second~~7~~-~~third~~~~7~~ or subsequent offense. For the  
27 purpose of determining if a violation charged is a second~~7~~  
28 third~~7~~ or subsequent offense, deferred judgments entered  
29 pursuant to section 907.3 for violations of this section and  
30 convictions or the equivalent of deferred judgments for  
31 violations in any other states under statutes substantially  
32 corresponding to this section shall be counted as previous  
33 offenses. The courts shall judicially notice the statutes of  
34 other states which define offenses substantially equivalent to  
35 the one defined in this section and can therefore be

1 considered corresponding statutes. Each previous violation on  
2 which conviction or deferral of judgment was entered prior to  
3 the date of the violation charged shall be considered and  
4 counted as a separate previous offense.

5 4. A person shall not be convicted and sentenced for more  
6 than one violation of this section for actions arising out of  
7 the same event or occurrence, even if the violation-is-shown  
8 to-have-been-committed-by-either-or-both-of-the-means  
9 described event or occurrence involves more than one of the  
10 conditions specified in subsection 1 in-the-same-occurrence.

11 5. The clerk of the district court shall immediately  
12 certify to the department a true copy of each order entered  
13 with respect to deferral of judgment, deferral of sentence, or  
14 pronouncement of judgment and sentence for a defendant under  
15 this section.

16 Sec. 3. Section 321J.2, subsection 8, Code 1997, is  
17 amended to read as follows:

18 8. a. The In addition to any other fine or penalty  
19 imposed under this chapter, the court shall order a defendant  
20 convicted of or receiving a deferred judgment for a violation  
21 of this section to make restitution, in-an-amount-not-to  
22 exceed-two-thousand-dollars, for damages resulting directly  
23 from the violation, to the victim, pursuant to chapter 910.  
24 An amount paid pursuant to this restitution order shall be  
25 credited toward any adverse judgment in a subsequent civil  
26 proceeding arising from the same occurrence. However, other  
27 than establishing a credit, a restitution proceeding pursuant  
28 to this section shall not be given evidentiary or preclusive  
29 effect in a subsequent civil proceeding arising from the same  
30 occurrence.

31 b. The court may order restitution paid to any public  
32 agency for the costs of the emergency response resulting from  
33 the actions constituting a violation of this section, not  
34 exceeding five hundred dollars per public agency for each such  
35 response. For the purposes of this paragraph, "emergency

1 response" means any incident requiring response by fire  
2 fighting, law enforcement, ambulance, medical, or other  
3 emergency services. A public agency seeking such restitution  
4 shall consult with the county attorney regarding the expenses  
5 incurred by the public agency, and the county attorney may  
6 include the expenses in the statement of pecuniary damages  
7 pursuant to section 910.3.

8 Sec. 4. Section 321J.3, Code 1997, is amended to read as  
9 follows:

10 321J.3 ~~COURT-ORDERED-SUBSTANCE~~ SUBSTANCE ABUSE EVALUATION  
11 OR TREATMENT.

12 ~~1. On a conviction for a violation of section 321J.2, the~~  
13 ~~court may order the defendant to attend a course for drinking~~  
14 ~~drivers under section 321J.22. If the defendant submitted to~~  
15 ~~a chemical test on arrest for the violation of section 321J.2~~  
16 ~~and the test indicated an alcohol concentration of .20 or~~  
17 ~~higher, or if the defendant is charged with a second or~~  
18 ~~subsequent offense, the court shall order the defendant, on~~  
19 ~~conviction, to undergo a substance abuse evaluation and the~~  
20 ~~court shall order the defendant~~

21 1. a. In addition to orders issued pursuant to section  
22 321J.2, subsection 2A, and section 321J.17, the court shall  
23 order any defendant convicted under section 321J.2 to follow  
24 the recommendations proposed in the substance abuse evaluation  
25 for appropriate substance abuse treatment for the defendant.  
26 Court-ordered substance abuse treatment is subject to the  
27 periodic reporting requirements of section 125.86.

28 b. If a defendant is committed by the court to a substance  
29 abuse treatment facility, the administrator of the facility  
30 shall report to the court when it is determined that the  
31 defendant has received the maximum benefit of treatment at the  
32 facility and the defendant shall be released from the  
33 facility. The time for which the defendant is committed for  
34 treatment shall be credited against the defendant's sentence.

35 c. The court may prescribe the length of time for the

1 evaluation and treatment or it may request that the community  
2 college conducting the course for drinking drivers which the  
3 person is ordered to attend or the treatment program to which  
4 the person is committed immediately report to the court when  
5 the person has received maximum benefit from the course for  
6 drinking drivers or treatment program or has recovered from  
7 the person's addiction, dependency, or tendency to chronically  
8 abuse alcohol or drugs.

9 d. Upon successfully completing ~~or-attending~~ a course for  
10 drinking drivers or an ordered substance abuse treatment  
11 program, a court may place the person ~~may-be-placed~~ on  
12 probation for six months and as a condition of probation, the  
13 person shall attend a program providing posttreatment services  
14 relating to substance abuse as approved by the court.

15 e. A person committed under this section who does not  
16 possess sufficient income or estate to make payment of the  
17 costs of the treatment in whole or in part shall be considered  
18 a state patient and the costs of treatment shall be paid as  
19 provided in section 125.44.

20 f. A defendant who fails to carry out the order of the  
21 court ~~or-who-fails-to-successfully-complete-or-attend-a-course~~  
22 ~~for-drinking-drivers-or-an-ordered-substance-abuse-treatment~~  
23 program shall be confined in the county jail for twenty days  
24 in addition to any other imprisonment ordered by the court or  
25 may be ordered to perform unpaid community service work, and  
26 shall be placed on probation for one year with a violation of  
27 this probation punishable as contempt of court.

28 g. In addition to any other condition of probation, the  
29 person shall attend a program providing substance abuse  
30 prevention services or posttreatment services related to  
31 substance abuse as ordered by the court. The person shall  
32 report to the person's probation officer as ordered concerning  
33 proof of attendance at the treatment program or posttreatment  
34 program ordered by the court. Failure to attend or complete  
35 the program shall be considered a violation of probation and



1 is punishable as contempt of court.

2 2. ~~a. As-a-condition-of-a-suspended-sentence-or-portion~~  
3 ~~of-sentence-for~~ Upon a second, ~~third,~~ or subsequent offense in  
4 violation of section 321J.2, the court upon hearing may commit  
5 the defendant for inpatient treatment of alcoholism or drug  
6 addiction or dependency to any hospital, institution, or  
7 community correctional facility in Iowa providing such  
8 treatment. The time for which the defendant is committed for  
9 treatment shall be credited against the defendant's sentence.

10 b. The court may prescribe the length of time for the  
11 evaluation and treatment or it may request that the hospital  
12 to which the person is committed immediately report to the  
13 court when the person has received maximum benefit from the  
14 program of the hospital or institution or has recovered from  
15 the person's addiction, dependency, or tendency to chronically  
16 abuse alcohol or drugs.

17 c. A person committed under this section who does not  
18 possess sufficient income or estate to make payment of the  
19 costs of the treatment in whole or in part shall be considered  
20 a state patient and the costs of treatment shall be paid as  
21 provided in section 125.44.

22 Sec. 5. Section 321J.4, subsection 1, Code 1997, is  
23 amended to read as follows:

24 1. If a defendant is convicted of a violation of section  
25 321J.2 and the defendant's motor vehicle license or  
26 nonresident operating privilege has not been revoked under  
27 section 321J.9 or 321J.12 for the occurrence from which the  
28 arrest arose, the department shall revoke the defendant's  
29 motor vehicle license or nonresident operating privilege for  
30 one hundred eighty days if the defendant has had no previous  
31 conviction or revocation under this chapter within the  
32 previous ~~six~~ twelve years and-the. The defendant shall not be  
33 eligible for any temporary restricted license for at least  
34 thirty days after the effective date of the revocation if a  
35 test was obtained, and for at least ninety days if a test was

1 refused. If the defendant is under the age of twenty-one, the  
2 defendant shall not be eligible for a temporary restricted  
3 license for at least sixty days after the effective date of  
4 revocation.

5 1A. If a defendant is convicted of a violation of section  
6 321J.2, and the defendant's motor vehicle license or  
7 nonresident operating privilege has not already been revoked  
8 under section 321J.9 or 321J.12 for the occurrence from which  
9 the arrest arose, the department shall revoke the defendant's  
10 motor vehicle license or nonresident operating privilege for  
11 one-year two years if the defendant has had one-or-more a  
12 previous convictions conviction or revocations revocation  
13 under this chapter within the previous six twelve years. The  
14 defendant shall not be eligible for any temporary restricted  
\* 15 license during-the-entire-one-year-revocation-period for one  
16 year after the effective date of revocation. The defendant  
17 shall be ordered to install an ignition interlock device of a  
18 type approved by the commissioner of public safety on all  
19 vehicles owned by the defendant if the defendant seeks a  
20 temporary restricted license at the end of the minimum period  
21 of ineligibility. A temporary restricted license shall not be  
22 granted by the department until the defendant installs the  
23 ignition interlock device.

24 Sec. 6. Section 321J.4, subsection 3, Code 1997, is  
25 amended to read as follows:

26 3. a. Upon a plea or verdict of guilty of a third or  
27 subsequent violation of section 321J.2, the court shall order  
28 the department to revoke the defendant's motor vehicle license  
29 or nonresident operating privilege for a period of six years.  
30 The defendant shall not be eligible for a temporary restricted  
31 license for at least one year after the effective date of the  
32 revocation. The court shall require the defendant to  
33 surrender to it all Iowa licenses or permits held by the  
34 defendant, which the court shall forward to the department  
35 with a copy of the order for revocation. The defendant shall

1 be ordered to install an ignition interlock device of a type  
2 approved by the commissioner of public safety on all vehicles  
3 owned by the defendant if the defendant seeks a temporary  
4 restricted license at the end of the minimum period of  
5 ineligibility. A temporary restricted license shall not be  
6 granted by the department until the defendant installs the  
7 ignition interlock device.

8 ~~b.--After two years from the date of the order for~~  
9 ~~revocation, the defendant may apply to the court for~~  
10 ~~restoration of the defendant's eligibility for a motor vehicle~~  
11 ~~license.--The application may be granted only if all of the~~  
12 ~~following are shown by the defendant by a preponderance of the~~  
13 ~~evidence:~~

14 ~~(1)--The defendant has completed an evaluation and, if~~  
15 ~~recommended by the evaluation, a program of treatment for~~  
16 ~~chemical dependency and is recovering, or has substantially~~  
17 ~~recovered, from that dependency or tendency to abuse~~  
18 ~~alcohol or drugs;~~

19 ~~(2)--The defendant has not been convicted, since the date~~  
20 ~~of the revocation order, of any subsequent violations of~~  
21 ~~section 321J.2 or 123.46, or any comparable city or county~~  
22 ~~ordinance, and the defendant has not, since the date of the~~  
23 ~~revocation order, submitted to a chemical test under this~~  
24 ~~chapter that indicated an alcohol concentration as defined in~~  
25 ~~section 321J.1 of .10 or more, or refused to submit to~~  
26 ~~chemical testing under this chapter;~~

27 ~~(3)--The defendant has abstained from the excessive~~  
28 ~~consumption of alcoholic beverages and the consumption of~~  
29 ~~controlled substances, except at the direction of a licensed~~  
30 ~~physician or pursuant to a valid prescription;~~

31 ~~(4)--The defendant's motor vehicle license is not currently~~  
32 ~~subject to suspension or revocation for any other reason.~~

33 ~~c.--The court shall forward to the department a record of~~  
34 ~~any application submitted under paragraph "b" and the results~~  
35 ~~of the court's disposition of the application.~~

1 Sec. 7. Section 321J.4, subsection 5, Code 1997, is  
2 amended to read as follows:

3 5. Upon a plea or verdict of guilty of a violation of  
4 section 321J.2 which involved a death, the court shall  
5 determine in open court, from consideration of the information  
6 in the file and any other evidence the parties may submit,  
7 whether a death occurred and, if so, whether the defendant's  
8 conduct in violation of section 321J.2 caused the death. If  
9 the court so determines, the court shall order the department  
10 to revoke the defendant's motor vehicle license or nonresident  
11 operating privilege for a period of six years. The defendant  
12 shall not be eligible for any temporary restricted license  
13 ~~until the minimum period of ineligibility has expired under~~  
14 ~~this section or section 321J.9, 321J.12, or 321J.20~~ for at  
15 least two years after the revocation. The defendant shall  
16 surrender to the court any Iowa license or permit and the  
17 court shall forward it to the department with a copy of the  
18 order for revocation.

19 Sec. 8. Section 321J.4, subsection 7, Code 1997, is  
20 amended to read as follows:

21 7. a. On a conviction for or as a condition of a deferred  
22 judgment for a violation of section 321J.2, the court may  
23 order the defendant to install ignition interlock devices of a  
24 type approved by the commissioner of public safety on all  
25 motor vehicles owned or operated by the defendant which,  
26 without tampering or the intervention of another person, would  
27 prevent the defendant from operating the motor vehicle with an  
28 alcohol concentration greater than a level set by rule of the  
29 commissioner of public safety.

30 b. The commissioner of public safety shall adopt rules to  
31 approve certain ignition interlock devices and the means of  
32 installation of the devices, and shall establish the level of  
33 alcohol concentration beyond which an ignition interlock  
34 device will not allow operation of the motor vehicle in which  
35 it is installed.

1 c. The order to install ignition interlock devices shall  
2 remain in effect for a period of time as determined by the  
3 court which shall not exceed the maximum term of imprisonment  
4 which the court could have imposed according to the nature of  
5 the violation. While the order is in effect, the defendant  
6 shall not operate a motor vehicle which does not have an  
7 approved ignition interlock device installed.

8 d. If the defendant's motor vehicle license or nonresident  
9 operating privilege has been revoked, the department shall not  
10 issue a temporary permit or a motor vehicle license to the  
11 person without certification that approved ignition interlock  
12 devices have been installed in all motor vehicles owned or  
13 operated by the defendant while the order is in effect.

14 e. A defendant who fails within a reasonable time to  
15 comply with an order to install an approved ignition interlock  
16 device may be declared in contempt of court and punished  
17 accordingly.

18 f. A person who tampers with or circumvents an ignition  
19 interlock device installed under a court order while an order  
20 is in effect commits a serious misdemeanor.

21 Sec. 9. Section 321J.4B, Code 1997, is amended to read as  
22 follows:

23 321J.4B MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION --  
24 PENALTY -- LIABILITY OF VEHICLE OWNER.

25 1. For purposes of this section:

26 a. "Immobilized" means the installation of a device in a  
27 motor vehicle that completely prevents a motor vehicle from  
28 being operated, or the installation of an ignition interlock  
29 device of a type approved by the commissioner of public  
30 safety.

31 b. "Impoundment" means the process of seizure and  
32 confinement within an enclosed area of a motor vehicle, for  
33 the purpose of restricting access to the vehicle.

34 c. "Owner" means the registered titleholder of a motor  
35 vehicle; except in the case where a rental or leasing agency

1 is the registered titleholder, in which case the lessee of the  
2 vehicle shall be treated as the owner of the vehicle for  
3 purposes of this section.

4 2. A motor vehicle is subject to impoundment in the  
5 following circumstances:

6 a. If a person ~~is convicted of a~~ operates a vehicle in  
7 violation of section 321J.2, and if convicted for that  
8 conduct, the conviction would be a second~~7-third~~ or  
9 subsequent offense of ~~operating while intoxicated~~, the court  
10 shall order that any motor vehicles owned by the person and  
11 used to commit the offense and any other motor vehicle used  
12 under section 321J.2.

13 b. If a person operates a vehicle while that person's  
14 motor vehicle license or operating privilege has been  
15 suspended, denied, revoked, or barred due to a violation of  
16 section 321J.2.

17 Upon conviction of a defendant for a violation of this  
18 subsection, the clerk of court shall send notice of the  
19 conviction to the impounding authority.

20 3. The motor vehicle operated by the person in the  
21 commission of the any offense included in subsection 2 may be  
22 immediately impounded or immobilized in accordance with this  
23 section. For purposes of this section, "immobilized" means  
24 the installation of a device that completely prevents a motor  
25 vehicle from being operated, or the installation of an  
26 ignition interlock device, of a type approved by the  
27 commissioner of public safety, in a motor vehicle.

28 a. A person or agency taking possession of an impounded or  
29 immobilized motor vehicle shall do the following:

30 (1) Make an inventory of any property contained in the  
31 vehicle, according to the agency's inventory procedure. The  
32 agency responsible for the motor vehicle shall also deliver a  
33 copy of the inventory to the county attorney.

34 (2) Contact all rental or leasing agencies registered as  
35 owners of the vehicle, as well as any parties registered as

1 holders of a secured interest in the vehicle, in accordance  
2 with subsection 12.

3 b. The county attorney shall file a copy of the inventory  
4 with the district court as part of each file related to  
5 criminal charges filed under this section.

6 4. An owner of a motor vehicle impounded or immobilized  
7 under this section, who knows of, should have known of, or  
8 gives consent to the operation of, the motor vehicle in  
9 violation of subsection 2, paragraph "b", shall be:

10 a. Guilty of a simple misdemeanor, and

11 b. Jointly and severally liable for any damages caused by  
12 the person who operated the motor vehicle, subject to the  
13 provisions of chapter 668.

14 5. a. The following persons shall be entitled to  
15 immediate return of the motor vehicle without payment of costs  
16 associated with the impoundment or immobilization of the  
17 vehicle:

18 (1) The owner of the motor vehicle, if the person who  
19 operated the motor vehicle is not a co-owner of the motor  
20 vehicle.

21 (2) A motor vehicle rental or leasing agency that owns the  
22 vehicle.

23 (3) A person who owns the motor vehicle and who is charged  
24 but is not convicted of the violation of section 321.218,  
25 321.561, 321A.32, 321J.2, or 321J.21, which resulted in the  
26 impoundment or immobilization of the motor vehicle under this  
27 section.

28 ~~2-~~ b. The Upon conviction of the defendant for a violation  
29 of subsection 2, paragraph "a", the court may order continued  
30 impoundment, or the immobilization, of the motor vehicle used  
31 in the commission of the offense, if the convicted person is  
32 the owner of the motor vehicle, and shall specify all of the  
33 following in the order:

34 ~~a-~~ (1) The motor vehicles vehicle that are is subject to  
35 the order.

1 b. (2) The period of impoundment or immobilization.

2 c. (3) The person or agency responsible for carrying out  
3 the order requiring continued impoundment, or the  
4 immobilization, of the motor vehicle.

5 c. If a the vehicle which-is-to-be-impounded-or  
6 immobilized subject to the order is in the custody of a law  
7 enforcement agency, the court shall designate that agency as  
8 the responsible agency. If the vehicle is not in the custody  
9 of a law enforcement agency, the person or agency responsible  
10 for carrying out the order shall be any person deemed  
11 appropriate by the court, including but not limited to a law  
12 enforcement agency with jurisdiction over the area in which  
13 the residence of the vehicle owner is located. The person or  
14 agency responsible for carrying out the order shall determine  
15 whether the motor vehicle shall be impounded or immobilized.

16 3. d. The period of impoundment or immobilization of a  
17 motor vehicle under this section shall be the period of  
18 license revocation imposed upon the person convicted of the  
19 offense or one hundred eighty days, whichever period is  
20 longer. The impoundment or immobilization period shall  
21 commence on the day that the vehicle is actually first  
22 impounded or immobilized.

23 4. e. The clerk of the district court shall send a copy of  
24 the order to the department, the person convicted of the  
25 offense, ~~the-motor-vehicle-owner-if-the-owner-is-not-the~~  
26 ~~person-convicted,~~ and the person or agency responsible for  
27 executing the order for impoundment or immobilization, and any  
28 holders of any security interests in the vehicle.

29 ~~5.---If-the-vehicle-to-be-impounded-or-immobilized-is-in-the~~  
30 ~~custody-of-a-law-enforcement-agency,-the-agency-shall~~  
31 ~~immobilize-or-impound-the-vehicle-upon-receipt-of-the-order,-~~  
32 ~~seize-the-motor-vehicle's-license-plates-and-registration,-and~~  
33 ~~shall-send-or-deliver-the-vehicle's-license-plates-and~~  
34 ~~registration-to-the-department.~~

35 6. f. If the vehicle ~~to-be-impounded-or-immobilized~~



1 subject to the court order is not in the custody of a law  
2 enforcement agency, the person or agency designated in the  
3 order as the person or agency responsible for executing the  
4 order shall, upon receipt of the order, promptly locate the  
5 vehicle specified in the order, seize the motor vehicle and  
6 the license plates, and send or deliver the vehicle's license  
7 plates to the department.

8 7- If the vehicle is located at a place other than the  
9 place at which the impoundment-or-immobilization court order  
10 is to be carried out, the person or agency responsible for  
11 executing the order shall arrange for the vehicle to be moved  
12 to the place of impoundment or immobilization. When the  
13 vehicle is found, is impounded or immobilized, and is at the  
14 place of impoundment or immobilization, the person or agency  
15 responsible for executing the order shall notify the clerk of  
16 the date on which the order was executed. The clerk shall  
17 notify the department of the date on which the order was  
18 executed.

19 8- g. Upon receipt of the a court order for-impoundment-or  
20 immobilization-and-seizure-of-the-motor-vehicle,-if-the-agency  
21 responsible-for-carrying-out-the-order-determines-that-the  
22 motor-vehicle-is-to-be-impounded for continued impoundment or  
23 immobilization of the motor vehicle, the agency shall review  
24 the value of the vehicle in relation to the costs associated  
25 with the period of impoundment of the motor vehicle specified  
26 in the order. If the agency determines that the costs of  
27 impoundment of the motor vehicle exceed the actual wholesale  
28 value of the motor vehicle, the agency may treat the vehicle  
29 as an abandoned vehicle pursuant to section 321.89. If the  
30 agency elects to treat the motor vehicle as abandoned, the  
31 agency shall notify the registered owner of the motor vehicle  
32 that the vehicle shall be deemed abandoned and shall be sold  
33 in the manner provided in section 321.89 if payment of the  
34 total cost of impoundment is not received within twenty-one  
35 days of the mailing of the notice. The agency shall provide

1 documentation regarding the valuation of the vehicle and the  
2 costs of impoundment. This paragraph shall not apply to  
3 vehicles that are immobilized pursuant to this section or if  
4 subsection ~~15 or 16~~ 12, paragraph "a" or "b", applies.

5 6. Upon conviction of the defendant for a second or  
6 subsequent violation of subsection 2, paragraph "b", the court  
7 shall order, if the convicted person is the owner of the motor  
8 vehicle used in the commission of the offense, that that motor  
9 vehicle be seized and forfeited to the state pursuant to  
10 chapters 809 and 809A.

11 9: 7. a. Upon receipt of a notice of conviction of the  
12 defendant for a violation of subsection 2, the impounding  
13 authority shall seize the motor vehicle's license plates and  
14 registration, and shall send or deliver them to the  
15 department.

16 b. The department shall destroy license plates received  
17 under this section and shall not authorize the release of the  
18 vehicle or the issuance of new license plates for the vehicle  
19 until the period of impoundment or immobilization has expired,  
20 and the fee and costs assessed under subsection 10 have been  
21 paid. The fee for issuance of new license plates and  
22 certificates of registration shall be the same as for the  
23 replacement of lost, mutilated, or destroyed license plates  
24 and certificates of registration.

25 ~~10: 8. a. Except where the person who is convicted of~~  
26 ~~operating while intoxicated and being a second or subsequent~~  
27 ~~offender is not lawfully in possession of the motor vehicle,~~  
28 ~~the owner of any motor vehicle that is impounded or~~  
29 ~~immobilized under this section shall be assessed~~ Upon  
30 conviction for a violation of subsection 2, the court shall  
31 assess the defendant, in addition to any other penalty, a fee  
32 of one hundred dollars plus the cost of any expenses for  
33 towing, storage, and any other costs of impounding or  
34 immobilizing the motor vehicle, to be paid to the clerk of the  
35 district court.

1     ~~b.~~   The person or agency responsible for ~~carrying-out-the~~  
2 ~~order~~ impoundment or immobilization under this section shall  
3 inform the court of the costs of towing, storage, and any  
4 other costs of impounding or immobilizing the motor vehicle.  
5 Upon payment of the fee and costs, the clerk shall forward a  
6 copy of the receipt to the department.

7     ~~11-~~ c.   If a law enforcement agency impounds or immobilizes  
8 a motor vehicle, the amount of the fee and expenses deposited  
9 with the clerk shall be paid by the clerk to the law  
10 enforcement agency responsible for executing the order to  
11 reimburse the agency for costs incurred for impoundment or  
12 immobilization equipment and, if required, in sending officers  
13 to search for and locate the vehicle specified in the  
14 impoundment or immobilization order.

15     ~~12-~~ 9.   Operating a motor vehicle on a street or highway in  
16 this state in violation of an order of impoundment or  
17 immobilization is a serious misdemeanor. A motor vehicle  
18 which is subject to an order of impoundment or immobilization  
19 that is operated on a street or highway in this state in  
20 violation of the order shall be seized and forfeited to the  
21 state under chapters 809 and 809A.

22     ~~13-~~ 10.   Once the period of impoundment or immobilization  
23 has expired, the owner of the motor vehicle shall have thirty  
24 days to claim the motor vehicle and pay ~~the~~ all fees and  
25 charges imposed under this section. If the owner or the  
26 owner's designee has not claimed the vehicle and paid ~~the~~ all  
27 fees and charges imposed under this section within seven days  
28 from the date of expiration of the period, the clerk shall  
29 send written notification to the motor vehicle owner, at the  
30 owner's last known address, notifying the owner of the date of  
31 expiration of the period of impoundment or immobilization and  
32 of the period in which the motor vehicle must be claimed. If  
33 the motor vehicle owner fails to claim the motor vehicle and  
34 ~~pay the~~ all fees and charges imposed within the thirty-day  
35 period, the motor vehicle shall be forfeited to the state

1 under chapters 809 and 809A.

2 ~~14-~~ 11. a. (1) During the period of impoundment or  
3 immobilization, ~~a person convicted of the offense of operating~~  
4 ~~while intoxicated which resulted in the impoundment or~~  
5 ~~immobilization~~ the owner of an impounded or immobilized  
6 vehicle shall not sell or transfer the title of the motor  
7 vehicle which is subject to the order of impoundment or  
8 immobilization. The

9 (2) A person convicted of ~~the offense of operating while~~  
10 ~~intoxicated~~ an offense under subsection 2, shall also not  
11 purchase ~~another motor vehicle~~ or register any motor vehicle  
12 during the period of impoundment, or immobilization, or  
13 license revocation.

14 PARAGRAPH DIVIDED. Violation of this paragraph "a" is a  
15 serious misdemeanor.

16 b. If, during the period of impoundment or immobilization,  
17 the title to the motor vehicle which is the subject of the  
18 order is transferred by the foreclosure of a chattel mortgage,  
19 a sale upon execution, the cancellation of a conditional sales  
20 contract, or an order of a court, the court which enters the  
21 order that permits transfer of the title shall notify the  
22 department of the transfer of the title. The department shall  
23 enter notice of the transfer of the title to the motor vehicle  
24 in the previous owner's vehicle registration record.

25 ~~15-~~ 12. Notwithstanding the other requirements of this  
26 section, ~~if the owner of the motor vehicle is not the person~~  
27 ~~who is convicted of the offense which resulted in the issuance~~  
28 ~~of the order of impoundment or immobilization or the owner of~~  
29 ~~the motor vehicle is a motor vehicle rental or leasing~~  
30 ~~company, the owner, the owner's designee, or the rental or~~  
31 ~~leasing company shall be permitted to submit a claim for~~  
32 ~~return of the motor vehicle within twenty-four hours from~~  
33 ~~receipt of the order for impoundment or immobilization.:~~

34 a. Upon learning the address or phone number of a rental  
35 or leasing company which owns a motor vehicle impounded or

1 immobilized under this section, the peace officer, county  
2 attorney, or attorney general shall immediately contact the  
3 company to inform the company that the vehicle is available  
4 for return to the company. ~~The vehicle shall be returned to~~  
5 ~~the owner, owner's designee, or rental or leasing company and~~  
6 ~~the order for impoundment or immobilization shall be rescinded~~  
7 ~~with respect to the particular motor vehicle, if the owner or~~  
8 ~~owner's designee can prove to the satisfaction of the court~~  
9 ~~that the owner did not know or should not have known that the~~  
10 ~~vehicle was to be used in the commission of the offense of~~  
11 ~~operating while intoxicated, or if the rental or leasing~~  
12 ~~company did not know, should not have known, and did not~~  
13 ~~consent to the operation of the motor vehicle used in the~~  
14 ~~commission of the offense of operating while intoxicated. For~~  
15 ~~purposes of this section, unless the person convicted of the~~  
16 ~~offense which results in the imposition of the order for~~  
17 ~~impoundment or immobilization is not in lawful possession of~~  
18 ~~the motor vehicle used in the commission of the offense, an~~  
19 ~~owner of a motor vehicle shall be presumed to know that the~~  
20 ~~vehicle was to be used by the person who is convicted of the~~  
21 ~~offense, in the commission of the offense of operating while~~  
22 ~~intoxicated.~~

23 ~~16. b.~~ Notwithstanding the requirements of this section,  
24 the The holder of a security interest in a vehicle which is  
25 impounded or immobilized pursuant to this section or forfeited  
26 in the manner provided in chapters 809 and 809A shall be  
27 notified of the impoundment, immobilization, or forfeiture  
28 within seventy-two hours of the seizure of the vehicle and  
29 shall have the right to claim the motor vehicle without  
30 payment of any fees or surcharges unless the value of the  
31 vehicle exceeds the value of the security interest held by the  
32 creditor.

33 ~~17. c.~~ Notwithstanding the requirements of this section,  
34 any Any of the following persons may make application to the  
35 court for permission to operate a motor vehicle, which is

1 impounded or immobilized pursuant to this section, during the  
2 period of impoundment or immobilization, if the applicant's  
3 motor vehicle license or operating privilege has not been  
4 suspended, denied, ~~or~~ revoked, or barred, and an ignition  
5 interlock device of a type approved by the commissioner of  
6 public safety is installed in the motor vehicle prior to  
7 operation:

8     ~~a-~~ (1) A person, other than the person who committed the  
9 offense which resulted in the impoundment or immobilization,  
10 who is not a member of the immediate family of the person who  
11 committed the offense but is a joint owner of the motor  
12 vehicle.

13     ~~b-~~ (2) A member of the immediate family of the person who  
14 committed the offense which resulted in the impoundment or  
15 immobilization, if the member demonstrates that the motor  
16 vehicle that is subject to the order for impoundment or  
17 immobilization is the only motor vehicle possessed by the  
18 family.

19     For purposes of this section, "a member of the immediate  
20 family" means a spouse, child, or parent of the person who  
21 committed the offense.

22     ~~10-~~ 13. The impoundment, immobilization, or forfeiture of  
23 a motor vehicle under this chapter does not constitute loss of  
24 use of a motor vehicle for purposes of any contract of  
25 insurance.

26     Sec. 10. Section 321J.7, Code 1997, is amended to read as  
27 follows:

28     321J.7 DEAD OR UNCONSCIOUS PERSONS.

29     A person who is dead, unconscious, or otherwise in a  
30 condition rendering the person incapable of consent or refusal  
31 is deemed not to have withdrawn the consent provided by  
32 section 321J.6, and the test may be given if a licensed  
33 physician certifies in advance of the test that the person is  
34 dead, unconscious, or otherwise in a condition rendering that  
35 person incapable of consent or refusal. If the certification

1 is oral, written certification shall be completed by the  
2 physician within twenty-four hours of the test.

3 Sec. 11. Section 321J.9, subsections 1 and 2, Code 1997,  
4 are amended to read as follows:

5 1. If a person refuses to submit to the chemical testing,  
6 a test shall not be given, but the department, upon the  
7 receipt of the peace officer's certification, subject to  
8 penalty for perjury, that the officer had reasonable grounds  
9 to believe the person to have been operating a motor vehicle  
10 in violation of section 321J.2 or 321J.2A, that specified  
11 conditions existed for chemical testing pursuant to section  
12 321J.6, and that the person refused to submit to the chemical  
13 testing, shall revoke the person's motor vehicle license and  
14 any nonresident operating privilege for the following periods  
15 of time:

16 a. ~~Two-hundred-forty-days~~ One year if the person has no  
17 previous revocation within the previous ~~six~~ twelve years under  
18 this chapter; and

19 b. ~~Five-hundred-forty-days~~ Two years if the person has one  
20 or more previous revocations within the previous ~~six~~ twelve  
21 years under this chapter.

22 2. a. A person whose motor vehicle license or nonresident  
23 operating privileges are revoked ~~for-two-hundred-forty-days~~  
24 under subsection 1, paragraph "a", shall not be eligible for a  
25 temporary restricted license for at least ninety days after  
26 the effective date of the revocation. A person whose motor  
27 vehicle license or nonresident operating privileges are  
28 revoked ~~for-five-hundred-forty-days~~ under subsection 1,  
29 paragraph "b", shall not be eligible for a temporary  
30 restricted license for at least one year after the effective  
31 date of the revocation.

32 b. The defendant shall be ordered to install an ignition  
33 interlock device of a type approved by the commissioner of  
34 public safety on all vehicles owned or operated by the  
35 defendant if the defendant seeks a temporary restricted

1 license at the end of the minimum period of ineligibility. A  
2 temporary restricted license shall not be granted by the  
3 department until the defendant installs the ignition interlock  
4 device.

5 Sec. 12. Section 321J.12, subsection 1, paragraphs a and  
6 b, Code 1997, are amended to read as follows:

7 a. One hundred eighty days if the person has had no  
8 revocation within the previous ~~six~~ twelve years under this  
9 chapter.

10 b. One year if the person has had one or more previous  
11 revocations within the previous ~~six~~ twelve years under this  
12 chapter.

13 Sec. 13. Section 321J.12, subsection 5, Code 1997, is  
14 amended to read as follows:

15 5. Upon certification, subject to penalty of perjury, by  
16 the peace officer that there existed reasonable grounds to  
17 believe that the person had been operating a motor vehicle in  
18 violation of section 321J.2A, that there existed one or more  
19 of the necessary conditions for chemical testing described in  
20 section 321J.6, subsection 1, and that the person submitted to  
21 chemical testing and the test results indicated an alcohol  
22 concentration as defined in section 321J.1 of .02 or more but  
23 less than .10, the department shall revoke the person's motor  
24 vehicle license or operating privilege for a period of sixty  
25 days if the person has had no revocations within the previous  
26 ~~six~~ twelve years under section 321J.2A, and for a period of  
27 ninety days if the person has had one or more previous  
28 revocations within the previous ~~six~~ twelve years under section  
29 321J.2A.

30 Sec. 14. Section 321J.17, Code 1997, is amended to read as  
31 follows:

32 321J.17 CIVIL PENALTY -- DISPOSITION -- LICENSE  
33 REINSTATEMENT.

34 1. When If the department revokes a person's motor vehicle  
35 license or nonresident operating privilege under this chapter,



1 the department shall assess the person a civil penalty of two  
2 hundred dollars. The money collected by the department under  
3 this section shall be transmitted to the treasurer of state  
4 who shall deposit one-half of the money in the separate fund  
5 established in section 912.14 and one-half of the money shall  
6 be deposited in the general fund of the state. A motor  
7 vehicle license or nonresident operating privilege shall not  
8 be reinstated until the civil penalty has been paid.

9 2. If the department or a court orders the revocation of a  
10 person's motor vehicle license or nonresident operating  
11 privilege under this chapter, the department or court shall  
12 also order the person, at the person's own expense, to do the  
13 following:

14 a. Enroll, attend, and satisfactorily complete a course  
15 for drinking drivers, as provided in section 321J.22.

16 b. Submit to evaluation and treatment or rehabilitation  
\* 17 services.

18 A motor vehicle license or nonresident operating privilege  
19 shall not be reinstated until proof of completion of the  
20 requirements of this subsection is presented to the  
21 department.

22 Sec. 15. Section 321J.20, subsection 1, unnumbered  
23 paragraph 1, Code 1997, is amended to read as follows:

24 The department may, on application, issue a temporary  
25 restricted license to a person whose motor vehicle license is  
26 revoked under this chapter allowing the person to drive to and  
27 from the person's home and specified places at specified times  
28 which can be verified by the department and which are required  
29 by the person's full-time or part-time employment, continuing  
30 health care or the continuing health care of another who is  
31 dependent upon the person, continuing education while enrolled  
32 in an educational institution on a part-time or full-time  
33 basis and while pursuing a course of study leading to a  
34 diploma, degree, or other certification of successful  
35 educational completion, substance abuse treatment, and court-

1 ordered community service responsibilities if the person's  
2 motor vehicle license has not been revoked previously under  
3 section 321J.4, 321J.9, or 321J.12 within the previous six  
4 twelve years and if any of the following apply:

5 Sec. 16. Section 321J.20, subsection 1, paragraph a, Code  
6 1997, is amended to read as follows:

7 a. The person's motor vehicle license is revoked under  
8 section 321J.4~~7-subsection-17-27-47-or-67~~ and the minimum  
9 period of ineligibility for issuance of a temporary restricted  
10 license has expired. This subsection shall not apply to a  
11 revocation ordered under section 321J.4 resulting from a plea  
12 or verdict of guilty of a violation of section 321J.2 that  
13 involved a death.

14 Sec. 17. Section 321J.20, subsection 6, Code 1997, is  
15 amended to read as follows:

16 6. Following the certain minimum period periods of  
17 ineligibility, a temporary restricted license under this  
18 section shall not be issued until such time as the applicant  
19 installs an ignition interlock device of a type approved by  
20 the commissioner of public safety on all motor vehicles owned  
21 or operated by the applicant, in accordance with section  
22 321J.4~~7-subsection-7~~. Installation of an ignition interlock  
23 device under this section shall be required for the period of  
24 time for which the temporary restricted license is issued~~7-but~~  
25 ~~no-longer-than-one-year7-unless-the-court-order-under-section~~  
26 ~~321J.47-subsection-77-provides-for-a-longer-period-of-time.~~

27 Sec. 18. Section 321J.21, Code 1997, is amended to read as  
28 follows:

29 321J.21 DRIVING WHILE LICENSE SUSPENDED, DENIED, OR  
30 REVOKED, OR BARRED.

31 1. A person whose motor vehicle license or nonresident  
32 operating privilege has been suspended, denied, or revoked as  
33 provided-in, or barred due to a violation of this chapter and  
34 who drives a motor vehicle upon-the-highways-of-this-state  
35 while the license or privilege is suspended, denied, or

1 revoked, or barred commits a serious misdemeanor, punishable  
 2 with a mandatory fine of one thousand dollars. The

3 2. In addition to the fine, the department, upon receiving  
 4 the record of the conviction of a person under this section  
 5 upon a charge of driving a motor vehicle while the license of  
 6 the person was ~~revoked-or~~ suspended, denied, revoked, or  
 7 ~~barred~~ shall extend the period of ~~revocation-or~~ suspension,  
 8 ~~denial, revocation, or bar~~ for an additional like period, and  
 9 the department shall not issue a new license during the  
 10 additional period.

11 Sec. 19. Section 321J.22, Code 1997, is amended to read as  
 12 follows:

13 321J.22 ~~COURT-ORDERED-DRINKING~~ DRINKING DRIVERS COURSE.

14 1. As used in this section, unless the context otherwise  
 15 requires:

16 a. "Course for drinking drivers" means an approved course  
 17 designed to inform the offender about drinking and driving and  
 18 encourage the offender to assess the offender's own drinking  
 19 and driving behavior in order to select practical  
 20 alternatives.

21 b. "Satisfactory completion of a course" means receiving  
 22 at the completion of a course a grade from the course  
 23 instructor of "C" or "2.0," or better.

24 ~~2.--After-a-conviction-for,-or-a-plea-of-guilty-of,-a~~  
 25 ~~violation-of-section-321J-2,-the-court-in-addition-to-its~~  
 26 ~~power-to-commit-the-defendant-for-treatment-of-alcoholism~~  
 27 ~~under-section-321J-3,-may-order-the-defendant,-at-the~~  
 28 ~~defendant's-own-expense,-to-enroll-in,-attend,-and~~  
 29 ~~successfully-complete-a-course-for-drinking-drivers.--The~~  
 30 ~~court-may-alternatively-or-additionally-require-the-defendant~~  
 31 ~~to-seek-evaluation,-treatment-or-rehabilitation-services-under~~  
 32 ~~section-125-33-at-the-defendant's-expense-and-to-furnish~~  
 33 ~~evidence-of-successful-completion.--A-copy-of-the-order-shall~~  
 34 ~~be-forwarded-to-the-department.~~

35 3- 2. The course provided in according to this section

1 shall be offered on a regular basis at each community college  
2 as defined in section 260C.2. Enrollment in the courses is  
3 not limited to persons ordered to enroll, attend, and  
4 successfully complete the course required under sections  
5 321J.2 and 321J.17, ~~subsection 27-and-any-person-convicted-of~~  
6 ~~a-violation-of-section-321J.2-who-was-not-ordered-to-enroll-in~~  
7 ~~a-course-may-enroll-in-and-attend-a-course-for-drinking~~  
8 ~~drivers~~. The course required by this section shall be taught  
9 by the community colleges under the department of education  
10 and approved by the department. The department of education  
11 shall establish reasonable fees to defray the expense of  
12 obtaining classroom space, instructor salaries, and class  
13 materials. A person shall not be denied enrollment in a  
14 course by reason of the person's indigency.

15 ~~4-~~ 3. An employer shall not discharge a person from  
16 employment solely for the reason of work absence to attend a  
17 course required by this section. Any employer who violates  
18 this section is liable for damages which include but are not  
19 limited to actual damages, court costs, and reasonable  
20 attorney fees. The person may also petition the court for  
21 imposition of a cease and desist order against the person's  
22 employer and for reinstatement to the person's previous  
23 position of employment.

24 ~~5-~~ 4. The department of education shall prepare a list of  
25 the locations of the courses taught under this section, the  
26 dates and times taught, the procedure for enrollment, and the  
27 schedule of course fees. The list shall be kept current and a  
28 copy of the list shall be sent to each court having  
29 jurisdiction over offenses provided in this chapter.

30 ~~6-~~ 5. The department of education shall maintain  
31 enrollment, attendance, successful and nonsuccessful  
32 completion data on the persons ordered to enroll, attend, and  
33 successfully complete a course for drinking drivers. This  
34 data shall be forwarded to the court.

35 Sec. 20. Section 707.6A, subsection 1, Code 1997, is

1 amended to read as follows:

2 1. A person commits a class "e" "B" felony when the person  
3 unintentionally causes the death of another by ~~any-of-the~~  
4 ~~following-means:~~

5 ~~a. --Operating~~ operating a motor vehicle while ~~under-the~~  
6 ~~influence-of-alcohol-or-other-drug-or-a-combination-of-such~~  
7 ~~substances-or-while-having-an-alcohol-concentration~~  
8 intoxicated, as ~~defined-in~~ prohibited by section ~~321J.17~~  
9 ~~subsection-17-of-10-or-more~~ 321J.2. Upon a plea or verdict  
10 of guilty of a violation of this paragraph subsection, the  
11 court shall order do the following:

12 a. Order the state department of transportation to revoke  
13 the defendant's motor vehicle license or nonresident operating  
14 privileges for a period of six years. The defendant shall  
15 surrender to the court any Iowa license or permit and the  
16 court shall forward ~~it~~ the license or permit to the department  
17 with a copy of the revocation order. The defendant shall not  
18 be eligible for a temporary restricted license for at least  
19 two years after the revocation.

20 b. Order the defendant, at the defendant's expense, to do  
21 the following:

22 (1) Enroll, attend, and satisfactorily complete a course  
23 for drinking drivers, as provided in section 321J.22.

24 (2) Submit to evaluation and treatment or rehabilitation  
25 services.

26 c. A motor vehicle license or nonresident operating  
27 privilege shall not be reinstated until proof of completion of  
28 the requirements of paragraph "b" is presented to the  
29 department.

30 1A. A person commits a class "C" felony when the person  
31 unintentionally causes the death of another by any of the  
32 following means:

33 b. a. Driving a motor vehicle in a reckless manner with  
34 willful or wanton disregard for the safety of persons or  
35 property, in violation of section 321.277.

1 e- b. Eluding or attempting to elude a pursuing law  
2 enforcement vehicle, in violation of section 321.279, if the  
3 death of the other person directly or indirectly results from  
4 the violation.

5 Sec. 21. Section 707.6A, subsection 3, Code 1997, is  
6 amended to read as follows:

7 3. A person commits ~~an aggravated misdemeanor~~ a class "D"  
8 felony when the person unintentionally causes a serious  
9 injury, as defined in section 321J.1, subsection 8, by any of  
10 the means described in subsection 1 ~~of this section~~ or 1A.

11 Sec. 22. Section 707.6A, Code 1997, is amended by adding  
12 the following new subsection:

13 NEW SUBSECTION. 6. Notwithstanding the provisions of  
14 sections 901.5 and 907.3, the court shall not defer judgment  
15 or sentencing, or suspend execution of any part of the  
16 sentence applicable to the defendant for a violation of  
17 subsection 1, or for a violation of subsection 3 involving the  
18 operation of a motor vehicle while intoxicated if any of the  
19 following apply:

20 a. If the defendant's alcohol concentration established by  
21 the results of an analysis of a specimen of the defendant's  
22 blood, breath, or urine withdrawn in accordance with chapter  
23 321J exceeds .15.

24 b. If the defendant has previously been convicted of a  
25 violation of section 321J.2, subsection 1, or a violation of a  
26 statute in another state substantially corresponding to  
27 section 321J.2, subsection 1.

28 c. If the defendant has previously received a deferred  
29 judgment or sentence for a violation of section 321J.2,  
30 subsection 1, or for a violation of a statute in another state  
31 substantially corresponding to section 321J.2, subsection 1.

\* 32 d. If the defendant refused to consent to testing  
33 requested in accordance with section 321J.6.

34 Sec. 23. Section 809A.3, subsections 4 and 5, Code 1997,  
35 are amended to read as follows:

1 ~~4.--A-violation-of-section-321J.4B, subsection 12.~~  
2 ~~5. 4.~~ Notwithstanding subsections 1 through 4 3,  
3 violations of chapter 321 or 321J, ~~except section 321J.4B,~~  
4 ~~subsection 12,~~ shall not be considered conduct giving rise to  
5 forfeiture, except for violations of the following:

6 a. A second or subsequent violation of section 321J.4B,  
7 subsection 2, paragraph "b".

8 b. Section 321J.4B, subsection 9.

9 Sec. 24. Section 907.3, subsection 1, paragraph g, Code  
10 1997, is amended to read as follows:

11 g. The offense is a violation of section 321J.2 and,  
12 within the previous ~~six~~ twelve years, the person has been  
13 convicted of a violation of that section or the person's  
14 driver's license has been revoked pursuant to section ~~321J.4,~~  
15 ~~321J.9, or 321J.12~~ under chapter 321J; a violation of section  
16 707.6A, subsection 1; or a violation of section 707.6A,  
17 subsection 3, involving operation of a motor vehicle while  
18 intoxicated, and any of the following apply:

19 (1) If the defendant's alcohol concentration established  
20 by the results of an analysis of a specimen of the defendant's  
21 blood, breath, or urine withdrawn in accordance with chapter  
22 321J exceeds .15.

23 (2) If the defendant has previously been convicted of a  
24 violation of section 321J.2, subsection 1, or a violation of a  
25 statute in another state substantially corresponding to  
26 section 321J.2, subsection 1.

27 (3) If the defendant has previously received a deferred  
28 judgment or sentence for a violation of section 321J.2,  
29 subsection 1, or for a violation of a statute in another state  
30 substantially corresponding to section 321J.2, subsection 1.

\* 31 (4) If the defendant refused to consent to testing  
32 requested in accordance with section 321J.6.

33 Sec. 25. Section 907.3, subsections 2 and 3, Code 1997,  
34 are amended to read as follows:

35 2. At the time of or after pronouncing judgment and with

1 the consent of the defendant, the court may defer the sentence  
2 and assign the defendant to the judicial district department  
3 of correctional services. The court may assign the defendant  
4 to supervision or services under section 901B.1 at the level  
5 of sanctions which the district department determines to be  
6 appropriate, if an intermediate criminal sanctions plan and  
7 program has been adopted in the judicial district under  
8 section 901B.1. However, the court shall not defer the  
9 sentence for a violation of section any of the following:

10 a. Section 708.2A, if the defendant has previously  
11 received a deferred judgment or sentence for a violation of  
12 section 708.2 or 708.2A which was issued on a domestic abuse  
13 assault, or if similar relief was granted anywhere in the  
14 United States concerning that jurisdiction's statutes which  
15 substantially correspond to domestic abuse assault as provided  
16 in section 708.2A. ~~In addition, the court shall not defer a~~  
17 ~~sentence if it is imposed for a conviction for or plea of~~  
18 ~~guilty to a violation of section~~

19 b. Section 236.8 or for contempt pursuant to section 236.8  
20 or 236.14.

21 c. Section 321J.2, subsection 1; section 707.6A,  
22 subsection 1; or a violation of section 707.6A, subsection 3,  
23 involving operation of a motor vehicle while intoxicated, if  
24 any of the following apply:

25 (1) If the defendant's alcohol concentration established  
26 by the results of an analysis of a specimen of the defendant's  
27 blood, breath, or urine withdrawn in accordance with chapter  
28 321J exceeds .15.

29 (2) If the defendant has previously been convicted of a  
30 violation of section 321J.2, subsection 1, or a violation of a  
31 statute in another state substantially corresponding to  
32 section 321J.2, subsection 1.

33 (3) If the defendant has previously received a deferred  
34 judgment or sentence for a violation of section 321J.2,  
35 subsection 1, or for a violation of a statute in another state



1 substantially corresponding to section 321J.2, subsection 1.

\* 2 (4) If the defendant refused to consent to testing  
3 requested in accordance with section 321J.6.

4 Upon a showing that the defendant is not fulfilling the  
5 conditions of probation, the court may revoke probation and  
6 impose any sentence authorized by law. Before taking such  
7 action, the court shall give the defendant an opportunity to  
8 be heard on any matter relevant to the proposed action. Upon  
9 violation of the conditions of probation, the court may  
10 proceed as provided in chapter 908.

11 3. By record entry at the time of or after sentencing, the  
12 court may suspend the sentence and place the defendant on  
13 probation upon such terms and conditions as it may require  
14 including commitment to an alternate jail facility or a  
15 community correctional residential treatment facility for a  
16 specific number of days to be followed by a term of probation  
17 as specified in section 907.7, or commitment of the defendant  
18 to the judicial district department of correctional services  
19 for supervision or services under section 901B.1 at the level  
20 of sanctions which the district department determines to be  
21 appropriate. A person so committed who has probation revoked  
22 shall be given credit for such time served. However, the  
23 court shall not suspend the any of the following sentences:

24 a. The minimum term of two days imposed pursuant to  
25 section 708.2A, subsection 6, paragraph "a", or a sentence  
26 imposed under section 708.2A, subsection 6, paragraph "b";  
27 ~~the court shall not suspend a~~

28 b. A sentence imposed pursuant to section 236.8 or 236.14  
29 for contempt.

30 c. A sentence imposed pursuant to a violation of section  
31 321J.2, subsection 1; section 707.6A, subsection 1; or a  
32 violation of section 707.6A, subsection 3, involving operation  
33 of a motor vehicle while intoxicated, if any of the following  
34 apply:

35 (1) If the defendant's alcohol concentration established

1 by the results of an analysis of a specimen of the defendant's  
2 blood, breath, or urine withdrawn in accordance with chapter  
3 321J exceeds .15.

4 (2) If the defendant has previously been convicted of a  
5 violation of section 321J.2, subsection 1, or a violation of a  
6 statute in another state substantially corresponding to  
7 section 321J.2, subsection 1.

8 (3) If the defendant has previously received a deferred  
9 judgment or sentence for a violation of section 321J.2,  
10 subsection 1, or for a violation of a statute in another state  
11 substantially corresponding to section 321J.2, subsection 1.

\* 12 (4) If the defendant refused to consent to testing  
13 requested in accordance with section 321J.6.

14 Sec. 26. Section 910.1, subsection 4, Code 1997, is  
15 amended to read as follows:

16 4. "Restitution" means payment of pecuniary damages to a  
17 victim in an amount and in the manner provided by the  
18 offender's plan of restitution. "Restitution" also includes  
19 fines, penalties, and surcharges, the contribution of funds to  
20 a local anticrime organization which provided assistance to  
21 law enforcement in an offender's case, the payment of crime  
22 victim compensation program reimbursements, payment of  
23 restitution to public agencies pursuant to section 321J.2,  
24 subsection 8, paragraph "b", court costs, court-appointed  
25 attorney's fees, or the expense of a public defender, and the  
26 performance of a public service by an offender in an amount  
27 set by the court when the offender cannot reasonably pay all  
28 or part of the court costs, court-appointed attorney's fees,  
29 or the expense of a public defender.

30 Sec. 27. Section 910.2, Code 1997, is amended to read as  
31 follows:

32 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY  
33 SENTENCING COURT.

34 In all criminal cases in which there is a plea of guilty,  
35 verdict of guilty, or special verdict upon which a judgment of

1 conviction is rendered, the sentencing court shall order that  
2 restitution be made by each offender to the victims of the  
3 offender's criminal activities, to the clerk of court for  
4 fines, penalties, surcharges, and, to the extent that the  
5 offender is reasonably able to pay, for crime victim  
6 assistance reimbursement, restitution to public agencies  
7 pursuant to section 321J.2, subsection 8, paragraph "b", court  
8 costs, court-appointed attorney's fees, or the expense of a  
9 public defender when applicable, or contribution to a local  
10 anticrime organization. However, victims shall be paid in  
11 full before fines, penalties, and surcharges, crime victim  
12 compensation program reimbursement, public agencies, court  
13 costs, court-appointed attorney's fees, the expenses of a  
14 public defender, or contribution to a local anticrime  
15 organization are paid. In structuring a plan of restitution,  
16 the court shall provide for payments in the following order of  
17 priority: victim, fines, penalties, and surcharges, crime  
18 victim compensation program reimbursement, public agencies,  
19 court costs, court-appointed attorney's fees, or the expense  
20 of a public defender, and contribution to a local anticrime  
21 organization.

22 When the offender is not reasonably able to pay all or a  
23 part of the crime victim compensation program reimbursement,  
24 public agency restitution, court costs, court-appointed  
25 attorney's fees, the expense of a public defender, or  
26 contribution to a local anticrime organization, the court may  
27 require the offender in lieu of that portion of the crime  
28 victim compensation program reimbursement, public agency  
29 restitution, court costs, court-appointed attorney's fees,  
30 expense of a public defender, or contribution to a local  
31 anticrime organization for which the offender is not  
32 reasonably able to pay, to perform a needed public service for  
33 a governmental agency or for a private nonprofit agency which  
34 provides a service to the youth, elderly, or poor of the  
35 community. When community service is ordered, the court shall

1 set a specific number of hours of service to be performed by  
2 the offender which, for payment of court-appointed attorney's  
3 fees or expenses of a public defender, shall be approximately  
4 equivalent in value to those costs. The judicial district  
5 department of correctional services shall provide for the  
6 assignment of the offender to a public agency or private  
7 nonprofit agency to perform the required service.

8 Sec. 28. Section 910.3, Code 1997, is amended to read as  
9 follows:

10 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

11 The county attorney shall prepare a statement of pecuniary  
12 damages to victims of the defendant and, if applicable, any  
13 award by the crime victim compensation program and expenses  
14 incurred by public agencies pursuant to section 321J.2,  
15 subsection 8, paragraph "b", and shall provide the statement  
16 to the presentence investigator or submit the statement to the  
17 court at the time of sentencing. The clerk of court shall  
18 prepare a statement of court-appointed attorney's fees, the  
19 expense of a public defender, and court costs, which shall be  
20 provided to the presentence investigator or submitted to the  
21 court at the time of sentencing. If these statements are  
22 provided to the presentence investigator, they shall become a  
23 part of the presentence report. If pecuniary damage amounts  
24 are not available at the time of sentencing, the county  
25 attorney shall provide a statement of pecuniary damages  
26 incurred up to that time to the clerk of court. The statement  
27 shall be provided no later than thirty days after sentencing.  
28 If a defendant believes no person suffered pecuniary damages,  
29 the defendant shall so state. If the defendant has any mental  
30 or physical impairment which would limit or prohibit the  
31 performance of a public service, the defendant shall so state.  
32 The court may order a mental or physical examination, or both,  
33 of the defendant to determine a proper course of action. At  
34 the time of sentencing or at a later date to be determined by  
35 the court, the court shall set out the amount of restitution

1 including the amount of public service to be performed as  
2 restitution and the persons to whom restitution must be paid.  
3 If the full amount of restitution cannot be determined at the  
4 time of sentencing, the court shall issue a temporary order  
5 determining a reasonable amount for restitution identified up  
6 to that time. At a later date as determined by the court, the  
7 court shall issue a permanent, supplemental order, setting the  
8 full amount of restitution. The court shall enter further  
9 supplemental orders, if necessary. These court orders shall  
10 be known as the plan of restitution.

11 Sec. 29. Section 910.9, unnumbered paragraph 3, Code 1997,  
12 is amended to read as follows:

13 Fines, penalties, and surcharges, crime victim compensation  
14 program reimbursement, public agency restitution, court costs,  
15 court-appointed attorney's fees, and expenses for public  
16 defenders, shall not be withheld by the clerk of court until  
17 all victims have been paid in full. Payments to victims shall  
18 be made by the clerk of court at least quarterly. Payments by  
19 a clerk of court shall be made no later than the last business  
20 day of the quarter, but may be made more often at the  
21 discretion of the clerk of court. The clerk of court  
22 receiving final payment from an offender, shall notify all  
23 victims that full restitution has been made, and a copy of the  
24 notice shall be sent to the sentencing court. Each office or  
25 individual charged with supervising an offender who is  
26 required to perform community service as full or partial  
27 restitution shall keep records to assure compliance with the  
28 portions of the plan of restitution and restitution plan of  
29 payment relating to community service and, when the offender  
30 has complied fully with the community service requirement,  
31 notify the sentencing court.

32 Sec. 30. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
33 3, shall not apply to this Act.

34

35

Lamberti, Ch.  
Larson.  
Kreman

HSB 222

JUDICIARY

Succeeded By  
SF/HF

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON LAMBERTI)

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

A BILL FOR

1 An Act relating to substance abuse evaluation and education, use  
2 of ignition interlock devices, criminal penalties and  
3 administrative revocations and payment of restitution by  
4 persons convicted of operating a motor vehicle while  
5 intoxicated; to certain operating privileges; to civil  
6 liability, forfeiture, and criminal penalties arising from  
7 operation of a motor vehicle by a person whose license is  
8 suspended, denied, revoked, or barred; and providing for  
9 technical changes, and certain effective and applicability  
10 dates.

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

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23

1 Section 1. Section 321.12, Code 1997, is amended to read  
2 as follows:

3 321.12 OBSOLETE RECORDS DESTROYED.

4 The director may destroy any records of the department  
5 which have been maintained on file for three years which the  
6 director deems obsolete and of no further service in carrying  
7 out the powers and duties of the department. However,  
8 operating records relating to a person who has been issued a  
9 commercial driver's license shall be maintained on file in  
10 accordance with rules adopted by the department. Records  
11 concerning suspensions authorized under section 321.210,  
12 subsection 1, paragraph "g", and section 321.210A may be  
13 destroyed six months after the suspension is terminated and  
14 the requirements of section 321.191 have been satisfied.  
15 Records concerning suspensions and surrender of licenses or  
16 registrations required under section 321A.31 for failing to  
17 maintain proof of financial responsibility, as defined in  
18 section 321A.1, may be destroyed six months after the  
19 requirements of sections 321.191 and 321A.29 have been  
20 satisfied.

21 The director shall not destroy any operating records  
22 pertaining to arrests or convictions for operating while  
23 intoxicated, in violation of section 321J.27-which-are-more  
24 than-twelve-years-old.--The-twelve-year-period-shall-commence  
25 with-the-date-of-the-arrest-or-conviction-for-the-offense,  
26 whichever-first-occurs.--However,7-the-director-shall-not  
27 destroy-operating-records-which-pertain-to-arrests-or  
28 convictions-for-operating-while-intoxicated-after-the  
29 expiration-of-twelve-years-when-the-motor-vehicle-being  
30 operated-was-a-commercial-motor-vehicle-or-if-all-of-the  
31 provisions-of-the-court-order-have-not-been-satisfied.

32 The-director-shall-destroy-any-operating-records-pertaining  
33 to-revocations-for-violations-of-section-321J.2A-which-are  
34 more-than-twelve-years-old.--The-twelve-year-period-shall  
35 commence-with-the-date-the-revocation-of-the-person's

~~1 operating-privileges-becomes-effective.--This-paragraph-shall  
2 not-apply-to-records-of-revocations-which-pertain-to  
3 violations-of-section-321J-2A-by-persons-operating-a  
4 commercial-motor-vehicle.~~

5 Sec. 2. Section 321.182, Code 1997, is amended by adding  
6 the following new subsections:

7 NEW SUBSECTION. 5. Certify that the applicant, if a minor  
8 who has not previously been issued a class C1 or class M1  
9 motor vehicle license under section 321.189, subsection 1,  
10 paragraph "f" or "g", meets the requirements for issuance of a  
11 motor vehicle license under those paragraphs.

12 NEW SUBSECTION. 6. Certify that the applicant, if a minor  
13 who has been operating a motor vehicle under a class C1 or  
14 class M1 motor vehicle license, satisfies the criteria  
15 necessary to be issued a regular motor vehicle license.

16 Sec. 3. Section 321.184, subsection 1, Code 1997, is  
17 amended by adding the following new unnumbered paragraph:

18 NEW UNNUMBERED PARAGRAPH. The parent, guardian, or person  
19 having custody of the applicant under chapter 600A shall also  
20 verify that the person has supervised the applicant's driving  
21 for the periods required by section 321.189, subsection 1,  
22 paragraph "f" or "g".

23 Sec. 4. Section 321.189, subsection 1, Code 1997, is  
24 amended by adding the following new paragraphs:

25 NEW PARAGRAPH. f. Class C1 -- Valid for the operation of  
26 a motor vehicle if the following conditions are met:

27 (1) The person issued the license is sixteen years of age.

28 (2) The person issued the license has held an instruction  
29 permit issued under section 321.180 for at least six months.

30 (3) The person has completed at least fifty hours of  
31 supervised driving including at least ten hours of supervised  
32 driving during hours of darkness.

33 (4) The person has operated a motor vehicle under the  
34 permit for at least the three most recent months prior to  
35 issuance of the license without an accident or violation,



1 other than a parking violation referred to under section  
2 321.210.

3 (5) The person has completed an approved driver education  
4 course.

5 A class C1 license shall authorize the holder to operate  
6 the same motor vehicles as a class C license holder, except  
7 that a person issued a class C1 license shall not operate a  
8 motor vehicle between the hours of midnight and five a.m.  
9 unless the person is accompanied by a parent or guardian or is  
10 going to or from the person's place of employment.

11 NEW PARAGRAPH. g. Class M1 -- Valid for the operation of  
12 a motorcycle if the following conditions are met:

13 (1) The person issued the license is sixteen years of age.

14 (2) The person issued the license has held an instruction  
15 permit issued under section 321.180 for at least six months.

16 (3) The person has completed the required number of  
17 supervised driving hours.

18 (4) The person has operated a motor vehicle under the  
19 permit for at least the three most recent months prior to  
20 issuance of the license without an accident or violation,  
21 other than a parking violation referred to under section  
22 321.210.

23 (5) The person has completed an approved driver education  
24 course and an approved motorcycle education course.

25 A class M1 license shall authorize the holder to operate a  
26 motorcycle as under a class M license, except that a person  
27 issued a class M1 license shall not operate a motorcycle  
28 between the hours of midnight and five a.m. unless the person  
29 is accompanied by a parent or guardian or is going to or from  
30 the person's place of employment.

31 Sec. 5. Section 321.189, subsection 1, Code 1997, is  
32 amended by adding the following new unnumbered paragraph:

33 NEW UNNUMBERED PARAGRAPH. Unless the person is subject to  
34 section 321.178, subsection 3, a license under paragraphs "a"  
35 through "e" shall only be issued to a person seventeen years

1 of age who has held a license under paragraph "f" or "g" for  
2 at least six months and who has had no accidents or  
3 violations, other than parking violations referred to under  
4 section 321.210, for at least the three months preceding the  
5 issuance of a license under paragraphs "a" through "e".

6 Sec. 6. Section 321.555, subsection 1, paragraph c, Code  
7 1997, is amended to read as follows:

8 c. Driving a motor vehicle while the person's motor  
9 vehicle license is suspended, denied, revoked, or barred.

10 Sec. 7. Section 321J.2, Code 1997, is amended to read as  
11 follows:

12 321J.2 OPERATING WHILE INTOXICATED ~~UNDER-THE-INFLUENCE-OF~~  
13 ~~ALCOHOL-OR-A-DRUG-OR-WHILE-HAVING-AN-ALCOHOL-CONCENTRATION-OF~~  
14 ~~.10-OR-MORE~~ (OWI).

15 1. A person commits the offense of operating while  
16 intoxicated if the person operates a motor vehicle in this  
17 state in either any of the following conditions:

18 a. While under the influence of an alcoholic beverage or  
19 other drug or a combination of such substances.

20 b. While having an alcohol concentration ~~as-defined-in~~  
21 ~~section-321J.1~~ of .10 or more.

22 2. A person who violates ~~this-section~~ subsection 1  
23 commits:

24 a. A serious misdemeanor for the first offense, and shall  
25 be imprisoned in the county jail for not less than forty-eight  
26 hours to be served as ordered by the court, less credit for  
27 any time the person was confined in a jail or detention  
28 facility following arrest, and assessed a fine of not less  
29 than five hundred dollars nor more than one thousand dollars.  
30 As an alternative to a portion or all of the fine, the court  
31 may order the person to perform not more than two hundred  
32 hours of unpaid community service. The court may accommodate  
33 the sentence to the work schedule of the defendant.

34 b. An aggravated misdemeanor for a second offense, and  
35 shall be imprisoned in the county jail or community-based

1 correctional facility not less than seven days, which minimum  
2 term cannot be suspended notwithstanding section 901.57  
3 subsection 3 and section 907.37 subsection 37 and assessed a  
4 fine of not less than seven hundred fifty dollars.

5 c. A class "D" felony for a third offense and each  
6 subsequent offense, and shall be imprisoned in the county jail  
7 for a determinate sentence of not more than one year but not  
8 less than thirty days, or committed to the custody of the  
9 director of the department of corrections, and assessed a fine  
10 of not less than seven hundred fifty dollars. The minimum  
11 jail term of thirty days cannot be suspended notwithstanding  
12 section 901.57 subsection 37 and section 907.37 subsection 37  
13 however, the person sentenced shall receive credit for any  
14 time the person was confined in a jail or detention facility  
15 following arrest. If a person is committed to the custody of  
16 the director of the department of corrections pursuant to this  
17 paragraph and the sentence is suspended, the sentencing court  
18 shall order that the offender serve the thirty-day minimum  
19 term in the county jail. If the sentence which commits the  
20 person to the custody of the director of the department of  
21 corrections is later imposed by the court, all time served in  
22 a county jail toward the thirty-day minimum term shall count  
23 as time served toward the sentence which committed the person  
24 to the custody of the director of the department of  
25 corrections. A person convicted of a second or subsequent  
26 offense shall be ordered to undergo a substance abuse  
27 evaluation prior to sentencing. If a A person is convicted of  
28 a third or subsequent offense or if the evaluation recommends  
29 treatment, the offender may be committed to the custody of the  
30 director of the department of corrections, who, if the  
31 sentence is not suspended, shall assign the person to a  
32 facility pursuant to section 904.513 or the offender may be  
33 committed to treatment in the community under the provisions  
34 of section 907.6.

35 2A. a. Notwithstanding the provisions of sections 901.5

1 and 907.3, the court shall not defer judgment or sentencing,  
2 or suspend execution of any part of the minimum sentence  
3 applicable to the defendant under subsection 2 if any of the  
4 following apply:

5 (1) If the defendant's alcohol concentration established  
6 by the results of an analysis of a specimen of the defendant's  
7 blood, breath, or urine withdrawn in accordance with this  
8 chapter exceeds .15.

9 (2) If the defendant has previously been convicted of a  
10 violation of subsection 1 or a statute in another state  
11 substantially corresponding to subsection 1.

12 (3) If the defendant has previously received a deferred  
13 judgment or sentence for a violation of subsection 2 or for a  
14 violation of a statute in another state substantially  
15 corresponding to subsection 2.

16 b. All persons convicted of an offense under subsection 2  
17 shall be ordered, at the person's expense, to undergo, prior  
18 to sentencing, a substance abuse evaluation pursuant to  
19 chapter 125.

20 c. A minimum term of imprisonment in a county jail or  
21 community-based correctional facility imposed on a person  
22 convicted of a second or subsequent offense under paragraph  
23 "b"-er-"e" subsection 2 shall be served on consecutive days.  
24 However, if the sentencing court finds that service of the  
25 full minimum term on consecutive days would work an undue  
26 hardship on the person, or finds that sufficient jail space is  
27 not available and is not reasonably expected to become  
28 available within four months after sentencing to incarcerate  
29 the person serving the minimum sentence on consecutive days,  
30 the court may order the person to serve ~~not-less-than-forty-~~  
31 ~~eight-consecutive-hours-of~~ the minimum term in segments of at  
32 least forty-eight hours and to perform a specified number of  
33 hours of unpaid community service as deemed appropriate by the  
34 sentencing court.

35 3. ~~No-conviction-for, deferred-judgment-for, or plea-of~~

1 ~~guilty to a violation of this section which occurred more~~  
2 ~~than six years prior to the date of the violation charged~~  
3 ~~shall be considered in determining that the violation charged~~  
4 ~~is a second, third, or subsequent offense.~~ For the purpose of  
5 determining if a violation charged is a second, third, or  
6 subsequent offense, deferred judgments entered pursuant to  
7 section 907.3 for violations of this section and convictions  
8 or the equivalent of deferred judgments for violations in any  
9 other states under statutes substantially corresponding to  
10 this section shall be counted as previous offenses. The  
11 courts shall judicially notice the statutes of other states  
12 which define offenses substantially equivalent to the one  
13 defined in this section and can therefore be considered  
14 corresponding statutes. Each previous violation on which  
15 conviction or deferral of judgment was entered prior to the  
16 date of the violation charged shall be considered and counted  
17 as a separate previous offense.

18 4. A person shall not be convicted and sentenced for more  
19 than one violation of this section for actions arising out of  
20 the same event or occurrence, even if the violation is shown  
21 to have been committed by either or both of the means  
22 described event or occurrence involves more than one of the  
23 conditions specified in subsection 1 in the same occurrence.

24 5. The clerk of the district court shall immediately  
25 certify to the department a true copy of each order entered  
26 with respect to deferral of judgment, deferral of sentence, or  
27 pronouncement of judgment and sentence for a defendant under  
28 this section.

29 6. This section does not apply to a person operating a  
30 motor vehicle while under the influence of a drug if the  
31 substance was prescribed for the person and was taken under  
32 the prescription and in accordance with the directions of a  
33 medical practitioner as defined in chapter 155A, if there is  
34 no evidence of the consumption of alcohol and the medical  
35 practitioner had not directed the person to refrain from

1 operating a motor vehicle.

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

12 8. The In addition to any other fine or penalty imposed  
13 under this chapter, the court shall order a defendant  
14 convicted of or receiving a deferred judgment for a violation  
15 of this section to make restitution,--in-an-amount-not-to  
16 exceed-two-thousand-dollars, for damages resulting directly  
17 from the violation according to the following:

18 a. To the victim, according to chapter 910. An amount  
19 paid pursuant to this restitution portion of the order shall  
20 be credited toward any adverse judgment in a subsequent civil  
21 proceeding arising from the same occurrence. However, other  
22 than establishing a credit, a restitution proceeding pursuant  
23 to-this-section related to this portion of the order shall not  
24 be given evidentiary or preclusive effect in a subsequent  
25 civil proceeding arising from the same occurrence.

26 b. To any public agency, for the costs of the emergency  
27 response resulting from the actions constituting a violation  
28 of this section, not exceeding five hundred dollars per public  
29 agency for each such response. For the purposes of this  
30 paragraph, "emergency response" means any incident requiring a  
31 response by fire fighting, law enforcement, ambulance,  
32 medical, or other emergency services. Restitution for costs  
33 incurred by a public agency as described under this paragraph  
34 may be sought by motion filed in the criminal proceedings  
35 against defendant for violation of this section.

1 9. In any prosecution under this section, the results of a  
2 chemical test may not be used to prove a violation of  
3 paragraph-"b" of subsection 1 if the alcohol concentration  
4 indicated by the chemical test minus the established margin of  
5 error inherent in the device or method used to conduct the  
6 chemical test does not equal ~~an alcohol concentration of .10~~  
7 or more or exceed the level prohibited by subsection 1.

8 Sec. 8. Section 321J.3, Code 1997, is amended to read as  
9 follows:

10 321J.3 ~~COURT-ORDERED-SUBSTANCE~~ SUBSTANCE ABUSE EVALUATION  
11 OR TREATMENT.

12 ~~1.---On a conviction for a violation of section 321J.2, the~~  
13 ~~court may order the defendant to attend a course for drinking~~  
14 ~~drivers under section 321J.22.---If the defendant submitted to~~  
15 ~~a chemical test on arrest for the violation of section 321J.2~~  
16 ~~and the test indicated an alcohol concentration of .20 or~~  
17 ~~higher, or if the defendant is charged with a second or~~  
18 ~~subsequent offense, the court shall order the defendant, on~~  
19 ~~conviction, to undergo a substance abuse evaluation and the~~  
20 ~~court shall order the defendant~~

21 1. a. In addition to orders issued pursuant to section  
22 321J.2, subsection 2A, and section 321J.17, the court shall  
23 order any defendant convicted under section 321J.2 to follow  
24 the recommendations proposed in the substance abuse evaluation  
25 for appropriate substance abuse treatment for the defendant.  
26 Court-ordered substance abuse treatment is subject to the  
27 periodic reporting requirements of section 125.86.

28 b. If a defendant is committed by the court to a substance  
29 abuse treatment facility, the administrator of the facility  
30 shall report to the court when it is determined that the  
31 defendant has received the maximum benefit of treatment at the  
32 facility and the defendant shall be released from the  
33 facility. The time for which the defendant is committed for  
34 treatment shall be credited against the defendant's sentence.

35 c. The court may prescribe the length of time for the

1 evaluation and treatment or it may request that the community  
2 college conducting the course for drinking drivers which the  
3 person is ordered to attend or the treatment program to which  
4 the person is committed immediately report to the court when  
5 the person has received maximum benefit from the course for  
6 drinking drivers or treatment program or has recovered from  
7 the person's addiction, dependency, or tendency to chronically  
8 abuse alcohol or drugs.

9 d. Upon successfully completing ~~or-attending~~ a course for  
10 drinking drivers or an ordered substance abuse treatment  
11 program, a court may place the person may-be-placed on  
12 probation for six months and as a condition of probation, the  
13 person shall attend a program providing posttreatment services  
14 relating to substance abuse as approved by the court.

15 e. A person committed under this section who does not  
16 possess sufficient income or estate to make payment of the  
17 costs of the treatment in whole or in part shall be considered  
18 a state patient and the costs of treatment shall be paid as  
19 provided in section 125.44.

20 f. A defendant who fails to carry out the order of the  
21 court ~~or-who-fails-to-successfully-complete-or-attend-a-course~~  
22 ~~for-drinking-drivers-or-an-ordered-substance-abuse-treatment~~  
23 program shall be confined in the county jail for twenty days  
24 in addition to any other imprisonment ordered by the court or  
25 may be ordered to perform unpaid community service work, and  
26 shall be placed on probation for one year with a violation of  
27 this probation punishable as contempt of court.

28 g. In addition to any other condition of probation, the  
29 person shall attend a program providing substance abuse  
30 prevention services or posttreatment services related to  
31 substance abuse as ordered by the court. The person shall  
32 report to the person's probation officer as ordered concerning  
33 proof of attendance at the treatment program or posttreatment  
34 program ordered by the court. Failure to attend or complete  
35 the program shall be considered a violation of probation and



1 is punishable as contempt of court.

2 2. ~~a. As-a-condition-of-a-suspended-sentence-or-portion~~  
3 ~~of-sentence-for~~ Upon a second~~7-third7~~ or subsequent offense in  
4 violation of section 321J.2, the court upon hearing may commit  
5 the defendant for inpatient treatment of alcoholism or drug  
6 addiction or dependency to any hospital, institution, or  
7 community correctional facility in Iowa providing such  
8 treatment. The time for which the defendant is committed for  
9 treatment shall be credited against the defendant's sentence.

10 b. The court may prescribe the length of time for the  
11 evaluation and treatment or it may request that the hospital  
12 to which the person is committed immediately report to the  
13 court when the person has received maximum benefit from the  
14 program of the hospital or institution or has recovered from  
15 the person's addiction, dependency, or tendency to chronically  
16 abuse alcohol or drugs.

17 c. A person committed under this section who does not  
18 possess sufficient income or estate to make payment of the  
19 costs of the treatment in whole or in part shall be considered  
20 a state patient and the costs of treatment shall be paid as  
21 provided in section 125.44.

22 Sec. 9. Section 321J.4, subsection 1, Code 1997, is  
23 amended to read as follows:

24 1. If a defendant is convicted of a violation of section  
25 321J.2 and the defendant's motor vehicle license or  
26 nonresident operating privilege has not been revoked under  
27 section 321J.9 or 321J.12 for the occurrence from which the  
28 arrest arose, the department shall revoke the defendant's  
29 motor vehicle license or nonresident operating privilege for  
30 one hundred eighty days if the defendant has had no previous  
31 conviction or revocation under this chapter ~~within-the~~  
32 ~~previous-six-years-and-the.~~ The defendant shall not be  
33 eligible for any temporary restricted license for at least  
34 thirty days after the effective date of the revocation if a  
35 test was obtained, and for at least ninety days if a test was

1 refused.

2 1A. If a defendant is convicted of a violation of section  
3 321J.2, and the defendant's motor vehicle license or  
4 nonresident operating privilege has not already been revoked  
5 under section 321J.9 or 321J.12 for the occurrence from which  
6 the arrest arose, the department shall revoke the defendant's  
7 motor vehicle license or nonresident operating privilege for  
8 one-year two years if the defendant has had one or more  
9 previous convictions or revocations under this chapter ~~within~~  
10 ~~the-previous-six-years~~. The defendant shall not be eligible  
11 for any temporary restricted license ~~during-the-entire-one-~~  
12 year-revocation-period for at least one year after the  
13 effective date of revocation. The defendant shall be ordered  
14 to install an ignition interlock device of a type approved by  
15 the commissioner of public safety on all vehicles owned by the  
16 defendant if the defendant seeks a temporary restricted  
17 license at the end of the minimum period of ineligibility. A  
18 temporary restricted license shall not be granted by the  
19 department until the defendant installs the ignition interlock  
20 device.

21 Sec. 10. Section 321J.4, subsection 3, Code 1997, is  
22 amended to read as follows:

23 3. ~~a~~ Upon a plea or verdict of guilty of a third or  
24 subsequent violation of section 321J.2, the court shall order  
25 the department to revoke the defendant's motor vehicle license  
26 or nonresident operating privilege for a period of six years.  
27 The defendant shall not be eligible for a temporary restricted  
28 license for at least one-year two years after the effective  
29 date of the revocation. The court shall require the defendant  
30 to surrender to it all Iowa licenses or permits held by the  
31 defendant, which the court shall forward to the department  
32 with a copy of the order for revocation. The defendant shall  
33 be ordered to install an ignition interlock device of a type  
34 approved by the commissioner of public safety on all vehicles  
35 owned by the defendant if the defendant seeks a temporary

1 restricted license at the end of the minimum period of  
2 ineligibility. A temporary restricted license shall not be  
3 granted by the department until the defendant installs the  
4 ignition interlock device.

5 b.--After two years from the date of the order for  
6 revocation, the defendant may apply to the court for  
7 restoration of the defendant's eligibility for a motor vehicle  
8 license.--The application may be granted only if all of the  
9 following are shown by the defendant by a preponderance of the  
10 evidence:

11 (1)--The defendant has completed an evaluation and, if  
12 recommended by the evaluation, a program of treatment for  
13 chemical dependency and is recovering, or has substantially  
14 recovered, from that dependency or tendency to abuse  
15 alcohol or drugs.

16 (2)--The defendant has not been convicted, since the date  
17 of the revocation order, of any subsequent violations of  
18 section 321J.2 or 123.46, or any comparable city or county  
19 ordinance, and the defendant has not, since the date of the  
20 revocation order, submitted to a chemical test under this  
21 chapter that indicated an alcohol concentration as defined in  
22 section 321J.1 of .10 or more, or refused to submit to  
23 chemical testing under this chapter.

24 (3)--The defendant has abstained from the excessive  
25 consumption of alcoholic beverages and the consumption of  
26 controlled substances, except at the direction of a licensed  
27 physician or pursuant to a valid prescription.

28 (4)--The defendant's motor vehicle license is not currently  
29 subject to suspension or revocation for any other reason.

30 c.--The court shall forward to the department a record of  
31 any application submitted under paragraph "b" and the results  
32 of the court's disposition of the application.

33 Sec. 11. Section 321J.4, subsection 5, Code 1997, is  
34 amended to read as follows:

35 5. Upon a plea or verdict of guilty of a violation of

1 section 321J.2 which involved a death, the court shall  
2 determine in open court, from consideration of the information  
3 in the file and any other evidence the parties may submit,  
4 whether a death occurred and, if so, whether the defendant's  
5 conduct in violation of section 321J.2 caused the death. If  
6 the court so determines, the court shall order the department  
7 to revoke the defendant's motor vehicle license or nonresident  
8 operating privilege for a period of six years. The defendant  
9 shall not be eligible for any temporary restricted license  
10 ~~until the minimum period of ineligibility has expired under~~  
11 ~~this section or section 321J.9, 321J.12, or 321J.20~~ for at  
12 least two years after the revocation. The defendant shall  
13 surrender to the court any Iowa license or permit and the  
14 court shall forward it to the department with a copy of the  
15 order for revocation.

16 Sec. 12. Section 321J.4, subsection 7, Code 1997, is  
17 amended to read as follows:

18 7. a. On a conviction for or as a condition of a deferred  
19 judgment for a violation of section 321J.2, the court may  
20 order the defendant to install ignition interlock devices of a  
21 type approved by the commissioner of public safety on all  
22 motor vehicles owned or operated by the defendant which,  
23 without tampering or the intervention of another person, would  
24 prevent the defendant from operating the motor vehicle with an  
25 alcohol concentration greater than a level set by rule of the  
26 commissioner of public safety.

27 b. The commissioner of public safety shall adopt rules to  
28 approve certain ignition interlock devices and the means of  
29 installation of the devices, and shall establish the level of  
30 alcohol concentration beyond which an ignition interlock  
31 device will not allow operation of the motor vehicle in which  
32 it is installed.

33 c. The order to install ignition interlock devices shall  
34 remain in effect for a period of time as determined by the  
35 court which shall not exceed the maximum term of imprisonment

1 which the court could have imposed according to the nature of  
2 the violation. While the order is in effect, the defendant  
3 shall not operate a motor vehicle which does not have an  
4 approved ignition interlock device installed.

5 d. If the defendant's motor vehicle license or nonresident  
6 operating privilege has been revoked, the department shall not  
7 issue a temporary permit or a motor vehicle license to the  
8 person without certification that approved ignition interlock  
9 devices have been installed in all motor vehicles owned or  
10 operated by the defendant while the order is in effect.

11 e. A defendant who fails within a reasonable time to  
12 comply with an order to install an approved ignition interlock  
13 device may be declared in contempt of court and punished  
14 accordingly.

15 f. A person who tampers with or circumvents an ignition  
16 interlock device installed under a court order while an order  
17 is in effect commits a serious misdemeanor.

18 Sec. 13. Section 321J.4B, Code 1997, is amended to read as  
19 follows:

20 321J.4B MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION --  
21 PENALTY -- LIABILITY OF VEHICLE OWNER.

22 1. For purposes of this section:

23 a. "Immobilized" means the installation of a device in a  
24 motor vehicle that completely prevents a motor vehicle from  
25 being operated, or the installation of an ignition interlock  
26 device of a type approved by the commissioner of public  
27 safety.

28 b. "Impoundment" means the process of seizure and  
29 confinement within an enclosed area of a motor vehicle, for  
30 the purpose of restricting access to the vehicle.

31 c. "Owner" means the registered titleholder of a motor  
32 vehicle; except in the case where a rental or leasing agency  
33 is the registered titleholder, in which case the lessee of the  
34 vehicle shall be treated as the owner of the vehicle for  
35 purposes of this section.

1 2. A motor vehicle is subject to impoundment in the  
2 following circumstances:

3 a. If a person ~~is convicted of a~~ operates a vehicle in  
4 violation of section 321J.2, and if convicted for that  
5 conduct, the conviction would be a second, third, or  
6 subsequent offense of operating while intoxicated, the court  
7 shall order that any motor vehicles owned by the person and  
8 used to commit the offense and any other motor vehicle used  
9 under section 321J.2.

10 b. If a person operates a vehicle while that person's  
11 motor vehicle license or operating privilege has been  
12 suspended, denied, revoked, or barred due to a violation of  
13 section 321J.2.

14 Upon conviction of a defendant for a violation of this  
15 subsection, the clerk of court shall send notice of the  
16 conviction to the impounding authority.

17 3. The motor vehicle operated by the person in the  
18 commission of the any offense included in subsection 2 may be  
19 immediately impounded or immobilized in accordance with this  
20 section. For purposes of this section, "immobilized" means  
21 the installation of a device that completely prevents a motor  
22 vehicle from being operated, or the installation of an  
23 ignition interlock device, of a type approved by the  
24 commissioner of public safety, in a motor vehicle.

25 a. A person or agency taking possession of an impounded or  
26 immobilized motor vehicle shall do the following:

27 (1) Make an inventory of any property contained in the  
28 vehicle, according to the agency's inventory procedure. The  
29 agency responsible for the motor vehicle shall also deliver a  
30 copy of the inventory to the county attorney.

31 (2) Contact all rental or leasing agencies registered as  
32 owners of the vehicle, as well as any parties registered as  
33 holders of a secured interest in the vehicle, in accordance  
34 with subsection 12.

35 b. The county attorney shall file a copy of the inventory

1 with the district court as part of each file related to  
2 criminal charges filed under this section.

3 4. An owner of a motor vehicle impounded or immobilized  
4 under this section, who knows of, should have known of, or  
5 gives consent to the operation of, the motor vehicle in  
6 violation of subsection 2, paragraph "b", shall be:

7 a. Guilty of a serious misdemeanor, and

8 b. Jointly and severally liable for any damages caused by  
9 the person who operated the motor vehicle, subject to the  
10 provisions of chapter 668.

11 5. a. The following persons shall be entitled to  
12 immediate return of the motor vehicle without payment of costs  
13 associated with the impoundment or immobilization of the  
14 vehicle:

15 (1) The owner of the motor vehicle, if the person who  
16 operated the motor vehicle is not a co-owner of the motor  
17 vehicle.

18 (2) A motor vehicle rental or leasing agency that owns the  
19 vehicle.

20 (3) A person who owns the motor vehicle and who is charged  
21 but is not convicted of the violation of section 321.218,  
22 321.561, 321A.32, 321J.2, or 321J.21, which resulted in the  
23 impoundment or immobilization of the motor vehicle under this  
24 section.

25 2- b. The Upon conviction of the defendant for a violation  
26 of subsection 2, paragraph "a", the court may order continued  
27 impoundment, or the immobilization, of the motor vehicle used  
28 in the commission of the offense, if the convicted person is  
29 the owner of the motor vehicle, and shall specify all of the  
30 following in the order:

31 a- (1) The motor vehicles vehicle that are is subject to  
32 the order.

33 b- (2) The period of impoundment or immobilization.

34 c- (3) The person or agency responsible for carrying out  
35 the order requiring continued impoundment, or the

1 immobilization, of the motor vehicle.

2 c. If a ~~the~~ vehicle which-is-to-be-impounded-or  
3 ~~immobilized~~ subject to the order is in the custody of a law  
4 enforcement agency, the court shall designate that agency as  
5 the responsible agency. If the vehicle is not in the custody  
6 of a law enforcement agency, the person or agency responsible  
7 for carrying out the order shall be any person deemed  
8 appropriate by the court, including but not limited to a law  
9 enforcement agency with jurisdiction over the area in which  
10 the residence of the vehicle owner is located. The person or  
11 agency responsible for carrying out the order shall determine  
12 whether the motor vehicle shall be impounded or immobilized.

13 3. d. The period of impoundment or immobilization of a  
14 motor vehicle under this section shall be the period of  
15 license revocation imposed upon the person convicted of the  
16 offense or one hundred eighty days, whichever period is  
17 longer. The impoundment or immobilization period shall  
18 commence on the day that the vehicle is actually first  
19 impounded or immobilized.

20 4. e. The clerk of the district court shall send a copy of  
21 the order to the department, the person convicted of the  
22 offense, ~~the motor vehicle owner if the owner is not the~~  
23 ~~person convicted,~~ and the person or agency responsible for  
24 executing the order for impoundment or immobilization, and any  
25 holders of any security interests in the vehicle.

26 ~~5. -- If the vehicle to be impounded or immobilized is in the~~  
27 ~~custody of a law enforcement agency, the agency shall~~  
28 ~~immobilize or impound the vehicle upon receipt of the order,~~  
29 ~~seize the motor vehicle's license plates and registration, and~~  
30 ~~shall send or deliver the vehicle's license plates and~~  
31 ~~registration to the department.~~

32 6. f. If the vehicle ~~to be impounded or immobilized~~  
33 subject to the court order is not in the custody of a law  
34 enforcement agency, the person or agency designated in the  
35 order as the person or agency responsible for executing the



1 order shall, upon receipt of the order, promptly locate the  
2 vehicle specified in the order, seize the motor vehicle and  
3 the license plates, and send or deliver the vehicle's license  
4 plates to the department.

5 7: If the vehicle is located at a place other than the  
6 place at which the impoundment-or-immobilization court order  
7 is to be carried out, the person or agency responsible for  
8 executing the order shall arrange for the vehicle to be moved  
9 to the place of impoundment or immobilization. When the  
10 vehicle is found, is impounded or immobilized, and is at the  
11 place of impoundment or immobilization, the person or agency  
12 responsible for executing the order shall notify the clerk of  
13 the date on which the order was executed. The clerk shall  
14 notify the department of the date on which the order was  
15 executed.

16 8: g. Upon receipt of the a court order for-impoundment-or  
17 immobilization-and-seizure-of-the-motor-vehicle, if-the-agency  
18 responsible-for-carrying-out-the-order-determines-that-the  
19 motor-vehicle-is-to-be-impounded for continued impoundment or  
20 immobilization of the motor vehicle, the agency shall review  
21 the value of the vehicle in relation to the costs associated  
22 with the period of impoundment of the motor vehicle specified  
23 in the order. If the agency determines that the costs of  
24 impoundment of the motor vehicle exceed the actual wholesale  
25 value of the motor vehicle, the agency may treat the vehicle  
26 as an abandoned vehicle pursuant to section 321.89. If the  
27 agency elects to treat the motor vehicle as abandoned, the  
28 agency shall notify the registered owner of the motor vehicle  
29 that the vehicle shall be deemed abandoned and shall be sold  
30 in the manner provided in section 321.89 if payment of the  
31 total cost of impoundment is not received within twenty-one  
32 days of the mailing of the notice. The agency shall provide  
33 documentation regarding the valuation of the vehicle and the  
34 costs of impoundment. This paragraph shall not apply to  
35 vehicles that are immobilized pursuant to this section or if

1 subsection ~~15 or 16~~ 12, paragraph "a" or "b", applies.

2 6. Upon conviction of the defendant for a second or  
3 subsequent violation of subsection 2, paragraph "b", the court  
4 shall order, if the convicted person is the owner of the motor  
5 vehicle used in the commission of the offense, that that motor  
6 vehicle be seized and forfeited to the state pursuant to  
7 chapters 809 and 809A.

8 9- 7. a. Upon receipt of a notice of conviction of the  
9 defendant for a violation of subsection 2, the impounding  
10 authority shall seize the motor vehicle's license plates and  
11 registration, and shall send or deliver them to the  
12 department.

13 b. The department shall destroy license plates received  
14 under this section and shall not authorize the release of the  
15 vehicle or the issuance of new license plates for the vehicle  
16 until the period of impoundment or immobilization has expired,  
17 and the fee and costs assessed under subsection 10 have been  
18 paid. The fee for issuance of new license plates and  
19 certificates of registration shall be the same as for the  
20 replacement of lost, mutilated, or destroyed license plates  
21 and certificates of registration.

22 ~~10- 8. a. Except where the person who is convicted of~~  
23 ~~operating while intoxicated and being a second or subsequent~~  
24 ~~offender is not lawfully in possession of the motor vehicle,~~  
25 ~~the owner of any motor vehicle that is impounded or~~  
26 ~~immobilized under this section shall be assessed Upon~~  
27 conviction for a violation of subsection 2, the court shall  
28 assess the defendant, in addition to any other penalty, a fee  
29 of one hundred dollars plus the cost of any expenses for  
30 towing, storage, and any other costs of impounding or  
31 immobilizing the motor vehicle, to be paid to the clerk of the  
32 district court.

33 b. The person or agency responsible for ~~carrying out the~~  
34 order impoundment or immobilization under this section shall  
35 inform the court of the costs of towing, storage, and any

1 other costs of impounding or immobilizing the motor vehicle.  
2 Upon payment of the fee and costs, the clerk shall forward a  
3 copy of the receipt to the department.

4 ~~11-~~ c. If a law enforcement agency impounds or immobilizes  
5 a motor vehicle, the amount of the fee and expenses deposited  
6 with the clerk shall be paid by the clerk to the law  
7 enforcement agency responsible for executing the order to  
8 reimburse the agency for costs incurred for impoundment or  
9 immobilization equipment and, if required, in sending officers  
10 to search for and locate the vehicle specified in the  
11 impoundment or immobilization order.

12 ~~12-~~ 9. Operating a motor vehicle on a street or highway in  
13 this state in violation of an order of impoundment or  
14 immobilization is a serious misdemeanor. A motor vehicle  
15 which is subject to an order of impoundment or immobilization  
16 that is operated on a street or highway in this state in  
17 violation of the order shall be seized and forfeited to the  
18 state under chapters 809 and 809A.

19 ~~13-~~ 10. Once the period of impoundment or immobilization  
20 has expired, the owner of the motor vehicle shall have thirty  
21 days to claim the motor vehicle and pay the all fees and  
22 charges imposed under this section. If the owner or the  
23 owner's designee has not claimed the vehicle and paid the all  
24 fees and charges imposed under this section within seven days  
25 from the date of expiration of the period, the clerk shall  
26 send written notification to the motor vehicle owner, at the  
27 owner's last known address, notifying the owner of the date of  
28 expiration of the period of impoundment or immobilization and  
29 of the period in which the motor vehicle must be claimed. If  
30 the motor vehicle owner fails to claim the motor vehicle and  
31 pay the all fees and charges imposed within the thirty-day  
32 period, the motor vehicle shall be forfeited to the state  
33 under chapters 809 and 809A.

34 ~~14-~~ 11. a. (1) During the period of impoundment or  
35 immobilization, ~~a person convicted of the offense of operating~~

1 ~~while-intoxicated-which-resulted-in-the-impoundment-or~~  
2 ~~immobilization~~ the owner of an impounded or immobilized  
3 vehicle shall not sell or transfer the title of the motor  
4 vehicle which is subject to the order of impoundment or  
5 immobilization. The

6 (2) ~~A person convicted of the-offense-of-operating-while~~  
7 ~~intoxicated~~ an offense under subsection 2, shall also not  
8 purchase ~~another-motor-vehicle~~ or register any motor vehicle  
9 during the period of impoundment, or immobilization, or  
10 license revocation.

11 PARAGRAPH DIVIDED. Violation of this paragraph "a" is a  
12 serious misdemeanor.

13 b. If, during the period of impoundment or immobilization,  
14 the title to the motor vehicle which is the subject of the  
15 order is transferred by the foreclosure of a chattel mortgage,  
16 a sale upon execution, the cancellation of a conditional sales  
17 contract, or an order of a court, the court which enters the  
18 order that permits transfer of the title shall notify the  
19 department of the transfer of the title. The department shall  
20 enter notice of the transfer of the title to the motor vehicle  
21 in the previous owner's vehicle registration record.

22 ~~15-~~ 12. Notwithstanding the other requirements of this  
23 ~~section-if-the-owner-of-the-motor-vehicle-is-not-the-person~~  
24 ~~who-is-convicted-of-the-offense-which-resulted-in-the-issuance~~  
25 ~~of-the-order-of-impoundment-or-immobilization-or-the-owner-of~~  
26 ~~the-motor-vehicle-is-a-motor-vehicle-rental-or-leasing~~  
27 ~~company-the-owner-the-owner's-designee-or-the-rental-or~~  
28 ~~leasing-company-shall-be-permitted-to-submit-a-claim-for~~  
29 ~~return-of-the-motor-vehicle-within-twenty-four-hours-from~~  
30 ~~receipt-of-the-order-for-impoundment-or-immobilization:~~

31 a. Upon learning the address or phone number of a rental  
32 or leasing company which owns a motor vehicle impounded or  
33 immobilized under this section, the peace officer, county  
34 attorney, or attorney general shall immediately contact the  
35 company to inform the company that the vehicle is available

1 for return to the company. The-vehicle-shall-be-returned-to  
2 the-owner, owner's-designee, or-rental-or-leasing-company-and  
3 the-order-for-impoundment-or-immobilization-shall-be-rescinded  
4 with-respect-to-the-particular-motor-vehicle, if-the-owner-or  
5 owner's-designee-can-prove-to-the-satisfaction-of-the-court  
6 that-the-owner-did-not-know-or-should-not-have-known-that-the  
7 vehicle-was-to-be-used-in-the-commission-of-the-offense-of  
8 operating-while-intoxicated, or-if-the-rental-or-leasing  
9 company-did-not-know, should-not-have-known, and-did-not  
10 consent-to-the-operation-of-the-motor-vehicle-used-in-the  
11 commission-of-the-offense-of-operating-while-intoxicated. For  
12 purposes-of-this-section, unless-the-person-convicted-of-the  
13 offense-which-results-in-the-imposition-of-the-order-for  
14 impoundment-or-immobilization-is-not-in-lawful-possession-of  
15 the-motor-vehicle-used-in-the-commission-of-the-offense, an  
16 owner-of-a-motor-vehicle-shall-be-presumed-to-know-that-the  
17 vehicle-was-to-be-used-by-the-person-who-is-convicted-of-the  
18 offense, in-the-commission-of-the-offense-of-operating-while  
19 intoxicated.

20 16. b. Notwithstanding-the-requirements-of-this-section,  
21 the The holder of a security interest in a vehicle which is  
22 impounded or immobilized pursuant to this section or forfeited  
23 in the manner provided in chapters 809 and 809A shall be  
24 notified of the impoundment, immobilization, or forfeiture  
25 within seventy-two hours of the seizure of the vehicle and  
26 shall have the right to claim the motor vehicle without  
27 payment of any fees or surcharges unless the value of the  
28 vehicle exceeds the value of the security interest held by the  
29 creditor.

30 17. c. Notwithstanding-the-requirements-of-this-section,  
31 any Any of the following persons may make application to the  
32 court for permission to operate a motor vehicle, which is  
33 impounded or immobilized pursuant to this section, during the  
34 period of impoundment or immobilization, if the applicant's  
35 motor vehicle license or operating privilege has not been

1 suspended, denied, ~~or~~ revoked, or barred, and an ignition  
2 interlock device of a type approved by the commissioner of  
3 public safety is installed in the motor vehicle prior to  
4 operation:

5 ~~a-~~ (1) A person, other than the person who committed the  
6 offense which resulted in the impoundment or immobilization,  
7 who is not a member of the immediate family of the person who  
8 committed the offense but is a joint owner of the motor  
9 vehicle.

10 ~~b-~~ (2) A member of the immediate family of the person who  
11 committed the offense which resulted in the impoundment or  
12 immobilization, if the member demonstrates that the motor  
13 vehicle that is subject to the order for impoundment or  
14 immobilization is the only motor vehicle possessed by the  
15 family.

16 For purposes of this section, "a member of the immediate  
17 family" means a spouse, child, or parent of the person who  
18 committed the offense.

19 ~~18-~~ 13. The impoundment, immobilization, or forfeiture of  
20 a motor vehicle under this chapter does not constitute loss of  
21 use of a motor vehicle for purposes of any contract of  
22 insurance.

23 Sec. 14. Section 321J.6, subsection 1, paragraphs d, f,  
24 and g, Code 1997, are amended to read as follows:

25 d. The preliminary breath screening test was administered  
26 and it indicated an alcohol concentration ~~as-defined-in equal~~  
27 to or in excess of the level prohibited by section 321J.1-of  
28 ~~10-or-more~~ 321J.2.

29 f. The preliminary breath screening test was administered  
30 and it indicated an alcohol concentration ~~of less than 0.10~~  
31 the level prohibited by section 321J.2, and the peace officer  
32 has reasonable grounds to believe that the person was under  
33 the influence of a drug other than alcohol, or a combination  
34 of alcohol and another drug.

35 g. The preliminary breath screening test was administered

1 and it indicated an alcohol concentration ~~of .02 or more but~~  
2 ~~less than .10~~ in excess of the level prohibited by section  
3 321J.2A, but less than the amount prohibited by section  
4 321J.2, and the person is under the age of twenty-one.

5 Sec. 15. Section 321J.7, Code 1997, is amended to read as  
6 follows:

7 321J.7 DEAD OR UNCONSCIOUS PERSONS.

8 A person who is dead, unconscious, or otherwise in a  
9 condition rendering the person incapable of consent or refusal  
10 is deemed not to have withdrawn the consent provided by  
11 section 321J.6, and the test may be given if a licensed  
12 physician certifies in advance of the test that the person is  
13 dead, unconscious, or otherwise in a condition rendering that  
14 person incapable of consent or refusal. If the certification  
15 is oral, written certification shall be completed by the  
16 physician within one hour of the test.

17 Sec. 16. Section 321J.8, subsection 2, Code 1997, is  
18 amended to read as follows:

19 2. If the person submits to the test and the results  
20 ~~indicate an alcohol concentration as defined in section 321J.1~~  
21 ~~of .10 or more, or the person is under the age of twenty-one~~  
22 ~~and the results indicate an alcohol concentration of .02 or~~  
23 ~~more, but less than .10~~ a violation of section 321J.2 or  
24 321J.2A, the person's motor vehicle license or nonresident  
25 operating privilege will be revoked by the department as  
26 required by and for the applicable period specified under  
27 section 321J.12.

28 Sec. 17. Section 321J.9, subsections 1 and 2, Code 1997,  
29 are amended to read as follows:

30 1. If a person refuses to submit to the chemical testing,  
31 a test shall not be given, but the department, upon the  
32 receipt of the peace officer's certification, subject to  
33 penalty for perjury, that the officer had reasonable grounds  
34 to believe the person to have been operating a motor vehicle  
35 in violation of section 321J.2 or 321J.2A, that specified

1 conditions existed for chemical testing pursuant to section  
2 321J.6, and that the person refused to submit to the chemical  
3 testing, shall revoke the person's motor vehicle license and  
4 any nonresident operating privilege for the following periods  
5 of time:

6 a. ~~Two-hundred-forty-days~~ One year if the person has no  
7 previous revocation ~~within-the-previous-six-years~~ under this  
8 chapter; and

9 b. ~~Five-hundred-forty-days~~ Two years if the person has one  
10 or more previous revocations ~~within-the-previous-six-years~~  
11 under this chapter.

12 2. a. A person whose motor vehicle license or nonresident  
13 operating privileges are revoked ~~for-two-hundred-forty-days~~  
14 under subsection 1, paragraph "a", shall not be eligible for a  
15 temporary restricted license for at least ninety days after  
16 the effective date of the revocation. A person whose motor  
17 vehicle license or nonresident operating privileges are  
18 revoked ~~for-five-hundred-forty-days~~ under subsection 1,  
19 paragraph "b", shall not be eligible for a temporary  
20 restricted license for at least one year after the effective  
21 date of the revocation.

22 b. The defendant shall be ordered to install an ignition  
23 interlock device of a type approved by the commissioner of  
24 public safety on all vehicles owned or operated by the  
25 defendant if the defendant seeks a temporary restricted  
26 license at the end of the minimum period of ineligibility. A  
27 temporary restricted license shall not be granted by the  
28 department until the defendant installs the ignition interlock  
29 device.

30 Sec. 18. Section 321J.10, subsection 4, Code 1997, is  
31 amended to read as follows:

32 4. a. Search warrants issued under this section shall  
33 authorize and direct peace officers to secure the withdrawal  
34 of blood specimens by medical personnel under section 321J.11.  
35 Reasonable care shall be exercised to ensure the health and



1 safety of the persons from whom specimens are withdrawn in  
2 execution of the warrants.

3 b. If a person from whom a specimen is to be withdrawn  
4 objects to the withdrawal of blood, and the warrant may be  
5 executed according to the following:

6 (1) If the person is capable of giving a specimen of  
7 breath, and a direct breath testing instrument is readily  
8 available, the warrant may be executed by the withdrawal of a  
9 specimen of breath for chemical testing.

10 (2) If the testimony in support of the warrant sets forth  
11 facts and information that the peace officer has reasonable  
12 grounds to believe that the person was driving while under the  
13 influence of a drug other than alcohol, or a combination of  
14 alcohol and another drug, a urine test may be executed, if the  
15 person is capable of giving a urine sample and materials for  
16 testing the urine sample are readily available.

17 Sec. 19. Section 321J.12, Code 1997, is amended to read as  
18 follows:

19 321J.12 TEST RESULT REVOCATION.

20 1. Upon certification, subject to penalty for perjury, by  
21 the peace officer that there existed reasonable grounds to  
22 believe that the person had been operating a motor vehicle in  
23 violation of section 321J.2, that there existed one or more of  
24 the necessary conditions for chemical testing described in  
25 section 321J.6, subsection 1, and that the person submitted to  
26 chemical testing and the test results indicated ~~an alcohol~~  
27 ~~concentration as defined in section 321J.1 of --10-- or more,~~ a  
28 violation of section 321J.2, the department shall revoke the  
29 person's motor vehicle license or nonresident operating  
30 privilege for the following periods of time:

31 a. One hundred eighty days if the person has had no  
32 revocation ~~within the previous six years~~ under this chapter.

33 b. One year if the person has had one or more previous  
34 revocations ~~within the previous six years~~ under this chapter.

35 2. A person whose motor vehicle license or nonresident

1 operating privileges have been revoked under subsection 1,  
2 paragraph "a", shall not be eligible for any temporary  
3 restricted license for at least thirty days after the  
4 effective date of the revocation. A person whose license or  
5 privileges have been revoked under subsection 1, paragraph  
6 "b", for one year shall not be eligible for any temporary  
7 restricted license for one year after the effective date of  
8 the revocation.

9 3. The effective date of the revocation shall be ten days  
10 after the department has mailed notice of revocation to the  
11 person by certified mail. The peace officer who requested or  
12 directed the administration of the chemical test may, on  
13 behalf of the department, serve immediate notice of revocation  
14 on a person whose test results indicated ~~an alcohol~~  
15 ~~concentration of .10 or more~~ a violation of section 321J.2.

16 4. If the peace officer serves that immediate notice, the  
17 peace officer shall take the person's Iowa license or permit,  
18 if any, and issue a temporary license valid only for ten days.  
19 The peace officer shall immediately send the person's driver's  
20 license to the department along with the officer's certificate  
21 indicating that the test results indicated ~~an alcohol~~  
22 ~~concentration of .10 or more~~ a violation of section 321J.2.

23 5. Upon certification, subject to penalty of perjury, by  
24 the peace officer that there existed reasonable grounds to  
25 believe that the person had been operating a motor vehicle in  
26 violation of section 321J.2A, that there existed one or more  
27 of the necessary conditions for chemical testing described in  
28 section 321J.6, subsection 1, and that the person submitted to  
29 chemical testing and the test results indicated an alcohol  
30 concentration ~~as defined in section 321J.1 of .02 or more but~~  
31 ~~less than .10~~ in violation of section 321J.2A, the department  
32 shall revoke the person's motor vehicle license or operating  
33 privilege for a period of sixty days if the person has had no  
34 revocations ~~within the previous six years~~ under section  
35 ~~321J.2A~~ this chapter, and for a period of ninety days if the

1 person has had one or more previous revocations ~~within the~~  
2 ~~previous six years~~ under ~~section 321J.2A~~ this chapter.

3 6. The results of a chemical test may not be used as the  
4 basis for a revocation of a person's motor vehicle license or  
5 nonresident operating privilege if the alcohol concentration  
6 indicated by the chemical test minus the established margin of  
7 error inherent in the device or method used to conduct the  
8 chemical test ~~does is~~ is not equal an alcohol concentration of  
9 ~~.10 or more for violations under to or in excess of the level~~  
10 prohibited by section 321J.2 or ~~of .02 or more for violations~~  
11 ~~of section 321J.2A.~~

12 Sec. 20. Section 321J.13, subsection 2, Code 1997, is  
13 amended to read as follows:

14 2. The department shall grant the person an opportunity to  
15 be heard within forty-five days of receipt of a request for a  
16 hearing if the request is made not later than ten days after  
17 receipt of notice of revocation served pursuant to section  
18 321J.9 or 321J.12. The hearing shall be before the department  
19 in the county where the alleged events occurred, unless the  
20 director and the person agree that the hearing may be held in  
21 some other county, or the hearing may be held by telephone  
22 conference at the discretion of the agency conducting the  
23 hearing. The hearing may be recorded and its scope shall be  
24 limited to the issues of whether a peace officer had  
25 reasonable grounds to believe that the person was operating a  
26 motor vehicle in violation of section 321J.2 or ~~section~~  
27 321J.2A and ~~either~~ one or more of the following:

28 a. Whether the person refused to submit to the test or  
29 tests.

30 b. Whether a test was administered and the test results  
31 indicated an alcohol concentration ~~as defined in~~ equal to or  
32 in excess of the level prohibited under section ~~321J.1 of .10~~  
33 ~~or more or whether a test was administered and the test~~  
34 ~~results indicated an alcohol concentration as defined in~~  
35 ~~section 321J.1 of .02 or more pursuant to section~~ 321J.2 or

1 321J.2A.

2 c. Whether a test was administered and the test results  
3 indicated the presence of alcohol, another drug, or a  
4 combination of both, in violation of section 321J.2.

5 Sec. 21. Section 321J.13, subsection 4, Code 1997, is  
6 amended by striking the subsection.

7 Sec. 22. Section 321J.17, Code 1997, is amended to read as  
8 follows:

9 321J.17 CIVIL PENALTY -- DISPOSITION -- LICENSE  
10 REINSTATEMENT.

11 1. When If the department revokes a person's motor vehicle  
12 license or nonresident operating privilege under this chapter,  
13 the department shall assess the person a civil penalty of two  
14 hundred dollars. The money collected by the department under  
15 this section shall be transmitted to the treasurer of state  
16 who shall deposit one-half of the money in the separate fund  
17 established in section 912.14 and one-half of the money shall  
18 be deposited in the general fund of the state. A motor  
19 vehicle license or nonresident operating privilege shall not  
20 be reinstated until the civil penalty has been paid.

21 2. If the department or a court orders the revocation of a  
22 person's motor vehicle license or nonresident operating  
23 privilege under this chapter, the department or court shall  
24 also order the person, at the person's own expense, to do the  
25 following:

26 a. Enroll, attend, and satisfactorily complete a course  
27 for drinking drivers, as provided in section 321J.22.

28 b. Submit to evaluation and treatment or rehabilitation  
29 services as provided in chapter 125.

30 A motor vehicle license or nonresident operating privilege  
31 shall not be reinstated until proof of completion of the  
32 requirements of this subsection is presented to the  
33 department.

34 Sec. 23. Section 321J.20, subsection 1, unnumbered  
35 paragraph 1, Code 1997, is amended to read as follows:

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

17 Sec. 24. Section 321J.20, subsection 1, paragraph a, Code  
18 1997, is amended to read as follows:

19 a. The person's motor vehicle license is revoked under  
20 section 321J.4~~-subsection-17-27-47-or-67~~ and the minimum  
21 period of ineligibility for issuance of a temporary restricted  
22 license has expired. This subsection shall not apply to a  
23 revocation ordered under section 321J.4 resulting from a plea  
24 or verdict of guilty of a violation of section 321J.2 that  
25 involved a death.

26 Sec. 25. Section 321J.20, subsection 6, Code 1997, is  
27 amended to read as follows:

28 6. Following the certain minimum period periods of  
29 ineligibility, a temporary restricted license under this  
30 section shall not be issued until such time as the applicant  
31 installs an ignition interlock device of a type approved by  
32 the commissioner of public safety on all motor vehicles owned  
33 or operated by the applicant, in accordance with section  
34 321J.4~~-subsection-7~~. Installation of an ignition interlock  
35 device under this section shall be required for the period of

1 time for which the temporary restricted license is issued, but  
2 no longer than one year, unless the court order under section  
3 321J.4, subsection 7, provides for a longer period of time.

4 Sec. 26. Section 321J.21, Code 1997, is amended to read as  
5 follows:

6 321J.21 DRIVING WHILE LICENSE SUSPENDED, DENIED, OR  
7 REVOKED, OR BARRED.

8 1. A person whose motor vehicle license or nonresident  
9 operating privilege has been suspended, denied, or revoked as  
10 provided in, or barred due to a violation of this chapter and  
11 who drives a motor vehicle upon the highways of this state  
12 while the license or privilege is suspended, denied, or  
13 revoked, or barred commits a serious misdemeanor, punishable  
14 with a mandatory fine of one thousand dollars, and may be  
15 imprisoned in the county jail for a period of time up to  
16 thirty days. The

17 2. In addition to the fine and any jail term imposed, the  
18 department, upon receiving the record of the conviction of a  
19 person under this section upon a charge of driving a motor  
20 vehicle while the license of the person was revoked or  
21 suspended, denied, revoked, or barred shall extend the period  
22 of revocation or suspension, denial, revocation, or bar for an  
23 additional like period, and the department shall not issue a  
24 new license during the additional period.

25 Sec. 27. Section 321J.22, Code 1997, is amended to read as  
26 follows:

27 321J.22 COURT-ORDERED-DRINKING DRINKING DRIVERS COURSE.

28 1. As used in this section, unless the context otherwise  
29 requires:

30 a. "Course for drinking drivers" means an approved course  
31 designed to inform the offender about drinking and driving and  
32 encourage the offender to assess the offender's own drinking  
33 and driving behavior in order to select practical  
34 alternatives.

35 b. "Satisfactory completion of a course" means receiving

1 at the completion of a course a grade from the course  
2 instructor of "C" or "2.0," or better.

3 ~~2. After a conviction for, or a plea of guilty of, a~~  
4 ~~violation of section 321J.2, the court in addition to its~~  
5 ~~power to commit the defendant for treatment of alcoholism~~  
6 ~~under section 321J.3, may order the defendant, at the~~  
7 ~~defendant's own expense, to enroll in, attend, and~~  
8 ~~successfully complete a course for drinking drivers. The~~  
9 ~~court may alternatively or additionally require the defendant~~  
10 ~~to seek evaluation, treatment or rehabilitation services under~~  
11 ~~section 125.33 at the defendant's expense and to furnish~~  
12 ~~evidence of successful completion. A copy of the order shall~~  
13 ~~be forwarded to the department.~~

14 3. 2. The course provided in according to this section  
15 shall be offered on a regular basis at each community college  
16 as defined in section 260C.2. Enrollment in the courses is  
17 not limited to persons ordered to enroll, attend, and  
18 successfully complete the course required under sections  
19 321J.2 and 321J.17, subsection 2, ~~and any person convicted of~~  
20 ~~a violation of section 321J.2 who was not ordered to enroll in~~  
21 ~~a course may enroll in and attend a course for drinking~~  
22 ~~drivers. The course required by this section shall be taught~~  
23 ~~by the community colleges under the department of education~~  
24 ~~and approved by the department. The department of education~~  
25 ~~shall establish reasonable fees to defray the expense of~~  
26 ~~obtaining classroom space, instructor salaries, and class~~  
27 ~~materials. A person shall not be denied enrollment in a~~  
28 ~~course by reason of the person's indigency.~~

29 4. 3. An employer shall not discharge a person from  
30 employment solely for the reason of work absence to attend a  
31 course required by this section. Any employer who violates  
32 this section is liable for damages which include but are not  
33 limited to actual damages, court costs, and reasonable  
34 attorney fees. The person may also petition the court for  
35 imposition of a cease and desist order against the person's

1 employer and for reinstatement to the person's previous  
2 position of employment.

3 5. 4. The department of education shall prepare a list of  
4 the locations of the courses taught under this section, the  
5 dates and times taught, the procedure for enrollment, and the  
6 schedule of course fees. The list shall be kept current and a  
7 copy of the list shall be sent to each court having  
8 jurisdiction over offenses provided in this chapter.

9 6. 5. The department of education shall maintain  
10 enrollment, attendance, successful and unsuccessful  
11 completion data on the persons ordered to enroll, attend, and  
12 successfully complete a course for drinking drivers. This  
13 data shall be forwarded to the court.

14 Sec. 28. Section 707.6A, subsection 1, Code 1997, is  
15 amended to read as follows:

16 1. A person commits a class "C" felony when the person  
17 unintentionally causes the death of another by ~~any-of-the~~  
18 ~~following-means:~~

19 ~~a.--Operating~~ operating a motor vehicle while under the  
20 ~~influence-of-alcohol-or-other-drug-or-a-combination-of-such~~  
21 ~~substances-or-while-having-an-alcohol-concentration~~  
22 intoxicated, as defined in prohibited by section ~~321J.1,~~  
23 ~~subsection-1,-of-10-or-more~~ 321J.2. Upon a plea or verdict  
24 of guilty of a violation of this paragraph subsection, the  
25 court shall order do the following:

26 a. Order the state department of transportation to revoke  
27 the defendant's motor vehicle license or nonresident operating  
28 privileges for a period of six years. The defendant shall  
29 surrender to the court any Iowa license or permit and the  
30 court shall forward it the license or permit to the department  
31 with a copy of the revocation order. The defendant shall not  
32 be eligible for a temporary restricted license for at least  
33 two years after the revocation.

34 b. Order the defendant, at the defendant's expense, to do  
35 the following:



1 (1) Enroll, attend, and satisfactorily complete a course  
2 for drinking drivers, as provided in section 321J.22.

3 (2) Submit to evaluation and treatment or rehabilitation  
4 services as provided in chapter 125.

5 c. A motor vehicle license or nonresident operating  
6 privilege shall not be reinstated until proof of completion of  
7 the requirements of paragraph "b" is presented to the  
8 department.

9 1A. A person commits a class "C" felony when the person  
10 unintentionally causes the death of another by any of the  
11 following means:

12 b. a. Driving a motor vehicle in a reckless manner with  
13 willful or wanton disregard for the safety of persons or  
14 property, in violation of section 321.277.

15 c. b. Eluding or attempting to elude a pursuing law  
16 enforcement vehicle, in violation of section 321.279, if the  
17 death of the other person directly or indirectly results from  
18 the violation.

19 Sec. 29. Section 707.6A, Code 1997, is amended by adding  
20 the following new subsection:

21 NEW SUBSECTION. 6. Notwithstanding the provisions of  
22 sections 901.5 and 907.3, the court shall not defer judgment  
23 or sentencing, or suspend execution of any part of the  
24 sentence applicable to the defendant for a violation of  
25 subsection 1, or for a violation of subsection 3 involving the  
26 operation of a motor vehicle while intoxicated if any of the  
27 following apply:

28 a. If the defendant's alcohol concentration established by  
29 the results of an analysis of a specimen of the defendant's  
30 blood, breath, or urine withdrawn in accordance with chapter  
31 321J exceeds .15.

32 b. If the defendant has previously been convicted of a  
33 violation of section 321J.2, subsection 1, or a violation of a  
34 statute in another state substantially corresponding to  
35 section 321J.2, subsection 1.

1 c. If the defendant has previously received a deferred  
2 judgment or sentence for a violation of section 321J.2,  
3 subsection 1, or for a violation of a statute in another state  
4 substantially corresponding to section 321J.2, subsection 1.

5 Sec. 30. Section 809A.3, subsections 4 and 5, Code 1997,  
6 are amended to read as follows:

7 ~~4. A violation of section 321J.4B, subsection 1~~

8 ~~5. 4.~~ Notwithstanding subsections 1 through 4 3,  
9 violations of chapter 321 or 321J ~~except section 321J.4B,~~  
10 ~~subsection 1~~ shall not be considered conduct giving rise to  
11 forfeiture, except for violations of the following:

12 a. A second or subsequent violation of section 321J.4B,  
13 subsection 2, paragraph "b".

14 b. Section 321J.4B, subsection 9.

15 Sec. 31. Section 907.3, subsection 1, paragraph g, Code  
16 1997, is amended to read as follows:

17 g. The offense is a violation of section 321J.2 and  
18 ~~within the previous six years, the person has been convicted~~  
19 ~~of a violation of that section or the person's driver's~~  
20 ~~license has been revoked pursuant to section 321J.4, 321J.9,~~  
21 ~~or 321J.12, subsection 1; section 707.6A, subsection 1; or a~~  
22 violation of section 707.6A, subsection 3, involving operation  
23 of a motor vehicle while intoxicated, and any of the following  
24 apply:

25 (1) If the defendant's alcohol concentration established  
26 by the results of an analysis of a specimen of the defendant's  
27 blood, breath, or urine withdrawn in accordance with chapter  
28 321J exceeds .15.

29 (2) If the defendant has previously been convicted of a  
30 violation of section 321J.2, subsection 1, or a violation of a  
31 statute in another state substantially corresponding to  
32 section 321J.2, subsection 1.

33 (3) If the defendant has previously received a deferred  
34 judgment or sentence for a violation of section 321J.2,  
35 subsection 1, or for a violation of a statute in another state

1 substantially corresponding to section 321J.2, subsection 1.

2 Sec. 32. Section 907.3, subsections 2 and 3, Code 1997,  
3 are amended to read as follows:

4 2. At the time of or after pronouncing judgment and with  
5 the consent of the defendant, the court may defer the sentence  
6 and assign the defendant to the judicial district department  
7 of correctional services. The court may assign the defendant  
8 to supervision or services under section 901B.1 at the level  
9 of sanctions which the district department determines to be  
10 appropriate, if an intermediate criminal sanctions plan and  
11 program has been adopted in the judicial district under  
12 section 901B.1. However, the court shall not defer the  
13 sentence for a violation of section any of the following:

14 a. Section 708.2A, if the defendant has previously  
15 received a deferred judgment or sentence for a violation of  
16 section 708.2 or 708.2A which was issued on a domestic abuse  
17 assault, or if similar relief was granted anywhere in the  
18 United States concerning that jurisdiction's statutes which  
19 substantially correspond to domestic abuse assault as provided  
20 in section 708.2A. ~~In addition, the court shall not defer a~~  
21 ~~sentence if it is imposed for a conviction for or plea of~~  
22 ~~guilty to a violation of section~~

23 b. Section 236.8 or for contempt pursuant to section 236.8  
24 or 236.14.

25 c. Section 321J.2, subsection 1; section 707.6A,  
26 subsection 1; or a violation of section 707.6A, subsection 3,  
27 involving operation of a motor vehicle while intoxicated, if  
28 any of the following apply:

29 (1) If the defendant's alcohol concentration established  
30 by the results of an analysis of a specimen of the defendant's  
31 blood, breath, or urine withdrawn in accordance with chapter  
32 321J exceeds .15.

33 (2) If the defendant has previously been convicted of a  
34 violation of section 321J.2, subsection 1, or a violation of a  
35 statute in another state substantially corresponding to

1 section 321J.2, subsection 1.

2 (3) If the defendant has previously received a deferred  
3 judgment or sentence for a violation of section 321J.2,  
4 subsection 1, or for a violation of a statute in another state  
5 substantially corresponding to section 321J.2, subsection 1.

6 Upon a showing that the defendant is not fulfilling the  
7 conditions of probation, the court may revoke probation and  
8 impose any sentence authorized by law. Before taking such  
9 action, the court shall give the defendant an opportunity to  
10 be heard on any matter relevant to the proposed action. Upon  
11 violation of the conditions of probation, the court may  
12 proceed as provided in chapter 908.

13 3. By record entry at the time of or after sentencing, the  
14 court may suspend the sentence and place the defendant on  
15 probation upon such terms and conditions as it may require  
16 including commitment to an alternate jail facility or a  
17 community correctional residential treatment facility for a  
18 specific number of days to be followed by a term of probation  
19 as specified in section 907.7, or commitment of the defendant  
20 to the judicial district department of correctional services  
21 for supervision or services under section 901B.1 at the level  
22 of sanctions which the district department determines to be  
23 appropriate. A person so committed who has probation revoked  
24 shall be given credit for such time served. However, the  
25 court shall not suspend the any of the following sentences:

26 a. The minimum term of two days imposed pursuant to  
27 section 708.2A, subsection 6, paragraph "a", or a sentence  
28 imposed under section 708.2A, subsection 6, paragraph "b" ~~and~~  
29 ~~the court shall not suspend a~~

30 b. A sentence imposed pursuant to section 236.8 or 236.14  
31 for contempt.

32 c. A sentence imposed pursuant to a violation of section  
33 321J.2, subsection 1; section 707.6A, subsection 1; or a  
34 violation of section 707.6A, subsection 3, involving operation  
35 of a motor vehicle while intoxicated, if any of the following

1 apply:

2 (1) If the defendant's alcohol concentration established  
3 by the results of an analysis of a specimen of the defendant's  
4 blood, breath, or urine withdrawn in accordance with chapter  
5 321J exceeds .15.

6 (2) If the defendant has previously been convicted of a  
7 violation of section 321J.2, subsection 1, or a violation of a  
8 statute in another state substantially corresponding to  
9 section 321J.2, subsection 1.

10 (3) If the defendant has previously received a deferred  
11 judgment or sentence for a violation of section 321J.2,  
12 subsection 1, or for a violation of a statute in another state  
13 substantially corresponding to section 321J.2, subsection 1.

14 Sec. 33. EFFECTIVE AND APPLICABILITY DATES. Sections 2  
15 through 5 of this Act take effect on July 1, 1997, for the  
16 purpose of adoption of rules by the department of  
17 transportation. Sections 2 through 5 of this Act are  
18 applicable to licenses issued to minors on and after July 1,  
19 1998.

20 Sec. 34. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
21 3, shall not apply to this Act.

22 EXPLANATION

23 This bill amends the laws relating to the offense of  
24 operating while intoxicated, and to operating privileges for  
25 minors.

26 This bill amends Code section 321J.2, subsection 8, by  
27 removing the \$2,000 limitation on victim restitution owed by a  
28 convicted drunk driver, and making restitution available to  
29 any public agency for the costs of emergency response services  
30 related to the acts underlying the drunk driving conviction,  
31 up to \$500 per agency per response.

32 The bill amends Code section 321J.4 by deleting the six-  
33 year period which a court uses in determining how many total  
34 prior OWI convictions a defendant has and what punishment is  
35 therefore applicable. The bill makes a similar change with

regard to license revocations in other portions of chapter 321J. The bill makes a related amendment to Code section 321.12 by deleting the requirement that the department of transportation destroy records pertaining to OWI arrests or convictions after 12 years and requiring that such records be permanently maintained by the department.

The bill further amends Code section 321J.4 by providing that a temporary restricted license or early license reinstatement shall not be available for persons convicted of a second OWI for at least one year of the two year revocation and on a third or subsequent OWI violation for at least two years after the six-year revocation. Ignition interlock devices are required as a condition for issuance of a temporary restricted license for any person convicted of a second or subsequent offense under Code section 321J.2. A conforming amendment is made to section 321J.20. A similar provision is added in Code section 707.6A for persons convicted of causing death as a result of an OWI violation, and conforming amendment are made in Code sections 321J.4 and 321J.20.

The bill amends Code section 321J.4B by providing that if a person is convicted of a second or subsequent offense of driving a vehicle while that person's license is suspended, denied, revoked, or barred for a violation of chapter 321J, then in addition to the applicable criminal penalty, the vehicle used in commission of the offense shall be subject to seizure and forfeiture pursuant to chapters 809 and 809A. Conforming amendments are made to Code section 809A.3. The bill also establishes a serious misdemeanor offense for any person who knowingly consents to operation of the person's vehicle by a person whose license is suspended, denied, revoked, or barred for a violation of chapter 321J, and provides for civil liability by such a vehicle owner for damages caused by the drunk driver.

The bill provides that an oral certification of death or

1 months preceding issuance of the license, and shall have  
2 completed an approved driver education course. The bill  
3 creates new licenses specifically for 16-year-olds. These  
4 licenses, class C1 for motor vehicles other than motorcycles  
5 and class M1 for motorcycles, restrict operation of a motor  
6 vehicle to between the hours of 5 a.m. and midnight unless  
7 the license holder is accompanied by a parent or guardian or  
8 traveling to or from the license holder's job. In order to  
9 obtain a regular driver's license, a person has to be 17 years  
10 of age, have held a class C1 or M1 license for at least six  
11 months, and have no accidents or traffic violations other than  
12 parking violations for the three months immediately preceding  
13 issuance of a regular license. The bill takes effect July 1,  
14 1997, for the purpose of adoption of rules by the department  
15 of transportation. The bill is applicable to licenses issued  
16 to minors on and after July 1, 1998.

17 Numerous technical changes are made throughout Code chapter  
18 321J.

19 This bill may include a state mandate as defined in Code  
20 chapter 25B. This bill makes inapplicable Code section 25B.2,  
21 subsection 3, which would relieve a political subdivision from  
22 complying with a state mandate if funding for the cost of the  
23 state mandate is not provided or specified. Therefore,  
24 political subdivisions are required to comply with any state  
25 mandate included in this bill.

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HOUSE FILE 707

AN ACT

RELATING TO SUBSTANCE ABUSE EVALUATION AND EDUCATION, USE OF IGNITION INTERLOCK DEVICES, MOTOR VEHICLE LICENSE REVOCATIONS AND PAYMENT OF RESTITUTION BY CERTAIN DRIVERS; TO CIVIL LIABILITY, FORFEITURE, AND CRIMINAL PENALTIES ARISING FROM OPERATION OF A MOTOR VEHICLE BY A PERSON WHOSE LICENSE IS SUSPENDED, DENIED, REVOKED, OR BARRED; AND PROVIDING CERTAIN BAIL RESTRICTIONS AND PENALTIES.

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

Section 1. Section 321.12, Code 1997, is amended to read as follows:

321.12 OBSOLETE RECORDS DESTROYED.

1. The director may destroy any records of the department which have been maintained on file for three years which the director deems obsolete and of no further service in carrying out the powers and duties of the department, except as otherwise provided in this section.

2. ~~However, operating~~ Operating records relating to a person who has been issued a commercial driver's license shall be maintained on file in accordance with rules adopted by the department.

3. The following records may be destroyed according to the following requirements:

a. Records concerning suspensions authorized under section 321.210, subsection 1, paragraph "g", and section 321.210A may

be destroyed six months after the suspension is terminated and the requirements of section 321.191 have been satisfied.

b. Records concerning suspensions and surrender of licenses or registrations required under section 321A.31 for failing to maintain proof of financial responsibility, as defined in section 321A.1, may be destroyed six months after the requirements of sections 321.191 and 321A.29 have been satisfied.

4. The director shall not destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2, ~~which are more than twelve years old. The twelve-year period shall commence with the date of the arrest or conviction for the offense, whichever first occurs. However, the director shall not destroy operating records which pertain to arrests or convictions for operating while intoxicated after the expiration of twelve years when the motor vehicle being operated was a commercial motor vehicle or if all of the provisions of the court order have not been satisfied.~~

~~The director shall destroy any or~~ operating records pertaining to revocations for violations of section 321J.2A which are more than twelve years old. ~~The twelve-year period shall commence with the date the revocation of the person's operating privileges becomes effective. This paragraph shall not apply to records of revocations which pertain to violations of section 321J.2A by persons operating a commercial motor vehicle, except that a conviction or revocation under section 321J.2 shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation.~~

Sec. 2. Section 321.555, subsection 1, paragraph c, Code 1997, is amended to read as follows:

c. Driving a motor vehicle while the person's motor vehicle license is suspended, denied, revoked, or barred.

Sec. 3. NEW SECTION. 321J.1A PUBLICATION OF LAW.



1. The department of public safety, the governor's traffic safety bureau, the state department of transportation, the governor, and the attorney general shall cooperate in an ongoing public education campaign to inform the citizens of this state of the dangers and the specific legal consequences of driving drunk in this state. The entities shall use their best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts, and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign.

2. The department shall publish pamphlets containing the criminal and administrative penalties for drunk driving, and related laws, rules, instructions, and explanatory matter. This information may be included in pamphlets containing information related to other motor vehicle laws, published pursuant to section 321.15. Copies of such pamphlets shall be given wide distribution, and a supply shall be made available to each county treasurer.

Sec. 4. Section 321J.2, subsections 2 through 5, Code 1997, are amended to read as follows:

2. A person who violates this-section subsection 1 commits:

a. A serious misdemeanor for the first offense ~~and shall be imprisoned, punishable by all of the following:~~

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest, and assessed. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of not less than five hundred dollars nor more than one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred

dollars of the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform not more than two hundred hours of unpaid community service. The court may accommodate the sentence to the work schedule of the defendant.

(3) Revocation of the person's motor vehicle license pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, which includes a minimum revocation period of one hundred eighty days, including a minimum period of ineligibility for a temporary restricted license of thirty days, and may involve a revocation period of one year.

(4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 2A.

b. An aggravated misdemeanor for a second offense, and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, ~~which minimum term cannot be suspended notwithstanding section 901.57, subsection 3 and section 907.37, subsection 3,~~ and assessed a fine of not less than seven one thousand five hundred fifty dollars nor more than five thousand dollars.

c. A class "D" felony for a third offense and each subsequent offense, and shall be imprisoned in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections, and ~~assessed a fine of not less than seven two thousand five hundred fifty~~ dollars nor more than seven thousand five hundred dollars. ~~The minimum jail term of thirty days cannot be suspended notwithstanding section 901.57, subsection 3, and section 907.37, subsection 3, however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest. If a person is committed to the custody of the director of the department of~~

~~corrections pursuant to this paragraph and the sentence is suspended, the sentencing court shall order that the offender serve the thirty-day minimum term in the county jail. If the sentence which commits the person to the custody of the director of the department of corrections is later imposed by the court, all time served in a county jail toward the thirty-day minimum term shall count as time served toward the sentence which committed the person to the custody of the director of the department of corrections. A person convicted of a second or subsequent offense shall be ordered to undergo a substance abuse evaluation prior to sentencing. If a A person is convicted of a third or subsequent offense or if the evaluation recommends treatment, the offender may be committed to the custody of the director of the department of corrections, who, if the sentence is not suspended, shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.6.~~

2A. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any part of the sentence applicable to the defendant under subsection 2 if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 2 or for a violation of a statute in another state substantially corresponding to subsection 2.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

b. All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation.

c. Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.

d. 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" subsection 2 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 in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

3. No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third, or subsequent offense. For the purpose of In determining if a violation charged is a second, third, or subsequent offense, deferred for purposes of criminal sentencing or license revocation under this chapter:

a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section and convictions shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

4. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the violation is shown to have been committed by either or both of the means described event or occurrence involves more than one of the conditions specified in subsection 1 in the same occurrence.

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

Sec. 5. Section 321J.2, subsection 8, Code 1997, is amended to read as follows:

8. a. The In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution, in an amount not to exceed two thousand dollars, for damages resulting directly from the violation, to the victim, pursuant to chapter 910.

An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

Sec. 6. Section 321J.3, Code 1997, is amended to read as follows:

321J.3 ~~COURT-ORDERED-SUBSTANCE~~ SUBSTANCE ABUSE EVALUATION OR TREATMENT.

~~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 shall order the defendant~~

1. a. In addition to orders issued pursuant to section 321J.2, subsection 2A, and section 321J.17, the court shall order any defendant convicted under section 321J.2 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.

b. 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.

c. The court may prescribe the length of time for the evaluation and treatment or it may request that the community college 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.

d. Upon successfully completing ~~or-attending~~ a course for drinking drivers or an ordered substance abuse treatment program, ~~a court may place the person may-be-placed~~ on probation for six months and as a condition of probation, ~~the person~~ shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

~~e. 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.~~

~~f. 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.

g. 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.

2. ~~a. As-a-condition-of-a-suspended-sentence-or-portion-of-sentence-for~~ Upon a second, ~~third,~~ or subsequent offense in violation of section 321J.2, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, ~~dependency, or tendency to chronically~~ abuse alcohol or drugs.

c. 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.

Sec. 7. Section 321J.3, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The state department of transportation, in cooperation with the judicial department, shall adopt rules, pursuant to the procedure in section 125.33, regarding the assignment of persons ordered under section 321J.17 to submit to substance abuse evaluation and treatment. The rules shall be applicable only to persons other than those committed to the custody of the director of the department of corrections under section 321J.2. The rules shall be consistent with the practices and procedures of the judicial department in sentencing persons to substance abuse evaluation and treatment under section 321J.2. The rules shall include the requirement that the treatment programs utilized by a person pursuant to an order of the department meet the licensure standards of the division of substance abuse for the department of public health. The rules shall also include provisions for payment of costs by the offenders, including insurance reimbursement on behalf of offenders, or other forms of funding, and shall also address reporting requirements of the facility, consistent with the provisions of sections 125.84 and 125.86. The department shall be entitled to treatment information contained in reports to the department, notwithstanding any provision of chapter 125 that would restrict department access to treatment information and records.

Sec. 8. Section 321J.4, subsection 1, Code 1997, is amended to read as follows:

1. ~~If a defendant is convicted of a violation of section 321J.2 and the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's motor vehicle license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction or revocation under this chapter within-the previous-six-years-and-the.~~ The defendant shall not be

eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained, and for at least ninety days if a test was refused. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of revocation.

1A. If a defendant is convicted of a violation of section 321J.2, and the defendant's motor vehicle license or nonresident operating privilege has not already been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's motor vehicle license or nonresident operating privilege for one-year two years if the defendant has had one-or-more a previous convictions conviction or revocations revocation under this chapter within-the-previous-six-years. The defendant shall not be eligible for any temporary restricted license during-the-entire-one-year-revocation-period for one year after the effective date of revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

Sec. 9. Section 321J.4, subsection 3, Code 1997, is amended to read as follows:

3. ~~at~~ Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to

surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

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

~~(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency on or tendency to abuse alcohol or drugs;~~

~~(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of section 321J.2 or 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under this chapter that indicated an alcohol concentration as defined in section 321J.1 of .16 or more, or refused to submit to chemical testing under this chapter;~~

~~(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription;~~

~~(4) The defendant's motor vehicle license is not currently subject to suspension or revocation for any other reason;~~

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

Sec. 10. Section 321J.4, subsection 5, Code 1997, is amended to read as follows:

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for any temporary restricted license ~~until the minimum period of ineligibility has expired under this section or section 321J.9, 321J.12, or 321J.20~~ for at least two years after the revocation. 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 order for revocation.

Sec. 11. Section 321J.4, subsection 7, Code 1997, is amended to read as follows:

7. a. On a conviction for or as a condition of a deferred judgment for a violation of section 321J.2, the court may order the defendant to install ignition interlock devices of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the defendant which, without tampering or the intervention of another person, would prevent the defendant from operating the motor vehicle with an alcohol concentration greater than a level set by rule of the commissioner of public safety.

b. The commissioner of public safety shall adopt rules to approve certain ignition interlock devices and the means of installation of the devices, and shall establish the level of

alcohol concentration beyond which an ignition interlock device will not allow operation of the motor vehicle in which it is installed.

c. The order to install ignition interlock devices shall remain in effect for a period of time as determined by the court which shall not exceed the maximum term of imprisonment which the court could have imposed according to the nature of the violation. While the order is in effect, the defendant shall not operate a motor vehicle which does not have an approved ignition interlock device installed.

d. If the defendant's motor vehicle license or nonresident operating privilege has been revoked, the department shall not issue a temporary permit or a motor vehicle license to the person without certification that approved ignition interlock devices have been installed in all motor vehicles owned or operated by the defendant while the order is in effect.

e. A defendant who fails within a reasonable time to comply with an order to install an approved ignition interlock device may be declared in contempt of court and punished accordingly.

f. A person who tampers with or circumvents an ignition interlock device installed under a court order while an order is in effect commits a serious misdemeanor.

Sec. 12. Section 321J.4B, Code 1997, is amended to read as follows:

321J.4B MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION -- PENALTY -- LIABILITY OF VEHICLE OWNER.

1. For purposes of this section:

a. "Immobilized" means the installation of a device in a motor vehicle that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device of a type approved by the commissioner of public safety.

b. "Impoundment" means the process of seizure and confinement within an enclosed area of a motor vehicle, for the purpose of restricting access to the vehicle.

c. "Owner" means the registered titleholder of a motor vehicle; except in the case where a rental or leasing agency is the registered titleholder, in which case the lessee of the vehicle shall be treated as the owner of the vehicle for purposes of this section.

2. A motor vehicle is subject to impoundment in the following circumstances:

a. If a person is convicted of a operates a vehicle in violation of section 321J.2, and if convicted for that conduct, the conviction would be a second, third, or subsequent offense of operating while intoxicated, the court shall order that any motor vehicles owned by the person and used to commit the offense and any other motor vehicle used under section 321J.2.

b. If a person operates a vehicle while that person's motor vehicle license or operating privilege has been suspended, denied, revoked, or barred due to a violation of section 321J.2.

The clerk of court shall send notice of a conviction of an offense for which the vehicle was impounded to the impounding authority upon conviction of the defendant for such offense.

Impoundment of the vehicle under this section may occur in addition to any criminal penalty imposed under chapter 321 or this chapter for the underlying criminal offense.

3. The motor vehicle operated by the person in the commission of the any offense included in subsection 2 may be immediately impounded or immobilized in accordance with this section. For purposes of this section, "immobilized" means the installation of a device that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device, of a type approved by the commissioner of public safety, in a motor vehicle.

a. A person or agency taking possession of an impounded or immobilized motor vehicle shall do the following:

(1) Make an inventory of any property contained in the vehicle, according to the agency's inventory procedure. The agency responsible for the motor vehicle shall also deliver a copy of the inventory to the county attorney.

(2) Contact all rental or leasing agencies registered as owners of the vehicle, as well as any parties registered as holders of a secured interest in the vehicle, in accordance with subsection 12.

b. The county attorney shall file a copy of the inventory with the district court as part of each file related to criminal charges filed under this section.

4. An owner of a motor vehicle impounded or immobilized under this section, who knows of, should have known of, or gives consent to the operation of, the motor vehicle in violation of subsection 2, paragraph "b", shall be:

a. Guilty of a simple misdemeanor, and

b. Jointly and severally liable for any damages caused by the person who operated the motor vehicle, subject to the provisions of chapter 668.

5. a. The following persons shall be entitled to immediate return of the motor vehicle without payment of costs associated with the impoundment or immobilization of the vehicle:

(1) The owner of the motor vehicle, if the person who operated the motor vehicle is not a co-owner of the motor vehicle.

(2) A motor vehicle rental or leasing agency that owns the vehicle.

(3) A person who owns the motor vehicle and who is charged but is not convicted of the violation of section 321.218, 321.561, 321A.32, 321J.2, or 321J.21, which resulted in the impoundment or immobilization of the motor vehicle under this section.

2- b. The Upon conviction of the defendant for a violation of subsection 2, paragraph "a", the court may order continued

impoundment, or the immobilization, of the motor vehicle used in the commission of the offense, if the convicted person is the owner of the motor vehicle, and shall specify all of the following in the order:

a- (1) The motor vehicles vehicle that are is subject to the order.

b- (2) The period of impoundment or immobilization.

c- (3) The person or agency responsible for carrying out the order requiring continued impoundment, or the immobilization, of the motor vehicle.

c. If a the vehicle which-is-to-be-impounded-or immobilized subject to the order is in the custody of a law enforcement agency, the court shall designate that agency as the responsible agency. If the vehicle is not in the custody of a law enforcement agency, the person or agency responsible for carrying out the order shall be any person deemed appropriate by the court, including but not limited to a law enforcement agency with jurisdiction over the area in which the residence of the vehicle owner is located. The person or agency responsible for carrying out the order shall determine whether the motor vehicle shall be impounded or immobilized.

3- d. The period of impoundment or immobilization of a motor vehicle under this section shall be the period of license revocation imposed upon the person convicted of the offense or one hundred eighty days, whichever period is longer. The impoundment or immobilization period shall commence on the day that the vehicle is actually first impounded or immobilized.

4- e. The clerk of the district court shall send a copy of the order to the department, the person convicted of the offense, ~~the-motor-vehicle-owner-if-the-owner-is-not-the-person-convicted,~~ and the person or agency responsible for executing the order for impoundment or immobilization, and any holders of any security interests in the vehicle.



~~5. If the vehicle to be impounded or immobilized is in the custody of a law enforcement agency, the agency shall immobilize or impound the vehicle upon receipt of the order, seize the motor vehicle's license plates and registration, and shall send or deliver the vehicle's license plates and registration to the department.~~

6. f. If the vehicle to be impounded or immobilized subject to the court order is not in the custody of a law enforcement agency, the person or agency designated in the order as the person or agency responsible for executing the order shall, upon receipt of the order, promptly locate the vehicle specified in the order, seize the motor vehicle and the license plates, and send or deliver the vehicle's license plates to the department.

7. If the vehicle is located at a place other than the place at which the impoundment or immobilization court order is to be carried out, the person or agency responsible for executing the order shall arrange for the vehicle to be moved to the place of impoundment or immobilization. When the vehicle is found, is impounded or immobilized, and is at the place of impoundment or immobilization, the person or agency responsible for executing the order shall notify the clerk of the date on which the order was executed. The clerk shall notify the department of the date on which the order was executed.

8. g. Upon receipt of the a court order for impoundment or immobilization and seizure of the motor vehicle, if the agency responsible for carrying out the order determines that the motor vehicle is to be impounded for continued impoundment or immobilization of the motor vehicle, the agency shall review the value of the vehicle in relation to the costs associated with the period of impoundment of the motor vehicle specified in the order. If the agency determines that the costs of impoundment of the motor vehicle exceed the actual wholesale value of the motor vehicle, the agency may treat the vehicle

as an abandoned vehicle pursuant to section 321.89. If the agency elects to treat the motor vehicle as abandoned, the agency shall notify the registered owner of the motor vehicle that the vehicle shall be deemed abandoned and shall be sold in the manner provided in section 321.89 if payment of the total cost of impoundment is not received within twenty-one days of the mailing of the notice. The agency shall provide documentation regarding the valuation of the vehicle and the costs of impoundment. This paragraph shall not apply to vehicles that are immobilized pursuant to this section or if ~~subsection 15-er-16~~ 12, paragraph "a" or "b", applies.

6. Upon conviction of the defendant for a second or subsequent violation of subsection 2, paragraph "b", the court shall order, if the convicted person is the owner of the motor vehicle used in the commission of the offense, that that motor vehicle be seized and forfeited to the state pursuant to chapters 809 and 809A.

9. 7. a. Upon receipt of a notice of conviction of the defendant for a violation of subsection 2, the impounding authority shall seize the motor vehicle's license plates and registration, and shall send or deliver them to the department.

b. The department shall destroy license plates received under this section and shall not authorize the release of the vehicle or the issuance of new license plates for the vehicle until the period of impoundment or immobilization has expired, and the fee and costs assessed under subsection 14 have been paid. The fee for issuance of new license plates and certificates of registration shall be the same as for the replacement of lost, mutilated, or destroyed license plates and certificates of registration.

~~10. 8. a. Except where the person who is convicted of operating while intoxicated and being a second or subsequent offender is not lawfully in possession of the motor vehicle, the owner of any motor vehicle that is impounded or~~

~~immobilized under this section shall be assessed~~ Upon conviction for a violation of subsection 2, the court shall assess the defendant, in addition to any other penalty, a fee of one hundred dollars plus the cost of any expenses for towing, storage, and any other costs of impounding or immobilizing the motor vehicle, to be paid to the clerk of the district court.

~~b.~~ The person or agency responsible for carrying out the order impoundment or immobilization under this section shall inform the court of the costs of towing, storage, and any other costs of impounding or immobilizing the motor vehicle. Upon payment of the fee and costs, the clerk shall forward a copy of the receipt to the department.

~~11. c.~~ If a law enforcement agency impounds or immobilizes a motor vehicle, the amount of the fee and expenses deposited with the clerk shall be paid by the clerk to the law enforcement agency responsible for executing the order to reimburse the agency for costs incurred for impoundment or immobilization equipment and, if required, in sending officers to search for and locate the vehicle specified in the impoundment or immobilization order.

~~12. 9.~~ Operating a motor vehicle on a street or highway in this state in violation of an order of impoundment or immobilization is a serious misdemeanor. A motor vehicle which is subject to an order of impoundment or immobilization that is operated on a street or highway in this state in violation of the order shall be seized and forfeited to the state under chapters 809 and 809A.

~~13. 10.~~ Once the period of impoundment or immobilization has expired, the owner of the motor vehicle shall have thirty days to claim the motor vehicle and pay the all fees and charges imposed under this section. If the owner or the owner's designee has not claimed the vehicle and paid the all fees and charges imposed under this section within seven days from the date of expiration of the period, the clerk shall

send written notification to the motor vehicle owner, at the owner's last known address, notifying the owner of the date of expiration of the period of impoundment or immobilization and of the period in which the motor vehicle must be claimed. If the motor vehicle owner fails to claim the motor vehicle and pay the all fees and charges imposed within the thirty-day period, the motor vehicle shall be forfeited to the state under chapters 809 and 809A.

~~14. 11. a. (1)~~ During the period of impoundment or immobilization, ~~a person convicted of the offense of operating while intoxicated which resulted in the impoundment or immobilization~~ the owner of an impounded or immobilized vehicle shall not sell or transfer the title of the motor vehicle which is subject to the order of impoundment or immobilization. The

(2) A person convicted of the offense of operating while intoxicated an offense under subsection 2, shall also not purchase another motor vehicle or register any motor vehicle during the period of impoundment, or immobilization, or license revocation.

PARAGRAPH DIVIDED. Violation of this paragraph "a" is a serious misdemeanor.

b. If, during the period of impoundment or immobilization, the title to the motor vehicle which is the subject of the order is transferred by the foreclosure of a chattel mortgage, a sale upon execution, the cancellation of a conditional sales contract, or an order of a court, the court which enters the order that permits transfer of the title shall notify the department of the transfer of the title. The department shall enter notice of the transfer of the title to the motor vehicle in the previous owner's vehicle registration record.

~~15. 12.~~ Notwithstanding the other requirements of this section, ~~if the owner of the motor vehicle is not the person who is convicted of the offense which resulted in the issuance of the order of impoundment or immobilization or the owner of~~

~~the motor vehicle is a motor vehicle rental or leasing company, the owner, the owner's designee, or the rental or leasing company shall be permitted to submit a claim for return of the motor vehicle within twenty-four hours from receipt of the order for impoundment or immobilization;~~

~~a. Upon learning the address or phone number of a rental or leasing company which owns a motor vehicle impounded or immobilized under this section, the peace officer, county attorney, or attorney general shall immediately contact the company to inform the company that the vehicle is available for return to the company. The vehicle shall be returned to the owner, owner's designee, or rental or leasing company and the order for impoundment or immobilization shall be rescinded with respect to the particular motor vehicle, if the owner or owner's designee can prove to the satisfaction of the court that the owner did not know or should not have known that the vehicle was to be used in the commission of the offense of operating while intoxicated, or if the rental or leasing company did not know, should not have known, and did not consent to the operation of the motor vehicle used in the commission of the offense of operating while intoxicated. For purposes of this section, unless the person convicted of the offense which results in the imposition of the order for impoundment or immobilization is not in lawful possession of the motor vehicle used in the commission of the offense, an owner of a motor vehicle shall be presumed to know that the vehicle was to be used by the person who is convicted of the offense, in the commission of the offense of operating while intoxicated.~~

~~16. b. Notwithstanding the requirements of this section, the holder of a security interest in a vehicle which is impounded or immobilized pursuant to this section or forfeited in the manner provided in chapters 809 and 809A shall be notified of the impoundment, immobilization, or forfeiture within seventy-two hours of the seizure of the vehicle and~~

shall have the right to claim the motor vehicle without payment of any fees or surcharges unless the value of the vehicle exceeds the value of the security interest held by the creditor.

~~17. c. Notwithstanding the requirements of this section, any Any of the following persons may make application to the court for permission to operate a motor vehicle, which is impounded or immobilized pursuant to this section, during the period of impoundment or immobilization, if the applicant's motor vehicle license or operating privilege has not been suspended, denied, or revoked, or barred, and an ignition interlock device of a type approved by the commissioner of public safety is installed in the motor vehicle prior to operation:~~

~~a. (1) A person, other than the person who committed the offense which resulted in the impoundment or immobilization, who is not a member of the immediate family of the person who committed the offense but is a joint owner of the motor vehicle.~~

~~b. (2) A member of the immediate family of the person who committed the offense which resulted in the impoundment or immobilization, if the member demonstrates that the motor vehicle that is subject to the order for impoundment or immobilization is the only motor vehicle possessed by the family.~~

~~For purposes of this section, "a member of the immediate family" means a spouse, child, or parent of the person who committed the offense.~~

~~18. 13. The impoundment, immobilization, or forfeiture of a motor vehicle under this chapter does not constitute loss of use of a motor vehicle for purposes of any contract of insurance.~~

~~Sec. 13. Section 321J.7, Code 1997, is amended to read as follows:~~

~~321J.7 DEAD OR UNCONSCIOUS PERSONS.~~

A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by section 321J.6, and the test may be given if a licensed physician certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal. If the certification is oral, written certification shall be completed by the physician within a reasonable time of the test.

Sec. 14. Section 321J.9, subsections 1 and 2, Code 1997, are amended to read as follows:

1. If a person refuses to submit to the chemical testing, a test shall not be given, but the department, upon the receipt of the peace officer's certification, subject to penalty for perjury, that the officer had reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321J.2 or 321J.2A, that specified conditions existed for chemical testing pursuant to section 321J.6, and that the person refused to submit to the chemical testing, shall revoke the person's motor vehicle license and any nonresident operating privilege for the following periods of time:

a. ~~Two-hundred-forty-days~~ One year if the person has no previous revocation ~~within-the-previous-six-years~~ under this chapter; and

b. ~~Five-hundred-forty-days~~ Two years if the person has ~~one or more had a previous revocations within the previous six years~~ revocation under this chapter.

2. a. A person whose motor vehicle license or nonresident operating privileges are revoked ~~for two-hundred-forty-days~~ under subsection 1, paragraph "a", shall not be eligible for a temporary restricted license for at least ninety days after the effective date of the revocation. A person whose motor vehicle license or nonresident operating privileges are ~~revoked for five-hundred-forty-days~~ under subsection 1,

paragraph "b", shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation.

b. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

Sec. 15. Section 321J.12, subsection 1, paragraphs a and b, Code 1997, are amended to read as follows:

a. One hundred eighty days if the person has had no revocation ~~within-the-previous-six-years~~ under this chapter.

b. One year if the person has had ~~one-or-more a previous revocations within the previous six years~~ revocation under this chapter.

Sec. 16. Section 321J.12, subsection 5, Code 1997, is amended to read as follows:

5. Upon certification, subject to penalty of perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2A, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to ~~chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more but less than .10, the department shall revoke the person's motor vehicle license or operating privilege for a period of sixty days if the person has had no revocations within the previous six years~~ previous revocation under ~~section-321J-2A~~ this chapter, and for a period of ninety days if the person has had ~~one-or-more a previous revocations within the previous six years~~ revocation under ~~section-321J-2A~~ this chapter.

Sec. 17. Section 321J.17, Code 1997, is amended to read as follows:

321J.17 CIVIL PENALTY -- DISPOSITION -- LICENSE  
REINSTATEMENT.

1. When if the department revokes a person's motor vehicle license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 912.14 and one-half of the money shall be deposited in the general fund of the state. A motor vehicle license or nonresident operating privilege shall not be reinstated until the civil penalty has been paid.

2. If the department or a court orders the revocation of a person's motor vehicle license or nonresident operating privilege under this chapter, the department or court shall also order the person, at the person's own expense, to do the following:

a. Enroll, attend, and satisfactorily complete a course for drinking drivers, as provided in section 321J.22.

b. Submit to evaluation and treatment or rehabilitation services.

The court or department may request that the community college conducting the course for drinking drivers which the person is ordered to attend immediately report to the court or department that the person has successfully completed the course for drinking drivers. The court or department may request that the treatment program which the person attends periodically report on the defendant's attendance and participation in the program, as well as the status of treatment or rehabilitation.

A motor vehicle license or nonresident operating privilege shall not be reinstated until proof of completion of the requirements of this subsection is presented to the department.

Sec. 18. Section 321J.20, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

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

Sec. 19. Section 321J.20, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. The person's motor vehicle license is revoked under section 321J.47-~~subsection 17-27-47 or 67~~ and the minimum period of ineligibility for issuance of a temporary restricted license has expired. This subsection shall not apply to a revocation ordered under section 321J.4' resulting from a plea or verdict of guilty of a violation of section 321J.2 that involved a death.

Sec. 20. Section 321J.20, subsection 6, Code 1997, is amended to read as follows:

6. Following the certain minimum period periods of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section

~~321J.4-subsection-7.~~ Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued, ~~but no longer than one year, unless the court order under section 321J.4-subsection-7, provides for a longer period of time.~~

Sec. 21. Section 321J.21, Code 1997, is amended to read as follows:

321J.21 DRIVING WHILE LICENSE SUSPENDED, DENIED, OR REVOKED, OR BARRED.

1. A person whose motor vehicle license or nonresident operating privilege has been suspended, denied, or revoked as provided in, or barred due to a violation of this chapter and who drives a motor vehicle ~~upon the highways of this state~~ while the license or privilege is suspended, denied, or revoked, or barred commits a serious misdemeanor, punishable with a mandatory fine of one thousand dollars. The

2. In addition to the fine, the department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was ~~revoked or suspended, denied, revoked, or barred~~ shall extend the period of revocation or suspension, denial, revocation, or bar for an additional like period, and the department shall not issue a new license during the additional period.

Sec. 22. Section 321J.22, Code 1997, is amended to read as follows:

~~321J.22 COURT-ORDERED DRINKING DRIVERS COURSE.~~

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

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

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

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

3. 2. The course provided in according to this section shall be offered on a regular basis at each community college as defined in section 260C.2. Enrollment in the courses is not limited to persons ordered to enroll, attend, and successfully complete the course required under sections 321J.2 and 321J.17, subsection 2, and any person convicted of a violation of section 321J.2 who was not ordered to enroll in a course may enroll in and attend a course for drinking drivers. The course required by this section shall be taught by the community colleges under the department of education and approved by the department. The department of education shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials. A person shall not be denied enrollment in a course by reason of the person's indigency.

4. 3. An employer shall not discharge a person from employment solely for the reason of work absence to attend a course required by this section. Any employer who violates this section is liable for damages which include but are not limited to actual damages, court costs, and reasonable attorney fees. The person may also petition the court for

imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

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

6- 5. The department of education shall maintain enrollment, attendance, successful and unsuccessful completion data on the persons ordered to enroll, attend, and successfully complete a course for drinking drivers. This data shall be forwarded to the court.

Sec. 23. Section 321J.24, subsection 1, paragraph b, Code 1997, is amended to read as follows:

b. "Participant" means a person ~~who is sixteen years of age or older but under the age of twenty-one, and~~ who is ordered by the court to participate in the reality education substance abuse prevention program.

Sec. 24. Section 321J.24, subsection 2, Code 1997, is amended to read as follows:

2. A reality education substance abuse prevention program is established in those judicial districts where the chief judge of the judicial district authorizes participation in the program. Upon a conviction or adjudication for a violation of ~~section 321J.2, or the entry of a deferred judgment concerning a violation of section 321J.2, the court or juvenile court, with the consent of the defendant or delinquent child,~~ may order ~~a defendant who is sixteen years of age or older but under the age of twenty-one or delinquent child who is sixteen years of age or older to participate~~ participation in the reality education substance abuse prevention program as a term and condition of probation or disposition in addition to any other term or condition of probation or disposition required

or authorized by law. The court or juvenile court shall require the defendant or delinquent child to abstain from consuming any controlled substance, alcoholic liquor, wine, or beer ~~before reaching age twenty-one~~ while participating in the program.

Sec. 25. Section 321J.25, subsection 4, Code 1997, is amended to read as follows:

4. Upon the revocation of the motor vehicle license or operating privileges of a person who is fourteen years of age or older for a violation of section 321J.2A, if the person has had no previous revocations under either section 321J.2 or section 321J.2A, a person may participate in the substance abuse awareness program. The state department of transportation shall notify a potential program participant of the possibility and potential benefits of attending a program and shall notify a potential program participant of the availability of programs which exist in the area in which the person resides. The state department of transportation shall consult with the Iowa department of public health to determine what programs are available in various areas of the state. ~~The period of revocation for a person whose motor vehicle license or operating privilege has been revoked under section 321J.2A, shall be reduced by fifty percent upon receipt by the state department of transportation of a certification by a program provider that the person has completed a program.~~

Sec. 26. Section 707.6A, subsection 1, Code 1997, is amended to read as follows:

1. A person commits a class ~~"E"~~ "B" felony when the person unintentionally causes the death of another by ~~any of the following means:~~

~~a. Operating~~ operating a motor vehicle while under the influence of alcohol or other drug or a combination of such substances or while having an alcohol concentration intoxicated, as defined in prohibited by section ~~321J.17~~ subsection 17 of 707 or more 321J.2. Upon a plea or verdict

of guilty of a violation of this paragraph subsection, the court shall order do the following:

a. 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 the license or permit to the department with a copy of the revocation order. The defendant shall not be eligible for a temporary restricted license for at least two years after the revocation.

b. Order the defendant, at the defendant's expense, to do the following:

(1) Enroll, attend, and satisfactorily complete a course for drinking drivers, as provided in section 321J.22.

(2) Submit to evaluation and treatment or rehabilitation services.

c. A motor vehicle license or nonresident operating privilege shall not be reinstated until proof of completion of the requirements of paragraph "b" is presented to the department.

d. Where the program is available and appropriate for the defendant, the court shall also order the defendant to participate in a reality education substance abuse prevention program as provided in section 321J.24.

1A. A person commits a class "C" felony when the person unintentionally causes the death of another by any of the following means:

b. a. 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.

c. b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279, if the death of the other person directly or indirectly results from the violation.

Sec. 27. Section 707.6A, subsection 3, Code 1997, is amended to read as follows:

3. A person commits ~~an aggravated misdemeanor~~ a class "D" felony when the person unintentionally causes a serious injury, as defined in section 321J.1, subsection 8, by any of the means described in subsection 1 ~~of this section or 1A.~~

Sec. 28. Section 707.6A, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any part of the sentence applicable to the defendant for a violation of subsection 1, or for a violation of subsection 3 involving the operation of a motor vehicle while intoxicated.

Sec. 29. Section 809A.3, subsections 4 and 5, Code 1997, are amended to read as follows:

~~4. A violation of section 321J.4B, subsection 12.~~

5. 4. Notwithstanding subsections 1 through ~~4~~ 3, violations of chapter 321 or 321J ~~except section 321J.4B, subsection 12,~~ shall not be considered conduct giving rise to forfeiture, except for violations of the following:

a. A second or subsequent violation of section 321J.4B, subsection 2, paragraph "b".

b. Section 321J.4B, subsection 9.

Sec. 30. Section 811.1, subsections 1 and 2, Code 1997, are amended to read as follows:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, 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 124.401, subsection 1, paragraph "a".



2. A defendant appealing a conviction of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, 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 124.401, subsection 1, paragraph "a".

Sec. 31. Section 907.3, subsection 1, paragraph g, Code 1997, is amended to read as follows:

g. The offense is a violation of section 321J.2 and ~~within the previous six years,~~ the person has been convicted of a violation of that section or the person's driver's license has been revoked ~~pursuant to section 321J.4, 321J.9, or 321J.12~~ under chapter 321J, and any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.5.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

Sec. 32. Section 907.3, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 3, involving operation of a motor vehicle while intoxicated.

Sec. 33. Section 907.3, subsections 2 and 3, Code 1997, are amended to read as follows:

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate, if an intermediate criminal sanctions plan and program has been adopted in the judicial district under section 901B.1. However, the court shall not defer the sentence for a violation of section any of the following:

a. Section 708.2A, if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. ~~In addition, the court shall not defer a sentence if it is imposed for a conviction for or plea of guilty to a violation of section~~

b. Section 236.8 or for contempt pursuant to section 236.8 or 236.14.

c. Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2,

subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. Section 707.6A, subsection 1; or section 707.6A, subsection 3, involving operation of a motor vehicle while intoxicated.

Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate. ~~A person so committed who has probation revoked shall be given credit for such time served.~~ However, the court shall not suspend the any of the following sentences:

a. The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph "a", or a sentence imposed under section 708.2A, subsection 6, paragraph "b"; and the court shall not suspend a

b. A sentence imposed pursuant to section 236.8 or 236.14 for contempt.

c. A sentence imposed pursuant to a violation of section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 3, involving operation of a motor vehicle while intoxicated.

Sec. 34. Section 910.1, subsection 4, Code 1997, 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" also includes ~~finer, penalties, and surcharges, the contribution of funds to~~ a local anticrime organization which provided assistance to law enforcement in an offender's case, the payment of crime victim compensation program reimbursements, payment of restitution to public agencies pursuant to section 321J.2, subsection 8, paragraph "b", 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. 35. Section 910.2, Code 1997, is amended to read as follows:

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

In all criminal cases 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, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, restitution to public agencies pursuant to section 321J.2, subsection 8, paragraph "b", court costs, court-appointed attorney's fees, or the expense of a public defender when applicable, or contribution to a local anticrime organization. However, victims shall be paid in full before fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs, court-appointed attorney's fees, the expenses of a public defender, or contribution to a local anticrime organization are paid. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, ~~court costs, court-appointed attorney's fees, or the expense~~ of a public defender, and contribution to a local anticrime organization.

When the offender is not reasonably able to pay all or a part of the crime victim compensation program reimbursement, public agency restitution, court costs, court-appointed attorney's fees, the expense of a public defender, or contribution to a local anticrime organization, the court may require the offender in lieu of that portion of the crime

victim compensation program reimbursement, public agency restitution, court costs, court-appointed attorney's fees, expense of a public defender, or contribution to a local anticrime organization 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 which, for payment of court-appointed attorney's fees or expenses of a public defender, shall be approximately equivalent in value to those costs. 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. 36. Section 910.3, Code 1997, is amended to read as follows:

910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim compensation program and expenses incurred by public agencies pursuant to section 321J.2, subsection 8, paragraph "b", and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. The clerk of court shall prepare a statement of court-appointed attorney's fees, ~~the expense of a public defender, and court costs, which shall be~~ provided to the presentence investigator or submitted to the court at the time of sentencing. If these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing.

If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for restitution identified up to that time. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

Sec. 37. Section 910.9, unnumbered paragraph 3, Code 1997, is amended to read as follows:

Fines, penalties, and surcharges, crime victim compensation program reimbursement, public agency restitution, court costs, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender, shall notify all victims that full restitution has been made, and a copy of the notice shall be sent to the sentencing court. Each office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the

portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

Sec. 38. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

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RON J. CORBETT  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 707, Seventy-seventh General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved *May 21* 1997

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TERRY E. BRANSTAD  
Governor