

July 1, 1986 and continue the procedure until June 30, 1989. The drug utilization review program shall report to the general assembly by January 10 of each year of the monitoring procedure, indicating any cost savings or increased usage of generic drugs.

Approved May 23, 1986

CHAPTER 1220

PENALTIES FOR OPERATION OF MOTOR VEHICLES

H.F. 2493

AN ACT relating to criminal penalties arising from the operation of motor vehicles.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 321J.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Alcohol concentration" means the number of grams of alcohol per any of the following:
 - a. One hundred milliliters of blood.
 - b. Two hundred ten liters of breath.
 - c. Sixty-seven milliliters of urine.
2. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.
3. "Arrest" includes but is not limited to taking into custody pursuant to section 232.19.
4. "Department" means the state department of transportation.
5. "Director" means the director of transportation or the director's designee.
6. "Motor vehicle license" means any license or permit issued to a person to operate a motor vehicle in this state, including but not limited to an operator, chauffeur, or motorized bicycle license and an instruction or temporary permit.
7. "Peace officer" means:
 - a. A member of the highway patrol.
 - b. A police officer under civil service as provided in chapter 400.
 - c. A sheriff.
 - d. A regular deputy sheriff who has had formal police training.
 - e. Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.
8. "Serious injury" means a bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

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

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in either of the following conditions:
 - a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.
 - b. While having an alcohol concentration as defined in section 321J.1 of .10 or more.
2. A person who violates this section commits:

a. A serious misdemeanor for the first offense and shall be imprisoned 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 a fine of not less than five hundred dollars nor more than one thousand dollars. 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.

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 901.5, subsection 3 and section 907.3, subsection 2, and assessed a fine of not less than seven hundred fifty dollars.

c. A class "D" felony for a third offense and each subsequent offense and shall be imprisoned in the county jail or community-based correctional facility for not less than thirty days, which minimum term cannot be suspended notwithstanding section 901.5, subsection 3, and section 907.3, subsection 2, and assessed a fine of not less than seven hundred fifty dollars.

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 determining if a violation charged is a second, third, or subsequent offense, deferred judgments pursuant to section 907.3 for violations of this section and 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 shall be considered a separate previous offense without regard to whether each was complete as to commission and conviction or deferral of judgment following or prior to any other previous violation.

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

5. The clerk of 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.

6. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in section 155.3, subsection 11, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

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

8. 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. 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.

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

Sec. 3. NEW SECTION. 321J.3 COURT ORDERED 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, the court shall order the defendant, on conviction, to undergo a substance abuse evaluation and the court may order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the area school conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend a course for drinking drivers or an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

2. As a condition of a suspended sentence or portion of sentence for 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. 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. 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. 4. NEW SECTION. 321J.4 REVOCATION OF MOTOR VEHICLE LICENSE ON CONVICTION OR COURT ORDER.

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 under section 321J.2 or revocation under section

321J.9 or 321J.12 within the previous six years and for one year if the defendant has had one or more previous convictions or revocations under those sections within the previous six years.

2. If the court defers judgment pursuant to section 907.3 for a 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 not less than thirty days nor more than ninety days if 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 court shall immediately 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 deferring judgment.

3. a. 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 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.

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 .10 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.

4. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, 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 serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. 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 one year in addition to any other period of suspension or 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.

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 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.

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

Sec. 5. NEW SECTION. 321J.5 PRELIMINARY SCREENING TEST.

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

Sec. 6. NEW SECTION. 321J.6 IMPLIED CONSENT TO TEST.

1. A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of section 321J.2.
b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.
c. The person has refused to take a preliminary breath screening test provided by this chapter.

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

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

2. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and section 321J.9 applies. A refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation under section 321J.9.

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

Sec. 7. NEW SECTION. 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.

Sec. 8. NEW SECTION. 321J.8 STATEMENT OF OFFICER.

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

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

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

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

Sec. 9. NEW SECTION. 321J.9 REFUSAL TO SUBMIT — REVOCATION.

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, 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 a period of two hundred forty days if the person has no previous revocation within the previous six years under this chapter; and five hundred forty days if the person has one or more previous revocations within the previous six years under this chapter; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked, subject to review as provided in this chapter. The effective date of revocation shall be twenty days after the department has mailed notice of revocation to the person by certified mail or, on behalf of the department, a peace officer offering or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing. If the peace officer serves that immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license effective for only twenty days. The peace officer shall immediately send the person's license to the department along with the officer's certificate indicating the person's refusal to submit to chemical testing.

Sec. 10. NEW SECTION. 321J.10 TESTS PURSUANT TO WARRANTS.

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

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

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

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

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

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

b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the

magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

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

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

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

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

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

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

4. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321J.11. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, and the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321J.9 and 321J.16 apply.

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

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

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

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

Sec. 11. NEW SECTION. 321J.11 TAKING SAMPLE FOR TEST.

Only a licensed physician, physician's assistant as defined in section 148C.1, subsection 6, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the

presence of drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration or the presence of drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

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

Sec. 12. NEW SECTION. 321J.12 TEST RESULT REVOCATION.

Upon certification, subject to penalty for 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.2, 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 .10 or more, the department shall revoke the person's motor vehicle license or nonresident operating privilege for a period of one hundred eighty days if the person has had no revocation within the previous six years under this chapter, and one year if the person has had one or more previous revocations within the previous six years under this chapter.

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

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

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

Sec. 13. NEW SECTION. 321J.13 HEARING ON REVOCATION — APPEAL.

1. Notice of revocation of a person's motor vehicle license or operating privilege served pursuant to section 321J.9 or 321J.12 shall include a form accompanied by a preaddressed envelope on which the person served may indicate by a checkmark if the person wishes to request a temporary restricted license only or if the person wishes a hearing to contest the revocation. The form shall clearly state on its face that the form must be completed and returned within twenty days of receipt or the person's right to a hearing to contest the revocation is foreclosed. The form shall also be accompanied by a statement of the operation of and the person's rights under this chapter.

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

- a. Whether the person refused to submit to the test or tests.
- b. Whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more.

3. After the hearing the department shall order that the revocation be either rescinded or sustained. In the event that the revocation is sustained, the administrative hearing officer who conducted the hearing has authority to issue a temporary restricted license to the person whose motor vehicle license or operating privilege was revoked. Upon receipt of the decision of the department to sustain a revocation, the person contesting the revocation shall have ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within fifteen days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within thirty days of the director's order.

4. A person whose motor vehicle license or operating privilege has been revoked under section 321J.9 or 321J.12 may reopen a department hearing on the revocation if the person submits a petition stating that new evidence has been discovered which provides grounds for rescission of the revocation, or if the person submits a petition stating that a criminal action on a charge of a violation of section 321J.2 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department.

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

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

Sec. 14. NEW SECTION. 321J.14 JUDICIAL REVIEW.

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

Sec. 15. NEW SECTION. 321J.15 EVIDENCE IN ANY ACTION.

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2, evidence of the alcohol concentration or the presence of drugs in the person's body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible. If it is established at trial that an analysis of a breath specimen was performed by a certified operator using a device and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

Sec. 16. NEW SECTION. 321J.16 PROOF OF REFUSAL ADMISSIBLE.

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

Sec. 17. NEW SECTION. 321J.17 CIVIL PENALTY — SEPARATE FUND — REINSTATEMENT.

When 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 one hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in a separate fund dedicated to and used for the purposes of chapter 912, and for the operation of a missing person clearinghouse and domestic abuse registry by the department of public safety. A temporary restricted license shall not be issued or a motor vehicle license or nonresident operating privilege reinstated until the civil penalty has been paid.

Sec. 18. NEW SECTION. 321J.18 OTHER EVIDENCE.

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

Sec. 19. NEW SECTION. 321J.19 INFORMATION RELAYED TO OTHER STATES.

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

Sec. 20. NEW SECTION. 321J.20 TEMPORARY RESTRICTED LICENSE.

1. 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 under 321J.4, 321J.9, or 321J.12 within the previous six years and if any of the following apply:

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

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

c. The person's motor vehicle license is revoked under section 321J.12.

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

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

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

Sec. 21. NEW SECTION. 321J.21 DRIVING WHILE LICENSE DENIED OR REVOKED.

A person whose motor vehicle license or nonresident operating privilege has been denied or revoked as provided in this chapter and who drives a motor vehicle upon the highways of this state while the license or privilege is denied or revoked commits a serious misdemeanor. 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 denied, shall extend the period of revocation or denial for an additional like period, and the department shall not issue a new license during the additional period.

Sec. 22. NEW SECTION. 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. The course provided in this section shall be offered on a regular basis at each area school as defined in section 280A.2. Enrollment in the courses is not limited to persons ordered to enroll, attend and successfully complete the course under 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 area schools under the department of public instruction and approved by the department. The department of public instruction 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. 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. The department of public instruction 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. The department of public instruction 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. NEW SECTION. ROADBLOCKS CONDUCTED BY LAW ENFORCEMENT AGENCIES.

1. The law enforcement agencies of this state may conduct emergency vehicle roadblocks in response to immediate threats to the health, safety, and welfare of the public; and otherwise may conduct routine vehicle roadblocks only as provided in this section. Routine vehicle roadblocks may be conducted to enforce compliance with the law regarding any of the following:

a. The licensing of operators of motor vehicles.

- b. The registration of motor vehicles.
 - c. The safety equipment required on motor vehicles.
 - d. The provisions of chapters 109 and 110.
2. Any routine vehicle roadblock conducted under this section shall meet the following requirements:
- a. The location of the roadblock, the time during which the roadblock will be conducted, and the procedure to be used while conducting the roadblock, shall be determined by policymaking administrative officers of the law enforcement agency.
 - b. The roadblock location shall be selected for its safety and visibility to oncoming motorists, and adequate advance warning signs, illuminated at night or under conditions of poor visibility, shall be erected to provide timely information to approaching motorists of the roadblock and its nature.
 - c. There shall be uniformed officers and marked official vehicles of the law enforcement agency or agencies involved, in sufficient quantity and visibility to demonstrate the official nature of the roadblock.
 - d. The selection of motor vehicles to be stopped shall not be arbitrary.
 - e. The roadblock shall be conducted to assure the safety of and to minimize the inconvenience of the motorists involved.

Sec. 24. NEW SECTION. 123.151 POSTING NOTICE ON DRUNK DRIVING LAWS REQUIRED.

State liquor stores and holders of liquor control licenses, wine permits, or beer permits shall post in a prominent place in the state liquor stores or licensed premises notice explaining the operation of and penalties of the laws which prohibit the operation of a motor vehicle by a person who is intoxicated. The size, print size, location, and content of the notice shall be established by rule of the department.

Sec. 25. Section 125.44, unnumbered paragraph 6, Code 1985, is amended to read as follows:

The department is liable for the cost of care, treatment, and maintenance of a substance abuser admitted to the facility voluntarily or pursuant to section 125.75, 125.81, or 125.91 or section ~~321.281, 321.283, subsection 3, 321J.3~~ or 204.409, subsection 2 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser is unable to pay the costs and there is no other person, firm, corporation or insurance company bound to pay the costs.

Sec. 26. NEW SECTION. 217A.30 ASSIGNMENT TO TREATMENT FACILITIES.

1. The director of the department of corrections may assign an offender committed to the custody of the director for a felony violation of chapter 321J to a facility which meets all of the following requirements:
 - a. Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.
 - b. Is a facility meeting applicable standards of the American corrections association.
 - c. Is a facility which meets any other rule or requirement adopted by the department pursuant to chapter 17A.
2. The assignment of an offender pursuant to subsection 1 shall be for purposes of substance abuse treatment and education, and may include work programs for the offender at times when the offender is not in substance abuse treatment or education.
3. Offenders assigned to a facility pursuant to this section shall not be included in calculations used to determine the existence of a prison overcrowding state of emergency.
4. The director shall prepare proposed administrative rules for the consideration of the administrative rules review committee for the funding of the program by means of self contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of

funding, program structure, criteria for the evaluation of facilities and offenders for participation in the programs, and all other issues the director shall deem appropriate. Proposed rules prepared pursuant to this subsection shall be submitted to the administrative rules review committee on or before September 15, 1986.

Sec. 27. Section 307.27, subsection 5, Code 1985, is amended to read as follows:

5. Administer the provisions of chapters 321A, ~~321B~~, 321E, ~~and 321F~~, and 321J relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.

Sec. 28. Section 321.178, subsection 1, unnumbered paragraph 1, Code 1985, is amended to read as follows:

An approved driver education course as programmed by the department of public instruction shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. An approved course shall include a minimum of two hours of classroom instruction concerning substance abuse as part of its curriculum. After the student has completed three clock hours of street or highway driving and has demonstrated to the instructor an ability to properly operate a motor vehicle and upon written request of a parent or guardian, the instructor may waive the remaining required laboratory instruction.

Sec. 29. Section 321.191, unnumbered paragraph 2, Code 1985, is amended to read as follows:

There shall be a fee of twenty dollars for reinstatement of a chauffeur's license or operator's license which is, after notice and opportunity for hearing, suspended or revoked pursuant to sections 321.193, 321.209 and 321.210, except subsection 4 thereof, 321.513, 321.560, 321A.6, and chapter ~~321B~~ 321J. The twenty-dollar fee shall be collected only if the person whose license was suspended or revoked was served personally with notice. If the person whose license was suspended or revoked was served notice by certified mail, the reinstatement fee shall be ten dollars.

Sec. 30. Section 321.196, Code Supplement 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Prior to the renewal of a license pursuant to this section, the department shall issue to each applicant information on the law relating to the operation of a motor vehicle while intoxicated and statistical information relating to the number of injuries and fatalities occurring as a result of the operation of motor vehicles while intoxicated.

Sec. 31. Section 321.209, subsection 2, Code 1985, is amended by striking the subsection.

Sec. 32. Section 321.210, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department shall not consider or assess any points for speeding violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour in determining a license suspension under this section. This paragraph shall apply to only the first two such violations which occur within any twelve-month period.

Sec. 33. Section 321.213, Code 1985, is amended to read as follows:

321.213 LICENSE SUSPENSIONS OR REVOCATIONS DUE TO VIOLATIONS BY JUVENILE DRIVERS.

Upon the entering of an order at the conclusion of an adjudicatory hearing under section 232.47 that the child violated a provision of this chapter or chapter 321A or chapter 321J for which the penalty is greater than a simple misdemeanor, ~~or that the child refused to submit to~~

chemical testing under section 321B.4, the clerk of the juvenile court in the adjudicatory hearing shall forward a copy of the adjudication to the department. Notwithstanding section 232.55, a final adjudication in a juvenile court that the child violated a provision of this chapter or chapter 321A or chapter 321J constitutes a final conviction of a violation of a provision of this chapter or chapter 321A or chapter 321J for purposes of section 321.189, subsection 2, paragraph "b", and sections 321.193, 321.194, 321.200, 321.209, 321.210, 321.215, and 321A.17. Notwithstanding section 232.55, the director shall revoke the license or permit of a child under section 321B.13 upon receipt of a copy of the final adjudication in a juvenile court that the child refused to submit to chemical testing under section 321B.4.

Sec. 34. Section 321.218, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

A person whose operator's or chauffeur's license or driving privilege has been denied, canceled, suspended or revoked as provided in this chapter, and who drives a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked commits a simple misdemeanor. However, a person whose license or driving privilege has been revoked under section 321.209 or chapter 321B and who drives a motor vehicle upon the highways of this state while the license or privilege is revoked commits a serious misdemeanor. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute. 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 suspended or revoked, shall, except for licenses suspended under section 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during the additional period.

Sec. 35. Section 321.228, subsection 2, Code 1985, is amended to read as follows:

2. The provisions of sections 321.261 to 321.274, ~~section and sections 321.277 and sections 321.280 to 321.282~~ shall apply upon highways and elsewhere throughout the state.

Sec. 36. Section 321.233, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

This chapter, except ~~section sections 321.277 and sections 321.280 to 321.282~~ does not apply to persons and motor vehicles and other equipment while actually engaged in work upon the surface of a highway officially closed to traffic but does apply to such persons and vehicles when traveling to or from such work. The minimum speed restriction of section 321.285, subsection 8, and the provisions of sections 321.297 and 321.298 do not apply to road workers operating maintenance equipment owned by or under lease to any state or local authority while engaged in road maintenance, road blading, snow and ice control and removal, and granular resurfacing work on a highway, whether or not the highway is closed to traffic.

Sec. 37. Section 321.555, subsection 1, paragraph b, Code 1985, is amended to read as follows:

b. Operating a motor vehicle in violation of section ~~321.281~~ 321J.2.

Sec. 38. Section 321A.17, subsection 1, Code 1985, is amended to read as follows:

1. Whenever the director, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter ~~321B~~ 321J, the director shall also suspend the registration for all motor vehicles registered in the name of the person, except that the director shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

Sec. 39. Section 331.653, subsection 33, Code Supplement 1985, is amended to read as follows:

33. Carry out duties relating to the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter ~~321B~~ 321J.

Sec. 40. Section 602.8102, subsection 51, Code Supplement 1985, is amended to read as follows:

51. Forward to the department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections ~~321.281~~ 321J.2 and 321.491.

Sec. 41. NEW SECTION. 707.6A HOMICIDE BY VEHICLE.

1. A person commits a class "D" felony when the person unintentionally causes the death of another by either of the following means:

a. Operating a motor vehicle while under the influence of alcohol or a drug or a combination of such substances or while having an alcohol concentration of .10 or more, in violation of section 321J.2.

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

2. A person commits an aggravated misdemeanor when the person unintentionally causes the death of another by operating a motor vehicle in any of the following manners:

a. Drag racing, in violation of section 321.278.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279.

3. As used in this section, "motor vehicle" includes any vehicle defined as a motor vehicle in section 321.1.

Sec. 42. Section 804.31, unnumbered paragraph 2, Code Supplement 1985, is amended to read as follows:

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter ~~321B~~ 321J prior to the arrival of a qualified interpreter for a hearing impaired person who is believed to have committed a violation of section ~~321.281~~ 321J.2. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

Sec. 43. Section 902.3, Code 1985, is amended to read as follows:

902.3 INDETERMINATE SENTENCE.

When a judgment of conviction of a felony, other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 707.3 or section 902.9 nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, the court may sentence a person convicted of a class "D" felony for a violation of section 321J.2 to imprisonment for up to one year in a county jail under section 902.9, subsection 4, and the person shall not be under the custody of the director of the Iowa department of corrections.

Sec. 44. Section 902.9, subsection 4, Code 1985, is amended to read as follows:

4. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition may be sentenced to a fine of not more than seven thousand five hundred dollars. A class "D" felon, such felony being for a violation of section 321J.2, may be sentenced to imprisonment for up to one year in the county jail.

Sec. 45. Section 907.3, subsection 1, paragraph g, Code 1985, is amended to read as follows:
 g. The offense is a violation of section ~~321.281~~ 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 ~~that section or chapter 321B~~ section 321J.4, 321J.9, or 321J.12.

Sec. 46. Section 912.1, subsection 4, Code 1985, is amended to read as follows:

4. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section ~~321.281~~ 321J.2 or when the intention is to cause personal injury or death. A plea or verdict of guilty of a charge under section ~~321.281~~ 321J.2 or a license revocation under section ~~321B.13~~ 321J.9 or ~~321B.16~~ 321J.12 shall be considered by the department as evidence of a violation of section ~~321.281~~ 321J.2 for the purposes of this chapter.

Sec. 47. Section 321.281, Code Supplement 1985, is repealed.

Sec. 48. Section 321.282, Code 1985, is repealed.

Sec. 49. Section 321.283, Code Supplement 1985, is repealed.

Sec. 50. Chapter 321B, Code 1985 and Code Supplement 1985, is repealed.

Sec. 51. References in chapter 321J to actions which occurred previously under "this chapter" or "this section" include the preceding Code chapter or section which covers the same or substantially similar actions.

Sec. 52. This Act applies to any judicial or administrative action which arises due to violation of a section of this Act or an implementing rule, and which occurs after the effective date of this Act. This Act also applies to any judicial or administrative action which arose prior to the effective date of this Act due to a violation of a preceding Code section or implementing rule which was the same or substantially similar to a section in this Act, or an implementing rule if the defendant or defendant's counsel requests that the action proceed under this Act.

Approved May 27, 1986

CHAPTER 1221
LEGAL DRINKING AGE
S.F. 97

AN ACT establishing the legal age for the purpose of laws relating to beer and alcoholic beverages at twenty-one years.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter 123, Code 1985, is amended by adding the following new section:
NEW SECTION. 123.47A PERSONS AGE NINETEEN AND TWENTY.

A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that the person is age nineteen or twenty. A person age nineteen or twenty shall not purchase or possess alcoholic liquor, wine, or beer. However, a person age nineteen or twenty may possess alcoholic liquor, wine, or beer given to the person within a private home with the knowledge and consent of the person's parent or guardian, and a person age nineteen or twenty may handle alcoholic liquor, wine, and