

ment data except in accordance with rule as established by the department for retention of child abuse information under section 235A.18 is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate child abuse information except in accordance with sections 235A.15 and 235A.17 shall be guilty of a simple misdemeanor.

Sec. 43. EFFECTIVE DATE. Enactment of this division of this Act is contingent upon the enactment of 1997 Iowa Acts, Senate File 230.\* If Senate File 230 is enacted, this division of this Act takes effect July 1, 1998.

Approved May 21, 1997

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## CHAPTER 177

### OPERATING WHILE INTOXICATED AND RELATED PROVISIONS

H.F. 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~~

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\* Chapter 35 herein

† Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

~~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 901.5, subsection 3 and section 907.3, 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 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 901.5, subsection 3, and section 907.3, 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 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 "e" 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. 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 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 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.~~

~~e. 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.

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

~~c.~~ 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.~~ 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.~~ 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.~~ 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.~~ 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 or 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 10 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 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.4, ~~subsection 1, 2, 4, or 6;~~ 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~~ 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 nonsuccessful 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 "C" "B" felony when the person unintentionally causes the death of another by ~~any of the following means:~~

~~a. 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.1, subsection 1, of .10 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.

e. 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.6.

(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 fines, 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.

Approved May 21, 1997