

Final Report of the  
DRUG ABUSE STUDY COMMITTEE  
to the  
SIXTY-FOURTH GENERAL ASSEMBLY  
of the  
STATE OF IOWA

Submitted January, 1971

## DRUG ABUSE STUDY COMMITTEE

### Final Report

House Concurrent Resolution 122 of the Sixty-third General Assembly, adopted at the 1970 session, authorized the Legislative Council to establish a committee of ten members appointed by the President of the Senate and the Speaker of the House, to study "the subject of drug abuse and related matters in order that proper legislative steps may be taken to limit the improper use of drugs and other substances for depressant, stimulant, or hallucinogenic purposes." Under this authority, the Legislative Council on May 7, 1970, created the Drug Abuse Study Committee, to which were appointed Senators Lee H. Gaudineer of Des Moines, Vernon H. Kyhl of Parkersburg, John L. Mowry of Marshalltown, James A. Potgeter of Steamboat Rock, and J. Donald Weimer of Cedar Rapids, and Representatives James T. Caffrey of Des Moines, Willard R. Hansen of Cedar Falls, Joseph C. Johnston of Iowa City, Floyd H. Millen of Farmington, and Nathan F. Sorg of Marion.

The Committee's organizational meeting was held on June 11, at which time Senator Mowry was elected Chairman and Representative Millen was elected Vice Chairman. A total of nine meetings were held. At the Committee's final meeting on December 29, it was agreed to recommend to the Sixty-fourth General Assembly a modified version of the model state Uniform Controlled Substances Act, which was recommended to the states earlier in the year by the National Conference of Commissioners on Uniform State Laws.

The Uniform Controlled Substances Act is closely related to the new federal Comprehensive Drug Abuse Prevention and Control Act (Public Law 91-513), signed by the President on October 27, 1970. Adoption by Iowa of the Uniform Act will bring Iowa's drug laws into conformity with the new federal law, and thereby facilitate coordinated state and federal law enforcement efforts in the field of drug abuse control. The Uniform Act subjects drug traffickers to strong penalties, while taking a more rehabilitative approach to drug users than does present law. Drugs and other substances which are or may be similarly abused are classified by the Uniform Act in a series of five schedules organized by degree of potential harm to abusers.

As recommended by the Drug Abuse Study Committee, the Uniform Act has been adapted in a manner which the Committee believes will better meet Iowa's particular needs and circumstances. Decisions on specific changes in the schedules of controlled substances will be made by the General Assembly acting on the basis of recommendations from the Board of Pharmacy Examiners, not by

the Board itself through administrative action as the Uniform Act originally provided. Several features of present Iowa drug laws which the Committee deems desirable or necessary have been carried over into the Iowa version of the Uniform Act. Authority for joint trials of drug offenders arrested together for the same offense, and penalties for persons knowingly organizing or helping to stage "rock festivals" and similar events where drug laws are violated, have been added to the Uniform Act.

Further discussion of the Uniform Act appears at the conclusion of this report, and a copy of the Uniform Act as recommended for introduction, with comments following most of the sections, is attached.

### Context of the Drug Abuse Study

The Legislative Drug Abuse Study was undertaken at a time when a number of other significant developments had occurred or were occurring in related areas.

#### S.F. 1276 - Treatment for Drug Addiction or Dependency

Under the terms of S.F. 1276, passed by the second session of the Sixty-third General Assembly, persons addicted to or dependent upon drugs may seek treatment and rehabilitation from a medical practitioner or hospital without fear of arrest or of being reported to law enforcement authorities for prosecution as a drug law violator. If the person seeking help is a minor, his parents or legal guardian will not be notified without his permission. This law permits a drug user to break out of the pattern of illegal drug use and try to rehabilitate himself without fearing that he is thereby inviting prosecution for his past drug law violations. Speakers at the Governor's Conference on Drug Abuse, held in Des Moines on May 25-27, 1970, as well as a number of persons meeting with the Drug Abuse Study Committee, have had high praise for the concept of S.F. 1276, and for the Iowa General Assembly's action in passing it.

It has been suggested that implementation of S.F. 1276 has been a problem in some areas of the state because of lack of facilities for treatment of drug users, particularly those who need in-patient care and are unable to pay for it. Representative Hansen, a member of the Drug Abuse Study Committee, on August 5 requested an Attorney General's opinion on whether present law is adequate to permit persons seeking help in overcoming drug problems to be treated by Iowa's existing community mental health centers. An opinion replying in the affirmative to this inquiry, and citing potential sources of funds for such treatment, was issued December 16. A copy appears as Appendix I to this report.

Drug Law Enforcement by  
Department of Public Safety

Another of the bills passed by the 1970 session of the Sixty-third General Assembly, S.F. 238, transferred primary responsibility for enforcement of Iowa's drug laws from the Board of Pharmacy Examiners to the Department of Public Safety. This legislation took effect on May 8, 1970, at which time five field enforcement agents and a total of \$71,000 in appropriations for their salaries and expenses were transferred to the Department of Public Safety. Subsequent federal grants obtained by the Department under the Law Enforcement Assistance Act, together with matching state funds, have provided an additional \$144,100 to employ seven more field agents, two clerical employees, and a director for the new Narcotic and Drug Enforcement Division. The Department of Public Safety's 1971-73 budget request includes funds for a total of 20 field agents, plus adequate supervisory and clerical personnel, for the Division.

Commissioner of Public Safety Jack Fulton stated, in a letter dated October 13, 1970, that:

"The legislation that the Department of Public Safety needs, more than any other, with respect to narcotic and drug enforcement in the state is a law requiring that all arrests, and circumstances of the arrest for narcotic and drug violations be reported to this Department. At the present time we are unable to compile a true picture of the drug problem in this state because of the lack of information. We participate in many of the arrests throughout the state, even those involving local enforcement officials, however, many of those go unreported and we have no knowledge of them.

Therefore, we feel a law is necessary requiring local authorities to report all arrests for drug and narcotic violations and to report the individuals involved, the contraband confiscated, and the circumstances surrounding the arrest. Further a report should be made as to the disposition of the charges. We then could pass on information to other areas of the state and could act as a clearing house with respect to the persons and the drugs, particular types of drugs and narcotics which are moving about the state. We feel that this could be a real service to the local enforcement agencies."

No member of the Drug Abuse Study Committee expressed opposition to this proposal. Unfortunately, the pressure of time and efforts to complete preparation of the Uniform Controlled Substances Act for introduction in the Sixty-fourth General Assembly prevented work on the drafting of the requested law for the Study Committee.

Governor's Consultant on  
Drug Abuse Programming

Dr. Phillip J. Levine, a Drake University pharmacy professor, was appointed Consultant to the Governor on Drug Abuse Programming on March 5, 1970. In this position he has worked energetically toward organization of coordinated, community-based efforts to combat drug abuse by drawing upon existing local and regional resources. After dividing the state's 99 counties into 19 suggested multicounty drug abuse programming areas and identifying resources available to combat drug abuse in each area, efforts to encourage and assist these areas to develop cooperative inter-agency programs were initiated at the May 25-27 Governor's Conference on Drug Abuse. Dr. Levine reported late in 1970 that nine of the 19 areas had some type of program in operation, intended to meet problems in the area of drug abuse which the various area coordinating councils see as existing in the respective areas. \$40,000 in "seed money," drawn from the contingency fund, was released at that time to help the various area programs get into operation.

In his work as Consultant on Drug Abuse Programming, and in meeting with the Drug Abuse Study Committee on two occasions, Dr. Levine has stressed the following points:

1. He sees drug abuse as a symptom of other problems, some personal, some of a community nature.
2. Drug abuse can be combatted effectively only when panic and prejudices regarding the subject are overcome and people are organized to deal with the problem rationally and on an informed basis.
3. Drug abuse programming must be coordinated among and draw upon the existing resources of educational, social, rehabilitation, and law enforcement agencies, both at the community level and at the state level. While an individual or a steering committee should be responsible for coordinating the work of such agencies in efforts to combat drug abuse, such efforts should not involve the creation of new agencies intended specifically to deal with drug abuse.

Meeting with the Drug Abuse Study Committee on July 22, Dr. Levine suggested establishment of a model drug treatment center in the state which could (1) admit both voluntary and involuntary patients, (2) train persons to function in local communities as counselors for former drug users who need help in reestablishing productive and satisfying patterns of life, and (3) do research on the factors which motivate drug users, so that educational programs to prevent drug abuse may be realistically and effectively oriented. He noted that any such program should be complemented by increased flexibility for courts in handling persons brought before them on drug or drug-related charges.

In recent months, Dr. Levine has been assisting with establishment of a community screening committee in the suburban area immediately west of the City of Des Moines. This screening committee is seen as a pilot project, hopefully the forerunner of similar screening committees elsewhere in the state, having the information and the lines of communication to place persons who seek help with drug problems in contact with the community or regional agency or resource best able to help that particular person with his specific problems.

### Review of Committee's Work

The nine meetings which the Drug Abuse Study Committee has held, and the research which has been done for the Committee have produced a variety of information and suggestions. As previously noted, Dr. Levine met with the Committee twice, at its June 11 organizational meeting and again on July 22. State Safety Commissioner Fulton reviewed his Department's progress in taking over from the Board of Pharmacy Examiners responsibility for enforcement of Iowa's drug laws, and former Iowa City Police Court Judge Marion Neely discussed the growth of drug problems which he observed during his tenure in that office, at the Committee's second meeting on June 25.

### Seeking the "Why" of Drug Abuse

Perhaps one of the Committee's most significant meetings, which was held on July 10, was its attempt to ascertain at least some of the reasons people abuse drugs. Dr. Robert Bittle, Assistant Professor of Psychiatry at the University of Iowa College of Medicine and a staff member of Psychopathic Hospital in Iowa City, attended the meeting accompanied by three University students-- Jim Holzaepfel, then a recent pharmacy graduate, Bill Kuentzel, a sophomore in pharmacy, and Miss Shirley Mueller, a senior in medicine--who have been active in efforts to inform young people about the dangers of drug use, and have thereby acquired considerable knowledge of the problems associated with drug use. Also accompanying Dr. Bittle to the meeting were four young adults (only two of whom were or had been University of Iowa students) whom he has treated for the effects of drug abuse. These four persons--two single men and a married couple--were identified to the Committee only as "witness no. 1", "witness no. 2", etc. A full account of their descriptions of their experiences with drugs will be found on pages 8 through 17, inclusive, of the minutes of the Drug Abuse Study Committee meeting of July 10, 1970.

Dr. Bittle reported that "a careful survey indicates that the typical drug user today is a 21-year old white male, of middle class background, who has at one time or another used a number of different drugs." He suggested that those who abuse drugs generally fit into one of the four following categories:

1. Curiosity seekers, who use drugs a few times with no discernable effect on their lives, and thereafter make no further illegal use of drugs.
2. Persons who begin as curiosity seekers, but go on to use drugs in a fairly consistent pattern, ranging from daily to two or three times a week. Dr. Bittle commented that although many individuals are able to do this very successfully over a considerable period of time without getting into trouble, with the law or otherwise, the longer such a pattern is continued the less likely it is that the individual will be able to avoid serious difficulty of one sort or another.
3. Persons with multiple problems and overwhelming anxieties, who can find no way to solve their own problems. Dr. Bittle added that his own studies of drug users in this category indicate that 70 percent of them come from broken homes, where in many instances the father was absent before the eventual drug user reached seven years of age. In some such cases there were a succession of husbands or other men in the home, but the mother was nearly always the dominant figure. Furthermore, the 30 percent of drug users in this category who do not come from broken homes are nearly all from families where the father was either an alcoholic, or was cruel and brutal in either a physical or mental sense, or both.
4. Older persons, many of whom would be considered quite successful in social and economic terms. Abuse of drugs by such persons seems to be more common on the east and west coasts than in the Middlewest at this time, but is not confined entirely to the coastal areas.

(Dr. Levine on another occasion told the Committee there are also persons, whom he termed psychopaths, who simply enjoy using a syringe and seemingly will inject into their bodies almost anything that flows.)

Dr. Erle W. Fitz, Head of the Department of Psychiatry at the College of Osteopathic Medicine and Surgery in Des Moines, which operates the Harrison Treatment and Rehabilitation Center, also presented to the Committee his views on why some persons abuse drugs. A paper by Dr. Fitz, entitled "Drug Abuse: A Quest for Holiness," is attached to the minutes of the Drug Abuse Study Committee's July 10 meeting.

Types of Drugs Abused--The  
Special Problem of Marijuana

An attempt to deal systematically with the various drugs of abuse and their respective effects would be at best lengthy and of questionable value to this report. The situation was perhaps best summarized several years ago by the World Health Organization's Expert Committee on Addiction-Producing Drugs, which observed:

"There is scarcely any agent which can be taken into the body to which some individuals will not get a reaction satisfactory or pleasurable to them, persuading them to continue its use even to the point of abuse--that is, to excessive or persistent use beyond medical need. Probably the only exceptions are agents that have incidental or side effects that prevent such use."\*

However, most drugs of abuse, or items used as drugs of abuse may be classified in one of the following categories:

1. Narcotics (includes opium and its derivatives, such as morphine, codeine, and heroin)
2. Amphetamines (includes a number of preparations intended for use as diet pills or "pep pills")
3. Barbiturates (includes sleeping pills and allied preparations intended for use in treating anxiety, high blood pressure, convulsive disorders, etc.)
4. Hallucinogenics, or psychedelics (includes LSD, mescaline, peyote, etc.; also in some classification systems marijuana is included)
5. Tranquilizers (includes various preparations intended for use in treating psychotic conditions, relieving anxiety and tension, or controlling hyperactivity)
6. Deliriant (includes various items not usually considered drugs, but which can be so used as to produce significant effects on the mind, such as model airplane glue, plastic cement, paint thinner, gasoline, and various other commercial products)

Some classifications list marijuana as a separate category, rather than placing it among the hallucinogenic or psychedelic drugs.\*

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\* Taken from an excerpt from the Committee's thirteenth report which appears in Second Interim Report of the Special Commission on Drug Abuse Within the Commonwealth of Massachusetts, House Report No. 5640 of the Massachusetts General Court (legislature), published August 18, 1969.

At present, opium and its derivatives are covered by Chapter 204 of the Code of Iowa, the Uniform Narcotic Drug Act, while amphetamines, barbiturates, hallucinogenics, and tranquilizers are regulated under Chapter 204A (Chapter 189, Acts of the Sixty-second General Assembly, 1967). However, marijuana is defined as a narcotic drug under Chapter 204, (and has been so defined under federal law until quite recently) although it is now generally recognized that marijuana is not a narcotic in the scientific sense.

The legal classification of marijuana as a narcotic probably reflects the fact that in the past marijuana has frequently been inaccurately equated with true narcotics in terms of the short-run dangers inherent in its use. The Sixty-third General Assembly in 1969 in effect recognized a distinction between true narcotics and marijuana by reducing the first offense penalty for possession of marijuana "in such quantity that it can logically be inferred that such marijuana is intended for personal use only and is not held for sale to others," and provided the option of a suspended sentence and probation in cases where the court deems recurrence of the violation unlikely. However, marijuana was not removed from its legal classification as a narcotic drug.

Use of marijuana may in some ways be considered to present one of the most difficult aspects of the current drug abuse problem. It is perhaps the drug most readily accessible to and widely used by young people. Relatively little documented scientific evidence is available regarding the effects of its use, particularly the long-term effects, yet there has in recent years and months been considerable discussion in the news media and elsewhere of whether legalization of its use may not be desirable, or inevitable, or both, although it should be made clear that no member of the Drug Abuse Study Committee has advocated this step. (P.L. 91-513, the new federal drug law, establishes a Commission on Marijuana and Drug Abuse, part of whose charge is to make a complete study and submit a comprehensive report on marijuana and the extent and effects of its use. The report is due within one year after the Commission is funded, and hopefully will provide some of the needed information about marijuana.)

One of the major concerns often expressed about marijuana is that its use may lead the user to experiment with other, more immediately dangerous drugs. In reporting on his survey, Dr. Bittle indicated that many drug users have had experience with both marijuana and harder drugs, but did not state that there is a cause-and-effect relationship. Another of the persons who met with the Committee, Dr. Andrew Weil of Sterling, Virginia, expressed the

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\* Examples cited in each listed category drawn from a table appearing on pages 47-48 of Compact, publication of the Education Commission of the States, Vol. 4, No. 3; June, 1970. See also page 5 of minutes of the Drug Abuse Study Committee's meeting of June 11, 1970.

view that persons who use harder drugs after having used marijuana would in most cases have experimented with the harder drugs anyway. One of the drug users whom Dr. Bittle arranged to have meet with the Committee said he had found that marijuana did not have the serious or damaging effects often ascribed to its use, and that he therefore disregarded similar warnings about LSD, the use of which did cause him serious difficulties.

Some members of the Committee felt that in order to complete an objective review of the drug abuse problem, the Committee should listen to the views of an individual knowledgeable in the area of effects of drug abuse who is an advocate of the legalization of marijuana. Although there was disagreement on this point, it was decided that the Committee staff should try to find such a person, within Iowa if possible, and arrange for his appearance before the Committee. There was no success in attempting to locate a professional person in the fields of medicine or pharmacy in Iowa who advocates legalization of marijuana. Instead, it was arranged for Dr. Weil to meet with the Committee on the afternoon of September 30.

Dr. Weil, who has published articles in medical and scientific journals on marijuana and its effects on users\*, stated that he does not favor the legalization of marijuana "as an isolated step," although he considers its effects mild and believes that it causes little long-term damage to users. However, Dr. Weil theorizes that much drug abuse results from what he views as a virtually universal, innate human desire to achieve "altered states of consciousness," either by chemicals (i.e., alcohol, narcotics or other drugs, etc.) or by other means. Therefore, Dr. Weil considers it futile to attempt to deny such experiences to persons who choose to seek them through drugs, and would prefer that society structure its laws so that such persons may have access to drugs in protective and controlled situations. A more complete explanation of Dr. Weil's views as presented to the Drug Abuse Study Committee may be found on pages 6 through 14, inclusive, of the minutes of the Committee's September 30, 1970, meeting.

#### The Uniform Controlled Substances Act

In August, 1970, the National Conference of Commissioners on Uniform State Laws recommended to the states a model Uniform Controlled Substances Act.

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\* Andrew T. Weil, Norman E. Zinberg, Judith M. Nelsen, "Clinical and Psychological Effects of Marihuana in Man", Science, Vol. 162, (December 13, 1968), 1234-42.  
Andrew T. Weil, "Cannabis", Science Journal, Vol. 5A, No. 3, 36-42.  
Andrew T. Weil, "Adverse Reactions to Marihuana; Classification and Suggested Treatment", New England Journal of Medicine, Vol. 282, No. 18, 997-1000.

Controlled Substances Act. At Chairman Mowry's request, a preliminary version of this Uniform Act was reviewed for the Study Committee on September 30 by Mr. Roy Kinsey of the legal staff of the federal Bureau of Narcotics and Dangerous Drugs. As previously mentioned, the Uniform Act is closely related to the new federal Comprehensive Drug Abuse Prevention and Control Act, and following final passage of the latter Act in October, the Uniform Act was placed in final form by the National Conference of Commissioners on Uniform State Laws. The Uniform Act was then placed in Iowa draft form for further consideration by the Drug Abuse Study Committee on November 11, at which time it was recommended in principle by the Committee. The final Iowa draft--which as previously noted incorporates a number of modifications and added features not found in the Uniform Act as recommended by the National Conference--was approved for recommendation to the Sixty-fourth General Assembly at the Study Committee's final meeting on December 29.

The following prefatory note accompanies the final version of the Uniform Controlled Substances Act as recommended to the states by the National Conference of Commissioners on Uniform State Laws.

The Uniform Controlled Substances Act is designed to supplant the Uniform Narcotic Drug Act, adopted by the National Conference of Commissioners on Uniform State Laws in 1933, and the Model State Drug Abuse Control Act, relating to depressant, stimulant, and hallucinogenic drugs, promulgated in 1966.\* With the enactment of the new Federal narcotic and dangerous drug law, the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513, short title "Controlled Substances Act"), it is necessary that the States update and revise their narcotic, marijuana, and dangerous drug laws.

This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.

The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it encompasses almost every nationality, race, and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every State in the Union.

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\* The relevant Iowa statutes are chapters 204 and 204A, Code of Iowa (1971).

Much of this major increase in drug use and abuse is attributable to the increased mobility of our citizens and their affluence. As modern American society becomes increasingly mobile, drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a State are easily transported for sale to another part of that State or even to another State. Nowhere is this mobility manifested with greater impact than in the legitimate pharmaceutical industry. The lines of distribution of the products of this major national industry cross in and out of a State innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between States, while at the same time securing such States against drug diversion from legitimate sources, it becomes critical to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the State and local level on a uniform basis.

A main objective of this Uniform Act is to create a coordinated and codified system of drug control, similar to that utilized at the Federal level, which classifies all narcotics, marijuana, and dangerous drugs subject to control into five schedules, with each schedule having its own criteria for drug placement. This classification system will enable the agency charged with implementing it to add, delete, or reschedule substances based upon new scientific findings and the abuse potential of the substance.\*

Another objective of this Act is to establish a closed regulatory system for the legitimate handlers of controlled drugs in order better to prevent illicit drug diversion. This system will require that these individuals register with a designated State agency, maintain records, and make biennial inventories of all controlled drug stocks.

The Act sets out the prohibited activities in detail, but does not prescribe specific fines or sentences, this being left to the discretion of the individual States. It further provides innovative law enforcement tools to improve investigative efforts and provides for interim education and training programs relating to the drug abuse problem.

The Uniform Act updates and improves existing State laws and insures legislative and administrative flexibility to enable the States to cope with both present and future drug problems. It is recognized that law enforcement may not be the ultimate solution to the drug

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\* This authority is reserved to the General Assembly, rather than delegated to the administrative agency, in the Iowa draft.

abuse problem. It is hoped that present research efforts will be continued and vigorously expanded, particularly as they relate to the development of rehabilitation, treatment, and educational programs for addicts, drug dependent persons, and potential drug abusers.

The text of the revised draft of the Uniform Act recommended by the Drug Abuse Study Committee appears as Appendix II to this report. Many sections of the draft bill are followed by explanatory comments. These comments are based on those included with the National Conference of Commissioners on Uniform State Laws' final draft of the Uniform Act, but have been edited or expanded as necessary to reflect revisions in the Uniform Act made by the Drug Abuse Study Committee.

APPENDIX I

Opinion of Attorney General  
issued to  
Representative Willard R. Hansen

STATE OFFICERS AND DEPARTMENTS: Department of Social Services - Community Mental Health Centers - Treatment of Drug Addicts - Chapters 224, 225B, §§230.24, 444.12, 1966 Code of Iowa; Chapter 209 §148, Chapter 202 §2, 62nd G.A.; Chapter 128 §18, Chapter 157 §47, Chapter 162 §6, 63rd G.A., 1st Session. Mental Health Centers are authorized to provide psychiatric examination and treatment for drug addicts in need thereof and can potentially receive funds through the Iowa Mental Health Authority, the State Institution fund, and County Boards of Supervisors. (Adams to Hansen, State Representative, 12/16/70) #70-12-3

December 16, 1970

Honorable Willard R. Hansen  
State Representative  
411 Main Street  
Cedar Falls, Iowa

Dear Representative Hansen:

In your letter of August 5, 1970 you requested an Opinion of the Attorney General as to (1) Can mental health facilities be used for the treatment of drug abusers and drug addicts? (2) Can mental health centers seek and/or receive federal funds for the purpose of treating drug abusers and addicts?

Mental health centers are established under, and governed by, §230.24, Code of Iowa 1966, which provides:

"County fund for mental health - psychiatric treatment - mental health center. The board of supervisors shall, annually, levy a tax of one mill or less, as may be necessary, for the purpose of raising a fund for the support of such mentally ill persons as are cared for and supported by the county in the county home, or elsewhere outside of any state hospital for the mentally ill, which shall be known as the county fund for mental health, and shall be used for no other purpose than the support of such mentally ill persons and for the purpose of making such additions and improvements as may be necessary to properly care for such patients as are ordered committed to the county home.

"The county board of supervisors are authorized to expend from the county fund for mental health as provided in this section funds for psychiatric examination and treatment of persons in need thereof or for professional evaluation, treatment, and habilitation of mentally retarded persons, in each county where they have facilities available for such treatment, and any county not having such facilities may contract through its board of supervisors with any other county, which has facilities for psychiatric examination and treatment or for professional evaluation, treatment, and habilitation of mentally retarded persons for the use thereof. Any county now or hereafter expending funds from the county fund for mental health for the psychiatric examination and treatment of persons in a community mental health center may levy an additional tax of not to exceed one-half mill.

"A county, or affiliated counties, desiring to establish an incorporated mental health center and having a total or combined population in excess of thirty-five thousand according to the last federal census, may establish such new mental health centers in conjunction with the Iowa mental health authority. In establishing such mental health center, the board of supervisors of each such county is authorized to expend therefor from the state institution fund an amount equal to, but not to exceed, two hundred fifty dollars per thousand population or major fraction thereof. Such appropriation shall not be recurring and shall not be applicable to any mental health center established prior to January 1, 1963."

In an Attorney General's Opinion dated August 11, 1969, the Attorney General stated at page 2:

"The only language in §230.24 tending to define or limit the services that a mental health center

may offer is contained in the second paragraph; notably it is provided that county funds may be expended 'for psychiatric examination and treatment of persons in need thereof.' While there is no specific authorization for treatment of alcoholics, it takes no straining of the statutory language to hold that an alcoholic can be a person in need of psychiatric examination and treatment. Indeed, most people today feel that alcoholism is a form of mental illness, or at least that it is rooted in mental and personality disturbances which are amenable to psychiatric treatment. . . ."

While this opinion concerns itself with alcoholism, we feel the same reasoning, by analogy, would apply to drug addiction. The legislature, in Chapter 224, 1966 Code of Iowa, combines excessive use of intoxicating liquors and narcotic drugs in providing the authority to the county commissioners of hospitalization to commit alcoholics and drug addicts to institutions.

Section 224.1, 1966 Code of Iowa, as amended by Chapter 209, §148, 62nd G.A. provides:

"Commitment. Persons addicted to the excessive use of intoxicating liquors, morphine, cocaine, or other narcotic drugs may be committed by the commissioners of hospitalization of each county to such institutions as the commissioner of the state department of social services may designate."

Section 224.2, 1966 Code of Iowa provides:

"Statutes applicable. All statutes governing the commitment, custody, treatment and maintenance of the mentally ill shall, so far as applicable, govern the commitment, custody, treatment, and maintenance of those addicted to the excessive use of such drugs and intoxicating liquors."

Honorable Willard R. Hansen  
Cedar Falls, Iowa

-page 4-

In accordance with the above, the answer to your first question regarding authority of mental health centers to treat drug addicts is as follows: They may treat drug addicts as part of their services "for psychiatric examination and treatment of persons in need thereof."

As to your second question, it is our opinion that a mental health center has no authority of its own to apply for funds for treatment of drug addicts. It may use funds acquired through the following channels:

Iowa Mental Health authority under §230.24 (quoted earlier), mental health centers are established "in conjunction with" the mental health authority which in turn is charged with "directing the benefits of Public Law 487, 79th Congress of the United States and amendments thereto." (§225B.1, 1966 Code of Iowa) Section 225B.4, 1966 Code of Iowa provides: "Supervision. All authorized funds of the mental health authority shall be disbursed under the supervision of the state board of regents and programs of the Iowa mental health authority shall be administered according to policies established by the committee on mental hygiene."

Funds supplied through the mental health authority can be used in treatment of drug addicts so long as it is consonant with any restrictions of the Federal law and of the state agencies mentioned above.

There are two sources of local funds available for possible use by a mental health center: The county fund for mental health, and the state institution fund.

According to §230.24 (quoted above) the former fund can be used for the support of mentally ill persons and for psychiatric examinations and treatment of persons in need thereof. This fund, which can be sustained by a levy of as much as one and one-half mills, can be used for the support of drug addicts who are mentally ill and for the psychiatric examinations and treatment of drug addicts who are in need thereof. For an analagous set of facts, see 1968 OAG 898.

Honorable Willard R. Hansen  
Cedar Falls, Iowa

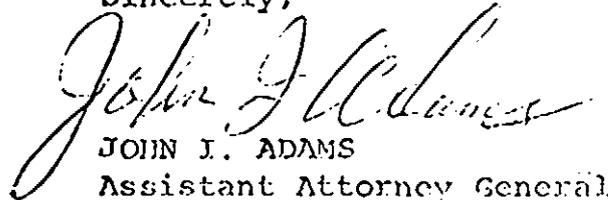
-page 5-

The state institution fund is governed primarily by §444.12, 1966 Code of Iowa as amended, Acts of the 62nd G.A., Chapter 202 §2. It may be used for the establishment of a community mental health center pursuant to §230.24, and it can be used on a continuing basis for support of mentally ill persons. Section 444.12 [as amended by the 62nd G.A., Chapter 202 §2; Chapter 128 §18, 63rd G.A., First Session; Chapter 157 §47, 63rd G.A., First Session; Chapter 162 §6, 63rd G.A., First Session] reads in part as follows:

"State institution fund. The board of supervisors for each county shall establish a state institution fund and shall at the time of levying other taxes, estimate the amount necessary to meet the expenses in the coming year of maintaining county patients . . . and for the establishment of a community health center as provided in §230.24 and for the support of such mentally ill or mentally retarded persons as one committed and treated locally pursuant to §229.9 of the Code or in any alternate public or private facility within or without the state approved by the commissioner of the department of social services for the care of the mentally ill or mentally retarded, shall levy a tax therefor. . ."

It is our opinion the state institution fund may be used for treatment of drug addicts in a mental health center which has undertaken specialized programs therefor, and any federal funds may also be used when made available by appropriation.

Sincerely,

  
JOHN I. ADAMS  
Assistant Attorney General

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APPENDIX II

Text of

Uniform Controlled Substances Act  
as revised and recommended by the  
Drug Abuse Study Committee,  
with explanatory comments

(title page omitted)

DIVISION I

Section 101. DEFINITIONS. As used in this Act:

1. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in his presence, by his authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

3. "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

4. "Board" means the state board of pharmacy examiners.

5. "Department" means the department of public safety of the state of Iowa.

6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of division II of this Act.

7. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

1 9. "Dispense" means to deliver a controlled substance  
2 to an ultimate user or research subject by or pursuant to  
3 the lawful order of a practitioner, including the prescrib-  
4 ing, administering, packaging, labeling, or compounding neces-  
5 sary to prepare the substance for that delivery.

6 10. "Dispenser" means a practitioner who dispenses.

7 11. "Distribute" means to deliver other than by administer-  
8 ing or dispensing a controlled substance.

9 12. "Distributor" means a person who distributes.

10 13. "Drug" means:

11 a. Substances recognized as drugs in the official United  
12 States Pharmacopoeia, official Homeopathic Pharmacopoeia of  
13 the United States, or official National Formulary, or any  
14 supplement to any of them;

15 b. Substances intended for use in the diagnosis, cure,  
16 mitigation, treatment, or prevention of disease in man or  
17 animals;

18 c. Substances, other than food, intended to affect the  
19 structure or any function of the body of man or animals; and

20 d. Substances intended for use as a component of any  
21 article specified in paragraphs a, b, or c of this subsection.  
22 It does not include devices or their components, parts, or  
23 accessories.

24 14. "Immediate precursor" means a substance which the  
25 board has found to be and by rule designates as being the  
26 principal compound commonly used or produced primarily for  
27 use, and which is an immediate chemical intermediary used  
28 or likely to be used in the manufacture of a controlled  
29 substance, the control of which is necessary to prevent,  
30 curtail, or limit manufacture.

31 15. "Manufacture" means the production, preparation,  
32 propagation, compounding, conversion or processing of a  
33 controlled substance, either directly or by extraction from  
34 substances of natural origin, or independently by means of  
35 chemical synthesis, or by a combination of extraction and

1 chemical synthesis, and includes any packaging or repackaging  
2 of the substance or labeling or relabeling of its container,  
3 except that this term does not include the preparation or  
4 compounding of a controlled substance by an individual for  
5 his own use, or the preparation, compounding, packaging, or  
6 labeling of a controlled substance:

7 a. By a practitioner as an incident to his administering  
8 or dispensing of a controlled substance in the course of his  
9 professional practice, or

10 b. By a practitioner, or by his authorized agent under  
11 his supervision, for the purpose of, or as an incident to,  
12 research, teaching, or chemical analysis and not for sale.

13 16. "Marijuana" means all parts of the plant *Cannabis*  
14 *sativa* L., whether growing or not, its seeds, the resin ex-  
15 tracted from any part of the plant, and every compound, manu-  
16 facture, salt, derivative, mixture, or preparation of the  
17 plant, its seeds or resin. It does not include the mature  
18 stalks of the plant, fiber produced from the stalks, oil or  
19 cake made from the seeds of the plant, any other compound,  
20 manufacture, salt, derivative, mixture, or preparation of  
21 the mature stalks, except the resin extracted therefrom,  
22 fiber, oil, or cake, or the sterilized seed of the plant which  
23 is incapable of germination.

24 17. "Narcotic drug" means any of the following, whether  
25 produced directly or indirectly by extraction from substances  
26 of vegetable origin, or independently by means of chemical  
27 synthesis, or by a combination of extraction and chemical  
28 synthesis:

29 a. Opium and opiate, and any salt, compound, derivative,  
30 or preparation of opium or opiate.

31 b. Any salt, compound, isomer, derivative, or preparation  
32 thereof which is chemically equivalent or identical with any  
33 of the substances referred to in paragraph a, but not including  
34 the isoquinoline alkaloids of opium.

35 c. Opium poppy and poppy straw.

1       d. Coca leaves and any salt, compound, derivative, or  
2 preparation of coca leaves, and any salt, compound, isomer,  
3 derivative, or preparation thereof which is chemically equiva-  
4 lent or identical with any of these substances, but not  
5 including decocainized coca leaves or extractions of coca  
6 leaves which do not contain cocaine or ecgonine.

7       18. "Opiate" means any substance having an addiction-  
8 forming or addiction-sustaining liability similar to morphine  
9 or being capable of conversion into a drug having addiction-  
10 forming or addiction-sustaining liability. It does not in-  
11 clude, unless specifically designated as controlled under  
12 section two hundred one (201) of this Act, the dextrorotatory  
13 isomer of 3-methoxy-n-methylmorphinan and its salts (dextro-  
14 methorphan). It does include its racemic and levorotatory  
15 forms.

16       19. "Opium poppy" means the plant of the species *Papaver*  
17 *somniferum* L., except its seeds.

18       20. "Person" means individual, corporation, government  
19 or governmental subdivision or agency, business trust, estate,  
20 trust, partnership or association, or any other legal entity.

21       21. "Poppy straw" means all parts, except the seeds, of  
22 the opium poppy, after mowing.

23       22. "Practitioner" means either:

24       a. A physician, dentist, veterinarian, scientific investi-  
25 gator, or other person licensed, registered or otherwise per-  
26 mitted to distribute, dispense, conduct research with respect  
27 to or to administer a controlled substance in the course of  
28 professional practice or research in this state.

29       b. A pharmacy, hospital or other institution licensed,  
30 registered, or otherwise permitted to distribute, dispense,  
31 conduct research with respect to or to administer a controlled  
32 substance in the course of professional practice or research  
33 in this state.

34       23. "Production" includes the manufacture, planting,  
35 cultivation, growing, or harvesting of a controlled substance.

1 24. "State," when applied to a part of the United States,  
2 includes any state, district, commonwealth, territory, insular  
3 possession, and any area subject to the legal authority of  
4 the United States of America.

5 25. "Ultimate user" means a person who lawfully possesses  
6 a controlled substance for his own use or for the use of a  
7 member of his household or for administering to an animal  
8 owned by him or by a member of his household.

9

10 COMMENT. The definitions in section 101 are those included  
11 in the Uniform Controlled Substances Act as drafted by the  
12 National Conference of Commissioners on Uniform State Laws,  
13 with the addition of the terms "board" and "department",  
14 referring respectively to the Board of Pharmacy Examiners  
15 and Department of Public Safety.

16 The Drug Abuse Study Committee considered, but decided  
17 against, a change in subsection 1, paragraph a, referring  
18 to administration of controlled substances by "a practitioner,  
19 or in his presence, by his authorized agent". It is not the  
20 Committee's intent that this bill broaden or liberalize Iowa's  
21 present statutory limitation upon authority of practitioners  
22 to delegate to persons other than registered nurses or interns  
23 responsibility for administration of controlled substances.  
24 The Committee members concluded that subsection 1, paragraph  
25 a, does not do so when read together with subsections 15 and  
26 22 of section 101.

27

28

## DIVISION II

29

### STANDARDS AND SCHEDULES

30

#### Sec. 201. DUTY TO RECOMMEND CHANGES IN SCHEDULES.

31

32

33

34

35

1. Annually, within thirty days after the convening of  
each regular session of the general assembly, the board shall  
recommend to the general assembly any additions to, deletions  
from, or revisions in the schedules of substances, enumerated  
in sections two hundred four (204), two hundred six (206),

1 two hundred eight (208), two hundred ten (210), or two hundred  
2 twelve (212) of this Act, which it deems necessary or  
3 advisable. In making a recommendation to the general assembly  
4 regarding a substance, the board shall consider the following:  
5 a. The actual or relative potential for abuse;  
6 b. The scientific evidence of its pharmacological effect,  
7 if known;  
8 c. State of current scientific knowledge regarding the sub-  
9 stance;  
10 d. The history and current pattern of abuse;  
11 e. The scope, duration, and significance of abuse;  
12 f. The risk to the public health;  
13 g. The potential of the substance to produce psychic or  
14 physiological dependence liability; and  
15 h. Whether the substance is an immediate precursor of  
16 a substance already controlled under this division.  
17 2. After considering the above factors, the board shall  
18 make a recommendation to the general assembly, specifying  
19 to what schedule the substance should be added, if it finds  
20 that the substance has a potential for abuse.  
21 3. If the board designates a substance as an immediate  
22 precursor, substances which are precursors of the controlled  
23 precursor shall not be subject to control solely because they  
24 are precursors of the controlled precursor. Such designations  
25 shall be made pursuant to the procedures of chapter seventeen  
26 A (17A) of the Code.  
27 4. If any substance is designated, rescheduled, or deleted  
28 as a controlled substance under federal law and notice of  
29 the designation is given to the board, the board shall  
30 recommend that a corresponding change in Iowa law be made  
31 by the next regular session of the general assembly convening  
32 not less than thirty days after publication in the federal  
33 register of a final order designating a substance as a  
34 controlled substance or rescheduling or deleting a substance,  
35 unless the board objects to the change. In that case, the

1 board shall publish the reasons for objection and afford all  
2 interested parties an opportunity to be heard. At the  
3 conclusion of the hearing, the board shall announce its  
4 decision and shall notify the general assembly in writing  
5 of the change in federal law or regulations and of the board's  
6 recommendation that a corresponding change in Iowa law be  
7 made, or not be made, as the case may be.

8

9 COMMENT. Section 201 sets out the criteria to be considered  
10 for the control and classification of drugs into the several  
11 schedules. These criteria consist of the degree of their  
12 abuse potential, known effect, harmfulness and level of  
13 accepted medical use. All controlled substances are contained  
14 in either Schedule I, II, III, IV or V. This classification  
15 achieves one of the main objectives of the Uniform Act, which  
16 is to create a coordinated, codified system of drug control  
17 and regulation.

18 The Act recognizes that some States have had more stringent  
19 laws relating to substances than did the former Federal laws.  
20 The Uniform Act follows the Federal Controlled Substances  
21 Act and lists all of the controlled substances in five  
22 schedules which are identical with the Federal law. The  
23 Uniform Act is not intended to prevent a State from adding  
24 or removing substances from the schedules, or from  
25 reclassifying substances from one schedule to another, provided  
26 the procedures specified in Section 201 are followed.

27 To bring a substance not listed in this bill under control,  
28 change the schedule in which a substance is listed, or remove  
29 a listed substance from control, this bill requires that the  
30 Board of Pharmacy Examiners make findings with respect to  
31 eight criteria set out in the Act and discussed in detail  
32 later in this comment. The Board then makes a recommendation  
33 to the General Assembly, which must make the final decision  
34 whether or not to change the law. In this respect, this bill  
35 differs from the Uniform Act drafted by the National Conference

1 of Commissioners on Uniform State Laws, which provides for  
2 changes in schedules of controlled substances to be made by  
3 administrative action. The Drug Abuse Study Committee, after  
4 consideration and consultation with the office of the Attorney  
5 General, concluded it is not advisable to vest any  
6 administrative agency with the authority to, in effect, make  
7 sale or delivery of a substance which may previously have  
8 been unrestricted a serious public offense, without action  
9 by the General Assembly.

10 The Uniform Act prescribes a procedure by which, in the  
11 absence of contrary action by a designated state agency,  
12 future changes in federal schedules of controlled substances  
13 established by Public Law 91-513 automatically bring about  
14 similar changes in state schedules established by the Uniform  
15 Act. In this bill, that procedure has been modified so that  
16 the Board of Pharmacy Examiners formally notifies the General  
17 Assembly of each change in federal schedules of controlled  
18 substances and makes a recommendation whether or not a similar  
19 change should be made in Iowa law. It is believed that with  
20 annual legislative changes, this procedure should not force  
21 and undue delay in bringing Iowa law into conformity with  
22 federal law.

23 The eight criteria to be considered in evaluating any pro-  
24 posal for a change in the lists of controlled substances,  
25 with respect to a particular substance, are as follows:

26 1. Its actual or relative potential for abuse--

27 These are the criteria which will be used most often to  
28 control drugs and will provide the basis for the greatest  
29 controversy. The term "potential for abuse" is found in the  
30 definition of a "depressant or stimulant drug" in the Drug  
31 Control Amendments of 1965 (21 U.S.C. 201(v)) and as  
32 characterized further in the regulations (21 CFR 166.2(e))  
33 promulgated under those regulations as follows:

34 "The Director of the Bureau of Narcotics and Dangerous  
35 Drugs may determine that a substance has a potential for abuse

1 because of its depressant or stimulant effect on the central  
2 nervous system or its hallucinogenic effect if:

3 1. There is evidence that individuals are taking the drug  
4 or drugs containing such a substance in amounts sufficient  
5 to create a hazard to their health or to the safety of other  
6 individuals or of the community; or

7 2. There is significant diversion of the drug or drugs  
8 containing such a substance from legitimate drug channels;  
9 or

10 3. Individuals are taking the drug or drugs containing  
11 such a substance on their own initiative rather than on the  
12 basis of medical advice from a practitioner licensed by law  
13 to administer such drugs in the course of his professional  
14 practice; or

15 4. The drug or drugs containing such a substance are new  
16 drugs so related in their action to a drug or drugs already  
17 listed as having a potential for abuse to make it likely that  
18 the drug will have the same potentiality for abuse as such  
19 drugs, thus making it reasonable to assume that there may  
20 be significant diversions from legitimate channels, significant  
21 use contrary to or without medical advice, or that it has  
22 a substantial capability of creating hazards to the health  
23 of the user or to the safety of the community."

24 These regulations follow and extend the suggestions con-  
25 tained in House Report No. 130, 89th Congress, First Session,  
26 page 7 (1965).

27 The report went further in its discussion of the "potential"  
28 aspect of the term. It stated that it did not intend that  
29 potential for abuse be determined on the basis of "isolated  
30 or occasional nontherapeutic purposes." The House Interstate  
31 and Foreign Commerce Committee felt that there must exist  
32 "a substantial potential for the occurrence of significant  
33 diversions from legitimate channels, significant use by  
34 individuals contrary to professional advice, or substantial  
35 capability of creating hazards to the health of the user or

1 the safety of the community." (at page 7)

2 There are two points that should be emphasized in this  
3 definition. First, the House Committee was speaking of  
4 "potential" rather than "actual" abuse. In considering a  
5 drug for control, it would not be necessary to show that abuse  
6 presently exists but only that there are indications of a  
7 potential for abuse. This is borne out by the Committee's  
8 statement that "the Secretary of Health, Education, and Welfare  
9 should not be required to wait until a number of lives have  
10 been destroyed or substantial problems have already arisen  
11 before designating a drug as subject to controls of the bill."  
12 (at page 7) Thus, the incidence of present abuse is not the  
13 test which must be applied. The test is a determination of  
14 future or potential abuse. The second point of emphasis is  
15 that in speaking of "substantial" potential the term "sub-  
16 stantial" means more than a mere scintilla of isolated abuse,  
17 but less than a preponderance. Therefore, documentation that,  
18 say, several hundred thousand dosage units of a drug have  
19 been diverted would be "substantial" evidence of abuse despite  
20 the fact that tens of millions of dosage units of that drug  
21 are legitimately used in the same time period. The normal  
22 way in which such diversion is shown is by accountability  
23 audits of the legitimate sources of distribution, such as  
24 manufacturers, wholesalers, pharmacies and doctors.

25 Misuse of a drug in suicides and attempted suicides, as  
26 well as injuries resulting from unsupervised use are regarded  
27 as indicative of a drug's potential for abuse.

28 2. Scientific evidence of its pharmacological effects--

29 The state of knowledge with respect to the uses of a  
30 specific drug are, of course, major considerations, e.g.,  
31 it is vital to know whether or not a drug has an hallucinogenic  
32 effect if it is to be controlled because of that effect.

33 3. The statement of current scientific knowledge regarding  
34 the substance--

35 Criteria (2) and (3) are closely related. However, (2)

1 is primarily interested in pharmacological effects and (3) deals  
2 with all scientific knowledge with respect to the substance.

3 4. Its history and current pattern of abuse--

4 To determine whether or not a drug should be controlled,  
5 the Board of Pharmacy Examiners must know the pattern of abuse  
6 of that substance, including the social, economic and ecologi-  
7 cal characteristics of the segments of the population involved  
8 in such abuse.

9 5. The scope, duration, and significance of abuse--

10 Not only must the Board know the pattern of abuse, but  
11 it must know whether the abuse is widespread. It must also  
12 know whether it is a passing fad, like smoking banana peels,  
13 or whether it is a significant chronic abuse problem like  
14 heroin addiction. In reaching this decision, the Board should  
15 consider the economics of regulation and enforcement attendant  
16 to such a decision. In addition, it should be aware of the  
17 social significance and impact of such a decision upon those  
18 people, especially the young, that would be affected by it.

19 6. What, if any, risk there is to the public health--

20 The Board must have the best available knowledge of the  
21 pharmacological properties of any drug under consideration.  
22 If a drug creates no danger to the public health, it would  
23 be inappropriate to control the drug under this Act.

24 7. Its psychic or physiological dependence liability--

25 There must be an assessment of the extent to which a drug  
26 is physically addictive or psychologically habit forming,  
27 if such information is known.

28 8. Whether the substance is an immediate precursor of a  
29 substance already controlled--

30 This criterion allows inclusion of immediate precursors  
31 on this basis alone into the appropriate schedule and thus  
32 safeguards against possibilities of clandestine manufacture.

33 The overall intent of this section is to create reasonable  
34 flexibility within the Uniform Act so that, as new substances  
35 are discovered or found to have an abuse potential, they can

1 readily be brought under control. Such flexibility will allow  
2 the laws to keep in step with new trends in drug abuse and  
3 new scientific information.

4  
5 Sec. 202. CONTROLLED SUBSTANCES - LISTED REGARDLESS OF  
6 NAME. The controlled substances listed in the schedules in  
7 sections two hundred four (204), two hundred six (206), two  
8 hundred eight (208), two hundred ten (210) and two hundred  
9 twelve (212) are included by whatever official name, common  
10 or usual name, chemical name, or trade name is designated.

11  
12 COMMENT. This section is taken without substantive change  
13 from the Uniform Controlled Substances Act as drafted by the  
14 National Conference of Commissioners on Uniform State Laws.

15  
16 Sec. 203. SUBSTANCES LISTED IN SCHEDULE I - CRITERIA.  
17 The board shall recommend to the general assembly that it  
18 place in schedule I any substance not already included therein  
19 if the board finds that the substance:

- 20 1. Has high potential for abuse; and  
21 2. Has no accepted medical use in treatment in the United  
22 States; or lacks accepted safety for use in treatment under  
23 medical supervision.

24  
25 COMMENT. This section, and sections 205, 207, 209, and 211  
26 are based on the Uniform Act, but have been revised in accor-  
27 dance with the procedure for changing substances listed in  
28 the various schedules which was discussed in the comment  
29 following section 201.

30  
31 Sec. 204. SCHEDULE I - SUBSTANCES INCLUDED.

32 1. The controlled substances listed in this section are  
33 included in schedule I.

34 2. Any of the following opiates, including their isomers,  
35 esters, ethers, salts, and salts of isomers, esters, and

1 ethers, unless specifically excepted, whenever the existence  
2 of these isomers, esters, ethers and salts is possible within  
3 the specific chemical designation:

- 4 a. Acetylmethadol.
- 5 b. Allylprodine.
- 6 c. Alphacetylmethadol.
- 7 d. Alphameprodine.
- 8 e. Alphamethadol.
- 9 f. Benzethidine.
- 10 g. Betacetylmethadol.
- 11 h. Betameprodine.
- 12 i. Betamethadol.
- 13 j. Betaprodine.
- 14 k. Clonitazene.
- 15 l. Dextromoramide.
- 16 m. Dextrorphan.
- 17 n. Diampromide.
- 18 o. Diethylthiambutene.
- 19 p. Dimenoxadol.
- 20 q. Dimepheptanol.
- 21 r. Dimethylthiambutene.
- 22 s. Dioxaphetyl butyrate.
- 23 t. Dipipanone.
- 24 u. Ethylmethylthiambutene.
- 25 v. Etonitazene.
- 26 w. Etoxeridine.
- 27 x. Furethidine.
- 28 y. Hydroxypethidine.
- 29 z. Ketobemidone.
- 30 aa. Levomoramide.
- 31 bb. Levophenacylmorphane.
- 32 cc. Morpheridine.
- 33 dd. Noracetylmethadol.
- 34 ee. Norlevorphanol.
- 35 ff. Normethadone.

- 1 gg. Norpipanone.
- 2 hh. Phenadoxone.
- 3 ii. Phenampromide.
- 4 jj. Phenomorphan.
- 5 kk. Phenoperidine.
- 6 ll. Piritramide.
- 7 mm. Proheptazine.
- 8 nn. Properidine.
- 9 oo. Racemoramide.
- 10 pp. Trimeperidine.

11 3. Any of the following opium derivatives, their salts,  
12 isomers and salts of isomers, unless specifically excepted,  
13 whenever the existence of these salts, isomers and salts of  
14 isomers is possible within the specific chemical designation:

- 15 a. Acetorphine.
- 16 b. Acetyldihydrocodeine.
- 17 c. Benzylmorphine.
- 18 d. Codeine methylbromide.
- 19 e. Codeine-N-Oxide.
- 20 f. Cyrenorphine.
- 21 g. Desomorphine.
- 22 h. Dihydromorphine.
- 23 i. Etorphine.
- 24 j. Heroin.
- 25 k. Hydromorphinol.
- 26 l. Methyldesorphine.
- 27 m. Methyldihydromorphine.
- 28 n. Morphine methylbromide.
- 29 o. Morphine methylsulfonate.
- 30 p. Morphine-N-Oxide.
- 31 q. Myrophine.
- 32 r. Nicocodeine.
- 33 s. Nicomorphine.
- 34 t. Normorphine.
- 35 u. Phoclodine.

1 v. Thebacon.

2 4. Any material, compound, mixture or preparation which  
3 contains any quantity of the following hallucinogenic  
4 substances, their salts, isomers and salts of isomers, unless  
5 specifically excepted, whenever the existence of these salts,  
6 isomers, and salts of isomers is possible within the specific  
7 chemical designation:

- 8 a. 3,4-methylenedioxy amphetamine.
- 9 b. 5-methoxy-3,4-methylenedioxy amphetamine.
- 10 c. 3,4,5-trimethoxy amphetamine.
- 11 d. Bufotenine.
- 12 e. Diethyltryptamine.
- 13 f. Dimethyltryptamine.
- 14 g. 4-methyl-2, 5-dimethoxylamphetamine.
- 15 h. Ibogaine.
- 16 i. Lysergic acid diethylamide.
- 17 j. Marijuana.
- 18 k. Mescaline.
- 19 l. Peyote, except as otherwise provided in subsection five  
20 (5) of this section.
- 21 m. N-ethyl-3-piperidyl benzilate.
- 22 n. N-methyl-3-piperidyl benzilate.
- 23 o. Psilocybin.
- 24 p. Psilocyn.
- 25 q. Tetrahydrocannabinols.

26 5. Nothing in this Act shall apply to peyote when used  
27 in bona fide religious ceremonies of the Native American  
28 Church; however, persons supplying the product to the church  
29 shall register, maintain appropriate records of receipts and  
30 disbursements of peyote, and otherwise comply with all  
31 applicable requirements of this Act and regulations adopted  
32 pursuant thereto.

33

34 COMMENT. Section 204 is identical with the corresponding  
35 section of the Uniform Act, except for the authorization for

1 use of peyote in the religious ceremonies of the Native  
2 American Church which is carried over into this bill from  
3 present section 204A.2(12) of the Code.

4

5 Sec. 205. SUBSTANCES LISTED IN SCHEDULE II - CRITERIA.

6 The board shall recommend to the general assembly that it  
7 place in schedule II any substance not already included therein  
8 if the board finds that:

9 1. The substance has high potential for abuse;

10 2. The substance has currently accepted medical use in  
11 treatment in the United States, or currently accepted medical  
12 use with severe restrictions; and

13 3. Abuse of the substance may lead to severe psychic or  
14 physical dependence.

15 Sec. 206. SCHEDULE II - SUBSTANCES INCLUDED.

16 1. The controlled substances listed in this section are  
17 included in schedule II.

18 2. Any of the following substances except those narcotic  
19 drugs listed in other schedules whether produced directly  
20 or indirectly by extraction from substances of vegetable  
21 origin, or independently by means of chemical synthesis, or  
22 by combination of extraction and chemical synthesis:

23 a. Opium and opiate, and any salt, compound, derivative,  
24 or preparation of opium or opiate.

25 b. Any salt, compound, isomer, derivative, or preparation  
26 thereof which is chemically equivalent or identical with any  
27 of the substances referred to in paragraph a, but not including  
28 the isoquinoline alkaloids of opium.

29 c. Opium poppy and poppy straw.

30 d. Coca leaves and any salt, compound, derivative, or  
31 preparation of coca leaves, and any salt, compound, derivative,  
32 or preparation thereof which is chemically equivalent or  
33 identical with any of these substances, but not including  
34 decocainized coca leaves or extractions which do not contain  
35 cocaine or ecgonine.

1       3. Any of the following opiates, including their isomers,  
2 esters, ethers, salts, and salts of isomers, whenever the  
3 existence of these isomers, esters, ethers and salts is pos-  
4 sible within the specific chemical designation:

- 5       a. Alphaprodine.
- 6       b. Anileridine.
- 7       c. Bezitramide.
- 8       d. Dihydrocodeine.
- 9       e. Diphenoxylate.
- 10      f. Fentanyl.
- 11      g. Isomethadone.
- 12      h. Levomethorphan.
- 13      i. Levorphanol.
- 14      j. Metazocine.
- 15      k. Methadone.
- 16      l. Methadone - Intermediate, 4-cyano-2-dimethylamino-4,  
17 4-diphenyl butane.
- 18      m. Moramide - Intermediate, 2-methyl-3-morpholino-1,  
19 1-diphenyl-propane-carboxylic acid.
- 20      n. Pethidine.
- 21      o. Pethidine - Intermediate - A, 4-cyano-1-methyl-4-  
22 phenylpiperidine.
- 23      p. Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-  
24 carboxylate.
- 25      q. Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-  
26 4-carboxylic acid.
- 27      r. Phenazocine.
- 28      s. Piminodine.
- 29      t. Racemethorphan.
- 30      u. Racemorphan.

31       4. Unless specifically excepted or unless listed in another  
32 schedule, any injectable liquid which contains any quantity  
33 of methamphetamine, including its salts, isomers, and salts  
34 of isomers.

35

1 COMMENT. The criteria for inclusion of substances in Schedule  
2 II are far broader than those substances actually included  
3 in it. Schedule II now includes only those substances  
4 principally considered as Class "A" narcotic drugs, i.e.,  
5 narcotics dispensed upon written prescription only. It is  
6 contemplated that if stringent control of a certain nonnarcotic  
7 drug is required, subclasses can be established in Schedule  
8 II and those substances added into that new subclass based  
9 upon the broad criteria set in Section 205.

10 For some reason, the item appearing as subsection 4 of  
11 section 206 of this bill was not carried over from Schedule  
12 II of the new federal drug law to Schedule II of the Uniform  
13 Act. Upon the recommendation of Mr. Paul Crews, Secretary  
14 of the Board of Pharmacy Examiners, this item was included  
15 in Schedule II in this bill and the language in parentheses  
16 in section 208, subsection 2, paragraph c, was inserted  
17 accordingly.

18

19 Sec. 207. SUBSTANCES LISTED IN SCHEDULE III - CRITERIA.

20 The board shall recommend to the general assembly that  
21 it place in schedule III any substance not already included  
22 therein if the board finds that:

23 1. The substance has a potential for abuse less than the  
24 substances listed in schedules I and II;

25 2. The substance has currently accepted medical use in  
26 treatment in the United States; and

27 3. Abuse of the substance may lead to moderate or low  
28 physical dependence or high psychological dependence.

29 Sec. 208. SCHEDULE III - SUBSTANCES INCLUDED.

30 1. The controlled substances listed in this section are  
31 included in schedule III.

32 2. Any material, compound, mixture, or preparation which  
33 contains any quantity of the following substances having a  
34 potential for abuse associated with a stimulant effect on  
35 the central nervous system:

1 a. Amphetamine, its salts, optical isomers, and salts  
2 of its optical isomers.

3 b. Phenmetrazine and its salts.

4 c. Any substance (except an injectable liquid) which con-  
5 tains any quantity of methamphetamine, including its salts,  
6 isomers, and salts of isomers.

7 d. Methylphenidate.

8 3. Unless listed in another schedule, any material,  
9 compound, mixture, or preparation which contains any quantity  
10 of the following substances having a potential for abuse  
11 associated with a depressant effect on the central nervous  
12 system:

13 a. Any substance which contains any quantity of a deriva-  
14 tive of barbituric acid, or any salt of a derivative of  
15 barbituric acid, except those substances which are specifically  
16 listed in other schedules.

17 b. Chlorhexadol.

18 c. Glutethimide.

19 d. Lysergic acid.

20 e. Lysergic acid amide.

21 f. Methyprylon.

22 g. Phencyclidine.

23 h. Sulfondiethylmethane.

24 i. Sulfonethylmethane.

25 j. Sulfonmethane.

26 4. Nalorphine.

27 5. Any material, compound, mixture, or preparation contain-  
28 ing limited quantities of any of the following narcotic drugs,  
29 or any salts thereof:

30 a. Not more than one point eighty grams of codeine, or  
31 any of its salts, per one hundred milliliters or not more  
32 than ninety milligrams per dosage unit, with an equal or  
33 greater quantity of an isoquinoline alkaloid of opium.

34 b. Not more than one point eighty grams of codeine, or  
35 any of its salts, per one hundred milliliters or not more

1 than ninety milligrams per dosage unit, with one or more  
2 active, nonnarcotic ingredients in recognized therapeutic  
3 amounts.

4 c. Not more than three hundred milligrams of dihydrocode-  
5 inone, or any of its salts, per one hundred milliliters or  
6 not more than fifteen milligrams per dosage unit, with a  
7 fourfold or greater quantity of an isoquinoline alkaloid of  
8 opium.

9 d. Not more than three hundred milligrams of dihydrocode-  
10 inone, or any of its salts, per one hundred milliliters or  
11 not more than fifteen milligrams per dosage unit, with one  
12 or more active, nonnarcotic ingredients in recognized  
13 therapeutic amounts.

14 e. Not more than one point eighty grams of dihydrocodeine,  
15 or any of its salts, per one hundred milliliters or not more  
16 than ninety milligrams per dosage unit, with one or more  
17 active, nonnarcotic ingredients in recognized therapeutic  
18 amounts.

19 f. Not more than three hundred milligrams of ethylmorphine,  
20 or any of its salts, per one hundred milliliters or not more  
21 than fifteen milligrams per dosage unit, with one or more  
22 ingredients in recognized therapeutic amounts.

23 g. Not more than five hundred milligrams of opium per  
24 one hundred milliliters or per one hundred grams, or not more  
25 than twenty-five milligrams per dosage unit, with one or more  
26 active, nonnarcotic ingredients in recognized therapeutic  
27 amounts.

28 h. Not more than fifty milligrams of morphine, or any  
29 of its salts, per one hundred milliliters or per one hundred  
30 grams with one or more active, nonnarcotic ingredients in  
31 recognized therapeutic amounts.

32 6. The board by rule may except any compound, mixture,  
33 or preparation containing any stimulant or depressant substance  
34 listed in subsections two (2) and three (3) of this section  
35 from the application of all or any part of this Act if the

1 compound, mixture, or preparation contains one or more active  
2 medicinal ingredients not having a stimulant or depressant  
3 effect on the central nervous system, and if the admixtures  
4 are included therein in such combinations, quantity, propor-  
5 tion, or concentration as to vitiate the potential for abuse  
6 of the substances which have a stimulant or depressant effect  
7 on the central nervous system.

8

9 COMMENT. Schedule III includes two categories of drugs --  
10 those narcotic drugs formerly considered Class "B" narcotics,  
11 and all stimulant and depressant drugs formerly included under  
12 both the Model State Drug Abuse Control Act and the Federal  
13 Drug Abuse Control Amendments of 1965.

14 Subsection 5 of this section, which includes the former  
15 Class "B" narcotic drugs, has undergone two changes. First,  
16 all calculations have been shifted from the historic apothecary  
17 system of measurement to the metric system to bring them in  
18 line with the general movement by many scientific groups and  
19 industries, including the pharmaceutical industry, to the  
20 metric system. Second, all dosage-strength calculations have  
21 been adjusted to correspond to the more modern 5 cc. teaspoon  
22 as a unit dose rather than the historic 3.69 cc. teaspoon  
23 size, upon which all previous calculations were made.

24

25 Sec. 209. SUBSTANCES LISTED IN SCHEDULE IV - CRITERIA.  
26 The board shall recommend to the general assembly that it  
27 place in schedule IV any substance not already included therein  
28 if the board finds that:

29 1. The substance has a low potential for abuse relative  
30 to the substances listed in schedule III;

31 2. The substance has currently accepted medical use in  
32 treatment in the United States; and

33 3. Abuse of the substance may lead to limited physical  
34 dependence or psychological dependence relative to the  
35 substances listed in schedule III.

1       Sec. 210. SCHEDULE IV - SUBSTANCES INCLUDED.

2       1. The controlled substances listed in this section are  
3 included in schedule IV.

4       2. Any compound, mixture, or preparation which contains  
5 any quantity of the following substances having a potential  
6 for abuse associated with a depressant effect on the central  
7 nervous system:

8       a. Barbital.

9       b. Chloral betaine.

10      c. Chloral hydrate.

11      d. Ethchlorvynol.

12      e. Ethinamate.

13      f. Methohexital.

14      g. Methoprobamate.

15      h. Methylphenobarbital.

16      i. Paraldehyde.

17      j. Petrichloral.

18      k. Phenobarbital.

19      3. The board by rule may except any compound, mixture,  
20 or preparation containing any depressant substance listed  
21 in subsection two (2) from the application of all or any part  
22 of this Act if the compound, mixture, or preparation contains  
23 one or more active medicinal ingredients not having a  
24 depressant effect on the central nervous system and if the  
25 admixtures are included therein in combinations, quantity,  
26 proportion, or concentration that vitiate the potential for  
27 abuse of the substances which have a depressant effect on  
28 the central nervous system.

29

30 COMMENT. Schedule IV contains certain tranquilizing drugs  
31 and long-acting barbiturates. All substances contained in  
32 the schedule must be dispensed on prescription.

33

34       Sec. 211. SCHEDULE V - CRITERIA. The board shall recom-  
35 mend to the general assembly that it place in schedule V any

1 substance not already included therein if the board finds  
2 that:

3 1. The substance has a low potential for abuse relative  
4 to the substances listed in schedule IV;

5 2. The substance has currently accepted medical use in  
6 treatment in the United States; and

7 3. The substance has limited physical dependence or  
8 psychological dependence liability relative to the controlled  
9 substances listed in schedule IV.

10 Sec. 212. SCHEDULE V - SUBSTANCES INCLUDED.

11 1. The controlled substances listed in this section are  
12 included in schedule V.

13 2. Any compound, mixture, or preparation containing limited  
14 quantities of any of the following narcotic drugs, which shall  
15 include one or more nonnarcotic active medicinal ingredients  
16 in sufficient proportion to confer upon the compound, mixture,  
17 or preparation, valuable medicinal qualities other than those  
18 possessed by the narcotic drug alone:

19 a. Not more than two hundred milligrams of codeine, or  
20 any of its salts, per one hundred milliliters or per one  
21 hundred grams;

22 b. Not more than one hundred milligrams of dihydrocodeine,  
23 or any of its salts, per one hundred milliliters or per one  
24 hundred grams;

25 c. Not more than one hundred milligrams of ethylmorphine,  
26 or any of its salts, per one hundred milliliters or per one  
27 hundred grams;

28 d. Not more than two point five milligrams of diphenoxylate  
29 and not less than twenty-five micrograms of atropine sulfate  
30 per dosage unit;

31 e. Not more than one hundred milligrams of opium per one  
32 hundred milliliters or per one hundred grams.

33

34 COMMENT. While it is contemplated that Schedule V drugs will  
35 be sold on a restricted over-the-counter sale basis for a

1 valid medical purpose, this section is not intended to super-  
2 sede prescription requirements of a state where such substances  
3 cannot be sold except on a prescription-only status.

4 While this schedule only contains narcotic drugs formerly  
5 considered as Class "X" (exempt over-the-counter drugs), the  
6 criteria set out in section 211 are broad enough to include  
7 other over-the-counter preparations which meet those criteria  
8 and are in need of some limited form of control.

9 The comments to section 208(5) relating to the metric sys-  
10 tem and the dosage-strength calculations apply equally as  
11 well to Schedule V.

12

13

### DIVISION III

14

#### REGULATION OF MANUFACTURE, DISTRIBUTION

15

#### AND DISPENSING OF CONTROLLED SUBSTANCES

16

17 Sec. 301. RULES AND REGULATIONS. The board may, subject  
18 to chapter seventeen A (17A), promulgate rules and charge  
19 reasonable fees relating to the registration and control of  
20 the manufacture, distribution, and dispensing of controlled  
21 substances within this state.

21

22 COMMENT. This section will permit the Board of Pharmacy  
23 Examiners to cover the costs of actual registration and control  
24 by charging reasonable fees. However, the Uniform Act was  
25 not intended to permit a state to charge exorbitant fees as  
26 a means of fully implementing the regulatory provisions of  
27 the Act and thereby avoiding the need for additional state  
28 appropriations.

29

30 Sec. 302. REGISTRATION REQUIREMENTS.

31

32 1. Every person who manufactures, distributes, or dis-  
33 penses any controlled substance within this state or who  
34 proposes to engage in the manufacture, distribution, or  
35 dispensing of any controlled substance within this state,  
shall obtain annually a registration issued by the board in

1 accordance with its rules.

2       2. Persons registered by the board under this Act to  
3 manufacture, distribute, dispense, or conduct research with  
4 controlled substances may possess, manufacture, distribute,  
5 dispense, or conduct research with those substances to the  
6 extent authorized by their registration and in conformity  
7 with the other provisions of this division.

8       3. The following persons need not register and may law-  
9 fully possess controlled substances under this Act:

10       a. An agent or employee of any registered manufacturer,  
11 distributor, or dispenser of any controlled substance if he  
12 is acting in the usual course of his business or employment.

13       b. A common or contract carrier or warehouseman, or an  
14 employee thereof, whose possession of any controlled sub-  
15 stance is in the usual course of business or employment.

16       c. An ultimate user or a person in possession of any  
17 controlled substance pursuant to a lawful order of a  
18 practitioner or in possession of a schedule V substance.

19       4. The board by rule may waive the requirement for regis-  
20 tration of certain manufacturers, distributors, or dispensers  
21 if it finds it consistent with the public health and safety.

22       5. A separate registration is required at each principal  
23 place of business or professional practice where the appli-  
24 cant manufactures, distributes, or dispenses controlled  
25 substances.

26       6. The board may inspect the establishment of a registrant  
27 or applicant for registration in accordance with the board's  
28 rules.

29

30 COMMENT. This section requires any person who engages in,  
31 or intends to engage in, the manufacture, distribution, or  
32 dispensing of controlled substances to be registered by the  
33 state. Practitioners who administer, as that term is defined  
34 in section 101(2), or who prescribe, will also be required  
35 to register. By registering every individual dealing with

1 dangerous drugs, the state will know who is responsible for  
2 a drug and who is dealing in these drugs. The tighter  
3 registration requirements imposed by this section are designed  
4 to eliminate many sources of diversion, both actual and  
5 potential.

6 Common and contract carriers, warehousemen, ultimate users,  
7 and agents of registrants are specifically exempted from the  
8 registration requirements since to require otherwise would  
9 be extremely burdensome and afford little increase in  
10 protection against diversion.

11 Annual registration is called for so that a licensee can  
12 be screened and the registrant lists purified should the need  
13 arise. In addition, the annual registration requirement will  
14 be a form of check on persons authorized to deal in controlled  
15 substances.

16

17 Sec. 303. REGISTRATION.

18 1. The board shall register an applicant to manufacture  
19 or distribute controlled substances included in sections two  
20 hundred four (204), two hundred six (206), two hundred eight  
21 (208), two hundred ten (210), and two hundred twelve (212)  
22 of this Act unless it determines that the issuance of that  
23 registration would be inconsistent with the public interest.  
24 In determining the public interest, the board shall consider  
25 all of the following factors:

26 a. Maintenance of effective controls against diversion  
27 of controlled substances into other than legitimate medical,  
28 scientific, or industrial channels.

29 b. Compliance with applicable state and local law.

30 c. Any convictions of the applicant under any federal  
31 and state laws relating to any controlled substance.

32 d. Past experience in the manufacture or distribution  
33 of controlled substances, and the existence in the applicant's  
34 establishment of effective controls against diversion.

35 e. Furnishing by the applicant of false or fraudulent

1 material in any application filed under this Act.

2 f. Suspension or revocation of the applicant's federal  
3 registration to manufacture, distribute, or dispense con-  
4 trolled substances as authorized by federal law.

5 g. Any other factors relevant to and consistent with the  
6 public health and safety.

7 2. Registration under subsection one (1) of this section  
8 does not entitle a registrant to manufacture and distribute  
9 controlled substances in schedule I or II other than those  
10 specified in the registration.

11 3. Practitioners must be registered to dispense any con-  
12 trolled substances or to conduct research with controlled  
13 substances in schedules II through V if they are authorized  
14 to dispense or conduct research under the law of this state.  
15 The board need not require separate registration under this  
16 division for practitioners engaging in research with non-  
17 narcotic controlled substances in schedules II through V where  
18 the registrant is already registered under this division in  
19 another capacity. Practitioners registered under federal  
20 law to conduct research with schedule I substances may conduct  
21 research in schedule I substances within this state upon  
22 furnishing the board evidence of the federal registration.

23 4. Compliance by manufacturers and distributors with the  
24 provisions of the federal law respecting registration,  
25 excluding fees, entitles them to be registered under this  
26 Act.

27

28 COMMENT. This section sets out the criteria upon which the  
29 Board of Pharmacy Examiners shall register persons to engage  
30 in the various activities concerning controlled substances.  
31 There is required a showing by the applicant of the maintenance  
32 of adequate safeguards against diversion, of compliance with  
33 state and local laws, and of his previous experience in the  
34 manufacture or distribution of such substances. These criteria  
35 are almost identical to those which the Attorney General must

1 consider in registering an applicant under the Federal  
2 Controlled Substances Act except for antitrust considerations,  
3 which were not considered applicable to the state control  
4 procedures. Thus, any particular applicant need meet only  
5 one set of criteria for both federal and state registration.

6 In addition, registration under the Federal Controlled  
7 Substances Act will be deemed sufficient for registration  
8 under state law. Since the criteria for federal and state  
9 registration are virtually identical, nothing would be served  
10 by requiring a registrant under federal law to go through  
11 a similar procedure in registering under state law. Wasteful  
12 duplication would be the only result. Under the proposed  
13 system, a single form will suffice to register an applicant  
14 under both state and federal law.

15 Practitioners are to be registered to prescribe or dispense  
16 substances in Schedules II through V, comprising all substances  
17 with recognized medical uses, if they are authorized to pre-  
18 scribe or dispense under the laws of the state. If those  
19 practitioners wish to conduct research in nonnarcotic  
20 substances in Schedules II through V, the Board has within  
21 its discretion the right to require, or not require, a separate  
22 registration. It is felt that such permissive authority will  
23 allow the Board to maintain close tabs on all those individuals  
24 who conduct research with controlled substances in the state.

25 Practitioners who are registered under federal law to con-  
26 duct research with respect to Schedule I substances are per-  
27 mitted to conduct such research in Iowa only upon notification  
28 to the Board of a valid federal registration for the purpose.

29

30 Sec. 304. REVOCATION AND SUSPENSION OF REGISTRATION.

31 1. A registration under section three hundred three (303)  
32 to manufacture, distribute, or dispense a controlled substance  
33 may be suspended or revoked by the board upon a finding that  
34 the registrant:

35 a. Has furnished false or fraudulent material information

1 in any application filed under this Act;

2 b. Has had his federal registration suspended or revoked  
3 to manufacture, distribute, or dispense controlled substances;  
4 or

5 c. Has been convicted of a felony under any state or fed-  
6 eral law relating to any controlled substance. For the pur-  
7 pose of this section only, a conviction shall include a plea  
8 of guilty or a finding of guilt in a criminal action even  
9 though the entry of the plea or finding has been withheld  
10 and the individual placed on probation.

11 2. The board may limit revocation or suspension of a  
12 registration to the particular controlled substance with  
13 respect to which grounds for revocation or suspension exist.

14 3. If the board suspends or revokes a registration, all  
15 controlled substances owned or possessed by the registrant  
16 at the time of suspension or the effective date of the  
17 revocation order may be placed under seal. No disposition  
18 may be made of substances under seal until the time for taking  
19 an appeal has elapsed or until all appeals have been concluded  
20 unless a court, upon application, orders the sale of perishable  
21 substances and the deposit of the proceeds of the sale with  
22 the court. Upon a revocation order becoming final, all such  
23 controlled substances may be forfeited to the state.

24 4. The board shall promptly notify the bureau and the  
25 department of all orders suspending or revoking registration  
26 and all forfeitures of controlled substances.

27

28 COMMENT. This section sets out the grounds upon which the  
29 Board of Pharmacy Examiners may revoke or suspend a  
30 registration. Subsection 1 of this section sets out the  
31 criteria upon which a registration can be revoked or suspended  
32 during the year in which that particular registration is in  
33 force. In denial of registration renewal situations for  
34 manufacturers or distributors, the criteria in this subsection  
35 should not be used. Instead, the Board should apply the

1 broader criteria set out in section 303, subsection 1 relating  
2 to initial registration.

3 Subsection 2 of this section allows the Board in its discre-  
4 tion to limit the revocation or suspension of a registration  
5 to a particular schedule or substance rather than revoking  
6 or suspending the whole registration. This will be especially  
7 effective where, for example, a manufacturer committed a  
8 criminal violation, but certain mitigating circumstances did  
9 not militate towards removing his full registration. Instead,  
10 his right to manufacture a particular substance could be sus-  
11 pended or revoked. As a practical matter, this would put  
12 him out of the business of manufacturing in the substance  
13 or schedule in which he committed the violation, but would  
14 not totally remove his livelihood.

15 Subsection 3 of this section relates to forfeitures of  
16 controlled substances, where the registrant who has the right  
17 to possess those substances has his registration revoked.  
18 The language of this section has purposely been drafted as  
19 a permissive forfeiture section rather than a mandatory  
20 provision. Thus, for example, if the registration of a sole  
21 medical practitioner or a community pharmacy in a small town  
22 were revoked, the Board could in its discretion allow the  
23 revoked registrant to sell those substances to a new owner  
24 (registrant) in order that the inhabitants of the particular  
25 town might not have to go without needed pharmaceutical  
26 supplies.

27 Upon a final order of revocation of a registration, the  
28 state must promptly notify the Bureau of Narcotics and Danger-  
29 ous Drugs. Such a provision is necessary since revocation  
30 of a state registration is grounds for denial, suspension,  
31 or revocation of a federal registration.

32 The question was raised, while the Uniform Act was under  
33 consideration by the Drug Abuse Study Committee, how the Board  
34 can revoke a registration which has been granted by virtue  
35 of registration of the same party under the federal law, as

1 provided by section 303. Mr. Carl Roberts, Director of the  
2 Legal Division of the American Pharmaceutical Association,  
3 suggests that this apparent paradox exists only if registration  
4 is thought of as a "piece of paper". Although the state will  
5 presumably not issue a "piece of paper" to persons who are  
6 registered under federal law, the Board will of necessity  
7 maintain a record of those persons in the state who have been  
8 issued registrations by the federal government, and by this  
9 record the state in effect grants to the persons listed therein  
10 a right to manufacture, distribute or dispense controlled  
11 substances. It is this abstract right which is subject to  
12 revocation by the state, and such revocations can be given  
13 effect simply by striking the registrant's name from the state  
14 records and informing him of this action. Such action will  
15 not affect the registrant's rights under his federal  
16 registration without action by the federal government.

17

18 Sec. 305. ORDER TO SHOW CAUSE.

19 1. Before denying, suspending or revoking a registration,  
20 or refusing a renewal of registration, the board shall serve  
21 upon the applicant or registrant an order to show cause why  
22 registration should not be denied, revoked, or suspended,  
23 or why the renewal should not be refused. The order to show  
24 cause shall contain a statement of the basis therefor and  
25 shall call upon the applicant or registrant to appear before  
26 the board at a time and place not less than thirty days after  
27 the date of service of the order, but in the case of a denial  
28 or renewal of registration the show cause order shall be  
29 served not later than thirty days before the expiration of  
30 the registration. These proceedings shall be conducted with-  
31 out regard to any criminal prosecution or other proceeding.  
32 Proceedings to refuse renewal of registration shall not abate  
33 the existing registration which shall remain in effect pending  
34 the outcome of the administrative hearing.

35 2. The board, without an order to show cause, may suspend

1 any registration simultaneously with the institution of pro-  
2 ceedings under section three hundred four (304), or where  
3 renewal of registration is refused, if it finds that there  
4 is an imminent danger to the public health or safety which  
5 warrants this action. The suspension shall continue in effect  
6 until the conclusion of the proceedings, including judicial  
7 review thereof, unless sooner withdrawn by the board or  
8 dissolved by the district or supreme court.

9

10 COMMENT. This section requires the Board of Pharmacy Examiners  
11 to serve upon a registrant an order to show cause why his  
12 registration should not be revoked or suspended or his  
13 registration renewal refused. The order will contain enough  
14 information to fully apprise the registrant of the charges  
15 against him and will be served at least 30 days before his  
16 current registration expires. If, during the pendency of  
17 an administration hearing to deny a renewal registration,  
18 the registration runs out, this section keeps the old  
19 registration in force until the administrative hearing is  
20 completed.

21 Subsection 2 of this section allows the Board, in cases  
22 of imminent danger to the public health or safety, to suspend  
23 the registration simultaneously with the institution of  
24 proceedings to revoke, suspend, or refuse a renewal. Such  
25 an emergency situation can occur when, for example, a  
26 practitioner, knowing that action is being taken to revoke  
27 his registration, begins to buy and divert large quantities  
28 of controlled substances. Rather than having to wait until  
29 all administrative proceedings have been completed and allow  
30 substantial diversion of these substances, the Board may act  
31 immediately to suspend the registration, and may then place  
32 all controlled substances under seal until the administrative  
33 hearing is completed.

34

35 Sec. 306. RECORDS OF REGISTRANTS. Persons registered

1 to manufacture, distribute, dispense, or administer controlled  
2 substances under this Act shall keep records and maintain  
3 inventories in conformance with the record keeping and in-  
4 ventory requirements of federal law and with such additional  
5 rules as may be issued by the board.

6  
7 COMMENT. This section, which requires registrants to prepare  
8 inventories and records of all stocks of schedule I through  
9 V substances, ties into the proposed federal system and should  
10 prove to be more than adequate for state record-keeping pur-  
11 poses. By tying the state and federal systems together, dif-  
12 ferent "paper" requirements will be avoided and wasteful  
13 duplication eliminated. This section of the Uniform Act,  
14 as originally drafted, has slightly altered by addition of  
15 the words ", or administer" after the word "dispense". This  
16 section provides the Board with the authority to promulgate  
17 rules requiring additional record-keeping or inventory  
18 controls, if considered necessary. Those individuals exempted  
19 by federal law from record keeping and inventory requirements  
20 are intended to be similarly exempted by this section.

21

22 Sec. 307. ORDER FORMS. Controlled substances in schedules  
23 I and II shall be distributed by a registrant to another  
24 registrant only pursuant to an order form. Compliance with  
25 the provisions of federal law respecting order forms shall  
26 be deemed compliance with this section.

27

28 COMMENT. This section requires order forms for the distribu-  
29 tion of any schedule I or II substances. It, too, is tied  
30 into the proposed federal system and compliance with the  
31 federal order form requirements should be sufficient to fulfill  
32 any state order form requirements. Thus, economic waste  
33 resulting from duplication will again be avoided.

34

35 Sec. 308. PRESCRIPTIONS.

1       1. Except when dispensed directly by a practitioner, other  
2 than a pharmacist, to an ultimate user, no controlled substance  
3 in schedule II may be dispensed without the written prescrip-  
4 tion of a practitioner.

5       2. In emergency situations, as defined by rule of the  
6 board, schedule II drugs may be dispensed upon oral prescrip-  
7 tion of a practitioner, reduced promptly to writing and filed  
8 by the pharmacy. Prescriptions shall be retained in conformity  
9 with the requirements of section three hundred six (306) of  
10 this Act. No prescription for a schedule II substance may  
11 be refilled.

12       3. Except when dispensed directly by a practitioner, other  
13 than a pharmacy, to an ultimate user, a controlled substance  
14 included in schedule III or IV, which is a prescription drug  
15 as determined under section one hundred fifty-five point three  
16 (155.3), subsections nine (9) and ten (10) of the Code, shall  
17 not be dispensed without a written or oral prescription of  
18 a practitioner. The prescription may not be filled or re-  
19 filled more than six months after the date thereof or be re-  
20 filled more than five times, unless renewed by the practi-  
21 tioner.

22       4. A controlled substance included in schedule V shall  
23 not be distributed or dispensed other than for a medical  
24 purpose.

25

26 COMMENT. This section draws on existing state and federal  
27 law with the exception that emergency provisions have been  
28 added with regard to the filling of oral prescriptions. This  
29 was done in recognition of common accepted practice between  
30 physicians and pharmacists.

31       The question was raised, while the Uniform Act was under  
32 consideration by the Drug Abuse Study Committee, whether prac-  
33 titioners should be allowed to dispense Schedules III and  
34 IV controlled substances without writing a prescription, as  
35 is authorized by subsection 3 of section 308. It is believed

1 that the requirements of section 306 are sufficient to require  
2 practitioners to keep adequate records of controlled substances  
3 dispensed to patients, etc., and that therefore the filling  
4 out of a prescription as such in these circumstances need  
5 not be required.

6  
7

#### DIVISION IV

8

#### OFFENSES AND PENALTIES

9       Sec. 401. PROHIBITED ACTS-MANUFACTURERS-POSSESSORS-COUNTER-  
10 FEIT SUBSTANCES - PENALTIES.

11       1. Except as authorized by this Act, it is unlawful for  
12 any person to manufacture, deliver, or possess with intent  
13 to manufacture or deliver, a controlled substance, or to  
14 consort with, act with, enter into a common scheme or design  
15 with, or conspire with one or more other persons to  
16 manufacture, deliver, or possess with intent to manufacture  
17 or deliver, a controlled substance.

18       a. Any person who violates this subsection with respect to:

19       (1) A substance classified in schedule I or II which is  
20 a narcotic drug, is guilty of a public offense and upon  
21 conviction shall be punished by imprisonment in the  
22 penitentiary for not to exceed ten years and by a fine of  
23 not more than two thousand dollars.

24       (2) Any other controlled substance classified in schedules  
25 I, II, or III, is guilty of a public offense and upon  
26 conviction shall be punished by imprisonment in the  
27 penitentiary for not to exceed five years and by a fine of  
28 not more than one thousand dollars.

29       (3) A substance classified in schedule IV, is guilty of  
30 a public offense and upon conviction shall be punished by  
31 imprisonment in the county jail for not to exceed one year  
32 and by a fine of not more than five hundred dollars.

33       (4) A substance classified in schedule V, is guilty of  
34 a public offense and upon conviction shall be punished by  
35 imprisonment in the county jail for not to exceed six months

1 and by a fine of not more than two hundred fifty dollars,  
2 or both such imprisonment and fine.

3 2. Except as authorized by this Act, it is unlawful for  
4 any person to create, deliver, or possess with intent to  
5 deliver, a counterfeit substance, or to consort with, act  
6 with, enter into a common scheme or design with, or conspire  
7 with one or more other persons to create, deliver, or possess  
8 with intent to deliver, a counterfeit substance.

9 a. Any person who violates this subsection with respect to:

10 (1) A counterfeit substance classified in schedule I or  
11 II which is a narcotic drug, is guilty of a public offense  
12 and upon conviction shall be punished by imprisonment in the  
13 penitentiary for not to exceed ten years, and by a fine of  
14 not more than two thousand dollars.

15 (2) Any other counterfeit substance classified in schedules  
16 I, II, or III, is guilty of a public offense and upon convic-  
17 tion shall be punished by imprisonment in the penitentiary  
18 for not to exceed five years and by a fine of not more than  
19 one thousand dollars.

20 (3) A counterfeit substance classified in schedule IV,  
21 is guilty of a public offense and upon conviction shall be  
22 punished by imprisonment in the county jail for not to exceed  
23 one year and by a fine of not more than five hundred dollars.

24 (4) A counterfeit substance classified in schedule V,  
25 is guilty of a public offense and upon conviction shall be  
26 punished by imprisonment in the county jail for not to exceed  
27 six months and by a fine of not more than two hundred fifty  
28 dollars.

29 3. It is unlawful for any person knowingly or intentionally  
30 to possess a controlled substance unless such substance was  
31 obtained directly from, or pursuant to, a valid prescription  
32 or order of a practitioner while acting in the course of his  
33 professional practice, or except as otherwise authorized by  
34 this Act. Any person who violates this subsection is guilty  
35 of a misdemeanor, and upon conviction shall be punished by

1 imprisonment in the county jail for not to exceed one year,  
2 or by a fine of not less than three hundred dollars nor more  
3 than one thousand dollars, or both such imprisonment and fine.

4  
5 COMMENT. Subsection 1 and 2 of this section designate the  
6 prohibited acts relating to unlawful manufacture and delivering  
7 of controlled or counterfeit substances, or possession with  
8 intent to manufacture or deliver such substances. The penalty  
9 structure is broken down according to the schedule of the  
10 substance involved and the particular unlawful act, since  
11 it is felt that trafficking offenses involving certain types  
12 of drugs constitute a greater danger to the public and are  
13 deserving of stiffer penalties. At present, the basic penalty  
14 for violations of chapter 204 of the Code, relating to narcotic  
15 drugs, is two to five years in the penitentiary and up to  
16 \$2,000 fine. The basic penalty for violations of chapter  
17 204A, relating to depressant, stimulant, and hallucinogenic  
18 drugs, is not more than one year in the penitentiary or a  
19 fine of up to \$1,000, or both.

20 The term "delivery" as used in this section is intended  
21 to include both dispensing and distribution as they are defined  
22 in section 101.

23 Subsection 3 of this Act defines the offense of simple  
24 possession of controlled substances, which is intended to  
25 be a less serious violation than the trafficking and illicit  
26 manufacturing types of offenses prohibited by subsections  
27 1 and 2. Accordingly, violation of subsection 3 is an  
28 indictable misdemeanor while violations of subsections 1 and  
29 2 are felonies. Present Iowa law makes no comparable  
30 distinction between possession of drugs for sale, etc., and  
31 possession for personal use, except with specific application  
32 to marijuana under subsection 5 of section 204.20.

33 It should be noted that possession of a Schedule V substance  
34 by an ultimate user is not an offense. See section 302,  
35 subsection 3, paragraph c.

1 In preparing this bill for introduction in the Iowa General  
2 Assembly, language was added to the Uniform Act as originally  
3 drafted which specifically makes conspiracy to violate any  
4 provision of subsections 1 or 2 an offense.

5

6 Sec. 402. PROHIBITED ACTS - DISTRIBUTORS - REGISTRANTS  
7 - PROPRIETORS - PENALTIES.

8 1. It is unlawful for any person:

9 a. Who is subject to division III to distribute or dispense  
10 a controlled substance in violation of section three hundred  
11 eight (308);

12 b. Who is a registrant, to manufacture a controlled  
13 substance not authorized by his registration, or to distribute  
14 or dispense a controlled substance not authorized by his  
15 registration to another registrant or other authorized person;

16 c. To refuse or fail to make, keep or furnish any record,  
17 notification, order form, statement, invoice or information  
18 required under this Act;

19 d. To refuse an entry into any premises during reasonable  
20 business hours for any inspection authorized by this Act;

21 or

22 e. Knowingly to keep or suffer or permit the keeping or  
23 to maintain any store, shop, warehouse, dwelling, temporary  
24 or permanent building, vehicle, boat, aircraft, or other  
25 temporary or permanent structure or place, which is resorted  
26 to by persons using controlled substances in violation of  
27 this Act for the purpose of using these substances, or which  
28 is used for keeping, possessing or selling them in violation  
29 of this Act.

30 2. Any person who violates subsection one (1) of this  
31 section, or who consorts with, acts with, enters into a common  
32 scheme or design with, or conspires with one or more other  
33 persons to violate subsection one (1) of this section, is  
34 guilty of a public offense and upon conviction:

35 a. Of a violation of paragraphs a, b, d, or e shall be

1 punished by imprisonment in the penitentiary for not to exceed  
2 one year, or by a fine of not more than one thousand dollars,  
3 or both such imprisonment and fine.

4 b. Of a violation of paragraph c shall be punished by  
5 a fine of not more than five hundred dollars if the conviction  
6 is the defendant's first under this Act or under any state  
7 or federal statute relating to narcotic drugs, marijuana,  
8 or stimulant, depressant, or hallucinogenic drugs, and by  
9 imprisonment in the penitentiary for not to exceed one year,  
10 or by a fine of not more than one thousand dollars, or both  
11 such imprisonment and fine if the defendant has previously  
12 been so convicted one or more times.

13  
14 COMMENT. This section defines those "commercial" offenses  
15 relating to registrants or other persons who unlawfully manu-  
16 facture, distribute, or dispense controlled substances or  
17 fail to comply with the requirements of the Act.

18 Violation of paragraph (1) (d) of this section is contin-  
19 gent upon meeting the requirements of administrative  
20 inspections under section 502. This means that when the  
21 inspector has an administrative inspection warrant or is not  
22 required to have such a warrant based upon paragraph 502 (2)  
23 (d), the person whose premises are to be inspected cannot  
24 refuse admittance or he is in violation of this paragraph.

25 Paragraph (1) (e) of this section applies to all persons  
26 who knowingly keep or maintain any illegal establishment.  
27 Illegal establishment under this section includes not only  
28 stationary buildings, such as stores, shops, warehouses or  
29 dwellings and movable vehicles, such as boats or aircraft,  
30 but also includes intermediate structures such as trailers.

31 Subsection 2 of section 402 has been changed from the  
32 Uniform Act in two respects. First, specific reference to  
33 conspiracy to violate the section has been inserted. Second,  
34 a lesser penalty is prescribed for violation of subsection  
35 1, paragraph c, than for violation of the other paragraphs

1 of this subsection. Present section 204A.10 of the Code was  
2 amended in 1969 to provide lesser penalty for this particular  
3 type of offense.

4

5 Sec. 403. PROHIBITED ACTS - CONTROLLED SUBSTANCES,  
6 DISTRIBUTION, USE, POSSESSION - RECORDS AND INFORMATION -  
7 PENALTIES.

8 1. It is unlawful for any person knowingly or intentionally:

9 a. To distribute as a registrant a controlled substance  
10 classified in schedules I or II, except pursuant to an order  
11 form as required by section three hundred seven (307) of this  
12 Act;

13 b. To use in the course of the manufacture or distribution  
14 of a controlled substance a registration number which is  
15 fictitious, revoked, suspended, or issued to another person;

16 c. To acquire or obtain possession of a controlled  
17 substance by misrepresentation, fraud, forgery, deception  
18 or subterfuge;

19 d. To furnish false or fraudulent material information  
20 in, or omit any material information from, any application,  
21 report, or other document required to be kept or filed under  
22 this Act, or any record required to be kept by this Act; or

23 e. To make, distribute, or possess any punch, die, plate,  
24 stone, or other thing designed to print, imprint, or reproduce  
25 the trademark, trade name, or other identifying mark, imprint,  
26 or device of another or any likeness of any of the foregoing  
27 upon any drug or container or labeling thereof so as to render  
28 the drug a counterfeit substance.

29 2. Any person who violates this section, or who consorts  
30 with, acts with, enters into a common scheme or design with,  
31 or conspires with one or more other persons to violate this  
32 section, is guilty of a public offense and upon conviction  
33 shall be punished by imprisonment in the penitentiary for  
34 not to exceed one year and by a fine of not more than one  
35 thousand dollars.

1 COMMENT. This section sets out the fraud offenses relating  
2 to the manufacture and distribution of controlled substances.  
3 This area of criminal activity was segregated from section  
4 401 because of the nature of these offenses and their effect,  
5 regardless of the drug involved, on the integrity of the  
6 regulatory system.

7 It should be noted that the acts or omissions set forth  
8 in paragraph (1) (d) are not only a violation of this Act  
9 but also provide a basis for revocation or suspension of  
10 registration under section 304.

11 Here again, language has been added to the Uniform Act  
12 to make conspiracy to violate this section a specific public  
13 offense.

14

15 Sec. 404. PENALTIES UNDER OTHER LAWS. Any penalty imposed  
16 for violation of this division shall be in addition to, and  
17 not in lieu of, any civil or administrative penalty or sanction  
18 otherwise authorized by law.

19 Sec. 405. BAR TO PROSECUTION. If a violation of this  
20 Act is a violation of a federal law or the law of another  
21 state, the conviction or acquittal under federal law or the  
22 law of another state for the same act is a bar to prosecution  
23 in this state.

24 Sec. 406. DISTRIBUTION TO PERSONS UNDER AGE EIGHTEEN.  
25 Any person who is eighteen years of age or over who violates  
26 section four hundred one (401), subsection one (1), by  
27 distributing a substance listed in schedule I or II, which  
28 is a narcotic drug, to a person under eighteen years of age  
29 who is at least three years his junior, shall be punished  
30 by the fine authorized by section four hundred one (401),  
31 subsection one (1), paragraph a, subparagraph one (1), and  
32 by a term of imprisonment of up to two times that authorized  
33 by section four hundred one (401), subsection one (1),  
34 paragraph a, subparagraph one (1). Any person who is eighteen  
35 years of age or over who violates section four hundred one

1 (401), subsection one (1), by distributing any other controlled  
2 substance listed in schedules I, II, III, IV, or V to a person  
3 under eighteen years of age who is at least three years his  
4 junior shall be punished by the fine authorized by section  
5 four hundred one (401), subsection one (1), paragraph a,  
6 subparagraphs two (2) or three (3), and by a term of im-  
7 prisonment up to one and one-half times that authorized by  
8 section four hundred one (401), subsection one (1), paragraph  
9 a, subparagraphs two (2) or three (3).

10

11 COMMENT. This section is designed to impose stiffer penalties  
12 on those persons over eighteen years of age who distribute  
13 controlled substances to persons under eighteen years of age.  
14 However, the recipient must be at least three years younger  
15 than the distributor before this section comes into effect.  
16 The three year age differentiation is included to prevent  
17 imposition of the stiffer penalties in a case such as where  
18 a nineteen year old college student distributes two or three  
19 marijuana cigarettes to his seventeen year old roommate.  
20 In this situation, there is not the element of seduction so  
21 often found in the cases where the distributor and recipient  
22 are far apart in age.

23 Section 204.20 of the present Code prescribes a penalty  
24 of from five to 20 years imprisonment for "selling,  
25 prescribing, or administering" any narcotic drug to a minor  
26 in violation of chapter 204. Section 204A.11 subjects "any  
27 person eighteen years of age or more . . . making available  
28 any depressant or stimulant drug to a person under twenty-  
29 one years of age", in violation of section 204A.3, to not  
30 more than five years in the penitentiary or up to \$2,000 fine,  
31 or both, for a first offense, and as much as 20 years in the  
32 penitentiary or \$5,000 fine or both for subsequent offenses.

33

34 Sec. 407. GATHERINGS WHERE CONTROLLED SUBSTANCES UNLAWFULLY  
35 USED - PENALTIES FOR FAILURE TO REPORT.

1 1. It shall be unlawful for any person who sponsors or  
2 promotes or aids or assists in sponsoring or promoting a meet-  
3 ing, gathering, or assemblage of two or more individuals and  
4 knows that any controlled substance has been manufactured,  
5 delivered, or possessed in violation of this Act at such  
6 meeting, gathering, or assemblage, to thereafter fail to  
7 report such violation or violations to a law enforcement  
8 agency or official and actively assist such law enforcement  
9 agency or official in the identification and prosecution of  
10 the person or persons who committed such violation or  
11 violations.

12 2. Any person who violates subsection one (1) of this  
13 section, or who consorts with, acts with, enters into a common  
14 scheme or design with, or conspires with one or more other  
15 persons to violate subsection one (1) of this section, is  
16 guilty of a public offense and upon conviction shall be pun-  
17 ished by imprisonment in the penitentiary for not more than  
18 five years, or by a fine of not more than ten thousand dollars,  
19 or both such imprisonment and fine. The court may pronounce  
20 sentence for a lesser period than the maximum, the provisions  
21 of the indeterminate sentence law notwithstanding. If the  
22 defendant is a corporation, business trust, estate, trust,  
23 partnership or association or any other legal entity, it shall  
24 upon conviction be fined not to exceed one hundred thousand  
25 dollars.

26 3. If one of the accused persons is the owner or lessee  
27 or holds any right, title, or interest in or to any building  
28 or real estate or any real estate adjacent thereto upon which  
29 such meeting, gathering, or assemblage is held or to be held,  
30 the maximum fine provided for in subsection two (2) of this  
31 section shall constitute a lien upon such interest in any  
32 building or real estate or real estate adjacent thereto from  
33 the date a charge of violation of subsection one (1) of this  
34 section is filed if the attorney general or county attorney  
35 files an affidavit of such encumbrance in the office of the

1 recorder of the county or counties wherein such real estate  
2 is situated. If such affidavit is filed after the date of  
3 the charge of violation, the lien shall have priority from  
4 that date. Such lien shall continue until the charge is  
5 disposed of and such interest in any building or real estate  
6 or any real estate adjacent thereto shall be subject to  
7 execution sale to satisfy any fine imposed, whether a homestead  
8 or not. If such accused person is subsequently not charged  
9 with a violation of subsection one (1) of this section by  
10 grand jury indictment or county attorney's information within  
11 two years or is found not guilty, the county attorney shall  
12 thereupon release such lien.

13 4. If one of the accused persons is the sponsoring,  
14 promoting, or responsible entity for the meeting, gathering,  
15 or assemblage, all monies, receipts, or fees received by the  
16 person from participants in the meeting, gathering, or  
17 assemblage shall, upon filing of a charge that subsection  
18 one (1) of this section has been violated, be subject to  
19 attachment by the sheriff of the county wherein all or part  
20 of such meeting, gathering, or assemblage is being or is to  
21 be held. The attorney general or county attorney shall apply  
22 to the clerk of the district court of the county wherein all  
23 or part of such meeting, gathering, or assemblage is being  
24 or is to be held for a distress warrant commanding the sheriff  
25 to immediately attach and take charge of all such monies,  
26 receipts, and fees which shall thereafter be held to satisfy  
27 any fine imposed pursuant to subsection two (2) of this  
28 section. If any such monies, receipts, and fees are not so  
29 used, or if the person is subsequently not charged with a  
30 violation of subsection one (1) of this section by grand jury  
31 indictment or county attorney's information within two years,  
32 or if the person is found not guilty, the amount remaining  
33 shall be returned to the person from whom it was seized.

34

35 COMMENT. Section 407 is not a part of the Uniform Controlled

1 Substances Act as recommended by the National Conference of  
2 Commissioners on Uniform State Laws. It is included in this  
3 bill because Iowa law presently defines no crime similar to  
4 the federal offense of failure to report to the proper law  
5 enforcement agency a known crime. Therefore, unless someone  
6 is actually apprehended selling or possessing drugs at large  
7 gatherings such as the July 31-August 2, 1970, "rock festival"  
8 held near Wadena, Iowa, it is quite difficult to prosecute  
9 such violations. Also, a statute such as section 407 will  
10 make it possible to extradite individuals from other states  
11 or file with the federal government a charge of flight to  
12 avoid prosecution, when the parties involved have left the  
13 state. It is doubtful that these procedures can be invoked  
14 when a violation of a court injunction against holding such  
15 an event is involved.

16 Subsections 3 and 4 of section 407 are intended to facili-  
17 tate enforcement of this section against defendants which  
18 are corporations rather than individuals.

19  
20 Sec. 408. JOINT CRIMINAL TRIALS. Information, indictments,  
21 trial, and sentencing for violations of this Act may allege  
22 any number of violations of their provisions against one  
23 person and join one or more persons as defendants who it is  
24 alleged violated the same provisions thereof. The several  
25 charges shall be set out in separate counts and each accused  
26 person shall be convicted or acquitted upon each count by  
27 separate verdict. Each accused person shall thereafter be  
28 sentenced upon each verdict of guilty. The court may consider  
29 such separate verdicts of guilty returned at the same time  
30 as one offense for the purpose of sentencing as provided in  
31 this chapter. The court shall not grant a severance and  
32 separate trial to any accused person jointly charged or  
33 indicted unless consented to by the attorney general or county  
34 attorney or it is established upon application and hearing,  
35 not ex parte, that substantial injustice would result to such

1 accused person unless a separate trial was granted.

2

3 COMMENT. Section 408 is also not a part of the Uniform Con-  
4 trolled Substances Act. It is included in order to permit  
5 prosecutors to proceed jointly against two or more persons  
6 against whom charges are filed for the same specific violation,  
7 such as persons arrested together in the course of a raid.  
8 At present, defendants in such cases are able to require  
9 prosecutors to present evidence against each defendant in  
10 a separate trial if they so request.

11

12 Sec. 409. CONDITIONAL DISCHARGE, COMMITMENT FOR TREATMENT,  
13 PROBATION, PAROLE.

14 1. Whenever any person who has not previously been con-  
15 victed of any offense under this Act or any offense under  
16 any state or federal statute relating to narcotic drugs,  
17 marijuana, or stimulant, depressant, or hallucinogenic drugs,  
18 pleads guilty to or is found guilty of possession of a con-  
19 trolled substance under section four hundred one (401),  
20 subsection three (3), the court, without entering a judgment  
21 of guilt and with the consent of the accused, may defer further  
22 proceedings and place him on probation upon terms and  
23 conditions as it requires. Upon violation of a term or  
24 condition, the court may enter an adjudication of guilt and  
25 proceed as otherwise provided. Upon fulfillment of the terms  
26 and conditions, the court shall discharge the person and  
27 dismiss the proceedings against him. Discharge and dismissal  
28 under this section shall be without court adjudication of  
29 guilt and is not a conviction for purposes of this section  
30 or for purposes of disqualifications or disabilities imposed  
31 by law upon conviction of a crime, including the additional  
32 penalties imposed for second or subsequent convictions under  
33 section four hundred ten (410) of this Act. Discharge and  
34 dismissal under this section may occur only once with respect  
35 to any person.

1 . 2. Whenever the court finds that a person who is charged  
2 with a violation of section four hundred one (401) of this  
3 Act and is in custody unable to make bail, or who has entered  
4 a plea of guilty to or been found guilty of a violation of  
5 section four hundred one (401) of this Act, and who has not  
6 previously been convicted of any offense under this Act or  
7 any offense under any state or federal statute relating to  
8 narcotic drugs, marijuana, or stimulant, depressant, or  
9 hallucinogenic drugs, is addicted to, dependent upon, or a  
10 chronic abuser of any controlled substance and that such  
11 person will be aided by proper medical treatment and  
12 rehabilitative services, it may, if the person consents, order  
13 that he be committed as an in-patient or out-patient to a  
14 facility approved by the state department of health for such  
15 medical treatment and rehabilitative services. In order to  
16 obtain the most effective results from such medical treatment  
17 and rehabilitative services, the court may commit such person  
18 to the custody of a public or private agency or any other  
19 responsible person and impose such other conditions upon such  
20 commitment as is necessary to insure compliance with the  
21 court's order and to insure that such person will not, during  
22 such period of treatment and rehabilitation, again violate  
23 any provisions of this Act. If it is established thereafter  
24 to the satisfaction of the court that the person has again  
25 violated any provision of this Act, he shall be returned to  
26 custody or sentenced upon his conviction as provided by law.  
27 The public or private agency or responsible person to whom  
28 the accused person was committed by the court shall immediately  
29 report to the court when the person has recovered from his  
30 addiction, dependency, or tendency to chronically abuse any  
31 controlled substance. The person shall then be returned to  
32 the court for disposition of his case. If the person has  
33 been charged or indicted, but not convicted, such charge shall  
34 proceed to trial or final disposition. If the person has  
35 been convicted or is thereafter convicted, the court shall

1 sentence him as provided by law but may remit all or any part  
2 of such sentence and place the person on probation upon such  
3 terms and conditions as the court may prescribe.

4

5 COMMENT. Only subsection 1 of section 409 is a part of the  
6 Uniform Controlled Substances Act as recommended by the  
7 National Conference of Commissioners on Uniform State Laws.

8 Subsection 1 is designed to permit a judge to place a first  
9 offender on probation in lieu of sentencing him to prison.  
10 However, it is only applicable to cases involving simple pos-  
11 session of controlled substances and is only available once  
12 with respect to any person. It should also be noted that  
13 first offender treatment is not available as a matter of right  
14 but rather is discretionary with the judge.

15 An additional aspect of subsection 1 is that it provides  
16 for confidentiality of the defendant's record upon fulfilling  
17 all the terms and conditions of his probation. This will  
18 preclude any permanent criminal record from attaching to and  
19 following the individual in later life.

20 Subsection 1, which goes beyond the provisions of the Youth  
21 Corrections Act by allowing for first offender treatment  
22 regardless of the defendant's age, should give judges added  
23 flexibility in dealing with this type of offender. This is  
24 particularly so in light of the fact that most of these indi-  
25 viduals are either casual drug users or experimenters who  
26 would be unlikely to commit the offense again after their  
27 first encounter with the law.

28 Subsection 2 authorizes a judge to commit a person, charged  
29 with or convicted of a first offense of manufacturing, process-  
30 ing, or delivering a controlled or counterfeit substance,  
31 to a suitable facility for treatment or rehabilitation if  
32 the person is himself a drug user (and, if not yet convicted,  
33 is in custody and unable to raise bail), the judge believes  
34 the person can benefit by treatment or rehabilitation, and  
35 the person consents to the commitment. Any further violation

1 of this Act would result in immediate termination of the  
2 arrangement. If the treatment or rehabilitation procedure  
3 is successful, the person is returned to the court and if  
4 he has not already been tried, the proceedings against him  
5 are completed. If he has been, or is subsequently, convicted  
6 of the original charge against him, the judge has discretion  
7 to sentence the person more leniently than would otherwise  
8 be required.

9

10       Sec. 410.   REDUCED SENTENCE FOR ACCOMMODATION OFFENSES.  
11 Any person who enters a plea of guilty to or is found guilty  
12 of a violation of section four hundred one (401), subsections  
13 one (1) or two (2), of this Act may move for and the court  
14 shall grant a further hearing at which evidence may be  
15 presented by the person, and by the prosecution if it so  
16 desires, relating to the nature of the act or acts on the  
17 basis of which the person has been convicted. If the convicted  
18 person establishes by clear and convincing evidence that he  
19 delivered or possessed with intent to deliver a controlled  
20 substance only as an accommodation to another individual and  
21 not with intent to profit thereby nor to induce the recipient  
22 or intended recipient of the controlled or counterfeit  
23 substance to use or become addicted to or dependent upon the  
24 substance, the court shall sentence the person as if he had  
25 been convicted of a violation of section four hundred one  
26 (401), subsection three (3).

27

28 COMMENT.   Section 410 is not a part of the Uniform Controlled  
29 Substances Act. In philosophy, it is patterned somewhat after  
30 present section 204.20, subsection 5. The purpose of section  
31 410 is to allow courts to sentence less severely than would  
32 otherwise be required persons who are technically guilty of  
33 violating subsections 1 or 2 of section 401, if the offense  
34 was in fact an accommodation to another person (for example,  
35 an individual who has two marijuana cigarettes giving or

1 offering one to another individual) and the convicted person  
2 is not a "drug pusher" in the usual sense of that term. The  
3 determination whether or not this is the case is made by the  
4 court in a proceeding which is in the nature of a post-  
5 conviction hearing. If a convicted person wishes to avail  
6 himself of the lighter penalties provided under this section,  
7 it is his responsibility to request such proceedings and to  
8 show that his offense was in the nature of an accommodation  
9 and not drug trafficking.

10

11 Sec. 411. SECOND OR SUBSEQUENT OFFENSES.

12 1. Any person convicted of a second or subsequent offense  
13 under this Act, may be punished by imprisonment for a period  
14 not to exceed three times the term otherwise authorized, or  
15 fined not more than three times the amount otherwise  
16 authorized, or punished by both such imprisonment and fine.

17 2. For purposes of this section, an offense is considered  
18 a second or subsequent offense, if, prior to his conviction  
19 of the offense, the offender has at any time been convicted  
20 under this Act or under any state or federal statute relating  
21 to narcotic drugs, marijuana, depressant, stimulant, or  
22 hallucinogenic drugs.

23 3. This section does not apply to offenses under section  
24 four hundred one (401), subsection three (3).

25

26 COMMENT. This section provides a uniform increase in severity  
27 of maximum sentences which may be imposed for second or  
28 subsequent offenses under this Act, other than simple posses-  
29 sion offenses. It does not take away a court's discretion  
30 to sentence second or subsequent offenders leniently where  
31 circumstances warrant. Under present section 204.20, for  
32 example, a person convicted of a second offense under that  
33 chapter must be sentenced to at least five years in  
34 penitentiary.

35

1 . Sec. 412. NOTICE OF CONVICTION. Whenever any person  
2 enters a plea of guilty to or is found guilty upon an  
3 indictment or information alleging a violation of this Act,  
4 a copy of the minutes attached to the indictment returned  
5 by the grand jury, or to the county attorney's information,  
6 a copy of the judgment and sentence, and a copy of the opinion  
7 of the judge if one is filed, shall be sent by the clerk of  
8 the court or the judge to any state board or officer by whom  
9 the convicted person has been licensed or registered to  
10 practice his profession or carry on his business. On the  
11 conviction of any such person, the court may, in its  
12 discretion, suspend or revoke the license or registration  
13 of the convicted defendant to practice his profession or carry  
14 on his business. On the application of any person whose  
15 license or registration has been suspended or revoked, and  
16 upon proper showing and for good cause, said board or officer  
17 may reinstate such license or registration.

18  
19 COMMENT. This section is not a part of the Uniform Controlled  
20 Substances Act. It is taken, with very little change in word-  
21 ing, from present Code section 204.15.

22

23

#### DIVISION V

24

#### ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

25

26 Sec. 501. RESPONSIBILITY FOR ENFORCEMENT. The department  
27 shall be primarily responsible for the enforcement of all  
28 provisions of this Act, and all other laws and regulations  
29 of this state, relating to controlled or counterfeit  
30 substances, except that the board shall be primarily  
31 responsible for making accountability audits of the supply  
32 and inventory of controlled substances in the possession of  
33 pharmacists, doctors, hospitals, and health care facilities  
34 as defined in section one hundred thirty-five C point one  
35 (135C.1), subsection eight (8), as well as in the possession  
of any and all other individuals or institutions authorized

1 to have possession of any controlled substances, and shall  
2 also be primarily responsible for such other duties in respect  
3 to controlled substances as shall be specifically delegated  
4 to the board by law. Any officer or employee of the board  
5 may, when so directed or authorized by the board:

6 1. Execute and serve search warrants, administrative  
7 inspection warrants, subpoenas, and summonses issued under  
8 the authority of this state.

9 2. Make seizures of property pursuant to the provisions  
10 of this Act.

11

12 COMMENT. This section has been almost completely rewritten  
13 from section 501 of the Uniform Controlled Substances Act  
14 as recommended by the National Conference of Commissioners  
15 on Uniform State Laws. That section is intended, according  
16 to the original comments accompanying the Uniform Act, "to  
17 insure that those individuals charged with enforcement of  
18 the Act are given full enforcement authority." In Iowa,  
19 responsibility for enforcement of criminal drug laws will  
20 rest with the Department of Public Safety's Division of  
21 Narcotic and Drug Law Enforcement, whose agents are  
22 specifically designated as peace officers by section 80.9  
23 of the 1971 Code. It therefore appears unnecessary to  
24 incorporate the original provisions of section 501 of the  
25 Uniform Act, detailing the powers of enforcement agents.  
26 Instead, the language of section 80.27 of the 1971 Code, with  
27 appropriate changes, has been incorporated in section 501  
28 of this bill to make clear the intent regarding the division  
29 of responsibility between the Department of Public Safety  
30 and the Board of Pharmacy Examiners. Some of the powers  
31 originally specified in section 501 of the Uniform Act are  
32 assigned personnel of the Board in order to facilitate the  
33 performance of their duties.

34

35 Sec. 502. ADMINISTRATIVE INSPECTIONS AND WARRANTS.

1 . 1. Issuance and execution of administrative inspection  
2 warrants shall be as follows:

3 a. A district or municipal court judge, within his  
4 jurisdiction, and upon proper oath or affirmation showing  
5 probable cause, may issue warrants for the purpose of  
6 conducting administrative inspections authorized by this Act  
7 or rule thereunder, and seizures of property appropriate to  
8 such inspections. For purposes of the issuance of  
9 administrative inspection warrants, probable cause exists  
10 upon showing a valid public interest in the effective  
11 enforcement of the Act or rules promulgated thereunder,  
12 sufficient to justify administrative inspection of the area,  
13 premises, building or conveyance in the circumstances specified  
14 in the application for the warrant.

15 b. A warrant shall issue only upon sworn testimony of  
16 an officer or employee of the board duly designated and having  
17 knowledge of the facts alleged, before the district or  
18 municipal court judge, establishing the grounds for issuing  
19 the warrant. If the judge is satisfied that grounds for the  
20 application exist or that there is probable cause to believe  
21 they exist, he shall issue a warrant identifying the area,  
22 premises, building, or conveyance to be inspected, the purpose  
23 of the inspection, and, if appropriate, the type of property  
24 to be inspected, if any.

25 The warrant shall:

26 (1) State the grounds for its issuance and the name of  
27 each person whose testimony has been taken in support thereof.

28 (2) Be directed to a person authorized by section five  
29 hundred one (501) to execute it.

30 (3) Command the person to whom it is directed to inspect  
31 the area, premises, building, or conveyance identified for  
32 the purpose specified and, if appropriate, direct the seizure  
33 of the property specified.

34 (4) Identify the item or types of property to be seized,  
35 if any.

1 (5) Direct that it be served during normal business hours,  
2 if appropriate, and designate the judge to whom it shall be  
3 returned.

4 c. A warrant issued pursuant to this section must be  
5 executed and returned within ten days after its date unless,  
6 upon a showing of a need for additional time, the court so  
7 instructs otherwise in the warrant. If property is seized  
8 pursuant to a warrant, the person executing the warrant shall  
9 give to the person from whom the property is seized, or the  
10 person in charge of the premises from which the property is  
11 seized, a copy of the warrant and a receipt for the property  
12 seized or shall leave the copy and receipt at the place from  
13 which the property is seized. The return of the warrant shall  
14 be made promptly and shall be accompanied by a written in-  
15 ventory of any property seized. The inventory shall be made  
16 in the presence of the person executing the warrant and of  
17 the person from whose possession or premises the property  
18 was seized, if they are present, or in the presence of at  
19 least one credible person other than the person executing  
20 the warrant. A copy of the inventory shall be delivered to  
21 the person from whom or from whose premises the property was  
22 seized and to the applicant for the warrant.

23 d. The judge who has issued a warrant under this section  
24 shall require that there be attached to the warrant a copy  
25 of the return, and of all papers filed in connection with  
26 the return, and shall file them with the clerk of the dis-  
27 trict or municipal court for the district in which the  
28 inspection was made.

29 2. The department may make administrative inspections  
30 of controlled premises in accordance with the following provi-  
31 sions:

32 a. For purposes of this section only, "controlled premises"  
33 means:

34 (1) Places where persons registered or exempted from  
35 registration requirements under this Act are required to keep

1 records; and

2 (2) Places including factories, warehouse establishments,  
3 and conveyances where persons registered or exempted from  
4 registration requirements under this Act are permitted to  
5 hold, manufacture, compound, process, sell, deliver, or  
6 otherwise dispose of any controlled substance.

7 b. Whenever authorized by an administrative inspection  
8 warrant issued pursuant to subsection one (1) of this section  
9 an officer or employee of the board, upon presenting the war-  
10 rant and appropriate credentials to the owner, operator, or  
11 agent in charge, has the right to enter controlled premises  
12 for the purpose of conducting an administrative inspection.

13 c. Whenever authorized by an administrative inspection  
14 warrant, an officer or employee of the board has the right:

15 (1) To inspect and copy records required by this Act to  
16 be kept;

17 (2) To inspect, within reasonable limits and in a  
18 reasonable manner, controlled premises and all pertinent  
19 equipment, finished and unfinished material, containers and  
20 labeling found therein, and, except as provided in paragraph  
21 e of this subsection, all other things therein, including  
22 records, files, papers, processes, controls, and facilities  
23 bearing on violation of this Act; and

24 (3) To inventory any stock of any controlled substance  
25 therein and obtain samples of any such substance.

26 d. This section shall not be construed to prevent the  
27 inspection without a warrant of books and records pursuant  
28 to a subpoena issued in accordance with section six hundred  
29 twenty-two point sixty-five (622.65) of the Code, nor shall  
30 this section be construed to prevent entries and administrative  
31 inspections, including seizures of property, without a warrant:

32 (1) With the consent of the owner, operator, or agent  
33 in charge of the controlled premises;

34 (2) In situations presenting imminent danger to health  
35 or safety;

1 (3) In situations involving inspection of conveyances  
2 where there is reasonable cause to believe that the mobility  
3 of the conveyance makes it impracticable to obtain a warrant;

4 (4) In any other exceptional or emergency circumstance  
5 where time or opportunity to apply for a warrant is lacking;  
6 and

7 (5) In all other situations where a warrant is not con-  
8 stitutionally required.

9 e. Except when the owner, operator, or agent in charge  
10 of the controlled premises so consents in writing, no inspec-  
11 tion authorized by this section shall extend to financial  
12 data; sales data, other than shipment data; or pricing data.  
13

14 COMMENT. The purpose of this Section is to codify certain  
15 recent United States Supreme Court decisions, in particular  
16 Camara v. Municipal Court of the City and County of San  
17 Francisco, 387 U.S. 523 (1967), See v. City of Seattle, 387  
18 U.S. 541 (1967), and Colonnade Catering Corp. v. U.S., 397  
19 U.S. 72 (1970), with regard to inspection warrants. <sup>1/</sup> The  
20 Section sets out in very careful terms the procedures and  
21 restrictions for obtaining and using an administrative  
22 inspection warrant. This is of vital importance to the states  
23 since they are involved in the regulation of the legitimate  
24 drug industry and must have the ability to inspect records,  
25 books, and premises in the event access to them is denied.  
26 By having a carefully delineated code section dealing with  
27 administrative inspection warrants, law enforcement officers  
28 will be more certain of what is needed to obtain them and  
29 the courts can apply a uniform standard. Perhaps even more  
30 important, the industry being inspected will have more  
31 certainty as to its rights and obligations in this area.

32 It should be noted that the Supreme Court, in Camara v.  
33

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34 1/ See also: Kramer Grocery v. U.S., 294 F. Supp. 65 (1968);  
35 and United States v. Stanack Sales Co., 387 F. 2d 849 (1968).

1 Municipal Court spoke of the requirement of "probable cause"  
2 for issuance of an administrative inspection warrant. But  
3 the Court was not speaking in terms of criminal probable  
4 cause, which would require a specific knowledge of the  
5 condition of the particular building to be inspected. Instead,  
6 rejecting the criminal probable cause argument, it required  
7 merely a valid public interest in the effective enforcement  
8 of a particular public health or safety act which justified  
9 the intrusion contemplated.

10 Although this Section codifies the Court's view for ad-  
11 ministrative inspection warrants, it is in no way intended  
12 to affect criminal probable cause as it is defined under pre-  
13 sent criminal statutes or case law.

14 Finally, it should be noted that while paragraph 402 (1)  
15 (d) makes it a violation of the Act to refuse entry into any  
16 premises for inspection, it is contemplated that such inspec-  
17 tion will have been authorized under the rules set out in  
18 this Section.

19

20 Sec. 503. INJUNCTIONS.

21 1. The district court may exercise jurisdiction to enjoin  
22 violations of this Act.

23 2. In case of an alleged violation of an injunction or  
24 restraining order issued under this section, upon demand of  
25 the defendant, trial shall be by a jury.

26 Sec. 504. COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY.

27 1. The department and board shall cooperate with federal  
28 and other state agencies in discharging its responsibilities  
29 concerning traffic in controlled substances and in suppressing  
30 the abuse of controlled substances. To this end, they may  
31 jointly:

32 a. Arrange for the exchange of information between govern-  
33 mental officials concerning the use and abuse of controlled  
34 substances.

35 b. Coordinate and cooperate in training programs on con-

1 trolled substance law enforcement at the local and state  
2 levels.

3 c. Cooperate with the bureau by establishing a centralized  
4 unit which will accept, catalogue, file, and collect  
5 statistics, including records of drug dependent persons and  
6 other controlled substance law offenders within the state,  
7 and make such information available for federal, state and  
8 local law enforcement purposes; except that they shall not  
9 furnish the name or identity of a patient or research subject  
10 whose identity could not be obtained under subsection three  
11 (3).

12 d. Conduct programs of eradication aimed at destroying  
13 wild or illicit growth of plant species from which controlled  
14 substances may be extracted.

15 2. Results, information, and evidence received from the  
16 bureau relating to the regulatory functions of this Act, in-  
17 cluding results of inspections conducted by that agency may  
18 be relied upon and acted upon by the board or the department  
19 in the exercise of their regulatory functions under this Act.

20 3. A practitioner engaged in medical practice or research  
21 shall not be required to furnish the name or identity of a  
22 patient or research subject to the board or the department,  
23 nor shall the practitioner be compelled in any state or local  
24 civil, criminal, administrative, legislative or other proceed-  
25 ings to furnish the name or identity of an individual that  
26 the practitioner is obligated to keep confidential.

27

28 COMMENT. The purpose of this section is to establish a basis  
29 for increased cooperation and exchange of information between  
30 State, local, and Federal law enforcement agencies. Real  
31 implementation of these cooperative arrangements will provide  
32 for the first time a means of obtaining meaningful statistics  
33 on drug dependent persons and other controlled substance law  
34 offenders. There is a definite need to obtain these statis-  
35 tics if there is ever to be an accurate assessment of the

1 total drug abuse problem in the United States. The intent  
2 of these provisions is to insure that both Federal and State  
3 agencies responsible for enforcement of these laws work in  
4 harmony and maximize their direction and efforts, rather than  
5 duplicating and overlapping each others activities.

6

7 Sec. 505. FORFEITURES.

8 1. The following are subject to forfeiture:

9 a. All controlled substances which have been manufactured,  
10 distributed, dispensed or acquired in violation of this Act;

11 b. All raw materials, products and equipment of any kind  
12 which are used, or intended for use, in manufacturing, com-  
13 pounding, processing, delivering, importing, or exporting  
14 any controlled substance in violation of this Act;

15 c. All property which is used, or intended for use, as  
16 a container for property described in paragraphs a or b;

17 d. All books, records, and research products and materials,  
18 including formulas, microfilm, tapes, and data which are used,  
19 or intended for use, in violation of this Act.

20 2. Property subject to forfeiture under this Act may be  
21 seized by the board or department when:

22 a. The seizure is incident to an arrest or a search under  
23 a search warrant or an inspection under an administrative  
24 inspection warrant;

25 b. The property subject to seizure has been the subject  
26 of a prior judgment in favor of the state in a criminal injunc-  
27 tion or forfeiture proceeding based upon this Act;

28 c. The department has probable cause to believe that the  
29 property is directly or indirectly dangerous to health or  
30 safety; or

31 d. The department has probable cause to believe that the  
32 property was used or is intended to be used in violation of  
33 this Act.

34 3. In the event of seizure pursuant to subsection two  
35 (2), proceedings under subsection four (4) shall be instituted

1 promptly.

2 4. Property taken, detained, or forfeited under this Act  
3 shall be disposed of in the manner provided in chapter seven  
4 hundred fifty-one (751) of the Code for property seized pur-  
5 suant to a search warrant, except that controlled substances  
6 so taken, detained, or forfeited shall be disposed of as  
7 provided by section five hundred six (506) of this Act. Such  
8 property shall not be subject to replevin.

9 5. Controlled substances classified in schedule I that  
10 are possessed, transferred, sold, or offered for sale in vio-  
11 lation of this Act are contraband and when seized shall be  
12 summarily forfeited to the state. Controlled substances  
13 listed in schedule I, which are seized or come into the  
14 possession of the state, the owners of which are unknown,  
15 are contraband and shall be summarily forfeited to the state.

16 6. Species of plants from which controlled substances  
17 classified in schedules I and II may be derived which have  
18 been planted or cultivated in violation of this Act, or of  
19 which the owners or cultivators are unknown, or which are  
20 wild growths, may be seized and summarily forfeited to the  
21 state.

22 7. The failure, upon demand by the board or department,  
23 or its duly authorized agent, of the person in occupancy or  
24 in control of land or premises upon which such species of  
25 plants are growing or being stored, to produce an appropriate  
26 registration, or proof that he is the holder thereof, shall  
27 constitute authority for the seizure and forfeiture of the  
28 plants.

29 8. Chapter one hundred twenty-seven (127) of the Code  
30 shall be applicable to conveyances used or intended to be  
31 used to transport any controlled substance listed in schedules  
32 I or II of this Act.

33

34 COMMENT. This section embodies many of the forfeiture provi-  
35 sions originally written into the Uniform Controlled Substances

1 Act. However, subsections 1 and 2 were significantly changed,  
2 and subsection 4 was completely rewritten from the Uniform  
3 Act.

4 Subsection 1, paragraph d, contained detailed provisions  
5 relating to the forfeiture of conveyances. At the suggestion  
6 of the Attorney General's office, paragraph d was deleted  
7 from subsection 1, and subsection 8 of section 505 was  
8 substituted for it.

9 Subsection 2 of the section 505 of the Uniform Act  
10 originally authorized seizure of certain property "upon process  
11 issued by any (appropriate court)" but added "However, seizure  
12 without such process may be made" under certain enumerated  
13 circumstances. As it appears that Iowa has no statutory  
14 provision for a process of this type, the quoted phrases have  
15 been deleted, and the subsection as written simply authorizes  
16 seizure of property subject to forfeiture under this Act,  
17 under the enumerated circumstances, without reference to any  
18 court process.

19 Subsection 4 has been rewritten in order to provide a  
20 greater degree of uniformity in the way in which property  
21 seized under a search warrant, or as otherwise authorized  
22 by this Act, is treated under the various statutes of the  
23 state.

24

25 Sec. 506. CONTROLLED SUBSTANCES - DISPOSAL. All controlled  
26 substances, the lawful possession of which is not established  
27 or the title to which cannot be ascertained, or excess or  
28 undesired controlled substances, which have come into the  
29 custody of the board, the department, or any peace officer,  
30 shall be disposed of as follows:

31 1. Except as otherwise provided in this section, the court  
32 having jurisdiction shall order such controlled substances  
33 forfeited and destroyed. A record of the place where the  
34 controlled substances were seized, of the kinds and quantities  
35 of controlled substances so destroyed, and of the time, place,

1 and manner of destruction, shall be kept, and a return under  
2 oath, reporting said destruction, shall be made to the court  
3 and to the bureau by the officer who destroys them.

4 2. Upon written application by the board, the court by  
5 whom the forfeiture of controlled substances has been decreed  
6 may order the delivery of any of them, except controlled  
7 substances listed in schedule I, to the board for distribution  
8 or destruction, as provided by this section.

9 3. Upon application by any hospital within this state,  
10 not operated for private gain, the board may in its discretion  
11 deliver any controlled substances that have come into its  
12 custody by authority of this section to the applicant for  
13 medicinal use. The board may from time to time deliver excess  
14 stocks of controlled substances to the bureau for disposition,  
15 or may destroy the excess controlled substances.

16 4. The board shall keep a full and complete record of  
17 all controlled substances received and disposed of, showing  
18 the exact kinds, quantities, and forms of controlled  
19 substances, the persons from whom received and to whom  
20 delivered, by whose authority received, delivered, and  
21 destroyed and the dates of the receipt, disposal, or  
22 destruction, which record shall be open to inspection by all  
23 federal or state officers charged with the enforcement of  
24 federal and state laws relating to any controlled substance.

25

26 COMMENT. This section is not a part of the Uniform Controlled  
27 Substances Act. It is very similar in wording, and identical  
28 in intended effect, to present Code section 204.14.

29

30

31 Sec. 507. BURDEN OF PROOF; LIABILITIES.

32 1. It is not necessary for the state to negate any exemp-  
33 tion or exception set forth in this Act in any complaint,  
34 information, indictment or other pleading or in any trial,  
35 hearing, or other proceeding under this Act. The proof of

1 and manner of destruction, shall be kept, and a return under  
2 oath, reporting said destruction, shall be made to the court  
3 and to the bureau by the officer who destroys them.

4 2. Upon written application by the board, the court by  
5 whom the forfeiture of controlled substances has been decreed  
6 may order the delivery of any of them, except controlled  
7 substances listed in schedule I, to the board for distribution  
8 or destruction, as provided by this section.

9 3. Upon application by any hospital within this state,  
10 not operated for private gain, the board may in its discretion  
11 deliver any controlled substances that have come into its  
12 custody by authority of this section to the applicant for  
13 medicinal use. The board may from time to time deliver excess  
14 stocks of controlled substances to the bureau for disposition,  
15 or may destroy the excess controlled substances.

16 4. The board shall keep a full and complete record of  
17 all controlled substances received and disposed of, showing  
18 the exact kinds, quantities, and forms of controlled  
19 substances, the persons from whom received and to whom  
20 delivered, by whose authority received, delivered, and  
21 destroyed and the dates of the receipt, disposal, or  
22 destruction, which record shall be open to inspection by all  
23 federal or state officers charged with the enforcement of  
24 federal and state laws relating to any controlled substance.

25  
26 COMMENT. This section is not a part of the Uniform Controlled  
27 Substances Act. It is very similar in wording, and identical  
28 in intended effect, to present Code section 204.14.

29

30 Sec. 507. BURDEN OF PROOF; LIABILITIES.

31 1. It is not necessary for the state to negate any exemp-  
32 tion or exception set forth in this Act in any complaint,  
33 information, indictment or other pleading or in any trial,  
34 hearing, or other proceeding under this Act. The proof of  
35 entitlement to any exemption or exception by the person claim-

1 ing its benefit shall be a valid defense.

2 2. The absence of proof that a person is the duly  
3 authorized holder of an appropriate registration or order  
4 form issued under this Act creates a rebuttable presumption  
5 that he is not the holder of such registration or form.

6 3. No liability shall be imposed by virtue of this Act  
7 upon any authorized state, county or municipal officer, engaged  
8 in the lawful performance of his duties.

9 Sec. 508. JUDICIAL REVIEW. All final determinations,  
10 findings and conclusions of the board or department under  
11 this Act shall be final and conclusive decisions of the matters  
12 involved, except that any person aggrieved by the decision  
13 may obtain review of the decision in the district court.  
14 Findings of fact by the board or department, if supported  
15 by substantial evidence, are conclusive.

16 Sec. 509. EDUCATION AND RESEARCH.

17 1. The board and the department shall carry out educational  
18 programs designed to prevent and deter misuse and abuse of  
19 controlled substances. They shall consult with each other  
20 and coordinate their programs so as to avoid duplication of  
21 effort. In connection with these programs they may:

22 a. Promote better recognition of the problems of misuse  
23 and abuse of controlled substances within the regulated  
24 industry and among interested groups and organizations;

25 b. Assist the regulated industry and interested groups  
26 and organizations in contributing to the reduction of misuse  
27 and abuse of controlled substances;

28 c. Consult with interested groups and organizations to  
29 aid them in solving administrative and organizational problems;

30 d. Evaluate procedures, projects, techniques, and controls  
31 conducted or proposed as part of educational programs on  
32 misuse and abuse of controlled substances;

33 e. Disseminate the results of research on misuse and abuse  
34 of controlled substances to promote a better public  
35 understanding of what problems exist and what can be done

1 to combat them; and,

2 f. Assist in the education and training of state and local  
3 law enforcement officials in their efforts to control misuse  
4 and abuse of controlled substances.

5 2. The board and the department shall encourage research  
6 on misuse and abuse of controlled substances. In connection  
7 with such research, and in furtherance of the enforcement  
8 of this Act, they may in such manner as will best insure  
9 coordination and avoid duplication of effort:

10 a. Establish methods to assess accurately the effects  
11 of controlled substances and identify and characterize those  
12 with potential for abuse;

13 b. Make studies and undertake programs of research to:

14 (1) Develop new or improved approaches, techniques,  
15 systems, equipment and devices to strengthen the enforcement  
16 of this Act;

17 (2) Determine patterns of misuse and abuse of controlled  
18 substances and the social effects thereof; and,

19 (3) Improve methods for preventing, predicting, understand-  
20 ing and dealing with the misuse and abuse of controlled  
21 substances; and,

22 c. Enter into contracts with public agencies, institutions  
23 of higher education, and private organizations or individuals  
24 for the purpose of conducting research, demonstrations, or  
25 special projects which bear directly on misuse and abuse of  
26 controlled substances.

27 3. The board or department may enter into contracts for  
28 educational and research activities without performance bonds.

29 4. The board and department may jointly authorize persons  
30 engaged in research on the use and effects of controlled  
31 substances to withhold the names and other identifying  
32 characteristics of individuals who are the subjects of the  
33 research. Persons who obtain this authorization shall not  
34 be compelled in any civil, criminal, administrative,  
35 legislative, or other proceeding to identify the individuals

1 who are the subjects of research for which the authorization  
2 was obtained.

3 5. The board and department may jointly authorize the  
4 possession and distribution of controlled substances by persons  
5 engaged in research. Persons who obtain this authorization  
6 are exempt from state prosecution for possession and  
7 distribution of controlled substances to the extent of the  
8 authorization.

9  
10 COMMENT. This section, setting out the education and research  
11 provisions, is designed to make it clear that education and  
12 research are an integral part of the total law enforcement  
13 effort. Broad language is used in order to provide maximum  
14 latitude.

15 Of primary importance are subsections (3) and (4)  
16 authorizing persons engaged in legitimate research to withhold  
17 the identities of research subjects and allowing the state  
18 to authorize possession and distribution of controlled  
19 substances. These provisions will tie into proposed Federal  
20 law and will allow legitimate researchers to carry on much  
21 needed research without fear of exposing either themselves  
22 or their research subjects to criminal prosecution.

23 It should be noted that a grant of Federal immunity would  
24 preempt any state grant or denial of immunity. However, the  
25 converse would not be true, and a researcher in possession  
26 of controlled substances under a state grant of immunity would  
27 be prosecuted under Federal law if the Federal Government  
28 elected not to confer immunity. However, the likelihood of  
29 this situation arising is extremely tenuous.

30

31

#### DIVISION VI

32

#### MISCELLANEOUS

33

#### Sec. 601. PENDING PROCEEDINGS.

34

1. Prosecution for any violation of law occurring prior  
35 to the effective date of this Act is not affected or abated

1 by the passage of this Act. If the offense being prosecuted  
2 is similar to one set out in division IV of this Act then  
3 the penalties under division IV shall apply if they are less  
4 than those under prior law.

5 2. Civil seizures or forfeitures and injunctive proceed-  
6 ings commenced prior to the effective date of this Act are  
7 not affected or abated by the passage of this Act.

8 3. All administrative proceedings pending under prior  
9 laws of this state which are superseded by this Act and are  
10 pending on the effective date of this Act shall be continued  
11 and brought to a final determination in accord with the laws  
12 and rules in effect prior to the effective date of the Act.  
13 Any substance controlled under prior law which is not listed  
14 within schedules I through V, is automatically controlled  
15 without further proceedings and shall be listed in the  
16 appropriate schedule.

17 4. The board shall initially permit persons to register  
18 who own or operate any establishment engaged in the  
19 manufacture, distribution, or dispensing of any controlled  
20 substance prior to the effective date of this Act and who  
21 are registered or licensed by the state.

22 5. This Act applies to violations of law, seizures and  
23 forfeiture, injunctive proceedings, administrative proceedings  
24 and investigations which occur following its effective date.

25

26 COMMENT. Subsection 4 of this Section is a provisional grand-  
27 father clause and states that upon the effective date of the  
28 Act, any person already licensed or registered by the state  
29 to engage in the manufacture, distribution, or dispensing  
30 of controlled substances shall automatically be registered.  
31 After that date, they will then be subject to the annual  
32 renewal requirements and will have to meet all required  
33 criteria in Sections 302 and 303.

34

35 Sec. 602. CONTINUATION OF RULES. Any orders and rules

1 which have been promulgated under any law affected by this  
2 Act and which are in effect on the effective date of this  
3 Act and not in conflict with the provisions of this Act  
4 continue in effect until modified, superseded or repealed  
5 by the board or the department, as the case may be.

6 Sec. 603. UNIFORMITY OF INTERPRETATION. This Act shall  
7 be so construed as to effectuate its general purpose to make  
8 uniform the law of those states which enact it.

9 Sec. 604. SHORT TITLE. This Act may be cited as the  
10 Uniform Controlled Substances Act.

11

12 COMMENT. A standard severability clause included in the Uni-  
13 form Controlled Substances Act as recommended by the National  
14 Conference of Commissioners on Uniform State Laws has been  
15 deleted from this bill, since it is considered unnecessary  
16 in Iowa.

17 The remaining sections of this bill are conforming amend-  
18 ments to existing Iowa laws.

19

20 Sec. 605. REPEALERS. The laws specified below are repealed  
21 except with respect to rights and duties which matured, penal-  
22 ties which were incurred and proceedings which were begun  
23 before the effective date of this Act:

24 1. Chapter two hundred four (204), Code 1971.

25 2. Chapter two hundred four A (204A), Code 1971.

26 Sec. 606. Section eighty point twenty-seven (80.27), Code  
27 1971, is amended as follows:

28 80.27 DRUG LAW ENFORCEMENT BY DEPARTMENT. The state de-  
29 partment of public safety shall be primarily responsible for  
30 the enforcement of all laws and regulations relating to nar-  
31 ~~coctic-drugs-as-defined-in-section-204.17-subsection-407~~  
32 ~~counterfeit-drugs-as-defined-in-section-204A.17-subsection-~~  
33 ~~57-and-depressant-or-stimulant-drugs-as-defined-in-section-~~  
34 ~~204A.17-subsection-67~~ any controlled substance or counterfeit  
35 substance, except for making accountability audits of the

1 supply and inventory of ~~narcotic-drugs-and-depressant-or-~~  
2 ~~stimulant-drugs~~ controlled substances in the possession of  
3 pharmacists, doctors, hospitals, ~~rest-homes,-and-nursing~~  
4 ~~homes,~~ and health care facilities as defined in section  
5 135C.1, subsection 8, as well as in the possession of any  
6 and all other individuals or institutions authorized to have  
7 possession of any ~~narcotic-drugs-and-depressant-or-stimulant~~  
8 ~~drugs~~ controlled substances.

9 As used in this chapter, the terms "controlled substances"  
10 and "counterfeit substances" shall be the same as defined in  
11 section 101, subsections 6 and 7, respectively, of this Act.

12 Sec. 607. Section eighty point twenty-eight (80.28), Code  
13 1971, is amended as follows:

14 80.28 AGENTS TRANSFERRED FROM PHARMACY BOARD. All agents  
15 of the board of pharmacy examiners who, on May 8, 1970, are  
16 either engaged in the enforcement of laws or regulations  
17 relating to ~~narcotic-drugs,-counterfeit-drugs-and-depressant-~~  
18 ~~or-stimulant-drugs,~~ controlled or counterfeit substances,  
19 except whose primary responsibility is making accountability  
20 audits, are hereby transferred to and shall be considered  
21 part of the department of public safety. Salary and expenses  
22 for such transferred agents included in the budget of the  
23 board of pharmacy examiners shall be transferred to the  
24 department of public safety by the state comptroller upon  
25 the effective date of the transfer.

26 Sec. 608. Section eighty point thirty (80.30), Code 1971,  
27 is amended as follows:

28 80.30 ADDITIONAL EMPLOYEES. Except as provided in this  
29 section, from and after May 8, 1970, any additional individuals  
30 hired by the state department of public safety for the purpose  
31 of enforcement of laws relating to ~~narcotic-drugs,-counter-~~  
32 ~~feit-drugs-and-depressant-or-stimulant-drugs~~ controlled or  
33 counterfeit substances shall be subject to the provisions  
34 of section 80.15 and such individuals shall be covered by  
35 the provisions of chapter 97A. They shall be entitled to

1 receive the benefits provided in chapter 97A, and will be  
2 required to make such contributions and payments into the  
3 system as are required by such chapter. However, if there  
4 is an individual who is not able to meet the qualifications  
5 established by section 80.15 or chapter 97A and he otherwise  
6 possesses experience and training which qualifies him as a  
7 person capable of enforcing laws relating to ~~narcotic-drugs,~~  
8 ~~counterfeit-drugs-and-depressant-or-stimulant-drugs,~~  
9 controlled or counterfeit substances, he may be hired by the  
10 commissioner of public safety notwithstanding.

11 Sec. 609. Section eighty point thirty-two (80.32), Code  
12 1971, is amended as follows:

13 80.32 DIVISION OF DRUG LAW ENFORCEMENT. The commissioner  
14 of public safety shall establish a division of drug law en-  
15 forcement and assign all enforcement functions and personnel  
16 therefor to the division of drug law enforcement. The commis-  
17 sioner shall assign other members of the department of public  
18 safety to the division of drug law enforcement on a temporary  
19 basis or for the purpose of special assignment. The division  
20 of drug law enforcement and any other division of the depart-  
21 ment of public safety may co-operate and co-ordinate their  
22 efforts in enforcing laws relating to ~~drugs~~ controlled or  
23 counterfeit substances and other laws which the department  
24 is charged with enforcing.

25 Sec. 610. Section eighty point thirty-three (80.33), Code  
26 1971, is amended as follows:

27 80.33 ACCESS TO DRUG RECORDS BY AGENTS. Every person  
28 required by law to keep records, and any carrier maintaining  
29 records with respect to any shipment containing any ~~narcotic,~~  
30 ~~counterfeit,-depressant-or-stimulant-drug~~ controlled or  
31 counterfeit substances shall, upon request of an authorized  
32 agent of the department of public safety, designated by the  
33 commissioner of public safety, permit such agent at reasonable  
34 times to have access to and copy such records. For the purpose  
35 of examining and verifying such records authorized agents

1 of the department of public safety, designated by the  
2 commissioner of public safety, may enter at reasonable times  
3 any place or vehicle in which any ~~narcotic, counterfeit,~~  
4 ~~depressant or stimulant drug~~ controlled or counterfeit  
5 substance is held, manufactured, dispensed, compounded,  
6 processed, sold, delivered, or otherwise disposed of and  
7 inspect such place or vehicle, and the contents thereof.  
8 For the purpose of enforcing laws relating to ~~narcotic drugs,~~  
9 ~~counterfeit drugs and depressant or stimulant drugs~~ controlled  
10 or counterfeit substances, and upon good cause shown, personnel  
11 of the division of drug law enforcement in the department  
12 of public safety shall be allowed to inspect audits and records  
13 in the possession of the state board of pharmacy examiners.

14 Sec. 611. Section eighty point thirty-four (80.34), Code  
15 1971, is amended as follows:

16 80.34 POWERS OF PEACE OFFICERS. Any authorized agent  
17 of the department of public safety designated to conduct  
18 examinations, investigations, or inspections and enforce the  
19 laws relating to ~~narcotic, depressant, stimulant or counterfeit~~  
20 ~~drugs~~ controlled or counterfeit substances shall have all  
21 the powers of other peace officers and may arrest without  
22 warrant for offenses under this chapter committed in his  
23 presence or, in the case of a felony, if he has probable cause  
24 to believe that the person arrested has committed or is commit-  
25 ting such offense. Such officers shall have the same powers  
26 as other peace officers to seize controlled substances or  
27 articles used in the manufacture or sale of controlled  
28 substances which they have reasonable grounds to believe are  
29 in violation of law. Such controlled substances or articles  
30 shall be subject to condemnation.

31 EXPLANATION

32 This bill is intended to place Iowa in a better position  
33 to combat drug abuse, and is recommended by the legislative  
34 Drug Abuse Study Committee which functioned during the 1970  
35 interim. The bill provides stiffened penalties for drug