2015 Legislative Update

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2015 Criminal Law Legislative Update

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The following bill has been enacted:

Senate File 150--Escape from custody by sexually violent predator

Under current law, a sexually violent predator who is civilly committed pursuant to Code chapter 229A, or a person who is detained pending a determination of whether the person is a sexually violent predator, and who escapes or attempts to escape from custody pursuant to Code section 229A.5B commits a simple misdemeanor or may be subject to punishment for contempt. This bill provides that such a violation is a serious misdemeanor or may be punishable as contempt.

The following bills have passed both the Senate and the House of Representatives but have not been signed by the Governor as of April 16, 2015:

Senate File 448--Juvenile Class "A" felons.

This bill relates to the commission of a class "A" felony by a person under 18 years of age, and provides penalties.

Current Iowa statutory law provides that a person under 18 years of age who commits a class "A" felony, other than murder in the first degree, shall be eligible for parole after serving a minimum term of confinement of 25 years. Also, under current Iowa statutory law, a person under 18 years of age who commits murder in the first degree must serve a life sentence without the possibility of parole which equals the sentences of other class "A" felons. However, the United States Supreme Court in Miller v. Alabama, 132 S. Ct. 2455 (2012), has ruled that a mandatory life sentence without the possibility of parole for a person under 18 years of age who commits murder is unconstitutional. In addition, the Iowa Supreme Court in State v. Lyle, 854 N.W.2d 378 (Iowa 2014), ruled that the Iowa Constitution forbids a mandatory minimum sentencing schema for juvenile offenders that deprives the district court of the discretion to consider youth and its attendant circumstances as mitigating factors.

The bill provides that a person who commits murder in the

first degree and who was under the age of 18 at the time the offense was committed shall be sentenced to serve one of three sentencing options. The first option provides that the court sentence the person to confinement for the rest of the person's life with no possibility of parole unless the governor commutes the sentence to a term of years. The second option provides that the court sentence the person to confinement for the rest of the person's life with the possibility of parole after serving a minimum term of confinement as determined by the court. Under the third option, the court sentences the person to confinement for the rest of the person's life with the possibility of parole.

The bill lists numerous circumstances for the court to consider prior to sentencing a person who commits murder in the first degree and who was under the age of 18 at the time the offense was committed.

The bill provides that a person who commits a class "A" felony, other than murder in the first degree, and who was under the age of 18 at the time the offense was committed shall be sentenced to serve one of two sentencing options. The first option provides that the court sentence the person to confinement for the rest of the person's life with the possibility of parole after serving a minimum term of confinement as determined by the court. Under the second option, the court sentences the person to confinement for the rest of the person's life with the possibility of parole.

The bill lists numerous circumstances for the court to consider prior to sentencing a person who commits a class "A" felony, other than murder in the first degree, and who was under the age of 18 at the time the offense was committed. This list of circumstances is similar to the list of circumstances the court must consider for a person under the age of 18 who commits murder in the first degree.

A person paroled pursuant to the bill is subject to the same set of procedures set out in Code chapters 901B, 905, 906, and 908, and rules adopted under those Code chapters for persons on parole.

The bill prohibits earned time from reducing any mandatory minimum sentence imposed under Code section 902.1.

The bill takes effect upon enactment and applies to a person who was convicted of a class "A" felony prior to, on, or after the effective date of the bill and who was under the age of 18 at the time the offense was committed.

Senate File 385--Expungement

This bill relates to the expungement of not-guilty verdicts and dismissed criminal-charge records.

The bill provides that upon application, the court shall expunge the record of a criminal case containing one or more criminal charges in which an acquittal was entered for all criminal charges or all criminal charges were otherwise dismissed in the case unless certain factors have been established.

Prior to expungement, the bill requires that all court costs, fees, and other financial obligations must have been paid and an minimum of 180 days have passed since entry of the judgement or dismissal unless the person was a victim of identity theft or mistaken identity in which case the 180 day requirement does not apply. The bill requires that the case was not dismissed due to the defendant being found not guilty by reason of insanity or being found incompetent to stand trial in the case.

The bill does not apply to dismissals related to a deferred judgment under Code section 907.9 but does apply to all public offenses.

The bill defines “expunged” to mean a criminal record has been segregated in a secure area or database which is exempted from public access. The bill also specifies that an expunged record is a confidential record but shall be made available by the clerk of the district court to an agency or person granted access to the deferred judgment docket under Code section 907.4(2).

The bill would take effect on January 1, 2016.

House File 146--Prohibited gambling game activities

This bill concerns prohibited activities and penalties relative to gambling games on excursion gambling boats and gambling structures.

Code section 99F.15(4)(d) is amended to provide that cheating at a gambling game includes committing any act which alters the outcome of the game. A violation of cheating at a gambling game is a class “D” felony.

Code section 99F.15(4)(h) currently provides that a person who places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is the subject of the bet commits a class “D” felony regardless of the amount of the bet and is barred for life from excursion gambling boats and gambling structures after a single offense. The bill strikes this provision and creates new subsection 5A concerning the offense of unlawful betting. The bill provides that a person

who places, removes, increases, or decreases a bet after acquiring knowledge of the outcome of the gambling game which is the subject of the bet commits the offense of unlawful betting. The bill then provides that a person is guilty of a class “D” felony if the potential winnings from the unlawful bet exceed $1,000 in value, an aggravated misdemeanor if the potential winnings from the unlawful bet exceed $500 in value but do not exceed $1,000 in value, a serious misdemeanor if the potential winnings from the unlawful bet exceed $200 in value but do not exceed $500 in value, or a simple misdemeanor if the potential winnings from the unlawful bet do not exceed $200 in value. The bill further provides that two convictions of the offense of unlawful betting shall result in the person being barred for life from excursion gambling boats and gambling structures.

House File 258--Sexual misconduct with offenders and juveniles

This bill relates to sexual misconduct with offenders and juveniles.

The bill specifies that a peace officer shall not engage in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services.

The bill specifies that a peace officer shall not engage in a sex act with a juvenile placed at a juvenile placement facility.

The bill further specifies that a peace officer shall not engage in a sex act with a prisoner incarcerated in a county jail.

A peace officer who violates the bill commits an aggravated misdemeanor.

Senate File 292--Juvenile records

The bill relates to the confidentiality of certain juvenile court records.

The bill specifies that juvenile court records containing a dismissal of a complaint or an informal adjustment of a complaint when no petition is filed relating to the complaint, shall not be available to the public and may only be inspected by or disclosed to the following: the judge or professional court staff, including juvenile court officers the child’s counsel or guardian ad litem, the county attorney, the superintendent of a school district or the authorities in charge of an accredited nonpublic school, a member of the armed forces conducting a background investigation, the statistical analysis

center, or the state public defender.

The amendment to Code section 232.149 relates to the records and files of a defendant transferred to juvenile court from adult court under Code section 803.6. The bill specifies that the records and files of the defendant transferred from adult court to juvenile court are public records except that criminal history data as defined in Code section 692.1(5), intelligence data as defined in Code section 692.1(14), and law enforcement investigatory files are subject to the confidentiality provisions of Code section 22.7 and Code chapter 692. The amendment to Code section 232.149 further specifies that juvenile court social records, as defined in Code section 232.2(31), shall be deemed confidential criminal identification files under Code section 22.7(9). The amendment to Code section 232.149 also specifies that the records of a defendant transferred to juvenile court may be sealed under Code section 232.150.

House File 227--Strip searches at jails

This bill relates to strip searches of persons arrested for scheduled violations or simple misdemeanors.

Current law provides that a person arrested for a scheduled violation or simple misdemeanor shall not be subject to a strip search unless there is probable cause to believe the person is concealing a weapon or contraband.

The bill provides that a person arrested for a scheduled violation or a simple misdemeanor who is housed in the general population of a jail or municipal holding facility may be subject to a visual strip search. The bill provides that such a person may be subject to a strip search if there is probable cause to believe that the person is concealing a weapon or contraband and written authorization of the supervisor is obtained.

The bill provides that a person arrested for a simple misdemeanor who is not housed in the general population of a jail or municipal holding facility shall not be subject to either a strip search or visual strip search unless there is probable cause to believe the person is concealing a weapon or contraband and written authorization of the supervisor on duty is obtained.

The bill provides that a person arrested for a scheduled violation who is not housed in the general population of a jail or municipal holding facility shall not be subject to either a strip search or visual strip search unless there is probable cause to believe the person is concealing a weapon or contraband and a search warrant is obtained.

The bill specifies that any person arrested for a scheduled violation or simple misdemeanor may be subjected to a search probing the mouth, ears, or nose.

The bill defines “visual strip search” to mean removing or arranging some or all of the person’s clothing so as to permit a visual inspection of the genitalia, buttocks, anus, female breasts, or undergarments of the person.

As of April 13, 2105, the following bills have received considerable attention but have not been enacted and are not law:

Senate File 391--Use of electronic devices while driving

This bill eliminates a provision prohibiting a peace officer from stopping or detaining a person solely for a violation of Code section 321.276, which relates to texting while driving.

The scheduled fine for a violation of Code section 321.276 remains $30. Under current law, the offense is not a moving violation, and therefore cannot be considered for purposes of administrative suspension of a driver’s license or to establish habitual offender status. However, if the violation causes a serious injury, a court could impose an additional fine of $500 or suspend the person’s driver’s license for not more than 90 days, or both. If the violation causes a death, a court could impose an additional fine of $1,000 or suspend the person’s driver’s license for not more than 180 days, or both.

House File 6--Sexual exploitation by school employee.

This bill expands the Code provision that establishes the criminal offense of sexual exploitation by a school employee to include an individual employed by a school district, including a full-time, part-time, or substitute. “School employee” also includes a contract employee or volunteer for a school district if the contract employee or volunteer has significant contact with students. Currently, a school employee is defined to include any practitioner or coach who is licensed or authorized by the board of educational examiners. The current definition does not limit regulated school employees to a public school employees.

For purposes of this bill, a school employee does not include a student enrolled in a school district or a person who is less than four years older than the student with whom the person engages in prohibited conduct with and the person is not

in a position of direct authority over the student.

A person who commits sexual exploitation by a school employee in violation of Code section 709.15(3) commits either an aggravated misdemeanor or a class “D” felony.

House File 3--Invasion of privacy

This bill creates the criminal offense of invasion of privacy by trespassing and modifies the criminal offense of invasion of privacy

INVASION OF PRIVACY BY TRESPASSING. Under the bill, a person commits invasion of privacy by trespassing when the person intentionally views, photographs, or films another person through the window or any other aperture of a dwelling, without legitimate purpose, while present on the real property upon which the dwelling is located, if the person being viewed, photographed, or filmed has a reasonable expectation of privacy, and if the person being viewed, photographed, or filmed does not consent or cannot consent to being viewed, photographed, or filmed.

A person who commits invasion of privacy by trespassing commits a serious misdemeanor.

INVASION OF PRIVACY. The bill also modifies the criminal offense of invasion of privacy by providing that a person who knowingly views, photographs, or films a victim, for the purpose of arousing or gratifying the sexual desire of any person, commits invasion of privacy if all of the following apply: the victim does not consent or is unable to consent to being viewed, photographed, or filmed; the victim is in a state of full or partial nudity; and the victim has a reasonable expectation of privacy while in a state of full or partial nudity.

Under the bill, the victim may have knowledge that the perpetrator is viewing, photographing, or filming the victim. Current law requires the victim to have no knowledge the perpetrator is viewing, photographing, or filming the victim.

The bill also changes the punishment for invasion of privacy from a serious misdemeanor to an aggravated misdemeanor.

Senate File 336--Civil protective orders in sexual abuse cases.

This bill relates to civil protective orders in sexual abuse cases, and makes penalties applicable.

Under current law, a defendant accused of sexual abuse must be arrested for sexual abuse before a victim can apply for a

criminal no-contact order against the defendant (Code section 664A.3) or the victim can apply for a criminal no-contact order against a defendant upon the defendant's release from jail or prison (Code section 709.19).

The bill creates new Code chapter 236A, the sexual abuse Act, allowing a victim of sexual abuse to seek relief from sexual abuse by filing a petition in district court for a sexual abuse civil protective order (emergency, temporary, and permanent) prior to the arrest of the defendant in such a situation affording the victim and the victim's family members, whose welfare may be affected by the sexual abuse situation, the same civil protections as victims of domestic abuse under Code chapter 236. The bill defines sexual abuse as the commission of a crime defined in Code chapter 709 (sexual abuse) and Code sections 726.2 (incest) and 728.12 (sexual exploitation of a minor), and to include sexual abuse crimes in other jurisdictions under statutes that are substantially similar to the aforementioned statutes.

Under the bill, upon a finding by the court, by a preponderance of the evidence, that a defendant has engaged in sexual abuse against the plaintiff, the court may order the defendant to cease the abuse, and order the defendant to stay away from the plaintiff's residence, school, or place of employment. In seeking a protective order, a victim has the right to seek help from the court with or without the assistance of an attorney and without the payment of court costs.

The bill requires criminal or juvenile justice agencies to collect and maintain information on incidents involving sexual abuse and to provide the information to the department of public safety.

The bill makes conforming changes to Code provisions relating to the issuance of and violations of civil protective orders, the duties of the departments of justice and public health, delinquency detention, insurance practices, court operating costs, and peace officer arrests.

SF 427-Suppressors and firearms--as amended by the House.

This bill relates to the manufacture, acquisition, sale, and use of firearms and suppressors.

FIREARM SUPPRESSORS. Current Iowa law provides that a mechanical device specifically constructed and designed so that when attached to a firearm it silences, muffles, or suppresses the sound when fired is an offensive weapon. Under Code section 724.3, any person who knowingly possesses an offensive weapon commits a class "D" felony, punishable by confinement for no more than five years and a fine of at least $750 but not more

than $7,500.

The bill strikes a provision in Code section 724.1(1)(h) that classifies a firearm suppressor as an offensive weapon. By striking this provision, a firearm suppressor is legal to possess in the state. This provision takes effect upon enactment.

The bill also creates in new Code section 724.1A, a process whereby a person may apply to the chief law enforcement officer of the jurisdiction where the person resides or maintains an address of record for a certification to make or transfer a firearm suppressor. The bill defines "firearm suppressor" to mean a mechanical device specifically constructed and designed so that when attached to a firearm silences, muffles, or suppresses the sound when fired that is considered a "firearm silencer" or "firearm muffler" as defined in 18 U.S.C. §921.

The bill specifies that a chief law enforcement officer shall not refuse to provide certification, based on a generalized objection, to an applicant making or transferring a firearm suppressor. If a person applies for certification to make or transfer a firearm suppressor with the chief law enforcement officer, the bill requires the chief law enforcement officer to issue the certification within 30 days of receiving such an application unless the applicant is prohibited by law from making or transferring a firearm suppressor or the applicant is the subject of a proceeding that could result in the applicant being prohibited by law from making or transferring a firearm suppressor. If the chief law enforcement officer does not issue a certification under the bill, the chief law enforcement officer shall provide the applicant a written notification of the denial and the reason for the denial. If the certification has been approved by the chief law enforcement officer under the bill, the applicant has the authority to make or transfer a firearm suppressor as provided by state and federal law.

If the applicant's request for certification is denied, the bill specifies that the applicant may appeal the decision to the district court for the county in which the applicant resides or maintains an address of record. The bill specifies that the court shall review the decision of the chief law enforcement officer to deny the certification de novo. If the court finds that the applicant is not prohibited by law from making or transferring a firearm suppressor, the bill requires the court to order the chief law enforcement officer to issue the certification and award court costs and reasonable attorney fees to the applicant. If the court determines the applicant is not eligible to be issued a certification, the bill requires the court to award court costs and reasonable attorney fees to the political subdivision of the state representing the chief law

enforcement officer.

In making a determination about whether to issue a certification under the bill, a chief law enforcement officer may conduct a criminal background check, but shall only require the applicant to provide as much information as is necessary to identify the applicant for this purpose or to determine the disposition of an arrest or proceeding relevant to the eligibility of the applicant to lawfully make or transfer a firearm suppressor. The bill prohibits a chief law enforcement officer from requiring access to any private premises as a condition of providing a certification under this Code section.

A chief law enforcement officer and employees of the chief law enforcement officer who act in good faith are immune from liability arising from any act or omission in making a certification under the bill.

The bill provides that a person shall not possess a firearm suppressor in this state if such possession is knowingly in violation of federal law commits a class "D" felony.

The provisions relating to making or transferring a firearm suppressor would take effect upon enactment.

CARRYING WEAPONS. The bill provides that a person does not commit the criminal offense of carrying weapons in violation of Code section 724.4 if the person has in the person's immediate possession and who displays to a peace officer on demand a valid permit to carry weapons which has been issued to the person, and whose conduct is within the limits of that permit. The bill specifies that a peace officer shall verify through electronic means, if possible, the validity of the person's permit to carry weapons. Current law does not require the permit to be in the person's immediate possession only that the permit be in the person's possession. If a person, who possesses a valid permit to carry weapons under the bill, fails to carry such a permit in the immediate possession of the person or fails to display the permit to a peace officer on demand, a person commits a simple misdemeanor punishable by a $10 scheduled fine.

CARRYING WEAPONS ON SCHOOL GROUNDS. The bill provides that a certified peace officer who possesses a professional permit to carry weapons does not commit the criminal violation of unlawfully carrying weapons on school grounds under Code section 724.4B. Under current law, a peace officer while acting within the official duties of the officer may possess a weapon on school grounds. A person who commits the offense of unlawfully carrying weapons on school grounds commits a class "D" felony.

DUTY TO POSSESS PERMIT TO CARRY WEAPONS. The bill under Code section 724.5 makes it a simple misdemeanor punishable by a $10 scheduled fine if a person armed with a revolver, pistol, or pocket billy concealed upon the person does not possess the

permit to carry weapons in the immediate possession of the person, and fails to produce such permit for inspection upon the request of a peace officer. The bill specifies that a peace officer shall verify through electronic means, if possible, the validity of the person's permit to carry weapons. Current law provides that if a person commits such a violation the person commits a simple misdemeanor.

INITIAL PERMIT TO CARRY WEAPONS (LANGUAGE FROM HF 527) —— TRAINING. The bill specifies in Code section 724.11 that the training program requirements in Code section 724.9(1) do not apply to an applicant who is able to demonstrate completion of small arms training as specified in Code section 724.9(1)(d). For all other applicants the training program requirements in Code section 724.9(1) must be satisfied within the 24-month period prior to the date of the application for the issuance of a permit. Current law specifies that the training program requirements under Code section 724.9(1) must be satisfied within the 12-month period prior to the application. A corresponding amendment is made to Code section 724.7.

ISSUANCE OF PERMIT TO CARRY OR RENEWAL (FROM HF 527). Prior to issuing any renewal of a permit to carry weapons, the sheriff or commissioner under Code section 724.11 shall determine if the requirements of Code sections 724.6, 724.7, 724.8, and 724.10 have been met. The bill provides for additional requirements under certain circumstances.

The bill provides that beginning with the first renewal of a permit issued after the calendar year 2010, and alternating renewals thereafter, if a renewal applicant applies within 30 days prior to the expiration of the permit or within 30 days after expiration of the permit, the training requirements of Code section 724.9(1) do not apply.

The bill provides that beginning with the second renewal of a permit issued after the calendar year 2010, and alternating renewals thereafter, if a renewal applicant applies within 30 days prior to the expiration of the permit or within 30 days after expiration of the permit, a renewal applicant shall qualify by taking an online training course certified by the national rifle association or the Iowa law enforcement academy, and the training program requirements of Code section 724.9(1) do not apply.

If any renewal applicant applies more than 30 days after the expiration of the permit, the bill specifies the training program requirements in Code section 724.9(1) do apply to the applicant. However, the bill specifies that the training program requirements in Code section 724.9(1) do not apply to a renewal applicant who is able to demonstrate completion of small arms training as specified in Code section 724.9(1)(d). For all other

renewal applicants who have applied more than 30 days after the expiration of the permit, the bill allows, in lieu of the training program requirements in Code section 724.9(1), the renewal applicant to choose to qualify on a firing range under the supervision of an instructor certified by the national rifle association or the department of public safety or another state's department of public safety, state police department, or similar certifying body. If a renewal applicant applies more than 30 days after the expiration of the permit, the bill specifies that any subsequent renewal shall be considered a first renewal of the permit.

As an alternative, a renewal applicant, under the bill, may choose to qualify at any renewal, under the training program requirements in Code section 724.9(1), or the renewal applicant may choose to qualify on a firing range under the supervision of an instructor certified by the national rifle association or the department of public safety or another state's department of public safety, state police department, or similar certifying body. Such training or qualification must occur within the 24-month period prior to the expiration of the applicant's current permit, except that the 24-month time period limitation to complete the training or qualification does not apply to an applicant who is able to demonstrate completion of small arms training as specified in Code section 724.9(1)(d).

The bill specifies that the initial or renewal permit shall have a uniform appearance, size, and content prescribed and published by the commissioner of public safety. The bill further specifies that the permit shall contain the name of the permittee and the effective date of the permit, but shall not contain the permittee's social security number. The bill prohibits such a permit to be issued for a particular weapon or to contain information about a particular weapon including the make, model, or serial number of the weapon, or any ammunition used in that weapon.

The bill does not increase or decrease the fee for a renewal of a permit to carry weapons but does allow a renewal applicant to pay the $25 renewal application fee if the renewal applicant applies within 30 days prior to the expiration of the permit or within 30 days after such expiration. Current law requires that in order to be assessed the $25 renewal application fee, the renewal applicant must apply at least 30 days prior to the expiration of the permit to carry weapons.

PERMITS TO ACQUIRE. The bill extends the time period a permit to acquire a weapon from one year to five years. An applicant who is a United States citizen is only required to provide certain basic identifying documentation. An applicant who is not a United States citizen must provide additional

information and is subject to an immigration alien query through a database maintained by the United States immigration and customs enforcement. All applicants are subject to a criminal history background check.

DENIAL, SUSPENSION, OR REVOCATION —— PERMIT TO CARRY WEAPONS AND PERMIT TO ACQUIRE FIREARMS. If an applicant under Code section 724.21A appeals the decision by the sheriff or commissioner to deny an application, or suspend or revoke a permit to carry weapons or a permit to acquire firearms, and it is later determined the applicant is eligible to be issued or possess such a permit, the bill provides that the applicant shall be awarded any costs related to the administrative hearing and reasonable attorney fees if applicable. However, if the decision of the sheriff or commissioner to deny the application, or suspend or revoke the permit is upheld on appeal, the political subdivision of the state representing the sheriff or the commissioner shall be awarded court costs and reasonable attorney fees if applicable.

POSSESSION OF PISTOL, REVOLVER, OR AMMUNITION BY PERSONS UNDER 14 YEARS OF AGE. Under the bill in Code section 724.22(5), a parent or guardian or spouse who is 21 years of age or older, or an instructor 21 years of age or older with the consent of the parent or guardian or spouse, may allow a minor of any age to possess a pistol or revolver or the ammunition therefor, which then may be lawfully used. Current law prohibits a parent or guardian or spouse who is 21 years of age or older from allowing a minor under 14 years of age from possessing a pistol, revolver, or the ammunition. This provision would take effect upon enactment.

Except for the circumstances under Code section 724.22(4) (security personnel) or Code section 724.22(5), under current law, a person who sells, loans, gives, or makes available a pistol or revolver or ammunition for a pistol or revolver to a person below the age of 21 commits a serious misdemeanor for a first offense and a class “D” felony for second and subsequent offenses.

PERMIT TO CARRY AND PERMIT TO ACQUIRE RECORDS —— CONFIDENTIALITY. Current law requires the commissioner of public safety to maintain a permanent record of all valid permits to carry weapons and of current permit revocations.

The bill provides in Code section 724.23 that, notwithstanding any other law or rule to the contrary, the commissioner of public safety and any issuing officer (county sheriff) shall keep confidential personally identifiable information of holders of permits to carry weapons and permits to acquire firearms. The release of any confidential information, except as otherwise provided in the bill, requires

a court order or the consent of the person whose personally identifiable information is the subject of the information request. The bill does not prohibit release of statistical information relating to the issuance, denial, revocation, or administration of nonprofessional permits to carry weapons and permits to acquire firearms if such information does not reveal the identity of any individual permit holder, the release of information to a law enforcement agency investigating a violation of law or where probable cause exists, the release for purposes of conducting a background check, or the release of information relating to the validity of a professional permit to carry weapons to an employer who requires an employee or an agent of the employer to possess a professional permit to carry weapons as part of the duties of the employee or agent. The bill also does not prohibit the release of confidential information to a member of the public if the person, in writing or in person, requests whether another person has a professional or nonprofessional permit to carry weapons or to acquire.

This provision applies to holders of nonprofessional permits to carry weapons and permits to acquire and to applicants for nonprofessional permits to carry weapons and permits to acquire on or after the effective date of the bill. This provision would take effect upon enactment.

FRAUDULENT PURCHASE OF FIREARMS OR AMMUNITION. The bill provides that a person who knowingly solicits, persuades, encourages, or entices a licensed firearms dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this state or of the United States commits a class "D" felony. A person who knowingly provides materially false information to a licensed firearms dealer or private seller of firearms or ammunition with the intent to deceive the firearms dealer or seller about the legality of a transfer of a firearm or ammunition commits a class "D" felony. Any person who willfully procures another to engage in conduct prohibited by this Code section shall be held accountable as a principal.

The Code section does not apply to a law enforcement officer acting in the officer's official capacity or to a person acting at the direction of such law enforcement officer.

This new Code section would take effect upon enactment.

RULES. The bill specifies that the department of public safety shall adopt rules pursuant to Code chapter 17A to administer Code chapter 724.

Senate File 219--Small amounts of marijuana.

The bill provides that a person who possesses five grams or

less of marijuana commits a simple misdemeanor for a first offense. A simple misdemeanor is punishable by confinement for no more than 30 days or a fine of at least $65 but not more than $625 or by both.

Current law provides that a person who commits first offense possession of marijuana commits a serious misdemeanor punishable by confinement for not more than six months or by a fine of not more than $1,000 or by both. The bill does not modify the penalty for second offense possession of marijuana which is punishable by confinement for no more than one year and a fine of at least $315 but not more than $1,875. The bill also does not modify the penalty for a third or subsequent possession of marijuana offense which is punishable by confinement for no more than two years and a fine of at least $625 but not more than $6,250.

Senate File 377--Definition of sex act

This bill changes the name of “assault with intent to commit sexual abuse” to “assault with sexual intent” and makes related changes.

The bill provides that a person who commits an assault as defined in Code section 708.1, by touching the breast of another, whether or not the touching was through the clothing or other covering, with the intent to arouse or gratify the sexual desires of either party, or for purposes of sexually degrading or humiliating the other person, commits assault with sexual intent.

Under the bill, a person who commits assault with sexual intent commits a class “C” felony if the person causes serious injury to any person, a class “D” felony if the person causes bodily injury, and an aggravated misdemeanor if no injury results. A person who commits an assault with sexual intent under the bill must register as a sex offender and is subject to a special sentence under Code section 903B.1 or 903B.2 depending on the severity of the offense.

If a person touches the breast of another and commits an assault as defined in Code section 708.1, whether or not the touching was through the clothing or other covering, and the touching is without the intent to arouse or gratify the sexual desires of either party and not for the purpose of sexually degrading or humiliating the other person, the person commits a serious misdemeanor.

The bill also makes numerous conforming changes in Code chapter 692A.

House File 567--Imitation controlled substances and other controlled substances

This bill relates to controlled substances, including by enhancing the penalties for imitation controlled substances, modifying the controlled substances listed in schedules I, III, IV, and temporarily designating substances as controlled substances.

TEMPORARY CONTROLLED SUBSTANCE DESIGNATION. Under current law and in the bill, the board of pharmacy may designate a new substance as a controlled substance, by administrative rule, without the general assembly amending Code chapter 124, only if the substance is designated as a controlled substance under federal law.

If the board of pharmacy designates a substance as controlled, the bill specifies that the temporary designation is considered a temporary amendment to the schedules of controlled substances in Code chapter 124, and if the general assembly does not amend Code chapter 124 to enact the temporary amendment and make the enactment effective within two years from the date the temporary amendment first became effective, the temporary amendment is repealed by operation of law two years from the effective date of the temporary amendment. A temporary amendment repealed by operation of law is subject to Code section 4.13 relating to the construction of statutes and the application of a general savings provision.

Current law provides that if within 60 days after the next general assembly convenes the general assembly has not made the corresponding changes in Code chapter 124, the temporary designation that the substance is a controlled substance is nullified.

IMITATION CONTROLLED SUBSTANCES. Under current law imitation controlled substances are regulated under Code chapter 124A. The bill repeals Code chapter 124A and transfers the regulation of imitation controlled substances to Code chapter 124. The definition and designation of an imitation controlled substance in Code chapter 124 remains identical to the definition and designation of an imitation controlled substance under current law in Code chapter 124A.

Under the bill and in current law, an imitation controlled substance means a substance which is not a controlled substance but by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance. The board of pharmacy may designate a substance as an imitation controlled substance pursuant to the board’s rulemaking authority and in accordance with Code chapter 17A.

In addition, under current law and in the bill, if a substance has not been designated as an imitation controlled substance by the board of pharmacy and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance, the following factors may be considered in determining whether the substance is an imitation controlled substance: the substance is represented as having the effect of a controlled substance; the substance is represented as a controlled substance or as a substitute for a controlled substance because of its nature or appearance; or a person receives money or other property having a value substantially greater than the actual value of the substance when sold.

Under the bill, if a person unlawfully manufactures, delivers, or possesses with the intent to deliver an imitation controlled substance containing any detectable amount of those substances identified in Code section 124.204(9), or unlawfully acts with, enters into a common scheme or design with, or conspires with one or more persons to manufacture, deliver, or possess such imitation controlled substances, the person commits the following offense: a class "B" felony punishable by confinement of no more than 50 years and a fine of not more than $1 million if the imitation controlled substance is more than 10 kilograms; a class "B" felony punishable by confinement of no more than 25 years and a fine of not less than $5,000 but not more than $100,000 if the imitation controlled substance is more than five kilograms but not more than 10 kilograms; a class "C" felony punishable by a fine of not less than $1,000 but not more than $50,000 if the imitation controlled substance is five kilograms or less; or an aggravated misdemeanor if the imitation controlled substance is classified in schedule IV or V. Current law in Code section 124A.4 provides that if a person unlawfully manufactures, delivers, or possesses with intent to deliver an imitation controlled substance, the person commits an aggravated misdemeanor, or if the person delivers to a person under 18 years of age who is at least three years younger than the violator, the person commits a class "D" felony. In addition, under current law, if a person unlawfully and knowingly publishes an advertisement or distributes in a public place a promotion for an imitation controlled substance the person commits a serious misdemeanor.

The bill enhances the criminal penalties for controlled substances classified in Code sections 124.204(4)(ai) and 124.204(6)(i) from an aggravated misdemeanor to a class "C" felony punishable pursuant to Code section 124.401(1)(c)(8). This change equalizes the criminal penalties with violations involving other schedule I controlled substances.

The bill provides that if the same person commits two or more

acts which are in violation of Code section 124.401(1) and the acts occur in the same location or time period so the acts are attributable to a single scheme, the acts may be considered a single violation and the weights of the imitation controlled substance may be combined for purposes of charging the offender.

The amendment to Code section 124.401A provides that a person who is 18 years of age or older who unlawfully manufactures with the intent to distribute, distributes, or possesses with the intent to distribute an imitation controlled substance to another person 18 years of age or older within 1,000 feet of the real property comprising a public or nonpublic school, may be sentenced up to an additional term of confinement of five years in addition to any other penalty.

The amendment to Code section 124.401B provides that a person who unlawfully possesses an imitation controlled substance within 1,000 feet of the real property comprising a school, public park, public pool, public recreation center, or marked school bus may be sentenced up to 100 hours of community service.

The amendments to Code section 124.406 relate to the distribution or possession with the intent to distribute an imitation controlled substance to a person under 18 years of age. A person who distributes or possesses with the intent to distribute an imitation controlled substance, represented to be a substance listed in schedule I or schedule II, to a person under 18 years of age commits a class “B” felony. The required penalty for such a violation is a minimum term of confinement of 10 years if the substance was distributed within 1,000 feet of the real property comprising a public or nonpublic school, public park, public pool, or public recreation center. A person who distributes or possesses with the intent to distribute an imitation controlled substance, represented to be a substance listed in schedule III, to a person under 18 years of age, who is at least three years younger than the violator, commits a class “C” felony. A person who distributes or possesses with the intent to distribute an imitation controlled substance, represented to be a substance listed in schedule IV or schedule V, to a person under 18 years of age, who is at least three years younger than the violator, commits an aggravated misdemeanor.

The amendment to Code section 124.415 requires that a peace officer make a reasonable effort to identify a person under 18 years of age discovered to be in possession of an imitation controlled substance, and if the person is not referred to juvenile court, the peace officer shall make a reasonable effort to notify the person’s custodial parent of the possession unless the officer has reasonable grounds to believe such notification

is not in the best interests of the person. The bill specifies that if the person is taken into custody the juvenile court officer shall make a reasonable effort to identify the school of attendance and to notify the school or nonpublic school of the taking into custody of the person.

The bill creates Code section 124.417, which is similar to Code section 124A.5 repealed by the bill. A person registered under Code section 124.302 does not violate the bill if the person manufactures, delivers, possesses, or possesses with the intent to manufacture or deliver, or acts with others to do such activities, if the person uses the imitation controlled substance for use as a placebo by a registered practitioner in the court of professional practice or research.

SCHEDULE I, III, AND IV CONTROLLED SUBSTANCES. The bill transfers numerous substances classified as "hallucinogenic substances" under schedule I and reclassifies the substances as "other substances" under schedule I. By transferring the substances to "other substances", a person commits a class "C" felony under Code section 124.401(1)(c)(8) if the violation involves such a substance. Under current law, a person commits an aggravated misdemeanor under Code section 124.401(1)(d) when committing such violations.

The bill adds new substances as "hallucinogenic substances" under schedule I. A person commits a class "C" felony under Code section 124.401(1)(c)(8) if the violation involves the new hallucinogenic substances.

The bill adds new substances as "stimulants" under schedule I. A person commits a class "C" felony under Code section 124.401(1)(c)(8) if the violation involves the new stimulant substances.

The bill also adds new substances to the classification of "other substances" under schedule I. A person commits a class "C" felony under Code section 124.401(1)(c)(8) for a violation involving the new substances.

The bill strikes one substance classified as a "hallucinogenic substance" under schedule I and reclassifies the substance as a "stimulant" containing a synthetic cathinone under schedule I. The transfer of the substance within schedule I also changes the criminal penalty for a violation involving the substance from a class "C" felony under Code section 124.401(1)(c)(8) to an aggravated misdemeanor under Code section 124.401(1)(d). The bill also strikes a substance in Code section 124.204(6)(i)(3) from schedule I and does not reclassify the substance in any other substance schedule.

The bill also removes numerous substances from schedule I which are currently classified as "stimulants" in Code section 124.204(6)(i).

The bill also strikes two narcotic substances from schedule III and adds three substances to schedule IV. A violation involving a schedule IV controlled substance is punishable as an aggravated misdemeanor in Code section 124.401(1)(d).

Senate File 484--Medical cannabis

This bill creates the medical cannabis Act and provides for civil and criminal penalties and fees.

OVERVIEW. The bill allows a patient with a debilitating medical condition who receives written certification from the patient's health care practitioner that the patient has a debilitating medical condition and who submits the written certification along with an application to the department of public health (department) for a medical cannabis registration card to allow for the lawful use of medical cannabis to treat the patient's debilitating medical condition. A patient who is issued a medical cannabis registration card will be able to receive medical cannabis directly from a licensed medical cannabis dispensary in this state.

DEFINITIONS. The bill provides the following definitions:

"Debilitating medical condition" means cancer; multiple sclerosis; epilepsy; AIDS or HIV; glaucoma; hepatitis C; Crohn's disease or ulcerative colitis; amyotrophic lateral sclerosis; Ehlers-danlos syndrome; post-traumatic stress disorder; severe, chronic pain caused by an underlying medical condition that is not responsive to conventional treatment or conventional treatment that produces debilitating side effects; and any other chronic or debilitating disease or medical condition or its medical treatment approved by the department by rule.

"Health care practitioner" means an individual licensed under Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, a physician assistant licensed under Code chapter 148C, or an advanced registered nurse practitioner licensed pursuant to Code chapter 152 or 152E.

"Medical cannabis" means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins.

"Medical cannabis dispensary" means an entity licensed under the bill that acquires medical cannabis from a medical cannabis manufacturer in this state for the purpose of dispensing medical cannabis in this state pursuant to the provisions of the bill.

"Medical cannabis manufacturer" means an entity licensed by the department to manufacture and to possess, cultivate, transport, or supply medical cannabis pursuant to the provisions of the bill.

"Primary caregiver" means a person, at least 18 years of age,

who has been designated by a patient's health care practitioner or a person having custody of a patient, as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabis pursuant to the bill.

"Written certification" means a document signed by a health care practitioner, with whom the patient has established a patient-provider relationship, which states that the patient has a debilitating medical condition and provides any other relevant information.

HEALTH CARE PRACTITIONER CERTIFICATION. The bill provides that prior to a patient's submission of an application for a medical cannabis registration card, if a health care practitioner determines that the patient whom the health care practitioner has examined and treated suffers from a debilitating medical condition, the health care practitioner may provide the patient with a written certification of that diagnosis. If the health care practitioner provides the written certification, the practitioner must also provide explanatory information to the patient about the therapeutic use of medical cannabis, and if the patient continues to suffer from a debilitating medical condition, issue the patient a new certification of that diagnosis on an annual basis.

MEDICAL CANNABIS REGISTRATION CARD —— PATIENT AND PRIMARY CAREGIVER. The department may approve the issuance of a medical cannabis registration card by the department of transportation to a patient who is at least 18 years of age and is a permanent resident of this state, who submits a written certification by the patient's health care practitioner to the department, who submits an application to the department of public health with certain information, and who submits a registration card fee to the department. The department of public health may also approve the issuance of a medical cannabis registration card by the department of transportation to a primary caregiver who is at least 18 years of age, who submits a written certification by the patient's health care practitioner to the department on behalf of the patient, and submits an application to the department with certain information. A medical cannabis registration card expires one year after the date of issuance and may be renewed.

MEDICAL ADVISORY BOARD. The director of public health is directed to establish a medical advisory board, no later than August 15, 2015, to consist of eight practitioners representing the fields of neurology, pain management, gastroenterology, oncology, psychiatry, infectious disease, family medicine, and pharmacy, and three patients with valid medical cannabis registration cards. The practitioners shall be nationally board-

certified in their area of specialty and knowledgeable about the use of medical cannabis. The duties of the board include reviewing and recommending to the department for approval additional chronic or debilitating diseases or medical conditions or their treatments as debilitating medical conditions that qualify for the use of medical cannabis under the bill, accepting and reviewing petitions to add chronic or debilitating diseases or medical conditions or their treatments to the list of debilitating medical conditions that qualify for the use of medical cannabis under the bill, and advising the department regarding the location of medical cannabis dispensaries, the form and quantity of allowable medical cannabis to be dispensed to a patient or primary caregiver, and the general oversight of medical cannabis manufacturers and medical cannabis dispensaries.

MEDICAL CANNABIS MANUFACTURER LICENSURE. The bill requires the department to license four medical cannabis manufacturers for the manufacture of medical cannabis within this state by December 1, 2015, and to license new medical cannabis manufacturers or relicense existing medical cannabis manufacturers by December 1 of each year. Information submitted during the application process is confidential until the medical cannabis manufacturer is licensed by the department unless otherwise protected from disclosure under state or federal law. As a condition for licensure, a medical cannabis manufacturer must agree to begin supplying medical cannabis to medical cannabis dispensaries in this state by July 1, 2016. The department is directed to consider several factors in determining whether to license a medical cannabis manufacturer including technical expertise, employee qualifications, financial stability, security measures, and production needs and capacity. Each medical cannabis manufacturer is required to contract with the state hygienic laboratory at the university of Iowa to test the medical cannabis produced by the manufacturer and to report testing results to the medical cannabis manufacturer. Each entity submitting an application for licensure shall pay a nonrefundable application fee of $7,500.

MEDICAL CANNABIS MANUFACTURERS. The bill provides that operating documents of a medical cannabis manufacturer shall include procedures for oversight and recordkeeping activities of the medical cannabis manufacturer and security measures undertaken by the medical cannabis manufacturer. A medical cannabis manufacturer is prohibited from sharing office space with, referring patients to, or having a financial relationship with a health care practitioner; permitting any person to consume medical cannabis on the property of the medical cannabis manufacturer; employing a person who is under 18 years of age or

who has been convicted of a disqualifying felony offense; and from operating in any location, whether for dispensing or for manufacturing, cultivating, harvesting, packaging, and processing, within 1,000 feet of a public or private school existing before the date of the medical cannabis manufacturer's licensure. A medical cannabis manufacturer shall be subject to reasonable inspection and shall be subject to reasonable restrictions relating to signage, marketing, display, and advertising of the medical cannabis.

A medical cannabis manufacturer is required to provide a reliable and ongoing supply of medical cannabis to medical cannabis dispensaries pursuant to the provisions of the bill, and all manufacturing, cultivating, harvesting, packaging, and processing of medical cannabis is required to take place in an enclosed, locked facility at a physical address provided to the department during the licensure process.

MEDICAL CANNABIS DISPENSARIES. The bill requires the department to license by April 1, 2016, 12 medical cannabis dispensaries to dispense medical cannabis within this state consistent with the provisions of the bill. The department is required to license new medical cannabis dispensaries or relicense the existing medical cannabis manufacturers by December 1 of each year. Information submitted during the application process shall be confidential until the medical cannabis dispensary is licensed by the department unless otherwise protected from disclosure under state or federal law. As a condition for licensure, a medical cannabis dispensary must agree to begin supplying medical cannabis to patients by July 1, 2016.

The department is directed to consider several factors in determining whether to license a medical cannabis dispensary including technical expertise, employee qualifications, financial stability, security measures, and the projection and ongoing assessment of fees for the purchase of medical cannabis on patients with debilitating medical conditions. Each entity submitting an application for licensure shall pay a nonrefundable application fee of five thousand dollars to the department.

The bill provides that medical cannabis dispensaries shall be located based on geographical need throughout the state to improve patient access. A medical cannabis dispensary may dispense medical cannabis pursuant to the provisions of this chapter but shall not dispense any medical cannabis in a form or quantity other than the form or quantity allowed by the department pursuant to rule. The operating documents of a medical cannabis dispensary shall include procedures for the oversight and record keeping activities of the medical cannabis

dispensary and security measures undertaken by the medical cannabis dispensary to deter and prevent the theft of medical cannabis and unauthorized entrance into areas containing medical cannabis. A medical cannabis dispensary is prohibited from sharing office space with, referring patients to, or having any financial relationship with a health care practitioner; permitting any person to consume medical cannabis on the property of the medical cannabis dispensary; employing a person who is under eighteen years of age or who has been convicted of a disqualifying felony offense; and from operating in any location within 1,000 feet of a public or private school existing before the date of the medical cannabis dispensary's licensure by the department. A medical cannabis dispensary shall be subject to reasonable inspection and to reasonable restrictions set by the department relating to signage, marketing, display, and advertising of medical cannabis.

Prior to dispensing of any medical cannabis, a medical cannabis dispensary is required to verify that the medical cannabis dispensary has received a valid medical cannabis registration card from a patient or a patient's primary caregiver, if applicable, assign a tracking number to any medical cannabis dispensed from the medical cannabis dispensary and follow proper packaging procedures in compliance with federal law.

FEES. Medical cannabis registration card fees and medical cannabis manufacturer and medical cannabis dispensary application and annual fees collected by the department pursuant to this chapter shall be retained by the department, shall be considered repayment receipts as defined in Code section 8.2, and shall be used for the purpose of regulating medical cannabis manufacturers and medical cannabis dispensaries and for other expenses necessary for the administration of this Code chapter.

CONFIDENTIALITY. The department is required to maintain a confidential file of the names of each patient and primary caregiver issued a medical cannabis registration card. Individual names contained in the file shall be confidential and shall not be subject to disclosure, except that information in the confidential file may be released on an individual basis to authorized employees or agents of the department, the department of transportation, and a medical cannabis dispensary as necessary to perform their duties and to authorized employees of state or local law enforcement agencies for the purpose of verifying that a person is lawfully in possession of a medical cannabis registration card. Release of information must also be consistent with federal Health Insurance Portability and Accountability Act regulations.

ADDITIONAL DEPARTMENT DUTIES —— RULES. The bill requires the

department to adopt rules relating to the manner in which the department shall consider applications for new and renewal medical cannabis registration cards, identify criteria and set forth procedures for including additional chronic or debilitating diseases or medical conditions or their medical treatments on the list of debilitating medical conditions, establish the form and quantity of medical cannabis allowed to be dispensed to a patient or primary caregiver in the form and quantity appropriate to serve the medical needs of the patient with the debilitating medical condition, establish requirements for the licensure of medical cannabis manufacturers and medical cannabis dispensaries, develop a dispensing system for medical cannabis within this state that follows certain requirements, establish and collect annual fees from medical cannabis manufacturers and medical cannabis dispensaries to cover the costs associated with regulating and inspecting medical cannabis manufacturers and medical cannabis dispensaries, and specify and implement procedures that address public safety including security procedures and product quality, safety, and labeling.

RECIPROCITY. The bill provides that a valid medical cannabis registration card, or its equivalent, issued under the laws of another state that allows an out-of-state patient to possess or use medical cannabis in the jurisdiction of issuance shall have the same force and effect as a valid medical cannabis card issued under the bill, except that an out-of-state patient in this state shall not obtain medical cannabis from a medical cannabis dispensary in this state.

USE OF MEDICAL CANNABIS —— SMOKING PROHIBITED. The bill provides that a patient shall not consume the medical cannabis by smoking the medical cannabis.

USE OF MEDICAL CANNABIS —— AFFIRMATIVE DEFENSES. The bill provides prosecution immunity for a health care practitioner, a medical cannabis manufacturer, and a medical cannabis dispensary, including any authorized agents or employees of the health care practitioner, medical cannabis manufacturer, and medical cannabis dispensary, for activities undertaken by the health care practitioner, medical cannabis manufacturer, and medical cannabis dispensary pursuant to the provisions of the bill.

The bill provides that in a prosecution for the unlawful possession of marijuana under the laws of this state, including but not limited to Code chapters 124 (controlled substances) and 453B (excise tax on unlawful dealing in certain substances), it is an affirmative and complete defense to the prosecution that the patient has been diagnosed with a debilitating medical condition, used or possessed medical cannabis pursuant to a certification by a health care practitioner, and, for a patient

age 18 or older, is in possession of a valid medical cannabis registration card. The bill provides a similar affirmative defense for a primary caretaker of a patient who has been diagnosed with a debilitating medical condition who is in possession of a valid medical cannabis registration card, and where the primary caregiver's possession of the medical cannabis is on behalf of the patient and for the patient's use only.

The bill amends Code section 124.401, relating to prohibited acts involving controlled substances, to provide that it is lawful for a person to knowingly or intentionally recommend, possess, use, dispense, deliver, transport, or administer medical cannabis if the recommendation, possession, use, dispensing, delivery, transporting, or administering is in accordance with the provisions of the bill.

The bill provides that an agency of this state or a political subdivision thereof, including any law enforcement agency, shall not remove or initiate proceedings to remove a patient under the age of 18 from the home of a parent based solely upon the parent's or patient's possession or use of medical cannabis as authorized under the bill.

PENALTIES. The bill provides that a person who knowingly or intentionally possesses or uses medical cannabis in violation of the requirements of the bill is subject to the penalties provided under Code chapters 124 and 453B. In addition, a medical cannabis manufacturer or a medical cannabis dispensary shall be assessed a civil penalty of up to $1,000 per violation for any violation of the bill in addition to any other applicable penalties.

EMERGENCY RULES. The bill provides that the department may adopt emergency rules and the rules shall be effective immediately upon filing unless a later date is specified in the rules.

TRANSITION PROVISIONS. The bill provides that a medical cannabis registration card issued under Code chapter 124D (medical cannabidiol Act) prior to July 1, 2015, shall remain effective and continues in effect as issued for the 12-month period following its issuance.

REPORTS. The bill requires the university of Iowa Carver college of medicine and college of pharmacy to, on or before July 1 of each year, beginning July 1, 2016, submit a report detailing the scientific literature, studies, and clinical trials regarding the use of medical cannabis on patients diagnosed with debilitating medical conditions as defined in the bill to the department of public health and the general assembly.

REPEAL. The bill repeals Code chapter 124D, the medical cannabidiol Act.