

Stamp of Disapproval: An Analysis of Iowa’s Drug Tax Stamp Law

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ABSTRACT: As the opioid epidemic rages on, fentanyl infiltrates our borders, and drug use and trafficking increases, Iowa is utilizing various methods to combat these growing concerns. However, some of these methods are inefficient and ineffective, branding individuals as felons and forcing them to pay enormous fines. This Essay analyzes Iowa’s chapter 453B, “Excise Tax on Unlawful Dealing in Certain Substances,” and argues the statutory scheme is unsuccessful in deterring the sale of illegal drugs. Through highlighting several of chapter 453B’s weaknesses, this Essay paints a comprehensive picture of how the drug tax stamp law fails in application, provides minimal deterrence, and raises scant revenue. Instead, this Essay argues that Iowa should either repeal the law entirely, or in the event chapter 453B must remain on Iowa’s books, Iowa should amend the drug tax stamp law to funnel the dollars it does generate to alternative substance-use treatment and rehabilitation programs.

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INTRODUCTION

Ranking thirty-fifth nationally in illicit drug use,¹ Iowa appears to have a grip on the illegal drug market. However, with the opioid epidemic claiming lives every day,² fentanyl streaming into the country,³ and drug use skyrocketing since the COVID-19 pandemic,⁴ addressing and attacking the illicit drug trade is a national concern. Iowa aims to combat this problem through several alternative programs to help educate the youth and treat and rehabilitate drug-related offenders.⁵ But within its drug-detering scheme, Iowa enforces a peculiar, decades-old law. Chapter 453B, titled, “Excise Tax on Unlawful Dealing in Certain Substances,” provides a unique statutory design to discourage unwanted behavior.⁶ The law requires drug dealers to purchase a

1. *Drug Information*, IOWA DEP’T PUB. SAFETY, <https://dps.iowa.gov/bureaus-iowa-department-public-safety/iowa-office-drug-control-policy/drug-information> [<https://perma.cc/WY26-M3N5>].

2. *See Understanding the Opioid Overdose Epidemic*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION (June 9, 2025), <https://www.cdc.gov/overdose-prevention/about/understanding-the-opioid-overdose-epidemic.html> [<https://perma.cc/YMW7-D5J6>] (“Approximately 105,000 people died from drug overdose in 2023 and nearly 80,000 of those deaths involved opioids (about 76%).”).

3. *See Facts About Fentanyl*, U.S. DRUG ENF’T ADMIN., <https://www.dea.gov/resources/facts-about-fentanyl> [<https://perma.cc/G9KR-QBLS>] (“Illicit fentanyl, primarily manufactured in foreign clandestine labs and smuggled into the United States through Mexico, is being distributed across the country and sold on the illegal drug market.”).

4. *See Ashley Abramson, Substance Use During the Pandemic*, AM. PSYCH. ASS’N (Mar. 1, 2021), <https://www.apa.org/monitor/2021/03/substance-use-pandemic> [<https://perma.cc/5YTN-FR3G>] (discussing how a “misuse of opioids and stimulants is . . . on the rise” with an initial increase of eighteen percent in overdoses during the first few months of the pandemic).

5. *See IOWA DEP’T PUB. SAFETY, OFF. DRUG CONTROL POL’Y, IOWA DRUG CONTROL STRATEGY & DRUG USE PROFILE 7–8* (2024), <https://dps.iowa.gov/media/321/download?inline> [<https://perma.cc/4CY2-ERS2>] (discussing various goals Iowa has in combatting drug use and possession in Iowa).

6. *See IOWA CODE* § 435B (2025).

stamp to affix to the controlled substances they are selling.⁷ With the purchase of the stamp, the drug dealer also pays a tax.⁸ If a dealer is caught selling drugs without the requisite stamp, the dealer faces both criminal charges and monetary fines.⁹ Through requiring the purchasing of the stamp and payment of the tax, chapter 453B is designed to make drug dealing an unattractive practice, thereby curbing the sale of illegal drugs.¹⁰

Yet, with the growing concerns surrounding drug use, drug trafficking, and incarceration,¹¹ the current substance-use landscape furnishes an opportunity to address the effectiveness of chapter 453B in diminishing the illegal drug market. This Essay argues that chapter 453B is an unsuccessful attempt to deter the sale of illegal drugs. Part I provides a comprehensive overview of taxing illegal activity in the United States and addresses chapter 453B's statutory structure. Part II reveals several reasons why chapter 453B fails, including the State's conflict of interest in enforcing the law and recent data that demonstrates taxing illegal substances is ineffective. Finally, Part III proposes that Iowa repeal chapter 453B. In the event the State chooses not to, Part III also suggests Iowa should amend chapter 453B to funnel the limited revenue the statute generates toward drug-related treatment programs and alternative incarceration methods.

I. TAXING ILLEGAL ACTIVITY: THE ORIGINS

Though taxing illegal activity is considered a novel and profound deterrence mechanism, state and local governments have been taxing illegal activity to indirectly regulate and hinder undesirable behaviors for nearly a century.¹² However, this method has faced countless constitutional challenges, rendering a number of the taxes invalid. To better understand how and why governing bodies choose to regulate undesirable activities in this manner, discussing various excise tax schemes is necessary. Accordingly, Section I.A proceeds by describing a brief history of excise taxes on illegal substances and how they have evolved over time. Then, Section I.B narrows its focus on Iowa's drug tax stamp law and its structure.

7. *See id.* § 453B.3.

8. *See id.*

9. *See id.* § 453B.12.

10. *See* Paul Swinton, *Iowa Stamps on Drugs: A Constitutional Analysis of Iowa Code Chapter 453B*, 44 *DRAKE L. REV.* 81, 82 (1995) (noting the purpose of chapter 453B is to "mak[e] drug dealing an even more unattractive endeavor").

11. *See* ADAM GELB ET AL., *MORE IMPRISONMENT DOES NOT REDUCE STATE DRUG PROBLEMS* 5 (2018), https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf [<https://perma.cc/8KTQ-ZXRS>].

12. *See* *United States v. Sullivan*, 274 U.S. 259, 264 (1927) (establishing the constitutionality of taxing income derived from illegal activity).

A. A BRIEF HISTORY

In 1927, the Supreme Court in *United States v. Sullivan* established that taxing illegal activity is constitutional.¹³ In the thick of the National Prohibition Act era, Manly S. Sullivan refused to file his tax return because a significant portion of his income was derived from selling alcohol.¹⁴ The Fourth Circuit Court of Appeals found that though Sullivan received the majority of his income from illegal activity, it was still subject to the income tax. However, he was not required to file a tax return because it would violate his Fifth Amendment right against self-incrimination.¹⁵ Reversing the court of appeals' decision, the U.S. Supreme Court held that reporting income from illegal activity on a tax return does not violate the Fifth Amendment because "[i]t would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime."¹⁶

However, the Court—though still recognizing taxing illegal activity as a constitutional tool—acknowledged Fifth Amendment protections for taxing illegal activity in a series of cases during the 1960s. During this time period, wagering was an unlawful activity both federally and locally.¹⁷ The federal wagering statutes imposed excise taxes on the gross income received from accepting wagers.¹⁸ To comply with the statute, individuals engaged in the business of wagering had to register to pay the occupational tax by completing a form that required disclosure of their names and addresses.¹⁹ Additionally, the statute required the placement of stamps at each business—or if no place of business, to keep the stamp with each individual—evincing payment of the occupational tax.²⁰ Such information was readily available to any state or local law enforcement upon request to assist in enforcing the criminal penalties if a business did not comply with the occupational tax requirements.²¹

This statute was precisely the statute at issue in *Marchetti v. United States*, where the petitioner was charged with failing to both register and pay the

13. *Id.* at 263–64.

14. *Id.* at 263.

15. *Id.* at 263; *see also* U.S. CONST. amend. V (“No person . . . shall be compelled in any criminal case to be a witness against himself.”).

16. *Sullivan*, 274 U.S. at 263–64 (“We see no reason . . . why the fact that a business is unlawful should exempt it from paying the taxes that if lawful it would have to pay.”).

17. *See Marchetti v. United States*, 390 U.S. 39, 44, 47 (1968) (“[W]agering is ‘an area permeated with criminal statutes,’ and those engaged in wagering are a group ‘inherently suspect of criminal activities.’” (quoting *Albertson v. Subversive Activities Control Bd.*, 382 U.S. 70, 79 (1965))).

18. *Id.* at 42.

19. *Id.* at 42–43.

20. *Id.* at 43.

21. *Id.* at 42, 47.

required wagering tax, thereby committing tax evasion.²² Distinguishing the case from *Sullivan*, the Court contended that the federal wagering tax violated the petitioner's Fifth Amendment rights.²³ Despite the Court determining that individuals could assert their Fifth Amendment right in these cases, it still held that the statute itself was constitutional,²⁴ acknowledging that imposing restrictions on obtaining information to facilitate prosecuting those engaged in unlawful wagering fell outside the Court's duty.²⁵

The same day the Court handed down *Marchetti*, it reaffirmed its holding in *Grosso v. United States*.²⁶ Under similar facts, the Court reiterated the wagering tax statute forced petitioner "on pain of criminal prosecution, to provide information which would readily incriminate him, and which he may [have] reasonably expect[ed] would be provided to prosecuting authorities."²⁷

One year later, in 1969, the Court decided *Leary v. United States*.²⁸ Perhaps the earliest form of drug tax stamp laws, Congress enacted the Marihuana Tax Act of 1937 ("Marihuana Tax Act") just ten years after the Court delivered *Sullivan*.²⁹ The Marihuana Tax Act regulated the importation, cultivation, and distribution of marijuana.³⁰ At the time, marijuana had not been criminalized due to its medicinal uses, but "[a]s the political climate changed," officials sought to prohibit its recreational use by imposing a tax that would make both transferring and using marijuana an undesirable activity.³¹ Thus, the Marihuana Tax Act required those importing marijuana to register and pay a transfer tax.³² In exchange, the revenue collector would affix a stamp to each order form, effectively accounting for the paid tax.³³ Anyone "dealing" in marijuana was

22. *Id.* at 40–41.

23. *Id.* at 49.

24. *Id.* at 69 ("We emphasize that we do not hold that these wagering tax provisions are as such constitutionally impermissible; we hold only that those who properly assert the constitutional privilege . . . may not be criminally punished . . .").

25. *Id.* at 58–60.

26. *Grosso v. United States*, 390 U.S. 62, 63 (1968).

27. *Id.* at 66–67.

28. *See Leary v. United States*, 395 U.S. 6, 6 (1969).

29. *See Did You Know... Marijuana Was Once a Legal Cross-Border Import?*, U.S. CUSTOMS & BORDER PROT., (Dec. 20, 2019), <https://www.cbp.gov/about/history/did-you-know/marijuana> [<https://perma.cc/BP95-TTF7>].

30. *Id.*

31. *Id.*; *see also Leary*, 395 U.S. at 22–23 (stating that testimony indicated that the transfer provisions were "to discourage the widespread use of the drug" and "prevent transfers to persons who would use marihuana for undesirable purposes" (quoting *Hearings on H.R. 6906 Before a Subcomm. of the S. Comm. on Fin.*, 75th Cong., 1st Sess., 5 (1937) (statement of Clinton Hester, Assistant General Counsel, Treasury Department))).

32. *Did You Know... Marijuana Was Once a Legal Cross-Border Import?*, *supra* note 29; *see also Leary*, 395 U.S. at 14 (describing the provision's requirements).

33. *Did You Know... Marijuana Was Once a Legal Cross-Border Import?*, *supra* note 29.

also subject to a yearly occupational tax.³⁴ If an individual violated the Act, they faced at most a two-thousand dollar fine and a five-year prison sentence.³⁵

Challenging the constitutionality of the Marihuana Tax Act, the petitioner in *Leary* was charged with evading the statute's tax requirements when he attempted to smuggle marijuana across the U.S.-Mexico border.³⁶ To comply with the statute and pay the required tax, individuals were required to supply their name and address along with "the quantity of marihuana transferred."³⁷ Once an individual supplied the necessary personal information, law enforcement could access it.³⁸ Obviously fearing self-incrimination, the petitioner did not complete the required order form.³⁹ The Supreme Court, following its precedent set in both *Marchetti* and *Grosso*, determined the Marihuana Tax Act would "entail[] a very substantial risk of self-incrimination" for individuals and, therefore, declared the Act unconstitutional.⁴⁰

As this Section illustrates, taxing illegal activity—including illegal substances—has been a method used by legislative forces for quite some time. Shortly after repealing the Marihuana Tax Act, states began imposing their own excise taxes on illegal substances, jumpstarting a wave of locally imposed methods to regulate and deter the sale of illegal drugs.⁴¹

B. STATE DRUG TAX STAMP LAWS

This Section presents the general statutory structure of these drug tax stamp laws. Section I.B.1 will provide an overview of current state statutes that impose excise taxes on illegal substances. Then, Section I.B.2 narrows its focus to Iowa's drug tax stamp law, outlining its statutory structure and provisions.

1. General Statutory Structure

After the Marihuana Tax Act was repealed, President Richard Nixon launched the War on Drugs, and the United States adopted a mindset that "drug abuse [was] 'public enemy number one.'"⁴² During this time, the Internal Revenue Service engaged in "drug based investigations which . . . increase[d]

34. *Leary*, 395 U.S. at 14.

35. *Did You Know... Marijuana Was Once a Legal Cross-Border Import?*, *supra* note 29.

36. *Leary*, 395 U.S. at 11.

37. *Id.* at 15.

38. *Id.*

39. *See id.* at 16 ("Petitioner had ample reason to fear that transmittal to such officials of the fact that he was a recent, unregistered transferee of marihuana 'would surely prove a significant 'link in a chain' of evidence tending to establish his guilt' under the state marihuana laws then in effect." (footnote omitted) (quoting *Marchetti v. United States*, 390 U.S. 39, 48 (1968))).

40. *Id.* at 26.

41. *See* Frank A. Racaniello, *State Drug Taxes: A Tax We Can't Afford*, 23 RUTGERS L.J. 657, 660–61 (1992) (discussing when states began adopting excise taxes on controlled substances).

42. *See War on Drugs*, BRITANNICA (Dec. 8, 2025), <https://www.britannica.com/topic/war-on-drugs> [https://perma.cc/KN75-4GLB].

... prosecutions of drug dealers on tax evasion charges.”⁴³ At the state level, legislatures began passing laws that imposed excise taxes on controlled substances—“a weapon in the War on Drugs”—because they “offer[ed] . . . another means of sanctioning people involved in the illegal drug trade.”⁴⁴ These laws were aimed toward raising revenue, collecting taxes from a highly-profitable industry that had been evading taxes, and most importantly, discouraging the sale of drugs.⁴⁵

Today, fourteen states still have operational drug tax stamp laws.⁴⁶ These laws generally follow the same concept: Illegal drug dealers must pay a tax and purchase stamps to affix to their controlled substances.⁴⁷ Accordingly, the stamps evince payment of the tax.⁴⁸ The tax rates generally depend on the weight or amount of substance a dealer is looking to sell.⁴⁹ For example, in Alabama, each gram of marijuana is taxed at a rate of \$3.50.⁵⁰ A gram or less of a controlled substance is taxed at a rate of \$200.⁵¹ And any controlled substance not sold by weight is taxed at a rate of \$2,000 for each “50 dosage units . . . or portion thereof.”⁵² Generally, if a dealer is caught by law enforcement without having paid the tax and affixing the stamps to the illegal substances, they often face a prison sentence and a hefty fine on top of their criminal charges associated with dealing the substance.⁵³

43. Racaniello, *supra* note 41, at 661.

44. Hayes R. Holderness, *Crack Taxes and the Dangers of Insidious Regulatory Taxes*, 95 S. CAL. L. REV. 483, 491 (2021).

45. *Id.*

46. ALA. CODE §§ 40-17A-1 to 40-17A-16 (2025); GA. CODE ANN. §§ 48-15-1 to 48-15-11 (2025); IDAHO CODE §§ 63-4201 to 63-4211 (2025); IND. CODE §§ 6-7-3-1 to 6-7-3-20 (2025); IOWA CODE §§ 435B.1-435B.18 (2025); KAN. STAT. ANN. §§ 79-5201 to 79-5212 (2025); LA. STAT. ANN. §§ 47:2601-47:2610 (2025); NEB. REV. STAT. §§ 77-4301 to 77-4316 (2025); NEV. REV. STAT. §§ 372A.060-372A.130 (2025); N.C. GEN. STAT. §§ 105-113.105 to 105-113.113 (2025); OKLA. STAT. tit. 68, §§ 450.1-450.9 (2025); 44 R.I. GEN. LAWS §§ 44-49.1 to 44-49.16 (2025); S.C. CODE ANN. §§ 12-21-5010 to 12-21-6050 (2025); TENN. CODE ANN. §§ 67-4-2801 to 67-4-2811 (2025).

47. *See, e.g.*, N.C. GEN. STAT. § 105-113.108 (“The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article.”); 44 R.I. GEN. LAWS § 44-49-5 (“No dealer may possess any controlled substance upon which a tax is imposed under this chapter unless the tax has been paid on a controlled substance as evidenced by a stamp or other official indicia.”). *But see, e.g.*, GA. CODE ANN. § 48-15-3 (requiring only payment of tax, but no affixing of stamps); IND. CODE § 6-7-3-10 (same).

48. *See, e.g.*, 44 R.I. GEN. LAWS § 44-49-5.

49. *See, e.g.*, ALA. CODE § 40-17A-7 (“[A]n amount of marihuana or other controlled substance is measured by the weight of the substance or by number of dosage units in the dealer’s possession.”); N.C. GEN. STAT. § 105-113.107 (“A quantity of marijuana or other controlled substance is measured by the weight of the substance . . .”).

50. ALA. CODE § 40-17A-8.

51. *Id.*

52. *Id.*

53. *See, e.g., id.* § 40-17A-9 (“Any dealer violating this chapter is subject to a penalty of [one hundred] percent of the tax in addition to the tax imposed . . . [and] a dealer failing to affix the appropriate stamps . . . is guilty of a Class C felony.”); Holderness, *supra* note 44, at 492.

States use the generated revenue—both from compliance and non-compliance with the law—in a variety of ways. For example, Oklahoma uses the revenue generated from its excise tax on controlled substances for its “Drug Abuse Education Revolving Fund,”⁵⁴ which funnels monies toward substance-use education and prevention.⁵⁵ Similarly, North Carolina places its revenue in its “General Fund,” which is accessible by state and local law enforcement agencies.⁵⁶

Although some states generate a large amount of revenue from these laws,⁵⁷ other states hardly generate any.⁵⁸ Such revenue disparities across the country can likely be attributed to general noncompliance and variations in how heavily these laws are imposed.⁵⁹ Noncompliance with these laws is rooted in an array of reasons, including high costs of purchasing the stamps, illegal drug dealers’ desires to keep their activity hidden, and perhaps simply an unawareness of the existence of these required taxes.⁶⁰ Still, noncompliance likely comprises most of the revenue generated from these taxes, requiring state and local law enforcement to properly apprehend individuals before the tax can be collected.⁶¹

2. Iowa’s Drug Tax Stamp Law—Chapter 453B

Titled “Excise Tax on Unlawful Dealing in Certain Substances,”⁶² chapter 453B was enacted in 1990 originally under chapter 421A.⁶³ The law seeks to deter the sale of illegal drugs by “making drug dealing an even more unattractive endeavor” by taxing the profits earned from engaging in the unlawful business.⁶⁴ Similar to other states’ drug tax stamp laws, chapter 453B

54. OKLA. STAT. tit. 68, § 450.7 (2025).

55. *Id.* tit. 63, § 2-417.

56. N.C. GEN. STAT. § 105-113 (2025).

57. *See, e.g.*, TAX PROCESSING, RSCH. & EQUITY DIV., N.C. DEP’T OF REVENUE, STATISTICAL ABSTRACT OF NORTH CAROLINA TAXES 33 tbl.15 (2023), <https://www.ncdor.gov/documents/reports/statistical-abstract-north-carolina-taxes-2023/open> [<https://perma.cc/5W8N-DGR4>] (generating \$8,986,750 in gross revenue from the Unauthorized Substance Tax).

58. *See, e.g.*, IDAHO STATE TAX COMM’N, ANNUAL REPORT 11 (2023), https://tax.idaho.gov/wp-content/uploads/reports/epb00033/EPB00033_05-24-2024.pdf [<https://perma.cc/E2S8-J4S2>] (depicting that, in fiscal year 2022, Idaho generated \$929 in tax revenue from its illegal drug tax).

59. *See* Holderness, *supra* note 44, at 495–96.

60. *See id.* at 496.

61. *See id.*; Robert E. Tomasson, 21 *States Imposing Drug Tax and Then Fining the Evaders*, N.Y. TIMES (Dec. 23, 1990), <https://www.nytimes.com/1990/12/23/us/21-states-imposing-drug-tax-and-then-fining-the-evaders.html> (on file with the *Iowa Law Review*) (“The states do not expect the dealers to pay the tax. Rather, the idea is to fine them much greater amounts for not paying the taxes if they are ever caught possessing or selling drugs.”).

62. IOWA CODE § 435B (2025).

63. *See* Swinton, *supra* note 10, at 83.

64. *Id.* at 82; *see also* State v. Gallup, 500 N.W.2d 437, 444–45 (Iowa 1993).

requires illegal drug dealers to pay an excise tax and purchase stamps to affix to their controlled substances.⁶⁵

The statute begins by outlining definitions used throughout the provisions.⁶⁶ For example, section 453B.1(3)(a) defines “Dealer” as “any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any [drugs].”⁶⁷ The provision proceeds to outline the quantity or amount of drugs a dealer must produce, transport, or possess in order to qualify for the excise tax:

- (1) Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.
- (2) Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.
- (3) One or more unprocessed marijuana plants.
- (4) Ten or more dosage units of a taxable substance which is not sold by weight.⁶⁸

Additionally, “each gram of processed marijuana, or each portion of a gram” is taxed at a rate of five dollars.⁶⁹ Thus, the statute appears to not apply to transporting, producing, or possessing less than the amount explicitly defined in these provisions.⁷⁰ The statute does, however, exempt lawful transporters, possessors, and producers of controlled substances.⁷¹

To purchase the stamps, individuals may either pay for them in person at the Iowa Department of Revenue (the “Department”), or they may fill out an order form to order the stamps by mail.⁷² Section 453B.10 provides that the information the Department obtains through stamp purchases cannot be revealed or used against the purchaser in a criminal proceeding.⁷³ Any Department employee who violates section 453B.10 “is guilty of a simple misdemeanor,”⁷⁴ or a maximum penalty of \$850.⁷⁵

65. IOWA CODE § 435B.

66. *Id.*

67. *Id.* § 435B.1(3)(a).

68. *Id.* § 453B.1(3)(a)(1)–(4).

69. *Id.* § 453B.7(1).

70. See Swinton, *supra* note 10, at 84.

71. IOWA CODE §§ 453B.1(3)(b), 453B.6.

72. See *Iowa Tax/Fee Descriptions and Rates*, IOWA DEP’T OF REVENUE, <https://revenue.iowa.gov/taxes/tax-guidance/general/iowa-taxfee-descriptions-and-rates> [<https://perma.cc/2G9X-6NH3>].

73. IOWA CODE § 453B.10.

74. *Id.*

75. *Id.* § 903.1(a).

Once the stamps are purchased, they must be immediately affixed to the controlled substances.⁷⁶ If a dealer does not pay the tax and purchase the stamps, they are “subject to [an additional] penalty equal to the amount of the tax” that the dealer failed to pay, including interest.⁷⁷ In other words, the dealer must pay more than double the amount of the initial tax they failed to pay.⁷⁸ Furthermore, the dealer is guilty of a class “D” felony for failing to pay the tax and affix the stamp.⁷⁹ A class “D” felony in Iowa results in a maximum prison sentence of five years in addition to a fine of at least \$1,025 but not exceeding \$10,245.⁸⁰ A violator cannot enjoin paying the amount due, but they can show the amount assessed is incorrect or invalid.⁸¹ Finally, violating chapter 453B results in only civil sanctions and does not preclude “a dealer from criminal prosecution”⁸² for essentially committing “the same act for which the dealer was prosecuted under chapter 453B.12.”⁸³

Like other states’ regulatory tax schemes, Iowa chooses to indirectly regulate undesirable activity and deter the sale of illegal drugs by imposing a tax on controlled substances. However, as this Part illustrated, this method is both complex and controversial, posing the question whether taxing undesirable activity is successful.

II. CHAPTER 453B DOES NOT DETER THE SALE OF ILLEGAL DRUGS

As previously discussed, taxing undesirable activity may be an innovative and nuanced approach to regulating behavior. However, chapter 453B in practice is ineffective. Therefore, this Essay analyzes chapter 453B to determine whether it has met its goals of deterring and punishing those who engage in the illicit drug trade. In doing so, this Part exposes the law’s critical weaknesses while discussing how those weaknesses play a role in conversations surrounding substance use and punishing drug dealers.

Accordingly, Section II.A exposes Iowa’s conflicting interests in applying chapter 435B. Section II.B contemplates whether imposing harsh monetary punishments effectively deters drug dealers from engaging in the trade, or if it instead perpetuates a vicious cycle, funneling those who engage in the trade for a source of income back into that system. Finally, Section II.C considers chapter 453B’s success by analyzing the revenue it generates and determining if the law successfully deters the sale of illegal drugs.

76. *Id.* § 453B.8.

77. *Id.* § 453B.12(1).

78. For example, if the requisite tax was \$250, and the dealer failed to purchase the stamp, the dealer would owe \$500 plus interest, which accounts for the unpaid tax and the penalty of one hundred percent of the original tax not paid.

79. IOWA CODE § 453B.12(2).

80. *Id.* § 902.9(1)(c).

81. *See id.* § 435B.9.

82. *Id.* § 435B.5.

83. Swinton, *supra* note 10, at 84.

A. CONFLICT OF INTEREST

Iowa enacted chapter 453B to deter the sale of illegal drugs through “making drug dealing an even more unattractive endeavor” by imposing taxes on certain illicit substances.⁸⁴ Through either purchasing stamps and paying the requisite tax, or failing to do so and facing hefty fines, the drug tax stamp law generates revenue that is “held in trust for the state of Iowa.”⁸⁵ Thus, in both compliance and noncompliance with the law, the State receives a cut from the illicit drug trade. In other words, Iowa profits from the same unlawful business it seeks to eliminate.

This Section analyzes chapter 453B, providing insight into public perceptions and how those perceptions fare when Iowa's interests are conflicting. Section II.A.1 breaks down chapter 453B's regulatory scheme and provides an analysis of how regulatory taxes function compared to direct criminal punishments. Then, Section II.A.2 explains how chapter 453B is a counter-majoritarian law—a law that the public likely does not favor—making it a weak statutory device.

1. Chapter 453B Is a Regulatory Tax

Categorized as a regulatory tax, one could argue that chapter 453B embodies a favorable legislative method of steering individuals away from an undesirable activity to avoid judicial scrutiny while simultaneously raising revenue.⁸⁶ To illustrate, a legislature might opt for imposing a tax on a specific behavior rather than directly regulating that behavior because it would face heightened judicial scrutiny.⁸⁷ Regulating behavior is thus baked into a law that is facially presented as a tax, bypassing more thorough judicial examination. Excise taxes on controlled substances fall squarely within this regulatory tax category because they indirectly regulate those engaging in the illicit drug trade and avoid judicial scrutiny on what would otherwise be criminal sanctions.⁸⁸

Though seemingly an ingenious method of targeting an undesirable activity, regulatory taxes and their implications often fly under the radar, hiding both overregulation and heightened costs.⁸⁹ For example, rather than simply imposing a law directly regulating certain behavior the legislature has identified as unacceptable, adopting a regulatory tax like a “controlled substance

84. *Id.* at 82; *see also* State v. Gallup, 500 N.W.2d 437, 44–45 (Iowa 1993).

85. IOWA CODE § 453B.3(4).

86. *See* Holderness, *supra* note 44, at 486 (discussing how “taxes will not face as much scrutiny from courts” because “[they] often employ a unique approach to analyzing tax laws”).

87. *See id.* (noting legislators have “use[d] taxes to achieve regulatory goals where other laws might receive more scrutiny from courts”).

88. *Id.* at 487 (“By adopting the taxes rather than increasing existing criminal sanctions, lawmakers impose punishment on those possessing and selling controlled substances without running up against legal protections for criminal defendants.”).

89. *See id.*

tax[] . . . impose[s] stealth costs on society because they are less effective.”⁹⁰ Instead of crafting new criminal sanctions for unwanted behavior or activity, legislatures that adopt regulatory taxes “opt[] for the less efficient route” which necessarily “increase[s] the costs of regulation.”⁹¹

But most importantly, these indirect regulatory schemes shelter the public from understanding how much “regulation that an activity is subject to.”⁹² In other words, beyond individuals that engage in the behavior that is subject to regulation, the rest of the public will likely remain unaware of such taxes.⁹³ Under this hidden regulatory regime, individuals engaging in the sale of illegal drugs might escape criminal convictions due to high standards of proof, yet still face sanctions for violating the drug tax stamp law.⁹⁴ And although this may seem fair because the “imposition of a tax nonetheless leaves an individual with a lawful choice to do or not to do a certain act,”⁹⁵ these clandestine regulatory taxes on controlled substances purposely circumvent the criminal justice system in exchange for lesser judicial scrutiny and potentially more money in the state’s pocket. That is, the state is deliberately choosing to avoid the more efficient tool of regulation—criminal sanctions—for the alternative method that is disguised from public view. And because most of the general public does not engage in the illicit drug trade, drug tax stamp laws prevent the public from understanding both the breadth and the cost of regulation, leaving the public blissfully unaware of a statutory device they might not agree with.⁹⁶

It might be true that the public favors laws like chapter 453B; however, the hidden nature of these regulatory taxes precludes the opportunity for public commentary. Conversations surrounding drug use both locally and nationally have become more prevalent, especially with the increase of fentanyl use and the opioid epidemic.⁹⁷ Those conversations have revealed that the

90. *Id.*

91. *Id.* at 510.

92. *Id.* at 487.

93. *Id.* at 511 (“[S]cholars [have] observe[d] that some type of taxes—particularly targeted regulatory taxes—draw less public attention, as people do not expect to be payors of the taxes.”).

94. *See id.* at 508.

95. *Id.* at 509 (quoting *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 574 (2012)).

96. *Id.* at 511 (noting that when “hidden taxes . . . obscure the ultimate cost and scope of government regulation of the taxed activity,” it leads to “the public’s [in]ability to evaluate and weigh in on the amount of regulation” thereby “undermining principles of representative democracy”).

97. Carmen Paun, *Everyone’s Tough on Drugs Again*, POLITICO (Oct. 27, 2024, 4:00 PM), <https://www.politico.com/news/2024/10/27/fentanyl-drugs-elections-00185576> [<https://perma.cc/F68F-KQUX>] (“Troubled by drug use, homelessness and crime, voters even in the country’s most progressive states favor cracking down [on drug use and trafficking].”); *see also* Rekha Basu, *Rekha Basu: A Record 470 Iowans Died of Overdoses Last Year. Some Iowans Helped Keep the Drugs Coming.*, DES MOINES REG. (Aug. 28, 2022, 7:41 AM), <https://www.desmoinesregister.com/story/opinion/columnists/rekha-basu/2022/08/28/iowa-drug-overdose-trend-fentanyl-meth/7892709001> [<https://perma.cc/K2KZ-25G7>] (“The sale of deadly drugs has skyrocketed in Iowa in the last decade.”).

public is less forgiving and understanding toward drug addicts and ultimately desire a strong solution to the drug problem.⁹⁸ Although the public's true perceptions of a tax on illegal substances is unknown, it can be presumed that the public is interested in utilizing efficient, cost-effective strategies to eliminate drugs and drug-related issues—everything regulatory taxes fail to do.⁹⁹

2. Chapter 453B Is a Countermajoritarian Law

Chapter 453B's design prevents having crucial conversations about the law and its regulatory scheme. Moreover, as established in the foregoing section, chapter 453B is an inefficient method of deterring the sale of illegal drugs when compared to its direct, regulatory counterpart.¹⁰⁰ And because the public favors strong, efficient methods of solving problems, it follows the public would likely disfavor chapter 453B if it had the opportunity to engage in meaningful discussions about the law.¹⁰¹

Thus, under the theory of countermajoritarian laws, chapter 453B stands on weak foundation. Laws that are countermajoritarian, or against the “will of the majority of the community,” are less desirable, especially when they identify behavior that is deemed punishable.¹⁰² Chapter 453B does identify behavior that is deemed punishable: engaging in the illicit drug market.¹⁰³ However, because chapter 453B embodies an inefficient and cost-inducing regulatory scheme that fails to deter the sale of illegal drugs, it follows that chapter 453B is a countermajoritarian law. In other words, because the manner

98. Paun, *supra* note 97 (discussing how there is “a hardening of the nation’s attitude toward addiction”); *see also* Riley Griffin, *Swing-State Voters Fixate on Fentanyl in US Presidential Race*, BLOOMBERG (Mar. 22, 2024, 5:00 AM), <https://www.bloomberg.com/news/newsletters/2024-03-22/fentanyl-crisis-emerges-as-key-issue-for-voters-in-us-presidential-race> [<https://perma.cc/Y7RW-PF26>] (describing how voters in swing states found “fentanyl misuse [as] a ‘very important’ or ‘somewhat important’ issue” in the recent 2024 election).

99. *See* Holderness, *supra* note 44, at 510; *see also* Lee Rood, *It’s True: Iowa Law Requires Dealers to First Pay Taxes Before Selling Illegal Drugs. But Is It Fair?*, DES MOINES REG. (June 13, 2019, 2:55 PM), <https://www.desmoinesregister.com/story/news/2019/06/12/illegal-drugs-iowa-crime-law-convictions-selling-drug-tax-stamps-meth-department-revenue/1416512001> [<https://perma.cc/SVZ7-E6HJ>] (“Several national polls now suggest most Americans feel the nation’s drug laws are too severe and its prisons are too full of nonviolent drug offenders.”).

100. *See supra* Section II.A.1.

101. Because the public desires strong, efficient methods of solving problems, and because chapter 453B falls into the regulatory taxes category (a category that is a round-a-bout and inefficient method of regulating undesirable behavior), it follows that the public would likely perceive the law as weak. *See* Michael L. Smith, *Countermajoritarian Criminal Law*, 43 PACE L. REV. 54, 66–67 (2022) (suggesting that “where laws are enacted through processes that are unrepresentative of the community, or where laws in place cannot be altered or stricken by majorities,” “a law no longer has majority support”).

102. *Id.* at 57, 62.

103. IOWA CODE § 453B.12 (2025) (imposing a class “D” felony for failure to affix a stamp to the necessary controlled substances).

by which chapter 453B aims to solve a societal problem is controversial, the law itself is unfavorable.¹⁰⁴

Additionally, Iowa's conflicting interests in a law that acts as both a deterrence measure and revenue generator further supports that chapter 453B is a countermajoritarian law. Because Iowa benefits from individuals complying with chapter 453B and paying the tax, it appears that the State has an interest in the illicit drug market itself. For example, if a drug dealer determines paying the requisite tax is justified to continue engaging in the illegal drug market, Iowa collects that revenue. Thus, Iowa is benefiting from the exact business it wishes to eradicate through chapter 453B's regulatory scheme, "signal[ing] government complicity in certain activities . . . [and] framing the activities as permissible if only one is willing to pay."¹⁰⁵ Therefore, with the added layer of Iowa's conflicting interest in a law already deemed undesirable because of its inefficiencies, it is plausible that the public—if aware of chapter 453B—would disfavor it, thereby making it a weak, countermajoritarian law.¹⁰⁶

B. A VICIOUS CYCLE

Because chapter 453B imposes harsh financial penalties, it forces offenders to continue selling drugs to pay those steep fines. Additionally, if convicted and labeled a felon, that individual loses important rights, like the right to vote, "loss of many job opportunities, [and the] loss of access to many forms of public housing and assistance including eligibility for student loans."¹⁰⁷ Thus, felons inherently face a difficult path to reintegrate into society, if they can even do so at all.¹⁰⁸ However, there are strong arguments that support punishing participating in the illegal drug trade because those who engage in dangerous and prohibited activity deserve tough repercussions.¹⁰⁹ And those repercussions serve a greater purpose than just apprehending an individual

104. It is important to note that this Essay does not suggest that the illegal drug trade should go unpunished. Rather, this Essay concedes that as an illegal activity, those who engage in dealing drugs should face some sort of retribution.

105. See Holderness, *supra* note 44, at 512.

106. See Smith, *supra* note 101, at 57, 62.

107. Joseph E. Kennedy, Isaac Unah & Kasi Wahlers, *Sharks and Minnows in the War on Drugs: A Study of Quantity, Race and Drug Type in Drug Arrests*, 52 U.C. DAVIS L. REV. 729, 759–60 (2018).

108. *Id.* at 774 ("To brand someone a felon is to greatly reduce the chance that the offender will ever successfully integrate his or herself back into the economic, political, and social life of their community.").

109. See JOSHUA DRESSLER & STEPHEN P. GARVEY, *CRIMINAL LAW: CASES AND MATERIALS* 34–35 (7th ed. 2015) ("[A] retributivist claims that punishment is justified because people deserve it," or in other words, "[T]he theory is backward looking: the justification for punishment is found in the prior wrongdoing."); see also Kennedy et al., *supra* note 107, at 765 (discussing arguments supporting the idea that "[t]he higher the dollar value of the quantity [of drugs], the greater the justification for serious punishment").

offender: Punishments function as deterrence measures.¹¹⁰ Still, such harsh penalties create an arduous road to reintegrating into society, forcing these individuals back into the drug trade to clear their name.

To illustrate, individuals dealing illegal drugs are motivated by the financial profit they stand to gain.¹¹¹ Although not the only reason, “financial survival and stability” incentivizes individuals to begin selling drugs, especially when it is the fastest method of generating any income.¹¹² Moreover, selling illicit substances can provide “unparalleled [income] to that of the legitimate [business] opportunities available,” incentivizing a further involvement in a lucrative, yet illegal, business.¹¹³ At the bare minimum, some of these individuals find themselves engrossed in the illicit drug trade because it furnishes a source of supplemental income, allowing individuals to further provide for themselves and their families.¹¹⁴

Still, steep monetary fines coupled with felony charges often provide for a much more arduous road to reintegrating into society. Considering those who are branded as felons lose significant rights and access to crucial portions of society,¹¹⁵ it follows that subjecting drug dealers to hefty fines serves to further incentivize engaging in the illicit drug trade. In other words, by imposing harsh penalties on individuals who likely turned to selling illegal drugs because of the trade's monetary incentives, these individuals are forced to find another source of income to pay their monetary fines—a task that is substantially more difficult when those opportunities are nearly nonexistent as a result of their felonious criminal record.¹¹⁶

Consider the story of Stephanie Hilgenberg—a mother who was caught with thousands of dollars in her purse, a scale, and over 300 grams of methamphetamine.¹¹⁷ Hilgenberg did not purchase and affix the requisite stamp evincing payment of the tax to the methamphetamine pursuant to chapter 453B.¹¹⁸ Instead, Hilgenberg discovered she owed “\$76,500 for the drug excise tax and a \$76,500 penalty, plus interest—almost [thirty] times the value of the meth she was caught with” after her nearly two thousand dollar

110. DRESSLER & GARVEY, *supra* note 109, at 38 (“Knowledge that punishment will follow crime deters people from committing crimes, thus reducing future violations of right and the unhappiness and insecurity they would cause.”).

111. See Lise-Marie VanNostrand & Richard Tewksbury, *The Motives and Mechanics of Operating an Illegal Drug Enterprise*, 20 DEVIANT BEHAV. 57, 63–64 (1999) (discussing individual's financial motivations for engaging in drug trafficking).

112. See *id.* at 62–63 (noting that those who opt into dealing controlled substances often do so because of a lack of “lucrative, legitimate employment opportunities”).

113. *Id.* at 65 (reporting that “[m]ost dealers . . . earn[ed] an average of \$2,000 to \$5,000 per day on drug sales”).

114. See *id.* at 62.

115. See Kennedy et al., *supra* note 107, at 774.

116. See *id.* at 774.

117. Rood, *supra* note 99.

118. *Id.*

casino jackpot was stripped from her.¹¹⁹ Totalling \$157,936, Hilgenberg's penalty for failing to purchase the requisite stamp and pay the tax is an amount she will likely never be able to repay.¹²⁰ In fact, Hilgenberg expressed that she "fe[lt] like they [were] trying to trap [her] into dealing again" through chapter 453B's steep monetary sanction.

Although Hilgenberg conveyed that she had no desire to ever deal illegal drugs again, it is plausible that others in Hilgenberg's position may choose otherwise.¹²¹ Evidently, Iowa's drug tax stamp law captures those who choose to forego the tax and forces these individuals to incur enormous debt while branding them as felons. As a result, their network of legitimate job opportunities to pay the State what it is owed is virtually nonexistent. Chapter 453B's purpose is to deter the sale of illegal drugs by "making drug dealing an even more unattractive endeavor."¹²² And yet, as applied, it in turn presents an attractive opportunity to fall back into the lucrative drug trade—a vicious cycle that provides a source of income to pay off the massive debt and survive.

C. CHAPTER 453B IN PRACTICE

Chapter 453B requires dealers who meet the requisite threshold to purchase stamps from the Department and affix them to their illicit substances, thereby evincing payment of the tax.¹²³ If dealers do not comply, they are assessed the original tax they did not pay, one hundred percent of the amount of the original tax as a penalty, and interest that accrues on the totaled amount.¹²⁴ However, in practice, chapter 453B is typically wielded as a plea bargaining tool, perhaps offering dealers an opportunity to opt for a class "D" felony and monetary fines instead of other more severe criminal charges.¹²⁵ For example, an individual may plead guilty to a chapter 453B violation rather than a class "B" felony for possession with the intent to deliver controlled substances. Thus, dealers are often slapped with a drug tax stamp violation in addition to other criminal charges, meaning chapter 453B is a routine offense and does not deter participation in the illicit drug market.

Furthermore, the data demonstrates that chapter 453B is unsuccessful. This Section introduces the Department's data regarding both assessments

119. *Id.*

120. *Id.*

121. *Id.* (questioning how "any felon could [repay the monetary fines] without returning to crime").

122. Swinton, *supra* note 10, at 82; *see also* State v. Gallup, 500 N.W.2d 437, 44–45 (Iowa 1993).

123. *See supra* Section I.B.2.

124. *See* IOWA CODE § 435B.12(1) (2025).

125. *See id.* § 124.401(1)(a) ("Violation of this subsection . . . is a class 'B' felony . . . punished by confinement for no more than fifty years and a fine of not more than one million dollars . . ."); *id.* § 453B.12(2); *see also* State v. Wilbourn, 974 N.W.2d 58, 61 (Iowa 2022) (mentioning the plea agreement where the defendant plead guilty to both possession with intent to deliver and a violation of chapter 453B in exchange for the remaining counts to be dismissed).

and collections from chapter 453B, as well as drug-related charges and convictions in a given year. This Section concludes by drawing that data into Iowa’s fight against controlled substances and assesses whether chapter 453B has deterred the sale of illegal drugs, if at all.

1. Assessments, Collections, and Convictions

The Department is tasked with assessing the drug tax stamp and collecting that revenue when it is due.¹²⁶ As Table 1 shows, in fiscal year 2021, the Department assessed a whopping \$18,570,323.92 in relation to chapter 453B.¹²⁷ In that same fiscal year, the Department only collected \$144,314.62.¹²⁸ The following fiscal year, 2022, the Department assessed \$891,203.13 but only collected \$151,584.97.¹²⁹ Finally, in fiscal year 2023, the Department assessed another \$2,192,711.92, and yet, only collected \$142,376.65.¹³⁰

Table 1: Drug Tax Stamp Assessment and Collection

Fiscal Year	Assessed	Collected
FY 2021	\$18,570,323.92	\$144,314.62
FY 2022	\$891,203.13	\$151,584.92
FY 2023	\$2,192,711.92	\$142,376.65

In sum, Iowa is collecting a fraction of the total amount of tax it is owed, meaning the law is generating some revenue, but a large portion of that revenue is left on the table. And of the revenue that is generated, save what appears to be an anomaly from fiscal year 2021, chapter 453B is producing a dash of the revenue Iowa pockets each year.¹³¹

126. See IOWA CODE §§ 453B.8–453B.9.

127. The total amount includes the tax, the penalty equivalent to the amount of the tax assessed, and interest. E-mail from Cara Rungo, Revenue Exam’r, Iowa Dep’t of Revenue, to Author (Nov. 18, 2024, 5:27 PM) [hereinafter November 18th Rungo Email] (on file with the *Iowa Law Review*) (displaying table depicting assessed tax, penalty, and interest in fiscal years 2021 to 2023).

128. The total amount includes both payments and offsets. Offsets occur when the state seizes tax returns to satisfy debts owed. E-mail from Cara Rungo, Revenue Exam’r, Iowa Dep’t of Revenue, to Author (Nov. 19, 2024, 10:40 AM) [hereinafter November 19th Rungo Email] (on file with the *Iowa Law Review*) (displaying data depicting the total amount actually collected in the “Offsets” and “Payments” row); see *Why Your Tax Refund May Be Lower than Expected*, USA.GOV (Mar. 26, 2025), <https://www.usa.gov/tax-refund-offset> [<https://perma.cc/CNQ3-HSHR>] (“If you owe money to a federal or state agency, the federal government may use part or all of your federal tax refund to repay the debt. This is called a tax refund offset.”).

129. November 19th Rungo Email, *supra* note 128.

130. *Id.*

131. See MARY MOSIMAN, IOWA DEP’T OF REVENUE, IOWA DEPARTMENT OF REVENUE: ANNUAL REPORT 6 (2023), <https://revenue.iowa.gov/media/3841/download?inline> [<https://perma.cc/97GL-Y7Y9>] (displaying total revenue from fiscal year 2019 to 2023).

Iowa may argue that the total amount assessed by the Department demonstrates that chapter 453B is being properly enforced. However, the more tax that is assessed, the less chapter 453B is deterring the sale of illegal drugs. In other words, if assessing a tax on the sale of illegal drugs is going to dissuade dealers from engaging in the illicit drug trade, the less tax that is assessed, the more likely chapter 453B is accomplishing its goal. What the Department's data suggests, then, is that chapter 453B is assessing taxes, but it is not gradually decreasing in the amount assessed each fiscal year.¹³² Of the limited data presented in this Essay, it is presumed that, because in fiscal year 2022 the Department assessed less than one million dollars, but in fiscal year 2023, it assessed over two million dollars, the illicit drug market is only running more rampant.¹³³ If chapter 453B was successfully deterring the sale of illegal drugs, chapter 453B should not assess any tax at all.

On the other hand, the Department is not coming close to collecting the full amount it is assessing.¹³⁴ Even though collecting any revenue at all from chapter 453B implicates Iowa's conflicting interests,¹³⁵ the fact that it is seeing an infinitesimal amount of money demonstrates that the drug tax stamp law is not accomplishing any of its goals.¹³⁶ Moreover, this failure to actually collect the full amount of tax, penalties, and interest suggests that this regulatory tax design is simply falling short. Taxes are still assessed, the State is collecting a fraction of that amount, and drug dealers are still engaging in the illicit drug trade.

2. Iowa's Illegal Drug Market

As the preceding Section suggests, Iowa's illegal drug trade is still operating.¹³⁷ As of 2023, Iowa "ranked [thirty-fifth] in illicit drug use and [forty-eighth] in overdose deaths" nationally.¹³⁸ From a national perspective, Iowa ranks in the bottom half of both categories. However, when analyzing the effectiveness of chapter 453B on the drug market in the State, Iowa should fall much lower.¹³⁹

Notably, crime conviction data in Iowa demonstrates drug trafficking convictions are falling. In fiscal year 2022, Iowa prosecuted 13,884 drug-

132. See November 18th Rungo Email, *supra* note 127; November 19th Rungo Email, *supra* note 128.

133. See November 18th Rungo Email, *supra* note 127.

134. See November 19th Rungo Email, *supra* note 128.

135. See *supra* Section II.A.

136. One justification for enacting laws like chapter 453B is that they generate revenue from a business that has been escaping paying taxes because of its illegal nature. However, Iowa is collecting only a fraction of what it is assessing each fiscal year, meaning even though it seeks to harness those taxes that have gone unpaid, it is failing to do so.

137. See *supra* Section II.C.1.

138. *Drug Information*, *supra* note 1.

139. If chapter 453B is curbing the sale of illegal drugs, drug use in Iowa necessarily should place Iowa low in the national drug use rankings.

related convictions.¹⁴⁰ Of those convictions, 1,415 were for drug trafficking specifically.¹⁴¹ In fiscal year 2023, there were a reported 1,358 drug trafficking convictions.¹⁴² In fiscal 2024, there were just 706 drug trafficking convictions.¹⁴³ However, the Criminal & Juvenile Justice Planning database does not indicate whether chapter 453B falls under the “Drug trafficking” category or the “Other drug” category. Though drug trafficking is objectively declining, from this data alone, it is unclear whether this is due to chapter 453B’s enforcement.

Nevertheless, Iowa’s recent drug trends indicate drug trafficking is increasing. In fact, the Iowa Department of Public Safety’s “Drug Information” webpage lists various elements of Iowa’s recent drug trends including an “[i]nflux of fentanyl and other potentially lethal synthetic opioids/drugs,” “[n]ew or emerging substances quick to market,” and “[i]ncreasing polydrug trafficking and use.”¹⁴⁴ Therefore, even though drug trafficking conviction data suggests drug trafficking is decreasing, Iowa reports otherwise, further supporting chapter 453B is unsuccessful in deterring the sale of illegal drugs.

III. STATUTORY OVERHAUL

Because chapter 453B fails to deter the sale of illegal drugs, it would be in Iowa’s best interest to follow several other states and repeal the law in its entirety.¹⁴⁵ However, this Part argues for alternative measures Iowa can take to better address and achieve chapter 453B’s purpose. Accordingly, Section III.A argues that Iowa should amend chapter 453B so that it imposes less severe penalties on its offenders. Additionally, Section III.B proposes Iowa should funnel its resources toward implementing and supporting rehabilitative efforts to treat substance users—resources that could partially come from an amended chapter 453B.

140. *Easy Access to Adult Criminal Data*, CRIM. & JUV. JUST. PLAN., <https://disposedcharges.iowa.gov> [https://perma.cc/7S84-HD6M] (To access this dataset, click on “Convictions” and select “FY 22” under the “Time Period/Dates” table. Then, select “Drug possession,” “Drug trafficking,” and “Other drug” under the “Crime sub type” table. Once the appropriate criteria are selected, navigate to the top of the webpage and select “Show Table.” The data will display the total number of convictions.).

141. *Id.* (To access this dataset, click on “Convictions” and select “FY 22” under the “Time Period/Dates” table and select “Drug trafficking” under the “Crim sub type” table. Once the appropriate criteria are selected, navigate to the top of the webpage and select “Show Table.” The data will display the total number of convictions.).

142. *Id.* (To access this dataset, click on “Convictions” and select “FY 23” under the “Time Period/Dates” table and select “Drug trafficking” under the “Crim sub type” table. Once the appropriate criteria are selected, navigate to the top of the webpage and select “Show Table.” The data will display the total number of convictions.).

143. *Id.* (To access this dataset, click on “Convictions” and select “FY 24” under the “Time Period/Dates” table and select “Drug trafficking” under the “Crim sub type” table. Once the appropriate criteria are selected, navigate to the top of the webpage and select “Show Table.” The data will display the total number of convictions.).

144. *Drug Information*, *supra* note 1.

145. *See, e.g.*, CONN. GEN. STAT. §§ 12-651 to 12-660 (repealed 2021).

A. AMENDING CHAPTER 453B'S PUNISHMENTS

As addressed in Section II.B, chapter 453B imposes a steep monetary sanction in addition to a class “D” felony charge for failing to purchase the requisite stamp and affix it to the controlled substances.¹⁴⁶ And because a chapter 453B charge is often brought in conjunction with other possession charges, an individual can face hefty cumulative punishments that are difficult to recover from.¹⁴⁷ Moreover, many of these individuals who engage in the illicit drug trade do so because it provides a source of income, especially when there is a lack of legitimate, well-paying job opportunities.¹⁴⁸ Thus, imposing severe penalties from failing to affix a small stamp to illegal substances and paying the requisite tax results in a felony conviction that places a massive roadblock in that individual’s ability to repay what the State is owed, encouraging them to continue selling drugs to provide repayment.¹⁴⁹

Therefore, if Iowa is truly interested in taxing a business that has escaped paying income tax for decades, it is in its best interest to reduce the penalties that are imposed. By doing so, the State can increase its likelihood of receiving the necessary payments it is owed.¹⁵⁰ For example, reducing the penalty from a felony to an aggravated misdemeanor removes the implications associated with a felony charge while still maintaining a possibility for incarceration and fines.¹⁵¹ Aggravated misdemeanors provide a maximum two-year prison sentence and a maximum penalty of \$8,540, if a specific penalty is not provided for.¹⁵² Moreover, Iowa could amend chapter 453B to require repayment of the initial tax plus interest rather than two hundred percent of the initial tax. As a result, offenders are not required to pay double the amount they initially failed to pay, and Iowa still receives the tax it was originally owed. Although some might argue reducing the penalties will contradict chapter 453B’s purpose, it is clear from the increase in Iowa’s drug use and drug trafficking that chapter 453B has failed.¹⁵³ Thus, adopting less severe penalties may provide for a greater opportunity for apprehending individuals while allowing for those individuals to have an opportunity to pay their monetary fines.

146. See *supra* Section II.B.

147. See *supra* Section II.C.

148. See VanNostrand & Tewksbury, *supra* note 111, at 62–63.

149. See IOWA CODE § 453B.12 (2025); Kennedy et al., *supra* note 107, at 774.

150. See JOSEPH MCENIRY, LEGISLATIVE GUIDE: CRIMINAL LAW OVERVIEW 4 (2015), <https://www.legis.iowa.gov/docs/publications/LG/14969.pdf> [https://perma.cc/KDX3-VSAM].

151. *Id.*

152. IOWA CODE § 903.1(2).

153. See *Drug Information*, *supra* note 1 (discussing recent drug trends in Iowa).

B. SOURCING TREATMENT AND REHABILITATION PROGRAMS

Channeling funds toward implementing and supporting drug rehabilitation and treatment programs, instead of giving the funds generally to the State, will help deter the sale of illegal drugs more than chapter 453B's current scheme. Those who are addicted to illicit substances are sustaining the illegal drug market.¹⁵⁴ To eliminate the illegal drug market altogether, treating substance-use disorders will reduce the demand for controlled substances.¹⁵⁵ In turn, drug dealers will no longer need to supply illicit drugs to meet the demand.¹⁵⁶

Currently, chapter 453B.3(4) provides that “[a]ll excise taxes collected under this chapter by a dealer or any individual are deemed to be held in trust for the state of Iowa.”¹⁵⁷ Where Iowa spends the collected taxes is unknown. Instead, Iowa legislators should amend chapter 453B.3(4) to funnel the excise taxes collected toward implementing and supporting treatment and rehabilitation programs¹⁵⁸ and funding drug courts.

1. Substance-Use Treatment Programs

Iowa publishes daily statistics regarding its incarceration populations. As of early 2026, over 8,500 people were incarcerated in Iowa—twenty percent over Iowa's maximum prison capacity.¹⁵⁹ In the last ten fiscal years, 11,786 individuals have been incarcerated for drug-related offenses in Iowa, constituting the third largest category of prison admission offenses.¹⁶⁰ “Iowa's prison population [has] more than tripled from 1980 to 2016,” which has caused an increase in government spending to accommodate overcrowding.¹⁶¹ In 2011,

154. VanNostrand & Tewksbury, *supra* note 111, at 81 (“As long as there exists a steady demand for drugs, there will remain opportunities for individuals to deal drugs to supply that demand.”).

155. *See id.* at 81 (discussing how treating substance-use disorders “would in essence put drug dealers out of a job”).

156. *See id.*

157. IOWA CODE § 453B.3(4).

158. Iowa could follow Oklahoma's Controlled Dangerous Substance Tax, distributing collected taxes into the “Drug Abuse Education Revolving Fund,” which is “budgeted and expended by the State Board of Education for drug abuse education programs.” *See* OKLA. STAT. tit. 68, § 450.7 (2025); *id.* tit. 63, § 2-417.

159. *Daily Statistics 01/02/2026*, IOWA OFFENDER SEARCH (Jan. 2, 2026), <https://doc-search.iowa.gov/dailystatistics> [<https://perma.cc/J9CJ-TVPX>].

160. *See Iowa Prison Admissions*, OPEN DATA, https://data.iowa.gov/Correctional-System/Iowa-Prison-Admissions/w4ib-vabz/data_preview [<https://perma.cc/2SYB-L2MF>] (displaying anonymous incarcerated individuals for drug-related offenses); ACLU SMART JUST., BLUEPRINT FOR SMART JUSTICE: IOWA 7 (2019), <https://5ostateblueprint.aclu.org/assets/reports/SJ-Blueprint-IA.pdf> [<https://perma.cc/DN8W-X27X>] (“As of September 2018, nearly two in five people imprisoned in Iowa were serving time for a drug or property offense.”).

161. Tyler J. Davis & Barbara Rodriguez, *ACLU: Fix Iowa Prison Overcrowding by Changing Drug Laws and Addressing Mental Health*, DES MOINES REG. (Mar. 7, 2019, 6:14 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2019/03/07/iowa-prison-jail-aclu-american-civil->

eighty-one percent of incarcerated individuals scanned for substances reported they “had a challenge with illicit drugs at some point in their lifetime.”¹⁶²

Consequently, incarcerating individuals for drug-related offenses, including violating chapter 453B, is not the most efficient or effective method of apprehending these individuals.¹⁶³ Instead, “address[ing] the root causes of many of [Iowa’s] admissions to prison” will better serve to deter and eliminate drug trafficking.¹⁶⁴ Already, Iowa’s Office of Drug Control Policy seeks to protect Iowan’s health and safety through “coordinat[ing] substance use related criminal justice resourcing and policy development.”¹⁶⁵ Accordingly, the Office’s “2024 Iowa Action Plan” provides four priority areas with detailed steps to address and attack illicit drug use and trafficking.¹⁶⁶ Notably, the plan aims to place individuals with substance-use disorders in treatment programs rather than incarceration.¹⁶⁷

Although incarcerating serious criminal offenders curtails some dangerous criminal activity, to accomplish chapter 453B’s goal of deterring the sale of illegal drugs, continuing to support programs like those identified by the Office of Drug Control Policy will better dissuade individuals from engaging in the illicit drug trade.¹⁶⁸ Furthermore, implementing and maintaining these programs in lieu of harsh penalties will allow individuals to forego felony charges in exchange for an opportunity to receive adequate treatment to integrate back into society. Finally, these treatment programs can reduce substance-use disorders, thereby eliminating the demand for illicit substances.

2. Drug Courts

Drug and treatment courts also provide an alternative method to incarceration, aiming to rehabilitate and reintegrate offenders into society.¹⁶⁹ In practice, these courts give criminal “offenders an opportunity to receive treatment and education” while simultaneously refraining from drug use to

liberties-union-department-corrections-criminal-justice-reform/3095418002 [https://perma.cc/8NJH-DF6V].

162. ACLU SMART JUST., *supra* note 160, at 9.

163. See GELB ET AL., *supra* note 11, at 5 (“[H]igher rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.”).

164. ACLU SMART JUST., *supra* note 160, at 10.

165. IOWA DEP’T PUB. SAFETY, *supra* note 5, at 11.

166. *Id.* at 9–10.

167. *Id.* at 9.

168. GELB ET AL., *supra* note 11, at 6 (advising “that the most effective response to drug misuse is a combination of law enforcement to curtail trafficking . . . ; alternative sentencing to divert nonviolent drug offenders from costly imprisonment; treatment to reduce dependency and recidivism; and prevention efforts [to] identify individuals at [a] high risk for substance use disorders.”).

169. See *What Are Drug Courts?*, U.S. DEP’T HEALTH & HUM. SERVS. (Dec. 16, 2022), <https://www.hhs.gov/opioids/treatment/drug-courts/index.html> [https://perma.cc/RXB5-GSD8].

understand and otherwise atone for their behavior.¹⁷⁰ As a cost-saving measure, drug courts can curtail expenditures and provide treatment that decreases substance use and recidivism.¹⁷¹ Thus, in the long run, the State can save money and continue to deter the sale of illegal drugs through alternative methods to incarceration.

Iowa has several drug treatment courts; however, these courts struggle to maintain adequate guidance and funding.¹⁷² Moreover, Iowa does not have any legislative standards regulating how these drug courts operate, meaning there are disparities among court to court.¹⁷³ Nevertheless, if Iowa can develop a sufficient budgetary plan to give these courts the proper funding to provide alternative incarceration methods,¹⁷⁴ Iowa could accomplish its goal of eliminating the illicit drug market or, at the very least, reducing its prevalence. Perhaps channeling the revenue generated from chapter 453B could provide the necessary funds for these drug courts.

CONCLUSION

Chapter 453B fails to deter the sale of illegal drugs. The law also promotes Iowa's conflict of interest: seeking to reduce the illegal drug market while simultaneously generating revenue from that market. Furthermore, chapter 453B encourages drug dealers to become repeat offenders, falling back into the drug trade to pay the vast monetary fines the law imposes. But most importantly, the Department's data suggests that chapter 453B fails to deter the sale of illegal drugs.

Ideally, Iowa should repeal the law entirely. But in the event Iowa wishes to keep the law on its books, it should amend chapter 453B to use the small revenue it generates to help fund drug education and treatment programs and alternative incarceration methods, like drug courts. In doing so, chapter 453B would successfully reduce drug use and curb the sale of illegal drugs through reducing the demand for illicit substances and eradicating the driving force behind the illegal drug trade.

170. *Id.*

171. See JOHN ROMAN, COST-BENEFIT ANALYSIS OF CRIMINAL JUSTICE REFORMS 32, 34 (2013), <https://www.ojp.gov/pdffiles1/nij/241929.pdf> [<https://perma.cc/828H-XRV2>] (“[A]dult drug courts significantly reduce participants’ drug use and criminal offending during and after program participation.”); *How Do Iowa Specialty Courts Work?*, IOWA CT. RECS., <https://iowacourtreports.us/specialty-court> [<https://perma.cc/AF2T-8GZL>] (“The Drug Court is the Iowa Judicial Branch’s effort at reducing recidivism in persons whose substance abuse problems have led them to crime.”).

172. See Jacob R. Wendell, Note, *A Statutory Proposal for the Expedited Development of Iowa’s Treatment Courts*, 110 IOWA L. REV. 463, 484–86 (2024).

173. *Id.* at 484 (discussing how the various treatment courts in Iowa “are currently operating without a state approved framework to guide their practices and minimal supervision from the Judicial Branch”).

174. *Id.* at 493–94 (proposing the Iowa Legislature should adopt adequate funding for the State’s treatment courts).