

45 written authorization and fingerprint identification.
 46 7. Shall annually approve rules and regulations adopted in accord-
 47 ance with section ten (10) of this Act and rules and regulations to
 48 assure the accuracy, completeness and proper purging of criminal his-
 49 tory data.

50 8. Shall approve all agreements, arrangements and systems for the
 51 interstate transmission and exchange of criminal history data.

1 SEC. 20. NEW SECTION. The provisions of sections two (2) and
 2 three (3) of this Act shall not apply to the certifying of an individ-
 3 ual's operating record pursuant to section three hundred twenty-one
 4 A point three (321A.3) of the Code.

Approved July 21, 1973.

This Act was passed by the G. A. before July 1, 1973.

CHAPTER 295

CRIMINAL DEFERRED JUDGMENTS OR SUSPENDED SENTENCES

S. F. 26

AN ACT relating to sentencing in criminal cases; relating to probation and the condi-
 tions thereof; providing a procedure for restitution as a condition of probation;
 providing a procedure for deferring judgment in particular cases; relating to the
 conditions of parole; and providing procedures necessary thereto.

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

1 SECTION 1. NEW SECTION. **Deferred judgment or suspended sen-**
 2 **tence—probation.** The trial court may, upon a plea of guilty, ver-
 3 dict of guilty, or a special verdict upon which a judgment of convic-
 4 tion may be rendered, exercise either of the options contained in sub-
 5 sections one (1) and two (2) of this section. However, this section
 6 shall not apply to the crimes of treason, murder, or violation of section
 7 two hundred four point four hundred one (204.401), subsection one
 8 (1) or two (2) of the Code, to which section two hundred four point
 9 four hundred nine (204.409), subsection two (2) of the Code is not
 10 applicable and which is not proved to be an accommodation offense
 11 under section two hundred four point four hundred ten (204.410) of
 12 the Code.

13 1. With the consent of the defendant, the court may defer judg-
 14 ment and place the defendant on probation upon such terms and condi-
 15 tions as it may require. Upon fulfillment of the terms of probation
 16 the defendant shall be discharged without entry of judgment. Upon
 17 violation of the terms, the court may enter an adjudication of guilt
 18 and proceed as otherwise provided.

19 However, this subsection shall not be available if any of the follow-
 20 ing is true:

21 a. The defendant attempted to kill anyone during the commission of
 22 the offense.

23 b. The defendant purposefully inflicted or attempted to inflict a
 24 serious injury upon anyone during the commission of the offense.
 25 "Serious injury" means death, permanent disability or disfigurement,
 26 protracted loss or impairment of the function of any body member or

27 organ, an injury requiring extended treatment or a prolonged healing
28 period, a disabling mental illness requiring extended treatment or pro-
29 longed care, or an injury which at the time of deferment of judgment
30 appears likely to result in any of the foregoing.

31 c. The defendant used, threatened to use or displayed in a threat-
32 ening manner a dangerous weapon during the commission of the
33 offense. "Dangerous weapon" means any instrument or device de-
34 signed primarily for use in inflicting death or injury upon a human
35 being or other living creature, and which is capable of inflicting death
36 upon a human being when used in the manner for which it was de-
37 signed. "Dangerous weapon" also includes any instrument or device
38 of any sort whatsoever which is actually used in such a manner as
39 to indicate that the defendant intends to inflict death or serious injury
40 upon anyone and which, when so used, is capable of inflicting death
41 upon a human being.

42 d. The defendant kidnaped any person for ransom during the com-
43 mission of the offense.

44 e. During the commission of the offense the defendant committed
45 rape or sodomy by force or threat of force, committed assault with
46 intent to commit rape by force or threat of force, committed or at-
47 tempted to commit rape of or sodomy with a child twelve years of age
48 or under, or committed a violation of section seven hundred twenty-five
49 point two (725.2) of the Code with respect to a child twelve years of
50 age or under and which included any of the following: force or threat
51 of force, fondling or touching the child in a lewd manner, or soliciting
52 a sexual act with the child.

53 f. The defendant has been previously convicted of a felony. "Fel-
54 ony" means a conviction in a court of this or any other state or of the
55 United States, of an offense classified as a felony by the law under
56 which he was convicted at the time of his conviction.

57 g. Prior to the commission of the offense the defendant had been
58 granted a deferred judgment or similar relief, two or more times any-
59 where in the United States.

60 h. Prior to the commission of the offense the defendant had been
61 granted a deferred judgment or similar relief in a felony prosecution
62 anywhere in the United States within the preceding five years, meas-
63 ured from the date of granting of deferment of judgment to the date
64 of commission of the offense.

65 Any deferment of judgment under this subsection shall be promptly
66 reported to the supreme court administrator who shall maintain a per-
67 manent record thereof including the name of the defendant, the dis-
68 trict court docket number, the nature of the offense, and the date of
69 the deferment. Before granting deferment in any case, the court
70 shall request of the supreme court administrator a search of the de-
71 ferred judgment docket and shall consider any prior record of a de-
72 ferment of judgment against the defendant. The permanent record
73 provided for in this subsection shall constitute a confidential record
74 exempted from public access under section sixty-eight A point seven
75 (68A.7) of the Code and shall be available only to justices of the
76 supreme court, district judges, district associate judges, and judicial
77 magistrates requesting information pursuant to this subsection.

78 2. By record entry at time of or after sentencing, the court may
79 suspend the sentence and place the defendant on probation upon such
80 terms and conditions as it may require.

81 Before exercising either of the options contained in subsections one
82 (1) and two (2) of this section, the court shall first determine which
83 of them will provide maximum opportunity for the rehabilitation of
84 the defendant and protection of the community from further offenses
85 by the defendant and others. In making this determination the court
86 shall consider the age of the defendant, his prior record of convictions,
87 if any, his employment circumstances, his family circumstances, the
88 nature of the offense committed, whether a dangerous weapon or force
89 was used in the commission of such offense, and such other factors as
90 shall be appropriate. The court shall file a specific written statement
91 of its reasons for and the facts supporting its decision to defer judg-
92 ment or to suspend sentence and its decision on the length of proba-
93 tion.

1 SEC. 2. NEW SECTION. **Length of probation.** The length of the
2 probation shall be for such term as the court may fix but not to ex-
3 ceed five years if the offense is a felony or not to exceed two years if
4 the offense is a misdemeanor, unless the person is ordered placed
5 under the supervision of the chief parole officer, in which case the
6 term of probation shall be determined by the board of parole and the
7 probation of the defendant shall be supervised by the chief parole offi-
8 cer.

9 The length of the probation shall not be less than one year and shall
10 not be less than two years if the offense is a felony. However, the
11 court may subsequently reduce the length of the probation if the court
12 determines that the purposes of probation have been fulfilled, as pro-
13 vided in section six (6) of this Act.

14 In determining the length of the probation, the court shall first
15 determine what period is most likely to provide maximum opportu-
16 nity for the rehabilitation of the defendant, to allow enough time to
17 determine whether or not rehabilitation has been successful, and to
18 protect the community from further offenses by the defendant and
19 others.

1 SEC. 3. NEW SECTION. **Presentence investigation.** Upon a plea
2 of guilty, verdict of guilty, or special verdict upon which a judgment
3 of conviction of any public offense may be rendered, the court shall
4 receive from the state and from the defendant any information which
5 may be offered which is relevant to the question of sentencing. The
6 court may consider information from other sources, and may, if the
7 offense is a felony, order a presentence investigation to be made.

8 The court may withhold execution of any judgment or sentence for
9 such time as shall be reasonably necessary for an investigation with
10 respect to deferment of judgment or suspension of sentence and proba-
11 tion. The investigation shall be made by a probation officer, by
12 the agency in charge of parole agents, or by another appropriate
13 agency, as determined by the court.

1 SEC. 4. NEW SECTION. **Presentence investigation and report.**
2 Whenever a presentence investigation is ordered by the court, the in-
3 vestigator shall promptly inquire into the defendant's characteristics,
4 family and financial circumstances, needs, and potentialities; his crim-
5 inal record and social history; the circumstances of the offense; the
6 time the defendant has been in detention; and the harm to the victim,
7 his immediate family, and the community. All local and state mental

8 and correctional institutions, courts, and police agencies shall furnish
 9 to the investigator on request the defendant's criminal record and
 10 other relevant information. With the approval of the court, a physi-
 11 cal examination of the defendant may be ordered, or the defendant
 12 may be committed to a psychiatric facility for an evaluation of his
 13 personality and mental health. The results of any such examination
 14 shall be included in the report of the investigator.

1 **SEC. 5. NEW SECTION. Report confidential.** The court may, in
 2 its discretion, make the presentence investigation report or parts of
 3 it available to the defendant, or the court may make the report or
 4 parts of it available while concealing the identity of the person who
 5 provided confidential information. The report of any medical exami-
 6 nation or psychiatric evaluation shall be made available to the attor-
 7 ney for the state and to the defendant upon request. Such reports
 8 shall be part of the record but shall be sealed and opened only on or-
 9 der of the court. In any case where the defendant is committed to
 10 the custody of the department of social services, a copy of the presen-
 11 tence investigation report shall be sent to the department at the time
 12 of commitment.

1 **SEC. 6. NEW SECTION. Discharge from probation.** At any time
 2 that the court determines that the purposes of probation have been
 3 fulfilled, the court may order the discharge of any person from proba-
 4 tion. At the expiration of the period of probation, in cases where the
 5 court fixes the term of probation, the court shall order the discharge
 6 of such person from probation, and the court shall forward to the
 7 governor a recommendation for or against restoration of citizenship
 8 rights to such person. A person who has been discharged from pro-
 9 bation shall no longer be held to answer for his offense. Upon dis-
 10 charge from probation, if judgment has been deferred under section
 11 one (1) of this Act, the court's criminal record with reference to the
 12 deferred judgment shall be expunged. The record maintained by the
 13 supreme court administrator required by section one (1) of this Act
 14 shall not be expunged. The court's record shall never be expunged
 15 in any other circumstances except as provided in section six hundred
 16 two point fifteen (602.15) of the Code.

1 **SEC. 7. NEW SECTION. Custody of court probationer—record to**
 2 **chief parole officer.** When probation is granted under section one (1)
 3 of this Act, the court shall order said person committed to the custody,
 4 care, and supervision:

5 1. Of any suitable resident of this state; or
 6 *2. Of the chief parole officer. The chief parole officer shall not,
 7 however, accept the custody, care and supervision of any person
 8 granted probation from a sentence to a term in a county jail or any
 9 other person who in the judgment of the chief parole officer could not
 10 be properly supervised.

11 In each case wherein the court shall order said person committed to
 12 the custody, care, and supervision of the chief parole officer, the clerk
 13 of the district court shall at once furnish the chief parole officer with
 14 certified copies of the indictment or information, the minutes of tes-

*See ch. 176, §7, herein.

15 timony attached thereto, the judgment entry if judgment is not de-
16 ferred, and the original mittimus. The county attorney shall at once
17 advise the chief parole officer, by letter, that the defendant has been
18 placed under the chief parole officer's supervision and give to the chief
19 parole officer a detailed statement of the facts and circumstances sur-
20 rounding the crime committed and the record and history of the de-
21 fendant as may be known to him. If the defendant is confined in the
22 county jail at the time of sentence, the court may order him held until
23 arrangements are made by the chief parole officer for his employment
24 and he has signed the necessary probation papers. If the defendant
25 is not confined in the county jail at the time of sentence, the court
26 may order him to remain in the county wherein he has been convicted
27 and sentenced and report to the sheriff as to his whereabouts.

1 **SEC. 8. NEW SECTION. Restitution.**

2 1. As used in this section, unless the context otherwise requires:

3 a. "Victim" means any person who has suffered pecuniary dam-
4 ages as a result of the defendant's criminal activities. However, with
5 respect to any part of a victim's pecuniary damages paid by an in-
6 surer, the insurer shall be regarded as the victim only if the insurer
7 has no right of subrogation and the insured has no duty to pay the
8 proceeds of restitution to the insurer.

9 b. "Pecuniary damages" means all damages which a victim could
10 recover against the defendant in a civil action arising out of the same
11 facts or event, except punitive damages and damages for pain, suffer-
12 ing, mental anguish, and loss of consortium. Without limitation, "pe-
13 cuniary damages" includes damages for wrongful death.

14 c. "Criminal activities" includes any crime for which there is a plea
15 of guilty, verdict of guilty, or special verdict upon which a judgment
16 of conviction may be rendered and any other crime committed after
17 July 1, 1972 which is admitted or not contested by the defendant,
18 whether or not prosecuted. However, "criminal activities" does not
19 include misdemeanors under chapter three hundred twenty-one (321)
20 of the Code.

21 d. "Restitution" means full or partial payment of pecuniary dam-
22 ages to a victim.

23 2. It is the policy of this state that restitution be made by each vi-
24 olator of the criminal laws to the victims of his criminal activities to
25 the extent that the violator is reasonably able to do so. This section
26 shall be interpreted and administered to effectuate this policy.

27 3. If the trial court exercises either of the sentencing options under
28 section one (1) of this Act, the court shall require as a condition of
29 probation that the defendant, in cooperation with the probation officer
30 assigned to the defendant, promptly prepare a plan of restitution, in-
31 cluding a specific amount of restitution to each victim and a schedule
32 of restitution payments. If the defendant is presently unable to make
33 any restitution but there is a reasonable possibility that the defendant
34 may be able to do so at some time during his probation period, the plan
35 of restitution shall also state the conditions under which or the event
36 after which the defendant will make restitution. If the defendant be-
37 lieves that he will not be able to make any restitution, he shall so state
38 and shall specify the reasons. If the defendant believes that no per-
39 son suffered pecuniary damages as a result of the defendant's criminal
40 activities, he shall so state.

41 4. The defendant's plan of restitution and the comments of his pro-
42 bation officer shall be submitted promptly to the court. The court
43 shall promptly enter an order approving the plan or modifying it and
44 providing for restitution payments to the extent that the defendant is
45 or may become reasonably able to make restitution, taking into ac-
46 count the factors enumerated in subsection five (5) of this section.
47 Compliance with the plan of restitution as approved or modified by
48 the court shall be a condition of the defendant's probation. Restitu-
49 tion payments shall be made to the clerk unless otherwise directed by
50 the court. The court thereafter may modify the plan at any time
51 upon the defendant's request or upon the court's own motion. If the
52 plan as approved or modified does not require full payment of pecu-
53 niary damages to all victims, or if the court determines that the de-
54 fendant is not able and will not be able to make any restitution at any
55 time during his probation period or that no person suffered pecuni-
56 ary damages as a result of the defendant's criminal activities, the
57 court shall file a specific written statement of its reasons for and the
58 facts supporting its action or determination.

59 5. The probation officer when assisting the defendant in preparing
60 the plan of restitution, and the court before approving or modifying
61 the plan of restitution, shall consider the physical and mental health
62 and condition of the defendant, his age, his education, his employment
63 circumstances, his potential for employment and vocational training,
64 his family circumstances, his financial condition, the number of vic-
65 tims, the pecuniary damages of each victim, what plan of restitution
66 will most effectively aid the rehabilitation of the defendant, and such
67 other factors as shall be appropriate. The probation officer shall at-
68 tempt to determine the name and address of each victim and the
69 amount of his pecuniary damages.

70 6. The clerk shall mail to each known victim a copy of the court's
71 order approving or modifying the plan of restitution, including the
72 court's statement, if any, under subsection four (4) of this section.

73 7. At any time during the probation period the defendant may re-
74 quest and the court shall grant a hearing on any matter related to the
75 plan of restitution.

76 8. Failure of the defendant to comply with subsection three (3) of
77 this section or to comply with the plan of restitution as approved or
78 modified by the court shall constitute a violation of the conditions of
79 probation. Without limitation, the court may modify the plan of resti-
80 tution or extend the period of time for restitution, but not beyond the
81 maximum probation period specified in section two (2) of this Act.

82 9. This section and proceedings under this section shall not limit or
83 impair the rights of victims to sue and recover damages from the
84 defendant in a civil action. However, any restitution payment by the
85 defendant to a victim shall be set off against any judgment in favor
86 of the victim in a civil action arising out of the same facts or event.
87 The fact that restitution was required or made shall not be admissible
88 as evidence in a civil action unless offered by such defendant.

1 SEC. 9. Section two hundred forty-seven point six (247.6), Code
2 1973, is amended by adding the following new unnumbered paragraph:
3 NEW UNNUMBERED PARAGRAPH. The rules and conditions of parole
4 may require that restitution be made by the parolee to the victims who
5 suffered pecuniary damages as a result of the parolee's criminal activi-

6 ties. Words defined in section eight (8) of this Act shall have the same
7 meaning in this paragraph.

1 SEC. 10. Section three hundred twenty-one point two hundred
2 eighteen (321.218), Code 1973, is amended to read as follows:

3 **321.218 Driving while license denied, suspended, or revoked.** Any
4 person whose operator's or chauffeur's license, or driving privilege, has
5 been denied, canceled, suspended or revoked as provided in this chap-
6 ter, and who drives any motor vehicle upon the highways of this state
7 while such license or privilege is denied, canceled, suspended, or re-
8 voked, is guilty of a misdemeanor and upon conviction shall be pun-
9 ished by imprisonment for not less than two days or more than thirty
10 days. The sentence imposed under this section shall not be suspended
11 by the court, notwithstanding the provisions of section ~~247.29~~ *one (1)*
12 *of this Act* or any other provision of statute. The department, upon
13 receiving the record of the conviction of any person under this section
14 upon a charge of driving a motor vehicle while the license of such
15 person was suspended or revoked, shall extend the period of suspension
16 or revocation for an additional like period, and the department shall
17 not issue a new license during such additional period.

1 SEC. 11. Section six hundred two point fifteen (602.15), Code 1973,
2 is amended to read as follows:

3 **602.15 Amending or expunging entry.** The record of any court
4 proceedings is under the control of the court and, *except as provided*
5 *in section six (6) of this Act*, may be amended or any entry therein
6 expunged before it has been signed by the judge or within sixty days
7 thereafter.

1 SEC. 12. Section seven hundred eighty-nine point two (789.2),
2 Code 1973, is amended to read as follows:

3 **789.2 Judgment of conviction—time for.** Upon a plea of guilty,
4 verdict of guilty, or a special verdict upon which a judgment of con-
5 viction ~~must~~ *may* be rendered, the court must fix a time for pronounc-
6 ing judgment, which must be at least three days after the verdict is
7 rendered, if the court remains in session so long, or, if not, as remote a
8 time as can reasonably be allowed; but in no case can it be pronounced
9 in less than six hours after the verdict is rendered, unless defendant
10 consents thereto *within a reasonable time but not less than eight days*
11 *after the plea is entered or the verdict is rendered, unless the defendant*
12 *consents thereto.*

1 SEC. 13. Section seven hundred eighty-nine point eleven (789.11),
2 Code 1973, is amended to read as follows:

3 **789.11 Judgment entered.** If *judgment is not deferred, and no*
4 *sufficient cause is shown why judgment should not be pronounced, and*
5 *none appears to the court upon the record, judgment shall be rendered.*
6 *In every case in which judgment is entered, the court shall include in*
7 *the judgment entry the number of the particular section of the Code*
8 *under which the defendant is sentenced.*

1 SEC. 14. **Prosecutions prohibited.** The action of any court in de-
2 ferring judgment or conviction in a criminal case prior to the effective
3 date of this Act is valid. No person previously prosecuted shall be tried,
4 sentenced, or convicted based on the same facts as in a prior prosecu-

5 tion on the grounds that a sentence, conviction, or judgment as a result
 6 of that prosecution was deferred, and the deferment was later declared
 7 by the supreme court of this state to be unauthorized by law. This
 8 section shall not apply to any case in which an appeal was pending on
 9 June 1, 1973.

1 SEC. 15. This section shall take effect July 1, 1974. Section three
 2 (3) of this Act is amended to read as follows:

3 **Presentence investigation.** Upon a plea of guilty, verdict of guilty,
 4 or special verdict upon which a judgment of conviction of any public
 5 offense may be rendered, the court shall receive from the state and
 6 from the defendant any information which may be offered which is
 7 relevant to the question of sentencing. The court may consider infor-
 8 mation from other sources, and ~~may~~ *shall*, if the offense is a felony,
 9 order a presentence investigation to be made.

10 The court may withhold execution of any judgment or sentence for
 11 such time as shall be reasonably necessary for an investigation with
 12 respect to deferment of judgment or suspension of sentence and pro-
 13 bation. The investigation shall be made by a probation officer, by the
 14 agency in charge of parole agents, or by another appropriate agency,
 15 as determined by the court.

1 SEC. 16. Sections two hundred forty-seven point twenty (247.20)
 2 and two hundred forty-seven point twenty-one (247.21),* Code 1973,
 3 are repealed.

Approved July 12, 1973.

This Act was passed by the G. A. before July 1, 1973.

*See §7(2), hereof; also, ch. 176, §7, herein.

SPECIAL AND LEGALIZING ACTS

SPECIAL AND LEGALIZING ACTS

CHAPTER 296

SPECIAL HIGHWAY REST AREA

H. F. 109

AN ACT relating to the establishment of a rest area and rest area building.

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

1 SECTION 1. Notwithstanding the provisions of section three hun-
2 dred thirteen point two (313.2) of the Code relating to intervals at
3 which rest areas and rest area buildings may be constructed on inter-
4 state highways, the state highway commission is directed to establish
5 and construct a rest area facility on the scenic overlook at Loveland
6 in Pottawattamie county on interstate highway eighty N.

1 SEC. 2. In no case shall more than one hundred eleven thousand
2 dollars (\$111,000) be expended in carrying out the provisions of this
3 Act.

Approved July 12, 1973.

This Act was passed by the G. A. before July 1, 1973.

CHAPTER 297

JEFFERSON COUNTY LEGALIZING ACT

S. F. 619

AN ACT permitting the Jefferson county board of supervisors to make payments for the purchase and acquisition of a one-fifth interest in the city-county law enforcement center and further to purchase and acquire the Jefferson county holding facility, so long as both purchases and acquisitions may be accomplished without a levy of additional taxes.

WHEREAS, the county of Jefferson was in need of a new jail; and

WHEREAS, the city of Fairfield was in need of holding facilities and a new law enforcement center; and

WHEREAS, during 1971 both bodies did jointly enter into the creation of a Jefferson county service agency organized under chapter 28E of the 1971 Code of Iowa to plan for and operate a joint facility; and

WHEREAS, a contract was subsequently entered into between Jefferson county and the Conner Brothers' Construction Company of Sigourney, Iowa, for the construction of such county holding facility on county-owned property adjacent to the city-county law enforcement center; and

WHEREAS, the city of Fairfield, Iowa has constructed said city-county law enforcement center with city funds and has provided offices therein for the Jefferson county sheriff; and