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### About the Author:

This Guide was written by Joseph McEniry, J.D., Creighton University, 1992. Mr. McEniry has been a Legal Counsel for the Legal Services Division of the Legislative Services Agency since 1998. Mr. McEniry staffs the Judiciary and Public Safety Committees and the Joint Appropriations Subcommittee on the Justice System, and drafts legislation in the areas of judiciary, corrections, and public safety.

Mr. McEniry can be reached by telephone at (515) 281-3189 or by e-mail at: [joseph.mceniry@legis.iowa.gov](mailto:joseph.mceniry@legis.iowa.gov)

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## CRIMINAL LAW OVERVIEW

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## I. Purpose and Overview

**Purpose.** The purpose of this Legislative Guide is to provide a general overview of the substantive criminal and sentencing laws in Iowa. The Guide includes a general description of the law relating to arrest, prosecution, and, if convicted, the sentencing of a person charged with a crime. The Guide further describes Iowa's sentencing system, including the variety of sentences available for imposition by judges and the roles of the Board of Parole, the Department of Corrections, and the Judicial District Departments of Correctional Services. A general overview of Iowa's Sex Offender Registry and the Sexually Violent Predator Act is also included in the Guide. The information presented in this Guide does not provide a detailed analysis of all the elements of Iowa's substantive criminal law and procedure, nor does the Guide provide an in-depth analysis of constitutional issues relating to criminal law.

Unless otherwise indicated, Iowa Code references in this Legislative Guide are to the 2014 Iowa Code. The references to the Iowa Administrative Code are current to September 2013. The references to the Iowa Court Rules are current to September 2013.

**Overview.** Iowa has an indeterminate criminal sentencing system at the felony level and a determinate sentencing system at the misdemeanor level. However, sentencing for the commission of an aggravated misdemeanor represents a hybrid between the two systems, as the sentencing judge has the discretion to sentence an offender to a determinate term if the sentence handed down is one year or less, and must sentence the offender to an indeterminate term of two years if the sentence is more than one year. Generally, when a person is convicted of a criminal offense in Iowa, the judge determines whether the person should be placed on probation, be assigned to a community-based correctional facility, or serve a term of confinement. However, the maximum length of a person's term of confinement is determined by statute. The current criminal sentencing system at the felony level, while still classified as indeterminate, has been modified statutorily to make the system more determinate in nature. The statutory modifications include mandatory sentences, penalty enhancements, and limitations placed on parole. See the Appendix for all sentences that carry a mandatory sentence, penalty enhancement, or limitation on parole.

## II. Criminal Intent

It is the Legislature's right to define the elements of a crime, subject only to the United States and Iowa Constitutions.<sup>1</sup> Iowa law recognizes both general intent crimes and specific intent crimes.<sup>2</sup> The Supreme Court of Iowa has addressed the distinction between general and specific intent crimes in the following manner:

When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a further consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general

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<sup>1</sup> The New Iowa Criminal Code and the Options of the Iowa Supreme Court, 32 Drake L. Rev. 61, 67 (1982-1983).

<sup>2</sup> Id. at 61, 77-78. See also *Eggman v. Scurr*, 311 N.W.2d 77, 78-79 (Iowa 1981) (quoting *State v. Redmon*, 244 N.W. 2d 792, 797 (Iowa 1976)).



criminal intent. When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent.<sup>3</sup>

Crimes which have no express intent elements are characterized as general intent crimes.<sup>4</sup> In a crime defined as a general intent crime, a person must do a voluntary act that is against the law.<sup>5</sup> Examples of general intent crimes include operating a motor vehicle while intoxicated and sexual abuse in the third degree involving a minor (statutory rape).<sup>6</sup> A conviction for operating a motor vehicle while under the influence of alcohol does not depend on whether a person intended to drive a motor vehicle while under the influence, only that the person did drive under the influence; nor does a conviction of sexual abuse in the third degree require that the other person have knowledge that the other person is under a certain age, only that the person committed a sex act with a minor under a certain age.<sup>7</sup> Crimes which carry an express intent element also known as “mens rea” require a special mental element beyond any mental state required during the criminal act itself.<sup>8</sup> Examples of specific intent crimes include murder in the first degree and assault.<sup>9</sup> Specific intent means not only being aware of doing an act and doing it voluntarily, but also doing it with a specific purpose in mind.<sup>10</sup>

### III. Categories of Criminal Penalties

**General Classifications.** In general, crimes in Iowa are classified as felonies or misdemeanors. Within the general felony or misdemeanor categories are the various offense classes which typically carry uniform minimum and maximum penalties.<sup>11</sup> However, mandatory minimum sentences, penalty enhancements, and limitations on parole have been added, which has led to increased sentence lengths in some offense classes.

#### A. Felonies

**Overview.** A criminal offense is a felony when the statute defining the crime declares it to be a felony.<sup>12</sup> Felonies are classified in descending order of severity from class “A” felonies to class “D” felonies.<sup>13</sup> Where an offense is declared to be a felony, but no other designation is given, the offense is a class “D” felony by definition under Iowa Code section 701.7.

**Class “A” Felonies.** Class “A” felonies are the most serious offenses under Iowa law and are punishable only by a mandatory life sentence, without possibility for parole or

<sup>3</sup> State v. Canas, 597 N.W.2d 488, 495 (Iowa 1999); negative treatment on other grounds in State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001).

<sup>4</sup> Eggman at 79.

<sup>5</sup> Iowa Criminal Jury Instruction 200.1.

<sup>6</sup> Iowa Code §321J.2(1) (operating a motor vehicle while intoxicated) and Iowa Code §709.4(1)(b) (sexual abuse in the third degree).

<sup>7</sup> Iowa Code §321J.2 (operating while intoxicated) and Iowa Code §709.4(1)(b) (sexual abuse in the third degree). See State v. Boleyn, 547 N.W.2d 202, 204 (Iowa 1996), (operating while intoxicated consists of two essential elements: (1) operation of a motor vehicle (2) while under the influence); and State v. Tague, 310 N.W.2d 209, 212 (Iowa 1981) (mistake of fact is no defense to sexual abuse in the third degree involving a minor).

<sup>8</sup> Canas at 495.

<sup>9</sup> Iowa Code §707.2 (murder in the first degree) and Iowa Code §708.1 (elements of varying degrees of assault).

<sup>10</sup> Iowa Criminal Jury Instruction 200.2.

<sup>11</sup> Iowa Code §902.9 (felonies) and Iowa Code §903.1 (misdemeanors).

<sup>12</sup> Iowa Code §701.7.

<sup>13</sup> Iowa Code §§902.1 and 902.9.



probation.<sup>14</sup> A class “A” felon can also be released from the custody and control of the Iowa Department of Corrections only through a pardon or commutation of the felon’s sentence to a term of years by the Governor.<sup>15</sup>

**Class “A” Felonies — Juveniles.** The United States Supreme Court in *Graham v. Florida* ruled that a sentence requiring a juvenile to serve a life sentence with no possibility for parole for an offense other than murder constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution.<sup>16</sup> After the *Graham* decision, Iowa changed the law to exclude a person under 18 years of age convicted of a class “A” felony other than murder in the first degree from serving a life sentence without parole.<sup>17</sup> Under current law, a person convicted of a class “A” felony, other than murder in the first degree, is eligible for parole after serving a minimum term of confinement of 25 years if the person was under the age of 18 at the time the offense was committed.<sup>18</sup> In a subsequent opinion, the United States Supreme Court ruled that a sentence requiring a mandatory life sentence for a juvenile who commits murder also constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution.<sup>19</sup> The Court’s majority emphasized that the ruling does not categorically bar a juvenile who commits murder from serving a life sentence but instead requires the jurisdiction to follow a process and consider an offender’s youth and other circumstances prior to sentencing.<sup>20</sup>

**Juvenile Convictions — Developing Case Law.** The Iowa Supreme Court has filed two recent opinions relating to juvenile sentencing.<sup>21</sup> In both cases a juvenile was convicted in adult court of a serious offense other than a class “A” felony and both were sentenced to lengthy mandatory minimum sentences requiring service of 70 percent of the sentence. The Court stated that the lengthy sentences triggered the protections afforded a juvenile under *Miller v. Alabama*, namely an individualized sentencing hearing to determine whether the juvenile should be parole eligible prior to the expiration of any mandatory minimum sentence.

**Class “B” Felonies.** Class “B” felonies are punishable by confinement for no more than 25 years.<sup>22</sup> However, the following class “B” felonies are punishable by confinement for no more than 50 years:

- Certain felony drug offenses.<sup>23</sup>

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<sup>14</sup> Iowa Code §902.1(1).

<sup>15</sup> See generally, Iowa Const. art. IV, §16; Iowa Code §902.1.

<sup>16</sup> *Graham v. Florida*, 130 S. Ct. 43 (2009).

<sup>17</sup> Iowa Code §902.1(2).

<sup>18</sup> Iowa Code §902.1(2).

<sup>19</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

<sup>20</sup> *Id.* at 2471. As of September 2012, Iowa had 38 offenders who committed the class “A” felony of murder in the first degree while the offender was a juvenile. Governor Branstad in response to *Miller* commuted all these class “A” sentences from a life sentence without the possibility of parole to a life sentence with the possibility of parole after serving 60 years of the sentence. Discussion with Brenna Findley, Legal Counsel to the Governor (August 2012). The Iowa Supreme Court recently affirmed the resentencing of a person subject to the Governor’s 60-year sentence commutation order because the order was the functional equivalent of a life sentence without parole. See *State v. Ragland*, No. 12-1758 (Iowa Aug. 16, 2013). The Iowa Supreme Court in *Ragland* further stated that the district court properly complied with *Miller* by resentencing the defendant from a life sentence without parole to a life sentence with the possibility of parole after serving 25 years.

<sup>21</sup> See *State v. Null*, No. 11-1080 (Iowa Aug. 16, 2013) and *State v. Pearson*, No. 11-1214 (Iowa Aug. 16, 2013).

<sup>22</sup> Iowa Code §902.9(1)(b).

<sup>23</sup> Iowa Code §124.401(1)(a).



- Murder in the second degree.<sup>24</sup>
- Multiple acts of child endangerment.<sup>25</sup>
- Railroad vandalism involving a death.<sup>26</sup>

**Class “C” Felonies.** Class “C” felonies are punishable by confinement for no more than 10 years and a fine of at least \$1,000 but not more than \$10,000.<sup>27</sup>

**Class “D” Felonies.** Class “D” felonies are punishable by confinement for no more than five years and a fine of at least \$750 but not more than \$7,500.<sup>28</sup>

**Other Felony Penalties.** A person convicted of manufacturing or possession with the intent to deliver methamphetamine or amphetamine to a minor commits a felony that is punishable by confinement for no more than 99 years.<sup>29</sup> If a person is convicted of a second or subsequent offense, the offense is classified as a class “A” felony.<sup>30</sup> A person convicted of a third or subsequent offense of operating while intoxicated commits a class “D” felony and may be committed to the custody of the Director of the Department of Corrections and assigned to a treatment facility pursuant to Iowa Code section 904.513.<sup>31</sup> If the court suspends a person’s sentence of commitment to the custody of the Director of the Department of Corrections, the court shall order the person to serve at least 30 days and up to one year in the county jail and may order the person committed to treatment in the community.<sup>32</sup>

## B. Misdemeanors

**Overview.** All public offenses which are not felonies are misdemeanors.<sup>33</sup> Misdemeanors are classified as aggravated, serious, and simple misdemeanors, in decreasing order of severity.<sup>34</sup> Where an act is declared to be a public offense, crime, or misdemeanor, but no other designation is given, the act is a simple misdemeanor by definition under Iowa Code section 701.8.

**Aggravated Misdemeanors.** The penalty for an aggravated misdemeanor is imprisonment not to exceed two years in a facility operated by the Department of Corrections and a fine of not less than \$625 but not more than \$6,250.<sup>35</sup> However, the court may impose a sentence of confinement for a determinate term of one year or less to be served in the county jail.<sup>36</sup>

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<sup>24</sup> Iowa Code §707.3.

<sup>25</sup> Iowa Code §726.6A.

<sup>26</sup> Iowa Code §716.10(2)(a).

<sup>27</sup> Iowa Code §902.9(1)(d).

<sup>28</sup> Iowa Code §902.9(1)(e).

<sup>29</sup> Iowa Code §§124.401D and 902.9(1)(a).

<sup>30</sup> Iowa Code §124.401D(1)(c).

<sup>31</sup> Iowa Code §321J.2(5)(a)(1).

<sup>32</sup> Iowa Code §321J.2(5)(a)(2).

<sup>33</sup> Iowa Code §701.8.

<sup>34</sup> Iowa Code §903.1.

<sup>35</sup> Iowa Code §903.1(2).

<sup>36</sup> Iowa Code §903.1(2).



**Serious Misdemeanors.** The penalty for a serious misdemeanor is a fine of not less than \$315 but not more than \$1,875. Imprisonment for up to one year in the county jail may also be ordered.<sup>37</sup>

**Simple Misdemeanors.** The penalty for a simple misdemeanor is a fine of at least \$65 but not more than \$625. Imprisonment for up to 30 days in the county jail may be ordered in addition to or in lieu of the fine.<sup>38</sup>

**Scheduled Violations.** In addition to the classified misdemeanors, a class of offenses known as scheduled violations is created in Iowa Code section 805.8. A scheduled violation is a violation of state, county, or city statute or ordinance for which the applicable penalty is a specific fine amount, which is listed in Iowa Code sections 805.8A, 805.8B, and 805.8C. Persons who commit acts which are scheduled violations are generally issued a citation or ticket and do not serve any term of confinement.<sup>39</sup>

## IV. Criminal Proceedings

### A. Search and Seizure

The United States and Iowa Constitutions grant the people the fundamental right to be secure in their persons, houses, and papers and effects against unreasonable searches and seizures, unless the government first obtains a search warrant based upon probable cause.<sup>40</sup> A valid search warrant must be signed by a magistrate or judge, be supported by an affidavit or testimony submitted under oath, and establish probable cause.<sup>41</sup> The search warrant must also describe with sufficient specificity the person, place, or thing to be searched.<sup>42</sup> The standard for probable cause is whether a person of reasonable prudence would believe a crime has been committed or that evidence of a crime might be located in the particular area to be searched.<sup>43</sup> If the government conducts an unreasonable search and seizure, the defendant's remedy is the exclusion of the evidence from trial.<sup>44</sup> This remedial exclusion of evidence is commonly referred to as the exclusionary rule. However, several exceptions to this rule for searches and seizures conducted by the government without a warrant have been established by the courts, including (1) consent searches, (2) searches based on probable cause and exigent circumstances, (3) search items in plain view, and (4) searches incident to a lawful arrest.<sup>45</sup>

### B. Arrest

An arrest is the taking of a person into custody when authorized by law.<sup>46</sup> Arrests may be made pursuant to a warrant or without a warrant.<sup>47</sup> An arrest pursuant to a warrant is

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<sup>37</sup> Iowa Code §903.1(1)(b).

<sup>38</sup> Iowa Code §903.1(1)(a).

<sup>39</sup> Iowa Code §§805.8(1), 805.6.

<sup>40</sup> U.S. Const. amend. IV; Iowa Const. art. I, §8.

<sup>41</sup> Iowa Code §808.3.

<sup>42</sup> Iowa Code §808.3.

<sup>43</sup> State v. Naujoks, 637 N.W.2d 101, 108 (Iowa 2001).

<sup>44</sup> State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007).

<sup>45</sup> Naujoks at 107.

<sup>46</sup> Iowa Code §804.5.

<sup>47</sup> Iowa Code §804.6.



commenced by the filing of a complaint before a judge which alleges that a person has committed a crime.<sup>48</sup> If the judge believes probable cause exists that a crime has been committed, the judge may issue an arrest warrant for the person named in the complaint.<sup>49</sup> A police officer is the only person authorized to make an arrest pursuant to a warrant issued by a judge.<sup>50</sup> However, a citizen may make an arrest if a crime is committed in the person's presence or if the arresting citizen reasonably believes that a felony has been committed.<sup>51</sup>

## C. Bail

Most, but not all, defendants are bailable after arrest, or after conviction if the defendant appeals the conviction. If a criminal offense is bailable the judge shall set bail.<sup>52</sup> The Iowa Constitution reads "[a]ll persons shall, before conviction, be bailable, by sufficient sureties, except for capital offences where the proof is evident, or the presumption great."<sup>53</sup> In order to determine the amount of bail, a defendant is required to appear before a judge without unnecessary delay.<sup>54</sup> However, a defendant within the period of time the defendant would otherwise remain incarcerated while waiting to be taken before a judge, may be released if such release is pursuant to pretrial release guidelines or a bond schedule promulgated by the Judicial Council.<sup>55</sup> However, the bond schedule does not apply when the court is in session and sets the bond amount.<sup>56</sup> A defendant awaiting judgment of conviction and sentencing shall not be admitted to bail following a plea or verdict of guilty of a class "A" felony, a forcible felony, or various other criminal offenses.<sup>57</sup> A defendant appealing a conviction of a class "A" felony, forcible felony, or various other criminal offenses is also prohibited from being admitted to bail.<sup>58</sup> In addition, a person detained for a sexually violent predator determination under Iowa Code chapter 229A is not bailable.<sup>59</sup>

<sup>48</sup> Iowa Code §804.1.

<sup>49</sup> Iowa Code §804.1.

<sup>50</sup> Iowa Code §804.6.

<sup>51</sup> Iowa Code §804.9.

<sup>52</sup> Iowa Code §804.21(2).

<sup>53</sup> Iowa Const. art. I, §12.

<sup>54</sup> Iowa Code §804.21(1).

<sup>55</sup> A defendant charged with a class "A" felony or with manufacture, delivery, possession with intent to manufacture or deliver, or distribution of methamphetamine is not eligible to be released under pretrial release guidelines or under the bond schedule promulgated by the Judicial Council. See Iowa Code §804.21(1) and the Uniform Bond Schedule at [http://www.iowacourtsonline.org/About\\_the\\_Courts/District\\_Courts/District\\_Court\\_Resources/Uniform\\_Bond\\_Schedule](http://www.iowacourtsonline.org/About_the_Courts/District_Courts/District_Court_Resources/Uniform_Bond_Schedule) (last visited Oct. 8, 2013).

<sup>56</sup> State v. Huss, 779 N.W.2d, 495, 498 (Iowa 2010).

<sup>57</sup> Iowa Code §811.1(1). The other criminal offenses for which a defendant shall not be admitted to bail after a judgment of conviction and sentencing following a plea or verdict of guilty include the following: any class "B" felony included in Iowa Code §462A.14 or Iowa Code §707.6A; any felony included in Iowa Code §124.401(1)(a) or (b); a second or subsequent offense under Iowa Code §124.401(1)(c); a felony punishable under Iowa Code §902.9(1)(a); a public offense committed while detained pursuant to Iowa Code §229A.5; or a public offense committed while subject to an order of commitment pursuant to Iowa Code chapter 229A. See Iowa Code §702.11 for a definition of forcible felony.

<sup>58</sup> Iowa Code §811.1(1),(2). The other criminal offenses for which a defendant shall not be admitted to bail after a judgment of conviction and sentencing following a plea or verdict of guilty include the following: any class "B" or "C" felony included in Iowa Code §462A.14 or Iowa Code §707.6A; any felony included in Iowa Code §124.401(1)(a) or (b); a second or subsequent offense under Iowa Code §124.401(1)(c); a felony punishable under Iowa Code §902.9(1)(a); a public offense committed while detained pursuant to Iowa Code §229A.5; or a public offense committed while subject to an order of commitment pursuant to Iowa Code chapter 229A. See Iowa Code §702.11 for a definition of forcible felony.

<sup>59</sup> Atwood v. Vilsack, 725 N.W.2d 641, 652 (Iowa 2006).



## D. Defense Representation

A person charged with a criminal offense is generally entitled to representation in legal proceedings by an attorney.<sup>60</sup> In Iowa, a person is entitled to an attorney for any offense where there is a possibility of imprisonment if the person is convicted.<sup>61</sup> The court is required by statute to appoint an attorney if the person is indigent.<sup>62</sup> A person is considered indigent if the person's income is at or below 125 percent of the United States poverty level.<sup>63</sup> An indigent person is entitled to a court-appointed attorney not only in criminal cases but also under Iowa Code chapters 229A, 665, 812, 814, 822, and 908; and Iowa Code sections 232.141, 598.23A, 600A.6B, 811.1A, 814.9, 814.10, and 815.4.<sup>64</sup>

## E. Prosecution

**Overview.** Upon the receipt of alleged facts that a crime has been committed, the county attorney has the discretion to file criminal charges.<sup>65</sup> A criminal defendant may be charged with an indictable misdemeanor or felony by the filing of a trial information or upon the return of an indictment by a grand jury. In most cases a defendant is charged by the filing of a trial information.<sup>66</sup> Generally, the trial information contains the alleged facts of a crime. The facts are usually gathered by the local police or other investigative governmental agencies.

**Plea Agreements.** If the criminal charge is not dismissed by a judge during the pretrial stage, the defendant has the choice to enter into a plea agreement with the county attorney or proceed to trial on the charge.<sup>67</sup> In almost all cases, the defendant and the county attorney enter into a plea agreement whereby the defendant agrees to plead guilty to a criminal charge in exchange for the county attorney agreeing not to seek the maximum penalty against the defendant.<sup>68</sup> If a plea agreement is entered into, the county attorney is usually bound by the agreement until the defendant pleads guilty; however, a defendant is not bound by the agreement until a guilty plea is entered.<sup>69</sup> Generally, the county attorney has the following options during plea discussions in exchange for a defendant pleading guilty:

- The defendant is allowed to plead guilty to a lesser or related offense that carries a lighter sentence.
- The county attorney agrees to drop or not file certain charges.

<sup>60</sup> U.S. Const. amend. VI; Iowa Const. art. I, §10; McNabb v. Osmundson, 315 N.W.2d 9, 14 (Iowa 1982).

<sup>61</sup> McNabb at 14; Iowa R.Cr.P. 2.28.

<sup>62</sup> Iowa Code §815.9(1)(a).

<sup>63</sup> Iowa Code §815.9(1)(a).

<sup>64</sup> Iowa Code ch. 229A (commitment of sexually violent predators), ch. 665 (contempt proceedings), ch. 812 (competency hearing), ch. 814 (appeals), ch. 822 (postconviction procedure), and ch. 908 (violations of parole or probation); Iowa Code §§232.141 (juvenile cases), 598.23A (contempt proceedings for support payments), 600A.6B (termination of parental rights), 811.1A (felony detention hearing), 814.9 (indigent right to appellate transcript), 814.10 (indigent application for transcript), and 815.4 (special witnesses for indigents). See Iowa Code §815.11.

<sup>65</sup> Iowa Code §331.756(1); Iowa R.Cr.P. 2.5(1).

<sup>66</sup> Iowa Const. art. I, §11; see generally, Iowa R.Cr.P. 2.5.

<sup>67</sup> Iowa R.Cr.P. 2.10(1).

<sup>68</sup> Iowa R.Cr.P. 2.10(1).

<sup>69</sup> State v. Edwards, 279 N.W.2d 9 (Iowa 1979).



- For misdemeanor charges, the county attorney may agree to recommend to the court a certain amount of days in jail or no jail sentence at all.
- The county attorney agrees to recommend to the court that “mitigating circumstances” exist under Iowa Code section 901.10 for certain drug- or weapon-related offenses, which would reduce a defendant’s sentence.
- The county attorney agrees to recommend to the court a deferred judgment, deferred sentence, or probation, or agrees to make no recommendation as to sentence.

**Guilty Pleas.** After a defendant enters a guilty plea, the judge decides the defendant’s sentence.<sup>70</sup> In most cases where a plea agreement is made between the county attorney and the defendant, the judge will follow the agreement, although the court is not bound to abide by any agreement between the parties.<sup>71</sup> If the defendant chooses to proceed to trial and is subsequently convicted, the county attorney is not bound by any plea agreement negotiations and is free to recommend to the court any type of sentence. Thus, a defendant convicted at trial loses some degree of certainty as to what type of sentence will be imposed.

## F. Trial

A criminal case will proceed to trial if the charges have not been dismissed against a person who is competent to stand trial, and the person does not enter a guilty plea. A person is entitled to a jury trial before 12 jurors in most cases, but in a simple misdemeanor case the jury is limited to six jurors.<sup>72</sup> To convict a person of a crime, the jury must be unanimous in its verdict.<sup>73</sup> A person may also choose to waive the person’s right to a jury trial and proceed with a trial before a judge.<sup>74</sup>

## G. Appeal

The Iowa Supreme Court and Iowa Court of Appeals have jurisdiction over all criminal appeals in Iowa.<sup>75</sup> If convicted of a crime other than a simple misdemeanor, by either a jury or a judge, a person must appeal within 30 days of conviction or the person loses the right to appeal.<sup>76</sup> An appeal of any criminal case other than a simple misdemeanor is to the Supreme Court, and the Supreme Court then decides whether to hear the appeal or to transfer the case to the Court of Appeals.<sup>77</sup> If the appeal is heard before the Court of Appeals, a person may file an application for further review with the Supreme Court within

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<sup>70</sup> Iowa Code §901.5.

<sup>71</sup> Iowa R.Cr.P. 2.10(2).

<sup>72</sup> See generally Iowa Const. art. I, §9 (right to a jury trial); Iowa R.Cr.P. 2.18(1) for most criminal cases and Iowa R.Cr.P. 2.67(6) for simple misdemeanors.

<sup>73</sup> Iowa R.Cr.P. 2.22(5).

<sup>74</sup> See Iowa R.Cr.P. 2.17(1) for criminal cases except simple misdemeanors and Iowa R.Cr.P. 2.64 for simple misdemeanors. A demand for a jury trial for a simple misdemeanor case must be made within 10 days of a plea of not guilty or the trial is before a judge, whereas in all other criminal cases a jury trial must be waived.

<sup>75</sup> Iowa Code §602.4102(1), (2).

<sup>76</sup> Iowa R. App. P. 6.101.

<sup>77</sup> Iowa Code §602.4102(2).



20 days of the Court of Appeals ruling.<sup>78</sup> A person convicted of a simple misdemeanor has 10 days to appeal the decision to the district court.<sup>79</sup>

## H. Postconviction Relief

Postconviction remedies exist to give trial courts an opportunity to consider and correct challenges to their original actions.<sup>80</sup> In many instances a postconviction relief action is in addition to any appeal; however, the appellate courts will hear postconviction arguments on appeal if the record is sufficient.<sup>81</sup> A person who has been convicted may seek postconviction relief on any of the following bases under Iowa Code section 822.2:

- The conviction or sentence was in violation of the United States or Iowa Constitution or other Iowa law.
- The court was without jurisdiction to impose sentence.
- The sentence exceeds the maximum authorized by law.
- New evidence of material facts requires a new trial in the interest of justice.
- The person is unlawfully held in custody.
- The person's "earned time" has been unlawfully forfeited.
- The person's conviction is subject to collateral attack<sup>82</sup> based upon any error.

## I. Confinement of a Dangerous Person

The county attorney may file a verified ex parte motion asking the court for the immediate arrest of a defendant awaiting sentencing, if the defendant is not already in custody, who is suspected of being a danger to another person or property.<sup>83</sup> The detention hearing must be held before a judge within 72 hours of the defendant's arrest or, if the defendant is in custody, within 72 hours of the filing of the motion.<sup>84</sup> If the court finds by clear and convincing evidence that the person is a danger to another person or property, the person is denied bail.<sup>85</sup>

## J. Confinement of a Mentally Incompetent Person

**Mental Incompetency — Suspension of Criminal Proceedings.** At any stage of a criminal proceeding, the defendant or the defense attorney may make an application to the court stating specific facts showing that the defendant is suffering from a mental disorder and is not competent to stand trial.<sup>86</sup> The court may make its own motion if the defendant or defense attorney in the criminal proceeding fails to make an application.<sup>87</sup> The court

<sup>78</sup> Iowa Code §602.4102(4).

<sup>79</sup> Iowa R.Cr.P. 2.73(1).

<sup>80</sup> State v. Swartz, 541 N.W.2d 533, 541 (Iowa 1995).

<sup>81</sup> State v. Spurgeon, 533 N.W.2d 218, 220 (Iowa 1995).

<sup>82</sup> See Black's Law Dictionary, p. 261 (6th edition 1990) for definition of "collateral attack."

<sup>83</sup> Iowa Code §811.1A(1) and (2)(a).

<sup>84</sup> Iowa Code §811.1A(2)(b).

<sup>85</sup> Iowa Code §811.1A.

<sup>86</sup> Iowa Code §812.3(1).

<sup>87</sup> Iowa Code §812.3(1).



must schedule a hearing to determine if probable cause exists to sustain the allegations.<sup>88</sup> If the court determines probable cause exists, the court suspends further proceedings, the defendant's right to a speedy indictment and speedy trial is tolled, and a hearing must be held on the defendant's competency to determine whether the defendant appreciates the charge, understands the proceedings, or can effectively assist in the defendant's defense.<sup>89</sup> The court must order a psychiatric evaluation of the defendant, or if a recent evaluation exists, the court may use that evaluation in the competency hearing.<sup>90</sup> A competency hearing is required within 14 days of the arrival of the person at a psychiatric facility for the performance of an evaluation, or within five days of the filing of an application if a recent evaluation will be used in the hearing.<sup>91</sup>

**Competency Hearing.** The court receives all relevant and material evidence at the competency hearing and is not bound by the rules of evidence.<sup>92</sup> If the court finds the defendant is competent to stand trial, the court must reinstate the criminal proceedings against the defendant.<sup>93</sup> If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court must suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program.<sup>94</sup>

**Placement and Treatment.** At the conclusion of the competency hearing, if the court finds the defendant does not pose a danger to the public peace and safety, is qualified for pretrial release, and is willing to cooperate with treatment, the court must order the person to undergo mental health treatment designed to restore the defendant to competency.<sup>95</sup>

If by clear and convincing evidence the defendant poses a danger to the public peace and safety, or is not qualified for pretrial release, or does not cooperate with treatment, the court must commit the defendant to an appropriate inpatient treatment facility.<sup>96</sup> The defendant must be committed as a safekeeper to the custody of the Director of the Department of Corrections for treatment if the defendant poses a danger to the public peace and safety.<sup>97</sup> If the defendant does not pose a danger to the public peace and safety but is otherwise being held in custody, the defendant is placed in a facility operated by the Department of Human Services for treatment.<sup>98</sup>

**Restoration of Competency.** After placement, if the treating psychiatrist or doctorate-level psychologist finds there is a substantial probability the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense, the psychiatrist or psychologist, or the director of the

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<sup>88</sup> Iowa Code §812.3(1).

<sup>89</sup> Iowa Code §812.3(1).

<sup>90</sup> Iowa Code §812.3(2).

<sup>91</sup> Iowa Code §812.4(1).

<sup>92</sup> Iowa Code §812.5.

<sup>93</sup> Iowa Code §812.5(1).

<sup>94</sup> Iowa Code §812.5(2).

<sup>95</sup> Iowa Code §812.6(1).

<sup>96</sup> Iowa Code §812.6(2).

<sup>97</sup> Iowa Code §812.6(2)(a). See Iowa Code §229A.2(8) for the definition of "safekeeper."

<sup>98</sup> Iowa Code §812.6(2)(b).



facility treating the defendant, notifies the court, and a hearing is set on the defendant's competency within 14 days of being notified.<sup>99</sup>

If there is no substantial probability the competency of the defendant will be restored, the court shall also be notified, and a hearing is required within 14 days of the court being notified.<sup>100</sup>

If the treating psychiatrist or doctorate-level psychologist finds the defendant would benefit from either a more restrictive or less restrictive placement for treatment, the psychiatrist or psychologist must notify the court, and a hearing must be set on the matter by the court within 14 days of being notified.<sup>101</sup>

**Restoration of Competency Hearing.** Fourteen days after receiving a notice that there is a substantial probability that the competency of the defendant has been restored, or there is no substantial probability the defendant's competency will be restored, or the appropriate level of treatment should be modified, the court must hold a restoration of competency hearing.<sup>102</sup> Upon a finding by the court that the defendant's competency has been restored, the court must terminate the placement and restore the criminal proceedings against the defendant, but may require continued treatment in order to maintain the competency of the defendant.<sup>103</sup> If the court finds by a preponderance of the evidence that the defendant's competency has not been restored but finds the defendant is making progress in regaining competency, the court must continue the placement.<sup>104</sup> If the court finds there is no substantial probability the defendant's competency will be restored in a reasonable amount of time, the court must terminate the placement.<sup>105</sup>

**Length of Placement and Other Proceedings.** A defendant cannot be placed for a period greater than the maximum term of confinement for the criminal offense for which the defendant is accused or 18 months, whichever is shorter.<sup>106</sup> If the length of the defendant's placement equals the maximum length of the term of confinement for which the defendant is accused, the criminal offense must be dismissed by the court with prejudice.<sup>107</sup> When the defendant's placement equals 18 months, the court must schedule a hearing to determine whether the competency of the defendant has been restored.<sup>108</sup> The court must terminate the placement of the defendant if the defendant's mental competency has not been restored.<sup>109</sup>

The state may, after termination of placement, commence civil commitment proceedings under Iowa Code chapter 229 or 229A.<sup>110</sup> After termination of the placement, if the criminal proceedings have not been dismissed with prejudice, the state may seek to

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<sup>99</sup> Iowa Code §812.8(1) and (4).

<sup>100</sup> Iowa Code §812.8(3) and (4).

<sup>101</sup> Iowa Code §812.8(2) and (4).

<sup>102</sup> Iowa Code §812.8(4).

<sup>103</sup> Iowa Code §812.8(5).

<sup>104</sup> Iowa Code §812.8(6).

<sup>105</sup> Iowa Code §812.8(8).

<sup>106</sup> Iowa Code §812.9(1).

<sup>107</sup> Iowa Code §812.9(1).

<sup>108</sup> Iowa Code §812.9(2).

<sup>109</sup> Iowa Code §812.9(2).

<sup>110</sup> Iowa Code §812.9(3).



file an application seeking to reinstate the criminal proceedings if it appears the competency of the defendant has been restored.<sup>111</sup>

## V. Imposition of Sentences

### A. Sentencing by the Court

**Sentencing Factors.** A judge has some discretion to determine the exact terms of a sentence or the form a sentence will take in a particular case. The judge is required by statute to decide which sentence will provide maximum opportunity for rehabilitation of the person and protect the community from further offenses.<sup>112</sup> In exercising discretion the Iowa Supreme Court has stated that the court:

[S]hould weigh and consider all pertinent matters determining proper sentence, including nature of the offense, the attending circumstances, defendant's age, character, and propensities and chances of reform. The courts owe a duty to the public as much as to the defendant in determining a proper sentence. The punishment should fit the crime and the individual.<sup>113</sup>

Other factors usually considered by the court in exercising discretion include the defendant's prior criminal record, employment circumstances, and availability of treatment options.<sup>114</sup> The sources of information on which the court may rely are varied and can include information presented by the prosecutor, the defense, a presentence investigation, victim impact statements, and information derived from any trial or hearings.<sup>115</sup> The court does not, however, necessarily have the same types of sentencing information available for every defendant in every case, especially misdemeanor cases. In most misdemeanor cases, a presentence investigation will not be available and the court will have to rely on statements from the prosecutor and the defense to make a determination as to the sentence.<sup>116</sup>

**Court Discretion.** The court has the discretion to decide the following sentences in cases that do not involve a mandatory prison or jail term:

- Prison for an indeterminate term for felonies and aggravated misdemeanors.<sup>117</sup>
- Deferral of judgment or sentence, or suspension of sentence and placement on probation. Probation may include placement at a community-based correctional facility.<sup>118</sup>
- Reconsideration of sentence to prison or jail followed by placement on probation.<sup>119</sup>

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<sup>111</sup> Iowa Code §812.9(4).

<sup>112</sup> Iowa Code §901.5 (unnumbered paragraph 1).

<sup>113</sup> State v. August, 589 N.W.2d 740, 744 (Iowa 1999) (quoting State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979) and State v. Cupples, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967)).

<sup>114</sup> Iowa Code §§901.3, 901.5, and 907.5. (Additional sentencing factors which may also be considered by the court include family circumstances, circumstances of the offense, time already served in confinement, the harm to the victim and the victim's family, and any mitigating circumstances related to the offense.)

<sup>115</sup> Iowa Code §901.5.

<sup>116</sup> Iowa Code §901.2.

<sup>117</sup> Iowa Code §901.5(1). See also Iowa Code §902.3 and Iowa Code ch. 907.

<sup>118</sup> Iowa Code §§901.5(3), (5) and 907.3. See generally, Iowa Code ch. 907.

<sup>119</sup> Iowa Code §§902.4 (felonies) and 903.2 (misdemeanors).



- Determining whether a sentence is to run concurrently or consecutively with other sentences.<sup>120</sup>
- Determining whether “mitigating circumstances” exist to reduce a sentence under Iowa Code section 124.406, 124.413, or 902.7.<sup>121</sup>
- Determinate jail sentence for a misdemeanor except an aggravated misdemeanor term of confinement that is more than one year.<sup>122</sup>

Generally, the court has the discretion to issue a specific fine within a range of monetary amounts provided for in statute.<sup>123</sup> However, in all misdemeanor cases and class “D” and “C” felonies, a minimum fine must be part of the sentence.<sup>124</sup> The court may in its discretion order the defendant to perform community service work in lieu of a fine in the event a person is unable to pay such a fine if it appears that community service work would be adequate to deter the person and discourage others from similar criminal activity.<sup>125</sup>

## B. Sentencing System

**Mandatory Sentences.** In recent years, many mandatory penalties of either a fine or imprisonment, or both, have been enacted and unique penalties have been established for a number of crimes. Examples of crimes which carry mandatory penalties include class “A” felonies, operating while under the influence, and domestic abuse assault.<sup>126</sup> In addition, a person convicted of a forcible felony listed in Iowa Code section 702.11 must be sentenced to a term of confinement without the possibility of receiving probation.<sup>127</sup>

**Penalty Enhancements.** Penalty enhancements have been added for several crimes, which has the effect of increasing the penalty applicable to an underlying offense if certain factors are present. Examples of crimes which carry penalty enhancements include distribution or possession of controlled substances on or near certain properties, failure to obey school bus warning lights and stop arm signals, criminal mischief in violation of individual rights, possession of weapons in or on weapons free zones, and sexually predatory offenses.<sup>128</sup>

**Limitations on Parole.** The General Assembly has also placed limitations on parole eligibility, which has a similar effect on the length of a sentence as a mandatory sentence. The following criminal offenses have limitations placed on a person’s ability to be paroled:

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<sup>120</sup> Iowa Code §901.8.

<sup>121</sup> Iowa Code §901.10.

<sup>122</sup> Iowa Code §903.1(2).

<sup>123</sup> Iowa Code §901.5(4). See Iowa Code §902.9 (felonies) and Iowa Code §903.1 (misdemeanors) for fine amount ranges.

<sup>124</sup> The minimum fines for the following offenses are as follows: for a simple misdemeanor, \$65; for a serious misdemeanor, \$315; for an aggravated misdemeanor, \$625; for a class “D” felony, \$750; and for a class “C” felony, \$1,000. See Iowa Code §§902.9 and 903.1.

<sup>125</sup> Iowa Code §§909.3A and 909.7.

<sup>126</sup> Iowa Code §§321J.2(3)(a), 321J.2(4)(a), and 321J.2(5)(a) (operating while under the influence), Iowa Code §708.2A (domestic abuse assault), and Iowa Code §902.1 (class “A” felonies). The enhanced penalties for domestic abuse assault are enhanced even further if the assault involved impeding the normal breathing or circulation of blood by applying pressure to the throat of another. See Iowa Code §708.2A.

<sup>127</sup> Iowa Code §907.3.

<sup>128</sup> Iowa Code §124.401A (distribution or possession of controlled substances on or near certain properties), Iowa Code §321.372 (failure to obey school bus warning lights and stop arm signals), Iowa Code §716.6A (criminal mischief in violation of individual rights), Iowa Code §724.4A (possession of weapons), and Iowa Code ch. 901A (sexually predatory offenses).



- Any forcible felony involving the use of a dangerous weapon.
- A habitual offender.
- First offense of conspiracy to manufacture or possess with the intent to deliver methamphetamine or amphetamines to a minor.
- Prior forcible felon serving a sentence for a felony other than a forcible felony.
- Any felony limiting the maximum accumulation of earned time to approximately 15 percent of the total sentence (otherwise referred to as 70 percent sentences).<sup>129</sup>

The Iowa Supreme Court has ruled that offenses which require service of 70 percent of the sentence do not constitute cruel and unusual punishment under the Iowa Constitution.<sup>130</sup> However, in recent cases the Iowa Supreme Court has concluded some sentences requiring juveniles to serve a lengthy 70 percent sentence do constitute cruel and unusual punishment under the United States Constitution and the Iowa Constitution.<sup>131</sup>

**Ten-year or Lifetime Parole — Special Sentence.** A person convicted of a class “C” felony or greater offense that is sexually violent in nature is subject to serving a special sentence requiring lifetime parole upon completion of the sentence imposed for the underlying criminal offense.<sup>132</sup> A person convicted of a class “D” felony or a misdemeanor offense that is sexually abusive in nature is subject to serving a special sentence that requires a 10-year term of parole upon completion of the sentence imposed for the underlying criminal offense.<sup>133</sup> A person begins a special sentence on parole or work release status after completion of the sentence for their underlying criminal offense.<sup>134</sup> A person’s release may be revoked just like any other person on parole except the first revocation of release cannot be for a period greater than two years, and any second or subsequent revocation cannot be for a period greater than five years.<sup>135</sup> A person may be discharged from the special sentence by the Board of Parole prior to the expiration of such a sentence.<sup>136</sup> However, a person convicted of a violation of Iowa Code section 709.3 (sexual abuse in the second degree), 709.4 (sexual abuse in the third degree), or 709.8 (lascivious acts with a child) committed on or with a child that is a class “C” felony or greater shall not be discharged from a special sentence.<sup>137</sup>

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<sup>129</sup> Iowa Code §902.7 (forcible felony involving the use of a dangerous weapon), Iowa Code §902.8 (habitual offender), Iowa Code §902.8A (manufacture or intent to deliver methamphetamine or amphetamine to a minor), Iowa Code §902.11 (forcible felon serving a felony sentence that is not a forcible felony), and Iowa Code §902.12 (70 percent sentences).

<sup>130</sup> State v. Lara, 580 N.W.2d 783, 785-6 (Iowa 1998). However, in State v. Bruegger, 773 N.W.2d 862, 885 (Iowa 2009), the Iowa Supreme Court did find that, in rare instances, a criminal penalty may constitute cruel and unusual punishment.

<sup>131</sup> See State v. Null, No. 11-1080 (Iowa Aug. 16, 2013) and State v. Pearson, No. 11-1080 (Iowa Aug. 16, 2013).

<sup>132</sup> Iowa Code §903B.1. For felony lifetime parole offenses, see Iowa Code ch. 709 (sexual abuse) and Iowa Code §728.12 (sexual exploitation of a minor).

<sup>133</sup> Iowa Code §903B.2. For class “D” felony and misdemeanor offenses requiring a 10-year parole term, see Iowa Code ch. 709 (sexual abuse) and Iowa Code §§726.2 (incest) and 728.12 (sexual exploitation of a minor).

<sup>134</sup> Iowa Code §§903B.1 and 903B.2.

<sup>135</sup> Iowa Code §§903B.1 and 903B.2.

<sup>136</sup> Iowa Code §906.15.

<sup>137</sup> Iowa Code §§906.15 and 903B.1.



## C. Probation

Probation is a procedure under which a criminal defendant, against whom a judgment of conviction has been or may be entered, is released subject to supervision by a judicial district department of correctional services.<sup>138</sup> In the case of a deferred judgment, the judgment is not entered and a sentence is not actually imposed before the person is placed on probation. In addition, the conviction is not made part of the defendant's record if the defendant successfully completes probation.<sup>139</sup> However, the arrest data remains part of the person's criminal history data, despite successful completion of probation following the deferred judgment, and may be disseminated subject to certain requirements and limitations.<sup>140</sup> A person receiving a deferred judgment is assessed a civil penalty of an amount not less than the amount of any criminal fine authorized by law for the offense.<sup>141</sup> If a defendant receives a deferred sentence, judgment is entered and the conviction is made part of the defendant's record but the sentence is not actually imposed.<sup>142</sup> In the case of a suspended sentence, the conviction is made part of the defendant's record and the sentence is imposed, but service of the term of the sentence is suspended during the period of probation.<sup>143</sup> Decisions relating to the conditions under which a person is released on probation, the length of probation, and the time of discharge from supervision are made by the court.<sup>144</sup> The court has discretion in felony cases that do not require a mandatory prison sentence to sentence a defendant to a minimum of two years' and a maximum of five years' probation.<sup>145</sup> In misdemeanor cases the minimum probationary period is one year and the maximum period is two years.<sup>146</sup> After the probationary period has been determined by the court, the court may extend the period of probation for up to one year, including one year beyond the maximum period of probation, if a violation of probation has been established.<sup>147</sup> Normally, the sentencing court maintains jurisdiction over a defendant's probation and will conduct any revocation or modification hearings regarding probation.<sup>148</sup>

## D. Reconsideration of a Sentence

A person convicted of a felony who has been sentenced to a term of confinement may have the sentence reconsidered within one year from the date the person begins to serve the sentence upon a motion by the court or the Director of the Department of Corrections.<sup>149</sup> A person convicted of a misdemeanor and sentenced to a term of confinement may have the sentence reconsidered within 30 days from the date the

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<sup>138</sup> Iowa Code §907.1(5).

<sup>139</sup> Iowa Code §907.3(1).

<sup>140</sup> Iowa Code §692.2(1)(b)(4).

<sup>141</sup> Iowa Code §907.14(1).

<sup>142</sup> Iowa Code §907.3(2).

<sup>143</sup> Iowa Code §907.3(3).

<sup>144</sup> Iowa Code §§907.6, 907.7, and 907.9(1).

<sup>145</sup> Iowa Code §907.7(1), (2).

<sup>146</sup> Iowa Code §907.7(1), (2).

<sup>147</sup> Iowa Code §907.7(1).

<sup>148</sup> Iowa Code §907.8.

<sup>149</sup> Iowa Code §902.4.



sentence begins.<sup>150</sup> If the court reconsiders a person's sentence, the court may order the person to serve any sentence permitted by law, including probation.<sup>151</sup> However, the court may not reconsider a person's sentence if the person was convicted of a class "A" felony or sentenced for a crime that carries a mandatory term of confinement.<sup>152</sup>

## E. Parole and Work Release

**Parole.** Parole is the release of an inmate from a term of confinement before the expiration of the inmate's sentence, subject to supervision by a judicial district department of correctional services.<sup>153</sup> Unlike probation, however, the person is still considered to be serving the sentence while the person is released, meaning that the term of the sentence will continue to run and may even expire during the course of the release.<sup>154</sup>

**Work Release.** Work release is the temporary release of an inmate for employment purposes.<sup>155</sup> An inmate may be released entirely from a correctional institution for work purposes or may leave actual confinement each day for work purposes.<sup>156</sup> There are two types of work release programs. One work release program is established by the Department of Corrections with the Board of Parole and applies to eligible inmates housed in all correctional institutions, and the other is an institutional work release program that is specific to each institution.<sup>157</sup>

Work release may also include an out-of-state work or treatment placement or release for purposes of seeking employment, attendance at an educational institution, or family visitation.<sup>158</sup> An inmate may even be placed on work release status in the inmate's own home, for child care and housekeeping or other appropriate purposes, although the inmate is to return to the institution or local supervised housing facilities once the work release hours have concluded.<sup>159</sup> An inmate may not be placed on institutional work release for longer than six months in any 12-month period without special approval.<sup>160</sup>

## F. Furlough, Reprieve, Pardon, and Commutation

**Furlough.** Furlough is the temporary release of an inmate due to serious family illness, family death, or for job search, training, or rehabilitation-related purposes.<sup>161</sup> A furlough program may be established by the Director of the Department of Corrections with the approval of the Board of Corrections and may not exceed 14 days in length.<sup>162</sup>

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<sup>150</sup> Iowa Code §903.2.

<sup>151</sup> Iowa Code §§901.5, 902.4, and 903.2.

<sup>152</sup> Iowa Code §902.4.

<sup>153</sup> Iowa Code §906.1.

<sup>154</sup> Iowa Code §906.16.

<sup>155</sup> Iowa Code §906.1.

<sup>156</sup> See generally, Iowa Code §§904.901 and 904.910.

<sup>157</sup> See Iowa Code §§904.901 (Department-wide work release program) and 904.910 (institutional work release program).

<sup>158</sup> Iowa Code §904.901.

<sup>159</sup> Iowa Code §904.901.

<sup>160</sup> Iowa Code §904.910(4).

<sup>161</sup> Iowa Code §904.108(2).

<sup>162</sup> Iowa Code §904.108(2).



**Reprieve, Pardon, and Commutation.** A reprieve is a temporary stay from the carrying out of a sentence.<sup>163</sup> A pardon is the permanent cancellation of a sentence and a commutation is the reduction of a sentence.<sup>164</sup> The power to grant a reprieve, pardon, or commutation of sentence rests with the Governor.<sup>165</sup> A person who has been convicted of a class “A” felony may request the Governor to commute the person’s sentence no more frequently than every 10 years.<sup>166</sup> All other persons who have been convicted of a crime may apply to the Governor for a reprieve, pardon, or commutation at any time.<sup>167</sup> Upon application by a person for a reprieve, pardon, or commutation, the Board of Parole is required to first review the application and subsequently to make recommendations to the Governor.<sup>168</sup>

## G. Earned Time

**Overview.** Once a person has been sentenced to a term of incarceration, one of the factors that may affect how long the person remains incarcerated is “earned time.”<sup>169</sup> Earned time is one of the tools used by the Department of Corrections to provide inmates of correctional institutions with an incentive to comply with the rules and regulations established for those facilities. For the purpose of calculating earned time, sentences are classified as either category “A” or “B” sentences.<sup>170</sup>

**Category “A.”** An inmate who has been sentenced to a category “A” sentence is eligible for a reduction in sentence of one and two-tenths days for each day of good conduct while committed to one of the Department of Corrections institutions.<sup>171</sup> To accumulate “earned time,” an inmate must exhibit good conduct and satisfactorily participate in an employment, treatment, or educational program.<sup>172</sup> If the inmate is a class “A” felon, the earned time accumulated will not actually reduce the person’s life sentence, but will be credited against the person’s sentence if the sentence is ever commuted to a term of years.<sup>173</sup>

**Category “B.”** A category “B” sentence is commonly referred to as a 70 percent sentence. If an inmate is sentenced for a felony listed in Iowa Code section 902.12, the inmate’s sentence is a category “B” sentence and the rules for accumulation of credit for earned time are different than for category “A” sentences.<sup>174</sup> Inmates with category “B” sentences are only eligible for a maximum accumulation of good time of fifteen eighty-fifths of a day for each day of good conduct up to a maximum of 15 percent of the maximum term of the sentence.<sup>175</sup>

<sup>163</sup> Black’s Law Dictionary, p. 1302 (6th ed. 1990).

<sup>164</sup> Black’s Law Dictionary, p. 1113 (6th ed. 1990) (pardon) and Black’s Law Dictionary, p. 280 (6th ed. 1990) (commutation).

<sup>165</sup> Iowa Const. art. IV, §16; Iowa Code §914.1.

<sup>166</sup> Iowa Code §902.2.

<sup>167</sup> Iowa Code §914.2.

<sup>168</sup> Iowa Code §914.3.

<sup>169</sup> Iowa Code §903A.2.

<sup>170</sup> Iowa Code §903A.2(1).

<sup>171</sup> Iowa Code §903A.2(1)(a).

<sup>172</sup> Iowa Code §903A.2(1)(a).

<sup>173</sup> Iowa Code §903A.2(5).

<sup>174</sup> Iowa Code §903A.2(1)(b).

<sup>175</sup> Iowa Code §903A.2(1)(b).



For example, an inmate sentenced for robbery in the first degree, a 25-year 70 percent category “B” sentence, will serve at least 17.5 years in prison prior to being eligible for parole<sup>176</sup> (25 years multiplied by 70 percent). In order to calculate the earned time for the inmate, the maximum term of the sentence of 25 years is multiplied by .176471 (fifteen eighty-fifths of a day for each day of good conduct by the inmate serving a category “B” sentence).<sup>177</sup> However, the maximum amount of earned time a category “B” inmate can earn is capped at 15 percent of the maximum term of the sentence or 3.75 years (25 years multiplied by 15 percent).<sup>178</sup> Thus, a person serving a 25-year 70 percent category “B” sentence is eligible for parole after serving 17.5 years in prison and the sentence will be discharged after 21.25 years (25 years minus 3.75 years), if no earned time credits were forfeited.<sup>179</sup> In addition, a person serving a 70 percent category “B” sentence is not eligible to be discharged early from parole.<sup>180</sup>

The following offenses listed in Iowa Code section 902.12 are considered category “B” sentences:

- Murder in the second degree.
- Attempted murder.
- Sexual abuse in the second degree.
- Kidnapping in the second degree.
- Robbery in the first and second degrees.
- Homicide by vehicle, where the defendant was found to be intoxicated or driving recklessly or eluding police and was also convicted of leaving the scene of the accident.<sup>181</sup>

**Computation.** An inmate begins to accrue earned time at the commencement of the inmate’s sentence at a correctional institution.<sup>182</sup> An inmate’s sentence is also credited with any time spent incarcerated at a jail, alternate jail facility, or community correctional treatment facility on the days prior to being sent to the institution.<sup>183</sup> However, an inmate will not actually receive the benefit of the reduction unless the inmate has successfully served the inmate’s full term, less time earned and not forfeited.<sup>184</sup> Any or all of the

<sup>176</sup> Iowa Code §903A.2(1)(b).

<sup>177</sup> Iowa Code §903A.2(1)(b).

<sup>178</sup> Iowa Code §903A.2(1)(b).

<sup>179</sup> 163A – E-mail from Tamia Salvati, Department of Corrections, to Joseph McEniry, LSA (July 22, 2010) (on file with author).

<sup>180</sup> Iowa Code §906.15.

<sup>181</sup> Iowa Code §902.12(6).

<sup>182</sup> Iowa Code §903A.5.

<sup>183</sup> Iowa Code §§903A.5, 907.3(3). Under previous law, a person who committed an offense prior to May 25, 2012, was also granted credit for time served on probation if the person was supervised in some capacity while on probation. See *Anderson v. State*, 801 N.W.2d 1, 9 (Iowa 2011). However, the law was amended to negate the *Anderson* case. See 2012 Iowa Acts, ch. 1138 (HF 2465), § 91. Under current law, a person who committed an offense prior to May 25, 2012, may expressly state to the court, at the time of sentencing, that the person waives any rights under *Anderson* relating to the calculation of credit for time served, and agrees to be sentenced using credits as calculated under Iowa Code §907.3 as amended by HF 2465. If the court finds the waiver voluntary, the sentencing order shall reference the person’s waiver of rights under *Anderson*, and order that credit for time served be calculated under Iowa Code §907.3 as amended by HF 2465. A person who commits an offense on or after May 25, 2012, is not eligible to have credit for time served calculated under *Anderson*.

<sup>184</sup> Iowa Code §903A.5.



reduction of an inmate's sentence which is due to the accrual of earned time credits may be forfeited at any time during the inmate's sentence for a violation of an institutional rule or other disciplinary action.<sup>185</sup>

## VI. Department of Corrections

If a person is sentenced to prison, the person is deemed committed to the custody of the Director of the Department of Corrections.<sup>186</sup> A person remains in prison under the authority of the Department of Corrections until the person serves out the full term of the sentence, until released by order of the Board of Parole, or upon a judge's order reconsidering the sentence.<sup>187</sup> The director is required to develop guidelines and procedures which determine the amount of earned time earned or forfeited by inmates.<sup>188</sup>

## VII. Judicial District Departments of Correctional Services

Upon a conviction, a judge may assign a person to a judicial district department of correctional services.<sup>189</sup> A judicial district department of correctional services provides community-based correctional programs for persons who have been placed on probation or parole.<sup>190</sup> A person placed on probation or parole may be subject to different levels of criminal sanctions.<sup>191</sup> For example, a person may reside at a community correctional center and be required to receive treatment or may reside at the person's own residence and be required to be employed.<sup>192</sup>

## VIII. Board of Parole

The authority for granting of parole or work release is vested in the Iowa Board of Parole.<sup>193</sup> Persons who are sentenced to prison, with the exception of class "A" felons whose sentences have not been commuted, may become eligible for parole or work release prior to the expiration of their sentences.<sup>194</sup> The Board of Parole shall grant parole or work release if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate.<sup>195</sup> Dispositions involving violations of conditions of parole or work release are also determined by the Board of Parole.<sup>196</sup> The statutory standards for release on parole and work release include such standards as the best interest of society and of the offender, and a reasonable probability of whether the person can be released without detriment to the community or to the

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<sup>185</sup> Iowa Code §903A.3.

<sup>186</sup> Iowa Code §§901.7 and 904.102.

<sup>187</sup> Iowa Code §902.6.

<sup>188</sup> Iowa Code §903A.4.

<sup>189</sup> Iowa Code §901.5(5).

<sup>190</sup> Iowa Code §§905.2, 906.1, and 907.1(5).

<sup>191</sup> Iowa Code §901B.1.

<sup>192</sup> See Iowa Code §901B.1 for other possible intermediate criminal sanctions levels.

<sup>193</sup> Iowa Code §904A.4(1).

<sup>194</sup> Iowa Code §906.4.

<sup>195</sup> Iowa Admin. Code 205-8.15(1) and (2).

<sup>196</sup> Iowa Code §§906.3 and 906.16(2), (3).



person.<sup>197</sup> The board has recently adopted a new risk assessment model to predict future recidivism.<sup>198</sup>

To assist in its decision-making task, the board uses various tools, including live testimony and documentary evidence, the individual's criminal history, and a risk assessment model.<sup>199</sup> The risk assessment model includes separate scores relating to violence risk and victimization risk.<sup>200</sup> The violence risk score predicts the likelihood of a conviction for any new violent crimes within three years of release and the victimization risk predicts the likelihood of a return to prison within three years of release. The nine areas that score both the violence risk and the victimization risk include the offender's active offenses, the number of property crimes, prior convictions for murder/manslaughter, robbery, or theft, number of prior violent crime convictions, prior convictions in previous 10 years, prior convictions for violent crimes in previous five years, whether released from prison or juvenile commitment in previous five years, security threat because of group membership, and current age.

## IX. DNA Profiling

A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony has been entered is required to submit a DNA sample for DNA profiling.<sup>201</sup> Any person 18 years of age or older who commits an aggravated misdemeanor on or after July 1, 2014, is required to submit a DNA sample for DNA profiling unless the offense involves certain exempt aggravated misdemeanor violations.<sup>202</sup> Any person determined to be a sexually violent predator pursuant to Iowa Code chapter 229A, any person required to register as a sex offender, or any person found not guilty by reason of insanity for an offense that requires DNA profiling is also required to submit a DNA sample for DNA profiling.<sup>203</sup> Any juvenile adjudicated delinquent of an offense that requires DNA profiling is also required to submit a DNA sample for DNA profiling.<sup>204</sup>

A person convicted, adjudicated a delinquent, civilly committed as a sexually violent predator, or found not guilty by reason of insanity, prior to June 14, 2005, who would otherwise be required to submit a DNA sample under the provisions of Iowa Code chapter 81, and who is under the custody, control, or jurisdiction of a supervising agency, must submit a DNA sample for DNA profiling prior to being released by the supervising agency.<sup>205</sup>

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<sup>197</sup> Iowa Code §906.4(1).

<sup>198</sup> Iowa Admin. Code 205-8.10(1). See also Board of Parole Minutes from November 2012, which discusses the option of the risk assessment model currently used by the Board of Parole.

<sup>199</sup> Iowa Code §904A.4.

<sup>200</sup> See Lettie Prell, Iowa Parole Risk Assessment Construction and Validation (April 2013).

<sup>201</sup> Iowa Code §81.2(1).

<sup>202</sup> See 2013 Iowa Acts, ch.107 (HF 527) for provisions relating to aggravated misdemeanor DNA profiling beginning July 1, 2014.

<sup>203</sup> Iowa Code §81.2(2), (3), (6).

<sup>204</sup> Iowa Code §81.2(4).

<sup>205</sup> 2005 Iowa Acts, ch. 158, §18.



## X. Civil Commitment of Sexually Violent Predators

**Procedure.** In the landmark case of *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that permitted the civil commitment of certain sexually violent criminal offenders after the offenders' criminal sentences had been completed.<sup>206</sup> A sexually violent predator is defined as a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts if not confined in a secure facility.<sup>207</sup> A sexually violent offense is defined in Iowa Code section 229A.2, subsection 10. If it is determined that an individual confined in prison or any other state institution may meet the definition of a sexually violent predator, the state agency with jurisdiction over the individual must notify the Attorney General of the individual's anticipated discharge from confinement.<sup>208</sup> The Attorney General or, in some instances, the prosecuting attorney from the county in which the sexually violent offense took place may file a petition with the district court alleging the individual is a sexually violent predator and request that the person be committed by means of a civil commitment proceeding to the care of the Department of Human Services.<sup>209</sup>

**Civil Commitment.** If a court or a jury determines beyond a reasonable doubt that an individual meets the definition of a sexually violent predator, the individual is committed to the care, custody, and control of the Department of Human Services until such time the person is safe to be placed in a transitional release program or discharged.<sup>210</sup> For more information on this form of civil commitment, see the Legislative Guide on the Civil Commitment of Sexually Violent Predators. The publication may be accessed via the Internet from the Iowa General Assembly Internet Site at [http://www.legis.iowa.gov/DOCS/LSA/Legis\\_Guide/2009/LGLSL053.PDF](http://www.legis.iowa.gov/DOCS/LSA/Legis_Guide/2009/LGLSL053.PDF).

## XI. Sex Offender Registry

### A. 2009 Changes to Registry Requirements

The General Assembly repealed and rewrote Iowa's sex offender registry requirements under Iowa Code chapter 692A in 2009 Iowa Acts, ch. 119 (SF 340). For a comprehensive description of Iowa's sex offender registry law, see the Legislative Guide on the Sex Offender Registry Law. The publication may be accessed via the Internet from the Iowa General Assembly Internet Site at [http://www.legis.iowa.gov/DOCS/LSA/Legis\\_Guide/2010/LGLSL016.PDF](http://www.legis.iowa.gov/DOCS/LSA/Legis_Guide/2010/LGLSL016.PDF).

### B. Offenders Required to Register

Any person convicted of a sex offense in this state or who is required to register in another jurisdiction under the other jurisdiction's sex offender registry is required to register as a sex offender in this state if the offender resides, is employed, or attends school in this

<sup>206</sup> *Kansas v. Hendricks*, 521 U.S. 346 (1997).

<sup>207</sup> Iowa Code §229A.2(11).

<sup>208</sup> Iowa Code §229A.3(1).

<sup>209</sup> Iowa Code §229A.4.

<sup>210</sup> Iowa Code §229A.7(5)(b).



state.<sup>211</sup> An offender who is incarcerated is not required to register, but the running of the period of registration is tolled while the offender is incarcerated.<sup>212</sup> Conviction of more than one sex offense prosecuted within a single indictment is considered a single offense for purposes of registration.<sup>213</sup>

Each offender convicted of a sex offense is classified as either a tier I, tier II, or tier III offender.<sup>214</sup> The tiers contain sex offenses that are in ascending order of severity; thus a tier I offender has committed a less serious offense than a tier II or tier III offender.<sup>215</sup> The tier classification system determines the frequency of verification of relevant information at the sheriff's office and determines when an offender is eligible to apply for a modification of registration requirements.<sup>216</sup> The tier classification system does not affect the duration of the registration requirement.<sup>217</sup> The system provides for reclassification based upon specified conditions.

## C. Registration Process

**Registration.** A sex offender is required to appear in person to register with the sheriff of each county where the offender has a residence, maintains employment, or is in attendance as a student, within five business days of being required to register.<sup>218</sup> A county sheriff is also required to accept the registration of any person who is required to register in the county.<sup>219</sup> An offender who registers is required to provide relevant information, including date of birth, passport and immigration documents, a government-issued driver's license or nonoperator's identification card, a DNA sample, and other specified information.<sup>220</sup> In addition, if another state requires registration, the offender is required to register in the other state within five business days of establishing a residence, employment, or attendance as a student in the other state.<sup>221</sup>

**Notification.** There are numerous instances where a change of relevant information triggers a requirement to notify the county sheriff of the particular change. If a sex offender changes residence, employment, or attendance as a student, the offender is required to appear in person to notify the sheriff of each county where a change has occurred within

<sup>211</sup> Iowa Code §692A.103(1). Iowa Code §692A.101(27) defines a "sex offense" to mean an indictable offense for which a conviction has been entered that has an element involving a sexual act, sexual contact, or sexual conduct, and which is enumerated in Iowa Code §692A.102, and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction. Two terms within the definition "sex offense" are also defined; see Iowa Code §692A.101(12) for the definition of "foreign court" and Iowa Code §692A.101(18) for the definition of "military offense."

<sup>212</sup> Iowa Code §692A.103(2).

<sup>213</sup> Iowa Code §692A.102(6).

<sup>214</sup> See Iowa Code §692A.102(1)(a) for a list of tier I offenses, Iowa Code §692A.102(1)(b) for a list of tier II offenses, and Iowa Code §692A.102(1)(c) for a list of tier III offenses.

<sup>215</sup> Iowa Code §692A.102.

<sup>216</sup> See Iowa Code §692A.108 for frequency of verifying relevant information and Iowa Code §692A.128 for applications to modify registration requirements.

<sup>217</sup> Iowa Code §692A.106.

<sup>218</sup> Iowa Code §692A.104(1).

<sup>219</sup> Iowa Code §692A.104(1).

<sup>220</sup> See Iowa Code §692A.101(23)(a) for the definition of "relevant information." The term "relevant information" also includes an offender's criminal history and the statutory citation and text of any sex offense committed by the offender. However, the offender is not obligated to provide such information; see Iowa Code §692A.101(23)(b).

<sup>221</sup> Iowa Code §692A.104(5).



five business days of such a change.<sup>222</sup> If the offender is going to be away from the principal residence for more than five days, the offender must notify, in person, the sheriff of the county where the principal place of residence is maintained, within five days of being away from the principal residence.<sup>223</sup>

**Verification.** An offender is required to periodically verify relevant information with the county sheriff of the county where the principal place of residence is maintained even if no change to an offender's relevant information has occurred.<sup>224</sup>

## D. Duration of Registration

Generally, the duration of registration for an offender is 10 years.<sup>225</sup> Other durations apply for special sentences,<sup>226</sup> when the duration is for life,<sup>227</sup> and when there is a violation of a registry requirement.<sup>228</sup>

## E. Penalties

An offender who violates the requirements of Iowa Code section 692A.104 (registration process), 692A.105 (additional registration requirements), 692A.108 (verification of relevant information), 692A.112 (knowingly providing false information), 692A.113 (exclusion zones and prohibited employment), 692A.114 (residency restrictions), or 692A.115 (employment where dependent adults reside), commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense.<sup>229</sup> In addition to any other penalty provided by law, an offender who has been convicted of an aggravated offense against a minor, a sex offense against a minor, or a sexually violent offense while in violation of certain registry requirements, commits a class "C" felony.<sup>230</sup> The court cannot defer judgment or sentence of a conviction for a violation of the Iowa Sex Offender Registry law.<sup>231</sup>

## XII. Collection of Delinquent Court Debt

### A. Court Debt

**Definition.** "Court debt" is defined to mean all fines, penalties, court costs, fees, forfeited bail, surcharges under Iowa Code chapter 911, victim restitution, court-appointed attorney fees or expenses of the public defender ordered pursuant to Iowa Code section 815.9 (indigency), or fees charged pursuant to Iowa Code section 356.7 or 904.108.<sup>232</sup>

<sup>222</sup> Iowa Code §692A.104(2).

<sup>223</sup> Iowa Code §692A.105.

<sup>224</sup> Iowa Code §692A.108. See Iowa Code §692A.101(23) for the definition of "relevant information."

<sup>225</sup> Iowa Code §692A.106(1).

<sup>226</sup> Iowa Code §692A.106(2).

<sup>227</sup> Iowa Code §692A.106(2), (4). See Iowa Code §906.15 allowing discharge from parole for a person on lifetime parole under Iowa Code §903B.1. However, under Iowa Code §906.15, if the person committed a class "C" offense or higher pursuant to Iowa Code §709.3 (sexual abuse in the second degree), 709.4 (sexual abuse in the third degree), or 709.8 (lascivious acts with a child), and the offense involved a minor, the person shall not be discharged from lifetime parole.

<sup>228</sup> Iowa Code §692A.106(4).

<sup>229</sup> Iowa Code §692A.111(1).

<sup>230</sup> Iowa Code §692A.111(1). See Iowa Code §692A.101(2) for the definition of "aggravated offense against a minor," Iowa Code §692A.101(28) for the definition of "sex offense against a minor," and Iowa Code §692A.101(30) for "sexually violent offense."

<sup>231</sup> Iowa Code §692A.111(1). See also Iowa Code §907.3(1)(a)(9) and (2)(a)(5).

<sup>232</sup> Iowa Code §602.8107(1).



Court debt is deemed delinquent if it is not paid within 30 days after the date it is assessed or ordered due, or 30 days after an installment payment is due.<sup>233</sup>

**Collection by Centralized Collection Unit of the Department of Revenue (CCU).** If court debt is deemed delinquent, the judicial branch may assign a case involving court debt to the CCU for collection for one year.<sup>234</sup> Any amounts collected by the CCU are first applied to the CCU's processing fee, and the remaining amounts are remitted to the clerk of the district court in the county in which the debt is owed.<sup>235</sup>

**Collection by County Attorney.** If the county attorney has filed with the clerk of the district court a notice of full commitment to collect delinquent court debt, the court debt shall be reassigned to the county attorney 60 days after assignment to the CCU if the CCU has not placed the debt in a payment plan.<sup>236</sup> The county attorney or the county attorney's designee may collect court debt 60 days after the court debt is deemed delinquent.<sup>237</sup>

The county attorney percentage for collection does not apply to amounts collected for victim restitution, the Victim Compensation Fund, the criminal penalty surcharge, the drug abuse resistance education surcharge, the law enforcement surcharge, the sex offender civil penalty, the county enforcement surcharge, amounts collected as a result of procedures initiated by a private collection designee or by a state agency debt setoff under Iowa Code section 8A.504, or fees charged by a municipality or county for arrest and custody costs pursuant to Iowa Code section 356.7.<sup>238</sup>

**Private Collection Designee.** The judicial branch must contract with a private collection designee for the collection of court debt one year after the court debt is deemed delinquent, if the county attorney is not already collecting such delinquent court debt.<sup>239</sup> The contract must provide for a collection fee of up to 25 percent of the amount of the court debt deemed delinquent in a case.<sup>240</sup> The collection fee is used to compensate the private collection designee.<sup>241</sup> Except for the collection fee amount used to compensate the private collection designee, the amounts collected are distributed to local jurisdictions and the state in accordance with existing law.<sup>242</sup>

## B. Write Off Old Debt

Court debt that remains uncollected 65 years from the date of imposition is written off as uncollectible and the case closed for purposes of collection.<sup>243</sup>

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<sup>233</sup> Iowa Code §602.8107(2)(d).

<sup>234</sup> Iowa Code §602.8107(3).

<sup>235</sup> Iowa Code §602.8107(3)(a).

<sup>236</sup> Iowa Code §602.8107(4).

<sup>237</sup> Iowa Code §602.8107(4).

<sup>238</sup> Iowa Code §602.8107(4)(a).

<sup>239</sup> Iowa Code §602.8107(5)(a). During FY 2012-2013, the private debt collector collected \$6.5 million that was deposited in the General Fund of the State. Telephone conversation with Jen Acton, Fiscal Analyst, Legislative Services Agency (September 30, 2013).

<sup>240</sup> Iowa Code §602.8107(5)(b).

<sup>241</sup> Iowa Code §602.8107(5)(b).

<sup>242</sup> Iowa Code §602.8107(5)(d).

<sup>243</sup> Iowa Code §602.8107(6).



## XIII. Disposition of Seized Property

If the aggregate fair market value of seized property is equal to or less than \$500, the seizing agency must serve notice of the seizure by personal service or by sending notice to the last known address of any person having an ownership or possessory right in the property.<sup>244</sup> If the aggregate fair market value of the property is greater than \$500, the seizing agency may send notice of the seizure by personal service or by restricted certified mail, return receipt requested.<sup>245</sup> After notice of the seized property has been served upon the owner, if the owner files a claim for seized property but fails to take possession of the seized property within 30 days of the expiration of the period of time for filing a written claim, the property is deemed abandoned and may be disposed of by the seizing agency.<sup>246</sup>

## XIV. Expunging Criminal Records

**Deferred Judgments and Related Records.** The term “expunged” is defined to mean the court’s criminal record with reference to a deferred judgment or any other criminal record has been segregated in a secure area or database exempt from public access.<sup>247</sup> If a defendant receives a deferred judgment, the court’s criminal record, any counts dismissed by the court, which were contained in the information that resulted in the deferred judgment, and any other related charges that were not contained in the information but were dismissed, are to be expunged upon discharge from probation. However, in 2012 the General Assembly enacted a provision prohibiting the court’s criminal records from being expunged until the defendant has paid in full the restitution, civil penalties, costs, and other fees associated with the deferred judgment.<sup>248</sup>

**Public Intoxication and Possession of Alcohol Under Legal Age.** Upon the expiration of two years following a conviction for public intoxication or possession of alcohol under legal age, a person may petition the court to expunge the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of Iowa Code chapter 321 (motor vehicle law) during the two-year period, the conviction shall be expunged as a matter of law.<sup>249</sup> The court shall enter an order that the record of the conviction be expunged by the clerk of the district court. After receipt of notice from the clerk of the district court that a record of conviction has been expunged, the record of conviction shall be removed from the criminal history data files maintained by the Department of Public Safety.

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<sup>244</sup> Iowa Code §809.5(1)(b).

<sup>245</sup> Iowa Code §809.5(1)(a).

<sup>246</sup> Iowa Code §809.5(1)(c).

<sup>247</sup> Iowa Code §907.1(3).

<sup>248</sup> Iowa Code §907.9(4)(b). The expungement provisions also apply to offenses involving a deferred judgment that were committed prior to July 1, 2012. See Iowa Code §907.9(4)(e). The judicial branch has until July 1, 2013, to comply with the expungement provisions enacted in 2012 Iowa Acts, ch. 1054 (HF 2379) that relate to the expungement of a dismissed count or other charge related to a deferred judgment. See 2012 Iowa Acts, ch. 1054, §4.

<sup>249</sup> Iowa Code §§123.46(6) (public intoxication) and 123.47(7) (possession under legal age).

## **APPENDIX**

### **Iowa's Sentencing System — Offenses With Sentencing Enhancements**

This Appendix, in chart format, compares each criminal offense that contains a sentence enhancement with a typical sentence within the applicable offense classification. The criminal offenses are listed in the first column on the left, and the sentence enhancements are listed on the top row of the chart. If a box within the chart contains a “black square,” the corresponding sentence enhancement applies to the criminal offense listed in the first column. The last column on the right contains the prison term range in years if all of the sentencing enhancements that are applicable were applied to the criminal sentence. For example, if a prison term range is 20.59 to 25 years, a person would serve 20.59 years in prison if all the “earned time” credits were earned and 25 years in prison if no “earned time” credits were earned. However, a person may serve less than 20.59 years in prison if the person serving the particular criminal offense is parole-eligible.

If an offense is classified as a forcible felony, a person must be sentenced to a term of confinement in prison without any possibility of receiving probation. Finally, many “Sentencing Enhancements” and “Minimum Prison Terms” at the top of the chart have been abbreviated, “By Schl” means distribution of a controlled substance near a school, “Presence of Minor” means manufacturing of methamphetamine in the presence of minors, “2nd Offense 3x Max” means a second or subsequent conviction for a controlled substance offense can be up to 3 times the maximum term of confinement, “5 Yr” means a person who distributes a controlled substance to a person who is under 18 years of age receives a minimum term of confinement of 5 years, “10 Yr” means a person who distributes a controlled substance to a person who is under 18 years of age near a school or park receives a minimum term of confinement of 10 years, “1/3 Max” means certain violators of Code Section 124.401 (controlled substances) must serve 1/3 the maximum sentence prescribed by law, “Fel Dom Abuse” means felony domestic abuse, and “Hab Off” means habitual offender.

## Iowa's Sentencing System — Offenses With Sentencing Enhancements

Offense Category		Def/ Susp	Special Sanctions and Notes	Forcible Felony 702.11 907.3	Max Prison Term in Yrs	Sentencing Enhancements:					Special Sentence 903B	Minimum Prison Terms - Limitation on Parole:							Parole Eligible	Prison Term Ranges w/Earned Time in Yrs
						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411		5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12		
	Enact Yr.																			
Class A Felony:																				
Typical				■	Life															Life
Meth-2nd/124.401D	1999				Life															Life
Sexual Abuse/Lascivious Acts 709.3/709.4/709.8	2005		Upon second conviction for either offense		Life															Life
Sex Predator/901A.2(4)	1996		2nd Sexual Predatory Offense under 901A.2(3)		Life															Life
Sex Predator/901A.2(5)	1996		2nd Sex Abuse Offense under 709.3(2)		Life															Life
Sex Predator/901A.2(6)	2002		If committed under Chapter 229A and subsequent convictions for a sexually violent or sexually predatory offenses		Life															
Meth-1st/124.401D	1999	■			99			5 yrs.					■				■		■	42.4 to 104
Commisson By Minor/902.1	2011		See p. 3 of this Guide for minors who commit a class A felony		Life														■	25 to life
Class B Felony:																				
Typical					25												■		■	11.4 to 25
Drug /124.401 (1)(a)	1999-meth and amphet	not if meth- amphe 2nd offense			50	■	■	5 yrs.	■	■				■			■		■	22.8 to 1,080
Drug /124.401(1)(b)	1999-meth and amphet	not if meth- amphe 2nd offense			25	■	■	5 yrs.	■	■				■			■		■	11.4 to 630
Drug Del Minors/124.406	Prior to 1990	■			25					■		■	■				■		■	11.4 to 75
Murder-2nd/707.3	1996			■	50							■						■	■	35 to 50
Veh. Homicide/707.6A(1) when Leaving Scene/ 321.261(3)	1998				25													■	■	17.5 to 25
Att. Murder/707.11	1996			■	25							■						■	■	17.5 to 25
Terrorism/708A.2	2002			■	50							■							■	22.8 to 50
Sex Abuse-2nd/709.3	1996/2005		Lifetime parole	■	25						■	■						■	■	17.5 to life
Kidnapping-2nd/710.3	1996			■	25							■						■	■	17.5 to 25
Robbery-1st/711.2	1996			■	25							■						■	■	17.5 to 25
Arson-1st/712.2	Prior to 1990			■	25							■					■		■	11.4 to 25

■ = column is applicable

# Iowa's Sentencing System — Offenses With Sentencing Enhancements

Offense Category		Def/ Susp	Special Sanctions and Notes	Forcible Felony 702.11 907.3	Max Prison Term in Yrs	Sentencing Enhancements:					Minimum Prison Terms - Limitation on Parole:								Parole Eligible	Prison Term Ranges w/Earned Time in Yrs
						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411	Special Sentence 903B	5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12		
	Enact Yr.																			
Burglary-1st/713.3	Prior to 1990			■	25							■					■		■	11.4 to 25
Child Endang./726.6A	1994			■	50							■					■		■	22.8 to 50
Sex Predator/901A.2(3)	1996		Add. 2 yrs rel. superv.		50															42.5 to 50
Class C Felony:																				
Typical		■			10												■		■	4.6 to 10
Drug/124.401(1)(c)	Prior to 1990	■			10	■	■	5 yrs.	■	■				■			■		■	4.6 to 360
Drug Del Minors/124.406	Prior to 1990	■			10					■							■		■	4.6 to 30
Veh. Homicide/707.6A(2) when Leaving Scene/ 321.261(3)	1998	■			10														■	7 to 10
Asslt - Part. Fel./708.3	Prior to 1990			■	10							■					■		■	4.6 to 10
Willful Injury/708.4(1)	Prior to 1990			■	10							■					■		■	4.6 to 10
Intimidation/708.6	Prior to 1990			■	10							■					■		■	4.6 to 10
Sex Abuse-3rd/709.4	Prior to 1990/2005		Lifetime parole	■	10 to life - parole						■	■					■		■	4.6 to life - parole
Detention in a Brothel/709.7	2005		Lifetime parole		10 to life - parole						■						■		■	4.6 to life - parole
Lasc Acts/709.8	2005	■	Lifetime parole		10 to life - parole						■						■		■	4.6 to life - parole
Assault w/Intent to Commit Sex Abuse/709.11	2005		Lifetime parole	■	10 to life - parole						■	■					■		■	4.6 to life - parole
Kidnapping-3rd/710.4	Prior to 1990/2005			■	10							■					■		■	4.6 to 10
Robbery-2nd/711.3	1996			■	10							■					■	■	■	7 to 10
Child Endang./726.6A	1994			■	10							■					■		■	4.6 to 10
Sexual Exploitation/728.12	2005		Lifetime parole		10 to life - parole						■						■		■	4.6 to life - parole
Sex Predator/901A.2(3)	1996		Add. 2 yrs rel. superv.		25															21.25 to 25
Habitual Offender/902.8	Prior to 1990				15											■	■		■	6.8 to 15
Class D Felony:																				
Typical		■			5												■		■	2.3 to 5
Optional Determinate Term (limited to certain offenses and offenders)/902.3A	2001		Judge must cite mitigating factors; add. 2 yrs rel. superv.		1 to 4.99														after half of max term	0.46 to 4.99
Drug/124.401(1)(d)	Prior to 1990	■			5	■	■	5 yrs.	■	■				■			■		■	2.3 to 270
Drug Poss-3rd/124.401(5)	1998	■	Probation, drug testing \$1,000 civil penalty if BAC is refused (462A.14)		5			100 hrs. comm. service		■							■		■	2.3 to 15
OWI-3rd/321J.2; OWI Boating-3rd/462A.14	OWI-Prior to 1990; OWI Boating 2000				5														■	2.3 to 5
Serious Injury OWI/ 707.6A(4)	1997				5												■		■	2.3 to 5
Domestic Abuse—Choking 708.2A(5)	2012		If cause bodily injury	■	5							■			■		■		■	2.3 to 5
Domestic Abuse/708.2A(4)	1997			■	5							■			■		■		■	2.3 to 5
Asslt - Part. Fel./708.3	Prior to 1990			■	5							■					■		■	2.3 to 5
Admin. Harmful Sub/708.5	Prior to 1990			■	5							■					■		■	2.3 to 5
Intimidation/708.6	Prior to 1990			■	5							■					■		■	2.3 to 5
Lasc Acts w/Child/709.8	2000/2005	■	Add. 2 yrs rel. superv. if sent to prison. 10 yr. parole		5 to 15						■						■		■	2.3 to 15

■ = column is applicable

# Iowa's Sentencing System — Offenses With Sentencing Enhancements

Offense Category	Enact Yr.	Def/ Susp	Special Sanctions and Notes	Forcible Felony 702.11 907.3	Max Prison Term in Yrs	Sentencing Enhancements:					Special Sentence 903B	Minimum Prison Terms - Limitation on Parole:							70 Percent Sentence 902.12	Parole Eligible	Prison Term Ranges w/Earned Time in Yrs
						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411		5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11				
Assault w/Intent to Commit Sex Abuse/709.11	2005		10 yr. parole	■	5 to 15						■	■						■		■	2.3 to 15
Sexual Exploit by Counselor/709.15(4)(a)	2005		10 yr. parole		5 to 15						■							■		■	2.3 to 15
Sexual Exploit by School Employee/709.15(5)(a)	2005				5 to 15						■							■		■	2.3 to 15
Abuse of corpse/709.18	2005		10 yr. parole		5 to 15						■							■		■	2.3 to 15
Animal Torture-2nd/ 717B.3A	2000	■	Psych. eval. and treat.		5													■		■	2.3 to 5
Sex Predator/901A.2(3)	1996		Add. 2 yrs rel. superv.		25																21.25 to 25
Habitual Offender/902.8	Prior to 1990				15												■	■		■	6.8 to 15
Aggravated Misdemeanor:																					
Typical		■			2															■	0.9 to 2
Drug/124.401(1)(d)	Prior to 1990	■			2	■	■		■	■					■					■	0.9 to 126
Drug Poss-2nd, Drug Poss Mari.-3rd/124.401(5)	Drug Poss- 2nd-1998; Poss. Mari. Prior to 1990	■	Probation, drug testing		2			100 hrs. comm. service		■										■	0.9 to 6
OWI-2nd/321J.2; OWI Boating-2nd/462A.14	2000		\$1,000 civil penalty if BAC is refused (462A.14B)		2															■	0.9 to 2
Domestic Abuse—Choking 708.2A(2)(d)	2012		1st offense punish by AG		2															■	0.9 to 2
Domestic Abuse/708.2A	1991				2															■	0.9 to 2
Assault w/Intent to Commit Sex Abuse/709.11	2005		10 year parole		2 to 12						■									■	0.9 to 12
Indecent Contact w/Child/709.12	2005		10 year parole		2 to 12						■									■	0.9 to 12
Sexual Exploit by Counselor/709.15(4)(b)	2005		10 year parole		2 to 12						■									■	0.9 to 12
Sexual Exploit by School Employee/709.15(5)(b)	2005		10 year parole		2 to 12						■									■	0.9 to 12
Sexual Misconduct with Offenders/709.16(1,3)	2005		10 year parole		2 to 12						■									■	0.9 to 12
Sexual Misconduct with Juveniles/709.16(2)	2005		10 year parole		2 to 12						■									■	0.9 to 12
Animal Torture-1st/717B.3A	2000	■	Psych. eval. and tx; comm. work required		2															■	0.9 to 2
			1 prior misd Sexual Predatory Offense/ add. 2 yrs. rel. superv.																		
Sex Predator/901A.2(1)	1996				4																3.4 to 4
			2 prior misd Sexual Predatory Offense/ add. 2 yrs. rel. superv.																		
Sex Predator/901A.2(2)	1996				10																8.5 to 10 yrs.
Serious Misdemeanor:																					
(May be sentenced to prison if consecutive sentences add up to more than one year)																					
Typical		■																			
Drug Poss-1st, Drug Poss Mari.-2nd/124.401(5)	Prior to 1990	■	Probation, drug testing					100 hrs. comm. service													

■ = column is applicable

## Iowa's Sentencing System — Offenses With Sentencing Enhancements

Offense Category	Enact Yr.	Def/ Susp	Special Sanctions and Notes	Forcible Felony 702.11 907.3	Max Prison Term in Yrs	Sentencing Enhancements:					Special Sentence 903B	Minimum Prison Terms - Limitation on Parole:							Parole Eligible	Prison Term Ranges w/Earned Time in Yrs
						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411		5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12		
Drug Poss Mari.- 1st/124.401(5)	Prior to 1990	■	Probation, drug testing					100 hrs. comm. service												
OWI-1st/321J.2; OWI Boating-1st/462A.14 Domestic Abuse/708.2A	2000 1991	■	Not deferred if 907.3(1) (g)(1) applies; \$500 civil penalty if BAC is refused (462A.14B)																	
Indecent Exposure/709.9	2005		10 yr. parole								■								■	10 yrs.
Lasc Conduct/709.14	2005		10 yr. parole								■								■	10 yrs.
Sexual Exploit by Counselor/709.15(4)(c)	2005		10 yr. parole								■								■	10 yrs.
Invasion of Privacy/709.21	2005		10 yr. parole								■								■	10 yrs.
Sexual Predator/901A.2(1)	1996		Add. 2 yrs rel. superv.		2															1.7 to 2 yrs.
Sexual Predator/901A.2(2)	1996		Add. 2 yrs rel. superv.		10															8.5 to 10 yrs.

■ = column is applicable