

CHAPTER 8
CRIMINAL JUSTICE INFORMATION
[Prior to 4/20/88, see Public Safety Department[680] Ch 8]

661—8.1 to 8.100 Reserved.

DIVISION I
IOWA ON-LINE WARRANTS AND ARTICLES SYSTEM
[Prior to 8/16/95, see 661—8.1 to 8.101]

661—8.101(80,692) Iowa on-line warrants and articles (IOWA) criminal justice information system. The Iowa on-line warrants and articles (IOWA) criminal justice information system is administered by the division of administrative services, field services bureau. The IOWA system, created pursuant to Iowa Code paragraph 80.9(2) “d” and Iowa Code section 692.14, provides criminal justice agency access to traffic record and criminal justice databases through a dedicated telecommunications network. To be eligible for access to the IOWA system, an agency must be a criminal justice agency at the federal, state, or local level within Iowa, or an agency providing services to criminal justice agencies in Iowa.

661—8.102(80,692) Information available through the IOWA system. The IOWA system provides access to databases from various state agencies within Iowa, from the Federal Bureau of Investigation’s National Crime Information Center (NCIC), and from the motor vehicle departments of other states nationally through the National Law Enforcement Telecommunications System (NLETS). Information on an international basis is also provided by NCIC and NLETS through interfaces to Canadian Police Information Centre and to INTERPOL. The NLETS system also provides administrative message traffic between Iowa criminal justice agencies and criminal justice agencies throughout the United States.

The IOWA system allows criminal justice agencies to:

1. Access nationwide computerized banks of information such as wanted, missing, and unidentified persons; stolen vehicles; stolen articles; stolen boats; stolen guns and stolen securities.
2. Access driver license and motor vehicle information in-state as well as out-of-state.
3. Exchange criminal history information on a national basis.
4. Communicate by use of administrative messages with other criminal justice agencies worldwide.

661—8.103(80) Human immunodeficiency virus-related information. An agency may enter human immunodeficiency virus-related (HIV) information into a wanted or missing person file of the IOWA system and the National Crime Information Center operated by the Federal Bureau of Investigation. HIV information shall be kept confidential and may be communicated only in accordance with this rule.

8.103(1) HIV information on an individual entered into the IOWA system or the National Crime Information Center operated by the Federal Bureau of Investigation shall be made available to terminal operators for the purpose of informing individuals who are authorized access pursuant to this rule.

8.103(2) HIV information may be communicated to:

- a. Employees and supervisors of employees of a law enforcement agency who have, or are expected to have, direct physical control of an individual reported to be HIV positive.
- b. Employees and supervisors of employees subject to the jurisdictional supervision of the Iowa department of corrections who have, or are expected to have, direct physical supervision of an individual reported to be HIV positive.

c. Employees and supervisors of employees of secure facilities for juveniles subject to the jurisdiction of the Iowa department of human services who have, or are expected to have, direct physical supervision of an individual reported to be HIV positive.

d. Employees and supervisors of employees of city and county jails who have, or are expected to have, direct physical supervision of an individual reported to be HIV positive.

8.103(3) HIV information shall not be transmitted over any law enforcement radio broadcasting system, cellular telephone system, radio telephone system, or any other radio-based communications system. This provision shall not apply to the transmission of HIV information in data form to or from mobile digital terminals or mobile digital computers authorized access to the IOWA system and operated by a law enforcement officer or certified IOWA system operator in the performance of official duties.

8.103(4) Individuals who receive HIV information pursuant to this rule shall use the information solely for the purpose of the protection of those individuals having or expected to have direct contact with individuals reported to be HIV positive, and for the prevention of the spread of the HIV virus. Information shall be provided only to individuals and their supervisors who have direct physical contact with persons reported to have the HIV virus. Except as provided in subrule 8.103(2), information obtained pursuant to this rule shall not be communicated to any person not employed by the agency employing the person providing it or used outside the agency for any purpose.

8.103(5) Individuals who are authorized to receive HIV information pursuant to this rule shall receive training developed and established by the commissioner of public safety, in cooperation with the department of corrections and the department of public health, regarding the confidentiality standards applicable to HIV information received from the IOWA system or the National Crime Information Center.

661—8.104(80,692) IOWA system security. IOWA system terminal access shall be available to criminal justice agencies as defined by Iowa Code section 692.1(7). Prior to being permitted terminal access to the IOWA system, a criminal justice agency shall meet the following criteria:

8.104(1) All terminals shall be located within the facilities or vehicles of authorized agencies where appropriate physical security can be maintained.

8.104(2) The immediate terminal areas shall be restricted to prevent access by unauthorized individuals.

8.104(3) All persons accessing NCIC and the criminal history files shall have been authorized to operate the terminal by the criminal justice agency administrator, been approved by the department of public safety, received the required training and achieved proficiency certification by the department of public safety.

Agencies shall complete a background investigation on all applicants for positions with access to NCIC and criminal history files. Agencies shall notify the department of public safety of the completion of the required background investigation. The background investigation shall be done to ensure the following:

- a. That the applicant is 18 years of age or older at the time of appointment to the position.
- b. That the applicant is not addicted to drugs or alcohol.
- c. That the applicant is of good moral character and has not been convicted of a serious crime.
- d. Agencies shall submit two fingerprint cards on all applicants to the Iowa division of criminal investigation. One card will be used to check for any Iowa criminal history and the second card will be forwarded to the FBI for a national search of criminal history records.

8.104(4) Where IOWA system terminals are not operated on a 24-hour-per-day basis, the terminals shall be physically secured when unattended.

8.104(5) The criminal justice agency administrator shall be directly responsible for ensuring that information received from the IOWA system is restricted for the official use of agency personnel, other criminal justice agencies, or other agencies authorized, in writing, by the department of public safety.

8.104(6) Any agency desiring direct access to IOWA system files shall make application to the department. Before authorization is granted, the administrator of the applying agency shall enter into a written agreement with the department of public safety agreeing to abide by all rules, policies and procedures promulgated by the department for system operation, security and discipline. The agreement shall reserve to the department the right to terminate furnishing criminal history or other file information to the applicant agency if abuses are discovered concerning either the security or dissemination requirements of this data.

8.104(7) Any agency which has had its authorization to IOWA system files terminated by the department may appeal the termination to the commissioner of public safety, in accordance with 661—Chapter 10.

661—8.105(80,692) Subpoenas and court orders. Any agency or individual in possession of criminal history data received from the department that is served with a subpoena, court order, request for production or other legal process demanding the production of criminal history data, shall notify the department in writing so that the department has an opportunity to make a timely resistance.

661—8.106 to 8.200 Reserved.

These rules are intended to implement Iowa Code sections 80.9 and 692.14.

DIVISION II
CRIMINAL INTELLIGENCE INFORMATION

661—8.201(692) Definitions.

8.201(1) “*Criminal intelligence file*” means stored information on:

a. An individual who, based upon reasonable grounds, is believed to be involved in the actual or attempted planning, organization, financing, promotion, or commission of criminal acts or having involvement in criminal activities with known or suspected criminal offenders.

b. A group, organization or business which, based on reasonable grounds, is believed to be involved in the actual or attempted planning, organization, financing, promotion, or commission of criminal acts, or of being illegally operated, controlled, financed, promoted, or infiltrated by known or suspected criminal offenders.

“Criminal intelligence file” does not include arrest data, conviction data, correctional data, criminal history data, criminal investigative data, disposition data, or surveillance data as defined in Iowa Code section 692.1.

8.201(2) “*Criminal intelligence system*” means any system of criminal intelligence files maintained and operated by a criminal justice agency in Iowa from which information is shared with any other agency. In addition to the criminal intelligence files, it includes any arrangements, equipment, facilities, and procedures used for the receipt, storage, submission, dissemination, or analysis of criminal intelligence files.

8.201(3) “*Need to know*” is established if criminal intelligence information will assist a recipient in anticipating, investigating, monitoring, or preventing possible criminal activity.

8.201(4) “*Reasonable grounds*” means information that establishes sufficient articulable facts that give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal activity or enterprise.

8.201(5) “*Right to know*” is established when a recipient of criminal intelligence information is a peace officer, a criminal justice agency, or a state or federal regulatory agency.

8.201(6) “*Surveillance data*” means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.

661—8.202(692) Iowa criminal intelligence system (ICIS). The Iowa Criminal Intelligence System (ICIS) is the system of criminal intelligence files maintained and operated by the intelligence bureau of the department of public safety, for the regular interagency exchange of information.

8.202(1) Access. The commissioner of public safety may authorize a peace officer, criminal justice agency, or state or federal regulatory agency to access ICIS provided that the authorized individual or agency follows approved procedures regarding receipt, maintenance, dissemination, submission and security of information, and related training. Authorization must be received in writing to be effective.

8.202(2) Termination of authorization. The commissioner of public safety may terminate authorization for access to ICIS which has been previously approved at any time for good cause. An individual or agency whose authorization to access ICIS has been terminated may appeal the termination in accordance with 661—Chapter 10. Notification of any termination of authorization for access to ICIS shall be provided to all agencies which operate criminal intelligence systems in Iowa.

8.202(3) Reinstatement. Any user whose authorization for access to ICIS has been terminated may apply for the authorization for access to be reinstated, provided that the problem which led to the termination has been corrected.

8.202(4) Applications. To apply for access to ICIS or to obtain further information about ICIS, contact the Intelligence Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, IA 50319, or by electronic mail via the Internet at intinfo@safe.ia.gov.

8.202(5) Entry of information—restrictions. Information about the political, religious, racial, or social views, associations, activities or sexual orientation, of any individual shall not be entered into ICIS unless such information directly relates to an investigation of criminal conduct or activity and there are reasonable grounds to believe that the subject of the information is, or may be, engaged in criminal conduct or activity.

8.202(6) Entry of information—conformance with applicable law. No information which has been obtained in violation of any applicable federal, state, or local law or ordinance, or these rules, may be entered into ICIS.

8.202(7) Dissemination. Criminal intelligence files from ICIS may be disseminated only to peace officers, criminal justice agencies, or state or federal regulatory agencies. Criminal intelligence files from ICIS may be disseminated only when there is a right to know and a need to know in the performance of a law enforcement activity. Criminal intelligence files from ICIS shall not be disseminated to any user whose authorization to access ICIS has been terminated and not reinstated.

EXCEPTION: Criminal intelligence files may be released to a government official or to any other individual when necessary to avoid imminent danger to life or property.

8.202(8) Redissemination. Recipients of criminal intelligence files from ICIS shall not redisseminate these files or information contained therein unless all of the following apply:

a. The information is for official purposes in connection with prescribed duties of the recipient, who is a peace officer, criminal justice agency, or state or federal regulatory agency.

b. The recipient is not a previously authorized user of ICIS whose authorization to access the system has been terminated and not reinstated.

c. The agency redisseminating the information maintains a record of the persons receiving the information and the date and purpose of the redissemination.

d. The request for the information is based upon name, fingerprints, or other individual identifying characteristics of the subject of the criminal intelligence information.

661—8.203(692) Criminal intelligence systems.

8.203(1) Notification. Any agency which establishes a criminal intelligence system shall provide written notification of its establishment to the intelligence bureau, Iowa department of public safety, indicating the name, address, and telephone number of the agency operating the system and the identity and title of an employee of the agency responsible for the administration of the system.

8.203(2) Identification of authorized users. Any agency operating a criminal intelligence system shall establish policies and procedures for identifying authorized users of the system and for termination of such authorization for cause. Authorized users may be peace officers, criminal justice agencies, or state or federal regulatory agencies.

8.203(3) Termination of authorization—notification of department. Any agency operating a criminal intelligence system which terminates the authorization for access to that system of any user for cause shall notify the intelligence bureau of the Iowa department of public safety of the termination, including the identity of the user whose authorization has been terminated and the reasons for the termination.

8.203(4) Restrictions on information entered. Information about the political, religious, racial, or social views, associations, activities or sexual orientation of any individual shall not be entered into a criminal intelligence file unless such information directly relates to an investigation of criminal conduct or activity and there are reasonable grounds to believe that the subject of the information is, or may be, engaged in criminal conduct or activity.

8.203(5) Information entered—conformance with applicable laws. No information which has been obtained in violation of any applicable federal, state, or local law or ordinance, or these rules, may be entered into criminal intelligence files in any criminal intelligence system in Iowa.

8.203(6) Dissemination. Criminal intelligence files may be disseminated only to peace officers, criminal justice agencies, or state or federal regulatory agencies. Criminal intelligence files may be disseminated only when there is a right to know and a need to know in the performance of a law enforcement activity. Criminal intelligence files may not be disseminated from any criminal intelligence system in Iowa to any user whose authorization to access ICIS has been terminated and not reinstated, nor may any criminal intelligence system disseminate criminal intelligence files to any user whose authorization to access that system has been terminated and not reinstated.

EXCEPTION: Criminal intelligence files may be released to a government official or to any other individual when necessary to avoid imminent danger to life or property.

8.203(7) Redissemination. Recipients of criminal intelligence files from a criminal intelligence system shall not redisseminate these files or information contained therein unless all of the following apply:

a. The information is for official purposes in connection with prescribed duties of the recipient, who is a peace officer, criminal justice agency, or state or federal regulatory agency.

b. The recipient is not a previously authorized user of ICIS or the criminal intelligence system from which the information was obtained whose authorization to access the system has been terminated and not reinstated.

c. The agency redisseminating the information maintains a record of the persons receiving the information and the date and purpose of the redissemination.

d. The request for the information is based upon name, fingerprints, or other individual identifying characteristics of the subject of the criminal intelligence information.

661—8.204(692) Criminal intelligence file security. The intelligence bureau of the department of public safety, other agencies operating criminal intelligence systems, and recipients of criminal intelligence files from criminal intelligence systems shall adopt administrative, technical, and physical safeguards, including audit trails, to ensure against unauthorized access and against intentional or unintentional damage. These safeguards shall include, but are not limited to, the following:

8.204(1) Records indicating who has been given the information, the reason for release of information, and the date of any dissemination shall be maintained until the information has been purged.

8.204(2) Criminal intelligence files shall be labeled to indicate security level and identities of submitting agencies and submitting individual.

8.204(3) Where appropriate, effective and technologically advanced computer software and hardware designs shall be implemented to prevent unauthorized access.

8.204(4) Any access to criminal intelligence files and computing facilities in which they are stored shall be restricted to authorized personnel.

8.204(5) Criminal intelligence files shall be stored in such a manner that they cannot be modified, destroyed, accessed, purged, or overlaid in any fashion by unauthorized personnel.

8.204(6) Computer systems on which criminal intelligence files are stored shall be programmed to detect, reject, and record any unauthorized attempt to access, modify, or destroy criminal intelligence files or to otherwise penetrate the security safeguards on such a system.

8.204(7) Access to any information required to gain authorized access to criminal intelligence files, including access codes and passwords, shall be restricted to only those personnel authorized to access these files. Agencies shall ensure that criminal intelligence files remain confidential when entering into specific agreements with individuals or organizations who provide computer or programming support to the agency.

8.204(8) Procedures shall be adopted to protect criminal intelligence files from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

8.204(9) Procedures shall be adopted which establish the right of the agency receiving or having in its possession criminal intelligence files, to screen and, if appropriate, reject for employment any personnel who would, if hired, have access to criminal intelligence files.

8.204(10) Procedures shall be established which allow the removal or transfer, based on good cause, of any existing employees from positions in which they have access to criminal intelligence files.

8.204(11) Any compromise, or suspected compromise, of information that would allow unauthorized access into criminal intelligence files shall be reported within 24 hours, excluding weekends and holidays, to the intelligence bureau of the department of public safety.

8.204(12) Any compromise, or suspected compromise, of information contained in criminal intelligence files shall be reported within 24 hours, excluding weekends and holidays, to the intelligence bureau of the department of public safety.

661—8.205(692) Review of criminal intelligence files—purge.

8.205(1) The intelligence bureau of the department of public safety, other agencies operating criminal intelligence systems, and recipients of criminal intelligence files from criminal intelligence systems shall regularly review the information in the criminal intelligence files for reclassification or purge. Decisions to retain, reclassify, or purge criminal intelligence files shall:

- a. Ensure the information is current, accurate and relevant to the needs of the agency.
- b. Safeguard individual privacy interests protected by federal and state laws.
- c. Ensure that security classifications remain appropriate.

8.205(2) Information that is misleading, unreliable, or is no longer useful shall be purged or reclassified when necessary within 24 hours of the discovery that it is misleading, unreliable, or is no longer useful. Any person or agency to whom the criminal intelligence file was disseminated shall be notified of the reclassification or purge.

8.205(3) All information shall be reviewed within a five-year period of its submission to ensure compliance with subrule 8.205(1).

8.205(4) All information retained as a result of a review shall reflect the name of the reviewer, date of review, and explanation of decision to retain.

8.205(5) Information that is not retained in the criminal intelligence file after a review shall be destroyed by shredding, mulching, or burning.

661—8.206(692) Prohibition on surveillance data. No surveillance data shall be placed in files or manual or automated data storage systems maintained by any peace officer or criminal justice agency.

661—8.207(692) Subpoenas and court orders. Any agency or individual shall notify the department of public safety in writing within 24 hours, excluding weekends and holidays, of the receipt of any subpoena, court order, request for production, or other legal process demanding the production of a criminal intelligence file, so that the department has an opportunity to make a timely resistance.

661—8.208 to 8.300 Reserved.

These rules are intended to implement Iowa Code sections 692.8, 692.10, and 692.19.

DIVISION III
IOWA SEX OFFENDER REGISTRY

661—8.301(692A) Sex offender registry established. The Iowa sex offender registry, as authorized by Iowa Code chapter 692A, is hereby established in the division of criminal investigation.

661—8.302(692A) Definitions. The following definitions apply to rules 661—8.301(692A) to 661—8.399.

8.302(1) “*Affirmative public notification*” means any form of communication or release undertaken by the department of public safety or other Iowa criminal or juvenile justice agency regarding the identity or characteristics of an individual registrant or registrants. “Affirmative public notification” does not mean release of information to a criminal or juvenile justice agency or agencies nor does it mean release of information about an individual registrant in response to an inquiry about that individual based upon the name and address of the individual, as provided in Iowa Code section 692A.13, subsection 6.

8.302(2) “*Convicted*” or “*conviction*” means a guilty verdict in a criminal case or an adjudication of delinquency in juvenile court for an offense specified in these rules or in Iowa Code chapter 692A as requiring registration with the Iowa sex offender registry. For purposes of these rules, “convicted” or “conviction” includes deferred judgments, deferred sentences, and acquittals by reason of insanity, and adjudications of delinquency of persons whose juvenile court records have been sealed under Iowa Code section 232.150.

8.302(3) “*Criminal or juvenile justice agency*” means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies, or departments, which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

8.302(4) “*Criminal offense against a minor*” means violations of any of the following sections of the Code of Iowa or equivalent laws of the United States or of any other jurisdiction, if committed against a minor:

a. Enticing a person into a brothel or detaining a person in a brothel by force, intimidation, or false pretenses in violation of Iowa Code section 709.7.

b. Rescinded IAB 7/15/98, effective 7/1/98.

c. Rescinded IAB 7/15/98, effective 7/1/98.

d. Any indictable offense involving sexual conduct directed toward a minor:

(1) Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph “b,” subparagraph (3), if the offense is sexually motivated.

(2) Any violation of the following Iowa Code sections, subsections, and paragraphs: 709.3(2), 709.4(2) “b,” 709.4(2) “c,” 709.8, 709.12, or 709.14.

(3) Any violation of the following Iowa Code sections with a minor victim: 709.2, 709.3, 709.4, 709.9, 709.15, 709.16, or 726.2; violations of section 698.1 (Iowa Code, 1975), 704.1 (Iowa Code, 1975), or 705.2 (Iowa Code, 1975).

e. Solicitation of a minor to engage in an illegal sex act; any violation of Iowa Code section 709A.6 involving an offense which would warrant registration.

f. Enticing away a child in violation of Iowa Code section 710.10.

g. Use of a minor in a sexual performance: any violation of Iowa Code section 728.12(1).

h. Sexual exploitation of a minor in violation of Iowa Code section 728.12, subsections 2 or 3.

i. Solicitation of a minor to practice prostitution: any violation of Iowa Code section 725.3(2).

j. Incest in violation of Iowa Code section 726.2, when committed against a minor.

k. Dissemination or exhibition of obscene materials to minors:

(1) Any violation of Iowa Code sections 728.2 or 728.15.

(2) Any violation of Iowa Code section 728.4 if delivery is to a minor.

l. Admitting minors to premises where obscene material is exhibited: any violation of Iowa Code section 728.3.

m. An attempt to commit sexual abuse of a minor: any violation of Iowa Code section 709.11; also, violations of section 698.4 (Iowa Code, 1975).

8.302(5) “*Offender*” means a person who is required to register with the Iowa sex offender registry.

8.302(6) “*Other relevant offenses*” means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.

b. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.

c. Indecent exposure in violation of Iowa Code section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “c” if committed in this state.

8.302(7) “*Registrant*” means a person who is currently registered with the Iowa sex offender registry.

8.302(8) “*Sexual exploitation*” means sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

8.302(9) “*Sexually violent offense*” means any of the following indictable offenses:

- a. Sexual abuse as defined in Iowa Code section 709.1.
- b. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- c. Sexual misconduct with offenders in violation of Iowa Code section 709.16.
- d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, false imprisonment, burglary, or manslaughter.
- e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “d” of this subrule if committed in this state.

8.302(10) “*Sexually violent predator*” means a person who has been convicted of an offense under the laws of this state or another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1798.

661—8.303(692A) Forms and procedures. The following forms and procedures are prescribed for use with the Iowa sex offender registry. Supplies of these forms may be obtained by contacting the Iowa sex offender registry at the division of criminal investigation.

8.303(1) Notification. Form DCI-144, “Notification of Registration Requirement,” which notifies offenders of their duty to register with the Iowa sex offender registry shall be provided to persons identified as being required to register. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

8.303(2) Registration.

a. Form DCI-145, “Sex Offender Registration,” shall be completed by or on behalf of each offender and submitted to the sheriff of the county in which the offender will be residing and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry.

b. Form DCI-145 shall also be used to report changes of residence, telephone number, or name of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant’s place of residence, telephone number, or name changes within ten days of the change of residence, telephone number, or name, whether within or outside the state of Iowa. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

c. Upon initial submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 unless the registrant’s appearance has not changed significantly in the judgment of the submitting agency.

d. A list of all registrants within a county shall be provided each month by the division of criminal investigation to the county sheriff. Each county sheriff may provide copies of these lists to other law enforcement, criminal justice, and juvenile justice agencies with jurisdiction in the county.

8.303(3) Annual verification. Form DCI-146, "Annual Verification of Address," shall be mailed by the division of criminal investigation to each registrant to the last address known to the registry annually during the month of original registration. Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope clearly stating that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

EXCEPTION: Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator to the last address known to the registry and shall be completed and returned to the division of criminal investigation by the registrant within ten days of receipt.

8.303(4) Application for determination. Form DCI-148, "Application for Determination," shall be completed by a registrant to initiate a request that the department review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry or whether the time period during which the registrant is required to register has expired. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts which the registrant intends to present to the department in support of the application. Failure to submit any of the required orders shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, and relevant statutory provisions, the commissioner may refer the matter to an administrative law judge or presiding officer for a hearing.

8.303(5) Decision of determination. Form DCI-149, "Decision of Determination," shall be used by the division of criminal investigation to notify a registrant who has submitted a request for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any registrant who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.

If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

8.303(6) Request for information. Form DCI-150, "Request for Registry Information," shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff or police department. A separate form shall be submitted for each person about whom information is being requested.

8.303(7) Confidential background investigation. A government agency conducting a confidential background investigation shall submit a completed Form DCI-151 to the division of criminal investigation to request information regarding the individual about whom the background investigation is being conducted.

8.303(8) Affirmative public notification.

a. Form DCI-152, "Notice of Intent to Make Affirmative Public Notification," shall be used by the division of criminal investigation to notify a registrant that the division intends to engage in affirmative public notification regarding the registrant in accordance with subrule 8.304(1).

b. Form DCI-153 shall be used by the division of criminal investigation to carry out affirmative public notification regarding a particular registrant in accordance with subrule 8.304(1). Additional information, including, but not limited to, a photograph of the registrant may be attached to Form DCI-153.

8.303(9) Confidential records. Completed forms filled out pursuant to rules 8.301(692A) through 8.399 are confidential records that may not be released to the public.

EXCEPTION: Completed copies of Form DCI-150 are public records only if public release of a form is authorized by the person completing the form.

661—8.304(692A) Release of information. The purpose of release of information from the Iowa sex offender registry is to afford protection to the public. The procedures specified here are intended to maximize the degree of protection afforded the public from potential risks presented by registrants while ensuring registrants their due process rights.

8.304(1) Affirmative public notification for public protection. A criminal or juvenile justice agency may initiate affirmative public notification regarding the identity and location of a specific registrant subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, or the department of human services which has resulted in a finding that the registrant is "at risk." A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to isor@dps.state.ia.us, fax transmission or via the Iowa on-line warrants and articles (IOWA) system.

a. *Risk assessment.* An assessment of the risk presented by a registrant shall be prepared prior to any affirmative public notification regarding that registrant. The assessment of risk for a registrant shall be prepared by the division of criminal investigation for a registrant who has moved to Iowa but is not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; juveniles who are not incarcerated but who are placed under the supervision of juvenile court services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Risk assessments shall be prepared by the department of corrections or the department of human services for registrants as specified in 1998 Iowa Acts, Senate File 2292, section 11. Risk assessments shall be completed following procedures prescribed by the department of corrections.

b. *Risk categories.* The assessment of risk presented to the community by a registrant shall result in placement of the registrant into one of the following two categories: "low risk" or "at risk."

All registrants are by virtue of their presence on the registry classified as "low-risk" offenders, unless they are classified as offenders "at risk" on the basis of assessments completed by the division of criminal investigation, department of corrections, or department of human services.

c. *Affirmative public notification procedures.* The means, method, and scope of release of information shall be based upon the determination of level of risk presented by a registrant. The following forms of notification may be utilized for each level of risk assessed.

(1) Low risk. For a registrant classified as presenting a low risk to the community, notification of the registrant's name, current address, criminal history, and a current photograph of the registrant may be provided to any law enforcement agency likely to encounter the registrant. These shall include, but are not limited to, any county or municipal agency with jurisdiction over the registrant's place of residence, place of employment or school or any other place to which the registrant is known to travel on a frequent basis.

(2) At risk. For a registrant classified as "at risk," the notification described in subparagraph (1) shall be completed. Also, persons likely to encounter the registrant may be notified through the following means. The department shall consult with the county attorney, sheriff, and local law enforcement agencies with jurisdiction in the registrant's place of residence, employment, school attendance, and other locations that the registrant is known to frequent, regarding appropriate forms of affirmative public notification. Form DCI-153 shall be used to carry out affirmative public notification initiated by the division of criminal investigation.

1. Notification of agencies or organizations in the community in which the registrant lives, is employed or attends school, or is known to frequent, where there are potential victims.

2. Personal or written notification of neighbors in the vicinity of the residence of the registrant, the registrant's place of employment or school, or other places the registrant is known to frequent.

3. Releases to media outlets which cover the community or communities in which the registrant resides, is employed or attends school, or is known to frequent including but not limited to the registrant's name and photograph.

4. Distribution of leaflets to residences and businesses in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

5. Posting of notices in public locations in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

(3) Responsibility for affirmative public notification. Affirmative public notification is intended to be a process of cooperation between the department of public safety and local law enforcement agencies with jurisdiction in locations where the registrant resides, is employed, attends school, or is known to frequent.

(4) Any county sheriff or police department shall provide a listing of all registrants classified as "at risk" within the county in which the sheriff or police department has jurisdiction to any person who requests such a list.

(5) A registrant who has been classified as "at risk" and whose history of offending includes the use of computer bulletin boards, the Internet, or other electronic means of contact with victims or potential victims may be the subject of a notice containing, but not limited to, the registrant's name and photograph, on the Internet.

(6) Information regarding any registrant who has been convicted of a criminal offense against a minor, sexual exploitation, another relevant offense, or a sexually violent offense on or after July 1, 1998, who has been assessed as "at risk" shall be made available electronically by the department of public safety to the public via the Internet.

d. Findings—prior notice—right to appeal—affirmative public notification by department.

(1) If the outcome of a risk assessment performed by the division of criminal investigation, the department of corrections, or the department of human services results in a finding that the registrant is “at risk” and the department intends to undertake or cause to be undertaken affirmative public notification with regard to the registrant, the division of criminal investigation shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152. Notice shall be given by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:

1. The proposed scope and specific manner and details of public notification;
2. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;
3. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;
4. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the initial determination is affirmed, or is modified, through the hearing process.

(2) A registrant who has received notice that an initial finding has been made which may result in affirmative public notification may appeal the initial finding in writing to the administrative services division of the department of public safety within 14 days of the date on which the notice is sent to the registrant by the division of criminal investigation.

(3) Affirmative public notification shall not proceed until at least 14 days after notice of the initial determination has been mailed or delivered to the registrant.

EXCEPTION: If the director of the division of criminal investigation finds that the registrant presents an immediate threat to the safety of the public, affirmative public notification may proceed at the same time as notice is sent to the registrant. In such a case, the notice shall inform the registrant that affirmative public notification may proceed immediately, based upon the finding that the registrant presents an immediate threat to the safety of the public.

(4) If the department does not receive a written application for a hearing within the time guidelines set forth above, the department may undertake affirmative public notification.

(5) When the department receives an application for a hearing, the department shall refer the matter to an administrative law judge or a presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial finding to the presiding officer with the application for hearing. The administrative law judge or presiding officer shall set a hearing within seven days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

(6) All documents relating to the hearing shall be confidential prior to, during, and after the hearing. The hearing itself shall be conducted *in camera*.

(7) Rule 661—10.306(17A), which governs introduction and consideration of evidence, shall apply to proceedings under this rule.

(8) The department shall have the burden of proof by a preponderance of the evidence to support its initial finding.

(9) After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the initial finding. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party. The order itself shall remain confidential, in accordance with Iowa Code section 692A.13.

(10) The registrant or the director of the division of criminal investigation may appeal the administrative law judge's or presiding officer's order to the commissioner of public safety. Appeal must be served in writing within 14 days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department or other criminal or juvenile justice agency may undertake affirmative public notification.

(11) The commissioner shall consider an appeal on the record made before the administrative law judge or presiding officer. The commissioner shall not consider any additional facts on appeal. The commissioner may, at the commissioner's discretion, request written briefs or oral argument in an appeal. The commissioner shall issue a written decision affirming, reversing, or modifying the order of the presiding officer. A copy of the decision shall be promptly mailed to each party. The decision, and all related information, shall remain confidential, in accordance with Iowa Code section 692A.13. The commissioner's decision shall constitute final agency action for purposes of Iowa Code section 17A.19.

(12) Subsequent affirmative public notification. For a registrant who has been assessed as "at risk" and who has been notified of the intent to initiate affirmative public notification, the department of public safety may initiate affirmative public notification in any area in which the registrant resides, is employed or attends school, or frequents subsequent to the initial notification to the registrant of the possibility of affirmative public notification. If the form of notice is consistent with that described in the notice given to the registrant of the initial finding that the registrant is "at risk" and subject to affirmative public notification, no further notice to the registrant is required. If the form or content of affirmative public notification differs substantially from that described in the notice to the registrant of the initial finding, a new notice of initial finding shall be prepared and sent to the registrant, as provided in paragraph "d," subparagraph (1), of this subrule.

e. Affirmative public notification initiated by other criminal or juvenile justice agency. A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by the division of criminal investigation, the department of corrections, or the department of human services of a risk assessment finding that the registrant is "at risk." Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency's decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant's right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification and the signature of the chief executive of that agency.

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant's residence, place of employment or school, or other places which the registrant is known to frequent.

8.304(2) *Release of information in response to individual request.* A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and shall provide the requester with the following information: name of registrant, address of registrant, age of registrant, gender of registrant, and physical description of registrant.

8.304(3) *Release of information for confidential background investigations.* The division of criminal investigation may release additional information regarding a registrant to personnel of criminal justice agencies or to personnel of government agencies conducting confidential background investigations.

8.304(4) *Release of information for bona-fide research.* Information from the Iowa sex offender registry may be released to persons conducting bona-fide research. A person conducting bona-fide research may request access to information from the Iowa sex offender registry by submitting a completed Form DCI-155 to the division of criminal investigation. Information identifying persons who have requested information about registrants using Form DCI-150 shall not be released to researchers unless permission has been obtained from each person who would be identified.

661—8.305(692A) Expungement of records.

8.305(1) *Expungement upon reversal of conviction.* The division of criminal investigation shall expunge the registration of any registrant if the conviction which forms the basis for the registrant's being required to register is reversed upon receipt of a certified copy of the court order reversing the conviction, providing that the person has been convicted of no other offense which would require registration.

8.305(2) *Expungement upon expiration of registration period.* The division of criminal investigation shall expunge a registrant's registration upon expiration of the period during which the registrant is required to register, provided that the registrant has not subsequently been convicted of an offense that would require registration.

661—8.306 to 8.399 Reserved.

These rules are intended to implement Iowa Code chapter 692A as amended by 1998 Iowa Acts, Senate File 2292.

[Filed June 30, 1975]

[Filed 6/7/79, Notice 5/2/79—published 6/27/79, effective 8/2/79]
 [Filed 1/10/86, Notice 11/20/85—published 1/29/86, effective 3/6/86]
 [Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
 [Filed emergency 9/27/94—published 10/26/94, effective 10/1/94]
 [Filed emergency 6/29/95—published 7/19/95, effective 7/1/95]
 [Filed 7/26/95, Notice 3/1/95—published 8/16/95, effective 10/1/95]
 [Filed 10/30/97, Notice 7/2/97—published 11/19/97, effective 1/1/98]
 [Filed emergency 6/26/98—published 7/15/98, effective 7/1/98]