

## CHAPTER 814

### APPEALS FROM THE DISTRICT COURT

Referred to in §602.8102(132), §801.1, §815.9, §815.11

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#### 814.1 Definition of appeal and discretionary review.

For the purposes of [this chapter](#), unless the context otherwise requires:

1. “*Appeal*” is the right of both the defendant and the state to have specified actions of the district court considered by an appellate court.

2. “*Discretionary review*” is the process by which an appellate court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

[R60, §4904, 4905; C73, §4520, 4521; C97, §5448; S13, §5448; C24, 27, 31, 35, 39, §13994; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.1; C79, 81, §814.1]

#### 814.2 Parties — how designated on appeal.

The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the district court.

[R60, §4818, 4819; C73, §4531, 4532; C97, §5455; C24, 27, 31, 35, 39, §14004; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.12; C79, 81, §814.2]

#### 814.3 Appeals in cases involving more than one defendant.

When defendants are tried jointly, they may seek discretionary review or may appeal separately or may join. The appellate court may, in the interest of justice, consolidate appeals or applications for discretionary review.

[R60, §4917; C73, §4526; C97, §5451; C24, 27, 31, 35, 39, §13996; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.3; C79, 81, §814.3]

#### 814.4 Repealed by 85 Acts, ch 157, §9.

#### 814.5 The state as appellant or applicant.

1. Right of appeal is granted the state from:

- An order dismissing an indictment, information, or any count thereof.
- A judgment for the defendant on a motion to the indictment or the information.
- An order arresting judgment or granting a new trial.

2. Discretionary review may be available in the following cases:

- a. An order dismissing an arrest or search warrant.
- b. An order suppressing or admitting evidence.
- c. An order granting or denying a motion for a change of venue.
- d. A final judgment or order raising a question of law important to the judiciary and the profession.

[C79, 81, §814.5; 82 Acts, ch 1021, §8, 12(1)]

Referred to in §808B.5

#### **814.6 The defendant as appellant or applicant.**

- 1. Right of appeal is granted the defendant from:
  - a. A final judgment of sentence, except in case of simple misdemeanor and ordinance violation convictions.
  - b. An order for the commitment of the defendant for insanity or drug addiction.
- 2. Discretionary review may be available in the following cases:
  - a. An order suppressing or admitting evidence.
  - b. An order granting or denying a motion for a change of venue.
  - c. An order denying probation.
  - d. Simple misdemeanor and ordinance violation convictions.
  - e. An order raising a question of law important to the judiciary and the profession.

[C79, 81, §814.6; 82 Acts, ch 1021, §9, 12(1)]

#### **814.7 Ineffective assistance claim on appeal in a criminal case.**

- 1. An ineffective assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to [chapter 822](#), except as otherwise provided in [this section](#). The claim need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes.
- 2. A party may, but is not required to, raise an ineffective assistance claim on direct appeal from the criminal proceedings if the party has reasonable grounds to believe that the record is adequate to address the claim on direct appeal.
- 3. If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under [chapter 822](#).

2004 Acts, ch 1017, §2

#### **814.8 Duties of prosecuting attorney.**

- 1. When an appeal is taken or an application made by the state or the defendant the prosecuting attorney shall promptly prepare and deliver to the attorney general so much of the proceedings as are material to the proper disposition of the matter.
- 2. When a notice of appeal or application has been filed by an adverse party, the prosecuting attorney shall immediately furnish the attorney general with a copy of said notice.

[C97, §301; SS15, §301; C24, 27, 31, 35, 39, §13999; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.7; C79, 81, §814.8]

Referred to in §331.756(80)

#### **814.9 Indigent's right to transcript on appeal.**

If a defendant in a criminal cause has perfected an appeal from a judgment and is determined by the court to be indigent, the court may order a transcript to be made. When an attorney of record is representing an indigent, the attorney shall apply to the district court for the transcript.

[C73, §3777; C97, §254; SS15, §254-a2; C24, 27, 31, 35, 39, §14000; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.8; C79, 81, §814.9]

83 Acts, ch 186, §10135, 10201; 96 Acts, ch 1193, §6

Referred to in §815.11

**814.10 Indigent's application for transcript in other cases.**

If a defendant in a criminal cause has been granted discretionary review from an action of the district court and the appellate court deems a transcript or portions thereof are necessary to proper review of the question or questions raised, the district court shall order the transcript to be made if the defendant is determined to be indigent.

[C79, 81, §814.10]

[83 Acts, ch 186, §10136, 10201; 96 Acts, ch 1193, §7](#)

Referred to in [§815.11](#)

**814.11 Indigent's right to counsel.**

1. An indigent person is entitled to appointed counsel on the appeal of all cases if the person is entitled to appointment of counsel under [section 815.9](#).

2. *a.* If the appeal involves an indictable offense or denial of postconviction relief, the appointment shall be made to the state appellate defender unless the state appellate defender notifies the court that the state appellate defender is unable to handle the case.

*b.* If the state appellate defender is unable to handle the case, the state public defender may transfer the case to a local public defender office, nonprofit organization, or private attorney designated by the state public defender to handle such a case. The state appellate defender shall notify the supreme court of the transfer of a case, and upon such notification the responsibility of the state appellate defender in the case terminates.

*c.* If, after transfer of the case to a local public defender office, nonprofit organization, or private attorney, the local public defender office, nonprofit organization, or private attorney withdraws from the case, the court shall appoint an attorney who has a contract with the state public defender to provide legal services in appellate cases.

3. *a.* In a juvenile case under [chapter 232](#) or a proceeding under [chapter 600A](#), the trial attorney shall continue representation throughout the appeal without an additional appointment order unless the court grants the attorney permission to withdraw from the case.

*b.* If the court grants the attorney permission to withdraw, the court shall appoint the state public defender's designee pursuant to [section 13B.4](#).

*c.* If the state public defender has not made a designation pursuant to [section 13B.4](#) to handle the type of case or the state public defender's designee is unable to handle the case, the court shall appoint an attorney who has a contract with the state public defender to provide legal services in appellate cases.

4. *a.* In all other cases not specified in [subsection 2](#) or [3](#), or except as otherwise provided in [this section](#), the court shall appoint the state public defender's designee pursuant to [section 13B.4](#).

*b.* If the state public defender has not made a designation pursuant to [section 13B.4](#) to handle these other types of cases or the state public defender's designee is unable to handle the case, the court shall appoint an attorney who has a contract with the state public defender to provide legal services in appellate cases to represent an indigent person.

5. If the court determines that no contract attorney is available to handle the appeal, the court may appoint a noncontract attorney, if the state public defender consents to the appointment of the noncontract attorney. The order of appointment shall include a specific finding that no contract attorney is available and the state public defender consents to the appointment.

6. The appointment of an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

7. An attorney who has been retained or has agreed to represent a person on appeal and subsequently applies to the court for appointment to represent that person on appeal because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

8. An attorney appointed under [this section](#) is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines

in a postconviction proceeding or on direct appeal that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under [this section](#) is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel is the proximate cause of the damage.

[C79, 81, §814.11]

[99 Acts, ch 135, §23](#); [2002 Acts, ch 1067, §14](#); [2004 Acts, ch 1017, §3](#); [2005 Acts, ch 19, §119](#); [2008 Acts, ch 1061, §4 – 6](#); [2012 Acts, ch 1063, §5](#); [2013 Acts, ch 90, §210](#); [2013 Acts, ch 116, §4](#)

Referred to in [§13B.4](#), [§22.7](#), [§815.7](#), [§815.11](#)

#### **814.12 Appeal by the state — effect.**

An appeal taken by the state does not stay the operation of a judgment in favor of the defendant, nor does an application for discretionary review.

[R60, §4911; C73, §4527; C97, §5452; C24, 27, 31, 35, 39, §14001; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.9; C79, 81, §814.12]

#### **814.13 Appeal or application by the defendant — effect.**

An appeal or application for discretionary review taken by the defendant does not stay the execution of the judgment unless the defendant is released on bail or otherwise as provided by law.

[R60, §4914, 4915; C73, §4528, 4529; C97, §5453; C24, 27, 31, 35, 39, §14002; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.10; C79, 81, §814.13]

#### **814.14 Certificate of release.**

When an appeal is taken by the defendant and the defendant is released, the clerk of the district court must give to the defendant or the defendant's attorney a certificate, under the seal of the court, that an appeal has been taken and the defendant released. The sheriff or other officer having the defendant in custody must, upon receipt of this certificate, discharge the defendant from custody and return to the clerk of court who issued it the execution under which the sheriff or other officer acted with the sheriff's or officer's return thereon.

[R60, §4916; C73, §4530; C97, §5454; C24, 27, 31, 35, 39, §14003; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.11; C79, 81, §814.14]

Referred to in [§331.653](#)

#### **814.15 Appeals and applications — docketing — when determined.**

Appeals and applications for discretionary review in criminal cases shall be docketed in the supreme court as provided in the rules of appellate procedure. Such causes shall take precedence over other business, and the appellate court shall consider and determine appeals and applications for discretionary review in criminal actions at the earliest time it may be done considering the rights of parties and proper administration of justice.

[R60, §4818, 4819; C73, §4531, 4532; C97, §5455; C24, 27, 31, 35, 39, §14004; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.12; C79, 81, §814.15]

[85 Acts, ch 157, §4](#)

#### **814.16 Repealed by 85 Acts, ch 157, §9.**

#### **814.17 Personal appearance of the defendant.**

The personal appearance of the defendant in the appellate court on the trial of an appeal, or upon the hearing of a matter of discretionary review, is in no case necessary.

[R60, §4920; C73, §4533; C97, §5456; C24, 27, 31, 35, 39, §14005; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.13; C79, 81, §814.17]

#### **814.18 Repealed by 85 Acts, ch 157, §9.**

**814.19 Hearing in the appellate court — rules of procedure.**

The record and case shall be presented to the appellate court as provided in the rules of appellate procedure; the provisions of law in civil procedure relating to the filing of decisions and opinions of the appellate court shall apply in such cases.

[C97, §5461; C24, 27, 31, 35, 39, §14009; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.17; C79, 81, §814.19]

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

**814.20 Decisions on appeals or applications by defendant.**

An appeal or application taken by the defendant shall not be dismissed for an informality or defect in taking it if corrected as directed by the appellate court. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the district court judgment. The appellate court may also order a new trial, or reduce the punishment, but shall not increase it.

[C51, §3097, 3098; R60, §4921, 4925; C73, §4534, 4538; C97, §5457, 5462; C24, 27, 31, 35, 39, §14006, 14010; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.14, 793.18; C79, 81, §814.20]

[85 Acts, ch 157, §5](#)

**814.21 Costs.**

Costs shall be taxed as provided by the rules of appellate procedure.

[C97, §5462; C24, 27, 31, 35, 39, §14011; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.19; C79, 81, §814.21]

[85 Acts, ch 157, §6](#)

**814.22 Reversal — effect.**

If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the appellate court shall direct a different disposition. In reversing the case, the appellate court may direct that the defendant be discharged and the defendant's bail exonerated, or if money is deposited instead, that it be returned to the defendant.

[C51, §3099; R60, §4927; C73, §4540; C97, §5464; C24, 27, 31, 35, 39, §14013; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.21; C79, 81, §814.22]

**814.23 Affirmance — effect.**

On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the appellate court shall direct.

[C51, §3100; R60, §4928; C73, §4541; C97, §5465; C24, 27, 31, 35, 39, §14014; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.22; C79, 81, §814.23]

**814.24 Decision recorded and procedendo.**

The decision of the appellate court with any opinion filed or judgment rendered must be recorded by its clerk. Procedendo shall be issued as provided in the rules of appellate procedure.

[C51, §3101, 3102; R60, §4929, 4930; C73, §4542, 4543; C97, §5466; C24, 27, 31, 35, 39, §14016; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.24; C79, 81, §814.24]

[85 Acts, ch 157, §7](#)

**814.25 Cessation of jurisdiction of appellate court.**

The jurisdiction of the appellate court shall cease when procedendo is issued. All proceedings for executing the judgment shall be had in the district court or by its clerk.

[C51, §3101, 3102; R60, §4929, 4930; C73, §4542, 4543; C97, §5466; C24, 27, 31, 35, 39, §14016; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.24; C79, 81, §814.25]

[85 Acts, ch 157, §8](#)

**814.26 Judgment enforced.**

Unless some proceeding in the district court is directed, copies of the judgment of the district court and of the decision on appeal or review, or a copy of the judgment and decision on appeal or review, certified by the clerk of the district court, shall be delivered to the

sheriff or proper officer as an execution. The sheriff or proper officer shall be authorized to execute the judgment of the court or take any legal measures required to bring the action to a conclusion.

[R60, §4931; C73, §4544; C97, §5467; C24, 27, 31, 35, 39, §14017; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.25; C79, 81, §814.26]

**814.27 Time of confinement deducted.**

A defendant, confined during the pendency of an unsuccessful review or appeal, or convicted at a new trial ordered by the appellate court, shall have the period of the defendant's former confinement deducted from the period of confinement fixed on the last verdict of conviction by the district court.

[R60, §4933; C73, §4545; C97, §5468; C24, 27, 31, 35, 39, §14018; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.26; C79, 81, §814.27]