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LEGISLATIVE GUIDE

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CRIMINAL LAW OVERVIEW

Table of Contents

I. Purpose and Overview 1

II. Criminal Intent 1

III. Categories of Criminal Penalties 2

A. Felonies 2
B. Misdemeanors 3
C. Juveniles — District Sentencing Provisions 4

IV. Criminal Proceedings 6

A. Search and Seizure 6
B. Arrest 8
C. Bail 8
D. Defense Representation 9
E. Prosecution 9
F. Trial 10
G. Appeal 11
H. Postconviction Relief 11
I. Confinement of a Dangerous Person 12
J. Confinement of a Mentally Incompetent Person 12

V. Imposition of Sentences 14

A. Sentencing by the Court 14
B. Sentencing System 15
C. Probation 18
D. Restitution 19
E. Reconsideration of a Sentence 19
F. Parole and Work Release 20
G. Furlough, Reprieve, Pardon, and Commutation 20
H. Earned Time 21

VI. Department of Corrections 22

VII. Judicial District Departments of Correctional Services 23

VIII. Board of Parole 23

IX. DNA Profiling 24

X. Civil Commitment of Sexually Violent Predators 24

XI. Sex Offender Registry 25

A. 2009 Changes to Registry Requirements 25

B. Offenders Required to Register 25

C. Registration Process 26

D. Duration of Registration 27

E. Penalties 27

XII. Collection of Delinquent Court Debt 27

A. Court Debt 27

B. Charge Off — Uncollectible Debt 28

XIII. Disposition of Seized Property 29

XIV. Civil Asset Forfeiture 29

XV. Expungement of Certain Criminal Records 29

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 2022 Iowa Code. The references to the Iowa Administrative Code are current through September 2021. The references to the Iowa Court Rules are current through September 2021. The reference to the Iowa Jury Instructions are current through June 2021.

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.

II. Criminal Intent

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

> Specific intent is present when from the circumstances the offender must have subjectively desired the prohibited result. General intent exists when from the circumstances the prohibited result may reasonably be expected to follow from the offender's voluntary act, irrespective of any subjective desire to have accomplished such result.[3]

[1] The New Iowa Criminal Code and the Options of the Iowa Supreme Court, 32 Drake L. Rev. 61, 67 (1982-1983).
[2] Id. at 61, 77-78. See also State v. Fountain, 786 N.W.2d 260, 263-265 (Iowa 2010).
[3] State v. Redmon, 244 N.W.2d 792, 797 (Iowa 1976).

Crimes which have no express intent elements are characterized as general intent crimes.[4] In a crime defined as a general intent crime, a person must do a voluntary act that is against the law.[5] Examples of general intent crimes include operating a motor vehicle while intoxicated and sexual abuse in the third degree involving a minor (statutory rape).[6] 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 involving a minor 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.[7] 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.[8] Murder in the first degree is an example of a specific intent crime.[9] 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.[10]

III. Categories of Criminal Penalties

General Classifications. In general, crimes in Iowa are classified as felonies or misdemeanors. Within the general felony and misdemeanor categories, various offense classes typically carry uniform minimum and maximum penalties.[11] These uniform minimum and maximum penalties have been altered by the enactment of mandatory minimum sentences, penalty enhancements, and limitations on parole, which have led to increased sentence lengths in some offense classes. See part III, section C of this Guide, entitled "Juveniles — Special Sentencing Provisions" for a discussion of restrictions regarding, and developing case law relating to, juvenile sentencing.

A. Felonies

Overview. A criminal offense is a felony when the statute defining the crime declares it to be a felony.[12] Felonies are classified in descending order of severity from class "A" felonies to class "D" felonies.[13] 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 probation.[14] A class "A" felon can 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.[15] However, see part III, section C of this Guide, entitled

4 Eggman v. Scurr, 311 N.W.2d 77, 79 (Iowa 1981).
5 Iowa Criminal Jury Instruction 200.1.
6 Iowa Code §§321J.2(1) (operating a motor vehicle while intoxicated), 709.4(1)(b)(3)(d) (sexual abuse in the third degree).
7 Iowa Code §§321J.2 (operating while intoxicated), 709.4(1)(b)(3) (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 and (2) while under the influence); 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).
8 State v. Canas, 597 N.W.2d 488, 495 (Iowa 1999).
9 Iowa Code §707.2 (murder in the first degree).
10 Iowa Criminal Jury Instruction 200.2.
11 Iowa Code §§902.9 (felonies), 903.1 (misdemeanors).
12 Iowa Code §701.7.
13 Iowa Code §§902.1, 902.9.
14 Iowa Code §902.1(1).
15 See generally, Iowa Const. art. IV, §16; Iowa Code §§902.1(1), 914.1.

"Juveniles — Special Sentencing Provisions," for more discussion about class "A" felons who committed the offense while under 18 years of age.

Class "B" Felonies. Class "B" felonies are punishable by confinement for no more than 25 years.[16] However, the following class "B" felonies are punishable by confinement for no more than 50 years:

- Certain felony drug offenses.[17]
- Murder in the second degree.[18]
- Multiple acts of child endangerment.[19]
- Railroad vandalism involving a death.[20]

Class "C" Felonies. Class "C" felonies are punishable by confinement for no more than 10 years and a fine of at least $1,370 but not more than $13,660.[21]

Class "D" Felonies. Class "D" felonies are punishable by confinement for no more than five years and a fine of at least $1,025 but not more than $10,245.[22]

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.[23] If a person is convicted of a second or subsequent offense, the offense is classified as a class "A" felony.[24]

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, or assigned to a treatment facility pursuant to Iowa Code section 904.513 if the person's sentence of commitment to the custody of the Director is suspended.[25] 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.[26]

B. Misdemeanors

Overview. All public offenses which are not felonies are misdemeanors.[27] Misdemeanors are classified as aggravated, serious, and simple misdemeanors, in decreasing order of severity.[28] 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

[16] Iowa Code §902.9(1)(b).
[17] Iowa Code §124.401(1)(a).
[18] Iowa Code §707.3.
[19] Iowa Code §726.6A.
[20] Iowa Code §716.10(2)(a).
[21] Iowa Code §902.9(1)(d).
[22] Iowa Code §902.9(1)(e).
[23] Iowa Code §§124.401D(1)(b), 902.9(1)(a).
[24] Iowa Code §124.401D(1)(c).
[25] Iowa Code §321J.2(5)(a)(1).
[26] Iowa Code §321J.2(5)(a)(2).
[27] Iowa Code §701.8.
[28] Iowa Code §903.1.

Corrections and a fine of not less than $855 but not more than $8,540.[29] 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.[30]

Serious Misdemeanors. The penalty for a serious misdemeanor is a fine of not less than $430 but not more than $2,560. Imprisonment for up to one year in the county jail may also be ordered.[31]

Simple Misdemeanors. The penalty for a simple misdemeanor is a fine of at least $105 but not more than $855. Imprisonment for up to 30 days in the county jail may be ordered in addition to or in lieu of the fine.[32]

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 a 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 that are scheduled violations are generally issued a citation or ticket and do not serve any term of confinement.[33] However, a court appearance may be required and a person may be punished within the limits of a simple misdemeanor under certain circumstances.[34]

C. Juveniles — District Sentencing Provisions

United States Supreme Court Decisions — Changes to Iowa Law. The United States Supreme Court in *Graham v. Florida* ruled that a sentence requiring a juvenile to serve a life sentence with no possibility of parole for an offense other than murder constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution.[35] After the *Graham* decision, Iowa changed the law in 2011 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. Instead, such an offender was required to serve a minimum term of confinement of 25 years with the possibility of parole after serving the minimum 25-year term.[36]

In a subsequent opinion, the United States Supreme Court in *Miller v. Alabama* 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.[37] 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.[38]

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[29] Iowa Code §903.1(2).
[30] Iowa Code §§903.1(2), 903.4.
[31] Iowa Code §903.1(1)(b).
[32] Iowa Code §903.1(1)(a).
[33] Iowa Code §§805.6, 805.8(1). See State v. Butler, 706 N.W.2d 1, 6 (Iowa 2005).
[34] Iowa Code §§805.9, 805.11.
[35] Graham v. Florida, 560 U.S. 48 (2010).
[36] 2015 Iowa Code §902.1(2). See 2011 Iowa Acts, ch. 131, §147, for enacting legislation.
[37] Miller v. Alabama, 567 U.S. 460 (2012).
[38] Id. at 483. As of September 1, 2021, Iowa had 25 offenders in custody who committed a class "A" felony while the offender was a juvenile, 22 of whom have been paroled, and 5 of whom are deceased. Email from Isabel Waller, Legislative Analyst, Fiscal Services Division, Iowa Legislative Services Agency (September 27, 2021, 1:51 p.m. CST) (on file with author).

Iowa Case Law and Subsequent Statutory Changes. The Iowa Supreme Court has issued several opinions relating to juvenile sentencing in recent years. In two cases, in 2013, a juvenile was convicted in adult court of a serious offense other than a class "A" felony and was sentenced to lengthy mandatory minimum sentences requiring service of 70 percent of the sentence.[39] 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.

In 2014, the Iowa Supreme Court in *State v. Lyle* went further and concluded that all mandatory minimum sentences of imprisonment for a juvenile are unconstitutional under the Cruel and Unusual Punishment Clause in Article I, section 17, of the Iowa Constitution.[40] However, the Court stated the *Lyle* decision does not prohibit a judge from sentencing a juvenile to prison for the length of time identified by the legislature for the crime committed as long as that sentence is not mandated.[41] The Court specified that this case will apply to all juveniles serving a mandatory sentence of imprisonment. Therefore, this case will require all persons who are in prison under a mandatory sentence for a crime committed as a juvenile to be resentenced.[42] The Court stated that "[e]ven if the resentencing does not alter the sentence for most juveniles, or any juvenile, the action taken by our district judges in each case will honor the decency and humanity embedded within the [Cruel and Unusual Punishment Clause of the Iowa Constitution], and, in turn, within every Iowan."[43]

After the *Miller* decision and subsequent Iowa case law, the 2015 General Assembly enacted changes to the sentencing provisions for juveniles who commit class "A" felonies while under 18 years of age.[44] These changes require a juvenile who commits murder in the first degree to be sentenced to one of the following sentences under Iowa Code section 902.1(2): 1) life with no possibility of parole unless the Governor commutes the sentence to a term of years; 2) life with the possibility of parole after serving a minimum term of confinement determined by the court; or 3) life with the possibility of parole. A juvenile who commits a class "A" felony other than murder in the first degree shall be sentenced to one of the following sentences under Iowa Code section 902.1(3): 1) life with the possibility of parole after serving a minimum term of confinement determined by the court or 2) life with the possibility of parole.

However, in 2016, building upon the conclusions of the *State v. Lyle* decision, the Iowa Supreme Court in *State v. Sweet* adopted a categorical rule barring a juvenile offender from being sentenced to life without the possibility of parole, thus invalidating Iowa Code section 902.1(2)(a)(1) which provides a sentencing court with the option to sentence a juvenile who commits murder in the first degree to life in prison without the possibility of parole.[45] The Iowa Supreme Court stated that a sentence of life without the possibility

[39] See State v. Null, 836 N.W.2d 41, 76 (Iowa 2013); State v. Pearson, 836 N.W.2d 88, 97 (Iowa 2013).
[40] State v. Lyle, 854 N.W.2d 378, 401 (Iowa 2014).
[41] Id. at 403.
[42] Id.
[43] Id.
[44] Iowa Code §902.1(2), (3).
[45] See State v. Sweet, 879 N.W.2d 811, 839 (Iowa 2016).

of parole for a juvenile offender is cruel and unusual punishment and violates Article I, section 17, of the Iowa Constitution.[46]

In 2017, the Iowa Supreme Court held in *State v. Roby* that while a 25-year sentence with a mandatory minimum period of confinement of 17.5 years is not categorically prohibited under the cruel and unusual punishment clause of the Iowa Constitution, the district court abused its discretion by imposing a mandatory sentence of confinement without parole eligibility.[47] The Iowa Supreme Court specifically held that the district court abused its discretion in the individualized sentencing hearing by not adhering to the factors first found in *Miller* and subsequently expanded upon by the Iowa Supreme Court through case law.[48] Under *Roby*, the Iowa Supreme Court emphasized the following: the *Miller* factors generally serve to mitigate punishment; juvenile sentences are not entirely adversarial; and the default rule in sentencing is that juveniles are not subject to mandatory minimum periods of confinement.[49] The Court carefully critiqued the district court decision relating to each *Miller* factor to add clarity to future individualized hearings involving juvenile offenders, and concluded the district court abused its discretion.[50]

In 2020, after adhering to the factors found in *Miller* at sentencing, the Iowa Supreme Court held in *State v. Majors* that the district court did not abuse its discretion by imposing a 17.5-year mandatory minimum sentence upon a 17-year-old defendant for attempted murder and burglary, even if the defense did not present an expert witness to testify regarding the juvenile sentencing factors found in *Miller*.[51]

In 2021, the United States Supreme Court held in *Jones v. Mississippi*[52] that the Eighth Amendment to the United States Constitution prohibits mandatory life sentences for juvenile offenders but does not prohibit discretionary life sentences for such offenders. The Court stated that the Court has never required an on-the-record sentencing explanation or an implicit finding regarding mitigating circumstances.[53] Although Court precedent requires a discretionary sentencing procedure in the case of murder committed by a juvenile, the resentencing court in *Jones* complied with those precedents because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of the defendant's youth.[54]

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.[55] A valid search warrant must be signed by a magistrate or judge, be supported

[46] Id.
[47] State v. Roby, 897 N.W.2d 127, 148 (Iowa 2017).
[48] Miller v. Alabama, 567 U.S. 460, 475 (2012); State v. Roby, 897 N.W.2d 127, 147-148 (Iowa 2017). For a short summation of evolving Iowa juvenile case law prior to the *Roby* decision, see State v. Sweet 879, N.W.2d 811, 832-833 (Iowa 2016).
[49] State v. Roby, 897 N.W.2d 127, 144 (Iowa 2017).
[50] Id. at 145-148. The five factors under *Miller* and expanded upon by the Iowa Supreme Court include the following: age and the features of youthful behavior, family and home environment, the circumstances of the crime, legal incompetency, and rehabilitation.
[51] State v. Majors, 940 N.W.2d 372, 393 (Iowa 2020).
[52] Jones v. Mississippi, 141 S. Ct. 1327, 1320 (2021).
[53] Id. at 1307
[54] Id. at 1322.
[55] U.S. Const. amend. iv; Iowa Const. art. I, §8.

by an affidavit or testimony submitted under oath, and establish probable cause.[56] The search warrant must also describe with sufficient specificity the person, place, or thing to be searched.[57]

The Iowa Supreme Court utilizes a two-step analysis in determining whether a violation of the Fourth Amendment to the United States Constitution or Article I, section 8, of the Iowa Constitution has occurred.[58] First, a person challenging the legality of a search has the burden to show that the person has a legitimate expectation of privacy in the area searched.[59] The Iowa Supreme Court stated the following:

> The determination of whether a person has a legitimate expectation of privacy with respect to a certain area is made on a case-by-case basis, considering the unique facts of each particular situation. The expectation must also be one that society considers reasonable.[60]

Second, if a reasonable expectation of privacy of the search area has been established, the court must determine whether the state unreasonably invaded the protected interest.[61]

If the government conducts an unreasonable search and seizure, the defendant's remedy is the exclusion of the evidence from trial.[62] This remedial exclusion of evidence is commonly referred to as the exclusionary rule.

> [T]he exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search, up to the point at which the connection with the unlawful search becomes so attenuated as to dissipate the taint.[63]

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) searches of items in plain view, and (4) searches incident to a lawful arrest.[64]

Under circumstances relating to vehicle impoundment and subsequent searches of the impounded vehicle, the Iowa Supreme Court stated the first determination is whether impoundment is necessary. If impoundment is not necessary, the owner or operator should be advised of other options to impoundment, including park-and-lock options on nearby streets or calling a friend or third party to drive the vehicle away.[65] Impoundment of a vehicle should be permitted only if these options have been adequately explored.[66] If

[56] Iowa Code §808.3. However, in State v. Angel, 893 N.W.2d 904 (Iowa 2017), the Iowa Supreme Court concluded that Iowa Code section 808.3 permits the search warrant applicant to orally swear to the truth of the contents of the search warrant application in the presence of the judge even if inadvertently, the applicant fails to sign the application. Additionally, under *Angel*, the Iowa Supreme Court concluded that a search warrant was not invalid because the judge failed to mark a probable cause finding box on the search warrant application where the evidence in the case left no doubt there was probable cause to sign the search warrant.
[57] Iowa Code §808.3.
[58] State v. Lowe, 812 N.W.2d 554, 567 (Iowa 2012).
[59] Id.
[60] Id. (quoting State v. Fleming, 790 N.W.2d 560, 564 (Iowa 2010)).
[61] Lowe at 567-568.
[62] State v. McGrane, 733 N.W.2d 671, 680 (Iowa 2007).
[63] Murray v. United States, 487 U.S. 533, 536–37.
[64] State v. Naujoks, 637 N.W.2d 101, 107 (Iowa 2001).
[65] State v. Ingram, 914 N.W.2d 794, 820 (Iowa 2018).
[66] Id.

impoundment is necessary, law enforcement should ask the operator whether there is any personal property in the vehicle the operator wishes to retain and, if so, the operator should be allowed to retrieve the property.[67] Next, if property is left behind, law enforcement should ask the driver if there is anything of value requiring safekeeping and make a record of the response in order to protect law enforcement from a later claim of theft.[68] If knowing and voluntary consent to search the vehicle is not given by the operator, law enforcement must inventory closed containers left in the vehicle as a unit and closed containers found within the vehicle should not be opened but stored for safekeeping as a unit.[69]

In 2021, the Iowa Supreme Court ruled that the contents of garbage bags left out for garbage collection outside a person's home seized by the police were "papers and effects" protected by the Iowa Constitution's prohibition against unreasonable searches and seizures.[70]

B. Arrest

An arrest is the taking of a person into custody when authorized by law.[71] Arrests may be made pursuant to a warrant or without a warrant.[72] An arrest pursuant to a warrant is commenced by the filing of a complaint before a judge which alleges that a person has committed a crime.[73] 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.[74] A police officer is the only person authorized to make an arrest pursuant to a warrant issued by a judge.[75] 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.[76]

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.[77] 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."[78] In order to determine the amount of bail, a defendant is required to appear before a judge without unnecessary delay.[79] 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.[80] However, the bond

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67 Id.
68 Id.
69 Id.
70 State v. Wright, 961 N.W.2d 396, 417 (2021).
71 Iowa Code §804.5.
72 Iowa Code §804.6.
73 Iowa Code §804.1(1).
74 Iowa Code §804.1(1).
75 Iowa Code §804.6.
76 Iowa Code §804.9.
77 Iowa Code §804.21(2).
78 Iowa Const. art. I, §12.
79 Iowa Code §804.21(1).
80 A bond shall not be set until a person arrested or taken into custody for the following offenses is seen by a judicial officer: a forcible felony; the manufacture, delivery, possession with intent to manufacture or deliver, or distribution of methamphetamine; stalking in violation of Iowa Code section 708.11; and violations of Iowa Code sections 236.11, 236.12, 236A.12, 664A.3, 708.6, and 724.26(1). See Iowa Code §804.21 and the Uniform Bond Schedule at www.iowacourts.gov/iowa-courts/district-court/uniform-bond-schedule (last visited September 10, 2021).

schedule does not apply when the court is in session and sets the bond amount.[81] 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.[82] 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.[83] In addition, a person detained for a sexually violent predator determination under Iowa Code chapter 229A is not bailable.[84]

D. Defense Representation

A person charged with a criminal offense is generally entitled to representation in legal proceedings by an attorney.[85] In Iowa, a person is entitled to an attorney for any offense where there is a possibility of imprisonment if the person is convicted.[86] The court is required by statute to appoint an attorney if the person is indigent.[87] A person is considered indigent if the person's income is at or below 125 percent of the United States poverty level.[88] 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.[89]

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.[90] 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.[91] 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

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[81] State v. Huss, No. 09-0574, at 6-7 (Iowa Ct. App. Jan. 22, 2010).

[82] 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 section 462A.14 or Iowa Code section 707.6A; any felony included in Iowa Code section 124.401(1)(a) or (b); a second or subsequent offense under Iowa Code section 124.401(1)(c); a felony punishable under Iowa Code section 902.9(1)(a); a public offense committed while detained pursuant to Iowa Code section 229A.5; or a public offense committed while subject to an order of commitment pursuant to Iowa Code chapter 229A. See Iowa Code section 702.11 for a definition of "forcible felony."

[83] Iowa Code §811.1(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 section 462A.14 or Iowa Code section 707.6A; any felony included in Iowa Code section 124.401(1)(a) or (b); a second or subsequent offense under Iowa Code section 124.401(1)(c); a felony punishable under Iowa Code section 902.9(1)(a); a public offense committed while detained pursuant to Iowa Code section 229A.5; or a public offense committed while subject to an order of commitment pursuant to Iowa Code chapter 229A. See Iowa Code section 702.11 for a definition of "forcible felony."

[84] Iowa Code §811.1(1), (2); see Atwood v. Vilsack, 725 N.W.2d 641, 652 (Iowa 2006).

[85] U.S. Const. amend. vi; Iowa Const. art. I, §10; McNabb v. Osmundson, 315 N.W.2d 9, 14 (Iowa 1982).

[86] McNabb, 315 N.W.2d at 14; Iowa R.Cr.P. 2.28.

[87] Iowa Code §13B.4(1); Iowa Code §815.9(1)(a).

[88] Iowa Code §815.9(1)(a).

[89] Iowa Code chs. 229A (commitment of sexually violent predators), 665 (contempt proceedings), 812 (confinement of persons found incompetent to stand trial), 814 (appeals), 822 (postconviction procedure), 908 (violations of parole or probation); Iowa Code §§232.141 (juvenile cases — expenses), 598.23A (contempt proceedings for support payments), 600A.6B (termination of parental rights — attorney fees), 811.1A (felony detention hearing), 814.9 (indigent right to appellate transcript), 814.10 (indigent application for transcript), 815.4 (special witnesses for indigents). See generally Iowa Code §815.11.

[90] Iowa Code §331.756(1); Iowa R.Cr.P. 2.5(1).

[91] Iowa Const. art. I, §11; see generally Iowa R.Cr.P. 2.5.

attorney or proceed to trial on the charge.[92] 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.[93] 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.[94] 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.[95]
- The county attorney agrees to drop or not file certain charges.[96]
- 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-related 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.[97] 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.[98] 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.[99] The court may require selection of one or more alternate jurors whose qualifications, powers, functions, facilities, and privileges will be the same as principal jurors.[100] To convict a person of a crime, the jury must be unanimous

[92] Iowa R.Cr.P. 2.10(1).
[93] Iowa R.Cr.P. 2.10(1).
[94] State v. Edwards, 279 N.W.2d 9 (Iowa 1979).
[95] Iowa R.Cr.P. 2.10(1).
[96] Iowa R.Cr.P. 2.10(2).
[97] Iowa Code §901.5.
[98] Iowa R.Cr.P. 2.10(2).
[99] 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.
[100] Iowa R.Cr.P. 2.18(15).

in its verdict.[101] A person may also choose to waive the person's right to a jury trial and proceed with a trial before a judge.[102]

G. Appeal

The Iowa Supreme Court and Iowa Court of Appeals have jurisdiction over all criminal appeals in Iowa.[103] 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.[104] 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.[105] If the appeal is heard before the Court of Appeals, a person may file an application for further review with the Supreme Court within 20 days of the Court of Appeals decision.[106] However, an application for further review with the Supreme Court in a child-in-need-of-assistance or termination-of-parental-rights proceeding shall be filed within 10 days of the Court of Appeals decision.[107] A person convicted of a simple misdemeanor has 10 days after judgment is rendered to appeal the decision to the district court.[108]

H. Postconviction Relief

Postconviction remedies exist to give trial courts an opportunity to consider and correct challenges to their original actions.[109] 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.[110] For an ineffective assistance of counsel claim in a criminal case, recent changes require the claim to proceed through postconviction relief proceedings rather than be decided on direct appeal.[111] 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[112] based upon any error.

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[101] Iowa R.Cr.P. 2.22(5).
[102] 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.
[103] See Iowa Const. art. V, §4, for Supreme Court jurisdiction. See also Iowa Code §602.4102(1), (2).
[104] Iowa R. App. P. 6.101.
[105] Iowa Code §602.4102(2).
[106] Iowa Code §602.4102(4)(b); Iowa R. App. P. 6.1103(1)(a).
[107] Iowa R. App. P. 6.1103(1)(a).
[108] Iowa R.Cr.P. 2.73(1).
[109] See Iowa Code ch. 822. See also State v. Swartz, 541 N.W.2d 533, 540 (Iowa Ct. App. 1995).
[110] State v. Spurgeon, 533 N.W.2d 218, 220 (Iowa 1995).
[111] Iowa Code §814.7. However, an ineffective assistance claim may be brought from a final judgment and sentencing on direct appeal prior to the effective date of new Iowa Code section 814.7. See State v. Macke, 933 N.W.2d 226, 237 (Iowa 2019).
[112] See Black's Law Dictionary (10th ed. 2014), defining "collateral attack."

- The results of DNA profiling ordered pursuant to an application filed under Iowa Code section 81.10 would have changed the outcome of the trial or voided the factual basis of a guilty plea had the profiling been conducted prior to the conviction.

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.[113] 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.[114] 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.[115]

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.[116] The court may make its own motion if the defendant or defense attorney in the criminal proceeding fails to make an application.[117] The court must schedule a hearing to determine if probable cause exists to sustain the allegations.[118] 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.[119] 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.[120] 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.[121]

Competency Hearing. The court receives all relevant and material evidence at the competency hearing and is not bound by the rules of evidence.[122] If the court finds the defendant is competent to stand trial, the court must reinstate the criminal proceedings against the defendant.[123] 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.[124]

[113] Iowa Code §811.1A(1), (2)(a).
[114] Iowa Code §811.1A(2)(b).
[115] Iowa Code §811.1A.
[116] Iowa Code §812.3(1).
[117] Iowa Code §812.3(1).
[118] Iowa Code §812.3(1).
[119] Iowa Code §812.3(1).
[120] Iowa Code §812.3(2).
[121] Iowa Code §812.4(1).
[122] Iowa Code §812.5.
[123] Iowa Code §812.5(1).
[124] Iowa Code §812.5(2).

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.[125]

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.[126] 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.[127] If the defendant does not pose a danger to the public peace or safety but is otherwise being held in custody, the defendant is placed in a facility operated by the Department of Human Services for treatment.[128]

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 facility treating the defendant, notifies the court, and a hearing is set on the defendant's competency within 14 days of being notified.[129]

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.[130]

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.[131]

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.[132] Upon a finding by the court by a preponderance of the evidence 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.[133] 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.[134] If the court finds there is no substantial probability the

[125] Iowa Code §812.6(1).
[126] Iowa Code §812.6(2).
[127] Iowa Code §812.6(2)(a). See Iowa Code section 229A.2(10) for the definition of "safekeeper."
[128] Iowa Code §812.6(2)(b).
[129] Iowa Code §812.8(1), (4).
[130] Iowa Code §812.8(3), (4).
[131] Iowa Code §812.8(2), (4).
[132] Iowa Code §812.8(4).
[133] Iowa Code §812.8(5).
[134] Iowa Code §812.8(6).

defendant's competency will be restored in a reasonable amount of time, the court must terminate the placement.[135]

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.[136] 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.[137] 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.[138] The court must terminate the placement of the defendant if the defendant's mental competency has not been restored.[139]

The state may, after termination of placement, commence civil commitment proceedings under Iowa Code chapter 229 or 229A.[140] After termination of the placement, if the criminal proceedings have not been dismissed with prejudice, the state may seek to file an application seeking to reinstate the criminal proceedings if it appears the competency of the defendant has been restored.[141]

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.[142] 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.[143]

Other factors usually considered by the court in exercising discretion include the defendant's prior criminal record, employment circumstances, and availability of treatment options.[144] 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

[135] Iowa Code §812.8(8).
[136] Iowa Code §812.9(1).
[137] Iowa Code §812.9(1).
[138] Iowa Code §812.9(2).
[139] Iowa Code §812.9(2).
[140] Iowa Code §812.9(3).
[141] Iowa Code §812.9(4).
[142] Iowa Code §901.5, unnumbered paragraph 1.
[143] 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)).
[144] Iowa Code §§901.3, 901.5, 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.

hearings.[145] 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.[146]

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.[147]
- Deferral of judgment or sentence, or suspension of sentence and placement on probation. Probation may include placement at a community-based correctional facility.[148]
- Reconsideration of sentence to prison or jail followed by placement on probation.[149]
- Determining whether a sentence is to run concurrently or consecutively with other sentences.[150]
- Determining whether "mitigating circumstances" exist to reduce a sentence under Iowa Code section 124.406, 124.413, or 902.7.[151]
- Determinate jail sentence for a misdemeanor except an aggravated misdemeanor term of confinement that is more than one year.[152]

Generally, the court has the discretion to impose a specific fine within a range of monetary amounts provided for in statute.[153] However, in all misdemeanor cases and class "D" and "C" felonies, a minimum fine must be part of the sentence.[154]

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.[155] 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.[156]

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

[145] Iowa Code §901.5.
[146] Iowa Code §901.2.
[147] Iowa Code §902.3; Iowa Code ch. 907.
[148] Iowa Code §§901.5(1), (3), (5), 907.3. See generally Iowa Code ch. 907.
[149] Iowa Code §§902.4 (felonies), 903.2 (misdemeanors).
[150] Iowa Code §901.8.
[151] Iowa Code §901.10.
[152] Iowa Code §903.1.
[153] Iowa Code §901.5(4). See Iowa Code sections 902.9 (felonies) and 903.1 (misdemeanors) for fine amount ranges.
[154] The minimum fines for the following offenses are as follows: for a simple misdemeanor, $105; for a serious misdemeanor, $430; for an aggravated misdemeanor, $855; for a class "D" felony, $1,025; and for a class "C" felony, $1,370. See Iowa Code §§902.9, 903.1.
[155] Iowa Code §§321J.2(3)(a), 321J.2(4)(a), 321J.2(5)(a) (operating while under the influence), 708.2A (domestic abuse assault), 902.1 (class "A" felonies). The penalties for domestic abuse assault are enhanced even further under Iowa Code sections 708.2A and 902.13.
[156] Iowa Code §907.3, unnumbered paragraph 1.

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.[157]

Limitations on Parole and Work Release. The General Assembly has also placed limitations on parole and work release eligibility, which has an effect on the length of a sentence similar to the effect of a mandatory sentence. The sentencing provisions for the following criminal offenses place limitations on a person's ability to be paroled or placed on work release:

- Any forcible felony involving the use of a dangerous weapon.[158]
- An habitual offender.[159]
- Conspiracy to manufacture or possess with the intent to deliver methamphetamine or amphetamine to a minor (first offense).[160]
- Attempt to commit murder of a peace officer.[161]
- Prior forcible felon serving certain sentences.[162]
- An offense listed under Iowa Code section 902.12.[163]
- Third offense domestic abuse assault.[164]

Iowa Code Section 902.12 Sentences. Prior to July 1, 2016, all offenses listed in Iowa Code section 902.12 required serving 70 percent of the maximum term of the sentence prior to being eligible for parole or work release.[165] In 2016, the General Assembly made two changes to sentences under Iowa Code section 902.12, by adding an additional offense subject to Iowa Code section 902.12 and modifying the parole or work release parameters for certain offenses already subject to Iowa Code section 902.12. First, a child endangerment offense occurring on or after July 1, 2016, that involved the death of a child or minor was added to Iowa Code section 902.12, and thus became subject to the parole or work release parameters under Iowa Code section 902.12.[166] Second, parole or work release parameters were modified for the newly added child endangerment offense and for a robbery in the second degree offense occurring

[157] Iowa Code §§124.401A (distribution or possession of controlled substances on or near certain properties), 321.372 (failure to obey school bus warning lights and stop arm signals), 716.6A (criminal mischief in violation of individual rights), 724.4A (weapons free zones); Iowa Code ch. 901A (sexually predatory offenses).
[158] Iowa Code §902.7.
[159] Iowa Code §902.8.
[160] Iowa Code §902.8A.
[161] Iowa Code §707.11(5).
[162] Iowa Code §902.11.
[163] See part V, section H, for more information regarding Iowa Code section 902.12 sentences.
[164] Iowa Code §§708.2A(4), 902.13.
[165] 2016 Iowa Code §902.12. The offenses listed under 2016 Iowa Code section 902.12 included murder in the second degree, attempted murder, sexual abuse in the second degree, kidnapping in the second degree, robbery in the first and second degree, and vehicular homicide, if the person also failed to stop at the scene of the accident.
[166] Iowa Code §902.12(2). In order to be subject to Iowa Code section 902.12, the child endangerment offense must involve an intentional act or series of intentional acts using unreasonable force, torture, or cruelty that results in bodily injury, or that is intended to cause serious injury that results in the death of a child or minor.

on or after July 1, 2016.[167] In 2019, the General Assembly amended Iowa Code section 902.12 by modifying the parole or work release parameters for a robbery in the first degree offense occurring on or after July 1, 2018,[168] and added arson in the first degree occurring on or after July 1, 2019, under Iowa Code section 902.12.[169] The arson in the first degree offense includes parole or work release parameters.[170]

The Iowa Supreme Court has ruled that offenses which require serving 70 percent of the sentence do not constitute cruel and unusual punishment under the Iowa Constitution.[171]

Iowa Code Section 902.13 Sentences. In 2017, the General Assembly created a new sentencing scheme for third or subsequent domestic abuse assault violations of Iowa Code section 708.2A.[172] A person serving a sentence for a third or subsequent domestic abuse assault offense must serve between 20 percent and 100 percent of the maximum five-year sentence prior to becoming eligible for parole or work release.[173] The court at the time of sentencing determines when the person first becomes eligible for parole or work release within the aforementioned parameters.[174] The sentence for a person serving a third or subsequent domestic abuse assault offense is also categorized as a category "B" sentence meaning the person is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct.[175]

Attempted Murder Against a Peace Officer. If, during the prosecution of the criminal offense of attempt to commit murder, the fact finder determines the attempt to commit murder was against a peace officer with the knowledge that the person against whom the attempt to commit murder was committed was a peace officer acting in the officer's official capacity, the person is subject to a category "C" sentence and must serve 100 percent of the 25-year term sentence and shall be denied parole, work release, or other conditional release, upon conviction.[176] See section H of this part of this Guide, entitled "Earned Time" for more information about category "C" sentences.

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.[177] A person convicted of a class "D" felony or a misdemeanor

[167] Iowa Code §902.12(2), (4). A person serving a sentence for child endangerment must serve between 30 and 70 percent of a 50-year sentence prior to becoming eligible for parole or work release and a person serving a sentence for robbery in the second degree must serve between 50 and 70 percent of a 10-year sentence prior to becoming eligible for parole or work release. The court at the time of sentencing determines when a person first becomes eligible for parole or work release within the above mentioned parameters.

[168] Iowa Code §902.12(3). A person serving a sentence for robbery in the first degree must serve between 50 and 70 percent of a 25-year sentence prior to becoming eligible for parole or work release. The court at the time of sentencing determines when a person first becomes eligible for parole or work release within the above-mentioned parameters.

[169] Iowa Code §902.12(5). A person serving a sentence for arson in the first degree must serve between 50 and 70 percent of a 25-year sentence prior to becoming eligible for parole or work release. The court at the time of sentencing determines when a person first becomes eligible for parole or work release within the above-mentioned parameters.

[170] Iowa Code §§902.12(5).

[171] 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.

[172] Iowa Code §902.13.

[173] Iowa Code §902.13(1).

[174] Iowa Code §902.13(2).

[175] Iowa Code §903A.2(1)(b)(1).

[176] Iowa Code §§707.11(5), 903A.2(1)(c).

[177] Iowa Code §903B.1. For felony lifetime parole offenses, see Iowa Code chapter 709 (sexual abuse), Iowa Code section 728.12 (sexual exploitation of a minor), and Iowa Code section 713.3(1)(d) (burglary in the first degree).

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.[178] A person begins a special sentence on parole or work release status after completion of the sentence for their underlying criminal offense.[179] 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.[180] A person may be discharged from the special sentence by the Board of Parole prior to the expiration of such a sentence.[181] 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.[182]

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.[183] 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.[184] 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.[185] 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.[186] 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.[187] 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.[188] 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.[189] 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.[190] In misdemeanor cases the minimum probationary period is one year and the maximum period is two years.[191] 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

[178] Iowa Code §903B.2. For class "D" felony and misdemeanor offenses requiring a 10-year parole term, see Iowa Code chapter 709 (sexual abuse) and Iowa Code sections 726.2 (incest) and 728.12 (sexual exploitation of a minor).
[179] Iowa Code §§903B.1, 903B.2.
[180] Iowa Code §§903B.1, 903B.2.
[181] Iowa Code §906.15(1).
[182] Iowa Code §§903B.1, 906.15(1).
[183] Iowa Code §907.1(5).
[184] Iowa Code §907.3(1).
[185] Iowa Code §692.2(1)(b)(4).
[186] Iowa Code §907.14(1).
[187] Iowa Code §907.3(2).
[188] Iowa Code §907.3(3).
[189] Iowa Code §§907.6, 907.7, 907.9(1).
[190] Iowa Code §907.7(1), (2).
[191] Iowa Code §907.7(1), (2).

probation has been established.[192] Normally, the sentencing court maintains jurisdiction over a defendant's probation and will conduct any revocation or modification hearings regarding probation.[193]

D. Restitution

In 2020, the General Assembly made numerous changes to restitution.[194] Restitution is categorized and defined to mean pecuniary damages, category "A" restitution, and category "B" restitution.[195] Pecuniary damages and category "A" restitution shall be ordered paid by the defendant without regard to the defendant's reasonable ability to make payments.[196] However, the court may order the defendant to perform community service work in lieu of a fine, which is part of category "A" restitution, in the event the defendant is unable to pay such a fine and if it appears that community service work would be adequate to deter the person and discourage others from similar criminal activity.[197] Category "B" restitution shall be ordered subject to an offender's reasonable ability to make payments.[198] A defendant is presumed to have the reasonable ability to make the full amount of category "B" restitution, unless the defendant requests a category "B" restitution hearing and the court determines the defendant is not reasonably able to make payments toward the full amount of category "B" restitution.[199] Restitution orders existing prior to June 25, 2020, shall be converted to a permanent restitution order under the newly enacted 2020 law.[200] A challenge to the conversion of an existing restitution order to a permanent restitution order shall be filed by the defendant in the district court no later than June 25, 2021.[201]

E. Reconsideration of a Sentence

A person convicted of a felony, other than a class "A" or class "B" 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.[202] 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 sentence begins.[203] If the court reconsiders a person's sentence, the court may order the person to serve any sentence permitted by law, including probation.[204]

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[192] Iowa Code §§907.7(1), 908.11.
[193] Iowa Code §907.8.
[194] 2020 Iowa Acts, ch. 1074 (SF 457), §§65-83.
[195] Iowa Code §910.1(10). Iowa Code section 910.1(1) defines category "A" restitution to mean fines, penalties, and surcharges. Iowa Code section 910.1(2) defines category "B" restitution to mean the contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender's case; the payment of crime victim compensation program reimbursements; payment of restitution to public agencies pursuant to Iowa Code section 321J.2(13)(b); court costs, court-appointed attorney fees ordered pursuant to Iowa Code section 815.9, including the expense of a public defender; and payment to the medical assistance program pursuant to Iowa Code chapter 249A for expenditures paid on behalf of the victim resulting from the offender's criminal activities including investigative costs incurred by the Medicaid fraud control unit pursuant to Iowa Code section 249A.50.
[196] Iowa Code §910.2(1)(a)(1).
[197] Iowa Code §§909.3A, 909.7.
[198] Iowa Code §910.2(1)(a)(2).
[199] Iowa Code §910.2A.
[200] Iowa Code §910.2B(1).
[201] Iowa Code §910.2B(4).
[202] Iowa Code §902.4.
[203] Iowa Code §903.2.
[204] Iowa Code §§901.5, 902.4, 903.2.

F. 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.[205] 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.[206]

Work Release. Work release is the temporary release of an inmate for employment purposes.[207] An inmate may be released entirely from a correctional institution for work purposes or may leave actual confinement each day for work purposes.[208] There are two types of work release programs. One work release program is established by the Department of Corrections in consultation 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.[209]

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.[210] 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.[211] An inmate may not be placed on institutional work release for longer than six months in any 12-month period without special approval.[212]

G. Furlough, Reprieve, Pardon, and Commutation

Furlough. Furlough is the temporary release of an inmate due to serious family illness or family death or for job search, training, or rehabilitation-related purposes.[213] 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.[214]

Reprieve, Pardon, and Commutation. A reprieve is a temporary postponement of the carrying out of a sentence.[215] A pardon is the permanent cancellation of a sentence and a commutation is the reduction of a sentence.[216] The power to grant a reprieve, pardon, or commutation of sentence rests with the Governor.[217] 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.[218] All other persons who have been convicted of a crime may apply to the Governor for a reprieve, pardon, or commutation at any time.[219] Upon application by a person for a reprieve, pardon, or commutation, the Board of Parole is

[205] Iowa Code §906.1(1)(a).
[206] Iowa Code §906.16.
[207] Iowa Code §906.1(1)(b).
[208] See generally Iowa Code §§904.901, 904.910.
[209] See Iowa Code §§904.901 (department-wide work release program), 904.910 (institutional work release program).
[210] Iowa Code §904.901.
[211] Iowa Code §904.901.
[212] Iowa Code §904.910(4).
[213] Iowa Code §904.108(2).
[214] Iowa Code §904.108(2).
[215] See generally Black's Law Dictionary (10th ed. 2014).
[216] Id.
[217] Iowa Const. art. IV, §16; Iowa Code §914.1.
[218] Iowa Code §902.2.
[219] Iowa Code §914.2.

required to first review the application and subsequently to make recommendations to the Governor.[220]

H. 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."[221] 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," "B," or "C" sentences.[222]

Category "A" Sentence. 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.[223] To accumulate "earned time," an inmate must exhibit good conduct and satisfactorily participate in an employment, treatment, or educational program.[224] If the inmate is a class "A" felon, the earned time accumulated will not actually reduce the person's life sentence or any mandatory minimum sentence imposed under Iowa Code section 902.1, except that earned time accrued shall be credited against the person's sentence if the sentence is ever commuted to a term of years.[225]

Category "B" Sentence. If an inmate is sentenced for any felony listed in Iowa Code section 902.12 or 902.13, 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" and category "C" sentences.[226] Inmates with category "B" sentences under Iowa Code section 903A.2 are only eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate and are subject to a maximum accumulation of earned time of 15 percent of the total sentence of confinement.[227] The interplay between Iowa Code section 902.12 or 902.13 (limiting parole eligibility) and Iowa Code section 903A.2 (limiting earned time) has the effect of lengthening the overall term of confinement that an inmate must serve in prison versus an inmate serving a category "A" sentence.[228]

For example, an inmate sentenced for kidnapping in the second degree, a 25-year 70 percent category "B" sentence, will serve at least 17.5 years in prison prior to being eligible for parole[229] (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).[230] 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).[231] Thus, a person serving a 25-year 70 percent category

[220] Iowa Code §914.3.
[221] Iowa Code §903A.2.
[222] Iowa Code §903A.2(1).
[223] Iowa Code §903A.2(1)(a)(1).
[224] Iowa Code §903A.2(1)(a)(1).
[225] Iowa Code §903A.2(5).
[226] Iowa Code §903A.2(1)(b), (c).
[227] Iowa Code §903A.2(1)(b).
[228] Iowa Code §§902.12, 903A.2.
[229] Iowa Code §903A.2(1)(b).
[230] Iowa Code §903A.2(1)(b).
[231] Iowa Code §903A.2(1)(b).

"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.[232] In addition, a person serving a 70 percent category "B" sentence is not eligible to be discharged early from parole.[233] See section B of this part of this Guide for additional analysis of Iowa Code sections 902.12 and 902.13 sentences.

Category "C" Sentence. If an inmate is sentenced for attempted murder against a peace officer, the inmate's sentence is a category "C" sentence and the inmate is required to serve 100 percent of the 25-year term of confinement imposed and shall be denied parole, work release, or other early release.[234] A category "C" sentence eliminates the ability to earn a reduction of sentence through earned time.[235] As of July 1, 2017, attempted murder against a peace officer in violation of Iowa Code section 707.11 is the only sentence classified as a category "C" sentence.

Computation. An inmate begins to accrue earned time at the commencement of the inmate's sentence at a correctional institution.[236] 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.[237] 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.[238] Any or all of the 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.[239]

Computation — Juveniles. The Iowa Supreme Court in *Breeden v. Iowa Department of Corrections*, building upon the *State v. Lyle* decision, concluded that because a juvenile is no longer subject to a mandatory minimum sentence, the juvenile is also not subject to the slower accural rate of earned time for sentences classified as category "B" sentences.[240] Thus, a juvenile sentenced for an offense listed in Iowa Code section 902.12 shall serve that sentence as classified as a category "A" sentence which allows for a faster accumulation of earned time than a category "B" sentence.[241]

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.[242] 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

[232] Email from Tamia Salviati, Department of Corrections, to Joseph McEniry, Senior Legal Counsel, Legislative Services Agency (July 22, 2010) (on file with author).
[233] Iowa Code §906.15(1).
[234] Iowa Code §903A.2(1)(c).
[235] Iowa Code §903A.2(1)(c).
[236] Iowa Code §903A.5.
[237] Iowa Code §§903A.5, 907.3(3).
[238] Iowa Code §903A.5.
[239] Iowa Code §903A.3.
[240] Breeden v. Iowa Department of Corrections, 887 N.W.2d 602, 612-613 (Iowa 2016). See also State v. Lyle, 854 N.W.2d 378, 401 (Iowa 2014). See Iowa Code section 903A.2 for provisions governing category "A" sentences and category "B" sentences. See also section B of this part of this Guide for an additional analysis of Iowa Code sections 902.12 and 902.13.
[241] Breeden, 887 N.W.2d at 612-613.
[242] Iowa Code §§901.7, 904.102.

order reconsidering the sentence.[243] The director is required to develop guidelines and procedures which determine the amount of earned time earned or forfeited by inmates.[244]

VII. Judicial District Departments of Correctional Services

Upon a conviction, a judge may assign a person to a judicial district department of correctional services.[245] A judicial district department of correctional services provides community-based correctional programs for persons who have been placed on probation or parole.[246] A person placed on probation or parole may be subject to different levels of criminal sanctions.[247] 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.[248]

VIII. Board of Parole

The authority for granting of parole or work release is vested in the Iowa Board of Parole.[249] Persons who are sentenced to prison may become eligible for parole or work release prior to the expiration of their sentences.[250] 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.[251] Dispositions involving violations of conditions of parole or work release are also determined by the Board of Parole.[252] 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 person.[253] The board has adopted a risk assessment model to predict future recidivism.[254] The board also has been recently charged with developing a risk assessment validated for domestic abuse-related offenses after consultation with the Department of Corrections.[255]

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.[256] The risk assessment model includes separate scores relating to violence risk and victimization risk.[257] 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.[258] 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,

[243] Iowa Code §902.6.
[244] Iowa Code §903A.4.
[245] Iowa Code §901.5(5).
[246] Iowa Code §§905.2, 906.1, 907.1(5).
[247] Iowa Code §901B.1.
[248] See Iowa Code section 901B.1 for other possible intermediate criminal sanctions levels.
[249] Iowa Code §904A.4(1).
[250] Iowa Code §906.4. Class "A" felons, except juvenile class "A" felons, whose sentences have not been commuted and felons sentenced for attempted murder against a police officer are not eligible for parole. See Iowa Code §§707.11(5), 902.1. For juvenile class "A" felons, see State v. Roby, 897 N.W.2d 127, 148 (Iowa 2017).
[251] Iowa Admin. Code 205-8.15(1), (2).
[252] Iowa Code §§906.3, 906.16(2), (3).
[253] Iowa Code §906.4(1).
[254] Iowa Admin. Code 205-8.5, 205-8.10.
[255] 2017 Iowa Acts, ch. 83, §8 (HF 263) (codified at Iowa Code §904A.4(8)(b)).
[256] Iowa Code §904A.4.
[257] See Iowa Board of Parole Minutes dated November 29, 2012.
[258] Id.

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.[259]

IX. DNA Profiling

A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony or an aggravated misdemeanor has been entered is required to submit a DNA sample for DNA profiling.[260] Only an aggravated misdemeanant 18 years of age or older is required to submit a DNA sample for DNA profiling except that certain aggravated misdemeanors do not require DNA profiling.[261] 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.[262] Any juvenile adjudicated delinquent of an offense that requires DNA profiling is also required to submit a DNA sample for DNA profiling.[263]

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.[264]

A defendant previously required to submit a DNA sample may make an application to the court for an order to require that further DNA profiling be performed on a forensic sample collected in which the defendant stands convicted.[265] A "forensic sample" is defined to mean an evidentiary item that potentially contains DNA relevant to a crime.[266] The application for an order to require further DNA profiling be performed on a forensic sample collected in the case must include a statement detailing why the DNA profiling results would have changed the outcome of the trial or invalidated a guilty plea if the requested DNA profiling had been conducted prior to conviction.[267] A finding that the results of DNA profiling ordered on a forensic sample would have changed the outcome of the trial or voided the factual basis of a guilty plea had the profiling been conducted prior to conviction can form the basis for a postconviction proceeding, and such results are considered a ground of fact that could not have been raised within the applicable time period for bringing a postconviction relief proceeding.[268]

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

[259] Id.
[260] Iowa Code §81.2(1).
[261] See Iowa Code §81.1(1) (definition of "aggravated misdemeanor").
[262] Iowa Code §81.2(2), (3), (6).
[263] Iowa Code §81.2(4).
[264] 2005 Iowa Acts, ch. 158, §18.
[265] Iowa Code §81.10(1).
[266] Iowa Code §81.1(9).
[267] Iowa Code §81.10(2)(l).
[268] Iowa Code §822.2(1)(h).

violent criminal offenders after the offenders' criminal sentences had been completed.[269] 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.[270] A sexually violent offense is defined in Iowa Code section 229A.2, subsection 11. 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.[271] 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.[272]

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.[273]

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 www.legis.iowa.gov/perma/10172016384.

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 state.[274] 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.[275] Conviction of more than one sex offense prosecuted within a single indictment is considered a single offense for purposes of registration.[276]

Each offender convicted of a sex offense is classified as either a tier I, tier II, or tier III offender.[277] The tiers contain sex offenses that are in ascending order of severity; thus a

[269] Kansas v. Hendricks, 521 U.S. 346 (1997).
[270] Iowa Code §229A.2(13).
[271] Iowa Code §229A.3(1).
[272] Iowa Code §229A.4.
[273] Iowa Code §229A.7(5)(b).
[274] Iowa Code §692A.103(1). Iowa Code section 692A.101(27) defines a "sex offense" to mean an indictable offense for which a conviction has been entered that is enumerated in Iowa Code section 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 of "sex offense" are also defined; see Iowa Code section 692A.101(12) for the definition of "foreign court" and Iowa Code section 692A.101(18) for the definition of "military offense."
[275] Iowa Code §692A.103(2).
[276] Iowa Code §692A.102(6).
[277] See Iowa Code section 692A.102(1)(a) for a list of tier I offenses, Iowa Code section 692A.102(1)(b) for a list of tier II offenses, and Iowa Code section 692A.102(1)(c) for a list of tier III offenses.

tier I offender has committed a less serious offense than a tier II or tier III offender.[278] 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.[279] The tier classification system does not affect the duration of the registration requirement.[280] The system provides for reclassification based upon specified conditions.[281]

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.[282] A county sheriff is also required to accept the registration of any person who is required to register in the county.[283] 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.[284] 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.[285]

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 five business days of such a change.[286] 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.[287]

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.[288]

[278] Iowa Code §692A.102.
[279] See Iowa Code section 692A.108 for frequency of verifying relevant information and Iowa Code section 692A.128 for applications to modify registration requirements. See also State v. Iowa Dist. Court ex rel. Story County, 843 N.W.2d 76 (Iowa 2014) (adults seeking modification of registration requirements despite not being under supervision).
[280] Iowa Code §692A.106.
[281] Iowa Code §692A.102(2)-(5).
[282] Iowa Code §692A.104(1).
[283] Iowa Code §692A.104(1).
[284] See Iowa Code section 692A.101(23) 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.
[285] Iowa Code §692A.104(5).
[286] Iowa Code §692A.104(2).
[287] Iowa Code §692A.105.
[288] Iowa Code §692A.108. See Iowa Code §692A.101(23) (definition of "relevant information").

D. Duration of Registration

Generally, the duration of registration for an offender is 10 years.[289] Other durations apply for special sentences,[290] when the duration is for life,[291] when there is a violation of a registry requirement,[292] and when the offender is also required to register in other jurisdictions.[293]

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.[294] 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.[295] The court cannot defer judgment or sentence of a conviction for a violation of the Iowa Sex Offender Registry law.[296]

XII. Collection of Delinquent Court Debt

A. Court Debt

Definition. "Court debt" is defined as restitution, fees, forfeited bail, and other debt paid to or collected by the clerk of the district court.[297] 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 pursuant to an installment agreement.[298]

Department of Revenue. Thirty days after court debt has been assessed and full payment has not been received, or if an installment payment is not received within 30 days after the date it is due, the judicial branch shall assign the case to the Department of Revenue for collection, unless the case has been assigned to the county attorney for collection.[299] Effective January 1, 2022, the Department of Revenue shall receive 15 percent of each court debt payment for the collection of court debt deemed delinquent.[300]

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[289] Iowa Code §692A.106(1).
[290] Iowa Code §692A.106(2).
[291] Iowa Code §692A.106(6). See Iowa Code section 906.15(1) allowing discharge from parole for a person on lifetime parole under Iowa Code section 903B.1. However, under Iowa Code section 906.15, if the person committed a class "C" offense or higher pursuant to Iowa Code sections 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.
[292] Iowa Code §692A.106(4).
[293] Iowa Code §692A.106(8).
[294] Iowa Code §692A.111(1).
[295] Iowa Code §692A.111(1). See Iowa Code section 692A.101(2) for the definition of "aggravated offense against a minor," Iowa Code section 692A.101(28) for the definition of "sex offense against a minor," and Iowa Code section 692A.101(30) for the definition of "sexually violent offense."
[296] Iowa Code §692A.111(1). See also Iowa Code §§907.3(1)(a)(9), 907.3(2)(a)(5).
[297] Iowa Code §602.8107(1)(a).
[298] Iowa Code §602.8107(2)(d). "Installment agreement" means an agreement made for the payment of court debt in excess of $100 in installments. Iowa Code §602.8107(1)(b).
[299] Iowa Code §602.8107(3)(a).
[300] Iowa Code §602.8107(3)(b)(1); 2021 Iowa Acts, ch. 145, §11; 2021 Iowa Acts, ch. 174, §35.

The remaining 85 percent shall be paid to the clerk of the district court for distribution under Iowa Code section 602.8108.[301]

Collection by County Attorney. Thirty days after court debt has been assessed and full payment has not been received, or if an installment payment is not received within 30 days after the date it is due, and if the county attorney has filed with the clerk of the district court a notice of full commitment to collect delinquent court debt, the case shall be assigned to the county attorney.[302] The county attorney or the county attorney's designee may collect court debt after the court debt is deemed delinquent.[303]

The county attorney percentage for collection does not apply to amounts collected for restitution involving pecuniary damages, the Victim Compensation Fund, the crime services surcharge, the domestic and sexual abuse crimes surcharge, the agricultural theft surcharge, the sex offender civil penalty, or under Iowa Code section 8A.504 (Department of Administrative Services claim setoff procedures).[304]

County Attorney Collection Distribution Formula. The distribution formula for delinquent court debt moneys collected by a county attorney is based on the amount of money collected and the population of the county.[305] Moneys collected below a certain threshold dollar amount are distributed in the same manner for all counties. The applicable threshold dollar amount is based upon the population size of the county.[306] Twenty-eight percent of the moneys collected below the threshold dollar amount is deposited into the county general fund, and the remaining 72 percent is paid to the clerk of the district court for distribution under Iowa Code section 602.8108.[307] After a county attorney's collection of delinquent court debt exceeds the applicable threshold dollar amount, 5 percent of the moneys collected above the threshold amount during the remainder of the fiscal year is distributed to the office of the county attorney that collected the court debt, 28 percent is deposited into the county general fund, and the remaining 67 percent is paid to the clerk of the district court for distribution under Iowa Code section 602.8108.[308]

B. Charge Off — Uncollectible Debt

Court debt that remains uncollected may be charged off if the person is deceased and the estate has no assets or the person cannot be located after diligent inquiry.[309]

Court debt for any of the following shall not be charged off until 65 years from the date of imposition: pecuniary damages, victim compensation, a criminal penalty surcharge, a sex offender civil penalty, a drug abuse resistance education surcharge, a law enforcement initiative surcharge, a county enforcement surcharge, fees charged pursuant to Iowa Code section 356.7, a crime services surcharge, a domestic and sexual abuse crimes surcharge, and an agricultural theft surcharge.[310]

[301] Iowa Code §602.8107(3)(b).
[302] Iowa Code §602.8107(3)(d).
[303] Iowa Code §602.8107(4).
[304] Iowa Code §602.8107(4)(a).
[305] Iowa Code §602.8107(4).
[306] Iowa Code §602.8107(4)(c)(2).
[307] Iowa Code §602.8107(4)(c).
[308] Iowa Code §602.8107(4)(d).
[309] Iowa Code §602.8107(5).
[310] Iowa Code §602.8107(5).

XIII. Disposition of Seized Property

If the aggregate fair market value of seized property is equal to or less than $500, the seizing agency shall 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.[311] If the aggregate fair market value of the property is greater than $500, the seizing agency shall send notice of the seizure by personal service or by restricted certified mail, return receipt requested.[312] 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.[313] Regardless of the fair market value of a firearm or ammunition seized by a law enforcement agency, if a firearm or ammunition is deemed abandoned or the owner is unable to be located, the firearm or ammunition shall be deposited with the Department of Public Safety.[314] The abandoned firearm or ammunition may be used for law enforcement, testing, or comparisons by the criminalistics laboratory, or may be destroyed or disposed of in accordance with Iowa Code section 809.21.[315]

XIV. Civil Asset Forfeiture

"Seizable property" means property which is relevant in a criminal prosecution or investigation, property defined by law to be forfeitable, and property which if not seized by the state poses an imminent danger to a person's health, safety, or welfare.[316] If the forfeiture is for property valued at less than $5,000, the owner or interest holder must also be convicted of the criminal offense for the conduct giving rise to forfeiture.[317] The prosecuting attorney must prove by clear and convincing evidence that the property is subject to forfeiture.[318] Property is not subject to forfeiture to the extent the amount or value of the property is grossly disproportionate to the severity of the offense.[319] However, contraband and proceeds from the offense are not subject to a proportionality review.[320] Each law enforcement agency that is in the custody of forfeitable property is required to adopt and comply with a written internal control policy.[321]

XV. Expungement of Certain Criminal Records

Misdemeanor Offenses. In 2019, the General Assembly enacted a comprehensive expungement process for misdemeanor offenses but did not alter other existing expungement processes described in this Part XV.[322] The new misdemeanor process lists numerous misdemeanor offenses not subject to the new misdemeanor expungement process.[323] Upon application of a defendant convicted of a misdemeanor offense in the county where the defendant's conviction occurred, the court shall enter an order

[311] Iowa Code §809.5(1)(b).
[312] Iowa Code §809.5(1)(a).
[313] Iowa Code §809.5(1)(c).
[314] Iowa Code §809.5(1)(f)(3).
[315] Iowa Code §809.5(1)(f)(3).
[316] Iowa Code §809A.1(1).
[317] Iowa Code §809A.5(2)(b).
[318] Iowa Code §809A.12(8).
[319] Iowa Code §809A.12B(1).
[320] Iowa Code §809A.12B(2).
[321] Iowa Code §809A.18A.
[322] Iowa Code §901C.3.
[323] Iowa Code §901C.3(2).

expunging the record of the criminal case, if the defendant has proven that more than eight years have passed since the date of the conviction, the defendant has not previously been granted two deferred judgments, the defendant has no pending criminal charges, and the defendant has paid all court costs, fees, fines, restitution, and other financial obligations ordered by the court.[324] A defendant shall be granted an expungement only one time in the defendant's lifetime; however, the defendant's application may request an expungement of records relating to more than one misdemeanor offense if the misdemeanor offenses arose from the same transaction or occurrence.[325]

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 that has been segregated in a secure area or database exempt from public access.[326] Upon discharge from probation, if judgment has been deferred under Iowa Code section 907.3, the court's criminal record with reference to the deferred judgment, any counts dismissed by the court, which were contained in the indictment, information, or complaint that resulted in the deferred judgment, and any other related charges that were not contained in the indictment, information, or complaint but were dismissed, shall be expunged. However, the court's criminal records shall not be expunged until the defendant has paid in full the restitution, civil penalties, costs, and other fees associated with the deferred judgment.[327]

Dismissed Counts Contained in Indictment with Deferred Judgment. A dismissed count which was contained in the indictment, information, or complaint that resulted in the deferred judgment shall be expunged when the deferred judgment is expunged.[328] A related charge that was not contained in the indictment, information, or complaint that resulted in the deferred judgment shall only be expunged upon a court order that identifies the related charge to be expunged.[329] A count or related charge that was dismissed shall not be expunged in any case in which a count or charge resulted in a conviction that was not expunged.[330] A charge or count is related to another charge or count if the charge or count arose from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan.[331]

Not Guilty Verdicts and Dismissed Counts not Contained in Indictment with Deferred Judgment. Upon application, the court shall expunge the court's criminal record of a case containing one or more criminal charges in which an acquittal was entered for all criminal charges or all criminal charges were otherwise dismissed in the case if certain factors have been established.[332] These factors include the requirement that all court costs, fees, and other financial obligations have been paid and that a minimum 180 days have passed since the entry of the judgment or dismissal. The 180-day requirement does not apply to cases where the person was a victim of identity theft or mistaken identity.[333] In addition, in order for the record in such a criminal case to be expunged, the criminal

[324] Iowa Code §901C.3(1).
[325] Iowa Code §901C.3(3).
[326] Iowa Code §907.1(3).
[327] Iowa Code §907.9(4)(b).
[328] Iowa Code §907.9(4)(c)(1).
[329] Iowa Code §907.9(4)(c)(2).
[330] Iowa Code §907.9(4)(d).
[331] Iowa Code §907.9(4)(g).
[332] Iowa Code §901C.2(1)(a).
[333] Iowa Code §901C.2(1)(a)(2), (3).

case shall not have been dismissed due to the defendant being found not guilty by reason of insanity and the defendant must not have been found incompetent to stand trial.[334]

Alcohol Consumption in Public, Public Intoxication, and Simulated Intoxication. Upon the expiration of two years following conviction for alcohol consumption in public, public intoxication, simulated public intoxication, or of a similar local ordinance, a person may petition the court to expunge the conviction if the person has had no other criminal convictions, other than local traffic violations or simple misdemeanor violations of Iowa Code chapter 321 during the two-year period.[335] After receipt of notice from the clerk of the district court that a record of conviction for consumption of alcohol in public, public intoxication, simulated public intoxication, or a similar local ordinance that has been expunged, the record of conviction shall be removed from the criminal history data files maintained by the Department of Public Safety if such a record was maintained.[336]

Possession of Alcohol Under Legal Age. Upon the expiration of two years following a conviction for 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 during the two-year period, the conviction shall be expunged as a matter of law. 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.[337]

[334] Iowa Code §901C.2(1)(a)(4), (5).
[335] Iowa Code §123.46(6).
[336] Iowa Code §123.46(6).
[337] Iowa Code §123.47(9).