

Senate File 2196 - Introduced

SENATE FILE 2196

BY DAWSON

A BILL FOR

1 An Act modifying criminal code provisions relating to criminal
2 records, penalties, prosecutions, appeals, driving
3 privileges, and postconviction relief, and including
4 effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

EXPUNGEMENT

Section 1. NEW SECTION. 901C.3 Misdemeanor — expungement.

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4 1. Upon application of a defendant convicted of a
5 misdemeanor offense, the court shall enter an order expunging
6 the record of such a criminal case, as a matter of law, if
7 the defendant has established that more than eight years
8 have passed since the date of the conviction, the defendant
9 is not the subject of a protective order or a no-contact
10 order, the defendant has no pending criminal charges, the
11 defendant has not been subsequently convicted of or granted a
12 deferred judgment for any criminal offense, other than a simple
13 misdemeanor conviction under chapter 321 or of a similar local
14 ordinance, and all court costs, fees, fines, and restitution
15 and other financial obligations ordered by the court or
16 assessed by the clerk of the district court have been paid.

17 2. An expungement under this section shall not be entered
18 for any of the following misdemeanor convictions:

19 a. A conviction under section 123.46.

20 b. A simple misdemeanor conviction under section 123.47,
21 subsection 3.

22 c. A conviction for dependent adult abuse under section
23 235B.20.

24 d. A conviction under section 321.218, 321A.32, or 321J.21.

25 e. A conviction under section 321J.2.

26 f. A conviction for a sex offense as defined in section
27 692A.101.

28 g. A conviction for involuntary manslaughter under section
29 707.5.

30 h. A conviction for assault under section 708.2, subsection
31 3.

32 i. A conviction under section 708.2A.

33 j. A conviction for harassment under section 708.7.

34 k. A conviction for stalking under section 708.11.

35 l. A conviction for removal of an officer's communication or

1 control device under section 708.12.

2 *m.* A conviction for trespass under section 716.8, subsection
3 3 or 4.

4 *n.* A conviction under chapter 717C.

5 *o.* A conviction under chapter 719.

6 *p.* A conviction under chapter 720.

7 *q.* A conviction under section 721.2.

8 *r.* A conviction under section 721.10.

9 *s.* A conviction under section 723.1.

10 *t.* A conviction under chapter 724.

11 *u.* A conviction under chapter 726.

12 *v.* A conviction under chapter 728.

13 *w.* A conviction under chapter 901A.

14 *x.* A conviction for a comparable offense listed in 49 C.F.R.
15 §383.51(b) (table 1), and 49 C.F.R. §383.51(e) (table 4).

16 *y.* A conviction under prior law of an offense comparable to
17 an offense enumerated in this subsection.

18 3. A person shall only be allowed to apply for an
19 expungement of a record under this section one time in
20 the person's lifetime. However, the one application may
21 request the expungement of records relating to more than one
22 misdemeanor offense if the misdemeanor offenses arose from the
23 same transaction or occurrence, and the application contains
24 the misdemeanor offenses to be expunged.

25 4. The expunged record under this section is a confidential
26 record exempt from public access under section 22.7 but shall
27 be made available by the clerk of the district court upon court
28 order.

29 5. Notwithstanding section 692.2, after receipt of
30 notice from the clerk of the district court that a record of
31 conviction has been expunged under subsection 1, the record
32 of conviction shall be removed from the criminal history data
33 files maintained by the department of public safety if such a
34 record was maintained in the criminal history data files.

35 6. The supreme court may prescribe rules governing the

1 procedures applicable to the expungement of a criminal case
2 under this section.

3 7. This section applies to a misdemeanor conviction that
4 occurred prior to, on, or after July 1, 2018.

5 DIVISION II

6 ROBBERY

7 Sec. 2. NEW SECTION. 702.26 Simulated firearm.

8 "*Simulated firearm*" means a device which is not a firearm,
9 but which is expressly represented to be a firearm, or
10 an object which is not a firearm but which is impliedly
11 represented to be a firearm and which under the circumstances
12 would lead a reasonable person to believe it to be a firearm.

13 Sec. 3. NEW SECTION. 702.27 Simulated explosive.

14 "*Simulated explosive*" means a device which is not an
15 explosive, but which is expressly represented to be an
16 explosive, or a device which is not an explosive but is
17 impliedly represented to be an explosive and which by its
18 appearance would lead a reasonable person to believe it to be
19 an explosive.

20 Sec. 4. Section 711.2, Code 2018, is amended to read as
21 follows:

22 **711.2 Robbery in the first degree.**

23 A person commits robbery in the first degree when, while
24 perpetrating a robbery, the person purposely inflicts or
25 attempts to inflict serious injury, or is armed with a
26 dangerous weapon, simulated firearm, or simulated explosive.
27 Robbery in the first degree is a class "B" felony.

28 Sec. 5. Section 711.3, Code 2018, is amended to read as
29 follows:

30 **711.3 Robbery in the second degree.**

31 All robbery which is not robbery in the first degree is
32 robbery in the second degree, ~~except as provided in section~~
33 ~~711.3A.~~ Robbery in the second degree is a class "C" felony.

34 Sec. 6. Section 901.11, Code 2018, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 2A. At the time of sentencing, the court
2 shall determine when a person convicted of robbery in the first
3 degree as described in section 902.12, subsection 2A, shall
4 first become eligible for parole or work release within the
5 parameters specified in section 902.12, subsection 2A, based
6 upon all pertinent information including the person's criminal
7 record, a validated risk assessment, and the negative impact
8 the offense has had on the victim or other persons.

9 Sec. 7. Section 902.12, subsection 1, paragraph e, Code
10 2018, is amended to read as follows:

11 e. Robbery in the ~~first or~~ second degree in violation of
12 section ~~711.2 or~~ 711.3, except as determined in subsection 3.

13 Sec. 8. Section 902.12, Code 2018, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 2A. a. A person serving a sentence for
16 a conviction for robbery in the first degree in violation of
17 section 711.2 for a conviction that occurs on or after July 1,
18 2018, shall be denied parole or work release until the person
19 has served between one-half and seven-tenths of the maximum
20 term of the person's sentence as determined under section
21 901.11, subsection 2A.

22 b. Notwithstanding section 902.12, subsection 1, paragraph
23 "e", Code 2018, if a person is serving a sentence for robbery in
24 the first degree in violation of section 711.2 for a conviction
25 that occurs prior to July 1, 2018, the person shall be denied
26 parole or work release until the person has served between
27 one-half and seven-tenths of the maximum term of the person's
28 sentence as determined by the board of parole based upon the
29 person's criminal record, a validated risk assessment, and the
30 negative impact the offense has had on the victim or other
31 persons.

32 Sec. 9. REPEAL. Section 711.3A, Code 2018, is repealed.

33 DIVISION III

34 PROPERTY CRIMES — VALUE

35 Sec. 10. Section 712.3, Code 2018, is amended to read as

1 follows:

2 **712.3 Arson in the second degree.**

3 Arson which is not arson in the first degree is arson in the
4 second degree when the property which is the subject of the
5 arson is a building or a structure, or real property of any
6 kind, or standing crops, or is personal property the value of
7 which exceeds five seven hundred fifty dollars. Arson in the
8 second degree is a class "C" felony.

9 Sec. 11. Section 714.2, Code 2018, is amended to read as
10 follows:

11 **714.2 Degrees of theft.**

12 1. The theft of property exceeding ten thousand dollars in
13 value, or the theft of property from the person of another, or
14 from a building which has been destroyed or left unoccupied
15 because of physical disaster, riot, bombing, or the proximity
16 of battle, or the theft of property which has been removed from
17 a building because of a physical disaster, riot, bombing, or
18 the proximity of battle, is theft in the first degree. Theft
19 in the first degree is a class "C" felony.

20 2. The theft of property exceeding one thousand five
21 hundred dollars but not exceeding ten thousand dollars in value
22 or theft of a motor vehicle as defined in [chapter 321](#) not
23 exceeding ten thousand dollars in value, is theft in the second
24 degree. Theft in the second degree is a class "D" felony.
25 However, for purposes of [this subsection](#), "motor vehicle" does
26 not include a motorized bicycle as defined in section 321.1,
27 subsection 40, paragraph "b".

28 3. The theft of property exceeding five seven hundred fifty
29 dollars but not exceeding one thousand five hundred dollars in
30 value, or the theft of any property not exceeding five hundred
31 dollars in value by one who has before been twice convicted of
32 theft, is theft in the third degree. Theft in the third degree
33 is an aggravated misdemeanor.

34 4. The theft of property exceeding ~~two~~ three hundred dollars
35 in value but not exceeding five seven hundred fifty dollars

1 in value is theft in the fourth degree. Theft in the fourth
2 degree is a serious misdemeanor.

3 5. The theft of property not exceeding ~~two~~ three hundred
4 dollars in value is theft in the fifth degree. Theft in the
5 fifth degree is a simple misdemeanor.

6 Sec. 12. Section 714.3A, subsection 1, Code 2018, is amended
7 to read as follows:

8 1. A person commits aggravated theft when the person commits
9 an assault as defined in [section 708.1, subsection 2](#), paragraph
10 "a", that is punishable as a simple misdemeanor under section
11 708.2, subsection 6, after the person has removed or attempted
12 to remove property not exceeding ~~two~~ three hundred dollars in
13 value which has not been purchased from a store or mercantile
14 establishment, or has concealed such property of the store or
15 mercantile establishment, either on the premises or outside the
16 premises of the store or mercantile establishment.

17 Sec. 13. Section 714.7B, subsection 6, paragraphs a and b,
18 Code 2018, are amended to read as follows:

19 a. A simple misdemeanor if the value of the goods, wares, or
20 merchandise does not exceed ~~two~~ three hundred dollars.

21 b. A serious misdemeanor if the value of the goods, wares,
22 or merchandise exceeds ~~two~~ three hundred dollars.

23 Sec. 14. Section 714.10, subsection 1, Code 2018, is amended
24 to read as follows:

25 1. Fraudulent practice in the second degree is the
26 following:

27 a. A fraudulent practice where the amount of money or value
28 of property or services involved exceeds one thousand five
29 hundred dollars but does not exceed ten thousand dollars.

30 b. A fraudulent practice where the amount of money or
31 value of property or services involved does not exceed one
32 thousand five hundred dollars by one who has been convicted of
33 a fraudulent practice twice before.

34 Sec. 15. Section 714.11, subsection 1, paragraph a, Code
35 2018, is amended to read as follows:

1 *a.* A fraudulent practice where the amount of money or value
2 of property or services involved exceeds ~~five~~ seven hundred
3 fifty dollars but does not exceed one thousand five hundred
4 dollars.

5 Sec. 16. Section 714.12, Code 2018, is amended to read as
6 follows:

7 **714.12 Fraudulent practice in the fourth degree.**

8 1. Fraudulent practice in the fourth degree is a fraudulent
9 practice where the amount of money or value of property or
10 services involved exceeds ~~two~~ three hundred dollars but does
11 not exceed ~~five~~ seven hundred fifty dollars.

12 2. Fraudulent practice in the fourth degree is a serious
13 misdemeanor.

14 Sec. 17. Section 714.13, Code 2018, is amended to read as
15 follows:

16 **714.13 Fraudulent practice in the fifth degree.**

17 1. Fraudulent practice in the fifth degree is a fraudulent
18 practice where the amount of money or value of property or
19 services involved does not exceed ~~two~~ three hundred dollars.

20 2. Fraudulent practice in the fifth degree is a simple
21 misdemeanor.

22 Sec. 18. Section 715A.6, subsection 2, paragraphs b and c,
23 Code 2018, are amended to read as follows:

24 *b.* If the value of the property or services secured or
25 sought to be secured by means of the credit card is greater
26 than one thousand five hundred dollars but not more than ten
27 thousand dollars, an offense under [this section](#) is a class "D"
28 felony.

29 *c.* If the value of the property or services secured
30 or sought to be secured by means of the credit card is one
31 thousand five hundred dollars or less, an offense under this
32 section is an aggravated misdemeanor.

33 Sec. 19. Section 715A.8, subsection 3, paragraphs b and c,
34 Code 2018, are amended to read as follows:

35 *b.* If the value of the credit, property, services, or other

1 benefit exceeds one thousand five hundred dollars but does not
2 exceed ten thousand dollars, the person commits a class "D"
3 felony.

4 c. If the value of the credit, property, services, or other
5 benefit does not exceed one thousand five hundred dollars, the
6 person commits an aggravated misdemeanor.

7 Sec. 20. Section 716.4, subsection 1, Code 2018, is amended
8 to read as follows:

9 1. Criminal mischief is criminal mischief in the second
10 degree if the cost of replacing, repairing, or restoring the
11 property that is damaged, defaced, altered, or destroyed
12 exceeds one thousand five hundred dollars but does not exceed
13 ten thousand dollars.

14 Sec. 21. Section 716.5, subsection 1, paragraph a, Code
15 2018, is amended to read as follows:

16 a. The cost of replacing, repairing, or restoring the
17 property that is damaged, defaced, altered, or destroyed
18 exceeds ~~five~~ seven hundred fifty dollars, but does not exceed
19 one thousand five hundred dollars.

20 Sec. 22. Section 716.6, subsection 1, paragraph a,
21 subparagraph (1), Code 2018, is amended to read as follows:

22 (1) The cost of replacing, repairing, or restoring the
23 property that is damaged, defaced, altered, or destroyed
24 exceeds ~~two~~ three hundred dollars, but does not exceed ~~five~~
25 seven hundred fifty dollars.

26 Sec. 23. Section 716.8, subsections 2 and 4, Code 2018, are
27 amended to read as follows:

28 2. Any person committing a trespass as defined in section
29 716.7, other than a trespass as defined in section 716.7,
30 subsection 2, paragraph "a", subparagraph (6), which results in
31 injury to any person or damage in an amount more than ~~two~~ three
32 hundred dollars to anything, animate or inanimate, located
33 thereon or therein commits a serious misdemeanor.

34 4. A person committing a trespass as defined in section
35 716.7 with the intent to commit a hate crime which results in

1 injury to any person or damage in an amount more than ~~two~~ three
2 hundred dollars to anything, animate or inanimate, located
3 thereon or therein commits an aggravated misdemeanor.

4 Sec. 24. Section 716.10, subsection 2, paragraphs d, e, f,
5 and g, Code 2018, are amended to read as follows:

6 *d.* A person commits railroad vandalism in the fourth degree
7 if the person intentionally commits railroad vandalism which
8 results in property damage which costs ten thousand dollars
9 or less but more than one thousand five hundred dollars to
10 replace, repair, or restore. Railroad vandalism in the fourth
11 degree is a class "D" felony.

12 *e.* A person commits railroad vandalism in the fifth degree
13 if the person intentionally commits railroad vandalism which
14 results in property damage which costs more than ~~five~~ seven
15 hundred fifty dollars but does not exceed one thousand five
16 hundred dollars to replace, repair, or restore. Railroad
17 vandalism in the fifth degree is an aggravated misdemeanor.

18 *f.* A person commits railroad vandalism in the sixth degree
19 if the person intentionally commits railroad vandalism which
20 results in property damage which costs more than ~~one~~ three
21 hundred dollars but does not exceed five seven hundred fifty
22 dollars to replace, repair, or restore. Railroad vandalism in
23 the sixth degree is a serious misdemeanor.

24 *g.* A person commits railroad vandalism in the seventh
25 degree if the person intentionally commits railroad vandalism
26 which results in property damage which costs ~~one~~ three hundred
27 dollars or less to replace, repair, or restore. Railroad
28 vandalism in the seventh degree is a simple misdemeanor.

29 Sec. 25. Section 716A.2, subsection 2, paragraph b, Code
30 2018, is amended to read as follows:

31 *b.* The revenue generated from a specific unsolicited bulk
32 electronic mail transmission exceeds one thousand five hundred
33 dollars or the total revenue generated from all unsolicited
34 bulk electronic mail transmitted to any electronic mail service
35 provider by the person exceeds fifty thousand dollars.

DIVISION IV

REVOCATION OF DRIVER'S LICENSE FOR DRUG-RELATED CONVICTIONS

Sec. 26. Section 124.412, Code 2018, is amended to read as follows:

124.412 Notice of conviction.

If a person enters a plea of guilty to, or forfeits bail or collateral deposited to secure the person's appearance in court, and such forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of [this chapter](#), a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to ~~the state department of transportation and to~~ any state board or officer by whom the convicted person has been licensed or registered to practice the person's profession or carry on the person's business. On the conviction of a person, the court may suspend or revoke the license or registration of the convicted defendant to practice the defendant's profession or carry on the defendant's business. On the application of a person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, the board or officer may reinstate the license or registration.

Sec. 27. Section 321.212, subsection 1, paragraph d, Code 2018, is amended by striking the paragraph.

Sec. 28. Section 321.215, subsection 1, paragraph b, Code 2018, is amended to read as follows:

b. However, a temporary restricted license shall not be issued to a person whose license is revoked pursuant to a court order issued under ~~section 901.5, subsection 10,~~ or under section 321.209, subsections 1 through 5 or subsection 7; to a juvenile whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph "a", for a violation of [chapter 124](#) or [453B](#) or

1 section 126.3; to a juvenile whose license has been suspended
2 under [section 321.213B](#); or to a person whose license has been
3 suspended pursuant to a court order under [section 714.7D](#). A
4 temporary restricted license may be issued to a person whose
5 license is revoked under [section 321.209, subsection 6](#), only
6 if the person has no previous drag racing convictions. A
7 person holding a temporary restricted license issued by the
8 department under [this section](#) shall not operate a motor vehicle
9 for pleasure.

10 Sec. 29. Section 321.215, subsection 2, unnumbered
11 paragraph 1, Code 2018, is amended to read as follows:

12 Upon conviction and the suspension or revocation of a
13 person's noncommercial driver's license under [section 321.209](#),
14 [subsection 5 or 6](#), or [section 321.210](#), [321.210A](#), or [321.513](#);
15 ~~or upon revocation pursuant to a court order issued under~~
16 ~~[section 901.5, subsection 10](#)~~; or upon the denial of issuance
17 of a noncommercial driver's license under [section 321.560](#),
18 based solely on offenses enumerated in [section 321.555](#),
19 [subsection 1, paragraph "c"](#), or [section 321.555, subsection](#)
20 [2](#); or upon suspension or revocation of a juvenile's driver's
21 license pursuant to a dispositional order under [section 232.52](#),
22 [subsection 2, paragraph "a"](#), for a violation of [chapter 124](#)
23 or [453B](#), or [section 126.3](#); or upon suspension of a driver's
24 license pursuant to a court order under [section 714.7D](#), the
25 person may apply to the department for a temporary restricted
26 license to operate a motor vehicle for the limited purpose or
27 purposes specified in [subsection 1](#). The application may be
28 granted only if all of the following criteria are satisfied:

29 Sec. 30. Section 321.215, subsection 2, paragraph c, Code
30 2018, is amended to read as follows:

31 *c.* Proof of financial responsibility is established as
32 defined in [chapter 321A](#). However, such proof is not required
33 if the driver's license was suspended under [section 321.210A](#)
34 or [321.513](#) ~~or revoked pursuant to a court order issued under~~
35 ~~[section 901.5, subsection 10](#)~~.

1 Sec. 31. Section 321.218, subsection 1, Code 2018, is
2 amended to read as follows:

3 1. A person whose driver's license or operating privilege
4 has been denied, canceled, suspended, or revoked as provided
5 in [this chapter](#) or as provided in [section 252J.8](#) ~~or section~~
6 ~~901.5, subsection 10~~, and who operates a motor vehicle upon
7 the highways of this state while the license or privilege
8 is denied, canceled, suspended, or revoked, commits a
9 simple misdemeanor. In addition to any other penalties, the
10 punishment imposed for a violation of [this subsection](#) shall
11 include assessment of a fine of not less than two hundred fifty
12 dollars nor more than one thousand five hundred dollars.

13 Sec. 32. Section 321A.17, subsection 4, Code 2018, is
14 amended to read as follows:

15 4. An individual applying for a driver's license following a
16 period of suspension or revocation pursuant to a dispositional
17 order issued under [section 232.52, subsection 2](#), paragraph
18 "a", or under [section 321.180B](#), section 321.210, subsection
19 1, paragraph "a", subparagraph (4), or [section 321.210A](#),
20 [321.213A](#), [321.213B](#), [321.216B](#), or [321.513](#), following a period
21 of suspension or revocation under [section 321.178](#) or [321.194](#),
22 or following a period of revocation pursuant to a court order
23 issued under ~~[section 901.5, subsection 10](#)~~, or under section
24 [321J.2A](#), is not required to maintain proof of financial
25 responsibility under [this section](#).

26 Sec. 33. Section 901.5, subsection 10, Code 2018, is amended
27 by striking the subsection.

28 Sec. 34. REINSTATEMENT OF DRIVER'S LICENSE. A defendant's
29 driver's license suspended or revoked pursuant to section
30 901.5, subsection 10, prior to the effective date of this Act,
31 shall be reinstated, if the defendant is otherwise eligible for
32 a driver's license.

33 Sec. 35. CONTINGENT EFFECTIVE DATE. This division of this
34 Act takes effect on the date the governor submits to the United
35 States secretary of transportation a written certification

1 that the governor is opposed to the enforcement in this state
2 of a law described in 23 U.S.C. §159(a)(3)(A) and a written
3 certification that the general assembly has adopted a joint
4 resolution expressing its opposition to the same, in accordance
5 with 23 U.S.C. §159(a)(3)(B). The office of the governor shall
6 notify the Code editor upon submission of the certifications
7 described in this section.

8 DIVISION V

9 THEFT, FRAUD, AND FORGERY REVISIONS

10 Sec. 36. NEW SECTION. 714.2A Consolidation of theft
11 offenses.

12 For purposes of charging a person with theft, any conduct
13 specified as theft in section 714.1, subsections 1 through 10,
14 constitutes a single offense of theft embracing the separated
15 offenses of theft known as taking, misappropriation, theft by
16 deception, possession or receipt of stolen property, fraudulent
17 conversion, check fraud, theft from a public utility, unlawful
18 access to a computer, theft of video rental property, and other
19 similar offenses related to theft. An accusation of theft may
20 be supported by evidence that it was committed in any manner
21 that would be theft under sections 714.1, subsections 1 through
22 10, notwithstanding the specification of a different manner
23 in the complaint, indictment, or information, subject only
24 to the power of the court to ensure a fair trial by granting
25 a continuance or other appropriate relief where the conduct
26 of the defense would be prejudiced by lack of fair notice or
27 surprise.

28 Sec. 37. Section 715A.2, subsection 2, paragraph a, Code
29 2018, is amended by adding the following new subparagraph:

30 NEW SUBPARAGRAPH. (5) A document issued by a department,
31 agency, board, or commission in this state used as evidence of
32 authorized stay or employment in the United States.

33 Sec. 38. Section 715A.2A, subsection 1, paragraphs a and b,
34 Code 2018, are amended to read as follows:

35 a. Hires a person when the employer or an agent or employee

1 of the employer knows that the document evidencing the person's
2 authorized stay or employment in the United States is in
3 violation of **section 715A.2, subsection 2**, paragraph "a",
4 subparagraph (4) or (5), or knows that the person is not
5 authorized to be employed in the United States.

6 *b.* Continues to employ a person when the employer or an
7 agent or employee of the employer knows that the document
8 evidencing the person's authorized stay or employment in the
9 United States is in violation of **section 715A.2, subsection 2**,
10 paragraph "a", subparagraph (4) or (5), or knows that the person
11 is not authorized to be employed in the United States.

12 Sec. 39. Section 802.5, Code 2018, is amended to read as
13 follows:

14 **802.5 Extension for fraud, fiduciary breach.**

15 1. If the periods prescribed in **sections 802.3 and 802.4**
16 have expired, prosecution may nevertheless be commenced for
17 any offense a material element of which is either fraud or a
18 breach of fiduciary obligation within one year after actual
19 discovery of the offense and the offender's involvement in the
20 offense by an aggrieved party or by a person who has legal duty
21 to represent an aggrieved party and who is not a party to the
22 offense, but in no case shall this provision extend the period
23 of limitation otherwise applicable by more than ~~three~~ five
24 years.

25 2. A prosecution may be commenced under this section as
26 long as the appropriate law enforcement agency has not delayed
27 the investigation in bad faith. This subsection shall not be
28 construed to require a law enforcement agency to pursue an
29 unknown offender with due diligence.

30 DIVISION VI

31 CRIMINAL PROCEEDINGS

32 Sec. 40. NEW SECTION. **701.12 Reference to victim in**
33 **criminal proceeding.**

34 In a criminal prosecution, the prosecuting attorney or
35 a witness may refer to a person using the term "victim"

1 during any criminal proceeding including at trial, if there
2 is sufficient evidence to support a finding that the person
3 referred to as the victim meets the definition of a victim in
4 section 915.10. A conviction shall not be reversed on appeal
5 based upon a reference or references to a person as a victim
6 during a criminal proceeding, if there is sufficient evidence
7 in the record to support a finding that the person meets the
8 definition of victim in section 915.10.

9 Sec. 41. Section 814.6, subsection 1, paragraph a, Code
10 2018, is amended to read as follows:

11 a. A final judgment of sentence, except in ~~ease of~~ the
12 following cases:

13 (1) A simple misdemeanor and ordinance violation
14 convictions conviction.

15 (2) An ordinance violation.

16 (3) A conviction where the defendant has pled guilty. This
17 subparagraph does not apply to a guilty plea for a class "A"
18 felony.

19 Sec. 42. Section 814.6, subsection 2, Code 2018, is amended
20 by adding the following new paragraph:

21 NEW PARAGRAPH. f. An order denying a motion in arrest of
22 judgment on grounds other than an ineffective assistance of
23 counsel claim.

24 Sec. 43. Section 814.7, Code 2018, is amended to read as
25 follows:

26 **814.7 Ineffective assistance claim on appeal in a criminal**
27 **case.**

28 ~~±~~ An ineffective assistance of counsel claim in a
29 criminal case shall be determined by filing an application
30 for postconviction relief pursuant to **chapter 822**, ~~except as~~
31 ~~otherwise provided in this section.~~ The claim need not be
32 raised on direct appeal from the criminal proceedings in order
33 to preserve the claim for postconviction relief purposes,
34 and the claim shall not be decided on direct appeal from the
35 criminal proceedings.

1 ~~2. A party may, but is not required to, raise an ineffective~~
2 ~~assistance claim on direct appeal from the criminal proceedings~~
3 ~~if the party has reasonable grounds to believe that the record~~
4 ~~is adequate to address the claim on direct appeal.~~

5 ~~3. If an ineffective assistance of counsel claim is raised~~
6 ~~on direct appeal from the criminal proceedings, the court may~~
7 ~~decide the record is adequate to decide the claim or may choose~~
8 ~~to preserve the claim for determination under chapter 822.~~

9 Sec. 44. NEW SECTION. **814.28 General verdicts.**

10 When the prosecution relies on multiple or alternative
11 theories to prove the commission of a public offense, a jury
12 may return a general verdict. If the jury returns a general
13 verdict, an appellate court shall not set aside or reverse such
14 a verdict on the basis of a defective or insufficient theory
15 if one or more of the theories presented and described in the
16 complaint, information, or indictment is sufficient to sustain
17 the verdict on at least one count.

18 Sec. 45. NEW SECTION. **814.29 Guilty pleas — challenges.**

19 If a defendant challenges a guilty plea based on an alleged
20 defect in the plea proceedings, the plea shall not be vacated
21 unless the defendant demonstrates that the defendant more
22 likely than not would not have pled guilty if the defect had
23 not occurred. The burden applies whether the challenge is
24 made through a motion in arrest of judgment or on appeal. Any
25 provision in the Iowa rules of criminal procedure that are
26 inconsistent with this section shall have no legal effect.

27 Sec. 46. Section 822.6, unnumbered paragraph 1, Code 2018,
28 is amended to read as follows:

29 Within thirty days after the docketing of the application,
30 or within any further time the court may fix, the state shall
31 respond by answer or by motion which may be supported by
32 affidavits. At any time prior to entry of judgment the court
33 may grant leave to withdraw the application. The court may
34 make appropriate orders for amendment of the application or
35 any pleading or motion, for pleading over, for filing further

1 pleadings or motions, or for extending the time of the filing
2 of any pleading. In considering the application the court
3 shall take account of substance regardless of defects of form.
4 ~~If the application is not accompanied by the record of the~~
5 ~~proceedings challenged therein, the respondent shall file with~~
6 ~~its answer the record or portions thereof that are material to~~
7 ~~the questions raised in the application.~~

8 Sec. 47. NEW SECTION. **822.10A Underlying criminal offense.**

9 The court file containing the conviction for which an
10 applicant seeks postconviction relief shall be part of the
11 record in any action under this chapter. Upon the filing
12 of an application for postconviction relief pursuant to
13 section 822.3, the clerk of the district court shall make the
14 underlying criminal file records accessible to the applicant,
15 county attorney, and attorney general. If the criminal file
16 records are not available in electronic format, the clerk of
17 the district court shall convert the records to an electronic
18 format and make the records available to the applicant, county
19 attorney, and attorney general.

20 DIVISION VII

21 STATE AND COUNTY MEDICAL EXAMINER DEATH REPORTS AND
22 INVESTIGATIONS

23 Sec. 48. Section 331.802, subsection 5, Code 2018, is
24 amended by adding the following new paragraphs:

25 NEW PARAGRAPH. *c.* In formulating findings and conclusions
26 regarding the cause and manner of death, the state medical
27 examiner or county medical examiner shall be allowed to rely
28 upon and include in the report referred to in subsection 2,
29 paragraph "a", any information provided by the county attorney
30 or law enforcement agency to the medical examiner making the
31 autopsy.

32 NEW PARAGRAPH. *d.* The state medical examiner or county
33 medical examiner may rely upon and consider statements by
34 witnesses or other persons for purposes of developing a
35 clinical history of the decedent that preceded death when

1 formulating findings and conclusions on the cause and manner of
2 death. A court shall not exclude a medical examiner's opinion
3 as to the cause of death on the basis that the medical examiner
4 relied on out-of-court statements in forming that opinion, and
5 such an opinion shall not constitute reversible error.

6 Sec. 49. Section 331.802, subsection 6, Code 2018, is
7 amended to read as follows:

8 6. a. The report of an investigation made by the state
9 medical examiner or a county medical examiner and the record
10 and report of an autopsy made under this section or chapter
11 691, shall be received as evidence in any court or other
12 proceedings, ~~except that statements by witnesses or other~~
13 ~~persons and conclusions on extraneous matters included in the~~
14 ~~report are not admissible~~ including any findings of the state
15 medical examiner or county medical examiner and any information
16 provided by a prosecuting attorney or law enforcement agency,
17 if the information is admissible under the Iowa rules of
18 evidence or have otherwise been substantially admitted into
19 evidence. The person preparing a report or record given
20 in evidence may be subpoenaed as a witness in any civil or
21 criminal case by any party to the cause. A copy of a record,
22 photograph, laboratory finding, or record in the office of the
23 state medical examiner or any medical examiner, when attested
24 to by the state medical examiner or a staff member or the
25 medical examiner in whose office the record, photograph, or
26 finding is filed, shall be received as evidence in any court
27 or other proceedings for any purpose for which the original
28 could be received without proof of the official character of
29 the person whose name is signed to it.

30 b. The state medical examiner and county medical examiner
31 may rely upon and consider statements by witnesses or other
32 persons for purposes of developing a clinical history of the
33 decedent that preceded death when formulating findings and
34 conclusions on the cause and manner of death.

35 Sec. 50. NEW SECTION. **691.5A Investigations.**

1 In lieu of conducting an investigation pursuant to this
2 chapter, the state medical examiner may rely exclusively upon
3 the findings of the county medical examiner, county attorney,
4 or a law enforcement agency.

5 DIVISION VIII

6 CRIMINAL PENALTIES

7 Sec. 51. Section 124.401, subsection 5, Code 2018, is
8 amended to read as follows:

9 5. a. (1) It is unlawful for any person knowingly or
10 intentionally to possess a controlled substance unless such
11 substance was obtained directly from, or pursuant to, a valid
12 prescription or order of a practitioner while acting in the
13 course of the practitioner's professional practice, or except
14 as otherwise authorized by [this chapter](#). Any person who
15 violates [this subsection](#) is guilty of a serious misdemeanor
16 for a first offense. A person who commits a violation of
17 this subsection and who has previously been convicted of
18 violating [this chapter](#) or [chapter 124B](#) or [453B](#), or chapter
19 124A as it existed prior to July 1, 2017, is guilty of an
20 aggravated misdemeanor. A person who commits a violation of
21 this subsection and has previously been convicted two or more
22 times of violating [this chapter](#) or [chapter 124B](#) or [453B](#), or
23 chapter 124A as it existed prior to July 1, 2017, is guilty of a
24 class "D" felony.

25 (2) If the controlled substance is marijuana, the
26 punishment shall be by imprisonment in the county jail for
27 not more than six months or by a fine of not more than one
28 thousand dollars, or by both such fine and imprisonment for a
29 first offense. If the controlled substance is marijuana and
30 the person has been previously convicted of a violation of this
31 subsection in which the controlled substance was marijuana, the
32 punishment shall be as provided in section 903.1, subsection
33 1, paragraph "b". If the controlled substance is marijuana
34 and the person has been previously convicted two or more times
35 of a violation of [this subsection](#) in which the controlled

1 substance was marijuana, the person is guilty of an aggravated
2 misdemeanor.

3 (3) Convictions or the equivalent of deferred judgments for
4 violations in any other states under statutes substantially
5 corresponding to this paragraph "a" shall be counted as previous
6 offenses. The courts shall judicially notice the statutes of
7 other states which define offenses substantially equivalent to
8 the offenses defined in this paragraph "a" and can therefore
9 be considered corresponding statutes. Each previous violation
10 on which conviction or deferral of judgment was entered prior
11 to the date of the violation charged shall be considered and
12 counted as a separate previous offense.

13 c. All or any part of a sentence imposed pursuant to
14 this subsection may be suspended and the person placed upon
15 probation upon such terms and conditions as the court may
16 impose including the active participation by such person in a
17 drug treatment, rehabilitation or education program approved
18 by the court.

19 d. If a person commits a violation of [this subsection](#), the
20 court shall order the person to serve a term of imprisonment of
21 not less than forty-eight hours. Any sentence imposed may be
22 suspended, and the court shall place the person on probation
23 upon such terms and conditions as the court may impose. If
24 the person is not sentenced to confinement under the custody
25 of the director of the department of corrections, the terms
26 and conditions of probation shall require submission to random
27 drug testing. If the person fails a drug test, the court may
28 transfer the person's placement to any appropriate placement
29 permissible under the court order.

30 e. If the controlled substance is amphetamine, its salts,
31 isomers, or salts of its isomers, or methamphetamine, its
32 salts, isomers, or salts of its isomers, the court shall order
33 the person to serve a term of imprisonment of not less than
34 forty-eight hours. Any sentence imposed may be suspended,
35 and the court shall place the person on probation upon such

1 terms and conditions as the court may impose. The court may
2 place the person on intensive probation. However, the terms
3 and conditions of probation shall require submission to random
4 drug testing. If the person fails a drug test, the court may
5 transfer the person's placement to any appropriate placement
6 permissible under the court order.

7 Sec. 52. Section 707.6A, subsection 2, Code 2018, is amended
8 by adding the following new paragraph:

9 NEW PARAGRAPH. c. Exceeding the speed limit by twenty-five
10 miles per hour or more, in violation of section 321.285,
11 321.290, 321.293, or 321.295, if the death of the other person
12 directly or indirectly results from the violation of section
13 321.285, 321.290, 321.293, or 321.295.

14 Sec. 53. Section 901.11, Code 2018, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 4. At the time of sentencing, the court
17 shall determine when a person convicted of arson in the first
18 degree as described in section 902.12, subsection 4, shall
19 first become eligible for parole or work release within the
20 parameters specified in section 902.12, subsection 3, based
21 upon all pertinent information including the person's criminal
22 record, a validated risk assessment, and the negative impact
23 the offense has had on the victim or other persons.

24 Sec. 54. Section 902.12, Code 2018, is amended by adding the
25 following new subsection:

26 NEW SUBSECTION. 4. A person serving a sentence for a
27 conviction for arson in the first degree in violation of
28 section 712.2 that occurs on or after July 1, 2018, shall
29 be denied parole or work release until the person has served
30 between one-half and seven-tenths of the maximum term of
31 the person's sentence as determined under section 901.11,
32 subsection 4.

33

EXPLANATION

34 The inclusion of this explanation does not constitute agreement with
35 the explanation's substance by the members of the general assembly.

1 This bill modifies criminal code provisions relating to
2 criminal records, penalties, prosecutions, appeals, driving
3 privileges, and postconviction relief, and including effective
4 date provisions.

5 DIVISION I — EXPUNGEMENT. This division relates to the
6 expungement of records of certain misdemeanor offenses.

7 The term "expunged" means the court's criminal record with
8 reference to a deferred judgment or any other criminal record
9 has been segregated in a secure area or database which is
10 exempted from public access.

11 A person shall not receive an expungement pursuant to the
12 bill unless all court costs, fees, fines, and restitution and
13 other financial obligations ordered by the court or assessed by
14 the clerk of the district court have been paid.

15 The division provides that upon the application of a
16 defendant convicted of a misdemeanor, the court shall enter
17 an order expunging the record of such criminal case, as a
18 matter of law, if the defendant has established that more than
19 eight years have passed since the date of the conviction,
20 the defendant is not the subject of a protective order or
21 a no-contact order, the defendant has no pending criminal
22 charges, the defendant has not been subsequently convicted of
23 or granted a deferred judgment for a criminal offense, other
24 than a simple misdemeanor conviction under Code chapter 321 or
25 of a similar local ordinance, and all court costs, fees, fines,
26 and restitution and other financial obligations ordered by the
27 court or assessed by the clerk of the district court have been
28 paid.

29 The division does not apply to the following misdemeanor
30 offenses: simple misdemeanor convictions under Code sections
31 123.46 (consumption or intoxication in public place) and
32 123.47(3) (alcohol consumption by persons under legal
33 age), because expungement procedures already exist for both
34 offenses; convictions for dependent adult abuse under Code
35 section 235B.20; convictions relating to operating a motor

1 vehicle with an invalid driver's license under Code section
2 321.218, 321A.32, or 321J.21; convictions for operating while
3 intoxicated under Code section 321J.2; convictions of a sex
4 offense as defined in Code section 692A.101; convictions for
5 involuntary manslaughter under Code section 707.5; convictions
6 for assault involving a dangerous weapon under Code section
7 708.2(3); convictions for domestic abuse assault under Code
8 section 708.2A; convictions for harassment under Code section
9 708.7; convictions for stalking under Code section 708.11;
10 convictions for removal of an officer's communication or
11 control device under Code section 708.12; convictions for
12 trespass under Code section 716.8(3) or (4); convictions under
13 Code chapter 717C (bestiality); convictions under Code chapter
14 719 (obstructing justice); convictions under Code chapter 720
15 (interference with judicial process); convictions under Code
16 section 721.2 (nonfelonious conduct in office); convictions
17 under Code section 721.10 (misuse of public records and files);
18 convictions under Code section 723.1 (riot); convictions under
19 Code chapter 724 (weapons); convictions under Code chapter 726
20 (protections of the family and dependent persons); convictions
21 under Code chapter 728 (obscenity); convictions under Code
22 chapter 901A (sexually predatory offenses); a conviction for
23 a comparable offense listed in 49 C.F.R. §383.51(b) (table
24 1), and 49 C.F.R. §383.51(e) (table 4) (commercial driver's
25 licenses); and any conviction under prior law of an offense
26 comparable to an offense enumerated in the bill.

27 The division prohibits a person from applying more than once
28 for an expungement of the person's record. However, the one
29 application may request the expungement of records relating
30 to more than one misdemeanor offense if the misdemeanor
31 offenses arose from the same transaction or occurrence, and the
32 application contains the misdemeanor offenses to be expunged.

33 The division provides that the expunged record under the
34 bill is a confidential record exempt from public access under
35 Code section 22.7 but shall be made available by the clerk of

1 the district court upon court order.

2 The division also provides that after receipt of notice from
3 the clerk of the district court that a record of conviction has
4 been expunged, the record of conviction shall be removed from
5 the criminal history data files maintained by the department of
6 public safety if such a record was maintained in the criminal
7 history data files.

8 The division provides that the supreme court may prescribe
9 rules governing expungement procedures applicable to criminal
10 cases pursuant to the division.

11 The division applies to misdemeanor convictions that occur
12 prior to, on, or after July 1, 2018.

13 DIVISION II — ROBBERY. This division modifies the criminal
14 offense of robbery in the first degree to include circumstances
15 when a person commits a robbery with a simulated firearm or
16 simulated explosive. Currently, a person commits robbery in
17 the first degree when the person purposely inflicts or attempts
18 to inflict serious injury, or is armed with a dangerous weapon.
19 Robbery in the first degree is a class "B" felony. A person
20 convicted of a class "B" felony shall also be denied parole or
21 work release until the person has served at least 70 percent of
22 the sentence pursuant to Code section 902.12.

23 The division defines "simulated firearm" to mean a device
24 which is not a firearm, but which is expressly represented to
25 be a firearm, or an object which is not a firearm but which
26 is impliedly represented to be a firearm and which under the
27 circumstances would lead a reasonable person to believe it to
28 be a firearm.

29 Under the division, a simulated explosive means a device
30 which is not an explosive, but which is expressly represented
31 to be an explosive, or a device which is not an explosive but
32 which is impliedly represented to be an explosive and which by
33 its appearance would lead a reasonable person to believe it to
34 be an explosive.

35 The division provides that a person serving a sentence for

1 a conviction for robbery in the first degree for a conviction
2 that occurs on or after July 1, 2018, shall serve between 50
3 and 70 percent of a 25-year class "B" felony sentence prior
4 to being eligible for parole or work release. In determining
5 when the person is first eligible for parole or work release
6 within such parameters, the sentencing court shall base its
7 determination upon all pertinent information including the
8 person's criminal record, a validated risk assessment, and
9 the negative impact the offense has had on the victim or
10 other persons. The division provides that a person serving
11 a sentence for a conviction of robbery in the first degree
12 for a conviction that occurs prior to July 1, 2018, shall
13 be denied parole or work release until the person has served
14 between one-half and seven-tenths of the maximum term of the
15 person's sentence as determined by the board of parole based
16 upon the person's criminal record, a validated risk assessment,
17 and the negative impact the offense has had on the victim or
18 other persons. Under current law, such a person sentenced to
19 confinement is required to serve at least 70 percent of the
20 25-year maximum class "B" felony sentence prior to becoming
21 eligible for parole or work release.

22 The division does not modify the earned time provisions
23 related to the commission of robbery in the first degree, as a
24 person who commits robbery in the first degree is eligible for
25 a reduction of sentence equal to fifteen eighty-fifths of a day
26 for each day of good conduct by the person under Code section
27 903A.2.

28 Under current law and the division, felonious robbery is
29 also classified as a "forcible felony" under Code section
30 702.11, and a person convicted of felonious robbery is
31 prohibited from receiving a suspended or deferred sentence or
32 deferred judgment pursuant to Code section 907.3.

33 The division repeals the offense of robbery in the third
34 degree, an aggravated misdemeanor. A person commits robbery
35 in the third degree when, while perpetrating a robbery, the

1 person commits a simple misdemeanor assault in violation of
2 Code section 708.2(6).

3 DIVISION III — PROPERTY CRIMES — VALUE. This division
4 increases the value of damaged or stolen property or services
5 necessary to commit certain levels of numerous criminal
6 offenses.

7 THEFT. The division increases the value of property
8 necessary for a person to commit theft in the second degree
9 from property exceeding \$1,000 but not more than \$10,000 to
10 property exceeding \$1,500 but not more than \$10,000. Theft in
11 the second degree is a class "D" felony.

12 The division increases the value of property necessary for
13 a person to commit theft in the third degree from property
14 exceeding \$500 but not more than \$1,000 to property exceeding
15 \$750 but not more than \$1,500. Theft in the third degree is an
16 aggravated misdemeanor.

17 The division increases the value of property necessary for
18 a person to commit theft in the fourth degree from property
19 exceeding \$200 but not more than \$500 to property exceeding
20 \$300 but not more than \$750. Theft in the fourth degree is a
21 serious misdemeanor.

22 The division increases the value of property necessary for a
23 person to commit theft in the fifth degree from property not
24 exceeding \$200 to property not exceeding \$300. Theft in the
25 fifth degree is a simple misdemeanor.

26 AGGRAVATED THEFT. The division increases the value of
27 property necessary for a person to commit aggravated theft from
28 property not exceeding \$200 to property not exceeding \$300.
29 Aggravated theft is an aggravated misdemeanor or a class "D"
30 felony depending upon the circumstances of the crime. Under
31 current law, a person commits aggravated theft when the person
32 commits a simple assault after the person has removed or
33 attempted to remove property not exceeding \$200.

34 THEFT DETECTION DEVICES — SHIELD OR REMOVAL. The division
35 increases the value of property necessary for a person to

1 commit a serious misdemeanor for removal of a theft detection
2 device from property exceeding \$200 in value to property
3 exceeding \$300 in value. The division increases the value of
4 property necessary for a person to commit a simple misdemeanor
5 for removal of a theft detection device from property not
6 exceeding \$200 in value to property not exceeding \$300 in
7 value.

8 FRAUDULENT PRACTICE. Fraudulent practice is defined in Code
9 section 714.8. The division increases the value of property or
10 services necessary for a person to commit fraudulent practice
11 in the second degree from property or services exceeding \$1,000
12 but not more than \$10,000 to property exceeding \$1,500 but not
13 more than \$10,000. Fraudulent practice in the second degree
14 is a class "D" felony.

15 The division increases the value of property or services
16 necessary for a person to commit fraudulent practice in the
17 third degree from property or services exceeding \$500 but not
18 more than \$1,000 to property or services exceeding \$750 but not
19 more than \$1,500. Fraudulent practice in the third degree is
20 an aggravated misdemeanor.

21 The division increases the value of property or services
22 necessary for a person to commit fraudulent practice in the
23 fourth degree from property or services exceeding \$200 but not
24 more than \$500 to property or services exceeding \$300 but not
25 more than \$750. Fraudulent practice in the fourth degree is
26 a serious misdemeanor.

27 The division increases the value of property or services
28 necessary for a person to commit fraudulent practice in the
29 fifth degree from property or services not exceeding \$200 to
30 property or services not exceeding \$300. Fraudulent practice
31 in the fifth degree is a simple misdemeanor.

32 CREDIT CARDS. Under current law, a person commits the class
33 "D" felony offense of credit card fraud when a person illegally
34 secures or seeks to secure property or services by means of
35 a credit card and the value of the property or services is

1 greater than \$1,000 but not more than \$10,000. The division
2 increases the minimum value of property or services necessary
3 for a person to commit such a class "D" felony offense from
4 \$1,000 to \$1,500.

5 Under current law, a person commits the aggravated
6 misdemeanor offense of credit card fraud when a person
7 illegally secures or seeks to secure property or services
8 by means of a credit card and the value of the property or
9 services is \$1,000 or less. The division increases the maximum
10 value of property or services necessary for a person to commit
11 such an aggravated misdemeanor offense from \$1,000 to \$1,500.

12 IDENTITY THEFT. Under current law, a person commits
13 the class "D" felony offense of identity theft when a
14 person fraudulently uses or fraudulently attempts to use
15 identification information of another person, with the intent
16 to obtain credit, property, services, or other benefit, and
17 the value of the credit, property, services, or other benefit
18 exceeds \$1,000 but does not exceed \$10,000. The division
19 increases the minimum value necessary for a person to commit
20 such a class "D" felony offense from \$1,000 to \$1,500.

21 Under current law, a person commits the aggravated
22 misdemeanor offense of identity theft when a person
23 fraudulently uses or fraudulently attempts to use
24 identification information of another person, with the intent
25 to obtain credit, property, or services, or other benefit, and
26 the value of the credit, property, services, or other benefit
27 exceeds \$1,000 but does not exceed \$10,000. The division
28 increases the minimum value necessary for a person to commit
29 such an aggravated misdemeanor offense from \$1,000 to \$1,500.

30 CRIMINAL MISCHIEF. The division increases the value of
31 damaged property that is necessary to commit criminal mischief
32 in the second degree from damaged property exceeding \$1,000 but
33 not more than \$10,000 to damaged property exceeding \$1,500 but
34 not more than \$10,000. Criminal mischief in the second degree
35 is a class "D" felony.

1 The division increases the value of damaged property
2 that is necessary to commit criminal mischief in the third
3 degree from damaged property exceeding \$500 but not more than
4 \$1,000 to damaged property exceeding \$750 but not more than
5 \$1,500. Criminal mischief in the third degree is an aggravated
6 misdemeanor.

7 The division increases the value of damaged property
8 that is necessary to commit criminal mischief in the fourth
9 degree from damaged property exceeding \$200 but not more than
10 \$500 to damaged property exceeding \$300 but not more than
11 \$750. Criminal mischief in the fourth degree is a serious
12 misdemeanor.

13 The division increases the value of damaged property that
14 is necessary to commit criminal mischief in the fifth degree
15 from damaged property not exceeding \$200 to damaged property
16 not exceeding \$300. Criminal mischief in the fifth degree is a
17 simple misdemeanor.

18 TRESPASS. The division increases the value of damaged
19 property that is necessary to commit a serious misdemeanor
20 trespass offense from damaged property of more than \$200 to
21 damaged property of more than \$300.

22 The division increases the value of damaged property that is
23 necessary to commit an aggravated misdemeanor trespass offense
24 involving a hate crime from damaged property of more than \$200
25 to damaged property of more than \$300.

26 RAILROAD VANDALISM. The division increases the value of
27 damaged property that is necessary to commit railroad vandalism
28 in the fourth degree from damaged property exceeding \$1,000 but
29 not more than \$10,000 to damaged property exceeding \$1,500 but
30 not more than \$10,000. Railroad vandalism in the fourth degree
31 is a class "D" felony.

32 The division increases the value of damaged property that
33 is necessary to commit railroad vandalism in the fifth degree
34 from damaged property exceeding \$500 but not more than \$1,000
35 to damaged property exceeding \$750 but not more than \$1,500.

1 Railroad vandalism in the fifth degree is an aggravated
2 misdemeanor.

3 The division increases the value of damaged property
4 that is necessary to commit railroad vandalism in the sixth
5 degree from damaged property exceeding \$200 but not more than
6 \$500 to damaged property exceeding \$300 but not more than
7 \$750. Railroad vandalism in the sixth degree is a serious
8 misdemeanor.

9 The division increases the value of damaged property that is
10 necessary to commit railroad vandalism in the seventh degree
11 from damaged property not exceeding \$200 to damaged property
12 not exceeding \$300. Railroad vandalism in the seventh degree
13 is a simple misdemeanor.

14 TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL (EMAIL).
15 Under current law, a person commits the class "D" felony
16 offense of transmission of unsolicited bulk email when the
17 revenue generated from such a transmissions exceeds \$1,000.
18 The division increases the minimum value necessary for a
19 person to commit such a class "D" felony offense from \$1,000
20 to \$1,500.

21 DIVISION IV — REVOCATION OF DRIVER'S LICENSE FOR
22 DRUG-RELATED CONVICTIONS. Current law requires a court to
23 order the department of transportation (DOT) to revoke a
24 defendant's driver's license for 180 days if a defendant
25 is sentenced for a controlled substance offense under Code
26 section 124.401 (manufacturers, possessors, and counterfeit
27 substances), 124.401A (enhanced penalty for manufacture or
28 distribution on certain property), 124.402 (distributors,
29 registrants, and proprietors), or 124.403 (distribution, use,
30 possession, records, and information), a drug or drug-related
31 offense under Code section 126.3 (prohibited acts related to
32 drugs, devices, and cosmetics), or a controlled substance tax
33 offense under Code chapter 453B. Current law also requires a
34 court to send a copy of the order and a notice of the conviction
35 to the DOT. The division strikes Code section 901.5(10)

1 revoking a defendant's driver's license for 180 days if the
2 defendant is sentenced for a controlled substance offense for
3 an offense under Code section 124.401, 124.401A, 124.402, or
4 124.403.

5 The division makes conforming Code changes to Code sections
6 124.412, 321.212, 321.215, 321.218, and 321A.17.

7 The division provides that a defendant's driver's license
8 suspended or revoked pursuant to Code section 901.5(10) prior
9 to the effective date of the division shall be reinstated if
10 the defendant is otherwise eligible for a driver's license.

11 The division provides a contingent effective date specifying
12 that the division takes effect on the date the governor submits
13 to the United States secretary of transportation a written
14 certification that the governor is opposed to the enforcement
15 in Iowa of a law described in 23 U.S.C. §159(a)(3)(A) and a
16 written certification that the general assembly has adopted
17 a joint resolution expressing its opposition to the same, in
18 accordance with 23 U.S.C. §159(a)(3)(B). The division requires
19 the office of the governor to notify the Code editor upon
20 submission of the certifications.

21 DIVISION V — THEFT, FRAUD, AND FORGERY REVISIONS.

22 THEFT OFFENSES — CONSOLIDATION. The division creates new
23 Code section 714.2A relating to the consolidation of theft
24 offenses. The division provides that for purposes of charging
25 a person with theft, any conduct specified as theft in Code
26 section 714.1(1) through (10), constitutes a single offense
27 of theft embracing the separated offenses of theft known as
28 taking, misappropriation, theft by deception, possession or
29 receipt of stolen property, fraudulent conversion, check fraud,
30 theft from a public utility, unlawful access to a computer,
31 theft of video rental property, and other similar offenses
32 related to theft. An accusation of theft may be supported by
33 evidence that it was committed in any manner that would be
34 theft under Code section 714.1(1) through (10), notwithstanding
35 the specification of a different manner of theft in the

1 complaint, indictment, or information, subject only to the
2 power of the court to ensure a fair trial by granting a
3 continuance or other appropriate relief where the conduct of
4 the defense would be prejudiced by lack of fair notice or
5 surprise.

6 DEFINITION OF FORGERY. The division amends Code section
7 715A.2(2) relating to forgery. Under the division, a person
8 commits forgery when the person possesses a writing that is
9 or purports to be a document issued by a department, agency,
10 board, or commission in this state and used as evidence of
11 authorized stay or employment in the United States. A person
12 who forges such a document commits a class "D" felony. By
13 amending the definition of forgery, the division also changes
14 the circumstances under which an employer is subject to a
15 civil penalty for hiring a person who commits such a forgery,
16 pursuant to Code section 715A.2A (accommodation of forgery).

17 STATUTE OF LIMITATIONS — FRAUD OR BREACH OF FIDUCIARY
18 OBLIGATION. The division amends Code section 802.5 relating
19 to extending the periods of time a prosecution may be brought
20 against a person for any offense involving a material element
21 of fraud or a breach of fiduciary obligation. Under current
22 law, a prosecution may be brought within one year after
23 discovery of the offense by an aggrieved party or by a person
24 who has legal duty to represent an aggrieved party and who is
25 not a party to the offense. The division specifies that the
26 prosecution may be brought within one year of actual discovery
27 of the offense and the offender's involvement in the offense
28 by an aggrieved party or by a person who has legal duty to
29 represent an aggrieved party and who is not a party to the
30 offense. The division also provides that a prosecution may be
31 commenced under this Code section as long as a law enforcement
32 agency has not delayed the investigation in bad faith, and does
33 not require that a law enforcement agency pursue an unknown
34 offender with due diligence.

35 DIVISION VI — CRIMINAL PROCEEDINGS.

1 REFERENCE TO VICTIM IN CRIMINAL PROCEEDING. This division
2 creates new Code section 701.12 relating to evidence in a
3 criminal prosecution. Under the division, the prosecuting
4 attorney or a witness may refer to a person using the term
5 "victim" during any criminal proceeding including at trial,
6 if there is sufficient evidence to support a finding that
7 the person referenced as the victim meets the definition of
8 a victim in Code section 915.10. A conviction shall not be
9 reversed based upon a reference to a person as the victim
10 during a criminal proceeding, if there is sufficient evidence
11 to support a finding that the person referenced as the victim
12 meets the definition of a victim in Code section 915.10.

13 DEFENDANT RIGHT TO APPEAL. The division amends Code section
14 814.6(1) by prohibiting the right to appeal to a defendant who
15 has pled guilty to a criminal offense except this prohibition
16 does not apply to a defendant who pleads guilty to a class "A"
17 felony. The right to appeal means that an appellate court
18 cannot deny a defendant's statutory or constitutional right to
19 have the defendant's case reviewed on appeal.

20 The division amends Code section 814.6(2) by specifying that
21 discretionary review by an appellate court applies to an order
22 denying a motion in arrest of judgment on grounds other than an
23 ineffective assistance claim. Under current law, discretionary
24 review applies to an order suppressing or admitting evidence,
25 an order granting or denying a motion for a change of venue,
26 an order denying probation, simple misdemeanor and ordinance
27 violations, and an order raising a question of law important to
28 the judiciary and the profession. Discretionary review is the
29 process by which an appellate court may exercise its discretion
30 to review specified matters not subject to appeal as a matter
31 of right.

32 INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS ON APPEAL. The
33 division amends Code section 814.7 relating to an ineffective
34 assistance claim on appeal in a criminal case. The division
35 prohibits an ineffective assistance claim being raised and

1 decided on direct appeal from the criminal proceedings. Under
2 current law, such a claim may be raised on direct appeal from
3 the criminal proceedings if the record at the trial level is
4 sufficient. Generally, an ineffective assistance of counsel
5 claim is raised on appeal by a criminal defendant alleging
6 the defendant's attorney was so incompetent it deprived the
7 defendant the constitutional right to assistance of counsel.

8 APPEALS FROM THE DISTRICT COURT — GENERAL VERDICT.

9 The division creates new Code section 814.28 relating to
10 general verdicts. When the prosecution relies on multiple
11 or alternative theories to prove the commission of a public
12 offense, a jury may return a general verdict. If the jury
13 returns a general verdict, the division specifies that a court
14 shall not set aside or reverse such a verdict on the basis
15 of a defective or insufficient theory if one or more of the
16 theories presented and described in the complaint, information,
17 or indictment is sufficient to sustain the verdict on at least
18 one count.

19 GUILTY PLEAS — CHALLENGES. If a defendant challenges a
20 guilty plea based on an alleged defect in the plea proceedings,
21 the division provides that the plea shall not be vacated unless
22 the defendant demonstrates it is more likely than not that the
23 defendant would not have pled guilty if the defect had not
24 occurred. The burden applies whether the challenge is made
25 by motion in arrest of judgment or in a challenge on appeal.
26 Any provision in the Iowa rules of criminal procedure that are
27 inconsistent with this provision shall have no legal effect.

28 POSTCONVICTION RELIEF — RECORDS. The division creates new
29 Code section 822.10A relating to postconviction procedure. The
30 division provides that the court file containing the conviction
31 for which the applicant seeks postconviction relief shall be
32 part of the record in any action under Code chapter 822. Upon
33 the filing of an application for postconviction relief pursuant
34 to Code section 822.3, the clerk of the district court shall
35 make the underlying criminal file accessible to the applicant,

1 county attorney, and attorney general. If the criminal file
2 records are not available in electronic format, the division
3 requires the clerk of the district court to convert the records
4 to an electronic format and make the records available to the
5 applicant, county attorney, and attorney general.

6 POSTCONVICTION — RELIEF. The bill strikes a provision that
7 requires the respondent to an application for postconviction
8 relief, to file an answer to the application with relevant
9 portions of the record of the proceedings being challenged, if
10 the applicant fails to file the application without the record
11 of the proceedings being challenged.

12 DIVISION VII — STATE AND COUNTY MEDICAL EXAMINER DEATH
13 REPORTS AND INVESTIGATIONS. Currently, the report of an
14 investigation by the state medical examiner or county medical
15 examiner and the record and report of an autopsy shall be
16 received as evidence in court or other proceedings, except that
17 statements by witnesses or other persons and conclusions on
18 extraneous matters included in the report are inadmissible.
19 The division provides that the report of an investigation made
20 by the state medical examiner or county medical examiner shall
21 be admissible in court including any findings of the state
22 medical examiner or county medical examiner and any information
23 provided by a county attorney or law enforcement agency, if
24 the information is otherwise admissible under the Iowa rules
25 of evidence.

26 The division provides that in formulating findings and
27 conclusions regarding the cause and manner of death, the state
28 medical examiner or county medical examiner shall be allowed
29 to rely upon and include in the report of an investigation
30 any information provided to the medical examiner by a county
31 attorney or law enforcement agency.

32 Additionally, the state medical examiner or county
33 medical examiner may also rely upon and consider statements
34 by witnesses or other persons for purposes of developing a
35 clinical history of the decedent that preceded death when

1 formulating findings and conclusions on the cause and manner of
2 death. A court shall not exclude a medical examiner opinion
3 as the cause of death on the basis that the examiner has
4 considered out-of-court statements in forming that opinion, and
5 such an opinion shall not constitute reversible error.

6 The division also specifies that in lieu of conducting
7 its own investigation, the state medical examiner may rely
8 exclusively upon the findings of the county medical examiner,
9 county attorney, or a law enforcement agency.

10 DIVISION VIII — CRIMINAL PENALTIES.

11 POSSESSION OF A CONTROLLED SUBSTANCE. Currently, if a
12 person commits a first offense possession of a controlled
13 substance the person commits a serious misdemeanor. If a
14 person commits a second offense possession of a controlled
15 substance and the person has previously been convicted of
16 violating Code chapter 124 (controlled substances), Code
17 chapter 124B (precursor substances), Code chapter 453B (excise
18 tax on unlawful dealing), or Code chapter 124A (imitation
19 controlled substances as it existed on July 1, 2017), the
20 person commits an aggravated misdemeanor.

21 Currently, if a person commits a first offense possession
22 of marijuana, the offense is punishable by imprisonment in
23 the county jail for not more than six months or by a fine
24 of not more than \$1,000, or by both. If a person commits a
25 second offense possession of marijuana, the person commits
26 a serious misdemeanor, and if a person commits a third or
27 subsequent offense possession of marijuana, the person commits
28 an aggravated misdemeanor.

29 The division makes convictions or the equivalent of deferred
30 judgments for violations in any other state count as a previous
31 offense if the violation in the other state substantially
32 corresponds with possession of controlled substance violations
33 in this state, thus making a person with a conviction in
34 another state more likely to be subject to enhanced penalties
35 for possession of a controlled substance in this state under

1 Code section 124.401(5), as amended by the division. The
2 division specifies that the court shall judicially notice the
3 statutes of other states which define offenses substantially
4 equivalent to possession of a controlled substance.

5 HOMICIDE BY VEHICLE. The division provides that a person
6 commits a class "C" felony when the person unintentionally
7 causes the death of another when exceeding the speed limit by
8 25 miles per hour or more, in violation of Code section 321.285
9 (speed restrictions), 321.290 (special restrictions), 321.293
10 (local authorities may alter limits), or 321.295 (limitation
11 on bridge or elevated structures), if the death of the other
12 person directly or indirectly results from such a violation.

13 Currently, a person who violates Code section 321.285
14 commits a simple misdemeanor or a simple misdemeanor punishable
15 as a scheduled fine under Code section 805.8A, a person who
16 violates Code section 321.290 or 321.293 commits a simple
17 misdemeanor, and a person who violates Code section 321.295
18 commits a simple misdemeanor punishable as a scheduled fine of
19 \$50.

20 ARSON IN THE FIRST DEGREE. The division requires an
21 offender who commits the criminal offense of arson in the first
22 degree to serve 50 to 70 percent of a 25-year class "B" felony
23 sentence prior to being eligible for parole or work release.
24 Under current law, such an offender is sentenced to confinement
25 for 25 years but is eligible for parole upon entering prison.
26 At the time of sentencing, the division provides that the
27 court determine when a person convicted of arson in the first
28 degree first becomes eligible for parole or work release within
29 the parameters of 50 to 70 percent of the 25-year sentence,
30 based upon all pertinent information including the person's
31 criminal record, a validated risk assessment, and the negative
32 impact the offense has had on the victim or other persons. The
33 division also makes arson in the first degree a category "B"
34 sentence under Code section 903A.2, in effect increasing the
35 length of the sentence by reducing the amount of earned time

1 such a person is eligible for during confinement from one and
2 two-tenths of a day for each day of good conduct to fifteen
3 eighty-fifths of a day for each day of good conduct.