

Specific Crimes Subcommittee Suggested Statutory Changes

1. Amend Iowa Code chapter 711 to create a non-forcible alternative to Robbery in the 3rd Degree.
2. Amend Iowa Code section 123.47 to allow expungement of underage possession of alcohol. Can only apply at 21 years old, must have clean record after the initial possession charge.
3. Allow for judges to be able to extend defendant's probation when a violation of probation has been established.
4. Specify under Iowa Code section 719.7 that the definition of contraband includes both prescription and non-prescription drugs.
5. Amend Iowa Code section 708.6 by numbering paragraphs, and then further define differences between C Felony and D Felony.
6. Make changes to Iowa Code section 719.4 to allow for uniformity in the charges related to escape.
7. Change Iowa Code section 708.2(4) (assault without intent to inflict serious injury but resulting in serious injury) from a forcible to non-forcible Class D Felony. Under Iowa Code section 708.2(1) assault with intent to inflict serious injury is an aggravated misdemeanor.



711.1 Robbery defined.

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate serious injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen.

[C51, §2578; R60, §4201; C73, §3858; C97, §4753; C24, 27, 31, 35, 39, §13038; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §711.1]

Definition of forcible felony, §702.11

711.2 Robbery in the first degree.

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

[C51, §2579; R60, §4202; C73, §3859; C97, §4754; C24, 27, 31, 35, 39, §13039; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §711.2]

Definition of forcible felony, §702.11

711.3 Robbery in the second degree.

All robbery which is not robbery in the first degree is robbery in the second degree. Robbery in the second degree is a class "C" felony.

[C51, §2580; R60, §4203; C73, §3860; C97, §4755; C24, 27, 31, 35, 39, §13040; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §711.3]

Definition of forcible felony, §702.11

123.46 Consumption or intoxication in public places - notifications - chemical tests - exoneration.

- 1. As used in this section unless the context otherwise requires:
 - a. "*Arrest*" means the same as defined in section 804.5 and includes taking into custody pursuant to section 232.19.
 - b. "*Chemical test*" means a test of a person's blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the commissioner of public safety.
 - c. "*Peace officer*" means the same as defined in section 801.4.
 - d. "*School*" means a public or private school or that portion of a public or private school which provides teaching for any grade from kindergarten through grade twelve.
- 2. A person shall not use or consume alcoholic liquor, wine, or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function. A person shall not be intoxicated or simulate intoxication in a public place. A person violating this subsection is guilty of a simple misdemeanor.
- 3. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the commissioner of public safety for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person's blood, breath, or urine established by the results of a chemical test performed within two hours after the person's arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.
- 4. a. A peace officer shall make a reasonable effort to identify a person under the age of eighteen who violates this section and, if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of the violation, whether or not the person is taken into custody, unless the officer has reasonable grounds to believe that notification is not in the best interests of the person or will endanger that person.
 - b. The peace officer shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the violation. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the

superintendent's designee, or the authorities in charge of the nonpublic school, of the violation. A reasonable attempt to notify the person includes, but is not limited to, a telephone call or notice by first-class mail.

5. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the person shall be deemed exonerated of the offense as a matter of law. The court shall enter an order exonerating the person of the conviction, and ordering that the record of the conviction be expunged by the clerk of the district court.

[C35, §1921-f42, 1921-f127; C39, §1921.042, 1921.132; C46, 50, 54, 58, 62, 66, 71, §123.42, 124.37; C73, 75, 77, 79, 81, §123.46]

85 Acts, ch 32, §36; 86 Acts, ch 1067, §1; 89 Acts, ch 225, §10; 92 Acts, ch 1231, §7; 2000 Acts, ch 1138, §1

908.11 Violation of probation.

1. A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation.

2. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

4. If the violation is established, the court may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

5. Notwithstanding any other provision of law to the contrary, if the court revokes the probation of a defendant who received a deferred judgment and imposes a fine, the court shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14. However, the court shall assess any required surcharge, court cost, or fee upon the total amount of the fine prior to reduction pursuant to this subsection.

[S13, §5447-b; C24, 27, 31, 35, 39, §3805, 3806; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.26, 247.27; C79, 81, §908.11]

84 Acts, ch 1244, §6; 91 Acts, ch 219, §29; 97 Acts, ch 125, §10; 97 Acts, ch 126, §52; 98 Acts, ch 1197, §2, 3, 8, 13; 2000 Acts, ch 1177, §4, 5; 2007 Acts, ch 180, §12

719.7 Possessing contraband.

1. "Contraband" includes but is not limited to any of the following:

- a. A controlled substance or a simulated or counterfeit controlled substance, hypodermic syringe, or intoxicating beverage.
- b. A dangerous weapon, offensive weapon, pneumatic gun, stun gun, firearm ammunition, knife of any length or any other cutting device, explosive or incendiary material, instrument, device, or other material fashioned in such a manner as to be capable of inflicting death or injury.
- c. Rope, ladder components, key or key pattern, metal file, instrument, device, or other material designed or intended to facilitate escape of an inmate.

2. The sheriff may x-ray a person committed to the jail, or the department of corrections may x-ray a person under the control of the department, if there is reason to believe that the person is in possession of contraband. A licensed physician or x-ray technician under the supervision of a licensed physician must x-ray the person.

3. A person commits the offense of possessing contraband if the person, not authorized by law, does any of the following:

- a. Knowingly introduces contraband into, or onto, the grounds of a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections.
- b. Knowingly conveys contraband to any person confined in a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections.
- c. Knowingly makes, obtains, or possesses contraband while confined in a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections, or while being transported or moved incidental to confinement.

4. A person who possesses contraband or fails to report an offense of possessing contraband commits the following:

- a. A class "C" felony for the possession of contraband if the contraband is of the type described in subsection 1, paragraph "b".
- b. A class "D" felony for the possession of contraband if the contraband is any other type of contraband.
- c. An aggravated misdemeanor for failing to report a known violation or attempted violation of this section to an official or officer at a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections.

5. Nothing in this section is intended to limit the authority of the administrator of any secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections to prescribe or enforce rules concerning the definition of contraband, and the transportation, making, or possession of substances, devices, instruments, materials, or other items.

[C73, §1663; C97, §2712; S13, §4913-a; SS15, §2713-n16; C24, 27, 31, 35, 39, §13365, 13366, 13368; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.15, 745.16, 745.18; C79, 81, §719.7]
83 Acts, ch 96, §120, 159; 99 Acts, ch 163, §1; 2007 Acts, ch 89, §1

5

708.6 Intimidation with a dangerous weapon.

A person commits a class "C" felony when the person, with the intent to injure or provoke fear or anger in another, shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people, and thereby places the occupants or people in reasonable apprehension of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

A person commits a class "D" felony when the person shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people, and thereby places the occupants or people in reasonable apprehension of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

[C97, §4799, 4810; C24, 27, 31, 35, 39, §13081, 13123; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §714.2, 716.11; C79, 81, §708.6; 81 Acts, ch 204, §5]

93 Acts, ch 112, §1, 2; 2002 Acts, ch 1075, §8

6

719.4 Escape or absence from custody.

1. A person convicted of a felony, or charged with or arrested for the commission of a felony, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer, public employee, or any other person to whom the person has been entrusted, commits a class "D" felony.

2. A person convicted of, charged with, or arrested for a misdemeanor, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer, public employee, or any other person to whom the person has been entrusted, commits a serious misdemeanor.

3. A person who has been committed to an institution under the control of the Iowa department of corrections, to a community-based correctional facility, or to a jail or correctional institution, who knowingly and voluntarily is absent from a place where the person is required to be, commits a serious misdemeanor.

4. A person who flees from the state to avoid prosecution for a public offense which is a felony or aggravated misdemeanor commits a class "D" felony.

5. Except for subsection 4, an offense committed under this section includes any offense committed wholly outside the state.

[C51, §2668; R60, §4295; C73, §3959; C97, §4898; S13, §4897-a, 4898; C24, 27, 31, 35, 39, §13351, 13353, 13358; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.1, 745.3, 745.8; C79, 81, §719.4; 82 Acts, ch 1082, §1]

83 Acts, ch 96, §119, 159; 86 Acts, ch 1040, §1; 86 Acts, ch 1238, §30; 99 Acts, ch 182, §3; 2000 Acts, ch 1037, §1, 2

708.1 Assault defined.

An assault as defined in this section is a general intent crime. A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Provided, that where the person doing any of the above enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace, the act shall not be an assault.

Provided, that where the person doing any of the above enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation, that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function regardless of the location, the act shall not be an assault, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.

[C51, §2594, 2597; R60, §4217, 4220; C73, §3875, 3878, 3879; C97, §4771, 4774, 4775; S13, §4771; C24, 27, 31, 35, 39, §12929, 12930, 12934; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §694.1, 694.2, 694.6; C79, 81, §708.1] 95 Acts, ch 191, §49; 2002 Acts, ch 1094, §1

708.2 Penalties for assault.

1. A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor.
2. A person who commits an assault, as defined in section 708.1, and who causes bodily injury or mental illness, is guilty of a serious misdemeanor.
3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.
4. A person who commits an assault, as defined in section 708.1, and who causes serious injury, is guilty of a class "D" felony.
5. A person who commits an assault, as defined in section 708.1, and who uses any object to penetrate the genitalia or anus of another person, is guilty of a class "C" felony.
6. Any other assault, except as otherwise provided, is a simple misdemeanor.

[C51, §2593 - 2595, 2597; R60, §4216 - 4218, 4220; C73, §3874 - 3876, 3878, 3879; C97, §4770 - 4772, 4774, 4775; C24, 27, 31, 35, 39, §12929 - 12935; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §694.1 - 694.7; C79, 81, §708.2; 81 Acts, ch 204, §3]

87 Acts, ch 154, §8; 98 Acts, ch 1026, §1; 99 Acts, ch 65, §3; 2003 Acts, ch 132, §2

Definition of forcible felony, §702.11