1. Is there any case law that points to problems with a particular code section?

2. Do the prohibitions in this chapter duplicate or overlap with crimes set out elsewhere in the code?

3. Do the code sections use plain language? Do they effectively communicate to a lay person what conduct is prohibited?

4. Is the **criminal intent** required to prove each crime clear and consistent?

5. Have any newer provisions jumped ahead of older crimes in the grading of the offenses?

6. Do any provisions criminalize trivial and non-dangerous conduct?

7. Are any critical terms undefined or defined inconsistently with the rest of the criminal code?

8. How do the definitions compare to ALI's Model Penal Code?

9. Does the organizational structure of the chapter make sense, *i.e.*, its location in the criminal code and the internal organization (most serious to least serious)?

10. Are there any case law definitions or explanatory language that should be incorporated into the statute itself?

§ 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.

No Issues

§ 123.47. Persons under legal age--penalty

1. A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age.

2. A person or persons under legal age shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter.

3. a. A person who is under legal age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits the following:

(1) A simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 7.

(2) A second offense shall be a simple misdemeanor punishable by a fine of five hundred dollars. In addition to any other applicable penalty, the person in violation of this section shall choose between either completing a substance abuse evaluation or the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

(3) A third or subsequent offense shall be a simple misdemeanor punishable by a fine of five hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

b. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section.

c. If the person who commits a violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in

chapter 232.
4. Except as otherwise provided in subsections 5 and 6, a person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section commits a serious misdemeanor punishable by a minimum fine of five hundred dollars.
5. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in serious injury to any person commits an aggravated misdemeanor.
6. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in the death of any person commits a class "D" felony.

Issue and Remedy: This section leaves out a penalty for 18, 19 or 20 year olds who provide alcohol to persons under legal age, instead treating them the same as those who merely possess alcohol (a simple misdemeanor). This has caused confusion for law enforcement officers and could be remedied by changing subsections 4, 5 and 6 to include all persons age 18 or over.

I would also note that we proposed a bill (SF375) during the last legislative season, at the request of Senator Hancock, that clarified that the use of PBT results in prosecutions for underage drinking was allowed. I believe the bill would be an appropriate addition to the revision of Chapter 123 and would provide an effective tool for curbing underage drinking at large parties, a job made more difficult by *In re W.B.*, 641 N.W.2d 543 (Iowa Ct. App. 2001).

§ 123.49. Miscellaneous prohibitions

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

    a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.
    b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

    a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or

permit.
b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of eight a.m. on Sunday and two a.m. on the following Monday.
c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.
d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.
e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.
f. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.
g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.
h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.
i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.
j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.
k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday

and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of eight a.m. on Sunday and two a.m. on the following Monday.
l. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

No Issues.

§ 123.50. Criminal and civil penalties

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph "h", or who fails to affix upon sale, defaces, or fails to record a keg identification sticker or produce a record of keg identification stickers pursuant to section 123.138, shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph "h", commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2.

No Issues.

§ 123.59. Bootlegging

Any person who, acting individually, or through another acting for the person, keeps or carries on the person, or in a vehicle, or leaves in a place for another to secure, any alcoholic liquor, wine, or beer, with intent to sell or dispense the liquor, wine, or beer, by gift or otherwise in violation of law, or who, within this state, in any manner, directly or indirectly, solicits, takes, or accepts an order for the purchase, sale, shipment, or delivery of alcoholic liquor, wine, or beer in violation of law, or aids in the delivery and distribution of alcoholic liquor, wine, or beer so ordered or shipped, or who in any manner procures for, sells, or gives alcoholic liquor, wine, or beer to a person under legal age, for any purpose except as authorized and permitted in this chapter, is a bootlegger and subject to the general penalties provided by this chapter.

No Issues.

§ 123.90. Penalties generally

Unless other penalties are herein provided, any person, except a person under legal age, who violates any of the provisions of this chapter, or who makes a false statement concerning any material fact in submitting an application for a permit or license, shall be guilty of a serious misdemeanor. Any person under legal age who violates any of the provisions of this chapter shall upon conviction be guilty of a simple misdemeanor.

This section makes a violation of any provision of the chapter, not otherwise specified, a simple misdemeanor and applies to many sections not discussed in this memorandum. Those sections generally involve the violation of licensing provisions and are most commonly handled as civil infractions. I do not believe any changes in these sections are necessary.

§ 123.91. Second and subsequent conviction

Any person who has been convicted, in a criminal action, in any court of record, of a violation of a provision of this chapter, a provision of the prior laws of this state relating to intoxicating liquors, wine, or beer which was in force prior to the enactment of this chapter, or a provision of the laws of the United States or of any other state relating to intoxicating liquors, wine, or beer, and who is thereafter convicted of a subsequent criminal offense against any provision of this chapter is guilty of the following offenses:

1. For the second conviction, a serious misdemeanor.
2. For the third and each subsequent conviction, an aggravated misdemeanor.

No Issues.

There are many acts in Chapter 123 which are defined as simple misdemeanor offenses. cf. §§ 123.99, 123.104. I have only highlighted those sections that directly address criminal acts and should be addressed in a redraft.

As a final note on §123.47, in further support of my proposal that we change the age for criminalizing providing alcohol to underage drinkers, I would note that Chapter 123 was not included in the 1978 revision. I suspect that the inconsistency in treating adults ages 18, 19 and 20 who provide alcohol to underage drinkers differently from those 21 and over arises from a time when the age of majority and the drinking age were the same.

§ 705.1. Solicitation

Any person who commands, entreats, or otherwise attempts to persuade another to commit a particular felony or aggravated misdemeanor, with the intent that such act be done and under circumstances which corroborates that intent by clear and convincing evidence, solicits such other to commit that felony or aggravated misdemeanor. One who solicits another to commit a felony of any class commits a class "D" felony. One who solicits another to commit an aggravated misdemeanor commits an aggravated misdemeanor.

§ 705.2. Renunciation

It is a defense to a prosecution for solicitation that the defendant, after soliciting another person to commit a felony or aggravated misdemeanor, persuaded the person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the defendant's criminal intent. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by (a) the person's belief the circumstances exist which increase the possibility of detection or apprehension of the defendant or another or which makes more difficult the consummation of the offense or (b) the person's decision to postpone the offense until another time or to substitute another victim or another but similar objective.

§ 706.1. Conspiracy

1. A person commits conspiracy with another if, with the intent to promote or facilitate the commission of a crime which is an aggravated misdemeanor or felony, the person does either of the following:

   a. Agrees with another that they or one or more of them will engage in conduct constituting the crime or an attempt or solicitation to commit the crime.

   b. Agrees to aid another in the planning or commission of the crime or of an attempt or solicitation to commit the crime.

2. It is not necessary for the conspirator to know the identity of each and every conspirator.
3. A person shall not be convicted of conspiracy unless it is alleged and proven that at least one conspirator committed an overt act evidencing a design to accomplish the purpose of the conspiracy by criminal means.
4. A person shall not be convicted of conspiracy if the only other person or persons involved in the conspiracy were acting at the behest of or as agents of a law enforcement agency in an investigation of the criminal activity alleged at the time of the formation of the conspiracy.

§ 706.2. Locus of conspiracy

A person commits a conspiracy in any county where the person is physically present when the person makes such agreement or combination, and in any county where the person with whom the person makes such agreement or combination is physically present at such time, whether or not any of the other conspirators are also present in that county or in this state, and in any county in which any criminal act is done by any person pursuant to the conspiracy, whether or not the person is or has ever been present in such county; provided, that a person may not be prosecuted more than once for a conspiracy based on the same agreement or combination.

§ 706.3. Penalties

A person who commits a conspiracy to commit a forcible felony is guilty of a class "C" felony. A person who commits a conspiracy to commit a felony, other than a forcible felony, is guilty of a class "D" felony. A person who commits a conspiracy to commit a misdemeanor is guilty of a misdemeanor of the same class.

§ 706.4. Multiple convictions

A conspiracy to commit a public offense is an offense separate and distinct from any public offense which might be committed pursuant to such conspiracy. A person may not be convicted and sentenced for both the conspiracy and for the public offense.

Chapter 124

Legislature adopted the Uniform Controlled Substances Act of 1994 with minor revisions (such as adding "electronic prescription" and "facsimile prescription" to definition section).

Therefore hard to suggest changes because the adoption of the uniform act designed for uniformity among the states. "When considering the meaning of chapter 124, we shall construe it with an eye toward uniform application among the several states that have adopted the Uniform Controlled Substance Act." *State v. Rogers,* 560 N.W.2d 585 (Iowa 1997).

Looks like we have tinkered with it, though. Under section 124.411, we can enhance up to three times the term, but uniform says two times for second or subsequent offenses. *See State v. Rogers,* 560 N.W.2d 585, 587 (Iowa 1997).

Suggestions for tinkering:

1. Amending 124.411 (2) to change language "an offense is considered a second or subsequent offense, <u>if prior to the person's having been convicted of the offense, the offender has ever been convicted under this chapter..."</u>

Could add language "Each previous violation shall be considered a separate previous offense without regard to whether each was complete as to commission and conviction or deferral of judgment following or prior to any other previous conviction."

This could "fix" (if we think it is a problem) raised in *State v. Freeman,* 705 N.W.2d 286 (Iowa 2005) (finding each offense must be complete as to conviction and sentencing before it qualifies as an enhancement).

2. Drug offenses have various sentencing permutations scattered throughout the code. We could put them all under chapter 124 to help courts find them. For example:

901.5(10) requires court to revoke driving privileges for certain enumerated drug offenses under chapter 124.

901.5(11) and (12) require the denial of certain federal benefits for offenses under chapter 124.

901.10 allows the court to reduce a drug offender's sentence if first offense, mitigating circumstances exist, or defendant pleads guilty and cooperates with the State.

911.2 and 911.3 requires the court to impose additional surcharges to chapter 124 offenses.

811.2(e) requires those charged with chapter 124 offenses to submit to substance abuse evaluations and random drug tests prior to being released on bail.

232.45(14) states that mandatory minimum of section 124.413 does not apply to juvenile offender but must serve 30 days in a secure facility.

3. Some (Kevin) have questioned whether the "conspire with" language in section 124.401(1) is necessary in light of the fact that section 706.1 defines it and the Court uses the language in section 706.1 anyway. *See State v. Corsi,* 686 N.W.2d 215 (Iowa 2004). (The "conspires with" language is also in section 124.401D). The language in the uniform act does not have this language.

To: Mary Tabor
From: Jean Pettinger
Date: October 26, 2007
Re: Iowa Code chapter 321J

The provisions of Iowa Code chapter 321J have been enacted at various times and have been frequently amended, leading to some inconsistency and confusion. The chapter is not included in the criminal code, probably because it also includes license revocation provisions. The following comments include many ideas from Pete Grady.

321J.1 - Definitions. The definition of "serious injury" in this section differs from that set forth in section 702.18 (but it is similar to the definition of "bodily injury" set forth in that section). For the sake of consistency, perhaps the definition should be changed.

The terms "violation" and "offense" are used throughout the chapter, which is both a criminal statute and an administrative licensing statute. Perhaps "offense" should refer to a criminal charge, while "violation" should mean a license revocation.

321J.1A - Drunk driving public education campaign - pamphlets. Perhaps should change "drunk driving" and "driving drunk" to reflect more accurately the elements of the 321J.2 offense.

321J.2 - Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .08 or more (OWI). Perhaps the title of this section should be changed to include "or while any amount of a controlled substance is present in the person."

321J.2(1) - Change language in introductory part to "operating while under the influence?"

321J.2(4) - Clarify whether deferred judgments or out of state convictions that are over 12 years old count as prior offense. Set forth that juvenile adjudications count as prior offense (*see* section 321.213).

321J.2(7) (a), (b) - Combine the two paragraphs and tighten language for clarity. Currently looks like section sets forth two separate defenses.

321J.2(8) - The 2-hour period for the presumption is different that the 2-hour period within which the test must be offered to trigger license revocation (321J.6(2)) - this is confusing. Perhaps the 2 hours should begin at the same time for both criminal and license revocation purposes.

321J.2A - Persons under the age of twenty-one. This is a license revocation provision, but the 2-hour period tracks the language of the presumption set forth in 321J.2(8) rather than the language in 321J.6(2). Again, perhaps the same 2-hour period should be used for both criminal and license revocation purposes.

321J.3 - Substance abuse evaluation or treatment - rules. [Pete Grady: "This whole section should be examined to determine whether it unnecessarily confuses/duplicates information in the substance abuse chapter in the Code (chapter 125). Some of the requirements of the section (a substance abuse evaluation for all OWI offenders) could be placed in section 321J.2, as could any requirement of treatment at the time of sentencing. The main concern is whether, given the ability to 'commit' a person for substance abuse under chapter 125, any placement under chapter 321J.2 is properly called a commitment, and what the funding mechanism would be for such a placement/commitment. It would be helpful to seek a review of this section by substance abuse providers as well as by the department of corrections (which has the treatment facility/community based treatment programs for second and third offenders)."]

321J.6 - Implied consent to test.

321J.6(2) - See 2-hour problem mentioned in connection with 321J.2(8). Does this section preclude testing pursuant to warrants (other than testing of dead or unconscious persons (321J.7) and persons involved in traffic accident reasonably likely to cause death (321J.10))? Section 321J.6(2) states that if officer fails to offer test within 2 hours after PBT or arrest, "a test is not required." Does this mean that if subject refuses test, officer cannot get warrant? *State v. Stanford*, 474 N.W.2d 573 (Iowa 1991) and *State v. Hitchens*, 294 N.W.2d 686 (Iowa 1980) point to that conclusion.

321J.6(3) - Perhaps "reasonable grounds" language should be removed to avoid suggestion that officer must have an independent justification for second test.

321J.10 - Tests pursuant to warrants. Clarify that no 2-hour limit applies to obtaining test (see section 321J.6(2) - if test not offered within 2 hours, no test required).

321J.10A - Blood, breath, or urine specimen withdrawal without a warrant. What would constitute an emergency? Dissipation of alcohol?

321J.11 - Taking sample for test. Re: obtaining an independent test as set forth in 2nd paragraph - is the remedy for a violation of this statutory right exclusion of State's test results? Iowa Supreme Court applied that remedy in *State v. Moorehead*, 699 N.W.2d 667 (Iowa 2005). What does "failure or inability" to obtain an independent test mean?

321J.15 - Evidence in any action. The last sentence (limiting foundational requirements to (1) certified operator; (2) device intended to determine alcohol concentration; and (3) use of methods approved by commissioner of public safety, is essential to arguing against the many attacks on the Datamaster device that have cropped up. This sentence must stay.

321J.20 - Temporary restricted license. What is the penalty for operating contrary to the terms of a temporary restricted license? Would that act be treated as driving under revocation?

804.20 - Communications by arrested persons. Although this statute is not part of chapter 321J, it has been an issue in numerous OWI cases. The provision does not provide for exclusion of the State's test results or defendant's statements as a remedy for a violation of the statutory right, but the Iowa Supreme Court applied that remedy in *State v. Moorehead*, 699 N.W.2d 667 (Iowa 2005), even though no constitutional violation had occurred. Does the last sentence in the statute - "A violation of this section shall constitute a simple misdemeanor." - indicate that no other remedy should be applied? This needs clarification.

Chapter 453B

The drug tax stamp statute is too boring to read to suggest any changes (just kidding).

1. If we disagree with the result in *State v. Carter,* 733 N.W.2d 333 (Iowa 2007), we could change the "jeopardy assessment" procedures in 453B.9. In *Carter,* the Supreme Court found that 453B.9 would be unconstitutional if no showing is made that the assessment is actually "in jeopardy" and if no showing is made of reasonable legislative or administrative standards for conducting the search.

We could change the language of 453B.9 to mirror what Georgia Code 48-2-51 has done:

"If the commissioner reasonably finds that a taxpayer gives evidence of intention to leave the state, to remove his property from the state, to conceal himself or his property, to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffective proceedings to compute, assess, or collect any tax, whereby it becomes advisable that such proceedings be brought without delay..."

This would offer some standards as to why the tax stamp assessment is in "jeopardy", rather than just leaving it up to the total discretion of the director.

2. In *State v. Martens,* 569 N.W.2d 482 (Iowa 1997) the Supreme Court found that section 453B.1(3)(b) requiring a "dealer" to possess 42 and ½ grams of marijuana does not include the weight of the marijuana stalks. If we thought this was a problem, we could amend the statute to make clear that the stalk is included in the weight, as we argued in *Martens.*

Chapter 692A – Sex Offender Registry and Residency Restrictions

I. Adam Walsh compliance

This chapter maybe the subject of significant revisions in light of the federal Adam Walsh legislation. The Department of Public Safety is considering what proposals may be necessary to come in compliance with the federal guidelines.

II Registration Requirements

The registration requirement provisions are confusing when it comes to the division of authority between the district court and the department of correctional services in conjunction with the department of public safety. This is especially true when the offense arguably falls into one of the catch-all categories at section 692A.1(5)(c) and (g). *See Kruse v. Iowa District Court for Howard County*, 712 N.W.2d 695 (Iowa 2006).

Application of the registration requirements to juvenile offenders also has proved vexing. Section 692A.2(6) provides little guidance on what basis a juvenile court should place a delinquent offender on the registry or why such an order may be modified. The Court of Appeals recently decided that juvenile courts retain jurisdiction to remove offenders fro the registry even after they are older than 18 years without any basis for that decision in the statutory language. *In the interest of B.A.*, 737 N.W.2d 665 (Iowa Ct. App. 2007).

III. Residency Restrictions

Where to start? Despite being upheld as constitutional, section 692A.2A has been roundly criticized as difficult to enforce and ineffective. Even if the provision is not repealed, many interpretation difficulties could be addressed. County attorneys have pointed out the following interpretation difficulties: (1) does "person" in definition refer to someone who has committed any offense sect forth in section 692A.1 or just offenses against minors; (2) "committed" vs. "convicted" language, does there have to be a prior conviction or adjudication? (3) how is distance measured; (4) how should the grandfather exemptions apply? (5) Does enhanced penalty in section 692A.7 apply to multiple residency restriction violations? These are just some of the questions which should be clarified.

MEMORANDUM

TO: Mary Tabor
FROM: Sharon Hall
DATE: October 23, 2007
RE: NOTES—CRIMINAL CODE REORGANIZATION
(following the format of the 10 questions posed except for chapters 701 & 702)

CHAPTER 701 GENERAL CRIMINAL LAW PROVISIONS

*No specific case law problems found.

*The inclusion of Section 701.11 (evidence of similar offenses in sexual abuse cases) in Chapter 701 seems strange because it is a specific evidentiary rule. It would more logically fit in Chapter 709 (sexual abuse).

*Section 701.11 was added to the Code in 2003 and there are no published opinions applying this provision: State v. Paulson, (Iowa Ct. App. 2/14/07); State v. Reyes, (Iowa Ct. App. 12/13/06); State v. Roby, (Iowa Ct. App. 9/21/06); State v. Green, (Iowa Ct. App. 7/13/05).

*No comparable provisions in the Model Penal Code except Section 6.01 of the MPC provides for three levels of felonies designated as 1st, 2nd, and 3rd. See Iowa Code Section 701.7.

CHAPTER 702 DEFINITIONS

*No specific case law problems found. Sections 702.1A (computer terminology) and 702.20A (video rental property) were added in 2000 but there have been no decisions involving those statutes.

*Section 702.6 (controlled substances) appears unnecessary because it simply points to chapter 124 and Section 124.101(5) defines controlled substances for purposes of that chapter. There are no decisions involving section 702.6.

*Section 702.19 (steal means take by theft) also appears unnecessary because theft is defined in section 714.1. The last decision citing 702.19 was in 1981.

*The **Model Penal Code** does not have a chapter of definitions similar to Iowa Code section 702. It appears most definitions are found within the relevant chapters/sections. I did not find any provisions dealing with computer related offenses.
For example: (see attachments)
*Section 702.10 defines "dwelling" more broadly than MPC § 3.11(3).
*MPC § 210.0 sets forth definitions for criminal homicide including "serious bodily injury" and "deadly weapon" which are similar to Sections 702.7 (dangerous weapon) and 702.18 (serious injury).

*MPC § 213.0 sets forth definitions for sex offenses. The MPC definition for "sexual intercourse" is much narrower than a "sex act" under Section 702.17.

*MPC § 221.0 sets forth definitions for burglary and other criminal intrusions. The MPC definition for "occupied structure" is essentially the same as Section 702.12.

*MPC § 223.0 sets forth definitions for theft and related offenses. The MPC definition of "property" differs from Section 702.14.

CHAPTER 723 PUBLIC DISORDER

1. Problem case law: Disorderly Conduct with respect to use of the US flag---**723.4(6)**.
March 2007--Federal district court in Southern District of Iowa held that phrase "show disrespect" renders statute void for vagueness and facially unconstitutional under the Fourteenth Amendment. Roe v. Milligan, 479 F. Supp.2d 995 (S.D. Iowa 2007). [Court made same holding as to phrase "cast contempt upon" in section 718A.1]. No appeal found.
2007 Iowa Legislature amended statute to prohibit using flag to "show disrespect" with the intent that "such use will provoke or encourage another to commit trespass or assault." (See attached). Thus, same phrase remains in statute BUT the Legislature added definitions which include further definitions for "show disrespect".

No problems discussed in decisions addressing sections 723.4(3) or 723.4(4): State v. Allen, 2000 WL 703009 (Iowa Ct. App. 5/31/00) (sufficiency of evidence–use of abusive epithet or threatening gesture likely to provoke violent act).
State v. Hardin, 498 N.W.2d 677 (Iowa 1993) (rejecting 1st Amendment challenge to section relating to disturbing lawful assembly or meeting—president's political speech).

2. Duplication: Chapter 718A.1 deals with Desecration of Flag or Other Insignia which is similar to section 723.4(6).

3. See note 1 above concerning section 723.4(6).

4. Intent element: I questioned whether section 723.1 (Riot) is clearly stated but a 1979 decision upheld provision against overbreadth, presumption, and vagueness challenges. Williams v. Osmundson, 281 N.W.2d 622 (Iowa 1979).

5. New section 723.5 added in 2006—prohibiting disorderly conduct at funerals and memorial services----provides for increased penalties for multiple offenses. Section does not jump ahead of others but covers a specific type of disruption.

6. No.

7. None other than similarities in section 718A.1.

CHAPTER 723, continued

8. Model Penal Code: Article 250 covers Riot, Disorderly Conduct, and Related Offenses. (See attached).

250.1 Riot and Failure to Disperse—in general more detailed than sections 723.1 and 723.3.

250.2 Disorderly Conduct—differs in several respects from section 723.4(subsections 1-3).

250.3 False Public Alarms—similar to section 723.4(5).

250.7 Obstruction Hwys and other Public Passages—similar to section 723.4(7).

250.8 Disrupting Meeting and Processions—similar to 723.4(4).

9. Organization acceptable.

10. None found.

CHAPTER 723A CRIMINAL STREET GANGS

1. No problem case law found.

Cases discussing offenses include:

In the Interest of C.T., 521 N.W.2d 754 (Iowa 1994).
State v. Lewis, 514 N.W.2d 63 (Iowa 1994) (jury instructions found proper).
State v. Walker, 506 N.W.2d 430 (Iowa 1993) (not vague or overbroad).

2. None found.

3. Language reasonable and/or sufficiently defined.

4. Intent elements clear.

5. None found.

6. ?? Gang recruitment under section 723A.3 criminalizes the act of recruitment of a minor to join a criminal street gang. No case law found—added to Code in 1995.

7. Chapter provides own definitions.

8. No equivalent Model Penal Code provisions.

9. Organization acceptable.

10. None found.

CHAPTER 729 INFRINGEMENT OF INDIVIDUAL RIGHTS

1. No relevant case law found.

2. ??Some duplication as to subject matter—criminal versus civil issues:
See generally Iowa Civil Rights Act in Chapter 216—prohibits various discriminatory practices.
*Section 729.1-.2 criminalizes use of religion in connection with public employment matters.
*Section 729.4 criminalizes violations of "fair employment practices"----while section 216.6 provides civil remedies for unfair employment practices and is broader in scope.
*Section 729.5 criminalizes certain violations as to the exercise of constitutional rights which result in physical injury, property damage, and/or assault.

3. Language clear.

4. Intent elements clear.

5. Genetic testing under section 729.6 was added in 1992 but there is no case law involving this statute—and it provides only for civil remedies, not criminal, for unlawful use of such testing in connection with employment, membership, and licensure matters. Also, minor wording change in 2007.

6. ??Simple misdemeanor for use of "religious test" in certain employment matters under sections 729.1-729.3.

7. The scope of sections 216.6 and 729.4 differ. (Also, the scope of section 729A.2 differs).

8. Nothing comparable found in Model Penal Code.

9. This chapter contains an odd mix of provisions and one statute, section 729.6 (genetic testing) which carries no criminal penalty. See note 2 above.

10. None found.

CHAPTER 729A VIOLATION OF INDIVIDUAL RIGHTS–HATE CRIMES

1. No problem case law found.

2. Section 729A.2 works in conjunction with specific statutes to enhance level of

punishment—Assault under section 708.2C, Arson under section 712.9, Criminal Mischief under section 716.6A, and Trespass under section 716.8(3-4). Section 729A.5 also provides for civil remedies for violations of chapter 729A.

CHAPTER 729A, continued

3. Language clear.

4. Intent clear.

5. Chapter 729A was last amended in 1992—nothing newer.

6. No.

7. No.

8. Nothing comparable found in Model Penal Code.

9. Organization reasonable.

10. None found.

CHAPTER 703 – PARTIES TO CRIME

§ 703.1 – Aiding and abetting

Perhaps §§ 703.1 and 703.2 should be run together, as follows:

1. All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense, or aid and abet its commission, or participate in joint criminal conduct in the furtherance of which the public offense is committed, shall be charged, tried, and punished as principals.
2. A person who lends countenance or approval to the commission of an offense, either by active participation or by encouraging it in some manner, either prior to its commission or at the time of its commission, is an aider and abettor. (From Yeager & Carlson, § 62, at 18, slightly modified.)
3. A person who, in concert with one or more others, directly commits or aids and abets the commission of a public offense, is a participant in joint criminal conduct. Such a person is responsible for any additional act committed by the other participant or participants in furtherance of the commission of the public offense or the escape therefrom, provided that the person could reasonably foresee that the additional act would be committed in furtherance of the commission of the public offense. (From § 703.2, modified and with the clause "and that person's guilt will be the same as that of the person so acting" deleted as duplicative of suggested paragraph (1); "reasonable foreseeability" element rewritten to express the element positively rather than negatively, following *State v. Smith,* 2007 WL 2554807 (Iowa Sept. 7, 2007).)

In any event, the section should include a definition of "aiding and abetting," *e.g.,* "Aiding and abetting means lending countenance or approval to the commission of an offense, either by active participation or by encouraging it in some manner, either prior to its commission or at the time of its commission." (From Yeager & Carlson, § 62, at 18, slightly modified.)

The second sentence of the existing section should be deleted. It may well be a true statement of the law, but it does not add anything to the description of the prohibited conduct, and covers matter which is more appropriately covered in a jury instruction.

§ 703.2 – Joint criminal conduct

Suggested paragraph (3) above may define the concept a bit more clearly than the existing language.

In *State v. Smith,* 2007 WL 2554807 (Iowa Sept. 7, 2007), the Iowa Supreme Court formulated the elements of the concept as follows:

1. Defendant must be acting in concert with another.
2. Defendant must knowingly be participating in a public offense.
3. A "different crime" must be committed by another participant in furtherance of the defendant's offense.

4. The commission of the different crime must be reasonably foreseen.

The court rejected existing Iowa Criminal Jury Instruction 200.7, required courts instructing on joint criminal conduct to "incorporate the elements of joint criminal conduct as set forth in this opinion," and "also instruct the jury on the separate public offense supporting a theory of joint criminal conduct."

§ 703.3 – Accessory after the fact

§ 703.4 – Responsibility of employers

No reported cases in almost thirty years. However, Yeager & Carlson, § 65, at 19-20, point out that this section reaches some conduct which is not within the scope of §§ 703.1 or 703.2.

§ 703.5 – Liability of corporations, partnerships, and voluntary associations

MEMO TO: MARY TABOR

FROM :RICHARD BENNETT

DATE: OCTOBER 25, 2007

RE: CRIMINAL CODE REORGANIZATION – CHAPTER 704 (JUSTIFICATION)

CHAPTER 704 – JUSTIFICATION

1. Is there any case law that points to problems with a particular code section?

Case law reflects a possible problem regarding section 704.1, which defines the terms "reasonable force." Those terms appear in the following provisions of chapter 704: defense of self or another (704.3); defense of property (704.4); aiding another in the defense of property (704.5); resisting forcible felony (704.7); and escape from place of confinement (704.8). "Reasonable force"is defined, in part, as follows: "that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another....." (Emphasis supplied).

Iowa case law has long applied a different formulation of reasonable force when deadly force is used : to use deadly force, a person must reasonably believe he or she is in imminent danger of death or great bodily harm. *See, e.g., State v. Benham*, 23 Iowa 154, 1867 WL 291, *3-4 (1867); *State v. Johnson*, 223 Iowa 962, 274 N.W. 41, 44 (1937); *State v. Badgett*, 167 N.W. 2d 689, 683 (Iowa 1969). Relying on *State v. Badgett*, in 2000 the Court of Appeals noted this formulation for reasonable use of deadly force (but also cited the statutory definition of reasonable force contained in section 704.1). *State v. Weatherspoon*, 2000 WL 328056, * 2 (Iowa Ct. App. 2000). One of the uniform jury instructions for the justification defense refers to imminent danger of death or injury (not necessarily great bodily harm). Iowa Criminal Jury Instruction 400.2 (Justification – Elements – Self-Defense of Person) (2007).

The emphasized statutory language above regarding "injury or risk to one's ... safety" connotes a broader test, possibly encompassing an injury less serious than great bodily harm. A 1995 decision of the Iowa Supreme Court suggests mischief could possibly flow from this broad language. In *State v. Stallings*, 541 N.W. 2d 855 (Iowa 1995), the Court revesed a willful injury conviction and remanded the case for a new trial because of instructional error related to self-defense. Although the victim lived, the defendant used deadly force when he shot the victim in the chest. The defendant requested the district court issue a jury instruction which included section 704.1's reference to force "necessary to avoid injury or risk to one's life or safety." The trial prosecutor successfully objected that such an instruction would be misleading, as it would appear "'to allow people to use deadly force simply to avoid a punch in the mouth or a scratch on the hand or something like that." *Id.* at 858. The Court correctly noted in *Stallings* that the defendant's request was patterned after a uniform jury instruction. *Id.* A current uniform

instruction also includes a reference to "risk to one's...safety" when defining "reasonable force." Iowa Criminal Jury Instruction 400.1 (Justification – Definition – Reasonable Force – Burden of Proof) (2007). The *Stallings* Court held the trial court erred when it refused the defense request to instruct the jury that "the use of deadly force is reasonable 'if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety.'" *Id.* (Emphasis supplied). The Court concluded: "A complete instruction on reasonable force is essential for a complete statement of the law." *Id.*

It seems to me that the statutory reference to "injury or risk" to one's "safety" is too broad, and is inconsistent with the appropriate narrow grounds for use of deadly force, as has been commonly understood for many years. It might be used to try to justify the use of disproportionate force, which would not be truly reasonable force.

2. Do the prohibitions in this chapter duplicate or overlap with crimes set out elswhere in the code?

Chapter 704 is limited to defenses, so there is no overlap with crimes elswhere in the code. I am unaware of any other portions of the code which duplicate the provisions of this chapter.

3. Do the code sections use plain language? Do they effectively communicate to a lay person what conduct is prohibited?

I think so.

4. Is the criminal intent required to prove each crime clear and consistent?

Because there are no crimes set forth in this chapter, there is no issue regarding adequacy of criminal intent to prove a particular crime. Aside from the matter discussed in Question 1, *supra.*, insofar as concepts of intent or other mental states are used in setting forth the defenses in this chapter, they appear to be clear and consistent, where consistency is to be expected.

5. Have any newer provisions jumped ahead of older crimes in the grading of the offenses?

This question is inapplicable because this chapter does not contain crimes.

6. Do any provisions criminalize trivial and non-dangerous conduct?

Because this chapter does not contain crimes, the question as stated has no application. However, the opposite import of the question may be implicated. As set forth in Question 1, *supra.*, broad language in the definition of "reasonable force" might be cited to justify use of disproportionate force.

7. Are any critical terms undefined or defined inconsistently with the rest of the criminal code?

I do not believe any critical terms are undefined, and am unaware of any inconsistency with

the rest of the criminal code.

8. How do the definitions compare to ALI's Model Penal Code?

Although the basic concepts contained in chapter 704 are, essentilly contained in the Model Penal Code, its justification sections are written *very differently* and do not, I believe, offer a model for change.

9. Does the organizational structure of the chapter make sense, *i.e.*, its location in the criminal code and the internal organization (most serious to least serious)?

Yes.

10. Are there any case law definitions or explanatory language that should be incorporated into the statute itself?

In view of my answer to Question 1, *supra.*, I believe that portion of section 704.1's definitition of "reasonable force" which concerns deadly force should be reworked to make clear that such force is only allowed when reasonable to avoid imminent danger or threat of death or serious injury. This would be consistent, I believe, with the cases discussed in my answer to Question 1, *supra,* although the terms "great bodily harm" are used instead of "serious injury." Use of the terms "serious injury" would be consistent with its use in other portions of chapter 704 regarding the definition of "deadly force" and use of dispropotionate force. Sections 704.2(1) and (2) and 704.6(3)(a). Furthermore, the terms "serious injury" are defined by statute. Section 702.18.

From Elisabeth

§ 705.1. Solicitation

Any person who commands, entreats, or otherwise attempts to persuade another to commit a particular felony or aggravated misdemeanor, with the intent that such act be done and under circumstances which corroborates that intent by clear and convincing evidence, solicits such other to commit that felony or aggravated misdemeanor. One who solicits another to commit a felony of any class commits a class "D" felony. One who solicits another to commit an aggravated misdemeanor commits an aggravated misdemeanor.

The crime of solicitation was created in the 1978 revision. The statute is modeled after the Model Penal Code but is slightly different in that the MPC uses the language "commands, encourages or requests" rather than "commands, entreats, or otherwise attempts to persuade". MPC 5.02. It certainly could be argued that the MPC uses language more easily understandable by the jury. The new crime has resulted in relatively few cases since inception. The do not appear to be any issues that need to be addressed with respect to Chapter 705.

On a related note, Iowa Code §704.11 provides protection for a police officer engaged in undercover activity. However, law enforcement officers are only protected if the officer was not "an instigator of the criminal activity." This leaves officers potentially guilty of solicitation in undercover drug buys. Removal of this language may be appropriate.

§ 706.1. Conspiracy

1. A person commits conspiracy with another if, with the intent to promote or facilitate the commission of a crime which is an aggravated misdemeanor or felony, the person does either of the following:

a. Agrees with another that they or one or more of them will engage in conduct constituting the crime or an attempt or solicitation to commit the crime.
b. Agrees to aid another in the planning or commission of the crime or of an attempt or solicitation to commit the crime.

2. It is not necessary for the conspirator to know the identity of each and every conspirator.
3. A person shall not be convicted of conspiracy unless it is alleged and proven that at least one conspirator committed an overt act evidencing a design to accomplish the purpose of the conspiracy by criminal means.
4. A person shall not be convicted of conspiracy if the only other person or persons involved in the conspiracy were acting at the behest of or as agents of a law enforcement agency in an investigation of the criminal activity alleged at the time of the formation of the conspiracy.

The conspiracy statute was rewritten in 1987. The 1978 revision did not follow the Model Penal Code. Though it does not follow the Model Penal Code verbatim, the 1987 revision clarified many of the issues that arose following the 1978 rewrite. The only issue with this section may be the duplication found in Iowa Code §124.401. This duplication does not appear to have caused any problems in analysis or application. The definition of conspiracy as contained in §706.1 is merely used in the jury instructions when a defendant is charged with conspiracy under §124.401.

On this issue of sentencing, §706.3 is inconsistent with respect to its potential treatment of conspiracy to commit a class "D" forcible felony more harshly than the underlying felony.

I would agree with the suggestion made at the meeting that the committee consider repealing joint criminal conduct, leaving conspiracy as the more understandable alternative.

From Kevin

707

Overall, Iowa's statute seems less complicated than other states, especially those with capital crimes and those with greater number of felony offense levels.

With the exception of the *Ragland, Beaman, Heemstra* line of cases the challenge to the other subdivisions of the murder chapter have not been plentiful. Still the statute is subject to many of the criticisms the Model Penal Code attempted to resolve.

For instance, the crimes of first and second degree murder retain elements that were defined in the common law and held over after the last code revision. Most modern code provisions eliminate the need for archaic and dense words like premeditation, deliberation, and malice aforethought. The confusion between those elements is somewhat apparent in *State v. Reeves.* The argument against these terms is they are not readily understood by the lay person thick elements of the murder and the distinction between them when defined is not great. The Model Penal Code eliminates them as elements entirely. Murder is simply purposefully and knowingly causing the death of another. It is then classified as a felony in the first degree.

Alternatives for murder include recklessly causing the death of another under circumstances manifesting an extreme indifference to the value of human life, which is presumed if the death occurs while the defendant is engaged in or an accomplice to enumerated felonies. It appears the advantage to this statute is the elimination of a special class of victim, that is, children, and applies this special mental state to the killing of any person. It also creates a felony murder rule that is more readily understood. Most commentators agree that a felony murder rule should enumerate the felonies that qualify for such treatment. Curiously, though one of the purposes of the Model Penal Code was to eliminate difficult terms and provide clearer definitions "extreme indifference to the value of human life" is not defined. Perhaps its presumption provision provide examples that are sufficient to guide the court and juries. Conduct, at least as egregious as serious felonies is required.

Some states have opted out of the Model Penal Code approach slightly choosing to have a traditional felony murder provision (without extreme indifference) either has murder in the first or second degree but always with enumerated felonies. Others also retain the extreme indifferent alternative (again frequently as second degree murder) but limit that alternative to children under 16. Arguably creating special categories of victims simply unnecessarily increases the number of alternative crimes, crimes that are largely unneeded and create incentives to adopt new and special classes with each interest group and notorious incident.

Murder in the second degree is nonexistent in the model penal code. Two primary reasons are suggested for its absence. First, second degree murder is a crime without elements. In other words, it is really only a compromise verdict and case law has had to create elements that are not enumerated in the code. Uncodified elements are discouraged by must critics of criminal codes. Secondly, the penalty structure for first degree felonies permits a sentence of not less than ten nor

more than life. Presumably, discretion is then left to the court as to what sentence to impose in light of mitigating and aggravating factors.

Manslaughter is then the next level of offense downward from murder in the Model Penal Code. It is either a reckless killing or a purposeful and knowing killing committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. An advantage here is that the requirement of provocation is eliminated thereby ultimately relieving the state of proving the negative, that is, the lack of serious provocation. The statute seems to combine the traditional defenses of diminished capacity and sudden passion. Opposition is likely because traditionally the courts have refused to reduce murder to manslaughter on diminished capacity defenses and prosecutors would likely be unsatisfied with the gap in penalty between murder and manslaughter. On the other hand reckless killing under a manslaughter statute would increase the penalty now imposed for the present involuntary manslaughter offenses. In other words, a trade off is present.

Involuntary manslaughter has been replaced in the Model Penal Code by negligent homicide. It is simply causing the death of another through negligence. It is a much broader category of potential offenses than involuntary manslaughter. Additionally, arguably involuntary manslaughter has become a compromise plea opportunity to people charged with homicide by vehicle. Involuntary manslaughter convictions outside the context of vehicle cases seem to be mostly lesser included verdicts. Eliminating it would also resolve the distinction between reckless acts and reckless code violations which can result in anomalous verdicts. It does create the specter of criminalizing accidents. If involuntary manslaughter is retained, in the very least, the code should add the language from case law incorporating a reckless element to the public offense alternative.

Additionally, the Model Penal Code approach could effectively work with the court's current concern about dropping the labels specific and general intent. The Model Penal Code theorized at its drafting that simply proving the elements of the offense without attaching unnecessary labels.

Homicide by vehicle does not exist in the Model Penal Code. The commentary to the code takes the position that homicides by vehicle should fall below manslaughters on the punishment scale and its basic premise that specialized statutes are rarely needed. This crime was routinely charged as involuntary manslaughter before the passage of the homicide by vehicle provision in 1986. There is much to suggest a return to the more simplified provisions in the Model Penal Code. Reckless and negligent homicide provisions would likely cover all the same ground. Arguably, the negligent homicide provision would gather up substantial conduct that is now either not prosecuted or results in acquittals. Further, in a traditional retributive and rehabilitative criminal justice system, the penalties for conduct that was not intended to kill should be less in most instances than the penalties for conduct that was not intended to kill.

Iowa Code Chapter 708 – Assault Crimes

I. General or Specific Intent Conundrum

Iowa law defines assault in three ways:

> 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.

Iowa Code § 708.1

For two decades, the Iowa courts interpreted these definitions of assault as general intent crimes. *See State v. Brown*, 376 N.W.2d 910, 913 (Iowa Ct. App. 1985) , citing K. Dunahoo, *The New Iowa Criminal Code*, 29 Drake L.Rev. 237, 301-02 (1979-80) for the proposition that the statute's use of the word "intent" does not mean it is a specific intent crime.

The Iowa Supreme Court shifted gears in *State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001) and held that assault was a specific intent crime. The concurrence in *Heard* predicted that "permitting voluntary intoxication and diminished responsibility to be raised as defenses to domestic abuse assault will substantially undermine the protective purpose of our domestic abuse statutes, thereby contravening clear legislative intent."

The legislature amended section 708 in 2002 to state the following: "An assault as defined in this section is a general intent crime."

Despite this amendment, in *State v. Keeton*, 710 N.W.2d 531 (Iowa 2006), the Court declined to "revisit the issue whether assault is a general- or specific-intent crime." Noting, "[r]egardless of which label is attached to the offense, the State was still required to prove Keeton possessed the *mens rea* required by the statute." Interestingly, the *Keeton* court cites to a law review article, Scott Anderegg, The Voluntary Intoxication Defense in Iowa, 73 Iowa L. Rev. 935, 935 (1988), which noted that the general/specific intent is an area of Iowa law with "a long history of illogical decisions and confusion."

The impending demise of the general and specific intent distinction also is revealed in the recent decision in *State v. Wolford*, 2007 WL 3085909 (Iowa Ct. App. October 24, 2007), where the Iowa Court of Appeals found that the district court did not err when it did not instruct that securities fraud was a specific intent crime because "attaching a label of specific intent or general intent is secondary to the State's burden to prove that the defendant possessed the mens rea required by the statute."

A comprehensive code revision should examine the feasibility of eliminating the distinction between general and specific intent crimes and address the applicability of the intoxication and diminished responsibility defenses in some other manner.

II. Pointing a Firearm

The third formulation of assault (intentionally pointing a firearm) doesn't really need to be separately defined. The act is covered under section 708.1(2) and in the enhancement to an aggravated misdemeanor in section 708.2(3).

III. Model Penal Code on Assault

The Model Penal Code divides assault into two classes: simple and aggravated.

(1) Simple Assault. A person is guilty of assault if he:

(a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
(b) negligently causes bodily injury to another with a deadly weapon; or
(c) attempts by physical menace to put another in fear of imminent serious bodily injury.

(2) Aggravated Assault. A person is guilty of aggravated assault if he:

(a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
(b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

The basic *mens rea* can be purposely, knowingly or recklessly (and even negligence will suffice if bodily injury is caused with a deadly weapon). The simplicity of the model penal code formulation is attractive. The difficulty in interpreting the necessary intent under Iowa's current assault definitions ("intent to cause" or "intent to place") would be alleviated by referring to terms from a common *mens rea* continuum.

IV. Means of Enhancing Assaults

Over the past 20 plus years, the legislature has enacted numerous provisions which enhance the punishment for the underlying crime of assault. Specifically, assaults are deemed more serious and carry greater penalties if committed while in a domestic relationship, while committing a hate crime, while participating in a felony, against persons in certain occupations, and by inmates.

It might be worth examining the equities of the various punishments ascribed to these enhanced assaults. For instance, an assault committed upon one's wife with the intent to inflict a serious injury is an aggravated misdemeanor (§ 708.2A(2)(c)), but an assault with the same intent committed on an employee of the department of revenue is a class "D" felony (§ 708.3A(1)). While it may be important to protect certain individuals with dangerous duties, it is curious that employees of a state agency would be considered less able to defend themselves than a battered spouse.

V. Other felonious assaults

Aside from the enhanced assaults mentioned above, chapter 708 defines four felonious assaults. Two appear under the definition of willful injury at section 708.4: (1) an act not justified which is intended to cause serious injury and does cause serious injury is a class "C" felony; (2) an act not justified which is intended to cause serious injury and causes bodily injury is a class "D" felony. The other two felonies are listed under the penalties at section 708.2: subsection (4) defines a class "D" felony for an assault which causes serious injury; subsection (5) creates a class "C" felony for conduct which would be a sexual assault under chapter 709, if a prosecutor could prove the act was sexual in nature. *See State v. Monk*, 514 N.W.2d 448 (Iowa 1994).

Section 708.2(6), if necessary, might fit better in the definition section of the assault chapter.

VI. Miscellaneous assault-type offenses

Chapter 708 also contains a sundry of other offenses which are related to assaultive acts, but may fit better under a weapons chapter, *e.g.* intimidation with a dangerous weapon (formerly terrorism) (708.6), going armed (708.8), spring guns (708.9) and disarming a peace officer (708.13).

VII. Harassment

Iowa's harassment provision divides in-person contact from contact in writing or by electronic means. The intent elements are more strict for in-person exchanges. The model penal code presents a simpler approach, though it is missing some of the specifics in our current provision.

> A person commits a misdemeanor if, with purpose to harass another, he:
>
> (1) makes a telephone call without purpose of legitimate communication; or
>
> (2) insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or
>
> (3) makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
>
> (4) subjects another to an offensive touching; or
>
> (5) engages in any other course of alarming conduct serving no legitimate purpose of the actor.

Model Penal Code § 250.4

VIII. Stalking

Iowa adopted its stalking statute in 1992, a year before the Model Anti-Stalking Code for States was issued by the National Justice Institute at the U.S. Justice Department. Iowa amended its statute in 1994, after having the benefit of the model language. In the intervening thirteen years, much research has been done on the behavior of stalkers, the effectiveness of stalking laws, and tracking and monitoring technologies. The National Center for Victims of Crime is recommending that the model act be revisited.

The proposal to update the model act includes several sound suggestions. Chief among them is a change from the requirement that the stalking behavior caused "actual fear" in the victim to proof that a "reasonable person" would be placed in fear. The proposal also suggests that it would be sufficient to show that the stalking caused "emotional distress" in the victim rather than fear of "bodily injury or death." In addition, the proposed revision would address technological chances, such as stalking through GPS. Iowa should consider updating its stalking statute to incorporate these proposals.

Chapters 708A and 708B

Chapters 708A (making terrorism a violation of state law) and 708B (outlawing the possession of anthrax) were a post-911 enactments which have never been tested in a criminal appeal.

IOWA CODE CHAPTER 709–SEXUAL ABUSE:

The Iowa sexual abuse chapter contains laws that are gender-neutral and progressive. The Model Penal Code's treatment of sex crimes, on the other hand, has been criticized. See Gerald Lynch, Revising the Model Penal Code: Keeping It Real, 1 Ohio St. J. Crim. L. 219, 223, 230-31 (2003); Deborah Denno, Why the Model Penal Code's Sexual Offense Provisions Should Be Pulled and Replaced, 1 Ohio St. Crim. L. 207, 209-18 (2003). Both the original 1962 MPC and its 1980 Commentaries are considered outdated, defining rape as heterosexual penetration, providing lesser penalties for sexual abuse committed by a "voluntary social companion", requiring corroboration of the victim's testimony, and in some subsections, examining the "promiscuity " of the victim.

Iowa Code Chapter 709 does a much better job of handling sex crimes. The biggest concern with the chapter is that piecemeal legislation has led to redundancies. I've gone through each section and tried to identify the problems. I haven't included the "fixes" we've already submitted in the last few months.

Section 709.1–Sexual Abuse Defined:

This language is cumbersome ("Any sex act between persons is sexual abuse by either of the parties when the act is performed with the other person..."). More important, the whole section is probably unnecessary. I'd suggest moving the definitions to the various sections, eliminating the overlap.

Section 709.1A–Incapacitation:

It would make sense to move this to the third-degree sexual abuse provision.

Section 709.2–First-degree Sexual Abuse:

No suggestions.

Section 709.3–Second-degree Sexual Abuse:

I'd change "A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances..." to "...when the person engages in a sex act under any of the following circumstances..." to incorporate the definitional section of 709.1. The alternatives look good, although I wonder if we want to keep it so a person "using force" and one 'threatening to use force" are equally culpable.

Section 709.4–Third-degree Sexual Abuse:

We could move the other definitional sections to here, with a little tweaking. Section 709.1(1) provides that if consent is procured by threats of violence, the act is against the will of the other person. That makes the crime both second-degree and third-degree sexual abuse.

The phrase "under the influence of a drug inducing sleep" in 709.1(1) should be eliminated–it's covered in the definition of "mentally incapacitated".

Under 709.4(2)(a), do we want to keep it as is, to allow a married person to have sex with his or her spouse even if the spouse has a mental defect or incapacity which precludes the person from giving consent?

Under Section 709.4 (2)(c) (the fourteen- and fifteen-year-old victims part), we might want to consider changing the "four or more years older" phrase to "48 months", to avoid the situation of the fifteen-year-old girl on the day before her 16th birthday and the guy who just turned nineteen. We've been interpreting that section to mean 48 months, but it would be clearer to say so.

Section 709.4 (3), which prohibits having sex with someone under the influence of a controlled substance, "including but not limited to flunitrazepam" could be eliminated completely, because it would be covered by Section 709.4(4) (mentally incapacitated, physically incapacitated, or physically helpless.) The only reason to keep it in would be that it contains a "know or should know the person is under the influence of the controlled substance " element on the part of the defendant, while the incapacity provisions are more akin to strict liability. See State v. Sullivan, 298 NW2d 267, 272-73 (Iowa 1980).

As noted, I'd move the definitions of incapacitation in 709.1A to here.

Section 709.5–Resistance to Sexual Abuse:

No suggestions.

Section 709.6–Jury Instructions for Offenses of Sexual Abuse:

This provision ("No instruction shall be given...cautioning the jury to use a different standard relating to the victim's testimony...") strikes me as unnecessary (at least I hope it is...)

Section 709.7–Detention in a Brothel:

This also seems unnecessary–do we have brothels anymore? Also, maybe it would make more sense in the Vice chapter.

Section 709.8–Lascivious Acts with a Child:

Do we want to keep this as applying only to defendants over eighteen years of age? (Sexual abuse does not have this element...) The conduct prohibited in 709.8(1) and (2) (touching genitals or pubes) is also covered, at least with kids under twelve, in the second-degree sexual abuse provision. We probably want to keep both to give prosecutors some discretion in charging...

Section 709.8(4) ("inflicting pain or discomfort upon a child") seems vague.

Section 709.9–Indecent Exposure:

It might be a good idea to add the act of masturbation to the sentence "who commits a sex act in the presence of a third person". Because masturbation is not a sex act under Iowa Code section 702.17, and the defendant's penis may not be exposed, a masturbating but clothed defendant is not currently covered (no pun intended) under the statute.

Section 709.10–Sexual Abuse–Evidence:

No substantive suggestions-- I'd just change "if the alleged victim does not want their name recorded...." to "his or her'.

Section 709.11–Assault with Intent to Commit Sexual Abuse:
No suggestions.

Section 709.12–Indecent Contact with a Child:
This is a less serious version of lascivious acts, but has a section that applies to sixteen- and seventeen-year-olds if the child is at least five years the defendant's junior. Do we also want to add that provision to lascivious acts, and/or do we want to change it to 60 months to avoid the problem described above?

Section 709.13–CHINA complaints:
No suggestions.

Section 709.14–Lascivious Conduct with a Minor:
No suggestions.

Section 709.15–Sexual Exploitation by a Counselor, Therapist, or School Employee:
A little labyrinthian, but otherwise it's hard to explain the different levels of culpability. "Student"is defined in 709.15(1)(g) as someone "currently enrolled or attending...or who was enrolled or attended within 30 days of the violation..." We may want to consider extending that to reach students in the middle of summer, even if they're not attending summer school.

Section 709.16–Sexual Misconduct with Offenders and Juveniles:
No suggestions.

Section 709.18–Abuse of a Corpse:
It seems odd to say "knowingly and intentionally" engages in a sex act with a human corpse. We don't use those terms anywhere else in the chapter and it's hard to imagine how one could accidentally engage in a sex act with a corpse.

Section 709.19–No-contact Orders upon the Defendant's release:
No suggestions.

Secton 709.21–Invasion of Privacy–Nudity:
No suggestions.

CHAPTER 709A–CONTRIBUTING TO JUVENILE DELINQUENCY

In 709A.1, the language "a child under eighteen" should be changed to "a minor", because a "child" is defined a person under fourteen in Section 702.5.

Under Section 709A.1(2), it seems archaic to prohibit sending a child to into a brothel. If we keep that concept, it could be phrased "...onto premises used for the purpose of prostitution, with the intent that the child engage the services of a prostitute."

Under Section 709A.1(5), it is unlawful to permit, cause or encourage a child to "be guilty of any vicious or immoral conduct". This seems very vague.

No other suggestions.

From Bridget

CHAPTER 710 – KIDNAPPING

Section 710.1 Kidnapping defined.
Section 710.2– Kidnapping in the First Degree

With three exceptions discussed below, Iowa Code section 710.1 is reasonably close to the Model Penal Code definition of kidnapping, see ALI Model Penal Code, section 212.1.

I would note only that over the past decade, Iowa Court of Appeals Judge Rosemary Sackett has consistently dissented in cases which involve sexual abuse and where the confinement does not extend far beyond the confinement and removal which facilitates the sexual abuse. Judge Sackett's dissent is based upon her concern that making such cases first degree kidnapping, which carries a life sentence, creates an incentive for the criminal to kill his or her victim. Killing the victim does not increase the potential sentence of the kidnapper and may significantly decrease the chances of conviction. *See, e.g., State v. Ledezma*, 549 N.W.2d 307 (Iowa Ct. App. 1996), a copy of that decision is attached.

The Model Penal Code addresses this concern by adding to the definition of kidnapping a provision that kidnapping is a felony in the first degree "unless the actor voluntarily releases the victim alive and in a safe place prior to trial," in which case the offense is reduced to a second-degree felony.

The Model Penal Code also defines kidnapping more broadly than does Iowa in one respect. Subsection 3 of section 710.1 refers to an "intent to inflict serious injury" to the victim or to subject the victim to "sexual abuse." The Model Penal Code more broadly includes an intent to "facilitate commission of any felony or flight thereafter." I do not recommend expanding Iowa's statute but only point out that this is a significant difference between Iowa's definition of kidnapping and the definition in the Model Penal Code.

Finally, the Model Penal Code specifies that the "confinement" and "removal" for purposes of the kidnapping statute be substantial. The removal must be "a substantial distance from the vicinity" where the victim was found and confinement must be "for a substantial period in a place of isolation." While Iowa case law has required evidence that any removal or confinement be more than incidental to the underlying offense and must "significantly increase the risk of harm to the victim or significantly lessen the risk of detection or facilitate escape, the Model Code version seems to require proof of slightly greater confinement or removal that does the Iowa version. There is some reason to believe that the Iowa kidnapping statute has been applied to situations where the removal or confinement was not much greater than the confinement inherent in commission

of the underlying offense.

Section 710.10 – Enticing Away a Minor

This section is being reviewed as part of the review of the sexual abuse chapter, Iowa Code Chapter 709.

IOWA CODE CHAPTER – 710A HUMAN TRAFFICKING

This chapter of the Code is very new, it was enacted in 2006, and I am not aware of any prosecution under this chapter. The chapter generally seems clear and understandable, with the exception of section 710A.3. That section creates an affirmative defense for a defendant who acted under compulsion. That section is very difficult to read and understand. It should be redrafted so that it is more clear.

This chapter has not been used so far, but I should be retained in any revision of the Code as this is an issue that has been and is being faced by other states and the by the federal government. The issue most often seems to arise in connection with the sex entertainment industry and in connection with the use of immigrant labor.

MEMO TO: MARY TABOR

FROM :RICHARD BENNETT

DATE: OCTOBER 25, 2007

RE: CRIMINAL CODE REORGANIZATION

CHAPTER 711 – ROBBERY AND EXTORTION

1. Is there any case law that points to problems with a particular code section?

No.

2. Do the prohibitions in this chaptar duplicate or overlap with crimes set out elsewhere in the code?

In *State v. Pierce*, 287 N.W. 2d 570,574 (Iowa 1980), the Court stated, in dicta I believe, that the robbery statute "may overlap" with the crime of assault while participating in a felony, under Iowa Code section 708.3.

3. Do the code provisions use plain language? Do they effectively communicate to a lay person what conduct is prohibited?

Except as to a portion of the extortion statute, I believe the answer to this question is "Yes." As to extortion, that offense is committed when a person makes one of the threats specified in the statute, "with the purpose of obtaining for oneself or another anything of value, tangible or intangible, including labor or services." (Emphasis supplied). The emphasized language appears to me to be somewhat vague. In *State v. Crone*, 545 N.W. 2d 267 (Iowa 1996), the Court considered the meaning of the statutory words "anything of value." After reviewing prior case law, a change in the extortion statute, and a dictionary, the Court concluded that defendant's unsuccessful use of a threat to cause the victim to meet with him came within the extortion statute, as such a meeting would have been "something of value" to him. *Id.* at 271-74. Although the Supreme Court apparantly figured it out, I am not so sure this language is that clear to a lay person.

4. Is the criminal intent required to prove each crime clear and consistent?

Yes, aside from the matter noted in Question 3, *supra.*

5. Have any newer provisions jumped ahead of older crimes in the grading of the offenses?

No.

6. Do any provisions criminalize trivial and non-dangerous conduct? No.

7. Are any critical terms undefined or defined inconsistently with the rest of the criminal code?

Aside from the matter discussed above in Question 3, no critical terms are undefined and I am unaware of any inconsistency with the rest of the criminal code.

8. How do the definitions compare to ALI's Model Penal Code?

Although it is phrased differently, the Model Penal Code's description of robbery is fairly comparable, except being armed with a dangerous weapon does not bump up the robbery to first-degree robbery, as in Iowa. The Model Penal Code has a crime entitled "theft by extortion." It requires that the defendant actually obtain property of another by use of a threat, but is otherwise fairly comparable to our statute as to the threats specified (although others are included, such as threatening to bring about a strike or boycott). Our statute does not require evidence that the defendant in fact obtained something of value as a result of the prohibited threat.

9. Does the organizational structure of the chapter make sense, *i.e.*, its location in the criminal code and the internal organization (most serious to least serious)?

Yes.

10. Are there any case law definitions or explanatory language that should be incorporated into the statute itself?

No.

CHAPTER 712 – ARSON

§ 712.1 – Arson defined

Paragraph (2) is new, added in 2004.

It could produce harsh results – potentially a conviction for a class "B" felony under § 712.2 for conduct which would ordinarily be no more than reckless or even negligent.

Because of the low level of mens rea required, the conduct defined as "arson" under paragraph (2) might better be treated as a higher degree of reckless use of fire under § 712.5 – perhaps an aggravated misdemeanor or a class "D" felony.

One might wonder whether paragraph (2) serves any useful purpose. A defendant who could be prosecuted under this paragraph would be guilty of some variety of manufacturing a controlled substance under § 124.401, and also of reckless use of fire under § 712.5. Deletion of this paragraph would not cause the guilty to go free.

§ 712.2 – Arson in the first degree

§ 712.3 – Arson in the second degree

The object property can be any "personal property the value of which exceeds five hundred dollars." This limit is probably too low, considering that the crime is a class "C" felony – even taking into account the fact that the distinguishing feature of arson is risk creation rather than property damage.

§ 712.4 – Arson in the third degree

§ 712.5 – Reckless use of fire or explosives

As noted above, the variety of "arson" defined in § 712.1(2) appears to fit better here.

§ 712.6 – Explosive or incendiary materials or devices

Paragraph (1) is written so broadly – criminalizing possession of "any incendiary or explosive device or material" with the intent to use it to commit "any public offense" – that it could produce incongruous and disproportionate effects. Suppose a defendant carries a book of matches in his pocket, with the intent to use it to set his neighbor's scarecrow on fire. The crime, if completed, would be an aggravated misdemeanor under § 712.4, but the inchoate crime is a class "C" felony. A possible fix would be language providing that a person convicted under § 712.6(1) shall be sentenced as though for the underlying inchoate crime, if the degree of that crime is lower than a class "C" felony.

Paragraph (2) is new, added in 2004.

The conduct described in this paragraph does not involve the creation of any actual risk, which is the distinguishing feature of arson crimes. It is really a special kind

of assault and might fit better in the assault chapter.

§ 712.7 – False reports

The conduct described in this section does not involve the creation of any actual risk, which is the distinguishing feature of arson crimes. The section is superfluous or very nearly so, as it substantially duplicates § 718.6 (false reports to public safety entities). The penalties are inconsistent: conduct which constitutes a class "D" felony under § 712.7 constitutes a serious misdemeanor, at most, under § 718.6.

§ 712.8 – Threats

The conduct described in this section does not involve the creation of any actual risk, which is the distinguishing feature of arson crimes. It appears to be a special kind of harassment and might fit better in § 708.7.

§ 712.9 – Violations of individual rights

This entire section is new, added in 1992.

I continue to believe that hate-crimes statutes are unwise and unjust.

In the first place, such statutes place the State in the position of making distinctions among victims – something which the State should not be doing.

In the second place, such statutes also cause the State to distinguish among criminals on the basis of their motivation, which is contrary to traditional principles of criminal law. One who robs a bank is guilty of bank robbery; it makes no difference whether he commits the robbery to finance his drug habit or to pay for his mother's operation.

In any event, if hate-crimes legislation is to be retained, there should be a single chapter or section cross-referencing all of the crimes which can be prosecuted as hate crimes. It should not be necessary to search all through the Code to determine whether a given act is also a hate crime.

From Linda

Iowa Code chapter 713. Burglary:

●The Model Penal Code, section 221.0(1) defines an "occupied structure" as "any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." An "occupied structure is not defined in chapter 713. I suggest it should be. Iowa Code section 702.12 defines an "occupied structure" and is more cumbersome than the Model Penal Code definition. Section 702.12 provides, in pertinent part, that an "occupied structure" is:

> any building, structure, appurtenances to buildings and structures, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or safekeeping anything of value.

Further, section 702.12 also specifically excludes certain items from the definition of an "occupied structure" such as: "a box, chest, safe, changer, or other object or device which is adapted or used for the deposit or storage of anything of value but is too small or not designed" for a person to enter.

I believe a simpler and more exclusive definition of "occupied structure" would be helpful. As one commentator notes, "[t]he Iowa Supreme Court has extended the term occupied structure to include some enclosures arguably the legislature never intended to be included within the scope of the statute." 4 IAPRAC § 10:4. For example, in *State v. Baker,* 560 N.W.2d 10, 13 (Iowa 1997), the Court found that a driveway constituted an appurtenance to a building or structure and therefore was an "occupied structure" pursuant to section 702.12.

The 2001 amendment to the burglary statute reducing the offense of burglary

(713.6A) and attempted burglary(713.6B) of an unoccupied motor vehicle to an aggravated misdemeanor and a serious misdemeanor, respectively, may provide some evidence that the legislature believes the term "occupied structure" has become to expansive.

●Iowa Code section 713.1's definition of burglary requires proof of an "intent to commit a *felony,* assault, or theft therein, ..." In contrast, the Model Penal Code's definition of burglary, section 221.1, provides that if entry is with "purpose to commit a *crime* therein, ..." Pursuant to *State v. Mesch,* 574 N.W.2d 10, 14 (Iowa,1997), the language of Iowa's statute requires the State "to specify the particular felony that a person intended to commit after the breaking and entering." The Model Penal Code's language does not require the State to specify a crime a person intends to commit after the breaking and entering. *Mesch*, 574 N.W.2d 14.

●Under the Model Penal Code there is no offense of first-degree burglary. Burglary in the second-degree is committed if it is perpetrated at night, or if the actor "purposely, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone" or "is armed with explosives or a deadly weapon." The Model Penal Code does not appear to have an enhancement to the crime of burglary where a person, "performs or participates in a sex act with any person which would constitute sexual abuse." Iowa Code § 713.3(1)(d).

Iowa Code ch. 714 Theft , Fraud and Related Offenses

A. Theft

The provisions of chapter 714 relating to theft are based in part on the Model Penal Code. For example, Iowa's statute, like the Model Penal Code, contains provisions against theft by taking (Iowa Code § 714.1(1)), theft by misappropriation (Iowa Code § 714.1(2)), theft by deception (Iowa Code § 714.1(3)), exercising control over stolen property (Iowa Code § 714.1(6)) and operating without the owner's consent (Iowa Code § 714.7). Unlike the Model Penal Code, Iowa also has prohibitions against theft of a security interest (Iowa Code § 714.1(5)), theft by check (Iowa Code § 714.1(6)) , theft from a public utility (Iowa Code § 714.1(7)), knowing and unauthorized access of a computer (Iowa Code § 714.1(8)), theft of video rental property (Iowa Code § 714.1(9)) and a catch-all of "any act that is declared to be theft" by another provision of the Code (Iowa Code § 714.1(10)).

Many of these provisions –theft by taking, deception and check– are prosecuted on a regular basis throughout the state. There are no reported cases on theft from a public utility , knowing or unauthorized access to a computer or theft of video rental property. Theft of a public utility and theft of video rental property could be prosecuted as theft by taking. The advantage to prosecuting the public utility and video rental under the current provisions is that they do not appear to contain an element of specific intent which is an element of theft by taking. This may not pose a problem given the Iowa Supreme Court's decision in *State v. Keeton, 710 N.W.2d 531, 534 (Iowa 2006)* in which the Court stated it no longer relies on the "labels" of specific and general intent but focuses instead on what are the statutory elements of the crime. Prior to *Keeton*, the court recognized each type of theft had a different intent element. *Eggman v. Scurr, 311 N.W2d 77, 80 (Iowa 1981).*

One area of the law which has presented a problem –and relates to intent– is a prosecution for exercising control over stolen property and operating without the owner's consent. When law enforcement apprehends a person in possession of a recently stolen vehicle, it is extraordinarily difficult to demonstrate a person's "intent to deprive" the owner of the property and prosecute it as a theft. *State v. Schminkey, 597 N.W.2d 785, 789 (Iowa 1999); State v. Morris, 677 N.W.2d 787, 788 (Iowa 204).* Without the ability to demonstrate an offender's intent at the time he or she obtained the property, the prompt apprehension of the person in the stolen vehicle leaves only the ability to prosecute operating without the owner's consent. *See* Iowa Code § 714.7 (2007). It is unclear what effect *Keeton* will have on this problem, but it is demoralizing to law enforcement when a recently stolen vehicle is found and a felony theft prosecution cannot lie because of an inability to prove intent due to good police work.

B. Fraudulent Practices

Fraudulent practices is specifically defined in the various subsections of Iowa

Code section 718.8 and generally defined as "any act expressly declared to be a fraudulent practice by any other section of the Code." Iowa Code § 714.8(10) (2007). A cursory review of other code sections which define fraudulent practices is quite varied. For example, in Iowa Code section 533.63 which deals with the penalties for false statements in the credit union chapter, include one provision which is a fraudulent practice (533.63(1)) and one which is not (533.63(2)):

> 1. A director, officer or employee of a credit union shall not intentionally publish, disseminate or distribute any advertising or notice containing any false, misleading or deceptive statement concerning rates, terms or conditions on which loans are made, or deposits or share installments are received, or concerning any charge which the credit union is authorized to impose pursuant to this chapter, or concerning the financial condition of the credit union. ***Any director, officer, or employee of a credit union who violates the provisions of this section commits fraudulent practice.***

Iowa Code § 533.63(1) (2007)(emphasis added). The subsection which follows provides:

> 2. Any person who maliciously or with intent to deceive makes, publishes, utters, repeats or circulates any false statement concerning any credit union which imputes or tends to impute insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of deposits from such credit union, or which may otherwise injure or tend to injure the business or goodwill of such credit union, ***shall be guilty of a simple misdemeanor.***

Iowa Code § 533.63(2) (2007) (emphasis added). There are numerous provisions in the Code like this in which conduct is criminalized but the legislature has not specifically designated it as a fraudulent practice. *See* Iowa Code § 321.216 (2007) (unlawful use of license or nonoperator's identification card –penalty); § 321.217 (falsifying driver's licenses, nonoperator's identification card or forms); § 423.36(1-4) (penalties for sales/use tax violations); § 446.26 (penalty for county treasurer failing to attend a tax sale); § 453A.38 (counterfeiting and previously used cigarette and tobacco stamps); §524.1601 (penalties and criminal provisions applicable to directors, officers and employees of state banks).

In researching those sections, it appears as though Westlaw treats those sections as a fraudulent practice anyway. In most instances, those sections constitute misdemeanor offenses. I do not know why these sections are treated differently than the fraudulent practices as far as the penalty is concerned. It seems unusual because the penalties for fraudulent practices are uniform and break down according to value amounts. Iowa Code § 714. 9-13 (2007). If no value can be established, it constitutes third-degree fraudulent practice and is an aggravated misdemeanor. Iowa Code § 714.11 (2007).

C. Consumer frauds.

I would defer to the Consumer Protection Division for their suggestions on modifying the statute.

Iowa Code ch. 714A Pay-per-call service

There are no reported cases on this chapter.

Iowa Code ch. 714B Prize promotions

There are no reported cases on this chapter.

Iowa Code ch. 714D Telecommunications service provider fraud

There are no reported cases on this chapter.

Iowa Code ch. 715 Computer spyware and malware protection

There are no reported cases on this chapter.

Iowa Code ch.715A Forgery and related fraudulent criminal acts

Like the theft chapter, the forgery chapter is based in part on the Model Penal Code. Forgery has a broad definition and is prosecuted in most instances as a "D" felony. Section 715A.2(b), however, makes forgery an aggravated misdemeanor if the writing "purports to be a will, deed, contract, release, commercial instrument, or any other writing or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations." Iowa Code § 715A.2(b) (2007). I would suggest this conduct also be made "D" felony because it has an "adverse impact on the integrity of the financial system." *State v. Brooks, 555 N.W.2d 446, 449 (Iowa 1996).*

Section 715A.6 is duplicative to the existing provisions of forgery under 715A.1. The difference between the general forgery provisions and forgery by credit card is that there is a value amount required to determine the penalty for forgery by credit card. The value amount breaks down in three categories: $10,000.00 or more is a "C" felony; more than $1,000.00 but less than $10,000.00 is a "D" felony; less than $1,000.00 is an aggravated misdemeanor. Iowa Code § 715A.6 (2007). The only difference is that for credit card forgery in excess of $10,000.00, it can be prosecuted as a "C" felony rather than a "D" felony with the general forgery provision. Conversely, to proceed under forgery by credit card with less than $1,000.00 loss is an aggravated misdemeanor rather than a "D" felony.

One criminal provision which has not drawn a great deal of attention– either in the number of cases or appellate challenges -- is identity theft. The State has successfully prosecuted identity theft under the current statutory language and its predecessor. Although the language is cumbersome, it has withstood two challenges. *State v. Mendoza, 2006 WL 2705527 (Iowa Ct.App. 2006) (unpublished); State v. Jenkins, 695 N.W.2d 42, 2004 WL 2387527 (Iowa Ct. App. 2004) (unpublished).* I would suggest no changes to the current language at this point.

From Linda

Iowa Code chapter 716. Damage and Trespass to Property:

●As defined in Iowa Code section 716.1, criminal mischief requires *intentional* damage, defacing, alteration, or destruction to property. Under the Model Penal Code § 220.3, a person is guilty of criminal mischief if he or she:

(a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in Section 220.2(1); or
(b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or
(c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

The Model Penal Code, therefore, criminalizes reckless and negligent damage to property as well as intentional.

●The term "railroad corporation" is identically defined in both in section 716.7(5) and 716.10(3). For brevity's sake, I think it the definition should appear only once.

●The penalty for first-degree railroad vandalism that results in the death of any person is a class "B" felony. However, section 716.10(2)(a) provides that "notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than *fifty* years." (Emphasis added.) This penalty seems excessive to me, particularly when you consider that voluntary manslaughter is a class "C" felony punishable by a term of imprisonment not to exceed twenty-five years and involuntary manslaughter is a class "D" felony punishable by a term of imprisonment not to exceed five years.

Iowa Code chapter 716A. Electronic Mail:

●A Federal statute, the CAN-SPAM Act of 2003 (15 U.S.C.A. sections 7701 et seq.) was "enacted in order to standardize the treatment of spam." Jay M. Zitter, Annotation, *Validity, Construction, and Application of Federal and State Statutes Regulating Unsolicited E-mail or "Spam"*, 10 A.L.R.6th 1 (2006). "This statute prohibits spammers from sending deceptive or misleading information and using deceptive subject headings, requires them to include return addresses in their e-mail messages, and prohibits them from sending e-mails to a recipient after that recipient has indicated he or she does not wish to receive e-mail messages from the spammer." *Id.*

The federal statute also preempts state statutes, regulations or rules that regulate "the use of electronic mail to send commercial messages, except to the extent that any statute, regulation, or rule prohibits falsity or

deception in any portion of a commercial electronic mail message or information attached thereto." 15 U.S.C.A. 7707(b)

Iowa's statute provides that a person a person commits an aggravated misdemeanor if he or she "uses a computer network with the intent to *falsify or forge* electronic mail transmission information or other routing information" in connection with the transmission of unsolicited bulk mail." At least one court has found that the word "falsity" in section 7707(b) of the CAN-SPAM Act must be read "in light of the clause as a whole" to refer to "traditionally tortious or wrongful conduct." *See Omega World Travel, Inc. v. Mummagraphics, Inc.* 469 F.3d 348, 354 (4th Cir. 2006) (finding that Oklahoma's spam statute was preempted by CANNED-SPAM Act).

There may be some question whether any part of chapter 716A or its implementation under certain circumstances is preempted by the CANNED-SPAM Act.

●There may be some redundancy in 716A.3, prohibiting the sale or offer for direct sale of prescription drugs through the use of electronic mail, and other Code chapters that regulate prescription drugs and pharmacies. For example, section 716.3A prohibits the "retail sale or offer to sell" prescription drugs "through use of electronic mail or the internet by a person other than a licensed pharmacist, physician, dentist, optometrist, podiatric pediatrician, or veterinarian." However, Iowa Code chapter 155A, the Iowa Pharmacy Practice Act, prohibits similar conduct but not specifically the of sales of prescription drugs by electronic mail or the internet. Iowa Code chapter 124 would appear to cover some of the conduct prohibited in section 716.3A, but again, not as specifically.

Date: October 26, 2007
To: Mary Tabor
Fr: Robert Ewald
Re: Criminal Code Reorganization; Comments on animal and agriculture criminal offenses (Iowa Code chapters 717, 717A, 717B, 717C, 717D, 717E)

ANIMAL AND AGRICULTURE OFFENSES

I do not see any particular problem areas in our animal and agricultural criminal offense laws, Iowa Code chapters 717, 717A, 717B, 717C, 717D, 717E. Since the criminal penalties for these chapters are not listed in the PATC chart (http://www.iowa-icaa.com/Sentencing_chart/2007/Sentencingw2007revisions--rev061007.pdf), I will list them here.

Chapter 717 Injury to Livestock

717.1A Livestock abuse. Aggravated misdemeanor.

717.2 Livestock neglect. Simple misdemeanor; serious misdemeanor if neglect results in serious injury or death of animal

Chapter 717A Offenses Relating to Agricultural Production

717A.2 Willful destruction of animal facility or animals in facility (civil and criminal). Range of criminal penalties from simple misdemeanor to class C felony, depending on amount of damage. In 2005, the threshold for a class C felony was lowered from $50,000 to $10,000.

717A.3 Damage to crops (civil and criminal). Range of criminal penalties from simple misdemeanor to class C felony, based on dollar amounts of damage specified in the "criminal mischief" statutes (ch. 716).

717A.4 Use of pathogens to threaten animals or crops. Class B felony. Enacted in 2004.

Chapter 717B Injury to Non-Livestock Animals

717B.2 Animal abuse. Aggravated misdemeanor. In *State v. West,* Iowa Ct. App. Oct. 12, 2007, the court held that section 351.27 (right to kill dog caught in act of worrying, chasing or killing domestic animal) (2005) provides an absolute defense. (In 2007 the Legislature struck the word "worrying" from section 351.27.)

717B.3 Animal neglect. Simple misdemeanor; serious misdemeanor if serious injury results.

717B.3A Animal torture. Aggravated misdemeanor (first offense); Class D felony (second or subsequent offense).

717B.8 Abandonment of dog or cat. Simple misdemeanor.

717B.9 Injury or interference with police service dog. Serious misdemeanor.

Chapter 717C Bestiality

717C.1 Sex act with animal. Enacted in 2001. "Sex act" definition is slightly more restrictive (does not include finger/hand to genitalia/anus contact) than "sex act" as defined in section 702.17. Applies to live or dead animals. Aggravated misdemeanor; mandatory psychological examination and treatment at offender's expense.

Chapter 717D Animal Contest Events

717D.1 (4) Prohibited "contest events" include dog fighting, cock fighting, bull fighting, bull baiting, bear baiting.

717D.4 Violation of any provision of this chapter is a class D felony (amended from serious misdemeanor in 2004). Violation "as a spectator" is an aggravated misdemeanor.

Chapter 717E Pets as Prizes

717E.2 Award or advertise pet as prize (with exceptions). Simple misdemeanor

Iowa Code chapter 718 (Offenses Against the Government)

Iowa Code § 718.1

In the overhaul of the Code in 1976 the crime of "treason" (one of the few crimes actually mentioned in the Iowa Constitution -- Art. I, § 16; Art. II, § 2, Art. III, § 11, Art. IV, § 16) was eliminated. *See, e.g.,* Iowa Code § 689.1 (1975) (life sentence for treason). Instead, we now have the crimes of insurrection and riot, a class "C" felony and an aggravated misdemeanor, respectively, as follows:

> 718.1 Insurrection. An insurrection is three or more persons acting in concert and using physical violence against persons or property, with the purpose of interfering with, disrupting, or destroying the government of the state or any subdivision thereof, or to prevent any executive, legislative, or judicial officer or body from performing its lawful function. Participation in insurrection is a class "C" felony.
>
> 723.1. Riot. A riot is three or more persons assembled together in a violent manner, to the disturbance of others, and with any use of unlawful force or violence by them or any of them against another person, or causing property damage. A person who willingly joins in or remains a part of a riot, knowing or having reasonable grounds to believe that it is such, commits an aggravated misdemeanor.

The choice to eliminate a crime of treason appears to have been knowing, but seems surprising. As it stands now, our criminal code has more to say about persons convicted of treason in other states than in Iowa. *See* Iowa Code § 820.2 (allowing extradition of fugitives convicted of felonies or treason). The insurrection statute finds use these days in the context of prison disturbances. For the sake of consistency between the companion crimes of insurrection and riot, a revision to Iowa Code section 704.6 might be advisable.

From

> ~~When defense not available. The defense of justification is not available to the following:~~
>
> ~~1. One who is participating in a forcible felony, or riot, or a duel.~~

To

> 704.6. When defense not available. The defense of justification is not available to the following:
>
> 1. One who is participating in a forcible felony, ~~or~~ riot, **insurrection,** or ~~a~~ duel.

Since 1976 Iowa has no general law against dueling -- though dueling is prohibited in the militia at Iowa Code § 29B.108 -- and since 1992 the Iowa Constitution no longer disqualifies one who has participated in a duel from holding office. *See* Iowa Const. Art. I, § 5 (repealed Nov. 3, 1992).

Iowa Code chapter 718 (Offenses Against the Government)

Iowa Code 718.2

Possible change: elevating some impersonating an officer offenses to a Class "D" felony. *Compare* Iowa Code § 719.1 (making it a class "D" felony if during an interference with official acts a person inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm). *See also* Model Penal Code §241.9 (source of the phrase "to induce another to submit to such pretended official authority").

From

> ~~718.2 Impersonating a Public Official. Any person who falsely claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor.~~

to

> 718.2 Impersonating a Public Official. Any person who falsely claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the **federal or** state **government,** or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor. **Anyone impersonating a public official while driving on a public roadway, armed with a dangerous weapon, committing a sexual assault, or displaying the flag, ensign, great seal, or other insignia of the United States, this state, or any political subdivision thereof, or who otherwise seeks to induce another to submit to such pretended official authority, commits a class "D" felony.**

<u>Iowa Code chapter 718 (Offenses Against the Government)</u>

Iowa Code § 718.3

Possible change: The current code does not acknowledge the significant difference between a willful disturbance at a deliberative body or state agency -- something akin to simple harassment -- and the use of force or the threat of force in such fora. The proposed change lowers some willful disturbance offenses to a simple misdemeanor where force is not involved. *Compare* Iowa Code § 718.4 (making harassment of a public official a simple misdemeanor); *cf. State v. Jeffries*, 430 N.W.2d 728 (Iowa 1988) (willful disturbance is not a lesser included offense of insurrection).

Change

> ~~718.3 Willful Disturbance. Any person who willfully disturbs any deliberative body or agency of the state, or subdivision thereof, with the purpose of disrupting the functioning of such body or agency by tumultuous behavior, or coercing by force or the threat of force any official conduct or proceeding, commits a serious misdemeanor.~~

to

> 718.3 Willful Disturbance. Any person who willfully disturbs any deliberative body or agency of the state, or subdivision thereof, with the purpose of disrupting the functioning of such body or agency by tumultuous behavior **commits a simple misdemeanor**, or **if** coercing by force or the threat of force any official conduct or proceeding, commits a serious misdemeanor.

Iowa Code chapter 718 (Offenses Against the Government)

Iowa Code § 718.4

Possible change: Incorporate the holdings of *State v. Bower*, 725 N.W.2d 435 (Iowa 2006) ("prevent" means "hinder" -- statute limited to physical conduct and fighting words to avoid running afoul of First Amendment); *cf. State v. Jeffries*, 430 N.W.2d 728 (Iowa 1988) (718.4 harassment is a lesser included offense of 718.1 insurrection).

From

~~718.4 Harassment of Public Officers and Employees. Any person who willfully prevents or attempts to prevent any public officer or employee from performing the officer's or employee's duty commits a simple misdemeanor.~~

To

718.4 Harassment of Public Officers and Employees. Any person who **by physical conduct or fighting words intends to hinder or prevent** any public officer or employee from performing the officer's or employee's duty commits a simple misdemeanor.

Iowa Code chapter 718 (Offenses Against the Government)

Iowa Code § 718.5

Possible change: Revise to encompass additional conduct involving public documents, such as their destruction. *See* Model Penal Code § 241.8. *See also State v. Barnholtz,* 613 N.W.2d 218, 221 (Iowa 2000) (falsification of an application for a certificate of title to a motor vehicle is not punishable as a falsification of public documents under section 718.5, because that statute only relates to altering the completed acts of public servants); *cf. State v. Acevedo*, 705 N.W.2d 1 (Iowa 2005) (holding that 715A.5 aggravated misdemeanor also applied to public records, such as a certificate of car title). Clarify that being in possession of an official seal is not a crime for those authorized to retain same. Broaden the language to deal with decisions in *Barnholtz, Acevedo*, and *State v. Ortega,* 418 N.W.2d 57 (Iowa 1988), as they relate to the operation of Iowa Code § 715A.5 *Cf.* Iowa Code § 321.216(7) (possession of blank motor vehicle license forms is a simple misdemeanor); Iowa Code §§ 321.97, 321.217 ("Perjury" on DOT forms and applications established as a class "D" felony);18 U.S.C. §§ 1028(d) (1982) (15 year penalties for false ID crimes); Iowa Code §§ 714.9-13 (fraudulent practices penalties ranging from class "C" felony to simple misdemeanor). I would guess Martha B. could have informed thoughts on these sorts of issues.

Change

~~718.5 Falsifying Public Documents. A person who, having no right or authority to do so, makes or alters any public document, or any instrument which purports to be a public document, or who possesses a seal or any counterfeit seal of the state or of any of its subdivisions, or of any officer, employee, or agency of the state or of any of its subdivisions, commits a class "D" felony.~~

To

718.5 Falsifying **or Seeking to Obtain False** Public Documents. A person commits a class "D" felony who, having no right or authority to do so:

1. **Destroys, conceals, removes, presents, uses,** makes, or alters any public document, or any instrument which purports to be a public document.

2. Possesses a seal or any counterfeit seal of the state or of any of its subdivisions, or of any officer, employee, or agency of the state or of any of its subdivisions commits.

3. Possesses blank identification documents.

4. Submits or files information or forms seeking to cause the creation or issuance of materially false public documents by any public servant.

Iowa Code chapter 718 (Offenses Against the Government)

Iowa Code § 718.6

Possible change: This revision is intended to ameliorate the rigid 911 standard in subsection 2 enacted in 1995, seeking to encourage citizens to err on the side of reporting legitimate matters and otherwise get involved. Accordingly, the proposed revision to section 718.6(2) decriminalizes some 911 call offenses. No revision is suggested to deal with the holding in *State v. Ahitow*, 544 N.W.2d 270 (Iowa 1996) (criminal suspect who fabricated a false alibi upon questioning by police did not *report* false information to the officer; he merely *provided* false information to the officer upon the officer's questioning).

Change

~~718.6 False Reports to or Communications with Public Safety Entities.~~

~~1. A person who reports or causes to be reported false information to a fire department, a law enforcement authority, or other public safety entity, knowing that the information is false, or who reports the alleged occurrence of a criminal act knowing the act did not occur, commits a simple misdemeanor, unless the alleged criminal act reported is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.~~

~~2. A person who telephones an emergency 911 communications center knowing that the person is not reporting an emergency or otherwise needing emergency information or assistance commits a simple misdemeanor.~~

~~3. A person who knowingly provides false information to a law enforcement officer who enters the information on a citation commits a simple misdemeanor, unless the criminal act for which the citation is issued is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.~~

to

718.6 False Reports to or Communications with Public Safety Entities.

1. A person who reports or causes to be reported false information to a fire department, a law enforcement authority, or other public safety entity, knowing that the information is false, or who reports the alleged occurrence of a criminal act knowing the act did not occur, commits a simple misdemeanor, unless the alleged criminal act reported is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.

2. A person who telephones an emergency 911 communications center knowing that the person is not reporting an emergency or otherwise needing emergency information or assistance commits a simple misdemeanor. **An isolated instance of a person seeking non-emergency assistance from, or contact information for, a local law enforcement agency shall not be deemed a knowing violation of this subsection.**

3. A person who knowingly provides false information to a law enforcement officer who enters the information on a citation commits a simple misdemeanor, unless the criminal act for which the citation is issued is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.

Iowa Code chapter 718A (Desecration of Flag or Other Insignia)

There are no right answers to the wrong questions.
--Ursula K. Le Guin

Possible changes: Repeal the entire chapter (along with Iowa Code § 723.4(6)), thereby decriminalizing all flag desecration offenses.

Of course, there is no sentiment in the Iowa legislature to repeal, as reflected by the recent amendments (enacting Iowa Code §§ 718A.0, 718A.7, 723.6(6) in response to Judge Pratt's ruling). *But see*

- *United States v. Eichman*, 496 U.S. 310, 110 S.Ct. 2404 (1990) (federal flag burning act was subject to most exacting scrutiny and could not be upheld under First Amendment);

- *Texas v. Johnson*, 491 U.S. 397, 109 S.Ct. 2533 (1989) (act of burning American flag during protest was protected First Amendment expressive conduct such that a state cannot prohibit in the interest of preventing breaches of peace or to preserve flag as symbol of nationhood and national unity);

- *Spence v. Washington*, 418 U.S. 405, 415, 94 S.Ct. 2727, 2453, 41 L.Ed.2d 842 (1974) (arrest under state flag desecration statute violates free speech); *but see* State v. Farrell 223 N.W.2d 270 (Iowa 1974) (effectively ignoring *Spence* after USSC remand in flag burning case).

- *Roe v. Milligan*, 479 F.Supp.2d 995 (S.D. Iowa 2007) (Iowa statute not facially overbroad but facially void for vagueness).

- *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 508, 89 S.Ct. 733, 737, 21 L.Ed.2d 731, 739 (1969) ("But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble.").

- *State v. Kool*, 212 N.W.2d 518 (Iowa 1973) (hanging plastic replica of American flag in upside-down position to signify a signal of distress because of the country's involvement in war and hanging peace symbol in front of flag, which was not intended to desecrate or hold flag up to ridicule and which did not cause any riots or violence constituted symbolic speech; and statute prohibiting desecration of American flag could not be constitutionally applied to prohibit such conduct).

- *State v. Waterman*, 190 N.W.2d 809 (Iowa 1971) (wearing United States flag as a poncho in public constituted act proscribed by statute).

The section could be reworked to leave prohibitions on commercial exploitation of the flag, but it seems unlikely the real motivating interest in the provision is commercial use.

In addition to flag desecration, section 250.9 of the Model Penal Code also addresses other "venerated objects," a reworking of which might read:

> Desecration of Venerated Objects. A person commits a simple misdemeanor by purposely desecrating any public monument or structure, or place of worship or burial. "Desecrate" means defacing, damaging, or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover the action.

Iowa Code chapter 719 (Obstructing Justice)

No suggested changes. I did speak with Bridget, who recently had the case of *State v. Allen*, 708 N.W.2d 361 (Iowa 2006) (§ 719.8 does not encompass DOC institutions), but she does not urge any changes to deal with that decision as it is her understanding that the statute strikes the balance that law enforcement desires.

Iowa Code chapter 720 (Perjury)

Iowa Code § 720.1

Possible changes: No reported prosecutions in over 80 years. *See Cotten v. Halverson*, 201 Iowa 636, 207 N.W. 795 (Iowa 1926). Move the substance of this subsection to revised section 720.4, below. Elimination of this subsection will also move "perjury" to the lead position in the chapter, which makes more sense.

> ~~720.1 Compounding a Felony. A person having knowledge of the commission by another of a felony indictable in this state who receives any consideration for a promise to conceal such crime, or not to prosecute or aid or give evidence to the prosecution of such crime, compounds that felony. Compounding any felony is an aggravated misdemeanor.~~

Iowa Code chapter 720 (Perjury)

Iowa Code § 720.2

Possible changes: None (other than renumbering it, should section 720.1 be compressed in 720.4).

720.2 Perjury, Contradictory Statements, and Retraction. A person who, while under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized by law, knowingly makes a false statement of material facts or who falsely denies knowledge of material facts, commits a class "D" felony. Where, while under oath or affirmation, in the same proceeding or different proceedings where oath or affirmation is required, a person has made contradictory statements, the indictment will be sufficient if it states that one or the other of the contradictory statements was false, to the knowledge of such person, and it shall be sufficient proof of perjury that one of the statements must be false, and that the person making the statements knew that one of them was false when the person made the statement, provided that both statements have been made within the period prescribed by the applicable statute of limitations. No person shall be guilty of perjury if the person retracts the false statement in the course of the proceedings where it was made before the false statement has substantially affected the proceeding.

Iowa Code chapter 720 (Perjury)

Iowa Code § 720.3

Possible changes: Codify and clarify the holding in *State v. Halleck*, 308 N.W.2d 56 (Iowa 1981) to deal with the person who tries to influence or direct the nature, character, mode, or manner of the testimony to get a witness to shade or color his testimony in a certain way, without actually lying. Elevate some suborning offenses to a Class "C" felony. *See*

- Iowa Code § 714.9 (first degree fraudulent practice involving $10,000 or more established as a Class C felony);

- Iowa Code § 719.6(1) (it is a Class C felony to aid the escape of Class A felon);

- Iowa Code §§ 718.6(1) and (3) (elevating the charge for a false report where "the alleged criminal act reported is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.").

Change

~~720.3 Suborning Perjury. A person who procures or offers any inducement to another to make a statement under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized, with the intent that such person will make a false statement, or who procures or offers any inducement to one who the person reasonably believes will be called upon for a statement in any such proceeding or matter, to conceal material facts known to such person, commits a class "D" felony.~~

to

720.3 Suborning Perjury. A person who procures or offers any inducement to another to make a statement under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized, with the intent that such person will make a false, **incomplete, or otherwise misleading** statement, or who procures or offers any inducement to one who the person reasonably believes will be called upon for a statement in any such proceeding or matter, to conceal **or fabricate** material facts known to such person, commits a class "D" felony. **If the suborned perjury was calculated to convict another of a serious or aggravated misdemeanor or felony, or otherwise deprive another of their liberty, then the suborner commits a class "C" felony.**

Iowa Code chapter 720 (Perjury)

Iowa Code § 720.4

Possible change: Fold existing section 720.1 into this section, and broaden the scope of the section, while bringing the penalties into line with those in other sections of the Code. *See* Uniform Penal Code §241.6; Iowa Code § 720.3 (making suborning perjury a class "D" felony); Iowa Code § 722.1 (making bribery of a juror a class "D" felony; accepting a bribe by juror a class "C" felony).

Change

~~720.4 Tampering with Witnesses or Jurors. A person who offers any bribe to any person who the offeror believes has been or may be summoned as a witness or juror in any judicial or arbitration proceeding, or any legislative hearing, or who makes any threats toward such person or who forcibly or fraudulently detains or restrains such person, with the intent to improperly influence such witness or juror with respect to the witness' or juror's testimony or decision in such case, or to prevent such person from testifying or serving in such case, or who, in retaliation for anything lawfully done by any witness or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor.~~

to read:

720.4 Tampering with Witnesses, Informants, or Jurors.

1. A person believing than an official proceeding or investigation is pending or about to be instituted who attempts to induce or otherwise improperly influence a witness, informant, or juror with respect to the witness' or juror's testimony, cooperation, or decision in any judicial, arbitration, or legislative proceeding, commits a serious misdemeanor.

a. Where the conduct relates to the commission of a felony, such a compounding of a felony is an aggravated misdemeanor.

b. Where the person employs force, deception, threat, or offer of pecuniary benefit such person commits a class "D" felony.

2. A person threatening or harming another by any unlawful act in retaliation for anything lawfully done in the capacity of witness, informant, or juror commits an aggravated misdemeanor.

3. A person soliciting, accepting, or agreeing to accept any benefit in consideration of influencing their conduct as a witness, informant, or juror commits a class "C" felony.

Iowa Code chapter 720 (Perjury)

Iowa Code § 720.5

Possible change: Broaden the wording to better encompass the sorts of activities that may arise. Stiffen the penalties for offenses taking place in official proceedings. *See* Uniform Penal Code §§ 241.2 and 241.7. *Cf.* Iowa Code § 321.217 ("Perjury" on DOT forms -- defined as making "any false affidavit, or knowingly swear[ing] or affirm[ing] falsely to any matter or thing required by the terms of [the DOT] chapter to be sworn to or affirmed" -- established as a class "D" felony); Iowa Code § 720.2 (Perjury in court established as a class "D" felony).

Change

~~720.5 False Representation of Records or Process. Any person who represents any document or paper to be any public record or any civil or criminal process, when the person knows such representation to be false, commits a simple misdemeanor.~~

To read:

720.5 Tampering with or Fabricating Physical Evidence; False Swearing.

1. Any person who represents any document or paper to be any public record or any civil or criminal process, when the person knows such representation to be false, commits a simple misdemeanor.

2. A person believing that an official proceeding or investigation is pending or about to be instituted, who alters or conceals any record, document, or thing to impair its verity or availability in such proceeding or investigation, or fabricates any record, document, or thing or presents such items in any such proceeding or investigation knowing them to be false, commits a serious misdemeanor.

3. A person who knowingly makes a false statement under oath or affirmation where the statement is one that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths, or the falsification occurs in an official proceeding or is intended to mislead a public service in the performance of an official function, commits an aggravated misdemeanor.

Iowa Code chapter 720 (Perjury)

Iowa Code § 720.6

Possible change: Clarify and expand the provision. Provide a civil remedy.

720.6 MALICIOUS PROSECUTION. A person who **makes an official report or otherwise** causes or attempts to cause another to be **arrested,** indicted or prosecuted for any public offense, having no reasonable grounds for believing that the person committed the offense commits a serious misdemeanor. **Iowa law shall recognize a civil remedy for damages arising from such malicious conduct, including legitimate costs and expenses incurred in successfully defending oneself from any criminal prosecution resulting from such malicious conduct.**

Iowa Code Chapter 99B (Games of Skill or Chance; Raffles)

Iowa Code § 99B.12(g)

Possible change: Increase the amount that can be won or lost in a private poker game from the 1975 dollar amount of $50 to a more realistic -- and more fun -- 2007 level of $250. *Cf.* Iowa Code § 99B.9(h) (same $50 limit for gambling in public places). For various contemporary valuations of $50 in 1975 dollars (extending up to $402) go to: *http://www.measuringworth.com/calculators/compare/*

99B.12 Games Between Individuals.

*****

g. No participant wins or loses more than a total of **two hundred and** fifty dollars or other consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

IOWA CODE CHAPTER 721: OFFICIAL MISCONDUCT Cris Douglass

This chapter prohibits various acts against or by public officers and employees. While the chapter is well organized in detailing the particular offenses, there are several concerns.

1) Section 721.1(1) (felonious misconduct in office) prohibits any public officer or employee from making, inter alia, a "false return." This term should be defined.

2) Section 721.2 (nonfelonious misconduct in office) has several problematic subsections:

a) section 721.2(4) provides:

> Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following commits a serious misdemeanor:
>
> 4. By color of the person's office and in excess of the authority conferred on the person by that office, requires any person to do anything or to refrain from doing any lawful thing.

This subsection is vague and conceivably could apply to acts that should not be criminal. For instance, could the Governor require a private citizen to drive him to the Capitol during a crisis without violating the statute? There is no exception for state emergencies or other compelling circumstances that may warrant the official's action.

b) section 721.2(5) prohibits any public officer or employee from knowingly using or permitting

> Any other person to use the property owned by the state or any subdivision or agency of the state **for any private purpose and for personal gain**, to the detriment of the state or any subdivision thereof (bold added).

Is it prohibited when the property is used a) for private purpose AND b) for personal gain? Or is it prohibited when property is used a) for private purpose OR b) for personal gain? There are no cases interpreting this statute and no uniform jury instructions laying out the elements needed to convict.

3) Section 721.3 prohibits "any person or political organization" from directly or indirectly soliciting "any employee of any commission, board or agency" created under Iowa statutes for money or contributions "for election purposes."

a) Why does this statute apply only to employees of "any commission, board or agency" and not also to employees of the state and political subdivisions?

b) There is no mens rea in this offense: it should only be prohibited if the person or political organization **knows** the person is an employee of a "commission, board or agency" when the solicitation is made.

3) Section 721.5 prohibits any "state officer," "state appointive officer," or "state employee" from leaving "the place of employment" "during the hours of employment" to do campaign work. Since the gist of the offense is using state work time to do political campaigning, there should be a statutory exception if the state employee takes vacation time to do the campaign work. A suggested amendment reads (addition in bold):

> It shall be unlawful for any state officer, any state appointive officer, or state employee to leave the place of employment or the duties of office for the purpose of soliciting votes or engaging in campaign work during the hours of employment of any such officer or employee **unless the person uses accrued personal vacation time for such purpose.**

4) Section 721.9 establishes the penalty for a violation of section 721.8, requiring the labeling of publicly owned vehicles. Section 721.9 should be repealed and the penalty should be added as the last line to section 721.8.

5) Although used in multiple places in chapter 721, the term "public officer" is not defined. For purposes of this chapter, does "public officer" have the same definition that the Iowa Supreme Court laid out in *State v. Pinckney*, 276 N.W.2d 433 (Iowa 1979)? *Pinckney* is discussed below in the chapter on bribery.

There are no comparable sections in the Model Penal Code with which to compare statutes in chapter 721.

IOWA CODE CHAPTER 722: BRIBERY Cris Douglass

This chapter concerns unlawfully influencing official decision-making in three areas: a) public officers and employees; b) sports and c) the commercial world.

1) Public officers and employees: sections 722.1 and 722.2

a) Section 722.1 prohibits offering the bribe, which is a class "D" felony. Section 722.2 prohibits accepting the bribe, which is a class "C" felony. No reason in the statute explains the disparity in the gravity of these two offenses. The Model Penal Code efficiently encompasses both crimes in one section entitled "Bribery in Official and Political Matters," and includes a helpful exclusionary clause for defenses:

> A person is guilty of bribery, a felony of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
>
> (1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
>
> (2) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
>
> (3) any benefit as consideration for a violation of a known legal duty as public servant or party official.
>
> It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

A. L. I. Model Penal Code section 240.1.

Recommendation: Sections 721.1 and 722.2 should be merged into one statute which provides the same penalty for either accepting or offering a bribe. The Model Penal Code clause excluding defenses should be included.

b) Sections 722.1 and 722.2 include a "witness" or a "juror" in the list of people who cannot be the object of bribes. These statutes overlap to an extent with Iowa Code section 720.4, which provides:

> A person who offers any bribe to any person who the offeror believes has been or may be summoned as a **witness or juror** in any judicial or arbitration proceeding, or any legislative hearing, or who makes any

threats toward such person or who forcibly or fraudulently detains or restrains such person, with the intent to improperly influence such witness or juror with respect to the witness' or juror's testimony or decision in such case, or to prevent such person from testifying or serving in such case, or who, in retaliation for anything lawfully done by any witness or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor (bold added).

There is a disparity between penalties: if the accused is charged with bribing a witness or juror under Iowa Code section 722.1, the penalty is a class "D" felony, while the penalty for the same act charged under Iowa Code section 722.2 is an aggravated misdemeanor. Recommendation: remove bribery from section 720.4 and limit that statute to force, fraud or detention of a witness or juror; or eliminate "witness" and "juror" from sections 722.1 and 722.2 and let section 720.4 concern any actions against witnesses and jurors. The Model Penal Code specifically excludes witnesses from the section on bribery, section 240.1.

c) Both sections 722.1 and 722.2 prohibit someone from "holding public office under the laws of this state." How long is this disqualification?

d) Who is a "public officer" under sections 722.1 and 722.2? The Iowa Supreme Court interpreted that term to exclude the liquor properties manager for the liquor control department in *State v. Pinckney*, 276 N.W.2d 433 (Iowa 1979) and detailed five elements required for a "public officer":

(1) The position must be created by the Constitution or legislature or through authority conferred by the legislature. (2) A portion of the sovereign power of government must be delegated to that position. (3) The duties and powers must be defined, directly or impliedly, by the legislature or through legislative authority. (4) The duties must be performed independently and without control of a superior power other than the law. (5) The position must have some permanency and continuity, and not be only temporary and occasional.

State v. Pinckney, 276 N.W.2f at 435-436, *quoting from State v. Taylor,* 144 N.W.2d 289, 292 (Iowa 1967).

Neither the criminal code nor Iowa Code chapter 4 defines "public officer." The Model Penal Code provides an initial definition section in the chapter on bribery and uses the all-inclusive term "public servant" which is defined as:

any officer or employee of government, including legislators, judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses; ...

ALI Model Penal Code section 240.0(7).

Recommendation: "public officer" should be defined OR the statute should adopt the Model Penal Code's inclusive term "public servant."

2) Sports: Bribery in sports is covered in sections 722.3 and in 722.11. Section 722.3 prohibits unlawful influencing of a sporting event while section 7122.11 concerns student athletes and includes a helpful definition section.

3) Commercial bribery: Section 722.10 prohibits the offer or delivery of a personal benefit to an employee which the offeror "has reason to know" is "in conflict with the employment relation and duties of the employee to the employer."

a) Initially, the phrase "in conflict with" is vague and not defined in the statute. If I take a corporate employee to a "business lunch"and extend the lunch for one-half hour over the business manual's limit of one hour for lunch, have I violated the statute?

b) The statute is limited to business bribery that occurs "in a business transaction or course of transactions." This phrase gave rise to an appeal, after conviction under this section, by a defendant who had offered a supervisor money to fire a fellow employee. Despite the fact that the offer occurred during business hours while the while the two were "on the clock" of the employer, the Court of Appeals found the conviction lacked
substantial evidence because the bribe did not occur during a "business transaction." *State v. Fisher*, 2002 WL 180826 (Iowa Ct. App. 2002).

In light of this case, it is unclear why commercial bribery is criminalized only to the extent detailed in *Fisher,* raising the question whether the legislature should regulate internal business actions in a criminal manner.

From Sharon

CHAPTER 723 PUBLIC DISORDER

1. Problem case law: Disorderly Conduct with respect to use of the US flag---**723.4(6)**.
March 2007--Federal district court in Southern District of Iowa held that phrase "show disrespect" renders statute void for vagueness and facially unconstitutional under the Fourteenth Amendment. Roe v. Milligan, 479 F. Supp.2d 995 (S.D. Iowa 2007). [Court made same holding as to phrase "cast contempt upon" in section 718A.1]. No appeal found.
2007 Iowa Legislature amended statute to prohibit using flag to "show disrespect" with the intent that "such use will provoke or encourage another to commit trespass or assault." (See attached). Thus, same phrase remains in statute BUT the Legislature added definitions which include further definitions for "show disrespect".

No problems discussed in decisions addressing sections 723.4(3) or 723.4(4): State v. Allen, 2000 WL 703009 (Iowa Ct. App. 5/31/00) (sufficiency of evidence–use of abusive epithet or threatening gesture likely to provoke violent act).
State v. Hardin, 498 N.W.2d 677 (Iowa 1993) (rejecting 1st Amendment challenge to section relating to disturbing lawful assembly or meeting—president's political speech).

2. Duplication: Chapter 718A.1 deals with Desecration of Flag or Other Insignia which is similar to section 723.4(6).

3. See note 1 above concerning section 723.4(6).

4. Intent element: I questioned whether section 723.1 (Riot) is clearly stated but a 1979 decision upheld provision against overbreadth, presumption, and vagueness challenges. Williams v. Osmundson, 281 N.W.2d 622 (Iowa 1979).

5. New section 723.5 added in 2006—prohibiting disorderly conduct at funerals and memorial services----provides for increased penalties for multiple offenses. Section does not jump ahead of others but covers a specific type of disruption.

6. No.

7. None other than similarities in section 718A.1.

CHAPTER 723, continued

8. Model Penal Code: Article 250 covers Riot, Disorderly Conduct, and Related Offenses. (See attached).
250.1 Riot and Failure to Disperse—in general more detailed than sections 723.1 and 723.3.
250.2 Disorderly Conduct—differs in several respects from section

723.4(subsections 1-3).

250.3 False Public Alarms—similar to section 723.4(5).
250.7 Obstruction Hwys and other Public Passages—similar to section 723.4(7).
250.8 Disrupting Meeting and Processions—similar to 723.4(4).

9. Organization acceptable.

10. None found.

CHAPTER 723A CRIMINAL STREET GANGS

1. No problem case law found.
   Cases discussing offenses include:

In the Interest of C.T., 521 N.W.2d 754 (Iowa 1994).
State v. Lewis, 514 N.W.2d 63 (Iowa 1994) (jury instructions found proper).
State v. Walker, 506 N.W.2d 430 (Iowa 1993) (not vague or overbroad).

2. None found.

3. Language reasonable and/or sufficiently defined.

4. Intent elements clear.

5. None found.

6. ?? Gang recruitment under section 723A.3 criminalizes the act of recruitment of a minor to join a criminal street gang. No case law found—added to Code in 1995.

7. Chapter provides own definitions.

8. No equivalent Model Penal Code provisions.

9. Organization acceptable.

10. None found.

From Bridget

IOWA CODE CHAPTER 724 – WEAPONS OFFENSES

This chapter seems inconsistent in its use of the requirement that the person act "knowingly." For example: section 724.3 refers to "knowingly possesses;" in section 724.4 some prohibited actions require proof of knowledge and others do not; sections 724.4B and 724.22 make no reference to knowledge. Case law establishes that to unlawfully carry or go armed with a weapon, the person must know of the presence of the weapon. The statutes would be more clear if the knowledge requirement were included in the language of the statutes and if that language were used consistently throughout the chapter.

The requirements for issuing permits to carry a weapon and for issuing annual permits to acquire pistols or revolvers should be thoroughly reviewed. Among the possible problems is that while the applicant is required to disclose on the application any history of addiction or mental illness, there is no requirement that the issuing agency confirm that the applicant has no such history and there is no central registry of persons who have been committed for chemical dependency or mental illness.

From Kevin

725 – Vice

Subsections 725.2, 725.3, and 725.4 could all be combined under a single statutory subsection called "promoting prostitution" with alternatives for 1) keeping a place for prostitution, 2) encouraging, inducing, or otherwise causing another to become or remain a prostitute, 3) soliciting, 4) procuring a prostitute. Arguably, alternatives such as leasing a place for prostitution could be eliminated and charged as "keeping" either as a principal or aider and abettor.
Also the common law notion that a person induced to be a prostitute is a victim, therefore not an aider and abettor, coconspirator, or accomplice, could be retained with an exception if the person induced knowingly and willingly enters into an arrangement to become a prostitute. This would be an additional statutory provision.

Review of Iowa Code Chapter 726 "Protection of the Family and Dependent Persons"

This chapter warrants simplification.

Order

Currently, the chapter contains no logical order. The subject of offenses are miss-ordered. The chapter progresses through the offenses of bigamy, incest, neglect of dependent persons, witnesses, nonsupport, and endangerment before returning to the subjects of neglect of healthcare facility residents and neglect or nonsupport of dependent adults. Similarly, the grade of offenses are helter-skelter: bigamy is a misdemeanor, incest a "D" felony, neglect a "C" felony, nonsupport a "D" felony, then the endangerment provisions march through a range from a fifty-year "B" felony to an aggravated misdemeanor, and so on. At least one offense, neglect of a dependent overlaps with two subsections of child endangerment. *See State v. Caskey*, 539 N.W.2d 176 (Iowa 1995). Finally, sections 726.3, 726.5, 726.7, and 726.8 all relate to neglect and nonsupport, but vary according to the victim (a dependent person, a child or ward, a healthcare facility resident, and a dependent adult) and in at least one instance overlap. *See State v. Caskey*, 539 N.W.2d 176 (Iowa 1995).

I suggest the following order:

1. Child endangerment, defined as:
    a. knowingly creating a risk to the child's physical, mental or emotional health, or safety
    b. knowingly permitting the continued abuse of a child.
    c. knowingly abandoning a child
    d. knowingly cohabiting with a sex offender
    e. knowing nonsupport of a child
    f. knowing exposure to meth lab
        Punishment according to:
            50 yr. "B" for death or three serious injuries in a 12 month period
            "C" felony for serious injury
            "D" felony for bodily injury
            Aggravated misdemeanor for no injury
2. Neglect of a healthcare facility resident or dependent adult, a "C" felony if serious injury results, a "D" felony if not.
3. Nonsupport of a dependant adult, a "D" felony
4. Incest, a "D" felony
5. Bigamy, a serious misdemeanor

Mens Rea

This chapter contains several confusing or superfluous *mens rea*. For instance, section 726.3 prohibits "knowingly ***or*** recklessly" exposing a dependent person to a hazard; if one is a lesser grade of intent, then the other is superfluous. Likewise, section 726.6(1) states it is child endangerment to knowingly create a risk of substantial harm or to intentionally torture; arguably the former subsumes the latter. Also, "Wanton neglect" under section 726.7 and 726.8 contain a "knowing" *mens rea*. Finally, the courts have had to devote considerable attention to the

meaning of "knowingly" under Iowa Code section 726.6(1)(a), which defines child endangerment to include one who "knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental, or emotional health or safety." *See, e.g.*, *State v. James*, 693 N.W.2d 353 (Iowa 2005).

For clarity and consistency's sake, I recommend adoption of the standards of culpability defined in the Model Penal Code at section 2.02. Notably, the Supreme Court drew from these definitions in *James*. The grades of culpability are "purposely," "knowingly," "recklessly," and "negligently." 10A *Model Penal Code* (U.L.A.) § 2.02(2) (2001). "Purposely" seems to equate with "intentionally" and the Model Code specifically states "knowingly" satisfies the term "willfully." *Id.* § 2.02(8). Most importantly, the Model Penal Code makes clear that the *mens rea* element attaches to each material element, as discussed in *James*, such that when a person "knowingly" acts, he must also be "practically certain that his conduct with cause such result."

Incidentally, Iowa may follow a minority position with respect to section 726.6(1)(a) -(b). Deleware, Missouri, and New York have similar statutes. *See* Del. Code Ann. Tit. 11, § 1102 (2001); Mo. Rev. Stat. § 568.045.1(1) (2003); N.Y. Penal Law§ 260.10(1) (McKinney 2003). States take a wide variety of statutory paths in enacting child endangerment laws.

Relevance of Model Penal Code
Other than adopting the standards of the model code, I do not recommend drawing more from it. The Model Penal Code chapter on offenses against the family devotes the bulk of its attention to prohibiting abortion, bigamy and incest. Neglect and nonsupport are single-sentence prohibitions, punished as misdemeanors. 10A *Model Penal Code* §§ 230.1 - 230.5 (2001).

Ad hoc Provisions
This Code chapter contains at least three provisions enacted to deal with peculiar sets of facts: section 726.3 and 726.6(2) are aimed at the Baby Chelsea situation and relieve persons who abandon newborns at hospitals from prosecution, section 726.6(1)(h) appears aimed at the Jetseta Gage case and prohibit cohabitation with known sex offenders, and section 726.6A seems aimed at the Ruesga case and creates a super-penalty for committing three acts of child endangerment within twelve months.

Finally, chapter 726 contains the Child Identification and Protection Act. Since it does not create a criminal penalty, but rather allows parents to get their children fingerprinted, I propose it be relocated

Additional resources:
Milton Roberts, Annot. *Validity and Construction of Penal Statute Prohibiting Child Abuse*, 1 A.L.R.4th 38 (1980).

Review of Iowa Code Chapter 727 "Health, Safety and Welfare"

This chapter is largely obsolete.

Section 727.1 prohibits distribution of dangerous substances, including drugs, medicine, poisons, and other injurious substances. This has largely been supplanted by Iowa Code chapter 124 governing controlled substances and other Code sections.

Section 727.2 makes the sale of fireworks a simple misdemeanor, punishable by a $250 fine. It allows cities, counties, and the Iowa State Fair to put on fireworks displays. One wonders if it might not better reside in the chapter for the State Fire Marshall (Iowa Code ch. 100).

Sections 727.3 and 727.4 punish abandoning refrigerators and exposing others to X-rays as simple misdemeanors. These should be governed by the Code chapters on waste and medical licensing as scheduled offenses.

Sections 727.5 and 727.6 are technologically outdated. They prohibit as simple misdemeanors the refusal to give the phone or trunk line to law enforcement and falsely claiming an emergency on the phone. Each are already governed by obstruction of justice and false reports crimes.

Section 727.8 concerning wiretapping is the only remaining section that is contemporary, *State v. Philpott*, 702 N.W.2d 500 (Iowa 2005), but arguably superseded by federal law. *See State v. Spencer*, 737 N.W.2d 124 (Iowa 2007).

Section 727.9 makes it a simple misdemeanor to transact business without a license.

Section 727.10 makes it a serious misdemeanor to "exhibit[] any person." Though a very old statute, it is unclear whether it prohibits much now that child endangerment and sexual abuse do not.

Finally, section 727.11 requires video store owners to keep confidential their customer's borrowing, except in certain circumstances. This can be governed in a regulatory fashion.

CHAPTER 728–OBSCENITY

The following suggestions are in addition to the "Muhlenbruch fix" we've already proposed. This chapter, with that exception, seems to be in pretty good shape.

Section 728.2–Dissemination and Exhibition of Obscene Material to Minors:

It seems odd to give parents and guardians the right to provide obscene material to their children. Because obscene material is different than pornography, it's hard to imagine when it would be appropriate for minors to view. I'd suggest removing the phrase "other than the parent or guardian of the minor".

Section 728.4–Rental or Sale of Hard-core pornography:

I'm curious as to why this section provides that only a county attorney or the Attorney General can bring charges.

Section 728.5–Public Indecent Exposure in Certain Establishments:

In 728.5 (2) and (3), we don't need "breast" in front of "nipple". Also, in 728.5(4), no person who exposes his or her "genitals, pubic hair, or anus" is allowed to remain on the premises. It seems difficult to expose one's anus-- I think it should be "buttocks" instead.

The last provision, exempting theaters, concert halls, art centers, museums or any other "similar establishment which is primarily devoted to the art or theatrical performances..." could be beefed up a little. Strip clubs are now calling themselves theaters, so we could add a SLAPS test here as well (See Section 728..1(5) for the definition of obscene material) about having serious literary, artistic, political or scientific value.

Section 728.6–Civil Suit to Determine Obscenity:

No substantive suggestions, but in the last sentence, I'd take out either "optional" or "not mandatory".

Section 728.7–School and Library Exemptions:

The court interpreted this section in State v. Robinson, 618 NW2d 306, 315-19 (Iowa 2000). No suggestions.

Section 728.8–Suspension of Licenses or Permits:

No suggestions.

Section 728.9–Evidence Considered:

No suggestions.

Section 728.10–Affirmative Defense–Reasonable Mistake of Age for Dissemination:

No suggestions.

Section 728.11–Uniform Application:

No suggestions.

Section 728.12–Sexual Exploitation of a Minor:

The most important change to this section will be the "Muhlenbruch fix", which will correct the one computer-one charge problem. Otherwise, no suggestions.

Section 728.14–Commercial Reporting:

I'm wondering why this section has its own definitional terms for "prohibited sexual acts". They're the same as the definitions in 728.1 except that "for the purposes of arousing or satisfying the sexual desires of a person who may view a depiction of the act" has been added to "fondling or touching the pubes or genitals". It seems like the original definitions should suffice.

Section 728.15–Telephone Dissemination:

No suggestions.

From Sharon

<u>CHAPTER 729</u> **<u>INFRINGEMENT OF INDIVIDUAL RIGHTS</u>**

1. No relevant case law found.

2. ??Some duplication as to subject matter—criminal versus civil issues:
See generally Iowa Civil Rights Act in Chapter 216—prohibits various discriminatory practices.
*Section 729.1-.2 criminalizes use of religion in connection with public employment matters.
*Section 729.4 criminalizes violations of "fair employment practices"----while section 216.6 provides civil remedies for unfair employment practices and is broader in scope.
*Section 729.5 criminalizes certain violations as to the exercise of constitutional rights which result in physical injury, property damage, and/or assault.

3. Language clear.

4. Intent elements clear.

5. Genetic testing under section 729.6 was added in 1992 but there is no case law involving this statute—and it provides only for civil remedies, not criminal, for unlawful use of such testing in connection with employment, membership, and licensure matters. Also, minor wording change in 2007.

6. ??Simple misdemeanor for use of "religious test" in certain employment matters under sections 729.1-729.3.

7. The scope of sections 216.6 and 729.4 differ. (Also, the scope of section 729A.2 differs).

8. Nothing comparable found in Model Penal Code.

9. This chapter contains an odd mix of provisions and one statute, section 729.6 (genetic testing) which carries no criminal penalty. See note 2 above.

10. None found.

<u>CHAPTER 729A</u> **<u>VIOLATION OF INDIVIDUAL RIGHTS–HATE CRIMES</u>**

1. No problem case law found.

2. Section 729A.2 works in conjunction with specific statutes to enhance level of punishment—Assault under section 708.2C, Arson under section 712.9, Criminal Mischief under section 716.6A, and Trespass under section 716.8(3-4). Section 729A.5 also provides for civil remedies for violations of chapter 729A.

CHAPTER 729A, continued

3. Language clear.
4. Intent clear.
5. Chapter 729A was last amended in 1992—nothing newer.
6. No.
7. No.
8. Nothing comparable found in Model Penal Code.
9. Organization reasonable.
10. None found.

From Bob

EMPLOYMENT OFFENSES (chapters 730, 731, 732)

Chapter 730 Employer-Employee Offenses

Sections 730.1 through 730.3, not amended since 1977, seem antiquated and unnecessary given developments in employment law and the availability of civil damages. These statutes may also result in selective enforcement problems. Section 730.1, in my opinion, is bad public policy and may be unconstitutional.

730.1 A former employer is prohibited from preventing a discharged employee, "by word of mouth or writing of any kind," from obtaining employment with another person or company, "except by furnishing in writing on request a truthful statement as to the cause of the person's discharge." Serious misdemeanor.

This statute could cause problems for well-meaning employers who truthfully tell prospective employers about legitimate concerns with a discharged employee. Is it sound public policy to place such severe restrictions (in writing, on request, cause of discharge only) on employers, or to criminalize the making of true statements?

Freedom of speech (chilling effect) constitutional problems??

730.2 Treble damages for blacklisting a discharged employee.

730.3 False statements concerning the honesty of employees (especially false statements that railroad employees let their friends ride for free). Simple misdemeanor. Looks like a "special interest" statute.

730.4 Polygraph examinations as condition of employment generally prohibited. Simple misdemeanor. Enacted in 1983; last amended in 2000.

730.5 Private sector drug-free workplace. Civil penalties and remedies only. Very long section, enacted in 1987 and extensively amended in 2004 and 2005.

Chapter 731 Labor Union Membership

Iowa's "right to work" law is a *malum prohibitum* statute with profound political and economic overtones:

731.2 Refusing employment based on union membership or non-membership.

731.3 Entering into a contract to exclude employment based on union status.

731.4 Making payment of union dues a prerequisite to employment.

731.5 Deducting union dues from pay.

731.6 Each of the above: Serious misdemeanor.

Chapter 732 Labor Boycotts and Strikes

Most of these provisions were enacted in 1950 and last amended in 1977. No Iowa case law. Like "right to work" law, *malum prohibitum*.

732.1 Contracting to boycott or strike in sympathy. Simple misdemeanor.

732.2 Carrying out unlawful boycott or strike. Simple misdemeanor.

732.3 Causing work stoppage or slowdown because of labor dispute. Simple misdemeanor.

732.6 Hiring professional strikebreakers. Simple misdemeanor.

From Tom A.

Iowa Code Chapter 822 (Postconviction Procedure)

Iowa Code § 822.2(1)

Possible change: Create a custody requirement similar to the federal habeas statute to prevent stale claims. *Compare Wenck v. State*, 320 N.W.2d 567 (Iowa 1982) (postconviction action is not moot when sentence which appellant challenges has expired due to the on-going collateral consequences that a conviction can have).

822.2 Situations Where Law Applicable.

> 1. Any person **in custody** who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under this chapter to secure relief . . . .

Iowa Code – Misc. Felonies (~~57~~ 55)

39A.2
48A.7A
80.9
80A.16
81.6
87.11E
87.14A
91E.3
99D.24
99D.25
99F.15
99G.36
101A.14
126.25
142C.10
142C.10A
147.103A
147A.11
172B.6
200.18
235B.20
321.189A
321.217
321.261
321.279
328.41
422.25
422.40
423.40
424.17
437A.13
462A.7
462A.14
462A.34B
462A.70
481A.125A
502.508
507A.10
507B.14
507E.3
516E.15
521A.10
523A.704
523C.18
524.1605
529.2
533.509
533C.706
535B.8
551A.10
553.14
692.7
808B.2
809A.10
809A.18

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I.C.A. § **39A.2**

Iowa Code Annotated Currentness
Title II. Elections and Official Duties [Chs. 39-79]
Subtitle 1. Elections [Chs. 39-63A]
Chapter 39A. Election Misconduct (Refs & Annos)

→**39A.2**. Election misconduct in the first degree

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

a. Registration fraud.

(1) Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

(2) Falsely swears to an oath required pursuant to section 48A.7A.

b. Vote fraud.

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter's right to vote.

confusing, repetitious?

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts to deprive or defraud the citizens of this state of a fair and impartially

conducted election process.

to prevent a person from doing

c. Duress. Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under chapters 39 through 53.

d. Bribery.

(1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).

e. Conspiracy. Conspires with or acts as an accessory with another to commit an act in violation of paragraphs "a" through "d".

2. Election misconduct in the first degree is a class "D" felony.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 2. Amended by Acts 2007 (82 G.A.) H.F. 653, § 1.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2007 Legislation

Acts 2007 (82 G.A.) H.F. 653, § 1, in subsec. 1, in par. a, designated subpar. (1), and added subpar. (2).

Acts 2007 (82 G.A.) H.F. 653, § 7 provides:

"Sec. 7. Applicability date. This Act applies to elections held on or after January 1, 2008."

I. C. A. § **39A.2,** IA ST § **39A.2**

Current through Acts of the 2007 1st Reg.Sess.

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I.C.A. § **48A.7A**

Iowa Code Annotated Currentness
Title II. Elections and Official Duties [Chs. 39-79]
Subtitle 1. Elections [Chs. 39-63A]
Chapter48a. Voter Registration (Refs & Annos)
Subchapter II. Qualifications to Register to Vote

→**48A.7A.** Election day and in-person absentee registration

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1\. a. A person who is eligible to register to vote and to vote may register on election day by appearing in person at the polling place for the precinct in which the individual resides and completing a voter registration application, making written oath, and providing proof of identity and residence.

b. (1) For purposes of this section, a person may establish identity and residence by presenting to the appropriate precinct election official a current and valid Iowa driver's license or Iowa nonoperator's identification card or by presenting any of the following current and valid forms of identification if such identification contains the person's photograph and a validity expiration date:

(a) An out-of-state driver's license or nonoperator's identification card.

(b) A United States passport.

(c) A United States military identification card.

(d) An identification card issued by an employer.

(e) A student identification card issued by an Iowa high school or an Iowa postsecondary educational institution.

(2) If the photographic identification presented does not contain the person's current address in the precinct, the person shall also present one of the following documents that shows the person's name and address in the precinct:

(a) Residential lease.

(b) Property tax statement.

(c) Utility bill.

(d) Bank statement.

(e) Paycheck.

(f) Government check.

(g) Other government document.

c. In lieu of paragraph "b", a person wishing to vote may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct. The registered voter's oath shall attest to the stated identity of the person wishing to vote and that the person is a current resident of the precinct. The oath must be signed by the attesting registered voter in the presence of the appropriate precinct election official. A registered voter who has signed an oath on election day attesting to a person's identity and residency as provided in this paragraph is prohibited from signing any further oaths as provided in this paragraph on that day.

2. The oath required in subsection 1, paragraph "a", and in paragraph "c", if applicable, shall be attached to the voter registration application.

3. At any time before election day, a person who appears in person at the commissioner's office or at a satellite absentee voting station after the deadline for registration in section 48A.9, may register to vote and vote an absentee ballot by following the procedure in this section for registering to vote on election day. A person who wishes to vote in person at the polling place on election day and who has not registered to vote before the deadline for registering in section 48A.9, is required to register to vote at the polling place on election day following the procedure in this section. However, the person may complete the voter registration application at the commissioner's office and, after the commissioner has reviewed the completed application, may present the application to the appropriate precinct election official along with proof of identity and residency.

4. a. The form of the written oath required of the person registering under this section shall read as follows:

I, (name of registrant), do solemnly swear or affirm all of the following:

I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa.

I am the person named above.

I live at the address listed below.

I do not claim the right to vote anywhere else.

I have not voted and will not vote in any other precinct in this election.

I understand that any false statement in this oath is a class "D" felony punishable by no more than five years in confinement and a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

....

Signature of Registrant

....

Address

....

Telephone (optional to provide)

Subscribed and sworn before me on (date).

....

Signature of Precinct Election Official

b. The form of the written oath required of a person attesting to the identity and residency of the registrant shall read as follows:

```
   I, .......... (name of registered voter), do solemnly swear or affirm all
of the following:
   I am a preregistered voter in this precinct or I registered to vote in this
precinct today, and a registered voter did not sign an oath on my behalf.
   I am a resident of the .......... precinct, ....... ward or township, city
of .........., county of .........., Iowa.
   I reside at .......... (street address) in ............... (city or
township)
   I personally know ............... (name of registrant), and I personally
know that ............... (name of registrant) is a resident of the
.......... precinct, .......... ward or township, city of .........., county
of .........., Iowa.
```

I understand that any false statement in this oath is a class "D" felony punishable by no more than five years in confinement and a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

....

Signature of Registered Voter

Subscribed and sworn before me on (date).

....

Signature of Precinct Election Official

CREDIT(S)

Added by Acts 2007 (82 G.A.) H.F. 653, § 2. Amended by Acts 2007 (82 G.A.) S.F. 601, § 241.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2007 Legislation

Acts 2007 (82 G.A.) H.F. 653, § 7 provides:

"Sec. 7. Applicability date. This Act applies to elections held on or after January 1, 2008."

Acts 2007 (82 G.A.) S.F. 601, § 242, made nonsubstantive changes in subsec. 4, par. b.

I. C. A. § **48A.7A,** IA ST § **48A.7A**

Current through Acts of the 2007 1st Reg.Sess.

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Lines:	296
Documents:	1
Images:	0

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I.C.A. § **80.9**

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 1. Public Safety [Chs. 80-83A]
Chapter 80. Department of Public Safety (Refs & Annos)

→**80.9**. Duties of department--duties and powers of peace officers--state patrol

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

It shall be the duty of the department to prevent crime, to detect and apprehend criminals, and to enforce such other laws as are hereinafter specified. A peace officer of the department when authorized by the commissioner shall have and exercise all the powers of any other peace officer of the state.

1. A peace officer shall not exercise the general powers of a peace officer within the limits of any city, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city, with the approval of the commissioner;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws;

g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When a peace officer of the department is acting in cooperation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the jurisdiction of the peace officer is statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, the duties of a peace officer shall be as follows:

a. To enforce all state laws.

b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured.

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; to disseminate fire-prevention education; to develop training standards and provide training to fire fighters around the state; and to address other issues related to fire service and emergency response as requested by the state fire service and emergency response council.

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe. The provisions of chapter 141A do not apply to the entry of human immunodeficiency virus-related information by criminal or juvenile justice agencies, as defined in section 692.1, into the Iowa criminal justice information system or the national crime information center system. The provisions of chapter 141A also do not apply to the transmission of the same information from either or both information systems to criminal or juvenile justice agencies. The provisions of chapter 141A also do not apply to the transmission of the same information from either or both information systems to employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the jurisdiction of the department of human services, and employees of city and county jails, if those employees have direct physical supervision over inmates of those facilities or institutions. Human immunodeficiency virus-related information shall not be transmitted over the police radio broadcasting system under chapter 693 or any other radio-based communications system. An employee of an agency receiving human immunodeficiency virus-related information under this section who communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates for the purpose of conveying the information to such an employee, or who communicates the information to any person not employed by the agency or uses the information outside the agency is guilty of a class "D" felony. The commissioner shall adopt rules regarding the transmission of human immunodeficiency virus-related information including provisions for maintaining confidentiality of the information. The rules shall include a requirement that persons receiving information from the Iowa criminal justice information system or the national crime information center system receive training regarding confidentiality standards applicable to the information received from the system. The commissioner shall develop and establish, in cooperation with the department of corrections and the Iowa department of public health, training programs and program criteria for persons receiving human immunodeficiency virus-related information through the Iowa criminal justice information system or the national crime information center system.

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

g. To assist persons who are responsible for the care of private and public land in identifying growing marijuana plants when the plants are reported to the department. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules necessary to carry out this paragraph.

h. To maintain a vehicle theft unit in the state patrol to investigate and assist in the examination and identification of stolen, altered, or forfeited vehicles.

i. Receive and review the budget submitted by the state fire marshal and the state fire service and emergency response

council.

j. To administer section 100B.31 relating to volunteer emergency services provider death benefits.

3. A peace officer may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to the peace officer's duties as provided by law.

4. The state patrol is established in the department. The patrol shall be under the direction of the commissioner. The number of supervisory officers shall be in proportion to the membership of the state patrol.

5. The department shall be primarily responsible for the enforcement of all laws and rules relating to any controlled substance or counterfeit substance, except for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, physicians, hospitals, and health care facilities as defined in section 135C.1, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances.

CREDIT(S)

Amended by Acts 1969 (63 G.A.) ch. 98, § 2; Acts 1970 (63 G.A.) ch. 1047, § 4, eff. May 8, 1970; Acts 1974 (65 G.A.) ch. 1087, § 32; Acts 1974 (65 G.A.) ch. 1180, § 53, eff. July 1, 1975; Acts 1975 (66 G.A.) ch. 85, § 1; Acts 1976 (66 G.A.) ch. 1064, § 3; Acts 1978 (67 G.A.) ch. 1019, § 26; Acts 1990 (73 G.A.) ch. 1179, § 1; Acts 1991 (74 G.A.) ch. 34, § 1; Acts 1992 (74 G.A.) ch. 1238, § 18; Acts 1994 (75 G.A.) ch. 1154, § 1; Acts 1995 (76 G.A.) ch. 191, § 2; Acts 1998 (77 G.A.) ch. 1074, § 6; Acts 1999 (78 G.A.) ch. 181, § 1; Acts 2000 (78 G.A.) ch. 1117, §§ 4, 5; Acts 2000 (78 G.A.) ch. 1232, § 96; Acts 2005 (81 G.A.) ch. 35, S.F. 283, §§ 4 to 8; Acts 2007 (82 G.A.) S.F. 204, §§ 1 to 3.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1998 Legislation

The 1998 amendment, in par. h of subsec. 2, substituted "state" for "highway safety".

1999 Legislation

The 1999 amendment, in subsec. 2, throughout par. d, substituted "chapter 141A" for "chapter 141".

2000 Legislation

The 2000 amendment by ch. 1117, in subsec. 2, added "; to develop training standards and provide training to fire fighters around the state; and to address other issues related to fire service and emergency response as requested by the state fire service and emergency response council" in par. c and added par. i relating to the receipt and review of the budgets of the state fire marshall, state fire service and emergency response counsel.

The 2000 amendment by ch. 1232, in subsec. 2, added par. j relating to administering § 100B.11.

Acts 2000 (78 G.A.) ch. 1232, § 98 which provided for the repeal of subsec. 2, par. j, eff. July 1, 2002 was itself repealed by Acts 2002 (79 G.A.) ch. 1079, § 2, eff. April 5, 2002.

2005 Legislation

The 2005 amendment by Acts 2005 (81 G.A.) ch. 35, S.F. 283, § 4, rewrote unnum. par. 1; ch. 35, S.F. 283, § 5, in subsec. 1, par. b, deleted "of public safety" following "commissioner"; ch. 35, S.F. 283, § 6, rewrote subsec. 1, unnum. par. 2; ch. 35, S.F. 283, § 7, rewrote subsec. 4; and ch. 35, S.F. 283, § 8, added subsec. 5, relating to

enforcement of laws and rules. Prior to amendment, unnum. par. 1, subsec. 1, unnum. par. 2, and subsec. 4, had read:

"It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, when authorized by the commissioner of public safety shall have and exercise all the powers of any peace officer of the state."

"When any member of the department shall be acting in cooperation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the member's jurisdiction shall be statewide."

"4. It is the intent of the general assembly that the commissioner of public safety shall reassign the arson investigators from the division of criminal investigation and bureau of identification of the department of public safety to the state fire marshal's office effective July 1, 1978, and the arson investigators shall be under the direct supervision of the state fire marshal."

The Code Editor for Code Supp. 2005 added "--duties and powers of peace officers--state patrol" in the section name line and made terminology changes in subsec. 2, par. h, pursuant to the terms of Acts 2005 (81 G.A.) ch. 35, S.F. 283, § 31, which provides:

"Sec. 31. Code editor directives.

"1. The Code editor is directed to change the term 'Iowa state patrol' to 'state patrol' wherever that term appears in the 2005 Code or in Acts enacted during a regular or extraordinary 2005 session of the general assembly, or in other Acts pending codification.

"2. The Code editor is directed to change the term 'division of criminal investigation and bureau of identification' to 'division of criminal investigation' wherever the term appears in the 2005 Code or in Acts enacted during a regular or extraordinary 2005 session of the general assembly, or in other Acts pending codification."

Similar provisions were formerly contained in §§ 80.4, 80.5, and 80.27, Code 2005.

2006 Legislation

The Code Editor for Code 2007, in subsec. 2, par. j, substituted "100B.31" for "100B.11".

2007 Legislation

Acts 2007 (82 G.A.) S.F. 204, § 1, in subsec. 1, unnum. par. 1, substituted "A peace officer" for "They" and "the general powers of a peace officer" for "their general powers"; Acts 2007 (82 G.A.) S.F. 204, § 2, in subsec. 2, unnum. par. 1, substituted "the duties of a peace officer" for "their duties"; and Acts 2007 (82 G.A.) S.F. 204, § 3, in subsec. 3, substituted "A peace officer" for "They" and "the peace officer's duties" for "their duties".

1996 Main Volume

The 1969 amendment inserted, in the second sentence, "when authorized by the commissioner of public safety".

The 1970 amendment, in subsec. 1, added para. g relating to narcotics and drugs.

Acts 1974 (65 G.A.) ch. 1087 deleted references to "town".

Acts 1974 (65 G.A.) ch. 1180, in par. b of subsec. 2, deleted "to issue operators' and chauffeurs' licenses".

The 1975 amendment added subsec. 3 relating to administration of oaths, acknowledgment of signatures and voluntary testimony.

The 1976 amendment, in subsec. 2, added par. f relating to protection and security.

The 1978 amendment added subsec. 4 relating to arson investigators.

The 1990 amendment, in subsec. 2, added par. g relating to identification and eradication of marijuana plants.

The 1991 amendment, in subsec. 2, rewrote par. g which prior thereto read:

"To identify and eradicate marijuana plants found growing on public or private property when growing marijuana plants are reported to the department, and adopt rules governing the identification and eradication of marijuana plants in cooperation with local law enforcement officials."

The 1992 amendment, in subsec. 2, added par. h relating to the vehicle theft unit.

The 1994 amendment, in subsec. 2, par. d, added the third to tenth sentences relating to human immunodeficiency virus-related information.

The 1995 amendment, in par. d of subsec. 2, inserted "or juvenile" in the third and fourth sentences.

Derivation:

Code 1939, § 1225.13.
Acts 1939 (48 G.A.) ch. 120, §§ 8, 40.
Acts 1937 (47 G.A.) ch. 134, § 36.
Code 1935, §§ 5018-g6, 13410.
Acts 1935 (46 G.A.) ch. 48, § 7.
Codes 1931, 1927, §§ 5017-a1, 13410.
Acts 1927 (42 G.A.) ch. 249.
Acts 1925 (41 G.A.) ch. 7, § 1.
Code 1924, § 13410.
Acts 1923-24, Ex.Sess. (40 G.A.) H.F. 250, § 8.
Code Supp.1915, § 65-b.
Acts 1915 (36 G.A.) ch. 271, § 2.

I. C. A. § **80.9,** IA ST § **80.9**

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Images:	0

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I.C.A. § **80A.16**

C

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 1. Public Safety [Chs. 80-83A]
Chapter 80A. Private Investigative Agencies and Security Agents (Refs & Annos)

→**80A.16**. Penalties

1. A person who violates any of the provisions of this chapter where no other penalty is provided is guilty of a simple misdemeanor.

2. A person who does any of the following is guilty of a fraudulent practice:

Knowingly?

a. Makes a false statement or representation in an application or statement filed with the commissioner, as required by this chapter.

b. Falsely states, represents, or fails to disclose as required by this chapter, that the person has been or is a private investigator, private security agent, or bail enforcement agent.

c. Falsely advertises that the person is a licensed private investigator, private security agent, or bail enforcement agent.

3. A person who is subject to the licensing requirements of this chapter and who engages in a private investigation or private security business as defined in this chapter, without possessing a current valid license as provided by this chapter, is guilty of a serious misdemeanor.

4. A person who is subject to the licensing requirements of this chapter for a bail enforcement business or bail enforcement agent, and who operates a bail enforcement business or who acts as a bail enforcement agent for a bail enforcement business, without possessing a current valid license, is guilty of a class "D" felony.

CREDIT(S)

Acts 1984 (70 G.A.) ch. 1235, § 16, eff. Jan. 1, 1985. Amended by Acts 1998 (77 G.A.) ch. 1149, § 10.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1998 Legislation

The 1998 amendment rewrote the section which had read:

"A person who violates any of the provisions of this chapter where no other penalty is provided is guilty of a simple misdemeanor. A person who makes a false statement or representation in an application or statement filed with the commissioner, as required by this chapter, or a person who falsely states or represents that the person has been or is a private investigator or private security agent or advertises as such is guilty of a fraudulent practice. A person who engages in a private investigation or private security business as defined in this chapter, without possessing a current valid license as provided by this chapter, is guilty of a serious misdemeanor."

Acts 1998 (77 G.A.) ch. 1149, § 14 provides:

"Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act."

1996 Main Volume

Derivation:

Codes 1983, 1981, 1979, 1977, § 80A.12.
Acts 1976 (66 G.A.) ch. 1245, (ch. 4), § 36.
Codes 1975, 1973, 1971, 1966, 1962, 1958, 1954, 1950, § 80A.12.
Acts 1947 (52 G.A.) ch. 62, § 12.

I. C. A. § **80A.16,** IA ST § **80A.16**

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Citation Text:	IA ST s 81.6
Lines:	69
Documents:	1
Images:	0

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I.C.A. § **81.6**

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 1. Public Safety [Chs. 80-83A]
Chapter 81. DNA Profiling (Refs & Annos)

→**81.6**. Criminal offense

1. A person who knowingly or intentionally does any of the following commits an aggravated misdemeanor:

a. Discloses any part of a DNA record to a person or agency that is not authorized by the division of criminal investigation to have access to the DNA record.

b. Uses or obtains a DNA record for a purpose other than what is authorized under this chapter.

2. A person who knowingly or intentionally alters or attempts to alter a DNA sample, falsifies the source of a DNA sample, or materially alters a collection container used to collect the DNA sample, commits a class "D" felony.

CREDIT(S)

Added by Acts 2005 (81 G.A.) ch. 158, H.F. 619, § 6, eff. June 14, 2005.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2005 Legislation

Acts 2005 (81 G.A.) ch. 158, H.F. 619, §§ 18 and 19, provide:

"Sec. 18. Persons required to submit a DNA sample prior to effective date of this division of this act [June 14, 2005]. A person convicted, adjudicated a delinquent, civilly committed as a sexually violent predator, or found not guilty by reason of insanity, prior to the effective date of this Act, who would otherwise be required to submit a DNA sample under this Act, and who is under the custody, control, or jurisdiction of a supervising agency, shall submit a DNA sample prior to being released from the supervising agency's custody, control, or jurisdiction.

"Sec. 19. Effective date. This division of this Act, being deemed of immediate importance, takes effect upon enactment [June 14, 2005]."

Acts 2005 (81 G.A.) ch. 158, H.F. 619, §§ 53 and 54, provide:

"Sec. 53. Severability clause. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

"Sec. 54. Implementation of act. Section 25B.2, subsection 3, shall not apply to this Act."

Former § **81.6**, Code 1979, relating to service of original notice for itinerant merchants, was repealed by Acts 1980 (68 G.A.) ch. 1094, § 59, and was derived from:

Codes 1979, 1977, 1975, 1973, 1971, 1966, 1962, 1958, § **81.6**.
Acts 1957 (57 G.A.) ch. 267, § 8.
Codes 1954, 1950, 1946, § **81.6**.
Code 1939, § 1225.35.
Acts 1939 (48 G.A.) ch. 209, § 6.

I. C. A. § **81.6,** IA ST § **81.6**

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Images:	0

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I.C.A. § **87.11E**

C
Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 2. Employment Services [Chs. 84-96A]
Chapter87. Compensation Liability Insurance (Refs & Annos)

→**87.11E.** Penalties for filing false financial statements

Knowingly?

1. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner of insurance under this chapter, any statement of material fact which is, at the time and in the light of circumstances under which it is made, false or misleading, or, in connection with such statement, to [knowingly] omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2. The following persons shall not commit any of the acts or omissions prohibited by subsection 3:

a. An employer.

b. A person administering a self-insurance program, in whole or in part, on behalf of an employer.

c. A partner of the employer or administrator.

d. An officer of the employer or administrator.

e. A director of the employer or administrator.

f. A person occupying a similar status or performing similar functions as persons described in paragraphs "a" through "e".

g. A person directly or indirectly controlling the employer or administrator.

3. A person listed under subsection 2 shall not do any of the following:

a. File an application for relief under section 87.11 which as of its effective date, or as of any date after filing in the

case of an order denying relief, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Willfully violate or willfully fail to comply with any provision of sections 87.11, 87.11A, and 87.11B, or any rule or order adopted or issued pursuant to such sections.

4. The commissioner of insurance may deny, suspend or revoke a certificate of relief issued pursuant to section 87.11, or may impose a civil penalty for a violation of this section.

5. A civil penalty levied under subsection 4 shall not exceed one thousand dollars per violation per person, and shall not exceed ten thousand dollars in a single proceeding against any one person. All civil penalties shall be deposited in the general fund of the state pursuant to section 505.7.

6. A person who willfully and knowingly violates this section, or a rule or order adopted or issued pursuant to this section, is guilty of a class "D" felony. The commissioner of insurance may refer such evidence as is available concerning violations of this section to the attorney general or the proper county attorney who may, with or without such reference, institute appropriate criminal proceedings under this section. This section does not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

CREDIT(S)

Added by Acts 1991 (74 G.A.) ch. 160, § 9.

I. C. A. § **87.11E,** IA ST § **87.11E**

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I.C.A. § **87.14A**

C
Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 2. Employment Services [Chs. 84-96A]
Chapter87. Compensation Liability Insurance (Refs & Annos)

→**87.14A.** Insurance required

An employer subject to this chapter and chapters 85, 85A, 85B, and 86 shall not engage in business without first obtaining insurance covering compensation benefits or obtaining relief from insurance as provided in this chapter. A person who willfully and knowingly violates this section is guilty of a class "D" felony.

CREDIT(S)

Added by Acts 1994 (75 G.A.) ch. 1066, § 3. Amended by Acts 2005 (81 G.A.) ch. 168, S.F. 342, § 16, eff. July 1, 2005.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2005 Legislation

The 2005 amendment deleted "or bond" following "Insurance" in the caption, and in the first sentence, deleted "or furnishing a bond pursuant to section 87.16" following "as provided in this chapter".

Acts 2005 (81 G.A.) ch. 168, S.F. 342, § 23 provides:

"Sec. 23. Effective date. This division of this Act takes effect July 1, 2005."

I. C. A. § **87.14A,** IA ST § **87.14A**

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Lines:	63
Documents:	1
Images:	0

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I.C.A. § **91E.3**

C
Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 2. Employment Services [Chs. 84-96A]
Chapter 91E. Non-English Speaking Employees (Refs & Annos)

→**91E.3**. Employer recruiting practices

how is this determined?

1. An employer or a representative of an employer who actively recruits non-English speaking residents of other states more than five hundred miles from the place of employment, for employment as employees for wages paid on an hourly basis in this state, must have on file, a copy of which must be provided to the employee, a written statement signed by the employer and the employee which provides relevant information regarding the position of employment, including but not limited to the following information:

a. The minimum number of hours the employee can expect to work on a weekly basis.

b. The hourly wages of the position of employment including the starting hourly wage.

c. A description of the responsibilities and tasks of the position of employment.

d. The health risks, known to the employer, to the employee involved in the position of employment.

e. That possession of forged documentation authorizing the person to stay or be employed in the United States is a class "D" felony.

2. If an employee who resigns from employment with an employer within four weeks of the employee's initial date of employment requests, within three business days of termination, transportation to return to the location from which the employee was recruited and the location from which the employee was recruited is five hundred or more miles from the place of employment, the employer shall provide the employee with transportation at no cost to the employee.

CREDIT(S)

Acts 1990 (73 G.A.) ch. 1134, § 4. Amended by Acts 1996 (76 G.A.) ch. 1181, § 1.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1996 Legislation

The 1996 amendment, in subsec. 1, added par. e relating to possession of forged documents relating to staying or being employed in the United States.

I. C. A. § **91E.3,** IA ST § **91E.3**

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Lines:	108
Documents:	1
Images:	0

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I.C.A. § **99D.24**

C

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 4. Gambling [Chs. 99-99G]
Chapter99d. Pari-Mutuel Wagering (Refs & Annos)

→**99D.24**. Prohibited activities--penalty

1. A person is guilty of an aggravated misdemeanor for doing any of the following:

a. Holding or conducting a race or race meeting where the pari-mutuel system of wagering is used or to be used without a license issued by the commission.

b. Holding or conducting a race or race meeting where wagering is permitted other than in the manner specified by section 99D.11.

c. Committing any other corrupt or fraudulent practice as defined by the commission in relation to racing which affects or may affect the result of a race.

2. A person knowingly permitting a person under the age of twenty-one years to make a pari-mutuel wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside the wagering area is subject to the penalties in section 725.7.

4. A person commits a class "D" felony and, in addition, shall be barred for life from racetracks under the jurisdiction of the commission, if the person does any of the following:

a. Offers, promises, or gives anything of value or benefit to a person who is connected with racing including, but not limited to, an officer or employee of a licensee, an owner of a horse, a jockey or driver, a trainer, or handler, pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a race, or to influence official action of a member of the commission.

b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with racing including, but not limited to, an officer or employee of a licensee, an owner of a horse, a jockey or driver, a trainer, or handler, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a race, or to influence official action of a member of the commission.

5. A person commits a class "D" felony and the commission shall suspend or revoke a license held by the person if the person:

a. Uses, possesses, or conspires to use or possess a device other than the ordinary whip or spur for the purpose of stimulating or depressing a horse or dog during a race or workout.

b. Sponges a horse's or dog's nostrils or windpipe or uses any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or dog or affecting its speed in a race or a workout.

6. A person commits a serious misdemeanor if the person has in the person's possession within the confines of a racetrack, stable, shed, building or grounds, or within the confines of a stable, shed, building or grounds where a horse or dog is kept which is eligible to race over a racetrack licensed under this chapter, an appliance other than the ordinary whip or spur which can be used for the purpose of stimulating or depressing a horse or dog or affecting its speed at any time.

CREDIT(S)

Acts 1983 (70 G.A.) ch. 187, § 24. Amended by Acts 1984 (70 G.A.) ch. 1265, § 5; Acts 1991 (74 G.A.) ch. 195, § 1; Acts 1994 (75 G.A.) ch. 1021, § 5, eff. March 31, 1994; Acts 2004 (80 G.A.) ch. 1086, § 24; Acts 2005 (81 G.A.) ch. 19, H.F. 227, § 31.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2004 Legislation

The 2004 amendment, in subsec. 4, unnum. par. 1, made a nonsubstantive change.

2005 Legislation

The 2005 amendment, in subsec. 3, substituted "wagering area" for "betting enclosure".

1996 Main Volume

The 1984 amendment added subsecs. 5 and 6 relating to Class "D" felonies and serious misdemeanors.

The 1991 amendment, in par. a of subsec. 5, substituted "Uses, possesses or conspires to use or possess a device" for "Uses or conspires to use a battery, buzzer, electrical, mechanical or other appliance" and substituted "during" for "or affecting its speed in".

The 1994 amendment, in subsec. 2, substituted "twenty-one" for "eighteen" preceding "years".

I. C. A. § **99D.24,** IA ST § **99D.24**

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I.C.A. § **99D.25**

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 4. Gambling [Chs. 99-99G]
Chapter99d. Pari-Mutuel Wagering (Refs & Annos)

→**99D.25**. Drugging or numbing--exception--tests--reports--penalties

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. As used in this section, unless the context otherwise requires:

a. "Drugging" means administering to a horse or dog any substance foreign to the natural horse or dog prior to the start of a race. However, in counties with a population of two hundred fifty thousand or more, "drugging" does not include administering to a horse the drugs furosemide and phenylbutazone in accordance with section 99D.25A and rules adopted by the commission.

b. "Numbing" means the applying of ice or a freezing device or substance to the limbs of a horse or dog within two hours before the start of a race, or a surgical or other procedure which was, at any time, performed in which the nerves of a horse or dog were severed, destroyed, injected, or removed.

c. "Entered" means that a horse or dog has been registered as a participant in a specified race, and not withdrawn prior to presentation of the horse or dog for inspection and testing.

2. The general assembly finds that the practice of drugging or numbing a horse or dog prior to a race:

a. Corrupts the integrity of the sport of racing and promotes criminal fraud in the sport;

b. Misleads the wagering public and those desiring to purchase a horse or dog as to the condition and ability of the horse or dog;

c. Poses an unreasonable risk of serious injury or death to the rider of a horse and to the riders of other horses competing in the same race; and

d. Is cruel and inhumane to the horse or dog so drugged or numbed.

3. The following conduct is prohibited:

a. The entering of a horse or dog in a race by the trainer or owner of the horse or dog if the trainer or owner knows or if by the exercise of reasonable care the trainer or owner should know that the horse or dog is drugged or numbed;

b. The drugging or numbing of a horse or dog with knowledge or with reason to believe that the horse or dog will compete in a race while so drugged or numbed. However, the commission may by rule establish permissible trace levels of substances foreign to the natural horse or dog that the commission determines to be innocuous;

c. The willful failure by the operator of a racing facility to disqualify a horse or dog from competing in a race if the operator has been notified that the horse or dog is drugged or numbed, or was not properly made available for tests or inspections as required by the commission; and

d. The willful failure by the operator of a racing facility to prohibit a horse or dog from racing if the operator has been notified that the horse or dog has been suspended from racing.

4. The owners of a horse or dog and their agents and employees shall permit a member of the commission or a person employed or appointed by the commission to make tests as the commission deems proper in order to determine whether a horse or dog has been improperly drugged. The fact that purse money has been distributed prior to the issuance of a test report shall not be deemed a finding that no chemical substance has been administered unlawfully to the horse or dog earning the purse money. The findings of the commission that a horse or dog has been improperly drugged by a narcotic or other drug are prima facie evidence of the fact. The results of the tests shall be kept on file by the commission for at least one year following the tests.

5. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on the racetrack under the jurisdiction of the commission, shall undergo a postmortem examination by a veterinarian or a veterinary pathologist at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the commission for testing for foreign substances and natural substances at abnormal levels. When practical, blood and urine test samples should be procured prior to euthanasia. The owner of the deceased horse is responsible for payment of any charges due to conduct the postmortem examination. A record of every postmortem shall be filed with the commission by the veterinarian or veterinary pathologist who performed the postmortem within seventy-two hours of the death. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupational license issued by the commission.

6. Any horse which in the opinion of the commission veterinarian has suffered a traumatic injury or disability such that a controlled program of phenylbutazone administration would not aid in restoring the racing soundness of the horse shall not be allowed to race while medicated with phenylbutazone or with phenylbutazone present in the horse's bodily systems.

7. A person found within or in the immediate vicinity of a security stall who is in possession of unauthorized drugs or hypodermic needles or who is not authorized to possess drugs or hypodermic needles shall, in addition to any other penalties, be barred from entry into any racetrack in Iowa and any occupational license the person holds shall be revoked. [FN1]

8. Before a horse is allowed to race using phenylbutazone, the veterinarian attending the horse shall certify to the commission the course of treatment followed in administering the phenylbutazone.

9. The commission shall conduct random tests of bodily substances of horses entered to race each day of a race meeting to aid in the detection of any unlawful drugging. The tests may be conducted both prior to and after a race. The commission may also test any horse that breaks down during a race and shall perform an autopsy on any horse that is killed or subsequently destroyed as a result of an accident during a race. When practical, blood and urine test samples should be procured prior to euthanasia.

10. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all medications and other substances which the veterinarian prescribed, administered, or dispensed for horses registered at a current race meeting. A logbook detailing other professional services performed while on the grounds of a racetrack shall be kept by veterinarians and shall be made immediately available to the commission veterinarian or the stewards upon request.

A person who violates this section is guilty of a class "D" felony.

CREDIT(S)

Acts 1983 (70 G.A.) ch. 187, § 25. Amended by Acts 1988 (72 G.A.) ch. 1137, §§ 5 to 12, eff. May 2, 1988; Acts 1994 (75 G.A.) ch. 1100, §§ 3, 4, eff. April 19, 1994; Acts 2004 (80 G.A.) ch. 1136, § 20, eff. May 6, 2004; Acts 2004 (80 G.A.) ch. 1136, §§ 21, 22, eff. July 1, 2004; Acts 2007 (82 G.A.) S.F. 129, § 1, eff. April 10, 2007.

[FN1] See, also § 99D.25A, subsec. 8.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2004 Legislation

The 2004 amendment, in subsec. 1, substituted "furosemide" for lasix"; in subsec. 5, in the first sentence, inserted "by a veterinarian or a veterinary pathologist" following "postmortem examination", deleted the following sentence which prior thereto read: "The postmortem examination shall be conducted by a veterinarian employed by the owner of the owner's trainer in the presence of an in consultation with the commission veterinarian.", in the fifth sentence, deleted "the veterinarian employed", deleted the following sentence, which prior thereto read: "The services of the commission veterinarian and in the laboratory testing of postmortem samples shall be made available by the commission without charge to the owner.", in the sixth sentence, deleted "owner's" preceding "veterinarian" and inserted "or veterinary pathologist who performed the postmortem" following same, and deleted "and shall be submitted on a form supplied by the commission."; in subsec. 9, in the second sentence, substituted "may" for "shall" and made one nonsubstantive change.

Acts 2004 (80 G.A.) ch. 1136, § 65 provides:

"Sec. 65. Effective date --retroactive applicability.

"1. The section of this Act amending section 99D.6 takes effect April 1, 2004. If this Act is enacted after April 1, 2004, the section of this Act amending section 99D.6, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to April 1, 2004, and is applicable on and after that date.

"2. The section of this Act amending section **99D.25**, subsection 5, takes effect April 1, 2004. If this Act is enacted after April 1, 2004, the section of this Act amending section **99D.25**, subsection 5, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to April 1, 2004, and is applicable on and after that date.

"3. The section of this Act amending section 99F.1, subsection 10, being deemed of immediate importance, takes effect upon enactment.

"4. The section of this Act amending section 99F.4A, subsection 8, being deemed of immediate importance, takes effect upon enactment.

"5. The section of this Act amending section 99F.5, subsection 1, being deemed of immediate importance, takes effect upon enactment.

"6. The section of this Act amending section 99F.7, subsection 10, paragraph 'e', being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to referendums held on or after January 1, 2002.

"7. The section of this Act requiring a socioeconomic study of gambling, being deemed of immediate importance, takes effect upon enactment.

"8. The section of this Act establishing transition provisions concerning excursion gambling boat cruising, being deemed of immediate importance, takes effect upon enactment.

"9. The section of this Act establishing a 2002-2004 racetrack enclosure gambling games tax, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to July 1, 2002, and is applicable on and after that date.

"10. The section of this Act establishing 2005 and 2006 rebuild Iowa infrastructure assessments, being deemed of immediate importance, takes effect upon enactment."

2007 Legislation

Acts 2007 (82 G.A.) S.F. 129, § 1, in subsec. 5, in the second sentence, substituted "may" for "shall"; and in subsec. 9, in the third sentence, substituted "may" for "shall", and added the last sentence.

Acts 2007 (82 G.A.) S.F. 129, § 7 provides:

"Sec. 7. Effective date. This Act, being deemed of immediate importance, takes effect upon enactment [April 10, 2007]."

1996 Main Volume

The 1988 amendment added subsecs. 5 to 11 relating to use of phenylbutazone and other medications and penalties for unauthorized use of medications and rewrote subsecs. 1 and 4 which prior thereto read:

"1. As used in this section, unless the context otherwise requires:

"a. 'Drugging' means administering to a horse or dog any substance, foreign to the natural horse or dog prior to the start of a race.

"b. 'Numbing' means the applying of ice, dry ice, a cold pack, or a chemical or mechanical freezing device to the limbs of a horse or dog within ten hours before the start of a race, or a surgical or other procedure which was, at any time, performed in which the nerves of a horse or dog were severed, destroyed, or removed.

"c. 'Entered' means that a horse or dog has been registered as a participant in a specified race, and not withdrawn prior to presentation of the horse or dog for inspection and testing."

"4. The owners of a horse or dog and their agents and employees shall permit a member of the commission or a person employed or appointed by the commission to make tests as the commission deems proper in order to determine whether a horse or dog has been improperly drugged. The findings of the commission that a horse or dog has been improperly drugged by a narcotic or other drug are prima facie evidence of the fact. The results of the tests shall be kept on file by the commission for at least one year following the tests."

The 1994 amendment, in subsec. 1, par. b, deleted "dry" preceding "ice", deleted "chemical or mechanical" preceding "freezing", inserted "or substance" following "device", deleted "within ten hours before the start of a race, or the applying of ice or a cold pack to the limbs of a horse or dog" preceding "within", and inserted "injected" following "destroyed"; deleted subsec. 6, which read:

"Phenylbutazone may not be administered to a horse within ninety-six hours of the start of a race in which the horse is entered.";

and renumbered former subsecs. 7 to 11 as subsecs. 6 to 10.

I. C. A. § **99D.25,** IA ST § **99D.25**

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I.C.A. § **99F.15**

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 4. Gambling [Chs. 99-99G]
Chapter99f. Gambling--Excursion Gambling Boats and Racetracks (Refs & Annos)

→**99F.15**. Prohibited activities--penalties

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. A person is guilty of an aggravated misdemeanor for any of the following:

a. Operating a gambling excursion where wagering is used or to be used without a license issued by the commission.

b. Operating a gambling excursion where wagering is permitted other than in the manner specified by section 99F.9.

c. Acting, or employing a person to act, as a shill or decoy to encourage participation in a gambling game.

2. A person knowingly permitting a person under the age of twenty-one years to make a wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside an excursion gambling boat, gambling structure, or a racetrack enclosure is in violation of section 725.7.

4. A person commits a class "D" felony and, in addition, shall be barred for life from excursion gambling boats and gambling structures under the jurisdiction of the commission, if the person does any of the following:

a. Offers, promises, or gives anything of value or benefit to a person who is connected with an excursion gambling boat or gambling structure operator including, but not limited to, an officer or employee of a licensee or holder of an occupational license pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with an excursion gambling boat or gambling structure including, but not limited to, an officer or employee of a

licensee, or holder of an occupational license, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

c. Uses a device to assist in any of the following:

(1) In projecting the outcome of the game.

(2) In keeping track of the cards played.

(3) In analyzing the probability of the occurrence of an event relating to the gambling game.

(4) In analyzing the strategy for playing or betting to be used in the game except as permitted by the commission.

d. Cheats at a gambling game.

e. Manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this chapter.

f. Instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the chapter.

g. Alters or misrepresents the outcome of a gambling game on which wagers have been made after the outcome is made sure but before it is revealed to the players.

h. Places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome.

i. Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

j. Knowingly entices or induces a person to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter with the intent that the other person plays or participates in that gambling game.

k. Uses counterfeit chips or tokens in a gambling game.

l. Knowingly uses, other than chips, tokens, coin, or other methods or credit approved by the commission, legal tender of the United States of America, or uses coin not of the denomination as the coin intended to be used in the gambling games.

m. Has in the person's possession any device intended to be used to violate a provision of this chapter.

n. Has in the person's possession, except a gambling licensee or employee of a gambling licensee acting in furtherance of the employee's employment, any key or device designed for the purpose of opening, entering, or affecting the operation of a gambling game, drop box, or an electronic or mechanical device connected with the gambling game or for removing coins, tokens, chips or other contents of a gambling game.

5. The possession of more than one of the devices described in subsection 4, paragraphs "c", "e", "m", or "n", permits a rebuttable inference that the possessor intended to use the devices for cheating.

6. Except for wagers on gambling games or exchanges for money as provided in section 99F.9, subsection 4, a licensee who exchanges tokens, chips, or other forms of credit to be used on gambling games for anything of value

commits a simple misdemeanor.

CREDIT(S)

Acts 1989 (73 G.A.) ch. 67, § 15. Amended by Acts 1989 (73 G.A.) ch. 139, § 9; Acts 1991 (74 G.A.) ch. 144, § 2, eff. May 9, 1991; Acts 1994 (75 G.A.) ch. 1021, §§ 27, 28, eff. March 31, 1994; Acts 2007 (82 G.A.) S.F. 263, §§ 17 to 19.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2007 Legislation

Acts 2007 (82 G.A.) S.F. 263, § 17, inserted ", gambling structure," in subsec. 3; Acts 2007 (82 G.A.) S.F. 263, § 18, inserted "and gambling structures" in subsec. 4, unnum. par. 1; and Acts 2007 (82 G.A.) S.F. 263, § 19, inserted "or gambling structure" in subsec. 4, pars. a and b.

1996 Main Volume

The 1989 amendment, in subsec. 2, raised the age from 18 to 21 years.

The 1991 amendment, in subsec. 2, substituted "eighteen years" for "twenty-one years".

The 1994 amendment, in subsec. 2, substituted "twenty-one" for "eighteen", and in subsec. 3, substituted "an" for "the" preceding "excursion" and inserted "or a racetrack enclosure" following "boat".

I. C. A. § **99F.15,** IA ST § **99F.15**

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I.C.A. § **99G.36**

Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 4. Gambling [Chs. 99-99G]
Chapter 99G. Iowa Lottery Authority (Refs & Annos)

→**99G.36**. Forgery--fraud--penalties

1. A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, redeems, or counterfeits a lottery ticket or share or attempts to falsely make, alter, forge, utter, pass, redeem, or counterfeit a lottery ticket or share, or commits theft or attempts to commit theft of a lottery ticket or share, is guilty of a class "D" felony.

2. Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials shall be guilty of a class "D" felony.

3. No person shall knowingly or intentionally make a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or record which is compiled or maintained or submitted to the board pursuant to the provisions of this chapter. Any person who violates the provisions of this section shall be guilty of a class "D" felony.

CREDIT(S)

Added by Acts 2003 (80 G.A.) ch. 178, § 89, eff. July 1, 2003. Amended by Acts 2003 (80 G.A.) ch. 179, § 142.

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

The 2003 amendment amended Acts 2003 (80 G.A.) ch. 178, § 121 (an effective date provision) by substituting "July 1, 2003" for "September 1, 2003".

I. C. A. § **99G.36,** IA ST § **99G.36**

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I.C.A. § **101A.14**

C
Iowa Code Annotated Currentness
Title III. Public Services and Regulation [Chs. 80-122C]
Subtitle 5. Fire Control [Chs. 100-102]
Chapter 101A. Explosive Materials (Refs & Annos)

→**101A.14**. Criminal penalties

1. Any person who violates the provisions of section 101A.2, subsection 3, or section 101A.3, subsection 4, commits a public offense and, upon conviction, shall be guilty of a class "C" felony.

2. Any person who violates the provisions of section 101A.6, 101A.8 or 101A.9 or any of the rules adopted by the state fire marshal pursuant to the provisions of this chapter, commits a simple misdemeanor.

CREDIT(S)

Acts 1971 (64 G.A.) ch. 117, § 14. Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 75, eff. Jan. 1, 1978; Acts 1984 (70 G.A.) ch. 1074, § 8.

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

The 1976 amendment in subsec. 1, substituted "punished by imprisonment in the penitentiary for a term not to exceed fifteen years, or fined not to exceed five thousand dollars, or by both such imprisonment and fine" for "guilty of a class C felony" and in subsec. 2, substituted "public offense and, upon conviction, shall be punished by imprisonment in the county jail not to exceed thirty days, or fined not to exceed one hundred dollars" for "simple misdemeanor".

The 1984 amendment substituted "state fire marshal" for "commissioner of public safety" in subsec. 2.

I. C. A. § **101A.14,** IA ST § **101A.14**

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I.C.A. § **126.25**

C
Iowa Code Annotated Currentness
Iowa Code Annotated Title Ivpublic Health [Chs. 123-158]
Subtitle 1. Alcoholic Beverages and Controlled Substances [Chs. 123-134]
Chapter 126. Drugs, Devices, and Cosmetics (Refs & Annos)

→**126.25**. Human immunodeficiency virus home testing kits--prohibition-- penalties

1. A person shall not advertise for sale, offer for sale, or sell in this state a home testing kit for human immunodeficiency virus antibody or antigen testing. The Iowa department of public health, in consultation with the board, shall adopt rules to establish what constitutes a home testing kit for the purposes of this section.

2. A person who violates this section is guilty of a class "D" felony.

3. The board may seek relief pursuant to section 126.4 restraining any person from violating the provisions of this section. In addition to granting a temporary or permanent injunction, the court may impose a civil penalty not to exceed forty thousand dollars per violation of this section.

4. In addition to other remedies provided for in this chapter, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section.

5. The board may refer available evidence concerning a possible violation of this section to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may refer the case to the appropriate county attorney.

6. This section does not apply to a newspaper or other print medium in which the advertisement appears, or to a broadcast station or other electronic medium which disseminates the advertisement unless the medium knowingly violates this section. A person who sells home testing kits for human immunodeficiency virus antibody or antigen testing shall not cause advertising of the kits to appear in this state from a location outside this state where such advertising is not prohibited without prominently indicating in the advertisement that the sale of the kits is void in this state.

CREDIT(S)

Transferred from § 203B.25 by the Code Editor for Code 1993. Amended by Acts 1997 (77 G.A.) ch. 21, § 1.

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

Acts 1997 (77 G.A.) ch. 21, § 1, in subsec. 1, inserted the second sentence relating to adoption of rules.

For the subject matter of former § **126.25**, Code 1971, see § 123.120.

Derivation:

Code 1991, § 203B.25.
Acts 1989 (73 G.A.) ch. 197, § 26.
Code 1989, § 203A.21.
Acts 1988 (72 G.A.) ch. 1231, § 1.

I. C. A. § **126.25,** IA ST § **126.25**

Current through Acts of the 2007 1st Reg.Sess.

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Westlaw Attached Printing Summary Report for PETTINGER,JEAN C 6280484

Your Search:	142C.10
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Citation Text:	IA ST s 142C.10
Lines:	53
Documents:	1
Images:	0

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I.C.A. § **142C.10**

Iowa Code Annotated Currentness
Iowa Code Annotated Title Ivpublic Health [Chs. 123-158]
Subtitle 2. Health-Related Activities [Chs. 135-146] (Refs & Annos)
Chapter 142C. Uniform Anatomical Gift Act (Refs & Annos)

→**142C.10**. Sale or purchase of parts prohibited--penalty

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. A person shall not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

2. Valuable consideration does not include reasonable payment for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

3. A person who violates this section commits a class "C" felony.

CREDIT(S)

Added by Acts 1995 (76 G.A.) ch. 39, § 10. Amended by Acts 2007 (82 G.A.) S.F. 509, § 12.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2007 Legislation

Acts 2007 (82 G.A.) S.F. 509, § 12, in the section heading, added "--Penalty"; and rewrote subsecs. 2 and 3, which had read:

"2. Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, distribution, transportation, or implantation of a part."

"3. A person who violates this section is guilty of a class 'C' felony and is subject to imprisonment not to exceed ten years and notwithstanding section 902.9, to a fine not to exceed two hundred fifty thousand dollars, or both."

2005 Main Volume

Uniform Law:

This section is similar to § 10 of the Uniform Anatomical Gift Act (1987 Act). See Vol. 8A Uniform Laws Annotated, Master Edition, or ULA database on Westlaw.

I. C. A. § **142C.10,** IA ST § **142C.10**

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Citation Text:	IA ST s 142C.10A
Lines:	27
Documents:	1
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I.C.A. § **142C.10A**

Iowa Code Annotated Currentness
Iowa Code Annotated Title Ivpublic Health [Chs. 123-158]
Subtitle 2. Health-Related Activities [Chs. 135-146] (Refs & Annos)
Chapter 142C. Uniform Anatomical Gift Act (Refs & Annos)

→**142C.10A.** Other prohibited acts--penalty

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

A person who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal, commits a class "C" felony.

CREDIT(S)

Added by Acts 2007 (82 G.A.) S.F. 509, § 13.

I. C. A. § **142C.10A,** IA ST § **142C.10A**

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Database:	IA-ST
Citation Text:	IA ST s 147.103A
Lines:	103
Documents:	1
Images:	0

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I.C.A. § **147.103A**

Iowa Code Annotated Currentness
Title IV. Public Health [Chs. 123-158]
Subtitle 3. Health-Related Professions [Chs. 147-158]
Chapter147. General Provisions, Health-Related Professions (Refs & Annos)
Enforcement Provisions

→**147.103A.** Physicians and surgeons, osteopaths, and osteopathic physicians and surgeons

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

This chapter shall apply to the licensing of persons to practice as physicians and surgeons, osteopaths, and osteopathic physicians and surgeons by the board of medicine subject to the following provisions:

← this provision says serious misdemeanor which contr

1. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class "D" felony.

2. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board. Put in section 147.44 ?

3. The board may appoint investigators, who shall not be members of the board, and whose compensation shall be determined pursuant to chapter 8A, subchapter IV. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter and chapters 148, 150, 150A, and 272C.

4. Applications for a license shall be made to the chairperson, executive director, or secretary of the board. All examination, license, and renewal fees shall be paid to and collected by the chairperson, executive director, or secretary of the board. The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 8A.413, subsection 2, under the pay plan for exempt positions in the executive branch of government.

5. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons, osteopaths, and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to persons who are minorities or low-income, or who live in rural areas.

6. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than three board members, at least two of which are licensed in the profession, or by a panel of not less than three members appointed pursuant to section 272C.6, subsection 2. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

CREDIT(S)

Added by Acts 1992 (74 G.A.) ch. 1183, § 9. Amended by Acts 1999 (78 G.A.) ch. 141, § 20; Acts 2003 (80 G.A.) ch. 145, § 195; Acts 2006 (81 G.A.) ch. 1155, H.F. 2748, § 7, eff. July 1, 2007; Acts 2007 (82 G.A.) S.F. 74, §§ 76, 77.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2006 Legislation

Acts 2006 (81 G.A.) H.F. 2784, § 7, in subsec. 4, deleted ", who shall transmit the fees to the treasurer of state for deposit in the general fund of the state" from the end of the second sentence.

Acts 2006 (81 G.A.) ch. 1155, H.F. 2748, § 15, provides:

"Sec. 15. Effective dates. The section of this Act providing for the nontransferability of registration fees appropriated in section 144.13A for primary and secondary child abuse prevention programs and for the center for congenital and inherited disorders central registry, being deemed of immediate importance, takes effect upon enactment [June 1, 2006].

"The sections of this Act relating to the addition of the hearing aid dispenser examiners and the nursing home administrators examiners to the list of examining boards in section 147.13, adding those professions to the list of examining boards contained in section 147.80, and providing for nonreversion of certain appropriations made for, and repayment receipts, and retained fees applicable to, the fiscal year beginning July 1, 2006, take effect July 1, 2006. The remaining sections of this Act take effect July 1, 2007."

2007 Legislation

Acts 2007 (82 G.A.) S.F. 74, § 76, in unnum. par. 1, substituted "medicine" for "medical examiners", and Acts 2007 (82 G.A.) S.F. 74, § 77, in subsec. 3, deleted "examining" preceding "board".

2005 Main Volume

The 1999 amendment, in subsec. 3, deleted a reference to chapter 147A in the second sentence.

The 2003 amendment, in subsec. 3, in the first sentence, substituted "8A, subchapter IV" for "19A"; and in subsec. 4, in the third sentence, substituted "8A.413" for "19A.9".

I. C. A. § **147.103A,** IA ST § **147.103A**

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Lines:	55
Documents:	1
Images:	0

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I.C.A. § **147A.11**

C

Iowa Code Annotated Currentness
Iowa Code Annotated Title Ivpublic Health [Chs. 123-158]
Subtitle 3. Health-Related Professions [Chs. 147-158]
Chapter 147A. Emergency Medical Care--Trauma Care (Refs & Annos)
Subchapter I. Emergency Medical Care

→**147A.11**. Prohibited acts

1. Any person not certified as required by this subchapter who claims to be an emergency medical care provider, or who uses any other term to indicate or imply that the person is an emergency medical care provider, or who acts as an emergency medical care provider without having obtained the appropriate certificate under this subchapter, is guilty of a class "D" felony.

2. An owner of an unauthorized ambulance, rescue, or first response service in this state who operates or purports to operate an ambulance, rescue, or first response service, or who uses any term to indicate or imply authorization without having obtained the appropriate authorization under this subchapter, is guilty of a class "D" felony.

3. Any person who imparts or conveys, or causes to be imparted or conveyed, or attempts to impart or convey false information concerning the need for assistance of an ambulance, rescue, or first response service or of any personnel or equipment thereof, knowing such information to be false, is guilty of a serious misdemeanor.

CREDIT(S)

Acts 1978 (67 G.A.) ch. 1074, § 11. Amended by Acts 1984 (70 G.A.) ch. 1287, § 11; Acts 1989 (73 G.A.) ch. 89, § 14; Acts 1995 (76 G.A.) ch. 41, § 20.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

The 1984 amendment inserted subsec. 2 relating to operation of unauthorized ambulance services or rescue squad services and renumbered former subsec. 2 as subsec. 3.

The 1989 amendment, in subsec. 1, substituted "emergency care provider" for "EMT or a paramedic"; and, in subsecs. 2 and 3, substituted "first response services" for "rescue squad".

The 1995 amendment, in subsec. 1, deleted "advanced" preceding "emergency" three times, and in subsec. 2, deleted "authorized" preceding "ambulance" and deleted "such" following "imply".

I. C. A. § **147A.11,** IA ST § **147A.11**

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Date/Time of Request:	Wednesday, October 24, 2007 15:20:00 Central
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Citation Text:	IA ST s 172B.6
Lines:	39
Documents:	1
Images:	0

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I.C.A. § **172B.6**

Iowa Code Annotated Currentness
Title V. Agriculture [Chs. 159-215A]
Subtitle 2. Animal Industry [Chs. 162-172E]
Chapter 172B. Livestock Transportation (Refs & Annos)

→**172B.6**. Offenses and penalties

1. A person who is convicted of violating section 172B.2 shall be guilty of a simple misdemeanor. (material) ?

2. A person who makes or utters a transportation certificate with knowledge that some or all of the information contained in the certificate is false, or a person who alters, forges, or counterfeits a transportation certificate, or the receipt prescribed in section 172B.4, commits a class "C" felony.

CREDIT(S)

Acts 1975 (66 G.A.) ch. 132, § 6, eff. Jan. 1, 1976. Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 513, eff. Jan. 1, 1978; Acts 1977 (67 G.A.) ch. 147, § 119, eff. Jan. 1, 1978.

HISTORICAL AND STATUTORY NOTES

1999 Main Volume

The 1976 amendment added simple misdemeanor and deleted specified punishment in subsec. 1; substituted class C felony for public offense and deleted specified punishment in subsec. 2.

The 1977 amendment substituted simple misdemeanor for specified punishment in subsec. 1; substituted class C felony for public offense and deleted specified punishment in subsec. 2.

I. C. A. § **172B.6,** IA ST § **172B.6**

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Citation Text:	IA ST s 200.18
Lines:	126
Documents:	1
Images:	0

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I.C.A. § **200.18**

Iowa Code Annotated Currentness
Title V. Agriculture [Chs. 159-215A]
Subtitle 4. Agriculture-Related Products and Activities [Chs. 189-215A]
Chapter 200. Fertilizers and Soil Conditioners (Refs & Annos)

→**200.18**. Violations

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. a. Except as otherwise provided in this subsection, a person violating this chapter or rules adopted by the secretary pursuant to this chapter is guilty of a simple misdemeanor.

b. A person who tampers with, possesses, or transports anhydrous ammonia or anhydrous ammonia equipment is guilty of a serious misdemeanor under section 124.401F.

c. A person who intentionally presents false identification or other information required in section 200.17A in order to purchase ammonium nitrate commits a serious misdemeanor. A person who purchases ammonium nitrate from a person required to be licensed under section 200.4 with the intention of manufacturing an explosive or incendiary device or material is guilty of a class "D" felony.

3. A person who is licensed pursuant to section 200.4 who fails to comply with the requirements of section 200.17A shall be subject to disciplinary action by the department. For a first violation, the department may suspend the person's license for up to ninety days. For a subsequent violation, the department may suspend the person's license for a longer period or revoke the person's license.

4. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when the secretary believes that the public interest will be best served by a suitable notice of warning in writing.

5. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

6. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

CREDIT(S)

Added by Acts 1965 (61 G.A.) ch. 194, § 18. Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 220, eff. Jan. 1, 1978; Acts 1998 (77 G.A.) ch. 1004, § 2, eff. Feb. 19, 1998; Acts 1999 (78 G.A.) ch. 12, § 9; Acts 2005 (81 G.A.) ch. 73, H.F. 476, § 3.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2005 Legislation

The 2005 amendment rewrote subsec. 2, which had read:

"2. A person violating this chapter or rules adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. However, a person who tampers with, possesses, or transports anhydrous ammonia or anhydrous ammonia equipment commits a serious misdemeanor under section 124.401F."

The Code Editor for Code Supp. 2005 redesignated subsec. 2A as 3 and renumbered the remaining subsecs. accordingly.

2000 Main Volume

The 1976 amendment rewrote subsec. 2 which prior thereto read:

"2. Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars."

The 1998 amendment rewrote subsec. 2 which prior thereto read:

"Any person violating any provision of this chapter or the rules and regulations issued thereunder shall be guilty of a simple misdemeanor."

The 1999 amendment rewrote subsec. 2 which prior thereto read:

"2. A person violating this chapter or rules adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. In addition to the imposition of the simple misdemeanor penalty, a person violating section 200.14 shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

"a. Intentionally tampers with anhydrous ammonia equipment.

"b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary.

"A person tampering with anhydrous ammonia equipment in violation of section 200.14 shall not have a cause of

action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering."

For disposition of former § **200.18**, Code 1962, which was repealed by Acts 1965 (61 G.A.) ch. 194, see Chapter 200, Code 1962, Disposition Table.

Derivation:

Codes 1962, 1958, § 200.19.
Acts 1957 (57 G.A.) ch. 103, § 19.
Codes 1954, 1950, 1946, §§ 200.11, 200.14.
Acts 1941 (49 G.A.) ch. 131.

I. C. A. § **200.18,** IA ST § **200.18**

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Documents:	1
Images:	0

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I.C.A. § **235B.20**

C
Iowa Code Annotated Currentness
Title VI. Human Services [Chs. 216-255A]
Subtitle 6. Children and Families [Chs. 234-255A]
Chapter 235B. Dependent Adult Abuse (Refs & Annos)
Dependent Adult Abuse Information Registry

→**235B.20**. Dependent adult abuse--initiation of charges--penalty

1. Charges of dependent adult abuse may be initiated upon complaint of private individuals or as a result of investigations by social service agencies or on the direct initiative of a county attorney or law enforcement agency.

2. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class "C" felony if the intentional dependent adult abuse results in serious injury.

3. A caretaker who recklessly commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class "D" felony if the reckless dependent adult abuse results in serious injury.

4. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class "C" felony if the intentional dependent adult abuse results in physical injury.

5. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a class "D" felony if the value of the property, assets, or resources exceeds one hundred dollars.

6. A caretaker who recklessly commits dependent adult abuse on a person in violation of this chapter is guilty of an aggravated misdemeanor if the reckless dependent adult abuse results in physical injury.

7. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a simple misdemeanor if the value of the property, assets, or resources is one hundred dollars or less.

8. A caretaker alleged to have committed a violation of this chapter shall be charged with the respective offense cited, unless a charge may be brought based upon a more serious offense, in which case the charge of the more serious offense shall supersede the less serious charge.

CREDIT(S)

Added by Acts 1996 (76 G.A.) ch. 1130, § 10.

I. C. A. § **235B.20,** IA ST § **235B.20**

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Lines:	84
Documents:	1
Images:	0

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I.C.A. § **321.189A**

Iowa Code Annotated Currentness
Title VIII. Transportation [Chs. 306-330B]
Subtitle 2. Vehicles [Chs. 321-323A]
Chapter 321. Motor Vehicles and Law of the Road (Refs & Annos)
Driver's Licenses (Refs & Annos)

→**321.189A.** Driver's license for undercover law enforcement officers--fee-- penalties

1. The department may issue undercover driver's licenses to certified peace officers employed by a local authority or by the state or federal law enforcement officers for use in the line of duty when a fictitious identity is necessary. The department, in cooperation with the commissioner of public safety, shall adopt rules pursuant to chapter 17A regarding the issuance, use, and cancellation of licenses issued pursuant to this section.

2. A license issued pursuant to this section shall only be issued to a certified peace officer or federal law enforcement officer, who is qualified to obtain the class of license sought, at the request of the law enforcement agency employing the officer for official use when the officer is involved in duty in which a fictitious identity is necessary. An officer issued a license pursuant to this section shall surrender the license when the license is no longer needed.

3. a. A license issued pursuant to this section shall only be used in the line of duty when it is necessary for the officer holding the license to assume a fictitious identity. An officer issued a license pursuant to this section shall report as soon as practical to the law enforcement agency employing the officer any traffic citation issued to the officer while using the officer's fictitious identity.

b. An officer using a license issued under this section shall not be prosecuted for a public offense under this chapter if the offense was committed in the line of duty and was necessary to protect the identity of the officer. However, this paragraph shall not apply to a violation of subsection 4, paragraph "a".

4. a. An officer who provides the department false information for the purposes of obtaining a license under this section commits a class "D" felony.

b. An officer who displays or uses a license issued pursuant to this section during the commission or attempted commission of a public offense other than a public offense referred to in subsection 3 or who knowingly permits another person to use the license issued under this section commits a class "D" felony.

c. An officer who displays or uses a license issued pursuant to this section in any manner which is not a public offense but which is not authorized under this section or who knowingly fails or refuses to surrender the license upon demand by the department commits an aggravated misdemeanor.

5. The fee for issuing a license under this section shall be the same as for licenses issued pursuant to section 321.189.

6. The department shall keep as confidential public records under section 22.7, all records regarding licenses issued under this section.

CREDIT(S)

Added by Acts 1997 (77 G.A.) ch. 92, § 2, eff. May 1, 1997. Amended by Acts 1998 (77 G.A.) ch. 1073, § 10.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1998 Legislation

The 1998 amendment, in the section name line and in subsec. 1, substituted "driver's" for "motor vehicle".

I. C. A. § **321.189A,** IA ST § **321.189A**

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Images:	0

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I.C.A. § **321.217**

C
Iowa Code Annotated Currentness
Title VIII. Transportation [Chs. 306-330B]
Subtitle 2. Vehicles [Chs. 321-323A]
Chapter 321. Motor Vehicles and Law of the Road (Refs & Annos)
Licenses and Nonoperator's Identification Cards--Violations

→**321.217**. Perjury

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed, is guilty of a class "D" felony.

CREDIT(S)

Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 280, eff. Jan. 1, 1978.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1976 amendment substituted "a class 'D' felony" for "perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable".

Derivation:
Code 1939, § 5015.02.
Acts 1937 (47 G.A.) ch. 134, § 248.
Codes 1935, 1931, § 4960-d47.
Acts 1931 (44 G.A.) ch. 114, § 23.

I. C. A. § **321.217,** IA ST § **321.217**

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Citation Text:	IA ST s 321.261
Lines:	95
Documents:	1
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I.C.A. § **321.261**

C
Iowa Code Annotated Currentness
Title VIII. Transportation [Chs. 306-330B]
Subtitle 2. Vehicles [Chs. 321-323A]
Chapter 321. Motor Vehicles and Law of the Road (Refs & Annos)
Accidents

→**321.261**. Death or personal injuries

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close as possible and if able, shall then return to and remain at the scene of the accident in accordance with section 321.263. Every such stop shall be made without obstructing traffic more than is necessary.

2. Any person failing to stop or to comply with the requirements in subsection 1 of this section, in the event of an accident resulting in an injury to any person is guilty upon conviction of a serious misdemeanor.

3. Notwithstanding subsection 2, any person failing to stop or to comply with the requirements in subsection 1, in the event of an accident resulting in a serious injury to any person, is guilty upon conviction of an aggravated misdemeanor. For purposes of this section, "serious injury" means as defined in section 702.18.

4. A person failing to stop or to comply with the requirements in subsection 1, in the event of an accident resulting in the death of a person, is guilty upon conviction of a class "D" felony.

5. The director shall revoke the driver's license of a person convicted of a violation of this section.

CREDIT(S)

Amended by Acts 1974 (65 G.A.) ch. 1180, § 110, eff. July 1, 1975; Acts 1981 (69 G.A.) ch. 103, § 4; Acts 1990 (73 G.A.) ch. 1230, § 67; Acts 1998 (77 G.A.) ch. 1073, § 9; Acts 2006 (81 G.A.) ch. 1082, H.F. 2398, §§ 1, 2.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1998 Legislation

The 1998 amendment, in subsec. 4, substituted "driver's license" for "motor vehicle license".

2006 Legislation

Acts 2006 (81 G.A.) ch. 1082, H.F. 2398, § 1, added subsec. 3, relating to persons failing to stop or comply with requirements of subsec. 1; and Acts 2006 (81 G.A.) ch. 1082, H.F. 2398, § 2, redesignated former subsec. 3 as subsec. 4, and substituted "a class 'D' felony" for "an aggravated misdemeanor".

The Code Editor for Code 2007 redesignated former subsec. 4 as subsec. 5.

1997 Main Volume

The 1974 amendment substituted "director" for "commissioner".

The 1981 amendment rewrote the section which prior thereto read:

"The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 321.263. Every such stop shall be made without obstructing traffic more than is necessary.

"Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty days nor more than one year or by fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

"The director shall revoke the operator's or chauffeur's license of the person so convicted."

The 1990 amendment designated unnum. pars. 1 and 2 as subsecs. 3 and 4, in subsec. 3 substituted "A" for "Any" preceding "person", and in subsec. 4, substituted "motor vehicle" for "operator's or chauffeur's" and inserted "of a violation of this section".

Derivation:

Code 1939, § 5020.01.
Acts 1937 (47 G.A.) ch. 134, § 292.
Codes 1935, 1931, 1927, 1924, §§ 5072, 5074.
Acts 1923-24 Ex.Sess. (40 G.A.) H.F. 277, §§ 200, 202.
Acts 1919 (38 G.A.) ch. 275, § 30.
Code Supp.1913, § 1571-m23.
Acts 1911 (34 G.A.) ch. 72, § 24.

I. C. A. § **321.261,** IA ST § **321.261**

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I.C.A. § **321.279**

C
Iowa Code Annotated Currentness
Title VIII. Transportation [Chs. 306-330B]
Subtitle 2. Vehicles [Chs. 321-323A]
Chapter 321. Motor Vehicles and Law of the Road (Refs & Annos)
Criminal Offenses

→**321.279** Eluding or attempting to elude pursuing law enforcement vehicle

1. The driver of a motor vehicle commits a serious misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop. The signal given by the peace officer shall be by flashing red light, or by flashing red and blue lights, and siren. For purposes of this section, "peace officer" means those officers designated under section 801.4, subsection 11, paragraphs "a", "b", "c", "g", and "h".

2. The driver of a motor vehicle commits an aggravated misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section and in doing so exceeds the speed limit by twenty-five miles per hour or more.

3. The driver of a motor vehicle commits a class "D" felony if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section, and in doing so exceeds the speed limit by twenty-five miles per hour or more, and if any of the following occurs:

a. The driver is participating in a public offense, as defined in section 702.13, that is a felony.

b. The driver is in violation of section 321J.2 or 124.401.

c. The offense results in bodily injury to a person other than the driver.

CREDIT(S)

Added by Acts 1980 (68 G.A.) ch. 1105, § 1. Amended by Acts 1994 (75 G.A.) ch. 1069, § 1; Acts 1999 (78 G.A.)

ch. 31, § 1; Acts 2002 (79 G.A.) ch. 1119, § 153.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1999 Legislation

The 1999 amendment rewrote the section which prior thereto read:

"The driver of a motor vehicle commits a serious misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual or audible signal to stop and in doing so exceeds the speed limit by twenty-five miles per hour or more. The signal given by the peace officer shall be by flashing red light or siren. For purposes of this section, 'peace officer' means those officers designated under section 801.4, subsection 11, paragraphs 'a,' 'b,' 'c,' 'g,' and 'h.'

"The driver of a motor vehicle commits an aggravated misdemeanor if, while participating in a public offense, as defined in section 702.13, that is a felony, the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual or audible signal as provided in this section."

2002 Legislation

The 2002 amendment, in subsec. 1, inserted ", or by flashing red and blue lights," in the second sentence.

1997 Main Volume

The 1994 amendment added unnum. par. 2, relating to eluding a law enforcement vehicle while participating in a felony public offense.

For disposition of subject matter of former § **321.279**, Code 1946, was repealed by Acts 1947 (52 G.A.) ch. 172, § 35, see § 321A.32.

I. C. A. § **321.279,** IA ST § **321.279**

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I.C.A. § **328.41**

C

Iowa Code Annotated Currentness
Title VIII. Transportation [Chs. 306-330B]
Subtitle 4. Aviation [Chs. 328-330B]
Chapter 328. Aeronautics (Refs & Annos)

Should this track 321J? (under influence, .08 or any controlled substance)?

→**328.41**. Operating recklessly or while intoxicated

It shall be unlawful for any person to operate an aircraft in the air space above this state or on the ground or water within this state, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air space above this state or on the ground or water within this state in a careless or reckless manner so as to endanger the life or property of another.

Any person who operates an aircraft in a careless or reckless manner in violation of the provisions of this section shall be guilty of a simple misdemeanor.

Any person who operates any aircraft, while in an intoxicated condition or under the influence of narcotic drugs in violation of this section, shall, upon conviction or a plea of guilty, be guilty of a serious misdemeanor for the first offense, be guilty of an aggravated misdemeanor for the second offense, and be guilty of a class "D" felony for a third offense.

CREDIT(S)

Added by Acts 1947 (52 G.A.) ch. 181, §§ 1, 2. Amended by Acts 1949 (53 G.A.) ch. 150, §§ 1, 2; Acts 1963 (60 G.A.) ch. 116, § 13; Acts 1974 (65 G.A.) ch. 1180, § 159, eff. July 1, 1975; Acts 1975 (66 G.A.) ch. 67, § 61, eff. Aug. 15, 1975; Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 311, eff. Jan. 1, 1978; Acts 1978 (67 G.A.) ch. 1029, § 33; Acts 1978 (67 G.A.) ch. 1117, § 4.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1949 amendment, in unnum. par. 2 substituted "operates an aircraft in a careless or reckless manner in violation of" for "violates"; and added unnum. pars. 3 and 4 relating to operating an aircraft while intoxicated and surrender of

any liquor permit upon sentencing.

The 1963 amendment deleted the former unnum. par. 4 which read:

"The court, in pronouncing sentence, shall provide for the immediate surrender of any liquor permit issued to the defendant under chapter 123 which chapter is identified as the 'Iowa Liquor Control Act'. The sentence shall further provide that a true copy of the judgment sentencing the defendant shall be forthwith certified by the clerk of court to the Iowa liquor control commission. The liquor control commission shall not thereafter issue to the defendant a liquor permit until such time as the court or judge of the court having original jurisdiction of the defendant for good cause shown shall so certify to the Iowa liquor control commission."

The 1974 act purported to update references to the aeronautics commission in this section; however, this section contained no such references.

The 1975 amendment deleted from Acts 1974 (65 G.A.) ch. 1180, § 159, which purported to amend this section, a reference to this section.

The 1976 amendment in unnum. par. 2 substituted "simple misdemeanor" for "misdemeanor and upon conviction thereof shall be punished accordingly".

Acts 1978 (67 G.A.) ch. 1029 rewrote unnum. par. 3 which prior thereto read:

"Any person who operates any aircraft, while in an intoxicated condition or under the influence of narcotic drugs in violation of this section, shall, upon conviction or a plea of guilty, be punished for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense by imprisonment in the penitentiary for a period not to exceed three years."

Acts 1978 (67 G.A.) ch. 1117 deleted unnum. par. 4 which read:

"The court shall after pronouncing sentence cause the clerk to certify a true copy of the judgment to the Iowa liquor control commission. Said commission upon receipt of such copy shall cause notice of such conviction and judgment to be sent to the manager of each liquor store in the state which notice shall be posted therein."

Former § **328.41**, Code 1946, which related the short title, was transferred to § 328.53 by the Code Editor for Code 1950.

I. C. A. § **328.41,** IA ST § **328.41**

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I.C.A. § **422.25**

C
Iowa Code Annotated Currentness
Title X. Financial Resources [Chs. 421-454]
Subtitle 1. Revenues and Financial Management [Chs. 421-424] (Refs & Annos)
Chapter422. Individual Income, Corporate, and Franchise Taxes (Refs & Annos)
Division II. Personal Net Income Tax (Refs & Annos)

→**422.25**. Computation of tax, interest, and penalties--limitation

1. a. Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine the return and determine the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years. In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

b. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to that prior year of a net operating loss or net capital loss, the period is the period of limitation for the taxable year of the net operating loss or net capital loss which results in the carryback. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall mail a notice of assessment to the taxpayer and, if applicable, to the taxpayer's authorized representative of the total, which shall be computed as a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay

interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

3. If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed, or the extended due date by which the return was due to be filed if ninety percent of the tax was paid by the original due date, or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment, for purposes of computing interest on refunds, shall be considered as having been made on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carryback to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due. For purposes of this subsection, the department shall not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments, except that the taxpayer and the department may agree to apply payments in accordance with rules adopted by the director when there are both agreed and unagreed to items as a result of an examination.

5. A person or withholding agent required to supply information, to pay tax, or to make, sign, or file a deposit form or return required by this division, who willfully makes a false or fraudulent deposit form or return, or willfully fails to pay the tax, supply the information, or make, sign, or file the deposit form or return, at the time or times required by law, is guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. The agreement shall stipulate the period of extension and the year or years to which the extension applies. It shall provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

8. A person or withholding agent who willfully attempts in any manner to defeat or evade a tax imposed by this division or the payment of the tax, upon conviction for each offense is guilty of a class "D" felony.

9. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

10. If a taxpayer files an amended return within sixty days prior to the expiration of the applicable period of limitations described in subsection 1, the department has sixty days from the date of receipt of the amended return to issue an assessment for any applicable tax, interest, or penalty.

CREDIT(S)

Amended by Acts 1955 (56 G.A.) ch. 210, §§ 1, 2; Acts 1955 (56 G.A.) ch. 211, §§ 1-3; Acts 1957 (57 G.A.) ch. 211, §§ 1-6; Acts 1957 (57 G.A.) ch. 267, § 46; Acts 1959 (58 G.A.) ch. 298, §§ 1-4, eff. May 10, 1959; Acts 1967 (62 G.A.) ch. 342, § 84, eff. Aug. 15, 1967; Acts 1970 (63 G.A.) ch. 1202, § 1; Acts 1973 (65 G.A.) ch. 244, § 1; Acts 1974 (65 G.A.) ch. 1199, §§ 6, 7, eff. Jan. 1, 1974; Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 338, eff. Jan. 1, 1978; Acts 1978 (67 G.A.) ch. 1140, § 1, eff. Jan. 1, 1979; Acts 1980 (68 G.A.) ch. 1113, § 3, eff. Jan. 1, 1981; Acts 1980 (68 G.A.) ch. 1133, § 1; Acts 1981 (69 G.A.) ch. 131, § 8; Acts 1981 (69 G.A.) ch. 133, § 2, eff. June 16, 1981; Acts

1981 (69 G.A.) ch. 134, § 1; Acts 1982 (69 G.A.) ch. 1180, § 3, eff. May 13, 1982; Acts 1983 (70 G.A.) ch. 160, § 5; Acts 1984 (70 G.A.) ch. 1025, § 1, eff. May 11, 1984; Acts 1984 (70 G.A.) ch. 1173, § 5, eff. Jan. 1, 1985; Acts 1986 (71 G.A.) ch. 1007, § 26; Acts 1986 (71 G.A.) ch. 1241, § 19; Acts 1988 (72 G.A.) ch. 1028, § 29, eff. April 4, 1988; Acts 1989 (73 G.A.) ch. 251, § 19; Acts 1990 (73 G.A.) ch. 1172, § 9, eff. Jan. 1, 1991; Acts 1994 (75 G.A.) ch. 1133, §§ 3, 4; Acts 1995 (76 G.A.) ch. 83, § 3, eff. April 25, 1995; Acts 1999 (78 G.A.) ch. 151, § 8, eff. May 20, 1999; Acts 1999 (78 G.A.) ch. 151, § 9; Acts 1999 (78 G.A.) ch. 152, § 3, eff. May 20, 1999; Acts 2002 (79 G.A.) ch. 1150, § 5.

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

The 1976 amendment rewrote the section read, which had read:

"1. As soon as practicable and in any event within three years after the return is filed the department shall examine it and determine the correct amount of tax, and the amount so determined by the department shall be the tax; provided that if the taxpayer omits from income such an amount as will, under the Internal Revenue Code of 1954, extend the statute of limitations for assessment of federal tax to six years under said Code, the period for examination and determination shall be six years; and provided further that the period for examination and determination shall be unlimited in the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return. Notwithstanding the periods of limitation for examination and determination heretofore specified, the department shall have six months to make an examination and determination from the date of receipt by the department of notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-months' period, the notice shall be in writing in any form sufficient to inform the department of such final disposition with respect to such year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice. The burden of proof of additional tax owing under the six-year period, or unlimited period, shall be on the department. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall notify the taxpayer by certified mail of the total, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

"2. In addition to the tax or additional tax as determined by the department under the provisions of subsection 1 of this section, the taxpayer shall pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In case of failure to file a return with the department on or before the due date (determined with regard to any extension of time for filing), unless it is shown that such failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent of the tax due unless it is shown that such failure was due to reasonable cause. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty above provided, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.

"3. If the amount of the tax as determined by the department shall be less than the amount theretofore paid, the excess shall be refunded with interest after sixty days from the date of payment at three-fourths of one percent per month counting each fraction of a month as an entire month under the provisions of such rules as may be prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment shall be considered as having been made at the close of the taxable year in which the net operating loss or net capital loss occurred or sixty days from the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carry back to a prior year eliminates or reduces an

underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

"4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due.

"5. Any person required to supply any information, to pay any tax, or to make, sign, or file any return or supplemental return, who willfully makes any false or fraudulent return, or willfully fails to pay such tax, supply such information, or make, sign, or file such return, at the time or times required by law, shall upon conviction for each such offense be punished by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding twenty-five hundred dollars, or both such fine and imprisonment.

"6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima-facie evidence thereof except as otherwise provided in this section.

"7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. Such agreement shall stipulate the period of extension and the year or years to which such extension applies. It shall further provide that a claim for refund may be filed by the taxpayer at any time during the period of extension. In consideration of such agreement, interest due in excess of thirty-six months on either a tax deficiency or tax refund shall be waived.

"8. Any person who willfully attempts in any manner to defeat or evade any tax imposed by this division or the payment thereof, shall upon conviction for each such offense be punished by imprisonment in the county jail for a term not exceeding one year or in the state penitentiary for a term not exceeding five years or by a fine not exceeding five thousand dollars, or both such fine and imprisonment.

"9. The jurisdiction of any offense as defined in this section is in the county of the residence of the person so charged, unless such person be a nonresident of this state or his residence in this state is not established, in either of which events jurisdiction of such offense is in the county of the seat of government of the state of Iowa.

"10. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after."

The 1976 amendment substituted fraudulent practice for specified punishment in subsec. 5 and substituted class "D" felony for specified penalty in subsec. 8.

The 1978 amendment revised subsec. 1, which had read:

"As soon as practicable and in any event within three years after the return is filed the department shall examine it and determine the correct amount of tax, and the amount so determined by the department shall be the tax; provided that if the taxpayer omits from income such an amount as will, under the Internal Revenue Code of 1954, extend the statute of limitations for assessment of federal tax to six years under said Code, the period for examination and determination shall be six years; and provided further that the period for examination and determination shall be unlimited in the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return. Notwithstanding the periods of limitation for examination and determination heretofore specified, the department shall have six months to make an examination and determination from the date of receipt by the department of notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-months' period, the notice shall be in writing in any form sufficient to inform the department of such final disposition with respect to such year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice. The burden of proof of additional tax owing under the six-year period, or unlimited period, shall be on the department. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall notify the taxpayer by certified mail of the total, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The notice shall also inform the taxpayer of the

additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month."

Acts 1980, ch. 1113 added additional penalties for failure to pay in subsec. 2. Chapter 1133 revised subsec. 3, which had read:

"If the amount of the tax as determined by the department shall be less than the amount theretofore paid, and the excess shall be refunded with interest after sixty days from the date of payment at three-fourths of one percent per month counting each fraction of a month as an entire month under the provisions of such rules as may be prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment shall be considered as having been made at the close of the taxable year in which the net operating loss or net capital loss occurred or sixty days from the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carry back to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred."

Acts 1981, ch. 131, § 8, changed rate of interest in subsecs. 2 and 3 from three-fourths of one percent per month; chapter 133, § 2, provided that interest was to accrue "on the first day of the second calendar month following" rather than "thirty days after" in subsec. 3; chapter 134, § 1, revised subsec. 1 which had read:

"Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine it and determine the correct amount of tax, and the amount so determined by the department shall be the tax; provided that if the taxpayer omits from income such an amount as will, under the Internal Revenue Code of 1954, extend the statute of limitations for assessment of federal tax to six years under said Code, the period for examination and determination shall be six years. Notwithstanding the periods of limitation for examination and determination heretofore specified, the department shall have six months to make an examination and determination from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter which occurred after the expiration of the applicable period of limitation specified in this section between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-months' period, the notice shall be in writing in any form sufficient to inform the department of such final disposition with respect to such year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice. The period for examination and determination of correct amount of tax shall be unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback. The burden of proof of additional tax owing under the six-year period, or unlimited period, shall be on the department. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall notify the taxpayer by certified mail of the total, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month."

The 1982 amendment added the ninety percent provisions in subsec. 2.

The 1983 amendment added withholding agent and deposit forms in subsec. 5 and added withholding agent in subsec. 8.

Acts 1984, ch. 1025 revised subsec. 3 by substituting "on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department" for "at the close of the tax of the year in which the net operating loss or net capital loss occurred".

Acts 1984 (70 G.A.) ch. 1025, § 2 provides:

"This Act applies to claims for refund or amended returns resulting from the carryback of net operating losses and net capital losses filed thirty days after the effective date of this Act."

Acts 1984, ch. 1173 rewrote subsec. 2 which previously read:

"In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In case of failure to file a return with the department on or before the due date determined with regard to any extension of time for filing, unless it is shown that the failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return fifty percent of the amount of the tax. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax."

Acts 1984 (70 G.A.) ch. 1173, § 10 provides:

"This act takes effect January 1 following enactment for taxes due and payable on or after that date."

The 1986 amendment by ch. 1007 revised subsec. 2 by increasing the penalty from five percent to seven and one-half percent and added "except as provided in section 421.27". It also increased the amount of tax to be shown from fifty percent to seventy-five percent.

Acts 1986 (71 G.A.) ch. 1007, § 45 provides that the amendment by ch. 1007 is effective January 1, 1987 for taxes due and payable on or after that date.

The 1986 amendment by ch. 1241 deleted the requirement that notification of tax due be sent by "certified" mail.

Acts 1988 (72 G.A.) ch. 1028, § 29, made retroactive to Jan. 1, 1988 by § 51 for tax years beginning on or after that date, in subsec. 1, unnum. par. 1, substituted "Internal Revenue Code" for "Internal Revenue Code of 1954" and substituted "six-month" for "six months".

Acts 1988 (72 G.A.) ch. 1028, § 51, provides:

"Sections 1, 2, 4, 5, 6, 7, 9, 11, 12, 13, 15 through 20, 21 through 27, 29, 32, 33, 34, 47, and 49 of this Act are retroactive to January 1, 1988, for tax years beginning on or after that date."

The 1989 amendment, in subsec. 7, deleted the fourth sentence relating to waiver of interest and made other nonsubstantive changes.

The 1990 amendment rewrote subsec. 2, which had read:

"2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If any person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety

percent of any tax required to be shown on the return, there shall be added to the tax a penalty of seven and one-half percent of the tax due, except as provided in section 421.27. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return seventy-five percent of the amount of the tax. The penalty imposed under this subsection is not subject to waiver."

Acts 1990 (73 G.A.) ch. 1172, § 16 provides that sections 1 through 4 and 7 through 12 of this Act are applicable to tax years beginning on or after January 1, 1991.

The 1994 amendment, in subsec. 1, designated unnum. par. 1 as par. a and unnum. par. 2 as par. b; in subsec. 1, par. a, rewrote the first sentence, which had read, "Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine it and determine the correct amount of tax, and the amount determined by the department is the tax."; in subsec. 1, par. b, deleted the former third sentence which had read, "The burden of proof of additional tax owing under the six year period, or unlimited period, is on the department."; in subsec. 1, par. b, substituted "mail a notice of assessment to the taxpayer and if applicable, to the taxpayer's authorized representative" for "notify the taxpayer by mail" in the third sentence; and in subsec. 4, added the second sentence relating to prior payments.

Acts 1994 (75 G.A.) ch. 1133, § 16, provides in part that the amendments to subsec. 1 "are effective for notices of assessment issued on or after January 1, 1995", and that the amendment to subsec. 4 "is effective for payments made on or after January 1, 1995".

The 1995 amendment added subsec. 11 relating to filing of an amended return within 60 days prior to expiration of limitations period.

Acts 1995 (76 G.A.) ch. 83, § 34, provides:

"Section 3 of this Act, being deemed of immediate importance, takes effect upon enactment, and applies or retroactively applies to April 1, 1995, for amended tax returns filed on or after that date."

The 1999 amendment, by ch. 151, in par. b of subsec. 1, in the third sentence twice substituted "dated" for "postmarked" and, in subsec. 3, in the first sentence inserted ", or the extended due date by which the return was due to be filed if ninety percent of the tax was paid by the original due date,".

Acts 1999 (78 G.A.) ch. 151, § 89, subsec. 3, provides:

"3. Section 9 of this Act, amending section **422.25**, subsection 3, applies retroactively to January 1, 1999, for tax years beginning on or after that date."

The 1999 amendment, by ch. 152, struck subsec. 9, and redesignated former subsecs. 10 and 11 as subsecs. 9 and 10. Prior to amendment, subsec. 9 had read:

"9. The jurisdiction of any offense as defined in this section is in the county of the residence of the person so charged, unless such person be a nonresident of this state or the person's residence in this state is not established, in either of which events jurisdiction of such offense is in the county of the seat of government of the state of Iowa."

The 2002 amendment in subsec. 5 deleted "semimonthly, monthly, or quarterly" in three places and substituted "required by this division" for "or supplemental return".

Derivation:

Acts 1943 (50 G.A.) ch. 200, § 5.
Code 1939, § 6943.057.
Acts 1939 (48 G.A.) ch. 179, § 1.
Acts 1939 (48 G.A.) ch. 176, § 9.
Acts 1939 (48 G.A.) ch. 175, § 20.
Code 1935, § 6943-f21.

Acts 1933-34 Ex.Sess. (45 G.A.) ch. 82, § 21.

I. C. A. § **422.25,** IA ST § **422.25**

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I.C.A. § **422.40**

Iowa Code Annotated Currentness
Title X. Financial Resources [Chs. 421-454]
Subtitle 1. Revenues and Financial Management [Chs. 421-424] (Refs & Annos)
Chapter422. Individual Income, Corporate, and Franchise Taxes (Refs & Annos)
Division III. Business Tax on Corporations (Refs & Annos)

→**422.40**. Cancellation of authority--penalty--offenses

1. If a corporation required by the provisions of this division to file any report or return or to pay any tax or fee, either as a corporation organized under the laws of this state, or as a foreign corporation doing business in this state for profit, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this division for making such report or return, or for paying such tax or fee, the director may certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state.

cease? and desist?

2. Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are canceled, as provided in any section of this division, shall pay a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered by an action to be brought by the director.

3. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in subsection 1, or similar provisions of prior revenue laws, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the department that it has complied with all the requirements of this division and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled again to exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by the secretary under the provisions of subsection 1 or similar provisions of prior revenue laws, and shall issue a certificate entitling such corporation to exercise its rights, privileges and franchises.

4. A person, officer or employee of a corporation, or member or employee of a partnership, who, with intent to evade

a requirement of this division or a lawful requirement of the director, fails to pay tax or fails to make, sign, or verify a return or fails to supply information required under this division, is guilty of a fraudulent practice. A person, corporation, officer or employee of a corporation, or member or employee of a partnership, who, with intent to evade any of the requirements of this division, or any lawful requirements of the director, makes, renders, signs, or verifies a false or fraudulent return or statement, or supplies false or fraudulent information, or who aids, abets, directs, causes, or procures anyone so to do, is guilty of a class "D" felony. The penalty is in addition to all other penalties in this division.

CREDIT(S)

Amended by Acts 1967 (62 G.A.) ch. 342, § 94, eff. Aug. 15, 1967; Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 339, eff. Jan. 1, 1978; Acts 1983 (70 G.A.) ch. 160, § 6.

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

The 1976 amendment added "serious" misdemeanor in the first sentence of subsec. 4 and substituted fraudulent practice for specified punishment in the second sentence.

The 1983 amendment revised subsec. 4 by substituting "fraudulent practice" for "serious misdemeanor" in the first mentioned penalty and by substituting "class D felony" for "fraudulently practice" in the second mentioned penalty.

Derivation:

Code 1939, § 6943.072.
Acts 1939 (48 G.A.) ch. 176, § 18.
Code 1935, § 6943-f36.
Acts 1933-34 Ex.Sess. (45 G.A.) ch. 82, § 35.

I. C. A. § **422.40,** IA ST § **422.40**

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I.C.A. § **423.40**

Iowa Code Annotated Currentness
Title X. Financial Resources [Chs. 421-454]
Subtitle 1. Revenues and Financial Management [Chs. 421-424] (Refs & Annos)
Chapter423. Sales and Use Taxes (Refs & Annos)
Subchapter V. Sales and Use Tax Act--Administration--Retailers Not Registered Under Agreement--Consumers Obligated to Pay Use Tax Directly

→**423.40**. Penalties--offenses--limitation

1. In addition to the sales or use tax or additional sales or use tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the sales or use tax or additional sales or use tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this subchapter. Unpaid penalties and interest may be enforced in the same manner as the taxes imposed by this chapter.

2. a. Any person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, or communication service at retail, or engages in the furnishing of services enumerated in section 423.2, in this state without procuring a permit to collect tax, as provided in section 423.36, or who violates section 423.24 and the officers of any corporation who so act are guilty of a serious misdemeanor.

b. A person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, or communication service at retail, or engages in the furnishing of services enumerated in section 423.2, in this state after the person's sales tax permit has been revoked and before it has been restored as provided in section 423.36, subsection 5, and the officers of any corporation who so act are guilty of an aggravated misdemeanor.

3. A person who willfully attempts in any manner to evade any tax imposed by this chapter or the payment of the tax or a person who makes or causes to be made a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade any tax imposed by subchapter II or III or the payment of the tax is guilty of a class "D" felony.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this subchapter shall be prima facie evidence thereof.

5. A person required to pay sales or use tax, or to make, sign, or file a tax deposit form or return or supplemental

return, who willfully makes a false or fraudulent tax deposit form or return, or willfully fails to pay at least ninety percent of the tax or willfully fails to make, sign, or file the tax deposit form or return, at the time required by law, is guilty of a fraudulent practice.

6. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

CREDIT(S)

Added by Acts 2003 (80 G.A.) 1st Ex.Sess., ch. 2, § 133, eff. July 1, 2004.

I. C. A. § **423.40,** IA ST § **423.40**

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I.C.A. § **424.17**

Iowa Code Annotated Currentness
Title X. Financial Resources [Chs. 421-454]
Subtitle 1. Revenues and Financial Management [Chs. 421-424] (Refs & Annos)
Chapter 424. Environmental Protection Charge on Petroleum Diminution (Refs & Annos)

→**424.17**. Penalties--offenses--limitation

1. In addition to the charge or additional charge, the charge payer shall pay a penalty as provided in section 421.27. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as the charge imposed under this chapter. Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter.

2. A person who willfully attempts to evade a charge imposed by this chapter or the payment of the charge or a person who makes or causes to be made a false or fraudulent return with intent to evade the charge imposed by this chapter or the payment of the charge is guilty of a class "D" felony.

3. The certificate of the director to the effect that a charge has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter, shall be prima facie evidence thereof.

4. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

CREDIT(S)

Acts 1989 (73 G.A.) ch. 131, § 28, eff. May 5, 1989. Amended by Acts 1990 (73 G.A.) ch. 1168, § 47; Acts 1990 (73 G.A.) ch. 1172, § 12, eff. Jan. 1, 1991; Acts 1999 (78 G.A.) ch. 152, § 12, eff. May 20, 1999.

<For repeal of this chapter effective June 30, 2016, see § 424.19.>

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

Acts 1990 (73 G.A.) ch. 1168 made nonsubstantive statutory corrections to subsec. 2.

Acts 1990 (73 G.A.) ch. 1172 rewrote subsec. 1, which had read:

"1. If a depositor fails to remit at least ninety percent of the charge due with the filing of the return on or before the due date, or pays less than ninety percent of any charge required to be shown on the return, excepting the period between the completion of an examination of the books and records of a charge payer and the giving of notice to the charge payer that a charge or additional charge is due, there shall be added to the charge a penalty of fifteen percent of the amount of the charge due, except as provided in section 421.27. In case of willful failure to file a return or willful filing of a false return with intent to evade charges, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as a charge on the return seventy-five percent of the amount of the charge. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as the charge imposed under this chapter. Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter."

Acts 1990 (73 G.A.) ch. 1172, § 16 provides that sections 1 through 4 and 7 through 12 of this Act are applicable to tax years beginning on or after January 1, 1991.

The 1999 amendment struck subsec. 4; and redesignated former subsec. 5 as subsec. 4. Prior to amendment, subsec. 4 had read:

"4. For purposes of determining the place of trial, the situs of an offense specified in this section is in the county of the residence of the person charged with the offense, unless the person is a nonresident of this state or the residence of the person cannot be established, in which event the situs of the offense is in Polk county."

I. C. A. § **424.17,** IA ST § **424.17**

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I.C.A. § **437A.13**

Iowa Code Annotated Currentness
Title X. Financial Resources [Chs. 421-454]
Subtitle 2. Property Taxes [Chs. 425-449] (Refs & Annos)
Chapter 437A. Taxes on Electricity and Natural Gas Providers (Refs & Annos)
Subchapter II. Generation, Transmission, and Delivery Taxes

→**437A.13**. Penalties--offenses--limitation

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

CREDIT(S)

Added by Acts 1998 (77 G.A.) ch. 1194, § 14, eff. Jan. 1, 1999.

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

Acts 1998 (77 G.A) ch. 1194, § 40, eff. Jan. 1, 1999, provides:

"Sec. 40. Effective and applicability dates.

"1. Except as provided in subsection 2, this Act takes effect January 1, 1999, and is applicable to property tax assessment years beginning on or after January 1, 1999, and to replacement tax years beginning on or after January 1, 1999.

"2. Notwithstanding subsection 1, section 437A.15, subsection 7, as enacted in this Act and which provides for the establishment of a task force to study the effects of the replacement tax, takes effect upon enactment."

I. C. A. § **437A.13,** IA ST § **437A.13**

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Images:	0

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I.C.A. § **462A.7**

Iowa Code Annotated Currentness
Title XI. Natural Resources [Chs. 455-485]
Subtitle 2. Lands and Waters [Chs. 461-466A]
Chapter 462A. Water Navigation Regulations (Refs & Annos)
General Provisions [Editorially Supplied Heading]

→**462A.7**. Occurrences involving vessels

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. The operator of a vessel involved in an occurrence that results in personal property damage or the injury or death of a person, shall, so far as possible without serious danger to the operator's own vessel, crew, or passengers, render to other persons affected by the occurrence such assistance as may be practicable and necessary to save them from or minimize any danger caused by the occurrence. The operator shall also give the operator's name, address, and identification of the operator's vessel in writing to any person injured and to the owner of any property damaged in the occurrence.

2. Whenever any vessel is involved in an occurrence that results in personal property damage or the injury or death of a person, except one which results only in property damage not exceeding two thousand dollars, a report of the occurrence shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. The report shall be submitted within forty-eight hours of the occurrence in cases that result in death, disappearance, or personal injuries requiring medical treatment by a licensed health care provider, and within five days of the occurrence in all other cases.

3. Every law enforcement officer who, in the regular course of duty, investigates an occurrence which is required to be reported by this section, shall, after completing such investigation, forward a report of such occurrence to the commission.

4. a. All reports shall be in writing. A vessel operator's report shall be without prejudice to the person making the report and shall be for the confidential use of the department. However, upon request the department shall disclose the identities of the persons on board the vessels involved in the occurrence and their addresses. Upon request of a person who made and filed a vessel operator's report, the department shall provide a copy of the vessel operator's report to the requester. A written vessel operator's report filed with the department shall not be admissible in or used in evidence in any civil or criminal action arising out of the facts on which the report is based.

b. All written reports filed by law enforcement officers as required under subsection 3 are confidential to the extent provided in section 22.7, subsection 5, and section 622.11. However, a completed law enforcement officer's report shall be made available by the department or the investigating law enforcement agency to any party to an occurrence involving a vessel, the party's insurance company or its agent, or the party's attorney on written request and payment of a fee.

5. Failure of the operator of any vessel involved in an occurrence to offer assistance and aid to other persons affected by such occurrence, as set forth in this chapter, or to otherwise comply with the requirements of subsection 1, is punishable as follows:

a. In the event of an occurrence resulting only in property damage, the operator is guilty upon conviction of a simple misdemeanor.

b. In the event of an occurrence resulting in an injury to a person, the operator is guilty upon conviction of a serious misdemeanor.

c. In the event of an occurrence resulting in a serious injury to a person, the operator is guilty upon conviction of an aggravated misdemeanor.

d. In the event of an occurrence resulting in the death of a person, the operator is guilty upon conviction of a class "D" felony.

CREDIT(S)

Transferred from § 106.7 by the Code Editor for Code 1993. Amended by Acts 1997 (77 G.A.) ch. 55, §§ 1, 2, eff. April 22, 1997; Acts 2006 (81 G.A.) ch. 1124, H.F. 2612, § 1; Acts 2007 (82 G.A.) S.F. 78, § 5.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2006 Legislation

Acts 2006 (81 G.A.) ch. 1124, H.F. 2612, § 1, rewrote subsec. 5, which had read:

"5. Failure of the operator of any vessel involved in a collision, reportable accident, or other casualty, to offer assistance and aid to other persons affected by such collision, accident, or casualty, as set forth in this chapter, shall constitute a serious misdemeanor."

2007 Legislation

Acts 2007 (82 G.A.) S.F. 78, § 5, rewrote the section heading, and subsecs. 1 and 2; in subsec. 4, par. b, in the second sentence, substituted "an occurrence involving a vessel" for "a boating accident, collision, or other casualty"; and in subsec. 5, substituted "an occurrence" for "a collision, accident, or other casualty" throughout unnum. par. 1, and pars. a to d, and made nonsubstantive changes. Prior to amendment, the section heading, and subsecs. 1 and 2 had read:

"**462A.7**. Collisions, accidents and casualties

"1. The operator of a vessel involved in a collision, accident or other casualty shall, so far as possible without serious danger to the operator's own vessel, crew or passengers, render to other persons affected by the collision, accident or casualty, such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident or other casualty. The operator shall also give the operator's name, address and identification of the operator's vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

"2. Whenever any vessel is involved in a collision, accident or casualty, except one which results only in property damage not exceeding five hundred dollars, a report thereof shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. The report shall be submitted without delay in death or disappearance cases and within five days in all other cases."

2004 Main Volume

The 1997 amendment, in subsec. 2, in the first sentence, substituted "five hundred" for "one hundred", and in the third sentence, substituted "The" for "Said"; and rewrote subsec. 4 which prior thereto read:

"All reports shall be in writing, and the written report shall be without prejudice to the individual so reporting and shall be for the confidential use of the commission. However, upon request the commission shall disclose the identities of the persons on board the vessels involved in the occurrence and their addresses. A written report filed with the commission shall not be admissible in or used in evidence in any civil or criminal action arising out of the facts on which the report is based."

Acts 1997 (77 G.A.) ch. 55, § 3, subsec. 2, eff. April 22, 1997, provides:

"Section 1 of this Act applies to written reports of accidents involving water and ice vessel accidents occurring on or after the effective date of this Act."

Formerly § 106.7, Code 1991. Transferred to § **462A.7** by the Code Editor for Code 1993.

Derivation:

Codes 1991, 1989, 1987, 1985, 1983, § 106.7.
Acts 1982 (69 G.A.) ch. 1028, § 10.
Codes 1981, 1979, 1977, § 106.7.
Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 80.
Code 1975, § 106.7.
Acts 1973 (65 G.A.) ch. 154, § 1.
Codes 1973, 1971, § 106.7.
Acts 1969 (63 G.A.) ch. 114, § 1.
Acts 1967 (62 G.A.) ch. 124, § 3.
Codes 1966, 1962, § 106.7.
Acts 1961 (59 G.A.) ch. 87, § 7.
Codes 1958, 1954, 1950, 1946, §§ 106.21, 106.23.
Code 1939, §§ 1703.21, 1703.23.
Acts 1937 (47 G.A.) ch. 99, §§ 16, 18.

I. C. A. § **462A.7,** IA ST § **462A.7**

Current through Acts of the 2007 1st Reg.Sess.

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I.C.A. § **462A.14**

Iowa Code Annotated Currentness
Title XI. Natural Resources [Chs. 455-485]
Subtitle 2. Lands and Waters [Chs. 461-466A]
Chapter 462A. Water Navigation Regulations (Refs & Annos)
General Provisions [Editorially Supplied Heading]

→**462A.14**. Operating a motorboat or sailboat while intoxicated

perhaps title should reflect all 3 alternatives of committing offense

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. A person commits the offense of operating a motorboat or sailboat while intoxicated if the person operates a motorboat or sailboat on the navigable waters of this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred dollars of the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Prohibition of operation of a motorboat or sailboat for one year, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsection 12, and a course for drinking drivers.

b. An aggravated misdemeanor for a second offense, punishable by all of the following:

(1) Imprisonment in the county jail or community-based correctional facility for not less than seven days.

(2) Assessment of a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.
state no waiver of fine, no community service ?

(3) Prohibition of operation of a motorboat or sailboat for two years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

c. A class "D" felony for a third offense and each subsequent offense, punishable by all of the following:

(1) Imprisonment in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.13.

(2) Assessment of a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. state no waiver of fine, no community service ?

(3) Prohibition of operation of a motorboat or sailboat for six years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

d. A class "D" felony for any offense under this section resulting in serious injury to persons other than the defendant, if the court determines that the person who committed the offense caused the serious injury, and shall be imprisoned for a determinate sentence of not more than five years but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for one year in addition to any other period of time the defendant would have been ordered not to operate if no injury had occurred in connection with the violation. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

state no waiver of fine no community service

e. A class "B" felony for any offense under this section resulting in the death of persons other than the defendant, if the court determines that the person who committed the offense caused the death, and shall be imprisoned for a determinate sentence of not more than twenty-five years, or committed to the custody of the director of the department of corrections. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for six years. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

n addition to any other period?

3. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the

alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 462A.14A.

(5) If the offense under this section results in bodily injury to a person other than the defendant.

b. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license or privilege revocation under this section:

a. Any conviction under this section within the previous twelve years shall be counted as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to an offense defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1. However, a person who refuses a test pursuant to section 462A.14B may be subject to imposition of the penalties under that section in addition to the penalties under this section if the person violates both sections, even though the actions arise out of the same event or occurrence.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. a. This section does not apply to a person operating a motorboat or sailboat while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle, or motorboat or sailboat.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operating or being in physical control of the motorboat or sailboat.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to show the presence of such controlled substance or other drug in the defendant at the time of operating or being in physical control of the motorboat or sailboat.

c. The nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances adopted by the department of public safety shall be utilized in prosecutions under this section.

9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph "b" or paragraph "c", if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1.

11. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

12. a. All substance abuse evaluations required under this section shall be completed at the defendant's expense.

b. In addition to assignment to substance abuse evaluation and treatment under this section, the court shall order any defendant convicted under this section to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

c. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

d. The court may prescribe the length of time for the evaluation and treatment or the court may request that the community college or licensed substance abuse program conducting the course for drinking drivers which the

defendant is ordered to attend or the treatment program to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

e. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and as a condition of probation, the defendant shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

f. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

g. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

h. In addition to any other condition of probation, the defendant shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The defendant shall report to the defendant's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

13. a. Upon a second or subsequent offense in violation of section **462A.14**, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in this state providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or the court may request that the hospital to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the program of the hospital or institution or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

CREDIT(S)

Transferred from § 106.14 by the Code Editor for Code 1993. Amended by Acts 2000 (78 G.A.) ch. 1099, § 2; Acts 2000 (78 G.A.) ch. 1232, § 74; Acts 2007 (82 G.A.) S.F. 74, § 176.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2007 Legislation

Acts 2007 (82 G.A.) S.F. 74, § 176, in subsec. 7, par. a, deleted "examiners" following "board of pharmacy".

2004 Main Volume

The 2000 amendment by ch. 1099 rewrote the section which prior thereto read:

"**462A.14**. Operating vessel while intoxicated or under influence of drugs

"Whoever operates a vessel or manipulates any water skis, surfboard or similar device upon the public waters of this state, while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances, not permitted by section 462A.12, subsection 2, shall, upon conviction or a plea of guilty be punished, for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense and each offense thereafter, by imprisonment for a period not to exceed three years.

"The court shall also, in pronouncing sentence, provide for the revocation of the pilot's and engineer's license of the defendant, if any.

"The court, in pronouncing sentence, may provide as to the period during which a pilot's and engineer's license shall not be issued or reissued to the defendant, provided said period shall be not less than sixty days nor more than one year from the date of sentence or revocation. If the court does not so provide, the commission may issue or reissue such license only upon application by the defendant after the expiration of a sixty-day period following the date of sentencing."

Acts 2000 (78 G.A.) ch. 1099, § 14, provides:

"Sec. 14. Implementation of act. Section 25B.2, subsection 3, shall not apply to this Act."

The 2000 amendment by ch. 1232, in par. d of subsec. 12, inserted "or licensed substance abuse program".

Formerly § 106.14, Code 1991. Transferred to § **462A.14** by the Code Editor for Code 1993.

Derivation:

Codes 1991, 1989, 1987, 1985, 1983, § 106.14.
Acts 1982 (69 G.A.) ch. 1028, § 18.
Codes 1981, 1979, 1977, 1975, 1973, 1971, § 106.14.
Acts 1967 (62 G.A.) ch. 124, § 4.
Codes 1966, 1962, § 106.14.
Acts 1961 (59 G.A.) ch. 87, § 15.
Acts 1959 (58 G.A.) ch. 122, § 2.
Codes 1958, 1954, 1950, §§ 106.5, 106.28.
Acts 1949 (53 G.A.) ch. 72, § 1.
Code 1946, § 106.5.
Code 1939, § 1703.05.
Code 1935, § 1703-e5.
Codes 1931, 1927, 1924, § 1695.
Code Supp.1913, § 2513.
Code 1897, § 2513.

I. C. A. § **462A.14,** IA ST § **462A.14**

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I.C.A. § **462A.34B**

Iowa Code Annotated Currentness
Title XI. Natural Resources [Chs. 455-485]
Subtitle 2. Lands and Waters [Chs. 461-466A]
Chapter 462A. Water Navigation Regulations (Refs & Annos)
General Provisions [Editorially Supplied Heading]

→**462A.34B.** Eluding or attempting to elude pursuing law enforcement vessel

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. The operator of a vessel commits a serious misdemeanor if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop. The signals given by the officer shall be by displaying a blue light or flashing blue and red lights and by sounding a horn or siren.

2. The operator of a vessel commits an aggravated misdemeanor if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop as provided in this section and in doing so exceeds a reasonable speed.

3. The operator of a vessel commits a class "D" felony if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop as provided in this section, and in doing so exceeds a reasonable speed, and if any of the following occurs:

a. The operator is participating in a public offense, as defined in section 702.13, that is a felony.

b. The operator is in violation of section 462A.14 or 124.401.

c. The offense results in bodily injury to a person other than the operator.

CREDIT(S)

Added by Acts 2007 (82 G.A.) S.F. 78, § 10.

I. C. A. § **462A.34B,** IA ST § **462A.34B**

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I.C.A. § **462A.70**

Iowa Code Annotated Currentness
Title XI. Natural Resources [Chs. 455-485]
Subtitle 2. Lands and Waters [Chs. 461-466A]
Chapter 462A. Water Navigation Regulations (Refs & Annos)
Vessel Registration Regulations

→**462A.70**. Hull identification, capacity plates, warning labels

1. Altering or changing numbers on plates.

a. A person shall not with fraudulent intent, deface, destroy, or alter the hull identification number, capacity plate, or any other plate, warning label, or instrument required by state or federal law on a vessel or component part nor shall a person place or stamp a hull identification number, capacity plate, or any other warning label or instrument upon a vessel or component part except one assigned thereto by state or federal law.

b. This section does not prohibit the restoration of an original hull identification number, capacity plate, or any other original plate, warning label, or instrument required by state or federal law when the restoration is made by the commission nor prevent a manufacturer from placing in the ordinary course of business numbers, plates, or marks upon vessels or component parts.

4th amend. concerns?

2. Test to determine true number or plate. When it appears that a hull identification number, capacity plate, or any other plate, warning label, or instrument required by state or federal law has been altered, defaced, or tampered with, a peace officer or inspector employed by the commission or any other person acting under the direction of a peace officer or inspector, may apply any recognized process or test to the vessel or part containing such number or plate for the purpose of determining the true number or plate content.

3. Right of inspection. Peace officers or examiners employed by the commission may inspect any vessel or component part in possession of any person or found upon the waters of this state under the jurisdiction of the commission or in a public mooring or storage area or enclosure in which vessels or component parts are kept for sale, storage, hire, or repair and to determine vessel or component part identification may board the vessel or enter the public mooring or storage area or enclosure.

4. Penalty. A person who is convicted of a violation of any of the provisions of this section or rules adopted under this section by the commission is guilty of a class "D" felony.

CREDIT(S)

Transferred from § 106.70 by the Code Editor for Code 1993.

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

Formerly § 106.70, Code 1991. Transferred to § **462A.70** by the Code Editor for Code 1993.

Derivation:
Codes 1991, 1989, 1987, 1985, 1983, § 106.70.
Acts 1982 (69 G.A.) ch. 1028, § 35.

I. C. A. § **462A.70,** IA ST § **462A.70**

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I.C.A. § **481A.125A**

C

Iowa Code Annotated Currentness
Title XI. Natural Resources [Chs. 455-485]
Subtitle 6. Wildlife [Chs. 481-485]
Chapter 481A. Wildlife Conservation (Refs & Annos)
Prohibited Acts

→**481A.125A.** Remote control or internet hunting--criminal and civil penalties

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

1. As used in this section, "remote control or internet hunting" means use of a computer or other electronic device, equipment, or software to remotely control the aiming or discharge of a firearm or other weapon, allowing a person who is not physically present to take a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C.

2. A person shall not offer for sale, take, or assist in the taking of a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C, by remote control or internet hunting.

3. A person who violates this section is guilty of a serious misdemeanor. A second or subsequent violation of this section is punishable as a class "D" felony.

4. In addition, any person who violates this section is subject to a civil penalty, which may be levied by the department, of not more than ten thousand dollars for each violation of this section. The moneys collected from imposition of a civil penalty shall be deposited in the state fish and game protection fund.

CREDIT(S)

Added by Acts 2007 (82 G.A.) H.F. 671, § 1.

I. C. A. § **481A.125A,** IA ST § **481A.125A**

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I.C.A. § **502.508**

C
Iowa Code Annotated Currentness
Title XII. Business Entities [Chs. 486-504C]
Subtitle 4. Securities [Chs. 502-503]
Chapter 502. Uniform Securities Act (Blue Sky Law) (Refs & Annos)
Article 5. Fraud and Liabilities

→**502.508**. Criminal penalties

1. Criminal penalties.

a. Except as provided in paragraph "b", a person who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

b. A person who willfully violates section 502.501 or section 502.502, subsection 1, resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony.

2. Criminal reference not required. The attorney general or the proper county attorney, with or without a reference from the administrator, may institute criminal proceedings under this chapter.

3. No limitation on other criminal enforcement. This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

CREDIT(S)

Added by Acts 2004 (80 G.A.) ch. 1161, § 47, eff. Jan. 1, 2005. Amended by Acts 2005 (81 G.A.) ch. 19, H.F. 227, § 76.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update
2005 Legislation

The 2005 amendment, in subsec. 2, inserted "attorney" following "county".

I. C. A. § **502.508,** IA ST § **502.508**

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I.C.A. § **507A.10**

C
Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 507A. Unauthorized Insurers (Refs & Annos)

→**507A.10**. Cease and desist orders--civil and criminal penalties

1. Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a person or insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the person or insurer, may issue an order requiring the person or insurer to cease and desist from engaging in the conduct resulting in the violation, and may assess a civil penalty of not more than fifty thousand dollars against the person or insurer.

2. a. Upon a determination by the commissioner that a person or insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the person or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

b. A person to whom a summary order has been issued under this subsection may contest the order by filing a request for a contested case proceeding and hearing as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing.

c. A person or insurer violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall find the person in contempt of the order if the court finds after hearing that the person or insurer is not in compliance with the order. The court may assess a civil penalty against the person or insurer and may issue further orders as it deems appropriate.

3. A person acting as an insurance producer, as defined in chapter 522B, without proper licensure, or an insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

4. A person acting as an insurance producer, as defined in chapter 522B, without proper licensure, or an insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

5. The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule adopted or order issued under this chapter, or of the failure of a person to comply with the licensing requirements of chapter 522B, to the attorney general or the proper county attorney who may, with or without such reference, institute the appropriate criminal proceedings under this chapter.

6. This chapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any other statute.

CREDIT(S)

Acts 1967 (62 G.A.) ch. 365, § 11, eff. July 1, 1967. Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4) § 413, eff. Jan. 1, 1978; Acts 1978 (67 G.A.) ch. 1029, § 36; Acts 1981 (69 G.A.) ch. 165, § 2; Acts 1995 (76 G.A.) ch. 185, § 5; Acts 2004 (80 G.A.) ch. 1110, § 19.

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

The 1976 amendment substituted fraudulent practice for specified punishment (later amended; see 1978 and 1981 amendment notes).

The 1978 amendment substituted serious misdemeanor for fraudulent practice (later amended; see 1981 amendment note).

The 1981 amendment revised the section which previously read:

"Any unauthorized foreign or alien insurer who does any unauthorized act of an insurance business as set forth in this chapter shall be guilty of a serious misdemeanor."

The 1995 amendment rewrote the section which prior thereto read:

"Civil penalty

"The commissioner may assess a civil penalty of not more than fifty thousand dollars against a person or insurer who has violated a provision of this chapter."

The 2004 amendment rewrote the section title which prior thereto read: "Cease and desist order--civil penalty"; designated former unnum. par. 1 as subsec. 1; and added subsecs. 2 through 6.

I. C. A. § **507A.10,** IA ST § **507A.10**

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I.C.A. § **507B.14**

C

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 507B. Insurance Trade Practices (Refs & Annos)

→**507B.14**. Transfer of insurance stock

When a controlling interest in two or more corporations, at least one of which is an insurance company domiciled in this state, is held by any person, group of persons, firm, or corporation, no exchange of stock, transfer or sale of securities, or loan based upon securities of any such corporation shall take place between such corporations, or between such person, group of persons, firm or corporation and such corporations, without first securing the approval of the insurance commissioner. If, in the opinion of the insurance commissioner, such sale, transfer, exchange, or loan would be improper and would work to the detriment of any such insurance company, the commissioner shall have the power to prohibit the transaction. A person, firm, or corporate officer or director shall not aid such transaction without approval of the insurance commissioner. A person, firm, or other corporate officer or director who willfully violates this provision is guilty of a class "D" felony. A person, firm, or corporate officer or director who willfully violates this provision, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

For purposes of this section, controlling interest means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a firm, partnership, corporation, association, or trust, whether through the ownership of voting securities, by contract, or otherwise.

CREDIT(S)

Acts 1963 (60 G.A.) ch. 302, §§ 1, 2. Amended by Acts 1975 (66 G.A.) ch. 234, § 619, eff. Jan. 1, 1976; Acts 2004 (80 G.A.) ch. 1161, § 66, eff. Jan. 1, 2005.

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

The 1975 amendment changed, in unnumbered par. 1, "502.28" to "five hundred two point six hundred five (502.605) of the Code."

Acts 1975 (66 G.A.) ch. 234, § 614, provided as follows:

"This Act shall take effect on January 1, 1976."

The 2004 amendment substituted "A person, firm, or corporate officer or director shall not aid such transaction without approval of the insurance commissioner. A person, firm, or other corporate officer or director who willfully violates this provision is guilty of a class 'D' felony" for "Any person, firm or corporate officer or director aiding such transaction carried out without approval of the insurance commissioner shall be deemed guilty of a felony and upon conviction punished as provided in section 502.605" and added "A person, firm, or corporate officer or director who willfully violates this provision, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class 'C' felony."

I. C. A. § **507B.14,** IA ST § **507B.14**

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Citation Text:	IA ST s 507E.3
Lines:	60
Documents:	1
Images:	0

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I.C.A. § **507E.3**

C
Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 507E. Insurance Fraud (Refs & Annos)

→**507E.3**. Fraudulent submissions--penalty

1. For purposes of this chapter, "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X ray, test result, or other evidence of loss, injury, or expense.

2. A person commits a class "D" felony if the person, with the intent to defraud an insurer, does any of the following:

a. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

b. Assists, abets, solicits, or conspires with another to present or cause to be presented to an insurer, any written document or oral statement, including a computer-generated document, that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

c. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in, an application for insurance coverage, knowing that such document or statement contains false information concerning a material fact.

CREDIT(S)

Acts 1994 (75 G.A.) ch. 1072, § 3, eff. July 1, 1995. Amended by Acts 1996 (76 G.A.) ch. 1045, § 2.

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

Acts 1994 (75 G.A.) ch. 1072, § 9 as amended by Acts 1995 (76 G.A.) ch. 185, § 46, was repealed by Acts 1998 (77 G.A.) ch. 1217, § 31, thereby removing all funding contingencies.

The 1996 amendment, in subsec. 2, in unnum. par. 1 substituted "any" for "either", and added par. c relating to an application for insurance coverage.

I. C. A. § **507E.3,** IA ST § **507E.3**

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Documents:	1
Images:	0

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I.C.A. § **516E.15**

C
Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 516E. Motor Vehicle Service Contracts (Refs & Annos)

→**516E.15**. Violations--penalties

1. a. Except as provided in paragraph "b", all of the following shall apply:

(1) A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

(2) A person who willfully and knowingly violates this chapter or a rule adopted pursuant to this chapter is, upon conviction, guilty of a class "D" felony.

b. A provider or service company that fails to file documents and information with the commissioner as required pursuant to section 516E.3 may be subject to a civil penalty. The amount of the civil penalty shall not be more than four hundred dollars plus two dollars for each service contract that the person executed prior to satisfying the filing requirement. However, a person who fails to file information regarding a change in the name or the termination of the business of a provider or service company as required pursuant to section 516E.3 is subject to a civil penalty of not more than five hundred dollars.

2. If the commissioner believes that grounds exist for the criminal prosecution of a provider, service company, or third-party administrator for violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession for action deemed appropriate by the attorney general or county attorney. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

CREDIT(S)

Transferred from § 321I.16 by Acts 2000 (78 G.A.) ch. 1147, § 15 for Code 2001. Amended by Acts 2005 (81 G.A.) ch. 70, S.F. 360, §§ 39, 40; Acts 2006 (81 G.A.) ch. 1117, S.F. 2364, § 88.

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

The 2005 amendment by Acts 2005 (81 G.A.) ch. 70, S.F. 360, § 39, in subsec. 1, par. b, substituted "A provider, service company, or third-party administrator that" for "A motor vehicle service contract provider who" in the first sentence, in the second sentence, deleted "motor vehicle" preceding "service contract", and in the third sentence, deleted "provider's" following "change in the" and "termination of the" and inserted "of a provider, service company, or third-party administrator"; and ch. 70, S.F. 360, § 40, substituted "a provider, service company, or third-party administrator" for "a motor vehicle service contract provider" in subsec. 2.

Acts 2006 (81 G.A.) ch. 1117, S.F. 2364, § 88, in subsec. 1, par. b, substituted "provider or service company" for "provider, service company, or third-party administrator" in two places.

Derivation:

Acts 2000 (78 G.A.) ch. 1147, § 13.
Codes 1999, 1997, 1995, § 321I.16.
Acts 1994 (75 G.A.) ch. 1031, § 5.

I. C. A. § **516E.15,** IA ST § **516E.15**

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I.C.A. § **521A.10**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 521A. Insurance Holding Company Systems (Refs & Annos)
General Provisions [Editorially Supplied Heading]

→**521A.10**. Sanctions and penalties

1. If the commissioner finds after notice and hearing that a person subject to registration under section 521A.4 failed without just cause to file a registration statement as required in this chapter, the person shall be required to pay a penalty of one thousand dollars for each day's delay. The penalty shall be recovered by the commissioner and paid into the state general fund. The maximum penalty under this section is ten thousand dollars. The commissioner may reduce the penalty if the person demonstrates that the imposition of the penalty would constitute a financial hardship to the person.

2. a. A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph "b":

(1) Knowingly participates in or assents to transactions or investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph "b".

(2) Knowingly permits any of the officers or agents of an insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph "b".

(3) Knowingly violates any other provision of this chapter.

b. An officer or director of an insurance holding company system who commits any of the acts or omissions listed in paragraph "a" shall pay, in the person's individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

3. If it appears to the commissioner that an insurer subject to this chapter has engaged in a transaction or entered into a

contract which is subject to section 521A.5 and which would not have been approved had approval been requested, the commissioner may order the insurer to immediately cease and desist any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the commissioner finds that action is in the best interest of the policyholders, creditors, or the public.

4. If it appears to the commissioner that an insurer or a director, officer, agent, or employee of an insurer has committed a willful violation of this chapter, the commissioner may institute criminal proceedings against the insurer or the responsible director, officer, agent, or employee in the district court for the county in which the principal office of the insurer is located, or if the insurer has no office in this state, then in the district court for Polk county. An insurer or individual who willfully violates this chapter is guilty of a class "D" felony.

5. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter is guilty of a class "D" felony. Any fines imposed shall be paid by the director, officer, or employee in the person's individual capacity.

CREDIT(S)

Acts 1970 (63 G.A.) ch. 1249, § 10. Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 434, eff. Jan. 1, 1978; Acts 1986 (71 G.A.) ch. 1102, § 23; Acts 1991 (74 G.A.) ch. 26, §§ 55, 56.

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

The 1976 amendment added serious misdemeanor and deleted specified punishment in two instances.

The 1986 amendment struck the section and inserted a new one. It previously provided:

"Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court of Polk county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this chapter commits a serious misdemeanor. Any individual who willfully violates this chapter commits a serious misdemeanor."

The 1991 amendment inserted subsec. 2 relating to actions subject to civil penalty, renumbered former subsecs. 2 and 3 as subsecs. 3 and 4 and added subsec. 5 relating to class "D" felonies.

I. C. A. § **521A.10,** IA ST § **521A.10**

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I.C.A. § **523A.704**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 523A. Cemetery and Funeral Merchandise and Funeral Services (Refs & Annos)
Subchapter VII. Fraudulent Practices

→**523A.704.** Violations

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

A person who willfully violates section 523A.501, subsection 1, or section 523A.502, subsection 1, is guilty of a class "D" felony.

CREDIT(S)

Added by Acts 2007 (82 G.A.) ch. 175, S.F. 559, § 26.

I. C. A. § **523A.704,** IA ST § **523A.704**

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I.C.A. § **523C.18**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle1. Insurance and Related Regulation [Chs. 505-523I] (Refs & Annos)
Chapter 523C. Residential Service Contracts (Refs & Annos)

→**523C.18**. Violations

A person who willfully violates section 523C.5 is, upon conviction, guilty of a class "D" felony.

CREDIT(S)

Added by Acts 1992 (74 G.A.) ch. 1078, § 8.

I. C. A. § **523C.18,** IA ST § **523C.18**

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Documents:	1
Images:	0

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I.C.A. § **524.1605**

C
Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 2. Financial Institutions [Chs. 524-534] (Refs & Annos)
Chapter 524. Banks (Refs & Annos)
Division XVI. Penalties

→**524.1605.** False statements, reports and felonious acts

1. Any director, officer or employee of a state bank who shall knowingly subscribe or make any false statements or false entries in the books, records, or memoranda of a state bank, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe or make false reports, or shall knowingly divert the funds of the state bank to other purposes than those authorized by law, or who commits any other act with intent to defraud the state bank or any other person shall be guilty of a class "C" felony, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

2. Any officer or employee of a state bank who, with intent to defraud the state bank or any other person, certifies any check when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who issues any certificate of deposit when funds have not been deposited equal to the amount of such certificate, or who, with intent to defraud the state bank or any other person, draws any draft or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation or instrument, or participates in, or receives directly or indirectly any money, property or other benefit from any transaction, loan, contract or other act of a state bank shall be guilty of a class "C" felony, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

CREDIT(S)

Acts 1969 (63 G.A.) ch. 273, § 1605, eff. Jan. 1, 1970. Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 442, eff. Jan. 1, 1978.

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1976 amendment, in subsec. 1, substituted "be guilty of a class 'C' felony" for ", upon conviction thereof, be

subject to imprisonment in the penitentiary for a period not exceeding five years or a fine not exceeding ten thousand dollars, or both"; and, in subsec. 2, substituted "be guilty of a class 'C' felony" for "upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding five years or a fine not exceeding ten thousand dollars, or both, or be subject to imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both".

Derivation:

Codes 1966, 1962, 1958, 1954, 1950, 1946, §§ 528.84, 528.85, 528.87.
Codes 1939, 1935, 1931, §§ 9282, 9283, 9283.02, 9283-c2.
Acts 1929 (43 G.A.) ch. 30, § 17.
Codes 1927, 1924, §§ 9282, 9283, 9283.02, 9283-c2.
Code 1897, §§ 1887, 1888.
Acts 1894 (25 G.A.) ch. 30, § 3.
McClain's Code 1888, §§ 1813, 1814.
Acts 1874 (15 G.A.) ch. 60, §§ 26, 27.

I. C. A. § **524.1605,** IA ST § **524.1605**

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Documents:	1
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I.C.A. § **529.2**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 2. Financial Institutions [Chs. 524-534] (Refs & Annos)
Chapter 529. Iowa Financial Transaction Reporting Act (Refs & Annos)

→**529.2**. Reports

1. A licensee, authorized delegate, or money transmitter required to file a report regarding business conducted in this state pursuant to the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a duplicate of that report with the department of public safety.

2. All persons engaged in a trade or business who are required to file a report pursuant to 26 U.S.C. § 6050I and 26 C.F.R. § 1.6050I, and any successor provisions, concerning returns relating to cash received in trade or business, shall file a copy of the report with the department of public safety.

3. A licensee, authorized delegate, or money transmitter that is regulated under the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt. 103, and that is required to make available prescribed records to the secretary of the United States department of treasury upon request at any time, shall follow the same prescribed procedures and create and maintain the same prescribed records relating to a transaction and shall make these records available to the department of public safety pursuant to a prosecuting attorney subpoena.

4. a. The timely filing of a report required by this section with the appropriate federal agency shall be deemed compliance with the reporting requirements of this section, unless the attorney general or the department of public safety has notified the superintendent that reports of that type are not being regularly and comprehensively transmitted by that federal agency to the department of public safety.

b. This chapter does not preclude a licensee, authorized delegate, money transmitter, financial institution, or a person engaged in a trade or business, in its discretion, from instituting contact with, and thereafter communicating with and disclosing customer financial records to appropriate state or local law enforcement agencies if the licensee, authorized delegate, money transmitter, financial institution, or person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting requirement of this chapter.

c. A licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or any public official or governmental employee who keeps or files a record pursuant to this section or who communicates or discloses information or records under

paragraph "b", is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained in that report.

5. The attorney general or the department of public safety may report any possible violations indicated by analysis of the reports required by this chapter to any appropriate law enforcement agency for use in the proper discharge of its official duties. The attorney general or the department of public safety shall provide copies of the reports required by this chapter to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this chapter to which the reports are relevant. A person who releases information received pursuant to this subsection except in the proper discharge of the person's official duties is guilty of a serious misdemeanor.

6. It shall be unlawful for any person to do any of the following:

a. With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide to a licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this section.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, money transmitters, financial institutions, or persons engaged in a trade or business.

7. A person who violates subsection 6 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

8. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

9. Any report, record, information, analysis, or request obtained by the attorney general or department of public safety pursuant to this chapter is not a public record as defined in chapter 22 and is not subject to disclosure.

CREDIT(S)

Added by Acts 1996 (76 G.A.) ch. 1133, § 35. Amended by Acts 1998 (77 G.A.) ch. 1074, § 31.

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1998 amendment, in par. b of subsec. 6, deleted "or with intent" preceding "to conduct".

For disposition of the subject matter of former § **529.2**, Code 1966, see disposition table preceding § 524.1.

I. C. A. § **529.2,** IA ST § **529.2**

Current through Acts of the 2007 1st Reg.Sess.

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Your Search:	533.509
Date/Time of Request:	Wednesday, October 24, 2007 15:53:00 Central
Client Identifier:	CRIMINAL
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Citation Text:	IA ST s 533.509
Lines:	57
Documents:	1
Images:	0

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I.C.A. § **533.509**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 2. Financial Institutions [Chs. 524-534] (Refs & Annos)
Chapter 533. Iowa Credit Union Act [Editorially Supplied Heading] (Refs & Annos)
Administration

→**533.509**. Penalty for falsification

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2007.]>

A director, officer, agent, or employee of a state credit union, a credit union service organization, or any other person who knowingly signs, makes, or consents to another person making any false statement or false entry in the books of the state credit union or credit union service organization, or knowingly signs, makes, or consents to the making of any false report regarding a state credit union or credit union service organization, or knowingly diverts the funds of the state credit union, is guilty of a class "C" felony and is forever after barred from holding any office or position in a state credit union or credit union service organization.

CREDIT(S)

Added by Acts 2007 (82 G.A.) S.F. 557, § 76.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

2007 Legislation

Acts 2007 (82 G.A.) S.F. 557, § 99, subsec. 1, par. e, and subsec. 2, provide:

"Sec. 99. Code editor directive.

"1. The Code editor shall establish the following divisions in chapter 533:"

"e. Division V, entitled 'supervisory actions, limitations, and penalties', shall be comprised of sections 533.501

through **533.509**."

"2. The Code editor shall make such other revisions throughout the Code to update references to particular provisions of the Iowa credit union Act, and such other revisions consistent with this Act."

Derivation:

Codes 2007, 2005, 2003, 2001, 1999, 1997, 1995, 1993, 1991, 1989, 1987, 1985, 1983, 1981, 1979, 1977, § 533.31.

Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 451, eff. Jan. 1, 1978.

Codes 1975, 1973, § 533.31.

Codes 1971, 1966, § 533.29.

Acts 1965 (61 G.A.) ch. 407, § 1.

I. C. A. § **533.509,** IA ST § **533.509**

Current through Acts of the 2007 1st Reg.Sess.

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Citation Text:	IA ST s 533C.706
Lines:	65
Documents:	1
Images:	0

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I.C.A. § **533C.706**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 2. Financial Institutions [Chs. 524-534] (Refs & Annos)
Chapter 533C. Uniform Money Services Act (Refs & Annos)
Article 7. Enforcement

→**533C.706**. Criminal penalties

1. A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or who intentionally makes a false entry or omits a material entry in such a record is guilty of a class "D" felony.

2. A person who knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter is guilty of an aggravated misdemeanor.

3. It shall be unlawful for any person to do any of the following:

a. With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide to a licensee, authorized delegate, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this chapter.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, financial institutions, or persons engaged in a trade or business.

4. A person who violates subsection 3 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

5. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

CREDIT(S)

Added by Acts 2003 (80 G.A.) ch. 96, § 30, eff. Oct. 1, 2003.

I. C. A. § **533C.706,** IA ST § **533C.706**

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Lines:	32
Documents:	1
Images:	0

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I.C.A. § **535B.8**

C
Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 3. Money and Credit [Chs. 535-541A]
Chapter 535B. Mortgage Bankers and Brokers (Refs & Annos)

→**535B.8**. Operating without a license

A person, who without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage banker or mortgage broker in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

CREDIT(S)

Acts 1988 (72 G.A.) ch. 1146, § 8.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

Former § **535B.8**, Code 1981, which related to rate change notices for variable rate mortgages and was repealed by Acts 1982 (69 G.A.) ch. 1253, § 44, was derived from: Acts 1979 (68 G.A.) ch. 132, § 9.

I. C. A. § **535B.8,** IA ST § **535B.8**

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Lines:	86
Documents:	1
Images:	0

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I.C.A. § **551A.10**

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 5. Regulation of Commercial Enterprises [Chs. 546-554D]
Chapter 551A. Business Opportunity Promotions (Refs & Annos)

→**551A.10**. Penalties

1. A seller who willfully violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 551A.3, who provides misleading advertising as provided in section 551A.9, who willfully violates a rule under this chapter, or who willfully violates an order of which the person has notice, upon conviction, is guilty of a class "D" felony. Otherwise, a person who violates a rule adopted or order issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

2. A business opportunity contract is subject to section 714.16.

3. A seller who willfully uses any device or scheme to defraud a person in connection with an advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in subsection 1, is, upon conviction, guilty of a fraudulent practice as provided in chapter 714.

CREDIT(S)

Amended by Acts 2004 (80 G.A.) ch. 1104, § 25. Transferred from § 523B.11, Code 2005, by Acts 2003 (80 G.A.) ch. 1104, § 30.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

1998 Legislation

The 1998 amendment, in subsec. 1, deleted "section 523B.4," following "violates".

2004 Legislation

The 2004 amendment rewrote subsec. 1 which prior thereto read:

"A seller who willfully violates section 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection 2, who willfully violates a rule under this chapter, who willfully violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.";

inserted subsec. 2; redesignated former subsec. 2 as subsec. 3, and therein, substituted "subsection 1," for "subsections 1 and 3," and added "as provided in chapter 714"; deleted former subsec. 3 and subsec. 4, which read:

"3. A seller who violates a rule or order adopted or issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor.

"4. The administrator may refer available evidence concerning a possible violation of this chapter or of a rule or order issued under this chapter to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county attorney to institute appropriate criminal proceedings.";

and made a nonsubstantive change.

Former § **551A.10**, relating to enjoining violations relating to cigarette sales, was transferred to § 421B.10 by the Code Editor for Code 1993.

Derivation:

Codes 2003, 2001, 1999, § 523B.11.
Acts 1998 (77 G.A.) ch. 1189, § 19.
Codes 1997, 1995, 1993, § 523B.11.
Acts 1991 (74 G.A.) ch. 205, § 8.
Codes 1991, 1989, 1987, 1985, 1983, § 523B.11.
Acts 1981 (69 G.A.) ch. 171, § 11.

1997 Main Volume

The 1991 amendment rewrote subsec. 1.

I. C. A. § **551A.10,** IA ST § **551A.10**

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Citation Text:	IA ST s 553.14
Lines:	60
Documents:	1
Images:	0

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I.C.A. § **553.14**

C

Iowa Code Annotated Currentness
Title XIII. Commerce [Chs. 505-554D]
Subtitle 5. Regulation of Commercial Enterprises [Chs. 546-554D]
Chapter 553. Iowa Competition Law (Refs & Annos)

→**553.14**. Criminal penalties

A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this chapter shall be guilty of a serious misdemeanor.

A person having substantial control over an enterprise who knowingly and willfully engages in bid rigging or price fixing involving a contract with the state or a governmental agency is guilty of a class "D" felony.

CREDIT(S)

Acts 1976 (66 G.A.) ch. 1224, § 14, eff. Jan. 1, 1977. Amended by Acts 1977 (67 G.A.) ch. 147, § 130, eff. Jan. 1, 1978; Acts 1984 (70 G.A.) ch. 1143, § 1.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1977 amendment substituted "guilty of a serious misdemeanor" for "upon conviction, fined not to exceed twenty five thousand dollars, imprisoned in the county jail for not more than six months or both so fined and imprisoned."

The 1984 amendment added unnum. par. 2 relating to bid rigging and price fixing with state or governmental agencies.

Former § **553.14**, Code 1975, which related to the duty of the grand jury to ascertain whether any provision of section 553.10 was violated, and was repealed by Acts 1976 (66 G.A.) ch. 1224, § 18, effective January 1, 1977, was derived from:

Codes 1973, 1971, 1966, 1962, 1958, 1954, 1950, 1946, § **553.14**.

Codes 1939, 1935, 1931, 1927, 1924, § 9919.
Code Supp.1913, § 5067-c.
Acts 1909 (33 G.A.) ch. 225, § 3.

Derivation:

Acts 1976 (66 G.A.) ch. 1245 (ch. 4), §§ 470, 471, 473.
Codes 1975, 1973, 1971, 1966, 1962, 1958, 1954, 1950, 1946, §§ 553.3, 553.13, 553.21.
Codes 1939, 1935, 1931, 1927, 1924, §§ 9908, 9918, 9926.
Code Supp.1913, §§ 5062, 5067-c, 5077-a5.
Acts 1909 (33 G.A.) ch. 225, § 3.
Acts 1908 (32 G.A.) ch. 187, § 1.
Acts 1907 (32 G.A.) ch. 188, § 3.
Code 1897, § 5062.
Acts 1890 (23 G.A.) ch. 28, § 3.

I. C. A. § **553.14,** IA ST § **553.14**

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Database:	IA-ST
Citation Text:	IA ST s 692.7
Lines:	65
Documents:	1
Images:	0

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I.C.A. § **692.7**

C

Iowa Code Annotated Currentness
Title XVI. Criminal Law and Procedure [Chs. 687-915] (Refs & Annos)
Subtitle 1. Crime Control and Criminal Acts [Chs. 687-747] (Refs & Annos)
Chapter 692. Criminal History and Intelligence Data (Refs & Annos)

→**692.7**. Criminal penalties

1. A person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or a person connected with a research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be guilty of an aggravated misdemeanor.

2. Any person who willfully requests, obtains, or seeks to obtain intelligence data under false pretenses, or who willfully communicates or seeks to communicate intelligence data to any agency or person except in accordance with this chapter, shall for each such offense be guilty of a class "D" felony. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate intelligence data except in accordance with this chapter shall for each such offense be guilty of a serious misdemeanor.

3. If a person convicted under this section is a peace officer, the conviction shall be grounds for discharge or suspension from duty without pay and if the person convicted is a public official or public employee, the conviction shall be grounds for removal from office.

4. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to criminal history data and intelligence data.

CREDIT(S)

Transferred from § 749B.7 by the Code Editor for Code Supp.1977. Amended by Acts 1996 (76 G.A.) ch. 1150, § 6.

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

The 1996 amendment, in subsec. 1, in the first sentence, twice substituted "A person" for "Any person", and substituted "a research" for "any research", and deleted the second sentence which read: "Any person who knowingly, but without criminal purposes, communicates or seeks to communicate criminal history data except in accordance with this chapter shall be guilty of a simple misdemeanor.".

Derivation:

Code 1977, § 749B.7.
Acts 1976 (66 G.A.) ch. 1245, § 508.
Code 1975, § 749B.7.
Acts 1973 (65 G.A.) ch. 294, § 7.

I. C. A. § **692.7,** IA ST § **692.7**

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Date/Time of Request:	Wednesday, October 24, 2007 15:57:00 Central
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Citation Text:	IA ST s 808B.2
Lines:	95
Documents:	1
Images:	0

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I.C.A. § **808B.2**

C
Iowa Code Annotated Currentness
Title XVI. Criminal Law and Procedure [Chs. 687-915] (Refs & Annos)
Subtitle 2. Criminal Procedure [Chs. 748-899] (Refs & Annos)
Chapter808b. Interception of Communications (Refs & Annos)

→**808B.2**. Unlawful acts--penalty

1. Except as otherwise specifically provided in this chapter, a person who does any of the following commits a class "D" felony:

a. Willfully intercepts, endeavors to intercept, or pro-cures any other person to intercept or endeavor to intercept, a wire, oral, or electronic communication.

b. Willfully uses, endeavors to use, or procures any other person to use or endeavor to use an electronic, mechanical, or other device to intercept any oral communication when either of the following applies:

(1) The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication.

(2) The device transmits communications by radio, or interferes with the transmission of radio communications.

c. Willfully discloses, or endeavors to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.

d. Willfully uses, or endeavors to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.

2. a. It is not unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in an activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the

communication. However, communications common carriers shall not use service observing or random monitoring except for mechanical or service quality control checks.

b. It is not unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

3. An operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission or interception of a wire, oral, or electronic communication shall not disclose the existence of any transmission or interception or the device used to accomplish the transmission or interception with respect to a court order under this chapter, except as may otherwise be required by legal process or court order. Violation of this subsection is a class "D" felony.

CREDIT(S)

Added by Acts 1989 (73 G.A.) ch. 225, § 23. Amended by Acts 1999 (78 G.A.) ch. 78, §§ 6 to 9.

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Section 808B.9, which repealed this chapter effective July 1, 1999, was itself repealed by Acts 1998 (77 G.A.) ch. 1157, § 1.

The 1999 amendment in subsec. 1, pars. a, c, and d and in subsec. 2, pars. b and c, substituted ", oral, or electronic" for "communication or oral" wherever the phrase appeared, and in subsec. 3 substituted ", oral, or electronic" for "or oral".

I. C. A. § **808B.2,** IA ST § **808B.2**

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Citation Text:	IA ST s 809A.10
Lines:	90
Documents:	1
Images:	0

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I.C.A. § **809A.10**

C
Iowa Code Annotated Currentness
Title XVI. Criminal Law and Procedure [Chs. 687-915] (Refs & Annos)
Subtitle 2. Criminal Procedure [Chs. 748-899] (Refs & Annos)
Chapter 809A. Forfeiture Reform Act (Refs & Annos)

→**809A.10**. Trustees--penalties

1. Except as provided in subsection 2, a trustee, constructive or otherwise, who has notice that a notice of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as record owner, shall furnish within fifteen days of such notice, to the seizing agency, or the prosecuting attorney all of the following:

a. The name and address of each person or entity for whom the property is held.

b. The description of all other property whose legal title is held for the benefit of the named person.

c. A copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as record owner of the property.

2. Subsection 1 is inapplicable if any of the following applies:

a. A trustee is acting under a recorded subdivision trust agreement or a recorded deed of trust.

b. All of the information is of record in the public records giving notice of liens on that type of property.

3. A trustee with notice who knowingly fails to comply with the provisions of this section commits a class "D" felony, and shall be fined not less than ten thousand dollars per day for each day of noncompliance.

4. A trustee with notice who fails to comply with subsection 1 is subject to a civil penalty of three hundred dollars for each day of noncompliance. The court shall enter judgment ordering payment of three hundred dollars for each day of noncompliance from the effective date of the notice until the required information is furnished or the state executes its judgment lien under this section.

5. To the extent permitted by the Constitution of the United States and the Constitution of the State of Iowa, the duty to comply with subsection 1 shall not be excused by any privilege or provision of law of this state or any other state or country which authorizes or directs that testimony or records required to be furnished pursuant to subsection 1 are privileged or confidential or otherwise may not be disclosed.

6. A trustee who furnishes information pursuant to subsection 1 is immune from civil liability for the release of information.

7. An employee of the seizing agency or the prosecuting attorney who releases the information obtained pursuant to subsection 1, except in the proper discharge of official duties, commits a serious misdemeanor.

8. If any information furnished pursuant to subsection 1 is offered in evidence, the court may seal that portion of the record or may order that the information be disclosed in a designated way.

9. A judgment or an order of payment entered pursuant to this section becomes a judgment lien against the property alleged to be subject to forfeiture.

CREDIT(S)

Added by Acts 1996 (76 G.A.) ch. 1133, § 10.

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Former § **809A.10**, which related to hearings and clerk's orders, and was repealed by Acts 1986 (71 G.A.) ch. 1140, § 19 was derived from Acts 1985 (71 G.A.) ch. 201, § 13.

See, now, § 809.10.

I. C. A. § **809A.10,** IA ST § **809A.10**

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Lines:	68
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I.C.A. § **809A.18**

Iowa Code Annotated Currentness
Title XVI. Criminal Law and Procedure [Chs. 687-915] (Refs & Annos)
Subtitle 2. Criminal Procedure [Chs. 748-899] (Refs & Annos)
Chapter 809A. Forfeiture Reform Act (Refs & Annos)

→**809A.18**. Powers of enforcement personnel

1. A prosecuting attorney may conduct an investigation of any conduct that gives rise to forfeiture. The prosecuting attorney is authorized, before the commencement of a proceeding or action under this chapter, to subpoena witnesses, and compel their attendance, examine them under oath, and require the production of documentary evidence for inspection, reproducing, or copying. Except as otherwise provided by this section, the prosecuting attorney shall proceed under this subsection with the powers and limitations, and judicial oversight and enforcement, and in the manner provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel.

2. The examination of all witnesses under this section shall be conducted by the prosecuting attorney before an officer authorized to administer oaths. The testimony shall be taken by a certified shorthand reporter or by a sound recording device and shall be transcribed or otherwise preserved. The prosecuting attorney may exclude from the examination all persons except the witness, the witness's counsel, the officer before whom the testimony is to be taken, law enforcement officials, and a certified shorthand reporter. Prior to oral examination, the person shall be advised of the person's right to refuse to answer any questions on the basis of the privilege against self-incrimination. The examination shall be conducted in a manner consistent with the rules dealing with the taking of depositions.

3. Except as otherwise provided in this section, prior to the filing of a civil or criminal proceeding or action relating to such a proceeding, documentary material, transcripts, or oral testimony, in the possession of the prosecuting attorney, shall not be available for examination by any individual other than a law enforcement official or agent of such official without the consent of the person who produced the material, transcripts, or oral testimony.

4. A person shall not knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material that is the subject of a subpoena, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the prosecuting attorney under this section. A violation of this subsection is a class "D" felony. The prosecuting attorney shall investigate and prosecute suspected violations of this subsection.

CREDIT(S)