

## CHAPTER 125

### CRIMINAL JUSTICE — MISCELLANEOUS PROVISIONS

S.F. 503

**AN ACT** relating to criminal justice, by providing for enhanced punishment for manufacturing methamphetamine in the presence of minors, providing restrictions on public nudity and actual or simulated public performance of sex acts in certain establishments, authorizing probation supervision and revocation by administrative parole and probation judges in the sixth judicial district, providing restitution for death of a victim of a crime, and providing penalties and an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 124.401C MANUFACTURING METHAMPHETAMINE IN PRESENCE OF MINORS.

1. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, and salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years.

2. For purposes of this section, the term "in the presence of a minor" shall mean, but is not limited to, any of the following:

- a. When a minor is physically present during the activity.
- b. When the activity is conducted in the residence of a minor.
- c. When the activity is conducted in a building where minors can reasonably be expected to be present.
- d. When the activity is conducted in a room offered to the public for overnight accommodation.
- e. When the activity is conducted in any multiple-unit residential building.

Sec. 2. Section 728.1, Code 1997, is amended by adding the following new subsection: NEW SUBSECTION. 5A. "Place of business" means the premises of a business required to obtain a sales tax permit pursuant to chapter 422, the premises of a nonprofit or not-for-profit organization, and the premises of an establishment which is open to the public at large or where entrance is limited by a cover charge or membership requirement.

Sec. 3. Section 728.5, Code 1997, is amended to read as follows:

728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

~~A holder of a liquor license or beer permit or any~~ An owner, manager, or person who exercises direct control over ~~any licensed premises defined in section 123.3, subsection 20 a~~ place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:

1. If such person ~~allow~~ allows or ~~permit~~ permits the actual or simulated public performance of any sex act upon or in such ~~licensed premises~~ place of business.
2. If such person ~~allow~~ allows or ~~permit~~ permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.
3. If such person ~~allow~~ allows or ~~permit~~ permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the ~~licensed premises~~ place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.
4. If such person ~~allow~~ allows or ~~permit~~ permits any person to remain in or upon the ~~licensed premises~~ place of business who exposes to public view the person's genitals, pubic hair, or anus.
5. ~~If such person allow or permit the displaying of moving pictures, films, or pictures~~

~~depicting any sex act or the display of the pubic hair, anus, or genitals upon or in such licensed premises.~~

~~6 5.~~ If such person advertises that any activity prohibited by this section is allowed or permitted in such ~~licensed premises~~ place of business.

~~7 6.~~ If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons. However, if such person allows or permits a minor to participate in any act included in subsections 1 through 4, the person shall be guilty of an aggravated misdemeanor.

~~Provided that the~~ The provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

Sec. 4. Section 728.8, Code 1997, is amended to read as follows:  
728.8 SUSPENSION OF LICENSES OR PERMITS.

Any person who knowingly permits a violation of section 728.2, 728.3, or 728.5, subsection 7 ~~6~~, to occur on premises under the person's control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2, 728.3, or 728.5, subsection 7 ~~6~~.

Sec. 5. Section 907.2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Probation officers employed by the judicial district department of correctional services, while performing the duties prescribed by that department, are peace officers. Probation officers shall investigate all persons referred to them for investigation by the director of the judicial district department of correctional services which employs them. They shall furnish to each person released under their supervision or committed to a community corrections residential facility operated by the judicial district department of correctional services, a written statement of the conditions of probation or commitment. They shall keep informed of each person's conduct and condition and shall use all suitable methods prescribed by the judicial district department of correctional services to aid and encourage the person to bring about improvements in the person's conduct and condition. Probation officers shall keep records of their work and, unless section 907.8A applies, shall make reports to the court when alleged violations occur and within no less than thirty days before the period of probation will expire. If section 907.8A applies, the probation officers shall make the reports of alleged violations to the administrative parole and probation judge within no less than thirty days before the period of probation will expire. Probation officers shall coordinate their work with other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

Sec. 6. Section 907.7, unnumbered paragraphs 1 and 2, Code 1997, are amended to read as follows:

The length of the probation shall be for such term as the court ~~may~~ shall fix but not to exceed five years if the offense is a felony or not to exceed two years if the offense is a misdemeanor.

The length of the probation shall not be less than one year if the offense is a misdemeanor and shall not be less than two years if the offense is a felony. However, the court or the administrative parole and probation judge, if section 907.8A applies, may subsequently reduce the length of the probation if the court or the administrative parole and probation judge determines that the purposes of probation have been fulfilled. The purposes of probation are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant and others.

Sec. 7. Section 907.8, unnumbered paragraph 3, Code 1997, is amended to read as follows:

~~Jurisdiction of~~ Except as otherwise provided in section 907.8A, the court shall retain jurisdiction over these persons shall remain with the sentencing court. Jurisdiction may be transferred to a court in another jurisdiction, or to the administrative parole and probation judge under section 907.8A, if a person's probation supervision is transferred to a judicial district department of correctional services in a district other than the district in which the person was sentenced.

Sec. 8. NEW SECTION. 907.8A SIXTH JUDICIAL DISTRICT — DETERMINATION OF ISSUES DURING PROBATIONARY PERIOD.

1. Except for those persons who are granted a deferred judgment or deferred sentence, for each adult, and each juvenile who has been prosecuted, convicted, and sentenced as an adult, who is released on probation by the court in the sixth judicial district, the jurisdiction of the sentencing court shall cease upon approval by the sentencing court of the conditions established by the judicial district department of correctional services. If a person is granted a deferred judgment or deferred sentence, jurisdiction shall be retained by the court.

2. All issues relating to whether the probationer has violated or fulfilled the terms and conditions of probation, including but not limited to express violations of a specific term of probation, new violations of the law, and changes of the term of probation as provided in sections 907.7, 908.11, and 910.4, which would otherwise be determined by the court, shall be determined instead by an administrative parole and probation judge. The administrative parole and probation judge, who shall be an attorney, shall be appointed by the board of parole, notwithstanding chapter 17A. The costs of employing the administrative parole and probation judge shall be borne by the board of parole.

A probation hearing conducted by an administrative parole and probation judge shall be conducted in the same manner as hearings regarding revocations or modifications of or discharge from parole. The hearing may be conducted electronically. The probation officer shall notify the county attorney at least five days prior to any probation hearing. The interests of the state shall be represented by the probation officer at the probation hearing, unless the county attorney or the county attorney's designee elects to assist the probation officer. The board of parole, the department of corrections, and the clerk of the district court in the sixth judicial district shall devise and implement a system for the filing of documents and records of probation hearings conducted under this section. The system shall allow for the electronic filing of records and documents where electronic filing is practicable.

3. Appeals from orders of the administrative parole and probation judge which pertain to the revocations or modifications of or discharge from probation shall be conducted in the manner provided in rules adopted by the board of parole.

Sec. 9. Section 907.9, Code 1997, is amended to read as follows:

907.9 DISCHARGE FROM PROBATION.

1. ~~At~~ Except as otherwise provided in section 907.8A, at any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of a person from probation.

2. At any time that a probation officer determines that the purposes of probation have been fulfilled, the officer may order the discharge of a person from probation after approval of the district director; and notification of the sentencing court, the administrative parole and probation judge if section 907.8A applies, and the county attorney who prosecuted the case.

3. The sentencing judge, ~~unless the judge is no longer serving or is otherwise unable to, or, if section 907.8A applies, the administrative parole and probation judge,~~ may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any

hearing pursuant to this section, if section 907.8A does not apply. Following the hearing, the court or the administrative parole and probation judge shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge.

4. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court or, if section 907.8A applies, the administrative parole and probation judge, shall order the discharge of the person from probation, and the court or administrative parole and probation judge shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

5. A probation officer or the director of the judicial district department of correctional services who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

Sec. 10. Section 908.11, Code 1997, is amended to read as follows:

908.11 VIOLATION OF PROBATION.

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

2. The Except as otherwise provided in sections 907.8 and 907.8A, the functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest and section 907.8A does not apply, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced ~~thereby by the merger~~.

4. If the person who is believed to have violated the conditions of probation was sentenced and placed on probation in the sixth judicial district under section 907.8A, or jurisdiction over the person was transferred to the sixth judicial district as a result of transfer of the person's probation supervision, the functions of the liaison officer and the board of parole shall be performed by the administrative parole and probation judge as provided in section 907.8A.

5. If the probation officer proceeds by arrest and section 907.8A applies, the administrative parole and probation judge may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may, at the discretion of the administrative parole and probation judge, be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

6. If the violation is established, the court or the administrative parole and probation judge may continue the probation with or without an alteration of the conditions of probation. If the defendant is an adult the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation, order the defendant to

be placed in a violator facility established pursuant to section 904.207 while continuing the probation, or revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed. The administrative parole and probation judge may revoke the probation and require the defendant to serve the sentence which was originally imposed. The administrative parole and probation judge may grant credit against the sentence, for any time served while the defendant was on probation. The order of the administrative parole and probation judge shall become a final decision, unless the defendant appeals the decision to the board of parole within the time provided in rules adopted by the board. The appeal shall be conducted pursuant to rules adopted by the board and the record on appeal shall be the record made at the hearing conducted by the administrative parole and probation judge.

Sec. 11. NEW SECTION. 910.3B RESTITUTION FOR DEATH OF VICTIM.

1. In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1, and determined under section 910.3, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate. The obligation to pay the additional amount shall not be dischargeable in any proceeding under the federal Bankruptcy Act. Payment of the additional amount shall have the same priority as payment of a victim's pecuniary damages under section 910.2, in the offender's plan for restitution.

2. An award under this section does not preclude or supersede the right of a victim's estate to bring a civil action against the offender for damages arising out of the same facts or event. However, no evidence relating to the entry of the judgment against the offender pursuant to this section or the amount of the award ordered pursuant to this section, shall be permitted to be introduced in any civil action for damages arising out of the same facts or event.

3. An offender who is ordered to pay a victim's estate under this section is precluded from denying the elements of the felony offense which resulted in the order for payment in any subsequent civil action for damages arising out of the same facts or event.

Sec. 12. Sections 906.16, 908.4, 908.5, 908.6, 908.7, 908.10, and 908.10A, Code 1997, are amended by striking from the sections the words "administrative parole judge" and inserting in lieu thereof the words "administrative parole and probation judge".

Sec. 13. EFFECTIVE DATE. Sections 2 through 4 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 7, 1997