



Iowa General Assembly

2009 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

LEGAL UPDATE—FIRST OFFENSE OPERATING WHILE INTOXICATED—COURT DISCRETION ON FINES

Filed by the Iowa Court of Appeals

August 19, 2009

State v. Kramer, Jr.

No. 09-0140

http://www.iowacourts.gov/court_of_appeals/Recent_Opinions/20090819/9-503.pdf

Summary. The defendant, arrested for the crime of Operating While Intoxicated (OWI), first offense, filed a motion to adjudicate law points with the district court to determine the court's authority to suspend the fine portion of the sentence under Code Section 321J.2(2). The district court found the fine was mandatory and thus concluded the court lacked the discretion to suspend the fine. Upon the defendant's guilty plea, the court's sentence for the defendant included the mandatory minimum fine under Code Section 321J.2.

Appeal. The defendant appeals from the fine imposed by the district court for OWI, first offense, claiming that the district court erred in determining the court lacked jurisdiction to suspend the fine imposed as a part of defendant's sentence. On appeal, the Iowa Court of Appeals (Court) found the district court had the discretion to suspend the fine, vacated the fine portion of the defendant's sentence, and remanded the case back to the district court for resentencing.

Issue. The issue in this case is whether the district court had the discretion to suspend the fine for an OWI first offense sentence under Code Section 321J.2(2).

Analysis. In laying the framework for the Court's analysis, the Court noted that general and specific statutes should be read together and harmonized, if possible, but if an irreconcilable conflict exists, then the specific statute prevails. See *State v. Lutgen*, 606 N.W.2d 312, 314 (Iowa 2000).

In reviewing this case for the correction of errors at law, the Court examined the applicable language contained in Code Section 321J.2. Code Section 321J.2(2)(a)(2) provides that a first offense OWI is a serious misdemeanor, punishable in part by the assessment of a \$1250 fine or, in the alternative, a reduction of all or a portion of the fine if community service hours are imposed. Code Section 321J.2(3)(a) provides that notwithstanding the provisions of Code Sections 901.5 and 907.3 (general sentencing provisions in the criminal code relating to the court's discretion to suspend a sentence, including a fine), the court cannot suspend any other part of a sentence not involving incarceration if any of five circumstances apply (the defendant refused testing, the offense resulted in bodily injury to a person other than the defendant, the defendant had a previous deferred judgment or sentence for OWI, the defendant's blood alcohol concentration (BAC) exceeded .15, or the defendant had a previous conviction for OWI.)

In this context, the Court concluded that the more specific provisions in Code Section 321J.2(3)(a) that prohibited the suspension of the part of the sentence not involving incarceration negated the more general provisions in section 907.3(3)(c) prohibiting the suspension of a first offense OWI sentence. The Court noted that had the Legislature wanted to limit a court's discretion to suspend the fine specifically for a first offense OWI conviction, the Legislature could have done so. The Court remanded the case back to the district court for resentencing because none of the five factors which would have prohibited the suspension of the part of the defendant's sentence not involving incarceration were applicable to the facts in this case.

Note. No application for further review was filed with the Iowa Supreme Court. *Procedendo* (directing the district court to proceed with resentencing) was issued in this case on September 15, 2009.

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