

Criminal Law and Legislation Update
December 2023

1. Legislation

a. Domestic Abuse

i. Lookback – Iowa Code section 708.2A

1. As of July 1, 2023, there is no lookback period for domestic abuse assault convictions as prior offenses
2. Prior to July 1, 2023, there was a 12-year lookback period

ii. Domestic Abuse Assault on a Pregnant Person – Iowa Code section 708.2A(2)(e)

1. Class D felony if the domestic abuse assault is committed against someone known to be or reasonably should be known to be pregnant and used dangerous weapon, was done with intent to cause serious injury, or was by strangulation

iii. Enhancements – Iowa Code section 708.2A(3)(c)

1. Second offense is a class D felony if the first offense was a class D felony and second offense would be classified as an aggravated misdemeanor

b. Stalking

i. Sexual motivation – Iowa Code section 692A.102

1. Stalking can be a sexually motivated offense

ii. Course of conduct definition – Iowa Code section 708.11

1. “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose, repeatedly utilizing a technological device to locate, listen to, or watch a person without authorization or legitimate purpose, or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person

iii. Technological device definition - Iowa Code section 708.11

1. “Technological device” means any computer, cellular phone, smartphone, digital camera, video camera, audio recording device, global positioning device, or other electronic device that can be used for creating, storing, or transmitting information in the form of electronic data

iv. Increased penalties – Iowa Code section 708.11

1. Now a class C felony if stalking
 - a. In violation of a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in civil protective order or

injunction, or any other court order which prohibits contact between the person and another person against whom the person has committed a public offense

- b. While in possession of a dangerous weapon
- c. The victim is under 18
- d. The person utilizes a technological device
- e. For a third or subsequent offense

2. Class D felony if second offense

3. Aggravated misdemeanor if first offense

c. Sexual Abuse

i. Mandatory minimum for Continuous Sexual Abuse of a Child – Iowa Code section 902.12(1)

- 1. A person convicted of this offense must serve seven-tenths of their sentence before eligible for parole or work release
- 2. “Super B” felony, so must serve 35 years

ii. Enticing a minor – Iowa Code section 710.10

- 1. Now includes officers posing to be minors under specific ages

iii. Sexual exploitation of a minor - Iowa Code section 728.12

- 1. Now includes officers posing as minors

2. Increased penalties

- a. “Child pornography” - know, have reason to know, or intent a prohibit sex act or simulated act may be photographed filmed, or otherwise preserved in a visual depiction is now class B felony
 - i. Court must determine if offender should serve between 50 to 70 percent before eligible for work release or parole at sentencing
 - ii. Subject to lifetime special sentence under 903B.1
- b. Knowingly promoting any material visually depicting a live performance of a minor engaging in a prohibited sex act is now a class C felony
 - i. Subject to lifetime special sentence under 903B.1
- c. Knowingly purchasing or possessing a visual depiction of a minor engaging in a prohibit sex act is a class D felony for first offense and a class C felony for second or subsequent offense
 - i. Deferred judgments and out of state convictions count as prior offenses

3. Deferred judgments are not permitted on this offense

4. Victim restitution for sexual exploitation of a minor – Iowa Code section 915.100(2)

- a. Court is to determine losses incurred by victim or projected losses, and then not less than \$3000
- d. Human Trafficking
 - i. Increased penalties – Iowa Code section 710A.2
 - 1. Class A felony if engaging in human trafficking and victim is under 18
 - 2. Class A felony if engaging in human trafficking by causing or threatening to cause serious physical injury
 - 3. Class B felony if engaging in human trafficking
 - a. Defines several situations
 - 4. Class D felony if engaging in human trafficking by knowingly providing or facilitating the provisions of a forged, altered, or fraudulent license to force or permit the person to perform labor or services
 - 5. Removes option for deferred judgment or suspended sentence
- e. Assault
 - i. Assault on a Pregnant Person – Iowa Code section 708.2(3A)
 - 1. Class D felony if assault is committed against someone known to be or reasonably should be known to be pregnant and used dangerous weapon
- f. Drugs
 - i. Fentanyl
 - 1. Penalties – Iowa Code chapter 124
 - a. 50 year “Super B” felony to manufacture, deliver, or possess with the intent to deliver more than 50 grams of a mixture or substance containing a detectable amount of fentanyl or fentanyl-related substance
 - b. Class B felony for more than 5 grams
 - c. Class C felony for 5 grams or less
 - 2. Causing Death – Iowa Code section 124.401(1)(g)
 - a. A person who causes the death of another person while participating in a violation of this subsection and who is not entitled to protection under section 124.418, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended
 - 3. Causing serious injury – Iowa Code section 124.401(1)(h)
 - a. A person who causes serious bodily injury to another person while participating in a violation of this subsection and who is not entitled to protection under section 124.418, shall be sentenced to two times the term

otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended

- ii. Manufacturing in the presence of minors – Iowa Code section 124.401C
 - 1. Changes code to apply to manufacturing any controlled substance in the presence of minors, rather than just meth
 - 2. Punishable by two times the term imposed by law
 - 3. Judgment and sentence shall not be deferred or suspended
- iii. Conspiracy to manufacture for delivery to a minor – Iowa Code section 124.D
 - 1. Changes code to apply to manufacturing any controlled substance in the presence of minors, rather than just meth
 - 2. Punishable by two times the term imposed by law
 - 3. Judgment and sentence shall not be deferred or suspended
 - 4. New section that includes cannot deliver or possess with intent to deliver to minor by combining substance with food or beverage product
- g. Motor Vehicles
 - i. Eluding – Iowa Code section 321.279
 - 1. General eluding is still a serious misdemeanor
 - 2. Eluding, second offense, is an aggravated misdemeanor
 - 3. Eluding 25 mph or more over the speed limit is class D felony
 - 4. Eluding 25 mph or more, second or subsequent offense, is class C felony
 - 5. No long eluding enhancement under this section if participating in a felony, in violation of 321J, or in violation of 124.401
 - a. Cannot get deferred if eluding and OWI
 - ii. Exceeding weight limit – Iowa Code section 805.8A(12)(e)
 - 1. All weight violations will be filed using a uniform citation and complaint form
- h. Law Enforcement
 - i. Authority to arrest - Iowa Code section 804.7(2)
 - 1. Peace officer has authority to make an arrest anywhere within the state, but shall not establish routine patrol outside of their employing agency
 - ii. Criminal histories – Iowa Code section 692.1(7)
 - 1. Definition of “criminal or juvenile justice agency” amended to include county attorneys and assistant county attorneys in a proceeding alleging a child is a child in need of assistance
 - iii. Brady-Giglio Lists
 - 1. Amended to not sunset in 2023

2. County attorney offices shall not distribute law enforcement file, medical records, or statements, except to officer's attorney

i. Juvenile Law

i. Disestablishment of Paternity – Iowa Code section 232.3A

1. During a CINA or TPR, any party or the Court may move the father undergo paternity testing
2. Juvenile court has authority to enter an order overcoming paternity of established father if:
 - a. The child has been adjudicated a child in need of assistance in an active juvenile court case and a dispositional order in that case is in place;
 - b. Paternity of the child has been legally established, including by one of the methods enumerated in section 252A.3, subsection 10, or by operation of law due to the established father's marriage to the mother at the time of conception, birth, or at any time during the period between conception and the birth of the child;
 - c. Pursuant to section 600B.41, the conclusion of the expert as disclosed by the evidence based upon blood or genetic testing demonstrates that the established father is not the biological father of the child; and
 - d. The established father agrees that the established father's paternity should be overcome or the established father objects to having his paternity overcome but the court finds that it is in the best interest of the child to overcome the established father's paternity

ii. Bridge Modification Orders – Iowa Code section 232.103B

1. A juvenile court may close a child in need of assistance case by returning jurisdiction of the child's custody to the district court through an order modifying issues of legal custody, physical care, and parenting time
2. All other matters, including child support, shall be filed by separate petition in district court, and shall be subject to existing statutory requirements

j. Mental Health/Substance Abuse

i. Substance Abuse Commitment – Iowa Code section 125.82

1. Allows Respondent to appear by telephone call and allows physician to testify by video

ii. Mental Health Commitment – Iowa Code section 229.12

1. Allows Respondent to appear by telephone call and allows physician to testify by video

k. Elections

i. Misconduct – Iowa Code section 39A.7

1. The attorney general shall investigate election misconduct

l. Other

i. Explosive materials or destructive devices – Iowa Code section 712.6

1. Destructive device defined in Iowa Code section 101A.1(2A)

- a. Bomb, grenade, rocket having propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than $\frac{1}{4}$ ounce, mine, booby trap, Molotov cocktail, bottle bomb, etc.
- b. Class C felony to possess with the intent to use it
- c. Class C felony to use it while committing public offense or to possess in the commission of a felony
- d. Possession is an aggravated misdemeanor

ii. Attorney General prosecution – Iowa Code section 13.2

1. The attorney general's office may prosecute a criminal proceeding on behalf of the state even if the county attorney does not request assistance

iii. Safe haven babies

1. Newborn safety device – Iowa Code section 233.1

- a. Padded and climate controlled receptacle at a hospital, fire station, emergency medical provider location
 - i. Must be staffed and in a conspicuous and visible location
 - ii. If not, must have a motion sensor and dual alarm system

2. Relinquishing custody – Iowa Code section 233.2

- a. Parents can relinquish physical custody at a hospital or other medical facility after delivery by notifying medical staff they are voluntarily relinquishing custody of the infant
- b. Can also relinquish physical custody by placing in a newborn safety device

iv. Ransomware – Iowa Code section 715.7

1. Defines and prohibits ransomware

- a. Cannot access or attempt to access a person's authorized access to a computer, computer network, computer software, system, or database; or copy, possess, or attempt to possess any of those items

2. Aggravated misdemeanor if losses of victim is less than \$10,000

3. Class D felony if losses of victim is more than \$10,000 but less than \$50,000
4. Class C felony if loss of victim is more than \$50,000

2. Rules of Criminal Procedure

- a. Scope – 2.1
 - i. Pro se defendants are held to the same standards as attorneys
- b. Initial appearances – Rule 2.2
 - i. Must occur within 24 hours unless no magistrate is available and in all events within 48 hours
 - ii. May occur by interactive audiovisual system
- c. Information – 2.5
 - i. If district court approves and attempts to file the information by the filing is rejected by EDMS or the clerk, the date of the corrected information dates back to the court's original attempted filing
 - ii. Addresses of witnesses is controlled by Rule 2.11(13)
- d. Pleading special matters – 2.6
 - i. Any enhancement must be charged in the indictment/information and found in a separate verdict
- e. Arraignment and pleas – 2.8
 - i. Plea of not guilty does not waive any right to challenge the indictment
 - ii. Conditional pleas are permitted with the consent of the court and prosecuting attorney
 1. Court-approved conditional pleas constitute "good cause" for Defendant to appeal the ruling on pretrial motion
 - iii. Guilty pleas
 1. Defendant must be informed of the nature and elements of the offense
 2. Defendant must be informed of incarceration, fines, surcharges, and any other punitive consequences
 3. Defendant must be informed of some collateral consequences
 4. Defendant must be informed of immigration advisory
 5. Defendant must be told they are waiving the presumption of innocence and cannot be convicted unless the state establishes guilty beyond a reasonable doubt to the unanimous agreement of a 12-person jury
 6. Defendant must be told if they plead guilty, no appeal be taken unless there is good cause
 7. Defendant must be told how much time they have to file a motion in arrest of judgment
 8. Court is allowed to question Defendant and may allow the Defendant's attorney to do the same

- 9. If Defendant would like immediate sentencing, must waive the right to file MIAJ, use of PSI, and the time period that must otherwise lapse before entry of judgment
 - 10. Guilty pleas for non-forcible class D felonies are permitted
- f. Plea agreements – Rule 2.10
 - i. Plea agreement must be in writing or in open court and on the record, and all parties must acknowledge it
- g. Suppression – Rule 2.12
 - i. Any “unlawfully obtained evidence”
 - ii. Timely motion must be filed or the objection is waived absent good cause
- h. Depositions – 2.13
 - i. Any party can object to a deposition
- i. Discovery – 2.14
 - i. Defendant’s duty to provide reciprocal discovery is automatic once defendant obtains discretionary discovery
- j. Subpoenas – 2.15
 - i. New rules and procedures for Defendants to seek subpoenas for pretrial investigation
 - 1. After trial information filed
 - 2. Defendant must apply and include a list of all other reasonable efforts made by the Defendant to obtain the material sought in detail
 - 3. Material sought:
 - a. Must contain exculpatory information
 - b. Does not include private information concerning a crime victim in the case
 - c. Is not otherwise protected from disclosure by a separate rule or statute
 - d. Not available through any other source
 - ii. State must have notice and opportunity to object
 - iii. State must obtain copy of any materials obtained within 7 days
 - iv. Defendant can seek a preservation order from the court if show good cause
- k. Trial by court – Rule 2.17
 - i. Trial on the minutes is allowed with specific waiver
 - 1. On the minutes and other materials upon agreement of the parties
- l. Juries - Rule 2.18
 - i. Juror cannot be struck for cause if it can be established through juror’s testimony or otherwise that either the juror’s rights of citizenship have

been restored or more than 10 years have passed since the juror's conviction or release from confinement for that felony, whichever is later

ii. Court can no longer rehabilitate jurors who express bias

m. Trial – Rule 2.19

i. Level of offense shall not be read

ii. Reporting of trial may not be waived except voir dire in misdemeanor cases

iii. Duty of the court to instruct on lesser included offenses unless Defendant waives on the record with consent of the state

iv. Court must establish factual basis of priors before accepting a stipulation for priors

n. Judgment – Rule 2.23

i. New procedure added to allow prosecutor and Defendant, with court approval, to enter into written sentencing agreement in lieu of in-person sentencing for misdemeanors and non-forcible class D felonies

ii. Outlines procedure and requirements for sentencing

o. Presence of the Defendant

i. Defendant may appear in person or interactive audiovisual system for initial appearance, arraignment, and plea, unless written waiver is filed

ii. Defendant must otherwise be personally present or there by interactive audiovisual system unless

1. Proceeding is not critical and the court waives appearance; or

2. Defendant waives appearance with approval of the court

iii. Defendant may waive presence at depositions with consent of prosecutor

iv. If in prison or federal custody, can appear by interactive audiovisual system for any stage, except trial

p. Dismissal – Rule 2.33

i. 45-day speedy indictment period commences after personal initial appearance or filing of initial appearance waiver

q. Appeal – Rule 2.72

i. Notice of appeal must be written

3. Supreme Court

a. Arrest

i. *Howsare v. Ia. Dist. Ct. Polk Cty.*, 986 N.W.2d 114 (Iowa 2023)

1. Defendants were charged and arrested for simple assault. Warrant provided no bond until seen by a magistrate.

2. Arrest and overnight detention for simple misdemeanor assault did not constitute unnecessary delay or violate the Fourth Amendment

ii. *State v. Boone*, 989 N.W.2d 645 (Iowa 2023)

1. Defendant charged and convicted of willful injury and intimidation with a dangerous weapon. After shooting, police are unsuccessful at arresting him for more than 4 years. During this time, the Defendant left the state and when he came back, he hid his residency to not get caught.
2. Court held Defendant was not “publicly resident” for the purposes of Iowa Code section 802.3 and the three-year statute of limitations tolled on offense.

b. Search/Seizure/Constitution

- i. *State v. Burns*, 988 N.W.2d 352 (Iowa 2023)
 1. DNA obtained from straw left at table at Pizza Ranch, which was used to identify suspect in cold murder case.
 2. Court held there was no expectation of privacy for this item in its location and testing it did not constitute a trespass.
- ii. *State v. Abu Youm*, 988 N.W.2d 713 (Iowa 2023)
 1. Entry to apartment to aid a possible shooting victim did not require a warrant under emergency aid doctrine.
- iii. *State v. Torres*, 989 N.W.2d 121 (Iowa 2023)
 1. DHS was called because child was hanging out a window. Father was at a bar. DHS was interviewing children inside and dad went into apartment. Law enforcement followed him in to make sure DHS worker was unharmed and patted him down for weapons after he used the bathroom in home based on circumstances.
 2. Court held this warrantless entry was justified under exigent circumstances and it was reasonable to pat him down for weapons.
- iv. *State v. Park*, 985 N.W.2d 154 (Iowa 2023)
 1. Simpson professor allegedly killed her husband. She made several statements to law enforcement in her home, at police station, and in response to police statements. Fact specific.
 2. The Court held the in-home questioning of the Defendant was not custodial until they told her she was going to the police station. Her *Miranda* waiver was valid. Police telling her they were there to help and “accidents happen” did not make her statements involuntary.
- v. *State v. Griffin*, 22-1234 (November 9, 2023)
 1. Defendant had a tinted plastic cover on his rear license plate. Law enforcement could not read plate, pulled him over, and gained evidence for criminal charges against him during stop. District court said evidence should be suppressed because tinted plate cover did not violate an Iowa statute.

2. Court held this was a traffic violation and the stop was not unconstitutional.
- vi. *State v. Cyrus*, 21-0828 (November 17, 2023)
 1. Woman called in suspicious vehicle in front of her home. Law enforcement drove up, activated lights, shined spotlight. Went up to driver and asked how he was doing. They smelled burnt odor of marijuana. Defendant and car searched, and found weapon and bullet. Defendant also argued his minority status should be considered in being seized.
 2. Court held this was not an unlawful seizure.
- vii. *State v. Wittenberg*, 22-0037 (November 17, 2023)
 1. Officers followed a car into a parking lot. It was going at high rate of speed and thought it would hit a curb, but it didn't. They shined spotlight on car. They did not block him. They got out of the car with flashlights and flashed them onto car. Driver had window part way down. They talked. Observed signs of impairment.
 2. This was not an illegal seizure prior to observing impairment.
- c. Juries/Trials/Instructions
 - i. *State v. Booker*, 989 N.W.2d 621 (Iowa 2023)
 1. Defendant was on trial for kidnapping and sexual abuse offense. Potential juror said cousin was convicted of sexual offense and implied it was his cousin and the victim's fault for his cousin's 50-year sentence. Juror was also black. State struck him.
 2. Court held this was a race-neutral reason, not pretextual, and was not reversible error. Any error did not prejudice the Defendant.
 - ii. *State v. Ross*, 986 N.W.2d 581 (Iowa 2023)
 1. Jurors were given instruction: "You should evaluate the testimony of [victim] the same way you evaluate the testimony of any other witness. The law does not require that the testimony of [victim] be corroborated in order to prove that she was sexually abused. You may find the Defendant guilty of Sexual Abuse if [victim] testimony convinces you of guilt beyond a reasonable doubt."
 2. Court held non-corroboration instructions improperly mislead or confuse the jury. Cannot overcome this with non-particularized jury instruction applicable to all witness testimony.
 - iii. *State v. Ellison*, 985 N.W. 473 (Iowa 2023)
 1. Defendant was convicted of voluntary manslaughter when charged with murder. Court instructed on stand your ground in justification defense, even though Defendant did not bring up this specific defense. He claimed it confused the jury on his actual justification defense. He also claimed instruction that does not

allow justification defense if disguises or conceals physical evidence violated his right against self-incrimination.

2. Court held that the instruction for stand your ground exception to the justification rule requiring retreat or alternate course was warranted. Instruction on duty not to conceal or destroy evidence does not violate right against self-incrimination.

iv. *State v. Mong*, 988 N.W.2d (Iowa 2023)

1. Defendant convicted of many violent crimes after shooting unintended victim. Also more third-prong *Duren* attempts.
2. Defendant's intent to kill or injure someone transfers, but evidence did not support unintended victim's intimidation transferred when not the target.
3. Statistical deviation won't prove third *Duren* prong.

v. *State v. Erdman*, 21-1594 (October 13, 2023)

1. 17-year-old charged as juvenile with forcible felony sex offense and waived to adult court. He was later convicted.
2. Court held his case should have started in district court, and then "reverse-waiver" could be considered, but Defendant benefited from it happening the other way. Juvenile court has discretion to take JCO's word at its face without other evidence. Conviction affirmed.

vi. *State v. Blahnik*, 22-0089 (October 27, 2023)

1. Defendant charged with murder, obstructing prosecution, and abuse of a corpse. During jury deliberations, jury said it was deadlocked. Court gave verdict-urging instruction. Jury reached a verdict 3.5 hours later.
2. This particular instruction was no coercive or forced a verdict.

vii. *State v. Bita Amisi*, 22-0624 (November 17, 2023)

1. Video in OWI trial showed Defendant agreeing to PBT and then cut to Defendant being arrested.
2. Court ruled it had limited probative value and was prejudicial because it implied Defendant failed PBT, but also evidence was overwhelming so harmless error here.

d. Pleas

i. *State v. Rutherford*, 22-0553 (November 3, 2023)

1. Defendant pleaded guilty to Theft in the Second Degree and Possession in of Firearm. He appealed claiming good cause.
2. Court held once the Court of Appeals found good cause to appeal, it had jurisdiction over entirety of the appeal under Iowa Code section 814.6, but because Defendant did not file motion in arrest of judgment, they could not consider whether guilty plea lacked

factual basis. Iowa Code section 814.7 limits the Supreme Court's authority.

e. Sentencing

- i. *State v. Iowa Dist. Ct. for Woodbury Cty.*, 989 N.W.2d 652 (Iowa 2023)
 1. Fine-only sentence for possession of methamphetamine, third or subsequent offense, a class D felony, was illegal.
- ii. *Anderson v. Iowa Dist. Ct. for Woodbury Cty.*, 989 N.W.2d 179 (Iowa 2023)
 1. You do not need two prior DAA 3rd or subsequent offenses to be convicted of DAA 3rd or subsequent offense.
- iii. *State v. Brown*, 22-0324 (October 20, 2023)
 1. Defendant convicted of first-degree robbery and willful injury causing serious injury after jury trial. There were a few juror issues, including some getting sick, and there was a 5-day recess to allow jury to recover and back. Mistrial not granted.
 2. Willful injury causing serious injury was not a lesser included of first-degree robbery in this situation.
 3. Delay of trial for jurors having COVID was not improper.
- iv. *State v. Cook*, 21-0522 (October 20, 2023)
 1. Robbery did not merge with willful injury causing serious injury at sentencing, even when tried as an aider and abettor.

f. Restitution

- i. *State v. Patterson*, 984 N.W.2d 449 (Iowa 2023)
 1. Misdemeanor appeal of restitution order, but it's a sloppy record where misdemeanor was dismissed and restitution cross-filed in felony matter.
 2. Restitution review is by *certiorari*.

g. Post Judgment

- i. *State v. Trane*, 984 N.W.2d 429 (Iowa 2023)
 1. Defendant convicted of sex offenses and appealed. Supreme Court conditionally affirmed, but remanded to have a rape shield law hearing. Defendant wanted district court to recuse itself and also didn't like the outcome.
 2. Defendant can still directly appeal following conditional affirmance and remand.
 3. Court acted within its discretion here.

h. Other

- i. *In Re V.H.*, 22-0952 (October 13, 2023)
 1. Defendant did not have right to represent himself in mental health commitment proceedings.

