

IMPLEMENTATION OF 2019 CRIMINAL OMNIBUS LAW
SEPTEMBER 23, 2020

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HOW THIS CAME TO PASS

- Senator Dan Dawson (R) Pottawattamie
- Judiciary committee
- Law enforcement background
- <https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i>

LOBBYIST POSITIONS

Undecided	One Iowa Action
Undecided	Iowa Catholic Conference
Against	American Civil Liberties Union of Iowa (ACLU-IA)
Against	Iowa Association for Justice
Undecided	Iowa Attorney General Dept. of Justice
Undecided	Iowa State Police Association
Undecided	Governors Office of Drug Control Policy
Undecided	Iowa Judicial Branch - Supreme Court
Undecided	Iowa Police Chief Association (FKA Iowa Police Executive Forum)
Undecided	Linn County Board of Supervisors
Undecided	Iowa State Bar Association
Undecided	Iowa Peace Officers Association
Undecided	League of Women Voters of Iowa
Undecided	Iowa Academy of Trial Lawyers
Undecided	Iowa Association of Magistrate Judges
For	Americans For Prosperity
For	Iowa County Attorneys Association
For	Iowa State Sheriffs' & Deputies' Association

PASSED UNANIMOUSLY

MISDEMEANOR EXPUNGEMENTS

- Iowa Code § 901C.3
- One per lifetime
- No pending criminal charges
- All \$\$ paid
- *Doe v. State*, 943 N.W.2d 608, 612 (Iowa 2020) (defendant has to pay financial obligations *only* from the case that is going to be expunged – not *all* cases the defendant owes money on).

ROBBERY & AGGRAVATED THEFT

- Removed Robbery 3rd degree
- Now all robbery that isn't robbery in the 1st degree is robbery in the 2nd degree
- Robbery 1st mandatory minimum now discretionary between 50-70% (instead of required 70%)
- Moved aggravated theft from theft chapter to robbery
- LSA notes:
 - The Division is estimated to increase the prison population by 286 inmates by year 10 of implementation. Estimated to increase costs to the Justice System by approximately \$423,800 annually.
 - In FY 2018, 52.0% of the persons convicted in Iowa of robbery in the first, second, or third degree were African-American

PROPERTY CRIMES

- Increases the value of damaged or stolen property or services necessary to commit certain levels of numerous criminal offenses
 - Arson in the second degree.
 - Theft in the second, third, fourth, and fifth degrees.
 - Theft detection devices — shield or removal.
 - Fraudulent practice in the second, third, fourth, and fifth degrees.

FRAUD & FORGERY

- Expands the definition of forgery in the class “D” to include forgery of a driver’s license, non-operator’s identification card, birth certificate, occupational license, or certificate in support of an occupational license.
- By amending the definition of forgery, changes the circumstances under which an employer is subject to a civil penalty for hiring or continuing to employ a person who commits a forgery (Iowa Code § 715A.2A).
- Extends SOL for prosecuting fraud offense/breach of fiduciary obligation to 3 years

ARSON

- Mandatory minimum of arson in the first degree (Class B) - between 50% and 70%
- LSA notes:
 - In FY 2018, there were six convictions for 1st degree arson. The projected incarceration is estimated to increase from 29 months to 180 months, an increase of approximately 13 years. The Division is estimated to increase the prison population by 38 inmates by year 10 of implementation.
 - Estimated to result in increased annual costs of \$276,000 by FY 2029.

STATUTE OF LIMITATIONS

- SOL for sexual abuse of a person under 18 now 15 years (was 10) from the date the victim turns 18 – Iowa Code § 802.2
- SOL for the incest or sexual exploitation by a counselor, therapist, or school employee now 15 years (was 10) from the date the victim turns 18 – Iowa Code § 802.2A

PUBLIC INTOX & CONSUMPTION

- Not subject to sentencing enhancement for second or subsequent conviction – remains a simple misdemeanor
- Can expunge 2 years after conviction if no other convictions – Iowa Code § 123.46
- LSA notes:
 - In FY 2018, there were 7,455 consumption/intoxication in public places convictions. Of these, 6,631 were simple misdemeanors, 296 were serious misdemeanors, and 528 were aggravated misdemeanors. Within two years of implementation, it is estimated there will be an annual decrease of 72 inmates in the prison population.
 - House Amendment S-3212 is estimated to have an annual cost savings of approximately \$3.6 million to the Justice System beginning in FY 2020

APPEAL FROM GUILTY PLEA

- Can't appeal from a guilty plea anymore unless it's a Class A or you show good cause - Iowa Code § 814.6
- Challenge to sentence = good cause - *State v. Damme*, 944 N.W.2d 98 (Iowa 2020)
- Not retroactive - *State v. Macke*, 933 N.W.2d 226, 227 (Iowa 2019)

INEFFECTIVE ASSISTANCE ON APPEAL

- Can't raise ineffective assistance on direct appeal - Iowa Code § 814.7
- LSA notes:
 - This will require a separate postconviction relief case. SPD estimates additional estimated cost of approximately \$3,489 for each separate action.
 - SPD expects this will result in increased costs because there may be a decrease in the number of guilty pleas entered. Currently, guilty pleas are entered in more than 90.0% of cases.
- Not retroactive - *State v. Macke*, 933 N.W.2d 226, 227 (Iowa 2019)
- *State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020)
 - Many appeals that seek to vacate a guilty plea will assert claims of ineffective assistance of counsel. Iowa Code section 814.7, as amended, now requires ineffective-assistance claims to be brought through a postconviction proceeding rather than a direct appeal. This provision furthers the legislative goal of curtailing frivolous direct appeals of convictions based on guilty pleas.

CHALLENGING GUILTY PLEA

- Iowa Code § 814.29
- If challenge guilty plea, have to prove “more likely than not” wouldn’t have pled guilty
- *State v. Macke*, 933 N.W.2d 226, 227 (Iowa 2019) – not retroactive

PENDING CHALLENGES

- State of Iowa v. David J. Treptow
 - Treptow argues Iowa Code sections 814.6(1)(a)(3), 814.7, and 814.29 must be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts. He further contends Iowa Code sections 814.6(1)(a)(3) and 814.7 violate equal protection, due process, and the right to effective counsel on appeal.
- State of Iowa v. Tyjaun Levell Tucker
 - Defendant contends new legislation requiring good cause for appeals from most guilty pleas and prohibiting consideration of ineffective-assistance-of-counsel claims on direct appeal unconstitutionally restricts the role and jurisdiction of Iowa's appellate courts and violates defendant's right to equal protection.

PRO SE LIMITATIONS

- No pro se filings allowed if you've got counsel
- Both criminal (Iowa Code § 814.6A(1)) & PCR (Iowa Code § 822.3B(1))
- Not retroactive - *State v. Purk*, No. 18-0208, 2019 WL 5790875, at *7 (Iowa Ct. App. Nov. 6, 2019); *Wright v. State*, No. 17-1904, 2020 WL 109559, at *3 (Iowa Ct. App. Jan. 9, 2020)

PENDING CHALLENGE

- State of Iowa v. Howard J. Thompson
 - Defendant argues that Iowa Code § 814.6A (2019) impairs the court's constitutional duty to secure justice for appellate litigants and violates the Iowa Constitution's separation of powers clause.

GENERAL VERDICTS

- Iowa Code § 814.28
- General verdicts are okay, not basis for reversal so long as one theory supported
- Not retroactive - *State v. Foster*, No. 19-0918, 2020 WL 4498847, at *7 (Iowa Ct.App. Aug. 5, 2020)

SUCCESSIVE PCR

- Response to *Allison v. State*, 914 N.W.2d 866 (Iowa 2018)
- Iowa Code § 822.3
- Now successive PCR based on ineffective assistance doesn't toll/extend/relate back

OVERALL CORRECTIONAL IMPACT

Bill Division	Offense	Penalties	Net Additional Convictions - FY 2019	Net Additional Convictions - FY 2020
II	Robbery 2nd	Class C Felony	17	34
	Robbery 3rd	Aggravated Misd.	-34	-68
	Aggravated Theft	Aggravated Misd.	17	34
III	Property Crimes	Various	Correctional impact cannot be determined	Correctional impact cannot be determined
IV	Fraud and Forgery	Various	Correctional impact cannot be determined	Correctional impact cannot be determined
VI	Arson in the First Degree	Class B Felony	No additional convictions, increases length of stay	No additional convictions, increases length of stay
VII	Limitation of Criminal Actions	Various	Correctional impact cannot be determined	Correctional impact cannot be determined
S-3212	Public Intoxication	Simple Misd.	824	824
		Serious Misd.	-296	-296
		Aggravated Misd.	-528	-528
			= 0	= 0

OVERALL FISCAL IMPACT

Bill Division	Provision	Fund	Cost Estimate - FY 2020	Cost Estimate - FY 2021
I	Expungements	Judicial Branch Operating Budget	\$57,453 - \$184,953	\$57,453 - \$184,953
II	Robbery and Aggravated Theft	Various justice system operating costs	\$210,500	\$423,800
III	Property Crime	Various justice system operating costs	Cannot be determined	Cannot be determined
IV	Fraud and Forgery Revisions	Various justice system operating costs	Cannot be determined	Cannot be determined
V	Criminal Proceedings	State Public Defender Operating Budget, Indigent Defense Fund	Cannot be determined	Cannot be determined
VI	Arson in the First Degree**	Various justice system operating costs	\$0	\$0
VII	Limitation of Criminal Actions	Various justice system operating costs	Cannot be determined	Cannot be determined
S-3212	Public Intoxication	Various justice system operating costs	-\$3,625,180	-\$3,625,180
			= - 3,357,227 to	= - 3,143,927 to
			- 3,229,727	- 3,016,427

**Division VI fiscal impact will not occur until FY 2022. See Division VI for more detail.