

CRIMINAL LAW
2024 GENERAL PRACTICE SERIES
Torey Cuellar

1. New Legislation

a. Sexual Abuse

i. Sexual Exploitation of a Minor – Iowa Code section 728.12(3)

1. Contemplates use of AI

- a. Needs to be a real person to start – an identifiable minor
- b. “Identifiable minor” is a person who was a minor at the time the visual depiction was created, adapted, or modified, or whose image as a minor was used in creating, adapting, or modifying the visual depiction and is recognizable as an actual person by the person’s face, likeness, or other distinguishing features
 - i. Do NOT need proof of actual identity of the identifiable minor

2. “It shall be unlawful to knowingly purchase or possess a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act”

3. For purposes of this subsection, “visual depiction of a minor” includes any visual depiction that has been created, adapted, or modified to give the appearance that an identifiable minor is engaged in a prohibited sexual act or the simulation of a prohibited sexual act

4. Multiples

- a. A visual depiction containing pictorial representations of different minors shall be prosecuted and punished as separate offenses for each pictorial representation of a different minor in the visual depiction
- b. Violations of this subsection involving multiple visual depictions of the same minor shall be prosecuted and punished as one offense

5. Class D felony for first offense; Class C felony for second offense

ii. Bestiality – Iowa Code section 717C.1

- 1. Expansion of code to define prohibited contact between human and animal
- 2. Prohibits photographing or filming the acts; advertising acts; getting other people to participate in the acts; selling material with the acts; and doing the acts in front of minors
- 3. First offense is aggravated misdemeanor; second or subsequent offense is class D felony
 - a. Also class D felony if previously convicted of animal abuse, neglect, torture, or mistreatment

iii. Grooming – Iowa Code section 709.8A

1. “The person knowingly performs an act in person or by conduct through a third party, uses a computer, internet service, or any other electronic storage or transmission device, or uses written communication to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or a person believed to be a child to commit any unlawful sex act or to otherwise engage in unlawful sexual conduct”
 2. Class D felony
- b. Assault
- i. Assault in Violation of a Protective Order – Iowa Code section 708.2E
 1. Separate and distinct offense from any other offense charged in Iowa Code sections 708 or 664A
 2. Class D felony if assault is committed by a defendant against a protected party in a protective order
 - a. Protective order must be in effect at time of assault
 - b. Protective order must be issued pursuant to Iowa Code sections 236 or 664A, or out of state order under similar statutes
- c. Robbery
- i. Robbery – Iowa Code section 802.2F and 802.2G
 1. Robbery in the first and second degree now have a 5 year statute of limitations instead of 3 year
- d. Drugs
- i. Venue – Iowa Code section 124.401(1)
 1. Relates to venue for controlled substance violation resulting in death or serious bodily injury of another
 2. Defendant may be charged criminally in either the county where the controlled substance violations occurred or whether the serious bodily injury occurred
 3. If both counties charge, the county where the controlled substance violation occurred shall have the primary right to prosecute
- e. Theft
- i. Organized Retail Theft – Iowa Code section 714.2B
 1. A person commits retail theft when all of the following occur:
 - a. The person is employed by or associated with a retail theft enterprise
 - b. The person has previously engaged in a pattern of retail theft and intentionally commits an act or directs another member of the retail theft enterprise to commit an act involving retail merchandise that is a violation of section 713.1, section 714.1, subsection 1, 3, 4, or 6, section 714.7B, or section 714.7C
 - c. The person or another member of the retail theft enterprise sells or intends to sell the stolen retail merchandise, advertises or displays any item of the stolen retail merchandise for sale, or returns any item of the stolen retail merchandise to a retailer for anything of value

2. Class C felony if value exceeds \$5,000
 3. Class D felony if between \$1,000 and \$5,000; or if between \$500 and \$1,000, but third offense within 10 years and prior was an agg/felony
 4. Aggravated misdemeanor if between \$500 and \$1,000; or if less than \$500 but second offense within 10 years and prior was an agg/felony
 5. Serious misdemeanor otherwise
- ii. Looting – Iowa Code section – Iowa Code section 714.2B
 1. “Looting” means the intentional entry without authorization of any dwelling, place of business, vehicle, watercraft, building, plant, or other structure, moveable or immovable, by a person, acting in joint criminal conduct, as defined in section 703.2, with another person or any group of persons and the person obtains, exerts control over, damages, or removes the property of another without authorization
 2. Ranges from aggravated misdemeanor to class C felony depending on value, with mandatory minimums and fines
- f. Witness Tampering – Iowa Code section 720.4
 - i. Adds “reporting party” to person that can be tampered with
 1. Reporting party is someone who:
 - a. (1) Reports or attempts to report a public offense to any fire department, law enforcement agency, emergency communications center, or other public safety entity
 - b. (2) Assists or attempts to assist a law enforcement agency or a prosecuting agency in any criminal investigation or judicial proceeding
 - ii. Adds language to address domestic violence tampering
 1. “to prevent such individual from becoming a reporting party, to encourage such individual to disobey or avoid a subpoena or other legal process, or to encourage such individual to withhold evidence, information, or documents, or in retaliation for anything lawfully done by such an individual, tamper with a witness/reporting party”
 - iii. Increases penalties
 1. A person who tampers with a witness, juror, or reporting party . . . commits a public offense that shall be classified and punished as an offense one degree higher than the underlying offense, not to exceed a class “C” felony, but in no case shall the public offense be classified and punished lower than an aggravated misdemeanor
- g. Harassment
 - i. Harassment - Iowa Code 708.7
 1. Notwithstanding subsection 5, a person eighteen years of age or older who commits a violation of this subparagraph shall be required to register as a sex offender pursuant to the provisions of chapter 692A
 2. For purposes of this section, “another person” includes an individual, recognizable by the person’s face, likeness, or other distinguishing features, whose image is used to create, adapt, or modify a visual

depiction to depict that other person in a manner as described in this subparagraph

- h. False Report
 - i. False Reports – Iowa Code section 718.6(2)
 - 1. Adds subsection that makes it a class D felony if false report is any of the following:
 - a. Forcible felony
 - b. Intimidation with a dangerous weapon
 - c. Terrorism
 - d. Unlawful possession of biological agents or diseases
 - e. Any offenses under Iowa Code chapter 712 (Arson)
 - 2. If any of the above and results in serious injury or death, then class C felony
- i. Accessory
 - i. Accessory After the Fact – Iowa Code section 703.3
 - 1. Amended to make it a class D felony if the charge was in violation of Iowa Code 707.2, 707.3, or 707.3A
- j. *Brady-Giglio* – Iowa Code section 80F
 - i. District Court given jurisdiction to review appeal of a prosecutor’s decision to place officer on their *Brady-Giglio* list
- k. Sentencing
 - i. Earned time credit – Iowa Code section 903A.5
 - 1. Good time credit will no longer be applied for:
 - a. Use of a Dangerous Weapon – Iowa Code section 902.7
 - i. Mandatory minimum sentence of 5 years
 - b. Habitual Offender – Iowa Code section 902.8
 - i. Mandatory minimum sentence of 3 years
 - c. Prior Forcible Felony for Parole or Work Release – Iowa Code section 902.11
 - i. Mandatory minimum sentence of 50 percent of maximum sentence
 - ii. Mandatory Minimum Sentence – Iowa Code section 902.12
 - 1. Human Trafficking, class B felony
 - a. Must serve one-half to seven-tenths of the maximum term of the person’s sentence as determined by the judge at sentencing pursuant to Iowa Code section 901.11
- l. Search Warrants
 - i. Search Warrant Inventory – Iowa Code section 808.4
 - 1. Technical update
 - 2. File a written inventory itemizing all seized property
- m. Children
 - i. Truancy – Iowa Code section 299.1C
 - 1. County attorney is responsible for enforcement of this chapter
 - 2. Venue is where the school’s administrative office is located

3. "Truant" means being absent for 20 percent of days or hours of school for any reason
 4. Change in process
 - a. School will meet with family and enter into absenteeism prevention plan at school engagement meeting
 - b. If that is not complied with, charge violation of absentee prevention plan under Iowa Code section 299.6
- n. Guardian Ad Litem/Victim Witness
- i. Victim Counselor – Iowa Code section 915.20A
 1. Victim counselor privilege adds "as person subjected to human trafficking" under definition of victim
 - ii. Guardian Ad Litem – Iowa Code section 915.37
 1. A prosecuting witness who has a mental disability in a case can have a guardian ad litem appointed
 - a. Must be case involving violation of Iowa Code sections 709, 710A, or parts of 726
 2. "Mental disability" means one or more intellectual, developmental, or psychiatric disabilities that result in significant impairment to a person's ability to comprehend, communicate, or learn
- o. Immigration
- i. Illegal Re-Entry Into a State by Certain Aliens – Iowa Code section 718C
 1. "Alien" means same as defined in 8 U.S.C. section 1101
 2. A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state under any of the following circumstances:
 - a. The person has been denied admission to or has been excluded, deported, or removed from the United States
 - b. The person has departed from the United States while an order of exclusion, deportation, or removal is outstanding
 3. Aggravated misdemeanor generally
 4. Class D felony if any true:
 - a. The person's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs, crimes against a person, or both
 - b. The person was excluded pursuant to 8 U.S.C. §1225(c) because the defendant was excludable under 8 U.S.C. §1182(a)(3)(B)
 - c. The person was removed pursuant to the provisions of 8 U.S.C. ch. 12, subch. V
 - d. The person was removed pursuant to 8 U.S.C. §1231(a)(4)(B)
 5. Class C felony if person removed subsequent to commission of a felony
 6. No deferred judgment or suspended sentence
 - ii. Order to Return to Foreign Nation – Iowa Code section 718.4C
 1. "A judge during a person's initial appearance following an arrest for a violation of this chapter may, after making a determination that

- probable cause exists for the arrest, order the person released from custody and issue a written order”
 - 2. Written order can discharge the person and require them to return to foreign nation if certain requirements are met, including the person agreeing to the order
 - 3. Class C felony not to comply with this order
 - iii. Civil Immunity – Iowa Code section 718C.7
 - 1. A local government official, employee, or contractor is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the local government
 - a. Except where a jury determines the local official acted in bad faith, conscious indifference, or with recklessness
 - p. Operating Under the Influence
 - i. Interlock Device – Iowa Code section 321J.17
 - 1. DOT shall revoked the driver’s license of a person who is operating without an interlock when they are required to have one
 - q. ATVs/UTVs
 - i. State Parks – Iowa Code section 321I.10
 - 1. Registered ATV or UTV may be operated on state park road systems and may be operated within the boundaries of a state park where a registered motor vehicle is authorized to be
- 2. Supreme Court Case Law
 - a. Pretrial Matters
 - i. *State v. Iowa District Court for Emmet County*, 6 N.W.3d 723 (Iowa 2024)
 - 1. Court cannot assess cost of review of electronic documents for privilege by third-party vendor to the State because it is not authorized by statute
 - ii. *State v. Bailey*, 2 N.W.3d 429 (Iowa 2024)
 - 1. Defendant thought he had claim of right and said he would not pursue legal action/other action if paid \$10,000; charged with extortion
 - 2. Court held District Court erred to grant Defendant’s motion to dismiss on belief of claim of right; held that is an affirmative defense, but it is for jury to determine
 - iii. *State v. Harris*, 12 N.W.3d 333 (Iowa 2024)
 - 1. Rule of criminal procedure now provides that 45-day speedy indictment begins at initial appearance
 - 2. Pre-amendment rule from case law is 45 days from arrest
 - b. Suppression
 - i. *State v. Laub*, 2 N.W.3d 821 (Iowa 2024)
 - 1. Court held that implied consent is not the exclusive means for obtaining chemical testing in OWI case

2. Iowa Chapter 808 search warrant is OK in OWI investigation
- ii. *State v. McMickle*, 3 N.W.3d 518 (Iowa 2024)
 1. Similar to *Laub* in that 808 search warrants are OK for an OWI investigation
 2. Further held that search warrant results will not be suppressed when 804.20 violation occurred after independent evidence is used to obtain search warrant was obtained based on observations on scene
 3. Concurrence: 804.20 violations are still not OK!
- iii. *State v. Starr*, 4 N.W.3d 686 (Iowa 2024)
 1. Iowa Code 804.20 right to contact family member or attorney might have a public safety exception for necessary delay, but in this case where officer wanted to locate a gun when suspect was in custody wasn't an ongoing emergency
- iv. *State v. Harbach*, 3 N.W.3d 209 (Iowa 2024)
 1. Court needs to determine whether officer's statements are intentionally or recklessly false in search warrant before suppressing evidence under *Franks v. Delaware*; Defendant must establish falsity
- v. *State v. Bauler*, 8 N.W.3d 892 (Iowa 2024)
 1. K-9 did open air sniff during traffic stop and paws touched outside of the vehicle; neither officer or dog went inside vehicle
 2. This does not violate Fourth Amendment or state constitution
- vi. *State v. Flynn*, No. 23-1448
 1. In OWI investigation, law enforcement cannot ask for generic consent for breath sample; must use implied consent advisory to properly request and advise of consequences
- c. Pleas
 - i. *State v. Hightower*, 8 N.W.3d 527 (Iowa 2024)
 1. Defects in plea form were not enough to show the Defendant would not have pleaded guilty or that plea was not voluntary; Iowa Code section 814.29 requires proof Defendant would not have pleaded guilty
 2. Can't forfeit bond to use for restitution
- d. Trial/Evidence
 - i. *State v. Medina*, 7 N.W.3d 350 (Iowa 2024)
 1. Allowing child sex abuse victim's closed-circuit testimony to continue the day she turned 18 did not violate the confrontation clause or section 915.38(1) in this particular case, and the defense did not totally preserve the issue for once she turned 18
 - ii. *State v. Canady*, 4 N.W.3d 661 (Iowa 2024)
 1. Prosecution where Defendant held victim down while someone else shot victim; Defendant rapped days before and included lyrics using nickname of victim; State wanted to admit lyrics and recorded video of rap to show intent; Court held that was fine
 2. Voluntary manslaughter and willful injury causing bodily injury do not merge

- iii. *State v. Jackson*, 4 N.W.3d 298 (Iowa 2024)
 - 1. Facts are important here: OWI prosecution with single vehicle accident; jail employee reviewed records and testified at trial that it didn't say anything about Defendant's medical condition
 - 2. Court said this testimony is not admissible in that manner under business records exception without proper authentication
- iv. *State v. Flores*, 2 N.W.3d 287 (Iowa 2024)
 - 1. Entirety of recording of child's forensic interview was admissible under rule of completeness following cross-examination by defense counsel in sex abuse case
 - 2. The Rule of Completeness applies regardless of which party opens the door
- v. *State v. Johnson*, 7 N.W.3d 504 (Iowa 2024)
 - 1. Jury instruction on stand your ground defense and reasonableness of using deadly force were misleading/confusing here, so reversed
 - a. A lot of discussion on the instructions in this one, so important to review if this is an issue in your case
- vi. *State v. Schwartz*, 7 N.W.3d 756 (Iowa 2024)
 - 1. Court held that jury instructions on pattern/practice/scheme and that hugging was a form of sexual conduct were correct statements of the law in sexual exploitation of by a school employee by patter, practice, or scheme of conduct prosecution
- vii. *State v. Slaughter*, 3 N.W.3d 540 (Iowa 2024)
 - 1. Boyfriend wins money at slot machine at casino, but owes child support, so girlfriend says she won when boyfriend was rightful owner; girlfriend is Defendant in this case
 - 2. Evidence showed intent to defraud or aiding/abetting fraud under Iowa Code section 99F.15(4)(h)
- viii. *State v. Rhodes*, 6 N.W.3d 741 (Iowa 2024)
 - 1. Replica muzzleloader that Defendant used to deer hunt was a firearm under meaning of the statute and supported conviction for felon in possession of a firearm
- ix. *State v. Lee*, 6 N.W.3d 703 (Iowa 2024)
 - 1. Robbery unit of prosecution requires theft from one person
 - 2. Here, assaulting husband and wife in their home to steal \$50,000 out of their safe supports two convictions of robbery
- x. *State v. Miller*, 4 N.W.3d 29 (Iowa 2024)
 - 1. State did not prove beyond a reasonable doubt that posting revenge porn of consensual sex was "sexually motivated" for purposes of determining he should be on sex offender registry at sentencing
- xi. *State v. McCullough*, 5 N.W.3d 620 (Iowa 2024)
 - 1. Videos of child using the bathroom and revealing her genitalia was sufficient to support conviction of sexual exploitation of a minor and to show crime was for purpose of sexual arousal

- xii. *State v. Wilson*, 5 N.W.3d 628 (Iowa 2024)
 - 1. Number of viewers of the masturbation can be the unit of prosecution for indecent exposure; here, 2 viewers = 2 counts
- xiii. *State v. Cole*, 3 N.W.3d 200 (Iowa 2024)
 - 1. Insufficient evidence mother knowingly acted in a matter that “created” substantial risk of harm for purposes of child endangerment by leaving 5 children sleeping alone at home, ages 5-12, when she went to the store
- xiv. *State v. Brown*, 5 N.W.3d 611 (Iowa 2024)
 - 1. Weapon under seat of vehicle Defendant used to elude, even when time lapsed, supported verdict for felon in possession of firearm in this situation; Court held you could draw natural conclusion the gun was Defendant’s
- xv. *State v. White*, 9 N.W.3d 1 (Iowa 2024)
 - 1. One-way closed circuit testimony of children witnesses at trial violated the right to confrontation under the Iowa Constitution
- xvi. *State v. Berg*, No. 23–0819
 - 1. Defendant arrested for Theft in the Fourth Degree and county attorney did not timely file TI; instead filed new charge of unauthorized use of a credit card
 - 2. Court ruled these were different offenses and this was fine
- xvii. *State v. Schooley*, No. 23–1117
 - 1. Evidence of Defendant slapping and spanking regularly to the point of injuries and bruises was sufficient for child endangerment causing bodily injury
 - 2. Can GAL make victim impact statement? It was called a “report to the court” in this case; Not preserved, so we don’t know
- xviii. *State v. Fenton*, No. 22–1681
 - 1. Defendant was convicted of solicitation of commercial sexual activity under Iowa Code section 710.2A after evidence presented that showed conversations he wanted to pay for Uber and shower room rental, about marijuana and money, and about possibility of threesome; minor was fictitious, but Defendant didn’t know
 - 2. Court held evidence was insufficient, so remanded for dismissal
- e. Post-Trial Matters
 - i. *State v. Martin*, 2 N.W.3d 271 (Iowa 2024)
 - 1. District Court did not abuse its discretion in considering a risk assessment included in the PSI when determining mandatory minimum in Robbery 1st sentencing
 - a. The Defendant did not challenge whether the risk assessment was valid
 - ii. *State v. Wade*, 7 N.W.3d 511 (Iowa 2024)
 - 1. Court must “fix” the specific term of probation under Iowa Code section 907.7(1); Court cannot say 2-5 years on probation
 - iii. *State v. Goble*, 4 N.W.3d 700 (Iowa 2024)

1. When Court mentioned the Defendant “might be paroled at some point,” it did not violate rule that courts cannot consider date of parole as factor
- iv. *State v. Rasmussen*, 7 N.W.3d 357 (Iowa 2024)
 1. Court held that NCO on companion simple misdemeanor that was dismissed per plea deal that was entered in serious misdemeanor case may not be proper; need further record
- v. *State v. Luke*, 4 N.W.3d 450 (Iowa 2024)
 1. District Court gave adequate reasons for imposing prison and running sentences consecutively in new charge/ROV; important that Court states reasons specifically for not just sentence, but also consecutive/concurrent
- vi. *State v. Miller*, No. 23-1122
 1. Juvenile plotted and killed Spanish teacher
 2. Court affirmed District Court’s sentence of life in prison with possibility of parole after 35 years and held Court did not abuse its discretion, failed to consider a factor, gave weight to improper factor, or arrived at a conclusion against the facts
- vii. *State v. Staton*, No. 22-0380
 1. Not allowing defense counsel to talk about plea negotiations in sentencing argument did not violate Defendant’s right to allocution
 - a. Defense counsel wanted to talk about rejected plea offers to show Defendant’s belief in innocence/lack of remorse
- f. Other
 - i. *State v. TJW*, 2 N.W.3d 853 (Iowa 2024)
 1. Court cannot order restitution after dismissing and expunging criminal charges following completion of a deferred judgment
 - ii. *State v. Olsen*, 9 N.W.3d 21 (Iowa 2024)
 1. Court dismissed petition to modify sex offender registry requirements for someone planning to move back to Iowa, but lived in Illinois
 2. Sex offenders can request modification of sex offender registry before they move back to Iowa if they will need to otherwise register because they will live, work, or attend school there
 - iii. *Murillo v. State*, No. 23-1448
 1. Statutory requirement for sex offender registry modification that sex offender successfully complete any required sex offender treatment program is ambiguous; court found that certificate of completion of STOP from DOC met threshold here
- g. PCR
 - i. *Smith v. State*, 7 N.W.3d 723 (Iowa 2024)
 1. Smith claimed defense counsel should have asked for more preemptory strikes in jury selection when 4 jurors said they would have wanted to hear from defendant at trial but were rehabilitated

2. Court held PCR applicant needs to show prejudice when they requested additional preemptory strike in trial, and court denied it, and juror was actually biased