



# HIGHWAY SAFETY LAW UPDATE



December 24, 2015

Office of the Prosecuting Attorneys Training Coordinator

Nov, Dec, 2015

## Court Orders/Search Warrants Necessary for Black Box Data

On December 4, President Obama signed the transportation bill (“Fixing America’s Surface Transportation Act.”) Part of the act, the “Driver Privacy Act of 2015” provides that court orders (i.e., search warrants) are necessary to download information from a vehicle “black box” (formally known as “Event Data Recorders.”) This new federal requirement conforms with normal practice in Iowa, as search warrants are routinely sought for such data in crash investigations.

The bill, found at <https://www.whitehouse.gov/briefing-room/signed-legislation> provides that data in the black box “is the property of the owner” or lessee of a motor vehicle and that such data “may not be accessed by a person other than an owner or a lessee” unless authorized by “a court or other judicial or administrative authority” or unless the owner or lessee provides “written, electronic, or recorded audio consent to the retrieval of the data.” Once retrieved, data is subject to the normal rules for admission of this type of evidence.

The act also provides rulemaking authority for the National Highway Traffic Safety Administration and directs that the agency report to Congress on “the amount of time event data recorders installed in passenger motor vehicles should capture and record for retrieval vehicle-related data in conjunction with an event in order to provide sufficient information to investigate the cause of motor vehicle crashes.”

## Expungement of Not Guilty Verdicts and Dismissals, But Not Traffic Tickets

A bill to expunge cases resulting in “not guilty” verdicts or dismissals enacted in the last session of the General Assembly, Senate File 385, becomes effective January 1, 2016. After that date, it will be possible in Iowa to seek expungement of criminal cases in which all charges were dismissed through acquittal or dismissal.

The office of the Attorney General has prepared an advisory on the new bill which is attached to this issue of the *Highway Safety Law Update*. The advisory has been sent to those who have contacted the office with a desire to have cases expunged from all public records,

including Iowa Courts Online. The advisory also includes a copy of Senate File 385.

It is important to note that expungement does *not* apply to scheduled violations/“traffic tickets” under Chapter 321 or local traffic ordinances.

By its terms, Senate File 385 applies to “all public offenses, as defined under section 692.1.” That section specifically provides that “Public offense’ as used in subsections 2, 3, and 10 *does not include nonindictable offenses under either chapter 321 or local traffic ordinances.*” (emphasis added.)



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## Have Training, Will Travel



The Prosecuting Attorneys Training Coordinator has short training programs available at no charge for law enforcement officers and prosecutors. Topics include vehicle stops and other search and seizure issues, OWI enforcement (including drugged driving), vehicular homicide, and youth alcohol issues (.02/zero tolerance, possession under the legal age, and supplying alcohol to persons under legal age.) Contact [Pete.Grady@iowa.gov](mailto:Pete.Grady@iowa.gov) for more information.

## Case of Interest from the Iowa Supreme Court

### Cash Seizure from Drug Interdiction Violated 4<sup>th</sup> Amendment Rights

In Re: Property Seized from Pardee, \_\_\_ N.W.2d \_\_\_ (Iowa, 12/11/15)

Cash seized during a drug interdiction stop (which was located, with small amounts of drugs, as a result of a dog sniff on the vehicle which occurred *after* the officer completed traffic warning tickets and gave the tickets to the driver) ordered returned by the Court because the officer extended the traffic stop beyond that period of time needed to complete the traffic stop; to the extent that the officer developed reasonable articulable suspicion to conduct the dog sniff *during* the stop, that level of suspicion was possible only because the officer delayed completion of the stop to engage in questioning of the driver and passenger; the extra time consumed during the questioning was an unconstitutional detention under the rule of Rodriguez v. U.S., 575 U.S. \_\_\_, 135 S.Ct. 1609 (4/21/15).

### RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

*Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at <http://www.iowacourts.gov/>).*

### Recent Unpublished Decisions of the Iowa Court of Appeals Arranged by County

**Black Hawk County** State v. Deantay Darell Williams, No. 14-0793, State v. Taevon Davonte Washington, No. 14-0792, and State v. Cordarrel Dontya Smith, No. 14-0812 (Iowa Court of Appeals, filed November 25, 2015.) **State v. Wing arrests require dismissal due to speedy indictment violations.** Three defendants in a sex abuse case were seized by police when a tactical team of 8 officers entered a residence, ordered everyone present to the floor at gunpoint, handcuffed all three and placed them in squad cars and took them to the police department for questioning; the officers' actions constituted "arrests" under the rule of State v. Wing, 791 N.W.2d 243 (Iowa, 12/3/10); trial informations filed 17 months later violated each defendant's right to a speedy indictment, and all cases should have been dismissed by the trial court.

**Clinton County** State v. Stacey Marie Hagge, No. 15-0652 (Iowa Court of Appeals, filed December 9, 2015.) **Tip of drunk driving with corroboration sufficient to justify stop.** Officer justified in stopping defendant where a named/known citizen informant contacted dispatch with a report of drunk driving and described the make and color of the car, the license plate number, and the direction of travel, and where officer observed the car make a wide turn and possibly hit a curb; "(b)ased on the totality of the circumstances, including an identified citizen caller and the independent verification of a number of details, we conclude the officer had reasonable suspicion to stop (the defendant's) vehicle."

**Floyd County** State v. Steven Eugene Sands, No. 14-1975 (Iowa Court of Appeals, filed December 23, 2015.) **Stop and detention valid.** Defendant's action of pulling onto a roadway and causing a trailing truck to swerve constituted improper merger, in violation of Iowa Code section 321.313; officer's mistaken believe that the defendant was also violating a minimum speed law by traveling 30 mph (where no such minimum speed law existed) irrelevant to the analysis; trial court properly denied motion to suppress.

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**Floyd County** *State v. Steven Eugene Sands*, No. 14-1975 (Iowa Court of Appeals, filed December 23, 2015.) **OWI conviction affirmed but lowered from 2<sup>nd</sup> to 1<sup>st</sup> offense.** Trial court improperly sentenced the defendant to OWI 2<sup>nd</sup> offense after having found the defendant guilty of OWI 1<sup>st</sup> offense; court's use of a "nunc pro tunc order to find (the defendant) guilty of a higher offense based on the same events violates the Double Jeopardy Clause of the Federal Constitution"; case remanded for resentencing as a 1<sup>st</sup> offense.

**Jefferson County** *State v. Dale Clark*, No. 14-2059 (Iowa Court of Appeals, filed December 9, 2015.) **Eluding and drug convictions upheld.** Court rejected defense argument that guilty pleas were not entered voluntarily and intelligently and preserved for possible post-conviction relief a claim that counsel was ineffective for "assuring (the defendant) that he would not be sentenced to prison if he were to plead guilty to the two aggravated misdemeanors."

**Mahaska County** *State v. Bryan James Elder*, No. 14-1678 (Iowa Court of Appeals, filed November 15, 2015.) **No basis for seizure; OWI 2<sup>nd</sup> conviction reversed.** Officer's seizure of a car in a parking lot (by pulling in behind the car and activating emergency lights) was not supported by reasonable articulable suspicion; although the stop occurred at 1:45 a.m. as bars were closing, the relevant business (VFW building) was still open for business and there was no evidence of or intelligence regarding burglaries in the area, and officer agreed that he only had a "hunch" that illegal activity was occurring in the car when he activated the lights and executed the stop.

**Mahaska County** *State v. Bryan James Elder*, No. 14-1678 (Iowa Court of Appeals, filed November 15, 2015.) **Community caretaking does not justify seizure; OWI 2<sup>nd</sup> conviction reversed.** Officer was not engaged in community caretaking when he discovered the defendant intoxicated in a car while the engine was running; the car was parked legally in a parking lot, there was no damage to the vehicle nor any indication that the car was having mechanical difficulty or otherwise needed assistance, and there was no indication of injury to the driver; the officer testified that he decided to seize the car when he saw the occupants 'duck underneath the door panel, like they saw me' which does not support a community caretaking theory for the seizure.

**Osceola County** *State v. Christopher Lee Lowery*, No. 15-0217 (Iowa Court of Appeals, filed December 23, 2015.) **Insufficient evidence of "operating while intoxicated"; jury's guilty verdict reversed.** Defendant's truck was found damaged in a ditch with the defendant outside the truck; the defendant cursed a passerby who stopped to help when the passerby called 911, the defendant attempted to hide when EMTs arrived to help him, he repeatedly expressed anger about his circumstances, and he refused a chemical test; however, the Court reversed the conviction for insufficient evidence because, among other things, no one saw the defendant operate the truck, the Court determined that the EMTs testimony that the defendant had "had" a couple did not necessarily mean that the defendant had "consumed" alcohol, the defendant was found outside the truck, the defendant "could have consumed at the scene, resulting in his intoxication and explaining his behavior at the scene"; "(t)here was no testimony that the truck's hood felt warm. There was no testimony that the cans in the back of the truck were empty or full, cold or warm. There was no testimony or admission that (the defendant) was drinking prior to the accident. . . facts the State relies upon raise only suspicion or speculation—not evidence—that (the defendant's) truck ended up in the ditch because he drove it while he was intoxicated."

**Polk County** *State v. Julio Cesar Romero Espinoza*, No. 15-0188 (Iowa Court of Appeals, filed October 28, 2015.) **OWI 3<sup>rd</sup> conviction affirmed; issues preserved for possible post conviction relief.** Defendant entered guilty pleas to OWI and other offenses and on appeal argued that trial counsel had failed to properly investigate the charge; conviction affirmed and complaints about trial counsel preserved for possible post conviction relief.

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**Polk County** *State v. Matthew Paul Smith*, No. 14-1567 (Iowa Court of Appeals, filed October 28, 2015.) **Sentence jointly recommended by the parties affirmed.** Defendant's two year concurrent sentences for OWI 2<sup>nd</sup> and child endangerment (imposed in accordance with the plea agreement) affirmed even though the sentencing court did not spell out the reasons for the sentence (see *State v. Cason*, 532 N.W.2d 755 (Iowa 1995) (“[T]he sentencing court was merely giving effect to the parties’ agreement. Under these circumstances, we do not believe the district court abused its discretion in failing to state reasons for the sentence imposed.”))

**Polk County** *State v. Jason Gene McDonnell*, No. 14-0550 (Iowa Court of Appeals, filed November 25, 2015.) **Conviction for operating without owner’s consent affirmed.** Conviction affirmed; defendant’s argument that his trial counsel was ineffective for failing seek a dismissal based upon a claimed speedy trial violation preserved for possible post-conviction relief.

**Polk County** *State v. Fawn Victoria Johnson*, No. 14-1802 (Iowa Court of Appeals, filed December 9, 2015.) **Synthetics—amended charge denied due to legislature’s delay.** The Iowa Board of Pharmacy designated a synthetic substance as a controlled substance, an action which, *if confirmed by the legislature within 60 days of the opening of a session*, would have classified delivery of the synthetic substance a class “C” felony; the legislature’s delay in acting on the Board’s designation resulted in an aggravated misdemeanor charge; when the legislature finally acted, the State attempted to amend the charge upward, but the trial and appellate court denied the State’s motion, citing Iowa Code section 124.201(4): “If a substance is designated as controlled by the board under this subsection the control shall be temporary and if, within sixty days after the next regular session of the general assembly convenes, the general assembly has not made the corresponding changes in this chapter, the temporary designation of control of the substance by the board shall be nullified.”

**Polk County** *In the Interest of D.K.*, No. 15-0185 (Iowa Court of Appeals, filed December 23, 2015.) **Terry pat down justified, gun admissible at trial.** Officer had grounds to believe his safety or that of others was in danger, and therefore, authority to pat down an individual who matched the description of a person who, according to a named citizen informant, was carrying a gun during a fight in a McDonald’s restaurant where individuals were yelling about someone “shooting bullets”; juvenile’s motion to suppress a gun found as a result of the pat down was properly denied by the trial court.

**Polk County** *State v. Anthony Eugene English*, No. 14-2015 (Iowa Court of Appeals, filed December 23, 2015.) **“White light” from brake light and crossing the center line justify traffic stop.** Defendant’s left rear brake light emitted white light and the vehicle crossed the center line, violations of Iowa Code section 321.387 and 321.404 as well as a violation of section 321.306 respectively; those violations were sufficient to support a traffic stop.

**Polk County** *State v. Anthony Eugene English*, No. 14-2015 (Iowa Court of Appeals, filed December 23, 2015.) **Driver in traffic stop may be ordered from car, and fact that defendant had been seen leaving a drug house supported expansion of the traffic stop.** In routine traffic stops, drivers may be ordered from the car (see *Pennsylvania v. Mims*, 434 U.S. 106 (1977)); further, the officer had grounds to expand the detention, as the defendant did not pull over for several blocks after the officer signaled him to stop, handed his license out the window and then immediately rolled up the window, provided false information to the officer, and had a large knife in the open glove box.

**Polk County** *State v. Anthony Eugene English*, No. 14-2015 (Iowa Court of Appeals, filed December 23, 2015.) **Frisk for weapons justified by suspicion the defendant was armed and dangerous; second search justified by defendant’s consent.** After valid *Terry* search determined the defendant was not armed, but revealed a “bulge” in the defendant’s pants, the officer told the defendant he suspected the

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defendant was hiding something in his pants and that he wanted to search further, to which the defendant replied “That’s fine. Go ahead.”; further, “it should also be noted that no evidence was seized. . .” but rather, drugs were found on the ground, where the defendant had been standing, after the defendant was told he was free to leave.

**Scott County** State v. DeMarcus Letrelle Culberson, No. 13-2049 (Iowa Court of Appeals, filed October 28, 2015.) **Defendant waived his right to make a statement in mitigation of punishment.** affirmed. Defendant, who in a written guilty plea told the court “I expressly waive my right to personally address the court at the time of sentencing” had unambiguously waived his right of allocution; driving while barred conviction affirmed.

**Scott County** State v. Larry Allen Bell, No. 14-1660 and 14-1721 (Iowa Court of Appeals, filed November 15, 2015.) **Defendant not entitled to discuss own interpretation of the law.** Trial court did not abuse its discretion by denying the defendant’s request to introduce a federal statute and comment upon his understanding of a decision of the United States Supreme Court; “(i)n the orderly trial of a case, the law is given to the jury by the court and not introduced as evidence. It is the function of the jury to determine the facts from the evidence and apply the law as given by the court to the facts as found by them from the evidence. Obviously, it would be most confusing to a jury to have legal material introduced as evidence and then argued as to what the law is or ought to be.” Two convictions for operating while barred affirmed.

**Scott County** State v. Dale Varner, No. 14-1566 (Iowa Court of Appeals, filed December 9, 2015.) **Sufficient evidence of recklessness to support homicide by vehicle.** Defendant who saw a black man walking toward his car and who then “intentionally ‘hit the gas’ and accelerated his vehicle towards, and ultimately into and over” the pedestrian engaged in reckless conduct in that the driving behavior was “highly dangerous” and a reasonable person in the position of the defendant would know “or should have reasonably foreseen that accelerating into a person would more likely than not result in harm to that person.”

**Scott County** State v. Dale Varner, No. 14-1566 (Iowa Court of Appeals, filed December 9, 2015.) **State disproved justification/self defense argument in homicide by vehicle case.** In case where defendant “hit the gas” and ran over a man walking in the street, the State disproved the defendant’s proffered justification defense in that the State proved that the defendant had an alternative course of action (he could have driven around the victim); that he did not believe he was in imminent danger and the use of force was necessary to save him (the victim was not facing the car when he was struck, no weapon was found on the victim, and the jury could have found that the defendant’s belief was unreasonable); and that the defendant’s use of force was unreasonable (he “hit the gas” and ran over a pedestrian when he could have driven around him.)

**Scott County** State v. Dale Varner, No. 14-1566 (Iowa Court of Appeals, filed December 9, 2015.) **Objective standard to be used when considering “alternative course of action” in a justification defense.** Jury was properly instructed that, when considering a justification defense, the jury should consider whether a *reasonable person* would believe that an alternative course of action entailed a risk and not, as the defendant had requested and the trial court refused, an instruction focused on whether a *given defendant* would believe that an alternative course of action entailed a risk.

**Scott County** State v. Dale Varner, No. 14-1566 (Iowa Court of Appeals, filed December 9, 2015.) **Justification defense jury instruction on retreating may not apply where the defendant was not in his own home or property but rather, was driving a car.** Court of Appeals questions whether person driving a car and running over someone with the car is entitled to a “no need to retreat when in one’s home or property” jury instruction; such an instruction was given in this vehicular homicide case

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and therefore if any benefit accrued, the defendant received that benefit, but the court questioned whether the instruction should have been given at all.

**Scott County** State v. Nicholas F. Lingle, No. 14-2015 (Iowa Court of Appeals, filed December 23, 2015.) **Handcuffing and *Miranda* but no *Wing* arrest.** Defendant who was handcuffed and read *Miranda* but who was released at the scene when he accepted an offer to work with police was not under arrest for purposes of State v. Wing, 791 N.W.2d 243 (Iowa, 12/3/10) and no speedy indictment violation occurred when the trial information was filed after 45 days had passed; unlike the facts in Wing, in this case, “(the defendant) was not transported anywhere and was specifically told no charges would be filed if he cooperated. The discussion of cooperation occurred in the back of the patrol car shortly after the commencement of the encounter. Therefore, we conclude a reasonable person in (the defendant’s) position would not have believed that an arrest occurred.”

**Sioux County** State v. Scott Anthony Sappingfield, No. 14-1716 (Iowa Court of Appeals, filed November 25, 2015.) **DRE evaluation with no chemical test and other officers’ observations sufficient to support OWI-drug conviction.**

Observations by officers (including a DRE examination which resulted in an opinion that the defendant was under the influence of a stimulant) though unsupported by chemical evidence (the defendant refused urine testing) were sufficient to support a conviction for OWI; the defendant “was confused, his speech was slurred and mumbled, and his body movements were impaired”; he did not know where he was when officers first observed him (parked cross-wise on a dead-end road), and the officers’ observations were corroborated by video evidence.

**Sioux County** State v. Scott Anthony Sappingfield, No. 14-1716 (Iowa Court of Appeals, filed November 25, 2015.) **Sufficient evidence of ‘operation’ for OWI.**

Trial counsel not ineffective for failing to claim there was insufficient evidence of operation to support an OWI; although defendant was found parked, horizontally across a dead end road, he admitted to having driven to the location, there was no one else nearby who would have driven the car to the location and he had not been there long, having told officers he had just gotten off work and had pulled off to take a nap; in addition, officers found a cold can of an alcoholic beverage in the car despite the warm weather (the offense occurred on July 30.)

**Sioux County** State v. Scott Anthony Sappingfield, No. 14-1716 (Iowa Court of Appeals, filed November 25, 2015.) **Defendant’s stipulation of prior convictions may have been the result of ineffective assistance of counsel.** Although the defendant stipulated that he had been previously convicted of OWI three times (and therefore was sentenced for OWI 3<sup>rd</sup> offense) and although the record shows that the defendant “understood he would be subject to an increased period of incarceration when he affirmed in open court that he was the person previously convicted of three prior convictions” of OWI, he may not have had an “adequate grasp” of the implications because the record failed to reveal whether trial counsel discussed those implications with the defendant; the issue therefore preserved for possible post conviction relief.

**Tama County** State v. Dawson Kyle Davenport, No. 14-1735 (Iowa Court of Appeals, filed November 15, 2015.) **Admission to prior convictions not prejudicial; no reversal warranted.** Conviction and sentence affirmed where, after conviction of the underlying offense, the defendant stipulated to prior convictions relied upon to enhance punishment (and where in accepting the stipulations, the trial court did not engage in a colloquy regarding the priors), and then, when appealing the failure to engage in such a colloquy, the defendant did not assert and could not show any prejudice arising from the lack of a colloquy; defendant could not claim surprise, as the prior convictions were detailed in the minutes of testimony and the state was ready to prove up the prior convictions; no prejudice occurred despite the lack of a colloquy, and enhanced conviction affirmed.

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**Wapello County** State v. Benjamin Wade Williams, No. 14-1495 (Iowa Court of Appeals, filed November 25, 2015.) **Stop of pedestrian not supported by reasonable articulable suspicion.** Officer did not have reasonable articulable suspicion to stop a pedestrian who, immediately before the stop, had been driving a van and then pulled the van into a parking lot (avoiding the well-lit portion of the lot and parking in the back of the lot) and who then left the van and “began walking quickly”; officer’s action of turning on the siren to stop the pedestrian was not supported by reasonable suspicion; “(t)hough late at night, (the defendant’s) activities of parking in a laundromat parking lot and walking away do not support a reasonable and articulable suspicion of criminal activity.”

**Warren County** State v. Michael Howard Belieu, No. 15-0134 (Iowa Court of Appeals, filed October 28, 2015.) **Consent search of room valid; grandfather had access to the room and authority to give consent for the search.** Man living as a guest in his grandfather’s home had a legitimate expectation of privacy in his bedroom, but where the man did not pay rent, the grandfather had access to the room and had been in the room earlier in the day, and the room was unlocked and the door open, the officer could reasonably believe that the grandfather had authority to consent to the search; possession of marijuana conviction affirmed.

**Woodbury County** State v. Ricky Lee Jackson, No. 15-0191 (Iowa Court of Appeals, filed December 23, 2015.) **Guilty plea knowing and voluntary; defendant knew the plea would moot his challenge to a traffic stop.** Defendant filed a motion to suppress a traffic stop which resulted in his charges; before the hearing on that motion the State offered a plea agreement whereby he would plead guilty to a single offense and the remainder of the charges would be dismissed, but if the defendant did not accept the offer at that time, the plea offer would be revoked; the defendant reluctantly accepted the offer but then challenged the plea, arguing that it was not knowing and voluntary; the opinion consists of the record of the court’s colloquy with the defendant showing that although he did not *like* the plea agreement, he ultimately accepted it; conviction for 3<sup>rd</sup> offense possession of marijuana affirmed.

**Prepared by the  
Prosecuting Attorneys Training Coordinator (PATC)**

Under a project approved by the Governor’s Traffic Safety Bureau (GTSB), in cooperation with the National Highway Traffic Safety Administration (NHTSA). The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the PATC, GTSB, NHTSA, or the Iowa Department of Justice. **One would expect that, in the spirit of the holiday season, a clever note would grace this issue. One would expect that. One would be wrong.**

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## INFORMATIONAL ADVISORY

From: Office of the Iowa Attorney General  
Date: December 11, 2015  
Re: **Expunging dismissed criminal charges from court records using the process in Senate File 385, effective January 1, 2016**

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Our office has received inquiries over the past several years about the process for expunging dismissed criminal charges from online court records. You are receiving this advisory because you may have contacted us or a clerk of court with this inquiry.

In 2012, the Iowa legislature adopted a procedure for expunging certain dismissed charges when the clerk expunged a deferred judgment in the same or a related case. See, Iowa Code § 907.9(4)(b)-(g). This was the only process available for expunging a dismissed criminal charge until this year.

The Iowa legislature enacted a new law in 2015 (copy enclosed) that is effective January 1, 2016 which provides a new process for people with dismissed criminal charges to ask the court to expunge them under certain conditions

Briefly, if an entire criminal case was dismissed, the person who was accused of a crime (the defendant) may apply for a court order expunging that case if all of the following conditions have been satisfied:

1. All charges in the case were dismissed through acquittal or otherwise;
2. All court costs, fees, or other financial obligations ordered by the court or assessed by the clerk have been paid;
3. At least 180 days have passed since the case was dismissed, unless the court reduces the time for a reason like identity theft; and,
4. The dismissal was not based on incompetency to stand trial or a finding of not guilty by reason of insanity.

Dismissed criminal charges have long been removed from the criminal history records of the Department of Public Safety. See, Iowa Code § 692.17(1). The new process means an expunged dismissed criminal case will no longer be viewable by the public in court records, including on Iowa Courts Online (the internet listing of cases).

An application to expunge cannot be filed until after January 1, 2016, but the application can apply to cases no matter when they were dismissed.





Senate File 385

AN ACT  
RELATING TO THE EXPUNGEMENT OF NOT-GUILTY VERDICTS AND  
DISMISSED CRIMINAL-CHARGE RECORDS, AND INCLUDING EFFECTIVE  
DATE AND APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 901C.1 Not-guilty verdicts and  
criminal-charge dismissals — expungement.

1. As used in this section, unless the context otherwise  
requires, "expunge" and "expungement" mean the same as expunged  
in section 907.1.

2. a. Except as provided in paragraph "b", upon application of a defendant or a prosecutor in a criminal case, or upon the court's own motion in a criminal case, the court shall enter an order expunging the record of such criminal case if the court finds that the defendant has established that all of the following have occurred, as applicable:

(1) The criminal case contains one or more criminal charges in which an acquittal was entered for all criminal charges, or in which all criminal charges were otherwise dismissed.

(2) All court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court have been paid.

(3) A minimum of one hundred eighty days have passed since entry of the judgment of acquittal or of the order dismissing the case relating to all criminal charges, unless the court finds good cause to waive this requirement for reasons including but not limited to the fact that the defendant was the victim of identity theft or mistaken identity.

(4) The case was not dismissed due to the defendant being found not guilty by reason of insanity.

(5) The defendant was not found incompetent to stand trial in the case.

b. The court shall not enter an order expunging the record of a criminal case under paragraph "a" unless all the parties in the case have had time to object on the grounds that one or more of the relevant conditions in paragraph "a" have not been established.

3. The record in a criminal case expunged under this section is a confidential record exempt from public access under section 22.7 but shall be made available by the clerk of the district court, upon request and without court order, to the defendant or to an agency or person granted access to the deferred judgment docket under section 907.4, subsection 2.

4. This chapter does not apply to dismissals related to a deferred judgment under section 907.9.

5. This chapter applies to all public offenses, as defined under section 692.1.

6. The court shall advise the defendant of the provisions of this chapter upon either the acquittal or the dismissal of all criminal charges in a case.

7. The supreme court may prescribe rules governing the procedures applicable to the expungement of the record of a criminal case under this chapter.

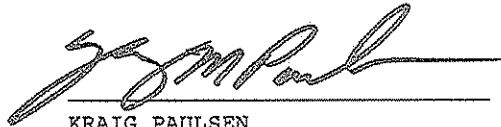
8. This section shall apply to all relevant criminal cases that occurred prior to, on, or after the effective date of this Act.

Sec. 2. EFFECTIVE DATE. This Act takes effect January 1, 2016.



PAM JOCHUM

President of the Senate



KRAIG PAULSEN

Speaker of the House

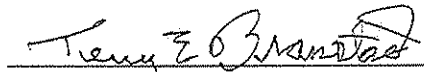
I hereby certify that this bill originated in the Senate and is known as Senate File 385, Eighty-sixth General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved May 1, 2015



TERRY E. BRANSTAD

Governor

## **INDEX TO THE 2015 HIGHWAY SAFETY LAW UPDATE**

### **Published Opinions Reported in the 2015 Highway Safety Law Update, Arranged by Date**

State v. Thompson, 856 N.W.2d 915 (Iowa, 12/12/14)

**Judges must provide reasons for a sentence on the record, and waiver of a record at sentencing does not waive a right to appeal where the judge fails to include the reasons for the sentence in the sentencing order.**

Heien v. North Carolina, 574 U. S. \_\_\_\_, 135 S.Ct. 530, 190 L. Ed. 2d 475 (12/15/14)

**Objectively reasonable mistakes of law do not violate the Fourth Amendment; such mistakes do violate article I, section 8 of the Iowa Constitution.**

State v. Rouse, 854 N.W.2d 73 (Iowa Ct. App., 7/16/14, published by Order of 1/2/15)

**Prison sentences must be imposed for reckless driving serious injury by motor vehicle under Iowa Code section 707.6A were OWI was involved in the case.**

State v. McIver, 858 N.W.2d 690 (Iowa, 1/9/15)

**Officer, not suspect, determines which type of specimen to test for OWI (here, officer requested breath and suspect refused and demanded a blood test)**

State v. Robinson, 859 N.W.2d 464 (Iowa, 2/6/15)

**Iowa Code section 804.20 does not provide a basis for on-going barrier free attorney-client consultation during a post-arrest incarceration.**

Sioux City v. Jacobsma, 862 N.W.2d 335 (Iowa, 2/20/15)

**City's automated traffic enforcement system does not offend substantive or procedural due process, is not an unreasonable exercise of police power, is within the city's Home Rule powers, and has not been impliedly pre-empted by portions of Chapter 321.**

In re Krull, 860 N.W.2d 38 (Iowa, 2/20/15)

**Lawyer-magistrate who issued a search warrant for a client's home created an appearance of impropriety which "called into question the impartiality of the Iowa judiciary"**

State v. McKinley, 860 N.W.2d 874 (Iowa, 3/13/15)

**Criminal defendants have a right to continued representation by a given attorney; facts of case where adverse witnesses were represented by the attorney's office did not "rise to the level of an actual conflict"; case remanded for reinstatement of counsel.**

State v. Cordero, 861 N.W.2d 453 (Iowa, 3/20/15)

**Trial court's refusal (in a murder prosecution) to instruct the jury on the intoxication defense was not an abuse of discretion; "(t)he evidence in this case only supported, at best, a finding of mere intoxication. . . Under our standard, more evidence of intoxication is required."**

Grady v. North Carolina, 575 U.S. \_\_\_\_, 135 S.Ct. 1368 (3/30/15)

**Placement of a GPS monitoring device on a person is a "search" within the meaning of the Fourth Amendment.**

State v. Young, 863 N.W.2d 249 (Iowa, 4/3/15)

**Under the Iowa Constitution, article I section 9 insures that defendants have a right to counsel whenever incarceration is possible and article I, section 10 forbids use of a conviction obtained without counsel (or a valid waiver of counsel) to enhance a subsequent prosecution.**

State v. Thacker, 862 N.W.2d 402 (Iowa, 4/17/15)

**To permit adequate appellate review of a sentence, a court's reasoning for imposing a particular sentence must appear somewhere in the record, either through a reported hearing, a filed document outlining a plea agreement, or a sentencing order outlining a plea agreement.**

State v. Lyon, 862 N.W.2d 391 (Iowa, 4/17/15)

**Officers are not required to read the implied consent advisory and request a sample before offering 804.20 calls, and need only advise who may be called (family member or an attorney).**

State v. Lyon, 862 N.W.2d 391 (Iowa, 4/17/15)

**Iowa Code section 321.388 (illumination of rear license plates) may be violated in two ways-by a vehicle with no illumination on the plate, or by a vehicle with insufficient illumination to make the plate clearly legible within 50 feet**

State v. Penn-Kennedy, 862 N.W.2d 384 (4/17/15)

**An arrest for a public offense does not trigger the speedy indictment rule for separate offenses which may arise from the same incident (explaining the limits of State v. Wing, 791 N.W.2d 243 (Iowa, 12/3/10)).**

Rodriguez v. U.S., 575 U.S. \_\_\_, 135 S.Ct. 1609 (4/21/15)

**Traffic stops may last only as long as it takes to "handle the matter for which the stop was made"; any additional detention must be independently justified under the Fourth Amendment.**

Sanford v. Fillenwarth, 863 N.W.2d 286 (Iowa, 5/8/15)

**Dram shop liability extends to entities which provide alcohol (without a separate charge, as part of the amenities of the entity) to paying guests of the resort.**

State v. Paye, 865 N.W.2d 1 (Iowa, 6/12/15)

**Unless a person invites the general public onto the steps or porch of a private residence, that person, though intoxicated, can not be guilty of "public intoxication"; contrast with State v. Booth, 670 N.W.2d 209 (Iowa, 10/08/03) for apartment steps and common hallways.**

State v. Gaskins, 866 N.W.2d 1 (Iowa, 6/30/15)

**Under article I, section 8 of the Iowa Constitution, an arresting officer may not search an automobile incident to arrest unless there is a likelihood the arrestee "could access the vehicle to obtain a weapon or destroy evidence."**

In Re: Property Seized from Pardee, \_\_\_ N.W.2d \_\_\_ (Iowa, 12/11/15)

**Cash seized during a drug interdiction stop ordered returned where the officer extended the traffic stop beyond that period of time needed to complete the traffic stop without adequate grounds to support the extended detention.**

**Unpublished Opinions of the Court of Appeals  
as Reported in the 2015 Highway Safety Law Update,  
Arranged by County and Date**

***Black Hawk County***

State v. Leonard Terrell Haynes, No. 13-1057 (Iowa Court of Appeals, filed December 24, 2014.) **Guilty pleas and sentences affirmed.**

State v. Brittany Marie McBride, No. 14-0378 (Iowa Court of Appeals, filed March 11, 2015.) **OWI 1<sup>st</sup> sentence not based upon unproven prior offenses.**

State v. Hubert Todd, Jr., No. 13-0271 (Iowa Court of Appeals, filed April 8, 2015.) **Guilty pleas and convictions affirmed; handicap placard to be displayed only when car is parked.**

State v. Davon Reasby Saffold, No. 14-0223 (Iowa Court of Appeals, filed April 22, 2015.) **Fact that registered owner was suspended justified stop.**

State v. Charles David Brown, No. 14-0588 (Iowa Court of Appeals, filed May 6, 2015.) **City noise ordinance violation justifies stop.**

State v. Timothy James McClain, No. 14-1473 (Iowa Court of Appeals, filed June 10, 2015.) **Driving while barred conviction affirmed and sentencing issues preserved for possible post conviction relief.**

State v. John Paul Drahos, No. 14-0823 (Iowa Court of Appeals, filed June 10, 2015.) **Investigatory seizure supported by reasonable articulable suspicion; suppression motion properly denied.**

State v. Jorge G. Garcia-Villa, No. 14-0837 (Iowa Court of Appeals, filed June 10, 2015.) **Driving outside the scope of a temporary restricted license is a violation of the underlying sanction.**

State v. David Ray Goddard, No. 14-1076 (Iowa Court of Appeals, filed June 24, 2015.) **Terry search of car resulted in the finding of pill bottle which, with other factors was probable cause to search the car.**

State v. Mar'yo D. Lindsey Jr., No. 14-0773 (Iowa Court of Appeals, filed June 24, 2015.) **School search of student's equipment bag valid; conviction affirmed.**

State v. Arthur Cherry, No. 14-1248 (Iowa Court of Appeals, filed August 5, 2015.) **Consent to alcohol testing was voluntary where officer's answer to defendant's question was 'factually correct.'**

State v. Mandy Lynn Loge, No. 14-1734 (Iowa Court of Appeals, filed August 19, 2015.) **No grounds to stop car; driving while barred conviction reversed.**

State v. Tamaris Quintez Gary, No. 14-1087 (Iowa Court of Appeals, filed September 10, 2015.) **Factual basis established for various pleas; review includes minutes of testimony.**

State v. Cicero McGee, No. 14-1099 (Iowa Court of Appeals, filed October 14, 2015.) **'Public' intoxication not proven where 'public' may, under the record, include hospital where police took the defendant; case remanded for further record.**

## ***Boone County***

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State v. Morgan Lea Myers, No. 14-1474 (Iowa Court of Appeals, filed August 5, 2015.) **Probable cause to search purse in car after drug scale and butane found in plain view, defendant and companion had prior drug convictions and nervous behavior was exhibited.**

## ***Buena Vista County***

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State v. Antonio Trevino III, No. 14-1310 (Iowa Court of Appeals, filed March 25, 2015). **OWI 3<sup>rd</sup> sentence affirmed.**

State v. Guy Christopher Johns, No. 14-1435 (Iowa Court of Appeals, filed August 19, 2015.) **Proof of mailing of DOT notices inadequate; driving while barred conviction reversed.**

## ***Calhoun County***

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State v. Marlin Lee Jensen, No. 14-0842 (Iowa Court of Appeals, filed February 11, 2015.) **Court rejects claim that prosecutor violated plea agreement; pleas and sentences affirmed.**

State v. Brandon Blake Slater, No. 14-1079 (Iowa Court of Appeals, filed February 11, 2015.) **Consecutive suspended two year sentences for public intoxication affirmed.**

State v. Joseph Michael Evenson, No. 14-0168 (Iowa Court of Appeals, filed April 22, 2015.) **Eluding is a general intent crime.**

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State v. Michele Lee Secory-Monson, No. 14-1844 (Iowa Court of Appeals, filed August 19, 2015.) **Patient entering secure hospital setting has no reasonable expectation of privacy.**

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Terry Houston v. State, No. 14-1474 (Iowa Court of Appeals, filed August 5, 2015.) **OWI is general intent crime; therefore, statutory intoxication defense does not apply.**

### ***Des Moines County***

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State v. Dwayne Grady Jefferson, Jr., No. 14-1703 (Iowa Court of Appeals, filed August 19, 2015.) **Substance abuse evaluation and treatment an appropriate term of probation in aggravated assault case, but being barred from Class C or D liquor establishments is 'excessive.'**

### ***Dickinson County***

State v. Kip Michael George Bryan, No. 13-2069 (Iowa Court of Appeals, filed April 8, 2015.) **No 'seizure' where officer parked car some distance away, did not block defendant or use emergency lights or siren; further, police car headlights on officer's car parked behind the defendant do not create a 'seizure'.**

State v. Nathan Lee Rouse, No. 15-0148 (Iowa Court of Appeals, filed September 10, 2015.) **Factual basis for OWI 3<sup>rd</sup> offense established; felony sentence not illegal.**

### ***Dubuque County***

State v. Maria A. Meyer, No. 14-0661 (Iowa Court of Appeals, filed January 29, 2015.) **Defense attorney acting within scope of authority may waive speedy trial.**

State v. Troy David Capesius, No. 14-1330 (Iowa Court of Appeals, filed June 24, 2015.) **License revocation imposed with drug conviction is direct consequence, but ineffective assistance not shown in guilty plea.**

State v. Brett Oliver Rosedale, No. 14-0928 (Iowa Court of Appeals, filed July 22, 2015.) **Sufficient evidence of OWI: speeding, odor of alcoholic beverage, failed SFSTs, and evasive behavior.**

### ***Floyd County***

State v. Steven Eugene Sands, No. 14-1975 (Iowa Court of Appeals, filed December 23, 2015.) **Stop for improper merger onto highway and detention valid; OWI conviction affirmed but lowered from 2<sup>nd</sup> to 1<sup>st</sup> offense.**

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## ***Henry County***

State v. Ahmet Mahalbasic, No. 13-2082 (Iowa Court of Appeals, filed April 22, 2015.) **Sufficient evidence of recklessness to support involuntary manslaughter conviction (in the middle of the day, defendant parked truck on the right of way of a 4-lane, 65 mph roadway and did not place emergency triangles or cones); this recklessness was a proximate cause of the victims' deaths where victims' car rear-ended the truck.**

## ***Johnson County***

State v. Franco Alexander Arellano, No. 14-0051 (Iowa Court of Appeals, filed March 11, 2015.) **Impound and inventory procedures justified by officers acting as caretakers; in this case, although no written policy was introduced, the policy used was reasonable; court also analyzed whether passengers normally may challenge impound and inventory procedures.**

State v. Marvis Latrell Jackson, No. 14-0067 (Iowa Court of Appeals, filed May 6, 2015.) **Search valid where officers relied upon apparent authority of another to consent.**

State v. Cordero Robert Seals, No. 14-1183 (Iowa Court of Appeals, filed September 10, 2015.) **Speedy indictment claim rejected; defendant not 'arrested' until arrest warrant was served; filing of complaint and seeking a warrant is not an arrest.**

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State v. Theodore Ray Bascom, No. 14-0024 (Iowa Court of Appeals, filed January 28, 2015.) **OWI conviction affirmed; ineffective assistance claim preserved for possible post-conviction relief.**

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State v. Laura Gabrielle Santoro-Peterman, No. 14-0020 (Iowa Court of Appeals, filed May 6, 2015.) **OWI guilty verdict upheld; defendant's confusion, 'inability or unwillingness' to follow directions' and other observations are substantial evidence to support verdict.**

### ***Marshall County***

State v. Jerome McDowell, No. 13-1259 (Iowa Court of Appeals, filed March 11, 2015.) **Vehicle stop supported by reasonable articulable suspicion; 911 call alerted officers to person with defendant's last name and a disturbance at specific address; officers knew this defendant had the same last name and met him driving a known car away from the address.**

State v. Stephen Scott Prusha, No. 14-0656 (Iowa Court of Appeals, filed March 11, 2015.) **Search of defendant was consensual; possession of methamphetamine conviction affirmed.**

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### ***Osceola County***

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State v. Douglas Henry Ollinger, No. 14-1619 (Iowa Court of Appeals, filed July 9, 2015.) **Report of 'suspicious activity' and general description of car and 'touching' centerline do not provide grounds to stop car.**

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State v. Justin James Norman, No. 12-1148 (Iowa Court of Appeals, filed December 24, 2014.) **Interference with official acts conviction affirmed where defendant stood very close to officers while videotaping a traffic stop of *someone else*, and the videotaping hindered the officers' investigation.**

State v. Kenneth Ray Washington, No. 13-1840 (Iowa Court of Appeals, filed January 14, 2015.) **Malfunctioning rear window brake light supports stop.**

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State v. Rustin C. Harvey, No. 13-2032 (Iowa Court of Appeals, filed February 25, 2015.) **Facts support 'knowing' possession of marijuana; conviction affirmed.**

State v. Joshua Michael Steward, No. 14-0319 (Iowa Court of Appeals, filed March 11, 2015.) **Motion in arrest of judgment in eluding plea properly denied.**

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State v. Donald Trajwan Johnson, No. 14-0833 (Iowa Court of Appeals, filed April 22, 2015.) **Officer had grounds to stop the defendant for speeding; OWI 2nd conviction affirmed.**

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Jonathan Quincy Adams v. State, No. 14-0971 (Iowa Court of Appeals, filed May 6, 2015.) **Trial counsel ineffective for failure to challenge causation; vehicular homicide conviction overturned.**

State v. Casey Joe Risius, No. 14-0948 (Iowa Court of Appeals, filed May 20, 2015.) **Dim license plate light, not readable from 50 feet, supports stop; once stopped, officers may order driver out of the car; defendant's pat down which resulted in the discovery of marijuana gave probable cause to search the car.**

State v. David Winslow Dunham, No. 13-0220 (Iowa Court of Appeals, filed June 10, 2015.) **No 'seizure' where defendant was already stopped.**

State v. Cindy Christine Hebron, No. 14-1344 (Iowa Court of Appeals, filed June 24, 2015.) **Convictions for assault and OWI affirmed.**

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State v. Curtis Udell White, No. 14-1121 (Iowa Court of Appeals, filed August 5, 2015.) **Guilty plea waives challenge to denial of suppression motion.**

State v. Ty Andre Patrick, No. 13-1575 (Iowa Court of Appeals, filed September 10, 2015.) **Cracked taillight 'showing white' supports stop.**

State v. Alfred Anthony Gallardo, No. 14-0350 (Iowa Court of Appeals, filed September 10, 2015.) **'Ultimate user' defense in drug cases recognized.**

State v. Richard Lee David Brown, No. 14-0667 (Iowa Court of Appeals, filed September 23, 2015.) **No seizure where officers called the defendant's name and asked to speak with him, and no search where officers recovered drugs the defendant had thrown onto the ground.**

State v. Terry Joe Rowe, No. 14-1354 (Iowa Court of Appeals, filed October 14, 2015.) **Challenge to prior convictions waived by failing to assert in trial court; evidence was sufficient to support OWI-drug conviction.**

State v. Christopher Nicholas Montinguise, No. 14-1075 (Iowa Court of Appeals, filed October 14, 2015.) **OWI conviction affirmed; arraignment delay did not affect speedy trial rights.**

In the Interest of D.K., No. 15-0185 (Iowa Court of Appeals, filed December 23, 2015.) **Terry pat down justified, gun admissible at trial.**

State v. Anthony Eugene English, No. 14-2015 (Iowa Court of Appeals, filed December 23, 2015.) **“White light” from brake light and crossing the center line justify traffic stop; driver in traffic stop may be ordered from car, and fact that defendant had been seen leaving a drug house supported expansion of the traffic stop; frisk for weapons justified by suspicion the defendant was armed and dangerous; second search justified by defendant’s consent.**

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State v. McCall D. Abrams, No. 14-0260 (Iowa Court of Appeals, filed June 24, 2015.) **‘Recent passenger’ has no standing to contest search of vehicle.**

State v. Rayshawn Cole, No. 14-1405 (Iowa Court of Appeals, filed July 22, 2015.) **Robbery stop supported by reasonable articulable suspicion.**

State v. Gary Duffel, No. 14-1830 (Iowa Court of Appeals, filed August 19, 2015.) **Public intoxication conviction affirmed without reference to PBT.**

State v. Valerie Ann Giddings, No. 14-1564 (Iowa Court of Appeals, filed September 10, 2015.) **Trial court did not rely on uncharged—and uncaused—death of motorcyclist in fashioning OWI 3<sup>rd</sup> sentence.**

State v. Nicholas F. Lingle, No. 14-2015 (Iowa Court of Appeals, filed December 23, 2015.) **Handcuffing and *Miranda* but no *Wing* arrest so no speedy indictment violation.**

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## ***Sioux County***

State v. Gary Ernest Moore, No. 14-0557 (Iowa Court of Appeals, filed April 22, 2015.) **Fingerprint records are non-testimonial; OWI 3<sup>rd</sup> as habitual offender conviction affirmed.**

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State v. James Lyle Johannes, No. 14-0589 (Iowa Court of Appeals, filed January 14, 2015.) **Arrest warrant is grounds to stop car; search is supported by probable cause and justified by impoundment and inventory policy.**

State v. Dale Lee Cram, No. 14-0366 (Iowa Court of Appeals, filed February 25, 2015.) **Requesting identification does not trigger the Fourth Amendment.**

Mollie Joan Ashton v. Nicholas Allan Brock, Todd Gohlman, Joel Congdon and John Nordyke, No. 14-1257 (Iowa Court of Appeals, filed June 10, 2015.) **Officers not liable for not preventing harm to victim.**

State v. William James Vary, No. 14-0887 (Iowa Court of Appeals, filed July 9, 2015.) **Ex-probationer not entitled to credit for probation time because supervision was not by the department of correctional services.**

State v. Misbakh Aumemah Abbasi, No. 14-1576 (Iowa Court of Appeals, filed August 19, 2015.) **No power to order evaluation where determinate incarceration, not probation, is the sentence.**

State v. Vincent Lee Hanson, No. 14-1161 (Iowa Court of Appeals, filed October 14, 2015.) **OWI 3<sup>rd</sup> prison sentence cloaked with presumption of validity; sentence affirmed.**

State v. Lucas James Burbridge, No. 14-1324 (Iowa Court of Appeals, filed October 14, 2015.) **Probable cause to believe a lane change violation occurred; stop is valid.**

State v. Deyawna Leanett Taylor, No. 14-2075 (Iowa Court of Appeals, filed October 14, 2015.) **Driving while barred conviction affirmed; speedy trial waiver upheld although speedy trial time period had run.**

## ***Tama County***

Michael Young v. State, No. 13-1656 (Iowa Court of Appeals, filed February 11, 2015.) **Driving without a license is probably a 'criminal/prohibitory' law and not a 'civil/regulatory' law; defendant's 'early' license suspension did not prejudice him.**

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State v. Jonathan Brian Kissee, No. 14-0219 (Iowa Court of Appeals, filed January 28, 2015.) **'Heavy cracking' of windshield supports stop.**

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Charles Edward Davis v. State, No. 14-0420 (Iowa Court of Appeals, filed May 20, 2015.) **Post conviction relief for OWI 3<sup>rd</sup> as an habitual offender denied.**

State v. Ricky Lee Jackson, No. 15-0191 (Iowa Court of Appeals, filed December 23, 2015.)  
**Guilty plea knowing and voluntary; defendant knew the plea would waive his challenge to a traffic stop.**

### ***Worth County***

State v. Aaron Dwayne Gunderson, No. 14-0529 (Iowa Court of Appeals, filed January 14, 2015.)  
**DARE surcharge limited to certain statutes.**

### ***Wright County***

State v. Corey Vinton Putney, No. 14-0433 (Iowa Court of Appeals, filed March 25, 2015).  
**Eluding across county lines is a single offense; discussing facts of the case at sentencing is not relying upon 'unproven offenses', and a single act of eluding in three counties could have been charged in any of the counties, but could not be charged separately in all three.**

State v. David Edward Vrba, No. 14-0894 (Iowa Court of Appeals, filed October 14, 2015.)  
**Alcohol condition in probation—prohibiting presence at 'any location where alcohol or illegal drugs are present'—lessened on appeal; new prohibition restricts consumption or possession of any drug without a valid prescription.**