



# HIGHWAY SAFETY

LAW UPDATE



May 16, 2019

Office of the Prosecuting Attorneys Training Coordinator

Jan/Feb/March, 2019

## County Spotlight – Allamakee County

The third county spotlight is on Allamakee County. Allamakee County is the furthest county in the northeastern part of the state. Allamakee County borders Minnesota and Wisconsin. According to the 2010 census, Allamakee County has a population of 14,330.<sup>1</sup> Waukon is the largest town in Allamakee County and sits on Highway 9. Waukon is also the county seat; however, it was not the first county seat of Allamakee County. According to the Allamakee County website, the selections of its county seat were contentious. If you are interested in learning more, please checkout the History of Allamakee County at: <https://www.allamakee.us/history>.

Anthony Gericke is the Allamakee County Attorney. Mr. Gericke graduated from the Iowa State University with a degree in History. Mr. Gericke then attended the Creighton Law School, graduating in 1994. After graduating law school, Mr. Gericke worked in Minneapolis for over a decade at a financial institution.

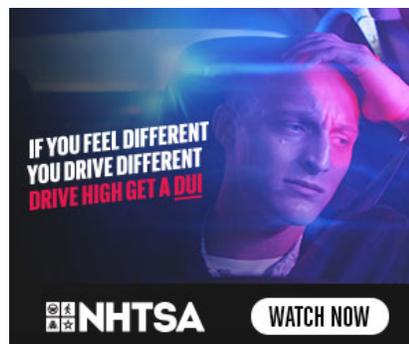
Mr. Gericke became the Allamakee County Attorney on January 1, 2019. Prior to becoming the county attorney, Mr. Gericke was an assistant Allamakee County Attorney for approximately 2 years. Mr. Gericke is a full-time county attorney and there is one assistant county attorney (part-time), Jill Kistler, in the office. Prior to January 2019, Jill Kistler was the county attorney for 8 years.

Allamakee County has multiple law enforcement agencies, including the Allamakee Sheriff’s Office, Lansing Police Department, Postal Police

Department, and Waukon Police Department. The Iowa State Patrol and Iowa DOT also provide law enforcement services in Allamakee County. In 2017, there were 919 traffic convictions<sup>2</sup> and 43 OWI convictions in Allamakee County according to Division of Criminal & Juvenile Justice Planning<sup>3</sup>.

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<sup>1</sup> <https://www.census.gov/quickfacts/fact/table/allamakeecountyiowa/PSST045217>

<sup>2</sup> “Convictions include all charges resulting in a conviction, including deferred judgments. Cases involving multiple charges may also involve multiple convictions, and each of those individual convictions are included in the results. Local ordinances are not included.”

<https://disposedcharges.iowa.gov/asp/glossary.asp>

<sup>3</sup> <https://disposedcharges.iowa.gov/>

## Commercial Drivers' License (CDL) Monograph<sup>4</sup>

Have you ever had a question on CDLs but you did not know where to look for answers? In 2017, the National District Attorneys Association (NDAA) and the National Traffic Law Center, with contributions from other agencies and individuals published the Second Edition of [Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations](#).<sup>5</sup> This monograph explains the numerous federal regulations governing CDLs. The monograph discusses: licensing requirements, driver responsibilities (e.g., safety inspections and hours of service), motor carriers' responsibilities, prosecuting CDL violations, and other areas.<sup>6</sup> If you are interested in learning more about CDLs, you can download the .pdf, along with other great materials, on NDAA's website: <https://ndaa.org/resources/publications/>.

## A Deferred Judgment on an OWI for a CDL Driver . . . Not So Fast

Imagine a defendant has been charged with an OWI first offense with a .10 BAC and is otherwise deferred eligible. Before a prosecutor makes a plea offer of a deferred judgment, they had better check one more thing—whether the defendant has a CDL (commercial driver's license). If the defendant has a CDL, they are not eligible for a deferred judgment pursuant to 49 CFR §384.226. 49 CFR §384.226 provides:

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.<sup>7</sup>

The State of Iowa could face a loss of funds if 49 CFR §384.226 is violated.<sup>8</sup> Although Iowa does not have an equivalent statute to 49 CFR §384.226, all prosecutors need to be aware of the federal “anti-masking” statute when making plea deals.

## “April Was National Distracted Driving Awareness Month”<sup>9</sup>

Smartphones can make our lives so much easier. Smartphones also can keep us connected no matter what activity we are doing, including while we are driving. But remember, 5 seconds is how long a driver's eyes leave the road to send or read a text message.<sup>10</sup> One football field (100 yards) is how long that same driver will travel in those 5 seconds if they are traveling at 55 mph.<sup>11</sup>

<sup>4</sup> “a detailed written study of a single specialized subject or an aspect of it” ([https://www.google.com/search?source=hp&ei=VBx0XM\\_5BeeZjwSRu4CICg&q=monograph&btnK=Google+Search&oq=monograph&gs\\_l=psy-ab.3..0i10.333.2039..2387...0.0..0.97.698.9.....0....1..qws-wiz.....0..0i131.uUDfp8\\_1HfQ](https://www.google.com/search?source=hp&ei=VBx0XM_5BeeZjwSRu4CICg&q=monograph&btnK=Google+Search&oq=monograph&gs_l=psy-ab.3..0i10.333.2039..2387...0.0..0.97.698.9.....0....1..qws-wiz.....0..0i131.uUDfp8_1HfQ))

<sup>5</sup> [https://ndaa.org/wp-content/uploads/CDLMono\\_REV2017\\_FinalWeb-1.pdf](https://ndaa.org/wp-content/uploads/CDLMono_REV2017_FinalWeb-1.pdf)

<sup>6</sup> [https://ndaa.org/wp-content/uploads/CDLMono\\_REV2017\\_FinalWeb-1.pdf](https://ndaa.org/wp-content/uploads/CDLMono_REV2017_FinalWeb-1.pdf) (page ii)

<sup>7</sup> <https://www.law.cornell.edu/cfr/text/49/384.226>

<sup>8</sup> <https://www.law.cornell.edu/cfr/text/49/384.401>

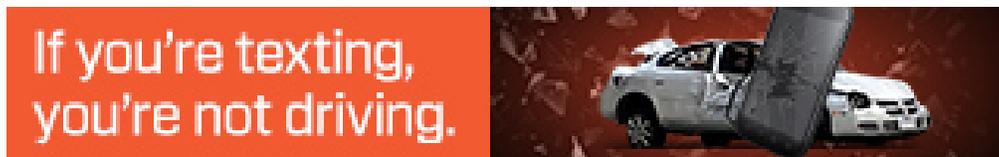
<sup>9</sup> <https://www.trafficsafetymarketing.gov/get-materials/distracted-driving/u-drive-u-text-u-pay>

<sup>10</sup> <https://www.nhtsa.gov/risky-driving/distracted-driving>

<sup>11</sup> <https://www.nhtsa.gov/risky-driving/distracted-driving>

In 2016, distracted driving claimed over 3,400 lives.<sup>12</sup> According to the Iowa Justice Data Warehouse, there were 972 convictions (18 years old or above) in 2017 and 1,706 in 2018 for a violation of Iowa Code section 321.276. “Distracted driving is any activity that diverts attention from driving, including talking or texting on your phone, eating and drinking, talking to people in your vehicle, fiddling with the stereo, entertainment or navigation system—anything that takes your attention away from the task of safe driving.”<sup>13</sup> To try and combat distracted driving, Iowa Code section 321.276 prohibits drivers from texting while driving.<sup>14</sup> Furthermore, under Iowa Code section 707.6A (Homicide or serious injury by vehicle), texting and driving is considered “prima facie evidence that the person was driving the motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property[.]”<sup>15</sup>

**Help remind everyone that distracted driving is dangerous!**



## **Iowa Acts of Interest to Law Enforcement**

**REMINDER**, it is not too late to register for the 2019 Iowa Acts of Interest to Law Enforcement Workshops!

The 2019 Iowa Acts of Interest to Law Enforcement Workshops are scheduled for:

**June 19, 2019** – Radisson Hotel & Conference Center – Coralville, Iowa

**June 20, 2019** – Prairie Meadows Hotel – Altoona, Iowa

The registration form and agenda are included at the end of the newsletter.

## **Opinions of the United States Supreme Court**

**Timbs v. Indiana**, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, \_\_\_ L.Ed.2d \_\_\_, (2/20/2019), No. 17-1091. **The Eight Amendment provides citizens protections from excessive fines, including in civil forfeiture cases.** The defendant pled guilty in “state court to dealing in a controlled substance and conspiracy to commit theft.” The defendant was sentenced to home detention and probation. The defendant was also ordered to pay \$1,203.00 in fines and costs. When the defendant was arrested, the police seized his vehicle, valued at approximately \$42,000.00. The defendant had purchased the vehicle with insurance proceeds after his father passed away. The State initiated an in rem civil forfeiture of the defendant’s vehicle, arguing it was used to transport drugs. The Indiana trial court found that the defendant’s vehicle was used to commit a crime, but denied the State’s forfeiture request. The trial court determined the vehicle had recently been purchased and the value (approximately \$42,000.00) was over four times that of the maximum allowable penalty (\$10,000.00) the defendant could have received. The trial court held the forfeiture of the vehicle “would be grossly disproportionate to the gravity of Timbs’s offense, hence unconstitutional under the Eighth

<sup>12</sup> <https://www.nhtsa.gov/risky-driving/distracted-driving>

<sup>13</sup> <https://www.nhtsa.gov/risky-driving/distracted-driving>

<sup>14</sup> <https://www.legis.iowa.gov/docs/code/321.276.pdf>

<sup>15</sup> <https://www.legis.iowa.gov/docs/code/707.6a.pdf>

Amendment's Excessive Fines Clause." The trial court's decision was affirmed by the Court of Appeals of Indiana, but it was reversed by the Indiana Supreme Court. The defendant then appealed to the U.S. Supreme Court. The U.S. Supreme Court held the Eight Amendment under the United States Constitution provides citizens protections from excessive fines, including in civil forfeiture cases. Under Austin v. United States, 509 U.S. 602 (1993), "civil in rem forfeitures are fines for purposes of the Eighth Amendment when they are at least partially punitive." The Indiana Supreme Court's decision was vacated and the case remanded.

## **Opinions of the Iowa Supreme Court**

***Muscatine County State v. Robert Arthur Davis***, \_\_\_ N.W.2d \_\_\_ (Iowa 1/18/2019) No. 17-0637. **The defendant's 804.20 rights were not triggered until he was "arrested and brought from the sally port to the jail's intake room."** A deputy responded to a motor vehicle crash and due to the weather conditions only had the defendant perform the horizontal-gaze-nystagmus (HGN) test. The deputy informed the defendant he needed to transport him to the jail to perform the remaining SFSTs in a controlled environment because of the weather conditions. Prior to leaving the area, the defendant advised his wife to contact his attorney. Once inside the deputy's vehicle, the deputy read defendant his *Miranda* rights, but the deputy did not put him in handcuffs. The defendant asked to consult with his wife, but was denied at that time. The deputy obtained defendant's cellphone from his wife and informed defendant that he would give it to him once they were at the jail. The defendant did not ask during the trip to the jail to call his wife or attorney from his cellphone. Once they arrived at the jail, the deputy had the defendant perform two more SFSTs in the sally port. The deputy then placed the defendant under arrest for OWI, walked him to the intake room, and allowed him to make a phone call. The defendant filed a motion to suppress arguing his 804.20 rights were violated prior to the SFSTs being administered. Held, the defendant's 804.20 rights were not violated; the sally port was not a place of detention, it was a place used for testing (SFSTs). A defendant's 804.20 rights are triggered after two conditions: (1) arrest or restraint of liberty (i.e., in custody) and (2) "arriving at the place of detention." The Court found that "the sally port was not a 'place of detention' under 804.20 (the defendant's "freedom was not any more restricted there than it would have been at the scene of the accident"). The Court noted that you should read State v. Moorehead, 699 N.W.2d 667 (Iowa 2005) with care.

***Linn County Behm, et. al., v. City of Cedar Rapids and Gatso USA, Inc.***, \_\_\_ N.W.2d \_\_\_ (Iowa 1/25/2019) No. 16-1031. **Automated speed cameras are constitutional.** Six motor vehicle owners filed suit against the City of Cedar Rapids and Gatso USA, Inc., challenging the constitutionality of the City's automated traffic enforcement (ATE) system (automated speed cameras on the highway) and the subsequent issuance of municipal infractions. The Iowa Supreme Court evaluated the municipal ordinance for due process, preemption, equal protection, privileges and immunities, unlawful delegation of police powers, and unjust enrichment violations, and found no violation nor a private cause of action, granting summary judgment in favor of the City and Gatso, USA. It is noted that the Iowa Supreme Court was evenly divided on the "plaintiffs' challenge asserting unlawful delegation as a result of calibration . . . and, therefore, the district court judgment [was] affirmed as a matter of law" regarding that issue.

***Floyd County State v. Jeffrey John Myers***, \_\_\_ N.W.2d \_\_\_, (Iowa filed 03/08/2019) No. 16-2177. **"Initial" positive screen for drugs is not sufficient evidence for conviction without confirmation under the 321J.2(1)(c) alternative, even coupled with officer testimony concerning signs of impairment.** The defendant was convicted of OWI following a bench trial on the minutes of testimony. The minutes included a toxicology report of a positive "initial" screen for drugs, which stated that the screen indicates the "possible presence" of a controlled substance and that confirmation for specific drugs would follow. No confirming reports were introduced. The trial court evaluated the evidence under both the "presence of a

controlled substance” 321J.2(1)(c), and “under the influence” 321J.2(1)(a) alternatives. The trial court orally found the defendant guilty due to a “presence of a controlled substance” in the toxicology report. The trial court entered a written order finding the defendant guilty of 321J.2, but did not specify which subsection. The defendant appealed and challenged the sufficiency of the evidence, claiming that state did not prove “the presence of a controlled substance in his system.” The Court of Appeals found there was no requirement of a confirmation test and “the detectable amounts of controlled substances by the initial test provided sufficient evidence to support a conviction for OWI.” The defendant then appealed to the Iowa Supreme Court. The Iowa Supreme Court found that according to the trial transcript, the trial court found the defendant guilty of 321J.2(1)(c) (“presence of a controlled substance”); therefore, it only determined whether there was sufficient evidence to support the conviction under 321J.2(1)(c). Held, “the results of the initial testing of the urine specimen, alone, is insufficient to satisfy the burden of proof[.]” The Court found that without the confirmation test results, they were “left with doubts about its [(the initial test’s)] accuracy, and those doubts mean the initial test falls short of establishing guilt beyond a reasonable doubt.” The Court stated: “To support a conviction under the statute, the test must identify an amount of a controlled substance in a blood or urine sample beyond a reasonable doubt.” The Court noted that the defendant’s conduct and behavior (e.g., bloodshot eyes, SFSTs) are significant when prosecuting under the “under the influence” alternative (321J.2(1)(a)); however, under the “presence of a controlled substance alternative (321J.2(1)(c)), the only question is whether the report shows a “presence of a controlled substance[.]” Thus, “the plain language of Iowa Code section 321J.2(1)(c) cannot be satisfied by relying on the circumstantial evidence of impairment.”

*Black Hawk County State v. Justin Andre Baker*, \_\_\_ N.W.2d \_\_\_, (Iowa 03/29/2019) No. 17-0622. **Sufficient evidence to support reasonable suspicion to stop the defendant’s vehicle.** After being previously informed that the defendant was arrested seven months earlier in Nevada with large amounts of marijuana in the vehicle, a law enforcement investigator began monitoring the residence where the defendant was living. Two weeks prior to the traffic stop, the investigator observed the defendant acting suspicious near the residence. Law enforcement then received an anonymous tip that the defendant had returned with a lot of marijuana. The day of the traffic stop the investigator observed: the defendant leave the residence and drive into an alley; a person reach into the passenger side window of the defendant’s vehicle; and quickly withdraw his hand and placed something in his pocket. After these observations and the investigator’s prior knowledge of the defendant’s history, the investigator had a police sergeant initiate a traffic stop. The defendant filed a motion to suppress arguing the stop was not supported by reasonable suspicion. Held, based on “the facts known to the officer under the totality of the circumstances, we find the officer had reasonable suspicion to conduct an investigatory stop of Baker in his vehicle.”

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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### (Recent Unpublished Decisions Arranged by County)

*Black Hawk County State v. Monte Allen Apfel*, No. 18-0440 (Iowa Court of Appeals, filed January 9, 2019). **The officer had probable cause to stop the defendant after his vehicle crossed the center line.** A police officer initiated a traffic stop on the defendant’s vehicle after observing the vehicle cross the center line once. The defendant argued the dash cam video did not show his vehicle crossed the center line. Held, “[t]he traffic stop was justified because probable cause existed to believe a traffic violation had occurred.”

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**Black Hawk County [State v. Monte Allen Apfel](#)**, No. 18-0440 (Iowa Court of Appeals, filed January 9, 2019). **The traffic stop was not unlawfully extended to wait for a drug dog to arrive.** A police officer initiated a traffic stop on the defendant's vehicle after observing the vehicle cross the center line once. The officer informed the defendant of the reason for the stop. The officer requested proof of insurance and registration. The defendant had purchased the vehicle recently and had the title, but he did not have: proper plates (the plates on the car were registered to a different vehicle owned by his wife), proof of insurance, or registration. The defendant was unable to identify the seller of the vehicle. The officer began to investigate whether the defendant had the authority to drive the vehicle. During the investigation, the officer noticed a duffle bag in the back seat and requested consent to search the vehicle, which was denied. The officer also discovered the defendant had a history of drug offenses and the officer called for a canine unit. While the officer was attempting to determine the ownership of the vehicle, a canine unit conducted a dog sniff on the outside of the vehicle and alerted on an open window. A subsequent search of the vehicle uncovered contraband. The defendant argued the officer should have ended the traffic stop after the purpose of the stop (violation for crossing the center line) had been resolved. Held, the traffic stop was not unlawfully extended by the officer. The investigation into the ownership of the vehicle was ongoing beyond the time it took for the canine to arrive at the scene and conduct the dog sniff. Furthermore, probable cause to search the vehicle was established by the canine alert of controlled substances.

**Black Hawk County [State v. Monte Allen Apfel](#)**, No. 18-0440 (Iowa Court of Appeals, filed January 9, 2019). **Dog sniff is not a search under the Federal or Iowa Constitutions.** During a traffic stop and while a police officer was attempting to determine the ownership of the vehicle, a canine unit arrived, conducted a dog sniff on the outside of the defendant's vehicle and alerted on an open window. The defendant argued the officer needed a search warrant or probable cause to conduct a dog sniff. Held, "[a] dog sniff outside the vehicle is not a search within the meaning of the Iowa or federal constitutions."

**Black Hawk County [State v. Jeffrey Michael Moeller](#)**, No. 17-1764 (Iowa Court of Appeals, filed February 6, 2019). **Proper foundation was presented to allow a witness to give an opinion about the defendant's intoxication.** During the defendant's OWI 3<sup>rd</sup> trial, a witness (worked as a firefighter and detention officer) testified that the defendant's breath smelled of alcohol and he had bloodshot and watery eyes. The witness testified he has frequent interactions and had some training with intoxicated people. The witness then gave an opinion as to whether the defendant "was under the influence of alcohol[.]" A jury convicted the defendant of OWI 3<sup>rd</sup>. The defendant appealed and argued the district court abused its discretion by allowing the witness to give an opinion about his intoxication. Held, due to the witness's training and personal observations of the defendant, there was no error in allowing the witness to express his opinion about the defendant's sobriety.

**Black Hawk County [State v. Jeffrey Michael Moeller](#)**, No. 17-1764 (Iowa Court of Appeals, filed February 6, 2019). **Substantial evidence to support the defendant's conviction for OWI 3<sup>rd</sup>.** The defendant was involved in a one car crash, on a clear night, with no obstructions on the road, no signs the defendant swerved or attempted to stop, and two witnesses observed an odor of alcohol, blood shot, watery eyes, and opined that the defendant "was under the influence of alcohol." Held, there was substantial evidence that the defendant was involved in the crash because he was under the influence of alcohol.

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**Black Hawk County [State v. Tracy Adam Thompson](#)**, No. 17-2003 (Iowa Court of Appeals, filed February 20, 2019). **No abuse in discretion when the court informs the defendant prior to trial of the maximum sentence he could receive if found guilty.** The defendant was charged with assault on persons in certain occupations (two counts), interference with official acts, and public intoxication 3<sup>rd</sup> offense. At the pretrial conference, the court informed the defendant what the worst case sentence would be if he was convicted. The defendant rejected the plea offer, was convicted at trial, and then sentenced to prison. The defendant appealed arguing the court had suggested his sentence prior to trial. Held, the court did not abuse its discretion; it merely attempted to inform the defendant of all his options before going to trial.

**Black Hawk County [State v. Tracy Adam Thompson](#)**, No. 17-2003 (Iowa Court of Appeals, filed February 20, 2019). **Court did not rely on the defendant's rejection of the plea offer as a sentencing factor.** The defendant was charged with assault on persons in certain occupations (two counts), interference with official acts, and public intoxication 3<sup>rd</sup> offense. At the pretrial conference, the court informed the defendant what the worst case sentence would be if he was convicted at trial. The defendant rejected the plea offer (treatment) and was then convicted at trial. At sentencing, the defendant requested treatment; however, the judge stated that the defendant was offered treatment prior to trial, but he had rejected the plea offer. The court then listed the reasons for the sentence it imposed. The defendant appealed arguing the court had improperly used his refusal to accept a plea offer in deciding his sentence. Held, the court's statement about treatment was not considered as sentencing factor, but a remark regarding the defendant's argument that treatment was an adequate sentence.

**Black Hawk County [Marquis Brumfield v. State](#)**, No. 18-0453 (Iowa Court of Appeals, filed March 20, 2019). **The defendant was not prejudiced by counsel's failure to challenge that the consent to search was made involuntarily.** The defendant voluntarily consented to a search of his vehicle. Held, although the defendant's counsel breached an essential duty by not challenging the voluntariness of the consent search, the defendant failed to show he was prejudiced because the officers would have been able to search the vehicle under the automobile exception.

**Bremer County [State v. Robert William Hampton](#)**, No. 18-0061 (Iowa Court of Appeals, filed February 6, 2019). **An officer cannot exceed the scope of the defendant's consensual search, unless the contraband is readily apparent.** After a lawful traffic stop, the deputy had the defendant exit the vehicle. The deputy then asked for the defendant's consent to perform a pat-down search. The defendant "consented to the pat-down search but only for weapons." During the pat-down, the deputy "manipulated the contents of [the defendant's] pocket and removed a pill container." Held, the deputy's search of the defendant's pocket and container exceeded "the scope of the consensual pat-down." The Court found the defendant's consent to the pat-down search for weapons was voluntarily under the totality of the circumstances, but the deputy's search was limited by the defendant's limitations (for weapons). Although the deputy is not required to ignore "immediately apparent contraband" discovered during a pat-down search, the deputy is not allowed to manipulate an object to determine if it is contraband under the plain-feel doctrine. Conviction vacated and the case was remanded.

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**Cerro Gordo County [State v. Angelia Maurice Schultz](#)**, No. 18-0818 (Iowa Court of Appeals, filed January 9, 2019). **Counsel not ineffective for failing to insist the plea agreement be condition on the court's acceptance.** The defendant pled guilty to OWI 3<sup>rd</sup> or subsequent offense. During the plea taking, the defendant was advised that the plea agreement was not binding on the court. At sentencing the, the court did not follow the plea agreement. The defendant appealed, arguing her counsel was ineffective for not insisting the plea agreement be conditioned on the court accepting it. Held, the defendant's counsel was not ineffective for failing to require the plea be binding on the court; the court could have rejected the plea even if it was conditioned on the court accepting it. Judgment and sentence affirmed.

**Clay County [State v. David Person](#)**, No. 18-0676 (Iowa Court of Appeals, filed February 6, 2019). **A probation fee to the sheriff's department is not authorized.** The defendant was convicted of OWI 1<sup>st</sup> and ordered to pay \$150.00 probation fee to the sheriff's department. The defendant appealed, arguing it was an illegal sentence because the sheriff's department does not have the authority to receive a probation fee. Held, a probation fee to the sheriff's department is not authorized by the Iowa Code. "However, such payment is authorized when a person is on probation with the judicial district department of correctional services." The conviction was affirmed, but the sentence was vacated in part and remanded.

**Delaware County [State v. Dean William Dempster, III](#)**, No. 18-0673 (Iowa Court of Appeals, filed February 20, 2019). **An application to amend a restitution plan that was not appealed is an "impermissible collateral attack on a final order."** The defendant was ordered to pay \$150,000.00 in victim restitution after a plea of guilty to vehicular homicide. The defendant filed for offset for insurance money paid both by his own insurer and the vehicle owner's insurer. A hearing was held on July 12, 2016 and the offset for both amounts was applied. A month later, the victim's parents sent a letter to the court asserting that the defendant should not have received the offset for monies paid by the owner of the vehicle's insurer. Without hearing, the court then "clarified" its prior restitution order and only applied the amount paid by the defendant's insurer, leaving the defendant with an amount due. Defendant filed a motion to set aside the amended order, which was denied without hearing. Defendant claimed on appeal that he was denied due process and that the victim's parents had no standing to challenge the first restitution order. In [State v. Dempster](#), No. 16-1756, 2017 WL 3525277 (Iowa Ct. App. Aug. 16, 2017), the Court of Appeals vacated and reversed the district court's clarifying order (holding that the state, not the victim's parents, had a personal or legal interest in the punishment defendant received and the restitution plan under Iowa Code 910.7(1), and the parents lacked standing because the victim's estate and the parents in their individual capacity had already settled their claims against the defendant). The State then filed an application to modify the plan of restitution to remove any credit from the third-party (vehicle owner's) insurer payments. The district court granted the State's application and the defendant appealed. Held, the State's application to change the plan of restitution was an "impermissible collateral attack of a final order." The decision of the district court was reversed. The Court of Appeals noted in a footnote, that Iowa Code section 910.3B was amended after the July 12, 2016 order and now precludes the reduction of most third-party insurance payments.

**Guthrie County [State v. Jonah Craig Chinn](#)**, No. 18-0756 (Iowa Court of Appeals, filed January 9, 2019). **Conviction affirmed, but the defendant's claim of ineffective assistance of counsel was preserved.** The defendant was charged with driving while barred, OWI 3<sup>rd</sup>, and possession of cocaine. Pursuant to a plea agreement, the defendant agreed to plead guilty to OWI 3<sup>rd</sup> and the State would dismiss the other two counts

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and “not pursue the habitual felon enhancement which was filed in this case[.]” even though the habitual felon enhancement had not actually been filed. When the court accepted the defendant’s plea of guilty, it advised him of the rights he was giving up. The defendant did not file a motion in arrest of judgment to challenge his plea of guilty. Later the defendant appealed and argued his counsel was ineffective because he did not understand the charges or the plea agreement. Held, the record was inadequate to determine if the defendant’s counsel was ineffective, the conviction was affirmed, but the claim of ineffective assistance was preserved.

**Johnson County [State v. Douglas Kent Smith](#)**, No. 18-0329 (Iowa Court of Appeals, filed January 9, 2019). **Factual basis to support plea of guilty.** The defendant pled guilty to OWI 3<sup>rd</sup> or subsequent offense. The defendant then appealed and argued his counsel was ineffective for letting him plead guilty without a factual basis. Held, the record (plea colloquy and minutes of testimony) established a factual basis to support the defendant’s plea of guilty.

**Jones County [State v. Roy Tompkins](#)**, No. 18-0304 (Iowa Court of Appeals, filed February 6, 2019). **Counsel was not ineffective because the substance abuse evaluation and drunk driving course requirements are collateral consequences.** The defendant entered an *Alford* plea to OWI 2<sup>nd</sup>. Held, the sentencing court’s failure to advise the defendant that he was going to be required to complete a substance abuse evaluation and a drunk drivers course “did not affect the knowing and voluntary nature of his plea[.]” counsel was not ineffective.

**Marshall County [State v. Harold Lathrop](#)**, No. 18-0446 (Iowa Court of Appeals, filed January 23, 2019). **No abuse in discretion in not stating reasons for the sentence when the court incorporated and followed the plea agreement.** The defendant pled guilty to driving while barred and theft pursuant to a plea agreement. The sentencing court imposed a sentence consistent with the plea agreement. The defendant appealed arguing that the sentencing court did not provide sufficient reasons for his sentence because the sentencing court was not bound by the plea agreement. Held, the sentencing court, even though not bound by the plea agreement, did not abuse its discretion in sentencing the defendant according to the plea agreement. Under *State v. Snyder*, 336 N.W.2d 728 (Iowa 1983), if the sentencing court gives effect to the plea agreement, then there is no abuse in discretion for not stating sufficient reasons for the sentence. It was noted that the *Snyder* court did say it was good practice to state reasons for a sentence, even when following a plea agreement.

**Marshall County [State v. Harold Lathrop](#)**, No. 18-0446 (Iowa Court of Appeals, filed January 23, 2019). **The court does not have to determine ability to pay until the plan of restitution is complete.** The defendant pled guilty to driving while barred and theft pursuant to a plea agreement. The sentencing court imposed a sentence consistent with the plea agreement. The court later entered an order that the defendant was to pay a set amount of victim restitution and any jail fees certified by the sheriff. The court did not determine if the defendant had a reasonable ability to pay the restitution. Later the sheriff filed a reimbursement claim, but there was no subsequent permanent order setting out a full plan of restitution. The defendant appealed arguing that court should have determined his reasonable ability to pay when it ordered restitution. Held, the court does not have to determine the defendant’s ability to pay until the plan of restitution is complete; therefore, his appeal was not ripe.

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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**Marshall County** [State v. Russell Gentry Jr.](#), No. 18-0052 (Iowa Court of Appeals, filed February 6, 2019). **Pacing and visual estimation of the defendant's speed provided probable cause to stop the vehicle.** An officer stopped the defendant's vehicle after visually estimating the vehicle was going 30 miles per hour and pacing the vehicle at 33 miles per hour. The officer had training on visually estimating speeds, but not pacing. The defendant was subsequently convicted of driving while barred (DWB) and other drug offenses. The defendant appealed the denial of his motion to suppress, arguing the stop of his vehicle was unconstitutional. Held, based on the officer's observations (pacing and visual estimation), there was a reasonable inference the defendant was exceeding the speed limit, which established probable cause to stop the defendant's vehicle.

**Muscatine County** [State v. Michelle Brewer](#), No. 18-0529 (Iowa Court of Appeals, filed March 6, 2019). **There was sufficient evidence to infer the defendant operated a motor vehicle while impaired.** An officer found the defendant in the driver's seat of her vehicle that was parked on a corner with a portion of the back in the intersection. The vehicle was off and the keys were in the defendant's purse. The officer observed an odor of alcoholic beverage, slurred speech, red eyes, and the defendant admitted to consuming alcohol. The officer also discovered what appeared to be a fresh container of food in the vehicle and the defendant admitted to driving. The defendant refused a PBT because she indicated she would not pass, but she did take the three SFSTs, which showed signs of intoxication. The defendant was convicted of OWI and appealed arguing the State failed to prove she operated the motor vehicle. Held, there was sufficient evidence to infer the defendant operated a motor vehicle while impaired.

**Plymouth County** [State v. Lonnie L. Richardson](#), No. 18-0555 (Iowa Court of Appeals, filed March 6, 2019). **Counsel not ineffective; the defendant voluntarily, intelligently, and knowingly waived jury trials.** The defendant waived jury trials and was convicted of DWB in two separate cases. Prior to each trial, the defendant filed a written waiver of jury trial, which the judge briefly addressed with the defendant. Held, the defendant's counsel was not ineffective for failing to object to the jury trial waivers; the district court substantially complied with [State v. Liddell](#), 672 N.W.2d 805 (Iowa 2003) and Iowa Rules of Criminal Procedure 2.17, when the district court incorporated the written waivers during the oral waiver of jury trial.

**Plymouth County** [State v. Lonnie L. Richardson](#), No. 18-0555 (Iowa Court of Appeals, filed March 6, 2019). **The State does not have to prove notice in a driving while barred (DWB) case; counsel not ineffective.** The defendant was convicted of DWB in two separate cases. The defendant appealed his conviction and argued his counsel was ineffective for not moving for a judgment of acquittal because the State failed to prove the DOT mailed him notice he was barred in the first DWB case. Held, under [State v. Williams](#), 910 N.W.2d 586 (Iowa 2018), the State does not have to prove notice in a DWB case; no ineffective assistance of counsel for not moving for a judgment of acquittal.

**Plymouth County** [State v. Lonnie L. Richardson](#), No. 18-0555 (Iowa Court of Appeals, filed March 6, 2019). **The defendant's counsel was not ineffective for not arguing the necessity defense.** The defendant waived jury trials and was convicted of DWB in two separate cases. The defendant was charged with DWB in the second case as he drove away from trial in the first DWB case. The defendant appealed arguing his counsel was ineffective for not arguing the necessity defense (he had to drive to court or he would be unable to present a defense and would lose his liberty) in the second case. Held, the defendant's

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counsel was not ineffective for not arguing the necessity defense. The defendant had over a month to plan for transportation and there was no “immediate danger.”

**Polk County [State v. Donovan Mason Edwards](#)**, No. 17-2007 (Iowa Court of Appeals, filed January 9, 2019). **No abuse of discretion in denying the defendant’s motion for a new trial.** After a jury convicted the defendant of OWI 3<sup>rd</sup>, the defendant argued the verdict was contrary to the weight of the evidence regarding his operation of the vehicle and he moved for a new trial. Held, no abuse of discretion in denying the defendant’s motion for a new trial “because the verdict was not contrary to the weight of the evidence[.]”

**Polk County [State v. David Shelledy](#)**, No. 18-0868 (Iowa Court of Appeals, filed January 23, 2019). **No abuse in discretion for denying the defendant’s motion to continue sentencing.** After the defendant was charged with OWI 3<sup>rd</sup> and driving while revoked, he obtained three substance abuse evaluations (two after he pled guilty to OWI 3<sup>rd</sup>). The last evaluation recommended inpatient treatment. The defendant was scheduled to begin inpatient treatment in July 2018, so he filed a motion to continue the May 14, 2018 sentencing hearing. The court denied his motion to continue because the defendant had sufficient time to complete any treatment. Held, the defendant failed to show “good and compelling cause” to support his motion to continue.

**Polk County [State v. David Shelledy](#)**, No. 18-0868 (Iowa Court of Appeals, filed January 23, 2019). **The court’s sentence was not unreasonable.** The defendant pled guilty to OWI 3<sup>rd</sup>. The PSI recommended the minimum sentence (30 days in jail, the remaining suspended). The defendant was sentenced “to an indeterminate term of imprisonment not to exceed five years.” Held, the court’s sentence was reasonable and there was no abuse of discretion. The Court of Appeals noted a PSI is not binding on the sentencing court. [State v. Hopkins](#), 860 N.W.2d 550 (Iowa 2015).

**Polk County [State v. Kristen Frances Harriman](#)**, No. 18-0299 (Iowa Court of Appeals, filed February 20, 2019). **Counsel was not ineffective for allowing the defendant to enter an *Alford* plea to theft of a truck.** The defendant and another were discovered in Missouri with a truck and other property that had been stolen from an Iowa golf course. The defendant entered an *Alford* plea to theft 2<sup>nd</sup> (truck) and theft 3<sup>rd</sup> (other property). Held, sufficient evidence to support the theft charges against the defendant and counsel was not ineffective for allowing the defendant to enter an *Alford* plea to the theft charges.

**Polk County [State v. Hector Martinez Lobo](#)**, No. 17-1768 (Iowa Court of Appeals, filed February 20, 2019). **Weaving, crossing solid white line and dashed white lines, and leaving turn signal on for an extended period, all in the early morning created reasonable suspicion to stop the vehicle.** In the early morning, an officer observed the defendant’s vehicle drive up an onramp and wait to merge onto the Interstate until the last moment, causing the defendant’s vehicle to travel over solid white lines. The defendant then left his turn signal on for an extended period of time (over forty seconds) and weaved multiple times over the solid white line and dashed white lines. The officer initiated a traffic stop and after an investigation arrested the defendant for OWI. The defendant appealed the denial of his motion to suppress and argued the officer did not have probable cause nor reasonable suspicion to stop his vehicle. Held, there was “a reasonable belief criminal activity may be afoot” based on the totality of the circumstances; thus the officer had reasonable suspicion to initiate the traffic stop. The Court of Appeals declined to address whether the officer had probable cause to stop the vehicle.

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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**Polk County [State v. Joseph Edward Brekke](#)**, No. 18-0620 (Iowa Court of Appeals, filed March 6, 2019). **There was substantial evidence to support the defendant's conviction for OWI.** An officer discovered the defendant at an intersection passed out in the driver's seat and the vehicle still on. After the defendant was woken up, he admitted to drinking and being on numerous medications. The officer also observed an odor of alcohol beverage, bloodshot and watery eyes, unsteady balance, and slurred speech. The defendant took the HGN test, which showed intoxication, but was unable to complete the other SFSTs due to an injury. The defendant refused the PBT and after implied consent was invoked, he refused to provide a breath sample. The defendant was subsequently convicted by a jury of OWI. Held, there was substantial evidence that the defendant was "under the influence of alcohol or drugs or a combination of alcohol and drugs."

**Polk County [State v. Joseph Edward Brekke](#)**, No. 18-0620 (Iowa Court of Appeals, filed March 6, 2019). **There was substantial evidence that the defendant knowingly possessed cocaine.** An officer discovered the defendant at an intersection passed out in the driver's seat and the vehicle still on. The officer conducted an investigation and found a cigarette pack on the defendant that contained a credit/debit card with the defendant's name and cocaine. At trial, the defendant claimed that he found the cigarette pack in a bathroom and he did not look in it. The defendant was convicted of possession of a controlled substance (cocaine). Held, there was substantial evidence that the defendant knowingly possessed cocaine.

**Polk County [State v. Joseph Edward Brekke](#)**, No. 18-0620 (Iowa Court of Appeals, filed March 6, 2019). **There was substantial evidence that the defendant knowingly possessed alprazolam and hydrocodone, and the drugs were not from a valid prescription.** An officer discovered the defendant at an intersection passed out in the driver's seat and the vehicle still on. The officer conducted an investigation and discovered alprazolam and hydrocodone in the center console in a cellophane wrapper during a search of the defendant's vehicle. At trial, the defendant claimed that he had prior prescriptions for the drugs and did not realize he could not possess them after the prescriptions expired. The defendant also claimed he did not realize the prescription drugs were in the vehicle. The defendant was convicted of two counts of possession of controlled substances (alprazolam and hydrocodone). Held, there was substantial evidence that the defendant knowingly possessed alprazolam and hydrocodone, and the drugs were not from a valid prescription.

**Polk County [State v. Franklin Lee Harris](#)**, No. 18-0408 (Iowa Court of Appeals, filed March 6, 2019). **No ineffective assistance of counsel when the officer's report was included with the minutes of testimony.** The defendant was convicted of OWI 3<sup>rd</sup> and DWR (driving while revoked). The defendant appealed and argued his counsel was ineffective because the minutes of testimony did not summarize the officer's testimony and were therefore insufficient to put him on notice to further investigate. Held, no ineffective assistance of counsel when the officer's report was included with the minutes of testimony. The Court did not address but preserved the defendant's claims of ineffective assistance of counsel regarding plea negotiations and discovery for any postconviction relief claims.

**Polk County [Patrick Miller Webb, Jr. v. State](#)**, No. 18-0693 (Iowa Court of Appeals, filed March 20, 2019). **No ineffective assistance regarding any suppression issue.** The defendant was charged with multiple drug crimes after a traffic stop of his vehicle. The defendant's first attorney filed a motion to suppress, but prior to any ruling on the motion, he obtained a different attorney, pled guilty and was sentenced on one drug charge. Held, the defendant's attorney was not ineffective regarding the suppression issue.

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**Poweshiek County [State v. Frederic Hayer](#)**, No. 17-1951 (Iowa Court of Appeals, filed March 6, 2019). **There were reasonable grounds to invoke implied consent.** After a deputy stopped the defendant for expired registration, he observed an odor of marijuana (including on the defendant's breath), and the defendant admitted to using marijuana just prior to being stopped and being "a little bit" affected by it. The defendant then passed the SFSTs and the PBT. The deputy then invoked implied consent based on the defendant's admissions and the odor marijuana and obtained a urine sample, which tested positive for marijuana metabolites. The defendant filed a motion to suppress arguing the deputy did not have "reasonable grounds" to invoke implied consent, which was denied. After a jury trial, the defendant was convicted of OWI 1<sup>st</sup>, carrying weapons, and possession of marijuana. Held, there were reasonable grounds to invoke implied consent.

**Poweshiek County [State v. Frederic Hayer](#)**, No. 17-1951 (Iowa Court of Appeals, filed March 6, 2019). **No abuse in discretion, the state present sufficient evidence to establish chain of custody.** After a deputy stopped the defendant for expired registration, he observed an odor of marijuana (including on the defendant's breath), and the defendant admitted to using marijuana just prior to being stopped and being "a little bit" effected by it. The defendant then passed the SFSTs and the PBT. The deputy then invoked implied consent based on the defendant's admissions and the odor marijuana and obtained a urine sample. Although the urine sample did not contain the defendant's information, two criminalists from the lab testified how they handle identification issues. Held, "the district court did not abuse its discretion by finding the State met its burden for admission of the urine test and allowing the jury to determine what weight to give to the evidence."

**Scott County [State v. Toby Ryan Richards](#)**, No. 18-0675 (Iowa Court of Appeals, filed March 6, 2019). **Insufficient record to address ineffective assistance of counsel claim.** The defendant was convicted of DWB (driving while barred); however, he argued his counsel was ineffective for failing to put the plea agreement in writing. Held, the record was not adequate to address the ineffectiveness claim; conviction affirmed, but the ineffective assistance claim was preserved for any postconviction claim.

**Sioux County [State v. Benjamin DeJesus-Cruz](#)**, No. 17-1820 (Iowa Court of Appeals, filed March 20, 2019). **The defendant's claim for postconviction relief was preserved; conviction affirmed.** The defendant was stopped by law enforcement due to his erratic driving. While one of the officers was conducting an OWI investigation, the other officer determined the defendant's vehicle was illegally parked and would be impounded. Prior to impounding the vehicle, an officer conducted an inventory search and discovered four bags of methamphetamine. The defendant was found guilty of OWI and possession of methamphetamine with intent to deliver. The defendant appealed the denial of his motion to suppress arguing the inventory search and impoundment of his vehicle violated the Iowa Constitution and his counsel was ineffective for failing to challenge the search under the Iowa Constitution. Held, the record was insufficient to determine whether counsel was ineffective, but the defendant's claim was preserved for any postconviction relief; conviction affirmed.

**Story County [State v. Michelle M. Swenson](#)**, No. 17-1460 (Iowa Court of Appeals, filed January 9, 2019). **There was probable cause to search the vehicle, including the defendant's purse located in the vehicle, under the automobile exception.** After determining the driver of a vehicle was not supposed to be driving, a police officer approached and instructed the driver to exit the vehicle. The officer noticed a pocket knife

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on the driver, performed a pat down search, and discovered a methamphetamine pipe. The officer then ordered the defendant, who was a passenger in the vehicle, to exit so he could conduct a search of the vehicle. When the defendant exited, she left her purse on the passenger seat. The officer searched the vehicle, including the defendant's purse, and found methamphetamine and drug paraphernalia in her purse. The defendant appealed the denial of her motion to suppress and argued the officer did not have probable cause to search. Held, the officer's observations (discovering the methamphetamine pipe on the driver) were sufficient to establish probable cause to search the vehicle, including any containers in the vehicle (e.g., the defendant's purse), under the automobile exception.

**Story County [State v. Kevin Leon Poster II](#)**, No. 18-0217 (Iowa Court of Appeals, filed January 23, 2019). **Substantial evidence to establish the defendant was driving under the influence.** The defendant was stopped after running a stop sign and driving dangerously through a busy intersection. The defendant had an odor of alcohol on his breath, admitted to drinking beer within 90 minutes, and showed clues of impairment after standard field sobriety tests. While the defendant was signing the implied consent form, he asked multiple questions regarding the number of times blood or urine tests are given and how the police administer those tests. The officer never advised the defendant about the opportunity for an independent test under 321J.11 and the defendant provided a breath sample with a BAC of .138. The defendant filed a motion to suppress arguing his right to an independent test was violated. The defendant's motion was denied and he agreed to a trial on the minutes of testimony. The court found the defendant guilty under two different alternatives (BAC over .08 and under the influence of alcohol). Held, there was substantial evidence (driving behavior, SFSTs, and admission to consuming alcohol) to support the defendant's conviction for OWI for the under the influence alternative. The Court of Appeals declined to answer whether the defendant's 321J.11 rights were violated.

**Story County [State v. Ryan Dale Dunn](#)**, No. 18-0132 (Iowa Court of Appeals, filed March 6, 2019). **The defendant was not seized by the officers when they spoke outside his vehicle during a consensual encounter.** Early in the morning, two police officers stopped behind the defendant's vehicle at a gas pump after observing it sitting there with the door open for several minutes. The officers did not activate their emergency lights. The officer exited the patrol vehicle to check on the driver and met the defendant in the area between the two vehicles. The officer and the defendant had a conversation and the officer asked the defendant if he had any weapons, which the defendant replied he had a pistol concealed around his ankle. The defendant produced a permit to carry, but it had expired over two months prior. The officer then patted down the defendant, took his loaded firearm, and asked if there were any other firearms in the vehicle. The defendant told the officer there were magazines, but denied the officer's request to search the vehicle. After the officer handcuffed and put the defendant in the back of the patrol vehicle, the officer searched the defendant's vehicle and found another gun. The defendant was subsequently arrested and transported to the jail. While the defendant was being booked into the jail, the officer discovered methamphetamine on the defendant. The defendant filed a motion to suppress arguing after the officers checked on him, he was seized and should have been read his *Miranda* warnings prior to any further questions and the vehicle search was an unconstitutional warrantless search. The motion to suppress was denied, and the defendant appealed. Held, the defendant was not seized by the officers when they spoke outside his vehicle. The Court distinguished this case from [State v. Coleman](#), 890 N.W.2d 284 (Iowa 2017) and [Rodriguez v. United States](#), 135 S.Ct. 1609 (2015), because this case did not involve a traffic stop. The officer's request for

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identification did not change the consensual encounter to seizure. See State v. Reinders, 690 N.W.2d 78 (Iowa 2004).

**Story County State v. Ryan Dale Dunn**, No. 18-0132 (Iowa Court of Appeals, filed March 6, 2019). **Miranda warnings not required because the defendant was not seized.** Early in the morning, two police officers stopped behind the defendant's vehicle at a gas pump after observing it sitting there with the door open for several minutes. The officers did not activate their emergency lights. The officer exited the patrol vehicle to check on the driver and met the defendant in the area between the two vehicles. The officer and the defendant had a conversation and the officer asked the defendant if he had any weapons, which the defendant replied he had a pistol concealed around his ankle. The defendant produced a permit to carry, but it had expired over two months prior. The officer then patted down the defendant, took his loaded firearm, and asked if there were any other firearms in the vehicle. The defendant told the officer there were magazines, but denied the officer's request to search the vehicle. After the officer handcuffed and put the defendant in the back of the patrol vehicle, the officer searched the defendant's vehicle and found another gun. The defendant was subsequently arrested and transported to the jail. While the defendant was being booked into the jail, the officer discovered methamphetamine on the defendant. The defendant filed a motion to suppress arguing after the officers checked on him, he was seized and should have been read his *Miranda* warnings prior to any further questions and the vehicle search was an unconstitutional warrantless search. The motion to suppress was denied, and the defendant appealed. Held, *Miranda* warnings not required because the defendant was not seized.

**Washington County State v. Christopher James Beardshear**, No. 18-0608 (Iowa Court of Appeals, filed January 23, 2019). **Conviction affirmed, but the claim of ineffective assistance was preserved.** The defendant filed a written guilty plea to OWI 1<sup>st</sup>. In his written guilty plea, the defendant waived his presence, stated he understood the proceedings, and was not under the influence of any drugs. Later, the defendant appealed and argued that his counsel was ineffective for allowing him to plead guilty because he was on medication that prevented him from knowing what he was doing. Held, there was not enough of a record to evaluate the defendant's claim and the conviction was affirmed, but his claim of ineffective assistance was preserved.

**Woodbury County State v. Greg Mitchell Redden**, No. 18-0876 (Iowa Court of Appeals, filed January 9, 2019). **No abuse of discretion in sentencing the defendant in his absence after the defendant waived his presence and right to allocution.** The defendant pled guilty to OWI, assault on a peace officer, and criminal mischief in the 2<sup>nd</sup> degree. The defendant filed a written plea of guilty, which waived his presence and rights to allocution, on the charges of OWI and assault on a peace officer. The defendant argued he was denied his right to be present and for allocution at sentencing on the assault on a peace officer and OWI charges. Held, the district court did not abuse its discretion in sentencing the defendant without him being present or a statement of allocution because the defendant's waivers were knowing and voluntary.

**Woodbury County State v. Mikala Celeste Webster**, No. 18-1379 (Iowa Court of Appeals, filed March 6, 2019). **Error not preserved.** In October 2017, the defendant was charged with an OWI from an incident that occurred in June 2013. The defendant filed a motion to dismiss arguing she was charged passed the three year statute of limitation under Iowa Code section 802.3; however, she did not argue a constitutional violation. The district court denied the defendant's motion because she did not reside in the state and section

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802.6(1) tolled the statute of limitations. The defendant appealed and argued Iowa Code section 802.6(1) violates the Iowa and Federal constitutions. Held, the defendant failed to argue the constitutional claims to the district court and therefore she did not preserve error on the continuation claims. Conviction affirmed.

**Wright County [State v. Travis Lee Hanna](#)**, No. 17-2090 (Iowa Court of Appeals, filed January 23, 2019). **Inadequate record to determine if counsel was ineffective or if the plea agreement was breached.** The defendant pled guilty to OWI pursuant to a plea agreement. The State agreed to recommend a minimum of seven days in jail along with a suspended sentence. In the defendant's written plea agreement, the defendant stated the agreement was 180 days in jail with all but seven days suspended. At sentencing, the State recommended a two-year prison sentence with all but seven days suspended. The defendant's counsel told the court that this was the agreement. The defendant appealed arguing the State breached the agreement and her counsel was ineffective for joining the recommendation. Held, the record was inadequate to determine exactly what the plea agreement was and whether the State breached the agreement or if the defendant's counsel was ineffective. Conviction affirmed, but the defendant's claim of ineffective assistance was preserved.

**Wright County [State v. Travis Lee Hanna](#)**, No. 17-2090 (Iowa Court of Appeals, filed January 23, 2019). **Plea agreement not conditioned on the court's acceptance; conviction affirmed.** The defendant pled guilty to OWI pursuant to a plea agreement. In the defendant's written plea agreement, he acknowledged the court was not bound by the agreement. At sentencing, the court did not follow the plea recommendation. The defendant appealed arguing the sentencing court failed to inform him that it was not bound by the agreement and that he could withdraw his plea. Held, the defendant's plea was not conditioned on the court's acceptance. Conviction affirmed, but the defendant's claim of ineffective assistance was preserved.

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.

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## 2019 Iowa Acts of Interest to Law Enforcement

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The **Wednesday, June 19th** workshop will be at the **Radisson Hotel & Conference Center** in Coralville located north of I-80 at Exit 242.

The **Thursday, June 20th** workshop will be at the **Prairie Meadows Hotel** in Altoona located at 1 Prairie Meadows Drive in Altoona.

The workshops will provide an overview of 2019 legislation, as well as new issues in Criminal Law.

Registration begins at 8:00 a.m. and the Workshop starts at **9:00 a.m.** Refreshments and lunch will be provided.

### Registration Fee: \$70.00 Payable to Iowa County Attorneys Association (ICAA)

Mail/Fax to: Cindy Glick

Prosecuting Attorneys Training Coordinator

Hoover Building, 2nd Fl., Des Moines, IA 50319

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Name: \_\_\_\_\_ Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

Zip: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

### Workshop Location

\_\_\_\_\_ **June 19 Coralville**

\_\_\_\_\_ **June 20 Altoona**

There will be a **\$35.00** fee applied to cancellations received after **June 12, 2019** and for any registrants who fail to attend without cancellation prior to June 14th.

The workshops are expected to qualify for CLE credits.

# 2019 IOWA ACTS OF INTEREST TO LAW ENFORCEMENT

**CLEs:**  
4.75 hours of CLEs  
Coralville - Activity#: 322499  
Altoona - Activity#: 322500

**AGENDA**  
**CORALVILLE - JUNE 19**  
**ALTOONA - JUNE 20**

- |                    |   |
|--------------------|---|
| <b>8:00-9:00</b>   | <b>Registration and Refreshments</b><br><br><b>Welcome: <i>Tom Ferguson</i></b><br>PATC Coordinator/ICAA Executive Director                           |
| <b>9:00-10:15</b>  | <b>2019 New Legislation</b><br><b><i>Tom Ferguson</i></b><br>PATC Coordinator/ICAA Executive Director   |
| <b>10:15-10:30</b> | <b>Break</b>  |
| <b>10:30-11:45</b> | <b>Medical Cannabidiol &amp; Hemp</b><br><b><i>Sarah G. Reisetter, J.D.</i></b><br>Deputy Director<br>Iowa Department of Public Health                |
| <b>11:45-12:45</b> | <b>Lunch</b>  |
| <b>12:45-1:45</b>  | <b>Criminal Law Update</b><br><b><i>Mike Bennett</i></b><br>Assistant Iowa Attorney General<br>Prosecuting Attorney Training Coordinator (PATC)       |
| <b>1:45-2:00</b>   | <b>Break</b>  |
| <b>2:00-3:15</b>   | <b>OWI/Traffic Law Update</b><br><b><i>Jeremy Peterson</i></b><br>Assistant Iowa Attorney General<br>Prosecuting Attorney Training Coordinator (PATC) |