

## CRIMINAL DEFENSE

What should I do if I am charged with a crime? Certain acts or actions may constitute a violation of Federal, State or local law. In Iowa, you may be prosecuted for a crime by a Federal Prosecutor if it a violation of United States Statute or Code Section, a County Attorney or the State Attorney General's Office if the action constitutes a violation of a State statute or regulation, or by a municipal prosecutor such as a City Attorney if the action continues a violation of a municipal code or statute.

If you are charged with a crime, you should be aware that you have certain rights. You have the right to contact legal counsel to represent you before you answer and questions posed by law enforcement or investigatory personnel. You have the right to remain silent in the face of questioning by such individuals and do not have to answer. Your silence cannot be held against you in a Court of law. You also have the right to have counsel present with you. If you cannot afford counsel, you have the right to have the right to have counsel appointed at state expense (subject to certain exceptions). An individual is commonly notified of these rights by the administration of a Miranda warnings. Please aware that a Miranda warning must only be administered by law enforcement under the following circumstances: When an individual is

1. In custody (not able to leave of their own volition or end the questioning by their own choice)

AND

2. Being interrogated by law enforcement personnel.

What should I do if I am pulled over for Operating While Intoxicated? If you are investigated for Operating While Intoxicated, you should be aware of your rights as outlined in the preceding paragraph. You should also be aware that you do not have to give an officer permission to search your motor vehicle if he or she requests to do so. An officer cannot search your motor vehicle without probable cause to believe that evidence of a crime will be located there. However if you consent to a search, the office no longer has need to establish or allege probable cause to justify the search.

If you are pulled over for Operating While Intoxicated, you should be friendly and courteous to the Officer. He or she is simply performing their duty and responsibility in fulfilling the functions of their job in an effort maintain safety upon the roadway. You may be asked to complete certain field sobriety tests, including a preliminary breath test. If you have any reason that you would be unable to complete the field sobriety tests (e.g. physical limitation, near sightedness, hard contact lenses, weather conditions, etc.) you should advise the office of that fact. If you feel capable of doing so, you should complete the field sobriety tests.

If the officer believes, after your completion of field sobriety test, that you are under the influence of alcohol, he or she will likely take you into custody and deliver you into the nearest law enforcement center to have a breath or blood sample taken to determine the level of blood alcohol concentration. In Iowa, blood alcohol concentration greater than .08% constitutes Operating While Intoxicated. Many times the decision on whether to provide a sample is dependent upon the particular circumstances. You should contact legal counsel if you have any questions whether you should provide a sample or not. If you do not provide a sample, your driving privileges will be suspended for up to a year by the Department of Transportation, regardless of the outcome of the criminal prosecution. If you do not provide a sample,

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you are also not eligible to receive a deferred judgment if you should ultimately plead guilty.

What is the difference between a deferred judgment, deferred sentence or sentence?

If you are convicted of a crime, the Court will impose a sentence. However in certain circumstances, you may be eligible for a deferred judgment. With a deferred judgement, the Court accepts your guilty plea but places you on probation (whether formal (supervised) or informal (unsupervised)) for a period of time. The Court may also impose other conditions upon you such as payment of civil penalty some monetary amount, restitution, community service, etc. If you complete the terms of your probation without additional violation, the Court will expunge the conviction from your record. You can then truthfully state that you have never been convicted of a criminal offense. If you violate the terms of your probation after receipt of a deferred judgment, the Court may force you to come back to be re-sentenced on the original charge.

A deferred prosecution occurs when a County Attorney agrees to defer or wait on prosecuting someone for a crime in order to allow them to complete certain requirements. If the requirements are completed, the County Attorney will then dismiss the prosecution. If the requirements are not completed, the prosecuting attorney may then pursue judgment and sentence against the individual.

What are the maximum penalties for the various types of crimes in Iowa? There are number of different sentences that can be imposed based upon the severity of the offense. However, the maximum sentences are as follows:

- Simple Misdemeanor - maximum punishment 30 days in jail and a fine not to exceed \$625.00
- Serious Misdemeanor - maximum sentence 1 year in jail and a fine not to exceed \$1,875.00
- Aggravated Misdemeanor - maximum penalty 2 years in prison and fine not to exceed \$6,250.00
- Class D Felony - maximum penalty 5 years in prison and a fine not to exceed \$7,500.00
- Class C Felony - maximum penalty 10 years in prison and a fine not to exceed \$10,000.00
- Class B Felony - maximum penalty 25 years in prison and a fine not to exceed \$25,000.00
- Class A Felony - maximum penalty life in prison

If you are charged with a crime, it is very important that you immediately contact legal counsel to discuss any questions you may have an preserve your rights.

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