Criminal Law Update

Criminal Justice, Mental Health and Resources in Iowa

POLK COUNTY BAR ASSOCIATION
SUMMER GENERAL PRACTICE SEMINAR

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Des Moines, Iowa

Robert R. Rigg
Professor of Law
Drake Law School
Legal Clinic
2400 University
Des Moines, Iowa 50311
515-271-3851
robert.rigg@drake.edu
I. Pre-trial issues—Competence to Stand Trial

A. Constitutional Requirements


“…it is not enough for the district judge to find that ‘the defendant (is) oriented to time and place and (has) some recollection of events,’ but that the ‘test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.’”

See also Pate v. Robinson, 383 U.S. 375, 86 S.Ct. (1966) citing Dusky at 388.


“Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so. “

B. Iowa Statutes

Iowa Code § 812.3

1. If at any stage of a criminal proceeding the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings and determine if probable cause exists to sustain the allegations. The applicant has the burden of establishing probable cause. The court may on its own motion schedule a hearing to determine probable cause if the defendant or defendant's attorney has failed or refused to make an application under this section and the court finds that there are specific facts showing that a hearing should be held on that question. The defendant shall not be compelled to testify at the hearing and any testimony of the defendant given during the hearing shall not be admissible on the issue of guilt. . . .

2. Upon a finding of probable cause sustaining the allegations, the court shall suspend further criminal proceedings and order the defendant to undergo a psychiatric evaluation to determine whether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. The order shall also authorize the evaluator to provide
treatment necessary and appropriate to facilitate the evaluation. If an evaluation has been conducted within thirty days of the probable cause finding, the court is not required to order a new evaluation and may use the recent evaluation during a hearing under this chapter. *Any party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing.* (emphasis added)

Iowa Code § 812.4

1. A hearing shall be held within fourteen days of the arrival of the person at a psychiatric facility for the performance of the evaluation, or within five days of the court's motion or the filing of an application, if the defendant has had a psychiatric evaluation within thirty days of the probable cause finding, and upon which the court decides to rely. Pending the hearing, *no further proceedings shall be taken under the complaint or indictment and the defendant's right to a speedy indictment and speedy trial shall be tolled until the court finds the defendant competent to stand trial.*

2. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present evidence.

3. *Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding.* . . .

C. Iowa Cases

State v. Lyman, 776 N.W.2d 865 (Iowa 2010)


2. “We presume a defendant is competent to stand trial. (cite omitted) The defendant has the burden of proving his or her incompetency to stand trial by a preponderance of the evidence. If the evidence is in equipoise, the presumption of competency prevails. (cite omitted) Moreover, once a court finds a defendant competent to stand trial, the presumption of competency continues unless and until the defendant produces new evidence to the contrary.(cite omitted).” Id. at 874.
3. Appellate court reviews a trial court's decision as to a defendant's competency to stand trial de novo; overruling State v. Jackson, 305 N.W.2d 420, State v. Aswegan, 331 N.W.2d 93, and State v. Rieflin, 558 N.W.2d 149. Id. at 873.

State v. Johnson, 784 N.W.2d 192,194-95 (Iowa 2010) holding defendant failed to establish by preponderance that he was incompetent.

D. Restoring Competence, the Constitution and Iowa Statutes


“… the Constitution permits the Government to administer antipsychotic drugs involuntarily to a mentally ill criminal defendant—in order to render that defendant competent to stand trial for serious, but nonviolent, crimes. We conclude that the Constitution allows the Government to administer those drugs, even against the defendant's will, in limited circumstances, i.e., upon satisfaction of conditions that we shall describe…..”

“…. the Constitution permits the Government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests.”

Iowa Code § 812.6(3)

A defendant ordered to obtain treatment or committed to a facility under this section may refuse treatment by chemotherapy or other somatic treatment. The defendant's right to refuse chemotherapy treatment or other somatic treatment shall not apply if, in the judgment of the director or the director's designee of the facility where the defendant has been committed, such treatment is necessary to preserve the life of the defendant or to appropriately control behavior of the defendant which is likely to result in physical injury to the defendant or others. If in the judgment of the director of the facility or the director's designee where the defendant has been committed, chemotherapy or other somatic treatments are necessary and appropriate to restore the defendant to competency and the defendant refuses to consent to the use of these treatment modalities, the director of the facility or the director's designee shall request from the district court which ordered the commitment of the defendant an order authorizing treatment by chemotherapy or other somatic treatments.
II. Trial Issues-Insanity and Diminished Responsibility

A. Notice of Defenses

Iowa Rule of Criminal Procedure.

2.11(11) Notices of defendant.

(1) Defense of insanity and diminished responsibility. If a defendant intends to rely upon the defense of insanity or diminished responsibility at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions, file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other order as appropriate. When the defendant has asserted a defense of insanity the burden of proof is on the defendant to prove insanity by a preponderance of the evidence as provided for in Iowa Code section 701.4.

(2) State’s right to expert examination. When a defendant has given notice of the use of the defense of insanity or diminished responsibility and intends to call an expert witness or witnesses on that issue at trial the defendant shall, within the time provided for the filing of pretrial motions, file written notice of the name of each such witness. Upon such notice or as otherwise appropriate the court may upon application order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination.

c. Intoxication, entrapment, and self-defense. If defendant intends to rely upon the defense of intoxication by drugs or alcohol, the defendant shall, within the time for filing pretrial motions, file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

d. Failure to comply. If either party fails to abide by the time periods heretofore described, such party may not offer evidence on the issue of insanity, diminished responsibility, intoxication, without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial.

Iowa Rules of Criminal Procedure

2.11(3) Effect of failure to raise defenses or objections. Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under this rule shall constitute waiver thereof, but the court, for good cause shown, may grant relief from such waiver.
2.11(4) **Time of filing** . . . no later than 40 days after arraignment . . . . If a written arraignment under rule 2.8(1) is used, the date of arraignment is the date the written arraignment is filed.

State v. Jordan, 779 N.W.2d 751, 756 (Iowa 2010). Holding good cause excused late filing of the defendant's notice of [diminished responsibility] defense. New counsel was appointed and the State was not prejudiced

B. **Iowa Code § 701.4 Insanity**

A person shall not be convicted of a crime if at the time the crime is committed the person suffers from such a diseased or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act.

If the defense of insanity is raised, the defendant must prove by a preponderance of the evidence that the defendant at the time of the crime suffered from such a deranged condition of the mind as to render the defendant incapable of knowing the nature and quality of the act the defendant was committing or was incapable of distinguishing between right and wrong in relation to the act.

See also Iowa Criminal Jury Instructions-Insanity 200.9; Insanity Defense – Consideration; 200.10 Sanity At The Time Of Commission Of The Offense; 200.11 Insanity - Elements - Defendant Not Guilty By Reason Of Insanity.

C. **Diminished Responsibility.**

State v. Marin, 788 N.W.2d 833, 838 (Iowa 2010) holding the diminished responsibility instruction was sufficient regarding the defendant’s mental condition caused by intoxication.

Anfinson v. State 758 N.W.2d 496 (Iowa, 2008).

“The doctrine of diminished responsibility has been recognized in Iowa as a matter of common law. En6 State v. Gramenz, 256 Iowa 134, 138-42, 126 N.W.2d 285, 288-90 (1964). “[D]iminished responsibility may be offered as a defense where an accused, because of a limited capacity to think, is unable to form a necessary criminal intent.” State v. Collins, 305 N.W.2d 434, 436 (Iowa 1981). The diminished responsibility defense allows a defendant to negate the specific intent element of a crime by demonstrating due
to some mental defect she did not have the capacity to form that specific intent. *Id.* at 437.

**FN6.** We have alternatively described the common law concept of decreasing a legally sane individual's criminal liability on the basis of a mental defect as a defense of “diminished capacity” and “diminished responsibility.” See, e.g., *State v. Decker,* 744 N.W.2d 346, 350 (Iowa 2008) (diminished capacity); *State v. Duncan,* 710 N.W.2d 34, 36 (Iowa 2006) (diminished responsibility). *Iowa Rule of Criminal Procedure 2.11(b),* the defense notice requirement, refers to notice of intent to rely upon the defense of diminished responsibility. In the interest of remaining consistent with our rules of procedure, we will use the term “diminished responsibility” in this opinion.

Evidence of diminished responsibility may not, however, negate general criminal intent, and is therefore not a defense to crimes which do not require proof of specific intent. *State v. McVey,* 376 N.W.2d 585, 586-87 (Iowa 1985) (evidence of mental unsoundness establishing lack of capacity to form the requisite criminal intent was not relevant in prosecution for theft perpetrated by exercising control over stolen property, a general intent crime); *Veverka v. Cash,* 318 N.W.2d 447, 449 (Iowa 1982) (diminished capacity not a defense to felony murder accomplished by arson); *Gramenz,* 256 Iowa at 142, 126 N.W.2d at 290 (evidence of diminished capacity not relevant to issues of malice aforethought and general criminal intent). But see *Hendershott v. People,* 653 P.2d 385, 393-94 (Colo.1982) (holding reliable and relevant evidence of mental impairment may be presented to negate mens rea for crimes not involving a specific intent element).” *Id.* 502-03.

See also Iowa Criminal Jury Instructions: 200.12 Diminished Responsibility - First Degree Murder: 200.13 Diminished Responsibility-Other Specific Intent Crimes - Total Defense.

**D. Verdicts and Post Verdict Proceedings**

**Iowa Rules of Criminal Procedure**

*2.22(8) Acquittal on ground of insanity or diminished responsibility; commitment hearing.*

*a. Jury finding.* If the defense is insanity or diminished responsibility, the jury must be instructed that, if it acquits the defendant on either of those grounds, it shall state that fact in its verdict.
b. Commitment for evaluation. Upon a verdict of not guilty by reason of insanity or diminished responsibility, the court shall immediately order the defendant committed to a state mental health institute or other appropriate facility for a complete psychiatric evaluation and shall set a date for a hearing to inquire into the defendant’s present mental condition. The court shall prepare written findings which shall be delivered to the facility at the time the defendant is admitted fully informing the chief medical officer of the facility of the reason for the commitment. The chief medical officer shall report to the court within 15 days of the admission of the defendant to the facility, stating the chief medical officer’s diagnosis and opinion as to whether the defendant is mentally ill and dangerous to the defendant’s self or to others. The court shall promptly forward a copy of the report to the defendant’s attorney and to the attorney for the state. An extension of time for the evaluation, not to exceed 15 days, may be granted upon the chief medical officer’s request after due consideration of any objections or comments the defendant may have.

c. Independent examination. The defendant may have a separate examination conducted at the facility by a licensed physician of the defendant’s choice and the report of the independent examiner shall be submitted to the court.

d. Return for hearing. Upon filing the report required by this rule or the filing of any subsequent report regarding the defendant’s mental condition, the chief medical officer shall give notice to the sheriff and county attorney of the county from which the defendant was committed and the sheriff shall receive and hold the defendant for hearing. However, if the chief medical officer believes continued custody of the defendant at the facility is necessary to ensure the defendant’s safety or the safety of others and states that finding in the report, the court shall make arrangements for the hearing to be conducted as soon as practicable at a suitable place within the facility to which the defendant was committed.

e. Hearing; release or retention in custody. If, upon hearing, the court finds that the defendant is not mentally ill and no longer dangerous to the defendant’s self or to others, the court shall order the defendant released. If, however, the court finds that the defendant is mentally ill and dangerous to the defendant’s self or to others, the court shall order the defendant committed to a state mental health institute or to the Iowa security and medical facility and retained in custody until the court finds that the defendant is no longer mentally ill and dangerous to the defendant’s self or to others. The court shall give due consideration to the chief medical officer’s findings and opinion along with any other relevant evidence that may be submitted. No more than 30 days after entry of an order for continued custody, and thereafter at intervals of not more than 60 days as long as the defendant is in custody, the chief medical officer of the facility to which the defendant is committed shall report to the court which entered the order. Each periodic report shall describe the defendant’s condition and state the chief medical officer’s prognosis if the
The defendant’s condition has remained unchanged or has deteriorated. The court shall forward a copy of each report to the defendant’s attorney and to the attorney for the state. If the chief medical officer reports at any time that the defendant is no longer mentally ill and is no longer dangerous to the defendant’s self or to others, the court shall, upon hearing, order the release of the defendant unless the court finds that continued custody and treatment are necessary to protect the safety of the defendant’s self or others in which case the court shall order the defendant committed to the Iowa security and medical facility for further evaluation, treatment, and custody.

III. Post-Conviction Issues

A. Sentencing in Iowa

In 2011 the legislature enacted provisions affecting several provisions of the Iowa Code affecting sentencing:

2011 Ia. Legis. Serv. S.F. 259 (WEST)

IOWA 2011 LEGISLATIVE SERVICE
Eighty-Fourth General Assembly, First Regular Session

Additions are indicated by Text; deletions by Text. Changes in tables are made but not highlighted. Vetoed provisions within tabular material are not displayed.

S.F. 259
West's No. 11
CRIMINAL PROCEDURE--MENTAL HEALTH--PROBATION

AN ACT RELATING TO MENTAL HEALTH AND SUBSTANCE ABUSE HISTORIES CONDUCTED IN A PRESENTENCE INVESTIGATION REPORT AND THE STANDARDS FOR RELEASE ON PROBATION IN A CRIMINAL PROCEEDING.

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

Iowa Code § 901.3, subsection 1, Code 2011, is amended to read as follows:

1. The defendant's characteristics, family and financial circumstances, needs, and potentialities, including the presence of any previously diagnosed mental disorder.
Sec. 2. Section 901.3, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Whether the defendant has a history of mental health or substance abuse problems. If so, the investigator shall inquire into the treatment options available in both the community of the defendant and the correctional system.

Sec. 3. Section 901.3, subsection 7, unnumbered paragraph 2, Code 2011, is amended to read as follows:

All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. The originating source of specific mental health or substance abuse information including the histories, treatment, and use of medications shall not be released to the presentence investigator unless the defendant authorizes the release of such information. If the defendant refuses to release the information, the presentence investigator may note the defendant's refusal to release mental health or substance abuse information in the presentence investigation report and rely upon other mental health or substance abuse information available to the presentence investigator. With the approval of the court, a physical examination or psychiatric evaluation of the defendant may be ordered, or the defendant may be committed to an inpatient or outpatient psychiatric facility for an evaluation of the defendant's personality and mental health. The results of any such examination or evaluation shall be included in the report of the investigator.

Iowa Code§ 907.5. Standards for release on probation--written reasons

Before deferring judgment, deferring sentence, or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In making this determination, the court shall consider the age of the defendant; the defendant's prior record of convictions and prior record of deferments of judgment if any; the defendant's employment circumstances; the defendant's family circumstances; the defendant's mental health and substance abuse history and treatment options available in the community and the correctional system; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment, to defer sentence, or to suspend sentence, and its decision on the length of probation.

Approved March 30, 2011.
IV. Correctional Issues

A. Forced Medication

Washington v. Harper, 494 U.S. 210, 227 110 S.Ct. 1028, 1039-40 (1990) holding that forced medication to an inmate with a serious mental illness if the inmate is a danger to themselves or others and the treatment is in the inmate’s medical interest does not violate due process.

Polk County Sheriff v. Iowa Dist. Court for Polk County, 594 N.W.2d 421, 431 (Iowa 1999) holding a jail may force medical treatment (dialysis) on a pretrial detainee.

B. Overcrowding resulting in Constitutional Violation

Brown v. Plata --- S.Ct. ----, 2011 WL 1936074 (2011) holding that a court may order reduction in overcrowding if the court finds overcrowding is the “primary cause of the violation of a Federal right.” Id.

C. Mental Disability in Iowa Prisons

Iowa Department of Corrections

www.doc.state.ia.us

Quick Facts about Offender Profile

Gender CBC Prison Total % of

Total
Women 7,251 711 7,962 21.0%
Men 21,631 8,258 29,889 78.8%
Unknown 97 0 97 .2%

Race
Asian 275 73 348 0.9%
African American 4,197 2,296 6,493 17.1%
Hispanic 1,414 602 2,016 5.3%
American Indian 317 152 469 1.2%
White 22,572 5,846 28,418 74.9%
Unknown 204 0 204 .5%

Age
Under 31 14,501 3,534 18,035 47.5%
31-50 11,664 4,273 15,937 42.0%
Over 50 2,814 1162 3,976 10.5%
Unknown 0 0 0 0%

Crime Type
Violent 4,735 3,931 8,666 22.8%
Property 7,031 1,661 8,692 22.9%
Drug 7,805 1,985 9,790 25.8%
Average Daily Cost per Prisoner (FY 2010) $85.72 or $31,287.80 per year

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<td><strong>47.1%</strong></td>
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<td><strong>26.2%</strong></td>
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SMI Serious Mental Illness-Schizophrenia, Psychotic Disorder NOS, Major Depression, Bipolar, Organic Brain syndrome including TBI, dementia and other similar disorders.

Source: Iowa Department of Corrections

Cost-No. of Inmates with Serious Mental Illness (2,329) x cost per year $31,287.30= $72,556,408.00 per year.