



# Iowa County Attorneys Association

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For anyone thinking about changing Iowa criminal laws regarding child sex offenses, a few facts about current law should be the starting point.

## **MANDATORY MINIMUM SENTENCES—**

- Although Iowa has indeterminate sentencing, Iowa law also successfully incorporates mandatory minimum sentences for certain serious sex offenses. The Iowa Code does not use the term “mandatory minimum,” but the effect is the same.
- Iowa has one of the toughest sentences of any state with its “life without parole” sentence for sexual abuse in the first degree, a class “A” felony. That is a “mandatory minimum” which is very “tough.”
- Sexual abuse in the second degree is a Class “B” felony with a maximum prison term of 25 years. This crime captures the large majority of the hard core perpetrators of child sexual abuse, where the victim is under the age of twelve. And, if convicted, it carries a “mandatory minimum” sentence of 17.5 years in prison. There are no exceptions. The interaction of three important sections of the Iowa Criminal Code create this “mandatory minimum” sentence:
  - ▶ §702.11 defines a “forcible felony.” All sexual abuse is a forcible felony.
  - ▶ §907.3 determines eligibility for a deferred judgment or a suspended sentence. All “forcible felonies” are excluded.
  - ▶ §902.12 provides that for sexual abuse in the second degree the defendant shall serve no less than 70% of the maximum sentence imposed.
- Sexual abuse in the third degree carries a “mandatory” prison term upon conviction. A minimum term is not imposed. The maximum term is ten years in prison. The indeterminate nature of this sentence is a key tool in the prosecution arsenal for obtaining a conviction by plea of guilty when a sex abuse case might not survive the constitutional, evidentiary, and emotional rigors of a trial with a child victim. That is exactly why mandatory minimum sentences for this and other child sex abuse crimes are unwise.

## **FAR MORE HARM THAN GOOD —**

- Additional mandatory minimums will not enhance child safety. Such measures will further harm child victims. Simply being “tough” in this manner will NOT be good for kids or for the *conviction* of sex offenders. It will clearly be detrimental to both.

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- The vast majority (90% or more) of child sexual abuse offenders are known and often related to the victim. In addition to the trauma of testifying, strong family pressure, using guilt and emotional and economic strain are often heaped upon child victims to not proceed with prosecution. When long, mandatory minimum sentences are involved, those pressures are greatly increased. It is absolutely vital for prosecutors in these situations to have options and flexibility in charging and sentencing in order to ensure a *conviction*. Without the latter, many child sexual offenders will go unpunished, will escape the registry, and will be free to victimize other children.
- Fixating merely on penalties for child sex offenses is misguided. The range of present penalties and prosecution options is good. Child victims and Iowa prosecutors do not need more crimes with mandatory minimum sentences. Child victims and prosecutors need lawmakers to direct their actions toward obtaining more *convictions* of offenders.

#### **WHAT CAN BE DONE?**

- There is one measure that this legislature could enact that would be the MOST effective and TOUGHEST measure on sex offenders: amend Iowa Code section 701.11 to provide that in a criminal trial for sexual abuse, “evidence of the defendant’s commission of another sexual abuse shall be admitted into evidence...” This prevents the defendant from hoodwinking the jury with statements such as, “I did not do that; I would never do that,” when in fact there is competent evidence to show that statement to be entirely false.
- That one provision would do far more for the *conviction* and incarceration of sex offenders, as well as the protection of children in Iowa, than would the enactment of the harshest mandatory minimum sentence of which anyone could conceive.
- If one wants to be TOUGH on sex offenders, and who does not, legislative changes must concentrate on convicting offenders, not simply increasing penalties. Longer sentences and minimum terms mean absolutely nothing *unless* there is a conviction; and there is no crime in Iowa which requires and deserves more to have available numerous charging and sentencing options, reasonable evidentiary rules, and experienced, careful prosecutors, than does the crime of child sexual abuse.
- If one truly wants to be TOUGH on sex offenders, one must invest in investigation resources, victim services, community corrections, treatment, prisons, and recruiting and retaining experienced, dedicated prosecutors.
- It would be so very easy for legislators to do what “feels good” in this area, but which is not the effective (read “tough”) thing to do. Often the “feel good” measure is actually detrimental to child safety and the *conviction* of perpetrators.

#### **BE TOUGH and SMART —**

- Iowa prosecutors ask, sincerely, for legislators to be TOUGH on sex offenders by first being SMART, and then making the critical choices which are truly effective for the protection of Iowa’s children.

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