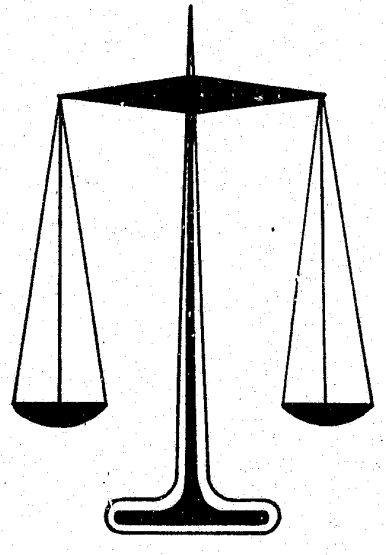
Iowa Criminal Justice Standards and Goals

COURTS



Iowa Crime Commission

Iowa Criminal Justice Standards and Goals

COURTS

Adopted By the Iowa Crime Commission

May, 1977

The Iowa Standards and Goals Project was financed, in part, through an L.E.A.A. discretionary grant, #74-DF-07-0007, awarded to the Iowa Crime Commission. Points of view and opinions expressed in this document do not necessarily reflect those of the Law Enforcement Assistance Administration or the government of the State of Iowa. Additional copies of this publication may be obtained through the Iowa Crime Commission, Des Moines, Iowa.

ROBERT D. RAY
GOVERNOR

Office of the Governor

STATE CAPITOL
DES MOINES, IOWA 50319

My Fellow Iowans:

A major concern of our people is the rising incidence of criminal activity. Although this is a nationwide phenomenon, there are initiatives we can take in our state to seek the solutions needed to reduce the social and economic damage caused by crime. One means of achieving this objective is through an efficient and effective criminal justice system.

To insure that Iowa has the best possible criminal justice system, a comprehensive analysis of our existing system was commenced almost three years ago. This effort, the Iowa Standards and Goals Project, was far-reaching in scope and depth and involved more than 350 knowledgeable persons. Their recommendations for system improvement are presented in these *Iowa Criminal Justice Standards and Goals* volumes. Recognizing the sacrifices in time and effort made by those participating in this study, I extend my deepest appreciation and thanks.

It is now our responsibility to put the Project's recommendations into action. The standards and goals provide us with the guidance necessary to modify our present system so that we can better combat crime. Clearly, the realization of a more effective and efficient criminal justice system demands a lengthy, dedicated effort by all of us. For this reason, we must begin implementing the Project's recommendations now. Your participation can make a difference.

Sincerely,

Robert D. Ray
Governor

RDR:sd

Robert D. Ray
Governor of the State of Iowa

John D. Scarlett
Chairman, Iowa Crime Commission

Allen R. Way
Executive Director, Iowa Crime Commission

PROJECT STAFF

Richard E. George
Project Coordinator/Courts Specialist

Sandor D. Fein
Law Enforcement Specialist

Etta L. Cain
Corrections Specialist

Margaret J. Kipper
Secretary

TABLE OF CONTENTS

INTRODUCTION

As in the rest of the nation, the rate of criminal activity has been increasing in Iowa. The response to criminal activity is the Iowa criminal justice system. This system is designed to deter potential offenders, apprehend those who have broken the laws, quickly and fairly determine guilt or innocence, and protect the community from further criminal actions while assisting the offender to become a law-abiding and productive citizen. Because the specific causes of crime are not known, there are no simple or immediate solutions to the current crime problem. However, steps can be taken to upgrade the operation of the criminal justice system. This in itself may reduce the incidence of crime. The Iowa Criminal Justice Standards and Goals Project represents an effort to improve the administration of Iowa's system of criminal justice.

The administration of criminal justice is a complex task. For example, the Iowa criminal justice system consists of three separate components—law enforcement, courts, and corrections. Within each component, there are numerous entities which interact when the system responds to criminal activity. In addition, social, political, and economic forces combine to affect the operation of the criminal justice system. Any study undertaken to improve the administration of criminal justice not only must recognize the influence of these outside forces but also must consider the interrelationships among the various components of the system.

The Standards and Goals Project relied on advisory groups to deal with the complexities of analyzing and revising the Iowa criminal justice system. Advisory groups are particularly appropriate for such a task. They permit serious and controversial issues to be examined and analyzed, and a consensus to be reached in a democratic manner. Functionaries, experts, and lay persons can study and deliberate new concepts that will encourage policy, procedural, and legislative changes. Individuals with divergent views can openly discuss ideas outside the confines of official formal relationships. The Project's reliance on advisory groups composed of criminal justice practitioners and individuals from related occupations helps to assure that the recommendations for improving Iowa's criminal justice system are comprehensive and realistic.

The Iowa criminal justice standards and goals are set forth in three reports: law enforcement, courts and corrections. The premise of the standards and goals is that the administration of criminal justice can be improved and the existing inequities of the criminal justice system can be diminished if criminal justice agencies and the general public reach consensus on the goals of the system and establish standards for the achievement of these goals. To facilitate understanding of the Iowa standards and goals, the following definitions are suggested:

GOAL: Changes in the criminal justice system that may or may not be achievable, but are something for which the State should continue to strive.

STANDARD: A statement that describes the conditions that should exist when a goal has been achieved.

The origins of the Iowa standards and goals program lie in the work of the National Advisory Commission on Criminal Justice Standards and Goals (NAC). The Law Enforcement Assistance Adminstration appointed the NAC in 1971 to formulate national standards and goals for crime reduction and prevention at the State and local levels. In 1973, the NAC's work was published in six volumes: **Report on Police, Report on Courts, Report on Corrections, Report on Community Crime Prevention, Report on the Criminal Justice System,** and **A National Strategy to Reduce Crime.** The NAC recommended that each State evaluate its own criminal justice system in terms of the national reports and formulate State criminal justice standards and goals.

Development of the Iowa standards and goals began in 1973 when the Iowa Crime Commission convened the Governor's Conference on Criminal Justice Standards and Goals. The Governor's Conference introduced the standards and goals concept in Iowa. In 1974, the Crime Commission initiated the Iowa Standards and Goals Project. The first phase of the Project was to carefully compare the Iowa criminal justice system to the system proposed by the NAC. During the evaluation phase, Project staff prepared three volumes comparing the similarities and differences of the two systems. The courts comparative analysis is contained in this report.

The development of realistic standards and goals required Statewide input from criminal justice practioners and concerned citizens. To obtain this input, local practioners and interested individuals were invited to attend Area Standards and Goals Meetings. The participants considered selected topics from the NAC Reports and recorded their views on the advisability of adopting the national standards in Iowa.

Actual formulation of the Iowa standards and goals took place at a series of Standards and Goals Conferences. Over three hundred persons participated in the twenty-six conferences. Conference participants were drawn from numerous sources; including, State and local criminal justice agencies, State government, the judiciary, public interest groups, the Legislature, and the offender population. Conferees reviewed the NAC Reports, the standards and goals comparative analyses, and the input from the area meetings. In addition, the Iowa Criminal Code Revision, The Governor's Conference Report, and the American Bar Association Standards for Criminal Justice were considered. Ultimately, conference participants established forty-six goals for Iowa law enforcement, courts and corrections and formu-

lated approximately three hundred standards to reach these goals.

This volume contains the standards and goals relating to the court component of the Iowa criminal justice system. No attempt to improve criminal justice in Iowa can be successful unless the courts of the State are able to fairly and efficiently deal with those individuals who become involved in the criminal justice system. Increasing caseloads and inefficient procedures and institutions are currently testing the State's ability to effectively administer the criminal law. Clearly, the task of assuring that Iowa has an effective and fair court component is not limited to upgrading the State's courts alone; the other functions that influence the criminal justice process must also be considered. Therefore, the standards address not only Iowa's courts but also the State's prosecutorial and defense functions. Furthermore, because the effectiveness of the court component is affected by the performance of law enforcement and correctional agencies, this volume should be considered in conjunction with the Iowa criminal justice standards and goals for law enforcement and corrections.

The standards are designed to promote effective and efficient criminal processing while insuring that the accused receives equal and fair treatment. There are two approaches to this problem. One is to focus on the procedures and processes that affect the flow of the criminal case. The other approach is to concentrate on the personnel and offices responsible for carrying out the various criminal justice functions.

Chapters 1 through 6 deal with the procedures and processes that influence the flow of the criminal case through the Iowa criminal justice system. These chapters are based upon the premise that attaining speed and efficiency in pretrial processes and achieving prompt finality in appellate proceedings result in increased deterrence of crime and earlier and more effective rehabilitative treatment of offenders. (See NAC, **A National Strategy to Reduce Crime**, 94 (1973).) In addition, speedy resolution of criminal cases minimizes any adverse effects upon those persons who are wrongly accused. Although Iowa presently imposes strict time limits on the prosecution of criminal cases, time limits are only one method of attaining efficiency and finality. Other methods appropriate for Iowa are set forth in these chapters.

One method is to encourage administrative dispositions. Because the State does not have sufficient resources to permit formal criminal processing of all cases, frequent administrative dispositions are essential to the effective functioning of the Iowa criminal justice system. Furthermore, the cost of expanding criminal justice resources so that the system can provide more trials is not justified by the minimal benefits to the State and the accused. For example, in cases where there are no disputed facts or legal points, a trial needlessly expends the prosecutor's and court's time. Similarly, a trial is not necessary to determine an appropriate disposition for a particular offender. Administrative processing can result in a disposition that is both in society's and the defendant's interests and is consistent with the intent of the Legislature. Finally, the fact that the judiciary does not always participate in administrative dispositions is not necessarily a defect. Experienced prosecutors and defense attorneys should have the necessary skills to protect the needs of society and preserve the rights of the accused.

The standards address three types of administrative dispositions. Chapter 1 relates to screening—the decision to abandon coercion over the accused. Screening promotes effective operation of the criminal justice system when the benefits to be derived from prosecution are outweighed by the costs. The decision to screen an individual out of the criminal justice system not only conserves criminal justice resources but also minimizes the burdens of formal prosecution upon the individual. To maximize the benefits of screening, the standards encourage Iowa prosecutors to make screening decisions at the earliest stages of criminal proceedings.

Chapter 2 deals with another type of administrative disposition, diversion. Diversion uses the threat of criminal prosecution to encourage the accused to agree, prior to trial, to participate in a rehabilitative program. Like screening, diversion saves criminal justice resources and allows adjustment for overcriminalization. In addition, diversion insures that the accused receives treatment or makes restitution for his/her criminal acts.

Plea negotiation, the subject of Chapter 3, is the process by which concessions are made by the prosecutor in exchange for guilty pleas. Although the subject of much criticism, plea negotiation serves the resource-saving function of promoting guilty pleas. It is unlikely that the Iowa criminal justice system could accomodate existing criminal caseloads without frequent disposition of cases through negotiated agreements. The standards recognize this situation and seek to minimize potential abuses by structuring the plea negotiation process.

Because administrative dispositions are informal and involve the exercise of discretion, safeguards must be established to insure that such dispositions are in the interests of society and the defendant. The informality of the administrative decisionmaking process may obscure wastefulness and inefficiency. Furthermore, the discretionary nature of the administrative process may endanger the defendant's interest in fair and equal treatment. Both dangers can be minimized in Iowa by raising the visibility of administrative dispositions. Chapters 1, 2, and 3 provide standards that raise the visibility of administrative processes by requiring the devel-

opment of administrative rules, uniform procedures, and records of administrative actions.

When administrative disposition is inappropriate, the case is subjected to formal pretrial, trial, and appellate proceedings. Delay and lack of finality characterize the formal processing of the criminal case. Ultimately, these characteristics of the criminal justice system may diminish the deterrent impact of the criminal law and make the rehabilitative task more difficult. Chapter 4, The Litigated Case, addresses delay and inefficiency at the pretrial and trial stages of the Iowa criminal process. Chapter 5, Sentencing, recommends a sentencing process that emphasizes realistic sentences which meet the needs of the individual offender. The sentencing standards are designed to add finality to the sentencing process and promote rehabilitation. Chapter 6, Review of Trial Court Proceedings, deals with the need to expedite the appellate process while preserving comprehensive review of trial court proceedings.

Chapters 7 through 11 address the personnel who perform the various criminal justice functions in Iowa and their offices. Successful implementation of the procedures and policies outlined in this volume depends upon the quality of the personnel working within the system. The prosecutor's role is particularly important. Because he/she exercises broad discretionary authority, the prosecutor has a significant impact on both the frequency and types of administrative dispositions. In addition, because it is the prosecutor's duty to represent the State in court, he/she influences the formal processing of criminal cases. Thus, the effectiveness and efficiency of the entire criminal justice process depend to a great extent on the skills and abilities that the prosecutor brings to office. To insure that Iowa prosecutors possess the skills demanded by the prosecution function the State must have professional prosecutors' offices. Chapter 7 recommends a prosecutorial system designed to promote the development of such offices in Iowa.

The concepts of professionalism and specialization extend to the defense function as well. The complexities of criminal justice require that the defense attorney be an expert in the criminal law and possess the skills necessary to competently represent his/her client. Chapter 8 addresses the provision of public defense services. The chapter recommends that Iowa develop a coordinated public defender and assigned counsel system to provide defense services to indigents accused of crime. The defense function standards stress the importance of full-time, professional defense services.

The role of the trial judge is also extremely important to the operation of the Iowa criminal justice system. Because judges exercise enormous discretionary power with almost no direct supervision, effective performance of the judicial function is largely contingent on the quality of the judges themselves. Thus, the methods used to select, compensate, retain, and remove judicial personnel are critical. With minor changes, Chapter 9 endorses the existing Iowa procedures as the most proficient methods of insuring judicial quality in Iowa. However, the task of promoting effective performance of the judicial function extends beyond the issue of judicial quality. Even the most capable trial judges cannot competently carry out their duties without adequate time and resources. Chapter 10, Court Administration, is designed to provide for efficient management of the trial court's resources. Relieving trial judges of unnecessary administrative chores is a major objective of the court administration standards. Trial court facilities and court-community relations also impact on the overall effectiveness of the trial judge in the criminal justice system. Chapter 11 recommends ways to upgrade trial court facilities and to improve the trial court's relationship with the community.

The standards and goals contained in these reports are not requirements. They are recommendations for action. During their development, emphasis was placed not only on what was desirable but also on what was workable. The reports place major emphasis on the need to develop greater coordination among the elements of the Iowa criminal justice system. Thus, the standards and goals should enable practitioners and the public to know where the system is heading, what it is trying to achieve, and what in fact it is achieving. However, the reports also recognize that the criminal justice system is designed to some extent to be decentralized and fragmented, and that preserving these characteristics in many instances is essential to basic concepts of justice. This realistic approach to criminal justice revision should enable the Iowa Legislature, the courts, and State and local criminal justice practitioners to use the reports as a guide for improving the Iowa criminal justice system. Consequently, the ultimate impact of the standards and goals reports depends upon their acceptance by the political, judicial, and administrative decisionmakers of the State.

IOWA STANDARDS AND GOALS PROJECT PARTICIPANTS

COURTS

Honorable William E. Adams
Judicial Magistrate
Woodbury County

Gordon Allen
Iowa Civil Liberties Union

Charles R. Anderson
Clerk of Court
Clinton County

Honorable C.W. Antes
Chief Judge of the District Court
First Judicial District

Honorable Cameron B. Arnold
Judicial Magistrate
Dickinson County

George A. Arvidson
Offender Advocate's Office
Polk County

Lawrence A. Baker
Department of Court Services
First Judicial District

Dwight Barton
Clerk of District Court
Dallas County

Roger Bertrand
District Court Administrator
Fourth Judicial District

James R. Bowers
Attorney at Law
Grinnel
Associaton of Trial Lawyers of Iowa

Honorable Lynne E. Brady
Associate Judge of the District Court
Sixth Judicial District

Robert L. Bray, Director
Legal Aid Society of Omaha-Council Bluffs
Council Bluffs

Lou Brewer, Warden
Iowa State Penitentiary
Fort Madison

Honorable Jack L. Burns
Associate Judge of the District Court
Seventh Judicial District

Honorable Ross F. Coniglia
Associate Judge of the District Court
Fourth Judicial District

Patrick M. Carr
Assistant County Attorney
Pottawattamie County

Honorable Lawrence D. Carstensen
Judge of the District Court
Seventh Judicial District

Zigmund Chwirka
County Attorney
Woodbury County

Professor Robert Clinton
College of Law
University of Iowa

Carol Coates
Administrative Operations Unit
Polk County

William L. Conner
Citizen
Milford

Charles Crook III
Assistant County Attorney
Polk County

Vere Dale
County Supervisor
Decatur County

Michael Doyle, Administrator
County Attorney's Office
Polk County

Robert J. Duff
Department of Adult Corrections
Sixth Judicial District

David J. Dutton
County Attorney
Black Hawk County

Morris L. Eckhardt
Attorney at Law
Vinton

Douglas Edmonds
Johnson County Sheriff's Department

William J. Elbert, Sr.
Department of Court Services
Fifth Judicial District

Honorable Elgin G. Enabit
Mayor
City of Osage

Honorable Carroll E. Engelkes
Judge of the District Court
First Judicial District

Nancy H. Evans
Assistant County Attorney
Linn County

Reverend Robert K. Fallgatter
Citizen
Dunlap

Maynard W. Fisher
Citizen
Muscatine

Dale Fredrick, Director
Model Traffic Court Project
Des Moines

Honorable Jack W. Frye
Judge of the District Court
Second Judicial District

Eugene J. Gardner, Associate Bureau Chief
Bureau of Community Correctional Services
Iowa Department of Social Services

William W. Garretson
Attorney at Law
Des Moines

Raymond J. Gazzo
Attorney at Law
Des Moines
Association of Trial Lawyers of Iowa

Honorable Julia Gentleman
State Representative
Sixty-fifth House District

Richard L. Glenn, Administrative Assistant
County Attorney's Office
Black Hawk County

Chris Goodell
Equal Employment Opportunity Unit
Linn County

Honorable Lyndon Greimann
Judicial Magistrate
O'Brien County

Gerald J. Greiner
Parole and Probation Supervisor
Fourth Judicial District

Robert H. Guild, Jr.
Bureau of Community Correctional Services
Second Judicial District

Robert P. Hentges
Bureau of Community Correctional Services
Second Judicial District

Karen S. Hibben
District Court Administrator
First Judicial District

Dennis E. Howard
District Court Administrator
Second Judicial District

Charlotte P. Hutchison
League of Women Voters of Iowa

John O. Iversen
Police Department
City of Davenport

Honorable Norman G. Jesse
State Representative
Sixty-second House District

Randy D. Johansen
Assistant County Attorney
Franklin County

Ronald M. Kayser
Prosecuting Attorney Training Coordinator
Iowa State Attorney General's Office

Edwin F. Kelly, Jr.
County Attorney
Jefferson County

Mary M. Kingsbury
Citizen
Waterloo

Honorable Eric M. Knoernschild
Judicial Magistrate
Black Hawk County

Eugene J. Kopecky
County Attorney
Linn County

Phillip L. Krejci
Assistant County Attorney
Wright County

Robert E. Lee
County Attorney
Humboldt County

Frank W. Leonhardt
Court Administrator
Polk County

John Lloyd
Attorney at Law
Des Moines
Association of Trial Lawyers of Iowa

Ben A. Marlenee
Juvenile Counselor
Anamosa

Rosemary Martin
Court Administrator
Clinton County

Thomas Mayer
Citizen's Aide Ombudsman
Des Moines

John McSweeny
Parole and Probation District Supervisor
Sixth Judicial District

David B. Moore
Attorney at Law
Harlan

Robert D. Moore
County Attorney
Louisa County

Edward L. Moran
Court Administrator
Woodbury County

Claudia Morrissey
Iowa Civil Liberties Union

Honorable Hazel E. Nardini
Mayor
City of Bloomfield

Lary A. Nelson
Department of Adult Corrections
Sixth Judicial District

Honorable Brice C. Oakley
State Representative
Seventy-eighth House District

Robert C. Oberbillig, Director
Polk County Legal Aid Society
Des Moines

John D. Oberthien
Citizen
Cedar Rapids

William J. O'Brien
Court Administrator of the Judicial Department

Honorable Joseph Orth
Mayor
City of Northwood

Kenneth W. Popenhagen
Benton County Sheriff

Professor Charles A. Pulaski
College of Law
University of Iowa

Honorable Richard R. Ramsey
State Senator
Forty-seventh Senate District

Judi Redmond
Assistant County Attorney
Linn County

Philip T. Riley
Legal Department
City of Des Moines

Lyle Rodenburg
County Attorney
Pottawattamie County

John Roehrick
Attorney at Law
Des Moines
Association of Trial Lawyers of Iowa

Gary R. Rosberg
Pretrial Release Supervisor
Department of Court Services
Fifth Judicial District

Arthur Ryman
Legal Clinic
School of Law
Drake University

Sue Sandler, Intern
Offender Advocate's Office
Polk County

Walter L. Saur
County Attorney
Fayette County

Walter C. Schroeder
Attorney at Law
Criminal Law Committee
Iowa Bar Association

Jay Schweitzer
County Attorney
Louisa County

William L. Shelton
County Attorney
Lucas County

Norma Smith
District Court Administrator
Sixth Judicial District

Daniel Spellman
Attorney at Law
Perry
Association of Trial Lawyers of Iowa

Ray Sullins
Assistant Attorney General
Iowa Attorney General's Office

Honorable B.C. Sullivan
Judge of the District Court
Second Judicial District

Stephen M. Terrill
Attorney at Law
Ames
Association of Trial Lawyers of Iowa

J.E. Toby III
Public Defender's Office
Muscatine County

Emil Trott, Jr., Research Director
Iowa Supreme Court

Ralph W. Wasik, Planner
Iowa Supreme Court

James L. Wayne, Director
Department of Court Services
Seventh Judicial District

Robert L. Widner
Police Department
City of Sioux City

John J. Wolfe, Jr.
Public Defender's Office
Clinton County

Lawrence W. Zeringue
Defender Advocate's Office
Des Moines County

Chapter One

Screening

Goal: To structure and regularize the discretionary decision to stop, prior to trial or plea, all formal proceedings against a person who has become involved in the criminal justice system.

STANDARD 1.1
Criteria for Screening

The need to halt formal or informal action concerning some individuals who become involved in the criminal justice system should be openly recognized. An accused should be screened out of the criminal justice system when the benefits to be derived from prosecution or diversion would be outweighed by the social and economic costs of such action. Among the factors to be considered in making this determination are the following:

1. Doubt as to the accused's guilt, including evaluation of the admissibility and sufficiency of evidence;
2. The value of further proceedings in preventing future offenses by other persons, considering the extent to which subjecting the accused to further proceedings could be expected to have an impact upon others who might commit such offenses, as well as the seriousness of these offenses;
3. The value of further proceedings in preventing future offenses by the offender, in light of the offender's commitment to criminal activity as a way of life; the seriousness of his/her past criminal activity, which might reasonably be expected to continue; the possibility that further proceedings might have a tendency to create or reinforce commitment on the part of the accused to criminal activity as a way of life; and the likelihood that programs available as diversion or sentencing alternativies may reduce the likelihood of future criminal activity;
4. The value of further proceedings in fostering the community's sense of security and confidence in the criminal justice system;
5. The direct cost of prosecution, in terms of prosecutorial time, court time, and similar factors;
6. Motives of the complainant;
7. Prolonged nonenforcement of the statute on which the charge is based;
8. The likelihood of prosecution and conviction of the offender by another jurisdiction; and
9. Any assistance rendered by the accused in apprehension or conviction of other offenders, in the prevention of offenses by others, in the reduction of the impact of offenses commited by himself/herself or others upon the victims, and any other socially beneficial activity engaged in by the accused that might be encouraged in others by not prosecuting the offender.

STANDARD 1.2
Procedure for Screening

The prosecutor, in consultation with the police, should develop guidelines for the taking of persons into custody. After a person has been taken into custody, the decision to proceed with formal prosecution should rest with the prosecutor. No complaint should be filed or arrest warrant issued without the formal approval of the prosecutor.

The prosecutor's office should formulate written guidelines. The guidelines should identify as specifically as possible those factors that will be considered in identifying cases in which the accused will not be taken into custody or in which formal proceedings will not be pursued. They should be readily available to the public as well as to those charged with offenses, and to their lawyers. They should be subjected to periodic reevaluation by the police and by the prosecutor.

When a defendant is screened out after being taken into custody, a written statement of the prosecutor's reasons should be prepared and kept on file in the prosecutor's office. Screening practices in a prosecutor's office should be reviewed periodically by the prosecutor himself/herself to assure that the written guildelines are being followed.

The decision to pursue formal proceedings should be a discretionary one on the part of the prosecutor and should not be subject to judicial review, except to the extent that pretrial procedures provide for judicial determination of the sufficiency of evidence to subject a defendant to trial.

If the prosecutor screens out a defendant, the police or the private complainant should have a recourse to the court. If the court determines that the decision not prosecute constituted an abuse of discretion, it should order the prosecutor to pursue formal proceedings.

COMMENTARY

Screening refers to the discretionary process by which the prosecutor decides whether to pursue formal criminal proceedings against a person who has become involved in the criminal justice system. The decision to prosecute primarily affects the defendant. (See Contemporary Studies Project, **Perspectives On The Administration of Criminal Justice in Iowa,** 57 Iowa L. Rev. 598, 627 (1972).) If charges are filed against the defendant, he/she faces the possibility of punishment and the stigma that attaches to a person accused of a

crime. (**Id.**) The defendant also bears the cost of criminal proceedings not only in financial terms but also in regard to family life disruption and other personal discomforts. (NAC, **Courts,** 21 (1973).) The decision not to prosecute relates mainly to societal interests. If the prosecutor decides not to prosecute the defendant, the public's interests in the deterrence of future offenses by the offender and others, in the incapacitation of the offender from committing future offenses, and in the rehabilitation of the offender are affected.

In Iowa, the screening process is one of low visibility. This is because the county attorney's decision to charge or not to charge is relatively unstructured. For example, the county attorney's information provisions permit the county attorney to initiate and continue formal criminal proceedings against a person largely in his/her own discretion. (See IOWA CODE, ch. 769 (1975).) Similarly, the county attorney has broad discretion to decline to prosecute an individual. (See Contemporary Studies Project, **supra,** 632.) Because of the low visibility and unstructured nature of the screening process in Iowa, there is no assurance that screening discretion is being exercised to serve the legitimate objectives of the criminal justice system: reducing criminal activity and extending fairness to defendants.

The American Bar Association states that "[i]t is the duty of the prosecutor to do justice, not to merely 'win' convictions." (ABA, **The Prosecution Function,** 84 (Approved Draft, 1971).) This duty requires that the prosecutor exercise his/her screening discretion in the public interest. The ABA concludes that "[t]he public interest is best served and even-handed justice dispensed not by mechanical application of the 'letter of the law' but by a flexible and individualized application of its norms through the exercise of the trained discretion of the prosecutor as an administrator of justice." (**Id.**)

Conference participants agree that the exercise of trained screening discretion is a legitimate function of the prosecutor. Basic to this conclusion is the recognition that there will be individuals whose conduct comes within the definition of a criminal offense but whom the legislature, had it considered the merits of the case, would not have desired to include within it. (See NAC, **Courts,** 18 (1973).) "The breadth of criminal legislation necessarily means that much conduct which falls within its literal terms should not always lead to criminal prosecution." (ABA, **The Prosecution Function,** 93 (Approved Draft, 1971).) Conferees believe, however, that the screening process must be guided by criteria and procedures designed to insure that Iowa prosecutors exercise their discretion in the public interest. Standard 1.1 and 1.2 provide appropriate screening criteria and procedures for Iowa prosecutors.

Standard 1.1 calls for open recognition of the need for screening discretion and the objectives it should serve. Conferees conclude that the prosecutor should decide not to initiate or continue formal or informal action against an individual "...when the benefits to be derived from prosecution or diversion would be outweighed by the social and economic costs of such action." Conferees believe that civil liability for any actions taken prior to the decision to screen will be limited by the existence of "probable cause" in the case.

The standard sets forth a nonexhaustive list of the factors that should be considered in determining when the benefits of prosecution are outweighed by the costs. The first factor is evidence insufficiency. The standard does not attempt to state a particular test in terms of probabilities, such as recommending screening out in those cases with a probability of conviction of less than 30 percent. (See NAC, **Courts,** 21 (1973).) Conferees recognize that such evaluations are not reducible to such specific delineation. Conference participants agree with the National Advisory Commission's position that "...the appropriateness of proceeding on the basis of a given probability of conviction might differ among various situations, depending upon the criminal justice system's need for the particular conviction." (**Id.**) The standard suggests that the prosecutor determine the sufficiency of the evidence according to the situation surrounding each case. In addition, the standard recommends that the prosecutor consider the value of criminal conviction in reducing offenses by others, either by general deterrence or by other mechanisms through which punishment might prevent offenses. (**Id.**) Any conclusions must be evaluated in light of the seriousness of the offense.

Similarly, the prosecutor should evaluate the impact of further proceedings upon the offender himself/herself. The National Advisory Commission states that "[i]f conviction if sought, it is possible that criminal sanctions might deter the offender, or that participation in correctional programs might alter his future course of activity. If diversion is pursued, available programs might offer a reasonable hope of preventing future criminal activity. Again, any expectation that criminal disposition or diversion will prevent future offenses must be evaluated in light of the seriousness of those offenses." (NAC, **Courts,** 22 (1973).)

Another factor is the community's sense of security and confidence in the criminal justice system. This factor suggests that in some cases formal proceedings might be justified because of their tendency to foster community confidence. The National Advisory Commission states that "[i]t is arguable that reliance upon this as an independent factor constitutes unjustifiable concession to public ignorance. Under these circum-

stances, prosecution would be of value only where there is no objectively justifiable need for further proceedings, but where a significant segment of the community unreasonably believes such a need exists. Although it is clear that the criminal justice system should work to educate the community as to the reasonable expectations of the criminal sanction and diversionary programs, it is equally clear that in the interim the system often should not reject community demands, even where those demands are objectively unjustifiable. To maintain community confidence, the criminal justice system must respond to community demand." (**Id.**) Therefore, the standard identifies community confidence as a factor to be considered during the screening process.

Also, the prosecutor should assess the value of prosecution in terms of the expenditure of resources. Where a shortage of resources exists, it is necessary to consider what a prosecution will cost in order to determine whether it, rather than other cases, deserves attention. (**Id.**) Standard 1.1 suggests that prosecutions requiring excessive resources should be scrutinized for screening purposes.

The standard directs the prosecutor to consider the motivations of the complainant in deciding whether to screen out or to prosecute. "If prosecution is sought by a private party out of malice or to exert coercion on the defendant, ... the prosecutor may properly decline to prosecute." (ABA, **The Prosecution Function,** 94 (Approved Draft, 1973).) However, when formal proceedings are justified by the community's need for protection, the improper motivation of a complainant should not be a significant consideration. (NAC, **Courts,** 22 (1973).)

The standard provides that prolonged nonenforcement of the statute on which the offense is based should be considered to favor screening. "If nonenforcement has continued for a significant period there is a strong suggestion that the community no longer regards the activity defined by statute as a proper subject for criminal proceedings. Prosecutors and police must guard against the possibility that conviction will be sought for such conduct because of an unprovable belief that the defendant poses a danger to the community for other reasons. Irregular enforcement of a criminal statute creates the danger—or at least the appearance—of arbitrariness and must be avoided. In addition a person may have committed an offense on the assumption that nonenforcement of a statute meant that the community no longer regarded that activity as illegal. Prosecution may be unnecessary if the offender can be made to understand that the community does consider his activity inappropriate and agrees to comply with the law." (**Id.**)

The prosecutor also should determine whether formal proceedings by another jurisdiction might serve the interests of the criminal justice system adequately. Duplication of effort should be avoided. (NAC, **Courts,** 23 (1973).) The final factor suggests that when the value of encouraging assistance in a law enforcement or similar activity outweighs the benefit to society from continuation of criminal or diversionary proceedings, the prosecutor should screen out the accused. (**Id.**)

Standard 1.2 recommends general procedures for the screening process. Conferees believe that these procedures should be designed to insure that the prosecutor has the opportunity to exercise his/her screening discretion in all cases. The standard directs that responsibility for the charging and screening decisions rest with the prosecutor, thereby limiting police authority to arrest and booking. Furthermore, conference participants conclude that the police arrest decision should be structured by screening guidelines developed by the prosecutor. The standard also prevents private complainants from filing charges directly with the court. Conferees feel that the private complainant should be required to initiate criminal proceedings through the prosecutor's office. To prevent abuses of prosecutorial discretion, the standard permits the police or the private complainant to seek recourse from the court when the prosecutor screens out a defendant.

In addition, Standard 1.2 requires the prosecutor to develop guidelines that structure the exercise of his/her screening discretion. The purpose of screening guidelines is to promote uniform application of screening discretion and to identify effective screening practices. The guidelines" ...might set out different policies for those charged with various offenses and for various categories of situations within the definition of a single crime." (NAC, **Courts,** 25 (1973).) For example, the guidelines might "... direct that an assault upon a member of the defendant's own family be dealt with differently from a similar assault upon an unknown person. Such guidelines might also establish the circumstances under which formal charges will be pressed for offenses such as gambling, or even establish the amount of marijuana ordinarily required before a prosecution for possession of the substance will be begun." (**Id.**) The standard also requires the prosecutor to maintain adequate records so that actual screening practice can be ascertained and evaluated. "It is increasingly acknowledged that the regularizing and structuring of discretionary action through written guidelines governing prosecutorial officials is not inconsistent with a broad discretionary authority. Guidelines [and records] are a protection against arbitrariness, and they bring discretionary decisions more in line with the concept of equal justice under the law. (See K. Davis, **Discretionary Justice, A Preliminary Inquiry** (1969)." (NAC, **Courts,** 26 (1973).)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 1.1, 1.2.

Chapter Two

Diversion

Goal: To provide for the disposition of appropriate offenders into noncriminal programs prior to trial or conviction.

STANDARD 2.1
General Criteria for Diversion

In appropriate cases offenders should be diverted into noncriminal programs before formal trial or conviction and not conditioned on a plea of guilty to a charge.

Such diversion is appropriate where there is a substantial likelihood that conviction could be obtained and the benefits to society from channeling an offender into an available noncriminal diversion program outweigh any harm done to society by conditionally suspending criminal prosecution. Among the factors that should be considered favorable to diversion are: (1) the willingness of the victim to have no conviction sought; (2) any likelihood that the offender suffers from a mental illness or psychological abnormality which was related to his/her crime and for which treatment is available; and (3) any likelihood that the crime was significantly related to any other condition or situation such as unemployment or family problems that would be subject to change by participation in a diversion program.

Among the factors that should be considered unfavorable to diversion are: (1) any history of the use of physical violence toward others; (2) involvement with organized crime; (3) a history of antisocial conduct indicating that such conduct has become an ingrained part of the defendant's lifestyle and would be particularly resistant to change; and (4) any special need to pursue criminal prosecution as a means of discouraging others from committing similar offenses.

STANDARD 2.2
Procedure for Diversion Programs

The formulation of procedures for diversion requires designation of the entity responsible for the diversion decision. Presently, it is inappropriate to designate this entity. Therefore, it is recommended that the issue receive further study.

COMMENTARY

Diversion is the halting or suspending before conviction of formal criminal proceedings against a person on the condition or assumption that he/she will do something in return. (NAC, **Courts**, 27 (1973).) It uses the threat or possibility of conviction of a criminal offense to encourage an accused to agree to do something: he/she may agree to participate in a rehabilitation program designed to change his/her behavior, or he/she simply may agree to make restitution to the victim of the offense. (**Id.**) The American Bar Association cites the following examples of traditional diversion practices:

> It has long been the practice among experienced prosecutors to defer prosecution upon certain conditions, such as a firm arrangement for the offender to seek psychiatric or other similar assistance where his disturbed mental condition may have contributed to his behavior. A technique of long standing, indeed one going back to the early history of our country, is found in decisions of prosecutors not to prosecute an offender who has agreed to enter the military service or who has obtained new employment or in some other manner has embarked on what can broadly be considered to be a rehabilitative program. (ABA, **The Prosecution Function**, 91 (Approved Draft, 1971).)

The diversion agreement may not be entirely voluntary, as the accused often agrees to participate in a diversion program only because he/she fears formal criminal prosecution. (NAC, **supra.**)

Diversion of offenders into noncriminal programs offers several benefits. Like screening, diversion programs allow adjustment for overcriminalization. The National Advisory Commission on Criminal Justice Standards and Goals argues that "[l]egislatures have not been able to prescribe in criminal statutes exactly which individuals should—and which should not—be subject to the formal imposition of criminal liability.... As a result, many individuals come within the language of existing criminal statutes, but their conviction and punishment would not be consistent with the intent of the legislature." (NAC, **Courts**, 27 (1973).) Diversion permits the prosecutor to make adjustments for overcriminalization, while insuring that the offender is prevented from committing future harmful acts or makes restitution.

Diversion also promotes economy. The National Advisory Commission states that because "... diversion programs generally operate at early points in the criminal process, they avoid the necessity for some formal proceedings, and resources that otherwise would be used to process the individuals through the criminal justice system can be used for other purposes." (**Id.**)

The major benefit of diversion programs is broadened resources. Diversion permits dispositions of offenders that would be difficult or impossible as sentencing alternatives, and is available in those cases that do not qualify for deferred judgments or suspended sentences. (See IOWA CODE §789A.1 (1975); Revised Criminal Code, ch. 3 § 702.) Because of its informality and flexibility, diversion also is likely to encompass more programs than could be made available as sentencing or probation

alternatives. Moreover, it permits use of these programs earlier than if they were sentencing or probation alternatives. No matter what efforts are made to expedite the process, requiring conviction before referral to such programs would delay significantly an offender's entry into them. Thus, diversion not only increases the available resources, but also permits more effective use of those resources in dealing with offenders. (**Id.**)

Against the benefits of diversion programs must be weighed actual or potential costs. One possible cost is the potential sacrifice of society's interest in protection. (NAC, **Courts**, 28 (1973).) Conference participants warn that diversion, because it eliminates formal court processing, may reduce the deterrent impact of criminal punishment. This viewpoint considers the court process itself as a deterrent to future criminal activity, and regards a formal admission of guilt through a plea as essential to rehabilitation. Conferees also caution that the impact of formal prosecution may be diminished in those cases where offenders fail to comply with diversion agreements. Proponents of this argument believe that delay from arrest to ultimate prosecution greatly reduces the deterrent effect of the criminal justice system. In addition, diversion programs involve the danger that the treatment may be so ineffective that it has significantly less effect upon the offender than the treatment that would have followed formal conviction. (**Id.**)

Diversion also poses potential threats to the legitimate interests of those charged with criminal offenses. For example, diversion may create a level of control over those individuals who would normally be screened out of the criminal justice system.

> A defendant's decision to participate in a diversion program is voluntary in one sense of the word. But it is clearly not free of influences over which the law has control, and in this sense the decision is involuntary or coerced. Whatever the label attached to the decision, diversion programs involve a significant danger that the criminal justice system will cause unjustified participation in a burdensome program. An innocent individual, because of ignorance or other factors, may agree to participate in a diversion program, even though he does not have to because the prosecution cannot establish his guilt. (NAC, **Courts**, 29 (1973).)

Furthermore, the informality of diversion may circumvent the defendant's rights. In reaching this conclusion, conference participants observe that diversion dispositions are not necessarily protected by safeguards designed to insure that defendants are aware of their rights and voluntarily and intelligently enter into diversion agreements. Conferees fear that the informality of such a process may give the prosecutor an unfair advantage when negotiated dispositions are sought. Finally, diversion may not be responsive to the needs of the offender. Conference participants note that the success of diversion dispositions depends ultimately upon rehabilitative programs, and that many of these programs are not currently available in all areas of the State.

Although there are several potential dangers associated with the concept, conference participants conclude that the Iowa criminal justice system can benefit from increased use of formalized diversion. Therefore, Standard 2.1 recommends that in appropriate criminal cases offenders be diverted into noncriminal programs before trial or conviction. Although many of the objectives sought through diversion can be accomplished through existing deferred judgment and suspended sentence provisions, participants believe that providing diversion alternatives prior to trial and not conditioning their availability on a guilty plea will promote individualized dispositions, economy, and broadened rehabilitative resources. Participants caution, however, that diversion decisions must be guided by criteria and procedures designed to insure that diversion dispositions are in the public interest and that defendants receive equal and fair treatment.

Standard 2.1 establishes criteria for diversion. The standard recommends that the offender should be diverted into a noncriminal program "... where there is a substantial likelihood that conviction could be obtained and the benefits to society from channeling an offender into an available noncriminal diversion program outweigh any harm done to society by conditionally suspending criminal prosecution. The standard also sets forth factors that should be considered when making the diversion decision. It is impossible to specify all of the factors that might be regarded as indicating the desirability of diversion. There are, however, two common prerequisites for diversion: (1) undesirability of criminal prosecution because of undue harm to the defendant or his/her underlying problem, because of the apparent futility of prosecution in preventing future offenses, or because formal prosecution fails to meet the needs of the victim; and (2) availability of assistance such as treatment, counseling or mediation procedures. (NAC, **Courts**, 33 (1973).) Given these general prerequisites, there is substantial room for variation among specific factors. (**Id.**)

Standard 2.2 does not establish specific diversion procedures. Conference participants conclude that, given the limited state of knowledge regarding the effectiveness of diversion and its impact on the ability of the criminal justice system to deter crime, and the variety of diversion programs that can be developed, it is presently inappropriate to recommend specific rules governing diversion. For example, a primary issue is the delegation of authority for making the diversion decision. Police diversion maximizes conservation of criminal justice resources because it emphasizes early disposition of criminal cases. However, the police

may not have sufficient expertise or information about an offender to develop a valid diversion agreement. Similarly, the prosecutor, while possessing the necessary legal skills to formulate a diversion agreement, may not be sufficiently aware of the offender's background to develop a diversion program that would be in the interests of the offender and society. Beyond these practical considerations, there is the question of whether the police and the prosecutor have the legal authority to impose dispositions involving substantial deprivations of liberty. Thus, the court may be the only entity legally empowered to make diversion decisions. Because of these questions, conferees conclude that it is premature to designate the appropriate authority for diversion. Participants recommend that these and other issues be fully analyzed before procedures for diversion are established.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 2.1, 2.2

Chapter Three

Plea Negotiation

Goal: To recognize plea negotiation as desirable and in the public interest and to provide guidelines for its administration.

STANDARD 3.1
Priority of Plea Discussions and Plea Agreements

In cases in which it appears that the interest of the public in the effective administration of criminal justice (as stated in Standard 3.2) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement.

STANDARD 3.2
Consideration of Plea in Final Disposition

(a) It is proper for the court to grant charge and sentence concessions to defendants who enter a plea of guilty or nolo contendere when the interest of the public in the effective administration of criminal justice would thereby be served. Among the considerations which are appropriate in determining these questions are:

(i) that the defendant by his/her plea has aided in ensuring the prompt and certain application of correctional measures to him/her;

(ii) that the defendant has acknowledged his/her guilt and shown a willingness to assume responsibility for his/her conduct;

(iii) that the concessions will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction;

(iv) that the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

(v) that the defendant has given or offered cooperation when such cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct;

(vi) that the defendant by his/her plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

(b) The court should not impose upon a defendant any sentence in excess of that which would be justified by any of the rehabilitative, protective, deterrent or other purposes of the criminal law because the defendant has chosen to require the prosecution to prove his/her guilt at trial rather than to enter a plea of guilty or nolo contendere.

COMMENTARY

The guilty plea is the most frequent method of disposition for criminal cases. (See, **e.g., Pleas of Guilty,** 1 (Approved Draft, 1968).) Conference participants conclude that the disposition of criminal cases as the result of guilty pleas is essential to the effective operation of the Iowa trial court system. This conclusion is based upon participants' belief that several essential values are served by frequent disposition of criminal cases without trial.

One value of the guilty plea is that it conserves the State's criminal justice resources. Conference participants observe that the State does not have sufficient trial courts, judges, and prosecutors to provide trials for all defendants. (See, **e.g.**,Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 609 (1972).) The plea of guilty greatly reduces the number of cases that must be tried.

Another value of the guilty plea is that it speeds the administration of justice. Conference participants feel that prompt administration of justice enhances the deterrent effect of criminal sanctions and eases the task of pretrial detention. Conferees further believe that the defendant benefits from prompt administration of justice because the tension and stress created by criminal processing are minimized.

Disposition of criminal cases without trial also promotes prompt application of correctional measures to offenders. The American Bar Association states that"... many penologists believe that disposition by plea in a proper case rather than prolonging a conflict with society enhances prospects for rehabilitation. The basis for an effective rehabilitation program can be developed better in the context of an agreed disposition than after the contest of trial." (ABA, **The Prosecution Function,** 102 (Approved Draft, 1971).) Similarly, a guilty plea"... aids in avoiding delay in the disposition of other cases, thereby increasing the probability of prompt and certain application of correctional measures to other offenders." (ABA, **Pleas of Guilty,** 2 (Approved Draft, 1968).)

Often the guilty plea is the result of plea negotiations between the prosecution and the defense. During the plea negotiation process, the prosecutor grants concessions to the defendant in return for a plea of guilty. A wide range of concessions are made by Iowa county attorneys in exchange for guilty pleas; included are sentence recommendations, promises to reduce charges, and promises to dismiss counts or indictments. (See, Contemporary Studies Project , **Perspectives on the Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 636 (1972).)

The plea negotiation process in its present form has been the subject of much criticism. The National Advisory Commission on Criminal Justice Standards and Goals states that plea negotiation raises the danger that innocent persons will be convicted of criminal offenses. The Commission argues that plea negotiation creates the threat that"... if the defendant goes to trial and is convicted he will be dealt with more harshly than would be the case had he pleaded guilty. An innocent defendant might be persuaded that the harsher sentence he must face if he is unable to prove his innocence at trial means that it is to his best interests to plead guilty despite his innocence. If these persons have a realistic chance of being acquitted at trial, a plea negotiation system that encourages them to forfeit their right to trial endangers their right to an accurate and fair determination of guilt or innocence." (NAC, **Courts,** 43 (1973).)

The National Advisory Commission also asserts that plea negotiation endangers society's interest in the administration of criminal justice. The Commission feels that"...plea bargaining results in leniency that reduces the deterrent impact of the criminal law..." and reduces public security "...by making the correctional task of rehabilitation more difficult." (NAC, **Courts,** 44 (1973).) Similarly, it is argued that plea negotiation distorts the sentencing process by limiting the trial court's discretion or "...by opposing society's decision that criminal conduct be met with particular penalties. Note, 112 U. Pa. L. Rev. 865, 878-79 (1964)." (ABA, **Pleas of Guilty,** 63 (Approved Draft, 1968).)

Another argument directed at plea negotiation is that the negotiation process disrupts efficient court administration. The National Advisory Commission states that "[p]lea bargaining often occurs simultaneously with the processing of the case through the formal steps of the proceedings. When a bargain is arrived at, the case is simply pulled out from wherever it happens to be. Unfortunately, the bargain is often entered into at the last minute. The resulting need to pull cases out of the process—sometimes on the morning of trial—makes efficient scheduling of cases difficult or impossible. Thus plea bargaining makes it difficult to use judicial and prosecutorial time effectively. When a trial is canceled at the last minute because the defendant has agreed to plead guilty, it is often impossible for the judge and the lawyers to reschedule some other useful activity into the time slot reserved for the trial.The result is wasted time." (NAC, **Courts,** 43 (1973).)

Despite these criticisms, conference participants believe that the plea negotiation process serves the essential function of promoting guilty pleas. Conferees conclude that criticism is directed at plea negotiation because, in its present form, the process is one of low visibility and is relatively uncontrolled. To remedy the deficiencies of the existing plea negotiation process, conference participants recommend that plea negotiation be openly recognized as desirable and in the public interest and that the process be guided by standards designed to improve its administration.

The standards contained in this chapter are designed to improve the plea negotiation process in Iowa. Standard 3.1 recognizes the propriety of the negotiated plea as a method of disposition for criminal cases and recommends open recognition of the need for Iowa prosecutors to engage in plea negotiation discussions and agreements. The standard limits the prosecutor's authority to pursue negotiated dispositions to those cases in which the public interest will be served by such dispositions.

Standard 3.2 lists factors that relate to determining when negotiated dispositions will be in the public interest. Conference participants recommend that Iowa prosecutors consider these factors when deciding whether to enter into plea negotiations and that Iowa judges apply the factors when determining whether to grant charge and sentence concessions. In addition, conference participants suggest that the plea of nolo contendere be adopted in Iowa.

COMPARATIVE ANALYSIS REFERENCE

NAC Courts 3.1, 3.7, 3.8.

STANDARD 3.3
Uniform Plea Negotiation Policies and Practices

Each prosecutor's office should formulate a written statement of factors to be considered by all members of the staff concerning plea negotiations.

COMMENTARY

The decision to offer concessions for a guilty plea is usually within the discretion of the trial prosecutor to whom the case is assigned. (NAC **Courts,** 52 (1973).) Generally, the prosecutor is not required to follow uniform policies and practices when exercising this discretion. Thus, the plea negotiation process is relatively unstructured and has a low degree of visibility - that is, it is seldom seen by observers of the system or, in many cases, by the participants themselves. (NAC, **Courts,** 3 (1973).)

The failure of the prosecutor to apply uniform plea negotiation policies and practices creates two potential problems. The first is that there may be a lack of uniformity in the factors considered during negotiations. (NAC, **Courts,** 52 (1973).) Ultimately, this may result in a disparity in the disposition of criminal cases with similar characteristics. (Id.) The second potential problem is that the failure to articulate plea negotiation factors may leave ineffective policies and practices undetected.

To promote fair, efficient, and effective administration of plea negotiations, conference participants conclude that the visibility of the plea negotiation process should be raised. Therefore, Standard 3.3 directs the prosecutor to formulate a written statement of factors to be considered during plea negotiations. The standard does not recommend the specific factors that should be included in the plea negotiation statement. Conference participants feel that formulation of actual factors should be left to the prosecutor's discretion. The National Advisory Commission on Criminal Justice Standards and Goals suggests the following considerations:

1. The impact that a formal trial would have on the offender and those close to him, especially the likelihood and seriousness of financial hardship and family disruption;
2. The role that a plea and negotiated agreement may play in rehabilitating the offender;
3. The value of a trial in fostering the community's sense of security and confidence in law enforcement agencies; and
4. The assistance rendered by the offender:
   a. in the apprehension or conviction of other offenders;
   b. in the prevention of crimes by others;
   c. in the reduction of the impact of the offense on the victim; or
   d. in any other socially beneficial activity. (NAC, **Courts,** 52, (1973).)

Articulating factors to be considered during plea negotiation serves several interests. Conference participants conclude that the plea negotiation statement will produce greater uniformity of application by single prosecutors and will help multi-attorney prosecutor's offices function as a unit. (See NAC, **Courts,** 53 (1973).) The American Bar Association states that formulating plea negotiation policies and procedures will serve "... to maintain consistent practices and continuity despite changing personnel and... to assure that policies adopted at the highest level of the office are observed by the staff." (ABA, **The Prosecution Function,** 65 (Approved Draft, 1971).) In addition, the ABA believes that articulation of criteria for the exercise of prosecutorial discretion will contribute "...to the fomulation of sound policies by compelling consideration and evaluation of practices which may have outlived their usefulness." (Id.)

The statement of plea negotiation factors should not dictate the exercise of prosecutorial discretion; rather, the prosecutor should use the statement as a guide to promote uniformity and effectiveness within the office. Thus, the statement should be an internal, intraoffice document only. For the same reason, the statement should not be subject to judicial review. However, the plea negotiation statement should be available to the public, defendants, and their attorneys. Conference participants believe that making the statement available will promote fair administration of the plea negotiation process and contribute to public understanding.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 3.3

STANDARD 3.4
Time Limit on Plea Negotiations

Each judicial district should set a time limit after which plea negotiations may no longer be conducted. The sole purpose of this limitation should be to insure the maintenance of a trial docket that lists only cases that will go to trial. After the specified time has elapsed, only pleas to the official charge should be allowed, except in unusual circumstances and with the approval of the judge and the prosecutor.

COMMENTARY

Conference participants observe that late settlement of cases severely disrupts trial court administration. Jury panel members must be notified, witnesses must be informed, and trials must be rescheduled. Ultimately, trial court resources are wasted. "A properly administered trial docket can save a jurisdiction time and money." (NAC, **Courts**, 54 (1973).) Standard 3.4 seeks to insure that Iowa jurisdictions have pure trial dockets free of cases to be settled without trial. The standard restricts only the receipt of a plea that is the result of a bargain arrived at after the specified time. Thus, the defendant may plead guilty as charged at any time. Conference participants do not recommend an appropriate time limit. Participants feel that the time limit will depend upon conditions and circumstances within each judicial district.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 3.4

STANDARD 3.5
Representation by Counsel During Plea Negotiations

No plea negotiations should be conducted until a defendant has been afforded an opportunity to be represented by counsel. If the defendant is represented by counsel, the negotiations should be conducted only in the presence of and with the assistance of counsel.

COMMENTARY

Standard 3.5 prohibits the prosecutor from negotiating with a represented defendant concerning the disposition of his/her case without counsel being present. If the defendant has retained or appointed counsel, his/her counsel should be present during plea discussions. (See NAC, **Courts**, 55 (1973).)

The defendant has a right to counsel at all critical stages of a criminal proceeding if the defendant may be deprived of his/her liberty as the result of a criminal prosecution. (**Argersinger v. Hamlin**, 407 U.S. 25 (1972).) The American Bar Association concludes that the defendant is denied effective assistance of counsel if his/her counsel does not have "... adequate opportunity to engage in plea discussions with the prosecuting attorney." (ABA, **Pleas of Guilty**, 22 (Approved Draft, 1968).) The standard attempts to insure that the defendant has available the knowledge and experience of an attorney during the plea negotiation process.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 3.5.

STANDARD 3.6
Prohibited Prosecutorial Inducements to Enter a Plea of Guilty

No prosecutor should, in connection with plea negotiations, engage in, perform, or condone any of the following:

1. **Charging or threatening to charge the defendant with offenses for which there is no reasonable basis for conviction.**
2. **Threatening to charge the defendant with a crime not ordinarily charged in the jurisdiction for the conduct allegedly engaged in by by him/her.**
3. **Failing to grant full disclosure before the plea negotiations of all exculpatory evidence material to guilt or punishment.**

COMMENTARY

The purpose of Standard 3.6 is to promote greater fairness in the plea negotiation process and reduce postconviction relief. Therefore, the standard is directed at the prosecutor's office. Although the court can detect and correct improper inducements to plead guilty, it cannot prevent the practice from occurring within the prosecutor's office. "Ultimately, ...the removal of improper inducements to plead guilty depends upon acceptance within the prosecutor's office of the wisdom of the prohibition." (NAC, **Courts, 57** (1973).)

Subparagraphs 1 and 2 prohibit overcharging. The National Advisory Commission on Criminal Justice Standards and Goals defines overcharging as "...the filing of an excessive number of charges by the prosecutor against a single defendant in order to improve the bargaining

power of the prosecutor in anticipation of a negotiated disposition." (NAC, **Courts**, 57 (1973).) Examples of overcharging are charging an offense more serious than the circumstances of the case seem to warrant and charging an unreasonable number of offenses based upon the same or closely related conduct. (**Id.**) Subparagraph 1 directs the prosecutor to charge only offenses for which there is a reasonable basis for conviction and forbids charges higher than warranted by the facts in the case. Subparagraph 2 prevents the prosecutor from charging a defendant more severly than others would be charged for the same conduct.

Subparagraph 3 recommends that, before entering into plea discussions with the defendant, the prosecutor should offer to disclose all exculpatory evidence material to guilt or punishment. Such disclosures enables the prosecution and the defense to arrive at the best possible negotiated disposition. (See NAC, **Courts**, 58 (1973).)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 3.6.

STANDARD 3.7
Record of Plea and Agreement

Where a negotiated guilty plea is offered, the agreement upon which it is based should be presented to the judge in open court for his/her acceptance or rejection. In each case in which such a plea is offered, the record should contain a full statement of the terms of the underlying agreement.

COMMENTARY

The National Advisory Commission on Criminal Justice Standards and Goals states that "...plea discussions between prosecutor and defense counsel are usually informal and consequently unreviewable." (NAC, **Courts,** 50 (1973).) The Commission concludes that this informality "...invites the use of questionable, if not improper, criteria." (**Id.**) The purpose of Standard 3.7 is to superimpose a control mechanism on the negotiated disposition of criminal cases. The standard makes it the duty of the prosecutor and defense counsel to create a record of the plea negotiation agreement and present the agreement to the trial court at the time the guilty plea is offered.

Conference participants believe that requiring the prosecutor and defense counsel to maintain a record of the negotiated agreement will help to regularize the plea negotiation process. In addition, the National Advisory Commission concludes that such a requirement will raise the visibility of the plea negotiation process. The Commission argues that "[i]f the terms and reasons for acceptance or rejection of negotiated pleas can be brought into the open, general practice in the area can be identified and corrective measures taken if necessary. Individual incidents of unfairness - for example, too lenient bargains - can also be identified and guarded against. The corrective measures would, in most cases, consist of internal action by the prosecutor in directing the way in which prosecutorial discretion is exercised in the bargaining process by his staff." (**Id.**)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 3.2.

STANDARD 3.8
Acceptability of a Negotiated Guilty Plea

The court should not participate in plea negotiations. It should, however, inquire as to the existence of any agreement whenever a plea of guilty is offered and carefully review any negotiated plea agreement underlying an offered guilty plea. It should make specific determinations relating to the acceptability of a plea before accepting it.

Before accepting a plea of guilty, the court should require the defendant to make a detailed statement concerning the commission of the offense to which he/she is pleading guilty and any offenses of which he/she has been convicted previously. In the event that the plea is not accepted, this statement and any evidence obtained through use of it should not be admissible against the defendant in any subsequent criminal prosecution.

The review of the guilty plea and its underlying negotiated agreement should be comprehensive. If any of the following circumstances is found and cannot be corrected by the court, the court should not accept the plea:

1. **Counsel was not present during the plea negotiations but should have been;**
2. **The defendant is not competent or does not understand the nature of the charges and proceedings against him/her;**
3. **The defendant does not know his/her constitutional rights and how the guilty plea will affect those rights; rights that expressly should be waived upon the entry of a guilty plea include:**

a. **Right to the privilege against compulsory self-incrimination (which includes the right to plead not guilty);**
b. **Right to trial in which the state must prove the defendant's guilt beyond a reasonable doubt;**
c. **Right to a jury trial;**
d. **Right to confrontation of one's accuser's;**
e. **Right to compulsory process to obtain favorable witnesses; and**
f. **Right to effective assistance of counsel at trial.**

4. **During plea negotiations the defendant was denied a constitutional or significant substantive right that he/she did not waive;**
5. **The defendant did not know at the time he/she entered into the agreement the mandatory minimum sentence, if any, and the maximum sentence that may be imposed for the offense to which he/she pleads, or the defendant was not aware of these facts at the time the plea was offered;**
6. **The defendant has been offered improper inducements to enter the guilty plea;**
7. **There is no factual basis to support the plea;**
8. **The defendant's guilty plea does not represent a voluntary and intelligent choice among alternative courses of action open to an accused;**
9. **Accepting the plea would not serve the public interest. Acceptance of a plea of guilty would not serve the public if it:**
   a. **places the safety of persons or valuable property in unreasonable jeopardy;**
   b. **unreasonably depreciates the seriousness of the defendant's activity or otherwise promotes disrespect for the criminal justice system;**
   c. **gives inadequate weight to the defendant's rehabilitative needs.**

All interested parties should be advised of the terms of the proposed plea prior to the time that the plea is entered.

COMMENTARY

Standard 3.8 addresses the trial court's role in the plea negotiation process. Conference participants conclude that the trial court's role should be limited to review of plea negotiation proceedings and agreements. Thus, the standard directs that the trial court should not participate in plea discussions.

Participation by the trial court in plea negotiations has two possible advantages. The first is that it would raise the visibility of the plea negotiation process, thereby enchancing understanding and acceptance of the process on the part of the defendant and the public. (NAC, **Courts**, 60 (1973).) The second advantage is that judicial participation would help to prevent abuses of prosecutorial discretion and improper inducements to plead guilty. (**Id.**) However, trial court participation also creates several potential problems. The American Bar Association suggests the following reasons for keeping the trial judge out of plea discussions:

(1) judicial participation in the discussions can create the impression in the mind of the defendant that he would not receive a fair trial were he to go to trial before this judge;
(2) judicial participation in the discussions makes it difficult for the judge objectively to determine the voluntariness of the plea when it is offered;
(3) judicial participation to the extent of promising a certain sentence is inconsistent with the theory behind the use of the presentence investigation report; and
(4) the risk of not going along with the disposition apparently desired by the judge may seem so great to the defendant that he will be induced to plead guilty even if innocent. (ABA, **Pleas of Guilty,** 73 (Approved Draft, 1968).)

Conference participants believe that the potential drawbacks of judicial participation outweigh the beneficial effects.

Standard 3.8 directs Iowa trial courts to make specific determinations relating to the defendant's behavior. Before accepting a negotiated plea, the trial judge should require a full statement from the defendant concerning the offense to which he/she is pleading guilty and his/her previous offenses. The statement serves two functions. "First, it insures that there is a factual basis for the plea and that the defendant is not in fact innocent. Second, it maximizes the information before the judge for use in sentencing; thus the statement should cover past offenses as well as the conduct underlying the charge to which the defendant seeks to plead." (NAC. **Courts**, 60 (1973).)

Standard 3.8 also requires Iowa trial courts to make specific determinations relating to the acceptance or rejection of a negotiated plea. To determine acceptance or rejection, Iowa judges should apply the criteria set forth in the standard. The criteria are designed to insure that the defendant understands the consequences of his/her guilty plea and the alternative courses available to him/her, and that the defendant voluntarily relinquishes the right to pursue the alternatives. (**Id.**)

Subparagraph 1. Standard 3.5 requires that unless the right to representation is waived, counsel must be present at all plea negotiations.

Subparagraph 2. The defendant should be competent and understand the nature of the

charges and the proceedings against him/her. "The responsibility of the judge in determining competence and understanding will vary on the basis of the defendant's intelligence, education, age, experience, mental health, and physical health. Special attention should be given to preventing an improper plea by a defendant who is habituated to or under the influence of alcohol or other drugs." (NAC, **Courts**, 61 (1973).; see **Brainard v. State**, 222 N.W. 2d 711 (Iowa 1974).) The trial judge should explain the charges and proceedings in language the defendant will understand. (See, **e.g.**, ABA, **Pleas of Guilty**, 26 (Approved Draft, 1968).)

Subparagraph 3. A plea of guilty waives several constitutional rights; including the accused's privilege against self-incrimination, the right to trial by jury and the right to confront one's accusers; all defenses except that the indictment or information charges no offense; and the right to challenge the plea itself. (**State v. Kobrock**, 213 N.W. 2d 481 (Iowa 1973).) These rights are sufficiently important to warrant a requirement that the trial judge undertake to insure that the defendant does in fact understand these rights and that he/she waives them by pleading guilty. (See ABA, **Pleas of Guilty**, 27 (Approved Draft, 1968).) Therefore, before a guilty plea is accepted by the trial court, the judge should make a determination as to whether the defendant is aware of the importance of his/her rights and is voluntarily and intelligently waiving them. (See NAC, **Courts**, 61 (1973).)

Subparagraph 4. This subparagraph takes the position that constitutional and other rights are so vital to the concept of fairness, both to the defendant and to the integrity of the criminal administrative system, that their violation justifies relief in the form of invalidation of a resulting plea agreement. (**Id.**)

Subparagraph 5. The record should demonstrate that the defendant understands the penal consequences of his/her plea. The standard requires that the defendant have such understanding at the time he/she entered into the plea negotiation agreement and at the time the plea is offered. (See, **e.g.**, **State v. Williams**, 224 N.W. 2d 17 (Iowa 1974).) To insure complete understanding, the court should inform the defendant of all ascertainable consequences that may result after a plea of guilty is accepted. (NAC, **Courts**, 62 (1973).)

Subparagraph 6. The court should determine whether the prosecutor has improperly induced the defendant to plead guilty. Among the inducements that should be considered improper are those listed in Standard 3.6. This subparagraph also contemplates "...any threats, misrepresentations, promises, or other inducements that render the guilty plea involuntarily or otherwise unacceptable to the court within the exercise of its discretion. When such inducements are offered, they ususally come from the prosecutor. They also may come from the defense attorney or the defendant's friends and family, however." (**Id.**)

Subparagraph 7. This subparagraph requires that the court find a "factual basis" for the defendant's guilty plea. This requirement is consistent with current Iowa caselaw and Standard 1.6 of the American Bar Association's **Standards Relating to Guilty Pleas**. (See, **e.g.**, **State v. Sisco**, 169 N.W. 2d 542 (Iowa 1969).)

Subparagraph 8. Before accepting the guilty plea, the court should find that the defendant voluntarily, knowingly, and understandingly consents to the imposition of the negotiated agreement. Thus, Subparagraph 8 permits the defendant to plead guilty to a negotiated plea even if he/she is unwilling or unable to admit his/her participation in the acts constituting the crime. (See **State v. Hansen**, 221 N.W. 2d 274 (Iowa 1974).) However, the defendant's plea must represent a voluntary choice among the alternatives available to him/her.

Subparagraph 9. Subparagraph 9 must be read in conjunction with Standard 3.2. The court should only grant plea negotiation concessions when to do so would be in the public interest. Standard 3.2 and Subparagraph 9 define the public interest.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 3.7.

Chapter Four

The Litigated Case

Goal: To eliminate unnecessary delay in the formal processing of criminal defendants throughout the court system.

STANDARD 4.1
Time Frame for Prompt Processing of Criminal Cases

The period from arrest to the beginning of trial of an indictable prosecution generally should not be longer than 90 days. In a misdemeanor prosecution, the period from arrest to trial generally should be 30 days or less. The court may for good cause shown extend the time limits herein specified.

STANDARD 4.2
Citation and Summons in Lieu of Arrest

Upon the arrest or following the charging of a person for a misdemeanor, citation or summons should be used in lieu of taking the person into custody.

All law enforcement officers should be authorized to issue a citation in lieu of continued custody following a lawful arrest for such offenses. All judicial officers should be given authority to issue a summons rather than an arrest warrant in misdemeanor cases in which a complaint, information or indictment is filed or returned against a person not already in custody.

Citations or summonses should be personally served upon the accused.

1. Situations in Which Citation or Summons Is Not Appropriate. Use of citation or summons would not be appropriate under the following situations:
   a. The behavior or past conduct of the accused indicates that his/her release presents a danger to individuals or to the community;
   b. The accused is under lawful arrest and fails to identify himself/herself satisfactorily;
   c. The accused refuses to sign the citation;
   d. The accused has no ties to the jurisdiction reasonably sufficient to assure his/her appearance; or
   e. The accused has previously failed to appear in response to a citation or summons.
2. Procedure for Issuance and Content of Citation and Summons. Whether issued by a law enforcement officer or a court, the citation or summons should:
   a. Inform the accused of the offense with which he/she is charged;
   b. Specify the date, time, and exact location of the initial appearance; and
   c. Advise the accused of all of his/her rights applicable to his/her arrest and trial and of the consequences of failing to appear.

STANDARD 4.3
Procedure in Simple Misdemeanor Prosecutions

Preliminary hearings should not be available in simple misdemeanor prosecutions.

All motions and an election of nonjury trial should be required within 7 days after appointment of counsel. Copies of motions should be served upon the prosecutor by defense counsel.

Upon receipt of the motions, the court should evaluate the issues raised. Motions requiring testimony should be heard at least 5 days prior to trial. If testimony will not be needed, arguments on the motions should be heard immediately preceding trial.

STANDARD 4.4
Administrative Disposition of Certain Matters Now Treated as Criminal Offenses

All non-serious traffic violation cases should be made infractions subject to administrative disposition. Penalties for such infractions should be limited to fines, informal probation, deferred sentence and other non-penal dispositions.

Procedures for disposition of such cases should include the following:

1. Violators should be permitted to enter pleas by mail, except where the infraction allegedly has resulted in a traffic accident.
2. No jury trial should be available.
3. A hearing, if desired by the alleged infractor, should be held before a law-trained referee. The alleged infractor should be entitled to be present, to be represented by counsel, and to present evidence and arguments in his/her own behalf. The government should be

required to prove the commission of the infraction by evidence beyond a reasonable doubt. Rules of evidence should be applied strictly. Appeal should be permitted to an appellate division of the administrative agency . The determination of the administrative agency should be subject to judicial review only for abuse of discretion.

STANDARD 4.5
Limitation of Grand Jury Functions

Grand jury indictment should not be required in any criminal prosecution. After a grand jury indictment is issued in a particular case, no preliminary hearing should be held in that case. In such cases, the prosecutor should disclose to the defense all testimony before the grand jury directly relating to the charges contained in the indictment returned against the defendant.

The grand jury should remain available for investigation and charging in exceptional cases.

STANDARD 4.6
Presentation Before Judicial Officer Following Arrest

When a defendant has been arrested and a citation has not been issued, the defendant should be presented before a judicial officer within 24 hours of the arrest or at such sooner time as a judicial officer is available. At this appearance, the defendant should be advised orally and in writing of the charges against him/her, of his/her constitutional rights (including the right to bail and to assistance of counsel), and of the date of his/her trial or preliminary hearing. If the defendant is entitled to publicly provided representation, arrangements should be made at this time. If it is determined that pretrial release is appropriate, the defendant should then be released.

STANDARD 4.7
Pretrial Release

Adequate investigation of defendants' characteristics and circumstances should be undertaken to identify those defendants who can be released prior to trial solely on their own promise to appear for trial. Release on this basis should be made wherever appropriate. If a defendant cannot appropriately be released on this basis, consideration should be given to releasing him/her under certain conditions, such as the deposit of a sum of money to be forfeited in the event of nonappearance, or assumption of an obligation to pay a certain sum of money in the event of nonappearance, or the agreement of third persons to maintain contact with the defendant and to assure his/her appearance.

In certain limited cases, it may be appropriate to deny pretrial release completely.

STANDARD 4.8
Nonappearance After Pretrial Release

Substantive law should deal severely with offenders who fail to appear for criminal proceedings. Programs for the apprehension and prosecution of such individuals should be established to implement the substantive law.

1. The substantive law regarding failure to appear after pretrial release should have the following features:
   a. The felony of failing to appear should be defined as the failure to appear on the designated date by an individual who, after receipt of a citation or summons to appear in court or after arrest, has been released from custody or has been permitted to continue at liberty upon the condition that he/she will appear subsequently in connection with the criminal action or proceeding, and who has had due notice of the date on which his/her appearance is required.
   b. The penalty provided for the crime of failing to appear should be 5 years or not to exceed the penalty for the substantive crime originally charged if such substantive crime is less than 5 years.
2. Programs for the implementation of Standard 4.8 should have the following feature:
   a. If a defendant fails to appear at any scheduled court appearance, the trial court immediately should issue a warrant

for his/her arrest for the offense of failing to appear and immediately should notify the prosecutor.

STANDARD 4.9
Preliminary Hearing and Arraignment

If a preliminary hearing is held, it should be held within 2 weeks following arrest. Evidence received at the preliminary hearing should be limited to that which is relevant to a determination that there is probable cause to believe that a crime was committed and that the defendant committed it.

If a defendant intends to waive his/her right to a preliminary hearing, he/she should file a notice to this effect at least 24 hours prior to the time set for the hearing.

STANDARD 4.10
Pretrial Discovery

The prosecution should disclose to the defendant all available evidence that will be used against him/her at trial. Such disclosure should take place within 5 days of the preliminary hearing, of the waiver of the preliminary hearing, or apprehension or service of summons following indictment, whichever form the initiation of prosecution takes in the particular case. The evidence disclosed should include, but should not be limited to, the following:

1. The names and addresses of persons whom the prosecutor intends to call as witnesses at the trial;
2. Written, recorded, or oral statements made by witnesses whom the prosecutor intends to call at the trial, by the accused, or by any codefendant;
3. Results of physical or mental examinations, scientific tests, and any analyses of physical evidence, and any reports or statements of experts relating to such examinations, tests, or analyses; and
4. Physical evidence belonging to the defendant or which the prosecutor intends to introduce at trial.

The prosecutor should disclose, as soon as possible, any evidence within this description that becomes available after initial disclosure.

The prosecutor also should disclose any evidence or information that might reasonably be regarded as germane to the defense, even if such disclosure is not otherwise required.

The defendant should disclose any evidence defense counsel intends to introduce at trial. Intent to rely on an alibi or an insanity defense should be indicated. Such disclosure should take place immediately following the resolution of pretrial motions or, in the event no such motions are filed, within 20 days of the preliminary hearing, the waiver of the preliminary hearing, or apprehension or service of summons following indictment, or whichever form the initiation of prosecution has taken in the case. No disclosure need be made, however, of any statement of the defendant or of whether the defendant himself/herself will testify at trial.

The trial court may authorize either side to withhold evidence sought if the other side establishes that a substantial risk of physical harm to the witness or others would be created by the disclosure and that there is no feasible way to eliminate such a risk. In these exceptional cases where a substantial risk of physical harm to the witness or others has been established, the trial court may authorize in camera proceedings, may direct defense counsel not to disclose information to the defendant, or may direct any procedures the court may determine necessary.

Where appropriate, a person failing to disclose evidence that should be disclosed should be held in contempt of court.

STANDARD 4.11
Pretrial Motions and Conference

All pretrial motions should be filed within 30 days of the preliminary hearing, the waiver of the preliminary hearing, or arraignment on indictment or information, whichever form the initiation of prosecution has taken in the case. A hearing should be held on such motions within 10 days of the filing of the motions. The court should rule on such motions within 3 working days of the close of the hearing.

No case should proceed to trial until a pretrial conference has been held, unless the trial judge determines that such a conference would serve no useful purpose. If pretrial motions have been made, this conference should not be held until the issues raised by these motions have been resolved. At this conference, maximum effort

should be made to narrow the issues to be litigated at the trial. The court should utilize a checklist to insure that all appropriate motions have been filed and all necessary issues raised. All issues raised should be resolved at this point; reserved rulings on motions should be avoided.

Where possible, this conference should be held immediately following and as a part of the motion hearing. In any event, it should be held within 10 days of the motion hearing.

STANDARD 4.12
Priority Case Scheduling

Immediately following the preliminary hearing, the return of an indictment, or the waiver of such proceedings, the prosecutor should advise the court administrator of those cases that are to be tried and that should be given priority in assigning cases for trial.

Cases should be given priority for trial where one or more of the following factors are present:

1. The defendant is in pretrial custody;
2. The defendant constitutes a significant threat of violent injury to others;
3. The defendant is a recidivist;
4. The defendant is a professional criminal, that is, a person who substantially derives his/her livelihood from illegal activities; or
5. The defendant is a public official.

In addition, the prosecutor should consider in setting priorities for trial the age of the case.

STANDARD 4.13
Continuances

Continuances should not be granted except upon verified and written motion and a showing of good cause.

STANDARD 4.14
Jury Selection

The State and the defense should have the right to conduct their own examination of a juror in order to enable them to select a qualified and competent jury.

COMMENTARY

This chapter addresses the formal processing of criminal prosecutions in Iowa. The goal of the standards contained in this chapter is to eliminate unnecessary delay in the formal processing of criminal defendants throughout the court system.

The National Advisory Commission on Criminal Justice Standards and Goals concludes that speed and efficiency in achieving final determination of guilt or innocence of a defendant both increase the deterrent effect of the criminal law and ease the task of rehabilitation. (NAC, **Courts**, 7 (1973).) The Commission summarizes the value of prompt processing of criminal cases as follows:

> Insofar as the apprehension and punishment of offenders has a deterrent effect upon the offenders themselves and others, it is reasonable to believe that the more closely the punishment follows the crime, the greater deterrent value of the punishment. In addition, prompt processing serves society's interest in incapacitating those who have committed crimes. Pretrial liberty of most defendants is a necessary concomitant of the presumption of innocence, even though it creates a risk that those left at liberty will commit additional offenses.... Prompt processing of defendants also has indirect benefits to society as a whole. It reduces the tensions upon defendants and eases the task of pretrial detention.... Prompt processing also [encourages] community confidence in the criminal justice system and fosters a sense of security. (NAC, **Courts**, 67 (1973).)

Conference participants believe that the litigated case standards address areas that often constitute major impediments to speed in achieving finality in Iowa criminal proceedings. As a general rule, conferees recommend that indictable offenses be prosecuted within 90 days of arrest and that nonindictable misdemeanor offenses be prosecuted within 30 days. (Standard 4.1.) The standard, therefore, is similar to the existing Iowa criminal justice system. (See IOWA CODE §§ 795.1, .2 (1975); **but see** Revised Criminal Code, **Rules of Criminal Procedure**, 27.) The

standard gives the trial court the discretion to extend these time limits for good cause.

Standard 4.2 urges Iowa law enforcement officers and judges to make more frequent use of citations and summonses in simple and indictable misdemeanor cases. Conferees conclude that more frequent use of these devices will result in considerable time and manpower savings. In addition, the National Advisory Commission states that use of a citation or summons avoids many of the undesirable effects on a defendant:

> There is no need to arrange for pretrial release; defendants sometimes are severely affected by the short period of custody that occurs between arrest and pretrial release. If the defendant was arrested in a motor vehicle, the vehicle may have been towed—at the defendant's expense—to a place of safekeeping. Parents taken into custody may have no opportunity to arrange for care of their children to minimize the effect of the situation upon the children. Taking a defendant from his job, even for a short period of time, may result in inconvenience to his employer or coworkers or in damage to material under his control. All of these situations could be avoided by use of citation. (NAC, **Courts**, 71 (1973).)

The standard provides guidelines and procedures for the issuance of citations and summonses.

Standards 4.3 and 4.4 are designed to expedite and simplify the processing of simple misdemeanor prosecutions in Iowa. Standard 4.3 recommends a uniform motion practice for simple misdemeanor proceedings. Conferees believe that such a practice will minimize inconvenience to all concerned and will promote efficient disposition of simple misdemeanor cases. Standard 4.4 proposes that nonserious traffic matters be recognized as not essentially criminal and that they be handled accordingly. (See NAC, **Courts**, 169 (1973).) The major advantage to the criminal justice process of the administrative solution to minor traffic matters is that it frees the courts to deal with matters that can benefit from the judicial process. (**Id.**) Also, the shift in forum as well as the change in terminology facilitates the development of procedures better suited to the processing of minor traffic matters. (**Id.**)

Standard 4.5 seeks to de-emphasize the function of the grand jury. The National Advisory Commission concludes that the grand jury process is ineffective as a screening device, is costly in terms of space, manpower, and money, and involves procedural intricacies that may result in dismissal of charges for minor discrepancies in the empaneling procedure. (NAC, **Courts**,75 (1973).) Conference participants agree with the National Advisory Commission's conclusions and endorse existing Iowa procedures which permit Iowa county attorneys to prosecute criminal cases on true information rather than on grand jury indictment. Conferees encourage Iowa prosecutors to avoid use of the grand jury except in doubtful or politically sensitive cases. (See IOWA CODE § 769.1 (1975).)

Conference participants observe that, following an arrest, the defendant often must wait a considerable length of time before being taken before a magistrate for preliminary arraignment. Conferees conclude that the delay is often caused by the unavailability of judicial officers to arraign defendants, especially during the weekends. Participants believe that the Iowa criminal justice system should possess the necessary resources to provide for the quick release of the defendant.

> Any time a person is taken into custody following an arrest, it is imperative that he be brought before a judicial officer at the earliest possible time. Denial of personal liberty is such an extreme step that the government should be required to provide the accused with an almost immediate opportunity to be informed of the charges against him and to be released if appropriate. (NAC, **Courts**, 77 (1973).)

In addition, conferees observe that prompt presentation before a judicial officer following arrest limits the opportunity of law enforcement officers to conduct an in-custody investigation of the defendant, thereby operating as a safeguard against potential abuses of the defendant's rights. To insure prompt release of the defendant and to protect his/her Constitutional rights, Standard 4.6 directs that the defendant be presented before a judicial officer within 24 hours of arrest. Conference participants believe that sufficient judicial resources should be available throughout Iowa to enable every jurisdiction to meet this standard.

Standard 4.6 also contemplates that the appropriateness of pretrial release will be determined at the initial appearance. The National Advisory Commission makes the following observations about pretrial release:

> Extensive experimentation has shown that most defendants can safely be released on nothing more than their own promise to reappear at a designated time, and the Commission recommends that maximum use be made of such programs. This means that criteria for selecting those who can be safely released in this manner need to be developed, and adequate facilities must be made available for obtaining the necessary information from arrested persons and verifying it. To some extent, such release may be appropriate only when certain restrictions are placed upon the defendant's activity; the Commission endorses the use of such restrictions to make release on the defendant's promise to reappear possible where it would not otherwise be available.

> In those situations in which release upon the defendant's promise to reappear is not appropriate, the Commission recognizes that money bail or some similar device to create a financial incentive to return may be appropriate.
>
> It also may be feasible to rely upon someone in the community who agrees to insure the defendant's appearance. (NAC, **Courts,** 83 (1973).)

Standard 4.7 recommends a pretrial release system similar to the present Iowa system.

The failure of defendants released prior to trial to appear for trial or other proceedings is a critical factor in delay in criminal litigation. (NAC, **Courts,** 85 (1973).) Conference participants agree that "[e]fforts to increase the number of defendants released ... must be balanced by measures designed to insure appearance or minimize the impact of nonappearance." (**Id.**) Standard 4.8 provides a recommendation for substantive law dealing with failure to appear and suggests that law enforcement agencies designate officers to serve as apprehension specialists.

The purpose of Standard 4.9 is to expedite the pretrial process. The standard recommends that, if a preliminary hearing is to be held in a case, it be held within two weeks of arrest. To further expedite pretrial matters, the standard directs that evidence at the preliminary hearing be limited to the determination of probable cause. This limitation is based upon conference participants' conclusion that the use of the preliminary hearing as a discovery device unnecessarily delays the processing of a criminal case. Conferees also conclude that the discovery provisions in Standard 4.10 are more effective and efficient than the preliminary hearing. Thus, the two week period set forth in Standard 4.9 should provide sufficient time for both parties to conduct the investigation necessary for a reliable determination of the limited matters at issue at the preliminary hearing.

Liberal discovery is of fundamental importance to the objective of facilitating the administrative disposition of cases wherever this can be done without sacrificing necessary protections against conviction of innocent persons. (NAC, **Courts,** 90 (1973).) "If liberalized discovery on both sides is required and a forum is provided for the resolution of collateral issues such as the admissibility of certain evidence, a significant number of cases that would otherwise be tried on the merits can be processed administratively without any sacrifice of defendant's rights. The administrative processing of these cases will reduce the pressure on courts and permit a more satisfactory resolution of cases that do go to trial." (NAC, **Courts,** 90 (1973).) Standard 4.10 calls for almost total disclosure by the prosecutor, similar to the existing Iowa system. The standard also calls for extensive disclosure by the defendant. When disclosure will create a substantial risk of physical harm to the witness or others, the standard permits the court to withhold the evidence or to limit the manner in which a party may examine the evidence. The standard places the burden of establishing the substantial risk of harm on the party seeking to withhold the evidence.

The purpose of Standard 4.11 is to establish a procedural framework that will facilitate the early resolution of preliminary issues in a criminal prosecution and encourage administrative settlements or a narrowing of the matters that need to be formally litigated. (See NAC, **Courts,** 93 (1973).) Thus, the standard requires early making of motions and speedy resolution. The standard also recommends that there should be a pretrial conference in those cases expected to proceed to trial. Conferees believe that the pretrial conference will set the stage for trial and narrow the issues as much as possible. Standard 4.11 contemplates that the pretrial conference will be held as a part of the motion hearing. Conference participants suggest that, at the pretrial conference, the judge utilize a checklist to insure that all motions have been filed and all necessary issues raised. The National Advisory Commission identifies two reasons for the checklist:

> First, it is imperative to effective protection of the rights of the defendant that issues be raised early in the proceeding. The combination of the expanded use of assigned counsel and the expansion and proliferation of criminal law pose a real danger to the rights of the defendant.
>
> It is difficult for an attorney specializing in criminal law to stay abreast of current developments and decisions. It is impossible for a general practitioner, or specialist in another field, to gain the expertise necessary to conduct a first-rate defense without intensive study and assistance from the bench in protecting the rights of the defendant. Motions to set aside indictments or informations, to challenge pleadings, to challenge venue and jurisdiction, to attack impaneling of grand or petit juries, to reduce bail, to sever defendants or offenses, in addition to motions addressed to the suppression of admissibility of evidence, are all potentially vital to a defendant's case. A checklist would insure that the defense counsel considered every possibility.
>
> Such a checklist would protect the record for review. The court of review will have a transcript establishing that all issues have been raised and considered by the trial court. This should serve to reduce greatly the number of collateral attacks following adjudication and bring finality to criminal proceedings. (NAC, **Courts,** 94 (1973).)

Standard 4.12 suggests factors that should be considered when scheduling cases for trial. The National Advisory Commission observes the following:

> The practice of automatically scheduling cases for trial on a chronological basis with no regard for the characteristics of individual cases amounts to ignoring an opportunity to serve the interests of individual defendants as well as those of the general public. In some circumstances, delay prior to trial is especially burdensome and some of these cases should be given priority as a means of minimizing the burden on the accused. If, for example, the defendant is not released from custody between apprehension and trial, trial delay is especially burdensome. In such cases, the standard directs that priority be given to the case. (NAC, **Courts**, 95 (1973).)

Conference participants recommend that the prosecutor be responsible for informing the court administrator of the case priorities.

Conference participants agree that continuances can be a major source of delay in the judicial process. Standard 4.13 stresses that continuances should only be granted upon verified and written motion and a showing of good cause.

The National Advisory Commission recommends that the questioning of prospective jurors should be conducted exclusively by the trial judge. The Commission believes that "[i]n many jurisdictions the use of the opportunity to question prospective jurors to influence the jurors has become an accepted trial tactic. Delay inevitably results." (NAC, **Courts**, 99 (1973).) The Commission concludes that "[r]equiring the judge to question jurors as to their qualifications for service in the case on trial ... will restore the opportunity to question prospective jurors to its appropriately limited function and provide a substantial timesaving for trial of significant issues."(**Id.**) Conference participants disagree with the National Advisory Commission's position and believe that the attorneys should continue to question prospective jurors. Therefore, Standard 4.14 endorses existing Iowa procedure.

COMPARATIVE ANALYSIS REFERENCE

NAC Courts 4.1-4.15.

Chapter Five

Sentencing

Goal: To establish general principles of sentencing and insure that these principles are applied equally in each case.

STANDARD 5.1
The Court's Role in Sentencing

The trial judge should be required to impose a sentence that, within limits imposed by statute, determines the maximum period a defendant's liberty may be restricted. Within this maximum period, other agencies may be given the power to determine the manner and extent of interference with the offender's liberty.

STANDARD 5.2
Sentencing the Nondangerous Offender

State penal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed 5 years for felonies other than murder. When by specific definition a crime has elements of aggravation involving the infliction or attempted or threatened infliction of serious bodily harm on another, to be determined by the trier of fact, the maximum sentence should not exceed 25 years except where the prescribed penalty is life imprisonment. No mandatory minimum sentence should be imposed by the legislature.

The sentencing court should be authorized to impose a maximum sentence less than that provided by statute.

Criteria should be established for sentencing offenders. Such criteria should include:

1. A requirement that the least drastic sentencing alternative be imposed that is consistent with public safety, rehabilitation, and punishment. The court should impose the first of the following alternatives that in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others:
   a. Unconditional release.
   b. Conditional release.
   c. A fine.
   d. Release under supervision in the community.
   e. Sentence to a halfway house or other residential facility located in the community.
   f. Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.
   g. Total confinement in a correctional facility.
2. A provision against the use of confinement as an appropriate disposition unless affirmative justification is shown on the record. Factors that would justify confinement may include:
   a. There is undue risk that the offender will commit another crime if not confined.
   b. The offender is in need of correctional services, rehabilitation, or punishment that can be provided effectively only in an institutional setting, and such services are reasonable available.
   c. Any other alternative will depreciate the seriousness of the offense.
3. Weighting of the following in favor of withholding a disposition of incarceration:
   a. The offender's criminal conduct neither caused nor actually threatened serious harm.
   b. The offender did not contemplate or intend that his/her criminal conduct would cause or threaten serious harm.
   c. The offender acted upon strong provocation.
   d. There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish defense.
   e. The offender had led a law-abiding life for a substantial period of time before commission of the present crime.
   f. The offender is likely to respond affirmatively to probationary or other community supervision.
   g. The victim of the crime induced or facilitated its commission.
   h. The offender has made or will make restitution or reparation to the victim of his/her crime for the damage or injury which was sustained.
   i. The offender's conduct was the result of circumstances unlikely to recur.
   j. The character, history, and attitudes of the offender indicate that he/she is unlikely to commit another crime.
   k. Imprisonment of the offender would entail undue hardship to dependents.
   l. The offender is elderly or in poor health.
   m. The correctional programs within the institutions to which the offender would be sent are inappropriate to his/her particular needs or would not likely be of benefit to him/her.

STANDARD 5.3
Sentencing to Extended Terms

State penal code revisions should contain separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incapacitate them for substantial periods of time.

The following provisions should be included:

1. Authority for the judicial imposition of an extended term of confinement of not more than 25 years, except for murder, when the court finds the incarceration of the defendant for a term longer than 5 years is required for the protection of the public and that the defendant is a persistent felony offender.
2. Definition of a persistent felony offender as a person over 18 years of age who stands convicted of a felony for the third time. At least one of the prior felonies should have been committed within the 5 years preceding the commission of the offense for which the offender is being sentenced. At least two of the three felonies should be offenses involving the infliction, or attempted or threatened infliction, of serious bodily harm on another. The three felonies necessary for classifying an offender as a persistent felony offender must arise from separate incidents.
3. Authority for the court to impose a minimum sentence to be served prior to eligibility for parole. It should not exceed one-third of the maximum sentence imposed or more than three years.
4. Authority for the sentencing court to permit the parole of an offender sentenced to a minimum term prior to service of that minimum upon request of the board of parole.

STANDARD 5.4
Probation

Each sentencing court should review and where necessary should revise its policies, procedures, and practices concerning probation, and where necessary, enabling legislation should be enacted, as follows:

1. A sentence to probation should be for a specific term not exceeding 5 years except that probation for misdemeanants may be for a period not exceeding two years.
2. The court or the probation officer should be authorized to impose such conditions as are necessary to provide a benefit to the offender and protection to the public safety. The court or the probation officer also should be authorized to modify or enlarge the conditions of probation at any time prior to expiration or termination of sentence. The conditions imposed in an individual case should be tailored to meet the needs of the defendant and society.
3. The offender should be provided with a written statement of the conditions imposed and should be granted an explanation of such conditions.
4. Procedures should be adopted authorizing the revocation of a sentence of probation for violation of specific conditions imposed, such procedures to include:
   a. Authorization for the prompt confinement of probationers who exhibit behavior that is a serious threat to themselves or others and for allowing probationers suspected of violations of a less serious nature to remain in the community until further proceedings are completed.
   b. A requirement that for those probationers who are arrested for violation of probation, a preliminary hearing be held promptly by a neutral official other than his/her probation officer to determine whether there is probable cause to believe that the probationer violated his/her probation. At this hearing the probationer should be accorded the following rights:
      (1) To be given notice of the hearing and of the alleged violations.
      (2) To be heard and to present evidence.
      (3) To confront and cross-examine adverse witnesses unless there is substantial evidence that the witnesses will be placed in danger of serious harm by so testifying.
      (4) To be represented by counsel and to have counsel appointed for him/her if he/she is indigent.
      (5) To have the decision maker state his/her reasons for his/her decision and the evidence relied on.
   c. Authorization of informal alternatives to formal revocation proceedings for handling alleged violations of minor conditions of probation. Such alternatives to revocation should include:
      (1) A formal or informal conference with the probationer to reemphasize the necessity of compliance with the conditions.
      (2) A formal or informal warning that further violations could result in revocation.
   d. A requirement that, unless waived by the probationer after due notification of his/her rights, a hearing be held on all alleged

violations of probation where revocation is a possibility to determine whether there is substantial evidence to indicate a violation has occurred and if such a violation has occurred, the appropriate disposition.

e. A requirement that at the probation revocation hearing the probationer should have notice of the alleged violation, access to official records regarding his/her case, the right to be represented by counsel including the right to appointed counsel if he/she is indigent, the right to subpena witnesses in his/her own behalf, and the right to confront and cross-examine witnesses against him/her.

f. A requirement that before probation is revoked the court make written findings of fact based upon substantial evidence of a violation of a condition of probation.

g. Authorization for the court, upon finding a violation of conditions of probation, to continue the existing sentence with or without modification, to enlarge the conditions, or to impose any other sentence that was available to the court at the time of initial sentencing. In resentencing a probation violator, the following rules should be applicable:

(1) Criteria and procedures governing initial sentencing decisions should govern resentencing decisions.

(2) Failure to comply with conditions of a sentence that impose financial obligations upon the offender should not result in confinement unless such failure is due to a willful refusal to pay.

STANDARD 5.5
Fines

In enacting penal code revisions, the State Legislature should determine the categories of offenses for which a fine is an appropriate sanction and provide a maximum fine for each category.

Criteria for the imposition of a fine also should be enacted, to include the following:

1. A fine should be imposed where it appears to be a deterrent against the type of offense involved or an appropriate correctional technique for an individual offender. Fines should not be imposed for the purpose of obtaining revenue for the government.
2. A fine should be imposed only if there is a reasonable chance that the offender will be able to pay without undue hardship for himself/herself or his/her dependents.
3. A fine should be imposed only where the imposition will not interfere seriously with the offender's ability to make reparation or restitution to the victim.

Legislation authorizing the imposition of fines also should include the following provisions:

1. Authority for the court to impose a fine payable in installments.
2. Authority for the court to revoke part or all of a fine once imposed in order to avoid hardship either to the defendant or others.
3. A prohibition against court imposition of such sentences as "30 dollars or 30 days."
4. Authority for the imprisonment of a person who intentionally refuses to pay a fine or who fails to make a good-faith effort to obtain funds necessary for payment. Imprisonment solely for inability to pay a fine should not be authorized.

Legislation authorizing fines against corporations should include the following special provisions:

1. Authority for the court to base fines on sales, profits, or net annual income of a corporation where appropriate to assure a reasonably even impact of the fine on defendants of various means.
2. Authority for the court to proceed against specified corporate officers or against the assets of the corporation where a fine is not paid.

STANDARD 5.6
Multiple Sentences

The State Legislature should authorize sentencing courts to make disposition of offenders convicted of multiple offenses, as follows:

1. Under normal circumstances, when an offender is convicted of multiple offenses separately punishable, or when an offender is convicted of an offense while under sentence on a previous conviction, the court should be authorized to impose concurrent sentences.
2. Where the court finds on substantial evidence that the public safety requires a longer sentence, the court should be authorized to impose consecutive sentences. However, a consecutive sentence should not be imposed if the result would be a maximum sentence

more than double the maximum sentence authorized for the most serious of the offenses involved.

3. The sentencing court should have authority to allow a defendant to plead guilty to any other offenses he/she has committed within the State, after the concurrence of the prosecutor and after determination that the plea is voluntarily made. The court should take each of these offenses into account in setting the sentence. Thereafter, the defendant should not be held further accountable for the crimes to which he/she has pleaded guilty.
4. The sentencing court should be authorized to impose a sentence that would run concurrently with out-of-State sentences, even though the time will be served in an out-of-State institution. When apprised of either pending charges or outstanding detainers against the defendant in other jurisdictions, the court should be given by interstate agreements the authority to allow the defendant to plead to those charges and to be sentenced, as provided for in the case of intrastate criminal activity.

STANDARD 5.7
Credit for Time Served

The State Legislature should eliminate all good and honor time and reduce the sentences provided by law to reflect a more realistic expectation of the time served considering that good and honor time has been eliminated. Until such time as the Legislature takes such action, the following provisions will apply:

Sentencing courts immediately should adopt a policy of giving credit to defendants against their maximum terms and against their minimum terms, if any, for time spent in custody and "good time" earned under the following circumstances:

1. Time spent in custody arising out of the charge or conduct on which such charge is based prior to arrival at the institution to which the defendant eventually is committed for service of sentence. This should include time spent in custody prior to trial, prior to sentencing, pending appeal, and prior to transportation to the correctional authority.
2. Where an offender is serving multiple sentences, either concurrent or consecutive, and he/she successfully invalidates one of the sentences, time spent in custody should be credited against the remaining sentence.
3. Where an offender successfully challenges his/her conviction and is retried and resentenced, all time spent in custody arising out of the former conviction and time spent in custody awaiting the retrial should be credited against any sentence imposed following the retrial.

The clerk of court should have the responsibility for assuring that the record reveals in all instances the amount of time to be credited against the offender's sentence and that such record is delivered to the correctional authorities. The correctional authorities should assume the responsibility of granting all credit due an offender at the earliest possible time and of notifying the offender that such credit has been granted.

Credit as recommended in this standard should be automatic and a matter of right and not subject to the discretion of the sentencing court or the correctional authorities. The granting of credit should not depend on such factors as the offense committed or the number of prior convictions.

STANDARD 5.8
Judicial Visits to Institutions

Court systems should adopt immediately, and correctional agencies should cooperate fully in the implementation of, a policy and practice to acquaint judges with the correctional facilities and programs to which they sentence offenders, so that the judges may obtain firsthand knowledge of the consequences of their sentencing decisions. It is recommended that:

1. During the first year of his/her tenure, a judge should visit all correctional facilities within his/her jurisdiction or to which he/she regularly sentences offenders.
2. Thereafter, he/she should make annual, unannounced visits to all such correctional facilities and should converse with both correctional staff and committed offenders.
3. No judge should be excluded from visiting and inspecting any part of any facility or from talking in private to any person inside the facility, whether offender or staff.

STANDARD 5.9
Sentencing Review

Procedures for implementing the review of sentences on appeal should contain the following precepts:

1. Appeal of a sentence should be a matter of right.
2. A statute specifying the issues for which review is available should be enacted. The issues should include:
   a. Whether the sentence imposed is consistent with statutory criteria.
   b. Whether the sentence is unjustifiably disparate in comparison with cases of similar nature.
   c. Whether the sentence is excessive or inappropriate.
   d. Whether the manner in which the sentence is imposed is consistent with statutory and constitutional requirements.

STANDARD 5.10
Sentencing Institutes

Court systems immediately should adopt the practice of conducting sentencing institutes to provide judges with the background of information they need to fulfill their sentencing responsibilities knowledgeably. The practice should be governed by these considerations:

1. Iowa should provide for a biennial sentencing institute, which all sentencing judges should be eligible to attend without cost or expense.
2. Each judge who has been appointed or elected since the last convening should be required to attend the institute in order to acquaint himself/herself further with sentencing alternatives available.
3. The institute should concern itself with all aspects of sentencing, among which should be establishment of more detailed sentencing criteria, alternatives to incarceration, and reexamination of sentencing procedures.
4. Defense counsel, prosecutors, police, correctional administrators, and interested members of the bar and other professions should be encouraged to attend. A stipend for at least some persons, including students, should be established.
5. To the extent possible, sentencing institutes should be held in a maximum or medium security penal institution in the State.

STANDARD 5.11
Requirements for Presentence Report and Content Specification

Sentencing courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable and correctionally appropriate dispositions. The guidelines should reflect the following:

1. A presentence report should be presented to the court in every case where there is a potential sentencing disposition involving incarceration of more than 30 days and in all cases involving felonies or minors.
2. Gradations of presentence reports should be developed between a full report and a short-form report for screening offenders to determine whether more information is desirable or for use when a full report is unnecessary.
3. No incarcerative disposition of over 30 days can be imposed without a written presentence report without exception. Copies of the presentence report are to be forwarded to any facility in which the individual is to be confined. The report must be delivered at the time of admittance to the facility.
4. In all cases after sentencing and disposition, the original presentence report should be sealed and made a part of the offender's official file with the clerk of district court.
5. The full presentence report should contain a complete file on the offender—his/her background, his/her prospects of reform, and details of the crime for which he/she has been convicted. Specifically, the full report should contain at least the following items:
   a. Complete description of the situation surrounding the criminal activity with which the offender has been charged, including the county attorney's, the victim's and the offender's version of the criminal act; and the offender's explanation for the act.
   b. The offender's educational background.
   c. The offender's employment background, including any military record, his/her present employment status, and capabilities.
   d. The offender's social history, including family relationships, marital status, interests, and activities.

e. Residence history of the offender.
f. The offender's medical history and, if desirable, a psychological or psychiatric report.
g. Information about environments to which the offender might return or to which he/she could be sent should a sentence of nonincarceration or community supervision be imposed.
h. Information about any resources available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, rehabilitative programs of various institutions, and similar programs.
i. Views of the person preparing the report as to the offender's motivations and ambitions, and an assessment of the offender's explanations for his/her criminal activity.
j. A list of the defendant's criminal record.
k. A recommendation as to disposition.

6. The short-form report should contain the information required in sections 5 a, c, d, e, h, i, and k.
7. All information in the presentence report should be factual and verified to the extent possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, should bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

STANDARD 5.12
Preparation of Presentence Report Prior to Adjudication

No presentence report should be prepared until the defendant pleads guilty or is found guilty by a jury.

STANDARD 5.13
Disclosure of Presentence Report

Sentencing courts immediately should adopt a procedure to inform the defendant of the basis for his/her sentence and afford him/her the opportunity to challenge it.

1. The presentence report and all similar documents should be available to defense counsel and the prosecution. The court may suppress such portions of the report as is necessary to assure the safety of individuals.
2. The presentence report should be made available to both parties within a reasonable time, fixed by the court, prior to the date set for the sentencing hearing. After receipt of the report, the defense counsel may request:
   a. A presentence conference, to be held within the time remaining before the sentencing hearing.
   b. A continuance of one week, to allow him/her further time to review the report and prepare for its rebuttal. Either request may be made orally, with notice to the prosecutor. The request for a continuance should be granted only:
      (1) If defense counsel can demonstrate surprise at information in the report; and
      (2) If the defendant presently is incarcerated, he/she consents to the request.

STANDARD 5.14
Sentencing Hearing - Role of Counsel

Sentencing courts immediately should develop and implement guidelines as to the role of defense counsel and prosecution in achieving sentencing objectives.

1. It should be the duty of both the prosecutor and defense counsel to:
   a. Avoid any undue publicity about the defendant's background.
   b. Challenge and correct, at the hearing, any inaccuracies contained in the presentence report.
   c. Inform the court of any plea discussion which resulted in the defendant's guilty plea.
   d. Verify, to the extent possible, any information in the presentence report.

2. The prosecutor may make recommendations with respect to sentence. He/she should disclose to defense counsel any information he/she has that is favorable or unfavorable to the defendant and is not contained in the presentence report.
3. It should be the duty of the defense counsel to protect the best interest of his/her client. He/she could consider not only the immediate but also the long-range interest in avoiding further incidents with the criminal justice system. He/she should, to this end:
   a. Challenge, and contradict to the extent possible, any material in the presentence report or elsewhere that is detrimental to his/her client.

STANDARD 5.15
Imposition of Sentence

Sentencing courts immediately should adopt the policy and practice of basing all sentencing decisions on an official record of the sentencing hearing. The record should be similar in form to the trial record but in any event should include the following:

1. A verbatim record of the sentencing hearing including statements made by all witnesses, the defendant and his/her counsel, and the prosecuting attorney.
2. Specific findings by the court on all controverted issues of fact and on all factual questions required as a prerequisite to the selection of the sentence imposed.
3. The reasons for selecting the particular sentence imposed.
4. A precise statement of the terms of the sentence imposed and the purpose that sentence is to serve.
5. The record of the sentencing hearing should be made a part of the trial record and should be available to the defendant or his/her counsel for purposes of appeal.

RESOLUTION: To the extent that the implementation of these standards may require increased court and probation personnel and services, it has been assumed that the same will be available.

COMMENTARY

Sentencing is a critical determination. "If too short or of the wrong type, it can deprive the law of its effectiveness and result in premature release of a dangerous criminal. If too severe or improperly conceived, it can reinforce the criminal tendencies of the defendant and lead to a new offense by one who otherwise might not have offended so seriously again." (ABA, **Sentencing Alternatives and Procedures,** 1 (Approved Draft, 1971).)

The sentencing decision is enormously complex because it is influenced by a wide variety of officers, institutions, and forces. (NAC, **Corrections,** 141 (1973).) In Iowa, the sentencing decision can be influenced by the Legislature, the prosecutor, correctional agencies, and the parole board. The Legislature affects sentencing by establishing statutory guidelines with which the sentencing judge must comply. These guidelines may grant the court considerable discretion in the selection of a sentencing alternative for some crimes while limiting judicial sentencing discretion for others. (See, **e.g.,** IOWA CODE §§ 690.2, 789A.1 (1975); Revised Criminal Code, ch. 1 § 702, ch. 3 § 702.) The prosecutor's actions also have an impact on sentencing. His/her determination of the charge and other commitments arising out of plea negotiations may limit or influence the sentencing judge's discretion. (NAC, **Corrections, supra.**) In addition, corrections entities may affect the judge's determination of sentence by providing the court with presentence investigation reports and recommendations. (See IOWA CODE §§ 789A.3, .4 (1975); Revised Criminal Code, ch. 3 §§ 102, 103.) Finally, when an offender is convicted of a felony punishable by an indeterminate sentence, the parole board in effect determines the length of sentence, thus leaving the trial judge with no sentencing discretion. (See IOWA CODE § 789.13 (1975); Revised Criminal Code, ch. 3 § 203; Dunahoo, **The Scope of Judicial Discretion in the Iowa Criminal Law Process,** 58 Iowa L. Rev. 1023, 1111 (1973).)

The primary goals of sentencing are effectiveness and equality. (NAC, **Corrections,** 143 (1973).) The achievement of these goals demands that the sentencing roles of the Legislature, the court system, and corrections entities be defined and coordinated. Conference participants conclude that sentencing effectiveness and equality can best be achieved in Iowa through the adoption of a qualified version of the indeterminate sentencing process. The standards contained in this chapter set forth this sentencing process and specifically define the roles of the Legislature, the courts, and corrections. Essentially, the standards suggest that the Legislature should articulate the purposes of the criminal sanction in a general way, that the courts should tailor individual sentences

to implement these purposes, and that corrections should carry out the terms of the sentences and determine when offenders should be released from incarceration or supervision.

Role of the Legislature in Sentencing

The role of the Legislature in sentencing should be threefold. First, the Legislature should articulate the purposes of the sentencing process. The power of the State should not be exercised over an individual without some socially useful purpose. (NAC, **Corrections**, 143 (1973).)

> ...[R]estrictions on liberty should be justified by some legitimate purpose, and the state in imposing sanctions should bear some burden of proving that the means employed have some reasonable relationship to the purpose selected. This requires not only an articulation of what those purposes are but also a measured application of sanctions in general. (**Id.**)

Standard 5.2 recommends that the purposes of the Iowa sentencing process should be protection of the community, rehabilitation of the offender, and punishment. Conference participants feel that sentencing for punitive reasons alone, where there is no need to protect the community or to rehabilitate the offender, serves the socially useful purpose of deterring others from committing similar offenses. Conferees cite tax fraud and white collar crimes as examples of situations where punitive sentencing is appropriate.

The Legislature's sentencing role should also include the authorization of a variety of sentencing alternatives. These alternatives should enable sentencing judges to formulate offender dispositions that are consistent with the purposes of sentencing. Standard 5.2 sets forth sentencing alternatives that should be available to Iowa judges and suggests the order in which these alternatives should be considered. Trial judges should be required by statute to impose the least drastic alternative that will provide for the rehabilitation of the offender, the protection of the community, and the deterrence of potential offenders.

The authorization of sentencing alternatives also requires that the Legislature establish the maximum terms to which offenders may be sentenced by the trial court. The standards recommend that the nondangerous offender's sentence should not exceed 5 years and that the dangerous offender's sentence not exceed 25 years, except where the prescribed penalty is life imprisonment. Conference participants conclude that these maximum terms will reduce the excessively long sentences served by some offenders for whom such sentences are inappropriate and will diminish disparate treatment of similarly situated offenders. Conferees also believe that these maximum terms reflect a more realistic assessment of actual time served in prison.

To make these sentencing provisions more consistent with actual practice, the Legislature should eliminate good and honor time. Currently, Iowa has statutory provisions granting good and honor time to inmates in correctional institutions. (See IOWA CODE Sec. 246.38, .39, .41, .43 (1975).) Good and honor time is calculated and credited upon arrival at the institution and is forfeited only as a result of infractions of the rules. When an offender is received at a correctional institution, the expiration date of his/her sentence is calculated on the basis of the inmate having already earned all good and honor time. Conferees conclude that the elimination of this practice will give criminal justice functionaries, the public, and offenders a better understanding of the sentencing process.

In addition to establishing statutory maximum terms, the Legislature should authorize the trial judge to impose maximum terms less than those authorized by law and to sentence dangerous offenders to minimum terms. However, conferees reject mandatory legislative minimum terms because they eliminate discretion. Conference participants observe that discretion is a pervasive and necessary part of the criminal justice system and believe that its elimination at the sentencing stage will limit the system's ability to deal with offenders on an individual basis. The major reason for this position is that "...a pure determinate sentence that could not be altered ... would leave little room for correctional administrators or parole boards to release the offender when it appears to them that he is capable of returning to society." (NAC, **Corrections,** 152 (1973).)

The Legislature's sentencing role should also encompass the articulation of sentencing criteria. The utilization of appropriate criteria for guiding and structuring the sentencing decision promotes the attainment of established sentencing purposes. (NAC, **Corrections,** 143 (1973).) For example, a requirement that the trial judge apply the legislatively prescribed criteria and state the rationale for individual sentencing decisions provides a check on the judge's own decisionmaking process and insures that his/her decisions are consistent with sentencing purposes. (See Standard 5.15.) In addition, such a requirement serves as a basis for appellate review of sentencing decisions. (See Standard 5.9.)

Standards 5.2 and 5.3 suggest sentencing criteria for the Iowa criminal justice system. They are designed to encourage dispositions that rehabilitate offenders, protect the community, and deter others while extending fairness and equality. The thrust of the criteria is that probation should become the standard sentence in criminal cases. Conference participants agree with the National Advisory Commission's observations regarding probation:

> Probation, with its emphasis on assisting the offender to adjust to the free community and supervising that process, offers greater hope

for success and less chance for human misery. But probation, to meet the challenge ahead, must be carefully and fairly administered.

Probation is a sentence in itself. In the past in most jurisdictions, probation was imposed only after the court suspended the execution or imposition of sentence to confinement. It was an act of leniency moderating the harshness of confinement. It should now be recognized as a major sentencing alternative in its own right. (NAC, **Corrections,** 159 (1973).

Role of the Court in Sentencing

The standards recommend an expanded judicial role in sentencing. "Since sentencing affects individual liberty, the involvement of a judicial officer attuned to the need to protect the offender against unjustified detention as well as to impose adequate punishment to meet society's needs is essential." (NAC, **Courts,** 110 (1973).)

The role of the Iowa district court in sentencing should be to individualize the general sentencing process established by the Legislature. Individualized sentencing requires that the trial judge specifically articulate the Legislative purposes of the criminal sanction for each case. Thus, the standards contemplate that, in each case, the court will: (1) apply the Legislative sentencing criteria, (2) select and articulate an appropriate sentencing purpose, (3) impose an authorized sentencing alternative designed to implement the selected purpose, and (4) state the terms of the sentence imposed and the factual findings for the particular decision. (See Standards 5.2, 5.3, 5.15.) Conference participants believe that these sentencing steps will promote effectiveness and reduce disparity by insuring that individual sentences are consistent with Legislative purposes, that correctional agencies have sufficient information to execute the sentence, and that appellate courts have a basis for review.

The standards also define the proper extent of judicial activity in sentencing. Conference participants conclude that, within limits imposed by the Legislature, the trial court should be empowered to impose a maximum sentence. (See Standards 5.1, 5.2, and 5.3.) The maximum sentence sets an outer limit to the extent to which correctional discretion may be used. (See NAC, **Courts,** 111 (1973).) Correctional authorities may determine whether to detain the offender or release him/her on parole up to the point at which the sentence expires. Conferees also recommend that the trial court should be empowered to impose a minimum sentence in certain cases. (Standard 5.3) This permits the judge to create three periods. In one, the offender must be detained (the period up to the minimum). However, the court may permit the parole of an offender sentenced to a minimum term prior to service of that minimum upon the request of the board of parole. (**Id.**) In the second period, the offender may, but need not, be released (the period between the minimum and the maximum during which the parole board may exercise its discretion). At the third period, the offender must be released (expiration of the maximum).

Conference participants considered whether correctional discretion should be further limited by authorizing the trial court to exercise continuing jurisdiction over sentenced offenders. The National Advisory Commission on Criminal Justice Standards and Goals makes the following argument in support of continuing jurisdiction of the sentencing court:

> The sentence imposed by the court is binding on two parties, the offender and the correctional agency. The offender is required to serve the sentence imposed. The correctional agency should be required to execute the sentence the sentencing court envisioned. The inherent power of a court continually to supervise its own orders should apply to the sentencing decision. Either party should be entitled to return to the court when the other party violates the order. This would allow the offender to return to the court if proper treatment and rehabilitation programs contemplated by the sentence were not made available. (NAC, **Corrections,** 173 (1973).)

Several conferees observed that federal courts now exercise jurisdiction over state confinement conditions. These participants argued that continuing state jurisdiction over prison conditions and problems would involve the Iowa district court in what is basically a state problem. In addition, conferees felt that continuing jurisdiction would enable the trial courts to play an orchestrating role in the criminal justice system. However, the majority of conference participants concluded that the judiciary was not specifically qualified to administer correctional institutions and programs and, therefore, should not exercise continuing jurisdiction over offenders.

Role of Corrections in Sentencing

The primary roles of corrections officials and the parole board are to execute the sentence imposed by the court and to determine when the purposes of each individual sentence have been achieved and the offender may be released from imprisonment and from any supervision. (The role of the paroling authority and corrections officials in the parole process is more fully considered in Chapter 10 of the Corrections report.) The corrections role in sentencing, like the court's role, involves the exercise of discretion. For example, the theory of indeterminate sentencing is that, while the judicially imposed sentence is the best estimate of the term of imprisonment necessary to rehabilitate the offender, protect the community, or serve the punitive needs of society, changes in attitude and development may alter the needs of the offender. Therefore, discretion is granted to the parole board to select the most appropriate date for release.

Conference participants recommend that paroling authorities continue to have broad discretion to release confined offenders. The standards seek to allow this discretion to operate where it bears a reasonable relationship to legitimate goals of the system but to limit and check discretionary decisions in order to avoid arbitrary and counterproductive actions. (NAC, **Corrections,** 145 (1973).) The judically imposed maximum and minimum sentences recommended in Standards 5.1, 5.2, and 5.3 serve to limit and check the discretion of the parole board. In the proposed sentencing structure, the period when the parole board may exercise its discretion to parole begins when the judicially imposed minimum sentence, if any, is served and ends when the judicially imposed or statutory maximum term expires. To diminish the inflexibility of judicially imposed sentences, the parole board may recommend to the court that the minimum sentence be revoked. (See Standard 5.3.) Conference participants comment that where the period of confinement is extended beyond an offender's needs, it is very destructive to the individual. For this reason, participants believe that the role of corrections officials should allow flexibility to meet the offender's changing needs.

To guide correctional agencies in executing the sentence, conference participants conclude that increased communication between the trial court and the correctional system is necessary. Correctional agencies will be in a better position to carry out the order of the court if they know the reasons upon which the sentence is based. (NAC, **Corrections,** 196 (1973).) Standard 5.15 requires that the record of the sentencing hearing show findings of fact, reasons justifying the sentence, and the purpose the sentence is intended to serve, and that the record be transmitted to correctional officials. (**Id.**)

To familiarize judges with correctional institutions and to promote communication between judges and correctional personnel, Standards 5.8 and 5.10 recommend that judges should visit correctional institutions periodically and that sentencing institutes should be convened in correctional institutions. Conferees endorse the position that to keep relatively apprised of conditions in institutions and to fully realize the impact of institutionalization, some personal observation and contact is necessary.

Another function of corrections officials in the sentencing process is to conduct the presentence investigation and to prepare the presentence report. Presentence investigations are usually conducted by a probation or parole officer. Presentence reports are "...written prior to sentence to inform the judge of what may be pertinent facts concerning the offender, his past, and his potential for the future. The purpose is to provide a range of evaluative and descriptive information and considerations the judge could not possibly obtain in mere courtroom exposure to the offender. Such information is essential if the [sentencing] decision is to be a knowledgeable one." (NAC, **Corrections,** 185 (1973).)

Guidelines for the presentence report are set forth in Standards 5.11, 5.12, 5.13, and 5.14. These guidelines contemplate several changes in the existing system in Iowa. First, conferees strongly support preparation of a presentence report before imposition of any sentence of confinement for more than 30 days. Presently, Iowa law requires a presentence investigation only if the offense is a felony. (See IOWA CODE § 789A.3 (1975).) However, the Revised Criminal Code contains provisions similar to the Iowa standard. (See Revised Criminal Code, ch. 3, § 102.)

Participants also recommend that the presentence report should be received at the institution at the time the person is committed. Participants insist that if corrections officials are to effectively carry out the sentencing order, they must have information concerning the offender at the time of admittance and classification.

Furthermore, to prevent possible prejudice to the defendant's case, Standard 5.12 recommends that the presentence report should not be prepared prior to adjudication. Conference participants feel that the court may be influenced by the information contained in the presentence report if the report is available prior to the determination of guilt. (See NAC, **Corrections,** 186 (1973).)

Finally, conference participants advocate full disclosure of the presentence report to the defense counsel and to the prosecution except where the court determines that suppression of specific portions of the report is necessary to protect the safety of informants. This position, outlined in Standard 5.13, contemplates a significant change. It removes the broad discretion of the trial judge to determine whether to disclose the entire contents of the presentence report. Under existing Iowa law, the trial judge has the discretion to suppress the report or portions of it. (See IOWA CODE § 789A.5; Revised Criminal Code, ch. 3 § 104.) Generally, the standard requires that the entire presentence report be disclosed to defense counsel and the prosecution. The trial judge's discretion is limited to suppressing those portions of the presentence report which may jeopardize the safety of individuals. However, the standard permits the sentencing judge to disclose such sensitive information, if deemed sufficiently important, by restricting its disclosure to defense counsel.

Conferees believe that full disclosure of the presentence report is important for several reasons. Conference participants reason that if the offender is to be reintegrated into society, he/she must be convinced that society has treated him/her fairly. When the offender has been sentenced on information that has not been available to his/her defense counsel, the offender will not perceive that he/she has been treated with impartiality and justice. (NAC, **Corrections,** 189 (1973).) In addition,

conferees feel that it is important that the court have a factual basis for making sentencing decisions. Full disclosure of the presentence report gives the defense counsel the opportunity to examine and contest information in the report.

COMPARATIVE ANALYSIS REFERENCE
NAC Corrections 5.1 - 5.19
NAC Courts 5.1

Chapter Six

Review of Trial Court Proceedings

Goal: To promote efficient review of trial court proceedings while preserving the interests of society and the defendant in justice and in the ongoing development of legal doctrine.

STANDARD 6.1
The Necessity of Appellate Review of Convictions in Criminal Cases

(A) The possibility of appellate review of trial court judgments should exist for every criminal conviction. It is undersirable to have any class of case in which such trial court determinations are unreviewable.

(B) An appeal is not a necessary and integral part of every conviction.

STANDARD 6.2
Appellate Court Structure; Specialized Criminal Courts of Appeal

(A) The structure of appellate courts should be consonant with the purposes of appellate review, to wit:
  (i) To protect defendants against prejudicial legal error in the proceedings leading to conviction and against verdicts unsupported by sufficient evidence;
  (ii) Authoritatively to develop and refine the substantive and procedural doctrines and principles of criminal law; and
  (iii) To foster and maintain uniform, consistent standards and practices in criminal process.

(B) It is undesirable to have specialized appellate courts such that a court, or a division of a court, is assigned appeals in criminal cases as its basic or exclusive task.

(C) In a three-tiered court system, the jurisdiction of the highest court may appropriately be discretionary with that court.

STANDARD 6.3
Defendants' Appeals; Final Judgments and Interlocutory Appeals

(A) A defendant should have the right to appeal any final judgment adverse to him/her, including:
  (i) A conviction followed by a sentence of probation, or
  (ii) A conviction followed by a sentence suspended as to imposition or execution, or
  (iii) A conviction based upon plea of guilty or nolo contendere, or
  (iv) The legality and appropriateness of a sentence.

(B) In general, a defendant should not be permitted to take an appeal until a final judgment adverse to him/her has been entered in the trial court.
  (i) Interlocutory appeals by a defendant should be discretionary on the part of the appeals court.

STANDARD 6.4
Prosecution Appeals

(A) The prosecution should be permitted to appeal in the following situations:
  (i) From judgments dismissing an indictment or information on substantive grounds, such as the unconstitutionality of the statute under which the charge was brought, or for failure of the charging instrument to state an offense under the statute;
  (ii) From other pretrial orders that terminate the prosecution, such as upholding the defense of double jeopardy, autrefois convict, autrefois acquit, or denial of speedy trial;
  (iii) In the discretion of the appellate court, from pretrial orders that seriously impede, although they do not technically foreclose, prosecution, such as orders granting pretrial motions to suppress evidence or pretrial motions to have confessions declared involuntary and inadmissible.

  Such judgments are likely to rest upon principles that ought to be clearly and uniformly applied throughout the State.

(B) Where more than one level of appellate review is provided, the prosecution should be permitted to seek further review in the highest court whenever an intermediate court has ruled in favor of a defendant-appellant.

(C) In an appeal at the instance of the prosecution, special provision should be made as to the custody of the defendant. A defendant should not be denied liberty pending determination of such an appeal unless there is cogent evidence that he/she will not abide by the judgment of the appellate court.

STANDARD 6.5
Counsel on Appeal

(A) Trial counsel, whether retained or court-appointed, should continue to represent a convicted defendant to advise on whether to take an appeal. In the event counsel wishes to withdraw as counsel of record, he/she should notify the court at the time of sentencing.

(B) Defense counsel is uniquely situated and should take it as his/her duty to advise a defendant on the meaning of the court's judgment and his/her right to appeal and on the possible grounds for appeal and the probable outcome of appealing. While counsel should do what is needed to inform and advise his/her client, the decision whether to appeal, like the decision whether to plead guilty, must be defendant's own choice.

(C) Every appellant should have assistance of counsel at all stages of appeal. For appellants without means to obtain adequate legal assistance, counsel should be assigned unless the right to counsel is explicitly waived, in which case counsel should still be assigned to render such assistance as is requested by appellants. Assigned counsel should be compensated from public funds.

(D) An office of State public defender should be created for the purpose of providing legal services for indigents in matters of criminal appeal.

(E) Counsel should not seek to withdraw from a case because of his/her determination that the appeal lacks merit unless counsel's continued representation would adversely affect representation of his/her client's interests.

(i) Counsel should give his/her client his/her best professional estimate of the quality of the case and should endeavor to persuade the client to abandon a wholly frivolous appeal, or to eliminate particular contentions that are lacking in any substance.

(ii) If the client wishes to proceed, it is better for counsel to present the case, so long as his/her advocacy does not involve deception or misleading of the court. After preparing and filing a brief, on behalf of the client, counsel may appropriately suggest that the case be submitted on briefs.

(F) Requests by appellants for dismissal of their counsel should be granted only for good cause shown.

(G) Unexplained, general requests by appellants for dismissal of their assigned counsel should be investigated by the court.

STANDARD 6.6
The Notice of Appeal

(A) A definite time period, such as ten days after trial court judgment, should be specified as the time during which appeal must be instituted. The appellate court, however, should have power to entertain appeals taken after the prescribed time if the delay is found to be excusable. The appeal should be initiated by filing with the clerk of district court.

(B) It should be mandatory for courts imposing sentence in all contested cases to assume the burden of advising the defendant that he/she has the right to review, that it must be exercised within a specific time, and that he/she should promptly consult counsel in that regard.

(C) In the event an individual so notifies the clerk of the court of his/her desire to appeal, when an appeal has not yet been perfected, the court should assure that the defendant is represented by counsel and, if not, should appoint competent counsel to assist defendant in perfecting his/her appeal.

STANDARD 6.7
Elimination of Pre-Appeal Screening

(A) Procedural devices for pre-appeal screening, designed to eliminate frivolous cases from appellate court dockets, are impractical and unsound in principle.

(i) A requirement of the trial court's certificate as a condition of appellate review is inconsistent with the right to appeal unless a decision to refuse the certificate is itself appealable. If such decision is appealable, the procedure for transition of cases to the appellate court has been unnecessarily complicated and the burden upon the appellate court has been substantially increased.

(ii) Devices for screening out frivolous cases by the appellate court, such as a requirement for leave of the court to appeal at the first level of review, add a useless stage to most appeals at a considerable burden to the court. Flexibility of procedure so that any appeal terminates, by a decision on the merits, at the earliest practical stage of its consideration in the appellate forum is far preferable.

(B) There appear to be no acceptable penalties

that can be imposed upon appellants who willfully prosecute frivolous appeals beyond the sanction of assessment of costs, which has no impact on those proceeding in forma pauperis.

STANDARD 6.8
Expediting Handling of Appeal

An appellate court should develop and employ techniques for expediting the handling of appeals. In addition to continuing evaluation of time schedules for various stages of the appeal, the court should seek to minimize the process for each appeal.

STANDARD 6.9
Professional Staff

The reviewing court should have a full-time professional staff of lawyers, responsible directly to the judges, to perform the following functions in review of criminal cases:

1. Monitoring. The staff should affirmatively monitor each case to insure that the court's rules are complied with and that there is no unnecessary delay in the review process. Illustrative of matters that can be administrated by such a process would be questions arising in the preparation and filing of the record of the proceedings below; the appointment of counsel and, where necessary, changes in assignment of counsel; granting of stays of execution and admission to bail, at least until the full court can act in due course; and employing practices designed to expedite the appeals by detecting and eliminating unnecessary causes of delay.
2. Shaping the Record. The full trial transcript should be expeditiously provided the reviewing court, and the staff should take action to insure that those portions of transcripts, trial court papers, and other matters that are essential to a full and fair adjudication of the issues are put before the judges.
3. Identification of Issues. The staff should take affirmative steps to discover all arguable issues in the case, even though not asserted by defendant and not apparent on the record, so that all matters that might be a asserted later as a basis for further review can be considered and decided in the initial review proceeding.
4. Screening. The staff should review all cases before they are considered by the judges and recommend appropriate procedural steps and disposition; the staff should identify tentatively those cases that contain only insubstantial issues and should prepare recommended dispositional orders so to permit the court to dispose of them with a minimum involvement of judicial time, thereby leaving for fuller judicial consideration those cases of arguable merit. The function of this staff should be to supplement rather than replace the work of attorneys representing the prosecution and the defendant in each case.

STANDARD 6.10
Flexible Review Procedures

The reviewing court should utilize procedures that are flexible and that can be tailored in each case by the staff and the judges to insure maximum fairness, expedition, and finality through a single review of the trial court proceeding. The review procedures should provide for:

1. Referral by the reviewing court to the trial judge of those issues that the reviewing court deems appropriate for the trial judge to decide;
2. Internal flexibility permitting the reviewing court to control written briefs and oral argument including leeway to dispose of the case without oral argument or on oral argument without written briefs on some or all of the issues;
3. Authority in the reviewing court, for stated reasons, to substitute for the sentence imposed any other disposition that was open to the sentencing court, if the defendant has asserted the excessiveness of his/her sentence as error; and
4. Authority in the reviewing court, for stated reasons, to set aside the conviction or remand the case for a new trial, even though the conviction is supported by evidence and there is no legal error, if, under all the circumstances, the reviewing court determines that the conviction should not stand. The reviewing court should be given the authority to affirm a conviction despite the existence of error if to do so would not amount to a miscarriage of justice. This power should be exercised more frequently to speed finality.

STANDARD 6.11
The Record on Appeal

[A] Continuing efforts should be exerted to improve techniques for the preparation of records for appeals. Methods should be adopted that will minimize the cost of preparation in terms of money and time. Developing technology should be watched; and, as promising new processes are perfected, they should be accepted as soon as they provide more rapid and efficient preparation of records.

[B] For defendants appealing in forma pauperis, transcripts of the testimony and other elements of the record should be supplied at government expense. Normally the court should not be involved in determining the content of the record. The best safeguard against abuse is to permit counsel for the appellant to specify what is necessary for his/her representation, subject to appropriate sanctions against counsel who has acted irresponsibly or extravagantly in requesting record documents at government expense.

[C] Exclusive of reporting matters ordered by the district court, priority should be given to the production of trial transcripts for cases on appeal.

STANDARD 6.12
Stating Reasons for Decisions and Limiting Publication of Opinions

A reviewing court should always state its reasons for its decision in a criminal case.

As to insubstantial issues, the statement of reasons should be brief and designed only to inform the defendant of what contentions the court considered and why, by citation to authority or otherwise, it rejected them.

A reviewing court should exercise control over publication of its statement of reasons. Statements of the reasons for decisions in cases involving only insubstantial issues normally should not be published. Even in cases involving substantial issues, publication should be allowed only if the opinion would be significant to the development of legal doctrine or if it would serve other important institutional purposes. Publication of opinions in more than 20 percent of all criminal cases disposed of by a reviewing court normally should be considered excessive.

STANDARD 6.13
Exceptional Circumstances Justifying Further Reviews

After the appellate court process has resulted in the affirmation of a trial court conviction and sentence, or after expiration of a fair opportunity for a defendant to obtain review with the aid of counsel, the conviction and the sentence generally should be final and not subject to further judicial review in any court, State or Federal. Further review should be available only in the following limited circumstances:

1. An appellate court determines that further review would serve the public interest in the development of legal doctrine or in the maintenance of uniformity in the application of decisional and statutory law;
2. The defendant asserts a claim of newly discovered evidence, which was not known to him/her and which could not have been discovered through the exercise of due diligence prior to conclusion of the review proceedings or the expiration of the time for seeking review, and which in light of all the evidence raises substantial doubt as to defendant's guilt.

Challenges to State court convictions made in the Federal courts should be heard by the U.S. courts of appeals.

STANDARD 6.14
Unitary Post-Conviction Remedy

There should be one comprehensive remedy for post-conviction review (i) of the validity of judgments of conviction or (ii) of the legality of custody or supervision based upon a judgment of conviction. The unitary remedy should encompass all claims whether factual or legal in nature and should take primacy over any existing procedure or process for determination of such claims.

STANDARD 6.15
Characterization of the Proceeding

The characteristics of the post-conviction remedy should not be governed by whether it is denominated a civil or criminal proceeding. It partakes of some attributes of each. The procedures should be appropriate to the objectives of the remedy. While the post-conviction proceeding will necessarily be separate from the original prosecution proceeding for many purposes, the post-conviction stage is, in a sense, an extension of the original proceeding and should be related to it insofar as feasible.

STANDARD 6.16
Parties; Legal Representatives of the Respondent

[A] The appropriate moving party in a post-conviction proceeding is the person seeking relief, proceeding in his/her own name. The appropriate respondent is the entity in whose name the original prosecution was brought.

[B] The legal officer with primary responsibility for responding to applications for post-conviction relief should be the Attorney General, or other designated legal officer with state-wide jurisdiction, with power to assign cases to the local prosecutors when the Attorney General deems it in the interest of the State to do so.

STANDARD 6.17
Jurisdiction and Venue

[A] Original jurisdiction to entertain applications for post-conviction relief should be vested in the court or judge of general jurisdiction.

[B] The most desirable venue for a post-conviction proceeding is in the court in which the applicant's challenged conviction and sentence were rendered. Such a choice fosters administrative convenience and equitable distribution of the burden of litigation. To guard against prejudice because of the site of the forum, procedure for change of venue should be provided and liberally administered.

[C] Where jurisdiction is vested in the trial courts and venue is determined as in [B] above, a general rule disfavoring submission of post-conviction applications to the same trial judge who originally presided is clearly preferable.

STANDARD 6.18
Grounds for Relief

A post-conviction remedy ought to be sufficiently broad to provide relief:

(a) for meritorious claims challenging judgments of conviction, including claims:
  (i) that the conviction was obtained or sentence imposed in violation of the Constitution of the United States or the Constitution or laws of the State in which the judgment was rendered;
  (ii) that the applicant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of the State in which judgment was rendered, or that the conduct for which the applicant was prosecuted is constitutionally protected;
  (iii) that the court rendering judgment was without jurisdiction over the person of the applicant or the subject matter;
  (iv) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
  (v) that there exists evidence of material facts, not theretofore presented and heard, which require vacation of the conviction or sentence in the interest of justice;
  (vi) that there has been a significant change in law, whether substantive or procedural, applied in the process leading to applicant's conviction or sentence, where sufficient reasons exist to allow retroactive application of the changed legal standard;
  (vii) on grounds otherwise properly the basis of collateral attack upon a criminal judgment;

(b) for meritorious claims challenging the legality of custody or restraint based upon a judgment of conviction, including claims that a sentence has been fully served or that there has been unlawful revocation of parole or probation or conditional release.

(c) for parole board decisions relative to denial of parole.

STANDARD 6.19
The Judgments of Conviction; Waiver

(a) Unless otherwise required in the interest of justice, any grounds for post-conviction relief as set forth in Standard 6.18 which have been fully and finally litigated in the proceedings leading to the judgment of conviction should not be re-litigated in post-conviction proceedings.

(i) It is essential that accurate and complete records of proceedings leading to such judgments be compiled and retained in accessible form.

(ii) A question has been fully and finally litigated when the highest court of the State to which a defendant can appeal as of right has ruled on the merits of the question.

(iii) Finality is an affirmative defense to be pleaded and proved by the State.

(b) Claims advanced in post-conviction applications should be decided on their merits, even though they might have been, but were not, fully and finally litigated in the proceedings leading to judgments of conviction.

(c) Where an applicant raises in a post-conviction proceeding a factual or legal contention which he/she knew of and which he/she deliberately and inexcusably:

(i) failed to raise in the proceeding leading to judgment of conviction, or

(ii) having raised the contention in the trial court, failed to pursue the matter on appeal,

a court should deny relief on the ground of an abuse of process. If an application otherwise indicates a claim worthy of further consideration, the application should not be dismissed for abuse of process unless the State has raised the issue in its answer and the applicant has had an opportunity, with the assistance of counsel, to reply.

(d) Because of the special importance of rights subject to vindication in post-conviction proceedings, courts should be reluctant to deny relief to meritorious claims on procedural grounds. In most instances of unmeritorious claims, the litigation will be simplified and expedited if the court reaches the underlying merits despite possible procedural flaws.

COMMENTARY

The National Advisory Commission on Criminal Justice Standards and Goals observes that:

> Because a conviction of crime imposes a serious stigma upon a person in the eyes of society and often results in the loss of liberty, there is a widely shared view that determining guilt and fixing punishment should not be left to a single trial court. The interests of both society and the defendant are served by providing another tribunal to review the trial court proceedings to insure that no prejudicial error was committed and that justice was done. Review also provides a means for the ongoing development of legal doctrine in the common law fashion, as well as a means of insuring evenhanded administration of justice throughout the jurisdiction. Functionally, review is the last stage in the judicial process of determining guilt and fixing sentence. Like the trial proceeding, it should be fair and expeditious. (NAC, **Courts**, 112 (1973).)

The National advisory Commission concludes that the appellate process is in trouble:

> Several decades ago appeals were taken only in a minority of cases, and collateral attacks on convictions were relatively rare. The current picture is stikingly different: in some jurisdictions more than 90 percent of all convictions are appealed, and collateral attack is almost routine in State and Federal courts. Courts are handling appeals under procedures that have changed little in the past hundred years. The process is cumbersome and fragmented; it is beset with delay. Both State and Federal courts are threatened with inundation. Even now, the vast increase in workload is making it increasingly difficult for appellate courts to give to substantial questions the careful, reflective consideration necessary to the development of a reasoned and harmonious body of decisional law. **[Id.]**

Conference participants believe that many of the problems identified by the National Advisory Commission are present in the Iowa review process. In particular, conferees observe that the Iowa Supreme Court has a large backlog of cases.

The goal of this chapter is to promote efficient review of Iowa trial court proceedings while preserving the interests of the defendant and society in justice and in the ongoing development of legal doctrine. The standards contained in this chapter are designed to accommodate the Iowa Court of Appeal's role in the Iowa appellate process and apply to that court as well as the Iowa Supreme Court. (See Standard 6.2.)

Standards 6.1 and 6.3 reflect the position of the American Bar Association. (See ABA, **Criminal Appeals**, Standards 1.1, 1.3 (Approved Draft, 1970).) These standards affirm the right of defendants convicted in Iowa trial courts to at least one level of appellate review of their convictions and sentences. (See ABA, **supra**, 1.) The standards direct that appellate review be provided only in cases where the defense takes the initiative to seek it. **(Id.)**

Standard 6.3 recommends that the scope of appellate review of Iowa trial court proceedings be extended to the legality and appropriateness of sentence. The National Advisory Commission makes the following arguments in support of sentence review:

> Providing for sentence review serves several purposes. It prevents distortion in legal doctrine unrelated to sentences. In many appeals the defendant's real dissatisfaction is with his sentence, but since the sentence is unreviewable he is compelled to direct arguments at the conviction even when there are in fact no substantial defects in the conviction. An appellate court convinced that there is a gross disparity or injustice in a sentence is driven to distort the law to find error in the conviction so that the sentence can be set aside.
>
> Moreover, and perhaps more importantly, sentence review protects against undesirable disparities. With many different courts in a system imposing sentences, substantial disparities inevitably occur. Rehabilitation and respect for the administration of justice are seriously impaired when prisoners of similar types convicted of similar offenses in similar circumstances receive prison terms of unduly varying lengths. Evenhanded justice requires some degree of consistency in sentencing. Review also provides a means, otherwise nonexistent, of developing statewide sentencing that will provide meaningful guidelines to the sentencing courts and introduce more rationality into sentencing. (NAC, **Courts,** 117 (1973).)

Similarly, conference participants conclude that many post-conviction relief proceedings are initiated by individuals who feel that they have not received equal treatment under Iowa's indeterminant sentencing and parole provisions. Conferees believe that appellate review of a sentencing process in which the trial judge has discretion to impose specific sentences, such as the process recommended in Chapter 5, will promote sentencing uniformity and, ultimately, reduce post-conviction writs.

The standard endorses the premise that "...ordinarily no appeal should be allowed until there has been a final judgment in the trial court...." (ABA, **supra,** 32.) Conference participants conclude, however, that there are situations in which the value of immediate appeal outweighs the factors that underlie the general principle. (**Id.**) For example, when the trial court denies a pretrial motion, such as a motion to suppress evidence, the defendant is required to proceed to trial for the purpose of preserving error in the denial of the motion. Such a requirement results in needless trials when the only issue in the case is whether the evidence is admissible. To avoid such trials and conserve trial court resources, conference participants recommend that interlocutory appeals be premitted in the discretion of the reviewing court.

The American Bar Association recommends "...a broader right of appeal by the prosecution than is found in most states." (ABA, **supra,** 2.) Standard 6.4 adopts this recommendation and grants Iowa prosecutors the right to appeal from judgments dismissing an indictment on substantive grounds and from pretrial orders that terminate the prosecution. In addition, the standard permits discretionary interlocutory appeals from pretrial orders that impede prosecution.

Standard 6.5 recommends that Iowa create a State public defender office for criminal appeals. Conferees conclude that such an office not only will promote finality in criminal proceedings but also will expedite the processing of criminal appeals. Conferees also believe that such an office will insure that indigent defendants are provided competent appellate counsel when trial attorneys wish to withdraw. The standard does not require that the State public defender office provide all indigent appellate services. Standard 6.5 also sets forth the duties of trial counsel in regard to appeal. These duties are designed to insure that the defendant receives continuous legal assistance while deciding whether to appeal his/her case. Similarly, the standard seeks to insure that appellants have the benefit of competent legal representation during all stages of criminal appeal.

Standard 6.6 suggests that the appealing party be required to file the notice of appeal within 10 days of the judgment of the trial court. Conferees believe that such a requirement will expedite the appellate process. The standard contemplates that the time limit will be tolled by filing the notice of appeal with the clerk of district court. The standard also emphasizes the importance of the district court's role in informing the defendant of his/her right to appeal. (See IOWA CODE, Court Rule 15.1 (1975).)

Standard 6.7 relates only to pre-appeal screening - that is, screening prior to the filing of the notice of appeal. Conferees conclude that this type of screening is inconsistent with the right to appeal defined in Standard 6.3. Therefore, Standard 6.7 stresses that the Iowa appellate process should not include pre-appeal screening devices or sanctions against those who pursue frivolous appeals.

Although conference participants conclude that pre-appeal screening is inappropriate, they do believe that the reviewing court should utilize procedures designed to expedite the appellate process and add finality to criminal proceedings. (See Standard 6.8.) Standard 6.9 recommends that the reviewing court have a professional staff to perform several essential functions. The first function is monitoring.

The staff should affirmatively monitor each case from the moment the initial step is taken by the defendant to seek review of his conviction or sentence. This is a departure from traditional appellate practice where the progress of an appeal is left entirely to the adversary process.

Failure to comply with the court's rules as to the times within which various steps must be taken has been checked only if the opponent has cared to make an issue of the matter. The result is that in many appellate courts the average time for taking the various steps substantially exceeds the time allowed by the rules. This is a major factor in delaying review. To overcome this problem the staff should be responsible for seeing that the case moves along, even though the parties might be willing to let it lag, if left to their own devices. The staff, or clerical personnel under staff direction, should deal directly by telephone with the persons involved - lawyers, clerks, trial judges, or reporters. The reviewing court should back up its staff's actions by providing for sanctions for failure to comply with rules or to cooperate with the staff. (NAC, **Courts**, 120 (1973).)

The second function that the reviewing court's staff should perform is shaping the record.

The staff should oversee the preparation and shaping of the papers to be put before the judges to insure that, on the one hand, the judges have all the information essential to a meaningful decision of the issues and that, on the other hand, the judges are not burdened with an unnecessary volume of material. While the lawyers for the parties should make the initial determination as to what data go before the reviewing court, the staff also should exercise an affirmative role, both in insuring completeness and in protecting the court from needless information. (**Id.**)

Identification of issues is another function the staff should perform.

The staff should take affirmative steps to identify all potential issues in the case, even though they were not asserted by the defendant and are not apparent on the face of the record. Performing this function effectively is essential if further review is to be limited. As to alleged constitutional defects in proceedings leading up to conviction and sentence, there is a widely accepted notion that the defendant at some point should be provided an opportunity for a hearing. Failure to provide that opportunity in the regular course of trial and appeal has been one of the causes of growth in postconviction litigation. This standard contemplates that once review is sought, the reviewing court, through its staff, will probe the entire case to spot any arguable issues that may be beneath the surface. (**Id.**)

The final staff function is screening.

A screening function should pervade the staff work. Every case coming to the reviewing court would be reviewed by the staff before being seen by any judge. One purpose is to insure completeness in all the papers, as described above in the description of the process of shaping the record. Another purpose is to recommend further steps. For example, if there is an issue on which a decision by the trial judge is appropriate,...the staff could frame a recommended order to that effect for the reviewing court's action. If written briefs or oral argument (or both) appear desirable, the staff could make that recommendation to the judges with a suggested limitation as to the issues to be treated.

Another purpose is to identify cases where there are no issues of substance; for example, a recommended per curiam affirmance could be prepared. In all these matters, if any judge disagrees with the staff recommendation, additional procedures or steps can be directed. But if the staff is competent and aware of the general views of the reviewing court, there should be a high degree of harmony between staff recommendations and judicial views. (NAC, **Courts,** 121 (1973).)

Conferees also recommend that the Iowa Supreme Court and the Iowa Court of Appeals adopt flexible review procedures that promote fairness, expedition, and finality. Standard 6.10 incorporates several of the flexible reviewing procedures recommended by the National Advisory Commission on Criminal Justice Standards and Goals. The Commission argues that the reviewing court should utilize procedures whereby certain issues can be referred to the trial court:

Even though the defendant will present to the reviewing court all grounds of attack on the trial proceeding, sound functional and institutional reasons may dictate that the trial judge's ruling be obtained initially on certain issues. These issues are likely to be those calling for an assessment of the impact of an alleged irregularity in the trial result that could best be made by a judge at the scene, or those calling for the exercise of discretion of the kind traditionally accorded a trial judge. This standard provides that if the reviewing court deems an issue to be of this type it can refer the issue to the trial judge. (NAC, **Courts**, 123 (1973).)

Standard 6.10 encourages the reviewing court to adopt procedures that provide for internal flexibility:

To achieve maximum expedition of review without sacrificing fairness to the defendant, it is necessary for the review process to be free of fixed rules prescribing a uniform treatment for all cases. The assistance of a professional staff makes it easier for a

reviewing court to tailor procedures to fit the cases. A defendant has no right to any particular review procedure, so long as he is given a full consideration and is not treated in an arbitrarily different fashion from other litigants in the same posture. A defendant, for example, has no right to present his contentions in writing instead of orally, or vice versa. His right extends only to submitting his contentions and the supporting information by some reasonable means to the reviewing court. (NAC, **Courts**, 124 (1973).)

The standard provides for authority in the reviewing court to increase as well as reduce the sentence. This authority permits the reviewing court to correct improperly harsh sentences and to protect society from unjustified leniency or other inappropriateness in the sentencing process. The standard does not grant the prosecution the right to seek review of sentences; however, when the defendant himself/herself raises the matter of appropriateness of sentence, the standard permits the reviewing court to review the sentence both for harshness and leniency. (**Id.**)

Subparagraph 4 of Standard 6.10 reflects the National Advisory Commission's provision. The Commission sets forth the following reasons for the broad authority outlined in the standard.

> An American appellate court normally is given the authority to overturn a conviction only if there is legal error in the record or if the evidence is insufficient to support a finding of guilty. Under this practice the court has no power to set aside the conviction or remand the case for a new trial simply to prevent a miscarriage of justice. The consequence is that in a case where the court is convinced that the conviction works an injustice it is driven artificially to find some legal error on which a reversal can respectably be based, even if this necessitates a distortion of legal doctrine. The more straightforward approach embodied in this standard gives to the court the power to deal with the conviction directly in terms of injustice.
>
> The English Court of Appeal, Criminal Division, has had statutory authority of this sort since 1966. That court is empowered to quash a guilty verdict if the court considers "that under all circumstances of the case it is unsafe or unsatisfactory." The power has been exercised sparingly. But its availability is a salutary protection for the innocent and a valuable device for use in the occasional case where there is evidence enough to support the verdict and no legal error, yet the circumstances convince the appellate judges that conviction is inconsistent with justice. Under this standard, the reviewing court could either quash the conviction and enter final judgment for defendant or set aside the conviction and remand for a new trial.
>
> This subparagraph also calls for reviewing courts to have the authority to affirm despite the existence of error if permitting the conviction to stand would not constitute a miscarriage of justice. Many appellate courts have this authority now in the form of a harmless error rule that permits the court to characterize an error as harmless and thus not requiring reversal of the conviction. But the Commission believes that this power should be used more often to affirm a conviction where errors in the trial cannot reasonably be regarded as having had any significant impact upon any of the defendant's rights. More widespread use of this power would counterbalance use of the power to reverse a conviction upon the basis that the conviction should not stand. (**Id.**)

Conferees believe that continuing efforts should be directed at expediting and improving the preparation of records for appeals. For example, conferees endorse the Iowa Supreme Court's abandonment of the traditional requirement of printed record as an appropriate method of improving the appellate process. Standard 6.11 relates to the record on appeal and directs that priority be given at the district court level to the production of trial transcripts for cases on appeal. To further expedite the appellate process and reduce judicial workload, Standard 6.12 recommends procedures for informing the appellant and appellee of the reviewing court's decision and for limiting the publication of opinions. Conference participants emphasize the importance of informing the litigants of the decision and the reasons therefor.

The purpose of Standard 6.13 is to promote finality in criminal proceedings. The standard suggests that, after the Iowa appellate process has affirmed a trial court conviction and sentence, or after the expiration of a fair opportunity to seek review, the decision should generally be final and not subject to further review. (See NAC, **Courts**, Standard 6.5 (1973).) To deal with questions that have not been finally adjudicated in the proceedings leading to conviction and sentence, the chapter recommends a system of post-conviction relief. This system is based upon the recommendations of the American Bar Association. The ABA states that "...it is preferrable in the pursuit of justice, and administratively most efficient, to develop a system that will treat post-conviction applications on their underlying merits rather than to create an elaborate overlay of procedural rules to attempt to dispose of them." (ABA, **Post-Conviction Remedies**, 3 (Approved Draft, 1968).) In pursuit of that purpose, the ABA recommends that:

(1) There should be a single, unitary post-conviction remedy so that applicants and courts need not be concerned with whether the proper form of relief has been sought. (See Standard 6.14.)

(2) The scope of the remedy should be broad enough to encompass all grounds for attacking the validity of a conviction or sentence in a criminal case, including violation of the United States Constitution or State constitution, lack of jurisdiction over the person or subject matter, unlawful sentence, new evidence of material facts or new developments in legal standards applicable to prior convictions. (See Standard 6.18.)
(3) To prevent applicants from taking undue advantage of the unrestricted remedy afforded, pervading the standards should be the sanction for abuse of process, whereby a court may refuse to entertain an application on its merits. Thus, a defendant who deliberately and inexcusably fails to raise a known defense during the prosecution proceedings may be precluded from doing so at the post-conviction stage. (See Standard 6.19.)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 6.1-6.9.

Chapter Seven

The Prosecution Function

Goal: To promote the development of professional prosecutors' offices that will have the personnel, resources, and direction to perform their duties effectively.

STANDARD 7.1
Professional Standards for the Chief Prosecuting Officer

Wherever feasible, the chief prosecutor and his/her staff should devote full-time to the performance of the duties of his/her office. The full-time prosecutor should be authorized to serve a minimum term of four years at an annual salary equal to that of the district court judge. In order to meet these standards, the jurisdiction of the prosecutor's office should be designed so that population, caseload and other relevant factors warrant at least one full-time prosecutor.

Prosecutors and their staffs should be selected on the basis of professional competence without regard to partisan political influence.

STANDARD 7.2
Professional Standards for Assistant Prosecutors

The prosecutor should undertake programs, such as legal internships for law students, designed to attract able lawyers to careers in prosecution.

The starting salaries for assistant prosecutors should be no less than those paid by private law firms in the jurisdiction, and the prosecutor should have the authority to increase periodically the salaries for assistant prosecutors to a level that will encourage the retention of able and experienced prosecutors, subject to approval of the legislature, city or county council as appropriate. For the first 5 years of service, salaries of assistant prosecutors should be comparable to those of attorneys in local private law firms.

The caseload of each assistant prosecutor should be limited to permit the proper preparation of cases at every level of the criminal proceedings. Assistant prosecutors should be assigned cases sufficiently in advance of the court date in order to enable them to interview every prosecution witness, and to conduct supplemental investigations when necessary.

COMMENTARY

The goal of "The Prosecution Function" is the development of professional prosecutors' offices that will have the personnel, resources, and direction to perform their duties effectively. "The prosecutor occupies a critical place in the criminal justice system. It is the prosecutor who must focus the power of the State on those who defy its prohibitions. He must argue to the bench and jury that the sanctions of the law need to be applied. He must meet the highest standard of proof because the right of freedom hangs in the balance." (NAC, **Courts**, 227 (1973).) It is essential to the effective administration of justice that the prosecutorial system be designed to insure competent and professional performance of these duties. Standards 7.1 and 7.2 recommend such a system for Iowa.

There are essentially two distinct types of prosecutorial systems: the full-time system, where the prosecutor and his/her assistants devote their full efforts to their roles as prosecuting attorneys; and the part-time system, where the prosecutor and his/her staff serve the prosecutor's office on a part-time basis and maintain private law practices. (See, **e.g.**, NAC, **Courts**, 229 (1973).)

Iowa's present prosecutorial system emphasizes the part-time, locally functioning prosecutor. In Iowa, each county elects a county attorney for a four-year term. (IOWA CODE § 39.17 (1975).) The county attorney is responsible for prosecuting violations of State law in his/her county and for advising and representing the county in civil matters. (IOWA CODE § 336.2 (1975).) Iowa law does not require that the county attorney devote his/her full efforts to official duties. Therefore, the county attorney may maintain a private law practice in addition to performing his/her official duties. Because criminal caseloads in most Iowa counties are not sufficient to warrant full-time prosecution, the majority of Iowa's county attorneys are part-time officials who maintain private law practices to supplement relatively low salaries. (See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa**, 57 Iowa L. Rev. 598, 616 (1972).) Although the county attorney is subject to the ultimate supervision of the Attorney General, he/she is essentially autonomous in his/her jurisdiction. (See IOWA CODE § 13.2 (1975).) Thus, the county attorney independently makes the critical decisions that affect the prosecution of criminal cases in his/her county. The county attorney may request assistance from the Attorney General. (**Id.**)

The primary advantage to such a system is that the jurisdiction served by an individual prosecutor is relatively small. The American Bar Association notes that "... division of prosecutorial responsi-

bility on this basis serves to emphasize the need for the prosecutor to be responsive to local conditions. (ABA, **The Prosecution Function**, 51 (Approved Draft, 1971).) The ABA concludes that the prosecutor's "... familiarity with the community aids him in gathering evidence, in allocating his resources to the various activities of his office, and in appraising the disposition appropriate to particular offenses and offenders." (**Id.**)

The emphasis on local prosecution, however, subjects the part-time prosecutorial system to criticism. One objection is directed at the small jurisdictions served by part-time prosecutors. The American Bar Association states that small-size prosecution offices "... cannot provide the investigative resources, the accumulated skill and experience and the variety of personnel desirable for the optimum functioning of an efficient prosecution office. Neither can they provide opportunities for developing a range of special skills and internal checks and balances within the office." (ABA **The Prosecution Function,** 52 (Approved Draft, 1971). See also NAC, **Courts,** 229 (1973).)

Other objections relate to the part-time prosecutor's private law practice. Permitting the prosecutor to maintain a private practice creates potential conflicts of interest. "The attorneys he deals with as a public officer are the same ones with whom he is expected to maintain a less formal and more accommodating relationship as counsel to private clients. Similar problems may arise in the prosecutor's dealings with his private clients whose activities may come to his official attention." (ABA, **The Prosecution Function**, 60 (Approved Draft, (1971).) In addition, private law practice may diminish the amount of time and energy that the prosecutor devotes to the prosecution function. "Since his salary is a fixed amount, and his total earnings depend on what he can derive from his private practice, there is a continuing temptation to give priority to private clients." (**Id.**)

Ultimately, the part-time prosecutor's position may be viewed only as a "stepping stone" to private law practice. Conference participants conclude that the turnover rate for the county attorney position is high because many county attorneys and assistants enter private practice after a brief period in office. Participants feel that this factor helps to explain the relatively limited amount of prosecutorial experience within the Iowa system.

The full-time prosecutorial system is offered by many authorities as the solution to many of the criticisms directed at the part-time system. (See, **e.g.**, ABA, **The Prosecution Function,** Standard 2.3 (b) (Approved Draft, 1971); NAC, **Courts,** Standard 12.1 (1973).) These authorities take the position that the demands and complexities of the prosecution function require that prosecutors and their staffs devote their full efforts to their roles as prosecuting attorneys. (See, **e.g.**, NAC, **Courts,** 229 (1973).) Conference participants generally endorse this position. Specifically, participants believe that Iowa's prosecutorial system can benefit from the adoption of full-time prosecution concepts. However, participants feel that numerous legal and practical considerations must be evaluated to determine the most feasible method of providing competent and professional prosecution services in Iowa. Thus, conference participants conclude that it is premature to recommend statewide implementation of a specific type of full-time prosecutorial system.

Standard 7.1 reflects these concerns. The purpose of the standard is to promote the development of the most effective and efficient prosecutorial system feasible in Iowa. The standard recognizes that such a system must be compatible with the conditions and needs of the State. Therefore, while the standard suggests full-time prosecution as a means of improving the prosecution function in Iowa, it does not dictate immediate implementation of a particular type of full-time system, such as a district attorney format. Rather, the standard takes a flexible approach. It recommends that the feasibility of adopting full-time prosecution in Iowa be evaluated, and that appropriate elements of full-time prosecution be incorporated into the Iowa system when to do so will improve effectiveness and efficiency.

The standard does not designate a particular entity to evaluate the feasibility of adopting full-time prosecution. Again, the standard is flexible. Thus, local jurisdictions may evaluate full-time prosecution in terms of local needs and conditions and may implement a full-time system wherever feasible, or a State-level entity, such as the Iowa Legislature, may evaluate feasibility on a statewide basis and initiate statewide implementation of a full-time prosecutorial system.

Numerous factors must be considered in such a feasibility study. Conference participants recommend that part-time prosecution be compared with full-time systems in terms of results, tenure, and cost-effectiveness. In addition, participants suggest that the effects of eliminating private law practice be analyzed. Participants observe that the elimination of private practice may diminish the attractiveness of the prosecutor's office and, ultimately, may affect turnover rates. Conferees also recommend that the actual effect of private law practice on the performance of the prosecution function be evaluated. Participants note that, in Iowa, private practice has not been shown to conflict with the performance of prosecutorial duties. Finally, conference participants feel that recent changes in Iowa's present prosecutorial system, such as four-year county attorney terms, should be analyzed to determine their impact on Iowa's system.

Standard 7.1 directs that, wherever it has been determined the full-time prosecution is feasible,

the jurisdiction of the prosecutor's office be structured so as to justify at least one full-time prosecutor. Thus, if feasibility has been determined at the local level, the standard may require that county jurisdictions be combined to support a full-time prosecutor. An example of such a system is found in Judicial District 1b, where two full-time prosecutors supplement the services of six county attorneys. If feasibility has been determined at the State level, the standard may suggest a complete reorganization of Iowa's present prosecutorial system. For example, evaluation of the entire State may indicate that a district attorney system is the most effective and efficient method of providing prosecution services in Iowa. The standard would then require that a district attorney system replace the existing county attorney system.

Standard 7.1 does not recommend a precise manner of selecting the prosecutor and his/her staff. However, the standard does direct that the selection process be insulated from partisan political influence. "An effort should be made to reach an understanding that the position of public prosecutor should not be subject to the pressures and demands of partisan politics but that nominations are to be based on merit, ..." (ABA, **The Prosecution Function**, 61 (Approved Draft, (1971).) The standard does not preclude election of prosecutors. "Although there is some evidence that elected prosecutors will be too sensitive to views that are popular but not enlightened and that direct election brings an unnecessary amount of partisanship to the office, there are substantial gains derived from the election process. Popular election makes the prosecutor responsive to the community and gives him a desirable measure of independence from other officials." (NAC, **Courts**, 230 (1973).) Regardless of the selection method chosen, the chief prosecutor and his/her staff should be selected on the basis of fitness for office.

Conference participants believe that the development of a professional prosecutorial system in Iowa requires that the chief prosecutor and his/her assistants be career-oriented personnel. A purpose of Standards 7.1 and 7.2 is to attract qualified attorneys to careers in prosecution. One method of attracting qualified attorneys is to provide adequate salaries for the chief prosecutor and assistant prosecutor positions. Because the chief prosecutor is not permitted to practice law on a private basis, his/her salary must be sufficient to encourage him/her to remain in office. Standard 7.1 recommends that the salary be equal to that of a district court judge. Participants feel that such a salary reflects the dignity, responsibility, and importance that should be attached to the chief prosecutor's position. Similarly, "... if highly qualified and competent personnel are to be attracted to careers in the administration of criminal justice, assistant prosecutors should be compensated at a level comparable to that received by their counterparts in private practice. Within the budget allocation, the prosecutor should be free to establish salary schedules based on his evaluation of the quality and experience of his staff." (NAC, **Courts**, 233 (1973).)

To minimize turnover rates for the chief prosecutor's position, the term of office must be of sufficient length. Standard 7.1 directs that full-time prosecutors be authorized to serve a minimum term of four years. Conference participants express the concern that the elimination of private practice and its long-term security may dissuade qualified attorneys from seeking the prosecutor's position. To minimize the possibility of this occurring, participants recommend that full-time prosecutors be given relatively long tenure. Also, a minimum four year term "... is necessary in order to allow the chief prosecuting officer time to master the office and to develop long-range programs for the improvement of the administration of justice." (NAC, **Courts**, 229 (1973).)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.1, 12.2.

STANDARD 7.3
Supporting Staff and Facilities

The office of the prosecutor should have a supporting staff comparable to that of similar-size private law firms. Prosecutors whose offices serve metropolitan jurisdictions should appoint an office manager with the responsibility for program planning and budget management, procurement of equipment and supplies, and selection and supervision of nonlegal personnel. Paraprofessionals should be utilized for law-related tasks that do not require prosecutorial experience and training. There should be adequate secretarial help for all staff attorneys. Special efforts should be made to recruit members of the supporting staff from all segments of the community served by the office.

The office of the prosecutor should have physical facilities comparable to those of similar-size private law firms. There should be at least one conference room and a public waiting area separate from the offices of the staff.

The prosecutor and his/her staff should have immediate access to a library sufficiently extensive to fulfill the research needs of the office. Staff attorneys should be supplied with personal copies of books, such as the State criminal code, needed for their day-to-day duties.

The basic library available to a prosecutor's office should include the following: the annotated laws of the State, the State code of criminal procedure, the municipal code, the United States code annotated, the State appellate reports, the U.S. Supreme Court reports, Federal courts of appeals and district court reports, citators covering all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting State law, a legal reference work digesting law in general, a form book of approved jury charges, legal treatises on evidence and criminal law, criminal and U.S. Supreme Court case reporters published weekly, looseleaf services related to criminal law, and, if available, an index to the State appellate brief bank.

STANDARD 7.4
Statewide Organization of Prosecutors

There should be a State-level entity that makes available to local prosecutors who request them the following:

1. Assistance in the development of innovative prosecution programs;
2. Supportive services, such as laboratory assistance; special counsel, investigators, accountants, and other experts; data-gathering services; appellate research services; and office management assistance.

This entity should provide for several meetings each year, at which prosecutors from throughout the State can engage in continuing education and exchange with other prosecutors. In administering its program, the entity should try to eliminate undesirable discrepancies in law enforcement policies.

An independent State agency should be created to perform or coordinate these functions. The agency and its program should be funded by the State through the executive budget. It should have officers and a governing board elected by the membership; the Attorney General of the State should be an ex officio member of the governing board. A full-time executive director should be provided to administer the agency and its program.

COMMENTARY

Effective operation of the prosecutor's office requires that the prosecutor and his/her assistants make efficient use of their legal skills and abilities. The prosecutor and his/her assistants cannot do so if they must devote an unnecessarily large portion of their time to clerical and nonlegal tasks. (See ABA, **The Prosecution Function**, 64 (Approved Draft, 1971); (NAC, **Courts**, 234 (1973).) Therefore, Standard 7.3 directs that the prosecutor's office be provided adequate supporting staff to perform the nonlegal duties of the office.

It is also essential to the effective operation of the prosecutor's office that the prosecutor and his/her assistants have adequate physical facilities. The National Advisory Commission on Criminal Justice Standards and Goals states that because "...the prosecutor is one of the most important officials in the criminal justice system, the office of the prosecutor should have physical facilities in keeping with the dignity and responsibility of the position. Prosecutors and their staffs must have privacy to prepare their cases and to discuss the problems of their offices without outside interruption. Moreover, prosecutors and their assistants must deal with highly personal and confidential problems brought to them by the police and citizens. Frank discussions are possible only in privacy. The office atmosphere should be one where the police and the public are assured that assistant prosecutors are giving them their undivided attention. Furthermore, if members of the public observe a physical environment that is not consistent with professionalism and the dignity of the office of prosecutor, then respect for law enforcement is bound to be lessened." (NAC, **Courts**, 235 (1973).) To insure that the prosecutor's office has adequate facilities, the standard recommends that the physical facilities of similar-size private law firms be used as a guide.

A complete library is an essential component of the prosecutor's office. The prosecutor and his/her staff cannot competently perform the prosecution function without the necessary tools to research and prepare cases. Therefore, Standard 7.3 recommends that the prosecutor and his/her staff have immediate access to a law library. The standard lists the volumes that should be contained in the library. While all of these materials are not currently available in Iowa, the standard contemplates that they should be included in the library if and when they become available. Conference participants recognize that equipping a library with all the volumes suggested in the standard will require a relatively large initial investment. Conferees feel, however, that these materials are essential to effective prosecution and are an appropriate long-range objective. Participants note that, to

limit expenses, the standard requires only that these volumes be available to the prosecutor's office, thereby permitting the development of centralized library services rather than individualized prosecutor's libraries.

The purpose of Standard 7.4 is to insure that the wide range of supporting services essential to effective prosecution are available to all Iowa prosecutors. The availability of these services to Iowa prosecutors depends in great part upon the method used to deliver these services. For example, many of the services listed in the standard are currently being performed in Iowa; however, there is no single entity responsible for coordinating the provision of the services to Iowa prosecutors. Consequently, many prosecutors either are not aware of the wide range of services available or do not know how to secure these services. Conference participants believe that this situation can be remedied if responsibility for coordinating the provision of support services is placed in a single State entity, such as the Prosecuting Attorneys Training Coordinator Council. (See Iowa Acts 1975 (66 G.A. Ch. 71.) The standard contemplates that this entity will be responsible for disseminating information about the support services available to prosecutors, for coordinating provision of the services upon request, and for conducting a series of educational meetings.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.3, 12.4.

STANDARD 7.5
Education of Professional Personnel

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. All newly appointed or elected prosecutors should attend prosecutors' training courses prior to taking office, and in-house training programs for new assistant prosecutors should be available in all metropolitan prosecution offices. All prosecutors and assistants should attend a formal prosecutors' training course each year, in addition to the regular in-house training.

COMMENTARY

Iowa prosecutors and their assistants must possess the specialized skills necessary to meet the demands of the prosecution function. A legal degree and admission to the bar do not insure that the prosecutor has developed these specialized skills. The National Advisory Commission on Criminal Justice Standards and Goals states that "[w]hile performance of the prosecution function requires the same high degree of skill and knowledge as other specialized areas of the law, 'the legal training of a prosecutor is generally limited to his legal education and whatever courtroom experience he has had. While this may meet the need for the court and trial aspects of the job, it does not necessarily prepare the man for his administrative and law enforcement functions.' (President's Commission on Law Enforcement and the Administration of Justice, **The Challenge of Crime in a Free Society**, 148 (1967).)" (NAC, **Courts**, 239 (1973).)

Standard 7.5 directs that Iowa prosecutors and their assistants be required to attend specialized education programs designed to develop their prosecutorial skills. Prior to taking office, newly appointed or elected prosecutors should participate in programs that teach the techniques of office management, court administration and the administration of criminal justice. (**Id.**) New assistant prosecutors should receive training in substantive and procedural law, ethics, and etiquette and manners in the courtroom and in relations with the court and opposing counsel. (See ABA, **The Prosecution Function**, 66 (Approved Draft, 1971).) In addition, new personnel should be familiarized with office structure, procedures and policies, the local court system, and the operation of police agencies. (**Id.**) In-service training programs should also be developed. These programs should be designed to "...impart to prosecuting attorneys a deeper understanding of the criminal justice system and the needs it is designed to serve." (NAC, **Courts**, 240 (1973).) The in-service programs should be conducted both as in-house training sessions and as formal training programs similar to those currently conducted by the Prosecuting Attorneys Training Coordinator Council. The State-level entity described in Standard 7.4 should be responsible for establishing and coordinating the formal training programs.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.5.

STANDARD 7.6
Filing Procedures and Statistical Systems

The prosecutor's office should have a file control system capable of locating any case file in not more than 30 minutes after demand, and a statistical system, either automated or manual, sufficient to permit the prosecutor to evaluate and monitor the performance of his/her office.

COMMENTARY

Standard 7.6 addresses the development of filing procedures and statistical systems for the prosecutor's office. A well-designed file control system is necessary to effectively manage the complex operation of the prosecutor's office. As stated by the National Advisory Commission, "[t]he case file is the only record the prosecutor has for the litigation of criminal cases. The misplacing of files can result in the continuance or outright dismissal of serious criminal charges because the prosecutor is not prepared. Thus, prosecutors and their staffs must take special precautions to preserve the accuracy, completeness, and accessibility of all case files." (NAC, **Courts**, 241 (1973).) Currently, there is no requirement in Iowa that the prosecutor maintain any type of file control system. The standard requires all Iowa prosecutors to develop a system capable of locating any case file in not more than 30 minutes after demand.

Standard 7.6 also requires all prosecutors to establish statistical systems. The purpose of the statistical system is to enable the prosecutor to evaluate and monitor the performance of his/her office and the effectiveness of his/her practices. The National Advisory Commission concludes that a properly developed statistical system can be helpful in the following areas:

> Resources Allocation—assignment of scarce manpower in the prosecutor's office to criminal cases in a manner that will lead to maximum effectiveness of prosecution based on the importance of the cases and their urgency for trial;
>
> Operational Processing—automatic notification of police officers, lay witnesses, expert witnesses, defendants, and defense attorneys of the date, time, and place of all required court appearances, and the automatic generation of lists of cases scheduled for special hearing...;
>
> Management Control—monitoring of administrative and scheduling problems in the orderly and timely prosecution of criminal cases;
>
> Research and Analysis—the means to identify trends in criminal activity and to assess the effectiveness of prosecution policies and the means to perform studies of special issues such as plea bargaining; and
>
> Interagency Coordination—automatic generating of reports to the police department, the court, the bail agency, the chemist, and the corrections department on the status and disposition of cases to assist in scheduling and coordinating actions relating to the court system. (Hamilton, Modern Management for the Prosecutor, 7 **Prosecutor**, 437 (1971).)

In addition, conference participants feel that the statistical information will assist the prosecutor in assessing the financial, physical, and personnel needs of the prosecutor's office.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.6.

STANDARD 7.7
Development and Review of Office Policies

Every chief prosecutor should develop a uniform procedure for handling cases within his/her office and a fair and uniform practice regarding every defendant and his/her counsel to insure that all cases are handled with fairness and that each defendant and his/her attorney are provided equal access to the prosecutor's office and function.

COMMENTARY

The prosecutor's office exercises a great deal of control over the ultimate disposition of a criminal case. For example, the office makes numerous discretionary decisions concerning screening, the charges to be filed, plea negotiations, and sentence recommendations. (NAC, **Courts**, 243 (1973).) In addition, the prosecutor's offices controls to some extent the amount of informa-

tion that is available to the accused and his/her attorney. Conference participants observe that, often, the more experienced defense attorneys have better opportunities to affect the decisions that are made by the prosecutor and to obtain information concerning their cases because they are familiar with the internal operation of the prosecutor's office. Participants conclude that it is essential to the fair administration of justice that all defendants and their attorneys have equal access to the prosecutor's office.

To insure equal access, Standard 7.7 recommends that the prosecutor's office develop uniform procedures for handling cases and uniform practices regarding defendants and their attorneys. The standard does not require that the prosecutor develop substantive policy statements that totally restrict the exercise of his/her discretion. Conference participants feel that such a requirement will force the prosecutor to predetermine the disposition of criminal cases, thereby limiting the flexibility necessary to deal with cases on individual factual bases. Rather, the standard is directed at insuring that the prosecutor and assistant prosecutors follow the same procedures when processing cases and grant all defendants and attorneys equal access to information. The standard contemplates, however, that uniform procedures and practices will be consistent with screening, diversion, and plea negotiation criteria and procedures. (See Chapters 1,2,3.)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.7.

STANDARD 7.8
The Prosecutor's Investigative Role

The prosecutor's primary function should be to represent the State in court. He/she should cooperate with the police in their investigation of crime. Each prosecutor also should have investigatorial resources at his/her disposal to assist him/her in case preparation, to supplement the results of police investigation when police lack adequate resources for such investigation, and, in a limited number of situations, to undertake an initial investigation of possible violations of the law.

The prosecutor should retain the power, subject to appropriate safeguards, to issue subpoenas requiring potential witnesses in criminal cases to appear for questioning. Such witnesses should be subject to contempt penalties for unjustified failure to appear for questioning or to respond to specific questions.

COMMENTARY

Standard 7.8 defines the role of the prosecutor in the investigation of crime. The standard recognizes that the prosecutor's primary function is to develop and present criminal cases in which a complaint has been made by a citizen or by a public agency, or following an arrest made by the police. (See NAC, **Courts**, 244 (1973); ABA, **The Prosecution Function**, 77 (Approved Draft, 1971).) However, there are instances when the prosecutor must assume an active role in the investigation of criminal cases. When these instances present themselves, the prosecutor must have available adequate resources to undertake the investigation. Standard 7.8 seeks to insure that these investigatorial resources are available to all Iowa prosecutors.

Conference participants recognize that often additional investigation is necessary to competently prepare the State's case. Such investigation may be limited to a specific matter that has not been adequately covered, or it may be relatively extensive. In either case, the prosecutor should have resources at his/her disposal to complete the necessary investigation. Conference participants stress that law enforcement agencies must cooperate in providing investigatory assistance. However, participants also emphasize that the prosecutor must have other resources to make the investigation when law enforcement assistance is not available. Conferees recommend the creation of a fund that Iowa prosecutors can use to secure outside investigatorial resources.

In some instances, it may be necessary that the prosecutor initiate investigation of criminal cases. The National Advisory Commission on Criminal Justice Standards and Goals concludes that the prosecutor's initial investigatory activities should be limited "... to cases involving complex issues that require legal evaluation during the investigation, such as some fraud cases, and cases where political expediency makes the prosecutor's participation of value in assuring the community of adequate investigation. The latter category would include investigation of allegations of serious police misconduct or corruption within governmental bodies." (NAC, **Courts**, 244 (1973).) Standard 7.8 recommends that the prosecutor undertake initial investigation of criminal activity in these limited situations.

In addition, the standard recommends that the prosecutor have the power, subject to appropriate safeguards, to subpoena potential witnesses for questioning. The subpoena power provides the prosecutor with an alternative to the grand jury

subpoena power, thereby permitting him/her to proceed without the use of the grand jury. Standard 7.8 endorses the Iowa county attorney subpoena procedures, which provide:

> The clerk of the district court, on application of the county attorney, shall issue subpoenas for such witnesses as the county attorney may require, and in such subpoenas shall direct the appearance of said witnesses before the county attorney at a specified time and place; provided that no subpoena shall issue unless an order authorizing same shall have been first made by the court or a judge thereof. After preliminary information, indictment, or information, the defendant shall be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this section. (IOWA CODE § 769.19 (1975).

Thus, the standard does not grant the prosecutor unlimited subpoena power; the court or a judge must authorize the issuance of subpoenas. Conference participants feel that this measure is a necessary restraint upon potential abuses. The Iowa standard, therefore, differs from the National Advisory Commission recommendation, which allows the prosecutor to issue subpoenas without judicial approval.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.8.

STANDARD 7.9

Prosecutor Relationships with the Public and with Other Agencies of the Criminal Justice System

The prosecutor should be the chief law enforcement officer in his/her jurisdiction, and—among the police, prosecutor, and court—the prosecutor should have the sole discretion to determine the charge to be filed, to decide not to charge, to recommend dismissal, and to proceed to trial. The prosecutor should give due consideration to the views of the police and court with respect to these decisions; however, it is the duty of the prosecutor to make an independent decision regarding these matters.

The prosecutor should maintain a regular liaison and training program with the police department in order to provide legal advice to the police, to identify mutual problems and to develop solutions to those problems and should keep the police informed about current developments in law enforcement, such as significant court decisions.

The prosecutor should develop and require the use of a basic police report form that includes all relevant information about the offense and the offender necessary for charging, plea negotiations and trial. After the offender has been processed by the police, the completed form should be promptly forwarded to and be on file in the prosecutor's office prior to indictment or the filing of a true information. Police officers should be informed by the prosecutor of the disposition of any case with which they were involved and the reason for the disposition.

The relationships among the prosecutor, the court, and defense bar should be characterized by professionalism, mutual respect and integrity.

The prosecutor and correctional agencies should establish regular communications at which appropriate information is exchanged.

The prosecutor should regularly inform the public about the activities of his/her office and of other law enforcement agencies and should communicate his/her views to the public on important issues and problems affecting the criminal justice system. The prosecutor should encourage the expression of views by members of the public concerning his/her office and its practices, and such views should be taken into account in determining office policy.

COMMENTARY

The prosecution of criminal cases requires the participation of three entities: the court, the prosecutor, and the police. Conference participants observe that, throughout the Iowa criminal justice system, these entities often disagree on the division of authority within the prosecution function. For example, the police may view themselves as the appropriate authority to determine the charges to be filed and the disposition to be sought. However, the prosecutor may regard this as his/her responsibility and may pursue a line of reasoning different than that of the police. When this situation occurs, the police may feel that their position has been compromised and their authority undermined by the prosecutor. Ultimately, the prosecution function may be adversely affected. The police may refuse to cooperate with the prosecutor in the preparation of cases, and the prosecutor may decline to assist the police with their legal questions.

Conference participants identify two factors that contribute to the conflict between the police and prosecutor. The first is that the county

attorney is often a recent law school graduate with relatively little experience in prosecuting criminal cases and in administering the prosecution function. Thus, he/she has difficulty establishing professional credibility with law enforcement officers who have a great deal more experience. Conference participants feel that Standard 7.1, Professional Standards for the Chief Prosecuting Officer, and Standard 7.5, Education of Professional Personnel, will help to overcome this problem. The second factor contributing to the conflict between the prosecutor and the police is that the Iowa criminal justice system does not provide an official statement that establishes the authority of the prosecutor. Participants believe that if the prosecutor can rely on a code provision to establish his/her authority, much of the existing professional conflict will diminish. Standard 7.9 makes it clear that the prosecutor is the chief law enforcement officer in his/her jurisdiction. As such, the prosecutor has the sole authority to determine the charges to be filed and to administer the prosecution of the case.

As the chief law enforcement officer in his/her jurisdiction, the prosecutor has a duty to assist the police in the performance of their function. Standard 7.9, therefore, requires that the prosecutor not only provide legal advice to the police but also maintain lines of communication to discuss and identify mutual administrative problems and to develop solutions to these problems. In addition, the standard recommends that the prosecutor assist the police in training their personnel in areas such as arrest, search and seizure, and interrogation. (See NAC, **Courts**, 248 (1973).)

To effectively make the decisions required of him/her as chief law enforcement officer in the jurisdiction, the prosecutor must have available extensive information concerning his/her criminal caseload. The most important source of information available to the prosecutor is the police report form. Conference participants feel that the use of police reports can be significantly improved throughout the Iowa criminal justice system. Conferees observe that in many jurisdictions the police report is the only contact the prosecutor has with the police prior to a hearing or trial. Thus, the prosecutor's preparation for a hearing may be limited to the information contained in the report. Clearly, when the report is insufficent, the prosecutor cannot properly prepare his/her case. Standard 7.9 directs that the prosecutor design the police report form to meet his/her needs and require that it be used by the police. The form "... should require police officers to detail all of the evidence which supports each element of the offense, the relevant surrounding circumstances, and all known witnesses and their addresses." (NAC, **Courts**, 248 (1973).)

Standard 7.9 requires that the prosecutor maintain lines of communication with correctional agencies. The National Advisory Commission on Criminal Justice Standards and Goal states that prosecution policies "... can have a significant impact on correctional programs. Plea negotiation and diversion practices often determine not only whether an offender will be placed in a correctional program but also the circumstances - such as length of possible confinement - under which he will participate in it. Moreover, the offender's perception of the fairness with which he was dealt by the prosecutor may affect significantly his attitude towards correctional programs. It is important that the prosecutor be aware of the impact of his policies and practices and of the need to ease the correctional task." (NAC, **Courts**, 249 (1973).) Thus, the prosecutor should meet regularly with representatives from correctional programs to discuss ways to improve the relationship between his/her office and correctional agencies.

Standard 7.9 also requires that the prosecutor develop a relationship with the public. "Since the public has the right to know about the activities of all public offices, the prosecutor has an obligation to keep his constituents informed about the activities of his office and of the activities of other law enforcement agencies." (NAC, **Courts**, 249 (1973).) The public also should have the opportunity to communicate their views concerning the performance of the prosecutor's office to the prosecutor.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 12.9.

Chapter Eight

The Defense Function

Goal: To insure that eligible defendants are provided professional, experienced, and well-trained public representation in all criminal proceedings.

STANDARD 8.1
Method of Delivering Defense Services

Services of a full-time public defender organization, and a coordinated assigned counsel system involving participation of the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime. Cases should be divided between the public defender and assigned counsel in a manner that will encourage participation by the private bar in the criminal justice system.

STANDARD 8.2
Administration and Financing of Defense Services

Defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction. Financing of defender services should be provided by the State. Administration and organization should be provided locally, regionally, or statewide.

COMMENTARY

Standards 8.1 and 8.2 consider the type of system that should be available in Iowa to provide public defense services to indigent defendants. Conference participants conclude that a combined public defender and assigned counsel system will best meet the needs of the State.

There are basically two methods of delivering public defense services: the public defender system, where an office is headed by a public official and supported by public funds; and the assigned counsel system, where individual lawyers are designated to take responsibility for particular cases as they arise. (See ABA, **Providing Defense Services**, 16 (Approved Draft, 1968).) The National Advisory Commission on Criminal Justice Standards and Goals identifies several arguments favoring complete reliance on the public defender system. The following paragraphs set forth these arguments:

> The problem of initially contacting private counsel and persuading them to accept appointments would be largely eliminated by full reliance upon public defenders. Public defenders usually devote their entire time to practice of criminal law. It can be argued that this enables them to provide a more effective criminal defense. In addition, a public defender might be able to render more complete services since he would be more readily available to assist an indigent defendant and begin preparation of his case prior to his appearance before a magistrate. Experience with public defenders has shown that they can and often do provide the early representation of the type required by **Miranda v. Arizona**, 384 U.S. 436 (1966) (police questioning), or **U.S. v. Wade**, 388 U.S. 48 (1967) (lineups). Appointive counsel sometimes cannot provide such early representation because they usually are not appointed until after the defendant is brought before the court.
>
> Full-time defenders also might have the advantage of being more likely to take measures to improve the legal and practical resources available to defendants. A strong argument can be made that a full-time defender, rather than appointed counsel, is more likely to work for new laws or procedures to benefit defendants and the criminal justice system. Recent examples of such procedures, brought about in large measure through the efforts of public defenders, include deferred prosecution policies and new discovery methods. (NAC, **Courts**, 263 (1973).)

However, complete reliance on the public defender system has several disadvantages. One is that the private bar may lose contact with the criminal justice system. The National Advisory Commission concludes that the active and knowledgeable support of the bar as a whole is essential to the improvement of the criminal justice system. (See NAC, **Courts**, 264 (1973).) The Commission fears that exclusive use of a public defender system will eventually diminish the private bar's contribution to criminal justice reform and improvement. Another disadvantage is that the public defender and his/her staff may be limited in their variety of legal skills and experience. (See NAC, **Courts**, 264 (1973).) Thus, the public defender office may not be able to handle unique situations which require special expertise.

To accommodate these considerations, Standard 8.1 directs that each jurisdiction in Iowa have access to a public defender office and a coordinated assigned counsel system involving participation by the private bar. Although the National Advisory Commission proposes that participation by the private bar be substantial, conference participants recommend that primary responsibility for the provision of public defense services rest with the public defender office. This recommendation is based upon the participant's

conclusion that a full-time public defender organization will be more effective both in terms of cost and quality of services than the assigned counsel system. The standard permits individual indigents to request that a private attorney be appointed by the court and allows the court to assign a particular attorney to a case because of his/her special expertise and experience. The standard does not recommend a percentage of cases to be provided by the public defender. Conferees feel that this will depend upon the needs and circumstances in the individual jurisdictions.

Standard 8.2 adopts a flexible approach that enables local jurisdictions to develop public defense services best suited to their own needs, provided that the standards contained in this chapter are observed. (See NAC, **Courts**, 265 (1973).) Factors such as geography, the quantity and nature of the criminal cases arising in the jurisdictions, the character and size of the local bar, and local traditions in providing defense services should be considered in developing a public defense system. (See ABA, **Providing Defense Services**, 18 (Approved Draft, 1968).) The standard does not designate an appropriate entity to provide administration for the defense system. Centralized control has the advantage of providing uniformity throughout the Iowa criminal justice system; however, such an approach may disregard local needs. Also, State administration may diminish local initiative and interest in the development of a professional public defense system. The standard, therefore, leaves open the administration question.

Standard 8.2 directs that financing of all public defender services be provided by the State regardless of the method selected to administer the public defense system. "Financial support is a critical element in providing effective defender services. Local governments are less able than the State to finance such services, and it is often politically impossible to provide adequate funding for defense services on the local level. Further aggravating the situation is that counties with a low tax base often have a higher incidence of crime. Often an especially high percent of defendants in these counties are financially unable to provide counsel. Hence, where the need may be greatest, the financial ability tends to be the least. The only way to balance the resources so that counsel can be provided uniformly to all indigent criminally accused without imposing an unreasonable burden on some communities is through a State-financed system." (NAC, **Courts**, 266 (1973).)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.5, 13.6.

STANDARD 8.3
Defender to be Full-Time and Adequately Compensated

The office of public defender should be a full-time occupation. State or local units of government should create regional public defenders serving more than one local unit of government if this is necessary to create a caseload of sufficient size to justify a full-time public defender office.

The defender and staff should be compensated at a rate commensurate with their experience and skill, sufficient to attract career personnel, and comparable to that provided for their counterparts in prosecutorial offices.

STANDARD 8.4
Salaries for Defender Attorneys

The starting salary for staff attorneys should be no less than those paid by private law firms in the jurisdiction, and the public defender should have the authority to increase periodically the salaries for staff attorneys to a level that will encourage the attraction and retention of able and experienced defenders.

STANDARD 8.5
Supporting Personnel and Facilities

Public defender offices should have adequate supportive services, including secretarial, investigation, and social work assistance. In rural areas (and other areas where necessary), units of local government should combine to establish regional defenders' offices that will serve a sufficient population and caseload to justify a supporting organization that meets the requirements of this standard.

The budget of a public defender for operational expenses other than the costs of personnel should be substantially equivalent to, and certainly not less than, that provided for other components of the criminal justice system with whom the public defender must interact, such as the courts, prosecution, the private bar, and the police. The budget should include:

1. Sufficient funds to provide quarters, facilities, copy equipment, and communications comparable to those available to private counsel handling a comparable law practice.
2. Funds to provide tape recording, photographic and other investigative equipment of a sufficient quantity, quality, and versatility to permit preservation of evidence under all circumstances.
3. Funds for the employment of experts and specialists, such as psychiatrists, forensic pathologists, and other scientific experts in all cases in which they may be of assistance to the defense.
4. Sufficient funds or means of transportation to permit the office personnel to fulfill their travel needs in preparing cases for trial and in attending court or professional meetings.

The office of the public defender should have physical facilities comparable to those of a similar-size private law firm. There should be at least one conference room and a public waiting area separate from the offices of the staff and such offices should not be in any courthouse. Each defender lawyer should have his/her own office that will assure absolute privacy for consultation with clients.

The public defender and his/her staff should have immediate access to a library sufficiently extensive to fulfill the research needs of the office. Staff attorneys should be supplied with personal copies of books, such as the State Criminal Code, needed for their day-to-day duties. duties.

The basic library available to the public defender's office should include the following: the annotated laws of the State; the State code of criminal procedure; the municipal code; the United States Code Annotated; the State appellate reports; the United States Supreme Court reports; Federal courts of appeal and district court reports; citators covering all reports and statutes in the library; digests for State and Federal cases; a legal reference digesting State law; a legal reference work digesting law in general; a form book of approved jury charges; legal treatises on evidence and criminal law; criminal and U.S. Supreme Court case reporters published weekly; looseleaf services related to criminal law; if available, an index to the State appellate brief bank; Black's Law Dictionary; Scientific Evidence in Criminal Cases, Foundation Press; Federal Jury Practice & Instructions, 2d Ed., Vols. 1 & 7; California Jury Instructions - Criminal - 3rd Ed.; California Jury Instructions - Misdemeanor - West Publishing; Modern Criminal Procedures - 3rd ed., West Publishing; Corpus Juris Secundum - Vols. 16 and 16A; Wharton's Criminal Evidence - 13th Ed., Vols. 1 through 4, Lawyers Cooperative; Investigation & Preparation of Criminal Cases - Bailey and Rothblatt, Lawyers Cooperative; Fundamentals of Criminal Advocacy - Bailey and Rothblatt, Lawyers Cooperative; Handling Narcotics & Drug Cases - Bailey and Rothblatt, Lawyers Cooperative; Crimes of Violence - Vols. 1 & 2 - Bailey and Rothblatt, Lawyers Cooperative; Defending Business & White Collar Cases - Bailey and Rothblatt, Lawyers Cooperative; Complete Manual of Criminal Forms - Bailey and Rothblatt, Lawyers Cooperative; Prisoner's Rights Sourcebook - Clark Boardman; Constitutional Rights of the Accused - Pretrial Rights, Cook Lawyers Cooperative; Searches & Seizures - Arrest & Confessions - Clark Boardman; Moore's Federal Practice - Rules of Criminal Procedure - Matthew Bender; Criminal Defense Techniques - vols. 1 through 4 and supplements, Matthew Bender; How to Win Criminal Cases by Establishing Reasonable Doubt, Cohen; United States Supreme Court Law reprints, Petitions and Briefs, Criminal Law Series, Executive Reprints Corp.; Trial Manual for the Defense of Criminal Cases - Amsterdam, Segal, Miller; The Criminal Law Reporter - Vols. 13 through 18, and subscription to the Reporter for the series - Bureau of National Affairs, Inc.; Short Court for Defense Lawyers in Criminal Cases - Northwestern University; Defense of Drunk Driving Cases - 3rd Ed., Criminal/Civil, Matthew Bender; Uniform Jury Instructions - Vol. 2 - Criminal - Iowa Bar Associations; and such other books relating to criminal law as needed.

COMMENTARY

These standards are designed to promote the development of professional public defender offices throughout Iowa. The basic premise of the standards is that public defense services can be provided most effectively and efficiently by full-time, career-oriented public defenders and staff lawyers who have available adequate supporting services and facilities.

Standard 8.3 stresses the concept of developing public defender offices. The term "public defender office" is used in the standard to indicate that each defender office should be staffed with at least three attorneys. Conference participants conclude that the multi-attorney office is better equipped than the single-attorney office to meet the demands of the defense function. In reaching this conclusion, participants note that often criminal case loads require that several court appearances be scheduled for the same time in a single jurisdiction. Participants recognize that such a situation creates severe problems for a single-attorney public defender office. Also, conferees feel that the multi-attorney office

provides a broader legal background to meet the numerous unique problems posed by criminal defense.

It is essential to the development of professional public defender offices that public defenders and their staff attorneys devote their full efforts to the provision of public defense services. Standard 8.3, therefore, rejects the part-time public defender system, where an office is served by a public defender who maintains an outside private law practice. There are several disadvantages to the part-time public defender system. One is that the public defense function is a form of professional service that does not lend itself to part-time performance. (See ABA, **Providing Defense Services**, 36 (Approved Draft, 1968).) It requires that the public defender devote the amount of time and effort to providing defense services that is demanded by his/her caseload. When the public defender maintains a private law practice, there is a temptation to neglect his/her defense work. The National Advisory Commission on Criminal Justice Standards and Goals describes the problem as follows:

> The attorney who serves as a part-time defender is compensated according to law at a fixed rate for his services. The total income of a part-time public defender, therefore, largely is determined by what he can earn in private practice. There is a significant danger that the defender will devote less energy to his public office. There is also a potential conflict of interest in such situations. (NAC, **Courts,** 267 (1973).)

Another disadvantage of the part-time system is that it encourages "...a tendency of those responsible for financing to maintain low salary structures on the assumption that the defender can supplement his salary through private practice." (ABA, **Providing Defense Services**, 37 (Approved Draft, 1968).) Finally, the part-time system creates the danger that the public defender office "... will become an avenue for the unethical solicitation of clientele." (**Id.**)

The development of professional public defender offices also requires that public defender and staff attorney positions be filled by qualified and career-oriented persons. The American Bar Association states that "[i]nadequate compensation, leading to an inability to recruit and retain personnel of high quality, is one of the greatest dangers in the creation of institutionalized defender services." (ABA, **Providing Defense Services,** 35 (Approved Draft, 1968).) To attract and retain qualified personnel, the salaries for public defenders and staff attorneys must be competitive with the financial rewards of private law practice and must reflect the importance of the public defender's role in the criminal justice system. Standards 8.3 and 8.4 suggest appropriate salary guidelines for Iowa public defenders and staff attorneys.

Effective operation of the public defender office demands that the public defender and staff attorneys make efficient use of their skills and time. The National Advisory Commission concludes that "[i]t is uneconomical for attorneys to carry out supporting functions." (NAC, **Courts,** 281 (1973).) Standard 8.5 stresses that "... adequate supporting services and facilities in those areas essential to adequate performance of the defense function..." be provided to Iowa public defender offices. (**Id.**) In addition to facilitating preparation of cases, adequate supporting services and facilities provide other benefits. Such services help to attract and retain qualified and career-oriented personnel. They also increase the accused's confidence in the public defender and public defense services. (See ABA, **Providing Defense Services**, 37 (Approved Draft, (1968).)

To implement these standards in Iowa, it will be necessary to regionalize public defender services. The caseload in the typical Iowa county jurisdiction is not sufficient to warrant a public defender office of the kind outlined in these standards. Therefore, Standards 8.3 and 8.5 recommend that jurisdictions be combined to create a population and caseload that will support a full-time public defender office, supporting staff, and facilities. The standards do not recommend an appropriate size for the region served by a single office. This will depend upon the needs of the local jurisdictions and, to a large degree, upon the methods selected to administer the system. (See Standard 8.2.) The only requirement is that the services of a public defender must be available in every jurisdiction. (See Standard 8.1.) Clearly, in those areas of the State where caseload and population are low, the geographic area served by the public defender will be relatively large. Consequently, the assigned counsel system is necessary to provide defense services to those areas which are distant from the public defender's office. The standards contemplate that the two systems will be coordinated to insure that effective public representation is available in all Iowa jurisdictions.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.7, 13.11, 13.14.

STANDARD 8.6
Selection of Public Defenders

The method employed to select public defenders should insure that the public defender is as independent as any private counsel who under-

takes the defense of a fee-paying criminally accused person. The most appropriate selection method is nomination by a selection board and appointment by the Governor. The procedure for the nomination and appointment of public defenders should be the same as that established for district court judges in order to assure that public defenders are free from popular and political pressure.

An updated list of qualified potential nominees should be maintained. The district judicial nominating commission should draw three names from this list and submit them to the Governor. The district judicial nominating commission should select a minimum of three persons to fill a public defender vacancy unless the commission is convinced there are not three qualified nominees. This list should be sent to the Governor within 30 days of a public defender vacancy, and the Governor should select the defender from this list. If the Governor does not appoint a defender within 30 days, the power of appointment should shift to the district judicial nominating commission.

A public defender should serve for a term of not less than four years and should be permitted to be reappointed.

A public defender should be subject to removal on the same grounds as that of the district court judge and by the same procedure.

STANDARD 8.7

Selection and Retention of Attorney Staff Members

Hiring, retention, and promotion policies regarding defender staff attorneys should be based upon merit as determined by the public defender. Staff attorneys should not have civil service status.

COMMENTARY

If the public representation system is to provide competent and effective defense services, the lawyers who provide these services must have the same independence and freedom as defense attorneys who represent fee-paying clients. (See ABA, **Providing Defense Services,** Standard 1.4 (Approved Draft, 1968); NAC, **Courts,** Standard 13.8 (1973).) It is particularly difficult to insure that the public defender and his/her staff attorneys have the freedom necessary to effectively represent their clients. The difficulty is caused by the often conflicting roles of the public defender office.

One role of the public defender office is that of a public agency; the office receives funds from the public through elected representatives. In this role, the office is responsible to an administrative authority and, ultimately, to the public. The other role of the public defender office is that of a law office devoted to criminal defense work; the office provides representation to the indigent accused. In this role, the office is ultimately responsible to the client. Often this responsibility demands that the public defender zealously defend unpopular causes and persons or point out errors of other public agencies and the judiciary.

These conflicting responsibilities present a dilemma to the public defender. The National Advisory Commission summarizes the problem as follows:

> The public defender's dilemma is that the more he fulfills his duty to represent the indigent - and usually unpopular - accused with the maximum possible zeal, vigor, and professional skill, the more public irritation (and even wrath) he may engender, and the greater the danger that pressure may mount to curb his effectiveness. Confronted with this dilemma, the public defender may be tempted to steer a middle course - to maintain a low profile in terms of publicity, to find reasons why his office should not handle sensational or controversial cases, and to do a less-than-adequate job rather than a truly responsible one of which he is capable and duty-bound to perform. (NAC, **Courts,** 272 (1973).)

The National Advisory Commission concludes:

> Appointment of the defender by a judge may impair the impartiality of the defender, because the defender becomes an employee of the judge. Moreover, such a system will create a potentially dangerous conflict, because the defender will be placed in a position where occasionally he must urge the error of his employer on behalf of his client. Such dual allegiance, to judge and client, will cripple seriously any system providing defender services. (NAC, **Courts,** 268 (1973).)

To insure that the public defender and his/her staff are free to defend their clients without threat to their positions, the selection process must be insulated from public, political, and judicial pressures. Conference participants conclude that the most appropriate selection method is nomination by a selection board outside the framework of State and local government and appointment by the Governor.

Standard 8.6 recommends that the methods used to nominate and appoint Iowa district court judges be used to select Iowa public defenders. This recommendation is based upon participants' belief that the Iowa district judicial nominating commissions are sufficiently insulated from outside pressures to serve as the public defender selection boards. (See IOWA CODE, ch. 46 (1975).) (The existing judicial nominating commissions are endorsed in Chapter 9, "The Judiciary.") In addition, conference participants note that utilizing existing mechanisms will be more efficient and less costly than developing separate public defender selection boards.

Standard 8.6 provides that, when a public defender vacancy occurs, the district judicial nominating commission for the judicial district in which the office is located must nominate three qualified persons to fill the vacancy. The standard directs the Governor to make the appointment from the list of nominees. Conference participants recognize that the office of Governor is a political position and therefore subject to partisan political influences. However, participants conclude that, because this method has worked successfully for the appointment of district court judges, it is appropriate for the appointment of public defenders.

The removal process for public defenders must also be free from extraneous pressures. Standard 8.6 endorses present Iowa judicial removal mechanisms and procedures for the same reasons it endorses the judicial appointment methods. Thus, the standard contemplates that the commission on judicial qualifications will be empowered to receive and hear complaints concerning public defenders, to dismiss the complaints, to take informal action, or to recommend to the Iowa Supreme Court that the public defender be disciplined or removed. (See IOWA CODE § 605.29 (1975).) The standard provides that the final decision to discipline or remove rests with the Iowa Supreme Court. (See IOWA CODE § 605.27 (1975).)

The necessity of protecting the public defender from outside influence also applies to defender staff attorneys. Defender lawyers must be free from any fear of reprisal for serving their clients, even from their superiors. (NAC, **Courts**, 274 (1973).) Standard 8.7 seeks to protect defender staff attorneys from undue political, public, and judicial pressure. By insulating recruitment and promotion from the influence of considerations extraneous to professional competence, the standard promotes professional career status for staff attorneys. However, the standard directs that staff attorneys not have civil service status. The purpose of this prohibition is to insure that the public defender has the flexibility necessary to assemble the staff best suited to his/her office needs.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.8, 13.10.

STANDARD 8.8
Training and Education of Defenders

The training of public defenders and assigned counsel panel members should be systematic and comprehensive. Defenders should receive training at least equal to that received by the prosecutor and the judge. An intensive entry-level training program should be established at State and national levels to assure that all attorneys, prior to representing the indigent accused, have the basic defense skills necessary to provide effective representation.

A defender training program should be established at the national level to conduct intensive training programs aimed at imparting basic defense skills to new defenders and other lawyers engaged in criminal defense work.

Iowa should establish its own defender training program to instruct new defenders and assigned panel members in substantive law, procedure, and practice.

Every defender office should establish its own orientation program for new staff attorneys.

COMMENTARY

The provision of competent public defense services ultimately depends upon the defense skills of the lawyers who represent indigent defendants. The National Advisory Commission on Criminal Justice Standards and Goals states that "[t]he traditional view that any licensed lawyer is capable of handling any type of case has eroded rapidly in the face of increased specialization within the legal profession. A well-informed client goes to a tax specialist when confronted by the Internal Revenue Service and to a personal-injury defense specialist when sued on the basis of an accident. Nowhere, however, is the need for a specialized talent more compelling than in the defense of the criminally accused. The high value placed upon personal liberty in a free society demands the most skilled practitioner to defend that liberty in the adversary process. That skill, acquired through the fusion of experience, ability, and

education, must necessarily be at the defense lawyer's instant command." (NAC, **Courts**, 284 (1973).)

Standard 8.8 seeks to insure that Iowa defender lawyers have the basic defense skills necessary to competently represent their clients. The standard recommends systematic and intensive basic training programs for Iowa public defenders and assigned counsel panel members. A statewide training program should be established in Iowa to provide new defenders with working knowledge of the substantive law, procedure, and postconviction remedies of the State. Orientation programs should be established at the local level to familiarize new defender attorneys with local court structure, practice, and community resources available to aid the defender in formulating sentencing alternatives. (See NAC, **Courts**, 285 (1973).) A national defender institute also should be established to provide entry-level training programs geared toward the application of practical skills and a focal point for training and continuing legal educational programs for the defender personnel. (**Id.**)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.16

STANDARD 8.9
Performance of the Public Defender Function

Policy should be established for and supervision maintained over a defender office by the public defender. It should be the responsibility of the public defender to insure that the duties of the office are discharged with diligence and competence.

The public defender should seek to maintain his/her office and the performance of its function free from political pressures that may interfere with his/her ability to provide effective defense services. He/she should assume a role of leadership in the general community, interpreting his/her function to the public and seeking to hold and maintain their support of and respect for this function.

The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect, and integrity. It should not be characterized by demonstrations of negative personal feelings on one hand or excessive familiarity on the other. Specifically, the following guidelines should be followed:

1. **The relations between public defender attorneys and prosecution attorneys should be on the same high level of professionalism that is expected between responsible members of the bar in other situations.**
2. **The public defender must negate the appearance of impropriety, remaining at all times aware of his/her image as seen by his/her client community.**
3. **The public defender should be prepared to take positive action, when invited to do so, to assist the police and other law enforcement components in understanding and developing their proper roles in the criminal justice system, and to assist them in developing their own professionalism. In the course of this educational process he/she should assist in resolving possible areas of misunderstanding.**
4. **He/she should maintain a close professional relationship with his/her fellow members of the legal community and organized bar, keeping in mind at all times that this group offers the most potential support for his/her office in the community.**

STANDARD 8.10
Community Relations

The public defender should be sensitive to all of the problems of his/her client community. He/she should be particularly sensitive to the difficulty often experienced by the members of that community in understanding his/her role.

COMMENTARY

The client community's mistrust of publicly provided representation constitutes a major obstacle to effective delivery of defense services by the public defender. Several factors combine to create this mistrust. The National Advisory Commission summarizes the problem as follows:

> The defender's client communities will consist largely of some of the most alienated sectors of American society. Members of

these communities often will have learned to mistrust virtually all agencies of government and the establishment (including the organized bar) and to put little faith in promises of equality, justice, or fair play. Public defenders often are the objects of a particularly large share of this mistrust.... Furthermore, since the public defender spends most of his time on the losing side of litigation, satisfied clients tend to be relatively infrequent. In addition, the role of the criminal defense advocate is as perplexing to an unschooled accused and his family as it is to many more affluent and educated citizens. How can an educated, well-nourished lawyer who says that he himself is against illegality (including perjury) and crime generally want to help an indigent young burglar? If he is drawing a government salary, one potential answer is obvious; he is being paid to sabotage his client. (NAC, **Courts**, 278 (1973).)

To overcome this obstacle, the community must perceive that the public defender's relationship with his/her clients is one of professional integrity and independence. Standards 8.9 and 8.10 are designed to promote such a relationship.

Standard 8.9 addresses the problem of how to maintain a necessary degree of policy control and supervision over the performance of the public defender's function without at the same time inhibiting his/her loyalty to clients and his/her advocacy of and dedication and zeal toward their legal causes. (See NAC, **Courts,** 272 (1973).) Conference participants conclude that responsibility for establishing public defender policy should be placed with the public defender himself/herself. Placing this responsibility with the public defender provides the independence necessary to the proper functioning of the office and eliminates the opportunity for undue political, public, or judicial influence. Thus, the standard rejects supervision by the public, the judiciary, political entities, or governing boards. However, the standard does not grant the public defender unbridled freedom to perform the defense function in any manner he/she chooses. It recognizes the public defender's role in the criminal justice system and the community, and sets forth guidelines to structure these relationships.

Standard 8.10 specifically relates to the public defender's relationship with the client community. The public defender must first seek to understand the problems of the client community and how these problems affect the community's view of the public defender role. After these problems have been defined, the public defender must seek ways to alleviate the community's antagonism toward the public defender office. Standard 8.10 does not set forth specific actions that should be taken by the public defender to alleviate community relations problems. Conference participants believe that each public defender should develop his/her own program based upon the needs and problems of his/her client community. However, the following suggestions serve as examples of possible ways to develop positive community relations:

1. The public defender should be aware that plea negotiation may lead to suspicion on the part of the client community and should seek to interpret the process and his/her role in it to the client community;

2. The public defender should be sensitive to and aware of the duties and purposes of his/her office and should be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice;

3. The public defender should maintain physical closeness of his/her office to localities from which clients predominately come and should seek office locations that will not cause the public defender's office to be excessively identified with the judicial and law enforcement components of the criminal justice system;

4. The public defender should pay increased attention to personalized representation of a client by one attorney. (See NAC, **Courts,** Standard 13.13 (1973).)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.9, 13.13.

STANDARD 8.11
Workload of Public Defenders

The caseload for each public defender's office should be limited to permit the proper preparation of cases at every level of the criminal proceedings. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his/her office might reasonably be expected to lead to inadequate representation in cases handled by him/her, he/she should bring this to the attention of the court. The court should then make future court appointments to other available resources until notified by the public defender that the excessive workload has diminished.

COMMENTARY

Defender lawyers must have sufficient time to adequately prepare their cases. However, conference participants encountered several difficulties in attempting to establish workload standards for public defender offices. First, there is relatively little experience with public defender offices in Iowa, thereby making it difficult to establish practical caseload numbers. Second, it is difficult to ascertain an average amount of time required for a class of cases. Third, particular local jurisdiction conditions, such as travel time, may affect the number of cases that can be handled by a particular office. (See NAC, **Courts**, 278 (1973).)

Because of these difficulties, conference participants recommend that the public defender be authorized to inform the trial court of an excessive caseload that may diminish the ability of the office to provide competent defense services. If the public defender's assessment of the situation is reasonable, the court should divert the indigent caseload to other resources.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.12.

STANDARD 8.12
Availability of Publicly Provided Representation in Criminal Cases

Public representation should be made available to eligible defendants (as defined in Standard 8.15) in all criminal cases at their request, or the request of someone acting for them, beginning at the time the defendant either is arrested or is requested to participate in an investigataion that has focused upon him/her as a likely suspect. The representation should continue during trial court proceedings and disposition of sentence, and through the exhaustion of all avenues of relief from conviction.

Defendants should be discouraged from conducting their own defense in criminal prosecutions. No defendant should be permitted to defend himself/herself if there is a basis for believing that:

1. **The defendant will not be able to deal effectively with the legal or factual issues likely to be raised;**
2. **The defendant's self-representation is likely to impede the reasonable expeditious processing of the case;**
3. **The defendant is likely to be disruptive of the trial process; or**
4. **The defendant is likely to face incarceration, unless a competent, valid waiver of his/her right to counsel is made by the defendant.**

STANDARD 8.13
Initial Contact with Client

The first client contact and initial interview by the public defender, his/her attorney staff, or appointed counsel should be governed by the following;

1. **The accused, or a relative, close friend, or other responsible person acting for him/her, may request representation at any stage of any criminal proceedings. Procedures should exist whereby the accused is informed of this right, and of the method for exercising it. Upon such request, the public defender or appointed counsel should contact the interviewee.**
2. **If, at the initial appearance, no request for publicly provided defense services has been made, and it appears to the judicial officer that the accused has not made an informed waiver of counsel and is eligible for public representation, an order should be entered by the judicial officer referring the case to the public defender, or to appointed counsel. The public defender or appointed counsel should contact the accused as soon as possible following entry of such an order.**
3. **Where, pursuant to court order or a request on behalf of an accused, a publicly provided attorney interviews an accused and it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel in accordance with established bar procedures and should continue to render all necessary public defender services until private counsel assumes responsibility for full representation of the accused.**

STANDARD 8.14
Providing Assigned Counsel

The court should have responsibility for compiling and maintaining a panel of attorneys from which a trial judge may select an attorney to appoint to a particular defendant. The public defender's office may provide assistance to other court appointed counsel.

COMMENTARY

The sixth amendment to the Constitution of the United States provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." The United States Supreme Court has construed this right in numerous decisions. In **Gideon v. Wainwright,** 372 U.S. 335 (1963), the Supreme Court held that the right to counsel for a defendant accused of a felony extended to the states through the due process clause of the fourteenth amendment. Since **Gideon**, the Court has expanded the right to counsel significantly. For example, in **Argersinger v. Hamlin,** 407 U.S. 25 (1972), the United States Supreme Court held that no indigent person may be incarcerated as the result of a criminal prosecution at which he/she was not given the right to be represented by publicly provided counsel.

The National Advisory Commission on Criminal Justice Standards and Goals concludes that full implementation of the spirit, as well as the letter, of judicial decisions interpreting the right to counsel is necessary for the effective operation of a fair system of criminal justice. (NAC, **Courts,** 253 (1973).) Therefore, the National Advisory Commission recommends the provision of counsel to eligible persons in all criminal proceedings. (NAC, **Courts,** Standard 13.1 (1973).) The Iowa standard reflects this position. It recommends that the right to counsel be extended to simple misdemeanor prosecutions regardless of the method of disposition. This recommendation expands current Iowa law, which provides an absolute right to counsel for indigents accused of felonies and indictable misdemeanors. (See IOWA CODE § 775.4 (1975); **Wright v. Denato,** 178 N. W. 2d 339 (Iowa 1970).) Because Chapter 4 recommends that traffic offenses be removed from the criminal area, the cost of implementing the standard should be minimal.

There are several advantages to extending the right of public representation to all criminal proceedings. The National Advisory Commission feels that the expansion of the right to counsel will increase fairness in misdemeanor prosecutions and will enhance the image of criminal justice in the lower courts. Also, conference participants believe that extending public representation to simple misdemeanor prosecutions will create a valuable educational forum for inexperienced public defenders and court appointed attorneys.

Standard 8.12 strongly discourages defendants from conducting their own defense. Conference participants agree that "... the defendant's interest in representing himself/herself is outweighed by dangers to adequate resolution of the issues in the case, to reasonably expeditious processing of the case, and to restriction of the matters legally relevant to the prosecution." (NAC, **Courts**, 255 (1973).) In addition conferees believe that self-representation should be discouraged when the defendant is likely to face incarceration following conviction. The standard requires that the judge assess the likelihood of incarceration and obtain a knowing and intelligent waiver of counsel before permitting the defendant to represent himself/herself.

Standards 8.12 and 8.13 stress the importance of providing public representation early in the criminal process. The National Advisory Commission summarizes the advantages of early involvement by counsel as follows:

> Waivers of fundamental constitutional rights occur principally during the prearraignment stages of a criminal proceeding. Such waivers of rights - including waiver of rights concerning self-incrimination and consent to searches and seizures - often becloud the case during later stages and are the subject of numerous lengthy motions before and during trial. The presence of counsel at these critical stages not only will safeguard the interests of the accused but will help reduce court congestion.
>
> The role of the criminal defense attorney is a more active one than that of mere attention to issues of law. His role has been seen as embracing the heavy responsibility of assessing himself, from a defense standpoint, to the resolution of issues of fact. (**United States v. Wade,** 388 U.S. 218 (1967).) Defense investigation at the earliest possible stage has become a routine expectation in most sophisticated judicial arenas. The need to obtain experts before perishable or transitory evidence is lost is becoming increasingly frequent as the courts come to depend more and more on science and technology to assist them in resolving issues of fact. (**P. Wald,** Poverty and Criminal Justice, Appendix C of **Task Force Report: The Courts** 145, 146, (1967).)
>
> In the early stages of a case (particularly in jurisdictions where the prosecutor, rather

than the police, decides whether to charge and what to charge), defense counsel may well do his most effective plea negotiating, pointing out the weaknesses of the State's case, or just keeping the charges low by persuasion.

The benefit to the defendant is obvious; the benefit to society includes reduction of court congestion and delays in handling cases. As numerous jurisdictions experiment with methods of diverting cases out of the judicial system prior to formal charging, this function takes on added significance.

When counsel first is appointed or provided at the initial appearance (or thereafter), there is usually a delay while he interviews the defendant and conducts whatever investigation or informal discovery is necessary on behalf of his client. When counsel enters the case at the focus-of-suspicion stage, he will be better prepared at the initial appearance than he would under an arraignment appointment. Again, the defendant benefits from early representation and the judicial process benefits from reduction in delay. (NAC, **Courts,** 254 (1973).)

Existing systems of public representation do not insure that the indigent person is provided the benefits of early representation. These systems usually require the formal intervention of law enforcement agencies and the courts prior to the provision of publicly provided counsel. For example, present systems provide that the indigent must be under arrest or charged with a crime to be eligible for public representation. (See, **e.g.**, IOWA CODE §336A.3 (1975).) In addition, these systems require that the indigent make a formal request to the court for the appointment of counsel. (See, **e.g.**, Iowa Code §§ 336A.4 775.4 (1975).) The earliest opportunity to make such a request and to have counsel appointed usually occurs at the initial appearance following arrest and booking. (See, **e.g.** Iowa CODE §§ 757.7, 758.1; 761.1 (1975).) Thus, prior to the initial appearance, counsel is generally not available to the indigent. The effect of such a system is that the actions of law enforcement agencies and the courts essentially determine the point in the criminal process at which the indigent person may exercise his/her right to counsel. In contrast, the person who has sufficient financial resources may exercise his/her right to counsel without the intervention of the police and the courts. If the affluent person is the subject of a police or grand jury investigation, he/she may retain private counsel. Thus, the person who can afford an attorney is not required to forgo the benefits of early involvement by counsel.

Standards 8.12 and 8.13 set forth several procedures designed to insure that the indigent person receives the benefits of early involvement by counsel. The standards enable the indigent person to apply directly to the public defender or other appointing authority for public representation. These provisions eliminate the necessity of relying upon the police and the courts to make counsel available. They also create a source of legal advice for the indigent who is under investigation or who feels that he/she is the subject of an investigation. If the indigent is incapacitated or incompetent, the standards permit someone acting on his/her behalf to make the application for public representation. Standard 8.13 directs that the court refer to the public defender or court appointed counsel any case in which an indigent has neither waived nor requested counsel.

Conference participants observe that such procedures may enable persons who are not eligible for public representation to request and receive initial counseling at public expense. Participants conclude that the importance of providing early and continuous legal representation in criminal matters outweighs the cost of providing occasional and limited services to ineligible persons. Therefore, Standard 8.13 directs that the public defender continue to represent the ineligible person until private counsel can be retained. The standard assumes that court appointed private counsel will continue to represent the unqualified person on a fee-paying basis. The partial payment provisions of Standard 8.15 provide the necessary flexibility to insure continuous legal representation.

Effective provision of defense services to all eligible defendants through a combined public defender and assigned counsel system requires that court appointed private attorneys be qualified to provide competent and early representation. To insure maximum effectiveness and efficiency of the assigned counsel component of the public defense system recommended for Iowa, Standard 8.14 directs that the court maintain an up-to-date list of qualified attorneys who are willing to accept appointments. (NAC, **Courts,** 282 (1973).) In addition, the standard suggests that the public defender provide assistance to court appointed counsel. Appointed attorneys need the same current information and supporting services as public defenders to effectively perform their function. If feasible, the public defender should supply such assistance.

It is clear that expanding public representation in the manner recommended in these standards involves numerous administrative and procedural difficulties. The standards do not offer solutions to all of these. Conference participants feel that practical solutions to these problems can best be developed as the standards are implemented.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.1, 13.3, 13.15.

STANDARD 8.15
Payment for Public Representation

An individual provided public representation should be required to pay any portion of the cost of the representation that he/she is able to pay at the time. Such payment should be no more than an amount that can be paid without causing substantial hardship to the individual or his/her family. Where any payment would cause substantial hardship to the individual or his/her family, such representation should be provided without cost.

The test for determining ability to pay should be a flexible one that considers such factors as amount of income, bank account, ownership of a home, a car, or other tangible or intangible property, the number of dependents, and the cost of subsistence for the defendant and those to whom he/she owes a legal duty of support. In applying this test, the following criteria and qualifications should govern:

1. **Counsel should not be denied to any person merely because his/her friends or relatives have resources adequate to retain counsel or because he/she has posted, or is capable of posting, bond.**
2. **Whether a private attorney would be interested in representing the defendant in his/her present economic circumstances should be considered.**
3. **The fact that an accused on bail has been able to continue employment following his/her arrest should not be determinative of his/her ability to employ private counsel.**
4. **The defendant's own assessment of his/her financial ability or inability to obtain representation without substantial hardship to himself/herself or his/her family should be considered.**

COMMENTARY

This standard addresses the question as to whether legal counsel at public expense should be provided for only the completely indigent or whether it should be made available to the partially indigent person as well. Limiting public representation to only the completely indigent has a distinct disadvantage; it requires that the partial indigent exhaust every financial resource to become eligible for publicly provided counsel. (ABA, **Providing Defense Services**, 54 (Approved Draft, (1968).) Such a requirement may cause substantial hardship not only to the accused but also to those who rely upon the accused for personal or family necessities. Ultimately, society may bear the burden of providing for the well-being of the accused and his/her dependents. (NAC, **Courts**, 257 (1973).)

Standard 8.15 adopts the second approach and provides for public representation of the partially indigent person. Conference participants conclude that this approach is particularly well suited to Iowa where the greatest demand for public defense services is among low income persons rather than among unemployed indigents. The present Iowa criminal justice system recognizes this need and provides for public representation of the partially indigent person. However, the present system is fragmented and lacks uniform guidelines for providing defense services to the partial indigent. (See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa**, 57 Iowa L. Rev. 598, 680-686 (1972).) Standard 8.15 establishes uniform criteria and requirements.

The standard sets forth a substantial hardship test for determining eligibility for public representation. It requires that the State provide public representation when payment for counsel would be a substantial hardship to the accused or his/her family. However, the person provided public representation must pay that portion of the cost as he/she is able to pay without causing a substantial hardship.

Conference participants identify several advantages to the partial payment requirement. Participants believe that the requirement will minimize the cost of extending public defense services beyond those completely indigent. Also, participants feel that partial payment will help to remove the stigma attached to those who must rely upon publicly provided services. Similarly, conferees conclude that such a provision will diminish the inherent scepticism concerning the quality of defense services provided totally at public expense. In this manner, the credibility of public defender offices and court appointed attorneys will be enhanced. Finally, the participants agree that the partial payment requirement will increase the client's sense of responsibility during the criminal process.

The second paragraph of the standard states the factors that should be considered when determining the accused's ability to pay for representation. The criteria and qualifications reflect the position of the National Advisory Commission on Criminal Justice Standards and Goals. The National Advisory Commission states that:

> To determine eligibility for public representation, it is necessary to rely significantly upon the defendant's ability to obtain private representation and to weigh the defendant's own evaluation of his financial situation.

Although this may result in abuses by some accused persons, most defendants will prefer to retain private attorneys if they can afford to do so. The desire for private representation is the best single safeguard against excessive use of appointed counsel or defender's services at public expense by non-needy persons. (NAC, **Courts**, 258 (1973).)

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 13.2.

Chapter Nine

The Judiciary

Goal: To provide for a statewide judicial system of unquestioned integrity and competence for settling legal disputes, including contested criminal prosecutions.

STANDARD 9.1
Judicial Selection

Vacancies in the Supreme Court and District Court should be filled by appointment by the Governor from lists of nominees submitted by the appropriate judicial nominating commission. Three nominees should be submitted for each Supreme Court vacancy, and two nominees should be submitted for each District Court vacancy. If the Governor fails for thirty days to make the appointment, it should be made from such nominees by the Chief Justice of the Supreme Court.

There should be a State Judicial Nominating Commission. Such commission should make nominations to fill vacancies in the Supreme Court. The State Judicial Nominating Commission should be composed and selected as follows: There should be not less than three or more than eight appointive members, as provided by law, and an equal number of elective members on such Commission, all of whom should be electors of the State. The appointive members should be appointed by the Governor subject to confirmation by the senate. The elective members should be elected by the resident members of the bar of the State. The judge of the Supreme Court who is senior in length of service on said Court, other than the Chief Justice, should also be a member of such Commission and should be its chairman.

There should be a District Judicial Nominating Commission in each judicial district of the State. Such commissions should make nominations to fill vacancies in the District Court within their respective districts. District Judicial Nominating Commissions should be composed and selected as follows: There should be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members of each such commission, all of whom should be electors of the district. The appointive members should be appointed by the Governor. The elective members should be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service should also be a member of such commission and should be its chairman.

Due consideration should be given to area representation in the appointment and election of Judicial Nominating Commission members. Appointive and elective members of Judicial Nominating Commissions should serve for six year terms, should be ineligible for a second six year term on the same commission, should hold no office of profit of the United States or of the State during their terms, should be chosen without reference to political affiliation, and should have such other qualifications as may be prescribed by law. As near as may be, the terms of one-third of such members should expire every two years.

Each judicial nominating commission should carefully consider the individuals available for judge, and within sixty days after receiving notice of a vacancy should certify to the governor and the chief justice the proper number of nominees. Such nominees should be chosen by the affirmative vote of a majority of the full statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation. Nominees should be members of the bar of Iowa, should be residents of the State or district of the court to which they are nominated, and should be of such age that they will be able to serve an initial and one regular term of office to which they are nominated before reaching the age of seventy-two years. No person should be eligible for nomination by a commission as judge during the term for which he/she was elected or appointed to that commission.

There should be in every county a judicial magistrate appointing commission which should be composed of the following members:

1. A district court judge designated by the chief judge of the district to serve until a successor is designated.
2. Three members elected by the public every two years. A commissioner appointed pursuant to this provision should not be an attorney, or an active law enforcement officer.
3. Two attorneys elected by the county bar.

Judcial magistrates should be appointed pursuant to the judicial magistrate appointment procedures set forth in Chapter 602 of the 1975 Code of Iowa.

All distinctions presently existing in the Code of Iowa between district associate judges and full-time judicial magistrates should be abolished; including distinctions in jurisdiction, title, retirement benefits, qualifications, and tenure.

STANDARD 9.2
Judicial Tenure

Members of all courts should have such tenure in office as may be fixed by law, but terms of Supreme Court Judges should be not less than eight years and terms of District Court Judges should not be less than six years. Judges should serve for one year after appointment and until the first day of January following the next judicial election after the expiration of such year. They should at such judicial election stand for retention in office on a separate ballot which shall submit

the question of whether such judge should be retained in office for the tenure prescribed for such office and when such tenure is a term of years, on their request, they should, at the judicial election next before the end of each term, stand again for retention on such ballot.

All judges of the Supreme Court or District Court who shall have reached the mandatory retirement age, should cease to hold office. The mandatory retirement age should be seventy-five years for all judges of the Supreme Court or District Court holding office on July 1, 1965. The mandatory retirement age should be seventy-two years for all judges of the Supreme Court or District Court appointed to office after July 1, 1965. Judges of the Supreme Court or District Court who are retired by reason of age should with their consent be eligible for assignment by the Supreme Court to temporary judicial duties on any court in the State, however only retired Supreme Court judges should be assigned to the Supreme Court and only in the case of temporary absence of a member of the Supreme Court.

Standard 9.3
Judicial Compensation

Judges should be compensated at a rate that adequately reflects their judicial responsibilities. The salaries and retirement benefits of the Federal judiciary should serve as a model for the State. Where appropriate, salaries and benefits should be increased during a judge's term of office.

STANDARD 9.4
Judicial Discipline and Removal

Judges should be disciplined and removed from office pursuant to the provisions relating to judicial qualifications set forth in Chapter 605 of the 1975 Code of Iowa.

STANDARD 9.5
Judicial Education

Iowa should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extensive commitment of judge time, both as faculty and as participants of such programs, that will be necessary. Funds necessary to prepare, administer, and conduct the programs, and funds to permit judges to attend appropriate national and regional educational programs, should be provided.

COMMENTARY

The goal of "The Judiciary" is to insure a statewide judicial system of unquestioned integrity and competence for settling legal disputes, including contested criminal prosecutions. To attain this goal, the courts must have an abiding concern to preserve their heritage of freedom and to provide deliberative thoughtfulness in settling all matters before them. (NAC, **Courts**, 145 (1973).)

"No procedures or court systems can be any better than the judges who administer the procedures and render the decisions.... Since judges exercise enormous discretionary power, and since trial judges function without any kind of direct supervision and perform their work alone rather than with colleagues, the quality of judicial personnel is more important than the quality of the participants in many other systems." (**Id.**) "The provisions established for the selection, tenure, compensation, and removal of judicial personnel are the main tools available for ensuring superior judicial quality." (Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa**, 57 Iowa L. Rev. 598, 767 (1972).) The standards contained in this chapter set forth the most appropriate methods of insuring superior judicial quality in Iowa. It is noteworthy that conference participants endorse the present Iowa system in three areas: judicial selection, tenure, and discipline and removal.

Judicial Selection

Standard 9.1 rejects popular election of judges as a judicial selection method. The National Advisory Commission on Criminal Justice Standards and Goals identifies several adverse effects that result from direct election of judges:

First, it has failed to encourage the ablest persons to seek or accept judicial posts. An elective system does not agressively seek out the best possible candidates; nor does it attract the most capable lawyers who, under another selection system, might accept judicial office. Capable lawyers with established law practices understandably are reluctant to leave them for an insecure elective judicial position.

Second, popular election of judges provides an incentive for judges to decide cases in a popular manner. The appearance of impropriety may be present even if future election prospects play no role in judicial decision-making. An elective selection system does little to dissuade minority groups from believing that an elected judge must pander to the popular viewpoint in order to remain in judicial office.

Third, the elective system places the crucial matter of selection in a context in which the electorate is least likely to be informed on the merits of the candidates. The voter generally is faced with such an enormous ballot that it is virtually impossible for even a conscientious person to obtain sufficient information to vote intelligently on candidates for all elective positions. (NAC, **Courts**, 146 (1973).)

The standard directs that judicial selection involve joint action by the bar, presently sitting judges, the electorate and the Governor of the State. Involvement by the bar and presently sitting judges insures that those best able to judge the professional qualifications of potential judges have a role in the selection process. Lawyers are "... able to apply professional standards of skill and integrity in considering their colleagues for judicial vacancies." (NAC, **Courts**, 148 (1973).) Similarly, the judges' experience with the requirement of judicial office assists "... in recognizing the qualities required by a competent judge." (**Id.**) The lay persons' concern for the court's public image emphasizes "... the nonprofessional requirements that ought to accompany judicial office...." (**Id.**) Conference participants conclude that existing Iowa procedures for the selection of judges sufficiently insure the involvement of the bar, the judiciary, the electorate, and the Governor. Standard 9.1 reflects the Iowa provisions. (See, **Iowa Constitution**, V; Amend. 1962, No. 21; IOWA CODE ch. 46 (1975).)

Conference participants recommend two modifications to the Iowa judicial magistrate system. The first relates to the appointment of members of county judicial magistrate appointing commissions. Participants believe that existing provisions, which grant the board of supervisors the power to appoint three members of the commission, subject the appointment process to undue political pressure and input. (See IOWA CODE § 602.42 (1975).) To eliminate political input, participants recommend that the three members currently appointed by the board of supervisors be elected by the public.

Conference participants also recommend that the distinctions between district associate judges and full-time magistrates be abolished. Participants conclude the usefulness of the full-time magistrate position in the Iowa judicial system is not being fully realized because of existing statutory limitations. For example, conference participants feel that distinctions in title and salary between district associate judges and full-time magistrates diminish the attractiveness of the full-time magistrate position and, ultimately, limit the number of attorneys who become candidates for the full-time magistrate position. Participants believe that, if the distinctions are eliminated, more attorneys will become candidates and the opportunities for selecting an individual with the qualifications demanded by the position will be increased. Conference participants conclude that this will eventually enhance the quality of justice dispensed in the Iowa court system.

Similarly, participants conclude that abolishing the distinctions between district associate judges and full-time magistrates will increase judicial resources within the court system. Participants observe that existing provisions permit the chief judge of the judicial district to order a district associate judge to "...temporarily exercise any of the jurisdiction of a district judge..." when a district court judge is incapacitated. (IOWA CODE § 602.32 (1975).) Participants note, however, full-time magistrates cannot be so ordered. Participants feel that eliminating this distinction will increase available judicial resources, especially in view of the eventual elimination of the district associate judge position.

Judicial Tenure

Standard 9.2 endorses current Iowa provisions relating to judicial tenure. The standard provides for popular participation in the retention of judges but eliminates most of the problems of the elective system. (NAC, **Courts**, 150 (1973).) For example, it eliminates the need for judges to campaign for office. However, the standard "...provides the opportunity for popular rejection of a sitting judge in the exceptional case in which he has so offended community sentiment that the electorate is willing to reject him in favor of an unidentified successor." (**Id.**)

Judicial Compensation

Standard 9.3 directs that Iowa judges be compensated at a rate that reflects their judicial responsibilities. "Qualified judicial personnel cannot be attracted and retained without adequate compensation. While it is unreasonable to expect

judicial salaries to match the income of highly successful private attorneys, it is equally unreasonable to ask attorneys to make tremendous economic sacrifices in accepting a judicial position." (NAC, **Courts**, 152 (1973).) Conference participants recommend that the salaries and benefits of the Federal judiciary serve as a model for Iowa.

Judicial Discipline and Removal

Conference participants conclude that the existing Iowa procedures for the discipline and removal of judges represent the public interest without unduly compromising the independence of the judicial branch. (See IOWA CODE §§605.26-.31 (1975).) Therefore, Standard 9.4 endorses the Iowa provisions.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 7.1-7.5.

Chapter Ten

Court Administration

Goal: To provide for uniform and professional court administration to manage judicial resources and insure efficient court functioning.

STANDARD 10.1
Unification of the Court System

State courts should be organized into a unified judicial system financed by the State under general supervision of the chief justice of the Iowa Supreme Court.

All trial courts should be unified into a single trial court with general criminal as well as civil jurisdiction. Criminal jurisdiction now in courts of limited jurisdiction should be placed in these unified trial courts of general jurisdiction, with the exception of certain traffic violations. The Iowa Supreme Court should promulgate rules for the conduct of minor as well as major criminal prosecutions.

All judicial functions in the trial courts should be performed by full-time judges. All judges should possess law degrees and be members of the bar.

A transcription or other record of the pretrial court proceedings and the trial should be kept in all criminal proceedings.

The appeal procedure should be the same for all cases.

Pretrial release services, probation services, and other rehabilitative services should be available in all prosecutions within the jurisdiction of the unified trial court.

COMMENTARY

Standard 10.1 endorses Iowa's recent move to unify the State court system and makes several recommendations designed to achieve further reform. The standard recommends that all judicial duties be performed by the judges of the trial court. (See Standard 9.1.) Currently, judicial magistrates perform such tasks as issuance of search and arrest warrants, holding initial appearances, presiding at preliminary hearings, and trying the issue of guilt or innocence in simple and indictable misdemeanor cases. The standard contemplates that all judicial officers of the Iowa district court will be full-time judges and will have the jurisdiction to perform all trial court functions.

The standard also directs that the appeal procedure for all criminal cases be the same. The National Advisory Commission identifies the trial de novo, or trial anew procedure, as a problem of existing trial court systems:

> [The trial de novo] precludes effective review and monitoring of the work and decisions of the lower courts by appellate tribunals, and enables judges of the lower courts, unlike their general jurisdiction judicial counterparts, to operate with improper procedures and under erroneous assumptions of the substantive law. (NAC, **Courts**, 162 (1973).)

The standard eliminates the trial anew appeal procedure for nonindictable offenses and recommends that the appellate prodecure for indictable offenses be applied to nonindictable appeals. (See IOWA CODE § 762.43 (1975).) To implement this recommendation, the standard requires that transcripts or other record be kept in all criminal proceedings.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 8.1.

STANDARD 10.2
State Court Administrator

The State court administrator should be selected by the Iowa Supreme Court and he/she should be subject to removal by the same authority. The performance of the State court administrator should be evaluated periodically by performance standards adopted by the Iowa Supreme Court.

The State court administrator should, subject to the control of the Iowa Supreme Court, establish policies for the administration of the State's courts. He/she also should establish and implement guidelines for the execution of these policies, and for monitoring and reporting their execution. Specifically, the State court administrator should establish policies and guidelines dealing with the following:

1. **Budgets. A budget for the operation of the entire court system of the State should be prepared by the State court administrator and submitted to the appropriate legislative body.**
2. **Personnel Policies. The State court administrator should recommend uniform personnel policies and procedures governing recruitment, hiring, removal, compensation, and training of all nonjudicial employees of the courts.**
3. **Information Compilation and Dissemination. The State court administrator should develop a statewide information system. This system should include both statistics and narrative regarding the operation of the entire State court system. At least**

yearly, the State court administrator should issue an official report to the public and the legislature, containing information regarding the operation of the courts.

4. Control of Fiscal Operations. The State court administrator should be responsible for policies and guidelines relating to accounting and auditing, as well as procurement and disbursement for the entire statewide court system.
5. Liaison Duties. The State court administrator should maintain liaison with the government and private organizations, labor and management, and should handle public relations.
6. Continual Evaluation and Recommendation. The State court administrator should continually evaluate the effectiveness of the court system and recommend needed changes.
7. Assignment of Judges. The State court administrator, under the direction of the presiding or chief justice, should assign judges on a statewide basis when required.

STANDARD 10.3
Chief Judge and Administration Policy of Trial Court

Local administrative policy for the operation of each trial court should be set out, within guidelines established by the Iowa Supreme Court, by the judge or judges making up that court. Each trial court consisting of more than one judge should meet, on a regular schedule with an agenda, to consider and resolve problems facing the court and to set policy for the operation of the court.

Ultimate local administrative judicial authority in each trial jurisdiction should be vested in a chief judge for a substantial fixed term. The chief judge should be selected on the basis of administrative ability rather than seniority.

The functions of the chief judge should be consistent with the statewide guidelines and should include the following:

1. Personnel matters. The chief judge, with the assistance of the district court administrator, should have control over recruitment, removal, compensation, and training of nonjudicial employees of the court. He/she should prepare and submit to the court for approval rules and regulations governing personnel matters to insure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.
2. Trial court case assignment. Cases should be assigned by the court administrator under the supervision of the chief judge. The court administrator should apportion the business of the court among the trial judges as equally as possible, and he/she should reassign cases as convenience or necessity requires. The chief judge should require that a judge to whom a case is assigned should accept that case unless he/she is disqualified or the interests of justice require that the case not be heard by that judge. When a judge has finished or continued a matter, the chief judge should require that the court administrator be notified of that fact.
3. Judge assignments. The chief judge should prepare an orderly plan for judicial vacations, attendance at educational programs, and similar matters. The plan should be approved by the judges of the court and should be consistent with the statewide guidelines. The chief judge also should require any judge who intends to be absent from his/her court one-half day or more to notify the district court administrator well in advance of his/her contemplated absence. The chief judge should have the power to assign judges to the various branches within the trial court.
4. Information compilation. In addition to the statistical reporting required by the State court administrator, the chief judge should have responsibility for development and coordination of statistical and management information.
5. Fiscal matters. The district court administrator should have responsibility for accounts and auditing as well as procurement and disbursing under the supervision of the chief judge. The chief judge should approve the court's proposed annual budget.
6. Court policy decisions. The chief judge should appoint the standing and special committees of judges of the court necessary for the proper performance of the duties of the court. He/she also should call meetings of all the judges as needed, and designate one of the other judges as acting chief judge in his/her absence or inability to act.
7. Rulemaking. The chief judge should by order fix times and places of holding court and designate the respective presiding judges. The chief judge should, with the assistance of appropriate committees, propose local rules for the con-

duct of the court's business to be submitted to the judges for their approval.

8. Liaison and public relations. The chief judge should have the responsibility for liaison with other court systems, and other governmental and civic agencies. He/she should represent the court in business, administrative, or public relations matters. When appropriate, he/she should meet with (or designate the district court administrator or other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.
9. Improvement in the functioning of the court. The chief judge should continually evaluate the effectiveness of the court in in administering justice. He/she should recommend changes in the organization, jurisdiction, operation, or procedures of the court when he/she believes these would increase the effectiveness of the court.

STANDARD 10.4
District Court Administrators

Each judicial district in the State of Iowa should have a full-time court administrator with State funding. The court administrator should be appointed by the chief judge of each judicial district.

The functions of district court administrators should include the following:

1. **Implementation of policies set by the State court administrator;**
2. **Assistance to the State court administrator in setting statewide policies;**
3. **Preparation and submission of the budget for the court or courts with which he/she is concerned;**
4. **Assist the chief judge in the recruiting, hiring, training, evaluating, and monitoring personnel of the court or courts with which he/she is concerned;**
5. **Assist the chief judge in the management of space, equipment, and facilities of the court or courts with which he/she is concerned;**
6. **Dissemination of information concerning the court or courts with which he/she is concerned;**
7. **Procurement of supplies and services for the court or courts with which he/she is concerned;**
8. **Monitor the funds for the court or courts with which he/she is concerned;**
9. **Preparation of reports concerning the court or courts with which he/she is concerned;**
10. **Juror management;**
11. **Study and improvement of caseflow, time standards, and calendaring; and**
12. **Research and development of effective methods of court functioning.**

The district court administrators should discharge their functions within the guidelines set by the State court administrator.

COMMENTARY

The American Bar Association observes that "[t]he caseload and diversity of adjudicative responsibilities in most trial courts are very great, and in some instances nearly overwhelming. It is therefore of critical importance that the most effective use be made of the court's resources." (ABA, **Trial Courts**, 48 (1976).) Effective use of the court's resources can only be made if these resources are managed and administered properly.

Court administration refers to the management of the nonjudicial business of the court system. (See, NAC, **Courts**, 171 (1973).) Its purpose is "...to secure the proper allocation of the court's time and resources among all the cases the court is responsible for determining." (ABA, **Trial Courts**, 2 (1968).) Traditionally, the court administrative function has been performed by the judges of the court system. Thus, in addition to deciding cases and deliberating on other judicial matters, judges have been required to assign and monitor cases, maintain and prepare reports, control fiscal operations, and supervise the activities of persons subject to the authority of the court.

Fair and effective administration of justice requires continuous attention both to the adjudicative function of the court and to its administrative function. It is becoming apparent that, due to increasing workloads, judges cannot continue to perform both functions effectively. To insure that the proper performance of one function does not adversely affect the performance of the other, judges must be relieved of some of their administrative chores and assisted in the performance of others. The most appropriate way to reduce the judicial workload while retaining effective court administration is to establish a statewide court administration system.

The standards contained in this chapter set forth a court administration system designed to meet the needs of Iowa's courts and judiciary. Two premises underlie this system. The first is

that effective court administration requires a balance between centralized control and flexibility for accommodation to local conditions. (NAC, **Courts**, 177 (1973).) The second is that State financing of the court administrative function is essential to promote uniformity and equality among the State's judicial districts and to eliminate local political control over court administration. The standards recommend that the Iowa court administration system be composed of four entities: the Iowa Supreme Court, the chief judges of the Iowa District Court, a State court administrator, and district court administrators.

Iowa Supreme Court

The Iowa Supreme Court should retain ultimate administrative authority for the conduct of the State's judicial business. However, the general exercise of this responsibility should be delegated to the chief judges of the Iowa District Court and to the State court administrator. The role of the Supreme Court should be to promote administrative uniformity among the judicial districts. To promote uniformity, the Court should establish, through the State court administrator, statewide rules for the administration of the Iowa District Court. However, these rules should be broad and flexible enough to enable judicial districts to make adjustments for their own situations and problems. The chief judges of the Iowa District Court and the State court administrator should participate in the development of the statewide administrative rules.

State Court Administrator

Standard 10.2 recommends that the State court administrator be appointed by the justices of the Iowa Supreme Court. His/her function should be to establish and implement, under the Supreme Court's control, minimum statewide policies and guidelines for court administration. The standard outlines the areas in which these policies and guidelines should be developed. These areas relate primarily to State-level considerations requiring uniform treatment. It is essential to the efficient administration of the State court system that control of these areas be centralized in the State court administrator's office.

The Chief Judge

Standard 10.3 contemplates that, subject to the coordinating authority of the Iowa Supreme Court and minimum statewide policies and guidelines, local administrative policy for each judicial district will be set and actual court administration will be performed within each judicial district. (See NAC, **Courts**, 181 (1973).) The chief judge of the judicial district should have ultimate authority for the local administration of the courts within the judicial district. However, local court administrative policy should be set by the judges of the judicial district acting as a policy board. "A modern court is a company of equals operating under customs developed within the legal community over a period of several hundred years. Each judge is in many respects independent. But as a member of a larger organization, he is expected to relinquish some of his autonomy to the needs of the organization. The preservation of his necessary independence within a system requiring some relinquishment of autonomy can best be accomplished in a participatory process through electing and serving on a board of judges or as presiding judge." (NAC, **Courts**, 181 (1973).)

The judges should meet regularly to establish policy for the operation and administration of their judicial district. "To operate as a unit, judges must coordinate their activities. Vacation policies must be prescribed, working hours determined, specialized functions assigned, and responsibility defined.... The judges sitting in concert can search basic policy decisions about the operation of the [judicial district] that should not be imposed from the outside. Judges participating in the decisions about their operations understand the purposes behind the decisions and usually are committed to them. When the decisionmaking process is made formal and continuous, all the judges involved will tend to support these decisions." (**Id.**)

In addition to insuring that the minimum statewide administrative guidelines are followed, the chief judge should be responsible for the functions set forth in the standard. Responsibility for some of these functions, such as information compilation and fiscal matters, should be centralized because they relate to the operation of the judicial district as a single entity. Others, such as rulemaking and judge assignment, should be centralized to promote uniform and efficient operation of the trial courts of the judicial district.

The District Court Administrator

Chief and district court judges must be given proper management support to assist them in carrying out the functions outlined in Standard 10.3. To insure that this support is available to all Iowa judges each judicial district should have a district court administrator.

The district court administrator must possess special qualifications. "Many specialized tasks must be performed if a trial court is to run smoothly. No one person can master all of the skills necessary. Court reporters, courtroom clerks, legal secretaries, probation officers, police officers, and lawyers are all necessary to the operation of a trial court. The ability to understand and recognize these unique and often rare skills is necessary...." (NAC, **Courts**, 184 (1973).) To effectively manage these skills, the district court administrator must have a complete understanding of the Iowa district court system and public administration. Because his/her authority to order things done is limited, the court administrator also must have the ability to persuade these persons to cooperate.

CONTINUED

1 OF 3

The district court administrator must have the support and respect of the judges of the judicial district in order to effectively perform his/her administrative function. "The court administrator should have a close professional relationship with the [chief] judge, the board of judges, and the individual judges of the [district] court. This relationship will assist the court administrator in the daily management of the business affairs of the court." (NAC, **Courts**, 184 (1973).) To develop such a relationship, the court administrator must be a specialized professional whose administrative skills exceed those of the judges. Special effort should be made to recruit professional administrators specifically trained in court administration.

Because the district court administrator must work closely with the chief judge of the judicial district, responsibility for appointing the court administrator should rest with the chief judge. Selection criteria should include the following:

1. Knowledge of the justice system;
2. Attitude toward public service;
3. Understanding of modern management technology;
4. Demonstrated human relations skills; and
5. Appreciation of the role of the court administrator. (See NAC, **Courts**, 184 (1973).)

The functions of the district court administrator are listed in Standard 10.4. His/her role is to provide management support to effectuate administrative decisions. Therefore, the standard must be considered in conjunction with Standards 10.2 and 10.3, which define administrative decisionmaking authority. Essentially, the standards contemplate that the Iowa Supreme Court and the Iowa District Court will make ultimate court administrative decisions, and the State court administrator and the district court administrators will be responsible for carrying out these decisions. Such a division of responsibility not only should reduce judicial workloads but also should promote uniform court administration throughout the Iowa court system.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 9.1-9.3.

STANDARD 10.5
Caseflow Management

Ultimate responsibility for the management and movement of cases should rest with the judges of the trial court. In discharging this responsibility, the following steps should be taken:

1. **Scheduling of cases should be delegated to nonjudicial personnel, but care should be taken that counsel do not exercise an improper influence on scheduling.**
2. **Recordkeeping should be delegated to nonjudicial personnel.**
3. **Case-in-process statistics, focusing upon the case at each stage of the court process, should be developed to provide information concerning elapsed time between events in the flow of cases, recirculations (multiple actions concerning the same defendant), and dispositions at various stages of the court process.**
4. **The flow of cases should be constantly monitored by the chief judge, and the status of the court calendar should be reported to the chief judge at least once each month.**
5. **The chief judge should assign judges to areas of the court caseload that require special attention.**
6. **A central source of information concerning all participants in each case—including counsel of record—should be maintained. This should be used to identify as early as possible conflicts in the schedules of the participants to minimize the need for later continuances because of schedule conflicts.**

COMMENTARY

The purpose of Standard 10.5 is to promote efficient allocation of trial court resources. Scheduling of cases and recordkeeping should be delegated to nonjudicial personnel to relieve trial court judges of some of their administrative burdens. Conference participants recommend that the district court administrator perform these functions. (See Standard 10.4.)

The district court administrator should also keep criminal and civil trial court statistics. The National Advisory Commission on Criminal Justice Standards and Goals concludes that traditional trial court statistics do not provide sufficient information for effective court administration. "Traditionally, criminal statistics kept by trial courts have been agency workload statistics that describe the number of dispositions, and the

number of cases pending. But such agency workload statistics represent only the number of actions taken by the court during certain time periods. Proper management requires more than this type of data". (NAC, **Courts**, 187 (1973).)

The National Advisory Commission recommends the following:

> Improved statistics systems ... are needed to determine the impact of crime as well as the effects of criminal justice system policies and operations upon individual citizens and social groups, and to forecast the results of changes in practices or the redefinition of agency roles and responsibilities. Cost-and-effect data must be generated in order to allocate resources to the most efficient existing techniques, procedures, and programs; to provide comparable agencies or personnel with standards of performance; to identify areas where increased expenditures will bring maximum benefits; and to ascertain that the use of the most basic criminal justice resources, both legal and fiscal, is adjusted to social priorities. Statistical methods also must be used by agencies other than courts to predict agency workloads in relation to both crime incidence and such internal system factors as changes in arrest policies, criminal procedures, or sentencing policies.
>
> The important information currently missing in most courts is the extent to which the actions preceding any given process point determine subsequent events. Effective management requires this information. Management purposes require statistics that show:
>
> 1. Elapsed time between events;
> 2. Recirculations (multiple actions toward same defendant); and
> 3. Reconciled input-output or fallout (proportion of offenders or suspects released at various levels of the proceeding, such as the percentage exiting at preliminary hearing or at grand jury, and the percentage dismissed).
>
> The requirement of a central source of information for use in identifying schedule conflicts of the attorneys involved in each case is one method of reducing the disruptive effect of continuances. When it appears that an attorney has conflicting obligations on a given date, a proceeding should be scheduled to avoid the conflict. (NAC, **Courts**, 188 (1973).)

Standard 10.5 endorses the National Advisory Commission's recommendations.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 9.4

STANDARD 10.6
Coordinating Councils

Coordinating councils should be established on a judicial district level and, where necessary, on a sub-district or county level. Each council should contain official representatives of all agencies of the criminal justice process within the area, as well as members of the public.

These coordinating councils should continuously survey the organization, practice, and methods of administration of the court system; assist in coordinating the court system with other agencies of the criminal justice system; and make suggestions for improvement in the operation of the court system.

STANDARD 10.7
Input Into Court Administration

The chief judge of each judicial district should establish a forum for interchange between judicial and nonjudicial members of the court's staff and other interested groups or members of the community.

COMMENTARY

The judiciary has ultimate responsibility for the management of the trial court system. However, the trial courts cannot operate in a vacuum. Judges must recognize that their administrative policies and procedures affect the operation not only of the trial courts but also of other criminal justice agencies. Effective trial court administration requires continuous and informed criticism, coupled with recommendations for improvement from other functionaries within the Iowa criminal justice system. Standard 10.6 recommends that a coordinating council be established in each judicial district to provide trial courts with this input. Conference participants suggest that the judicial district coordinating councils be patterned after the Iowa Supreme Court Advisory Council, which provides input and makes recommendations to the Iowa Supreme Court.

Conference participants feel that the trial court system also suffers from a lack of public understanding. Participants conclude that increased communications between the judiciary and the public will help dispel the image of judges as individuals removed from the community. (See NAC, **Courts,** 191 (1973).) Participants believe that increased communication also will provide valuable input to the court system. Therefore, Standard 10.7 directs that the chief judge of each judicial district establish a forum for interchange between the trial court system and the public.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 9.5,9.6.

Chapter Eleven

Trial Court Facilities and Community Relations

Goal: To develop favorable court-community relations while maintaining the integrity of the court system.

STANDARD 11.1
Courthouse Physical Facilities

Adequate physical facilities should be provided for court processing of criminal defendants. These facilities include the courthouse structure itself, and such internal components as the courtroom and its adjuncts, and facilities and conveniences for witnesses, jurors, and attorneys. Facilities provided should conform to the following requirements:

1. The courthouse structure or structures should be adequate in design and space in terms of the functions housed within and the population served. All court facilities should be properly lighted, heated, and air-conditioned. Additional court sessions may be held in other places by assignment in facilities of adequate and appropriate design.
2. The detention facilities should be located so that there are no unreasonable delays in defendants appearing for court proceedings. Police and detention facilities should be separate from court facilities.
3. The courtroom should be designed to facilitate interchange among the participants in the proceedings, while at the same time providing for adequate security of all personnel taking part in the proceedings. The floor plan and acoustics should enable the judge and the jury to see and hear the complete proceedings. A jury room, judges' chambers, staff room, and detention area should be convenient to each courtroom.
4. Each jurisdiction should have an adequate library containing the following: the annotated laws of the State, the State code of criminal procedure, the appropriate municipal code, an annotated United States code, the State appellate reports, the U.S. Supreme Court reports, the Federal courts of appeals and district court reports, citators covering all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting law in general, a form book of approved jury instructions, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court reporters published weekly, looseleaf services related to criminal law, and if available, an index to the State appellate brief bank. Where courts sit in more than one location there should be additional library facilities provided as needed.
5. Provision should be made for witness waiting and assembly rooms. A central registry should be provided where witnesses will register upon arrival. The rooms should be large enough to accommodate the number of witnesses expected daily. They should be comfortably furnished and adequately lighted. The waiting areas should be provided with reading materials and telephones. Provision should also be made for conference rooms where parties may confer with potential witnesses.
6. Lounges and assembly rooms should be provided for jurors; these should not be accessible to witnesses, attorneys, or spectators. They should be furnished comfortably. Telephone service should be available, when needed.
7. A lawyers' workroom should be available in the courthouse for public and private lawyers. The room should be furnished with desks or tables, and telephones should be available. It should be located near a law library. There also should be rooms in the courthouse where attorneys can talk privately with their clients, without compromising the security needed.
8. The physical facilities described in this standard should be clean and serviceable at all times.

STANDARD 11.2
Court Information and Service Facilities

Facilities and procedures should be established to provide information concerning court processes to the public and to participants in the criminal justice system:

1. An information service should be provided in the courthouse by court personnel. The information service should include personnel (who are familiar with the judicial system and the agencies serving that system) to direct defendants (and their friends and relatives), witnesses, jurors, and spectators to their destinations. Their role should be to answer questions concerning the agencies of the system and the procedure to be followed by those involved in the system.
2. The defendant, in addition to being advised of his/her rights, should be provided with a pamphlet detailing his/her rights and explaining the steps from arrest through trial and sentencing. This pamphlet should be provided to the accused by court personnel during his/

her first court appearance. Where necessary, the pamphlet should be published not only in English but also in other languages spoken by members of the community. The pamphlet should be drafted in language readily understood by those to whom it is directed. A similar pamphlet should be provided to non-serious traffic-violators. (See Standard 4.4.)

3. The prosecutor and the court should establish procedures whereby witnesses requesting information relating to cases or court appearances in which they are involved may do so by telephone.
4. To assist the prosecutor and the court in responding to telephone inquiries from witnesses, each witness should be provided with a phone number to call for information and data regarding his/her case. The witness should be advised of the name of the defendant or the case, the court registry or docket number, and other information that will be helpful in responding to his/her inquiries.
5. The judge should instruct each jury panel, prior to its members sitting in any case, concerning its responsibilities, its conduct, and the proceedings in trials. Each juror should be given a handbook that restates these matters.

STANDARD 11.3
Court Public Information and Education Programs

The court, the news media, the public, the bar and especially the school systems, should have coordinate responsibility for informing and educating the public concerning the functioning of the courts. The court should pursue an active role in this process:

1. Each court should designate a public information officer to provide liaison between courts and the news media. The public information officer should, when necessary:
   a. Prepare releases describing items of court operation and administration that may be of interest to the public;
   b. Answer inquiries for the news media; and
   c. Specify guidelines for media coverage of trials.
2. Each courthouse should have an office prominently identified as the office for receiving complaints, suggestions, and reactions of members of the public concerning the court process. All communications made to this office should be given attention. Each person communicating with this office should be notified concerning what response, if any, has or will be made to his/her communication.
3. The court should take affirmative action to educate and inform the public of the function and activities of the court. This should include:
   a. The issuance of periodic reports concerning the court's workload, accomplishments, and changes in procedure;
   b. The issuance of handbooks for court employees concerning their function;
   c. Preparation of educational pamphlets describing the functions of the court for the general public, and for use in schools;
   d. Preparation of handbooks for jurors explaining their function and pamphlets for defendants explaining their rights;
   e. Organization of tours of the court; and
   f. Personal participation by the judges and court personnel in community activities.

These functions should be performed by the court information officer or by the court administrator's office, by associations of judges, or by individual judges.

4. The court should encourage citizen groups to inform themselves of the functions and activities of the courts and in turn share this information with other members of the public.
5. The court should work together with the bar associations to educate the public regarding law and the courts. The judiciary and the bar should cooperate by arranging joint and individual speaking programs and by preparing written materials for public dissemination.
6. All State, area, and local educational systems should incorporate study of the history, procedure, and operation of the judicial system into their curricula. The courts and the bar should be instrumental in assisting all such educational systems in developing curricula.

STANDARD 11.4
Production of Witnesses

Prosecution and defense witnesses should be called only when their appearances are of value to the court. No more witnesses should be called than necessary.

1. **Witness Other Than Police Officers. Steps that should be taken to minimize the burden of testifying imposed upon witnesses other than police officers should include the following:**
   a. **Prosecutors and defense counsel should carefully review formal requirements of law and practical necessity and require the attendance only of those witnesses whose testimony is required by law or would be of value in resolving issues to be litigated. Counsel should be encouraged by the court to enter into stipulations of nonessential or uncontested facts. Comment should not be allowed by opposing counsel on the failure of a party to call a witness whose testimony has been stipulated.**
   b. **Counsel should give sufficient notice to witnesses to appear when their testimony is needed.**
   c. **Where possible, counsel should schedule cases so as to cause the least inconvenience to witnesses.**
2. **Police Officers. Special efforts should be made to avoid having police officers spend unnecessary time making court appearances. Each jurisdiction should develop and implement a plan to insure that this objective is accomplished.**

STANDARD 11.5
Compensation of Witnesses

Police witnesses should not be compensated additionally when appearing in criminal proceeding while on-duty. Police witnesses should be compensated as citizen witnesses when off-duty, if not otherwise compensated. Citizen witnesses in criminal proceedings should receive compensation for court appearances at a minimum rate of twice the prevailing Federal minimum wage for each hour the witnesses spend in court. An officer of the court should certify the time spent by the witness in court between arrival and dismissal; payment should be made accordingly.

COMMENTARY

The court system attracts a great deal of public scrutiny. The National Advisory Commission on Criminal Justice Standards and Goals states that:

> For those directly involved in criminal matters, as victims, witnesses, or defendants, the way in which the case is treated is of immediate importance. Even individuals not directly involved in particular cases often exhibit interest in judicial activity related to crime, both because of a legitimate interest in being protected against criminal behavior, and because of widespread interest in crime and criminals as a general matter. (NAC, **Courts**, 192 (1972).)

Court-community relations, therefore, inevitably exist.

The quality of court-community relations has an important impact upon the courts' ability to perform their function effectively. The National Advisory Commission makes the following observations:

> A law-abiding atmosphere is fostered by public respect for the court process. Such attitudes correspondingly suffer when public scrutiny results in public dissatisfaction. The perception the community has of the court system also may have a direct impact on court processes, as when it affects the willingness of members of the community to appear as witnesses, serve as jurors, or support efforts to provide courts with adequate resources. **(Id.)**

Conference participants believe that there are several areas of deficiency in present court-community relations in Iowa. This chapter sets forth conferees' recommendations for correcting these deficiencies. The court-community relations standards seek to develop favorable court-community relations by improving the public's perception of courthouse facilities, the court's treatment of witnesses and jurors, court information and education services.

Facilities

Conferees conclude that Iowa's courthouse facilities are characterized by inadequate design, physical deterioration, and serious space inadequacies. Conferees believe that this situation not only increases the difficulty of adjudicating cases but also adversly affects the public's perception of the competence of the court system.

Standard 11.1 calls for providing Iowa trial courts with adequate physical facilities. The National Advisory Commission make the following recommendations:

> The courthouse should be designed to facilitate the adjudication of cases and the functioning of the participants in this process. This includes courtroom facilities reflecting the needs of the participants in the trial itself as well as their needs outside the courtroom. In order to design a courtroom and courthouse, the functions, needs, and interrelationships of the participants must be analyzed; such basic factors as organizational and functional relationships and kinds of circulation and movement of the public, the jury, the judges, the lawyers, and the prisoners must be considered. (NAC, **Courts**, 197 (1973).)

Information and Service Facilities

Conference participants believe that adequate court information and service facilities will ease the burden of participating in the criminal justice process. Participation in the criminal process often is a confusing and traumatic experience that leaves the participant with an unfavorable impression of the court system. (NAC, **Courts**, 194 (1973).)

> Defendants and witnesses may experience difficulty locating the site of trials at which they are to appear. No provision generally is made for answering basic questions concerning rights and responsibilities of participants, or the meaning of various parts of the process. Consequently, jurors, witnesses, and defendants may fail to exercise rights they otherwise would, or may come away from contact with a criminal case with an erroneous impression of the system. Either lowers public respeet for courts. **(Id.)**

Conferees conclude that the provision of information services concerning the court's functions and participants' rights and responsibilities will facilitate the participants' performance of their functions. Standard 11.2 directs that the Iowa court system provide general information services, witness and juror information services, and substantive information services.

Public Information and Education Programs

Conference participants also believe the Iowa courts need to improve their relations with the community in the areas of public information and education. "Because of the specialized terminology and procedures, legal proceedings are particularly difficult for the public to understand. Sources of information usually are informal, so the flow of information is irregular. The availability of information concerning a routine case, for example, may be greater than access to information on a highly publicized case about which there is much public concern. The absence of any focused responsibility within the court system for disseminating information and educational material contributes to the problem." (NAC **Courts,** 194 (1973).) Standard 11.3 places responsibility for informing and educating the public about the functions and business of the Iowa court system with the court, the news media, the public, the bar, and the school system. Conferees emphasize the importance of the school system's role in educating students concerning the Iowa court system and its function in society.

Witnesses

Conferees believe that the community's perception of the court system can be significantly improved if the court's provide better treatment for witnesses. In addition to providing physical facilities designed to meet the needs of witnesses, the courts should develop procedures that will minimize the burden of appearing at court proceedings. The National Advisory Commission states that "[w]itnesses are often required to make court appearances that serve no function. Police officers, for example, often are required to attend a defendant's initial appearance, although they serve no function at this proceeding.... The financial burden imposed on the witness by the combination of repeated court appearances and inadequate or nonexistent compensation is often serious." (NAC, **Courts**, 194 (1973).) Standard 11.4 and 11.5 set forth recommendations for improving court-witness relations in Iowa.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 10.1, 10.2, 10.3, 10.5, 10.7.

STANDARD 11.6
Representativeness of Court Personnel

No discrimination should exist in recruitment, employment, and promotion of court personnel. Courts should be given requisite power to insure that no discrimination in recruitment, hiring, or promotion of court personnel is permitted to exist, without regard as to whom the legal employer of said personnel may be.

STANDARD 11.7
Participation in Criminal Justice Planning

Judges and court personnel should participate in criminal justice planning activities as a means of disseminating information concerning the court system and of furthering the objective of coordination among agencies of the criminal justice system.

COMMENTARY

Conference participants conclude that, to retain the confidence of the community, the courts must demonstrate a concern for all segments of the community and an interest in the improvement of all the community's criminal justice resources. Conferees believe that Iowa courts can demonstrate such concern and interest by insuring that all members of the community have the opportunity to participate in the court process. The National Advisory Commission of Criminal Justice Standards and Goals states that "[i]f court personnel do not include members of racial and ethnic minority groups constituting a significant segment of the population served by the court, these groups may not readily accept the judicial process as a legitimate governmental operation." (NAC, **Courts,** 206 (1973).) Standard 11.6 recommends that Iowa courts have the power to insure that no discrimination exists in the recruitment, employment, and promotion of court personnel.

Another way for the courts to demonstrate interest in the community is to participate actively in criminal justice planning programs. "Few situations can bring courts into greater disrepute than obvious demonstrations of lack of cooperation with other agencies of the criminal justice system. Such situations not only create resentment on the part of the other agencies, but suggest to the general public that the courts are either disinterested or unsympathetic with the goals and programs of other agencies, such as the police and correctional authorities." (NAC, **Courts,** 207, (1973).) Standard 11.7 suggests that judges and court personnel should participate in community criminal justice planning activities.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 10.4, 10.5.

STANDARD 11.8
Mass Disorders

A. The judicial council, in conjunction with other necessary State and local agencies, should devise a plan to deal with mass disorders. The plan should provide for the assignment of necessary personnel from throughout the State to adequately perform all functions necessary.
B. The judicial council should be empowered to enforce the plan. The plan should not be effective until approved by the Legislature and the Governor.

COMMENTARY

Conference participants conclude that, to maintain the integrity of the criminal justice system, the courts must be able to fairly dispense justice under all social conditions. One condition that severely strains the courts' ability to administer justice is the mass disorder. During such an occurrence, law enforcement agencies, the courts, the prosecutor, and the defense may be called upon to handle a greatly increased workload. It is unrealistic to expect the courts to function in their regular manner when a mass disorder occurs. However, conferees believe that the changes that must be made in court processing during a mass disorder should not result in dilution of the quality of justice dispensed.

Although mass disorders are relatively unusual in Iowa, conferees feel that the Iowa court system should develop a plan to deal with such occurrences. Standard 11.8 recommends that the judicial council, composed of the chief justice of the Iowa Supreme Court and the chief judges of the Iowa District Court, devise a plan to deal with mass disorders. Conferees believe that the judicial council is sufficiently representative of the Iowa court system to develop a comprehensive plan. However, the plan should be developed in conjunction with other law enforcement agencies.

COMPARATIVE ANALYSIS REFERENCE
NAC Courts 15.1-15.4.

Comparative Analysis

The second section of this report contains a comparative analysis of the National Advisory Commission's (NAC) **Report on Courts** with the Iowa criminal justice system (ICJS). The study compares each NAC courts standard to the related area of the ICJS and analyzes the similarities and differences. Originally, the comparative analysis provided guidance for the development of the Iowa standards and goals. However, it continues to serve the useful purpose of informing the reader about the origins of the Iowa standards and goals. In addition, the study pinpoints the problem areas of the ICJS. The comparative analysis consists of three parts: the National Advisory Commission's standard (e.g., **NAC Courts Standard 1.1, Criteria for Screening**), a description of the related area of the Iowa criminal justice system (**ICJS**), and the analysis of the similarities and differences of the two systems (**Analysis**).

NAC COURTS STANDARD 1.1
CRITERIA FOR SCREENING

RELATED IOWA STANDARD
1.1 CRITERIA FOR SCREENING

The need to halt formal or informal action concerning some individuals who become involved in the criminal justice system should be openly recognized. This need may arise in a particular case because there is insufficient evidence to justify further proceedings or because—despite the availability of adequate evidence—further proceedings would not adequately further the interests of the criminal justice system.

ICJS

The Iowa Supreme Court has stated that a certain degree of discretion is confided in the prosecutor in instituting and conducting criminal prosecutions. **State v. Hospers,** 126 N.W. 818 (Iowa 1910). The need to halt criminal proceedings concerning individuals who become involved in the criminal justice system is recognized in this grant of prosecutorial discretion to the county attorney. However, this discretion is neither recognized nor structured by statute. Rather, the CODE implies that the county attorney must prosecute all public offenses committed within his county. IOWA CODE § 336.2 (1975).

The county attorney exercises this discretion in two ways. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 628 (1972). Where criminal activity initially comes to the county attorney's attention, he may decide whether to institute prosecution. **Id.** The county attorney's information provisions permit the county attorney to make this decision almost entirely in his own discretion. **Id.** See **ICJS Commentary 4.4.** Where an individual has been arrested, the county attorney may decide whether to proceed with the case. **Id.** He may allow the case to proceed to preliminary and grand jury examination, he may file an information directly in district court, or he may make application to dismiss the case in the interests of justice. IOWA CODE § 761.1, 769.1, 771.1, 795.5 (1975). Applications for dismissal are rarely refused. See Dunahoo, **The Scope of Judicial Discretion in the Iowa Criminal Law Process,** 58 Iowa L. Rev. 1023 (1973).

When the county attorney exercises his discretion, there is a strong presumption that his acts are in good faith and are based upon proper considerations. See, **e.g., State v. Hospers, supra.; State v. Bastedo,** 111 N.W. 2d 225 (Iowa 1961); **State v. Russell,** 147 N.W. 2d 22 (Iowa 1966).

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The Commission defines screening as the discretionary decision to stop, prior to trial or plea, all formal proceedings against a person who has become involved in the criminal justice system. To raise the visibility of this process, Standard 1.1 calls for the open recognition of the need for screening. The need for such screening is not openly recognized in the ICJS. Rather, it is manifested in the county attorney's discretion to initiate or halt criminal proceedings. It is clear that this discretion is relatively broad and unstructured.

NAC 1.1 contd.

An accused should be screened out of the criminal justice system if there is not a reasonable likelihood that the evidence admissible against him would be sufficient to obtain a conviction and sustain it on appeal. In screening on this basis, the prosecutor should consider the value of a conviction in reducing future offenses, as well as the probability of conviction and affirmance of that conviction on appeal.

ICJS

The decision to screen a case on the basis of insufficient evidence and the determination of the factors to be considered in making this decision are within the county attorney's discretion. The formal limitations on this decision are that the county attorney must act in good faith and upon proper considerations. **State v. Russell, supra.** If the decision to

screen is made after formal proceedings have begun, the county attorney must seek the trial court's approval of his motion to dismiss the charges. Such approval is rarely withheld. See Dunahoo, **supra** note 114 at 1040. Similarly, the trial court has the discretion to dismiss charges in the interests of justice. IOWA CODE 795.5 (1975).

Analysis

ICJS practice is similar to NAC Standard

ICJS principle is significantly different than NAC

Prosecutors in Iowa screen criminal cases on the basis of insufficient evidence. However, this action is neither recognized nor structured by statute. The Standard recommends open recognition.

NAC 1.1 contd.

An accused should be screened out of the criminal justice system when the benefits to be derived from prosecution or diversion would be outweighed by the costs of such action. Among the factors to be considered in making this determination are the following:

1. Any doubt as to the accused's guilt;
2. The impact of further proceedings upon the accused and those close to him, especially the likelihood and seriousness of financial hardship or family life disruption;
3. The value of further proceedings in preventing future offenses by other persons, considering the extent to which subjecting the accused to further proceedings could be expected to have an impact upon others who might commit such offenses, as well as the seriousness of those offenses;
4. The value of further proceedings in preventing future offenses by the offender, in light of the offender's commitment to criminal activity as a way of life; the seriousness of his past criminal activity, which he might reasonably be expected to continue; the possibility that further proceedings might have a tendency to create or reinforce commitment on the part of the accused to criminal activity as a way of life; and the likelihood of future criminal activity;
5. The value of further proceedings in fostering the community's sense of security and confidence in the criminal justice system;
6. The direct cost of prosecution, in terms of prosecutorial time, court time, and similar factors;
7. Any improper motives of the complainant;
8. Prolonged nonenforcement of the statute on which the charge is based;
9. The likelihood of prosecution and conviction of the offender by another jurisdiction; and
10. Any assistance rendered by the accused in apprehension or conviction of other offenders, in the prevention of offenses by others, in the reduction of the impact of offenses committed by himself or others upon the victims, and any other socially beneficial activity engaged in by the accused that might be encouraged in others by not prosecuting the offender.

ICJS

The county attorney may, in his discretion, determine that the benefits from prosecution are outweighed by the costs and screen a case on this basis. See Contemporary Studies Project, **supra** at 633. Several considerations that influence this determination have been noted. Included are:

1. Unjustified hardship on the accused;
2. Rectification of the injury without prosecution;
3. Requests by the victim to not prosecute;
4. Insufficient prosecutorial funds and time to prosecute all offenses;
5. Costs of the prosecution vis a vis the seriousness of the offense;
6. Assistance rendered by the accused. **Id.**

This list is not exhaustive of the factors that the county attorney may consider in his discretion.

Analysis

ICJS practice is similar to NAC Standard

ICJS principle is significantly different than NAC

The county attorney may consider those factors suggested by the Commission in determining whether to screen a case on the basis of costs and benefits. However, this action is not structured by statute.

NAC COURTS STANDARD 1.2
PROCEDURE FOR SCREENING

RELATED IOWA STANDARD
1.2 PROCEDURE FOR SCREENING

Police, in consultation with the prosecutor, should develop guidelines for the taking of persons into custody. Those guidelines should embody the factors set out in Standard 1.1.

ICJS

The decision to take a person into custody is a police decision. See IOWA CODE § 755.4 1975); Revised Criminal Code, ch. 2 § 407. This decision is structured by probable cause requirements. **Id.** However, the CODE does not require that the police, in consultation with the prosecutor, develop screening guidelines. The development of such guidelines is an informal process left to the individual agencies.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is inconsistent with NAC

NAC 1.2 contd.

After a person has been taken into custody, the decision to proceed with formal prosecution should rest with the prosecutor. No complaint should be filed or arrest warrant issued without the formal approval of the prosecutor. Where feasible, the decision whether to screen a case should be made before such approval is granted. Once a decision has been made to pursue formal proceedings, further consideration should be given to screening an accused as further information concerning the accused and the case becomes available. Final responsibility for making a screening decision should be placed specifically upon an experienced member of the prosecutor's staff.

ICJS

Generally, after a person has been taken into custody, the decision to proceed with formal prosecution rests with the county attorney. See IOWA CODE § 795.5 (1975); **ICJS Commentary 1.1.** However, the county attorney's office may not be involved in the case until after the preliminary arraignment. Thus, prior to the involvement of the prosecutor, the police may make the initial decisions to retain the person in custody and to charge at the preliminary arraignment. See, **e.g.,** IOWA CODE § 758.1, .2 (1975).

The formal approval of the county attorney is not required by statute before a complaint or preliminary information is filed or before a warrant of arrest or citation is issued. See IOWA CODE ch. 754, 762 (1975). Procedures whereby the county attorney's prior approval is necessary may be established by the county attorneys, courts, or police agencies within the local jurisdictions.

Once a decision has been made to continue formal proceedings, the county attorney retains discretion to screen the case as more information becomes available. The county attorney may designate the member of his staff who has final responsibility for making the screening decision.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

The Commission recommends that police authority should be limited to arrest and booking and that formal proceedings should continue beyond this stage only with prosecutorial approval. Specifically, the Commission states that the decision to charge, to screen or to continue proceedings should be made by the prosecutor's office. Under the ICJS, police authority is not limited to arrest and booking. Iowa criminal procedure provides that the police may make the initial decisions to charge and to continue proceedings.

NAC 1.2 contd.

The prosecutor's office should formulate written guidelines to be applied in screening that embody those factors set out in Standard 1.1. Where possible, such guidelines, as well as the guidelines promulgated by the police, should be more detailed. The guidelines should identify as specifically as possible those factors that will be considered in identifying cases in which the accused will not be taken into custody or in which formal proceedings will not be pursued. They should reflect local conditions and attitudes, and should be readily available to the public as well as to those charged with offenses, and to their lawyers. They should be subjected to periodic reevaluation by the police and by the prosecutor.

When a defendant is screened after being taken into custody, a written statement of the prosecutor's reasons should be prepared and kept on file in the prosecutor's office. Screening practices in a prosecutor's office should be reviewed periodically by the prosecutor himself to assure that the written guidelines are being followed.

ICJS

The county attorney is not required to formulate written screening guidelines or identify screening criteria. See **ICJS Commentary 1.1.** The decision to do so is a discretionary one on the part of the county attorney. Similarly, there is no requirement that any screening guidelines or criteria established by the county attorney be made available to the public, the defendant, or defense counsel. It has been noted that the formulation of screening guidelines and the identification of screening criteria has been very limited in Iowa. See Contemporary Studies Project, **Perspectives on the Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 635 (1972).

When a person is screened after being taken into custody, records of this action are not required to be kept on file at the county attorney's office. Again, the decision to maintain screening records is a discretionary one on the part of the county attorney. However, to screen an individual, it may be necessary to apply to the court for dismissal of the charges. See IOWA CODE § 795.5 (1975).) When such action is necessary, a record of the county attorney's motion for dismissal of the charges and of the court's order will exist.

Analysis

ICJS practice is significantly different that NAC Standard
ICJS principle is inconsistent with NAC

The purpose of the Standard's written guidelines and records requirement is to raise the visibility of the screening process and permit evaluation of actual screening practices. The Commission does not regard this structuring of prosecutorial action as inconsistent with broad prosecutorial discretionary authority. Rather, it perceives the requirement as a protection against unequal and arbitrary application of justice.

Because of the unstructured nature of prosecutorial discretion in Iowa, protections against arbitrary and discriminatory screening practices are minimal. See Contemporary Studies Project, **supra** at 630. While Iowa county attorneys are not restricted from establishing screening guidelines and records, they are not formally encourage to do so. Thus, statewide evaluation of screening practices is possible only if each county attorney independently elects to establish screening guidelines and records.

NAC 1.2 contd.

The decision to continue formal proceedings should be a discretionary one on the part of the prosecutor and should not be subject to judicial review, except to the extent that pretrial procedures provide for judicial determination of the sufficiency of evidence to subject a defendant to trial. Alleged failure of the prosecutor to adhere to stated guidelines or general principles of screening should not be the basis for attack upon a criminal charge or conviction.

If the prosecutor screens a defendant, the police or the private complainant should have recourse to the court. If the court determines that the decision not to prosecute constituted an abuse of discretion, it should order the prosecutor to pursue formal proceedings.

ICJS

The decision to continue formal proceedings is a discretionary one on the part of the county attorney. The decision is subject to judicial review to the extent of determining whether his acts were in good faith and upon proper considerations. See, **e.g., State v. Russell,** 147 N.W. 2d 22 (Iowa 1966). The Supreme Court has stated that "... courts are slow to interfere with the broad discretion placed in the county attorney to prosecute or not prosecute for alleged public offenses...." **Id.** When it is necessary to apply for dismissal of charges, the county attorney's motion for dismissal is reviewed by the court. IOWA CODE § 795.5 (1975). The motion to dismiss must be in the furtherance of justice. **Id.** Police recourse to the court is limited in practice.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 2.1
GENERAL CRITERIA FOR DIVERSION

RELATED IOWA STANDARD
2.1 GENERAL CRITERIA FOR DIVERSION

In appropriate cases offenders should be diverted into noncriminal programs before formal trial or conviction.

Such diversion is appropriate where there is a substantial likelihood that conviction could be obtained and the benefits to society from channeling an offender into an available noncriminal diversion program outweigh any harm done to society by abandoning criminal prosecution. Among the factors that should be considered favorable to diversion are: (1) the relative youth of the offender; (2) the willingness of the victim to have no conviction sought; (3) any likelihood that the offender suffers from a mental illness or psychological abnormality which was related to his crime and for which treatment is available; and (4) any likelihood that the crime was significantly related to any other condition or situation such as unemployment or family problems that would be subject to change by participation in a diversion program.

Among the factors that should be considered unfavorable to diversion are: (1) any history of the use of physical violence toward others; (2) involvement with syndicated crime; (3) a history of anti-social conduct indicating that such conduct has become an ingrained part of the defendant's lifestyle and would be particularly resistant to change; and (4) any special need to pursue criminal prosecution as a means of discouraging others from committing similar offenses.

Another factor to be considered in evaluating the cost to society is that the limited contact a diverted offender has with the criminal justice system may have the desired deterrent effect.

NAC COURTS STANDARD 2.2
PROCEDURE FOR DIVERSION PROGRAMS

RELATED IOWA STANDARD
2.2 PROCEDURE FOR DIVERSION PROGRAMS

The appropriate authority should make the decision to divert as soon as adequate information can be obtained.

Guidelines for making diversion decisions should be established and made public. Where it is contemplated that the diversion decision will be made by police officers or similar individuals, the guidelines should be promulgated by the police or other agency concerned after consultation with the prosecutor and after giving all suggestions due consideration. Where the diversion decision is to be made by the prosecutor's office, the guidelines should be promulgated by that office.

When a defendant is diverted in a manner not involving a diversion agreement between the defendant and the prosecution, a written statement of the fact of, and reason for, the diversion should be made and retained. When a defendant who comes under a category of offenders for whom diversion regularly is considered is not diverted, a written statement of the reasons should be retained.

Where the diversion program involves significant deprivation of an offender's liberty, diversion should be permitted only under a court-approved diversion agreement providing for suspension of criminal proceedings on the condition that the defendant participate in the diversion program. Procedures should be developed for the formulation of such agreements and their approval by the court. These procedures should contain the following features:

1. Emphasis should be placed on the offender's right to be represented by counsel during negotiations for diversion and entry and approval of the agreement.
2. Suspension of criminal prosecution for longer than one year should not be permitted.
3. An agreement that provides for a substantial period of institutionalization should not be approved unless the court specifically finds that the defendant is subject to nonvoluntary detention in the institution under noncriminal statutory authorizations for such institutionalization.
4. The agreement submitted to the court should contain a full statement of those things expected of the defendant and the reason for diverting the defendant.
5. The court should approve an offered agreement only if it would be approved under the applicable criteria if it were a negotiated plea of guilty.
6. Upon expiration of the agreement, the court should dismiss the prosecution and no future prosecution based on the conduct underlying the initial charge should be permitted.
7. For the duration of the agreement, the prosecutor should have the discretionary authority to determine whether the offender is performing his duties adequately under the agreement and, if he determines that the offender is not, to reinstate the prosecution.

Whenever a diversion decision is made by the prosecutor's office, the staff member making it should specify in writing the basis for the decision, whether or not the defendant is diverted. These statements, as well as those made in cases not requiring a formal agreement for diversion, should be collected and subjected to periodic review by the prosecutor's office to insure that diversion programs are operating as intended.

The decision by the prosecutor not to divert a particular defendant should not be subject to judicial review.

ICJS

Diversion refers to the halting or suspension before conviction of formal criminal proceedings against a person on the condition or assumption that he will do something in return. This concept receives limited formal recognition in the ICJS. Section 125.17 of the CODE OF IOWA provides that a person who appears to be intoxicated or incapacitated by alcohol in a public place and in need of help may be taken to a treatment facility by a peace officer. The action by the peace officer is labeled as protective custody and does not constitute an arrest. If the person refuses such disposition, he may be arrested and charged with intoxication.

The police and the prosecution may employ more informal diversion practices. These forms of diversion are essentially discretionary and largely unstructured. The ICJS provides no systemwide standards to be used by the police and the prosecution in making these diversion decisions.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 3.1 ABOLITION OF PLEA NEGOTIATION

RELATED IOWA STANDARD 3.1 PRIORITY OF PLEA DISCUSSIONS AND PLEA AGREEMENTS

As soon as possible, but in no event later than 1978, negotiations between prosecutors and defendants—either personally or through their attorneys—concerning concessions to be made in return for guilty pleas should be prohibited. In the event that the prosecutor makes a recommendation as to sentence, it should not be affected by the willingness of the defendant to plead guilty to some or all of the offenses with which he is charged. A plea of guilty should not be considered by the court in determining the sentence to be imposed.

Until plea negotiations are eliminated as recommended in this standard, such negotiations and the entry of pleas pursuant to the resulting agreements should be permitted only under a procedure embodying the safeguards contained in the remaining standards in this chapter.

ICJS

Negotiations between prosecutors and defendants concerning concessions to be made in return for guilty pleas are permitted in criminal proceedings in Iowa. See, **e.g., State v. Voshell,** 216 N.W. 2d 309 (Iowa 1974); **State v. Whitehead,** 163 N.W. 2d 899 (Iowa 1969). The sentence recommendation agreement has been identified as a type of plea negotiation practice. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 636 (1972). In this agreement, the county attorney promises to recommend a lenient sentence or to refrain from recommending a harsh sentence in return for a plea of guilty. **Id.** Other recognized plea negotiation practices are the dismissal of additional counts or indictments and the reduction of the original charge to a lesser included offense. **Id.**

In determining the sentence to be imposed, the court is not required to consider the defendant's guilty plea or the county attorney's recommendation. Rather, the court must make an independent judicial determination of what the sentence should be. See **State v. Voshell, supra.** The court cannot use the sentencing process as a threat to induce the defendant to plead guilty. **State v. Rife,** 149 N.W. 2d 846 (Iowa 1967). See also Revised Criminal Code, Rule of Criminal Procedure 9.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The Commission recognizes one legitimate function served by the plea negotiation process. This function is the conservation of the prosecutorial and judicial resources of the criminal justice system. However, it is the Commission's position that lack of these resources should not affect the outcome of criminal proceedings. The Commission states that, once the resource savings function is rejected, the plea negotiation process only exacts unacceptable costs from the system. These costs include the following:

1. By providing an incentive for prosecutors to overcharge, the plea negotiation practice distorts the charging process;
2. By providing an advantage to those who are knowledgable about plea negotiation, the practice distorts concepts of equal application of the law;
3. By providing an incentive to avoid full and fair resolution of the issues in an adversary context, the practice distorts the defendant's legal rights;
4. By introducing matters which are irrelevant to the issues of guilt, rehabilitation, and deterrence, the practice reduces the rationality of the criminal process.

The saving of criminal justice resources is usually suggested as the reason for sanctioning plea negotiations in the ICJS. See Contemporary Studies Project, **supra** at 636. The practice exists in relatively unstructured form. **Id.** Thus, it is likely that, while conserving prosecutorial and judicial resources, the practice is also exacting the costs identified by the Commission.

NAC COURTS STANDARD 3.2
RECORD OF PLEA AND AGREEMENT

RELATED IOWA STANDARD
3.7 RECORD OF PLEA AND AGREEMENT

Where a negotiated guilty plea is offered, the agreement upon which it is based should be presented to the judge in open court for his acceptance or rejection. In each case in which such a plea is offered, the record should contain a full statement of the terms of the underlying agreement and the judge's reasons for accepting or rejecting the plea.

ICJS

In **State v. Sisco,** 169 N.W. 2d 542 (Iowa 1969), the Supreme Court adopted Standard 1.5 of the American Bar Association Minimum Standards for Criminal Justice, **Pleas of Guilty.** This Standard provides that "... the court should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached." Meaningful compliance with this guideline is sufficient. See **State v. Sisco, supra.** Thus, the trial court is not specifically required to determine the existence of a plea agreement and its terms. It is sufficient if the court finds that the plea is not the result of improper plea bargaining. See, **e.g., State v. Reppert,** 215 N.W. 2d 302 (Iowa 1974). If the court so finds, further inquiry into the existence of a plea agreement is not necessary. Therefore, the trial record will not contain a statement of the terms of the agreement and the judge's reasons for accepting or rejecting the negotiated plea when the court finds that plea negotiations were not improper. See also Revised Criminal Code, Rule of Criminal Procedure 9.

Analysis

ICJS practice is significantly different than NAC Standard

The Commission recommends that a control mechanism be imposed on the disposition of criminal proceedings through plea negotiations. The purpose of this Standard is to raise the visibility of the plea negotiation process so that the actual practices can be identified and corrected where necessary. Similarly, the purpose of the ICJS guilty plea guidelines is to identify and correct improper plea negotiation practices. However, the ICJS control mechanism falls short of the Standard's requirements that the trial court review the specific terms of the plea agreement. Rather, the ICJS plea negotiation process is controlled by the requirement that the defendant's guilty plea must represent a voluntary choice among alternative courses of action open to an accused. See, e.g., **State v. Hansen,** 221, N.W. 2d 274 (Iowa 1974). Under this requirement, the trial court must determine whether the plea negotiation process deprived the act of pleading guilty of a voluntary character. This determination does not require inquiry into actual plea negotation practices and terms when the court finds that the defendant's plea was not induced or coerced. **Id.**

NAC COURTS STANDARD 3.3
UNIFORM PLEA NEGOTIATION POLICIES AND PRACTICES

RELATED IOWA STANDARD
3.3 UNIFORM PLEA NEGOTIATION POLICIES AND PRACTICES

Each prosecutor's office should formulate a written statement of policies and practices governing all members of the staff in plea negotiations.

This written statement should provide for consideration of the following factors by prosecuting attorneys engaged in plea negotiations:

1. The impact that a formal trial would have on the offender and those close to him, especially the likelihood and seriousness of financial hardship and family disruption;
2. The role that a plea and negotiated agreement may play in rehabilitating the offender;
3. The value of a trial in fostering the community's sense of security and confidence in law enforcement agencies; and

4. The assistance rendered by the offender:
   a. in the apprehension or conviction of other offenders;
   b. in the prevention of crimes by others;
   c. in the reduction of the impact of the offense on the victim; or
   d. in any other socially beneficial activity.

The statement of policies should provide that weaknesses in the prosecution's case may not be considered in determining whether to permit a defendant to plead guilty to any offense other than that charged.

The statement of policies should be made available to the public.

ICJS

While county attorney offices may formulate written statements of policies and practices governing plea negotiations, the offices are not required to do so by statute or other authority. Similarly, there is no requirement that any policy statements which may be formulated be made available to the public. The general failure of the county attorneys to establish plea negotiation guidelines and criteria has been recognized as a major problem with the plea negotiation process in Iowa. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 637 (1972). Because of this failure, identification of the actual criteria applied in plea negotiations is difficult.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The purpose of this Standard is to structure the discretionary plea negotiation process. The Commission suggests that articulation of the factors to be considered in plea negotiations will produce greater uniformity of application. Also, the Commission states that communication of plea negotiation policies to the public will increase the visibility of the process, thereby encouraging public acceptance of the practice.

The ICJS practice places responsibility for structuring the plea negotiation process with each county attorney. Thus, the practice promotes neither equitable administration of criminal law nor increased public understanding of the plea negotiation process.

NAC 3.3 contd.

The statement should direct that before finalizing any plea negotiations, a prosecutor's staff attorney should obtain full information on the offense and the offender. This should include information concerning the impact of the offense upon the victims, the impact of the offense (and of a plea of guilty to a crime less than the most serious that appropriately could be charged) upon the community, the amount of police resources expended in investigating the offense and apprehending the defendant, any relationship between the defendant and organized crime, and similar matters. This information should be considered by the attorney in deciding whether to enter into an agreement with the defendant.

The statement should be an internal, intraoffice standard only. Neither the statement of policies nor its applications should be subject to judicial review. The prosecutor's office should assign an experienced prosecutor to review negotiated pleas to insure that the guidelines are applied properly.

ICJS

County attorney offices are not required to formulate written policy statements that specify the amount and kind of information to be obtained before finalizing plea negotiations. However, each county attorney has the discretionary authority to do so. The lack of a statewide requirement makes it difficult to ascertain both the actual information considered by Iowa county attorneys in plea negotiations and the sufficiency of this information.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

NAC COURTS STANDARD 3.4
TIME LIMIT ON PLEA NEGOTIATIONS

RELATED IOWA STANDARD
3.4 TIME LIMIT ON PLEA NEGOTIATIONS

Each jurisdiction should set a time limit after which plea negotiations may no longer be conducted. The sole purpose of this limitation should be to insure the maintenance of a trial docket that lists only cases that will go to trial. After the specified time has elasped, only pleas to the official charge should be allowed, except in unusual circumstances and with the approval of the judge and the prosecutor.

ICJS

A time limit after which plea negotiations may no longer be conducted is not set by statutory or decisional law. Although the presiding judge is responsible for administering and scheduling pretrial activities, formal judicial controls on the plea negotiation process are limited. See **e.g.,** Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 639 (1972). Thus, plea negotiations may be conducted at any time before the defendant pleads guilty or the case goes to trial. Under this procedure, it is likely that trial dockets list cases that do not go to trial.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

NAC COURTS STANDARD 3.5
REPRESENTATION BY COUNSEL
DURING PLEA NEGOTIATIONS

RELATED IOWA STANDARD
3.5 REPRESENTATION BY COUNSEL
DURING PLEA NEGOTIATIONS

No plea negotiations should be conducted until a defendant has been afforded an opportunity to be represented by counsel. If the defendant is represented by counsel, the negotiations should be conducted only in the presence of and with the assistance of counsel.

ICJS

The Code does not specifically define the defendant's right to counsel during plea negotiations. However, unless effectively waived by the defendant, the right is protected by the Fifth and Sixth Amendments to the Constitution. See **Argersinger v. Hamlin,** 407 U.S. 24 (1972); **Miranda v. Arizona,** 384 U.S. 436 (1966). Generally when the defendant is represented, negotiations are conducted through his counsel. Disciplinary Rule 7-104 of the **Iowa Code Of Professional Responsibility For Lawyers** provides as follows:

(A) During the course of his representation of a client a lawyer shall not:
  (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.
  (2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 3.6 PROHIBITED PROSECUTORIAL INDUCEMENTS TO ENTER A PLEA OF GUILTY

RELATED IOWA STANDARD 3.6 PROHIBITED PROSECUTORIAL INDUCEMENTS TO ENTER A PLEA OF GUILTY

No prosecutor should, in connection with plea negotiations, engage in, perform, or condone any of the following:

1. Charging or threatening to charge the defendant with offenses for which the admissible evidence available to the prosecutor is insufficient to support a guilty verdict.
2. Charging or threatening to charge the defendant with a crime not ordinarily charged in the jurisdiction for the conduct allegedly engaged in by him.
3. Threatening the defendant that if he pleads not guilty, his sentence may be more severe than that which ordinarily is imposed in the jurisdiction in similar cases on defendants who plea not guilty.
4. Failing to grant full disclosure before the disposition negotiations of all exculpatory evidence material to guilt or punishment.

ICJS

Before the trial court may accept a plea of guilty, it must ascertain whether the defendant is voluntarily entering the plea. See **State v. Sisco**, 169 N.W. 2d 542 (Iowa 1969). The Supreme Court has stated that, if a guilty plea is induced by promises or threats which deprive it of the character of a voluntary act, the plea is void. See **State v. Whitehead**, 163 N.W. 2d 899 (Iowa 1969). Similarly, if the prosecutor induces the plea by empty promises of leniency, or if the judge threatens to impose the maximum sentence upon a conviction after trial, the guilty plea is involuntary. **State v. Rife**, 149 N.W. 2d 846 (Iowa 1967).

The **Iowa Code Of Professional Responsibility For Lawyers** contains specific provisions governing the conduct of public prosecutors. Disciplinary Rule 7-103(A) states:

> A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

Also, Disciplinary Rule 7-103(B) provides:

> A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC COURTS STANDARD 3.7 ACCEPTABILITY OF A NEGOTIATED GUILTY PLEA

RELATED IOWA STANDARDS 3.2 CONSIDERATION OF PLEA IN FINAL DISPOSITION 3.8 ACCEPTABILITY OF A NEGOTIATED GUILTY PLEA

The court should not participate in plea negotiations. It should, however, inquire as to the existence of any agreement whenever a plea of guilty is offered and carefully review any negotiated plea agreement underlying an offered guilty plea. It should make specific determinations relating to the acceptability of a plea before accepting it.

Before accepting a plea of guilty, the court should require the defendant to make a detailed statement concerning the commission of the offense to which he is pleading guilty and any offenses of which he has been convicted previously. In the event that the plea is not accepted, this statement and any evidence obtained through use of it should not be admissible against the defendant in any subsequent criminal prosecution.

The review of the guilty plea and its underlying negotiated agreement should be comprehensive. If any of the following circumstances is found and cannot be corrected by the court, the court should not accept the plea:

1. Counsel was not present during the plea negotiations but should have been;

2. The defendant is not competent or does not understand the nature of the charges and proceedings against him;

3. The defendant was reasonably mistaken or ignorant as to the law or facts related to his case and this affected his decision to enter into the agreement;

4. The defendant does not know his constitutional rights and how the guilty plea will affect those rights; rights that expressly should be waived upon the entry of a guilty plea include:
   a. Right to the privilege against compulsory self-incrimination (which includes the right to plead not guilty);
   b. Right to trial in which the government must prove the defendant's guilt beyond a reasonable doubt;
   c. Right to a jury trial;
   d. Right to confrontation of one's accusers;
   e. Right to effective assistance of counsel at trial.

5. During plea negotiations the defendant was denied a constitutional or significant substantive right that he did not waive;

6. The defendant did not know at the time he entered into the agreement the mandatory minimum sentence, if any, and the maximum sentence that may be imposed for the offense to which he pleads, or the defendant was not aware of these facts at the time the plea was offered;

7. The defendant has been offered improper inducements to enter the guilty plea;

8. The admissible evidence is insufficient to support a guilty verdict on the offense for which the plea is offered, or a related greater offense;

9. The defendant continues to assert facts that, if true, establish that he is not guilty of the offense to which he seeks to plead; and

10. Accepting the plea would not serve the public interest. Acceptance of a plea guilty would not serve the public interest if it:
   a. places the safety of persons or valuable property in unreasonable jeopardy;
   b. depreciates the seriousness of the defendant's activity or otherwise promotes disrespect for the criminal justice system;
   c. gives inadequate weight to the defendant's rehabilitative needs; or
   d. would result in conviction for an offense out of proportion to the seriousness with which the community would evaluate the defendant's conduct upon which the charge is based.

A representative of the police department should be present at the time a guilty plea is offered. He should insure that the court is aware of all available information before accepting the plea and imposing sentencing.

When a guilty plea is offered and the court either accepts or rejects it, the record must contain a complete statement of the reasons for acceptance or rejection of the plea.

ICJS

The test of any guilty plea procedure is whether it establishes on the record that the guilty plea has been voluntarily and intelligently entered and that it has a factual basis. **Brainard v. State,** 222 N.W. 2d 711 (Iowa 1974). The court must address the accused personally and determine whether he understands the charge made, he is aware of the penal consequences of the plea, the plea is entered voluntarily and there is a factual basis for the plea. **Id.** Also, the court must determine that the defendant is aware that he waives his fundamental trial rights by pleading guilty and that, if his plea is accepted, he stands convicted as if found guilty by a jury. **Id.** The record of the guilty plea proceeding must demonstrate that the defendant was actually aware of his privilege against self-incrimination, the right to trial by jury, and the right to confront one's accusers. **Id.** Meaningful compliance with guilty plea guidelines is sufficient. See **State v. Sisco**, 169 N.W. 2d

542 (Iowa 1969); ICJS Commentary Standard 3.2. See also Revised Criminal Code, Iowa Rule of Criminal Procedure 9.

Analysis
ICJS practice is different than NAC Standard
NAC principle is the same as NAC

NAC COURTS STANDARD 3.8
EFFECT OF THE METHOD OF DISPOSITION ON SENTENCING

RELATED IOWA STANDARDS
3.2 CONSIDERATION OF PLEA IN FINAL DISPOSITION

The fact that a defendant has entered a plea of guilty to the charge or to a lesser offense than that initially charged should not be considered in determining sentence.

ICJS
In determining sentence, the trial court must make an independent judicial determination of what the sentence should be. See **State v. Voshell,** 216 N.W. 2d 309 (Iowa 1974). The court cannot use the sentencing process as a threat to induce the defendant to plead guilty. **State v. Rife,** 149 N.W. 2d 846 (Iowa 1967). The defendant may plead guilty if he believes such a plea is to his advantage. See **State v. Heisdorffer**, 217 N.W. 2d 627 (Iowa 1974). When accepted by the court, the defendant's plea of guilty constitutes a conviction of the highest order, and its effect is to authorize imposition of a sentence prescribed by law. **State v. Kobrock**, 213 N.W. 2d 481 (Iowa 1973). But see Revised Criminal Code, Rule of Criminal Procedure 9.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 4.1
TIME FRAME FOR PROMPT PROCESSING CRIMINAL CASES

RELATED IOWA STANDARD
4.1 TIME FRAME FOR PROMPT PROCESSING OF CRIMINAL CASES

The period from arrest to the beginning of trial of a felony prosecution generally should not be longer than 60 days.

ICJS
The period from arrest to the beginning of trial of felony and indictable misdemeanor prosecutions is generally subject to four time requirements. The first is the limitation on the period from the arrest of the defendant to the time of preliminary arraignment. The Code requires that after the defendant has been arrested, he must be taken before a magistrate without unnecessary delay. See IOWA CODE §§ 757.7, 758.1, 775.14 (1975); Revised Criminal Code, ch. 2 §§ 422, 423. The Code does not define the meaning of "without unnecessary delay"; however, the Supreme Court has construed this term. See **ICJS Commentary 4.5; but see** Revised Criminal Code, Rule of Criminal Procedure 2 (c). At the preliminary arraignment, the magistrate must inform the defendant of the offense with which he is charged and of his right to counsel, and must allow the defendant a reasonable time to obtain counsel before proceeding with the preliminary examination. IOWA CODE § 761.1 (1975); Revised Criminal Code, Rules of Criminal Procedure 1, 2.

The second time requirement controls the period from the preliminary arraignment to the time of the preliminary examination or its waiver. Section 761.1 provides that after waiting a reasonable time for or on the appearance of the defendant's counsel, the magistrate must proceed with the preliminary examination or may allow the defendant to waive preliminary examination. The Supreme Court has stated that this provision contemplates prompt action by the magistrate in holding a preliminary examination or allowing the defendant to waive the same. See **ICJS Commentary 4.8**; **see also** Revised Criminal Code, Rules of Criminal Procedure 3, 4.

Section 795.1 establishes the third time requirement. This section states that "[w]hen a person is held to answer for a public offense, if an indictment be not found against him within thirty days, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown." **But see** Revised Criminal Code, Rule of Criminal Procedure 27. In **State v. Morningstar,** 207 N.W. 2d 772 (Iowa 1973), the Supreme Court construed "held to answer" as meaning held to answer by a magistrate after preliminary examination or the waiver of preliminary examination. Operation of Section 795.1 is not prevented by the fact that the person held to answer failed to demand a speedy trial. **Id.**

The final time requirement limits the period from indictment or the filing of a county attorney information to the time of trial. Section 795.2 states:

> "If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial within the sixty days after the indictment is found, the court must order it to be dismissed, unless good cause to the contrary be shown. An accused not admitted to bail and unrepresented by legal counsel, shall not be deemed to have waived his privilege of dismissal or be held to make demand or request to enforce a guarantee of speedy trial, and the court on its own motion shall carry out the provisions of this section as to dismissal." IOWA CODE § 795.2 (1975); **but see** Revised Criminal Code, Rule of Criminal Procedure 27.

Prior the **State v. Gorham,** 206 N.W. 2d 908 (Iowa 1973), the demand-waiver doctrine applied to Section 795.2. Under this doctrine, a defendant was presumed to have waived consideration of his right to a speedy trial for any period prior to which he had not demanded a trial. In **Gorham**, the Supreme Court reviewed **Barker v. Wingo**, 407 U.S. 514 (1972), where the United States Supreme Court held that the demand-waiver doctrine was inconsistent with the Court's pronouncements on the waiver of Constitutional rights. The Iowa Supreme Court held that under Section 795.2:

> "...an accused, on bail and represented by counsel, whose trial has not been postponed upon his own application is entitled to a dismissal if not brought to trial within sixty days after being indicted unless good cause to the contrary be prosecutorially shown."

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is different than NAC

The ICJS and NAC practices are similar in the sense that both specify time limits for the prosecution of criminal cases. However, the ICJS practice may exceed ninety days while the NAC practice is limited to sixty. The principles of the two systems differ. The ICJS practice is based upon contemporary standards surrounding the waiver of the Sixth Amendment right to a speedy trial. The NAC practice has its origins in society's interests in the prompt processing of criminal cases. These interests are deterrence of offenders and others, incapacitation of those who have committed crimes, and reduction of pretrial hardships on defendants and the state.

NAC 4.1 contd.

In a misdemeanor prosecution, the period from arrest to trial generally should be 30 days or less.

ICJS

The Code does not specify the period from arrest to trial in simple misdemeanor prosecutions. This period is dependent upon caseload factors in the various jurisdictions. Section 762.12 provides that the period from the defendant's appearance to the trial must be at least fifteen days. IOWA CODE § 762.12 (1975); **see also** Revised Criminal Code, Rule of Criminal Procedure 45. The period from the issuance of a citation to the appearance date is not limited by statute.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS 4.2
CITATION AND SUMMONS IN LIEU OF ARREST

RELATED IOWA STANDARD
4.2 CITATION AND SUMMONS IN LIEU OF ARREST

Upon the apprehension, or following the charging, of a person for a misdemeanor or certain less serious felonies, citation or summons should be used in lieu of taking the person into custody.

All law enforcement officers should be authorized to issue a citation in lieu of continued custody following a lawful arrest for such offenses.

ICJS

The CODE provides for the issuance of a citation in lieu of arrest. Section 753.5 states that "[w]henever it would be lawful for a peace officer to arrest a person without a warrant, he may issue a citation instead of making the arrest and taking the person before a magistrate." IOWA CODE § 753.5 (1975); **see also** Revised Criminal Code, ch. 2, division V. Thus, a peace officer may issue a citation in the situations set forth in Section 755.4:

1. For a public offense committed or attempted in his presence.
2. Where a public offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it.
3. Where he has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.
4. Where he has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing him that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge. IOWA CODE § 755.4 (1975); **see also** Revised Criminal Code, ch. 2 § 407.

A uniform traffic citation and complaint must be used for charging all traffic violations in Iowa under state law or municipal ordinance. IOWA CODE § 753.13 (1975).

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

Section 753.5 authorizes peace officers to issue citations for felonies and misdemeanors. Therefore, the section grants the peace officer the discretion to determine whether the seriousness of the offense warrants the issuance of a citation in lieu of arrest. The principles of time and manpower savings are recognized.

NAC 4.2 contd.

All judicial officers should be given authority to issue a summons rather than an arrest warrant in all cases alleging these offenses in which a complaint, information or indictment is filed or returned against a person not already in custody.

Summons should be served upon the accused in the same manner as a civil summons.

ICJS

A complaint or preliminary information is a statement in writing of the commission or threatened commission of a public offense, and accusing someone thereof. IOWA CODE § 754.1 (1975). When a preliminary information is made before a magistrate, district court clerk or his deputy, and it charges a public offense triable on indictment, either a felony or an indictable misdemeanor, the magistrate, district court clerk or his deputy, may issue an arrest warrant. IOWA CODE § 754.3 (1975). Whenever the complaint or preliminary information charges a misdemeanor, the magistrate, district court clerk or his deputy may, in his discretion, issue a citation instead of an arrest warrant. **Id; see also** Revised Criminal Code, ch. 2 § 401; Rule of Criminal Procedure 7.

Similarly, Chapter 762, **Trial of Nonindictable Offenses**, provides that upon the filing of an information charging a nonindictable offense, the magistrate, district court clerk or his deputy may issue a warrant for the arrest of the defendant. IOWA CODE § 762.6 (1975). This action is discretionary; therefore, a citation may be issued under Section 754.3 in lieu of the arrest warrant.

Section 754.3 states that the citation may be served in the same manner as an original notice in a civil action.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 4.2 contd.

1. Situations in Which Citation or Summons is Not Appropriate. Use of citation or summons would not be appropriate under the following situations:
   a. The behavior or past conduct of the accused indicates that his release presents a danger to individuals or to the community;
   b. The accused is under lawful arrest and fails to identify himself satisfactorily;
   c. The accused refuses to sign the citation;
   d. The accused has no ties to the jurisdiction reasonably sufficient to assure his appearance; or
   e. The accused has previously failed to appear in response to a citation or summons.

ICJS

A peace officer may issue a citation whenever an arrest without warrant would be appropriate. IOWA CODE § 753.5 (1975). However, the cited person is required to sign the citation before he is released. IOWA CODE § 753.7 (1975). A judicial magistrate may issue a citation whenever the preliminary information charges a misdemeanor. IOWA CODE § 754.3 (1975). If the magistrate becomes satisfied that the cited person will not appear, the magistrate may issue a warrant for the arrest of the person without waiting for the appearance date mentioned in the citation. **Id; see also** Revised Criminal Code, **supra.**

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

The CODE does not specify the situations, other than refusal to sign and the likelihood of nonappearance, in which the use of a citation would not be appropriate. The determination of these situations is within the discretion of the police or judicial officer.

NAC 4.2 contd.

2. Procedure for issuance and Content of Citation and Summons. Whether issued by a law enforcement officer or a court, the citation or summons should:
   a. Inform the accused of the offense with which he is charged;

b. Specify the date, time, and exact location of trials in misdemeanors of the preliminary hearing in felonies;
c. Advise the accused of all of his rights applicable to his arrest and trial and of the consequences of failing to appear;
d. Explain the law concerning representation by and provision of counsel, and contain a form for advising the court (within 3 days after service of citation or summons) of the name of his counsel or of the desire to have the court appoint an attorney to defend him; and
e. State that in misdemeanor cases all motions and an election of nonjury trial must be filed within 7 days after appointment of counsel with copies provided to the prosecutor.

ICJS

When a peace officer issues a citation, it must include the name and address of the person, the nature of the offense, the time and place at which the person is to appear in court, and the penalty for nonappearance. IOWA CODE § 753.6 (1975). Judicial citations must set forth the nature of the offense and command the person to appear before the magistrate issuing the citation at a specific time and place. IOWA CODE § 754.3

Analysis

ICJS practice is similar to NAC Standard
ICJS principle meets NAC

NAC COURTS STANDARD 4.3 PROCEDURE IN MISDEMEANOR PROSECUTIONS

RELATED IOWA STANDARD 4.3 PROCEDURE IN SIMPLE MISDEMEANOR PROSECUTIONS

Preliminary hearings should not be available in misdemeanor prosecutions.

ICJS

Generally, a preliminary hearing is not available in a nonindictable misdemeanor prosecution. Such a prosecution is commenced by filing an information or complaint with the magistrate. IOWA CODE § 762.2 (1975). The case then proceeds to the appearance of the defendant. IOWA CODE § 762.9 (1975). At this appearance, the defendant is required to plead. **Id.** If the defendant pleads other than guilty, the case is set for trial, and a preliminary hearing is not available. IOWA CODE § 762.11 (1975); **see also** Revised Criminal Code, ch. 2 § 1302.

However, a preliminary hearing may be held in a nonindictable misdemeanor prosecution when an arrest is made without a warrant. The magistrate may initially set the case for preliminary examination and, at the examination, find that a nonindictable offense appears to have been committed. He then must order an information to be filed and must proceed under the nonindictable misdeameanor provisions. IOWA CODE § 758.2 (1975).

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 4.3 contd.

All motions and an election of nonjury trial should be required within 7 days after appointment of counsel. Copies of motions should be served upon the prosecutor by defense counsel.
Upon receipt of the motions, the court should evaluate the issues raised. Motions requiring testimony should be heard immediately preceding trial. If testimony will not be needed, arguments on the motions should be heard immediately preceding trial. However, should a continuance be needed, the court should

notify the prosecution and defense that the motions will be heard on the scheduled trial date and that trial will be held at a specified time within 10 days thereafter.

ICJS

To be entitled to a jury trial, the defendant must file a written jury demand with the magistrate at least ten days before the time set for trial. IOWA CODE § 762.15 (1975). Also, a change of place of trial may be applied for by filing an affidavit with the magistrate before any testimony is heard. IOWA CODE § 762.13 (1975). Other than these two provisions, the CODE does not establish a specific motion practice for nonindictable misdemeanor prosecutions. **See also** Revised Code, **supra.**

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

The purpose of this Standard is to simplify the processing of misdemeanor cases. The ICJS recognizes this need and provides simplified procedures for nonindictable misdemeanor prosecutions. However, not all the practices suggested by the Commission are present in the ICJS.

NAC COURTS STANDARD 4.4
LIMITATION OF GRAND JURY FUNCTIONS

RELATED IOWA STANDARD
4.5 LIMITATION OF GRAND JURY FUNCTIONS

Grand jury indictment should not be required in any criminal prosecution. If an existing requirement of indictment cannot be removed immediately, provision should be made for the waiver of indictment by the accused. Prosecutors should develop procedures that encourage and facilitate such waivers. If a grand jury indictment is issued in a particular case, no preliminary hearing should be held in that case. In such cases, the prosecutor should disclose to the defense all testimony before the grand jury directly relating to the charges contained in the indictment returned against the defendant.

ICJS

It is the duty of the grand jury to inquire into all indictable offenses and present them to the court by indictment. IOWA CODE § 771.1 (1975). Thus when a person is charged with an indictable offense, he is taken before a magistrate for preliminary examination. IOWA CODE § 761.1 (1975). The magistrate proceeds with preliminary examination or allows the defendant to waive examination. **Id.** If it appears from the examination that an indictable offense has been committed and that there is sufficient reason for believing that the defendant committed the offense, or if the defendant waives the examination, the magistrate orders that the defendant be held to answer. IOWA CODE § 761.18 (1975). The preliminary examination papers are then transferred to the district court and placed before the grand jury for its action. IOWA CODE § 761.25, 771.18 (1975); **see also State v. Mays,** 204 N.W. 2d 862 (Iowa 1973); Revised Criminal Code, Rule of Criminal Procedure 3.

However, Iowa criminal procedure provides an alternative to grand jury indictment. The Constitution of Iowa, Amendment of 1884, No. 3, states that "... the General Assembly may provide for holding a person to answer for any criminal offense without the intervention of the grand jury." Such a provision is Chapter 769, **Information By County Attorney.** Under this chapter, felonies and indictable misdemeanors may be prosecuted upon information with the same effect as upon indictment. IOWA CODE § 769.1 (1975). To proceed in this manner, the county attorney must file with the clerk of district court, upon approval by a district judge or district associate judge, an information charging a person with an indictable offense. IOWA CODE § 769.2 (1975). The offense may then be prosecuted to final judgment without the intervention of the grand jury. **See also** Revised Criminal Code, Rule of Criminal Procedure 5.

When the grand jury indicts a person who is not already in custody, a preliminary hearing is not held. Rather, the indicted person is arrested and taken before the court for arraignment. IOWA CODE §§ 774.2, .4, .5 (1975). The case then proceeds without prelimi-

nary hearing. However, when a person is initially arrested and charged by preliminary information, the case proceeds to both preliminary and grand jury examination. IOWA CODE §§ 761.1, .18, 771.18 (1975).

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is different than NAC

NAC 4.4 contd.
The grand jury should remain available for investigation and charging in exceptional cases.

ICJS
The grand jury is available for investigation and charging in cases involving indictable offenses. IOWA CODE § 771.1 (1975).

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is different than NAC

This standard recommends that grand jury indictment not be required for initiation of any criminal proceedings. The Commission states that the grand jury procedure is costly, intricate, and ineffective as a screening device, and views the preliminary hearing as a more viable alternative. Therefore, the Commission advocates a system in which prosecutions proceed primarily on preliminary hearing findings. The grand jury would remain available in exceptional cases.

Under the Iowa practice, the county attorney information provisions allow the prosecutor to use the preliminary hearings as an alternative to grand jury indictment. However, in principle, the CODE does not recognize the preliminary hearing as an alternative to grand jury indictment.

NAC COURTS STANDARD 4.5 PRESENTATION BEFORE JUDICIAL OFFICER FOLLOWING ARREST

RELATED IOWA STANDARD 4.6 PRESENTATION BEFORE JUDICIAL OFFICER FOLLOWING ARREST

When a defendant has been arrested and a citation has not been issued, the defendant should be presented before a judicial officer within 6 hours of the arrest.
At the initial appearance, the judicial officer should have the authority, upon showing of justification, to remand the defendant to police custody for custodial investigation. Such remands should be limited in duration and purpose, and care should be taken to preserve the defendant's rights during such custodial investigation.

ICJS
When a person has been arrested under a warrant, the officer making the arrest must proceed as commanded by the warrant or as provided by law. IOWA CODE § 757.7 (1975). In all cases, the defendant must be taken before the magistrate without unnecessary delay. IOWA CODE § 757.7 (1975). Similiarly, in those situations involving an arrest without a warrant, the arrested person must be taken before a magistrate without unnecessary delay. IOWA CODE 758.1 (1975).

The Supreme Court of Iowa has interpreted the meaning of "without unnecessary delay." In **State v. Milford,** 186 N.W. 2d 560 (Iowa 1971), the Court refused to hold inadmissable a statement obtained after arrest but prior to appearance before a magistrate for arraignment. The Court stated that "[w]e have consistently held that failure to take an

accused immediately before a magistrate for an arraignment under Section 758.1 does not itself render a statement taken prior thereto inadmissable." The Court concluded that the delay was not unreasonable since the defendant was not being held for the sole purpose of obtaining a confession and there were other circumstances to be investigated before a proper charge could be determined. Therefore, delay does not itself violate due process or make a confession involuntary. Rather, it is one of the indicia of undue pressure. **State v. Hodge,** 105 N.W. 2d 613 (Iowa 1961).

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The Commission's standard does not preclude custodial investigation prior to initial presentation before a judicial officer. However, it does take the position that custodial investigation should not be used to justify delay in presentation. The Commission suggests that the defendant should be taken before a judicial officer within six hours of the arrest, and that the judicial officer should then determine whether custodial investigation is appropriate. This position conflicts with the ICJS practice, which permits custodial investigation prior to initial presentation before a magistrate.

NAC 4.5 contd.

At this appearance, the defendant should be advised orally and in writing of the charges against him, of his constitutional rights (including the right to bail and to assistance of counsel), and of the date of his trial or preliminary hearing.

ICJS

At the defendant's initial appearance, he must be informed of the offense with which he is charged, of his right to counsel in every stage of the proceedings, and must be allowed a reasonable time to send for counsel. The IOWA CODE § 761.1 (1975). The magistrate must set a date for preliminary examination or allow the defendant to waive the same. **Id.** If the defendant is indigent and is charged with an indictable offense, counsel must be appointed for preliminary examination. Op. Attny. Gen. Oct., **1964.** Bail must be determined if examination is adjourned. IOWA CODE § 761.5 (1975); **see also** Revised Criminal Code, Rule of Criminal Procedure 2.

Analysis

ICJS practice meets NAC Standard
ICJS principle is that same as NAC

NAC COURTS STANDARD 4.6 PRETRIAL RELEASE

RELATED IOWA STANDARD 4.7 PRETRIAL RELEASE

Adequate investigation of defendant's characteristics and circumstances should be undertaken to identify those defendants who can be released prior to trial solely on their own promise to appear. Release on this basis should be made wherever appropriate.

ICJS

All defendants are bailable before and after conviction except for murder in the first degree, kidnapping, and treason. IOWA CODE §§ 763.1, .2 (1975). Bailable defendants must be release on their personal recognizance, or upon the execution of an unsecured appearance bond unless the magistrate determines, in his discretion, that such release will not reasonably assure the appearance of the defendant. IOWA CODE § 763.17 (1975). Through pretrial release programs, background information and release recommendations

may be available to the magistrate. IOWA CODE § 217.28 (1975). In determining the appropriate conditions of release, the magistrate must consider:

1. the nature and circumstances of the offense charged;
2. the defendant's family ties;
3. employment;
4. financial conditions;
5. character and mental condition;
6. the length of his residence in the community;
7. his record of convictions;
8. his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

See also Revised Criminal Code, ch.2 §§1101, 1102.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

Although statutory provisions permit extensive investigation of the defendant's characteristics and circumstances prior to release, actual pretrial release investigation and recommendation programs have not been implemented on a statewide basis.

NAC 4.6 contd.

If a defendant cannot appropriately be released on this basis, consideration should be given to releasing him under certain conditions, such as the deposit of a sum of money to be forfeited in the event of nonappearance, or assumption of an obligation to pay a certain sum of money in the event of nonappearance, or the agreement of third persons to maintain contact with the defendant and to assure his appearance.

ICJS

If the defendant cannot be appropriately released on his own recognizance, or upon the execution of an unsecured appearance bond, the magistrate must impose alternative or additional conditions of release upon the defendant. Section 763.17(1) states that when the magistrate concludes that release on personal recognizance or upon execution of an unsecured appearance bond will not assure the appearance of the defendant, "...the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial, or, if no single condition gives that assurance, any combination of the following conditions:

a. Place the defendant in the custody of a designated person or organization agreeing to supervise him;
b. Place restrictions on the travel, association or place or abode of the defendant during the period of release;
c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash or other qualified security of a sum not to exceed ten percent of the amount of the bond, such deposit to be returned to the defendant upon the performance of the appearances as required in Section 766.1;
d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu thereof, provided that, except as provided in Section 763.2, bail initially given shall remain valid until final disposition of the offense. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase thereof and the defendant must provide the additional undertaking, written or cash, to secure his release.
e. Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Analysis
ICJS practice meets NAC Standard
ICJS principle is the same as NAC

NAC 4.6 contd.
Participation by private bail bond agencies in the pretrial release process should be eliminated.

ICJS
Under Section 763.11, private bond agencies may participate in the bail process.

Analysis
ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

NAC 4.6 contd.
In certain limited cases, it may be appropriate to deny pretrial release completely.

ICJS
Defendants who are charged with murder in the first degree, kidnapping for ransom, and treason are not bailable. IOWA CODE §§ 763.1, .2, .17 (1975); **but see** Revised Criminal Code, ch. 2 § 1101. Also, the court may, in its discretion, order a defendant who has given bail and has appeared for trial, to be committed to custody. IOWA CODE § 780.34 (1975).

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 4.7 NONAPPEARANCE AFTER PRETRIAL RELEASE

RELATED IOWA STANDARD 4.8 NONAPPEARANCE AFTER PRETRIAL RELEASE

Substantive law should deal severely with offenders who fail to appear for criminal proceedings. Programs for the apprehension and prosecution of such individuals should be established to implement the substantive law.

1. Substantive Law Concerning Failure to Appear. The substantive law regarding failure to appear after pretrial release should have the following features:
   a. The felony of failing to appear should be defined as the failure to appear on the designated date by an individual who, after receipt of a citation or summons to appear in court or after arrest, has been released from custody or has been permitted to continue at liberty upon the condition that he will appear subsequently in connection with the criminal action or proceeding, and who has had due notice of the date on which his appearance is required.

ICJS
The substantive law regarding failure to appear after pretrial release provides as follows:

763.19 Failure to appear - penalty. Any defendant who, having been released pursuant to Sections 763.17 and 763.18 willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for his release, if he was released in connection with a charge which constitutes a felony, or while

awaiting sentence or pending appeal after conviction of any public offense, shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five thousand dollars. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any pubiic offense not a felony, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars. **See also** Revised Criminal Code, ch. 2 § 1102 (7).

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 4.7 contd.

b. It should be an affirmative defense to the felony of failing to appear that the defendant was prevented from appearing at the specified time and place by unavoidable circumstances beyond his control.

ICJS

Under Section 763.19, a willful intent to not appear is an element of the offense. Thus, where the defendant is prevented from appearing by unavoidable circumstances beyond his control, the element of a willful intent is missing and the offense of failure to appear has not been committed. The burden is placed upon the prosecution to establish a willful intent.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

The Commission recognizes the principle that a defendant should not be convicted for failure to appear when such failure was unavoidable. In practice, the Commission places the burden of establishing the unavoidable circumstances on the defendant. While this principle is recognized in the ICJS, the burden is on the prosecution to prove that the defendant willfully intended to not appear on the designated date.

NAC 4.7 contd.

c. With the exception of capital cases, the penalty provided for the felony of failing to appear should be the same as the penalty for the substantive crime originally charged.

ICJS

The penalty for the offense of failure to appear is not the same as the penalty for the substantive crime originally charged. Rather, Section 763.19 sets specific penalties for the offense.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

NAC 4.7 contd.

2. Programs for Apprehension of Fugitives. Programs for the implementation of Standard 4.7(1) should have the following features:

a. If a defendant fails to appear at any scheduled court appearance, the trial court immediately should issue a warrant for his arrest for the offense of failing to appear and immediately should notify the prosecutor.

ICJS

If a defendant fails to appear when his personal appearance is required, the trial court may issue an order directing the clerk, on application of the county attorney, to issue a warrant for the arrest of the defendant. See IOWA CODE §§ 767.1, 775.3, 789.4.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 4.8 PRELIMINARY HEARING AND ARRAIGNMENT

RELATED IOWA STANDARD 4.9 PRELIMINARY HEARING AND ARRAIGNMENT

If a preliminary hearing is held, it should be held within 2 weeks following arrest.
If a defendant intends to waive his right to a preliminary hearing, he should file a notice to this effect at least 24 hours prior to the time set for the hearing.

ICJS

If the offense charged is a felony or an indictable misdemeanor, the magistrate, after waiting a reasonable time for the defendant to obtain counsel, must immediately proceed with the preliminary examination, or allow the defendant to waive the same. IOWA CODE § 761.1 (1975). Concerning the time period within which the hearing must be held, the Supreme Court has stated that Section 761.1 contemplates "... prompt action by the magistrate in holding a preliminary examination or allowing the accused to waive the same." **State v. Mays,** 204 N.W. 2d (Iowa 1973); **see also** Revised Criminal Code, Rules of Criminal Procedure 4,8.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 4.8 contd.

Evidence received at the preliminary hearing should be limited to that which is relevant to a determination that there is probable cause to believe that a crime was committed and that the defendant committed it.

ICJS

If it appears from the preliminary examination that a public offense, triable on indictment, has been committed, and there is sufficient reason for believing the defendant is guilty of the offense, the magistrate must order that the defendant be held to answer. IOWA CODE § 761.18 (1975). The purpose of this examination is to determine whether there is probable cause to believe that the defendant committed an offense and whether sufficient evidence exists to hold the accused for trial. **State v. Evans,** 169 N.W. 2d 200 (Iowa 1969); **State v. Washington,** 160 N.W. 2d 337 (Iowa 1968); **see also** Revised Criminal Code, **supra.**

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

The Commission advises against the use of the preliminary hearing as a discovery device. Rather, it proposes extensive discovery under Standard 4.9 and limitation of the preliminary hearing to the finding of probable cause. Under the ICJS practice, the preliminary examination may serve as a discovery device if the magistrate does not limit the scope of examination.

NAC 4.8 contd.

Arraignment should be eliminated as a formal step in criminal prosecution. The initial charging document, as amended at the preliminary hearing should serve as the formal charging document for trial.

ICJS

The defendant must be promptly arraigned after an indictment is found. IOWA CODE § 775.1 (1975). This provision applies to cases in which the grand jury has found an indictment and to those in which the county attorney has filed an information. IOWA CODE § 769.13 (1975). At the arraignment, the court must inform the defendant that he has the right to counsel and that counsel will be provided if he is indigent. IOWA CODE § 775.4 (1975). Also, the court must read the indictment to the defendant and ask him to enter a plea. IOWA CODE § 775.8 (1975); **see also** Revised Criminal Code, **supra.**

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is significantly different than NAC

Under the NAC system, upon arrest the defendant must be taken before a magistrate to be informed of the charges and to have defense counsel appointed. The Commission views the arraignment as a repetition of this earlier procedure. Under the ICJS, an arraignment must be held in all cases. However, in cases in which an indictment has been found or an information has been filed and the defendant has not been arrested, the arraignment may serve as the initial source of information on the charge and the intital opportunity to plead. Thus, the arraignment may not be a repetition of previous proceedings.

NAC COURTS STANDARD 4.9
PRETRIAL DISCOVERY

RELATED IOWA STANDARD
4.10 PRETRIAL DISCOVERY

The prosecution should disclose to the defendant all available evidence that will be used against him at trial. Such disclosure should take place within 5 days of the preliminary hearing, of the waiver of the preliminary hearing, or apprehension or service of summons following indictment, whichever form the initiation of prosecution takes in the particular case. The evidence disclosed should include, but should not limit to, the following:

1. The names and addresses of persons whom the prosecutor intends to call as witnesses at the trial;
2. Written, recorded, or oral statements made by witnesses whom the prosecutor intends to call at the trial, by the accused, or by any codefendant;
3. Results of physical or mental examinations, scientific tests, and any analyses of physical evidence, and any reports or statements of experts relating to such examinations, tests, or analyses; and
4. Physical evidence belonging to the defendant or which the prosecutor intends to introduce at trial.

The prosecutor should disclose, as soon as possible, any evidence within this description that becomes available after initial disclosure.
The prosecutor also should disclose any evidence or information that might reasonably be regarded as potentially valuable to the defense, even if such disclosure is not otherwise required.

ICJS

When an offense is prosecuted on information, the names of the witnesses and a summary of their testimony must be endorsed upon the information. IOWA CODE §§ 769.1, .4 (1975). A copy of the information and the minutes of evidence must be delivered to the accused at or prior to arraigment. IOWA CODE § 769.10 (1975).

When an offense is prosecuted on indictment, the names of the witnesses on whose evidence it was found must be endorsed upon the information and the minutes of their

evidence must be filed with the clerk of court. IOWA CODE § 772.3 (1975). On request, the clerk must furnish the defendant with a copy of the minutes. IOWA CODE § 772.4 (1975).

If the indictment or the information together with the minutes of evidence fails to inform the defendant of the offense sufficiently to enable him to prepare his defense, the court may on its own motion, and must on the defendant's motion, order the county attorney to provide a bill of particulars containing the necessary information. IOWA CODE § 773.6 (1975). Also, the court may order the county attorney to furnish a bill of particulars when it believes it to be in the interests of justice to supply the defendant with facts not set out in the indictment, information, or the minutes of evidence. **Id.**

In **State v. Eads,** 166 N.W. 2d 776 (Iowa 1969), the Iowa Supreme Court stated that "... courts have the inherent power to compel disclosure of evidence by the State when necessary in the interests of justice." Under this decision, the defendant may move for the disclosure of physical evidence that the State expects to use at trial and the technical analysis thereof. The Court refused disclosure of witness statements absent a showing of necessity. The Court also refused disclosure of police investigatory reports. However, in **State v. Deando,** 218 N.W. 2d 649 (Iowa 1974), the Court ruled that police reports relevant to the testimony of a witness were discoverable.

The defendant may move for the disclosure of exculpatory evidence known to the State. See **State v. Peterson,** 219 N.W. 2d 665 (Iowa 1974). In **Brady v. Maryland,** 373 U.S. 83 (1963), the Unites States Supreme Court held that "... the suppression by the prosecutor of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to sentencing, irrespective of the good or bad faith of the prosecution."

The defendant may also take discovery depositions. Section 781.10 provides that the defendant may examine witnesses in the same manner and with like effect as in civil actions. This section has been construed as giving the defendant the right to take discovery depositions of the State's witnesses. See **State v. Peterson, supra.** Similarly, Section 781.11 allows the defendant to perpetuate testimony in the same manner, and with like effect, as in civil actions. **See also** Revised Criminal Code, Rules of Criminal Procedure 12, 13.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

This standard requires discovery of all evidence to be used against the defendant at trial, of any evidence that might reasonably be regarded as valuable to the defense, and of any evidence that becomes available after initial disclosure. Only investigatory reports and evidence not intended to be introduced at trial are excluded, and then only if not exculpatory or not leading to exculpatory evidence. The purpose of these extensive discovery requirements is to facilitate the administrative disposition of cases and to reduce the number of cases that would otherwise be tried. The ICJS discovery provisions are extensive. However, their purpose is to insure fairness at trial; the provisions are not specifically designed to facilitate the administrative disposition of cases.

NAC 4.9 contd.

The defendant should disclose any evidence defense counsel intends to introduce at trial. Intent to rely on an alibi or an insanity defense should be indicated. Such disclosure should take place immediately following the resolution of pretrial motions or, in the event no such motions are filed, within 20 days of the preliminary hearing, the waiver of the preliminay hearing, or apprehension or service of summons following indictment, or whichever form the initiation of prosecution has taken in the case. No disclosure need be made, however, of any statement of the defendant or of whether the defendant himself will testify at trial.

ICJS

Limited discovery is granted to the prosecution. When the defendant intends to show insanity or an alibi as a defense, he must, at least four days prior to trial, file a written notice of his intent to do so. IOWA CODE § 777.18 (1975). The notice must set forth the

names of the witnesses, their addresses and occupations, and a summary of their testimony. **Id; but see** Revised Criminal Code, Rule of Criminal Procedure 13 (3).

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 4.9 contd.

The trial court may authorize either side to withhold evidence sought if the other side establishes in an ex parte proceeding that a substantial risk of physical harm to the witness or others would be created by the disclosure and that there is no feasible way to eliminate such a risk.
Evidence, other than the defendant's testimony, that has not been disclosed to the opposing side may be excluded at trial unless the trial judge finds that the failure to disclose it was justifiable. The desire to maximize the tactical advantage of either the defendant or the prosecution should not be regarded as justification under any circumstances. Where appropriate, a person failing to disclose evidence that should be disclosed should be held in contempt of court.

ICJS
Iowa criminal procedure does not specifically provide an ex parte proceeding in which substantial risk of harm to the witness or others may be established as a reason for denying disclosure. Such matters may be raised in the resistance to the motion for discovery and asserted at the hearing on the motion. Failure to comply with a court order for discovery may be punished as a contempt. See IOWA CODE § 665.2 (1975).

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is different than NAC principle

NAC COURTS STANDARD 4.11 PRIORITY CASE SCHEDULING

RELATED IOWA STANDARD 4.12 PRIORITY CASE SCHEDULING

Immediately following the preliminary hearing, the return of an indictment, or the waiver of such proceedings, the prosecutor should advise the court administrator of those cases that are to be tried and that should be given priority in assigning cases for trial.

Cases should be given priority for trial where one or more of the following factors are present:

1. The defendant is in pretrial custody;
2. The defendant constitutes a significant threat of violent injury to others;
3. The defendant is a recidivist;
4. The defendant is a professional criminal, that is, a person who substantially derives his livelihood from illegal activities; or
5. The defendant is a public official.

In addition, the prosecutor should consider in setting priorities for trial the age of the case, and whether the defendant was arrested in the act of committing a felony.

ICJS
The ICJS neither provides systemwide standards for scheduling criminal cases nor requires the trial courts to establish such standards. However, the system does permit the local jurisdictions to formulate scheduling procedures and priorities. Administrative rule making authority for the district courts is vested primarily with the chief judge and the district court judges. See R.C.P. 181.2, 372, 373. This authority allows the judges to establish case scheduling standards. The presiding judges, the clerks of court, the county attor-

neys, or the court administrators may be delegated substantial responsibility for scheduling criminal cases and for formulating scheduling priorities.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 4.12 CONTINUANCES

RELATED IOWA STANDARD 4.13 CONTINUANCES

Continuances should not be granted except upon verified and written motion and a showing of good cause.

ICJS
The Rules of Civil Procedure apply to the continuance of criminal actions. IOWA CODE §780.2(1975). Under these Rules, a motion for continuance must be filed after the grounds for the motion become known. R.C.P. 182. The court, in its discretion, may grant the motion for any cause which satisfies it that "... justice will be more nearly obtained." See R.C.P. 183 (a); **State v. Cowman,** 212 N.W. 2d 420 (Iowa 1973). The cause cannot have arisen through the fault or negligence of the moving party. **Id.** Motions for continuances based on the absence of evidence must be supported by affidavit. R.C.P. 183 (b). Specific provisions exist for continuances based on the need for trial preparation time, for additional testimony, and for time to prepare for cross-examination of alibi or insanity defenses. See IOWA CODE §§ 780.3; 780.12; 777.18 (1975); **see also** Revised Criminal Code, Rule of Criminal Procedure 10.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 4.13 JURY SELECTION

RELATED IOWA STANDARD 4.14 JURY SELECTION

Questioning of prospective jurors should be conducted exclusively by the trial judge. His examination should cover all matters relevant to their qualification to sit as jurors in the case on trial. Attorneys for the prosecution and defense should be permitted to submit questions to the judge to be asked of the jurors concerning matters not covered by the judge in his examination. The judge should put such questions to the jurors unless they are irrelevant, repetitive, or beyond the scope of proper juror examination.

ICJS
Questioning of prospective jurors is not conducted exclusively by the trial judge. The State and the defense have the right to conduct their own examination in order to enable them to select a qualified and competent jury. **Elkin v. Johnson,** 148 N.W. 2d 442 (Iowa 1967). The scope of the voir dire examination is within the trial court's discretion. **Id.**

Analysis
ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

The Commission states that the defendant is entitled to an unbiased jury; he is not enti-

tled to a jury biased in his favor. It is the Commission's position that questioning of prospective jurors by the judge and allowing counsel to submit questions through the court adequately protects this right. In addition, the Commission believes that this procedure limits voir dire examination to its appropriate function and provides substantial timesavings.

NAC 4.13 contd.

The number of peremptory challenges should correspond to the size of the jury and should be limited to multiple defendant cases. The prosecution should be entitled to the number of challenges equal to the total number of which the defendants are entitled.

ICJS

If the offense charged is or may be punishable with imprisonment for life, the State and the defendant each have the right to peremptorily challenge eight jurors and must strike two jurors. Iowa Code §779.11(1975); **see also** Revised Criminal Code, Rule of Criminal Procedure 17. If the offense charged is any other felony, the State and the defendant have the right to peremptorily challenge four jurors and must strike two. **Id.** If a misdemeanor is charged, the State and the defendant have two peremptory challenges and must strike two. **Id.**

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 4.14
JURY SIZE AND COMPOSITION

Juries in criminal prosecutions for offenses not punishable by life imprisonment should be composed of less than 12 but of at least six persons. If a 12-member jury has been seated, a reduction in jury size during the course of a trial to not less than 10 members should be permitted where a jury member has died or is discharged for illness or other good cause. Corresponding decreases in size should be permitted in cases where there were less than 12 jurors initially, but no decrease should be permitted that will result in a jury of less than six persons.

ICJS

In cases triable on indictment or county attorney information, the jury is composed of twelve persons. IOWA CODE § 779.1 (1975); **see also** Revised Criminal Code, Rule of Criminal Procedure 17. Six persons constitute the jury in cases involving nonindictable misdemeanor offenses. IOWA CODE § 762.24 (1975); Revised Criminal Code, Rule of Criminal Procedure 48.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is significantly different than NAC

To save time and money, the Commission recommends reducing the number of jurors traditionally used in criminal prosecutions. It believes that a jury of six persons adequately assures community representation, group deliberation, and freedom from outside intimidation. The ICJS practice achieves time and money savings when the case involves a nonindictable misdemeanor. However, in the trial of an indictable offense, the savings is not achieved. Here, the jury must be composed of twelve persons.

NAC 4.14 contd.

Persons 18 years of age and older should not be disqualified from jury service on the basis of age.

ICJS

To be competent for jury service, a person must be a qualified elector of the State. A person becomes a qualified elector at age 18. See U.S. Constitution, Amendment 26.

Analysis

ICJS practice meets NAC Standard
ICJS principle is the same as NAC

NAC COURTS 4.15
TRIAL OF CRIMINAL CASES

In every court where trials of criminal cases are being conducted, daily sessions should commence promptly at 9 a.m. and continue until 5 p.m. unless business before the court is concluded at an earlier time and it is too late in the day to begin another trial. Jury selection in the next case should start as soon as the jury in the preceding case has retired to consider a verdict.

ICJS

There are no systemwide standards for the commencement and adjournment of daily trial court sessions. However, the chief judge and the presiding judges of each of the judicial district have the authority to formulate administrative rules for the trial courts within the district. See R.C.P. 372, 377. The presiding judge of the trial court exercises great discretion in conducting actual trial sessions.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC 4.15 contd.

All criminal trials should conform to the following:

1. Opening statements to the jury by counsel should be limited to a clear, nonargumentative statement of the evidence to be presented to the jury.

ICJS

After the jury has been impaneled and sworn, the clerk or county attorney must read the indictment and the defendant's plea. IOWA CODE § 780.5 (1975); Revised Criminal Code, Rule of Criminal Procedure 18. The county attorney then may briefly state his defense and the evidence by which he expects to sustain it. **Id.**

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 4.15 contd.

2. Evidence admitted should be strictly limited to that which is directly relevant and material to the issues being litigated. Repetition should be avoided.

ICJS

At the conclusion of the opening statements, the state and the defense may offer evidence. IOWA CODE § 780.5 (1975); Revised Criminal Code, Rule of Criminal Procedure 18. Generally, the admission of evidence is in the trial court's discretion. The fact that evidence is not directly relevant to the elements of the offense does not render it inadmissible. **State v. Lyons,** 210 N.W. 2d 543 (Iowa 1973). Evidence is admissible if it has a legitimate bearing on any point in issue. **State v. Theodore,** 150 N.W. 2d 612 (Iowa 1967).

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 4.15 contd.

3. Summations or closing statements by counsel should be limited to the issues raised by evidence submitted during trial and should be subject to time limits established by the judge.

ICJS

When the evidence in concluded, counsel may make closing arguments to the jury. IOWA CODE § 780.6 (1975); Revised Criminal Code, Rule of Criminal Procedure 18. The facts and inferences stated in the arguments must be based on the evidence in the record. The CODE does not establish time limits for summations.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 4.15 contd.

4. Standardized instructions should be utilized in all criminal trials as far as is practicable. Requests by counsel for specific instructions should be made at, or before, commencement of the trial. Final assembling of instructions should be completed by support personnel under the court's direction prior to the completion of the presentation of the evidence.

ICJS

The trial court must charge the jury in writing stating the law of the case. IOWA CODE § 780.9 (1975); Revised Criminal Code, Rule of Criminal Procedure, 18. Counsel may request specific instructions at the close of the evidence. See R.C.P. 196. The court must then provide counsel with a copy of its instructions in their final form and grant a reasonable time for objections. **Id.** The objections must be ruled on before arguments to the jury. Upon the conclusion of the closing arguments, the court must read the instructions to the jury.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

Jury sentencing should be abolished in all situations. The trial judge should be required to impose a sentence that, within limits imposed by statute, determines the maximum period a defendant's liberty may be restricted. Within this maximum period, other agencies may be given the power to determine the manner and extent of interference with the offender's liberty. Continuing jurisdiction in the trial court over the offender during the sentence imposed is not inconsistent with this standard.

ICJS

The jury's function is limited to trying the questions of fact and rendering verdict. Sections 780.23, 785.1. It must be discharged prior to the sentencing of the defendant. Section 785.17.

Presentence

Upon a plea or verdict of guilty, the court must set a time for pronouncing judgment. Section 789.2. Pronouncement of judgment may be deferred for the purpose of conducting a presentence investigation. The court must receive from the State and the defendant any information which is relevant to the question of sentencing. Section 789A.3. Information from other sources may be considered, and a presentence investigation must be made if the offense is a felony. **Id.**

Deferred Judgment

In appropriate cases, the court may, with the defendant's consent, defer judgment and place the defendant on probation. Section 789A.1. The court itself may fix the term of probation; however, its length cannot exceed five years if the offense is a felony and two years if the offense is a misdemeanor. Section 789A.2. Alternatively, the court may order the defendant placed under the supervision of the chief parole officer, in which case the term of probation is determined by the board of parole. **Id.** In either situation, the length of probation cannot be less than one year if the offense is a misdemeanor and two years if the offense is a felony. **Id.** The court retains the authority to reduce the length of probation if it determines that the purposes of probation have been fulfilled. Section 789A.6.

Mandatory Sentencing

The offense may be punishable by a mandatory sentence. See, **e.g.,** Section 690.2. Upon a plea of guilty or verdict of guilty, the court must impose the sentence required by statute.

Fixed-Term Sentencing

The offense may be punishable by imprisonment in the penitentiary for life or any term of years. See **e.g.,** Section 708.2. Upon a plea or verdict of guilty, the court may determine the term of imprisonment in its discretion.

Indeterminate Sentencing

When the offense is a felony, other than escape, treason, murder, or any other crime the penalty for which is life imprisonment, the indeterminate sentencing provisions apply. See Section 789.13. Under these provisions, the court may impose a sentence of confinement in the penitentiary, or men's or women's reformatory. However, it cannot fix or limit the term of imprisonment. The Board of Parole has this authority. After commitment, the Board has the power to parole persons convicted of a crime and committed to either the penitentiary or the men's or women's reformatory. Section 247.5. The term of imprisonment cannot exceed the maximum term provided by law for the offense. Section 789.13.

Discretionary Sentencing

The offense may be punishable by imprisonment in the penitentiary, or by fine, or by imprisonment in the county jail, or both. See Section 789.15. Upon a plea or verdict of guilty, the court may impose an indeterminate sentence or a term of imprisonment in the county jail.

Cumulative Sentencing

When the defendant is convicted of two or more offenses, the court may impose cumulative sentences.

Suspended Sentence

At the time of or after sentencing, the court may suspend the sentence and place the de-

fendant on probation. Section 789A.1(2). The provisions governing deferred judgment probation also govern suspended sentence probation.

Analysis

ICJS practice is different that NAC Standard
ICJS principle is different than NAC

The Commission recognizes that correctional agencies are capable of determining the disposition that is best suited to changing the defendant's behavior and protecting society's interests. However, it rejects the notion that the courts are incapable of making decisions of comparable quality. Therefore, the Commission recommends that both the courts and correctional agencies have a substantial role in the sentencing process. The value of judicial input is recognized in the deferred judgment and suspended sentence provisions of the ICJS. However, the indeterminate sentence provisions place the sentencing function almost entirely under the control of the Board of Parole. The Revised Criminal Code contains significant sentencing changes. See Revised Criminal Code, ch. 3.

NAC COURTS STANDARD 6.1
UNIFIED REVIEW PROCEEDING

RELATED IOWA STANDARD
6.1 THE NECESSITY OF APPELLATE REVIEW
6.3 DEFENDANTS' APPEALS
6.4 PROSECUTION APPEALS

Every convicted defendant should be afforded the opportunity to obtain one full and fair judicial review of his conviction and sentence by a tribunal other than that by which he was tried or sentenced.

ICJS

As a matter of right, the defendant may appeal any judgment, action, or decision of the district court in a criminal case involving an indictable offense. Section 793.1. An appeal can only be taken from final judgment. In criminal cases, final judgment means sentence. **State v. Coughlin,** 200 N.W. 2d 525 (Iowa 1972); **see also** Revised Criminal Code, ch. 2 § 1401.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is the same as NAC

This standard asserts that the defendant has a right only to a single, unified review. Under ICJS procedures, multiple reviews may be available.

NAC 6.1 contd.

Review in that proceeding should extent to the entire case, including:
1. The legality of all proceedings leading to the conviction.

ICJS

In criminal cases, the Supreme Court is a court for the correction of errors at law. As such, the Court can review on appeal the legality of the proceedings leading to conviction; however, the review is not de novo. The verdict of the jury is binding upon the Court unless it is without substantial support in the record or is clearly against the weight of the evidence. **State v. Galavan,** 181 N.W. 2d 147 (Iowa 1970). Also, the trial court's findings of fact are binding unless the findings are not supported by substantial evidence or are not justified as a matter of law. **Benton v. State,** 199 N.W. 2d 56 (Iowa 1972). To insure review, the defendant usually must preserve the error in the trial record.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 6.1 contd.

2. The legality and appropriateness of the sentence.

ICJS
The scope of the Supreme Court's review extends to the legality and appropriateness of sentence. See Section 793.18. The Court may review the sentence to determine whether the trial court followed statutory sentencing provisions. See **State v. Johnson,** 196 N.W. 2d 563 (Iowa 1972). Also, the Court may review the sentence to determine whether it is too severe. However, the Court only reduces punishment where it finds that the trial court clearly abused its discretion. **Id.** Generally, the Court cannot increase punishment. Section 793.18; **see also** Revised Criminal Code, ch. 2 § 1420.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 6.1 contd.

3. Matters that have heretofore been asserted in motions for new trial.

ICJS
The ICJS preserves the motion for a new trial. The motion must be made before the trial court renders judgment. Section 787.2; Revised Criminal Code, Rule of Criminal Procedure 23(2). Therefore, the matters that are asserted in the motion are initially presented to the trial court. The Supreme Court can only review these matters after the trial court has heard and decided the motion and has rendered final judgment in the case.

Analysis
ICJS practice is inconsistent with NAC Standard
ICJS principle is similar to NAC

The Commission suggests that the review process absorb the new trial motion proceedings. The purpose of this change is to eliminate the delay from verdict to appeal that is caused by the trial court's determination of the motion. This delay is present in the ICJS practice.

NAC 6.1 contd.

4. Errors not apparent in the trial record that heretofore might have been asserted in collateral attacks on a conviction or sentence.

ICJS
Generally, matters not raised by the defendant during trial cannot be effectively asserted for the first time on appeal. **State v. Russell,** 216 N.W. 2d 335 (Iowa 1974); **State v. Nepple,** 211 N.W. 2d 330 (Iowa 1973). Those questions or objections that, for reasons of strategy or otherwise, were not presented to the trial court are usually considered on appeal to have been waived when the defendant was represented by counsel. **State v. Galavan,** 181 N.W. 2d 147 (Iowa 1970). Under Section 793.18, the Court may consider, as a matter of grace, points not raised below and may review the record to determine whether the

defendant received a fair trial. See, **e.g.**, **State v. Cowman,** 212 N.W. 2d (Iowa 1973); **State v. Bedell,** 220 N.W. 2d 200 (Iowa 1974); **State v. Bynes,** 150 N.W. 2d 280 (Iowa 1967). However, the Court's scope of review generally does not extend to errors not apparent in the trial record. See Revised Criminal Code, ch. 2 § 1420.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is similar to NAC

The Commission's goal is to bring finality to criminal convictions. To achieve this, it recommends that existing multiple review practices be replaced by a single, unified review proceeding. In this proceeding, the role of the reviewing court is emphasized. This court is given the duty of affirmatively discovering and disposing of all arguable defects in the trial proceedings. The Iowa Supreme Court's scope of review is not this extensive. Generally, the Court reviews only those issues initially raised in the trial court. A purpose of this requirement is to encourage the immediate correction of errors by the trial court itself, thereby eliminating the need for appellate review. Thus, the ICJS practice emphasizes the role of the trial court in bringing finality to criminal convictions. However, the practice does require multiple and fragmented review to insure fairness in all cases.

NAC COURTS STANDARD 6.2
PROFESSIONAL STAFF

RELATED IOWA STANDARD
6.7 ELIMINATION OF PRE-APPEAL SCREENING
6.9 PROFESSIONAL STAFF

The reviewing court should have a full-time professional staff of lawyers, responsible directly to the judges, to perform the following functions in review of criminal cases:

1. Monitoring. The staff should affirmatively monitor each case to insure that the court's rules are complied with and that there is no unnecessary delay in the review process.

2. Shaping the Record. The full trial transcript should be expeditiously provided the reviewing court, and the staff should take action to insure that those portions of transcripts, trial court papers, and other matters that are essential to a full and fair adjudication of the issues are put before the judges.

3. Identification of Issues. The staff should take affirmative steps to discover all arguable issues in the case, even though not asserted by defendant and not apparent on the record, so that all matters that might be asserted later as a basis for further review can be considered and decided in the initial review proceeding.

4. Screening. The staff should review all cases before thay are considered by the judges and recommend appropriate procedural steps and disposition; the staff should identify tentatively those cases that contain only insubstantial issues and should prepare recommended dispositional orders so as to permit the court to dispose of them with a minimum involvement of judicial time, thereby leaving for fuller judicial consideration those cases of arguable merit.

The function of this staff should be to supplement rather than replace the work of attorneys representing the prosecution and the defendant in each case.

ICJS

The Court Administrator of the Judicial Department and his staff of attorneys perform numerous support activities for the Iowa Supreme Court. Among these activities are the following: monitoring cases to assure that procedural rules are complied with, reviewing and summarizing cases assigned for argument, preparing bench memoranda, and making recommendations to the court regarding the issues presented for appeal. Other Supreme Court support staff personnel include a Traffic Court Administrator, Executive Secretary, Supreme Court Clerk/Assistant Court Administrator, Code Editor, judicial statistician, statistical clerk, nine (9) law clerks and nine (9) secretaries (one for each justice), and part-time research assistants.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 6.3
FLEXIBLE REVIEW PROCEDURES

RELATED IOWA STANDARD
6.7 PRE-APPEAL SCREENING
6.10 FLEXIBLE REVIEW PROCEDURES

The reviewing court should utilize procedures that are flexible and that can be tailored in each case by the staff and the judges to insure maximum fairness, expedition, and finality through a single review of the trial court proceeding. The review procedures should provide for:

1. Receiving and considering new evidence bearing on the issue of guilt, or on the sentence, or on the legality of the trial court proceedings, which could not reasonably have been offered at trial.

ICJS
The Supreme Court's review procedures do not provide for receiving and considering new evidence. In criminal cases, the Court's scope of review is limited to the correction of errors at law. The trial court's findings of fact and the jury's verdict are usually binding upon the Court. See **ICJS Commentary 6.1.** New evidence may be heard by the trial court on a new trial motion and in postconviction relief proceedings. See Sections 663A.2, 787.3; Revised Criminal Code, Rule of Criminal Procedure 23(2).

Analysis
ICJS practice is inconsistent with NAC Standard
ICJS principle is different than NAC

NAC 6.3 contd.

2. Referral by the reviewing court to the trial judge of those issues that the reviewing court deems appropriate for the trial judge to decide.

ICJS
The Supreme Court has the authority to reverse the judgment of the trial court and remand the case for a new trial. See Section 793.18; Revised Criminal Code, ch. 2 § 1420. Also, Rule of Civil Procedure 342(e) states that the Supreme Court during appeal or pending application for appeal may remand the cause to the trial court which shall have jurisdiction for such specific proceedings as may be directed by the Supreme Court.

Analysis
ICJS practice is significantly different than NAC Standard
ICJS principle is different than NAC

The Standard recommends that issues requiring the trial judge's ruling prior to resolution by the reviewing court be referred to the trial court. The reviewing court retains jurisdiction and reviews as soon as the trial judge rules. The procedure is deemed necessary if the new trial motion is abolished. The Iowa Supreme Court does not retain jurisdiction when it reverses a case and remands for a new trial. Also, under Iowa appellate procedure, issues not previously decided by the trial court are not likely to be before the Supreme Court. See **ICJS Commentary 6.1.**

NAC 6.3 contd.

3. Means of identifying and deciding all arguable points in the case, whether or not apparent on the record, that heretofore have been grounds for a collateral attack on the conviction or sentence.

ICJS

The Supreme Court staff, clerks and research department review the cases on appeal and identify the arguable points. Generally, the Supreme Court reviews only those points initially raised in the trial court proceedings. See **ICJS Commentary 6.1.**

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

The Commission recommends that the reviewing court have a mechanism for discovering issues that have not been asserted at trial and assigned as error on appeal. Under this recommendation, the reviewing court would have the power to decide these issues. While the Iowa Supreme Court staff may identify such issues for the Court, the Court is not required to review and decide these issues.

NAC 6.3 contd.

4. Internal flexibility permitting the reviewing court to control written briefs and oral argument, including leeway to dispose of the case without oral argument or on oral argument without written briefs on some or all of the issues.

ICJS

The Rules of Civil Procedure and Court Rules relating to the "...printing and filing of arguments, petitions for rehearing, oral arguments, motions and resistances thereto, ..." apply in criminal cases insofar as consistent with the Code of Iowa. Supreme Court Rule 18. Under Rule of Civil Procedure 344(h), the Court has authority to control the length of briefs. Also, Court Rule 13 provides that if oral argument would not be of assistance or should be shortened, the Court may shorten or eliminate the argument.

Analysis

ICJS practice meets NAC Standard
ICJS principle is the same as NAC

NAC 6.3 contd.

5. Authority in the reviewing court, at its discretion, to require or permit the presence of the defendant at a review hearing.

ICJS

No provisions exist.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The purpose of this recommendation is to have the defendant available when new evidence is submitted in matters previously resolved by new trial motions or postconviction proceedings. As the Commission recommends that these proceedings be absorbed by the reviewing court, fairness requires the defendant's presence. Section 793.13 of the Code of

Iowa states that the presence of the defendant is not necessary, thereby implying that he may be present. However, the purpose of the Section is not to permit the defendant to hear new testimony or to testify himself.

NAC 6.3 contd.

6. Authority in the reviewing court, for stated reasons, to substitute for the sentence imposed any other disposition that was open to the sentencing court, if the defendant has asserted the excessiveness of his sentence as error; and

ICJS

See ICJS Commentary 6.1.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 6.3 contd.

7. Authority in the reviewing court, for stated reasons, to set aside the conviction or remand the case for a new trial, even though the conviction is supported by evidence and there is no legal error, if, under all the circumstances, the reviewing court determines that the conviction should not stand.

ICJS

The Supreme Court can overturn a conviction only when there is legal error, the trial court's findings of fact are incorrect, or the evidence is insufficient to support a finding of guilt. See **ICJS Commentary 6.1.**

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The Commission advocates granting the review court the authority to set aside a conviction simply to "prevent a miscarriage of justice." The purpose of this grant of authority is to eliminate the situation in which the reviewing court is forced to artifically find some legal error to overturn a conviction which it simply deems unjust.

NAC 6.3 contd.

The reviewing court should be given the authority to affirm a conviction despite the existence of error if to do so would not amount to a miscarriage of justice. This power should be exercised more frequently to speed finality.

ICJS

Under the harmless error rule, the Supreme Court may affirm a conviction despite the existence of error if such error was not prejudicial. See, **e.g., State v. Lamar,** 210 N.W. 2d 600 (Iowa 1973).

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 6.4
DISPOSITIONAL TIME IN REVIEWING COURT

RELATED IOWA STANDARD
6.8 EXPEDITING HANDLING OF APPEAL

In a reviewing court functioning under flexible procedures with a professional staff, a criminal case should be ready for initial action within 30 days after the imposition of sentence. Cases containing only insubstantial issues should be finally disposed of within 60 days of imposition of sentence. Cases presenting substantial issues should be finally disposed of within 90 days after imposition of sentence.

ICJS

Under Supreme Court Rules of Civil Procedure, from the date of the final judgment in the trial court, without extension, attorneys are allowed a maximum of:

1. Thirty days to file notice of appeal,
2. Seventy days to file reporter's transcript and have appeal docketed,
3. One hundred twenty days to file appellant's brief and appendix,
4. One hundred fifty days to file appellee's brief and record,
5. One hundred sixty-four days to submit a reply brief.

Neither the Court's Rules nor the Code specify dispositional times.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 6.5
EXCEPTIONAL CIRCUMSTANCES
JUSTIFYING FURTHER REVIEW

RELATED IOWA STANDARD
6.13 EXCEPTIONAL CIRCUMSTANCES
JUSTIFYING FURTHER REVIEW

After a reviewing court has affirmed a trial court conviction and sentence, or after expiration of a fair opportunity for a defendant to obtain review with the aid of counsel, the conviction and the sentence generally should be final and not subject to further judicial review in any court, State or Federal. Further review should be available only in the following limited circumstances:

1. An appellate court determines that further review would serve the public interest in the development of legal doctrine or in the maintenance of uniformity in the application of decisional and statutory law.

ICJS

After the Supreme Court has filed its opinion, a petition for rehearing may be filed if, in the opinion of the petitioner, the Court has overlooked or misapprehended any points of law or fact. See R.C.P. 350.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 6.5 contd.

2. The defendant asserts a claim of newly discovered evidence, which was not known to him and which could not have been discovered through the exercise of due diligence prior to conclusion of the unified review proceeding or the expiration of the time for seeking review, and which in light of all the evidence raises substantial doubt as to defendant's guilt; or

ICJS

Any person who has been convicted of, or sentenced for a public offense and who claims that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice may institute postconviction proceedings to secure relief. Section 663A.2. The district court in which the conviction or sentence took place hears and determines the proceeding. The judgment may be reviewed by the Supreme Court. Sections 663A.6, 663A.9.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

The Commission suggests that the "newly discovered evidence" attack on conviction be made a part of the review process. The ICJS recognizes the principle that a forum must be provided for those who can prove their innocence through the discovery of new evidence. However, in practice, the forum is not a part of the review process. Rather, the proceeding is a part of postconviction relief, which is sought in the court where the conviction was rendered.

NAC 6.5 contd.

3. The defendant asserts a claim of constitutional violation which, if well-founded, undermines the basis for or the integrity of the entire trial or review proceeding, or impairs the reliability of the fact-finding process at the trial.

Challenges to State court convictions made in the Federal courts should be heard by the U.S. courts of appeals.

ICJS

When a conviction or sentence was in violation of the United States Constitution or the Constitution of Iowa, the person so convicted or so sentenced may seek postconviction relief. Section 663A.2 (1). Similarly, Federal habeas corpus proceedings are available to litigate these Constitutional issues.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

It is the Commission's position that the defendant need not be afforded more than one opportunity to have trial proceedings reviewed for error or irregularity. Consequently, this section of the Standard provides for further review of only those constitutional rights that are so fundamental that violation of the same undermines the basis of the prosecution or the integrity of the proceeding. As examples of proper constitutional claims, the Commission suggests the unconstitutionality of the statute under which the prosecution was brought or the inadequacy of representation at trial. Also, the Commission views as proper any constitutional violations which endanger the reliability of the fact finding process. Examples are those involving involuntary confessions, unconstitutionally composed juries, and knowing use of perjured testimony. Excluded are claims raising the use of voluntary confessions made without Miranda warnings, illegally seized evidence, and other violations which do not affect the reliability of the fact finding process.

The ICJS recognizes the principle that a conviction based upon the kind of constitutional violations set out by the Commission cannot be allowed to stand. However, the procedures for resolving such violations are not a part of a further review proceeding and are broader in scope.

NAC COURTS STANDARD 6.6
FURTHER REVIEW WITHIN THE SAME COURT SYSTEM: PRIOR ADJUDICATION
NAC COURTS STANDARD 6.7
FURTHER REVIEW IN STATE OR FEDERAL COURT: PRIOR FACTUAL DETERMINATIONS
NAC COURTS STANDARD 6.8
FURTHER REVIEW IN STATE OR FEDERAL COURT: CLAIM NOT ASSERTED PREVIOUSLY

RELATED IOWA STANDARD
6.13 EXCEPTIONAL CIRCUMSTANCES JUSTIFYING FURTHER REVIEW

If, after initial review, a defendant seeks further review in the court system in which he was convicted, claiming a constitutional violation in the exceptional circumstances described in subparagraph 3 of Standard 6.5, the court should not adjudicate the claim if it has been adjudicated previously on the merits by any court of competent jurisdiction within that judicial system.

When a defendant seeks further review in either a State or a Federal court, claming a constitutional violation in the exceptional circumstances described in subparagraph 3 of Standard 6.5, determinations of basic or historical facts previously made by either a trial or reviewing court, evidenced by written findings, should be conclusive, unless the defendant shows that there was a constitutional violation that undermined the integrity of the factfinding process.

When a defendant seeks further review in either a State or a Federal court, claiming a constitutional violation in the exceptional circumstances described in subparagraph 3 of Standard 6.5, the court should not adjudicate the merits of the claim if in the trial court or the review proceeding it was not adjudicated because it was expressly disclaimed by the defendant or his lawyer, or it was not asserted at any point, or it was not asserted in accordance with valid governing rules of procedure, unless the defendant establishes a justifiable basis for not regarding his prior actions related to the claim as foreclosing further review.

ICJS
See NAC Courts Standard 6.5.

NAC COURTS STANDARD 6.9
STATING REASONS FOR DECISIONS AND LIMITING PUBLICATION OF OPINION

RELATED IOWA STANDARD
6.12 STATING REASONS FOR DECISIONS AND LIMITING PUBLICATION OF OPINIONS

A reviewing court should always state its reasons for its decision in a criminal case.

ICJS
The Supreme Court is required to specifically state its decision on each question upon which it passes. Section 684.13. If the question is deemed of sufficient importance, the decision must be accompanied by an opinion. Both the decision and accompanying opinion must be in writing and filed with the clerk. Section 793.22.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 6.9 contd.
As to insubstantial issues, the statement of reasons should be brief and designed only to inform the de-

fendant of what contentions the court considered and why, by citation to authority or otherwise, it rejected them.

ICJS

The decision of the Supreme Court must be accompained by an opinion only when the decisions are deemed of sufficient importance. Section 684.13. Under Rule of Civil Procedure 348.1, when the court determines that the judgment of the district court is correct, that the evidence in support of the jury verdict is sufficient, that the order of an administrative agency is supported by substantial evidence, that no error of law appears, and that the questions are not of sufficient importance to justify an opinion and are of no precedential value, it may affirm the judgment without opinion.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 6.9 contd.

A reviewing court should exercise control over publication of its statements of reasons. Statements of the reasons for decisions in cases involving only insubstantial issues normally should not be published. Even in cases involving substantial issues, publication should be allowed only if the opinion would be significant to the development of legal doctrine or if it would serve other important institutional purposes. Publications of opinions in more than 20 percent of all criminal cases disposed of by a reviewing court normally should be considered excessive.

ICJS

The Supreme Court may publish reports of official opinions or may direct that publication of the reports by a private publisher be considered the official reports. Section 684.13. If the Court considers that a decision is not of sufficient general importance to be published, it may so designate, and such decision will not be included in the reports. Section 684.15.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 7.1
JUDICIAL SELECTION

RELATED IOWA STANDARD
9.1 JUDICIAL SELECTION

The selection of judges should be based on merit qualifications for judicial office. A selection process should aggressively seek out the best potential judicial candidates through the participation of the bench, the organized bar, law schools, and the lay public.

Judges should be selected by a judicial nominating commission. Representatives from the judiciary, the general public, and the legal profession should organize into a 7-member judicial nominating commission for the sole purpose of nominating a slate of qualified candidates eligible to fill judicial vacancies. The Governor should fill judicial vacancies from this list.

ICJS

Vacancies in the Supreme Court and District Court are filled by appointment by the Governor from lists of nominees submitted by the appropriate judicial nominating commission. If the Governor does not make the appointment within thirty days, the Chief Justice must do so. Constitution of Iowa, Amendment of 1962, Section 1.5. The State Judicial Nomi-

nating Commission makes nominations to fill vacancies in the Supreme Court. The District Judicial Nominating Commission in the the appropriate judicial district makes nominations to fill vacancies in the District Court. The state commissioner of elections must notify the chariman of the appropriate nominating commission when a vacancy occurs in the Supreme or District Court. Section 46.12. The commission then considers each individual who is available to serve as judge and certifies the proper number of nominees to the Governor and the Chief Justice. Section 46.14. The nominees are chosen by an affirmative vote of a majority of the statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation.

Analysis
ICJS practice meets NAC Standard
ICJS principle is the same as NAC

NAC 7.1 contd.

With the exception of the judicial member, the members of the commission should be selected by procedures designed to assure that they reflect the wishes of the groups they represent. The senior judge of the highest court, other than the chief justice, should represent the judiciary and serve as the commission's presiding officer. The Governor should appoint three public members, none of whom should be judges or lawyers. No more than two should be of the same political affiliation or be from the same geographic vicinity. Three members from the legal profession should be appointed or elected by the membership of the unified bar association or appointed by the Governor when no such organization exists. A lawyer member of the commission should not be eligible for consideration for judicial vacancies until the expiration of his term and those of the other two lawyer members and three lay members serving with him. Commission members representing the public and the legal profession should serve staggered terms of three years.

ICJS

The senior judge of the Supreme Court, other than Chief Justice, serves as the chairman of the State Judicial Nominating Commission. The chairman of each District Judicial Nominating Commission is designated as the district judge of the judicial district who is senior in length of service. Constitution of Iowa, Amendment of 1962, Section 16. The Governor appoints, subject to Senate confirmation, one elector of each congressional district to the State Judicial Nominating Commission. Section 46.1. Also, the Governor appoints five electors of each judicial election district to the District Judicial Nominating Commission. Section 46.3. The resident members of the bar of each congressional district elect one elector of the district to the State Judicial Nominating Commission. Section 46.2. The resident members of the bar of each judicial election district elect five electors of the district to the District Judicial Nominating Commission. Section 46.4. A person serving on a judicial nomination commission is not eligible for nomination as a judge during the term for which he was elected or appointed to that commission. Section 46.14. The appointed and elected members of the judicial nominating commissions serve staggered terms of six years.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 7.1 contd.

For the appointment procedure to function efficiently, the commission staff should maintain an updated list of qualified potential nominees from which the commission should draw names to submit to the Governor. The commission should select a minimum of three persons to fill a judicial vacancy on the court, unless the commission is convinced there are not three qualified nominees. This list should be sent to the Governor within 30 days of a judicial vacancy, and, if the Governor does not appoint a candidate within 30 days, the power of appointment should shift to the commission.

ICJS

The judicial nominating commissions must certify to the Governor and the Chief Justice the proper number of nominees. Section 46.14. For a Supreme Court vacancy, three nominees must be submitted; for a District Court vacancy, two nominees must be submitted. Constitution of Iowa, Amendment of 1962, Section 15. If the Governor does not appoint a candidate within thirty days, the Chief Justice must make the appointment.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC COURTS STANDARD 7.2
JUDICIAL TENURE

RELATED IOWA STANDARD
9.2 JUDICIAL TENURE

Initial appointment should be for a term of 4 years for trial court judges and 6 years for appellate court judges. At the end of each term, the judge should be required to run in an uncontested election at which the electorate is given the option of voting for or against his retention. If the vote is in favor of retention, he should thereby become entitled to another term of the same length as the initial term.

ICJS

The initial term of office of judges of the Supreme Court and District Court is for one year after appointment and until January 1 following the next judicial election after the expiration of such year. Section 46.16. Appointed judges must stand for retention or rejection at the judicial election preceding the expiration of their initial terms. Section 46.20. Supreme Court justices who are retained at the election serve a regular term of eight years. Section 46.16. District Court judges who are retained serve a term of six years. At the end of their regular term all judges must stand for retention.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 7.1 contd.

A mandatory retirement age of 65 years should be set for all judges, subject to a provision enabling judges over that age to sit thereafter at the discretion of the presiding or other appropriate administrative judge by designation for limited periods of time.

ICJS

For judges of the Supreme and District Courts who were holding office on July 1, 1965, the mandatory retirement age is seventy-five years. For those appointed after July 1, 1965, the mandatory retirement age is seventy-two years. Section 605.24. Upon reaching the mandatory retirement age judges cease to hold office. id. Retired judges may be assigned temporary judicial duties by the Supreme Court. Section 605.25.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

Judges should be compensated at a rate that adequately reflects their judicial responsibilities. The salaries and retirement benefits of the Federal judiciary should serve as a model for the States.

ICJS

The salaries of Supreme Court justices and District Court judges are fixed by the General Assembly. Sections 605.1, 684.17. For example, the General Assembly has fixed the salaries as follows:

	1973-74 Fiscal Year	1976-77 Fiscal Year
1. District Court		
Chief Judge	$27,000	$34,072
District Court Judge	$26,500	$33,072
2. Supreme Court		
Chief Justice	$31,000	$40,000
Justice	$30,000	$39,000

The Judicial Retirement System is available to provide retirement benefits for judges. Under this system, judges may contribute a percentage of their basic salary to the judicial retirement fund. The State, counties, and cities contribute such additional amounts as are necessary to finance the system. The retirement fund is used to pay a monthly annuity to each participating judge upon his retirement at age sixty-five or upon disability. See Chapter 605A.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

The ICJS judicial compensation rates reflect the differing degrees of judicial responsibilities within the Iowa court system. The salary rates are not comparable to the Federal judiciary.

NAC 7.3 contd.

Where appropriate, salaries and benefits should be increased during a judge's term of office.

ICJS

Salaries and benefits may be increased by the General Assembly during a judge's term in office. See Sections 605.1, 684.17. The increases are on a general rather than individual basis.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

A judge should be subject to discipline or removal for permanent physical or mental disability seriously interfering with the performance of judicial duties, willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, or conduct prejudicial to the administration of justice.

ICJS

A judge is subject to retirement for permanent physical or mental disability which substantially interferes with the performance of his judicial duties, and to discipline or removal for persistent failure to perform his duties, habitual intemperance, willful misconduct in office, conduct which brings judicial office into disrepute, or substantial violation of the canons of judicial ethics. Section 605.27.

Analysis

ICJS practice meets the NAC Standard
ICJS principle is the same as NAC

NAC 7.4 contd.

A judicial conduct commission should be created, composed of judges elected by the judicial conference, lawyers elected by the bar, and at least two laymen, of different political persuasions, appointed by the Governor. Whatever the size of the commission, no more than one-third should be members of the judiciary.

ICJS

The Commission on Judicial Qualifications consists of one district court judge and two practicing attorneys appointed by the Chief Justice, and four electors of the state who are not attorneys, no more than two of whom belong to the same political party, appointed by the Governor subject to Senate confirmation. Section 605.26. The members serve staggered six year terms.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 7.4 contd.

The commission should be empowered to investigate charges bearing on judges' competence to continue on the bench, and should be empowered to take appropriate action regarding their conduct.

ICJS

The Commission on Judicial Qualifications investigates charges bearing on a judges' competence to determine whether grounds exist therefor. If a charge is groundless, the Commission must dismiss. If a charge is substantiated but does not warrant application to the Supreme Court for further action, the Commission may take informal action to remedy the problem. However, if a charge appears to be substantiated and if proved would warrant further action by the Supreme Court, the Commission must notify the judge and conduct a hearing. In accordance with the findings at the hearing, the Commission must either dismiss the charge or make application to the Supreme Court. See Section 605.29. If the Supreme Court finds that the application should be granted, it may retire, discipline or remove the judge. Section 605.30.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

The Commission recommends that the judicial conduct commission, rather than the Supreme Court, be empowered to discipline, remove, or retire a judge. While the Commission on Judicial Qualifications in Iowa has the authority to screen charges and take informal action in less serious cases, ultimate authority to retire, discipline or remove a judge rests with the Supreme Court. As such, the ICJS practice does not promote the principle of removing "...any danger that professional relations will impede effective implementation of the discipline and removal process."

NAC COURTS STANDARD 7.5
JUDICIAL EDUCATION

RELATED IOWA STANDARD
7.5 JUDICIAL EDUCATION

Every State should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extensive commitment of judge time, both as faculty and as participants of such programs, that will be necessary. Funds necessary to prepare, administer, and conduct the programs, and funds to permit judges to attend appropriate national and regional educational programs, should be provided.

1. All new trial judges, within 3 years of assuming judicial office, should attend both local and national orientation programs as well as one of the national judicial educational programs. The local orientation program should come immediately before or after the judge first takes office. It should include visits to all institutions and facilities to which criminal offenders may be sentenced.

2. Each State should develop its own State judicial college, which should be responsible for the orientation program for new judges and which should make available to all State judges the graduate and refresher programs of the national judicial educational organizations. Each State also should plan specialized subject matter programs as well as 2- or 3-day annual State seminars for trial and appellate judges.

3. The failure of any judge, without good cause, to pursue educational programs as prescribed in this standard should be considered by the judicial conduct commission as grounds for discipline or removal.

4. Each State should prepare a bench manual on procedural laws, with forms, samples, rule requirements and other information that a judge should have readily available. This should include sentencing alternatives and information concerning correctional programs and institutions.

5. Each State should publish periodically - and not less than quarterly - a newsletter with information from the chief justice, the court administrator, correctional authorities, and others. This should include articles of interest to judges, references to new literature in the judicial and correctional fields, and citations of important appellate and trial court decisions.

6. Each State should adopt a program of sabbatical leave for the purpose of enabling judges to pursue studies and research relevant to their judicial duties.

ICJS

The Iowa Supreme Court has established several education programs for Iowa judges. Administered by the Court Administrator, these programs provide orientation sessions for newly appointed judges and magistrates and continuing education sessions for full-time judges. The Iowa District Court Education Program conducts two District Court Conferences yearly. The purpose of the conferences is to continue education programs for full-time trial judges. The program is developed and administered by the American Academy of Judicial Education. The District Judges Training Project provides funding for district court judges to attend judicial education programs conducted by the National College of the State Judiciary and the National College of Juvenile Justice. This project enables selected judges to receive orientation and continuing judicial education courses. The Supreme Court also has established the Iowa Judicial Magistrate Training Program. The program conducts an annual school of instruction for judicial magistrates. The school is developed and administered by the National College of the State Judiciary under the direction and supervision of the Court Administrator.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC COURTS STANDARD 8.1
UNIFICATION OF THE STATE COURT SYSTEM

RELATED IOWA STANDARD
10.1 UNIFICATION OF THE COURT SYSTEM

State courts should be organized into a unified judicial system financed by the State and administered through a statewide court administrator or administrative judge under the supervision of the chief justice of the State supreme court.

ICJS
Chapter 603, **Iowa District Court,** establishes a unified judicial system. Financing of the system is divided between the State and the counties. The salaries of judges and magistrates are paid from state funds. Sections 605.1, 602.31, 602.54. Operation of the trial courts is financed through the counties. The trial courts are not administered through a statewide court administrator or administrative judge. However, the Supreme Court Administrator has the statutory authority to make reports and recommendations relating to the operation of the court system. Section 685.8.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

All trial courts should be unified into a single trial court with general criminal as well as civil jurisdiction. Criminal jurisdiction now in courts of limited jurisdiction should be placed in these unified trial courts of general jurisdiction, with the exception of certain traffic violations. The State supreme court should promulgate rules for the conduct of minor as well as major criminal prosecutions.

ICJS
The trial courts in Iowa are organized into a unified trial court known as the Iowa District Court. Section 602.1. All mayor's courts, justice of the peace courts, police courts, superior courts, and municiple courts were abolished on July 1, 1973. Section 602.36. The Iowa District Court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, and may exercise all the power usually possessed and exercised by trial courts of general jurisdiction. Section 602.1. This jurisdiction is exercised by three categories of judges. District judges possess the full jurisdiction of Iowa District Court. Section 602.4. District associate judges are former municipal court judges who have been retained under Section 602.28. These judges and judicial magistrates have jurisdiction of nonindictable misdemeanors, including traffic and ordinance violations, preliminary hearings, search warrant hearings, and small claims. Section 602.35. In addition, district associate judges and full-time judicial magistrates have jurisdiction of indictable misdemeanors and assigned juvenile matters. Section 602.32. All judges have authority to hear complaints and preliminary informations, to issue warrants, to order arrests, and to make bail. Section 748.2. The Supreme Court has the power to promulgate and enforce rules for the conduct of the District Court in rendering judicial services. Section 602.11.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

This Standard recommends a system of unified trial courts in which all criminal cases are

tried in a single level of courts. Its purpose is to improve the quality of justice in those cases traditionally tried in lower or misdemeanor courts. Iowa has been cited by the Commission as being among the most progressive states in advancing this concept. However, the Iowa trial courts system retains differentiations in titles, salaries, and types of cases handled by judges. Thus, the one-level trial court system is not specifically realized.

NAC 8.1 contd.

All judicial functions in the trial courts should be performed by full-time judges. All judges should possess law degrees and be members of the bar.

ICJS

Supreme Court justices, district court judges, and district associate judges must be attorneys at law and admitted to practice in Iowa. Section 605.14. These judges serve on a full-time basis and cannot practice as attorneys. Section 605.15.

Judicial magistrates may be either full- or part-time. The Code allocates full-time magistrates on the basis of population. There must be at least one full-time magistrate in those counties having a population of more than thirty-five thousand. Section 602.51. These magistrates must be electors of the county of appointment and licensed to practice law in Iowa. Section 602.52. Pursuant to Section 602.50, judicial magistrates may be appointed to serve on a part-time basis. These magistrates are not required to be licensed to practice law; however, those applicants who are so licenses must be given preference. Section 602.52.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 8.1 contd.

A transcription or other record of the pretrial court proceedings and the trial should be kept in all criminal cases.

ICJS

When a case involves a nonindictable misdemeanor, the proceedings upon trial are not required to be reported. Section 762.12. However, the magistrate must maintain a record of the case. **Id.** When a case involves an indictable offense, stricter standards apply. At the preliminary hearing, the magistrate must write out or cause to be written out the substance of the testimony of each witness. See Section 761.14. Also, the magistrate must certify the preliminary examination proceedings. This requires that he attach together the complaint, the warrant or order of commitment, the minutes of examination, and any depositions used and annex his certificate thereto. Section 761.16. These papers must be returned to the district court. Section 761.25. Upon the request of either party, the proceedings in district court must be taken and reported in full. See Section 605.6.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 8.1 contd.

The appeal procedure should be the same for all cases.

ICJS

The appeal procedure for indictable offenses and nonindictable offenses differs. In criminal cases involving an indictable offense, appeal may be taken to the Supreme Court from any judgment, action or decision of the district court. Section 793.1. The scope of review in the Supreme Court extends to the correction of errors at law. In nonindictable misdemeanor cases, the defendant may appeal upon a judgment of conviction. The appeal is to the district court, and the case stands for a new trial. Section 762.43. After appeal to the district court, the defendant may appeal to the Supreme Court in the same manner as from a judgment in a case involving an indictable offense. Section 762.44.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

NAC COURTS STANDARD 8.2 ADMINISTRATIVE DISPOSITION OF CERTAIN MATTERS NOW TREATED AS CRIMINAL OFFENSES

RELATED IOWA STANDARD 4.4 ADMINISTRATIVE DISPOSITION OF CERTAIN MATTERS

All traffic violation cases should be made infractions subject to administrative disposition, except certain serious offenses such as driving while intoxicated, reckless driving, driving while a license is suspended or revoked, homicide by motor vehicle, and eluding police officers in a motor vehicle. Penalties for such infractions should be limited to fines; outright suspension or revocation of driver's license; and compulsory attendance at educational and training programs, under penalty of suspension or revocation of driver's license.

Procedures for disposition of such cases should include the following:

1. Violators should be permitted to enter pleas by mail, except where the violator is a repeat violator or where the infraction allegedly has resulted in a traffic accident.

2. No jury trial should be available.

3. A hearing, if desired by the alleged infractor, should be held before a law-trained referee. The alleged infractor should be entitled to be present, to be represented by counsel, and to present evidence and arguments in his own behalf. The government should be required to prove the commission of the infraction by clear and convincing evidence. Rules of evidence should not be applied strictly.

Appeal should be permitted to an appellate division of the administrative agency. The determination of the administrative agency should be subject to judicial review only for abuse of discretion.

Consideration should be given, in light of experience with traffic matters, to similar treatment of certain nontraffic matters such as public drunkenness.

ICJS

Traffic violations, except for the more serious offenses, are nonindictable misdemeanors. See Sections 321.482, 602.60. As such, these violations are subject to disposition under the procedures applicable to the trial of nonindictable misdemeanors. See Chapter 761. The proceedings are criminal in nature; however, at trial, the case may actually be disposed of in an informal, administrative manner. A jury trial is available upon demand. Section 762.15. The case is heard by either a judicial magistrate or an associate district judge. Section 602.60. The defendant may appeal upon a judgment of conviction. The appeal is to the district court, and the case stands for a new trial. Section 762.43. The defendant may then appeal to the Supreme Court in the same manner as from a judgment in a case involving an indictable offense. Section 762.44.

When the defendant wishes to admit a traffic violation, the matter may be disposed administratively. A uniform citation and complaint must be used for charging all violations under State or municipal ordinance. Section 753.13. The citation and complaint must contain a list of minimum fines for scheduled violations and a place where the defendant may sign an admission of the violation. **Id.** Before the appearance date, the defendant may sign

the admission and deliver or mail the citation and complaint, together with the minimum fine and costs, to the traffic violations office. Section 753.16. The admission constitutes a conviction, and the defendant need not appear. **Id.** However, this procedure is not available when the charge involved an accident, when the defendant did not have a valid driver's license, or when the violation was hazardous or aggravated because of highway conditions, visibility, traffic, repetition, or other circumstances. Section 753.17.

Anlaysis

ICJS practice is different than NAC Standard

ICJS principle is different than NAC

The Commission proposes that all traffic violation cases be subject to administrative disposition. Under ICJS procedures, admission of the offense may be handled in this manner, and trial proceedings may be informal. However, the defendant may elect to proceed under formal criminal procedures, and a jury trial is available. The NAC principle of resource savings is partially recognized.

NAC COURTS STANDARD 9.1
STATE COURT ADMINISTRATOR

RELATED IOWA STANDARD
10.2 STATE COURT ADMINISTRATOR

An office of State court administrator should be established in each State. The State court administrator should be selected by the chief justice or presiding judge of the State's highest appellate court, and he should be subject to removal by the same authority. The performance of the State court administrator should be evaluated periodically by performance standards adopted by the State's highest appellate court.

ICJS

Section 685.6 establishes the position of Court Administrator of the Judicial Department. The Court Administrator is selected by and serves at the pleasure of the Supreme Court. With the approval of the Court, the Court Administrator can appoint such assistants as are necessary to perform the powers and duties vested in him. Section 685.7. The Court Administer is, under the Court's direction, the administrative officer of the Supreme Court. Section 685.8.

Analysis

ICJS practice similar NAC Standard

ICJS principle is the same as NAC

NAC 9.1 contd.

The State court administrator should, subject to the control of the State's highest appellate court, establish policies for the administration of the State's courts. He also should establish and implement guidelines for the execution of these policies, and for monitoring and reporting their execution. Specifically, the State court administrator should establish policies and guidelines dealing with the following:

1. Budgets. A budget for the operation of the entire court system of the State should be prepared by the State court administrator and submitted to the appropriate legislative body.

2. Personnel Policies. The State court administrator should establish uniform personnel policies and procedures governing recruitment, hiring, removal, compensation, and training of all nonjudicial employees of the courts.

3. Information Compilation and Dissemination. The State court administrator should develop a statewide information system. This system should include both statistics and narrative regarding the operation of the entire State court system. At least yearly, the State court administrator should issue an official report

to the public and the legislature, containing information regarding the operation of the courts.

4. Control of Fiscal Operations. The State court administrator should be responsible for policies and guidelines relating to accounting and auditing, as well as procurement and disbursement for the entire statewide court system.

5. Liaison Duties. The State court administrator should maintain liaison with government and private organizations, labor and management, and should handle public relations.

6. Continual Evaluation and Recommendation. The State court administrator should continually evaluate the effectiveness of the court system and recommend needed changes.

7. Assignment of judges. The State court administrator, under the direction of the presiding or chief justice, should assign judges on a statewide basis when required.

ICJS

Section 685.8 assigns the Court Administrator the following duties:

1. Collect and compile statistical and other data and make reports relating to the business transacted by the courts;
2. Collect statistical and other data and make reports relating to the expenditure of moneys for the maintenance and operation of the judicial system and the offices connected therewith;
3. Obtain reports from clerks of court, judges and magistrates, in accordance with law, or rules prescribed by the supreme court as to cases and other judicial business in which action has been delayed beyond periods of time specified by law or such rules, and make report thereof;
4. Examine the state of the dockets of the courts and determine the need for assistance by any courts;
5. Make reports concerning the overloading and underloading of particular courts;
6. Make recommendations relating to the assignment of judges where courts are in need of assistance;
7. Examine the administrative methods employed in the offices of clerks of courts, probation officers, and sheriffs, and make recommendations regarding the improvement of same;
8. Formulate recommendations for the improvement of the judicial system with reference to the structure of the system of courts, their organization, their methods of operation, the functions which should be performed by various courts, the selection, compensation, number, and tenure of judges and court officials, and as to such other matters as the chief justice and the supreme court may direct; and
9. Attend to such other matters as may be assigned by the chief justice and the supreme court.

In addition of these duties, the Court Administration is responsible for screening cases for oral argument, writing bench memoranda for cases submitted to the Court, apportioning part-time judicial magistrates among the counties, conducting an annual school of instruction for magistrates, supervising the client security fund, securing Federal funding for Court projects, and budgeting for the Supreme Court and its Administrative Office. See **1973 Report Relating To The Courts Of The State Of Iowa** p. 4 (1974).

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

It is the Commission's position that efficient judicial administration requires the creation of centralized court administration within each jurisdiction. To achieve this, the Commission suggests that the general exercise of administrative authority for the conduct of judicial business be delegated to an administrative organization headed by a State court administrator. The Commission recommends that the administrator have the delegated and supervised authority to promulgate statewide rules for the administration of all courts throughout the State. While the Court Administrator of the Judicial Department has the authority to establish a centralized administration of the Iowa Courts, such a system has not been implemented.

NAC COURTS STANDARD 9.2
PRESIDING JUDGE AND ADMINISTRATIVE POLICY OF THE TRIAL COURT

RELATED IOWA STANDARD
10.3 CHIEF JUDGE AND ADMINISTRATION POLICY OF THE TRIAL COURT

Local administrative policy for the operation of each trial court should be set out, within guidelines established by the State's highest appellate court, by the judge or judges making up that court. Each trial court consisting of more than one judge should meet, on a regular schedule with an agenda, to consider and resolve problems facing the court and to set policy for the operation of the court.

Ultimate local administrative judicial authority in each trial jurisdiction should be vested in a presiding judge for a substantial fixed term. The presiding judge should be selected on the basis of administrative ability rather than seniority.

ICJS

The Supreme Court is required to adopt and enforce rules for the orderly and efficient administration of the District Court. Sections 684.21, 602.11. The Chief Justice of the Supreme Court exercises supervisory and administrative control over all trial courts in the State, judges and administrative personnel. R.C.P. 374. The Chief Justice appoints a Chief Judge in each judicial district who exercises administrative supervision within the district over all district courts, judges, magistrates, officials and employees. R.C.P. 377. The Chief Judges and the Chief Justice meet at least twice a year to consider all court administrative rules, directives, and regulations. R.C.P. 380. Similarly, each Chief Judge may conduct a judicial conference within his district to study and plan for improvement of the administration of justice. R.C.P. 377. The Chief Judge designates the respective presiding judges. **Id.** The presiding judges are responsible for the daily administration of the court's business. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 752 (1972). Each judicial district, by action of a majority of its judges, may make rules governing its practice and administration. R.C.P. 372.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 9.2 contd.

The functions of the presiding judge should be consistent with the statewide guidelines and should include the following:

1. Personnel matters. The presiding judge should have control over recruitment, removal, compensation, and training of nonjudicial employees of the court. He should prepare and submit to the court for approval rules and regulations governing personnel matters to insure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.

2. Trial court case assignment. Cases should be assigned under the supervision of the presiding judge. He should apportion the business of the court among the trial judges as equally as possible and he should reassign cases as convenience or necessity requires. In addition, he should require that a judge to whom a case is assigned accept that case unless he is disqualified or the interests of justice require that the case not be heard by that judge. He also should require that when a judge has finished or continued a matter that the judge immediately notify the presiding judge of that fact.

3. Judge assignments. The presiding judge should prepare an orderly plan for judicial vacation, attendance at educational programs, and similar matters. The plan should be approved by the judges of the court and should be consistent with the statewide guidelines. The presiding judge also should require any judge who intends to be absent from his court one-half day or more to notify the presiding judge well in advance of his contemplated absence. The presiding judge should have the power to assign judges to the various branches within the trial court.

4. Information compilation. The presiding judge should have responsibility for development and coordination of statistical and management information schemes.

5. Fiscal matters. The presiding judge should have responsibility for accounts and auditing as well as procurement and disbursing. He also should prepare the court's proposed annual budget.

6. Court policy decisions. The presiding judge should appoint the standing and special committees of judges of the court necessary for the proper performance of the duties of the court. He also should call meetings of all the judges as needed, and designate one of the other judges as acting presiding judge in his absence or inability to act.

7. Rulemaking and enforcement. The presiding judge should, with the assistance of appropriate committees, propose local rules for the conduct of the court's business. These rules should include such matters as the times for convening regular sessions of the court and should be submitted to the judges for their approval. The presiding judge should have authority to enforce these rules.

8. Liaison and public relations. The presiding judge should have responsibility for liaison with other court systems, and other governmental and civic agencies. He should represent the court in business, administrative, or public relations matters. When appropriate, he should meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.

9. Improvement in the functioning of the court. The presiding judge should continually evaluate the effectiveness of the court in administering justice. He should recommend changes in the organization, jurisdiction, operation, or procedures of the court when he believes these would increase the effectiveness of the court.

ICJS

The chief judge exercises continuing administrative supervision within his district over all district courts, judges, officials and employees for the purpose of providing orderly, efficient and effective administration of justice. See R.C.P. 377. However, the ICJS does not provide statewide guidelines that set forth specific administrative functions.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is the same as NAC

NAC COURTS STANDARD 9.3 LOCAL AND REGIONAL TRIAL COURT ADMINISTRATORS

RELATED IOWA STANDARD 10.4 DISTRICT COURT ADMINISTRATORS

Each trial court with five or more judges (and where justified by caseload, courts with fewer judges) should have a full-time local trial court administrator. Trial courts with caseloads too small to justify a full-time trial court administrator should combine into administrative regions and have a regional court administrator. Local trial court administrators and regional court administrators should be appointed by the State court administrator.

The functions of local and regional court administrators should include the following:

1. Implementation of policies set by the State court administrator;
2. Assistance to the State court administrator in setting statewide policies;
3. Preparation and submission of the budget for the court or courts with which he is concerned;
4. Recruiting, hiring, training, evaluating, and monitoring personnel of the court or courts with which he is concerned;
5. Management of space, equipment, and facilities of the court or courts with which he is concerned;
6. Dissemination of information concerning the court or courts with which he is concerned;
7. Procurement of supplies and services for the court or courts with which he is concerned;
8. Custody and disbursement of funds for the court or courts with which he is concerned;
9. Preparation of reports concerning the court or courts with which he is concerned;
10. Juror management;
11. Study and improvement of caseflow, time standards, and calendaring; and
12. Research and development of effective methods of court functioning, especially the mechanization and computerization of court operations.

The local and regional court administrators should discharge their functions within the guidelines set by the State court administrator.

ICJS

Statutory provisions exist for the development of a statewide trial court administrative system. Under Section 685.8(9), the Supreme Court may direct the Court Administrator of the Judicial Department to establish administrative guidelines for the district courts and to appoint such assistants as are necessary to implement these guidelines. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 597 at 794 (1972). A centralized administrative system of this kind has not been developed.

However, trial court administrative programs have been implemented in several judicial districts. The district court administrators in these programs are neither appointed nor supervised by the Court Administrator of the Judicial Department. A uniform set of performance standards for the operation of these programs has not been adopted. Generally, each district court administrator is under the supervision of the Chief Judge of the judicial district. The Chief Judge and the other judges of the district may assign the duties of the district court administrator. The duties are not necessarily consistent among the districts and may not include those set out in this Standard.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 9.4
CASEFLOW MANAGEMENT

RELATED IOWA STANDARD
10.5 CASEFLOW MANAGEMENT

Ultimate responsibility for the management and movement of cases should rest with the judges of the trial court. In discharging this responsibility, the following steps should be taken:

1. Scheduling of cases should be delegated to nonjudicial personnel, but care should be taken that defense attorneys and prosecutors do not exercise an improper influence on scheduling.
2. Recordkeeping should be delegated to nonjudicial personnel.
3. Subject-in-process statistics, focusing upon the offender at each stage of the criminal process, should be developed to provide information concerning elapsed time between events in the flow of cases, recirculations (multiple actions concerning the same defendant), and defendants released at various stages of the court process.
4. The flow of cases should be constantly monitored by the presiding judge, and the status of the court calendar should be reported to the presiding judge at least once each month.
5. The presiding judge should assign judges to areas of the court caseload that require special attention.
6. A central source of information concerning all participants in each case-including defense counsel and the prosecuting attorney assigned to the case-should be maintained. This should be used to identify as early as possible conflicts in the schedules of the participants to minimize the need for later continuances because of schedule conficts.

ICJS

Ultimate responsibility for the management and movement of cases rests with the chief judge of the judicial district. However, actual scheduling of cases may be accomplished under the direction of the presiding judge. The clerk of district court is required to maintain a current list of pending actions which are ready for trial. See R.C.P. 181.1. On each court day or at such time as the chief judge orders, the district judges must examine the pending criminal cases and place those cases which are ready for trial on a trial list for dis-

position at the next trial session. R.C.P. 181.2(a). The chief judge may specially assign a case for trial on a day certain, and any judge presiding at a trial session may make a trial assignment for a day certain during the session. **Id.** It is chief judge's duty to designate trial sessions in the various counties in his district and to assign a judge to try the cases placed on the trial list or assigned for trial on a day certain. R.C.P. 181.2(b).

In practice, assignment work may be handled personally by the judge or delegated to others. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 774 (1972). The clerk of court and the county attorney may exercise substantial control over the assignment of cases. **Id.** Also, the chief judge may delegate assignment work to the district court administrator.

Under the direction of the judge, the district court clerk is responsible for maintaining the records and proceedings of the district court. Section 606.1. The ICJS does not require that subject-in-process statistics be developed. However, presiding judges are required to examine pending criminal cases on each court day or when ordered by the chief judge. R.C.P. 181.2(a). The clerk of court maintains a central source of information concerning cases. R.C.P. 181.1.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 9.5
COORDINATING COUNCILS

RELATED IOWA STANDARD
10.6 COORDINATING COUNCILS

Coordinating councils should be established on statewide, local, and-where trial courts are regionalized for administrative purposes-regional bases. Each council should contain official representatives of all agencies of the criminal justice process within the area, as well as members of the public. Chief executives of police agencies, prosecutor's offices, defender's offices, probation, paroie, correctional agencies, and youth authorities (where they exist) should be included. The presiding or chief judge of the appellate or trial court also should be a member. The chairman of the council should be appointed by the presiding judge of the State's highest appellate court (in the case of a statewide council) or the presiding judge of the trial court (in the case of a local or regional council). The chairman of the State coordinating council should be a member of the State Criminal Justice Planning Board, and the chairman of the local or regional council should be a member of the local criminal justice planning agency.

These coordinating councils should continuously survey the organization, practice, and methods of administration of the court system; assist in coordinating the court system with other agencies of the criminal justice system; and make suggestions for improvement in the operation of the court system.

ICJS

R.C.P. 380 establishes the Judicial Council. The Council is composed of the Chief Judges of the judicial districts and the Chief Justice of the Supreme Court or his designee. The Chief Justice acts as chairperson of the Council. The Council meets at least twice a year to consider all court administrative rules, directives and regulations for the achievement of orderly, efficient, and effective administration of justice. R.C.P. 380 does not provide for the participation of representatives of other criminal justice agencies or the public.

The Supreme Court has established the Supreme Court Advisory Council. The Advisory Council contains representatives of the Iowa bar, the State legislature, and the public. The purpose of the Advisory Council is to study the appellate process in Iowa. Immediate attention has been directed to the problem of increased caseload. Other administrative problems will also be addressed.

The Chief Judges may conduct judicial conferences of their district judges to consider, study and plan for improvement of the administration of justice. R.C.P. 377. The Rules of Civil Procedure do not direct that the public and other criminal justice agencies be represented at the judicial district conferences.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 9.6
PUBLIC INPUT INTO COURT ADMINISTRATION

RELATED IOWA STANDARD
10.7 INPUT INTO COURT ADMINISTRATION

The presiding judge of each court (or group of courts consolidated for management purposes) should establish a forum for interchange between judicial and nonjudicial members of the court's staff and interested members of the community. Lay individuals should be appointed to the group, and representatives of the prosecutor's staff, the bar association, and the defense bar should participate. Representatives from law schools and other university sources as well as representatives of minority, church, and civic groups should be included.

ICJS
The chief judge of the judicial district may conduct judicial conferences within his judicial district. See R.C.P. 377; **ICJS Commentary 9.5.** However, the ICJS does not provide a systemwide standard for the creation of a forum for interchange among judges, the public, the prosecutor, the bar association, and others.

Analysis
ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 10.1
COURTHOUSE PHYSICAL FACILITIES

RELATED IOWA STANDARD
11.1 COURTHOUSE PHYSICAL FACILITIES

Adequate physical facilities should be provided for court processing of criminal defendants. These facilities include the courthouse structure itself, and such internal components as the courtroom and its adjuncts, and facilities and conveniences for witnesses, jurors, and attorneys. Facilities provided should conform to the following requirements:

1. The courthouse structure should be adequate in design and space in terms of the functions housed within and the population served. In areas served by a single judge, adequate facilities should be provided in an appropriate public place. In metropolitan areas where the civil and criminal litigation is substantial and is served by the same personnel, there should be one centrally located courthouse. All rooms in the courthouse should be properly lighted, heated, and air-conditioned.
2. The detention facility should be near the courthouse.
3. The courthouse should be designed to facilitate interchange among the participants in the proceedings. The floor plan and acoustics should enable the judge and the jury to see and hear the complete proceedings. A jury room, judges' chambers, staff rooms and detention area should be convenient to each courtroom.
4. Each judge should have access to a library containing the following: the annotated laws of the State, the State code of criminal procedure, the municipal code, the United States code annotated, the State appellate reports, the U.S. Supreme Court reports, the Federal courts of appeals and district court reports, citators covering all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting law in general, a form book of approved jury instructions, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court reporters published weekly, looseleaf services related to criminal law, and if available, an index to the State appellate brief bank.
5. Provision should be made for witness waiting and assembly rooms. Separate rooms for prosecution

and defense witnesses should be provided. The rooms should be large enough to accommodate the number of witnesses expected daily. They should be comfortably furnished and adequately lighted. The waiting areas should be provided with reading materials, television, and telephones, and should be serviced by a full-time attendant.

6. Juror privacy should be maintained by establishing separate entrances, elevators, and food service facilities for exclusive use of jurors. Similarly, lounges and assembly rooms should be provided for jurors; these should not be accessible to witnesses, attorneys, or spectators. They should be furnished comfortably and lighted adequately. Television, magazines, and other diversions should be provided. A full-time attendant should service the lounge, and telephone service should be available.

7. A lawyers' workroom should be available in the courthouse for public and private lawyers. The room should be furnished with desks or tables, and telephones should be available. It should be located near a law library. A receptionist should be available to take messages and locate lawyers. There also should be rooms in the courthouse where defense attorneys can talk privately with their clients, without compromising the security needed.

8. The physical facilities described in this standard should be clean and serviceable at all times.

ICJS

The chief judge of the judicial district designates the places in each county at which courts are to be held. Section 602.4. The county must provide suitable facilities at these places. The facility provided is usually the county courthouse. However, when there is no courthouse at the place designated by the chief judge, the board of supervisors must furnish other facilities. See Sections 602.6, .7. The Code does not require that detention facilities be located near the courthouse.

The Code specifies that the court facilities provided by the county must be suitable. However, specific standards for courthouse and courtroom design are not set forth. Also, the Code does not specifically structure the provision of witness rooms, jury facilities, and lawyers' workrooms.

The county board of supervisors may, in their discretion, provide library facilities in the county courthouse. Section 332.6. When provided, these facilities are for the use of the judges, the county attorney, county officers and their deputies. The county law library is under the supervision and control of the judges of the district court of the county wherein the library is located. **Id.**

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 10.2 COURT INFORMATION AND SERVICE FACILITIES

RELATED IOWA STANDARD 10.2 COURT INFORMATION AND SERVICE FACILITIES

Facilities and procedures should be established to provide information concerning court processes to the public and to participants in the criminal justice system:

1. There should be information desks strategically placed in public areas of the courthouse and manned where necessary by bilingual personnel to direct defendants (and their friends and relatives), witnesses, jurors, and spectators to their destinations. In metropolitan courthouses, visual screens should be installed to identify the proceedings currently in progress in each courtroom and other proceedings scheduled that day for each courtroom.

2. The information service should include personnel who are familiar with the local criminal justice system and the agencies serving that system. These persons should be under the supervision of the public defender or legal aid office. Their role should be to answer questions concerning the agencies of the system and the procedures to be followed by those involved in the system.

3. The defendant, in addition to being told of his rights, should be provided with a pamphlet detailing his rights and explaining the steps from arrest through trial and sentencing. This pamphlet should be provided to the accused by the police at booking. Where necessary, the pamphlet should be published not only in English but also in other languages spoken by members of the community. The pamphlet should be drafted in language readily understood by those to whom it is directed.

4. The prosecutor and the court should establish procedures whereby witnesses requesting information relating to cases or court appearances in which they are involved may do so by telephone.

5. To assist the prosecutor and the court in responding to telephone inquiries from witnesses, each witness should be provided with a wallet-size card giving a phone number to call for information, and data regarding his case. The card should contain the name of the defendant or the case, the court registry or docket number, and other information that will be helpful in responding to witnesses' inquiries.

6. The judge should instruct each jury panel, prior to its members sitting in any case, concerning its responsibilities, its conduct, and the proceedings of a criminal trial. Each juror should be given a handbook that restates these matters.

ICJS

Trial courts are not required to establish formal information services concerning participants' rights and responsibilities and the court's function. However, the court bailiff and the clerk of court have statutory duties which make them important sources of information for the public and court participant. The clerk is required to attend district court sessions and maintain court records; the bailiff is responsible for managing many aspects of actual trial sessions. See Section 606.1; Contemporary Studies Project: **Perspectives On The Administration Of Criminal Justice In Iowa,** 57 Iowa L. Rev. 598, 790 (1972).
The Code does not require that the trial judge instruct each jury panel, prior to its members sitting in any case, concerning its responsibilities, its conduct, and the proceedings of a criminal trial. However, after the beginning of trial, the judge is required to admonish the jury concerning its duties at each adjournment during the progress of the trial previous to the final submission of the cause to the jury. See Section 780.21, .22.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURT STANDARD 10.3 COURT PUBLIC INFORMATION AND EDUCATION PROGRAMS

RELATED IOWA STANDARD 11.3 COURT PUBLIC INFORMATION AND EDUCATION PROGRAMS

The court, the news media, the public, and the bar should have coordinate responsibility for informing and educating the public concerning the functioning of the courts. The court should pursue an active role in this process:

1. Each court should appoint a public information officer to provide liaison between courts and the news media. Where a court has a court administrator, he should act as the public information officer or should designate someone in his office to perform this function. The public information officer should:
   a. Prepare releases, approved by the court, regarding case dispositions of public interest;
   b. Prepare releases describing items of court operation and administration that may be of interest to the public;
   c. Answer inquiries from the news media; and
   d. Specify guidelines for media coverage of trials.

ICJS

Trial court are not required by statute to appoint a public information officer to provide liai-

son between courts and the news media. Several judicial districts have established the position of district court administrator. However, there is no systemwide requirement that the district court administrator serve as a public information officer.

Analysis

ICJS practice is significantly different that NAC Standard
ICJS principle is significantly different than NAC

NAC 10.3 contd.

2. Each courthouse should have an office specifically and prominently identified as the office for receiving complaints, suggestions and reactions of members of the public concerning the court process. All communications made to this office should be given attention. Each person communicating with this office should be notified concerning what response, if any, has or will be made to his communication.

ICJS

The ICJS does not provide guidelines for the creation of an office for receiving complaints, suggestions, and reactions of the public concerning the court process. The office of the clerk of district court may serve this function. Also, the district court administrator may be assigned duties in these areas.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

NAC 10.3 contd.

3. The court should take affirmative action to educate and inform the public of the function and activities of the court. This should include:

a. The issuance of periodic reports concerning the court's workload, accomplishments, and changes in procedure;
b. The issuance of handbooks for court employees concerning their functions;
c. Preparation of educational pamphlets describing the functions of the court for the general public, and for use in schools;
d. Preparation of handbooks for jurors explaining their function and pamphlets for defendants explaining their rights;
e. Organization or tours of the court; and
f. Personal participation by the judges and court personnel in community activities.

These funtions should be performed by the court information officer or by the court administrator's office, by associations of judges, or by individual judges.

4. The court should encourage citizen groups to inform themselves of the functions and activities of the courts and in turn share this information with other members of the public.

5. The court should work together with bar associations to educate the public regarding law and the courts. The judiciary and the bar should cooperate by arranging joint and individual speaking programs and by preparing written materials for public dissemination.

ICJS

The Court Administrator of the Judicial Department is required to compile data relating to the activities of the district court and to report thereon. See Section 685.3. The judges, district associate judges, judicial magistrates, reporters, clerks of court, probation officers, and other officers are required to comply with the Court Administrator's requests for information concerning the business of the judicial system. See Section 685.9. The Court Administrator's reports are available to the public.

Trial courts are not required by statute to develop handbooks, pamphlets, or court tours

for the education of the public, employees, and jurors. However, Canon 4A of the **Code Of Judicial Conduct** permits judges to speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice. The **Iowa Code of Professional Responsibility for Lawyers** also encourages the bar to educate the public in matters of the law and courts. See, **e.g.**, Canon 8.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 10.4 REPRESENTATIVENESS OF COURT PERSONNEL

RELATED IOWA STANDARD 11.6 REPRESENTATIVENESS OF COURT PERSONNEL

Court personnel should be representative of the community served by the court. Special attention should be given to recruitment of members of minority groups.

ICJS
There is no systemwide requirement that court personnel be representative of the community served by the court. Chapter 601A of the Code of Iowa prohibits unfair or discriminatory employment practices.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 10.5 PARTICIPATION IN CRIMINAL JUSTICE PLANNING

RELATED IOWA STANDARD 11.7 PARTICIPATION IN CRIMINAL JUSTICE PLANNING

Judges and court personnel should participate in criminal justice planning activities as a means of disseminating information concerning the court system and of furthering the objective of coordination among agencies of the criminal justice system.

ICJS
See ICJS, Standard 9.5 and 9.6.

NAC COURTS STANDARD 10.6 PRODUCTION OF WITNESSES

RELATED IOWA STANDARD 11.4 PRODUCTION OF WITNESSES

Prosecution and defense witnesses should be called only when their appearances are of value to the court. No more witnesses should be called only when their appearances are of value to the court. No more witnesses should be called than necessary.

1. Witnesses Other Than Police Officers. Steps that should be taken to minimize the burden of testifying imposed upon witnesses other than police officers should include the following:

a. Prosecutors and defense counsel should carefully review formal requirements of law and practical necessity and require the attendance only of those witnesses whose testimony is required by law or would be of value in resolving issues to be litigated.

b. Procedures should be instituted to place certain witnesses on telephone alert. To insure that such a procedure will be capable of producing witnesses on short notice on the court date, citizen witnesses should be required as early as possible to identify whether and how they may be contacted by telephone on court business days and whether, if so contacted, they can appear at court within 2 hours of such notification. Witnesses who appear likely to respond to telephone notification should be identified by both the prosecution and the defense and placed on telephone alert. On the morning of each court date, the prosecutor and defense counsel should determine the status of cases on which witnesses are on alert and should notify promptly those witnesses whose presence will be required later in the day. Witnesses who unreasonably delay their arrival in court after such notification should not be placed on telephone alert for subsequent appearances.

c. Upon the initiation of criminal proceedings or as soon thereafter as possible, the prosecutor and defense counsel should ask their witnesses which future dates would be particularly inconvenient for their appearance at court. The scheduling authority should be apprised of these dates dates and should, insofar as is possible, avoid scheduling court appearances requiring the witnesses' attendance on those dates.

2. Police Officers. Special efforts should be made to avoid having police officers spend unnecessary time making court appearances. Among the steps that should be taken are the following:

a. Upon production of the defendant before a magistrate, the arresting police officer should be excused from further appearances in the case unless the prosecutor requires the attendance of the police officer for any particular proceeding.

b. Police agencies should establish procedures whereby police officers may undertake their regular police duties and at the same time be available for prompt appearance at court when a notification that such appearance is communicated to police command. Whenever possible, this procedure should be used.

c. Routine custodial duties relating to the processing of a criminal case should be undertaken by a central officer to relieve the individual arresting officer of these duties. Electronic document transmission equipment should be used when feasible in place of police transportation of documents to court.

d. Police agencies should provide to the authority scheduling court appearances the dates on which each police officer will be available. The schedules should list a sufficient number of available dates for each month or term of court to permit the scheduling authority flexibility in choosing among them when assigning court dates. The scheduling authority should consult the schedules in selecting dates for criminal proceedings. Insofar as possible, the scheduling authority should schedule court appearances that inconvenience the officer and his department as little as possible.

ICJS

Production of witnesses is primarily the responsibility of the prosecutor and the defense attorney. Both may subpoena witnesses in all criminal proceedings. See Chapter 781. The ICJS does not provide systemwide guidelines designed to minimize the inconvenience of testifying.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle if significantly different than NAC

NAC COURTS STANDARD 10.7
COMPENSATION OF WITNESSES

RELATED IOWA STANDARD
11.5 COMPENSATION OF WITNESSES

Police witnesses should be compensated for their attendance at criminal court proceedings at a rate equal to that at which they would be compensated were they performing other official duties at the time of

the court appearance. Compensation should cover the actual time spent in the court process by the police officer. Citizen witnesses in criminal proceedings should receive compensation for court appearances at a minimum rate of twice the prevailing Federal minimum wage for each hour the witnesses spend in court. An officer of the court should certify the time spent by the witness in court between arrival and dismissal; payment should be made accordingly.

Witnesses should be paid for round trip travel between the court and their residence or business address, whichever is shorter, at the Federal Government mileage rate for each mile traveled to and from court.

ICJS

The Code of Iowa provides as follows:

Section 622.69 Witness fees. Witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses at the rate of fifteen cents per mile for each mile actually traveled.

Section 622.72 Expert witnesses-fee. Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed one hundred fifty dollars per day while so employed.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 11.1
COURT ADMINISTRATION

There should be available for all high-volume criminal justice systems computer services adequate to perform functions such as multiple indexing, jury selection, and case scheduling. Provision should be made for input and access by all participatants in the court process, including the prosecutor and public defender, as well as the court itself. Costs should be minimized by joint use of centrally located computer systems. Courts with a sufficiently large workload should utilize the computer for additional services. The system should be designed with flexibility to be modified as necessary to reflect the requirements of each court.

Computerized production of transcripts of trial proceedings for use in review should be employed on an experimental basis, and further efforts to perfect that means of transcript production should be encouraged.

NAC COURTS STANDARD 11.2
AUTOMATED LEGAL RESEARCH

Automated legal research services should be made available to judges, prosecutors, and defense attorneys on an experimental basis in those jurisdictions where there is available a full-text data bank of all statutes and decisions relevant to the court's workload, and where the service provides interactive terminals.

The data bank necessary for such services should be developed by a public agency or a regulated or supervised private entity.

ICJS

While the concept of using computers to provide services has received some attention, no systemwide standards have been formulated for the development and implementation of a

computerized court services system. Presently, there are no computer services available in Iowa to perform such functions as case monitoring and scheduling, jury selection, and transcript production. Automated legal research services are also not available.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 12.1 PROFESSIONAL STANDARDS FOR CHIEF PROSECUTING OFFICER

RELATED IOWA STANDARD 7.1 PROFESSIONAL STANDARDS FOR THE CHIEF PROSECUTING OFFICER

The complexities and demands of the prosecution function require that the prosecutor be a full-time, skilled professional selected on the basis of demonstrated ability and high personal integrity.

ICJS

The prosecution function in Iowa is performed primarily by the county attorney's office. See Section 336.2. To hold this office, an individual must be a qualified elector of his county and an attorney admitted to practice law in Iowa. Section 336.1 The county attorney is not required to be a full-time prosecutor. In addition to his prosecutorial duties, the county attorney must perform other official duties which are unrelated to the prosecution function. See Section 336,2. Also, the county attorney is permitted to maintain a limited private law practice. Section 336.5 provides that he, or any member of a firm with which he is connected, is restricted from acting as an attorney "... for any party other than the state or county in any action or proceeding pending or arising in his county, based upon substantially the same facts upon which a prosecution or proceeding has been commenced or prosecuted by him in the name of the county or state;...."

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

The Commission states that the prosecution function is a complex task which requires a full-time commitment to master its demands. It is the Commission's position that part-time law practice is inconsistent with the type of commitment the community has a right to expect of its prosecutor. Therefore, this Standard recommends that the prosecutor be required to devote his full efforts to prosecutorial duties. In practice, Iowa county attorneys do not devote their efforts completely to the prosecution function. While full-time prosecutors are not excluded in principle, the law permits county attorneys to maintain private practices and requires that they perform other unrelated duties.

NAC 12.1 contd.

The prosecutor should be authorized to serve a minimum term or 4 years at an annual salary no less than that of the presiding judge of the trial court of general jurisdiction.

ICJS

Each county elects a county attorney at the general election. Section 39.17. The term of office is four years. **Id.** The county attorney's minimum salary is set by statute. See Section 340.9. The board of supervisors may establish a higher salary. **Id.** Also, the board may accept private, state, or federal funds to increase or replace the county funds used to pay the county attorney. **Id.**

Analysis

ICJS practice is different than NAC Standard
ICJS principle is significantly different than NAC

It is the Commission's position than salaries which are competitive with those of attorneys in private practice help to attract and retain qualified prosecutors. Iowa's minimum salary schedule does not reflect this position. The salaries are based upon the probable workload in a county of a certain population. They reflect the traditionally low rate of compensation paid to the prosecutor.

NAC 12.1 contd.

In order to meet these standards, the jurisdiction of every prosecutor's office should be designed so that population, caseload and other relevant factors warrant at least one full-time prosecutor.

ICJS

The jurisdiction of the county attorney's office extends to the county in which he is elected. The county attorney is required to enforce in his county all the laws of the state, actions for a violation of which may be prosecuted in the name of the state, and must appear for the state in all cases and proceedings in the courts of his county. See Section 336.2.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is inconsistent with NAC

The Commission recognizes full-time prosecution as the primary method of meeting the demands of the prosecution function. In view of this emphasis on full-time prosecution, the Commission has determined that the jurisdictional boundaries of the prosecutor's office should remain flexible to ensure that population and caseload warrant a full-time prosecutor. The ICJS practice of determining the prosecutor's jurisdiction on the basis of county boundaries does not ensure sufficient population and caseload to warrant a full-time prosecutor. In counties with lower populations, the salaries of the county attorneys and their assistants are lower, and they are more likely to maintain private practices. Such a system is inconsistent with the Commission's principle of full-time, professional prosecutors.

NAC COURTS STANDARD 12.2 PROFESSIONAL STANDARDS FOR ASSISTANT PROSECUTORS

RELATED IOWA STANDARD 7.2 PROFESSIONAL STANDARDS FOR ASSISTANT PROSECUTORS

The primary basis for the selection and retention of assistant prosecutors should be demonstrated legal ability. Care should be taken to recruit lawyers from all segments of the population.

ICJS

Section 341.1 permits each county attorney to appoint, with the approval of the board of supervisors, assistant county attorneys. The number of assistants is set by the board. The assistants are required to perform the county attorney's duties in his or her absence. Therefore, they must possess the qualifications required by Section 336.1 for county attorneys. Thus, the assistants must be admitted to practice as attorneys in the courts of Iowa.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 12.2 contd.

The prosecutor should undertake programs, such as legal internships for law students, designed to attract able young lawyers to careers in prosecution.

ICJS

The Iowa Crime Commission has supported the Law School Intern Program. Administered through the Iowa County Attorney's Association, this program permits senior law students to work in the offices of Iowa county attorneys during the summer months. The objective of the program is to stimulate interest among law students in the prosecution function.

Analysis

ICJS practice meets NAC
ICJS principle is the same as NAC

NAC 12.2 contd.

The position of assistant prosecutor should be a full-time occupation, and assistant prosecutors should be prohibited from engaging in outside law practice.

ICJS

Assistant county attorneys may or may not be full-time prosecutors. In some Iowa counties, the population and caseload are sufficient to warrant full-time assistants. In others, the population and caseload are insufficient, and the assistants are employed on a part-time basis. Part-time assistants are permitted to engage in outside law practice.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is inconsistent with NAC

NAC 12.2 contd.

The starting salaries for assistant prosecutors should be no less than those paid by private law firms in the jurisdiction, and the prosecutor should have the authority to increase periodically the salaries for assistant prosecutors to a level that will encourage the retention of able and experienced prosecutors, subject to approval of the legislature, city or county council as appropriate. For the first 5 years of service, salaries of assistant prosecutors should be comparable to those of attorney associates in local private law firms.

ICJS

The Code of Iowa limits the salaries for assistant county attorneys. Under Section 340.10, compensation is set as follows:

1. For the first assistant county attorney, not more than eighty-five percent of the amount of the salary of the county attorney.
2. For additional assistant county attorneys, not to exceed eighty percent of the amount of the salary of the county attorney, as fixed by the board of supervisors.

The minimum salaries for county attorneys are set by Section 340.9. These amounts and the amounts paid to assistant county attorneys may be increased by the board of supervisors.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 12.2 contd.

The caseload for each assistant prosecutor should be limited to permit the proper preparation of cases at every level of the criminal proceedings. Assistant prosecutors should be assigned cases sufficiently in advance of the court date in order to enable them to interview every prosecution witness, and to conduct supplemental investigations when necessary.

ICJS
Section 341.6 states that each assistant shall perform the duties assigned to him or her by the county attorney. Thus, caseload assignments and individual case preparation methods are determined by the county attorney.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 12.2 contd.

The trial division of each prosecutor's office should have at least two attorneys for each trial judge conducting felony trials on a full-time basis or the equivalent of such a judge. Each office also should have a sufficient number of attorneys to perform the other functions of the office.

ICJS
The number of assistants that the county attorney may appoint is limited by Section 341.1 to the number that the board of supervisors deems appropriate. Once this number is determined, the county attorney may appoint individuals to the positions. Upon approval of the appointments by the board of supervisors, the county attorney has the discretion to assign the duties of the assistants and to determine the organization of the office. Most county attorney offices are not of sufficient size to be organized into separate divisions.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 12.3
SUPPORTING STAFF AND FACILITIES

RELATED IOWA STANDARD
7.3 SUPPORTING STAFF AND FACILITIES

The office of the prosecutor should have a supporting staff comparable to that of similar-size private law firms. Prosecutors whose offices serve metropolitan jurisdictions should appoint an office manager with the responsibility for program planning and budget management, procurement of equipment and

supplies, and selection and supervision of nonlegal personnel. Paraprofessionals should be utilized for law-related tasks that do not require prosecutorial experience and training. There should be adequate secretarial help for all staff attorneys. Special efforts should be made to recruit members of the supporting staff from all segments of the community served by the office.

ICJS

The size and composition of the county attorney's supporting staff are dependent in large part upon the population and criminal caseload of the county. In the SMSA jurisdictions, the supporting staff may include numerous secretaries, law clerks, and administrative personnel. In the smaller counties, the supporting staff may be limited to a part-time secretary. The County Attorney Intern Program provides additional support.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 12.3 contd.

The office of the prosecutor should have physical facilities comparable to those of similar-size private law firms. There should be at least one conference room and one lounge for staff attorneys, and a public waiting area separate from the offices of the staff.

ICJS

The board of supervisors of each county must furnish the county attorney with offices at the county seat. Section 332.9. However, there are no systemwide standards governing the physical facilities of these offices. In the majority of counties, the county attorney performs his prosecutorial duties from his private law office. In others, the office is located in county court house.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 12.3 contd.

The prosecutor and his staff should have immediate access to a library sufficiently extensive to fulfill the research needs of the office. Staff attorneys should be supplied with personal copies of books, such as the State criminal code, needed for their day-to-day duties.

The basic library available to a prosecutor's office should include the following: The annotated laws of the State, the State code of criminal procedure, the municipal code, the United States code annotated, the State appellate reports, the U.S. Supreme Court reports, Federal courts of appeals and district court reports, citators covering all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting State law, a legal reference work digesting law in general, a form book of approved jury charges, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court case reporters published weekly, looseleaf services related to criminal law, and, if available, an index to the State appellate brief bank.

ICJS

There are no systemwide standards which require that county attorneys and their staffs have immediate access to extensive library services. Similarly, the county boards of supervisors are not required to supply library services to the county attorneys. Section 332.10. Section 332.6 provides that the county board of supervisors may, in their discretion, maintain a law library in the county courthouse. It is the policy of the State Library Commission to encourage boards to implement law library facilities. Section 303A.4 (9). Generally,

some services are available at the county courthouse. Also, the Law Library Division of the Iowa Library Department maintains a state law library which is available to the county attorneys. See Section 303A.5 (2) (a).

Analysis
ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 12.4 STATEWIDE ORGANIZATION OF PROSECUTORS

RELATED IOWA STANDARD 7.4 STATEWIDE ORGANIZATION OF PROSECUTORS

In every State there should be a State-level entity that makes available to local prosecutors who request them the following:

1. Assistance in the development of innovative prosecution programs;

2. Support services, such as laboratory assistance; special counsel, investigators, accountants, and other experts; data-gathering services; appellate research services; and office management assistance.

This entity should provide for at least four meetings each year, at which prosecutors from throughout the State can engage in continuing education and exchange with other prosecutors. In administering its program, the entity should try to eliminate undesirable discrepancies in law enforcement policies.

In States where the local prosecutors are appointed by the State attorney general, the office of the attorney general may be the entity performing these functions. In other states, and where desirable in States in which local prosecutors are appointed by the State attorney general, an independent State agency should be created to perform these functions. The agency and its program should be funded by the State through the executive budget. It should have officers and governing board elected by the membership; the attorney general of the State should be an ex officio member of the governing board. A full-time executive director should be provided to administer the agency and its program.

ICJS
The county attorney offices are under the supervision of the Attorney General. Section 13.2 (7). It is the duty of the Attorney General to counsel and advise the county attorneys on problems occurring during the course of official duties, to inform prosecuting attorneys and assistant prosecuting attorneys of changes in law and matters pertaining to their office, and to establish programs for the continuing education of prosecuting attorneys and their assistants. Section 13.2

The Attorney General's Office has established an Area Prosecutor's Unit. Its function is to investigate and prosecute criminal cases when the interests of the state so require and, upon request, to advise and assist the county attorneys in prosecuting cases.

The Department of Public Safety also supplies support services to county attorneys. Through the Department's Bureau of Criminal Investigation, the county attorneys have access to a criminal investigations unit, a criminal conspiracy unit, a criminal identification unit, and a criminalistics laboratory. Also, the services of the state Division of Narcotic and Drug Enforcement are available.

The Iowa County Attorneys Association provides additional support services to the county attorneys. The Association provides orientation and training sessions for newly elected county attorneys, continuing legal education programs, a centralized information source, and coordinates efforts to improve the office of county attorney.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

The Commission recommends that services essential to effective prosecution be provided by a state-level agency. Currently, these essential services are provided to Iowa county attorneys through various entities. However, the newly created Office of Prosecuting Training Coordination will coordinate the provision of many of these services.

NAC COURTS STANDARD 12.5 EDUCATION OF PROFESSIONAL PERSONNEL

RELATED IOWA STANDARD 7.5 EDUCATION OF PROFESSIONAL PERSONNEL

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. All newly appointed or elected prosecutors should attend prosecutors' training courses prior to taking office, and in-house training programs for new assistant prosecutors should be available in all metropolitan prosecution offices. All prosecutors and assistants should attend a formal prosecutors' training course each year, in addition to the regular in-house training.

ICJS

Iowa county attorneys are required to be admitted to practice as attorneys and counselors in the courts of Iowa. Section 336.1. In addition to these educational considerations, the Attorney General is required to inform prosecuting attorneys and assistants of changes in the law and matters pertaining to their office. Section 13.2 (1). Also, it is the duty of the Attorney General to establish programs for the continuing education of prosecuting attorneys and their assistants. **Id.** The Iowa County Attorneys Association conducts orientation and training sessions for newly elected county attorneys and provides continuing legal education programs. However, there are no systemwide standards which specifically require that county attorneys receive specialized training in the prosecution function.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 12.6 FILING PROCEDURES AND STATISTICAL SYSTEMS

RELATED IOWA STANDARD 7.6 FILING PROCEDURES AND STATISTICAL SYSTEMS

The prosecutor's office should have a file control system capable of locating any case file in not more than 30 minutes after demand, and a statistical system, either automated or manual, sufficient to permit the prosecutor to evaluate and monitor the performance of his office.

ICJS

There are no statewide standards which regulate file control and statistical systems employed by county attorney offices. Subject to the supervision of the Attorney General, each county attorney is responsible for the administration of his office. See Section 13.2. Thus, responsibility for implementation of efficient filing and statistical systems rests with the individual county attorney.

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is inconsistent with NAC

NAC COURTS STANDARD 12.7
DEVELOPMENT AND REVIEW OF
OFFICE POLICIES

RELATED IOWA STANDARD
7.7 DEVELOPMENT AND REVIEW OF
OFFICE POLICIES

Each prosecutor's office should develop a detailed statement of the office practices and policies for distribution to every assistant prosecutor. These policies should be reviewed every 6 months. The statement should include guidelines governing screening, diversion, and plea negotiations, as well as other internal office practices.

ICJS

County attorney offices are not required to develop, distribute, and review detailed statement of office practices and policies. See **ICJS Commentary** 1.2; 2.2. While each county attorney has the authority to do so, actual development of practice and policy statements has been minimal in Iowa. **Id.** Each county attorney is required to make reports relating to the duties and administration of his office to the Governor and the Attorney General when requested. Section 336.2 (11).

Analysis

ICJS practice is significantly different than NAC Standard
ICJS principle is inconsistent with NAC

NAC COURTS STANDARD 12.8
THE PROSECUTOR'S INVESTIGATIVE
ROLE

RELATED IOWA STANDARD
7.8 THE PROSECUTOR'S INVESTIGATIVE
ROLE

The prosecutor's primary function should be to represent the State in court. He should cooperate with the police in their investigation of crime. Each prosecutor also should have investigatorial resources at his disposal to assist him in case preparation, to supplement the results of police investigation when police lack adequate resources for such investigation, and, in a limited number of situations, to undertake an initial investigation of possible violations of the law.

ICJS

In his role as prosecutor, the county attorney's primary function is to represent the State in court. See Section 336.2. The county attorney relies heavily on the investigatorial resources of local police agencies to perform this function. When necessary, the county attorney may supplement local police resources with those of his own office.

If these investigatorial capabilities are insufficient, others are available. It is the duty of the Attorney General to prosecute and defend cases when, in the opinion of the Attorney General, the interests of the State so require. Section 13.2 (4). To carry out these duties, the Attorney General has established a Criminal Prosecution Unit. The objective of this unit is to provide assistance to county attorneys on request and as directed by the Attorney General. Through the Area Prosecutor's Unit, the Attorney General makes available to the county attorneys full-time, professional prosecutors who may assist in the investigation and prosecution of complex cases. Also, the Unit provides legal research assistance to the county attorneys upon request.

The Department of Public Safety makes available additional investigatorial resources. See **ICJS Commentary 12.4.**

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 12.8 contd.

The prosecutor should be given the power, subject to appropriate safeguards, to issue subpenas requiring protential witnesses in criminal cases to appear for questioning. Such witnesses should be subject to contempt penalties for unjustified failure to appear for questioning or to respond to specific questions.

ICJS

Through the grand jury's subpoena power, the county attorney may require potential witnesses to appear for questioning. Grand jury procedures provide that the county attorney may appear before the grand jury on his own request for the purpose of examining witnesses. Section 771.5. To assure the appearance of these witnesses, the county attorney may require the clerk of court to issue subpoenas. Section 771.7.

In addition to the grand jury's subpoena power, the county attorney may utilize the limited subpoena power created under the county attorney information provisions. Under these provisions, the county attorney may apply to the clerk of court for subpoenas directing the appearance of required witnesses. Section 769.19. However, the authorization of the court or a judge is necessary before the clerk may issue the subpoenas. **Id.**

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 12.8 contd.

The office of the prosecutor should review all applications for search and arrest warrants prior to their submission by law enforcement officers to a judge for approval; no application for a search or arrest warrant should be submitted to a judge unless the prosecutor or assistant prosecutor approves the warrant.

ICJS

The Code does not require that the county attorney review and approve search and arrest warrants prior to their submission to a magistrate. Section 751.4 provides that any credible resident of the State may apply for the issuance of a search warrant without previously consulting the county attorney. Similarly, Section 754.3 provides that the magistrate may issue an arrest warrant when a preliminary information or complaint charging a public offense is filed. The filing may be made without the prior approval of the county attorney. See Section 754.5. Procedures whereby the county attorney's review and approval is necessary prior to submission may be established within the local jurisdictions. See **ICJS Commentary 2.2.**

Analysis

ICJS practice is different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS 12.9
PROSECUTOR RELATIONSHIPS WITH THE PUBLIC AND WITH OTHER AGENCIES OF THE CRIMINAL JUSTICE SYSTEM

RELATED IOWA STANDARD
7.9 PROSECUTOR RELATIONSHIPS

The prosecutor should be aware of the importance of the function of his office for other agencies of the criminal justice system and for the public at large. He should maintain relationships that encourage interchange of views and information and that maximize coordination of the various agencies of the criminal justice system.

The prosecutor should maintain regular liaison with the police department in order to provide legal advice

to the police, to identify mutual problems and to develop solutions to those problems and keep the police informed about current developments in law enforcement, such as significant court decisions. He should develop and maintain a liaison with the police legal adviser in those areas relating to police-prosecutor relationships.

ICJS

The county attorney may establish and maintain regular liaison with local police agencies for the purposes of providing legal advice and identifying mutual problems. Similarly, he may participate in police training and legal education programs. However, the creation of such a relationship is discretionary. There are no specific standards which direct the county attorney to develop liaison and training programs.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is significantly different than NAC

NAC 12.9 contd.

The prosecutor should develop for the use of the police a basic police report form that includes all relevant information about the offense and the offender necessary for charging, plea negotiations, and trial. The completed form should be routinely forwarded to the prosecutor's office after the offender has been processed by the police. Police officers should be informed by the prosecutor of the disposition of any case with which they were involved and the reason for the disposition.

ICJS

The ICJS provides no standards to be used by the county attorney in developing basic police report forms and uniform reporting procedures. While the county attorney has the authority to develop these components of his relationship with local police agencies, he is not required to do so by statute or other authority. Similarly, the county attorney is not required to communicate case disposition information to the police.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is significantly different than NAC

NAC 12.9 contd.

The relationship between the prosecutor and the court and defense bar should be characterized by professionalism, mutual respect and integrity. It should not be characterized by demonstrations of negative personal feelings or excessive familiarity. Assistant prosecutors should negate the appearance of impropriety and partiality by avoiding excessive camaraderie in their courthouse relations with defense attorneys, remaining at all times aware of their image as seen by the public and the police.

ICJS

There are no standards specifically regulating the prosecutor's relationship with the court and the private bar. However, the **Iowa Code Of Professional Responsibility For Lawyers** contains relevant provisions. Canon 1 and the Disciplinary Rules provide that a lawyer must safeguard the integrity and competence of the legal profession. Canon 5 and the Disciplinary Rules emphasize that a lawyer should exercise independent judgment on behalf of his client. Canon 7 and the Disciplinary Rules structure the lawyer/court relationship and require lawyers to perform their duties within the bounds of the law.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 12.9 contd.

The prosecutor should establi .i regular communications with correctional agencies for the purpose of determining the effect of his practices upon correctional programs. The need to maximize the effectiveness of such programs should be given significant weight in the formulation of practices for the conduct of the prosecutor function.

ICJS

The county attorney is not required to establish regular communications with correctional agencies for the purpose of determining the effect of his practices upon correctional programs. However, some interaction between the prosecutor and correctional authorities is demanded. The Code requires the county attorney to supply the board of parole and the chief parole officer with the facts and circumstances attending an offense. Section 247.15. Similarly, the county attorney may participate in the presentence report investigation.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 12.9 contd.

The prosecutor should regularly inform the public about the activities of his office and of other law enforcement agencies and should communicate his views to the public on important issues and problems affecting the criminal justice system. The prosecutor should encourage the expression of views by members of the public concerning his office and its practices, and such views should be taken into account in determining office policy.

ICJS

The ICJS does not directly standardize the prosecutor's relationship with the public. The county attorney is not required to inform the public about the activities of his office or communicate his opinions on important issues affecting the operation of his office. Similarly, he is not directed to seek the public's input on these matters. However, such a relationship may indirectly be established because of the political nature of the county attorney's position.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is significantly different than NAC

NAC COURTS STANDARD 13.1 AVAILABILITY OF PUBLICLY FINANCED REPRESENTATION IN CRIMINAL CASES

RELATED IOWA STANDARD 8.12 AVAILABILITY OF PUBLICLY PROVIDED REPRESENTATION IN CRIMINAL CASES

Public representation should be made available to eligible defendants (as defined in Standard 13.2) in all criminal cases at their request, or the request of someone acting for them, beginning at the time the individual either is arrested or is requested to participate in an investigation that has focused upon him as a likely suspect. The representation should continue during trial court proceedings and through the exhaustion of all avenues of relief from conviction.

ICJS

Public representation is available for indigent defendants who are charged with felony and indictable misdemeanor offenses. See Sections 775.4, .5; **Wright v. Denato,** 178 N.W. 2d

712 (Iowa 1970). Public representation is provided primarily through the appointed counsel system. However, statutory provisions exist for a public defender system. See Chapter 336A. Before public representation can be provided, the court must find that the defendant is charged with a felony or an indictable misdemeanor, that the defendant desires representation, and that the defendant is unable to employ counsel. See Sections 775.4; **Wright v. Denato,** supra. If the court so finds, it must allow the defendant to select or assign him counsel at public expense. **Id.** Section 775.4 states that the court must appoint representation when the defendant appears for arraignment without counsel. However, this section has been construed as not limiting the court's power to appoint counsel prior to the time of arraignment. See **Schmidt v. Uhlenhopp,** 140 N.W. 2d 118 (Iowa 1966). For example, counsel must be provided for an indigent defendant at the preliminary hearing. Op. Atty. Gen., Oct. 1965. Under these provisions, public representation continues during trial and on appeal. The appointment of counsel in post conviction habeas corpus proceedings is within the trial court's discretion. **Larson v. Bennett,** 160 N.W. 2d 303 (Iowa 1968).

The public defender must represent each indigent person who is under arrest or charged with a crime if the defendant so requests or the court so orders. Section 336A.3. When representing an indigent person, the public defender is required to counsel and defend him at every stage of the proceedings and prosecute any appeals or other remedies which are in the interest of justice. Section 336A.6. The court may, for cause, appoint an attorney other than the public defender to represent the indigent person. Section 336A.7.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

See Revised Criminal Code, Rules of Criminal Procedure 2 (3), 8 (1), 26.

NAC 13.1 contd.

Defendants should be discouraged from conducting their own defense in criminal prosecutions. No defendant should be permitted to defend himself if there is a basis for believing that:

1. The defendant will not be able to deal effectively with the legal or factual issues likely to be raised;
2. The defendant's self-representation is likely to impede the reasonably expeditious processing of the case; or
3. The defendant's conduct is likely to be disruptive of the trial process.

ICJS

The defendant has the right to proceed without counsel. However, this right is subject to several limitations. The right is waived by the failure of the defendant to unequivocally request to act as his own attorney. **State v. Smith,** 215 N.W. 2d 335 (Iowa 1974). After the commencement of trial, the right of self-representation is curtailed by the necessities of an orderly trial. **Id.** Also, the defendant cannot enter a plea of guilty to a felony unless he is represented by counsel. Section 777.12.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

COURTS STANDARD 13.2
PAYMENT FOR PUBLIC REPRESENTATION

RELATED IOWA STANDARD
8.15 PAYMENT FOR PUBLIC REPRESENTATION

An individual provided public representation should be required to pay any portion of the cost of the representation that he is able to pay at the time. Such payment should be no more than an amount that

can be paid without causing substantial hardships to the individual or his family. Where any payment would cause substantial hardship to the individual or his family, such representation should be provided without cost.

ICJS

An attorney appointed by the court to defend any person at the public expense is entitled to receive reasonable compensation for his services. Section 775.5. The court determines the amount that is reasonable. **Id.** An attorney so appointed may receive, or contract to receive, a partial payment on behalf of the client. Section 775.6. Any such payment must be disclosed to the court and is considered in determining the portion of the attorney fee to be paid by the public. **Id.** The Code does not limit the amount of the partial payment to that which can be paid without causing substantial hardship to the individual or his family. However, the public defender provisions define indigent as "... any person who would be unable to retain in his behalf, legal counsel without prejudicing his financial ability to provide economic necessities for himself or his family." Section 336A.4. A person meeting this definition must be provided representation by the public defender without cost. See Section 336A.3 (2); **see also** Revised Criminal Code, Rule of Criminal Procedure 26.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is the same as NAC

NAC 13.2 contd.

The test for determining ability to pay should be a flexible one that considers such factors as amount of income, bank account, ownership of a home, a car, or other tangible or intangible property, the number of dependents, and the cost of subsistence for the defendant and those to whom he owes a legal duty of support. In applying this test, the following criteria and qualifications should govern:

1. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted, or is capable of posting, bond.

2. Whether a private attorney would be interested in representing the defendant in his present economic circumstances should be considered.

3. The fact that an accused on bail has been able to continue employment following his arrest should not be determinative of his ability to employ private counsel.

4. The defendant's own assessment of his financial ability or inability to obtain representation without substantial hardship to himself or his family should be considered.

ICJS

Section 775.4 provides that public representation must be provided if the defendant is unable to employ counsel. The Code does not establish a test for determining ability to pay. Thus, the court may apply those factors which it considers relevant to this determination. The Supreme Court has indicated several appropriate considerations. In **Bolds v. Bennett,** 159 N.W. 2d 425 (Iowa 1968), the Court stated that factors to be considered in determining indigency are realty or personalty owned, employment benefits, pensions, annuities, social security and unemployment compensation, inheritances, number of dependents, outstanding debts, seriousness of the charge, and other valuable resources.

The public defender provisions establish a "substantial hardship" test for determining ability to pay. See **ICJS Commentary, supra.** The factors to be considered in determining "substantial hardship" are within the court's discretion. See Revised Criminal Code, Rule of Criminal Procedure 26.

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 13.3
INITIAL CONTACT WITH CLIENT

RELATED IOWA STANDARD
8.13 INITIAL CONTACT WITH CLIENT

The first client contact and initial interview by the public defender, his attorney staff, or appointed counsel should be governed by the following:

1. The accused, or a relative, close friend, or other responsible person acting for him, may request representation at any stage of any criminal proceedings. Procedures should exist whereby the accused is informed of this right, and of the method for exercising it. Upon such request, the public defender or appointed counsel should contact the interviewee.

2. If, at the initial, no request for publicly provided defense services has been made, and it appears to the judicial officer that the accused has not made an informed waiver of counsel and is eligible for public representation, an order should be entered by the judicial officer referring the case to the public defender, or to appointed counsel. The public defender or appointed cousel should contact the accused as soon as possible following entry of such an order.

ICJS

Under the appointed counsel system, application for defender services is made to the court. The Code provides that the defendant must be informed of his right to counsel and given the opportunity to obtain representation at the preliminary arraignment. See Section 761.1. To be provided representation at public expense, the defendant must allege indigency and request cousel. See, **e.g., Wright v. Denato**, 178 N.W.2d 712 (Iowa, 1970). Such a request may be made at any stage of the proceedings. See Section 761.1. Before an attorney may be appointed, the defendant must complete a financial statement. Section 336B.2. The court then determines whether the defendant is financially able to employ counsel. When the court finds that the defendant is unable to do so, it appoints representation. The appointments are usually made from a list of attorneys practicing in the county.

Under the public defender system, application may be made directly to the public defender. Section 336A.3(2) provides that the public defender must represent each indigent person who is under arrest or charged with a crime if the defendant so requests. Before preliminary arraignment or other initial court appearance, the public defender determines indigency. Section 336A.4. At or after the initial appearance, the court determines the issue. **Id.** The court may order the appointment of the public defender on its own motion. Section 336A.3(2).

Analysis

ICJS practice is similar to NAC Standard
ICJS principle is similar to NAC

NAC 13.3 contd.

3. Where, pursuant to court order or a request by or on behalf of an accused, a publicly provided attorney interviews an accused and it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel in accordance with established bar procedures and should continue to render all necessary public defender services until private counsel assumes responsibility for full representation of the accused.

ICJS

There are no systemwide standards that apply to the situation in which counsel has been provided at public expense and the defendant is later determined to be financially ineligible for public defense services. However, a practice has been identified. The appointed counsel continues to represent the defendant; however, the court requires payment of the attorney's fee by the defendant. See Contemporary Studies Project, **Perspectives On The Administration Of Criminal Justice In Iowa**, 57 Iowa L. Rev. 598 at 684 (1972). The court

may order direct payment, the county may pay the fee and tax the defendant, or a judgment in the amount of the fee may be entered against the defendant. **Id.**

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.5
METHOD OF DELIVERING DEFENSE SERVICES

RELATED IOWA STANDARD
8.1 METHOD OF DELIVERING DEFENSE SERVICES

Services of a full-time public defender organization, and a coordinated assigned counsel system involving substantial participation of the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime. Cases should be divided between the public defender and assigned counsel in a manner that will encourage significant participation by the private bar in the criminal justice system.

IJCS
The Code provides for the creation of public defender organizations in Iowa. The board of supervisors of any county may establish such an office or may join with other contiguous counties within its judicial district to do so. Section 336A.1. The public defender must represent, without charge, each indigent person who is under arrest or charged with a crime if the defendant so requests or the court so orders. Section 336A.3 (2). It is the duty of the public defender to counsel and defend the indigent person at every stage of the proceedings against him and to prosecute any appeals or other remedies before or after conviction. Section 336A.6. The participation of the private bar is preserved. Upon the request of the indigent person or the public defender, or upon its own motion, the court may appoint an attorney other than the public defender to represent the indigent person at any stage of the proceedings or on appeal. Section 336A.7.

Analysis
ICJS practice is significantly different than NAC Standard
ICJS principle is the same as NAC

NAC COURTS STANDARD 13.6
FINANCING OF DEFENSE SERVICES

RELATED IOWA STANDARD
8.2 ADMINISTRATION AND FINANCING OF DEFENSE SERVICES

Defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction.

ICJS
The court appointed counsel system is organized and administered primarily by the local jurisdiction, the county. The county bar, the county attorney, and the judges of the District Court may determine actual procedures for providing assigned counsel. Systemwide standards are minimal, and practices vary from county to county. See, **e.g.**, Contemporary Studies Project, **Perspective On the Administration Of Criminal Justice In Iowa**, 57 Iowa L. Rev. 598 at 687 (1972). The public defender provisions further enable the county to organize and administer defense services in a manner consistent with local needs. See Chapter 336A. Under these provisions, a county may establish a coordinated public defender and court appointed counsel system. See Section 336A.1. Also, such a system may be organ-

ized on a regional basis. **Id.** However, local administration of the public defender system is limited by statutory standards. See Chapter 336A.

Analysis
ICJS practice is similar to NAC Standard
ICJS principle meets NAC

NAC 13.6

Financing of defender services should be provided by the State. Administration and organization should be provided locally, regionally, or statewide.

ICJS
Court appointed counsel fees are paid out of county funds. Similarly, the expenses incident to the operation of a public defender office are paid by the county. Section 336A.5. To finance the public defender's office, the county may accept funds from private organizations and individuals, and other public agencies. Section 336A.2. The funds are administered locally.

Analysis
ICJS practice is significantly different than NAC Standard
ICJS principle is significantly different than NAC

The Commission states that local governments are less able than the State to finance defender services. Therefore, it advocates State financing of all defender services. However, the Commission recognizes that differing local conditions require local administration.

NAC COURTS STANDARD 13.7 DEFENDER TO BE FULL-TIME AND ADEQUATELY COMPENSATED

RELATED IOWA STANDARD 8.3 DEFENDER TO BE FULL-TIME AND ADEQUATELY COMPENSATED

The office of public defender should be a full-time occupation.

ICJS
The public defender must devote his full time to the discharge of his duties and cannot engage in private practice if his salary is twelve thousand dollars or more. Section 336A. 10. This restiction applies to any assistant public defender who salary is ten thousand dollars or more. **Id.**

Analysis
ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC 13.7 contd.

State or local units of government should create regional public defenders serving more than one local unit of government if this is necessary to create a caseload of sufficient size to justify a full-time public defender.

ICJS

To create a sufficient caseload, a county may join with one or more contiguous counties within its judicial district to establish one office to serve those counties. Section 336A.1.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC 13.7 contd.

The public defender should be compensated at a rate not less than that of the presiding judge of the trial court of general jurisdiction.

ICJS

The compensation of the public defender is fixed by the board of supervisors. The salary cannot exceed that of the highest paid county attorney of the county or counties the public defender serves. Section 336A.5.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.8
SELECTION OF PUBLIC DEFENDERS

RELATED IOWA STANDARD
8.6 SELECTION OF PUBLIC DEFENDERS

The method employed to select public defenders should insure that the public defender is as independent as any private counsel who undertakes the defense of a fee-paying criminally accused person. The most appropriate selection method is nomination by a selection board and appointment by the Governor. If a jurisdiction has a Judicial Nominating Commission as described in Standard 7.1, that commission also should choose public defenders. If no such commission exists, a similar body should be created for the selection of public defenders.

An updated list of qualified potential nominees should be maintained. The commission should draw names from this list and submit them to the Governor. The commission should select a minimum of three persons to fill a public defender vacancy unless the commission is convinced there are not three qualified nominees. This list should be sent to the Governor within 30 days of a public defender vacancy, and the Governor should select the defender from this list. If the Governor does not appoint a defender within 30 days, the power of appointment should shift to the commission.

A public defender should serve for a term of not less than four years and should be permitted to be reappointed.

ICJS

The district court judges of the judicial district containing the county or counties which the public defender is to serve act as a nomination board. When a vacancy occurs in the office of public defender, these judges nominate two qualified attorneys and certify their names to the board or boards of supervisors of the county or counties. Within thirty days, the supervisors must appoint, by majority vote, one of the nominees. The appointment is for a term of six years. The Code does not restrict the public defender to one term.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC 13.8 contd.

A public defender should be subject to disciplinary or removal procedures for permanent physical or mental disability seriously interfering with the performance of his duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice. Power to discipline a public defender should be placed in the judicial conduct commission provided in Standard 7.4.

ICJS

Section 336A.3 states that the public defender is appointed for a term of six years so long as he shall remain qualified as otherwise provided in this chapter. To be qualified, the public must be an attorney admitted to practice before the Iowa Supreme Court. Section 336A.3(1). Other provisions of the public defender chapter set forth duties and various prohibitions. Presumably, the public defender must comply with these provisions to remain qualified. See, **generally**, Chapter 336A. The Code neither establishes specific discipline or removal procedures nor creates a conduct commission to review alleged misconduct.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 13.9
PERFORMANCE OF PUBLIC DEFE ER FUNCTION

RELATED IOWA STANDARD
8.9 PERFORMANCE OF THE PUBLIC DEFENDER FUNCTION

Policy should be established for and supervision maintained over a defender office by the public defender. It should be the responsibility of the public defender to insure that the duties of the office are discharged with diligence and competence.

The public defender should seek to maintain his office and the performance of its function free from political pressures that may interfere with his ability to provide effective defense services. He should assume a role of leadership in the general community, interpreting his function to the public and seeking to hold and maintain their support of and respect for this function.

The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect, and integrity. It should not be characterized by demonstrations of negative personal feelings on one hand or excessive familiarity on the other. Specifically, the following guidelines should be followed:

1. The relations between public defender attorneys and prosecution attorneys should be on the same high level of professionalism that is expected between responsible members of the bar in other situations.

2. The public defender must negate the appearance of impropriety by avoiding excessive and unnecessary camaraderie in and around the courthouse and in his relations with law enforcement officials, remaining at all times aware of his image as seen by his client community.

3. The public defender should be prepared to take positive action, when invited to do so, to assist the police and other law enforcement components in understanding and developing their proper roles in the criminal justice system, and to assist them in developing their own professionalism. In the course of this educational process he should assist in resolving possible areas of misunderstanding.

4. He should maintain a close professional relationship with his fellow members of the legal community and organized bar, keeping in mind at all times that this group offers the most potential support for his office in the community and that, in the final analysis, he is one of them. Specifically:
   a. He must be aware of their potential concern that he will preempt the field of criminal law, accepting as clients all accused persons without regard to their ability or willingness to retain private counsel. He must avoid both the appearance and fact of competing with the private bar.
   b. He must, while in no way compromising his representation of his own clients, remain sensitive

to the calendaring problems that beset civil cases as a result of criminal case overloads, and cooperate in resolving these.

c. He must maintain the bar's faith in the defender system by affording vigorous and effective representation to his own clients.
d. He must maintain dialogue between his office and the private bar, never forgetting that the bar more than any other group has the potential to assist in keeping his office free from the effects of political pressures and influences.

ICJS

The ICJS does not specifically designate the entity that has control over the policy of the public defender office. Also, the Code does not set forth policy statements concerning the public defender's relationships with the public, law enforcement agencies, the prosecution and the courts. The **Iowa Code Of Professional Responsibility** does contain professional conduct guidelines that apply to all attorneys.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.10
SELECTION AND RETENTION OF ATTORNEY STAFF MEMBERS

RELATED IOWA STANDARD
8.7 SELECTION AND RETENTION OF ATTORNEY STAFF MEMBERS

Hiring, retention, and promotion policies regarding public defender staff attorneys should be based upon merit. Staff attorneys, however, should not have civil service status.

ICJS

It is the responsibility of the board of supervisors to determine the number of assistant public defenders necessary to carry out the duties of the public defender office. The public defender may then appoint such assistants. Section 336A.5(2). All assistants must be qualified attorneys licensed to practice before the Supreme Court. The Code does not set forth specific standards for hiring, promotion, and retention policies.

Analysis

ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 13.11
SALARIES FOR DEFENDER ATTORNEYS

RELATED IOWA STANDARD
8.4 SALARIES FOR DEFENDER ATTORNEYS

Salaries through the first 5 years of service for public defender staff attorneys should be comparable to those of attorney associates in local private law firms.

ICJS

The compensation of assistant public defenders must be fixed by the board of supervisors. Section 336A.5. The Code provides no guidance in setting the amount. However, the salary of the public defender cannot exceed that of the highest paid county attorney of the county or counties the public defender serves. **Id.**

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.12
WORKLOAD OF PUBLIC DEFENDERS

RELATED IOWA STANDARD
8.11 WORKLOAD OF PUBLIC DEFENDERS

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for postjudgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

ICJS
The statutory provisions relating to the operation of public defender offices do not specifically address the question of caseloads. See Chapter 336A. However, Section 336A.3 (2) provides that the public defender must represent each indigent defendant if the defendant so requests or the court so orders. Therefore, the caseload of the office is determined by the number of requests and court assignments. The public defender may control this caseload factor by applying to court for appointment of an attorney other than the public defender. See Section 336A.7.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.13
COMMUNITY RELATIONS

RELATED IOWA STANDARD
8.10 COMMUNITY RELATIONS

The public defender should be sensitive to all of the problems of his client community. He should be particularly sensitive to the difficulty often experienced by the members of that community in understanding his role. In response:

1. He should seek, by all possible and ethical means, to interpret the process of plea negotiation and the public defender's role in it to the client community.
2. He should, where possible, seek office locations that will not cause the public defender's office to be excessively identified with the judicial and law enforcement components of the criminal justice system, and should make every effort to have an office or offices within the neighborhoods from which clients predominantly come.
3. He should be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice.

ICJS
The ICJS provides no systemwide standards for the public defender's relationship with the

client community. The **Iowa Code Of Professional Responsibility For Lawyers** contains provisions which structure the lawyer-client relationship.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.14
SUPPORTING PERSONNEL AND FACILITIES

RELATED IOWA STANDARD
8.5 SUPPORTING PERSONNEL AND FACILITIES

Public defender offices should have adequate supportive services, including secretarial, investigation, and social work assistance.

In rural areas (and other areas where necessary), units of local government should combine to establish regional defenders' offices that will serve a sufficient population and caseload to justify a supporting organization that meets the requirements of this standard.

The budget of a public defender for operational expenses other than the costs of personnel should be substantially equivalent to, and certainly not less than, that provided for other components of the justice system with whom the public defender must interact, such as the courts, prosecution, the private bar, and the police. The budget should include:

1. Sufficient funds to provide quarters, facilities, copying equipment, and communications comparable to those available to private counsel handling a comparable law practice.

2. Funds to provide tape recording, photographic and other investigative equipment of a sufficient quantity, quality, and versatility to permit preservation of evidence under all circumstances.

3. Funds for the employment of experts and specialists, such as psychiatrists, forensic pathologists, and other scientific experts in all cases in which they may be of assistance to the defense.

4. Sufficient funds or means of transportation to permit the office personnel to fulfill their travel needs in preparing cases for trial and in attending court or professional meetings.

Each defender lawyer should have his own office that will assure absolute privacy for consultation with clients.

The defender office should have immediate access to the library containing the following basic materials: the annotated laws of the State, the State code of criminal procedure, the municipal code, the United States Code Annotated, the State appellate reports, the U.S. Supreme Court reports, Federal courts of appeal and district court reports, citators governing all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting State law, a form book of approved jury charges, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court case reporters published weekly, loose leaf services related to criminal law, and, if available, an index to the State appellate brief bank. In smaller offices, a secretary who has substantial experience with legal work should be assigned as librarian, under the direction of one of the senior lawyers. In large offices, a staff attorney should be responsible for the library.

ICJS
The board of supervisors of the county which the public defender serves must provide office space, furniture, equipment, and supplies for the use of the public defender suitable for the business of his office. Section 336A.9. In lieu of providing facilities, an allowance may be provided. **Id.** The Code does not specify the actual support services to be supplied. In their discretion, the board of supervisors may provide a county law library in the courthouse. Section 332.6. However, the board is not required to provide the public defender office with library services. Counties may combine to establish a regional office. Section 336A.1. This provision allows the local governments to increase the population and caseload served by the office, thereby justifying extensive support services.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is similar to NAC

NAC COURTS STANDARD 13.15
PROVIDING ASSIGNED COUNSEL

RELATED IOWA STANDARD
8.14 PROVIDING ASSIGNED COUNSEL

The public defender office should have responsibility for compiling and maintaining a panel of attorneys from which a trial judge may select an attorney to appoint to a particular defendant. The trial court should have the right to add to the panel attorneys not placed on it by the public defender. The public defender's office also should provide initial and inservice training to lawyers on the panel and support services for appointed lawyers, and it should monitor the performance of appointed attorneys.

ICJS
The Code does not assign to the public defender the responsibility for compiling and maintaining a panel of private defense attorneys whom the trial judge may appoint. Rather, the public defender and his assistants are restricted from referring directly or indirectly any legal manner to any particular lawyer or lawyers. Section 336A.11. However, the public defender may recommend a lawyer when requested to do so by any court, governmental agency, or legal aid society. **Id.**

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 13.16
TRAINING AND EDUCATION OF DEFENDERS

RELATED IOWA STANDARD
8.8 TRAINING AND EDUCATION OF DEFENDERS

The training of public defenders and assigned counsel panel members should be systematic and comprehensive. Defenders should receive training at least equal to that received by the prosecutor and the judge. An intensive entry-level training program should be established at State and national levels to assure that all attorneys, prior to representing the indigent accused, have the basic defense skills necessary to provide effective representation.

A defender training program should be established at the national levels to conduct intensive training programs aimed at imparting basic defense skills to new defenders and other lawyers engaged in criminal defense work.

Each State should establish its own defender training program to instruct new defenders and assigned panel members in substantive law, procedure, and practice.

Every defender office should establish its own orientation program for new staff attorneys and for new panel members participating in provision of defense services by assigned counsel.

Inservice training and continuing legal education programs should be established on a systematic basis at the State and local level for public defenders, their staff attorneys, and lawyers on assigned counsel panels as well as for other interested lawyers.

ICJS
There are no statutory requirements that public defenders and publicly appointed defense attorneys receive specialized instruction in criminal law and criminal defense skills. All attorneys admitted to the Iowa bar are required to participate in continuing legal education programs. However, specialized training in the defense function is not required.

Analysis
ICJS practice is different than NAC Standard
ICJS principle is different than NAC

NAC COURTS STANDARD 15.1
THE COURT COMPONENT AND RESPONSIBLITY FOR ITS DEVELOPMENT

RELATED IOWA STANDARD
11.8 MASS DISORDERS

Each comprehensive plan for the administration of justice in a mass disorder situation should contain a court processing section dealing in detail with court operations and the defense and prosecution functions required to maintain the adversary process during a mass disorder.

Where no other adequate judicial planning body exists in a community, that portion of the court processing plan that deals with court operations should be developed under the auspices of a council of judges containing representatives of all courts within the community. Where the general plan for mass disorders includes multiple counties or municipalities, the judiciary of each county or municipality within the purview of that plan should be assured adequate representation on the council of judges.

The council of judges or its equivalent also should have responsibility for reviewing, modifying if necessary, and approving these portions of the court processing plan that deal with defense and prosecution functions.

NAC COURTS STANDARD 15.2
SUBJECT MATTER OF THE COURT PLAN

The court plan should be concerned with both judicial policy matters and court management matters. The council of judges should develop the judicial policy aspects of the plan. The court management aspects also should be developed by the council of judges, unless the community has an adequate court management operation to which such planning may be delegated.

1. Jucicial Policy Matters. Generally, the following policies should be developed and enunciated. Provision should be made for their institutionalization by the judicial planning body in its mass disorder plan:
   a. The court plan, to the extent possible, should be made public and disseminated widely to assure the community and individual arrestees that their security and rights are being protected. Portions of the plan that contain sensitive information should not be made public.
   b. Provision should be made for pretrial release procedures normally available to remain available during a disorder.
   c. The adversary process should function as in normal times and to this end the defense and prosecution functions should be performed adequately.
   d. Persons coming before the bench should be informed of all their rights as in normal times.
   e. Arrested persons should be assured speedy presentation before a judicial officer and a speedy trial.
   f. Sentencing growing out of a mass disorder should be deferred until the conclusion of the disorder, with the exception of sentencing to time served in pretrial detention or a minimal and affordable fine.

2. Management Considerations. Generally, the following management considerations should be contained in the court component of the mass disorder plan:
   a. To insure prompt execution of the plan in the event of a mass disorder, responsibility for its activation should be vested in an single member of the council of judges. An alternate also should be designated, and he should have activation responsibility in the event that the first member is unavailable. Deactivation should take place under the direction of the same council member.
   b. The plan should be designed to be activated in phases scaled to the precise degree required by the disorder at hand. In order to activate to that precise degree, a basic processing module formula for both initial appearance and trial should be developed and used.
   c. The normal business of the courts should proceed during a disorder unless the disorder is of

CONTINUED

2 OF 3

such a magnitude that sufficient personnel and facilities are unavailable. In that event, normal business should be postponed and rescheduled for the earliest possible time.

d. Plans should be made for the identification, recruitment, and assignment of sufficient judicial personnel from all courts within the municipality and, when necessary, from neighboring municipalities or even neighboring States. The requisite intrajurisdictional and interjurisdictional compacts should be entered into, and where necessary, legislation or constitutional amendment should be enacted in conjunction with the planning process.
e. Plans should be made for the identification, recruitment, and assignment of sufficient court administrative and clerical personnel for all purposes, drawing such personnel, if necessary from nonjudicial governmental departments within the municipality or from the entire metropolitan area. Such auxiliary personnel should be identified and recruited as part of the planning process for potential callup in the event they are needed. The list of such personnel should be updated periodically.
f. Court papers should be designed to conform as nearly as possible to the paper forms employed by the police and the prosecution. Sufficient quantities of such forms should be produced in advance so that they will be available in the event of a mass disorder.
g. Attention should be given to the problem of paper flow and mechanical and electronic data flow, to the end that papers and mechanically and electronically retrieved information move smoothly from the police to prosecutors and defense counsel and to the court.
h. Arrangements should be made to identify and secure facilities within the municipality or metropolitan area suitable for potential use as court, prosecutorial, and defense facilities. Such facilities should be used in the event that the usual facilities become insufficient. Other governmental buildings suitable for such use should be considered first, and, if this is inadequate, arrangements should be made for the use of other facilities.
i. Arrangements should be made for sufficient clerical supplies and equipment to be available for use in processing arrestees during a mass disorder. Material should include sufficient business machinery, office equipment, computers, and the like.
j. Provision should be made to maintain adequate security in the regular courthouses and in any other facilities that may be utilized for court purposes. Alternate facilities should be available in the event the regular courthouse is in the disorder zone and security would be difficult or impossible to maintain.
k. Techniques should be developed to pinpoint the location of detained persons during a disorder and to insure that they can be brought before the court on demand and that their attorneys can establish physical contact when required.

At least yearly a simulated implementation of the plan should be attempted, so that deficiencies in it can be identified and corrected.

NAC COURTS STANDARD 15.3
PROSECUTION SERVICES

The prosecutorial plan should be developed initially by the prosecutor's office. If the general plan encompasses several prosecutors' offices, a board of prosecutors should be established and given responsibility for proposing a prosecutorial plan. All prosecutors' offices within the area should be represented on this board.

1. Policy Considerations. The following policy considerations should be included in the plan:
   a. Screening--The case of each individual arrestee resulting from a mass disorder should be examined within the shortest possible time following arrest. Immediate release wherever appropriate should be ordered. Specific guidelines should be included for determining those situations in which immediate release will be appropriate.

      Such release is appropriate if a station house summons will suffice or if for any reason the case should not proceed to trial. In order to facilitate this screening, simplified procedures should be developed so that the chain of evidence from arrest to screening is clearly recorded and available. The prosecutor, in conjunction with the planning process, should develop discretionary guidelines to insure that the criteria for screening cases is met.
   b. Charging--Arrestees who are not screened out immediately should be charged by the prosecutor within the shortest possible time. Similar criteria that exist in normal times should be employed during mass disorder. Care should be taken to avoid ove charging. Guidelines for charging in a mass disorder context should be developed as part of the planning process. In jurisdictions in

which adequate legislation defining unlawful conduct peculiar to mass disorders does not exist, new laws should be enacted to fit such behavior.

2. Management Considerations. The following management considerations should be included in the prosecutorial plan:

a. Advance arrangements should be made for recruitment of sufficient prosecutors in the event of a mass disorder, drawing when necessary upon other prosecutorial offices in neighboring municipalities or States, and, if necessary, from the private bar. The requisite interjurisdictional compacts to effectuate the employment of extrajurisdictional prosecutorial personnel should be entered into in conjunction with the planning process. Provision should be made for periodically updating the recruitment list.

b. Plans should be made for identification, recruitment, and assignment of sufficient administrative, clerical, and investigatory personnel to provide backup services for the prosecutorial staff. Such personnel should, if necessary, be drawn from nonjudicial governmental departments within the area. Provision should be made for periodically updating the recruitment list.

c. Arrangements should be made for sufficient space, clerical material, and equipment to be available for use in processing the anticipated caseload in the event of a mass disorder. This includes sufficient business machinery, office equipment, telephones, duplicating equipment, and computer facilities.

NAC COURTS 15.4
DEFENSE SERVICES

The plan for providing defense services during a mass disorder should generally be developed initially under the auspices of the local public defender. If the general plan encompasses several public defender offices, a board of public defenders should be established and given responsibility for proposing a defense plan. All public defender offices within the area should be represented on this board.

In the event that the community's primary system for defense of the indigent is assigned counsel, the organized bar within the community should develop the plan for providing defense services during mass disorder.

1. Policy Considerations. The following policy considerations should be included in the plan:

a. Any person arrested during a mass disorder or charged with any offense as a result of such a disorder should have a right to be represented by a publicly provided attorney if the arrestee meets the criteria for the appointment of counsel normally applied or if, because of the nature of the mass disorder situation, he is unable to obtain other representation.

b. Arrested persons should be informed of their rights, including their right to representation at the earliest possible time after arrest. Counsel should be available to the arrestee as soon after arrest as is required to protect the arrestee's rights, including the right not to be unnecessarily detained prior to charging.

c. Each attorney should represent only one arrestee at a time before a judicial officer or judge unless the case is of such a nature that it is not in the best interests of the defendants to be so represented.

2. Management Considerations. The following management considerations should be included in the defense plan:

a. Provision should be made for the identification, recruitment, and assignment of sufficient defense counsel, utilizing the public defender staff and assigned cousel lists where available. If this will not provide sufficient personnel, private attorneys from within the jurisdiction who have indicated a willingness to represent defendants during a mass disorder should be included.

Members of the bar of other States should be permitted to serve as counsel during a mass disorder if necessary; provision should be made for admission on motion. Provision should be made for periodically updating the recruitment list.

b. Law students should be employed in the defense function in conformity with rules for utilizing law students during normal times.

c. Special training programs should be conducted for attorneys on the list of those who will provide defense services during a mass disorder.

d. Plans should be made for the identification, recruitment, and assignment of sufficient adminis-

trative, investigatory, and clerical personnel to serve, if needed, as backup to defense counsel. Such personnel should be drawn from governmental or nongovernmental departments within the municipality or the metropolitan area. Provision should be made for periodically updating the recruitment list.

e. Arrangements should be made for sufficient space, clerical material, and equipment to be available for use in processing the anticipated caseload in the event of a mass disorder. This includes sufficient business machinery, office equipment, telephones, duplicating equipment, and computer facilities.

ICJS

NAC Standards 15.1 through 15.4 deal with court processing of individuals during a mass disorder. The Commission believes that it is unrealistic to expect courts to function in their regular manner during such an occurrence. The Commission further recognizes that courts must make changes in the processing of individuals to accommodate the unusual situation. The objective of these Standards is to maximize the likelihood that these changes will not result in dilution of the quality of justice dispensed. The Standards deal only with the court process - the process beginning after arrest and continuing through acquittal or sentence. The process should be considered as only one component of an overall plan for the administration of justice during a mass disorder. Such a plan must involve all agencies of the criminal justice process. It must be coordinated, comprehensive in scope, developed in advance of the disorder, and capable of implementation should the disorder occur. The goal of the adjudicatory phase of such a plan must be to protect individual liberties of arrested persons as well as the security of the community involved in a mass disorder.

The court component of the Iowa criminal justice system does not have such a plan. Also, the Code contains no provisions designed to modify court processing during a mass disorder.

Analysis

ICJS practice is inconsistent with NAC Standard
ICJS principle is inconsistent with NAC

END