In the Iowa District Court for Polk County

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| **State of Iowa,**  *Plaintiff*,  v.  **,**  *Defendant*. | **Criminal No:**  **Order Revoking Probation and**  **Imposing Sentence**  *Defendant is in custody* |

The State is represented by .

Defendant appears in person and with counsel,      ,

Defendant also appears with interpreter, .

Defendant knowingly, voluntarily and intelligently waives his/her right to an attorney.

Defendant waived reporting and any record of the probation hearing.

**Findings of the Court**

Defendant **STIPULATES** **IS FOUND** **IS FOUND NOT** to have violated the terms of his probation by .

**Order**

On inquiry, no legal cause has been shown to prevent disposition on this date. Defendant was given an opportunity to speak in mitigation of the sentence. The following sentence is based on all available **SENTENCING CONSIDERATIONS** set out in Iowa Code § 907.5. The court finds the following factors the most significant in determining this particular sentence:

The nature and circumstances of the crime Statutory sentence requirements Victim impact statement

Protection of the public from further offenses Defendant’s statement Defendant’s age and character

Defendant’s criminal history Defendant’s mental health history Defendant’s employment

Defendant’s substance abuse history Defendant’s family circumstances The plea agreement

Defendant’s propensity for further criminal acts Maximum opportunity for rehabilitation

Defendant’s probation is **revoked**. Defendant is adjudged guilty of  in violation of Iowa Code Section  and shall be **incarcerated for a period not to exceed  years** as provided by Iowa Code Sections 902.9 and 902.3. Credit Defendant with all days served.

Defendant shall pay a $ **fine**. Defendant is also ordered to pay a **CRIME SERVICES SURCHARGE** of 15% on any portion of the fine which is not suspended.

This fine is suspended due to Defendant’s incarceration.

**CONTINUED Probation is denied** based on the sentencing considerations set out above. The Court has determined that this sentence will provide reasonable protection of the public. Credit Defendant for all days served. **Defendant is committed to the custody of the Director of the Iowa Department of Corrections** (DOC) for a determination of the appropriate place of confinement, all as provided by Iowa Code Sections 901.7 and 902.5. Pending Defendant’s transfer to the custody of the Director of the Iowa Department of Corrections at the reception center, Defendant shall remain in the custody of the sheriff. The sheriff shall transport Defendant to the State institution accompanied by a person of the same sex. Defendant’s term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits and program credits. Defendant may be eligible for parole before the sentence is discharged.

Defendant shall submit a **DNA sample** to the Department of Corrections pursuant to Iowa Code Chapter 81. Failure to comply may constitute contempt of court.

**victim PECUNIARY DAMAGES (vpd).**  Defendant is ordered to pay VPD in the amount of $      for the costs inflicted on the victim(s) of this crime*. (“TBD” means “to be determined” which means that the final, accurate VPD amounts are not available at this time. When such amounts are available, the State may apply for VPD and a supplemental VPD order will follow.)* Defendant has 30 days to contest the amount of VPD. Payment(s) shall be made to the Clerk of Criminal Court, Criminal Courts Building, 110 6th Avenue, Des Moines, IA 50309.The Clerk shall forward payment(s) to      . ***DEFENDANT SHALL NOT BE DISCHARGED FROM PAROLE UNTIL VICTIM RESTITUTION DUE IS PAID IN FULL.***

Defendant is ordered to participate in and successfully complete the **IOWA Domestic Abuse Program** while in prison**.**

S**PECIAL SEX OFFENDER CONDITIONS.** Defendant is advised that this conviction is for a sexually predatory offense and the punishment for any future convictions for similar crimes will be enhanced due to this conviction. In addition:

**SPECIAL SENTENCE.** In addition to the sentence imposed above, per Iowa Code Section 903B.2, Defendant is committed to the custody of the Director of Department of Corrections for TEN (10) years. Such sentence shall commence at the end of the sentence for underlying offense and Defendant shall be supervised as if on parole.

**SEX OFFENDER REGISTRY.** Defendant is ordered to comply with all terms of Iowa Code Chapter 692A including Iowa Code Section 692A.113 on Exclusion Zones and Activities and is ordered to comply with the Sex Offender Registry as set out in the attached Notice.

**SEX OFFENDER TREATMENT.** Defendant shall participate in, cooperate with and complete Sex Offender Treatment. Failure to comply with sex offender treatment may result in defendant serving 100% of the sentence imposed.

**DNA SAMPLE.** Defendant shall submit a DNA sample to the Iowa Department of Corrections (DOS).

**Category B Restitution and Reasonable Ability to Pay Analysis**

***This section applies to the current probation revocation matter only. It does not change any prior restitution order entered, or any reasonable ability to pay determination made, by the court previously with respect to the underlying charges.***

Iowa law separates restitution into three categories. ***Victim Pecuniary Damages*** includes the damages done to a victim in the course of a crime as set out in Iowa Code § 910.1(3). ***Category A Restitution*** includes fines, surcharges and penalties. Defendant must pay all ***Victim Pecuniary Damages*** and ***Category A Restitution*** and that duty is not subject to a reasonable ability to pay analysis.

***Category B Restitution*** includes court costs, crime victim assistance program reimbursement, expenses incurred by public agencies under Iowa Code §321J.2(13)(b), medical assistance program restitution pursuant to Iowa Code chapter 249A, contributions to a local anti-crime organization and legal assistance fees, (including the expense of a public defender) pursuant to Iowa Code §815.9.

According to Iowa Code §910.2A, Defendant is presumed to have the reasonable ability to pay all ***Category B Restitution and is therefore ordered to pay all Category B Restitution.*** Defendant can challenge the obligation to pay ***Category B Restitution*** by filing a motion within 30 days of this order stating that defendant does not have a reasonable ability to pay ***Category B Restitution*.** The motion must be accompanied by a financial affidavit which must also be served on the prosecutor. Defendant must prove that defendant does not have a reasonable ability to pay ***Category B Restitution*** or the court cannot legally reduce the order to pay such fees.Failure to file a motion or a financial affidavit waives any claim of an inability to pay Category B Restitution. *“Financial* *affidavit”* means a signed affidavit sworn under penalty of perjury that provides specific financial information about Defendant to enable the sentencing court to determine defendant’s reasonable ability to pay Category “B” Restitution.The affidavit form applying for court-appointed counsel is not sufficient for purposes of determining reasonable ability to pay.

Defendant requests a finding of less than a full ability to pay Category B Restitution. Defendant furnished a completed financial affidavit to the Court and the prosecutor had the opportunity to cross examination on the financial affidavit. Evidence of the amount of attorney fees was presented. The Court therefore makes the following finding regarding Category B Restitution:

**☐ NO ABILITY TO PAY:**  Defendant has no ability to pay ***Category B Restitution*** in any amount.

**☐ PARTIAL ABILITY TO PAY:**  Defendant has the reasonable ability to pay, and is ordered to pay, up to $ for ***Category B Restitution***

**☐ FULL ABILITY TO PAY:**  Defendant has a full ability to pay, and is ordered to pay, all ***Category B Restitution***.

***Defendant is ordered to pay any and all assessed restitution, fines, surcharges, and court costs.*** All payments shall be made to Clerk of Criminal Court, Polk County Criminal Courts Building, 110 6th Avenue, or the Polk County Justice Center, 222 Fifth Avenue, Des Moines, Iowa 50309 or online at [www.iowacourts.gov](http://www.iowacourts.gov). Defendant shall call the Clerk of Court at 286-3772 to verify amounts owed. ***These amounts are delinquent 30 days after all costs are assessed.*** The Clerk shall pay down Category B Restitution according to Iowa Code §910.2(1). If there are multiple cases, the clerk shall divide Category B Restitution costs equally between cases where appropriate. If Defendant fails to pay the total financial obligation due, the case will be transferred for collection. The State of Iowa may withhold any State income tax refund, vehicle registration and/or driver’s license issuance for unpaid court ordered financial obligations.

**Dismissal of Other Counts and Cases**

**DISMISSAL OF OTHER COUNTS AND CASES**. Upon the State’s recommendation, the following counts/cases are dismissed: .  State to pay costs. Pursuant to the plea agreement adopted by the court, Defendant is ordered to pay court costs and any victim restitution associated with these counts and/or cases.

Iowa Code Section 901C.1 allows Defendant to request that a dismissed case be removed from the public record.  Before the request is made or granted each of the following must be true:

1. All charges in the caseare dismissed.
2. At least 180 days have passed since the dismissal or Defendant proves, and the court finds, good cause to act sooner.
3. The dismissal was not based on a finding that Defendant was incompetent or not guilty by reason of insanity.
4. All court costs, fees, or other financial obligations ordered by the court have been paid.

Dismissed case number(s)  are related to a deferred judgment.

**Other Matters**

If Deferred Judgment was revoked and sentence imposed, there are two ways **to** **challenge THIS judgment** defendant must file for EITHER 1) Appeal OR 2) Discretionary Review -- either must be filed with the clerk of court within 30 days or the request will be denied as untimely.  Defendant has a right to Appeal except after a guilty plea which waives the right absent good cause.  Grounds for Discretionary Review are limited by Iowa Code § 814.6(2).  A copy of the Notice of Appeal must be served on the Iowa Attorney General. If Defendant cannot afford the expense of Appeal and qualifies financially, an attorney and necessary documents will be furnished at State expense.

Any mittimus shall issue immediately.

**RECALL WARRANT**

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Defendant was personally served with a copy of this order.

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In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following: