

## Section H

# Does Your Criminal Law Client Have a New Civil Rights Case Under Godfrey

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under *Godfrey*?**

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## Iowa's New Civil Rights Actions Under *Godfrey*

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### I. Recent caselaw:

- A. *Godfrey v. State*, 898 N.W.2d (Iowa 2017). Plaintiff brought a damages lawsuit against Governor Branstad and other officials concerning reduction of salary. Plaintiff was an Iowa Workers' Compensation Commissioner. The suit alleged four counts alleging violation of due process and equal protection provisions of the Iowa Constitution. The district court granted summary judgment for Defendants on those claims, concluding that there are no private causes of action for violations of the Iowa Constitution. The Supreme Court reversed in part and affirmed in part, holding that (1) there is a private cause of action for violations of the Iowa Constitution and (2) the equal protection clause of the Iowa Constitution is self-executing.
- B. *Baldwin v. City of Estherville*, 951 N.W.2d 259 (Iowa 2018). The Iowa Supreme Court answered a question asked by the federal district court as to whether a defendant can raise a defense of qualified immunity to an individual's claim for damages in violation of Iowa Const. art. I, 1 and 8.

Plaintiff, an ATV operator, was arrested for a crime that did not exist under the City Ordinances. Plaintiff brought suit against the city and the police officers under article I, sections 1 and 8 of the Iowa Constitution. The federal district court certified a question of law to the Iowa Supreme Court. The Iowa Supreme Court answered that a

defendant who pleads and proves as an affirmative defense that the defendant exercised “all due care” to conform with the requirements of the law is entitled to a qualified immunity on an individual’s claim for damages in violation of article I, sections 1 and 8 of the Iowa Constitution. The case was remanded for trial.

C. *Baldwin v. City of Estherville*, 929 N.W.2d 691 (Iowa 2019). The Iowa Supreme Court answered further questions certified to it by the federal district court, holding, among other things, that a municipality can assert qualified immunity to a claim for damages for violation of the Iowa Constitution based on its officers' exercise of "all due care."

Specifically, the Iowa Supreme Court held (1) the due care exemption under Iowa Code 670.4(1)(c) could provide the City immunity; (2) section 670.4(1)(e) of the Municipal Tort Claims Act precludes an award of punitive damages against the municipality that employed the constitutional tortfeasor; (3) common law attorney fees may be available against the municipal employer.

D. *Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019). Plaintiff was charged and tried for a rape that occurred while the Plaintiff was indisputably in another State at the time. Plaintiff was acquitted. The Iowa Supreme Court affirmed in part and reversed in part the judgment of the district court denying Defendants' motions to dismiss, holding *Baldwin* “all due care” immunity did not displace absolute judicial immunity for prosecutors.

The police defendants, however, were not entitled to judicial immunity, but instead enjoy only *Baldwin* “all due care” immunity. The case was remanded for trial.

II. Why do *Godfrey* actions matter? Why not just bring a § 1983 lawsuit under the Federal Constitution in Federal Court? Because a *Godfrey* action is an opportunity for both greater constitutional protection and more plaintiff-friendly “all due care” immunity.

A. Greater protection under Iowa’s Bill of Rights.

1. The federal drafters saw the individual states as having the responsibility to preserve individual rights. *Baldon* at 808 (citing I *Records of the Federal Convention of 1787* 356 (Max Farrand ed., 1937)). The Iowa Constitution “was designed to be the primary defense for individual rights, with the United States Constitution Bill of Rights serving **only as a second layer of protection.**” Honorable Mark S. Cady, *A Pioneer’s Constitution: How Iowa’s Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Civil Liberties*, 60 *DRAKE L. REV.* 1133, 1145 (2012) (emphasis added).
2. Unlike the federal constitution, the Iowa Constitution contained a Bill of Rights right from the start. The drafters considered it more important than all other clauses of the Iowa Constitution put together. *State v. Short*, 851 N.W.2d 474, 482 (Iowa 2014).
3. Iowa’s drafters intended Iowa’s Bill of Rights to expand and not curtail the rights of the people. *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013).
4. “[T]he record of the 1857 Iowa Constitutional Convention reflects a desire of its members ‘to put upon record every guarantee that could be legitimately placed [in the constitution] in order that Iowa not only might be the first State in the Union, unquestionably as she is in many respects, but that she might also have the best and most clearly defined Bill of Rights.’” *Godfrey v. State*, 898 N.W.2d 844, 864 (Iowa 2017).

5. As Iowa lawyers, we are privileged to practice in a state that has “been at the forefront in recognizing individuals' civil rights.” *Varnum* at 877 fn4 (Iowa 2009). The Iowa Court of Appeals has strongly declared that Iowa’s judicial branch “has for over 150 years led the nation in protecting the individual rights of our citizens. We reaffirm that position.” *State v. Blanks*, 479 N.W.2d 601, 605 (Iowa App. 1991)(emphasis added).
6. A few examples of greater protection under Iowa Bill of Rights:
  - a. Search and Seizure – Rejection of *Leon* Good-Faith Exception to the Exclusionary Rule. *State v. Prior*, 617 N.W. 2d 260 (Iowa 2000).
  - b. Search and Seizure – Vehicle Stop. *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004).
  - c. Search and Seizure – Reasonable Expectation of Privacy by Renter. *State v. Fleming*, 790 N.W.2d 560, 567-68 (Iowa 2010).
  - d. Search and Seizure – Constant to Vehicle Search. *State v. Pals*, 805 N.W.2d 767 (Iowa 2011).
  - e. Search and Seizure – Warrantless Search of Locked Container in Vehicle. *State v. Gaskins*, 866 N.W.2d 1, 16 (Iowa 2015).
  - f. Search and Seizure – Traffic Stop Ends when Reason for Stop Resolved and No Other Reasonable Suspicion. *State v. Coleman*, \_\_\_ N.W.2d \_\_\_ (Iowa 2017)
  - g. Search and Seizure – Warrantless Searches Involving Parolees. *State v. Kern* 831 N.W.2d 149 (Iowa 2013); *State v. Ochoa*, 792 N.W.2d 260 (Iowa 2010); *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013).
  - h. Cruel and Unusual Punishment – *State v. Bruegger*, 773 N.W.2d 862, 863(Iowa 2009)(as applied challenge under article I, section 17 to lengthy incarceration).
  - i. Cruel and Unusual Punishment of Juveniles -- *State v. Sweet*, 879 N.W.2d 811 (Iowa 2016).
  - j. Due Process – Admission of Prior Bad Acts Evidence. *State v. Cox*, 781 N.W.2d 757, 762 (Iowa 2010)(No

admission of prior bad acts involving different victim to show propensity under article I, section 9.)

#### B. Different standard for Qualified Immunity

1. "All due care to comply with the law" is a much more plaintiff-friendly standard than Federal § 1983 *Harlow* Qualified Immunity. "The Iowa standard for qualified immunity is more stringent than the federal standard." *Ohlson-Townsend v. Wolf*, 18-cv-4093-CJW-MAR, 2019 WL 6609695 (N.D. Iowa December 5, 2019).
2. It is an affirmative defense that must be plead and proved by the Defendant.
3. "All due care" amounts to negligence.

#### III. Unresolved Questions and Pitfalls

- a. Iowa Tort Claims Act
- b. Municipal Tort Claims Act
- c. Attorney's fees
- d. Favorable Termination of Criminal Case
- e. Deferred Prosecution Agreements
- f. *Alford* Pleas


#### IV. Conclusion

These rights aren't new. They have been around since before the 1857 convention. It is our great privilege as Iowa lawyers to practice here in the state at the forefront of constitutional rights.

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Inmate Record Dickinson County Jail		Sheriff: Greg Baloun
<b>Name</b> Last: <b>BJORNSTAD</b> First: Jack M Bjorn SS/DL #: [REDACTED] AKA POB: Great Lakes Address: 1093 235th Avenue City, State Zip: Spirit Lake IA 51360 Home Phone: (712) 336-2000 Sex: <input checked="" type="radio"/> M <input type="radio"/> F Employer: Bjornstad Law Firm, Spirit Lake, Iowa Occupation: Attorney Scars/Tattoos:		Arresting Officer: 30-8 Ed Lock Matron: Booking Officer: 30-J2 Becky Daniels Record #: 163694 Case #: 163694 Released By: 30-J2 Becky Daniels Magistrate: JUDGE HOITING Remarks: OR'D PER JUDGE HOITING
<b>Charges</b> 1 719.1 Interference with Official Acts 2 719.2 Refusing to Assist Officer 3 718.4 Harassment of Public Officer 4 703.3 Accessory After the Fact 5 719.3 Preventing Apprehension, Obstructing Prosecution 6		
<b>Called Whom</b> Offered And Refused DOB: [REDACTED] Age (at Time of Booking): 36 Race: White Hair: BRO - Brown Ht: 507 Eyes: Blue Wt: 180 Skin: Medium <b>Test Results</b> Marital Status: <input checked="" type="radio"/> Married <input type="radio"/> Single <input type="radio"/> Divorced <input type="radio"/> Widowed <input type="radio"/> Separated <input type="radio"/> Common Law		
		Date Created: 3/1/2011 Time Created: 10:33 <b>In</b> In Date: 3/1/2011 In Time: 10:33 <b>Out</b> Out Date: 3/1/2011 Out Time: 13:23 <b>Final</b> Days in Jail: 0.00 Hours Served: 02:49 In or Out of Jail: Out of Jail Current Hours / Min: ?



*Godfrey v. State*, 898 N.W.2d (Iowa 2017).

The Iowa Supreme Court held that (1) there is a private cause of action for violations of the Iowa Constitution and (2) the equal protection clause of the Iowa Constitution is self-executing.

*Baldwin v. City of Estherville*, 951 N.W.2d 259 (Iowa 2018).

The Iowa Supreme Court refused to adopt federal Section 1983 *Harlow* immunity, instead holding that a defendant who pleads and proves as an affirmative defense that the defendant exercised “all due care” to conform with the requirements of the law is entitled to a qualified immunity on an individual’s claim for damages in violation of article I, sections 1 and 8 of the Iowa Constitution.

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The Iowa Supreme Court held *Baldwin* “all due care” immunity did not displace absolute judicial immunity for prosecutors.

Police Officers still get only *Baldwin* “all due care” immunity.

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Questions?