

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 21-1753

---

STATE OF IOWA,  
Petitioner-Appellant,

vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,  
Defendant-Appellee.

---

APPEAL FROM THE IOWA DISTRICT COURT  
FOR WOODBURY COUNTY  
THE HONORABLE JEFFREY A. NEARY, JUDGE

---

**PETITIONER'S SUPPLEMENTAL BRIEF**

---

BRENNA BIRD  
Attorney General of Iowa

**ZACHARY MILLER**  
Assistant Attorney General  
Hoover State Office Building, 2nd Floor  
Des Moines, Iowa 50319  
(515) 281-5976  
(515) 281-4902 (fax)  
[zachary.miller@ag.iowa.gov](mailto:zachary.miller@ag.iowa.gov)

PATRICK JENNINGS  
Woodbury County Attorney

MICHELLE VENABLE-RIDLEY  
Assistant County Attorney

ATTORNEYS FOR PETITIONER-APPELLANT

FINAL

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... 3

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW ..... 5

ARGUMENT ..... 7

**I. The district court acted illegally by imposing a fine-only sentence on a non-forcible class “D” felony because Iowa Code section 909.1 does not apply to offenses with penalties of confinement and a fine..... 7**

    A. In *State v. Peterson*, this Court held that section 909.1 authorizes a fine-only sentence “when an offense carries penalties cast in alternative terms of confinement, or a fine, or both”: a non-forcible class “D” felony requires confinement and a fine, so section 909.1 does not apply. .... 7

    B. The defendant did not ask any court to overrule *Peterson* until his supplemental brief, which is too late. .... 11

    C. Even if section 909.1 allowed a fine-only sentence for a class “D” felony, it conflicts with section 124.401(5)(f)’s 48-hour confinement and probation requirement, and section 124.401(5)(f) controls as the specific, more recent statute. ....13

CONCLUSION .....16

CERTIFICATE OF COMPLIANCE ..... 17

## TABLE OF AUTHORITIES

### State Cases

<i>Brewer-Strong v. HNI Corp.</i> , 913 N.W.2d 235 (Iowa 2018) .....	10
<i>Feld v. Borkowski</i> , 790 N.W.2d 72 (Iowa 2010) .....	12
<i>In re C.Z.</i> , 956 N.W.2d 113 (Iowa 2021) .....	15
<i>In re Vajgrt</i> , 801 N.W.2d 570 (Iowa 2011) .....	10
<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002) .....	12
<i>State v. Hess</i> , ___ N.W.2d ___, 2022 WL 17985864 (Iowa 2022) .....	14
<i>State v. Iowa Dist. Ct.</i> , 902 N.W.2d 811 (Iowa 2017) .....	10
<i>State v. Iowa Dist. Ct.</i> , No. 21–1753, 2022 WL 3068684 (Iowa Ct. App. Aug. 3, 2022) .....	7
<i>State v. Johnson</i> , 950 N.W.2d 21 (Iowa 2020) .....	15
<i>State v. Kirby</i> , 622 N.W.2d 506 (Iowa 2001) .....	9
<i>State v. McGinnis</i> , 243 N.W.2d 583 (Iowa 1976) .....	9
<i>State v. Peterson</i> , 327 N.W.2d 735 (Iowa 1982) .....	7, 8, 9, 10
<i>State v. Robertson</i> , No.03–1575, 2004 WL 793235 (Iowa Ct. App. Apr. 14, 2004) .....	9
<i>State v. Short</i> , 851 N.W.2d 474 (Iowa 2014) .....	12

### State Statutes

Iowa Code § 4.7 .....	14
Iowa Code § 4.8 .....	15
Iowa Code § 124.401(5) .....	13, 15
Iowa Code § 124.401(5)(f) .....	13, 14, 15
Iowa Code § 124.404 .....	14, 15

Iowa Code § 124.405(5) .....	13
Iowa Code § 902.7.....	8
Iowa Code § 902.9(e).....	9, 13, 14
Iowa Code §902.9(4).....	8
Iowa Code § 907.3 .....	9
Iowa Code § 909.1.....	7, 8, 9, 10, 11, 12, 13, 14, 15
Iowa Code § 909.2.....	8
<b>State Rule</b>	
Iowa R. Crim. P. 2.24(5) .....	11
<b>Other Authorities</b>	
Roehrick, <i>The New Iowa Criminal Code: A Comparison</i> (1978).....	8
Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> 183 (2012).....	14

## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. In *State v. Peterson*, this Court said that section 909.1 only allows a fine-only sentence “when an offense carries penalties cast in alternative terms of confinement, or a fine, or both.” A non-forcible class “D” felony requires confinement and a fine. Does section 909.1 apply to allow a fine-only sentence on a non-forcible felony that requires confinement?**

### Authorities

*State v. Hess*, \_\_\_ N.W.2d \_\_\_, 2022 WL 17985864 (Iowa 2022)  
*Brewer-Strong v. HNI Corp.*, 913 N.W.2d 235 (Iowa 2018)  
*Feld v. Borkowski*, 790 N.W.2d 72 (Iowa 2010)  
*In re C.Z.*, 956 N.W.2d 113 (Iowa 2021)  
*In re Vajgrt*, 801 N.W.2d 570 (Iowa 2011)  
*Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)  
*State v. Iowa Dist. Ct.*, 902 N.W.2d 811 (Iowa 2017)  
*State v. Iowa Dist. Ct.*, No. 21–1753, 2022 WL 3068684  
(Iowa Ct. App. Aug. 3, 2022)  
*State v. Johnson*, 950 N.W.2d 21 (Iowa 2020)  
*State v. Kirby*, 622 N.W.2d 506 (Iowa 2001)  
*State v. McGinnis*, 243 N.W.2d 583 (Iowa 1976)  
*State v. Peterson*, 327 N.W.2d 735 (Iowa 1982)  
*State v. Robertson*, No.03–1575, 2004 WL 793235  
(Iowa Ct. App. Apr. 14, 2004)  
*State v. Short*, 851 N.W.2d 474 (Iowa 2014)  
Iowa Code § 124.404  
Iowa Code § 124.405(5)  
Iowa Code § 902.9(4)  
Iowa Code § 909.1  
Iowa Code § 909.2  
Iowa Code § 902.7  
Iowa Code § 4.7  
Iowa Code § 4.8  
Iowa Code § 124.401(5)  
Iowa Code § 124.401(5)(f)  
Iowa Code § 902.9(e)  
Iowa Code § 907.3

Iowa R. Crim. P. 2.24(5)

Roehrick, *The New Iowa Criminal Code: A Comparison* (1978)

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012)

## ARGUMENT

- I. **The district court acted illegally by imposing a fine-only sentence on a non-forcible class “D” felony because Iowa Code section 909.1 does not apply to offenses with penalties of confinement and a fine.**

### Merits

- A. **In *State v. Peterson*, this Court held that section 909.1 authorizes a fine-only sentence “when an offense carries penalties cast in alternative terms of confinement, or a fine, or both”: a non-forcible class “D” felony requires confinement and a fine, so section 909.1 does not apply.**

In *State v. Peterson*, 327 N.W.2d 735, 739 (Iowa 1982), this Court held that, notwithstanding Iowa Code section 909.1, a “trial court lacked authority to impose a fine-only sentence” on a forcible class “D” felony. This Court’s reasoning in *Peterson* applies to non-forcible class “D” felonies as well. The Court of Appeals properly applied *Peterson* to reverse this illegal, fine-only sentence. *State v. Iowa Dist. Ct.*, No. 21–1753, 2022 WL 3068684 (Iowa Ct. App. Aug. 3, 2022).

Iowa Code section 909.1 provides: “Upon a ... plea of guilty of any public offense for which a fine is authorized, the court may impose a fine instead of any other sentence where it appears the fine will be adequate ....” Iowa Code § 909.1. In *Peterson*, the defendant argued that Iowa Code section 909.1 allowed a fine-only sentence on

a forcible class “D” felony. *Peterson*, 327 N.W.2d at 737–38. This Court rejected that argument. *Id.* It reasoned that “the legislative intent of section 909.1 was only to provide a justification ... for the imposition of a fine-only sentence when an offense carries penalties cast in alternative terms of confinement, or a fine, or both,” as with misdemeanors. *Id.* at 737. It “conclude[d] that section 909.2”—which authorizes confinement *and* a fine—“*not* section 909.1, is the relevant provision of chapter 909.” *Id.* And it refused to find that by including section 909.1 in its general revision of the criminal code in 1978, the legislature intended section 909.1 to trump sections 902.9(e)<sup>1</sup>, 902.7, 907.3, and 909.2. *Id.* at 738 (stating that the 1978 criminal code revision was “primarily a restatement of prior law”); *see also* Roehrick, *The New Iowa Criminal Code: A Comparison*, at 991 (1978).

True, *Peterson* did not involve a non-forcible class “D” felony. But its logic demands the same conclusion. Section 909.1 seems broad. It says that for “any public offense for which a fine is authorized, the court may impose a fine instead of any other sentence....” Forcible and non-forcible class “D” felonies are both

---

<sup>1</sup> Formerly Iowa Code section 902.9(4).



“public offense[s] for which a fine is authorized.” Iowa Code § 909.1; *see also* Iowa Code § 902.9(e). So absent *Peterson*, section 909.1 might seem to apply to all class “D” felonies. Iowa Code §§ 902.9(e), 909.1. Yet *Peterson* explained that section 909.1 applied to allow a fine-only sentence only when statutes authorize confinement, or a fine, or both, such as with misdemeanors. *Peterson*, 327 N.W.2d at 737–38. That logic applies equally to forcible and non-forcible class “D” felonies. Indeed, while a forcible felony precludes a deferred judgment or sentence or suspended sentence, a non-forcible class “D” felony requires probation. Iowa Code § 907.3; *see State v. Kirby*, 622 N.W.2d 506, 510–11 (Iowa 2001) (“[I]t is a fundamental condition of any probation, whether or not it is expressed in probation instructions, that the probationer shall not violate the law.” (quoting *State v. McGinnis*, 243 N.W.2d 583, 587 (Iowa 1976))); *State v. Robertson*, No.03–1575, 2004 WL 793235, at \*2 (Iowa Ct. App. Apr. 14, 2004) (holding a two day suspended sentence with no term of probation is illegal). Reading sections 902.9(e) and 907.3 together for non-forcible “D” felonies still precludes a fine-only sentence. *Peterson* applies.

Because *Peterson* applies to non-forcible class “D” felonies, stare decisis and legislative acquiescence demand applying *Peterson*’s interpretation of section 909.1. Stare decisis is a “venerable doctrine” that requires applying “the holdings of past rulings” unless a litigant makes “the highest possible showing that a precedent should be overruled.” *State v. Iowa Dist. Ct.*, 902 N.W.2d 811, 817 (Iowa 2017). And stare decisis “is especially applicable” in a case like this one “where the construction placed on a statute by previous decisions has been long acquiesced in by the legislature.” *Id.* at 818 (quoting *In re Vajgrt*, 801 N.W.2d 570, 574 (Iowa 2011)). Indeed, legislative acquiescence is especially applicable here because this Court decided *Peterson* forty years ago and the legislature has since altered chapter 909 without amending section 909.1. *See id.*; *Brewer-Strong v. HNI Corp.*, 913 N.W.2d 235, 249 (Iowa 2018); *see also Peterson*, 327 N.W.2d at 735; *compare* Iowa Code chpt. 909 (1979), *with* Iowa Code chpt. 909 (2022).

The Court of Appeals correctly decided that under *Peterson* a fine-only sentence for a non-forcible class “D” felony is illegal. This Court should affirm that decision.

**B. The defendant did not ask any court to overrule *Peterson* until his supplemental brief, which is too late.**

As the State just explained, this Court interpreted Iowa Code section 909.1 in *Peterson* using logic that makes fine-only sentences on non-forcible class “D” felony convictions illegal. Because the defendant pled guilty to a non-forcible class “D” felony, the fine-only sentence that the district court imposed was illegal.

To avoid *Peterson*, the defendant needed to ask this Court to overrule it. But he did not argue that section 909.1 authorized a fine-only sentence in the district court. Def. Sent. Memo. (7/9/2021); App. \_\_; Rest. Mot. Correct Illegal Sent. (10/14/2021); App. \_\_; see generally Tr. Sent. Hr’g. And in his opening brief on appeal, he failed to argue that section 909.1 authorized his fine-only sentence or that this Court should overrule *Peterson*. See generally Def. Am. Br. Instead, he tried to distinguish *Peterson* saying, “it can ... be argued that a fine-only sentence is legal” “in a situation where the class ‘D’ felony is not a forcible and a deferred or suspended sentence is an option[.]” *Id.* at 9–10. While this is a certiorari action targeting an illegal sentence and illegal sentences can be corrected at any time, the defendant thinks his sentence was legal, not illegal. Iowa R. Crim. P.

2.24(5); Def. Am. Br. at 8–10. He therefore needed to argue that *Peterson* be overruled and that section 909.1 applied before a supplemental brief filed after the case was decided on appeal. *See State v. Short*, 851 N.W.2d 474, 480 (Iowa 2014) (stating that this Court will not “create issues” or “overturn existing law” absent “the most cogent circumstances” unless advocated by the parties (quoting *Feld v. Borkowski*, 790 N.W.2d 72, 78 n.4 (Iowa 2010))); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (describing error preservation requirements).

Because the defendant did not ask this Court to overrule *Peterson* or apply section 909.1 before the district court or in his opening brief on appeal, this Court should not inject those issues in this case for him. As this Court has repeatedly said: “absen[t] the most cogent circumstances [it does] not create issues or unnecessarily overturn existing law sua sponte when the parties have not advocated for such a change.... [It is] restrained to apply the controlling law as advocated by the parties.” *Short*, 851 N.W.2d at 480 (alterations in original).

This Court ought not do something that the defendant failed to ask for. It ought not do what the legislature has declined to do for

forty years. *Peterson* is the law; this Court should apply it and reverse this illegal, fine-only sentence.

**C. Even if section 909.1 allowed a fine-only sentence for a class “D” felony, it conflicts with section 124.401(5)(f)’s 48-hour confinement and probation requirement, and section 124.401(5)(f) controls as the specific, more recent statute.**

Even if this Court holds that section 909.1 applies to allow fine-only sentences for non-forcible class “D” felony convictions, a fine only sentence is still unavailable for this defendant. If section 909.1 applies to non-forcible class “D” felony convictions, then section 909.1 and section 124.401(5)(f) conflict.

The defendant pled guilty to possessing methamphetamine (“meth”) as a third offense in violation of Iowa Code section 124.405(5). J. & Sent. at 1–2; App.\_\_\_\_. Possessing meth as a third offense is a class “D” felony subject to section 902.9(e). Iowa Code § 124.401(5). But possessing meth also requires the district court to “order the person to serve a term of imprisonment of not less than forty-eight hours,” which the court can suspend, and put the defendant on probation including “random drug testing.” Iowa Code § 124.401(5)(f). Those provisions in section 124.401(5)(f) conflict with section 909.1’s fine-only provision. *Compare* Iowa Code

§ 124.401(5)(f), *with* Iowa Code § 909.1. Section 124.401(5)(f) prevails in a conflict with section 909.1 for three reasons.

First, section 124.401(5)(f) is more specific than section 909.1. If section 909.1 trumps the class “D” felony provision in section 902.9(e), section 124.401(5)(f) adds another criminal penalty beyond the confinement and fine in section 902.9(e). The additional penalty in section 124.401(5)(f) does not include a fine, showing that the legislature did not intend for section 909.1 to apply to a sentence under section 124.401(5)(f). Section 124.401(5)(f) is therefore more specific and controls. *See* Iowa Code § 4.7 (providing that when two statutes conflict, “the special or local provision prevails”); *State v. Hess*, \_\_\_ N.W.2d \_\_\_, 2022 WL 17985864, at \*6 (Iowa 2022); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012) (“If there is a conflict between a general provision and a specific provision, the specific provision prevails.”).

Second, Iowa Code section 124.404 applies to section 124.401(5)(f)’s sentence for possessing meth. Section 124.404 provides that “[a]ny penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.” Iowa

Code § 124.404. This Court has interpreted “sanction otherwise authorized by law” to mean criminal sanction. *State v. Johnson*, 950 N.W.2d 21, 26 (Iowa 2020). Section 909.1 is a criminal sanction. Iowa Code § 909.1. Thus, section 124.404 requires that section 124.401(5)(f) applies “in addition to” section 909.1’s criminal sanction.

Third, section 124.401(5)(f) is more recent than section 909.1. Iowa Code § 909.1 (1979); Iowa Code § 124.401(5) (1999). The more recent enactment controls when statutes conflict. Iowa Code § 4.8; *In re C.Z.*, 956 N.W.2d 113, 122 (Iowa 2021).

Even if this Court alters *Peterson* and applies section 909.1 to non-forcible class “D” felonies, the district court’s fine-only sentence was still illegal. Section 124.401(5)(f) required 48-hours confinement and probation. It prevails in a conflict with section 909.1. This Court should reverse this illegal sentence.

## CONCLUSION

For the foregoing reasons, the State requests that this Court reverse this illegal, fine-only sentence.

Respectfully submitted,

BRENNA BIRD  
Attorney General of Iowa



---

**ZACHARY MILLER**  
Assistant Attorney General  
Hoover State Office Bldg., 2nd Fl.  
Des Moines, Iowa 50319  
(515) 281-5976  
[zachary.miller@ag.iowa.gov](mailto:zachary.miller@ag.iowa.gov)



## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,774** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: January 20, 2023



---

**ZACHARY MILLER**

Assistant Attorney General  
Hoover State Office Bldg., 2nd Fl.  
Des Moines, Iowa 50319  
(515) 281-5976  
[zachary.miller@ag.iowa.gov](mailto:zachary.miller@ag.iowa.gov)