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SENATE FILE 496  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 267)

Passed Senate, Date 4/10/91 (p. 1163) Passed House, Date 5/2/91 (p. 2055)  
Vote: Ayes 47 Nays 1 Vote: Ayes 98 Nays 0  
Approved May 29, 1991

A BILL FOR

1 An Act relating to persons convicted of public offenses, relating  
2 to the department of corrections and its programs and  
3 facilities, and establishing additional public offenses and  
4 criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6

SENATE FILE 496

S-3243

1 Amend Senate File 496 as follows:

2 1. Page 10, by striking lines 18 through 24 and  
3 inserting the following:

4 "2. If an applicant confined in a state  
5 institution seeks relief under section 663A.2,  
6 subsection 6, and the court finds in favor of the  
7 applicant, or ~~the postconviction proceedings fail~~ when  
8 relief is denied and costs and expenses referred to in  
9 ~~unnumbered paragraph~~ subsection 1 cannot be collected  
10 from the applicant, these costs and expenses  
11 initially".

12 2. Page 15, line 4, by striking the words and  
13 figure ", pursuant to section 663A.5".

By MICHAEL GRONSTAL

S-3243 FILED APRIL 1, 1991

*Adopted 4/10/91 (p. 1163)*

22

23

1 Section 1. Section 229.14, subsection 4, Code 1991, is  
2 amended to read as follows:

3 4. The respondent is seriously mentally impaired and in  
4 need of full-time custody and care, but is unlikely to benefit  
5 from further treatment in a hospital. If the report so  
6 states, the chief medical officer shall recommend an  
7 alternative placement for the respondent and the court shall  
8 enter an order which may direct the respondent's transfer to  
9 the recommended placement. A respondent who is an inmate in  
10 the custody of the department of corrections may, as a court-  
11 ordered alternative placement, receive mental health services  
12 in a correctional program. If the court or the respondent's  
13 attorney consider the placement inappropriate, an alternative  
14 placement may be arranged upon consultation with the chief  
15 medical officer and approval of the court.

16 Sec. 2. NEW SECTION. 246.207 VIOLATOR FACILITY.

17 The director may establish a violator facility as a  
18 freestanding facility, or designate a portion of an existing  
19 correctional facility, for the purpose. A violator facility  
20 is for the short-term confinement of offenders who have  
21 violated conditions of release under work release, parole, or  
22 probation, or who are sentenced to the custody of the director  
23 for assignment to a treatment facility under section 246.513.  
24 The director shall adopt rules pursuant to chapter 17A,  
25 subject to the approval of the board, to implement this  
26 section.

27 Sec. 3. Section 246.508, Code 1991, is amended to read as  
28 follows:

29 246.508 PROPERTY OF INMATE -- INMATE SAVINGS FUND.

30 1. The superintendent of each institution shall receive  
31 and care for any property an inmate may possess on the  
32 inmate's person upon entering the institution, and on the  
33 discharge of the inmate, return the property to the inmate or  
34 the inmate's legal representatives, unless the property has  
35 been previously disposed of according to the inmate's written

1 designation or policies prescribed by the board. The  
2 superintendent may place an inmate's money at interest,  
3 keeping an account of the money and returning the remaining  
4 money and interest upon discharge.

5 2. The director shall establish and maintain an inmate  
6 savings fund in an interest-bearing account for the deposit of  
7 all or part of an inmate's allowances, as provided in section  
8 246.702. All or part of an inmate's allowances shall be  
9 deposited into the savings fund, until the inmate's deposit is  
10 equal to the amount due the inmate upon discharge, parole, or  
11 placement on work release, as provided in section 906.9. If  
12 an inmate's deposits equal this amount, the inmate may  
13 voluntarily withdraw from the savings fund. The director  
14 shall notify the inmate of this right to withdraw and shall  
15 provide the inmate with a written request form to facilitate  
16 the withdrawal. If the inmate withdraws and the inmate's  
17 deposits exceed the amount due as provided in section 906.9,  
18 the director shall disburse the excess amount as provided for  
19 allowances under section 246.702, except the director shall  
20 not deposit the excess amount in the inmate savings fund. If  
21 the inmate chooses to continue to participate in the savings  
22 fund, the inmate's deposits shall be returned to the inmate  
23 upon discharge, parole, or placement on work release.  
24 Otherwise, the inmate's deposits shall be disposed of as  
25 provided in subsection 3. An inmate's deposits into the  
26 savings fund may be used to provide the money due the inmate  
27 upon discharge, parole, or placement on work release, as  
28 required under section 906.9. Interest earned from the  
29 savings fund shall be placed in a separate account, and may be  
30 used for purchases approved by the director to directly and  
31 collectively benefit inmates.

32 3. Upon the death of an inmate, the superintendent of the  
33 institution shall immediately take possession of the  
34 decendent's property left at the institution, including the  
35 inmate's deposits into the inmate savings fund, and shall

1 deliver the property to the person designated by the inmate to  
2 be contacted in case of an emergency. However, if the  
3 property left by the decedent cannot be delivered to the  
4 designated person, delivery may be made to the surviving  
5 spouse or an heir of the decedent. If the decedent's property  
6 cannot be delivered to the designated person and no surviving  
7 spouse or heir is known, the superintendent shall deliver the  
8 property to the treasurer of state for disposition as  
9 unclaimed property pursuant to chapter 556, after deducting  
10 expenses incurred in disposing of the decedent's body or  
11 property.

12 Sec. 4. Section 246.513, Code 1991, is amended to read as  
13 follows:

14 246.513 ASSIGNMENT OF OWI VIOLATORS TO TREATMENT  
15 FACILITIES.

16 1. a. The department of corrections in cooperation with  
17 judicial district departments of correctional services shall  
18 establish in each judicial district bed-space a continuum of  
19 programming, including residential facilities, for the  
20 confinement supervision and treatment of offenders convicted  
21 of violating chapter 321J who are sentenced to the custody of  
22 the director. The department of corrections shall develop  
23 standardized assessment criteria for the assignment of  
24 offenders to a facility established pursuant to this section  
25 ~~chapter. The offender shall be assigned by the director to a~~  
26 ~~facility pursuant to section 321J.2, subsection 2, paragraph~~  
27 ~~"b" or "c", unless initial medical treatment is necessary or~~  
28 ~~there is insufficient space to accommodate the person.--The~~  
29 ~~offenders shall be assigned to the Iowa medical classification~~  
30 ~~facility at Oakdale for classification if medical treatment is~~  
31 ~~necessary or if the offender fails to satisfactorily perform~~  
32 ~~in a treatment program conducted in a residential facility~~  
33 ~~operated by a judicial district department of correctional~~  
34 ~~services.--The offender shall be assigned to an institution~~  
35 ~~following classification.--The facilities established shall~~

1 ~~meet all the following requirements:~~

2 ~~a. -- is a treatment facility meeting the licensure standards~~  
3 ~~of the division of substance abuse of the department of public~~  
4 ~~health.~~

5 ~~b. -- is a facility meeting applicable standards of the~~  
6 ~~American corrections association.~~

7 ~~c. -- is a facility which meets any other rule or requirement~~  
8 ~~adopted by the department pursuant to chapter 17A.~~

9 b. Except as otherwise provided in this section, the  
10 offender shall be assigned to a community-based correctional  
11 program. If medical treatment is necessary, the offender may  
12 be assigned to the Iowa medical and classification center at  
13 Oakdale for treatment and assignment, until the offender's  
14 health status permits placement in a community-based  
15 correctional program.

16 c. If there is insufficient space in a community-based  
17 correctional program to accommodate the offender, the court  
18 may order the offender to be released on personal recognizance  
19 or bond, released to the supervision of the judicial district  
20 department of correctional services, or held in jail. If the  
21 offender is ordered to the supervision of a judicial district  
22 department of correctional services, the district director may  
23 request, and the director of the department may approve, the  
24 transfer of the offender to the Iowa medical and  
25 classification center at Oakdale for classification and  
26 assignment, until space is available in a community-based  
27 correctional program.

28 d. If an offender fails to satisfactorily perform in a  
29 program conducted by a community-based correctional program,  
30 the offender shall be transferred to the Iowa medical and  
31 classification facility at Oakdale for classification and  
32 assignment.

33 e. A program established under this section shall operate  
34 in accordance with the rules and requirements adopted by the  
35 department pursuant to chapter 17A.

1 2. The assignment of an offender pursuant to subsection 1  
2 shall be for purposes of risk management, substance abuse  
3 treatment, and education, and may include work programs for  
4 the offender at times when the offender is not participating  
5 in ~~substance-abuse-treatment-or-education~~ other program  
6 components.

7 ~~3--Offenders-assigned-to-a-facility-pursuant-to-this~~  
8 ~~section-shall-not-be-included-in-calculations-used-to~~  
9 ~~determine-the-existence-of-a-prison-overcrowding-state-of~~  
10 ~~emergency-~~

11 4 3. Upon request by the director a county shall provide  
12 temporary confinement for offenders allegedly violating the  
13 conditions of assignment to a treatment program if space is  
14 available. The department shall negotiate a reimbursement  
15 rate with each county for the temporary confinement of  
16 offenders allegedly violating the conditions of assignment to  
17 a treatment program who are in the custody of the director or  
18 who are housed or supervised by the judicial district  
19 department of correctional services. The amount to be  
20 reimbursed shall be determined by multiplying the number of  
21 days a person is confined by the average daily cost of  
22 confining a person in the county facility as negotiated with  
23 the department. A county holding offenders ordered to jail  
24 pursuant to subsection 1 due to insufficient space in a  
25 community-based correctional program shall be reimbursed in  
26 the same manner following the fifth day of confinement.  
27 Payment shall be made upon submission of a voucher executed by  
28 the sheriff and approved by the director.

29 5 4. The ~~director~~ department shall ~~prepare-proposed~~  
30 ~~administrative~~ adopt rules for-the-consideration-of-the  
31 ~~administrative-rules-review-committee~~ for the funding of the  
32 program by means of self-contribution by the offenders,  
33 insurance reimbursement on behalf of offenders, or other forms  
34 of funding, program structure, criteria for the evaluation of  
35 facilities and offenders for participation in the programs,

1 and all other issues the director shall deem appropriate.  
2 ~~Proposed rules prepared pursuant to this subsection shall be~~  
3 ~~submitted to the administrative rules review committee on or~~  
4 ~~before September 15, 1986.~~

5 Sec. 5. Section 246.702, Code 1991, is amended to read as  
6 follows:

7 246.702 DEDUCTION TO PAY COURT COSTS, INDUSTRIES PROGRAM  
8 COSTS, INCARCERATION COSTS, OR DEPENDENTS -- DEPOSITS --  
9 SAVINGS FUND.

10 If allowances are paid pursuant to section 246.701, the  
11 director may deduct an amount established by the inmate's  
12 restitution plan of payment or an amount sufficient to pay all  
13 or part of the court costs taxed as a result of the inmate's  
14 commitment. The amount deducted shall be forwarded to the  
15 clerk of the district court or proper official. The director  
16 may deduct an amount, not to exceed ten percent of the amount  
17 of the allowance, unless the inmate requests a larger amount,  
18 to be deposited into the inmate savings fund established in  
19 section 246.508. However, if the inmate's deposit in the  
20 inmate savings fund is sufficient to pay the amount due the  
21 inmate upon discharge, parole, or placement on work release  
22 pursuant to section 906.9, and the inmate has voluntarily  
23 withdrawn from the savings fund, the director shall not make  
24 further deposits from the inmate's allowances into the savings  
25 fund unless the inmate chooses to participate in the savings  
26 fund. The director may deduct and disburse an amount  
27 sufficient for industries' programs to qualify under the  
28 eligibility requirements established in the Justice Assistance  
29 Act of 1984, Pub. L. No. 98-473, including an amount to pay  
30 all or part of the cost of the inmate's incarceration. The  
31 director may pay all or any part of remaining allowances paid  
32 pursuant to section 246.701 directly to a dependent of the  
33 inmate, or may deposit the allowance to the account of the  
34 inmate, or may deposit a portion and allow the inmate a  
35 portion for the inmate's personal use.

1 Sec. 6. Section 246.901, Code 1991, is amended to read as  
2 follows:

3 246.901 WORK RELEASE PROGRAM.

4 The Iowa department of corrections, in consultation with  
5 the board of parole, shall establish a work release program  
6 under which the board of parole may grant inmates sentenced to  
7 an institution under the jurisdiction of the department the  
8 privilege of leaving actual confinement during necessary and  
9 reasonable hours for the purpose of working at gainful  
10 employment. Under appropriate conditions the program may also  
11 include an out-of-state work or treatment placement or release  
12 for the purpose of seeking employment and attendance at an  
13 educational institution. An inmate may be placed on work  
14 release status in the inmate's own home, under appropriate  
15 circumstances, which may include child care and housekeeping  
16 in the inmate's own home. This work release program is in  
17 addition to the institutional work release program established  
18 in section 246.910.

19 Sec. 7. Section 246.909, Code 1991, is amended to read as  
20 follows:

21 246.909 WORK RELEASE AND OWI VIOLATORS -- REIMBURSEMENT TO  
22 THE DEPARTMENT OF CORRECTIONS FOR TRANSPORTATION COSTS.

23 The department of corrections shall arrange for the return  
24 of a work release client or offender convicted of violating  
25 chapter 321J who escapes or participates in an act of  
26 absconding from the facility to which the client is assigned.  
27 The client or offender shall reimburse the department of  
28 corrections for the cost of transportation incurred because of  
29 the escape or act of absconding. The amount of reimbursement  
30 shall be the actual cost incurred by the department and shall  
31 be credited to the support account from which the billing  
32 occurred. The director of the department of corrections shall  
33 recommend rules pursuant to chapter 17A, subject to approval  
34 by the board of corrections pursuant to section 246.105,  
35 subsection 7, to implement this section.

1     Sec. 8. NEW SECTION. 246.910 INSTITUTIONAL WORK RELEASE  
2 PROGRAM.

3     1. In addition to the work release program established in  
4 section 246.901, the department of corrections shall establish  
5 an institutional work release program for each institution.  
6 The program shall provide that the department may grant  
7 inmates sentenced to an institution under its jurisdiction the  
8 privilege of leaving actual confinement during necessary and  
9 reasonable hours for the purpose of working at gainful  
10 employment. Under appropriate conditions, the program may  
11 also include an out-of-state work or treatment placement or  
12 release for the purpose of seeking employment or attendance at  
13 an educational institution. An inmate may be placed on work  
14 release status in the inmate's own home, under appropriate  
15 circumstances, which may include child care and housekeeping  
16 in the inmate's own home.

17     2. A committee shall be established by the department for  
18 the work release program at each institution to review  
19 applications for participation in the program.

20     3. An inmate who is eligible to participate in the work  
21 release program may apply to the superintendent of the  
22 institution for permission to participate in the program. The  
23 application shall include a statement that, if the application  
24 is approved, the inmate agrees to abide by all terms and  
25 conditions of the inmate's work release plan adopted by the  
26 committee. In addition, the application shall state the name  
27 and address of the proposed employer, if any, and shall  
28 contain other information as required by the committee. The  
29 committee may approve, disapprove, or defer action on the  
30 application. If the application is approved, the committee  
31 shall adopt an institutional work release plan for the  
32 applicant. The plan shall contain the elements required by  
33 this section and other conditions as the committee deems  
34 necessary and proper. The plan shall be signed by the inmate  
35 prior to participation in the program. Approval of a plan may

1 be revoked at any time by the superintendent or the committee.

2 4. The department may contract with a judicial district  
3 department of correctional services for the housing and  
4 supervision of an inmate in local facilities as provided in  
5 section 246.904. The institutional work release plan shall  
6 indicate the place where the inmate is to be housed when not  
7 on work assignment. The plan shall not allow for placement of  
8 an inmate on work release for more than six months in any  
9 twelve-month period without unanimous committee approval to do  
10 so. However, an inmate may be temporarily released to the  
11 supervision of a responsible person to participate in family  
12 and selected community, religious, educational, social, civic,  
13 and recreational activities when the committee determines that  
14 the participation will directly facilitate the release of the  
15 inmate from the institution to the community. The department  
16 shall provide a copy of the work release plan and a copy of  
17 any restitution plan of payment to the judicial district  
18 department of correctional services housing and supervising  
19 the inmate.

20 5. An inmate employed in the community under an  
21 institutional work release plan approved pursuant to this  
22 section shall surrender the inmate's total earnings less  
23 payroll deductions required by law to the superintendent, or  
24 to the judicial district department of correctional services  
25 if it is housing or supervising the inmate. The  
26 superintendent or the judicial district department of  
27 correctional services shall deduct from the earnings in the  
28 priority established in section 246.905.

29 6. The department of corrections shall adopt rules for the  
30 implementation of this section.

31 Sec. 9. Section 321.1, subsection 43, unnumbered paragraph  
32 3, Code 1991, is amended to read as follows:

33 If authorized to transport inmates, probationers, parolees,  
34 or work releasees by the director of the Iowa department of  
35 corrections or the director's designee, an employee of the

1 Iowa department of corrections or a district department of  
2 correctional services is not a chauffeur when transporting the  
3 inmates, probationers, parolees, or work releasees in an  
4 automobile.

5 Sec. 10. Section 663A.5, Code 1991, is amended to read as  
6 follows:

7 663A.5 PAYMENT OF COSTS.

8 1. If the applicant is unable to pay court costs and  
9 expenses of legal representation, including stenographic,  
10 printing, and or other legal services or consultation, these  
11 costs and expenses shall be made available to the applicant in  
12 the preparation of the application, in the trial court, and on  
13 review. However, nothing in this section shall be interpreted  
14 to require payment of expenses of legal representation,  
15 including stenographic, printing, or other legal services or  
16 consultation, when the applicant is self-represented or is  
17 utilizing the services of an inmate.

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18 2. If an applicant ~~confined in a state institution~~ seeks  
19 relief under section 663A.2, ~~subsection 6,~~ and the court finds  
20 in favor of the applicant, or the postconviction proceedings  
21 fail and, the costs and expenses referred to in unnumbered  
22 paragraph subsection 1 cannot be collected from the applicant,  
23 shall be assessed to the applicant pursuant to sections 910.2  
24 and 910.3. In all cases these costs and expenses initially  
25 shall be paid by the county in which the ~~state institution is~~  
26 located application was filed. The facts of payment and the  
27 proceedings on which it is based, with a statement of the  
28 amount of costs and expenses incurred, shall be submitted to  
29 the county in a timely manner with approval in writing by the  
30 presiding or district judge appended to the statement or  
31 endorsed on it, and shall be certified by the clerk of the  
32 district court under seal to the state executive council. The  
33 executive council shall review the proceedings and authorize  
34 reimbursement for the costs and expenses or for that part  
35 which the executive council finds justified, and shall notify

1 the director of revenue and finance to draw a warrant to the  
2 county treasurer on the state general fund for the amount  
3 authorized.

4 Sec. 11. NEW SECTION. 709.15 SEXUAL MISCONDUCT WITH  
5 OFFENDERS.

6 An officer, employee, contractor, vendor, volunteer, or  
7 agent of the department of corrections who engages in a sex  
8 act with an individual committed to the custody of the  
9 department of corrections commits an aggravated misdemeanor.

10 Sec. 12. Section 719.1, Code 1991, is amended to read as  
11 follows:

12 719.1 INTERFERENCE WITH OFFICIAL ACTS.

13 1. A person who knowingly resists or obstructs anyone  
14 known by the person to be a peace officer or fire fighter,  
15 whether paid or volunteer, in the performance of any act which  
16 is within the scope of the lawful duty or authority of that  
17 officer or fire fighter, whether paid or volunteer, or who  
18 knowingly resists or obstructs the service or execution by any  
19 authorized person of any civil or criminal process or order of  
20 any court, commits a simple misdemeanor. However, if a person  
21 commits an interference with official acts, as defined in this  
22 ~~section~~ subsection, and in so doing inflicts bodily injury  
23 other than serious injury, that person commits a serious  
24 misdemeanor. If a person commits an interference with  
25 official acts, as defined in this ~~section~~ subsection, and in  
26 so doing inflicts or attempts to inflict serious injury, or  
27 displays a dangerous weapon, as defined in section 702.7, or  
28 is armed with a firearm, that person commits an aggravated  
29 misdemeanor.

30 2. A person under the custody, control, or supervision of  
31 the department of corrections who knowingly resists,  
32 obstructs, or interferes with a correctional officer, agent,  
33 employee, or contractor, whether paid or volunteer, in the  
34 performance of the person's official duties, commits a serious  
35 misdemeanor. If a person violates this subsection and in so

1 doing commits an assault, as defined in section 708.1, the  
2 person commits an aggravated misdemeanor. If a person  
3 violates this subsection and in so doing inflicts or attempts  
4 to inflict bodily injury other than serious injury to another,  
5 displays a dangerous weapon, as defined in section 702.7, or  
6 is armed with a firearm, the person commits a class "D"  
7 felony. If a person violates this subsection and uses or  
8 attempts to use a dangerous weapon, as defined in section  
9 702.7, or inflicts serious injury to another, the person  
10 commits a class "C" felony.

11 3. The terms "resist" and "obstruct", as used in this  
12 section, do not include verbal harassment unless the verbal  
13 harassment is accompanied by a present ability and apparent  
14 intention to execute a verbal threat physically.

15 Sec. 13. Section 906.9, unnumbered paragraph 1, Code 1991,  
16 is amended to read as follows:

17 When an inmate is discharged, paroled, or placed on work  
18 release, the warden or superintendent shall furnish the  
19 inmate, at state expense, appropriate clothing and  
20 transportation to the place in this state indicated in the  
21 inmate's discharge, parole, or work release plan. When an  
22 inmate is discharged, paroled, or placed on work release, the  
23 warden or superintendent shall provide the inmate, at state  
24 expense or through inmate savings as provided in section  
25 246.508, money in accordance with the following schedule:

26 Sec. 14. Section 908.9, Code 1991, is amended to read as  
27 follows:

28 908.9 DISPOSITION OF VIOLATOR.

29 If the parole of a parole violator is revoked, the violator  
30 shall remain in the custody of the Iowa department of  
31 corrections under the terms of the parolee's original  
32 commitment. The violator may be placed in a violator facility  
33 established pursuant to section 246.207. If the parole of a  
34 parole violator is not revoked, the parole revocation officer  
35 or board panel shall order the person's release subject to the

1 terms of the person's parole with any modifications that the  
2 parole revocation officer or board panel determines proper.

3 Sec. 15. Section 908.11, Code 1991, is amended to read as  
4 follows:

5 908.11 VIOLATION OF PROBATION.

6 A probation officer or the judicial district department of  
7 correctional services having probable cause to believe that  
8 any person released on probation has violated the conditions  
9 of probation shall proceed by arrest or summons as in the case  
10 of a parole violation. The functions of the liaison officer  
11 and the board of parole shall be performed by the judge or  
12 magistrate who placed the alleged violator on probation if  
13 that judge or magistrate is available, otherwise by another  
14 judge or magistrate who would have had jurisdiction to try the  
15 original offense. If the probation officer proceeds by  
16 arrest, any magistrate may receive the complaint, issue an  
17 arrest warrant, or conduct the initial appearance and probable  
18 cause hearing if it is not convenient for the judge who placed  
19 the alleged violator on probation to do so. The initial  
20 appearance, probable cause hearing, and probation revocation  
21 hearing, or any of them, may at the discretion of the court be  
22 merged into a single hearing when it appears that the alleged  
23 violator will not be prejudiced thereby. If the violation is  
24 established, the court may continue the probation with or  
25 without an alteration of the conditions of probation. If the  
26 defendant is an adult the court may hold the defendant in  
27 contempt of court and sentence the defendant to a jail term  
28 while continuing the probation, order the defendant to be  
29 placed in a violator facility established pursuant to section  
30 246.207 while continuing the probation, or may revoke the  
31 probation and require the defendant to serve the sentence  
32 imposed or any lesser sentence, and, if imposition of sentence  
33 was deferred, may impose any sentence which might originally  
34 have been imposed.

35 Sec. 16. Section 910.3, Code 1991, is amended to read as

1 follows:

2 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

3 ~~The court shall require the~~ county attorney ~~to promptly~~  
4 shall prepare a statement of pecuniary damages to victims of  
5 the defendant and ~~shall require the,~~ if applicable, any award  
6 by the crime victim assistance programs and shall provide the  
7 statement to the presentence investigator or submit the  
8 statement to the court at the time of sentencing. The clerk  
9 of court ~~to~~ shall prepare a statement of court-appointed  
10 attorney's fees, the expense of a public defender and court  
11 costs, which shall be promptly provided to the presentence  
12 investigator or submitted to the court at the time of  
13 sentencing. ~~These~~ If these statements are provided to the  
14 presentence investigator, they shall become a part of the  
15 presentence report. If pecuniary damage amounts are not  
16 available at the time of sentencing, the county attorney shall  
17 provide a statement of pecuniary damages incurred up to that  
18 time to the clerk of court. The statement shall be provided  
19 no later than thirty days after sentencing. If a defendant  
20 believes no person suffered pecuniary damages, the defendant  
21 shall so state. If the defendant has any mental or physical  
22 impairment which would limit or prohibit the performance of a  
23 public service, the defendant shall so state. The court may  
24 order a mental or physical examination, or both, of the  
25 defendant to determine a proper course of action. At the time  
26 of sentencing or at a later date to be determined by the  
27 court, the court shall set out the amount of restitution  
28 including the amount of public service to be performed as  
29 restitution and the persons to whom restitution must be paid.  
30 ~~This~~ If the full amount of restitution cannot be determined at  
31 the time of sentencing, the court shall issue a temporary  
32 order determining a reasonable amount for pecuniary damages  
33 incurred up to that time, any award by the crime victim  
34 assistance programs, court-appointed attorney's fees or the  
35 expense of a public defender, and court costs. At a later

1 date as determined by the court, the court shall issue a  
2 permanent, supplemental order, setting the full amount of  
3 restitution. The court shall enter further supplemental  
4 orders, if necessary, pursuant to section 663A.5. These court  
5 orders shall be known as the plan of restitution.

6 EXPLANATION

7 This bill contains a number of provisions relating to the  
8 activities of the department of corrections.

9 Section 1 provides that in involuntary civil commitment  
10 proceedings, respondent inmates in the custody of the  
11 department may receive court-ordered alternative placements in  
12 correctional programs.

13 Sections 2, 14, and 15 allow the director to establish a  
14 violator facility for the short-term confinement of offenders  
15 who have violated conditions of release pursuant to work  
16 release, parole, or probation, or who are sentenced to the  
17 custody of the director pursuant to provisions pertaining to  
18 operating while intoxicated (OWI) offenders. Section 15 also  
19 provides that the court may order probation violators to this  
20 facility.

21 Sections 3, 5, and 13 establish an inmate savings fund.  
22 The director may deduct up to 10 percent of an inmate's  
23 allowances and deposit the money into the fund, unless the  
24 inmate requests a larger amount to be deducted. Once the  
25 inmate's deposits equal the amount of gate money that will be  
26 due upon release pursuant to section 906.9, the inmate may  
27 voluntarily withdraw from the fund. An inmate's deposits up  
28 to the amount of gate money may be used to provide the gate  
29 money funds. Deposits above the amount of gate money are  
30 returned to the inmate upon release. The bill provides that  
31 interest earned on the fund shall be placed in a separate  
32 account to be used for the benefit of all inmates. Section 3  
33 also provides that although the superintendent may place an  
34 inmate's property in the inmate's possession upon entering the  
35 institution in an interest-bearing account, the superintendent

1 need not return the interest to the inmate. Current law  
2 requires the return of the interest upon discharge.

3 Section 4 of the bill relates to the assignment of  
4 operating a motor vehicle while intoxicated (OWI) offenders to  
5 treatment facilities. Changes enacted during the 1990  
6 legislative session prohibited the department from sending  
7 these offenders to the Iowa medical and classification center  
8 at Oakdale unless medical treatment is necessary or the  
9 offender fails to satisfactorily perform in a treatment  
10 program. The bill provides that if insufficient space is  
11 available in a community-based correctional program, the court  
12 may order the offender to be released on personal  
13 recognizance, bond, to the supervision of the judicial  
14 district department of correctional services, or held in jail.  
15 If the offender is ordered to the supervision of the district,  
16 the district director may request, and the departmental  
17 director may approve, the transfer of the offender to Oakdale  
18 until space is available.

19 Section 4 also includes language pertaining to a continuum  
20 of programming to be provided for OWI offenders. The section  
21 eliminates the provision that offenders assigned to a facility  
22 under section 246.513 are not included in calculations used to  
23 determine the existence of a prison overcrowding emergency.  
24 The section further provides for reimbursement to the counties  
25 when OWI offenders are held in jail due to insufficient  
26 program space after the first five days of confinement. The  
27 counties are required to pay for the first five days. This  
28 provision may include a state mandate as defined in section  
29 25B.3. Finally, an outdated administrative rules provision in  
30 the section is deleted.

31 Sections 6 and 8 establish an institutional work release  
32 program in addition to the work release program administered  
33 by the board of parole pursuant to section 246.901. The  
34 institutional work release program operates in a similar  
35 manner; however, a committee for each institution would be

1 established by the department of corrections. The committee  
2 is provided authority to approve work release applications and  
3 devise work release plans.

4 Section 7 permits the department to recover transportation  
5 costs for returning OWI offenders who have absconded from a  
6 treatment program. The department may seek reimbursement from  
7 the offender.

8 Section 9 exempts department employees from chauffeur's  
9 license requirements when transporting inmates, probationers,  
10 parolees, or work releasees.

11 Section 10 relates to the payment of costs in  
12 postconviction proceedings pursuant to chapter 663A. The bill  
13 provides that all persons seeking such relief shall have  
14 certain legal expenses made available, except applicants  
15 proceeding with self-representation or through the services of  
16 an inmate. The bill further provides that costs of  
17 postconviction proceedings are processed as provided in  
18 section 663A.5. Under current law, only cases involving  
19 inmates proceeding pursuant to section 663.A.2, subsection 6,  
20 relating to reduction of sentence, are included. The bill  
21 provides that initially these costs are paid by the county  
22 where the application is filed, rather than where the  
23 institution is located. The bill requires that applications  
24 for payment must be submitted in a timely manner. The bill  
25 also provides that any district judge, in addition to the  
26 presiding judge, may approve the application. Also, the bill  
27 provides that the applicant must pay restitution, if able, as  
28 provided in chapter 912.

29 Section 11 provides that an officer, employee, contractor,  
30 vendor, volunteer, or agent of the department who engages in a  
31 sex act with a person in the custody of the department commits  
32 an aggravated misdemeanor.

33 Section 12 establishes the crime of interference with  
34 official correctional acts by a prisoner, and provides for  
35 penalties for varying types of interference. The section is

1 similar to current Code section 719.1 as it relates to  
2 interference with the official acts of peace officers and fire  
3 fighters.

4 Section 16 pertains to the determination of the amount of  
5 restitution. The section provides that the county attorney  
6 and clerk of court must prepare statements relating to  
7 restitution without the necessity of a court order. The bill  
8 also provides the county attorney must include awards by the  
9 crime victim assistance programs in the statement, in addition  
10 to pecuniary damages. These statements must either be  
11 submitted to the court at sentencing or be provided as part of  
12 the presentence report. The section provides that if  
13 pecuniary damages are not available at sentencing, the county  
14 attorney must provide a statement of damages incurred up to  
15 that point, no later than 30 days after sentencing. The  
16 section also requires the court to enter a temporary order at  
17 sentencing if the full amount of restitution cannot be  
18 determined at that time, with a permanent, supplemental order,  
19 setting the full amount of restitution, to follow as  
20 determined by the court.

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SENATE FILE 496  
FISCAL NOTE

A fiscal note for Senate File 496 as amended and passed by the Senate is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

1. Senate File 496 as amended and passed by the Senate relates to duties of the Department of Corrections (DOC). Sections 3, 5, and 13 establish an inmate savings fund. The inmate's deposits may provide gate money; any amount in excess of the gate money is returned to the inmate upon release. Section 7 requires OWI offenders who have escaped or absconded to reimburse the DOC for transportation costs.
2. Section 4 relates to the Operating While Intoxicated (OWI) Program. A continuum of sanctions is provided. If space is not available in a Community Based Corrections (CBC) facility, the judge may order the offender released on personal recognizance, bond, community-based supervision, or held in jail. If the offender is ordered to CBC supervision, the CBC District Department Director may request that the offender be transferred to the Oakdale Correctional Facility until space is available. The DOC is required to reimburse counties for the costs of confining OWI offenders pending space availability in a CBC facility following the fifth day of confinement.
3. Sections 6 and 8 establish a work release program to be administered by the DOC. This program is in addition to the work release program previously established. The DOC and Parole Board have discretion in administering the new program.
4. Sections 11 and 12 create new crimes. DOC staff, agents, or vendors who engage in a sex act with an inmate commit an aggravated misdemeanor. Graduated penalties are imposed for interference with official acts, ranging from a serious misdemeanor to a Class C felony.

Assumptions

1. The items contained within Paragraph 1 are cost-containment measures. The DOC does not anticipate significant savings to result.
2. The average daily cost for county jail confinement is \$39. Currently, an OWI offender is confined in jail an average of 2 days pending space availability in a CBC residential facility. The number of these OWI offenders being held in county jails will decrease as the alternative sentencing options are implemented.
3. If a prison-based work release program is established, the DOC will need additional staff and vans to implement it. A program may be established at each prison, with 2 programs at the Iowa Correctional Institution for

-2-

Women (Mitchellville).

4. It is not possible to estimate the fiscal impact of creating new crimes. There are no data with which to estimate the costs. However, the DOC has indicated that these specific acts occur rarely.

Fiscal Impact

The costs to reimburse counties for temporarily confining OWI offenders ranges from \$20,000 to \$50,000.

If a prison-based work release program is established at all 8 prisons, it would cost \$405,500 during FY 1992 (\$135,000 for vans + \$270,500 for 9 correctional officers). The vans would be replaced every other year.

Source: Iowa Department of Corrections

(LSB 1288sv.2, BAL)

FILED APRIL 16, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 496  
FISCAL NOTE

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A fiscal note for Senate File 496 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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1. Senate File 496 relates to duties of the Department of Corrections (DOC). Sections 3, 5, and 13 establish an inmate savings fund. The inmate's deposits may provide gate money; any amount in excess of the gate money is returned to the inmate upon release. Section 7 requires OWI offenders who have escaped or absconded to reimburse the DOC for transportation costs.
2. Section 4 relates to the Operating While Intoxicated (OWI) Program. A continuum of sanctions is provided. If space is not available in a Community Based Corrections (CBC) facility, the judge may order the offender released on personal recognizance, bond, community-based supervision, or held in jail. If the offender is ordered to CBC supervision, the CBC District Department Director may request that the offender be transferred to the Oakdale Correctional Facility until space is available. The DOC is required to reimburse counties for the costs of confining OWI offenders pending space availability in a CBC facility following the fifth day of confinement.
3. Sections 6 and 8 establish a work release program to be administered by the DOC. This program is in addition to the work release program previously established.
4. Section 10 expands the State's responsibility for payment of costs related to post-conviction relief proceedings.
5. Sections 11 and 12 create new crimes. DOC staff, agents, or vendors who engage in a sex act with an inmate commit an aggravated misdemeanor. Graduated penalties are imposed for interference with official acts, ranging from a serious misdemeanor to a Class C felony.

Assumptions

1. The items contained within Paragraph 1 are cost-containment measures. The DOC does not anticipate significant savings to result.
2. The average daily cost for county jail confinement is \$39. Currently, an OWI offender is confined in jail an average of 2 days pending space availability in a CBC residential facility. The number of these OWI offenders being held in county jails will decrease as the alternative sentencing options are implemented.
3. It is not possible to estimate the fiscal impact of expanding the State's responsibility for payment of post-conviction proceedings.

-2-

4. The DOC will need additional staff and vans to implement a prison-based work release program. A program would be established at each prison, with 2 programs at the Iowa Correctional Institution for Women (Mitchellville).
5. It is not possible to estimate the fiscal impact of creating new crimes. There are no data with which to estimate the costs. However, the DOC has indicated that these specific acts occur rarely.

Fiscal Impact

Total costs for FY 1992 range from \$425,500 to \$455,500, as indicated below.

The costs to reimburse counties for temporarily confining OWI offenders ranges from \$20,000 to \$50,000.

The work release program would cost \$405,500 during FY 1992 (\$135,000 for vans + \$270,500 for 9 correctional officers). The vans would be replaced every other year.

Source: Iowa Department of Corrections

(LSB 1288SV, BAL)

FILED MARCH 28, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

Use Judiciary 4/11/91 to Pass 4/11/91

SENATE FILE 496  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 267)

(AS AMENDED AND PASSED BY THE SENATE APRIL 10, 1991)

- New Language by the Senate

\* - Language Stricken by the Senate

*as amended  
by House*

Passed Senate, Date 5/8/91 (p. 1734) Passed House, Date 5/2/91 (p. 2055)

Vote: Ayes 49 Nays 0 Vote: Ayes 98 Nays 0

Approved May 29, 1991

A BILL FOR

3641 1 An Act relating to persons convicted of public offenses, relating  
2 to the department of corrections and its programs and  
3 facilities, and establishing additional public offenses and  
4 criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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Conference Committee Appointed

8 Senators Sturgeon (Chair), Gronstedt, Murphy, Berlang & Haster (p. 1741)  
9 Reps. Sharp (Chair), Peterson, Wissing, McKeen, M. Neal 5/10 (p. 2252)

Conference Committee Report

12 Passed Senate 5/11/91 (p. 1811) Passed House 5/11/91 (p. 2422)  
46-0 95-0

S.F. 496

1 Section 1. Section 229.14, subsection 4, Code 1991, is  
2 amended to read as follows:

3 4. The respondent is seriously mentally impaired and in  
4 need of full-time custody and care, but is unlikely to benefit  
5 from further treatment in a hospital. If the report so  
6 states, the chief medical officer shall recommend an  
7 alternative placement for the respondent and the court shall  
8 enter an order which may direct the respondent's transfer to  
9 the recommended placement. A respondent who is an inmate in  
10 the custody of the department of corrections may, as a court-  
11 ordered alternative placement, receive mental health services  
12 in a correctional program. If the court or the respondent's  
13 attorney consider the placement inappropriate, an alternative  
14 placement may be arranged upon consultation with the chief  
15 medical officer and approval of the court.

32412  
16 Sec. 2. NEW SECTION. 246.207 VIOLATOR FACILITY.

17 The director may establish a violator facility as a  
18 freestanding facility, or designate a portion of an existing  
19 correctional facility, for the purpose. A violator facility  
20 is for the short-term confinement of offenders who have  
21 violated conditions of release under work release, parole, or  
22 probation, or who are sentenced to the custody of the director  
23 for assignment to a treatment facility under section 246.513.  
24 The director shall adopt rules pursuant to chapter 17A,  
25 subject to the approval of the board, to implement this  
26 section.

27 Sec. 3. Section 246.508, Code 1991, is amended to read as  
28 follows:

29 246.508 PROPERTY OF INMATE -- INMATE SAVINGS FUND.

30 1. The superintendent of each institution shall receive  
31 and care for any property an inmate may possess on the  
32 inmate's person upon entering the institution, and on the  
33 discharge of the inmate, return the property to the inmate or  
34 the inmate's legal representatives, unless the property has  
35 been previously disposed of according to the inmate's written

1 designation or policies prescribed by the board. The  
2 superintendent may place an inmate's money at interest,  
3 keeping an account of the money and returning the remaining  
4 money and interest upon discharge.

5 2. The director shall establish and maintain an inmate  
6 savings fund in an interest-bearing account for the deposit of  
7 all or part of an inmate's allowances, as provided in section  
8 246.702. All or part of an inmate's allowances shall be  
9 deposited into the savings fund, until the inmate's deposit is  
10 equal to the amount due the inmate upon discharge, parole, or  
11 placement on work release, as provided in section 906.9. If  
12 an inmate's deposits equal this amount, the inmate may  
13 voluntarily withdraw from the savings fund. The director  
14 shall notify the inmate of this right to withdraw and shall  
15 provide the inmate with a written request form to facilitate  
16 the withdrawal. If the inmate withdraws and the inmate's  
17 deposits exceed the amount due as provided in section 906.9,  
18 the director shall disburse the excess amount as provided for  
19 allowances under section 246.702, except the director shall  
20 not deposit the excess amount in the inmate savings fund. If  
21 the inmate chooses to continue to participate in the savings  
22 fund, the inmate's deposits shall be returned to the inmate  
23 upon discharge, parole, or placement on work release.  
24 Otherwise, the inmate's deposits shall be disposed of as  
25 provided in subsection 3. An inmate's deposits into the  
26 savings fund may be used to provide the money due the inmate  
27 upon discharge, parole, or placement on work release, as  
28 required under section 906.9. Interest earned from the  
29 savings fund shall be placed in a separate account, and may be  
30 used for purchases approved by the director to directly and  
31 collectively benefit inmates.

32 3. Upon the death of an inmate, the superintendent of the  
33 institution shall immediately take possession of the  
34 decedent's property left at the institution, including the  
35 inmate's deposits into the inmate savings fund, and shall

1 deliver the property to the person designated by the inmate to  
2 be contacted in case of an emergency. However, if the  
3 property left by the decedent cannot be delivered to the  
4 designated person, delivery may be made to the surviving  
5 spouse or an heir of the decedent. If the decedent's property  
6 cannot be delivered to the designated person and no surviving  
7 spouse or heir is known, the superintendent shall deliver the  
8 property to the treasurer of state for disposition as  
9 unclaimed property pursuant to chapter 556, after deducting  
10 expenses incurred in disposing of the decedent's body or  
11 property.

12 Sec. 4. Section 246.513, Code 1991, is amended to read as  
13 follows:

14 246.513 ASSIGNMENT OF OWI VIOLATORS TO TREATMENT  
15 FACILITIES.

16 1. a. The department of corrections in cooperation with  
17 judicial district departments of correctional services shall  
18 establish in each judicial district bed-space a continuum of  
19 programming, including residential facilities, for the  
20 confinement supervision and treatment of offenders convicted  
21 of violating chapter 321J who are sentenced to the custody of  
22 the director. The department of corrections shall develop  
23 standardized assessment criteria for the assignment of  
24 offenders to a facility established pursuant to this section  
25 ~~chapter. The offender shall be assigned by the director to a~~  
26 ~~facility pursuant to section 321J.2, subsection 2, paragraph~~  
27 ~~"b" or "c", unless initial medical treatment is necessary or~~  
28 ~~there is insufficient space to accommodate the person. The~~  
29 ~~offenders shall be assigned to the Iowa Federal Classification~~  
30 ~~facility at Oakdale for classification if medical treatment is~~  
31 ~~necessary or if the offender fails to satisfactorily perform~~  
32 ~~in a treatment program conducted in a residential facility~~  
33 ~~operated by a judicial district department of correctional~~  
34 ~~services. The offender shall be assigned to an institution~~  
35 ~~following classification. The facilities established shall~~

1 meet-all-the-following-requirements:

2 a.--is-a-treatment-facility-meeting-the-licensure-standards  
3 of-the-division-of-substance-abuse-of-the-department-of-public  
4 health:

5 b.--is-a-facility-meeting-applicable-standards-of-the  
6 American-corrections-association:

7 c.--is-a-facility-which-meets-any-other-rule-or-requirement  
8 adopted-by-the-department-pursuant-to-chapter-17A:

9 b. Except as otherwise provided in this section, the  
10 offender shall be assigned to a community-based correctional  
11 program. If medical treatment is necessary, the offender may  
12 be assigned to the Iowa medical and classification center at  
13 Oakdale for treatment and assignment, until the offender's  
14 health status permits placement in a community-based  
15 correctional program.

16 c. If there is insufficient space in a community-based  
17 correctional program to accommodate the offender, the court  
18 may order the offender to be released on personal recognizance  
19 or bond, released to the supervision of the judicial district  
20 department of correctional services, or held in jail. If the  
21 offender is ordered to the supervision of a judicial district  
22 department of correctional services, the district director may  
23 request, and the director of the department may approve, the  
24 transfer of the offender to the Iowa medical and  
25 classification center at Oakdale for classification and  
26 assignment, until space is available in a community-based  
27 correctional program.

28 d. If an offender fails to satisfactorily perform in a  
29 program conducted by a community-based correctional program,  
30 the offender shall be transferred to the Iowa medical and  
31 classification facility at Oakdale for classification and  
32 assignment.

33 e. A program established under this section shall operate  
34 in accordance with the rules and requirements adopted by the  
35 department pursuant to chapter 17A.

1 2. The assignment of an offender pursuant to subsection 1  
2 shall be for purposes of risk management, substance abuse  
3 treatment, and education, and may include work programs for  
4 the offender at times when the offender is not participating  
5 in substance-abuse-treatment-or-education other program  
6 components.

7 ~~3.--offenders-assigned-to-a-facility-pursuant-to-this~~  
8 ~~section-shall-not-be-included-in-calculations-used-to~~  
9 ~~determine-the-existence-of-a-prison-overcrowding-state-of~~  
10 ~~emergency.~~

11 4 3. Upon request by the director a county shall provide  
12 temporary confinement for offenders allegedly violating the  
13 conditions of assignment to a treatment program if space is  
14 available. The department shall negotiate a reimbursement  
15 rate with each county for the temporary confinement of  
16 offenders allegedly violating the conditions of assignment to  
17 a treatment program who are in the custody of the director or  
18 who are housed or supervised by the judicial district  
19 department of correctional services. The amount to be  
20 reimbursed shall be determined by multiplying the number of  
21 days a person is confined by the average daily cost of  
22 confining a person in the county facility as negotiated with  
23 the department. A county holding offenders ordered to jail  
24 pursuant to subsection 1 due to insufficient space in a  
25 community-based correctional program shall be reimbursed in  
26 the same manner following the fifth day of confinement.

27 Payment shall be made upon submission of a voucher executed by  
28 the sheriff and approved by the director.

29 5 4. The director department shall prepare-reposed  
30 administrative adopt rules for-the-consideration-of-the  
31 administrative-rules-review-committee for the funding of the  
32 program by means of self-contribution by the offenders,  
33 insurance reimbursement on behalf of offenders, or other forms  
34 of funding, program structure, criteria for the evaluation of  
35 facilities and offenders for participation in the programs.

1 and all other issues the director shall deem appropriate.  
2 ~~Proposed rules prepared pursuant to this subsection shall be~~  
3 ~~submitted to the administrative rules review committee on or~~  
4 ~~before September 15, 1986.~~

5 Sec. 5. Section 246.702, Code 1991, is amended to read as  
6 follows:

7 246.702 DEDUCTION TO PAY COURT COSTS, INDUSTRIES PROGRAM  
8 COSTS, INCARCERATION COSTS, OR DEPENDENTS -- DEPOSITS --  
9 SAVINGS FUND.

10 If allowances are paid pursuant to section 246.701, the  
11 director may deduct an amount established by the inmate's  
12 restitution plan of payment or an amount sufficient to pay all  
13 or part of the court costs taxed as a result of the inmate's  
14 commitment. The amount deducted shall be forwarded to the  
15 clerk of the district court or proper official. The director  
16 may deduct an amount, not to exceed ten percent of the amount  
17 of the allowance, unless the inmate requests a larger amount,  
18 to be deposited into the inmate savings fund established in  
19 section 246.508. However, if the inmate's deposit in the  
20 inmate savings fund is sufficient to pay the amount due the  
21 inmate upon discharge, parole, or placement on work release  
22 pursuant to section 906.9, and the inmate has voluntarily  
23 withdrawn from the savings fund, the director shall not make  
24 further deposits from the inmate's allowances into the savings  
25 fund unless the inmate chooses to participate in the savings  
26 fund. The director may deduct and disburse an amount  
27 sufficient for industries' programs to qualify under the  
28 eligibility requirements established in the Justice Assistance  
29 Act of 1984, Pub. L. No. 98-473, including an amount to pay  
30 all or part of the cost of the inmate's incarceration. The  
31 director may pay all or any part of remaining allowances paid  
32 pursuant to section 246.701 directly to a dependent of the  
33 inmate, or may deposit the allowance to the account of the  
34 inmate, or may deposit a portion and allow the inmate a  
35 portion for the inmate's personal use.

1     Sec. 6. Section 246.901, Code 1991, is amended to read as  
2 follows:

3     246.901 WORK RELEASE PROGRAM.

4     The Iowa department of corrections, in consultation with  
5 the board of parole, shall establish a work release program  
6 under which the board of parole may grant inmates sentenced to  
7 an institution under the jurisdiction of the department the  
8 privilege of leaving actual confinement during necessary and  
9 reasonable hours for the purpose of working at gainful  
10 employment. Under appropriate conditions the program may also  
11 include an out-of-state work or treatment placement or release  
12 for the purpose of seeking employment and attendance at an  
13 educational institution. An inmate may be placed on work  
14 release status in the inmate's own home, under appropriate  
15 circumstances, which may include child care and housekeeping  
16 in the inmate's own home. This work release program is in  
17 addition to the institutional work release program established  
18 in section 246.910.

19     Sec. 7. Section 246.909, Code 1991, is amended to read as  
20 follows:

21     246.909 WORK RELEASE AND OWI VIOLATORS -- REIMBURSEMENT TO  
22 THE DEPARTMENT OF CORRECTIONS FOR TRANSPORTATION COSTS.

23     The department of corrections shall arrange for the return  
24 of a work release client or offender convicted of violating  
25 chapter 321J who escapes or participates in an act of  
26 absconding from the facility to which the client is assigned.  
27 The client or offender shall reimburse the department of  
28 corrections for the cost of transportation incurred because of  
29 the escape or act of absconding. The amount of reimbursement  
30 shall be the actual cost incurred by the department and shall  
31 be credited to the support account from which the billing  
32 occurred. The director of the department of corrections shall  
33 recommend rules pursuant to chapter 17A, subject to approval  
34 by the board of corrections pursuant to section 246.105,  
35 subsection 7, to implement this section.

1     Sec. 8. NEW SECTION. 246.910 INSTITUTIONAL WORK RELEASE  
2 PROGRAM.

3     1. In addition to the work release program established in  
4 section 246.901, the department of corrections shall establish  
5 an institutional work release program for each institution.  
6 The program shall provide that the department may grant  
7 inmates sentenced to an institution under its jurisdiction the  
8 privilege of leaving actual confinement during necessary and  
9 reasonable hours for the purpose of working at gainful  
10 employment. Under appropriate conditions, the program may  
11 also include an out-of-state work or treatment placement or  
12 release for the purpose of seeking employment or attendance at  
13 an educational institution. An inmate may be placed on work  
14 release status in the inmate's own home, under appropriate  
15 circumstances, which may include child care and housekeeping  
16 in the inmate's own home.

17     2. A committee shall be established by the department for  
18 the work release program at each institution to review  
19 applications for participation in the program.

20     3. An inmate who is eligible to participate in the work  
21 release program may apply to the superintendent of the  
22 institution for permission to participate in the program. The  
23 application shall include a statement that, if the application  
24 is approved, the inmate agrees to abide by all terms and  
25 conditions of the inmate's work release plan adopted by the  
26 committee. In addition, the application shall state the name  
27 and address of the proposed employer, if any, and shall  
28 contain other information as required by the committee. The  
29 committee may approve, disapprove, or defer action on the  
30 application. If the application is approved, the committee  
31 shall adopt an institutional work release plan for the  
32 applicant. The plan shall contain the elements required by  
33 this section and other conditions as the committee deems  
34 necessary and proper. The plan shall be signed by the inmate  
35 prior to participation in the program. Approval of a plan may

1 be revoked at any time by the superintendent or the committee.  
2 4. The department may contract with a judicial district  
3 department of correctional services for the housing and  
4 supervision of an inmate in local facilities as provided in  
5 section 246.904. The institutional work release plan shall  
6 indicate the place where the inmate is to be housed when not  
7 on work assignment. The plan shall not allow for placement of  
8 an inmate on work release for more than six months in any  
9 twelve-month period without unanimous committee approval to do  
10 so. However, an inmate may be temporarily released to the  
11 supervision of a responsible person to participate in family  
12 and selected community, religious, educational, social, civic,  
13 and recreational activities when the committee determines that  
14 the participation will directly facilitate the release of the  
15 inmate from the institution to the community. The department  
16 shall provide a copy of the work release plan and a copy of  
17 any restitution plan of payment to the judicial district  
18 department of correctional services housing and supervising  
19 the inmate.

20 5. An inmate employed in the community under an  
21 institutional work release plan approved pursuant to this  
22 section shall surrender the inmate's total earnings less  
23 payroll deductions required by law to the superintendent, or  
24 to the judicial district department of correctional services  
25 if it is housing or supervising the inmate. The  
26 superintendent or the judicial district department of  
27 correctional services shall deduct from the earnings in the  
28 priority established in section 246.905.

29 6. The department of corrections shall adopt rules for the  
30 implementation of this section.

31 Sec. 9. Section 321.1, subsection 43, unnumbered paragraph  
32 3, Code 1991, is amended to read as follows:

33 If authorized to transport inmates, probationers, parolees,  
34 or work releasees by the director of the Iowa department of  
35 corrections or the director's designee, an employee of the

1 Iowa department of corrections or a district department of  
2 correctional services is not a chauffeur when transporting the  
3 inmates, probationers, parolees, or work releasees in an  
4 automobile.

5 Sec. 10. Section 663A.5, Code 1991, is amended to read as  
6 follows:

7 663A.5 PAYMENT OF COSTS.

8 1. If the applicant is unable to pay court costs and  
9 expenses of legal representation, including stenographic,  
10 printing, and or other legal services or consultation, these  
11 costs and expenses shall be made available to the applicant in  
12 the preparation of the application, in the trial court, and on  
13 review. However, nothing in this section shall be interpreted  
14 to require payment of expenses of legal representation,  
15 including stenographic, printing, or other legal services or  
16 consultation, when the applicant is self-represented or is  
17 utilizing the services of an inmate.

18 2. If an applicant confined in a state institution seeks  
19 relief under section 663A.2, subsection 6, and the court finds  
20 in favor of the applicant, or the postconviction proceedings  
21 fail when relief is denied and costs and expenses referred to  
22 in unnumbered-paragraph subsection 1 cannot be collected from  
23 the applicant, these costs and expenses initially shall be  
24 paid by the county in which the state institution is located  
25 application was filed. The facts of payment and the  
26 proceedings on which it is based, with a statement of the  
27 amount of costs and expenses incurred, shall be submitted to  
28 the county in a timely manner with approval in writing by the  
29 presiding or district judge appended to the statement or  
30 endorsed on it, and shall be certified by the clerk of the  
31 district court under seal to the state executive council. The  
32 executive council shall review the proceedings and authorize  
33 reimbursement for the costs and expenses or for that part  
34 which the executive council finds justified, and shall notify  
35 the director of revenue and finance to draw a warrant to the

1 county treasurer on the state general fund for the amount  
2 authorized.

3641  
3 Sec. 11. NEW SECTION. 709.15 SEXUAL MISCONDUCT WITH  
4 OFFENDERS.

5 An officer, employee, contractor, vendor, volunteer, or  
6 agent of the department of corrections who engages in a sex  
7 act with an individual committed to the custody of the  
8 department of corrections commits an aggravated misdemeanor.

9 Sec. 12. Section 719.1, Code 1991, is amended to read as  
10 follows:

11 719.1 INTERFERENCE WITH OFFICIAL ACTS:

12 1. A person who knowingly resists or obstructs anyone  
13 known by the person to be a peace officer or fire fighter,  
14 whether paid or volunteer, in the performance of any act which  
15 is within the scope of the lawful duty or authority of that  
16 officer or fire fighter, whether paid or volunteer, or who  
17 knowingly resists or obstructs the service or execution by any  
18 authorized person of any civil or criminal process or order of  
19 any court, commits a simple misdemeanor. However, if a person  
20 commits an interference with official acts, as defined in this  
21 section subsection, and in so doing inflicts bodily injury  
22 other than serious injury, that person commits a serious  
23 misdemeanor. If a person commits an interference with  
24 official acts, as defined in this section subsection, and in  
25 so doing inflicts or attempts to inflict serious injury, or  
26 displays a dangerous weapon, as defined in section 702.7, or  
27 is armed with a firearm, that person commits an aggravated  
28 misdemeanor.

29 2. A person under the custody, control, or supervision of  
30 the department of corrections who knowingly resists,  
31 obstructs, or interferes with a correctional officer, agent,  
32 employee, or contractor, whether paid or volunteer, in the  
33 performance of the person's official duties, commits a serious  
34 misdemeanor. If a person violates this subsection and in so  
35 doing commits an assault, as defined in section 705.1, the

1 person commits an aggravated misdemeanor. If a person  
2 violates this subsection and in so doing inflicts or attempts  
3 to inflict bodily injury other than serious injury to another,  
4 displays a dangerous weapon, as defined in section 702.7, or  
5 is armed with a firearm, the person commits a class "D"  
6 felony. If a person violates this subsection and uses or  
7 attempts to use a dangerous weapon, as defined in section  
8 702.7, or inflicts serious injury to another, the person  
9 commits a class "C" felony.

10 3. The terms "resist" and "obstruct", as used in this  
11 section, do not include verbal harassment unless the verbal  
12 harassment is accompanied by a present ability and apparent  
13 intention to execute a verbal threat physically.

3047  
14 Sec. 13. Section 906.9, unnumbered paragraph 1, Code 1991,  
15 is amended to read as follows:

16 When an inmate is discharged, paroled, or placed on work  
17 release, the warden or superintendent shall furnish the  
18 inmate, at state expense, appropriate clothing and  
19 transportation to the place in this state indicated in the  
20 inmate's discharge, parole, or work release plan. When an  
21 inmate is discharged, paroled, or placed on work release, the  
22 warden or superintendent shall provide the inmate, at state  
23 expense or through inmate savings as provided in section  
24 246.508, money in accordance with the following schedule:

25 Sec. 14. Section 908.9, Code 1991, is amended to read as  
26 follows:

27 908.9 DISPOSITION OF VIOLATOR.

28 If the parole of a parole violator is revoked, the violator  
29 shall remain in the custody of the Iowa department of  
30 corrections under the terms of the parolee's original  
31 commitment. The violator may be placed in a violator facility  
32 established pursuant to section 246.207. If the parole of a  
33 parole violator is not revoked, the parole revocation officer  
34 or board panel shall order the person's release subject to the  
35 terms of the person's parole with any modifications that the

1 parole revocation officer or board panel determines proper.

2 Sec. 15. Section 908.11, Code 1991, is amended to read as  
3 follows:

4 908.11 VIOLATION OF PROBATION.

5 A probation officer or the judicial district department of  
6 correctional services having probable cause to believe that  
7 any person released on probation has violated the conditions  
8 of probation shall proceed by arrest or summons as in the case  
9 of a parole violation. The functions of the liaison officer  
10 and the board of parole shall be performed by the judge or  
11 magistrate who placed the alleged violator on probation if  
12 that judge or magistrate is available, otherwise by another  
13 judge or magistrate who would have had jurisdiction to try the  
14 original offense. If the probation officer proceeds by  
15 arrest, any magistrate may receive the complaint, issue an  
16 arrest warrant, or conduct the initial appearance and probable  
17 cause hearing if it is not convenient for the judge who placed  
18 the alleged violator on probation to do so. The initial  
19 appearance, probable cause hearing, and probation revocation  
20 hearing, or any of them, may at the discretion of the court be  
21 merged into a single hearing when it appears that the alleged  
22 violator will not be prejudiced thereby. If the violation is  
23 established, the court may continue the probation with or  
24 without an alteration of the conditions of probation. If the  
25 defendant is an adult the court may hold the defendant in  
26 contempt of court and sentence the defendant to a jail term  
27 while continuing the probation, order the defendant to be  
28 placed in a violator facility established pursuant to section  
29 246.207 while continuing the probation, or may revoke the  
30 probation and require the defendant to serve the sentence  
31 imposed or any lesser sentence, and, if imposition of sentence  
32 was deferred, may impose any sentence which might originally  
33 have been imposed.

34 Sec. 16. Section 910.3, Code 1991, is amended to read as  
35 follows:

## 1 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

2 The court ~~shall require the~~ county attorney ~~to promptly~~  
3 shall prepare a statement of pecuniary damages to victims of  
4 the defendant and ~~shall require the~~, if applicable, any award  
5 by the crime victim assistance programs and shall provide the  
6 statement to the presentence investigator or submit the  
7 statement to the court at the time of sentencing. The clerk  
8 of court ~~to shall~~ prepare a statement of court-appointed  
9 attorney's fees, the expense of a public defender and court  
10 costs, which shall be ~~promptly~~ provided to the presentence  
11 investigator or submitted to the court at the time of  
12 sentencing. ~~These~~ If these statements are provided to the  
13 presentence investigator, they shall become a part of the  
14 presentence report. If pecuniary damage amounts are not  
15 available at the time of sentencing, the county attorney shall  
16 provide a statement of pecuniary damages incurred up to that  
17 time to the clerk of court. The statement shall be provided  
18 no later than thirty days after sentencing. If a defendant  
19 believes no person suffered pecuniary damages, the defendant  
20 shall so state. If the defendant has any mental or physical  
21 impairment which would limit or prohibit the performance of a  
22 public service, the defendant shall so state. The court may  
23 order a mental or physical examination, or both, of the  
24 defendant to determine a proper course of action. At the time  
25 of sentencing or at a later date to be determined by the  
26 court, the court shall set out the amount of restitution  
27 including the amount of public service to be performed as  
28 restitution and the persons to whom restitution must be paid.  
29 This if the full amount of restitution cannot be determined at  
30 the time of sentencing, the court shall issue a temporary  
31 order determining a reasonable amount for pecuniary damages  
32 incurred up to that time, any award by the crime victim  
33 assistance programs, court-appointed attorney's fees or the  
34 expense of a public defender, and court costs. At a later  
35 date as determined by the court, the court shall issue a

1 permanent, supplemental order, setting the full amount of  
2 restitution. The court shall enter further supplemental  
\*3 orders, if necessary. These court orders shall be known as  
4 the plan of restitution.

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## SENATE FILE 496

H-3641

1 Amend Senate File 496, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 15 the  
4 following:

5 "Sec. \_\_\_\_\_. Section 246.105, Code 1991, is amended  
6 by adding the following new subsection:

7 NEW SUBSECTION. 9A. Adopt rules pursuant to  
8 chapter 17A pertaining to executions of persons  
9 convicted of capital murder."

10 2. Page 11, by inserting after line 2 the  
11 following:

12 "Sec. \_\_\_\_\_. Section 701.7, Code 1991, is amended to  
13 read as follows:

14 701.7 FELONY DEFINED AND CLASSIFIED.

15 A public offense is a felony of a particular class  
16 when the statute defining the crime declares it to be  
17 a felony. Felonies are capital felonies, class "A"  
18 felonies, class "B" felonies, class "C" felonies, and  
19 class "D" felonies. Where If the statute defining the  
20 offense declares it to be a felony but does not state  
21 what class of felony it is or provide for a specific  
22 penalty, that felony ~~shall be~~ is a class "D" felony.

23 Sec. \_\_\_\_\_. NEW SECTION. 707.1A CAPITAL MURDER.

24 1. a. A person commits capital murder if the  
25 person commits murder in the first degree pursuant to  
26 section 707.2, and the person previously has been  
27 convicted of capital murder or a class "A" felony  
28 pursuant to section 707.2, 709.2, or 710.2.

29 b. A person commits capital murder if the person  
30 commits murder in the first degree pursuant to section  
31 707.2, and the person, in the course of that murder,  
32 commits another capital murder or another class "A"  
33 felony pursuant to section 707.2, 709.2, or 710.2.

34 2. Capital murder is a felony punishable either by  
35 death or by life imprisonment, as determined pursuant  
36 to sections 115 through 118 of this Act. However, if  
37 a person is convicted of capital murder who was under  
38 the age of sixteen years at the time the offense was  
39 committed, the person shall be sentenced to life  
40 imprisonment.

41 3. If a defendant is sentenced to death pursuant  
42 to sections 115 through 118 of this Act, the sentence  
43 shall be executed by the administration of a lethal  
44 injection pursuant to rules adopted by the board of  
45 corrections. For the purposes of this section,  
46 "lethal injection" means a continuous intravenous  
47 injection of a lethal quantity of sodium thiopental or  
48 other equally or more effective substance sufficient  
49 to cause death.

50 Sec. \_\_\_\_\_. Section 707.2, unnumbered paragraph 1,

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Page 2

1 Code 1991, is amended to read as follows:

2 A person commits murder in the first degree when  
3 the person commits murder which is not capital murder  
4 and which is committed under any of the following  
5 circumstances:

6 Sec. \_\_\_\_\_. Section 707.3, unnumbered paragraph 1,  
7 Code 1991, is amended to read as follows:

8 A person commits murder in the second degree when  
9 the person commits murder which is not capital murder  
10 or murder in the first degree.

11 Sec. \_\_\_\_\_. Section 707.4, unnumbered paragraph 2,  
12 Code 1991, is amended to read as follows:

13 Voluntary manslaughter is an included offense under  
14 an indictment for capital murder or murder in the  
15 first or second degree.

16 Sec. \_\_\_\_\_. Section 707.5, unnumbered paragraph 1,  
17 Code 1991, is amended to read as follows:

18 Involuntary manslaughter as defined in this section  
19 is an included offense under an indictment for capital  
20 murder or murder in the first or second degree or  
21 voluntary manslaughter."

22 3. Page 12, by inserting after line 13 the  
23 following:

24 "Sec. \_\_\_\_\_. Section 802.1, Code 1991, is amended to  
25 read as follows:

26 802.1 MURDER.

27 A prosecution for capital murder or murder in the  
28 first or second degree may be commenced at any time  
29 after the death of the victim.

30 Sec. \_\_\_\_\_. Section 811.1, subsections 1 and 2, Code  
31 1991, are amended to read as follows:

32 1. A defendant awaiting judgment of conviction and  
33 sentencing following either a plea or verdict of  
34 guilty of a class "A" felony, capital murder, murder,  
35 felonious assault, sexual abuse in the second degree,  
36 sexual abuse in the third degree, kidnapping, robbery  
37 in the first degree, arson in the first degree, or  
38 burglary in the first degree, or any felony included  
39 in section 204.401, subsection 1, paragraph "a".

40 2. A defendant appealing a conviction of a class  
41 "A" felony, capital murder, murder, felonious assault,  
42 sexual abuse in the second degree, sexual abuse in the  
43 third degree, kidnapping, robbery in the first degree,  
44 arson in the first degree, or burglary in the first  
45 degree, or any felony included in section 204.401,  
46 subsection 1, paragraph "a".

47 Sec. \_\_\_\_\_. Section 811.1, Code 1991, is amended by  
48 adding the following new subsection:

49 NEW SUBSECTION. 4. A defendant charged with  
50 capital murder, if upon hearing held under the

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1 conditions required by section 812.2, the prosecuting  
2 attorney establishes by clear and convincing evidence  
3 that the release of the defendant from custody is  
4 likely to pose a danger of physical harm to another  
5 person. The court shall consider all lawfully  
6 obtained evidence relevant to the required  
7 determination, whether or not the evidence would be  
8 admissible at trial, but testimony of the person  
9 charged is not admissible at a subsequent trial on the  
10 issue of guilt of the offense charged or of any other  
11 offense.

12 Sec. \_\_\_\_ . NEW SECTION. 814.28 REVIEW OF DEATH  
13 SENTENCE.

14 1. In a case in which a sentence of death is  
15 imposed, the supreme court shall automatically review  
16 the judgment and sentence. The case shall not be  
17 transferred to the court of appeals.

18 2. A review by the supreme court of a judgment and  
19 sentence imposing the punishment of death has priority  
20 over all other criminal and other actions pending  
21 before the supreme court.

22 3. The supreme court shall review the trial and  
23 judgment, and separately shall review the sentencing  
24 proceeding. Upon determining that errors did not  
25 occur at the trial requiring reversal or modification  
26 of the judgment, the supreme court shall proceed to  
27 determine if the sentence of death is lawfully  
28 imposed. In its review of the sentencing proceeding  
29 the supreme court shall determine all of the  
30 following:

31 a. Whether the sentence of death was imposed  
32 capriciously or under the influence of prejudice or  
33 other arbitrary factor.

34 b. Whether the special verdicts returned under  
35 section 115, subsection 2 of this Act, are supported  
36 by the evidence.

37 c. Whether the sentence of death is excessive or  
38 disproportionate to the penalty imposed in similar  
39 cases, considering both the crime and the defendant.

40 4. If the supreme court determines that the  
41 sentence of death was not lawfully imposed the court  
42 shall set aside the sentence and shall remand the case  
43 to the trial court for imposition of a sentence of  
44 life imprisonment.

45 5. If the supreme court affirms the judgment and  
46 sentence of death, the clerk of the supreme court  
47 shall certify the judgment of the supreme court under  
48 the seal of the court to the clerk of the trial court.

49 Sec. \_\_\_\_ . NEW SECTION. 901.11 CAPITAL MURDER  
50 PROCEEDINGS.

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1 1. If a charge of capital murder is submitted to  
 2 the jury or court, but the prosecuting attorney waives  
 3 the death penalty, upon a verdict of guilty, the court  
 4 shall sentence the defendant to life imprisonment. If  
 5 the prosecuting attorney waives the death penalty, the  
 6 court shall follow the sentencing procedures set forth  
 7 in rule of criminal procedure 22, Iowa court rules,  
 8 third edition, and need not follow the special  
 9 sentencing procedures provided for capital murder  
 10 cases.

11 2. If capital murder is charged, but the charge is  
 12 not submitted to the court or jury, or the court or  
 13 jury finds the defendant guilty of another offense,  
 14 upon conviction of the other charge, the court shall  
 15 follow the sentencing procedures set forth in rule of  
 16 criminal procedure 22, Iowa court rules, third  
 17 edition, concerning sentencing for the offense, rather  
 18 than the sentencing procedures provided for capital  
 19 murder cases.

20 3. Capital murder proceedings shall be conducted  
 21 in bifurcated proceedings before the same trier of  
 22 fact. During the initial proceeding, the jury, or the  
 23 court, if the defendant waives the right to a jury  
 24 trial, shall decide only whether the defendant is  
 25 guilty or not guilty of any submitted offense. The  
 26 issue of punishment shall not be submitted during the  
 27 initial proceeding.

28 Upon a verdict of guilty to a capital murder  
 29 charge, a separate sentencing proceeding shall be  
 30 conducted as provided in sections 115 through 118 of  
 31 this Act. If a defendant enters a plea of guilty to a  
 32 capital murder charge, the court shall conduct a  
 33 separate sentencing proceeding as provided in sections  
 34 115 through 118 of this Act.

35 Sec. \_\_\_\_. NEW SECTION. 902.12 CAPITAL MURDER.  
 36 If a person is to be sentenced to life imprisonment  
 37 under section 115, subsection 5 of this Act, nothing  
 38 in chapters 901 through 909, pertaining to deferred  
 39 judgment, deferred sentence, suspended sentence, or  
 40 reconsideration of sentence, applies, and the person  
 41 shall not be released on parole unless the governor  
 42 commutes the person's sentence to a term of years and  
 43 shall not otherwise be released from confinement  
 44 unless the governor pardons the person."

45 4. Page 15, by inserting after line 4 the  
 46 following:

47 "Sec. \_\_\_\_\_. Rules of criminal procedure, Iowa court  
 48 rules, third edition, are amended by adding sections  
 49 115 through 118 of this Act.

50 Sec. 115. NEW RULE. CAPITAL MURDER -- PROCEDURE.

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1 1. Upon a finding or plea that a defendant is  
2 guilty of capital murder, the court shall conduct a  
3 separate sentencing proceeding to determine whether  
4 the defendant shall be sentenced to death or to life  
5 imprisonment. The proceeding shall be conducted in  
6 the trial court before the trial jury, or the court if  
7 there is no jury, as soon as practicable. In the  
8 proceeding, additional evidence may be presented as to  
9 any matter which is relevant to the sentence. The  
10 court shall receive when offered any evidence that is  
11 required by the rules of criminal procedure. This  
12 subsection does not authorize the introduction of any  
13 evidence secured in violation of the Constitution of  
14 the United States or of the Constitution of the State  
15 of Iowa. The state and the defendant or the  
16 defendant's counsel shall be permitted to cross-  
17 examine witnesses and to present argument for or  
18 against a sentence of death.

19 2. On conclusion of the presentation of the  
20 evidence, the court shall submit each of the following  
21 issues to the jury:

22 a. Whether the conduct of the defendant that  
23 caused the death of the deceased was committed  
24 willfully, deliberately, and with the reasonable  
25 expectation that the death of the deceased or another  
26 would result.

27 b. Whether a probability exists that in the future  
28 the defendant would commit criminal acts of violence  
29 that would constitute a continuing threat to society.

30 c. Whether aggravating circumstances exist that  
31 are sufficient to outweigh any mitigating  
32 circumstances that may exist.

33 If the case is not tried to a jury, the court shall  
34 determine the issues.

35 3. The state must prove each issue in subsection 2  
36 beyond a reasonable doubt, and the jury, or the court  
37 if there is no jury, shall return a special verdict of  
38 "yes" or "no" on each issue.

39 4. If the case is tried to a jury, the court shall  
40 charge the jury that:

41 a. It shall answer any issue "yes" if it agrees  
42 unanimously.

43 b. It shall answer any issue "no" if the jurors  
44 unanimously agree that the answer is "no" or if the  
45 jurors do not unanimously agree that the answer is  
46 "yes".

47 5. If the jury, or the court if there is no jury,  
48 returns an affirmative finding on all applicable  
49 issues, the court shall sentence the defendant to  
50 death. If the jury or the court returns a negative

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1 finding on any applicable issue, the court shall  
2 sentence the defendant to the custody of the director  
3 of the department of corrections for confinement for  
4 the rest of the defendant's life.

5 6. Iowa Code chapters 901 through 909 do not apply  
6 to a conviction of capital murder if the defendant is  
7 sentenced to death.

8 Sec. 116. NEW RULE. AUTOMATIC REVIEW -- STAY OF  
9 JUDGMENT.

10 1. A judgment of conviction and sentence of death  
11 shall be reviewed automatically in the manner provided  
12 in Iowa Code section 814.28, and the Iowa supreme  
13 court has exclusive jurisdiction of the review.

14 2. Upon entry of judgment and sentence of death,  
15 the trial court shall prepare a complete record and  
16 transcript of the action in the manner provided in the  
17 rules of criminal procedure and shall docket the  
18 record and transcript with the clerk of the supreme  
19 court.

20 3. The judgment and sentence of the trial court is  
21 stayed as a matter of law from the time of its entry  
22 until the judgment of the supreme court is certified  
23 to and entered by the trial court. Upon entry of a  
24 judgment of the supreme court which affirms the  
25 conviction and sentence, the stay of the judgment and  
26 sentence terminates as a matter of law.

27 4. All court costs required due to the automatic  
28 preparation of the record and transcript, docketing  
29 with the supreme court, and stay of judgment and  
30 sentence shall be assessed to the state.

31 Sec. 117. NEW RULE. ISSUANCE OF WARRANT.

32 1. Upon entry by the trial court of the judgment  
33 of the supreme court affirming a judgment and sentence  
34 of death, a district judge shall within five days of  
35 the entry issue a warrant under the seal of the court  
36 for the execution of the sentence of death. The  
37 warrant shall specifically set forth the offense and  
38 the fact of conviction, shall state the judgment and  
39 sentence of the court, shall state that the judgment  
40 and sentence were affirmed by the supreme court and  
41 the date of entry of judgment of the supreme court in  
42 the trial court, and shall specify the date fixed for  
43 execution of the defendant which shall be not less  
44 than fifty nor more than sixty days after the date of  
45 entry in the trial court of the judgment of the  
46 supreme court affirming the judgment and sentence of  
47 death. The warrant shall be directed to the director  
48 of the department of corrections commanding the  
49 director to cause the warrant to be executed on the  
50 date specified. The trial court shall deliver the

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1 warrant to the sheriff of the county in which judgment  
2 of conviction was entered and the sheriff shall  
3 deliver the warrant and the defendant to the custody  
4 of the department of corrections for confinement in  
5 the state penitentiary. The director of the  
6 department of corrections shall acknowledge receipt of  
7 the warrant and the defendant, and the sheriff shall  
8 return the acknowledgment to the office of the clerk  
9 of the trial court from which the warrant was issued.

10 2. Immediately after issuance of a warrant  
11 ordering a sentence of death, the clerk of the trial  
12 court issuing the warrant shall transmit by mail to  
13 the governor a copy of the indictment, the plea, the  
14 verdict and special findings, the affirmation of  
15 judgment and sentence by the supreme court, and the  
16 complete transcript of the trial court.

17 Sec. 118. NEW RULE. EVIDENCE AT SENTENCING IN  
18 CAPITAL MURDER CASES -- REQUIRED INFORMATION.

19 1. At a reasonable time before the commencement of  
20 sentencing proceedings in a capital murder case, each  
21 party shall file and serve upon the other party the  
22 following:

23 a. A list of all aggravating or mitigating  
24 circumstances which the party intends to prove during  
25 the sentencing proceedings.

26 b. The names of all persons whom the party intends  
27 to call as witnesses during the sentencing  
28 proceedings.

29 c. Notwithstanding rule 13, copies, or for  
30 inspection purposes, the location, of all documents,  
31 including books, papers, writings, drawings, graphs,  
32 charts, photographs, phonorecords, and other data  
33 compilations from which information can be obtained,  
34 or other objects which the party intends to offer into  
35 evidence during the sentencing proceedings. If copies  
36 are not supplied to opposing counsel, the party shall  
37 make the items available for inspection and copying  
38 without order of the court.

39 2. In proceedings to determine whether the  
40 sentence shall be death or life imprisonment, evidence  
41 may be presented as to any matter which the trial  
42 court deems relevant to sentence, including but not  
43 limited to the nature, circumstances, and manner of  
44 completion of the murder, and the defendant's  
45 character, background, history, and mental and  
46 physical condition. The trial court shall admit any  
47 relevant evidence respecting any aggravating or  
48 mitigating circumstances, if the party has included  
49 the circumstance on a list provided pursuant to this  
50 rule, or good cause is shown for the failure to do so.

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1 Sec. \_\_\_\_ . APPLICABILITY. This Act applies to  
2 offenses committed on or after the effective date of  
3 this Act."

4 5. Title page, line 3, by inserting after the  
5 word "facilities," the following: "applying the death  
6 penalty or life imprisonment, by establishing the  
7 offense of capital murder, by providing a minimum age  
8 for imposition of a death sentence, by providing for  
9 review of death sentences, by providing for execution  
10 by lethal injection, by amending the rules of criminal  
11 procedure, and by providing for the Act's  
12 applicability".

13 6. By renumbering as necessary.

By KREBSBACH of Mitchell	IVERSON of Wright
BANKS of Plymouth	CORBETT of Linn
GRUBBS of Scott	MILLAGE of Scott
JOHNSON of Clinton	BRANSTAD of Winnebago
McKEAN of Jones	BARTZ of Worth
RENKEN of Grundy	MILLER of Cherokee
HAHN of Muscatine	

H-3641 FILED APRIL 15, 1991

*W/D 5/2/91*

## SENATE FILE 496

H-4020

- 1 Amend Senate File 496, as amended, passed, and  
2 reprinted by the Senate, as follows:
- 3 1. Page 1, by inserting after line 15 the  
4 following:
- 5 "Sec. \_\_\_\_ . Section 246.206, subsection 1, Code  
6 1991, is amended to read as follows:
- 7 1. The correctional release center at Newton shall  
8 be utilized for the preparation of inmates of the  
9 correctional institutions for discharge, work release,  
10 or parole. The director may transfer an inmate of a  
11 correctional institution ~~within-ninety-days-of-the~~  
12 ~~inmate's-release-from-custody~~ to the correctional  
13 release center for intensive training to assist the  
14 inmate in the transition to civilian living. The  
15 statutes applicable to an inmate at the corrective  
16 institution from which transferred shall remain  
17 applicable during the inmate's stay at the  
18 correctional release center."
- 19 2. Page 1, line 17, by striking the word "may"  
20 and inserting the following: "shall".
- 21 3. Page 1, by striking line 20 and inserting the  
22 following: "is for the confinement of offenders, for  
23 no longer than sixty days, who have".
- 24 4. Page 2, line 4, by striking the words "and  
25 interest" and inserting the following: "and  
26 interest".
- 27 5. Page 2, line 9, by striking the words "deposit  
28 is" and inserting the following: "deposits and  
29 interest earned upon the deposits are".
- 30 6. Page 2, line 12, by inserting after the word  
31 "deposits" the following: "and interest".
- 32 7. Page 2, line 17, by inserting after the word  
33 "deposits" the following: "and interest".
- 34 8. Page 2, line 22, by inserting after the word  
35 "deposits" the following: "and interest".
- 36 9. Page 2, line 24, by inserting after the word  
37 "deposits" the following: "and interest".
- 38 10. Page 2, line 26, by inserting after the word  
39 "fund" the following: "and interest earned upon those  
40 deposits".
- 41 11. Page 2, by striking lines 28 through 31, and  
42 inserting the following: "required under section  
43 906.9."
- 44 12. Page 2, line 35, by inserting after the word  
45 "fund" the following: "and interest earned upon those  
46 deposits".
- 47 13. Page 3, line 19, by inserting after the word  
48 "facilities" the following: "and institutions".
- 49 14. By striking page 3, line 35, through page 4,  
50 line 8, and inserting the following: "following

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1 ~~classification~~. The facilities established shall meet  
2 all the following requirements:

3 a. Is a treatment facility meeting the licensure  
4 standards of the division of substance abuse of the  
5 department of public health.

6 b. Is a facility meeting applicable standards of  
7 the American corrections association.

8 c. Is a facility which meets any other rule or  
9 requirement adopted by the department pursuant to  
10 chapter 17A."

11 15. Page 5, lines 25 and 26, by striking the  
12 words "in the same manner following the fifth day of  
13 confinement".

14 16. Page 11, line 6, by inserting after the word  
15 "corrections" the following: ", or an officer,  
16 employee, or agent of a judicial district department  
17 of correctional services,".

18 17. Page 11, line 8, by inserting after the word  
19 "corrections" the following: "or a judicial district  
20 department of correctional services".

21 18. Page 12, by inserting after line 24, the  
22 following:

23 "Sec. \_\_\_\_\_. Section 907.9, unnumbered paragraph 2,  
24 Code 1991, is amended to read as follows:

25 A probation officer or the director of the judicial  
26 district department of correctional services who acts  
27 in compliance with this section is acting in the  
28 course of the person's official duty and is not  
29 personally liable, either civilly or criminally, for  
30 the acts of a person discharged from probation by the  
31 officer after such discharge, unless the discharge  
32 constitutes willful disregard of the person's duty."

33 19. Page 12, line 32, by inserting after the  
34 figure "246.207" the following: "if the parole  
35 revocation officer or board panel determines that  
36 placement in a violator facility is necessary".

37 20. Page 15, by inserting after line 4, the  
38 following:

39 "Sec. \_\_\_\_\_. NEW SECTION. 910.10 RESTITUTION LIEN.

40 1. The state or a person entitled to restitution  
41 under a court order may file a restitution lien.

42 2. The restitution lien shall set forth all of the  
43 following information, if known:

44 a. The name and date of birth of the person whose  
45 property or other interests are subject to the lien.

46 b. The present address of the residence and  
47 principal place of business of the person named in the  
48 lien.

49 c. The criminal proceeding pursuant to which the  
50 lien is filed, including the name of the court, the

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1 title of the action, and the court's file number.  
 2 d. The name and business address of the attorney  
 3 representing the state in the proceeding pursuant to  
 4 which the lien is filed or the name and residence and  
 5 business address of each person entitled to  
 6 restitution pursuant to a court order.  
 7 e. A statement that the notice is being filed  
 8 pursuant to this section.  
 9 f. The amount of restitution the person has been  
 10 ordered to pay or is likely to be ordered to pay.  
 11 3. A restitution lien may be filed by either of  
 12 the following:  
 13 a. A prosecuting attorney in a criminal proceeding  
 14 in which restitution is likely to be sought after the  
 15 filing of an information or indictment. At the time  
 16 of arraignment, the prosecuting attorney shall give  
 17 the defendant notice of any restitution lien filed.  
 18 b. A victim in a criminal proceeding after  
 19 restitution is determined and ordered by the trial  
 20 court following pronouncement of the judgment and  
 21 sentence.  
 22 4. The filing of a restitution lien in accordance  
 23 with this section creates a lien in favor of the state  
 24 and the victim in any personal or real property  
 25 identified in the lien to the extent of the interest  
 26 held in that property by the person named in the lien.  
 27 5. This section does not limit the right of the  
 28 state or any other person entitled to restitution to  
 29 obtain any other remedy authorized by law."  
 30 21. By renumbering and correcting internal  
 31 references as necessary.

By SHERZAN of Polk  
 McKEAN of Jones

H-4020 FILED MAY 2, 1991  
 ADOPTED *as amended by 4030 5/2/91 (p. 2055)*

## SENATE FILE 496

H-4030

1 Amend the amendment, H-4020, to Senate File 496, as  
 2 amended, passed, and reprinted by the Senate, as  
 3 follows:  
 4 1. Page 1, by striking lines 24 through 46.  
 5 2. Page 2, by inserting after line 20 the  
 6 following:  
 7 "\_\_\_\_. Page 12, by inserting after line 13 the  
 8 following:  
 9 "Sec. \_\_\_\_ Section 901.3, subsection 7, Code 1991,  
 10 is amended by striking the subsection."  
 11 3. By renumbering and correcting internal  
 12 references as necessary.

By SHERZAN of Polk  
 McKEAN of Jones

H-4030 FILED MAY 2, 1991  
 ADOPTED *(p. 2055)*

HOUSE AMENDMENT TO  
SENATE FILE 496

S-3698

1 Amend Senate File 496, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 15 the  
4 following:

5 "Sec. \_\_\_\_ . Section 246.206, subsection 1, Code  
6 1991, is amended to read as follows:

7 1. The correctional release center at Newton shall  
8 be utilized for the preparation of inmates of the  
9 correctional institutions for discharge, work release,  
10 or parole. The director may transfer an inmate of a  
11 correctional institution within-ninety-days-of-the  
12 inmate's-release-from-custody to the correctional  
13 release center for intensive training to assist the  
14 inmate in the transition to civilian living. The  
15 statutes applicable to an inmate at the corrective  
16 institution from which transferred shall remain  
17 applicable during the inmate's stay at the  
18 correctional release center."

19 2. Page 1, line 17, by striking the word "may"  
20 and inserting the following: "shall".

21 3. Page 1, by striking line 20 and inserting the  
22 following: "is for the confinement of offenders, for  
23 no longer than sixty days, who have".

24 4. Page 3, line 19, by inserting after the word  
25 "facilities" the following: "and institutions".

26 5. By striking page 3, line 35, through page 4,  
27 line 8, and inserting the following: "following  
28 classification. The facilities established shall meet  
29 all the following requirements:

30 a. Is a treatment facility meeting the licensure  
31 standards of the division of substance abuse of the  
32 department of public health.

33 b. Is a facility meeting applicable standards of  
34 the American corrections association.

35 c. Is a facility which meets any other rule or  
36 requirement adopted by the department pursuant to  
37 chapter 17A."

38 6. Page 5, lines 25 and 26, by striking the words  
39 "in the same manner following the fifth day of  
40 confinement".

41 7. Page 11, line 6, by inserting after the word  
42 "corrections" the following: ", or an officer,  
43 employee, or agent of a judicial district department  
44 of correctional services,".

45 8. Page 11, line 8, by inserting after the word  
46 "corrections" the following: "or a judicial district  
47 department of correctional services".

48 9. Page 12, by inserting after line 13 the  
49 following:

50 "Sec. \_\_\_\_ . Section 901.3, subsection 7, Code 1991,

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1 is amended by striking the subsection."

2 10. Page 12, by inserting after line 24, the

3 following:

4 "Sec. \_\_\_\_ . Section 907.9, unnumbered paragraph 2.

5 Code 1991, is amended to read as follows:

6 A probation officer or the director of the judicial  
7 district department of correctional services who acts  
8 in compliance with this section is acting in the  
9 course of the person's official duty and is not  
10 personally liable, either civilly or criminally, for  
11 the acts of a person discharged from probation by the  
12 officer after such discharge, unless the discharge  
13 constitutes wilful disregard of the person's duty."

14 11. Page 12, line 32, by inserting after the  
15 figure "246.207" the following: "if the parole  
16 revocation officer or board panel determines that  
17 placement in a violator facility is necessary".

18 12. Page 15, by inserting after line 4, the  
19 following:

20 "Sec. \_\_\_\_ . NEW SECTION. 910.10 RESTITUTION LIEN.

21 1. The state or a person entitled to restitution  
22 under a court order may file a restitution lien.

23 2. The restitution lien shall set forth all of the  
24 following information, if known:

25 a. The name and date of birth of the person whose  
26 property or other interests are subject to the lien.

27 b. The present address of the residence and  
28 principal place of business of the person named in the  
29 lien.

30 c. The criminal proceeding pursuant to which the  
31 lien is filed, including the name of the court, the  
32 title of the action, and the court's file number.

33 d. The name and business address of the attorney  
34 representing the state in the proceeding pursuant to  
35 which the lien is filed or the name and residence and  
36 business address of each person entitled to  
37 restitution pursuant to a court order.

38 e. A statement that the notice is being filed  
39 pursuant to this section.

40 f. The amount of restitution the person has been  
41 ordered to pay or is likely to be ordered to pay.

42 3. A restitution lien may be filed by either of  
43 the following:

44 a. A prosecuting attorney in a criminal proceeding  
45 in which restitution is likely to be sought after the  
46 filing of an information or indictment. At the time  
47 of arraignment, the prosecuting attorney shall give  
48 the defendant notice of any restitution lien filed.

49 b. A victim in a criminal proceeding after  
50 restitution is determined and ordered by the trial

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1 court following pronouncement of the judgment and  
2 sentence.

3 4. The filing of a restitution lien in accordance  
4 with this section creates a lien in favor of the state  
5 and the victim in any personal or real property  
6 identified in the lien to the extent of the interest  
7 held in that property by the person named in the lien.

8 5. This section does not limit the right of the  
9 state or any other person entitled to restitution to  
10 obtain any other remedy authorized by law."

11 13. By renumbering and correcting internal  
12 references as necessary.

RECEIVED FROM THE HOUSE

S-3698 FILED MAY 3, 1991

*Senate amended & Concurred 5/8/91 (p. 1723)*

S-3733

1 Amend the House amendment, S-3698, to Senate File  
2 496, as amended, passed, and reprinted by the Senate,  
3 as follows:

4 1. Page 1, by inserting after line 2 the  
5 following:

6 "\_\_\_\_. Page 1, by inserting before line 1 the  
7 following:

8 "Section 1. Section 80B.11, subsection 2, Code  
9 1991, as amended by 1991 Iowa Acts, Senate File 444,  
10 section 2, if enacted by the 1991 Session of the  
11 Seventy-fourth General Assembly, is amended to read as  
12 follows:

13 2. Minimum basic training requirements law  
14 enforcement officers employed after July 1, 1968, must  
15 complete in order to remain eligible for continued  
16 employment and the time within which such basic  
17 training must be completed. Minimum requirements  
18 shall mandate training devoted to the topic of  
19 domestic abuse. The council shall submit an annual  
20 report to the general assembly by January 15 of each  
21 year relating to the continuing education requirements  
22 devoted to the topic of domestic abuse, including the  
23 number of hours required, the substance of the classes  
24 offered, and other related matters."

25 2. Page 1, by inserting after line 4, the  
26 following:

27 "Sec. \_\_\_\_ Section 236.5, subsection 4, Code 1991,  
28 as amended by 1991 Iowa Acts, Senate File 444, section  
29 8, if enacted by the 1991 Session of the Seventy-  
30 fourth General Assembly, is amended to read as  
31 follows:

32 4. A certified copy of any order or approved  
33 consent agreement shall be issued to the plaintiff,  
34 the defendant and the county sheriff having  
35 jurisdiction to enforce the order or consent  
36 agreement, and the twenty-four hour dispatcher for the  
37 county sheriff. Any subsequent amendment or  
38 revocation of an order or consent agreement shall be  
39 forwarded by the clerk to all individuals and the  
40 county sheriff previously notified. The clerk shall  
41 notify the county sheriff and the twenty-four hour  
42 dispatcher for the county sheriff by telephone or  
43 otherwise in writing so that the county sheriff and  
44 the county sheriff's dispatcher receive written notice  
45 within six hours of filing the order, approved consent  
46 agreement, amendment, or revocation. The county  
47 sheriff's dispatcher shall notify all law enforcement  
48 agencies having jurisdiction over the matter and the  
49 twenty-four hour dispatcher for the law enforcement  
50 agencies upon notification by the clerk. The clerk

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1 shall send or deliver a written copy of any such document to the law enforcement agencies and the twenty-four hour dispatcher within twenty-four hours of filing the document.

5 Sec. \_\_\_\_ . Section 236.14, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

7 When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the victim's safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's relatives immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the alleged abuser to have no contact with the alleged victim's children shall prevail over any existing order awarding custody or visitation rights, which may be in conflict with the no-contact order.

31 Sec. \_\_\_\_ . Section 246.108, subsection 1, paragraph p, Code 1991, as enacted by 1991 Iowa Acts, Senate File 444, section 18, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

36 p. Adopt rules subject to the approval of the board, requiring the establishment and implementation of batterers' support-groups programs in all of the institutions under the jurisdiction of the department."

41 3. Page 1, by inserting after line 40, the following:

43 " \_\_\_\_ . Page 10, by inserting after line 4, the following:

45 "Sec. \_\_\_\_ . Section 602.8105, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph after paragraph u:

48 NEW UNNUMBERED PARAGRAPH. Notwithstanding any other provision of law to the contrary, including but not limited to the other provisions of this section,

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1 five dollars of the fees imposed pursuant to paragraph  
2 "a", the five dollar additional fee imposed pursuant  
3 to paragraph "1", and fifteen dollars of the fees  
4 imposed pursuant to paragraphs "m" and "n" shall be  
5 remitted to the treasurer of state for deposit into  
6 the general fund of the state, and shall not be  
7 deposited in the court revenue distribution account,  
8 and shall not be deposited in the judicial retirement  
9 fund.

10 Sec. \_\_\_\_ . Section 602.8106, Code 1991, is amended  
11 by adding the following new subsection:

12 NEW SUBSECTION. 6. Notwithstanding any other  
13 provision of law to the contrary, including but not  
14 limited to the other provisions of this section, five  
15 dollars of the fee for filing and docketing of a  
16 complaint or information for a simple misdemeanor and  
17 five dollars of the fee for filing and docketing of a  
18 complaint or information for a nonscheduled simple  
19 misdemeanor imposed pursuant to subsection 1 shall be  
20 remitted to the treasurer of state for deposit into  
21 the general fund of the state, and shall not be  
22 deposited in the court revenue distribution account,  
23 and shall not be deposited in the judicial retirement  
24 fund.

25 Sec. \_\_\_\_ . Section 602.8105, subsection 1,  
26 paragraph m, Code 1991, as amended by 1991 Iowa Acts,  
27 Senate File 444, section 23, if enacted by the 1991  
28 Session of the Seventy-fourth General assembly, is  
29 amended to read as follows:

30 m. For filing an application for a license to  
31 marry, thirty dollars. ~~The clerk of the district~~  
32 ~~court shall remit to the treasurer of state twenty~~  
33 ~~dollars for each marriage license application filed.~~  
34 ~~The treasurer of state shall deposit the funds~~  
35 ~~received in the general fund of the state. For~~  
36 issuing an application for an order of the district  
37 court authorizing the issuance of a license to marry  
38 prior to the expiration of three days from the date of  
39 filing the application for the license, five dollars.  
40 The court shall authorize the issuance of a marriage  
41 license without the payment of any fees imposed by  
42 this paragraph upon a showing that the applicant is  
43 unable to pay the fees."

44 \_\_\_\_ . Page 11, by inserting after line 2, the  
45 following:

46 "Sec. \_\_\_\_ . Section 708.2A, subsection 4, Code  
47 1991, as amended by 1991 Iowa Acts, Senate File 444,  
48 section 27, if enacted by the 1991 Session of the  
49 Seventy-fourth General Assembly, is amended to read as  
50 follows:

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1 4. A person convicted of violating this section  
2 shall serve a minimum term of two days of the sentence  
3 imposed by law, and shall not be eligible for  
4 suspension of the minimum sentence. The minimum term  
5 shall be served on consecutive days. This section  
6 does not prohibit the court from sentencing and the  
7 defendant from serving the maximum term of confinement  
8 or from paying the maximum fine permitted pursuant to  
9 chapters 902 and 903, and does not prohibit the court  
10 from entering a deferred judgment or sentence pursuant  
11 to section 907.3, if the defendant has not previously  
12 received a deferred sentence or judgment for a  
13 violation of section 708.2 or 708.2A which was issued  
14 on a domestic abuse assault. However, once the  
15 defendant has received one deferred sentence or  
16 judgment involving a violation of section 708.2 or  
17 708.2A which was issued on a domestic abuse assault,  
18 the defendant shall not be eligible to receive another  
19 deferred sentence or judgment for a violation of this  
20 section.

21 Sec. \_\_\_\_ . Section 708.2A, subsection 6, Code 1991,  
22 as amended by 1991 Iowa Acts, Senate File 444, section  
23 27, if enacted by the 1991 Session of the Seventy-  
24 fourth General Assembly, is amended to read as  
25 follows:

26 6. In addition to the mandatory minimum term of  
27 confinement imposed by this section, the court may  
28 shall order the defendant to participate in a  
29 batterers' treatment program as required under section  
30 708.2B. However In addition, as a condition of  
31 deferring judgment or sentence pursuant to section  
32 907.3, the court shall order the defendant to  
33 participate in a batterers' treatment program. The  
34 clerk of the district court shall send a copy of the  
35 judgment or deferred judgment to the judicial district  
36 department of correctional services.""

37 4. Page 2, by inserting after line 3, the  
38 following:

39 "Sec. \_\_\_\_ . Section 907.3, subsection 1, Code 1991,  
40 is amended by adding the following new paragraph:

41 NEW PARAGRAPH. h. Prior to the commission of the  
42 offense the defendant had been granted a deferred  
43 judgment or deferred sentence for a violation of  
44 section 708.2 or 708.2A which was issued on a domestic  
45 abuse assault, or was granted similar relief anywhere  
46 in the United States concerning that jurisdiction's  
47 statutes which substantially correspond to domestic  
48 abuse assault as provided in section 708.2A, and the  
49 current offense is a violation of section 708.2A.

50 Sec. \_\_\_\_ . Section 907.3, subsection 2, Code 1991,

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1 is amended to read as follows:

2 2. At the time of or after pronouncing judgment  
3 and with the consent of the defendant, the court may  
4 defer the sentence and assign the defendant to the  
5 judicial district department of correctional services.  
6 However, the court shall not defer the sentence for a  
7 violation of section 708.2A if the defendant has  
8 previously received a deferred judgment or sentence  
9 for a violation of section 708.2 or 708.2A which was  
10 issued on a domestic abuse assault, or if similar  
11 relief was granted anywhere in the United States  
12 concerning that jurisdiction's statutes which  
13 substantially correspond to domestic abuse assault as  
14 provided in section 708.2A. Upon a showing that the  
15 defendant is not fulfilling the conditions of  
16 probation, the court may revoke probation and impose  
17 any sentence authorized by law. Before taking such  
18 action, the court shall give the defendant an  
19 opportunity to be heard on any matter relevant to the  
20 proposed action. Upon violation of the conditions of  
21 probation, the court may proceed as provided in  
22 chapter 908."

23 5. Page 3, by inserting after line 10, the  
24 following:

25 "Sec. \_\_\_\_ . Section 910A.11, subsection 4, Code  
26 1991, as enacted by 1991 Iowa Acts, Senate File 444,  
27 section 32, if enacted by the 1991 Session of the  
28 Seventy-fourth General Assembly, is amended to read as  
29 follows:

30 4. An application may be made pursuant to this  
31 section in a criminal case, and if made, a district  
32 associate judge or magistrate having jurisdiction of  
33 the highest offense charged in the criminal case or a  
34 district judge shall have jurisdiction to enter an  
35 order under this section.

36 Sec. \_\_\_\_ . 1991 Iowa Acts, Senate File 444, section  
37 16, if enacted by the 1991 Session of the Seventy-  
38 fourth General Assembly, is amended to read as  
39 follows:

40 SEC. 16. NEW SECTION. 236.17 DOMESTIC ABUSE  
41 TRAINING REQUIREMENTS.

42 The department, in cooperation with victim service  
43 providers, may shall work with various professional  
44 organizations to encourage organizations to establish  
45 training programs for professionals who work in the  
46 area of domestic abuse prevention and services.  
47 Domestic abuse training may include, but is not  
48 limited to, the following areas:

49 1. The enforcement of both civil and criminal  
50 remedies in domestic abuse matters.

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1 2. The nature, extent, and causes of domestic  
2 abuse.

3 3. The legal rights and remedies available to  
4 domestic abuse victims, including crime victim  
5 compensation.

6 4. Services available to domestic abuse victims  
7 and their children, including the domestic abuse  
8 telephone hotline.

9 5. The mandatory arrest provisions of section  
10 236.12, and other duties of peace officers pursuant to  
11 this chapter.

12 6. Techniques for intervention in domestic abuse  
13 cases.

14 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
15 26, if enacted by the 1991 Session of the Seventy-  
16 fourth General Assembly, is amended to read as  
17 follows:

18 SEC. 26. Section 631.6, subsection 1, Code 1991,  
19 is amended by adding the following new unnumbered  
20 paragraph:

21 NEW UNNUMBERED PARAGRAPH. The clerk shall collect  
22 an additional fee of five dollars upon docketing a  
23 small claims action, and shall remit the fee to the  
24 treasurer of state for deposit in the general fund of  
25 the state. Notwithstanding any provision of law to  
26 the contrary, including but not limited to the other  
27 provisions of this section, the additional fee of five  
28 dollars imposed in this paragraph shall not be  
29 deposited in the court revenue distribution account,  
30 and shall not be deposited in the judicial retirement  
31 fund.

32 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
33 28, if enacted by the 1991 Session of the Seventy-  
34 fourth General Assembly, is amended to read as  
35 follows:

36 SEC. 28. NEW SECTION. 708.2B TREATMENT OF  
37 DOMESTIC ABUSE OFFENDERS.

38 As used in this section, "district department"  
39 means a judicial district department of correctional  
40 services, established pursuant to section 905.2. A  
41 person convicted of, or receiving a deferred judgment  
42 for, domestic abuse assault shall report to the  
43 district department in order to participate in a  
44 batterers' treatment program for domestic abuse  
45 offenders, ~~if ordered to do so by the court pursuant~~  
46 ~~to section 708.2A.~~ Participation in the batterers'  
47 treatment program shall not require a person to be  
48 placed on probation, but a person on probation may  
49 participate in the program. The district departments  
50 may contract for services in completing the duties

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1 relating to the batterers' treatment programs. The  
2 district departments shall assess the fees for  
3 participation in the program, and shall either collect  
4 or contract for the collection of the fees to recoup  
5 the costs of treatment, but may waive the fee or  
6 collect a lesser amount upon a showing of cause. The  
7 fees shall be used by each of the district departments  
8 or contract service providers for the establishment,  
9 administration, coordination, and provision of direct  
10 services of the batterers' treatment programs.

11 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
12 36, subsections 1 and 2, if enacted by the 1991  
13 Session of the Seventy-fourth General Assembly, are  
14 amended to read as follows:

15 1. The portion of section 27 of this Act which  
16 enacts new subsection 6 of section 708.2A takes effect  
17 on January 1, 1992, in order to permit the judicial  
18 district departments of correctional services to  
19 establish batterers' treatment programs. The district  
20 departments shall establish at least one program in  
21 each district by January 1, 1992, and shall establish  
22 programs throughout the district so that the programs  
23 are readily accessible to offenders by ~~January 1, 1993~~  
24 August 1, 1992.

25 2. From July 1, 1991, through ~~December~~ July 31,  
26 1992, the court ~~may~~ shall order a defendant who is  
27 convicted of, or who receives a deferred judgment for,  
28 a violation of section 708.2A to participate in a  
29 batterers' treatment program through other treatment  
30 or counseling services, until the programs are  
31 established by the judicial district departments of  
32 correctional services, to the extent that the court  
33 has the authority under existing sentencing  
34 procedures. The court shall order the defendant to  
35 pay for the treatment, unless just cause is  
36 demonstrated for waiving the fee.

37 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
38 1, if enacted by the 1991 Session of the Seventy-  
39 fourth General Assembly, is repealed.

40 Sec. \_\_\_\_\_. PILOT PROGRAM FOR DOMESTIC ABUSE  
41 PROSECUTION PLANS AND PROCEDURES.

42 1. The prosecuting attorneys training coordinator  
43 shall establish a pilot program pertaining to the  
44 prosecution of domestic abuse assaults. For the  
45 purposes of this section, "domestic abuse assault"  
46 means an assault, as defined in section 708.1 which is  
47 domestic abuse as defined in section 236.2. The  
48 prosecuting attorneys training coordinator, in  
49 consultation with the criminal and juvenile justice  
50 planning council, shall select five county attorneys

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1 whose jurisdictions have a dismissal rate in domestic  
2 abuse assault cases of higher than fifty percent. If  
3 the prosecuting attorneys training coordinator is  
4 unable to select five county attorneys whose  
5 jurisdictions have a dismissal rate of over fifty  
6 percent, the coordinator shall select county attorneys  
7 with the highest dismissal rates available. These  
8 five county attorneys shall participate in the pilot  
9 program.

10 2. The coordinator shall direct the five county  
11 attorneys to develop and implement a written plan to  
12 expedite and improve the efficiency and just  
13 disposition of domestic abuse matters in their  
14 respective jurisdictions. The county attorneys shall  
15 solicit input from the chief judge of the judicial  
16 district in which their county is located and law  
17 enforcement agencies within their jurisdictions in  
18 developing the written plan. The program participants  
19 shall seek assistance from domestic abuse advocates  
20 and other interested members of the public in the  
21 development of a model plan and in the development or  
22 adaptation of the plans in each of the jurisdictions  
23 represented by the five county attorneys. Once a  
24 model plan is developed, the prosecuting attorneys  
25 training coordinator shall make it available to all  
26 prosecuting attorneys, regardless of whether the  
27 prosecuting attorneys are participants in the pilot  
28 program. All plans must state goals and contain  
29 policies and procedures to address the following  
30 matters:

31 a. The early assignment of a prosecuting attorney,  
32 who has the responsibility of handling a domestic  
33 abuse assault matter through disposition, and who is  
34 also responsible for establishing early contact with  
35 the victim.

36 b. The facilitation of the earliest possible  
37 contact between the prosecuting attorney's office and  
38 the victim for the purpose of acquainting the victim  
39 with the criminal justice process, the use of  
40 subpoenas, the victim's role as a witness in the  
41 prosecution, a victim's rights under chapter 236, and  
42 available domestic abuse and victim services.

43 c. The coordination of the prosecuting attorney's  
44 efforts with those of a domestic abuse advocate or  
45 victim advocate, where available, and to facilitate  
46 the early provision of victim advocacy services.

47 d. Methods that will be used to identify, gather,  
48 and preserve evidence, in addition to the victim's  
49 testimony, that will enhance the ability to prosecute  
50 a case when a victim is reluctant to assist,

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1 including, but not limited to, physical evidence of  
2 the victim's injury, evidence relating to the scene of  
3 the crime, eye witness testimony, and statements of  
4 the victim made at or near the time of injury.

5 e. The education of local law enforcement agencies  
6 about the contents of the plan and their role in  
7 assisting with its implementation.

8 f. The use of subpoenas of victims and witnesses,  
9 where appropriate.

10 g. Annual review of the plan to evaluate whether  
11 it is meeting its goals effectively and whether  
12 improvements are needed.

13 h. A timetable for implementation.

14 3. A copy of each plan shall be filed with the  
15 prosecuting attorneys training coordinator by July 1,  
16 1992. The county attorneys selected for the pilot  
17 program shall file a status report on the pilot  
18 program by July 1, 1993. The pilot program shall  
19 terminate on July 1, 1994. The status report must  
20 contain information on the number of prosecutions and  
21 dismissals of domestic abuse cases in the county  
22 attorney's office."

23 . Title page, line 3, by inserting after the  
24 word "facilities," the following: "relating to  
25 treatment, prevention, prosecution, and sentencing  
26 concerning domestic abuse cases, "."

27 6. By renumbering and correcting internal  
28 references as necessary.

By MICHAEL E. GRONSTAL

S-3733 FILED MAY 8, 1991

ADOPTED *as amended by 3736 5/8/91 (p. 1723)*

SENATE FILE 496

S-3736

1 Amend the amendment, S-3733, to the House  
2 amendment, S-3698, to Senate File 496, as amended,  
3 passed and reprinted by the Senate as follows:

4 1. Page 8, line 10, by striking the word "direct"  
5 and inserting the following: "notify".

6 2. Page 8, line 11, by striking the words  
7 "attorneys to" and inserting the following:

8 "attorneys who shall".

By MICHAEL E. GRONSTAL

S-3736 FILED MAY 8, 1991

ADOPTED *(p. 1723)*

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 496  
H-4098

1 Amend the House amendment, S-3698, to Senate File  
2 496, as amended, passed, and reprinted by the Senate,  
3 as follows:

4 1. Page 1, by inserting after line 2 the  
5 following:

6 "\_\_\_\_. Page 1, by inserting before line 1 the  
7 following:

8 "Section 1. Section 80B.11, subsection 2, Code  
9 1991, as amended by 1991 Iowa Acts, Senate File 444,  
10 section 2, if enacted by the 1991 Session of the  
11 Seventy-fourth General Assembly, is amended to read as  
12 follows:

13 2. Minimum basic training requirements law  
14 enforcement officers employed after July 1, 1968, must  
15 complete in order to remain eligible for continued  
16 employment and the time within which such basic  
17 training must be completed. Minimum requirements  
18 shall mandate training devoted to the topic of  
19 domestic abuse. The council shall submit an annual  
20 report to the general assembly by January 15 of each  
21 year relating to the continuing education requirements  
22 devoted to the topic of domestic abuse, including the  
23 number of hours required, the substance of the classes  
24 offered, and other related matters."

25 2. Page 1, by inserting after line 4, the  
26 following:

27 "Sec. \_\_\_\_ . Section 236.5, subsection 4, Code 1991,  
28 as amended by 1991 Iowa Acts, Senate File 444, section  
29 8, if enacted by the 1991 Session of the Seventy-  
30 fourth General Assembly, is amended to read as  
31 follows:

32 4. A certified copy of any order or approved  
33 consent agreement shall be issued to the plaintiff,  
34 the defendant and the county sheriff having  
35 jurisdiction to enforce the order or consent  
36 agreement, and the twenty-four hour dispatcher for the  
37 county sheriff. Any subsequent amendment or  
38 revocation of an order or consent agreement shall be  
39 forwarded by the clerk to all individuals and the  
40 county sheriff previously notified. The clerk shall  
41 notify the county sheriff and the twenty-four hour  
42 dispatcher for the county sheriff ~~by telephone or~~  
43 otherwise in writing so that the county sheriff and  
44 the county sheriff's dispatcher receive written notice  
45 within six hours of filing the order, approved consent  
46 agreement, amendment, or revocation. The county  
47 sheriff's dispatcher shall notify all law enforcement  
48 agencies having jurisdiction over the matter and the  
49 twenty-four hour dispatcher for the law enforcement  
50 agencies upon notification by the clerk. The clerk

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1 shall send or deliver a written copy of any such docu-  
2 ment to the law enforcement agencies and the twenty-  
3 four hour dispatcher within twenty-four hours of  
4 filing the document.

5 Sec. \_\_\_\_ . Section 236.14, subsection 2, unnumbered  
6 paragraph 1, Code 1991, is amended to read as follows:

7 When a person arrested for a domestic abuse  
8 assault, or taken into custody for contempt  
9 proceedings pursuant to section 236.11, is brought  
10 before a magistrate and the magistrate finds probable  
11 cause to believe that domestic abuse or a violation of  
12 an order or consent agreement has occurred and that  
13 the presence of the alleged abuser in the victim's  
14 residence poses a threat to the victim's safety of the  
15 alleged victim, persons residing with the alleged  
16 victim, or members of the alleged victim's immediate  
17 family, the magistrate shall enter an order which  
18 shall require the alleged abuser to have no contact  
19 with the alleged victim, persons residing with the  
20 alleged victim, or members of the alleged victim's  
21 immediate family, and to refrain from harassing the  
22 alleged victim, persons residing with the alleged  
23 victim, or members of the alleged victim's relatives  
24 immediate family, in addition to any other conditions  
25 of release determined and imposed by the magistrate  
26 under section 811.2. A no-contact order requiring the  
27 alleged abuser to have no contact with the alleged  
28 victim's children shall prevail over any existing  
29 order awarding custody or visitation rights, which may  
30 be in conflict with the no-contact order.

31 Sec. \_\_\_\_ . Section 246.108, subsection 1, paragraph  
32 p, Code 1991, as enacted by 1991 Iowa Acts, Senate  
33 File 444, section 18, if enacted by the 1991 Session  
34 of the Seventy-fourth General Assembly, is amended to  
35 read as follows:

36 p. Adopt rules subject to the approval of the  
37 board, requiring the establishment and implementation  
38 of batterers' support-groups programs in all of the  
39 institutions under the jurisdiction of the  
40 department."

41 3. Page 1, by inserting after line 40, the  
42 following:

43 " \_\_\_\_ . Page 10, by inserting after line 4, the  
44 following:

45 "Sec. \_\_\_\_ . Section 602.8105, subsection 1, Code  
46 1991, is amended by adding the following new  
47 unnumbered paragraph after paragraph u:

48 NEW UNNUMBERED PARAGRAPH. Notwithstanding any  
49 other provision of law to the contrary, including but  
50 not limited to the other provisions of this section,

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1 five dollars of the fees imposed pursuant to paragraph  
2 "a", the five dollar additional fee imposed pursuant  
3 to paragraph "l", and fifteen dollars of the fees  
4 imposed pursuant to paragraphs "m" and "n" shall be  
5 remitted to the treasurer of state for deposit into  
6 the general fund of the state, and shall not be  
7 deposited in the court revenue distribution account,  
8 and shall not be deposited in the judicial retirement  
9 fund.

10 Sec. \_\_\_\_\_. Section 602.8106, Code 1991, is amended  
11 by adding the following new subsection:

12 NEW SUBSECTION. 6. Notwithstanding any other  
13 provision of law to the contrary, including but not  
14 limited to the other provisions of this section, five  
15 dollars of the fee for filing and docketing of a  
16 complaint or information for a simple misdemeanor and  
17 five dollars of the fee for filing and docketing of a  
18 complaint or information for a nonscheduled simple  
19 misdemeanor imposed pursuant to subsection 1 shall be  
20 remitted to the treasurer of state for deposit into  
21 the general fund of the state, and shall not be  
22 deposited in the court revenue distribution account,  
23 and shall not be deposited in the judicial retirement  
24 fund.

25 Sec. \_\_\_\_\_. Section 602.8105, subsection 1,  
26 paragraph m, Code 1991, as amended by 1991 Iowa Acts,  
27 Senate File 444, section 23, if enacted by the 1991  
28 Session of the Seventy-fourth General assembly, is  
29 amended to read as follows:

30 m. For filing an application for a license to  
31 marry, thirty dollars. ~~The clerk of the district~~  
32 ~~court shall remit to the treasurer of state twenty~~  
33 ~~dollars for each marriage license application filed.~~  
34 ~~The treasurer of state shall deposit the funds~~  
35 ~~received in the general fund of the state.~~ For  
36 issuing an application for an order of the district  
37 court authorizing the issuance of a license to marry  
38 prior to the expiration of three days from the date of  
39 filing the application for the license, five dollars.  
40 The court shall authorize the issuance of a marriage  
41 license without the payment of any fees imposed by  
42 this paragraph upon a showing that the applicant is  
43 unable to pay the fees."

44 \_\_\_\_\_. Page 11, by inserting after line 2, the  
45 following:

46 "Sec. \_\_\_\_\_. Section 708.2A, subsection 4, Code  
47 1991, as amended by 1991 Iowa Acts, Senate File 444,  
48 section 27, if enacted by the 1991 Session of the  
49 Seventy-fourth General Assembly, is amended to read as  
50 follows:

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4. A person convicted of violating this section shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. This section does not prohibit the court from sentencing and the defendant from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the defendant has not previously received a deferred sentence or judgment for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault. However, once the defendant has received one deferred sentence or judgment involving a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, the defendant shall not be eligible to receive another deferred sentence or judgment for a violation of this section.

Sec. \_\_\_\_ . Section 708.2A, subsection 6, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 27, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

6. In addition to the mandatory minimum term of confinement imposed by this section, the court may shall order the defendant to participate in a batterers' treatment program as required under section 708.2B. However in addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the defendant to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judgment or deferred judgment to the judicial district department of correctional services."

4. Page 2, by inserting after line 3, the following:

"Sec. \_\_\_\_ . Section 907.3, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

Sec. \_\_\_\_ . Section 907.3, subsection 2, Code 1991,

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1 is amended to read as follows:

2     2. At the time of or after pronouncing judgment  
3 and with the consent of the defendant, the court may  
4 defer the sentence and assign the defendant to the  
5 judicial district department of correctional services.  
6 However, the court shall not defer the sentence for a  
7 violation of section 708.2A if the defendant has  
8 previously received a deferred judgment or sentence  
9 for a violation of section 708.2 or 708.2A which was  
10 issued on a domestic abuse assault, or if similar  
11 relief was granted anywhere in the United States  
12 concerning that jurisdiction's statutes which  
13 substantially correspond to domestic abuse assault as  
14 provided in section 708.2A. Upon a showing that the  
15 defendant is not fulfilling the conditions of  
16 probation, the court may revoke probation and impose  
17 any sentence authorized by law. Before taking such  
18 action, the court shall give the defendant an  
19 opportunity to be heard on any matter relevant to the  
20 proposed action. Upon violation of the conditions of  
21 probation, the court may proceed as provided in  
22 chapter 908."

23     5. Page 3, by inserting after line 10, the  
24 following:

25     "Sec. \_\_\_\_ . Section 910A.11, subsection 4, Code  
26 1991, as enacted by 1991 Iowa Acts, Senate File 444,  
27 section 32, if enacted by the 1991 Session of the  
28 Seventy-fourth General Assembly, is amended to read as  
29 follows:

30     4. An application may be made pursuant to this  
31 section in a criminal case, and if made, a district  
32 associate judge or magistrate having jurisdiction of  
33 the highest offense charged in the criminal case or a  
34 district judge shall have jurisdiction to enter an  
35 order under this section.

36     Sec. \_\_\_\_ . 1991 Iowa Acts, Senate File 444, section  
37 16, if enacted by the 1991 Session of the Seventy-  
38 fourth General Assembly, is amended to read as  
39 follows:

40     SEC. 16. NEW SECTION. 236.17 DOMESTIC ABUSE  
41 TRAINING REQUIREMENTS.

42     The department, in cooperation with victim service  
43 providers, may shall work with various professional  
44 organizations to encourage organizations to establish  
45 training programs for professionals who work in the  
46 area of domestic abuse prevention and services.  
47 Domestic abuse training may include, but is not  
48 limited to, the following areas:

49     1. The enforcement of both civil and criminal  
50 remedies in domestic abuse matters.

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1 2. The nature, extent, and causes of domestic  
2 abuse.  
3 3. The legal rights and remedies available to  
4 domestic abuse victims, including crime victim  
5 compensation.  
6 4. Services available to domestic abuse victims  
7 and their children, including the domestic abuse  
8 telephone hotline.  
9 5. The mandatory arrest provisions of section  
10 236.12, and other duties of peace officers pursuant to  
11 this chapter.

12 6. Techniques for intervention in domestic abuse  
13 cases.  
14 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
15 26, if enacted by the 1991 Session of the Seventy-  
16 fourth General Assembly, is amended to read as  
17 follows:

18 SEC. 26. Section 631.6, subsection 1, Code 1991,  
19 is amended by adding the following new unnumbered  
20 paragraph:

21 NEW UNNUMBERED PARAGRAPH. The clerk shall collect  
22 an additional fee of five dollars upon docketing a  
23 small claims action, and shall remit the fee to the  
24 treasurer of state for deposit in the general fund of  
25 the state. Notwithstanding any provision of law to  
26 the contrary, including but not limited to the other  
27 provisions of this section, the additional fee of five  
28 dollars imposed in this paragraph shall not be  
29 deposited in the court revenue distribution account,  
30 and shall not be deposited in the judicial retirement  
31 fund.

32 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
33 28, if enacted by the 1991 Session of the Seventy-  
34 fourth General Assembly, is amended to read as  
35 follows:

36 SEC. 28. NEW SECTION. 708.2B TREATMENT OF  
37 DOMESTIC ABUSE OFFENDERS.

38 As used in this section, "district department"  
39 means a judicial district department of correctional  
40 services, established pursuant to section 905.2. A  
41 person convicted of, or receiving a deferred judgment  
42 for, domestic abuse assault shall report to the  
43 district department in order to participate in a  
44 batterers' treatment program for domestic abuse  
45 offenders, ~~if ordered to do so by the court pursuant~~  
46 ~~to section 708.2A.~~ Participation in the batterers'  
47 treatment program shall not require a person to be  
48 placed on probation, but a person on probation may  
49 participate in the program. The district departments  
50 may contract for services in completing the duties

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1 relating to the batterers' treatment programs. The  
2 district departments shall assess the fees for  
3 participation in the program, and shall either collect  
4 or contract for the collection of the fees to recoup  
5 the costs of treatment, but may waive the fee or  
6 collect a lesser amount upon a showing of cause. The  
7 fees shall be used by each of the district departments  
8 or contract service providers for the establishment,  
9 administration, coordination, and provision of direct  
10 services of the batterers' treatment programs.

11 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
12 36, subsections 1 and 2, if enacted by the 1991  
13 Session of the Seventy-fourth General Assembly, are  
14 amended to read as follows:

15 1. The portion of section 27 of this Act which  
16 enacts new subsection 6 of section 708.2A takes effect  
17 on January 1, 1992, in order to permit the judicial  
18 district departments of correctional services to  
19 establish batterers' treatment programs. The district  
20 departments shall establish at least one program in  
21 each district by January 1, 1992, and shall establish  
22 programs throughout the district so that the programs  
23 are readily accessible to offenders by ~~January 17, 1993~~  
24 August 1, 1992.

25 2. From July 1, 1991, through ~~December~~ July 31,  
26 1992, the court ~~may~~ shall order a defendant who is  
27 convicted of, or who receives a deferred judgment for,  
28 a violation of section 708.2A to participate in a  
29 batterers' treatment program through other treatment  
30 or counseling services, until the programs are  
31 established by the judicial district departments of  
32 correctional services, to the extent that the court  
33 has the authority under existing sentencing  
34 procedures. The court shall order the defendant to  
35 pay for the treatment, unless just cause is  
36 demonstrated for waiving the fee.

37 Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section  
38 1, if enacted by the 1991 Session of the Seventy-  
39 fourth General Assembly, is repealed.

40 Sec. \_\_\_\_\_. PILOT PROGRAM FOR DOMESTIC ABUSE  
41 PROSECUTION PLANS AND PROCEDURES.

42 1. The prosecuting attorneys training coordinator  
43 shall establish a pilot program pertaining to the  
44 prosecution of domestic abuse assaults. For the  
45 purposes of this section, "domestic abuse assault"  
46 means an assault, as defined in section 708.1 which is  
47 domestic abuse as defined in section 236.2. The  
48 prosecuting attorneys training coordinator, in  
49 consultation with the criminal and juvenile justice  
50 planning council, shall select five county attorneys

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1 whose jurisdictions have a dismissal rate in domestic  
2 abuse assault cases of higher than fifty percent. If  
3 the prosecuting attorneys training coordinator is  
4 unable to select five county attorneys whose  
5 jurisdictions have a dismissal rate of over fifty  
6 percent, the coordinator shall select county attorneys  
7 with the highest dismissal rates available. These  
8 five county attorneys shall participate in the pilot  
9 program.

10 2. The coordinator shall notify the five county  
11 attorneys who shall develop and implement a written  
12 plan to expedite and improve the efficiency and just  
13 disposition of domestic abuse matters in their  
14 respective jurisdictions. The county attorneys shall  
15 solicit input from the chief judge of the judicial  
16 district in which their county is located and law  
17 enforcement agencies within their jurisdictions in  
18 developing the written plan. The program participants  
19 shall seek assistance from domestic abuse advocates  
20 and other interested members of the public in the  
21 development of a model plan and in the development or  
22 adaptation of the plans in each of the jurisdictions  
23 represented by the five county attorneys. Once a  
24 model plan is developed, the prosecuting attorneys  
25 training coordinator shall make it available to all  
26 prosecuting attorneys, regardless of whether the  
27 prosecuting attorneys are participants in the pilot  
28 program. All plans must state goals and contain  
29 policies and procedures to address the following  
30 matters:

31 a. The early assignment of a prosecuting attorney,  
32 who has the responsibility of handling a domestic  
33 abuse assault matter through disposition, and who is  
34 also responsible for establishing early contact with  
35 the victim.

36 b. The facilitation of the earliest possible  
37 contact between the prosecuting attorney's office and  
38 the victim for the purpose of acquainting the victim  
39 with the criminal justice process, the use of  
40 subpoenas, the victim's role as a witness in the  
41 prosecution, a victim's rights under chapter 236, and  
42 available domestic abuse and victim services.

43 c. The coordination of the prosecuting attorney's  
44 efforts with those of a domestic abuse advocate or  
45 victim advocate, where available, and to facilitate  
46 the early provision of victim advocacy services.

47 d. Methods that will be used to identify, gather,  
48 and preserve evidence, in addition to the victim's  
49 testimony, that will enhance the ability to prosecute  
50 a case when a victim is reluctant to assist,

1 including, but not limited to, physical evidence of  
2 the victim's injury, evidence relating to the scene of  
3 the crime, eye witness testimony, and statements of  
4 the victim made at or near the time of injury.

5 e. The education of local law enforcement agencies  
6 about the contents of the plan and their role in  
7 assisting with its implementation.

8 f. The use of subpoenas of victims and witnesses,  
9 where appropriate.

10 g. Annual review of the plan to evaluate whether  
11 it is meeting its goals effectively and whether  
12 improvements are needed.

13 h. A timetable for implementation.

14 3. A copy of each plan shall be filed with the  
15 prosecuting attorneys training coordinator by July 1,  
16 1992. The county attorneys selected for the pilot  
17 program shall file a status report on the pilot  
18 program by July 1, 1993. The pilot program shall  
19 terminate on July 1, 1994. The status report must  
20 contain information on the number of prosecutions and  
21 dismissals of domestic abuse cases in the county  
22 attorney's office."

23 . Title page, line 3, by inserting after the  
24 word "facilities," the following: "relating to  
25 treatment, prevention, prosecution, and sentencing  
26 concerning domestic abuse cases,".

27 6. By renumbering and correcting internal  
28 references as necessary.

RECEIVED FROM THE SENATE

H-4098 FILED MAY 8, 1991

*House refused to concur 5/9/91 (p. 2212)*  
*Senate insisted 5/10/91 (p. 1759)*

REPORT OF THE CONFERENCE COMMITTEE  
ON SENATE FILE 496

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and the House of Representatives on Senate File 496, a bill for an Act relating to persons convicted of public offenses, relating to the department of corrections and its programs and facilities, and establishing additional public offenses and criminal penalties, respectfully make the following report:

1. That the Senate recedes from its amendment, H-4098.
2. That the House recedes from its amendment, S-3698.
3. That Senate File 496, as amended, passed, and reprinted by the Senate, is amended as follows:

1. Page 1, by inserting before line 1 the following:  
"Section 1. Section 80B.11, subsection 2, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 2, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed. Minimum requirements shall mandate training devoted to the topic of domestic abuse. The council shall submit an annual report to the general assembly by January 15 of each year relating to the continuing education requirements devoted to the topic of domestic abuse, including the number of hours required, the substance of the classes offered, and other related matters."

2. Page 1, by inserting after line 15 the following:  
"Sec. \_\_\_\_ . Section 236.5, subsection 4, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 8, if enacted by the 1991 Session of the Seventy-fourth General

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Assembly, is amended to read as follows:

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and the county sheriff having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified. The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff by-telephone-or otherwise in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk. The clerk shall send or deliver a written copy of any such document to the law enforcement agencies and the twenty-four hour dispatcher within twenty-four hours of filing the document.

Sec. \_\_\_\_ . Section 236.14, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the victim's safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to

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refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's relatives immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the alleged abuser to have no contact with the alleged victim's children shall prevail over any existing order awarding custody or visitation rights, which may be in conflict with the no-contact order.

Sec. \_\_\_\_ . Section 246.108, subsection 1, paragraph p, Code 1991, as enacted by 1991 Iowa Acts, Senate File 444, section 18, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

p. Adopt rules subject to the approval of the board, requiring the establishment and implementation of batterers' support-groups programs in all of the institutions under the jurisdiction of the department.

Sec. \_\_\_\_ . Section 246.206, subsection 1, Code 1991, is amended to read as follows:

1. The correctional release center at Newton shall be utilized for the preparation of inmates of the correctional institutions for discharge, work release, or parole. The director may transfer an inmate of a correctional institution ~~within-ninety-days-of-the-inmate's-release-from-custody~~ to the correctional release center for intensive training to assist the inmate in the transition to civilian living. The statutes applicable to an inmate at the corrective institution from which transferred shall remain applicable during the inmate's stay at the correctional release center."

3. Page 1, line 17, by striking the word "may" and inserting the following: "shall".

4. Page 1, by striking line 20 and inserting the following: "is for the confinement of offenders, for no longer than sixty days, who have".

5. Page 3, line 19, by inserting after the word

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"facilities" the following. "and institutions".

6. By striking page 3, line 35, through page 4, line 8, and inserting the following: ~~"following-classification:~~ The facilities established shall meet all the following requirements:

a. Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.

b. Is a facility meeting applicable standards of the American corrections association.

c. Is a facility which meets any other rule or requirement adopted by the department pursuant to chapter 17A."

7. Page 5, lines 25 and 26, by striking the words "in the same manner following the fifth day of confinement".

8. Page 10, by inserting after line 4, the following:

"Sec. \_\_\_\_ . Section 602.8105, subsection 1, paragraph m, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 23, if enacted by the 1991 Session of the Seventy-fourth General assembly, is amended to read as follows:

m. For filing an application for a license to marry, thirty dollars. ~~The clerk of the district court shall remit to the treasurer of state twenty dollars for each marriage license application filed. The treasurer of state shall deposit the funds received in the general fund of the state.~~ For issuing an application for an order of the district court authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license, five dollars. The court shall authorize the issuance of a marriage license without the payment of any fees imposed by this paragraph upon a showing that the applicant is unable to pay the fees.

Sec. \_\_\_\_ . Section 602.8105, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph after paragraph u:

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NEW UNNUMBERED PARAGRAPH. Notwithstanding any other provision of law to the contrary, including but not limited to the other provisions of this section, five dollars of the fees imposed pursuant to paragraph "a", the five dollar additional fee imposed pursuant to paragraph "l", and fifteen dollars of the fees imposed pursuant to paragraphs "m" and "n" shall be remitted to the treasurer of state for deposit into the general fund of the state, and shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

Sec. \_\_\_\_ . Section 602.8106, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding any other provision of law to the contrary, including but not limited to the other provisions of this section, five dollars of the fee for filing and docketing of a complaint or information for a simple misdemeanor and five dollars of the fee for filing and docketing of a complaint or information for a nonscheduled simple misdemeanor imposed pursuant to subsection 1 shall be remitted to the treasurer of state for deposit into the general fund of the state, and shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund."

9. Page 11, by inserting after line 2, the following:

"Sec. \_\_\_\_ . Section 708.2A, subsection 4, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 27, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

4. A person convicted of violating this section shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. This section does not prohibit the court from sentencing and the defendant from serving the maximum term of confinement or from

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paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the defendant has not previously received a deferred sentence or judgment for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault. However, once the defendant has received one deferred sentence or judgment involving a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, the defendant shall not be eligible to receive another deferred sentence or judgment for a violation of this section.

Sec. \_\_\_\_. Section 708.2A, subsection 6, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 27, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

6. In addition to the mandatory minimum term of confinement imposed by this section, the court ~~may~~ shall order the defendant to participate in a batterers' treatment program as required under section 708.2B. ~~However~~ In addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the defendant to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judgment or deferred judgment to the judicial district department of correctional services."

10. Page 11, line 6, by inserting after the word "corrections" the following: ", or an officer, employee, or agent of a judicial district department of correctional services,".

11. Page 11, line 8, by inserting after the word "corrections" the following: "or a judicial district department of correctional services".

12. Page 12, by inserting after line 13 the following:  
"Sec. \_\_\_\_. Section 901.3, subsection 7, Code 1991, is amended by striking the subsection."

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13. Page 12, by inserting after line 24, the following:

"Sec. \_\_\_\_ . Section 907.3, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. n. Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

Sec. \_\_\_\_ . Section 907.3, subsection 2, Code 1991, is amended to read as follows:

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

Sec. \_\_\_\_ . Section 907.9, unnumbered paragraph 2, Code 1991, is amended to read as follows:

A probation officer or the director of the judicial district department of correctional services who acts in compliance with

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this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty."

14. Page 12, line 32, by inserting after the figure "246.207" the following: "if the parole revocation officer or board panel determines that placement in a violator facility is necessary".

15. Page 15, by inserting after line 4, the following:

"Sec. \_\_\_\_ . NEW SECTION. 910.10 RESTITUTION LIEN.

1. The state or a person entitled to restitution under a court order may file a restitution lien.

2. The restitution lien shall set forth all of the following information, if known:

a. The name and date of birth of the person whose property or other interests are subject to the lien.

b. The present address of the residence and principal place of business of the person named in the lien.

c. The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number.

d. The name and business address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and residence and business address of each person entitled to restitution pursuant to a court order.

e. A statement that the notice is being filed pursuant to this section.

f. The amount of restitution the person has been ordered to pay or is likely to be ordered to pay.

3. A restitution lien may be filed by either of the following:

a. A prosecuting attorney in a criminal proceeding in which restitution is likely to be sought after the filing of an

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information or indictment. At the time of arraignment, the prosecuting attorney shall give the defendant notice of any restitution lien filed.

b. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

4. The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property identified in the lien to the extent of the interest held in that property by the person named in the lien.

5. This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.

Sec. \_\_\_\_ . Section 910A.11, subsection 4, Code 1991, as enacted by 1991 Iowa Acts, Senate File 444, section 32, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

4. An application may be made pursuant to this section in a criminal case, and if made, a district associate judge or magistrate having jurisdiction of the highest offense charged in the criminal case or a district judge shall have jurisdiction to enter an order under this section.

Sec. \_\_\_\_ . 1991 Iowa Acts, Senate File 444, section 16, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

SEC. 16. NEW SECTION. 236.17 DOMESTIC ABUSE TRAINING REQUIREMENTS.

The department, in cooperation with victim service providers, may shall work with various professional organizations to encourage organizations to establish training programs for professionals who work in the area of domestic abuse prevention and services. Domestic abuse training may include, but is not limited to, the following areas:

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1. The enforcement of both civil and criminal remedies in domestic abuse matters.
2. The nature, extent, and causes of domestic abuse.
3. The legal rights and remedies available to domestic abuse victims, including crime victim compensation.
4. Services available to domestic abuse victims and their children, including the domestic abuse telephone hotline.
5. The mandatory arrest provisions of section 236.12, and other duties of peace officers pursuant to this chapter.
6. Techniques for intervention in domestic abuse cases.

Sec. \_\_\_\_ . 1991 Iowa Acts, Senate File 444, section 26, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

SEC. 26. Section 631.6, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The clerk shall collect an additional fee of five dollars upon docketing a small claims action, and shall remit the fee to the treasurer of state for deposit in the general fund of the state. Notwithstanding any provision of law to the contrary, including but not limited to the other provisions of this section, the additional fee of five dollars imposed in this paragraph shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

Sec. \_\_\_\_ . 1991 Iowa Acts, Senate File 444, section 28, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

SEC. 28. NEW SECTION. 708.2B TREATMENT OF DOMESTIC ABUSE OFFENDERS.

As used in this section, "district department" means a judicial district department of correctional services, established pursuant to section 905.2. A person convicted of, or receiving a deferred judgment for, domestic abuse assault shall report to the district department in order to participate

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in a batterers treatment program for domestic abuse offenders; ~~if ordered to do so by the court pursuant to section 708.2A.~~ Participation in the batterers' treatment program shall not require a person to be placed on probation, but a person on probation may participate in the program. The district departments may contract for services in completing the duties relating to the batterers' treatment programs. The district departments shall assess the fees for participation in the program, and shall either collect or contract for the collection of the fees to recoup the costs of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section 36, subsection 2, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

2. From July 1, 1991, through December 31, 1992, the court may shall order a defendant who is convicted of, or who receives a deferred judgment for, a violation of section 708.2A to participate in a batterers' treatment program through other treatment or counseling services, until the programs are established by the judicial district departments of correctional services, to the extent that the court has the authority under existing sentencing procedures. The court shall order the defendant to pay for the treatment, unless just cause is demonstrated for waiving the fee.

Sec. \_\_\_\_\_. 1991 Iowa Acts, Senate File 444, section 1, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is repealed.

Sec. \_\_\_\_\_. PILOT PROGRAM FOR DOMESTIC ABUSE PROSECUTION PLANS AND PROCEDURES.

1. The prosecuting attorneys training coordinator shall

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establish a pilot program pertaining to the prosecution of domestic abuse assaults. For the purposes of this section, "domestic abuse assault" means an assault, as defined in section 708.1 which is domestic abuse as defined in section 236.2. The prosecuting attorneys training coordinator, in consultation with the criminal and juvenile justice planning council, shall select county attorneys whose jurisdictions have a high dismissal rate in domestic abuse assault cases and where there are more than a de minimus number of cases. A minimum number of five county attorneys shall participate in the pilot program.

2. The coordinator shall notify the county attorneys who shall develop and implement a written plan to expedite and improve the efficiency and just disposition of domestic abuse matters in their respective jurisdictions. The county attorneys shall solicit input from the chief judge of the judicial district in which their county is located and law enforcement agencies within their jurisdictions in developing the written plan. The program participants shall seek assistance from domestic abuse advocates and other interested members of the public in the development of a model plan and in the development or adaptation of the plans in each of the jurisdictions represented by the five county attorneys. Once a model plan is developed, the prosecuting attorneys training coordinator shall make it available to all prosecuting attorneys, regardless of whether the prosecuting attorneys are participants in the pilot program. All plans must state goals and contain policies and procedures to address the following matters:

a. The early assignment of a prosecuting attorney, who has the responsibility of handling a domestic abuse assault matter through disposition, and who is also responsible for establishing early contact with the victim.

b. The facilitation of the earliest possible contact

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between the prosecuting attorney's office and the victim for the purpose of acquainting the victim with the criminal justice process, the use of subpoenas, the victim's role as a witness in the prosecution, a victim's rights under chapter 236, and available domestic abuse and victim services.

c. The coordination of the prosecuting attorney's efforts with those of a domestic abuse advocate or victim advocate, where available, and to facilitate the early provision of victim advocacy services.

d. Methods that will be used to identify, gather, and preserve evidence, in addition to the victim's testimony, that will enhance the ability to prosecute a case when a victim is reluctant to assist, including, but not limited to, physical evidence of the victim's injury, evidence relating to the scene of the crime, eye witness testimony, and statements of the victim made at or near the time of injury.

e. The education of local law enforcement agencies about the contents of the plan and their role in assisting with its implementation.

f. The use of subpoenas of victims and witnesses, where appropriate.

g. Annual review of the plan to evaluate whether it is meeting its goals effectively and whether improvements are needed.

h. A timetable for implementation.

3. A copy of each plan shall be filed with the prosecuting attorneys training coordinator by July 1, 1992. The county attorneys selected for the pilot program shall file a status report on the pilot program by July 1, 1993. The pilot program shall terminate on July 1, 1994. The status report must contain information on the number of prosecutions and dismissals of domestic abuse cases in the county attorney's office."

16. Title page, line 3, by inserting after the word

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"facilities," the following: "relating to treatment, prevention, prosecution, and sentencing concerning domestic abuse cases,".

17. By renumbering and correcting internal references as necessary.

ON THE PART OF THE SENATE:

ON THE PART OF THE HOUSE:

AL STURGEON, Chairperson

GARY SHERZAN, Chairperson

ALLEN BORLAUG

MICHAEL E. GRONSTAL

JACK W. HESTER

MICHAEL K. PETERSON

LARRY MURPHY

MATTHEW WISSING

CCS-496.1 FILED MAY 11, 1991

ADOPTED (p. 181)

*House Adopted 5/11/91 (p. 2-223)*

GRONSTAL, CH.  
MURPHY  
FUHRMAN

SSB 267  
JUDICIARY

SENATE/HOUSE FILE 496  
BY (PROPOSED DEPARTMENT  
OF CORRECTIONS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to persons convicted of public offenses, relating  
2 to the department of corrections and its programs and  
3 facilities, and establishing additional public offenses and  
4 criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 229.14, subsection 4, Code 1991, is  
2 amended to read as follows:

3 4. The respondent is seriously mentally impaired and in  
4 need of full-time custody and care, but is unlikely to benefit  
5 from further treatment in a hospital. If the report so  
6 states, the chief medical officer shall recommend an  
7 alternative placement for the respondent and the court shall  
8 enter an order which may direct the respondent's transfer to  
9 the recommended placement. A respondent who is an inmate in  
10 the custody of the department of corrections may, as a court-  
11 ordered alternative placement, receive mental health services  
12 in a correctional program. If the court or the respondent's  
13 attorney consider the placement inappropriate, an alternative  
14 placement may be arranged upon consultation with the chief  
15 medical officer and approval of the court.

16 Sec. 2. NEW SECTION. 246.207 VIOLATOR FACILITY.

17 The director may establish a violator facility as a  
18 freestanding facility, or designate a portion of an existing  
19 correctional facility, for the purpose. A violator facility  
20 is for the short-term confinement of offenders who have  
21 violated conditions of release under work release, parole, or  
22 probation, or who are sentenced to the custody of the director  
23 for assignment to a treatment facility under section 246.513.  
24 The director shall adopt rules pursuant to chapter 17A,  
25 subject to the approval of the board, to implement this  
26 section.

27 Sec. 3. Section 246.508, Code 1991, is amended to read as  
28 follows:

29 246.508 PROPERTY OF INMATE -- INMATE SAVINGS FUND.

30 1. The superintendent of each institution shall receive  
31 and care for any property an inmate may possess on the  
32 inmate's person upon entering the institution, and on the  
33 discharge of the inmate, return the property to the inmate or  
34 the inmate's legal representatives, unless the property has  
35 been previously disposed of according to the inmate's written

1 designation or policies prescribed by the board. The  
2 superintendent may place an inmate's money at interest,  
3 keeping an account of the money and returning the remaining  
4 money and interest upon discharge.

5 2. The director shall establish and maintain an inmate  
6 savings fund in an interest-bearing account for the deposit of  
7 all or part of an inmate's allowances, as provided in section  
8 246.702. All or part of an inmate's allowances shall be  
9 deposited into the savings fund, until the inmate's deposit is  
10 equal to the amount due the inmate upon discharge, parole, or  
11 placement on work release, as provided in section 906.9. If  
12 an inmate's deposits equal this amount, the inmate may  
13 voluntarily withdraw from the savings fund. The director  
14 shall notify the inmate of this right to withdraw and shall  
15 provide the inmate with a written request form to facilitate  
16 the withdrawal. If the inmate withdraws and the inmate's  
17 deposits exceed the amount due as provided in section 906.9,  
18 the director shall disburse the excess amount as provided for  
19 allowances under section 246.702, except the director shall  
20 not deposit the excess amount in the inmate savings fund. If  
21 the inmate chooses to continue to participate in the savings  
22 fund, the inmate's deposits shall be returned to the inmate  
23 upon discharge, parole, or placement on work release.  
24 Otherwise, the inmate's deposits shall be disposed of as  
25 provided in subsection 3. An inmate's deposits into the  
26 savings fund may be used to provide the money due the inmate  
27 upon discharge, parole, or placement on work release, as  
28 required under section 906.9. Interest earned from the  
29 savings fund shall be placed in a separate account, and may be  
30 used for purchases approved by the director to directly and  
31 collectively benefit inmates.

32 3. Upon the death of an inmate, the superintendent of the  
33 institution shall immediately take possession of the  
34 decedent's property left at the institution, including the  
35 inmate's deposits into the inmate savings fund, and shall

1 deliver the property to the person designated by the inmate to  
2 be contacted in case of an emergency. However, if the  
3 property left by the decedent cannot be delivered to the  
4 designated person, delivery may be made to the surviving  
5 spouse or an heir of the decedent. If the decedent's property  
6 cannot be delivered to the designated person and no surviving  
7 spouse or heir is known, the superintendent shall deliver the  
8 property to the treasurer of state for disposition as  
9 unclaimed property pursuant to chapter 556, after deducting  
10 expenses incurred in disposing of the decedent's body or  
11 property.

12 Sec. 4. Section 246.513, Code 1991, is amended to read as  
13 follows:

14 246.513 ASSIGNMENT OF OWI VIOLATORS TO TREATMENT  
15 FACILITIES.

16 1. a. The department of corrections in cooperation with  
17 judicial district departments of correctional services shall  
18 establish in each judicial district bed-space a continuum of  
19 programming, including residential facilities, for the  
20 confinement supervision and treatment of offenders convicted  
21 of violating chapter 321J who are sentenced to the custody of  
22 the director. The department of corrections shall develop  
23 standardized assessment criteria for the assignment of  
24 offenders to a facility established pursuant to this section  
25 chapter. The offender shall be assigned by the director to a  
26 facility pursuant to section 321J.27, subsection 27, paragraph  
27 "b" or "c", unless initial medical treatment is necessary or  
28 there is insufficient space to accommodate the person. The  
29 offenders shall be assigned to the Iowa medical classification  
30 facility at Oakdale for classification if medical treatment is  
31 necessary or if the offender fails to satisfactorily perform  
32 in a treatment program conducted in a residential facility  
33 operated by a judicial district department of correctional  
34 services. The offender shall be assigned to an institution  
35 following classification. The facilities established shall

1 meet-all-the-following-requirements:

2 a.---is-a-treatment-facility-meeting-the-licensure-standards  
3 of-the-division-of-substance-abuse-of-the-department-of-public  
4 health.

5 b.---is-a-facility-meeting-applicable-standards-of-the  
6 American-corrections-association.

7 c.---is-a-facility-which-meets-any-other-rule-or-requirement  
8 adopted-by-the-department-pursuant-to-chapter-17A.

9 b. Except as otherwise provided in this section, the  
10 offender shall be assigned to a community-based correctional  
11 program. If medical treatment is necessary, the offender may  
12 be assigned to the Iowa medical and classification center at  
13 Oakdale for treatment and assignment, until the offender's  
14 health status permits placement in a community-based  
15 correctional program.

16 c. If there is insufficient space in a community-based  
17 correctional program to accommodate the offender, the court  
18 may order the offender to be released on personal recognizance  
19 or bond, released to the supervision of the judicial district  
20 department of correctional services, or held in jail. If the  
21 offender is ordered to the supervision of a judicial district  
22 department of correctional services, the district director may  
23 request, and the director of the department may approve, the  
24 transfer of the offender to the Iowa medical and  
25 classification center at Oakdale for classification and  
26 assignment, until space is available in a community-based  
27 correctional program.

28 d. If an offender fails to satisfactorily perform in a  
29 program conducted by a community-based correctional program,  
30 the offender shall be transferred to the Iowa medical and  
31 classification facility at Oakdale for classification and  
32 assignment.

33 e. A program established under this section shall operate  
34 in accordance with the rules and requirements adopted by the  
35 department pursuant to chapter 17A.

1 2. The assignment of an offender pursuant to subsection 1  
2 shall be for purposes of risk management, substance abuse  
3 treatment, and education, and may include work programs for  
4 the offender at times when the offender is not participating  
5 in substance-abuse-treatment-or-education other program  
6 components.

7 ~~3--Offenders-assigned-to-a-facility-pursuant-to-this~~  
8 ~~section-shall-not-be-included-in-calculations-used-to~~  
9 ~~determine-the-existence-of-a-prison-overcrowding-state-of~~  
10 ~~emergency.~~

11 4 3. Upon request by the director a county shall provide  
12 temporary confinement for offenders allegedly violating the  
13 conditions of assignment to a treatment program if space is  
14 available. The department shall negotiate a reimbursement  
15 rate with each county for the temporary confinement of  
16 offenders allegedly violating the conditions of assignment to  
17 a treatment program who are in the custody of the director or  
18 who are housed or supervised by the judicial district  
19 department of correctional services. The amount to be  
20 reimbursed shall be determined by multiplying the number of  
21 days a person is confined by the average daily cost of  
22 confining a person in the county facility as negotiated with  
23 the department. A county holding offenders ordered to jail  
24 pursuant to subsection 1 due to insufficient space in a  
25 community-based correctional program shall be reimbursed in  
26 the same manner following the fifth day of confinement.  
27 Payment shall be made upon submission of a voucher executed by  
28 the sheriff and approved by the director.

29 5 4. The director department shall prepare-proposed  
30 administrative adopt rules for-the-consideration-of-the  
31 administrative-rules-review-committee for the funding of the  
32 program by means of self-contribution by the offenders,  
33 insurance reimbursement on behalf of offenders, or other forms  
34 of funding, program structure, criteria for the evaluation of  
35 facilities and offenders for participation in the programs,

1 and all other issues the director shall deem appropriate.  
2 ~~Proposed rules prepared pursuant to this subsection shall be~~  
3 ~~submitted to the administrative rules review committee on or~~  
4 ~~before September 15, 1986.~~

5 Sec. 5. Section 246.702, Code 1991, is amended to read as  
6 follows:

7 246.702 DEDUCTION TO PAY COURT COSTS, INDUSTRIES PROGRAM  
8 COSTS, INCARCERATION COSTS, OR DEPENDENTS -- DEPOSITS --  
9 SAVINGS FUND.

10 If allowances are paid pursuant to section 246.701, the  
11 director may deduct an amount established by the inmate's  
12 restitution plan of payment or an amount sufficient to pay all  
13 or part of the court costs taxed as a result of the inmate's  
14 commitment. The amount deducted shall be forwarded to the  
15 clerk of the district court or proper official. The director  
16 may deduct an amount, not to exceed ten percent of the amount  
17 of the allowance, unless the inmate requests a larger amount,  
18 to be deposited into the inmate savings fund established in  
19 section 246.508. However, if the inmate's deposit in the  
20 inmate savings fund is sufficient to pay the amount due the  
21 inmate upon discharge, parole, or placement on work release  
22 pursuant to section 906.9, and the inmate has voluntarily  
23 withdrawn from the savings fund, the director shall not make  
24 further deposits from the inmate's allowances into the savings  
25 fund unless the inmate chooses to participate in the savings  
26 fund. The director may deduct and disburse an amount  
27 sufficient for industries' programs to qualify under the  
28 eligibility requirements established in the Justice Assistance  
29 Act of 1984, Pub. L. No. 98-473, including an amount to pay  
30 all or part of the cost of the inmate's incarceration. The  
31 director may pay all or any part of remaining allowances paid  
32 pursuant to section 246.701 directly to a dependent of the  
33 inmate, or may deposit the allowance to the account of the  
34 inmate, or may deposit a portion and allow the inmate a  
35 portion for the inmate's personal use.

1     Sec. 6. Section 246.901, Code 1991, is amended to read as  
2 follows:

3     246.901 WORK RELEASE PROGRAM.

4     The Iowa department of corrections, in consultation with  
5 the board of parole, shall establish a work release program  
6 under which the board of parole may grant inmates sentenced to  
7 an institution under the jurisdiction of the department the  
8 privilege of leaving actual confinement during necessary and  
9 reasonable hours for the purpose of working at gainful  
10 employment. Under appropriate conditions the program may also  
11 include an out-of-state work or treatment placement or release  
12 for the purpose of seeking employment and attendance at an  
13 educational institution. An inmate may be placed on work  
14 release status in the inmate's own home, under appropriate  
15 circumstances, which may include child care and housekeeping  
16 in the inmate's own home. This work release program is in  
17 addition to the institutional work release program established  
18 in section 246.910.

19     Sec. 7. Section 246.909, Code 1991, is amended to read as  
20 follows:

21     246.909 WORK RELEASE AND OWI VIOLATORS -- REIMBURSEMENT TO  
22 THE DEPARTMENT OF CORRECTIONS FOR TRANSPORTATION COSTS.

23     The department of corrections shall arrange for the return  
24 of a work release client or offender convicted of violating  
25 chapter 321J who escapes or participates in an act of  
26 absconding from the facility to which the client is assigned.  
27 The client or offender shall reimburse the department of  
28 corrections for the cost of transportation incurred because of  
29 the escape or act of absconding. The amount of reimbursement  
30 shall be the actual cost incurred by the department and shall  
31 be credited to the support account from which the billing  
32 occurred. The director of the department of corrections shall  
33 recommend rules pursuant to chapter 17A, subject to approval  
34 by the board of corrections pursuant to section 246.105,  
35 subsection 7, to implement this section.

1     Sec. 8. NEW SECTION. 246.910 INSTITUTIONAL WORK RELEASE  
2 PROGRAM.

3     1. In addition to the work release program established in  
4 section 246.901, the department of corrections shall establish  
5 an institutional work release program for each institution.  
6 The program shall provide that the department may grant  
7 inmates sentenced to an institution under its jurisdiction the  
8 privilege of leaving actual confinement during necessary and  
9 reasonable hours for the purpose of working at gainful  
10 employment. Under appropriate conditions, the program may  
11 also include an out-of-state work or treatment placement or  
12 release for the purpose of seeking employment or attendance at  
13 an educational institution. An inmate may be placed on work  
14 release status in the inmate's own home, under appropriate  
15 circumstances, which may include child care and housekeeping  
16 in the inmate's own home.

17     2. A committee shall be established by the department for  
18 the work release program at each institution to review  
19 applications for participation in the program.

20     3. An inmate who is eligible to participate in the work  
21 release program may apply to the superintendent of the  
22 institution for permission to participate in the program. The  
23 application shall include a statement that, if the application  
24 is approved, the inmate agrees to abide by all terms and  
25 conditions of the inmate's work release plan adopted by the  
26 committee. In addition, the application shall state the name  
27 and address of the proposed employer, if any, and shall  
28 contain other information as required by the committee. The  
29 committee may approve, disapprove, or defer action on the  
30 application. If the application is approved, the committee  
31 shall adopt an institutional work release plan for the  
32 applicant. The plan shall contain the elements required by  
33 this section and other conditions as the committee deems  
34 necessary and proper. The plan shall be signed by the inmate  
35 prior to participation in the program. Approval of a plan may

1 be revoked at any time by the superintendent or the committee.

2 4. The department may contract with a judicial district  
3 department of correctional services for the housing and  
4 supervision of an inmate in local facilities as provided in  
5 section 246.904. The institutional work release plan shall  
6 indicate the place where the inmate is to be housed when not  
7 on work assignment. The plan shall not allow for placement of  
8 an inmate on work release for more than six months in any  
9 twelve-month period without unanimous committee approval to do  
10 so. However, an inmate may be temporarily released to the  
11 supervision of a responsible person to participate in family  
12 and selected community, religious, educational, social, civic,  
13 and recreational activities when the committee determines that  
14 the participation will directly facilitate the release of the  
15 inmate from the institution to the community. The department  
16 shall provide a copy of the work release plan and a copy of  
17 any restitution plan of payment to the judicial district  
18 department of correctional services housing and supervising  
19 the inmate.

20 5. An inmate employed in the community under an  
21 institutional work release plan approved pursuant to this  
22 section shall surrender the inmate's total earnings less  
23 payroll deductions required by law to the superintendent, or  
24 to the judicial district department of correctional services  
25 if it is housing or supervising the inmate. The  
26 superintendent or the judicial district department of  
27 correctional services shall deduct from the earnings in the  
28 priority established in section 246.905.

29 6. The department of corrections shall adopt rules for the  
30 implementation of this section.

31 Sec. 9. Section 321.1, subsection 43, unnumbered paragraph  
32 3, Code 1991, is amended to read as follows:

33 If authorized to transport inmates, probationers, parolees,  
34 or work releasees by the director of the Iowa department of  
35 corrections or the director's designee, an employee of the

1 Iowa department of corrections or a district department of  
2 correctional services is not a chauffeur when transporting the  
3 inmates, probationers, parolees, or work releasees in-an  
4 automobile.

5 Sec. 10. Section 663A.5, Code 1991, is amended to read as  
6 follows:

7 663A.5 PAYMENT OF COSTS.

8 1. If the applicant is unable to pay court costs and  
9 expenses of legal representation, including stenographic,  
10 printing, and or other legal services or consultation, these  
11 costs and expenses shall be made available to the applicant in  
12 the preparation of the application, in the trial court, and on  
13 review. However, nothing in this section shall be interpreted  
14 to require payment of expenses of legal representation,  
15 including stenographic, printing, or other legal services or  
16 consultation, when the applicant is self-represented or is  
17 utilizing the services of an inmate.

18 2. If an applicant ~~confined-in-a-state-institution~~ seeks  
19 relief under section 663A.2, ~~subsection-6,~~ and the court finds  
20 in favor of the applicant, or the postconviction proceedings  
21 fail ~~and,~~ the costs and expenses referred to in unnumbered  
22 paragraph subsection 1 cannot-be-collected-from-the-applicant,  
23 shall be assessed to the applicant pursuant to sections 910.2  
24 and 910.3. In all cases these costs and expenses initially  
25 shall be paid by the county in which the ~~state-institution-is~~  
26 ~~located~~ application was filed. The facts of payment and the  
27 proceedings on which it is based, with a statement of the  
28 amount of costs and expenses incurred, shall be submitted to  
29 the county in a timely manner with approval in writing by the  
30 presiding or district judge appended to the statement or  
31 endorsed on it, and shall be certified by the clerk of the  
32 district court under seal to the state executive council. The  
33 executive council shall review the proceedings and authorize  
34 reimbursement for the costs and expenses or for that part  
35 which the executive council finds justified, and shall notify

1 the director of revenue and finance to draw a warrant to the  
2 county treasurer on the state general fund for the amount  
3 authorized.

4 Sec. 11. Section 704.8, Code 1991, is amended to read as  
5 follows:

6 704.8 ESCAPE FROM PLACE OF CONFINEMENT.

7 A correctional officer or peace officer is justified in  
8 using reasonable force, including deadly force, which is  
9 necessary to prevent the escape of any person from any jail,  
10 penal institution, correctional facility, or similar place of  
11 confinement, or place of trial or other judicial proceeding,  
12 or to prevent the escape from custody of any person who is  
13 being transported from any such place of confinement, trial or  
14 judicial proceeding to any other such place, ~~except that~~  
15 ~~deadly force may not be used to prevent the escape of one who~~  
16 ~~the correctional officer or peace officer knows or should know~~  
17 ~~is confined on a charge or conviction of any class of~~  
18 misdemeanor.

19 Sec. 12. NEW SECTION. 709.15 SEXUAL MISCONDUCT WITH  
20 OFFENDERS.

21 An officer, employee, contractor, vendor, volunteer, or  
22 agent of the department of corrections who engages in a sex  
23 act with an individual committed to the custody of the  
24 department of corrections commits an aggravated misdemeanor.

25 Sec. 13. Section 719.1, Code 1991, is amended to read as  
26 follows:

27 719.1 INTERFERENCE WITH OFFICIAL ACTS.

28 1. A person who knowingly resists or obstructs anyone  
29 known by the person to be a peace officer or fire fighter,  
30 whether paid or volunteer, in the performance of any act which  
31 is within the scope of the lawful duty or authority of that  
32 officer or fire fighter, whether paid or volunteer, or who  
33 knowingly resists or obstructs the service or execution by any  
34 authorized person of any civil or criminal process or order of  
35 any court, commits a simple misdemeanor. However, if a person

1 commits an interference with official acts, as defined in this  
2 ~~section~~ subsection, and in so doing inflicts bodily injury  
3 other than serious injury, that person commits a serious  
4 misdemeanor. If a person commits an interference with  
5 official acts, as defined in this ~~section~~ subsection, and in  
6 so doing inflicts or attempts to inflict serious injury, or  
7 displays a dangerous weapon, as defined in section 702.7, or  
8 is armed with a firearm, that person commits an aggravated  
9 misdemeanor.

10 2. A person under the custody, control, or supervision of  
11 the department of corrections who knowingly resists,  
12 obstructs, or interferes with a correctional officer, agent,  
13 employee, or contractor, whether paid or volunteer, in the  
14 performance of the person's official duties, commits a serious  
15 misdemeanor. If a person violates this subsection and in so  
16 doing commits an assault, as defined in section 708.1, the  
17 person commits an aggravated misdemeanor. If a person  
18 violates this subsection and in so doing inflicts or attempts  
19 to inflict bodily injury other than serious injury to another,  
20 displays a dangerous weapon, as defined in section 702.7, or  
21 is armed with a firearm, the person commits a class "D"  
22 felony. If a person violates this subsection and uses or  
23 attempts to use a dangerous weapon, as defined in section  
24 702.7, or inflicts serious injury to another, the person  
25 commits a class "C" felony.

26 3. The terms "resist" and "obstruct", as used in this  
27 section, do not include verbal harassment unless the verbal  
28 harassment is accompanied by a present ability and apparent  
29 intention to execute a verbal threat physically.

30 Sec. 14. Section 906.9, unnumbered paragraph 1, Code 1991,  
31 is amended to read as follows:

32 When an inmate is discharged, paroled, or placed on work  
33 release, the warden or superintendent shall furnish the  
34 inmate, at state expense, appropriate clothing and  
35 transportation to the place in this state indicated in the

1 inmate's discharge, parole, or work release plan. When an  
2 inmate is discharged, paroled, or placed on work release, the  
3 warden or superintendent shall provide the inmate, at state  
4 expense or through inmate savings as provided in section  
5 246.508, money in accordance with the following schedule:

6     Sec. 15. Section 908.9, Code 1991, is amended to read as  
7 follows:

8     908.9 DISPOSITION OF VIOLATOR.

9     If the parole of a parole violator is revoked, the violator  
10 shall remain in the custody of the Iowa department of  
11 corrections under the terms of the parolee's original  
12 commitment. The violator may be placed in a violator facility  
13 established pursuant to section 246.207. If the parole of a  
14 parole violator is not revoked, the parole revocation officer  
15 or board panel shall order the person's release subject to the  
16 terms of the person's parole with any modifications that the  
17 parole revocation officer or board panel determines proper.

18     Sec. 16. Section 908.11, Code 1991, is amended to read as  
19 follows:

20     908.11 VIOLATION OF PROBATION.

21     A probation officer or the judicial district department of  
22 correctional services having probable cause to believe that  
23 any person released on probation has violated the conditions  
24 of probation shall proceed by arrest or summons as in the case  
25 of a parole violation. The functions of the liaison officer  
26 and the board of parole shall be performed by the judge or  
27 magistrate who placed the alleged violator on probation if  
28 that judge or magistrate is available, otherwise by another  
29 judge or magistrate who would have had jurisdiction to try the  
30 original offense. If the probation officer proceeds by  
31 arrest, any magistrate may receive the complaint, issue an  
32 arrest warrant, or conduct the initial appearance and probable  
33 cause hearing if it is not convenient for the judge who placed  
34 the alleged violator on probation to do so. The initial  
35 appearance, probable cause hearing, and probation revocation

1 hearing, or any of them, may at the discretion of the court be  
2 merged into a single hearing when it appears that the alleged  
3 violator will not be prejudiced thereby. If the violation is  
4 established, the court may continue the probation with or  
5 without an alteration of the conditions of probation. If the  
6 defendant is an adult the court may hold the defendant in  
7 contempt of court and sentence the defendant to a jail term  
8 while continuing the probation, order the defendant to be  
9 placed in a violator facility established pursuant to section  
10 246.207 while continuing the probation, or may revoke the  
11 probation and require the defendant to serve the sentence  
12 imposed or any lesser sentence, and, if imposition of sentence  
13 was deferred, may impose any sentence which might originally  
14 have been imposed.

15 Sec. 17. Section 910.3, Code 1991, is amended to read as  
16 follows:

17 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

18 ~~The court shall require the~~ county attorney to promptly  
19 shall prepare a statement of pecuniary damages to victims of  
20 the defendant and ~~shall require the,~~ if applicable, any award  
21 by the crime victim assistance programs and shall provide the  
22 statement to the presentence investigator or submit the  
23 statement to the court at the time of sentencing. The clerk  
24 of court to shall prepare a statement of court-appointed  
25 attorney's fees, the expense of a public defender and court  
26 costs, which shall be promptly provided to the presentence  
27 investigator or submitted to the court at the time of  
28 sentencing. These If these statements are provided to the  
29 presentence investigator, they shall become a part of the  
30 presentence report. If pecuniary damage amounts are not  
31 available at the time of sentencing, the county attorney shall  
32 provide a statement of pecuniary damages incurred up to that  
33 time to the clerk of court. The statement shall be provided  
34 no later than thirty days after sentencing. If a defendant  
35 believes no person suffered pecuniary damages, the defendant

1 shall so state. If the defendant has any mental or physical  
2 impairment which would limit or prohibit the performance of a  
3 public service, the defendant shall so state. The court may  
4 order a mental or physical examination, or both, of the  
5 defendant to determine a proper course of action. At the time  
6 of sentencing or at a later date to be determined by the  
7 court, the court shall set out the amount of restitution  
8 including the amount of public service to be performed as  
9 restitution and the persons to whom restitution must be paid.  
10 This If the full amount of restitution cannot be determined at  
11 the time of sentencing, the court shall issue a temporary  
12 order determining a reasonable amount for pecuniary damages  
13 incurred up to that time, any award by the crime victim  
14 assistance programs, court-appointed attorney's fees or the  
15 expense of a public defender, and court costs. At a later  
16 date as determined by the court, the court shall issue a  
17 permanent, supplemental order, setting the full amount of  
18 restitution. The court shall enter further supplemental  
19 orders, if necessary, pursuant to section 663A.5. These court  
20 orders shall be known as the plan of restitution.

21

#### EXPLANATION

22 This bill contains a number of provisions relating to the  
23 activities of the department of corrections.

24 Section 1 provides that in involuntary civil commitment  
25 proceedings, respondent inmates in the custody of the  
26 department may receive court-ordered alternative placements in  
27 correctional programs.

28 Sections 2, 15, and 16 allow the director to establish a  
29 violator facility for the short-term confinement of offenders  
30 who have violated conditions of release pursuant to work  
31 release, parole, or probation, or who are sentenced to the  
32 custody of the director pursuant to provisions pertaining to  
33 operating while intoxicated (OWI) offenders. Section 15 also  
34 provides that the court may order probation violators to this  
35 facility.

1 Sections 3, 5, and 14 establish an inmate savings fund.  
2 The director may deduct up to 10 percent of an inmate's  
3 allowances and deposit the money into the fund, unless the  
4 inmate requests a larger amount to be deducted. Once the  
5 inmate's deposits equal the amount of gate money that will be  
6 due upon release pursuant to section 906.9, the inmate may  
7 voluntarily withdraw from the fund. An inmate's deposits up  
8 to the amount of gate money may be used to provide the gate  
9 money funds. Deposits above the amount of gate money are  
10 returned to the inmate upon release. The bill provides that  
11 interest earned on the fund shall be placed in a separate  
12 account to be used for the benefit of all inmates. Section 3  
13 also provides that although the superintendent may place an  
14 inmate's property in the inmate's possession upon entering the  
15 institution in an interest-bearing account, the superintendent  
16 need not return the interest to the inmate. Current law  
17 requires the return of the interest upon discharge.

18 Section 4 of the bill relates to the assignment of  
19 operating a motor vehicle while intoxicated (OWI) offenders to  
20 treatment facilities. Changes enacted during the 1990  
21 legislative session prohibited the department from sending  
22 these offenders to the Iowa medical and classification center  
23 at Oakdale unless medical treatment is necessary or the  
24 offender fails to satisfactorily perform in a treatment  
25 program. The bill provides that if insufficient space is  
26 available in a community-based correctional program, the court  
27 may order the offender to be released on personal  
28 recognizance, bond, to the supervision of the judicial  
29 district department of correctional services, or held in jail.  
30 If the offender is ordered to the supervision of the district,  
31 the district director may request, and the departmental  
32 director may approve, the transfer of the offender to Oakdale  
33 until space is available.

34 Section 4 also includes language pertaining to a continuum  
35 of programming to be provided for OWI offenders. The section

1 eliminates the provision that offenders assigned to a facility  
2 under section 246.513 are not included in calculations used to  
3 determine the existence of a prison overcrowding emergency.  
4 The section further provides for reimbursement to the counties  
5 when OWI offenders are held in jail due to insufficient  
6 program space after the first five days of confinement. The  
7 counties are required to pay for the first five days. This  
8 provision may include a state mandate as defined in section  
9 25B.3. Finally, an outdated administrative rules provision in  
10 the section is deleted.

11 Sections 6 and 8 establish an institutional work release  
12 program in addition to the work release program administered  
13 by the board of parole pursuant to section 246.901. The  
14 institutional work release program operates in a similar  
15 manner; however, a committee for each institution would be  
16 established by the department of corrections. The committee  
17 is provided authority to approve work release applications and  
18 devise work release plans.

19 Section 7 permits the department to recover transportation  
20 costs for returning OWI offenders who have absconded from a  
21 treatment program. The department may seek reimbursement from  
22 the offender.

23 Section 9 exempts department employees from chauffeur's  
24 license requirements when transporting inmates, probationers,  
25 parolees, or work releasees.

26 Section 10 relates to the payment of costs in  
27 postconviction proceedings pursuant to chapter 663A. The bill  
28 provides that all persons seeking such relief shall have  
29 certain legal expenses made available, except applicants  
30 proceeding with self-representation or through the services of  
31 an inmate. The bill further provides that costs of  
32 postconviction proceedings are processed as provided in  
33 section 663A.5. Under current law, only cases involving  
34 inmates proceeding pursuant to section 663.A.2, subsection 6,  
35 relating to reduction of sentence, are included. The bill

1 provides that initially these costs are paid by the county  
2 where the application is filed, rather than where the  
3 institution is located. The bill requires that applications  
4 for payment must be submitted in a timely manner. The bill  
5 also provides that any district judge, in addition to the  
6 presiding judge, may approve the application. Also, the bill  
7 provides that the applicant must pay restitution, if able, as  
8 provided in chapter 912.

9 Section 11 permits correctional and peace officers to use  
10 deadly force to prevent the escape of persons from custody.  
11 Current law prohibits the use of deadly force if the officer  
12 knows or should know the escapee is a misdemeanant.

13 Section 12 provides that an officer, employee, contractor,  
14 vendor, volunteer, or agent of the department who engages in a  
15 sex act with a person in the custody of the department commits  
16 an aggravated misdemeanor.

17 Section 13 establishes the crime of interference with  
18 official correctional acts by a prisoner, and provides for  
19 penalties for varying types of interference. The section is  
20 similar to current Code section 719.1 as it relates to  
21 interference with the official acts of peace officers and fire  
22 fighters.

23 Section 17 pertains to the determination of the amount of  
24 restitution. The section provides that the county attorney  
25 and clerk of court must prepare statements relating to  
26 restitution without the necessity of a court order. The bill  
27 also provides the county attorney must include awards by the  
28 crime victim assistance programs in the statement, in addition  
29 to pecuniary damages. These statements must either be  
30 submitted to the court at sentencing or be provided as part of  
31 the presentence report. The section provides that if  
32 pecuniary damages are not available at sentencing, the county  
33 attorney must provide a statement of damages incurred up to  
34 that point, no later than 30 days after sentencing. The  
35 section also requires the court to enter a temporary order at

1 sentencing if the full amount of restitution cannot be  
2 determined at that time, with a permanent, supplemental order,  
3 setting the full amount of restitution, to follow as  
4 determined by the court.

5 BACKGROUND STATEMENT  
6 SUBMITTED BY THE AGENCY

7 Section 1: A recent court case on involuntary civil  
8 commitments limits authority to treat mentally ill inmates as  
9 outpatients in an institutional setting. Prior cases  
10 recognized this authority. Involuntary mental health services  
11 are provided at Oakdale. Once stabilized, the inmates can be  
12 returned to the general population and function normally on  
13 medication. Some inmates refuse medication, resulting in the  
14 deterioration of mental health and the return of psychotic  
15 episodes. The proposal restores the department's outpatient  
16 treatment authority.

17 Sections 2, 15, and 16: Changes approved in the past two  
18 years created a new class of facility for short-term placement  
19 of program violators. The proposal codifies this type of  
20 facility in a manner similar to other correctional facilities.  
21 The proposal provides clear authority to hold probation  
22 violators in institutional facilities while maintaining their  
23 probation status.

24 Sections 3, 5, and 14: Inmates have no effective savings  
25 plan. The proposal helps inmates financially prepare for  
26 release, partially or totally defrays gate money costs, and  
27 benefits the inmate population collectively through interest  
28 generated. Present language requires that interest be paid to  
29 individual inmates. However, the funds are not in interest-  
30 bearing accounts because administrative costs for many small  
31 accounts (over 7,000 per year) exceed the interest generated.  
32 Since financial institutions refuse to administer this many  
33 small accounts collectively, the interest income is now being  
34 lost.

35 Section 4: Changes approved during the 1990 legislative

1 session had some negative impacts that the proposal corrects,  
2 including a "standardized assessment criteria for the  
3 assignment of offenders" that failed to provide program  
4 flexibility for a range of offender programs. This proposal  
5 permits a continuum of programs, to match treatment and  
6 sanctions with individual needs, resulting in more effective  
7 use of resources. The 1990 changes removed prison as an  
8 option for holding offenders awaiting placement, with no  
9 alternatives. The proposal gives the court options, and  
10 authorizes county reimbursement when offenders are held in  
11 jail awaiting placement.

12 Sections 6 and 8: Many eligible inmates remain in prison  
13 due to lack of available work-release placements. These  
14 inmates need more meaningful opportunities, which would be  
15 available if the department could permit conditional release  
16 and supervision.

17 Section 7: The department may recover expenses incurred in  
18 returning an escapee from work release, and the proposal  
19 extends this to OWI absconders, saving taxpayers' money.

20 Section 9: The department operates many vans to transport  
21 inmates and staff. It is costly to require chauffeurs'  
22 licenses for all staff. The department has traditionally been  
23 exempted from the requirement, and the proposal restores the  
24 exemption.

25 Section 10: Presently, court costs in postconviction cases  
26 fall disproportionately upon counties with correctional  
27 facilities. The proposal distributes these expenses more  
28 equitably among the counties of original prosecution.

29 Section 11: The provision relating to deadly force  
30 unreasonably burdens correctional officers and exposes the  
31 state to liability. Few misdemeanants are in prison, and they  
32 are placed throughout the system. Misdemeanants receive the  
33 same treatment, clothing, programming, and services as felons,  
34 making them tough to distinguish. All inmates should be  
35 treated equally, even during escape. The state may be liable

1 if a misdemeanor is injured or killed during an escape, due  
2 to the "should know" provision. If an officer refrains from  
3 deadly force and an escapee causes injury, the state may be  
4 liable.

5 Section 12: Rarely, departmental employees become sexually  
6 involved with offenders. This warrants criminal sanctions.

7 Section 13: In a recent year, inmates committed 270  
8 assaults on staff. The proposed penalties are similar to  
9 those for interference with police and fire fighters, will  
10 help deter assaults, and assist in the management of dangerous  
11 offenders.

12 Section 17: Chapter 910 produces uneven results in  
13 identifying monetary damages to victims. The proposal assures  
14 that the damages are included in court records.

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SENATE FILE 496

AN ACT

RELATING TO PERSONS CONVICTED OF PUBLIC OFFENSES, RELATING TO THE DEPARTMENT OF CORRECTIONS AND ITS PROGRAMS AND FACILITIES, RELATING TO TREATMENT, PREVENTION, PROSECUTION, AND SENTENCING CONCERNING DOMESTIC ABUSE CASES, AND ESTABLISHING ADDITIONAL PUBLIC OFFENSES AND CRIMINAL PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 80B.11, subsection 2, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 2, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed. Minimum requirements shall mandate training devoted to the topic of domestic abuse. The council shall submit an annual report to the general assembly by January 15 of each year relating to the continuing education requirements devoted to the topic of domestic abuse, including the number of hours required, the substance of the classes offered, and other related matters.

Sec. 2. Section 229.14, subsection 4, Code 1991, is amended to read as follows:

4. The respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital. If the report so states, the chief medical officer shall recommend an alternative placement for the respondent and the court shall enter an order which may direct the respondent's transfer to the recommended placement. A respondent who is an inmate in the custody of the department of corrections may, as a court-ordered alternative placement, receive mental health services in a correctional program. If the court or the respondent's attorney consider the placement inappropriate, an alternative placement may be arranged upon consultation with the chief medical officer and approval of the court.

Sec. 3. Section 236.5, subsection 4, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 8, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and the county sheriff having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified. The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff by telephone or otherwise in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk. The clerk shall send

or deliver a written copy of any such document to the law enforcement agencies and the twenty-four hour dispatcher within twenty-four hours of filing the document.

Sec. 4. Section 236.14, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the victim's safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's relatives immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the alleged abuser to have no contact with the alleged victim's children shall prevail over any existing order awarding custody or visitation rights, which may be in conflict with the no-contact order.

Sec. 5. Section 246.108, subsection 1, paragraph p, Code 1991, as enacted by 1991 Iowa Acts, Senate File 444, section 18, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

p. Adopt rules subject to the approval of the board, requiring the establishment and implementation of batterers' support groups programs in all of the institutions under the jurisdiction of the department.

Sec. 6. Section 245.206, subsection 1, Code 1991, is amended to read as follows:

1. The correctional release center at Newton shall be utilized for the preparation of inmates of the correctional institutions for discharge, work release, or parole. The director may transfer an inmate of a correctional institution ~~within ninety days of the inmate's release from custody~~ to the correctional release center for intensive training to assist the inmate in the transition to civilian living. The statutes applicable to an inmate at the corrective institution from which transferred shall remain applicable during the inmate's stay at the correctional release center.

Sec. 7. NEW SECTION. 246.207 VIOLATOR FACILITY.

The director shall establish a violator facility as a freestanding facility, or designate a portion of an existing correctional facility, for the purpose. A violator facility is for the confinement of offenders, for no longer than sixty days, who have violated conditions of release under work release, parole, or probation, or who are sentenced to the custody of the director for assignment to a treatment facility under section 246.513. The director shall adopt rules pursuant to chapter 17A, subject to the approval of the board, to implement this section.

Sec. 8. Section 246.508, Code 1991, is amended to read as follows:

246.508 PROPERTY OF INMATE -- INMATE SAVINGS FUND.

1. The superintendent of each institution shall receive and care for any property an inmate may possess on the inmate's person upon entering the institution, and on the discharge of the inmate, return the property to the inmate or the inmate's legal representatives, unless the property has been previously disposed of according to the inmate's written designation or policies prescribed by the board. The superintendent may place an inmate's money at interest, keeping an account of the money and returning the remaining money and interest upon discharge.

2. The director shall establish and maintain an inmate savings fund in an interest-bearing account for the deposit of all or part of an inmate's allowances, as provided in section 246.702. All or part of an inmate's allowances shall be deposited into the savings fund, until the inmate's deposit is equal to the amount due the inmate upon discharge, parole, or placement on work release, as provided in section 906.9. If an inmate's deposits equal this amount, the inmate may voluntarily withdraw from the savings fund. The director shall notify the inmate of this right to withdraw and shall provide the inmate with a written request form to facilitate the withdrawal. If the inmate withdraws and the inmate's deposits exceed the amount due as provided in section 906.9, the director shall disburse the excess amount as provided for allowances under section 246.702, except the director shall not deposit the excess amount in the inmate savings fund. If the inmate chooses to continue to participate in the savings fund, the inmate's deposits shall be returned to the inmate upon discharge, parole, or placement on work release. Otherwise, the inmate's deposits shall be disposed of as provided in subsection 3. An inmate's deposits into the savings fund may be used to provide the money due the inmate upon discharge, parole, or placement on work release, as required under section 906.9. Interest earned from the savings fund shall be placed in a separate account, and may be used for purchases approved by the director to directly and collectively benefit inmates.

3. Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution, including the inmate's deposits into the inmate savings fund, and shall deliver the property to the person designated by the inmate to be contacted in case of an emergency. However, if the property left by the decedent cannot be delivered to the designated person, delivery may be made to the surviving

spouse or an heir of the decedent. If the decedent's property cannot be delivered to the designated person and no surviving spouse or heir is known, the superintendent shall deliver the property to the treasurer of state for disposition as unclaimed property pursuant to chapter 556, after deducting expenses incurred in disposing of the decedent's body or property.

Sec. 9. Section 246.513, Code 1991, is amended to read as follows:

246.513 ASSIGNMENT OF OWI VIOLATORS TO TREATMENT FACILITIES.

1. a. The department of corrections in cooperation with judicial district departments of correctional services shall establish in each judicial district bed-space a continuum of programming, including residential facilities and institutions, for the confinement supervision and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The department of corrections shall develop standardized assessment criteria for the assignment of offenders to a facility established pursuant to this section chapter. ~~The offender shall be assigned by the director to a facility pursuant to section 321J-27, subsection 27, paragraph "b" or "c", unless initial medical treatment is necessary or there is insufficient space to accommodate the person--The offenders shall be assigned to the Iowa medical classification facility at Okate for classification if medical treatment is necessary or if the offender fails to satisfactorily perform in a treatment program conducted in a residential facility operated by a judicial district department of correctional services--The offender shall be assigned to an institution following classification.~~ The facilities established shall meet all the following requirements:

e- (.) Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.

b. (2) Is a facility meeting applicable standards of the American corrections association.

c. (3) Is a facility which meets any other rule or requirement adopted by the department pursuant to chapter 17A.

b. Except as otherwise provided in this section, the offender shall be assigned to a community-based correctional program. If medical treatment is necessary, the offender may be assigned to the Iowa medical and classification center at Oakdale for treatment and assignment, until the offender's health status permits placement in a community-based correctional program.

c. If there is insufficient space in a community-based correctional program to accommodate the offender, the court may order the offender to be released on personal recognizance or bond, released to the supervision of the judicial district department of correctional services, or held in jail. If the offender is ordered to the supervision of a judicial district department of correctional services, the district director may request, and the director of the department may approve, the transfer of the offender to the Iowa medical and classification center at Oakdale for classification and assignment, until space is available in a community-based correctional program.

d. If an offender fails to satisfactorily perform in a program conducted by a community-based correctional program, the offender shall be transferred to the Iowa medical and classification facility at Oakdale for classification and assignment.

e. A program established under this section shall operate in accordance with the rules and requirements adopted by the department pursuant to chapter 17A.

2. The assignment of an offender pursuant to subsection 1 shall be for purposes of risk management, substance abuse treatment, and education, and may include work programs for the offender at times when the offender is not participating

in substance-abuse-treatment-or education other program components.

3. Offenders assigned to a facility pursuant to this section shall not be included in calculations used to determine the existence of a prison overcrowding state of emergency.

4 3. Upon request by the director a county shall provide temporary confinement for offenders allegedly violating the conditions of assignment to a treatment program if space is available. The department shall negotiate a reimbursement rate with each county for the temporary confinement of offenders allegedly violating the conditions of assignment to a treatment program who are in the custody of the director or who are housed or supervised by the judicial district department of correctional services. The amount to be reimbursed shall be determined by multiplying the number of days a person is confined by the average daily cost of confining a person in the county facility as negotiated with the department. A county holding offenders ordered to jail pursuant to subsection 1 due to insufficient space in a community-based correctional program shall be reimbursed. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director.

5 4. The director department shall prepare-proposed administrative adopt rules for-the-consideration-of-the administrative-rules-review-committee for the funding of the program by means of self-contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of funding, program structure, criteria for the evaluation of facilities and offenders for participation in the programs, and all other issues the director shall deem appropriate. Proposed-rules-prepared-pursuant-to-this-subsection-shall-be submitted-to-the-administrative-rules-review-committee-on-or before-September-15,-1985.

Sec. 10. Section 246.702, Code 1991, is amended to read as follows:

246.702 DEDUCTION TO PAY COURT COSTS, INDUSTRIES PROGRAM COSTS, INCARCERATION COSTS, OR DEPENDENTS -- DEPOSITS -- SAVINGS FUND.

If allowances are paid pursuant to section 246.701, the director may deduct an amount established by the inmate's restitution plan of payment or an amount sufficient to pay all or part of the court costs taxed as a result of the inmate's commitment. The amount deducted shall be forwarded to the clerk of the district court or proper official. The director may deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund established in section 246.508. However, if the inmate's deposit in the inmate savings fund is sufficient to pay the amount due the inmate upon discharge, parole, or placement on work release pursuant to section 906.9, and the inmate has voluntarily withdrawn from the savings fund, the director shall not make further deposits from the inmate's allowances into the savings fund unless the inmate chooses to participate in the savings fund. The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration. The director may pay all or any part of remaining allowances paid pursuant to section 246.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

Sec. 11. Section 246.901, Code 1991, is amended to read as follows:

246.901 WORK RELEASE PROGRAM.

The Iowa department of corrections, in consultation with the board of parole, shall establish a work release program under which the board of parole may grant inmates sentenced to an institution under the jurisdiction of the department the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment. Under appropriate conditions the program may also include an out-of-state work or treatment placement or release for the purpose of seeking employment and attendance at an educational institution. An inmate may be placed on work release status in the inmate's own home, under appropriate circumstances, which may include child care and housekeeping in the inmate's own home. This work release program is in addition to the institutional work release program established in section 246.910.

Sec. 12. Section 246.909, Code 1991, is amended to read as follows:

246.909 WORK RELEASE AND OWI VIOLATORS -- REIMBURSEMENT TO THE DEPARTMENT OF CORRECTIONS FOR TRANSPORTATION COSTS.

The department of corrections shall arrange for the return of a work release client or offender convicted of violating chapter 321J who escapes or participates in an act of absconding from the facility to which the client is assigned. The client or offender shall reimburse the department of corrections for the cost of transportation incurred because of the escape or act of absconding. The amount of reimbursement shall be the actual cost incurred by the department and shall be credited to the support account from which the billing occurred. The director of the department of corrections shall recommend rules pursuant to chapter 17A, subject to approval by the board of corrections pursuant to section 246.105, subsection 7, to implement this section.

Sec. 13. NEW SECTION. 246.910 INSTITUTIONAL WORK RELEASE PROGRAM.

1. In addition to the work release program established in section 246.901, the department of corrections shall establish an institutional work release program for each institution. The program shall provide that the department may grant inmates sentenced to an institution under its jurisdiction the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment. Under appropriate conditions, the program may also include an out-of-state work or treatment placement or release for the purpose of seeking employment or attendance at an educational institution. An inmate may be placed on work release status in the inmate's own home, under appropriate circumstances, which may include child care and housekeeping in the inmate's own home.

2. A committee shall be established by the department for the work release program at each institution to review applications for participation in the program.

3. An inmate who is eligible to participate in the work release program may apply to the superintendent of the institution for permission to participate in the program. The application shall include a statement that, if the application is approved, the inmate agrees to abide by all terms and conditions of the inmate's work release plan adopted by the committee. In addition, the application shall state the name and address of the proposed employer, if any, and shall contain other information as required by the committee. The committee may approve, disapprove, or defer action on the application. If the application is approved, the committee shall adopt an institutional work release plan for the applicant. The plan shall contain the elements required by this section and other conditions as the committee deems necessary and proper. The plan shall be signed by the inmate prior to participation in the program. Approval of a plan may be revoked at any time by the superintendent or the committee.

4. The department may contract with a judicial district department of correctional services for the housing and supervision of an inmate in local facilities as provided in section 246.904. The institutional work release plan shall indicate the place where the inmate is to be housed when not on work assignment. The plan shall not allow for placement of an inmate on work release for more than six months in any twelve-month period without unanimous committee approval to do so. However, an inmate may be temporarily released to the supervision of a responsible person to participate in family and selected community, religious, educational, social, civic, and recreational activities when the committee determines that the participation will directly facilitate the release of the inmate from the institution to the community. The department shall provide a copy of the work release plan and a copy of any restitution plan of payment to the judicial district department of correctional services housing and supervising the inmate.

5. An inmate employed in the community under an institutional work release plan approved pursuant to this section shall surrender the inmate's total earnings less payroll deductions required by law to the superintendent, or to the judicial district department of correctional services if it is housing or supervising the inmate. The superintendent or the judicial district department of correctional services shall deduct from the earnings in the priority established in section 246.905.

6. The department of corrections shall adopt rules for the implementation of this section.

Sec. 16. Section 321.1, subsection 43, unnumbered paragraph 3, Code 1991, is amended to read as follows:

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of

correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees in an automobile.

Sec. 15. Section 602.8105, subsection 1, paragraph m, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 23, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

m. For filing an application for a license to marry, thirty dollars. ~~The clerk of the district court shall remit to the treasurer of state twenty dollars for each marriage license application filed. The treasurer of state shall deposit the funds received in the general fund of the state.~~ For issuing an application for an order of the district court authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license, five dollars. The court shall authorize the issuance of a marriage license without the payment of any fees imposed by this paragraph upon a showing that the applicant is unable to pay the fees.

Sec. 16. Section 602.8105, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph after paragraph u:

NEW UNNUMBERED PARAGRAPH. Notwithstanding any other provision of law to the contrary, including but not limited to the other provisions of this section, five dollars of the fees imposed pursuant to paragraph "a", the five dollar additional fee imposed pursuant to paragraph "l", and fifteen dollars of the fees imposed pursuant to paragraphs "m" and "n" shall be remitted to the treasurer of state for deposit into the general fund of the state, and shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

Sec. 17. Section 602.8106, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding any other provision of law to the contrary, including but not limited to the other provisions of this section, five dollars of the fee for filing and docketing of a complaint or information for a simple misdemeanor and five dollars of the fee for filing and docketing of a complaint or information for a nonscheduled simple misdemeanor imposed pursuant to subsection 1 shall be remitted to the treasurer of state for deposit into the general fund of the state, and shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

Sec. 18. Section 663A.5, Code 1991, is amended to read as follows:

663A.5 PAYMENT OF COSTS.

1. If the applicant is unable to pay court costs and expenses of legal representation, including stenographic, printing, and or other legal services or consultation, these costs and expenses shall be made available to the applicant in the preparation of the application, in the trial court, and on review. However, nothing in this section shall be interpreted to require payment of expenses of legal representation, including stenographic, printing, or other legal services or consultation, when the applicant is self-represented or is utilizing the services of an inmate.

2. If an applicant confined in a state institution seeks relief under section 663A.2, subsection 6, and the court finds in favor of the applicant, or the postconviction proceedings fail when relief is denied and costs and expenses referred to in unnumbered-paragraph subsection 1 cannot be collected from the applicant, these costs and expenses initially shall be paid by the county in which the state institution is located application was filed. The facts of payment and the proceedings on which it is based, with a statement of the amount of costs and expenses incurred, shall be submitted to the county in a timely manner with approval in writing by the

presiding or district judge appended to the statement or endorsed on it, and shall be certified by the clerk of the district court under seal to the state executive council. The executive council shall review the proceedings and authorize reimbursement for the costs and expenses or for that part which the executive council finds justified, and shall notify the director of revenue and finance to draw a warrant to the county treasurer on the state general fund for the amount authorized.

Sec. 19. Section 708.2A, subsection 4, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 27, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

4. A person convicted of violating this section shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. This section does not prohibit the court from sentencing and the defendant from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the defendant has not previously received a deferred sentence or judgment for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault. However, once the defendant has received one deferred sentence or judgment involving a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, the defendant shall not be eligible to receive another deferred sentence or judgment for a violation of this section.

Sec. 20. Section 708.2A, subsection 6, Code 1991, as amended by 1991 Iowa Acts, Senate File 444, section 27, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

6. In addition to the mandatory minimum term of confinement imposed by this section, the court may shall order the defendant to participate in a batterers' treatment program as required under section 708.2B. However in addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the defendant to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judgment or deferred judgment to the judicial district department of correctional services.

Sec. 21. NEW SECTION. 709.15 SEXUAL MISCONDUCT WITH OFFENDERS.

An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.

Sec. 22. Section 719.1, Code 1991, is amended to read as follows:

719.1 INTERFERENCE WITH OFFICIAL ACTS.

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a simple misdemeanor. However, if a person commits an interference with official acts, as defined in this section subsection, and in so doing inflicts bodily injury other than serious injury, that person commits a serious misdemeanor. If a person commits an interference with official acts, as defined in this section subsection, and in

so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits an aggravated misdemeanor.

2. A person under the custody, control, or supervision of the department of corrections who knowingly resists, obstructs, or interferes with a correctional officer, agent, employee, or contractor, whether paid or volunteer, in the performance of the person's official duties, commits a serious misdemeanor. If a person violates this subsection and in so doing commits an assault, as defined in section 708.1, the person commits an aggravated misdemeanor. If a person violates this subsection and in so doing inflicts or attempts to inflict bodily injury other than serious injury to another, displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, the person commits a class "D" felony. If a person violates this subsection and uses or attempts to use a dangerous weapon, as defined in section 702.7, or inflicts serious injury to another, the person commits a class "C" felony.

3. The terms "resist" and "obstruct", as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

Sec. 23. Section 901.3, subsection 7, Code 1991, is amended by striking the subsection.

Sec. 24. Section 906.9, unnumbered paragraph 1, Code 1991, is amended to read as follows:

When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall furnish the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan. When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall provide the inmate, at state

expense or through inmate savings as provided in section 246.508, money in accordance with the following schedule:

Sec. 25. Section 907.3, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

Sec. 26. Section 907.3, subsection 2, Code 1991, is amended to read as follows:

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

Sec. 27. Section 907.9, unnumbered paragraph 2, Code 1991, is amended to read as follows:

A probation officer or the director of the judicial district department of correctional services who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

Sec. 28. Section 908.9, Code 1991, is amended to read as follows:

908.9 DISPOSITION OF VIOLATOR.

If the parole of a parole violator is revoked, the violator shall remain in the custody of the Iowa department of corrections under the terms of the parolee's original commitment. The violator may be placed in a violator facility established pursuant to section 246.207 if the parole revocation officer or board panel determines that placement in a violator facility is necessary. If the parole of a parole violator is not revoked, the parole revocation officer or board panel shall order the person's release subject to the terms of the person's parole with any modifications that the parole revocation officer or board panel determines proper.

Sec. 29. Section 908.11, Code 1991, is amended to read as follows:

908.11 VIOLATION OF PROBATION.

A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an

arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced thereby. If the violation is established, the court may continue the probation with or without an alteration of the conditions of probation. If the defendant is an adult the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation, order the defendant to be placed in a violator facility established pursuant to section 246.207 while continuing the probation, or may revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

Sec. 30. Section 910.3, Code 1991, is amended to read as follows:

910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

~~The court shall require the county attorney to promptly~~ shall prepare a statement of pecuniary damages to victims of the defendant and ~~shall require the, if applicable, any award by the crime victim assistance programs and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing.~~ shall prepare a statement of court-appointed attorney's fees, the expense of a public defender and court costs, which shall be promptly provided to the presentence investigator or submitted to the court at the time of sentencing. ~~These if these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall~~

provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. This If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for pecuniary damages incurred up to that time, any award by the crime victim assistance programs, court-appointed attorney's fees or the expense of a public defender, and court costs. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

Sec. 31. NEW SECTION. 910.10 RESTITUTION LIEN.

1. The state or a person entitled to restitution under a court order may file a restitution lien.
2. The restitution lien shall set forth all of the following information, if known:
  - a. The name and date of birth of the person whose property or other interests are subject to the lien.
  - b. The present address of the residence and principal place of business of the person named in the lien.
  - c. The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number.

d. The name and business address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and residence and business address of each person entitled to restitution pursuant to a court order.

e. A statement that the notice is being filed pursuant to this section.

f. The amount of restitution the person has been ordered to pay or is likely to be ordered to pay.

3. A restitution lien may be filed by either of the following:

a. A prosecuting attorney in a criminal proceeding in which restitution is likely to be sought after the filing of an information or indictment. At the time of arraignment, the prosecuting attorney shall give the defendant notice of any restitution lien filed.

b. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

4. The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property identified in the lien to the extent of the interest held in that property by the person named in the lien.

5. This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.

Sec. 32. Section 910A.11, subsection 4, Code 1991, as enacted by 1991 Iowa Acts, Senate File 444, section 32, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

4. An application may be made pursuant to this section in a criminal case, and if made, a district associate judge or magistrate having jurisdiction of the highest offense charged in the criminal case or a district judge shall have jurisdiction to enter an order under this section.

Sec. 33. 1991 Iowa Acts, Senate File 444, section 16, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

SEC. 16. NEW SECTION. 236.17 DOMESTIC ABUSE TRAINING REQUIREMENTS.

The department, in cooperation with victim service providers, may shall work with various professional organizations to encourage organizations to establish training programs for professionals who work in the area of domestic abuse prevention and services. Domestic abuse training may include, but is not limited to, the following areas:

1. The enforcement of both civil and criminal remedies in domestic abuse matters.
2. The nature, extent, and causes of domestic abuse.
3. The legal rights and remedies available to domestic abuse victims, including crime victim compensation.
4. Services available to domestic abuse victims and their children, including the domestic abuse telephone hotline.
5. The mandatory arrest provisions of section 236.12, and other duties of peace officers pursuant to this chapter.
6. Techniques for intervention in domestic abuse cases.

Sec. 34. 1991 Iowa Acts, Senate File 444, section 26, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

SEC. 26. Section 631.6, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The clerk shall collect an additional fee of five dollars upon docketing a small claims action, and shall remit the fee to the treasurer of state for deposit in the general fund of the state. Notwithstanding any provision of law to the contrary, including but not limited to the other provisions of this section, the additional fee of five dollars imposed in this paragraph shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

Sec. 35. 1991 Iowa Acts, Senate File 444, section 28, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

SEC. 28. NEW SECTION. 708.2B TREATMENT OF DOMESTIC ABUSE OFFENDERS.

As used in this section, "district department" means a judicial district department of correctional services, established pursuant to section 905.2. A person convicted of, or receiving a deferred judgment for, domestic abuse assault shall report to the district department in order to participate in a batterers' treatment program for domestic abuse offenders--if-ordered-to-do-so-by-the-court-pursuant-to section-708-2A. Participation in the batterers' treatment program shall not require a person to be placed on probation, but a person on probation may participate in the program. The district departments may contract for services in completing the duties relating to the batterers' treatment programs. The district departments shall assess the fees for participation in the program, and shall either collect or contract for the collection of the fees to recoup the costs of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

Sec. 36. 1991 Iowa Acts, Senate File 444, section 36, subsection 2, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is amended to read as follows:

2. From July 1, 1991, through December 31, 1992, the court may shall order a defendant who is convicted of, or who receives a deferred judgment for, a violation of section 708.2A to participate in a batterers' treatment program through other treatment or counseling services, until the programs are established by the judicial district departments of correctional services, to the extent that the court has the

authority under existing sentencing procedures. The court shall order the defendant to pay for the treatment, unless just cause is demonstrated for waiving the fee.

Sec. 37. 1991 Iowa Acts, Senate File 444, section 1, if enacted by the 1991 Session of the Seventy-fourth General Assembly, is repealed.

Sec. 38. PILOT PROGRAM FOR DOMESTIC ABUSE PROSECUTION PLANS AND PROCEDURES.

1. The prosecuting attorneys training coordinator shall establish a pilot program pertaining to the prosecution of domestic abuse assaults. For the purposes of this section, "domestic abuse assault" means an assault, as defined in section 708.1 which is domestic abuse as defined in section 236.2. The prosecuting attorneys training coordinator, in consultation with the criminal and juvenile justice planning council, shall select county attorneys whose jurisdictions have a high dismissal rate in domestic abuse assault cases and where there are more than a de minimus number of cases. A minimum number of five county attorneys shall participate in the pilot program.

2. The coordinator shall notify the county attorneys who shall develop and implement a written plan to expedite and improve the efficiency and just disposition of domestic abuse matters in their respective jurisdictions. The county attorneys shall solicit input from the chief judge of the judicial district in which their county is located and law enforcement agencies within their jurisdictions in developing the written plan. The program participants shall seek assistance from domestic abuse advocates and other interested members of the public in the development of a model plan and in the development or adaptation of the plans in each of the jurisdictions represented by the five county attorneys. Once a model plan is developed, the prosecuting attorneys training coordinator shall make it available to all prosecuting attorneys, regardless of whether the prosecuting attorneys are

participants in the pilot program. All plans must state goals and contain policies and procedures to address the following matters:

a. The early assignment of a prosecuting attorney, who has the responsibility of handling a domestic abuse assault matter through disposition, and who is also responsible for establishing early contact with the victim.

b. The facilitation of the earliest possible contact between the prosecuting attorney's office and the victim for the purpose of acquainting the victim with the criminal justice process, the use of subpoenas, the victim's role as a witness in the prosecution, a victim's rights under chapter 236, and available domestic abuse and victim services.

c. The coordination of the prosecuting attorney's efforts with those of a domestic abuse advocate or victim advocate, where available, and to facilitate the early provision of victim advocacy services.

d. Methods that will be used to identify, gather, and preserve evidence, in addition to the victim's testimony, that will enhance the ability to prosecute a case when a victim is reluctant to assist, including, but not limited to, physical evidence of the victim's injury, evidence relating to the scene of the crime, eye witness testimony, and statements of the victim made at or near the time of injury.

e. The education of local law enforcement agencies about the contents of the plan and their role in assisting with its implementation.

f. The use of subpoenas of victims and witnesses, where appropriate.

g. Annual review of the plan to evaluate whether it is meeting its goals effectively and whether improvements are needed.

h. A timetable for implementation.

i. A copy of each plan shall be filed with the prosecuting attorneys training coordinator by July 1, 1992. The county

attorneys selected for the pilot program shall file a status report on the pilot program by July 1, 1993. The pilot program shall terminate on July 1, 1994. The status report must contain information on the number of prosecutions and dismissals of domestic abuse cases in the county attorney's office.

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JOE J. WELSH  
President of the Senate

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ROBERT C. ARNOULD  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 496, Seventy-fourth General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved May 29, 1991

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TERRY E. BRANSTAD  
Governor