

FILED MAR 3 1994

SENATE FILE 2256
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2241)

^(P668)
Passed Senate, Date 3-15-94
Vote: Ayes 49 Nays 0
Approved _____

Passed House, Date _____
Vote: Ayes _____ Nays _____

A BILL FOR

1 An Act to make changes regarding payment of restitution by
2 criminal offenders.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2256

1 Section 1. Section 421.17, subsection 25, unnumbered
2 paragraph 1, Code Supplement 1993, is amended to read as
3 follows:

4 To establish and maintain a procedure to set off against a
5 debtor's income tax refund or rebate any debt which is in the
6 form of a liquidated sum due, owing, and payable to the clerk
7 of the district court as a ~~criminal-fine~~, civil penalty,
8 ~~surcharges, court-costs~~, or restitution of ~~attorney-fees~~ as
9 defined and ordered under sections 910.1 and 910.2 incurred as
10 a result of services provided under chapters 13B and 815, and
11 section 232.141. The procedure shall meet the following
12 conditions:

13 Sec. 2. Section 602.8107, subsections 1 and 2, Code
14 Supplement 1993, are amended to read as follows:

15 1. ~~Fines, penalties, court-costs, fees, interest,~~
16 ~~restitution-for-court-appointed-attorney-fees, and surcharges~~
17 Restitution as defined in section 910.1 shall be paid to the
18 clerk of the district court. All amounts collected shall be
19 distributed pursuant to sections 602.8106 and 602.8108 or as
20 otherwise provided by this Code. The clerk may accept payment
21 of an obligation or a portion thereof by credit card. The
22 clerk may charge a fee to reflect the additional cost of
23 processing the payment by credit card.

24 2. Payments received under this section shall be applied
25 to the balance owed under the identified case number. If a
26 case number is not identified, payments shall be credited to
27 any active case in the manner determined by the clerk prior to
28 applying payments to any inactive cases. The determination of
29 whether a case is inactive shall be based on the expiration
30 date for supervision by a judicial district department of
31 correctional services or for a period of incarceration.

32 Payments received under this section shall be applied in the
33 following priority order:

34 a. ~~Fines or penalties plus any interest due on unsatisfied~~
35 ~~judgments and criminal penalty surcharges plus interest due on~~

1 unsatisfied-amounts: Pecuniary damages as defined in section
2 910.1, subsection 2.

3 b. Victim-restitution: Fines or penalties plus any
4 interest due on unsatisfied judgments and criminal penalty
5 surcharges plus interest due on unsatisfied amounts.

6 c. Court-costs: Crime victim compensation program
7 reimbursement.

8 d. Court-appointed Court costs, court-appointed attorney
9 fees, or public defender expenses.

10 Sec. 3. Section 602.8107, subsection 5, unnumbered
11 paragraph 2, Code Supplement 1993, is amended to read as
12 follows:

13 This subsection does not apply to amounts collected for
14 victim restitution, the new victim restitution compensation
15 fund, criminal penalty surcharge, or amounts collected as a
16 result of procedures initiated under section 421.17,
17 subsection 25.

18 Sec. 4. Section 714.7A, Code 1993, is amended to read as
19 follows:

20 714.7A VETERANS' GRAVE MARKERS.

21 A person commits a simple misdemeanor when the person takes
22 possession or control of a veteran's grave marker which was
23 provided pursuant to section 35B.16, with the intention to
24 deprive the owner of the marker, regardless of the value of
25 the marker. The person shall also be liable for restitution
26 reimbursement in an amount equal to three times the cost of
27 the marker to be paid to the county commission of veteran
28 affairs or other person who furnished the marker.

29 Sec. 5. Section 714.16, subsection 7, unnumbered paragraph
30 1, Code 1993, is amended to read as follows:

31 A civil action pursuant to this section shall be by
32 equitable proceedings. If it appears to the attorney general
33 that a person has engaged in, is engaging in, or is about to
34 engage in a practice declared to be unlawful by this section,
35 the attorney general may seek and obtain in an action in a

1 district court a temporary restraining order, preliminary
2 injunction, or permanent injunction prohibiting the person
3 from continuing the practice or engaging in the practice or
4 doing an act in furtherance of the practice. The court may
5 make orders or judgments as necessary to prevent the use or
6 employment by a person of any prohibited practices, or which
7 are necessary to restore to any person in interest any moneys
8 or property, real or personal, which have been acquired by
9 means of a practice declared to be unlawful by this section,
10 including the appointment of a receiver in cases of
11 substantial and willful violation of this section. If a
12 person has acquired moneys or property by any means declared
13 to be unlawful by this section and if the cost of
14 administering restitution reimbursement outweighs the benefit
15 to consumers or consumers entitled to the restitution
16 reimbursement cannot be located through reasonable efforts,
17 the court may order disgorgement of moneys or property
18 acquired by the person by awarding the moneys or property to
19 the state to be used by the attorney general for the
20 administration and implementation of this section. Except in
21 an action for the concealment, suppression, or omission of a
22 material fact with intent that others rely upon it, it is not
23 necessary in an action for restitution reimbursement or an
24 injunction, to allege or to prove reliance, damages, intent to
25 deceive, or that the person who engaged in an unlawful act had
26 knowledge of the falsity of the claim or ignorance of the
27 truth. A claim for restitution reimbursement may be proved by
28 any competent evidence, including evidence that would be
29 appropriate in a class action.

30 Sec. 6. Section 714.16A, subsection 1, unnumbered
31 paragraph 2, Code 1993, is amended to read as follows:

32 A civil penalty imposed pursuant to this section shall be
33 paid to the treasurer of state, who shall deposit the money in
34 the elderly victim fund, a separate fund created in the state
35 treasury and administered by the attorney general for the

1 investigation and prosecution of frauds against the elderly.
2 Notwithstanding section 8.33, any balance in the fund on June
3 30 of any fiscal year shall not revert to the general fund of
4 the state. An award of restitution reimbursement pursuant to
5 section 714.16 has priority over a civil penalty imposed by
6 the court pursuant to this subsection.

7 Sec. 7. Section 904.905, subsections 1 through 4, Code
8 1993, are amended to read as follows:

9 1. An amount ~~determined to be the cost to the judicial~~
10 ~~district department of correctional services for providing~~
11 ~~food, lodging and clothing for the inmate while under the~~
12 program may be legally obligated to pay for the support of the
13 inmate's dependents, the amount of which shall be paid to the
14 dependents through the department of human services located in
15 the county or city in which the dependents reside.

16 2. ~~The actual and necessary food, travel and other~~
17 ~~expenses of the inmate when released from actual confinement~~
18 ~~under the program. An amount determined to be the cost to the~~
19 judicial district department of correctional services for
20 providing food, lodging, and clothing for the inmate while
21 under the program.

22 3. ~~An amount the inmate may be legally obligated to pay~~
23 ~~for the support of the inmate's dependents, the amount of~~
24 ~~which shall be paid to the dependents through the local~~
25 ~~department of human services in the county or city in which~~
26 ~~the dependents reside. Restitution as ordered by the court~~
27 pursuant to chapter 910.

28 4. ~~Restitution as ordered by the court pursuant to chapter~~
29 ~~910. Any other financial obligations which are acknowledged~~
30 by the inmate or any unsatisfied judgment against the inmate.

31 Sec. 8. Section 910.1, subsection 3, Code 1993, is amended
32 to read as follows:

33 3. "Restitution" means payment of pecuniary damages to a
34 victim in an amount and in the manner provided by the
35 offender's plan of restitution. Restitution also includes

1 fines, penalties, and surcharges, the payment of crime victim
2 assistance compensation program reimbursements, court costs,
3 court-appointed attorney's fees, or the expense of a public
4 defender, and the performance of a public service by an
5 offender in an amount set by the court when the offender
6 cannot reasonably pay all or part of the court costs, court-
7 appointed attorney's fees, or the expense of a public
8 defender.

9 Sec. 9. Section 910.2, Code 1993, is amended to read as
10 follows:

11 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
12 SENTENCING COURT.

13 In all criminal cases except including but not limited to
14 simple misdemeanors under chapter 321, in which there is a
15 plea of guilty, verdict of guilty, or special verdict upon
16 which a judgment of conviction is rendered, the sentencing
17 court shall order that restitution be made by each offender to
18 the victims of the offender's criminal activities, to the
19 clerk of court for fines, penalties, surcharges, and, to the
20 extent that the offender is reasonably able to pay, for crime
21 victim assistance reimbursement, court costs, court-appointed
22 attorney's fees, or the expense of a public defender when
23 applicable. However, victims shall be paid in full before
24 ~~restitution-is-paid-for~~ fines, penalties, and surcharges,
25 crime victim assistance compensation program reimbursement,
26 court costs, court-appointed attorney's fees, or for the
27 ~~expense~~ expenses of a public defender are paid. In
28 structuring a plan of restitution, the court shall provide for
29 payments in the following order of priority: victim, fines,
30 penalties, and surcharges, crime victim assistance
31 compensation program reimbursement, court costs, and court-
32 appointed attorney's fees, or the expense of a public
33 defender. When the offender is not reasonably able to pay all
34 or a part of the crime victim assistance compensation program
35 reimbursement, court costs, court-appointed attorney's fees,

1 or the expense of a public defender, the court may require the
2 offender in lieu of that portion of the crime victim
3 ~~assistance~~ compensation program reimbursement, court costs,
4 court-appointed attorney's fees, or expense of a public
5 defender for which the offender is not reasonably able to pay,
6 to perform a needed public service for a governmental agency
7 or for a private, nonprofit agency which provides a service to
8 the youth, elderly, or poor of the community. When community
9 service is ordered, the court shall set a specific number of
10 hours of service to be performed by the offender. The
11 judicial district department of correctional services shall
12 provide for the assignment of the offender to a public agency
13 or private nonprofit agency to perform the required service.

14 Sec. 10. Section 910.3, Code 1993, is amended to read as
15 follows:

16 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

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

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

19 Sec. 11. Section 910.9, unnumbered paragraph 3, Code 1993,
20 is amended to read as follows:

21 Court Fines, penalties, and surcharges, crime victim
22 compensation program reimbursement, court costs, court-
23 appointed attorney's fees, and expenses for public defenders,
24 shall not be withheld by the clerk of court until all victims
25 have been paid in full. Payments to victims shall be made by
26 the clerk of court at least quarterly. Payments by a clerk of
27 court shall be made no later than the last business day of the
28 quarter, but may be made more often at the discretion of the
29 clerk of court. The clerk of court receiving final payment
30 from an offender, shall notify all victims that full
31 restitution has been made, and a copy of the notice shall be
32 sent to the sentencing court. Each office or individual
33 charged with supervising an offender who is required to
34 perform community service as full or partial restitution shall
35 keep records to assure compliance with the portions of the

1 plan of restitution and restitution plan of payment relating
2 to community service and, when the offender has complied fully
3 with the community service requirement, notify the sentencing
4 court.

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EXPLANATION

6 The bill makes changes in offender restitution. Section 8
7 changes the definition of what is included in the term
8 "restitution" and sections 2, 7, and 9 make changes in the
9 priority by which any payments made by an offender are applied
10 to the various obligations imposed upon or assumed by the
11 offender. The remainder of the sections make various
12 technical changes to provide for uniform application of the
13 new restitution definition and payment priority.

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SENATE FILE 2256

S-5132

1 Amend Senate File 2256 as follows:
 2 1. Page 2, lines 3 and 4, by striking the words
 3 "plus any interest due on unsatisfied judgements".
 4 2. Page 2, by striking line 5, and inserting the
 5 following: "surcharges."
 6 3. Page 4, by inserting after line 30 the follow-
 7 ing:
 8 "Sec. ____ . Section 909.6, Code Supplement 1993, is
 9 amended to read as follows:
 10 909.6 FINE AS JUDGMENT----INTEREST--ASSESES.
 11 Whenever a court has imposed a fine on any
 12 defendant, the judgment in such case shall state the
 13 amount of the fine, and shall have the force and
 14 effect of a judgment against the defendant for the
 15 amount of the fine. The law relating to judgment
 16 liens, executions, and other process available to
 17 creditors for the collection of debts shall be
 18 applicable to such judgments; provided, that no law
 19 exempting the personal property of the defendant from
 20 any lien or legal process shall be applicable to such
 21 judgments.
 22 ~~If a court imposes a fine on an offender, the court~~
 23 ~~shall impose interest charges on any amount remaining~~
 24 ~~unsatisfied from the day after sentencing at the rate~~
 25 ~~provided in section 535.3.~~
 26 At the time of imposing the sentence, the court
 27 shall inform the offender of the amount of the fine
 28 and that the judgment includes the imposition of a
 29 criminal surcharge, court costs, and applicable fees.
 30 The court shall also inform the offender of the duty
 31 to pay the judgment in a timely manner ~~and that~~
 32 ~~interest will be charged on unsatisfied judgments.~~
 33 4. By numbering and renumbering as necessary.

By RALPH ROSENBERG

S-5132 FILED MARCH 9, 1994

Adopted 3-15-94
(P. 668) SENATE FILE 2256

S-5125

1 Amend Senate File 2256 as follows:
 2 1. Page 4, line 15, by inserting after the word
 3 "reside." the following: "For purposes of this
 4 section, "legally obligated" means under a court
 5 order."
 6 2. Page 4, line 20, by striking the word
 7 "clothing" and inserting the following: "other
 8 expenses".
 9 3. Page 5, by striking line 13 and inserting the
 10 following: "In all criminal cases except".
 11 4. Page 5, line 21, by striking the word
 12 "assistance" and inserting the following: "assistance
 13 compensation program".

By AL STURGEON

S-5125 FILED MARCH 9, 1994

ADOPTED

SENATE FILE 2256

S-5200

1 Amend Senate File 2256 as follows:

2 1. Page 4, by inserting after line 6 the
3 following:

4 "Sec. ____ . Section 901.6, Code 1993, is amended to
5 read as follows:

6 901.6 JUDGMENT ENTERED.

7 If judgment is not deferred, and no sufficient
8 cause is shown why judgment should not be pronounced
9 and none appears to the court upon the record,
10 judgment shall be pronounced and entered. In every
11 case in which judgment is entered, the court shall
12 include in the judgment entry the number of the
13 particular section of the Code and the name of the
14 offense under which the defendant is sentenced and a
15 statement of the days credited pursuant to section
16 903A.5 shall be incorporated into the sentence. In
17 addition, if the defendant is sentenced to a period of
18 incarceration and the defendant has on a previous
19 occasion been sentenced to a period of incarceration,
20 the court shall, as part of the judgment entry, notify
21 the defendant that a judgment will be entered for the
22 costs of providing the defendant with food, lodging,
23 and clothing upon the release of the defendant from
24 incarceration, and of the defendant's right to contest
25 the amount. Immediately prior to the time that the
26 defendant is to be released from incarceration, the
27 defendant and the court shall be provided with an
28 accounting of the costs of providing the defendant
29 with food, lodging, and clothing during incarceration.
30 Unless the defendant contests the amount within thirty
31 days of receipt of the accounting, the court shall
32 enter a judgment against the defendant for the amount
33 stated in the accounting, which shall constitute a
34 lien against any real or personal property owned or
35 subsequently acquired by the defendant.

36 Sec. ____ . Section 902.6, Code 1993, is amended to
37 read as follows:

38 902.6 RELEASE.

39 A person who has been committed to the custody of
40 the director of the Iowa department of corrections
41 shall remain in custody until released by the order of
42 the board of parole, in accordance with the law
43 governing paroles, or by order of the judge after
44 reconsideration of a felon's sentence pursuant to
45 section 902.4 or until the maximum term of the
46 person's confinement, as fixed by law, has been
47 completed. Upon a person's release, if a judgment is
48 to be entered against the person for the costs of
49 providing food, lodging, and clothing for the person
50 during incarceration, the person shall be provided

S-5200

S-5200

Page 2

1 with an accounting of the costs for providing food,
2 lodging, and clothing for the person while the person
3 was in the custody of the director of the Iowa
4 department of corrections and in confinement.

5 Sec. . Section 903.4, Code 1993, is amended to
6 read as follows:

7 903.4 PROVIDING PLACE OF CONFINEMENT.

8 All persons sentenced to confinement for a period
9 of one year or less shall be confined in a place to be
10 furnished by the county where the conviction was had
11 unless the person is presently committed to the
12 custody of the director of the Iowa department of
13 corrections, in which case the provisions of section
14 901.8 apply. All persons sentenced to confinement for
15 a period of more than one year shall be committed to
16 the custody of the director of the Iowa department of
17 corrections to be confined in a place to be designated
18 by the director ~~and the cost of the confinement shall~~
19 ~~be borne by the state.~~ The director may contract with
20 local governmental units for the use of detention or
21 correctional facilities maintained by the units for
22 the confinement of such persons. Each person
23 sentenced to confinement for a period of more than one
24 year who has previously been sentenced to a period of
25 incarceration shall be provided, upon release, with an
26 accounting of the costs of providing the person with
27 food, lodging, and clothing during the period of the
28 person's confinement."

29 2. By renumbering as necessary.

By ANDY MCKEAN

S-5200 FILED MARCH 14, 1994

WITHDRAWN

3.15.94

(P.638) 3-15-94 House - Judiciary

SENATE FILE 2256
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2241)

(AS AMENDED AND PASSED BY THE SENATE MARCH 15, 1994)

- _____ - New Language by the Senate
- * - Language Stricken by the Senate

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

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1 An Act to make changes regarding payment of restitution by
 2 criminal offenders.
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S.F. 2256

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18 clerk of the district court. All amounts collected shall be
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25 to the balance owed under the identified case number. If a
26 case number is not identified, payments shall be credited to
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30 date for supervision by a judicial district department of
31 correctional services or for a period of incarceration.

32 Payments received under this section shall be applied in the
33 following priority order:

34 a. ~~Fines-or-penalties-plus-any-interest-due-on-unsatisfied~~
35 ~~judgments-and-criminal-penalty-surcharges-plus-interest-due-on~~

1 ~~unsatisfied-amounts-~~ Pecuniary damages as defined in section
2 910.1, subsection 2.

3 b. ~~Victim-restitution-~~ Fines or penalties and criminal
4 penalty surcharges.

5 c. ~~Court-costs-~~ Crime victim compensation program
6 reimbursement.

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35 district court a temporary restraining order, preliminary

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2 from continuing the practice or engaging in the practice or
3 doing an act in furtherance of the practice. The court may
4 make orders or judgments as necessary to prevent the use or
5 employment by a person of any prohibited practices, or which
6 are necessary to restore to any person in interest any moneys
7 or property, real or personal, which have been acquired by
8 means of a practice declared to be unlawful by this section,
9 including the appointment of a receiver in cases of
10 substantial and willful violation of this section. If a
11 person has acquired moneys or property by any means declared
12 to be unlawful by this section and if the cost of
13 administering restitution reimbursement outweighs the benefit
14 to consumers or consumers entitled to the restitution
15 reimbursement cannot be located through reasonable efforts,
16 the court may order disgorgement of moneys or property
17 acquired by the person by awarding the moneys or property to
18 the state to be used by the attorney general for the
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 2 30 of any fiscal year shall not revert to the general fund of
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6 Sec. 7. Section 904.905, subsections 1 through 4, Code
 7 1993, are amended to read as follows:

8 1. An amount ~~determined-to-be-the-cost-to-the-judicial~~
 9 ~~district-department-of-correctional-services-for-providing~~
 10 ~~food,-lodging-and-clothing-for~~ the inmate while under the
 11 program may be legally obligated to pay for the support of the
 12 inmate's dependents, the amount of which shall be paid to the
 13 dependents through the department of human services located in
 14 the county or city in which the dependents reside. For
 15 purposes of this section, "legally obligated" means under a
 16 court order.

17 2. ~~The-actual-and-necessary-food,-travel-and-other~~
 18 ~~expenses-of-the-inmate-when-released-from-actual-confinement~~
 19 ~~under-the-program.~~ An amount determined to be the cost to the
 20 judicial district department of correctional services for
 21 providing food, lodging, and other expenses for the inmate
 22 while under the program.

23 3. ~~An-amount-the-inmate-may-be-legally-obligated-to-pay~~
 24 ~~for-the-support-of-the-inmate's-dependents,-the-amount-of~~
 25 ~~which-shall-be-paid-to-the-dependents-through-the-local~~
 26 ~~department-of-human-services-in-the-county-or-city-in-which~~
 27 ~~the-dependents-reside.~~ Restitution as ordered by the court
 28 pursuant to chapter 910.

29 4. ~~Restitution-as-ordered-by-the-court-pursuant-to-chapter~~
 30 ~~910.~~ Any other financial obligations which are acknowledged
 31 by the inmate or any unsatisfied judgment against the inmate.

32 Sec. 8. Section 909.6, Code Supplement 1993, is amended to
 33 read as follows:

34 909.6 FINE AS JUDGMENT----INTEREST-ASSESSED.

35 Whenever a court has imposed a fine on any defendant, the

1 judgment in such case shall state the amount of the fine, and
2 shall have the force and effect of a judgment against the
3 defendant for the amount of the fine. The law relating to
4 judgment liens, executions, and other process available to
5 creditors for the collection of debts shall be applicable to
6 such judgments; provided, that no law exempting the personal
7 property of the defendant from any lien or legal process shall
8 be applicable to such judgments.

9 ~~If a court imposes a fine on an offender, the court shall~~
10 ~~impose interest charges on any amount remaining unsatisfied~~
11 ~~from the day after sentencing at the rate provided in section~~
12 ~~535.3.~~

13 At the time of imposing the sentence, the court shall
14 inform the offender of the amount of the fine and that the
15 judgment includes the imposition of a criminal surcharge,
16 court costs, and applicable fees. The court shall also inform
17 the offender of the duty to pay the judgment in a timely
18 manner and that interest will be charged on unsatisfied
19 judgments.

20 Sec. 9. Section 910.1, subsection 3, Code 1993, is amended
21 to read as follows:

22 3. "Restitution" means payment of pecuniary damages to a
23 victim in an amount and in the manner provided by the
24 offender's plan of restitution. Restitution also includes
25 finances, penalties, and surcharges, the payment of crime victim
26 assistance compensation program reimbursements, court costs,
27 court-appointed attorney's fees, or the expense of a public
28 defender, and the performance of a public service by an
29 offender in an amount set by the court when the offender
30 cannot reasonably pay all or part of the court costs, court-
31 appointed attorney's fees, or the expense of a public
32 defender.

33 Sec. 10. Section 910.2, Code 1993, is amended to read as
34 follows:

35 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY

1 SENTENCING COURT.

2 In all criminal cases except simple misdemeanors under
3 chapter 321, in which there is a plea of guilty, verdict of
4 guilty, or special verdict upon which a judgment of conviction
5 is rendered, the sentencing court shall order that restitution
6 be made by each offender to the victims of the offender's
7 criminal activities, to the clerk of court for fines,
8 penalties, surcharges, and, to the extent that the offender is
9 reasonably able to pay, for crime victim assistance
10 compensation program reimbursement, court costs, court-
11 appointed attorney's fees, or the expense of a public defender
12 when applicable. However, victims shall be paid in full
13 before ~~restitution-is-paid-for~~ fines, penalties, and
14 surcharges, crime victim assistance compensation program
15 reimbursement, court costs, court-appointed attorney's fees,
16 or ~~for the expense~~ expenses of a public defender are paid. In
17 structuring a plan of restitution, the court shall provide for
18 payments in the following order of priority: victim, fines,
19 penalties, and surcharges, crime victim assistance
20 compensation program reimbursement, court costs, and court-
21 appointed attorney's fees, or the expense of a public
22 defender. When the offender is not reasonably able to pay all
23 or a part of the crime victim assistance compensation program
24 reimbursement, court costs, court-appointed attorney's fees,
25 or the expense of a public defender, the court may require the
26 offender in lieu of that portion of the crime victim
27 assistance compensation program reimbursement, court costs,
28 court-appointed attorney's fees, or expense of a public
29 defender for which the offender is not reasonably able to pay,
30 to perform a needed public service for a governmental agency
31 or for a private, nonprofit agency which provides a service to
32 the youth, elderly, or poor of the community. When community
33 service is ordered, the court shall set a specific number of
34 hours of service to be performed by the offender. The
35 judicial district department of correctional services shall

1 provide for the assignment of the offender to a public agency
2 or private nonprofit agency to perform the required service.

3 Sec. 11. Section 910.3, Code 1993, is amended to read as
4 follows:

5 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

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

1 ~~victim-assistance-programs, court-appointed-attorney's-fees-or~~
2 ~~the-expense-of-a-public-defender, and-court-costs.~~ At a later
3 date as determined by the court, the court shall issue a
4 permanent, supplemental order, setting the full amount of
5 restitution. The court shall enter further supplemental
6 orders, if necessary. These court orders shall be known as
7 the plan of restitution.

8 Sec. 12. Section 910.9, unnumbered paragraph 3, Code 1993,
9 is amended to read as follows:

10 Court Fines, penalties, and surcharges, crime victim
11 compensation program reimbursement, court costs, court-
12 appointed attorney's fees, and expenses for public defenders,
13 shall not be withheld by the clerk of court until all victims
14 have been paid in full. Payments to victims shall be made by
15 the clerk of court at least quarterly. Payments by a clerk of
16 court shall be made no later than the last business day of the
17 quarter, but may be made more often at the discretion of the
18 clerk of court. The clerk of court receiving final payment
19 from an offender, shall notify all victims that full
20 restitution has been made, and a copy of the notice shall be
21 sent to the sentencing court. Each office or individual
22 charged with supervising an offender who is required to
23 perform community service as full or partial restitution shall
24 keep records to assure compliance with the portions of the
25 plan of restitution and restitution plan of payment relating
26 to community service and, when the offender has complied fully
27 with the community service requirement, notify the sentencing
28 court.

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SENATE FILE 2256

H-5817

1 Amend Senate File 2256, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 4, lines 13 and 14, by striking the words
4 "department of human services located in the county or
5 city in which the dependents reside" and inserting the
6 following: "clerk of the district court or, for cases
7 in which services are being provided pursuant to
8 chapter 252B, to the collection services center".

9 2. Page 4, line 16, by inserting after the word
10 "court" the following: "or administrative".

11 3. Page 4, by inserting after line 31, the
12 following:

13 "Sec. ____ . Section 905.12, subsection 1, Code
14 1993, is amended to read as follows:

15 1. An amount the resident may be legally obligated
16 to pay for the support of dependents, which shall be
17 paid to the dependents directly or through the
18 ~~department of human services in the county in which~~
19 ~~the dependents reside~~ clerk of the district court or,
20 for cases in which services are being provided
21 pursuant to chapter 252B, to the collection services
22 center. For the purpose of this subsection, "legally
23 obligated" means under a court or administrative
24 order."

25 4. By numbering and renumbering as necessary.

By MILLAGE of Scott

H-5817 FILED MARCH 29, 1994

Sturgeon
Rosenberg
Redfern

SSB-2241

Judiciary
New

SENATE FILE 2256
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON STURGEON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to make changes regarding payment of restitution by
2 criminal offenders.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 421.17, subsection 25, unnumbered
2 paragraph 1, Code Supplement 1993, is amended to read as
3 follows:

4 To establish and maintain a procedure to set off against a
5 debtor's income tax refund or rebate any debt which is in the
6 form of a liquidated sum due, owing, and payable to the clerk
7 of the district court as a ~~criminal-fine~~, civil penalty,
8 ~~surcharge~~, ~~court-costs~~, or ~~restitution of-attorney-fees~~ as
9 defined and ordered under sections 910.1 and 910.2 incurred as
10 a result of services provided under chapters 13B and 815, and
11 section 232.141. The procedure shall meet the following
12 conditions:

13 Sec. 2. Section 602.8107, subsections 1 and 2, Code
14 Supplement 1993, are amended to read as follows:

15 1. ~~Fines, penalties, court-costs, fees, interest,~~
16 ~~restitution-for-court-appointed-attorney-fees, and surcharges~~
17 Restitution as defined in section 910.1 shall be paid to the
18 clerk of the district court. All amounts collected shall be
19 distributed pursuant to sections 602.8106 and 602.8108 or as
20 otherwise provided by this Code. The clerk may accept payment
21 of an obligation or a portion thereof by credit card. The
22 clerk may charge a fee to reflect the additional cost of
23 processing the payment by credit card.

24 2. Payments received under this section shall be applied
25 to the balance owed under the identified case number. If a
26 case number is not identified, payments shall be credited to
27 any active case in the manner determined by the clerk prior to
28 applying payments to any inactive cases. The determination of
29 whether a case is inactive shall be based on the expiration
30 date for supervision by a judicial district department of
31 correctional services or for a period of incarceration.

32 Payments received under this section shall be applied in the
33 following priority order:

34 a. ~~Fines-or-penalties-plus-any-interest-due-on-unsatisfied~~
35 ~~judgments-and-criminal-penalty-surcharges-plus-interest-due-on~~

1 unsatisfied-amounts: Pecuniary damages as defined in section
2 910.1, subsection 2.

3 b. Victim-restitution: Fines or penalties plus any
4 interest due on unsatisfied judgments and criminal penalty
5 surcharges plus interest due on unsatisfied amounts.

6 c. Court-costs: Crime victim compensation program
7 reimbursement.

8 d. Court-appointed Court costs, court-appointed attorney
9 fees, or public defender expenses.

10 Sec. 3. Section 602.8107, subsection 5, unnumbered
11 paragraph 2, Code Supplement 1993, is amended to read as
12 follows:

13 This subsection does not apply to amounts collected for
14 victim restitution, the new victim restitution compensation
15 fund, criminal penalty surcharge, or amounts collected as a
16 result of procedures initiated under section 421.17,
17 subsection 25.

18 Sec. 4. Section 714.7A, Code 1993, is amended to read as
19 follows:

20 714.7A VETERANS' GRAVE MARKERS.

21 A person commits a simple misdemeanor when the person takes
22 possession or control of a veteran's grave marker which was
23 provided pursuant to section 35B.16, with the intention to
24 deprive the owner of the marker, regardless of the value of
25 the marker. The person shall also be liable for restitution
26 reimbursement in an amount equal to three times the cost of
27 the marker to be paid to the county commission of veteran
28 affairs or other person who furnished the marker.

29 Sec. 5. Section 714.16, subsection 7, unnumbered paragraph
30 1, Code 1993, is amended to read as follows:

31 A civil action pursuant to this section shall be by
32 equitable proceedings. If it appears to the attorney general
33 that a person has engaged in, is engaging in, or is about to
34 engage in a practice declared to be unlawful by this section,
35 the attorney general may seek and obtain in an action in a

1 district court a temporary restraining order, preliminary
2 injunction, or permanent injunction prohibiting the person
3 from continuing the practice or engaging in the practice or
4 doing an act in furtherance of the practice. The court may
5 make orders or judgments as necessary to prevent the use or
6 employment by a person of any prohibited practices, or which
7 are necessary to restore to any person in interest any moneys
8 or property, real or personal, which have been acquired by
9 means of a practice declared to be unlawful by this section,
10 including the appointment of a receiver in cases of
11 substantial and willful violation of this section. If a
12 person has acquired moneys or property by any means declared
13 to be unlawful by this section and if the cost of
14 administering ~~restitution~~ reimbursement outweighs the benefit
15 to consumers or consumers entitled to the ~~restitution~~
16 reimbursement cannot be located through reasonable efforts,
17 the court may order disgorgement of moneys or property
18 acquired by the person by awarding the moneys or property to
19 the state to be used by the attorney general for the
20 administration and implementation of this section. Except in
21 an action for the concealment, suppression, or omission of a
22 material fact with intent that others rely upon it, it is not
23 necessary in an action for ~~restitution~~ reimbursement or an
24 injunction, to allege or to prove reliance, damages, intent to
25 deceive, or that the person who engaged in an unlawful act had
26 knowledge of the falsity of the claim or ignorance of the
27 truth. A claim for ~~restitution~~ reimbursement may be proved by
28 any competent evidence, including evidence that would be
29 appropriate in a class action.

30 Sec. 6. Section 714.16A, subsection 1, unnumbered
31 paragraph 2, Code 1993, is amended to read as follows:

32 A civil penalty imposed pursuant to this section shall be
33 paid to the treasurer of state, who shall deposit the money in
34 the elderly victim fund, a separate fund created in the state
35 treasury and administered by the attorney general for the

1 investigation and prosecution of frauds against the elderly.
2 Notwithstanding section 8.33, any balance in the fund on June
3 30 of any fiscal year shall not revert to the general fund of
4 the state. An award of restitution reimbursement pursuant to
5 section 714.16 has priority over a civil penalty imposed by
6 the court pursuant to this subsection.

7 Sec. 7. Section 904.905, subsections 1 through 4, Code
8 1993, are amended to read as follows:

9 1. ~~An amount determined-to-be-the-cost-to-the-judicial~~
10 ~~district-department-of-correctional-services-for-providing~~
11 ~~food,-lodging-and-clothing-for the inmate while-under-the~~
12 ~~program~~ may be legally obligated to pay for the support of the
13 inmate's dependents, the amount of which shall be paid to the
14 dependents through the department of human services located in
15 the county or city in which the dependents reside.

16 2. ~~The-actual-and-necessary-food,-travel-and-other~~
17 ~~expenses-of-the-inmate-when-released-from-actual-confinement~~
18 ~~under-the-program:~~ An amount determined to be the cost to the
19 judicial district department of correctional services for
20 providing food, lodging, and clothing for the inmate while
21 under the program.

22 3. ~~An-amount-the-inmate-may-be-legally-obligated-to-pay~~
23 ~~for-the-support-of-the-inmate's-dependents,-the-amount-of~~
24 ~~which-shall-be-paid-to-the-dependents-through-the-local~~
25 ~~department-of-human-services-in-the-county-or-city-in-which~~
26 ~~the-dependents-reside:~~ Restitution as ordered by the court
27 pursuant to chapter 910.

28 4. ~~Restitution-as-ordered-by-the-court-pursuant-to-chapter~~
29 ~~910:~~ Any other financial obligations which are acknowledged
30 by the inmate or any unsatisfied judgment against the inmate.

31 Sec. 8. Section 910.1, subsection 3, Code 1993, is amended
32 to read as follows:

33 3. "Restitution" means payment of pecuniary damages to a
34 victim in an amount and in the manner provided by the
35 offender's plan of restitution. Restitution also includes

1 fines, penalties, and surcharges, the payment of crime victim
2 assistance compensation program reimbursements, court costs,
3 court-appointed attorney's fees, or the expense of a public
4 defender, and the performance of a public service by an
5 offender in an amount set by the court when the offender
6 cannot reasonably pay all or part of the court costs, court-
7 appointed attorney's fees, or the expense of a public
8 defender.

9 Sec. 9. Section 910.2, Code 1993, is amended to read as
10 follows:

11 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
12 SENTENCING COURT.

13 In all criminal cases except including but not limited to
14 simple misdemeanors under chapter 321, in which there is a
15 plea of guilty, verdict of guilty, or special verdict upon
16 which a judgment of conviction is rendered, the sentencing
17 court shall order that restitution be made by each offender to
18 the victims of the offender's criminal activities, to the
19 clerk of court for fines, penalties, surcharges, and, to the
20 extent that the offender is reasonably able to pay, for crime
21 victim assistance reimbursement, court costs, court-appointed
22 attorney's fees, or the expense of a public defender when
23 applicable. However, victims shall be paid in full before
24 ~~restitution-is-paid-for~~ fines, penalties, and surcharges,
25 crime victim assistance compensation program reimbursement,
26 court costs, court-appointed attorney's fees, or for the
27 ~~expense~~ expenses of a public defender are paid. In
28 structuring a plan of restitution, the court shall provide for
29 payments in the following order of priority: victim, fines,
30 penalties, and surcharges, crime victim assistance
31 compensation program reimbursement, court costs, and court-
32 appointed attorney's fees, or the expense of a public
33 defender. When the offender is not reasonably able to pay all
34 or a part of the crime victim assistance compensation program
35 reimbursement, court costs, court-appointed attorney's fees,

1 or the expense of a public defender, the court may require the
2 offender in lieu of that portion of the crime victim
3 assistance compensation program reimbursement, court costs,
4 court-appointed attorney's fees, or expense of a public
5 defender for which the offender is not reasonably able to pay,
6 to perform a needed public service for a governmental agency
7 or for a private, nonprofit agency which provides a service to
8 the youth, elderly, or poor of the community. When community
9 service is ordered, the court shall set a specific number of
10 hours of service to be performed by the offender. The
11 judicial district department of correctional services shall
12 provide for the assignment of the offender to a public agency
13 or private nonprofit agency to perform the required service.
14 Sec. 10. Section 910.3, Code 1993, is amended to read as
15 follows:

16 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

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

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

19 Sec. 11. Section 910.9, unnumbered paragraph 3, Code 1993,
20 is amended to read as follows:

21 Court Fines, penalties, and surcharges, crime victim
22 compensation program reimbursement, court costs, court-
23 appointed attorney's fees, and expenses for public defenders,
24 shall not be withheld by the clerk of court until all victims
25 have been paid in full. Payments to victims shall be made by
26 the clerk of court at least quarterly. Payments by a clerk of
27 court shall be made no later than the last business day of the
28 quarter, but may be made more often at the discretion of the
29 clerk of court. The clerk of court receiving final payment
30 from an offender, shall notify all victims that full
31 restitution has been made, and a copy of the notice shall be
32 sent to the sentencing court. Each office or individual
33 charged with supervising an offender who is required to
34 perform community service as full or partial restitution shall
35 keep records to assure compliance with the portions of the

1 plan of restitution and restitution plan of payment relating
2 to community service and, when the offender has complied fully
3 with the community service requirement, notify the sentencing
4 court.

5

EXPLANATION

6 The bill makes changes in offender restitution. Section 8
7 changes the definition of what is included in the term
8 "restitution" and sections 2, 7, and 9 make changes in the
9 priority by which any payments made by an offender are applied
10 to the various obligations imposed upon or assumed by the
11 offender. The remainder of the sections make various
12 technical changes to provide for uniform application of the
13 new restitution definition and payment priority.

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