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SENATE FILE 2309  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2223)

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

A BILL FOR

1 An Act relating to crimes and criminal justice and providing  
2 effective dates.

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

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SF 2309

1 Section 1. Section 48.30, Code 1993, is amended to read as  
2 follows:

3 48.30 NOTIFICATION OF CHANGES IN REGISTRATION.

4 The clerk of the district court shall promptly notify the  
5 county commissioner of registration of changes of name and of  
6 ~~convictions of felonies, as defined in section 701.7,~~ of legal  
7 declarations of incompetence made after a proceeding held  
8 pursuant to section 229.27, and of diagnosis of severe or  
9 profound mental retardation of persons of voting age. The  
10 clerk of the district court shall also notify the county  
11 commissioner of registration of the restoration of citizenship  
12 of a person who has been convicted of a felony and of the  
13 finding that a person is of good mental health. The notice  
14 will not restore voter registration. The county commissioner  
15 of registration shall notify the person whose citizenship has  
16 been restored or who has been declared to be in good mental  
17 health that the person's registration to vote was canceled and  
18 the person must register again to become a qualified elector.

19 Sec. 2. Section 321J.2, subsection 8, Code Supplement  
20 1993, is amended to read as follows:

21 8. The court shall order a defendant convicted of or  
22 receiving a deferred judgment for a violation of this section  
23 to make restitution, ~~in an amount not to exceed two thousand~~  
24 dollars pursuant to chapter 910, for damages resulting  
25 directly from the violation. An amount paid pursuant to this  
26 restitution order shall be credited toward any adverse  
27 judgment in a subsequent civil proceeding arising from the  
28 same occurrence. However, other than establishing a credit, a  
29 restitution proceeding pursuant to this section shall not be  
30 given evidentiary or preclusive effect in a subsequent civil  
31 proceeding arising from the same occurrence.

32 Sec. 3. Section 602.1303, subsection 9, Code 1993, is  
33 amended to read as follows:

34 9. If a county board of supervisors, with the approval of  
35 the supreme court, elects not to maintain space for the

1 district court, the county may enter into an agreement with a  
2 contiguous county in the same judicial district to share the  
3 costs under subsections 1 through 8 and 10. For the purposes  
4 of this subsection, two counties are contiguous if they share  
5 a common boundary, including a corner.

6 Sec. 4. Section 602.1303, Code 1993, is amended by adding  
7 the following new subsection:

8 NEW SUBSECTION. 10. A county shall provide and maintain a  
9 law library which may be used by judicial officers and court  
10 employees.

11 Sec. 5. Section 602.8102, subsection 151, Code Supplement  
12 1993, is amended to read as follows:

13 151. Transfer the papers relating to a case transferred to  
14 another court as provided in R.C.P. 173 or 175, Ia. Ct. Rules,  
15 3d ed.

16 Sec. 6. Section 602.8104, subsection 2, Code 1993, is  
17 amended to read as follows:

18 2. The following books or electronic records shall be kept  
19 by the clerk:

20 a. ~~A-record-book-which-contains-the-entries~~ Entries of the  
21 proceedings of the court and ~~which-has~~ an index referring to  
22 each proceeding in each cause under the names of the parties,  
23 both plaintiff and defendant, and under the name of each  
24 person named in either party.

25 b. A judgment docket which contains an abstract of the  
26 judgments having separate columns for the names of the  
27 parties, the date of the judgment, the damages recovered,  
28 costs, the date of the issuance and return of executions, the  
29 entry of satisfaction, and other memoranda. The docket shall  
30 have an index containing the information specified in  
31 paragraph "a".

32 c. A cash journal in which is listed in detail the costs  
33 and fees in each action or proceeding under the title of the  
34 action or proceeding. The cash journal shall also have an  
35 index containing the information specified in paragraph "a".

1 d. An encumbrance book or electronic record in which the  
2 sheriff shall enter a statement of the levy of each attachment  
3 on real estate.

4 e. An appearance docket in which the titles of all actions  
5 or special proceedings shall be entered. The actions or  
6 proceedings shall be numbered consecutively in the order in  
7 which they commence and shall include the full names of the  
8 parties, plaintiffs and defendants, as contained in the  
9 petition or as subsequently made parties by a pleading,  
10 proceeding, or order. The entries provided for in this  
11 paragraph and paragraphs "b" and "c" may be combined in one  
12 book or electronic record, the combination docket, which shall  
13 also have an index containing the information specified in  
14 paragraph "a".

15 f. A lien book or electronic record in which an index of  
16 all liens in the court are kept.

17 g. A record of official bonds as provided in section  
18 64.24.

19 h. A cemetery record as provided in section 566.4.

20 i. A hospital lien docket as provided in section 582.4.

21 j. A marriage license book or electronic record as  
22 provided in section 595.6.

23 k. A book or electronic record of surety company  
24 certificates and revocations as provided in section 636.13.

25 l. A book or electronic record in which the deposits of  
26 funds, money, and securities kept by the clerk are recorded as  
27 provided in section 636.37.

28 Sec. 7. Section 602.8107, subsections 1 and 2, Code  
29 Supplement 1993, are amended to read as follows:

30 1. ~~Fines, penalties, court costs, fees, interest,~~  
31 ~~restitution-for-court-appointed-attorney-fees,-and-surcharges~~  
32 Restitution as defined in section 910.1 shall be paid to the  
33 clerk of the district court. All amounts collected shall be  
34 distributed pursuant to sections 602.8106 and 602.8108 or as  
35 otherwise provided by this Code. The clerk may accept payment

1 of an obligation or a portion thereof by credit card. The  
2 clerk may charge a fee to reflect the additional cost of  
3 processing the payment by credit card.

4 2. Payments received under this section shall be applied  
5 to the balance owed under the identified case number. If a  
6 case number is not identified, payments shall be credited to  
7 any active case in the manner determined by the clerk prior to  
8 applying payments to any inactive cases. The determination of  
9 whether a case is inactive shall be based on the expiration  
10 date for supervision by a judicial district department of  
11 correctional services or for a period of incarceration.

12 Payments received under this section shall be applied in the  
13 following priority order:

14 a. ~~Fines or penalties plus any interest due on unsatisfied~~  
15 ~~judgments and criminal penalty surcharges plus interest due on~~  
16 ~~unsatisfied amounts.~~ Pecuniary damages as defined in section  
17 910.1, subsection 2.

18 b. ~~Victim restitution.~~ Fines or penalties and criminal  
19 penalty surcharges.

20 c. ~~Court costs.~~ Crime victim compensation program  
21 reimbursement.

22 d. ~~Court-appointed~~ Court costs, court-appointed attorney  
23 fees, or public defender expenses.

24 Sec. 8. Section 692.8, unnumbered paragraph 1, Code 1993,  
25 is amended to read as follows:

26 Intelligence data contained in the files of the department  
27 of public safety or a criminal justice agency may be placed  
28 within a computer data storage system, provided that access to  
29 the computer data storage system is restricted to authorized  
30 employees of the department or criminal justice agency and the  
31 ~~computer data storage system is not interconnected with any~~  
32 ~~other computer, computer system, or communication facility~~  
33 ~~outside of the department or agency and cannot be accessed by~~  
34 ~~persons outside of the department or agency.~~ The department  
35 shall adopt rules to implement this paragraph.

1     Sec. 9. NEW SECTION. 809.1A RIGHT TO USE AND OCCUPANCY  
2 OF REAL ESTATE.

3     Real estate used or needed for shelter, support, or  
4 security of dependent family members, or for legitimate trade,  
5 business, or agricultural use, shall not be physically seized  
6 until a court has ordered forfeiture of the property. In lieu  
7 of such seizure the law enforcement agency may file a lien  
8 against the property and may seek an injunction temporarily  
9 restraining persons upon notice to the persons affected. The  
10 court may grant the county attorney or attorney general a  
11 hearing to determine whether an order should be entered to  
12 restrict reentry, access, utilization, or occupancy of the  
13 premises by any individual. An order shall only be entered if  
14 the state establishes by a preponderance of the evidence that  
15 the relief requested is reasonably necessary to facilitate  
16 investigation of criminal activity, preserve evidence, prevent  
17 serious damage to the premises, or prevent continued illegal  
18 use of the premises. The court may consider evidence of prior  
19 conduct of the owner or occupant in making necessary  
20 determination.

21     Sec. 10. Section 809.5, subsection 1, Code 1993, is  
22 amended to read as follows:

23     1. Seized property which is no longer required as evidence  
24 or for use in an investigation may be returned to the owner  
25 without the requirement of a hearing, provided that the  
26 person's possession of the property is not prohibited by law  
27 and there is no forfeiture claim filed on behalf of the state.  
28 The seizing agency or prosecuting attorney shall send notice  
29 by regular mail, if the value of the property is less than  
30 fifty dollars, or certified mail, if the value of the property  
31 is equal to or greater than fifty dollars, to the last known  
32 address of any person having an ownership or possessory right  
33 in the property stating that the property is released and must  
34 be claimed within thirty days. Such notice shall state that  
35 if no written claim for the property is made upon the seizing

1 agency within thirty days after the mailing of notice, the  
2 property shall be deemed abandoned and disposed of accordingly  
3 according to the provisions of section 809.13. ~~In-the-event~~  
4 ~~that-there-is~~ If more than one party who may assert a right to  
5 possession or ownership of the property, the seizing agency  
6 shall not release the property to any party until the  
7 expiration of the date for filing claims unless all other  
8 claimants execute a written waiver. ~~In-the-event-that-there~~  
9 ~~is~~ If more than one claim is filed for the return of property  
10 under this section, at the expiration of the period for filing  
11 claims, the seizing agency or prosecuting attorney shall file  
12 a copy of all such claims with the clerk of court and the  
13 clerk shall proceed as if such claims were filed by the  
14 parties under section 809.3. ~~In-the-event-that~~ If no owner  
15 can be located or no claim is filed under this section, the  
16 property shall be deemed abandoned and the seizing agency  
17 shall become the owner of ~~such~~ the property and ~~may~~ shall  
18 dispose of it ~~in-any-reasonable-manner~~ as provided in section  
19 809.13.

20 Sec. 11. Section 809.10, Code 1993, is amended by adding  
21 the following new subsection:

22 NEW SUBSECTION. 2A. At the hearing to determine whether  
23 property should be forfeited, the court may also consider any  
24 counterclaim by the person seeking return of the property with  
25 respect to damage to the property occasioned by the negligence  
26 or wrongful acts of persons acting on behalf of the state or a  
27 political subdivision of the state. Notice of such  
28 counterclaim shall be provided to the county attorney or  
29 attorney general at least five days in advance of a hearing,  
30 and the burden shall be on the counterclaimant to prove such  
31 claim by a preponderance of the evidence. Upon the conclusion  
32 of the hearing the court may, in its discretion, award  
33 attorneys fees to a person who successfully defends against an  
34 attempted forfeiture.

35 Sec. 12. Section 809.10, subsection 3, Code 1993, is

1 amended to read as follows:

2 3. Upon a finding by the court that the property is  
3 forfeitable, the court may as a matter of equity enter an a  
4 temporary order transferring title to the property to the  
5 state. The order shall become permanent upon a conviction or  
6 entering of a guilty plea in the related criminal proceeding.

7 Sec. 13. Section 809.11, subsection 1, Code 1993, is  
8 amended to read as follows:

9 1. Forfeiture is a civil proceeding. At the hearing the  
10 burden is on the state to prove by ~~a-preponderance-of-the~~  
11 clear and convincing evidence that the property is  
12 forfeitable. ~~However, forfeiture is not dependent upon a~~  
13 ~~prosecution for, or conviction of, a criminal offense and~~  
14 ~~forfeiture proceedings are separate and distinct from any~~  
15 ~~related criminal action.~~ Forfeiture proceedings may occur  
16 prior to prosecution for or conviction of a public offense.  
17 However, property found to be forfeitable, if not contraband,  
18 shall be returned to the person having control of the property  
19 when it was seized or to the person proved to be entitled to  
20 the property, if an indictment or information is not found or  
21 filed in the related action within forty-five days of the  
22 finding that the property is forfeitable, or if the charges  
23 are dropped or the person is acquitted in the related action.

24 Sec. 14. Section 809.13, Code 1993, is amended to read as  
25 follows:

26 809.13 DISPOSITION OF FORFEITED PROPERTY.

27 1. Any person having control over forfeited property shall  
28 communicate that fact to the attorney general or the attorney  
29 general's designee.

30 2. Forfeited property not needed as evidence in a criminal  
31 case shall be delivered to the department of justice ~~or, upon~~  
32 ~~written authorization of the attorney general or the attorney~~  
33 ~~general's designee, the property may be destroyed, sold, or~~  
34 ~~delivered to an appropriate agency for disposal in accordance~~  
35 with this section.

1 3. Forfeited Except as provided in section 809.21,  
2 forfeited property seized from a person who is convicted of an  
3 offense, the title to which has permanently vested in the  
4 state, may be used by the department of justice in the  
5 enforcement of the criminal law.--The department may give,  
6 sell, or trade property to any other state agency or to any  
7 other law enforcement agency within the state if, in the  
8 opinion of the attorney general, it will enhance law  
9 enforcement within the state sold by the state at public  
10 auction. The proceeds of a public auction conducted pursuant  
11 to this section, less department expenses reasonably incurred  
12 and the amount of any preexisting lien or purchase money  
13 security interest on the property, shall be transferred to the  
14 victim compensation fund created in section 912.14.

15 4. Forfeited property which is not used sold by the  
16 department of justice in the enforcement of the law may be  
17 requisitioned by the department of public safety or any law  
18 enforcement agency within the state for use in enforcing the  
19 criminal laws of this state.--Forfeited property not  
20 requisitioned may be delivered to the director of the  
21 department of general services to be disposed of in the same  
22 manner as property received pursuant to section 18.15.

23 5. Notwithstanding subsection 1, 2, 3, or 4, forfeited  
24 property which is:

25 a. A controlled substance or a simulated, counterfeit, or  
26 imitation controlled substance shall be disposed of as  
27 provided in section 124.506.

28 b. A weapon or ammunition shall be deposited with the  
29 department of public safety to be disposed of in accordance  
30 with the rules of the department. All weapons or ammunition  
31 may be held for use in law enforcement, testing, or comparison  
32 by the criminalistics laboratory, or destroyed. Ammunition  
33 and firearms which are not illegal and are not offensive  
34 weapons as defined by section 724.1 may be sold by the  
35 department as provided in section 809.21.

1 c. Material in violation of chapter 728 shall be  
2 destroyed.

3 d. Property subject to the rules of the natural resource  
4 commission shall be delivered to that commission for disposal  
5 in accordance with its rules.

6 Sec. 15. Section 809.14, subsections 1 and 2, Code 1993,  
7 are amended to read as follows:

8 1. Property shall not be forfeited under this chapter to  
9 the extent of the interest of an owner, ~~other than a joint~~  
10 ~~tenant~~, who had no part in the commission of the crime and who  
11 had no knowledge of the criminal use or intended use of the  
12 property. However, if it is established by a preponderance of  
13 the evidence that the owner permitted the use of the property  
14 under circumstances in which the owner knew or should have  
15 known that the property was being used for a criminal purpose,  
16 there is a rebuttable presumption that the owner knew that the  
17 property was intended to be used in the commission of a crime.

18 2. Upon receipt of forfeited property the attorney general  
19 shall permit any owner or lienholder of record having a  
20 nonforfeitable property interest in the property the  
21 opportunity to purchase the property interest forfeited. At  
22 its lowest reasonable market value reduced by any costs which  
23 would be incurred if the property were offered for public  
24 sale. If the owner or lienholder does not exercise the option  
25 under this subsection within thirty days the option is  
26 terminated, unless the time for exercising the option is  
27 extended by the attorney general.

28 Sec. 16. NEW SECTION. 809.14A EXCESSIVE FINES  
29 PROHIBITED.

30 1. In an order for forfeiture the property interest  
31 ordered forfeited shall not exceed the total maximum fines  
32 imposed by statute upon conviction for the criminal offense  
33 related to the forfeiture. If the value of the property  
34 exceeds the maximum amount the remainder shall be treated as a  
35 nonforfeitable interest in accordance with the provisions of

1 this chapter.

2 2. In assessing whether a forfeitable action under this  
3 chapter constitutes an excessive fine under the eighth  
4 amendment to the Constitution of the United States, or article  
5 I, section 17, of the Constitution of the State of Iowa, the  
6 court shall inquire into the following circumstances and make  
7 specific findings of fact with respect to each:

8 a. The hardship imposed upon third parties with limited  
9 culpability or innocent parties to the forfeiture proceedings.

10 b. Whether the person seeking return of the property,  
11 other than a party to the alleged criminal activity, reported  
12 the alleged criminal activity to the appropriate law  
13 enforcement agency prior to the seizure of the property.

14 c. Whether the person seeking return of the property acted  
15 reasonably in attempting to prevent or terminate the unlawful  
16 use of the property.

17 d. Whether the person seeking return of the property had  
18 no prior knowledge of the criminal activity.

19 e. Whether the property is used or needed for the shelter,  
20 support, or security of dependent family members.

21 f. The effect of the proposed forfeiture on the resources  
22 available to the defendant and upon the defendant's ability to  
23 secure legal counsel and defend the action.

24 g. Reasonable relationship between the value of the  
25 property seized and the seriousness of the offense.

26 h. The extent of any other fines, drug taxes, or other  
27 financial penalties being imposed.

28 i. Whether the property is subject to other forfeiture  
29 actions.

30 Sec. 17. Section 904.311, Code 1993, is amended by adding  
31 the following new unnumbered paragraphs:

32 NEW UNNUMBERED PARAGRAPH. There is established in the  
33 office of the director an inmate tort claim fund. This fund  
34 shall be used to reimburse inmates for the damage or loss of  
35 personal property caused by the department. Reimbursement for

1 a single loss may be up to one hundred dollars. Section 8.33  
2 notwithstanding, moneys in the fund shall not revert but shall  
3 remain in the fund. The fund shall be replenished from the  
4 general appropriation to the institutions as necessary to meet  
5 the obligations of the fund.

6 NEW UNNUMBERED PARAGRAPH. Tort claims denied at the  
7 institution shall be forwarded to the state appeal board for  
8 its consideration as if originally filed with that body. This  
9 procedure shall be used in lieu of the procedure in chapter  
10 669 for inmate tort claims of less than one hundred dollars.

11 Sec. 18. Section 904.602, subsection 1, unnumbered  
12 paragraph 1, Code 1993, is amended to read as follows:

13 The following information regarding individuals receiving  
14 or who have received services from the department or from the  
15 judicial district departments of correctional services under  
16 chapter 905 is public information and may be given to anyone,  
17 ~~except that the information shall be limited to the offense~~  
18 ~~for which an individual was last convicted:~~

19 Sec. 19. Section 904.602, subsection 2, unnumbered  
20 paragraph 1 and paragraph a, Code 1993, are amended to read as  
21 follows:

22 The following information regarding individuals receiving  
23 or who have received services from the department or from the  
24 judicial district departments of correctional services under  
25 chapter 905 is confidential and shall not be disseminated by  
26 the department to the public:

27 a. Home street address of the individual receiving or who  
28 has received services or that individual's family.

29 Sec. 20. Section 904.603, Code 1993, is amended to read as  
30 follows:

31 904.603 ACTION FOR DAMAGES.

32 A person receiving or who has received services, or that  
33 person's family, victim or employer may institute a civil  
34 action for damages under chapter 669 or other action to  
35 restrain the release of confidential records set out in

1 section 904.602, subsection 2, which is in violation of that  
2 section, and a person, agency or governmental body proven to  
3 have released confidential records in violation of section  
4 904.602, subsection 2 is liable for actual damages for each  
5 violation and is liable for court costs and reasonable  
6 attorney's fees incurred by the party bringing the action.

7 Sec. 21. Section 906.16, Code 1993, is amended by striking  
8 the section and inserting in lieu thereof the following:

9 906.16 PAROLE OR WORK RELEASE TIME APPLIED.

10 1. Except as otherwise provided in this section, the time  
11 when a prisoner is on parole or work release from the  
12 institution shall apply to the sentence against the parolee or  
13 work releasee.

14 2. If a parole revocation hearing is held, the  
15 administrative parole judge or the board of parole shall  
16 determine the amount of time on parole that shall apply to the  
17 sentence against the parolee. In making the determination,  
18 the administrative parole judge or the board of parole shall  
19 apply any time that has elapsed prior to the violation during  
20 which the parolee was in compliance with the terms of the  
21 person's parole.

22 3. If a work release is revoked, the board of parole shall  
23 determine the amount of time on work release that shall apply  
24 to the sentence against the work releasee. In making the  
25 determination, the board shall apply any time that has elapsed  
26 prior to the violation during which the work releasee was in  
27 compliance with the terms of the person's work release.

28 4. The time when a prisoner is absent from the institution  
29 by reason of an escape shall not apply upon the sentence  
30 against the prisoner.

31 Sec. 22. Section 909.3, Code Supplement 1993, is amended  
32 to read as follows:

33 909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

34 1. All fines imposed by the court shall be paid as  
35 follows:

1 1. If the fine is ordered to be paid immediately, on the  
2 day the fine is imposed.

3 ~~2. The court may, in its discretion, order a fine to be~~  
4 paid If the fine is not ordered to be paid immediately, in  
5 installments, or ~~may fix~~ by a date in the future which is not  
6 more than one hundred twenty days from the date the fine is  
7 imposed for the payment of the fine, whenever it appears that  
8 the defendant cannot make immediate payment, or should not be  
9 made to do so.

10 For good cause, the court may order that the date for  
11 payment of the fine be extended beyond one hundred twenty days  
12 from the date the fine was imposed.

13 3. If the fine is not ordered to be paid immediately, in  
14 the manner provided in chapter 909A.

15 Sec. 23. Section 909.6, Code Supplement 1993, is amended  
16 to read as follows:

17 909.6 FINE AS JUDGMENT ---INTEREST-ASSESSED.

18 Whenever a court has imposed a fine on any defendant, the  
19 judgment in such case shall state the amount of the fine, and  
20 shall have the force and effect of a judgment against the  
21 defendant for the amount of the fine. The law relating to  
22 judgment liens, executions, and other process available to  
23 creditors for the collection of debts shall be applicable to  
24 such judgments; provided, that no law exempting the personal  
25 property of the defendant from any lien or legal process shall  
26 be applicable to such judgments.

27 ~~If a court imposes a fine on an offender, the court shall~~  
28 ~~impose interest charges on any amount remaining unsatisfied~~  
29 ~~from the day after sentencing at the rate provided in section~~  
30 ~~535-3.~~

31 At the time of imposing the sentence, the court shall  
32 inform the offender of the amount of the fine and that the  
33 judgment includes the imposition of a criminal surcharge,  
34 court costs, and applicable fees. The court shall also inform  
35 the offender of the duty to pay the judgment in a timely

1 manner ~~and-that-interest-will-be-charged-on-unsatisfied~~  
2 judgments.

3 Sec. 24. NEW SECTION. 909A.1 PAYMENT IN INSTALLMENTS OR  
4 ON A FIXED FUTURE DATE -- INSTALLMENT FEE AND INTEREST --  
5 STRUCTURED CIVIL PENALTY.

6 1. If the district court orders a structured fine under  
7 section 909.3, or a structured civil penalty, the structured  
8 fine, any related criminal penalty surcharge imposed under  
9 chapter 911, any related civil penalty surcharge, the indigent  
10 defense costs assessed under chapter 910, and any related  
11 court costs imposed under chapter 602 are to be paid in  
12 installments or at a fixed date in the future and the court  
13 shall do all of the following:

14 a. Impose a time payment fee in the amount of ten dollars.

15 b. Impose interest charges on any unsatisfied civil  
16 judgment from the date of imposition of the structured civil  
17 penalty at the rate provided in section 535.3 for court  
18 judgments.

19 2. Notwithstanding any other provision of law, when a  
20 deferred judgment or deferred sentence is entered by the court  
21 pursuant to chapter 907, the court may impose a structured  
22 civil penalty that is calculated in the same manner as a  
23 structured fine. The structured civil penalty shall be  
24 subject to a structured civil penalty surcharge under section  
25 911.2. The structured civil penalty and the structured civil  
26 penalty surcharge shall be disbursed in the manner provided in  
27 section 909A.3.

28 Sec. 25. NEW SECTION. 909A.2 NO MINIMUM FINE.

29 Notwithstanding chapters 902 and 903, or any other  
30 provision of law, a structured fine imposed under this chapter  
31 shall not be subject to any minimum amount.

32 Sec. 26. NEW SECTION. 909A.3 DISTRIBUTION OF CERTAIN  
33 FEES.

34 1. Upon payment of the time payment fee, the clerk of the  
35 district court shall remit all fees collected by the fifteenth

1 day of the month following payment to the county treasurer for  
2 credit to the general fund of the county to be used to support  
3 the costs of operating the structured fines program in the  
4 county. Upon payment of interest charges on civil penalties,  
5 the clerk of the district court shall remit the interest  
6 charges collected by the fifteenth day of the month following  
7 payment to the treasurer of state to be credited to the  
8 general fund of the state.

9 2. Notwithstanding any other provisions of law, the clerk  
10 of the district court receiving payments from structured fines  
11 or structured civil penalties, shall remit by the fifteenth  
12 day of the month following payment fifteen percent of all  
13 structured fines, criminal penalty surcharges collected on  
14 structured fines, structured civil penalties, structured civil  
15 penalty surcharges, indigent defense fees, and court costs  
16 collected in cases where a structured fine or structured civil  
17 penalty was imposed, to the county treasurer for credit to the  
18 general fund of the county to be used to support the costs of  
19 operation of the structured fines program and the remaining  
20 eighty-five percent to the treasurer of state for deposit in  
21 the general fund of the state.

22 Sec. 27. OFFENDER ACCOUNTABILITY PILOT PROJECT. The  
23 department of corrections shall by July 1, 1995, in  
24 cooperation with the judicial district departments of  
25 correctional services and the chief judges of the judicial  
26 districts, establish a two-year offender accountability pilot  
27 project in a judicial district in the state. The pilot  
28 project shall include, but is not limited to, implementation  
29 of a corrections process that gives increased discretionary  
30 disciplinary authority to the judicial district departments of  
31 correctional services within parameters established in  
32 sentencing orders by the court. The discretionary  
33 disciplinary authority may include the following:

34 1. The establishment and utilization of an incremental  
35 sanctioning structure within the judicial district departments

1 of correctional services that permits, based upon offender  
2 behavior, the imposition by the judicial district departments  
3 of correctional services of increased or decreased  
4 restrictions on offenders who are under district supervision  
5 without a court hearing.

6 2. An administrative review process for changes made in  
7 offender status by the district department of corrections.

8 Sec. 28. Section 808B.9, Code 1993, is repealed.

9 Sec. 29. SENTENCING STUDY. The legislative council is  
10 requested to establish an interim study committee to review  
11 current criminal penalties and sentencing practices, including  
12 but not limited to the effects of mandatory minimum penalties  
13 on sentencing practices and the effects of sentencing  
14 practices on inmate populations at state and adult and  
15 residential community-based correctional facilities. The  
16 committee shall also conduct a comparative assessment of the  
17 relative penalties imposed for various crimes based not only  
18 on the threat posed by the prohibited criminal conduct, but  
19 also by the risk generally associated with particular criminal  
20 offenders.

21 Sec. 30. EFFECTIVE DATE. Sections 8 and 28 of this Act  
22 take effect June 30, 1994.

23 Sec. 31. EFFECTIVE DATE. Section 5 of this Act takes  
24 effect upon the effective date of the corresponding revision  
25 to R.C.P. 175, Ia. Ct. Rules, 3d ed.

26 EXPLANATION

27 This bill provides as follows:

28 1. Section 48.30 is amended to remove the requirement that  
29 the clerk of the district court notify the county commissioner  
30 of voter registration of a person's felony conviction. The  
31 county commissioner is already provided this notice under  
32 section 48.31 by the state registrar.

33 2. Section 321J.2 is amended to eliminate the \$2,000 limit  
34 on restitution which a defendant may be ordered to pay as a  
35 result of a violation of section 321J.2, prohibiting operating

1 a motor vehicle while intoxicated, and provides that the  
2 amount of any restitution is to be determined pursuant to the  
3 victim restitution chapter (chapter 910).

4 3. Section 602.1303 is amended to add the requirement that  
5 counties continue to provide and maintain a law library.

6 4. Section 602.8102, subsection 151, regarding the duties  
7 of the clerk of the district court is amended to add that the  
8 clerk must transfer papers in a case brought in the wrong  
9 county which is transferred to another court in accordance  
10 with Iowa rule of civil procedure 175.

11 5. Section 602.8104 is amended to allow clerks of the  
12 district court to specifically keep encumbrance, lien,  
13 marriage license, surety company certificates and revocations,  
14 and deposit records in electronic form.

15 6. Sections 602.8107 and 909.6 are amended in sections 7  
16 and 23 to eliminate the requirement that interest accrue on  
17 unsatisfied fines and criminal penalty surcharges. Section  
18 602.8107 is also amended to make changes in the priority by  
19 which any payments made by an offender are applied to various  
20 obligations imposed upon or assumed by the offender.

21 7. Section 692.8 is amended, effective July 30, 1994, to  
22 remove the prohibition on the dissemination of criminal  
23 intelligence data between criminal justice agencies by  
24 computer. The changes also require the department of public  
25 safety to adopt rules regarding the sharing of criminal  
26 intelligence data by computer.

27 8. Sections 9 through 16 make changes in the criminal  
28 forfeiture chapter to provide the following:

29 a. That there exists a statutory right to the use and  
30 occupancy of certain real estate which shall not physically be  
31 seized until the forfeiture order is entered by the court. A  
32 law enforcement agency may file a lien against the property or  
33 seek a temporary restraining order against persons using the  
34 property.

35 b. That a person whose property is subject to forfeiture

1 may counterclaim against the state for damage caused the  
2 property by persons acting on behalf of the state or a  
3 political subdivision of the state.

4 c. That court orders transferring property found to be  
5 forfeitable are temporary in nature, only becoming permanent  
6 if a conviction or guilty plea results in the criminal action  
7 related to the seizure of the property.

8 d. That the state must prove that the property is  
9 forfeitable by clear and convincing evidence which is a higher  
10 standard of proof than the current standard.

11 e. That property found to be forfeitable, and not  
12 contraband, must be returned to the person last in control of  
13 or entitled to the property 45 days following the finding that  
14 the property is forfeitable unless an indictment or  
15 information is found or filed in the criminal action related  
16 to the seizure of the property, or must be returned when  
17 charges are dropped or the person is acquitted.

18 f. That property found to be forfeitable, the title to  
19 which has permanently been transferred to the state, shall be  
20 disposed of at public auction, if not contraband, or destroyed  
21 or delivered to the department of general services. Legal  
22 ammunition and firearms are required to be sold by the  
23 department of public safety. Funds raised through the sale of  
24 forfeited property shall be transferred to the victim  
25 compensation fund.

26 g. That a property owner who had no part in the underlying  
27 offense shall not have the person's interest in property  
28 forfeited. The bill also provides that a person holding a  
29 nonforfeitable interest in property shall be given the  
30 opportunity to acquire the property at its lowest reasonable  
31 market value.

32 h. That the value of property forfeited not exceed the  
33 total maximum fines which may be imposed for a conviction of  
34 the underlying offense. Property valued in excess of this  
35 amount is to be treated as nonforfeitable. The bill also

1 provides criteria for the court to use in determining whether  
2 the forfeiture is excessive.

3 9. Section 904.311 is amended to establish an inmate tort  
4 claim fund within the department of corrections for purposes  
5 of paying inmates for small personal property losses of less  
6 than \$100. Moneys in the fund come from transfers from the  
7 general appropriations to the institutions to meet fund  
8 obligations. Moneys left in the fund at the end of a fiscal  
9 year do not revert to the state treasury.

10 10. Sections 904.602 and 904.603 are amended to permit the  
11 release of information by the department of corrections or by  
12 the judicial district departments of correctional services  
13 relating to offenders for whom services have been previously  
14 provided, in addition to information regarding those who are  
15 currently receiving services, and extends the right of action  
16 for release of confidential information to those who have  
17 previously received services.

18 11. Section 21 rewrites section 906.16, which relates to  
19 application of time spent on work release or parole against an  
20 inmate's sentence to provide for an adjustment, by either the  
21 board of parole or by an administrative parole judge, in the  
22 amount of time to be applied to a parolee's sentence at any  
23 time that a parole revocation hearing is held. Previously the  
24 section only permitted an adjustment in the amount of time to  
25 be applied against a parolee's sentence by the board of parole  
26 if the person's parole was revoked. The provision still only  
27 permits an adjustment in the amount of time that is applied  
28 against a work releasee's sentence to be made by the board of  
29 parole in the event that the person's work release is revoked.

30 12. Section 909.3 is amended and a new chapter 909A is  
31 created to permit courts to order structured fines and  
32 structured civil penalties as the court deems appropriate.

33 13. The department of corrections, in cooperation with the  
34 judicial district departments of correctional services and the  
35 chief judges of the judicial districts is to establish,

1 effective July 1, 1995, a two-year offender accountability  
2 pilot project in a judicial district which provides increased  
3 discretionary authority for the district to deal with offender  
4 behavior without a court hearing, once the offender is placed  
5 under supervision.

6 14. Section 808B.9 is repealed, effective June 30, 1994,  
7 which provides for the repeal of chapter 808B, the  
8 interception of communications chapter, on July 1, 1994.

9 15. The legislative council is requested to establish an  
10 interim study committee to review current criminal penalties  
11 and sentencing practices.

12 Provisions of this bill may constitute a state mandate  
13 under chapter 25B.

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## SENATE FILE 2309

S-5107

1 Amend Senate File 2309 as follows:

2 1. Page 10, by inserting after line 29 the  
3 following:

4 "Sec. \_\_\_\_ . Section 902.7, Code 1993, is amended to  
5 read as follows:

6 902.7 MINIMUM SENTENCE -- USE OF A FIREARM.

7 At the trial of a person charged with participating  
8 in a forcible felony, if the trier of fact finds  
9 beyond a reasonable doubt that the person is guilty of  
10 a forcible felony and that the person represented that  
11 the person was in the immediate possession and control  
12 of a firearm, displayed a firearm in a threatening  
13 manner, or was armed with a firearm while  
14 participating in the forcible felony the convicted  
15 person shall serve a minimum of five years of the  
16 sentence imposed by law. A person sentenced pursuant  
17 to this section shall not be eligible for parole until  
18 the person has served the minimum sentence of  
19 confinement imposed by this section. This section  
20 shall not apply if the person is an habitual violent  
21 offender under section 902.8A.

22 Sec. \_\_\_\_ . Section 902.8, Code 1993, is amended to  
23 read as follows:

24 902.8 MINIMUM SENTENCE -- HABITUAL OFFENDER.

25 An habitual offender is any person convicted of a  
26 class "C" or a class "D" felony, who has twice before  
27 been convicted of any felony in a court of this or any  
28 other state, or of the United States. An offense is a  
29 felony if, by the law under which the person is  
30 convicted, it is so classified at the time of the  
31 person's conviction. A person sentenced as an  
32 habitual offender shall not be eligible for parole  
33 until the person has served the minimum sentence of  
34 confinement of three years. This section shall not  
35 apply if the felony convictions meet the criteria  
36 specified in section 902.8A.

37 Sec. \_\_\_\_ . NEW SECTION. 902.8A LIFE IMPRISONMENT  
38 -- HABITUAL VIOLENT OFFENDER.

39 1. An habitual violent offender is any person  
40 convicted of a dangerous offense, who has, before the  
41 commission of the dangerous offense, twice been  
42 convicted of any dangerous offense in a court of this  
43 or any other state, or of the United States. An  
44 offense committed in another jurisdiction is a  
45 dangerous offense for purposes of this section if, by  
46 the law under which the person is convicted, the court  
47 finds that the elements of the offense, at the time of  
48 the person's conviction, are the same as or are  
49 substantially similar to the elements of any offense  
50 that constitutes a dangerous offense if committed in

S-5107

S-5107

Page 2

1 this state. A person sentenced as an habitual violent  
2 offender shall be imprisoned for the rest of the  
3 person's life and shall not be eligible for parole.  
4 Nothing in the Iowa corrections code pertaining to  
5 deferred judgment, deferred sentence, suspended  
6 sentence, or reconsideration of sentence applies to a  
7 sentence as an habitual violent offender.

8 2. For purposes of this section, a "dangerous  
9 offense" means any of the following offenses:

10 a. An offense which is a class "A" felony.

11 b. A offense which is a forcible felony as defined  
12 under section 702.11.

13 c. Any other felony offense which includes the  
14 causing of, or the intent to cause, death or serious  
15 injury as an element of the offense.

16 Sec. \_\_\_\_ . Section 902.9, Code Supplement 1993, is  
17 amended to read as follows:

18 902.9 MAXIMUM SENTENCE FOR FELONS.

19 The maximum sentence for any person convicted of a  
20 felony shall be that prescribed by statute or, if not  
21 prescribed by statute, if other than a class "A"  
22 felony shall be determined as follows:

23 1. An habitual violent offender shall be confined  
24 for the rest of the person's life.

25 2. A class "B" felon, not an habitual violent  
26 offender, shall be confined for no more than twenty-  
27 five years.

28 3. An habitual offender shall be confined for no  
29 more than fifteen years.

30 4. A class "C" felon, not an habitual offender  
31 or an habitual violent offender, shall be confined for  
32 no more than ten years, and in addition may be  
33 sentenced to a fine of at least five hundred dollars  
34 but not more than ten thousand dollars.

35 5. A class "D" felon, not an habitual offender  
36 or an habitual violent offender, shall be confined for  
37 no more than five years, and in addition may be  
38 sentenced to a fine of at least five hundred dollars  
39 but not more than seven thousand five hundred dollars.

40 A class "D" felon, such felony being for a violation  
41 of section 321J.2, may be sentenced to imprisonment  
42 for up to one year in the county jail.

43 The criminal penalty surcharge required by section  
44 911.2 shall be added to a fine imposed on a class "C"  
45 or class "D" felon, as provided by that section, and  
46 is not a part of or subject to the maximums set in  
47 this section."

48 2. By numbering, renumbering, and changing  
49 internal references as necessary.

By ANDY MCKEAN

DONALD B. REDFERN

SENATE FILE 2309

S-5189

1 Amend Senate File 2309 as follows:

2 1. By striking page 3, line 28 through page 4,  
3 line 23.

4 2. By renumbering and changing internal  
5 references as necessary.

By RALPH ROSENBERG

S-5189 FILED MARCH 14, 1994

Rosenman - chair  
Sturgeon  
McKean

SSB - 2223  
Judiciary

SENATE FILE 2309  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BY CHAIRPERSON  
STURGEON)

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

**A BILL FOR**

1 An Act relating to crimes and criminal justice and providing  
2 effective dates.

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

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1 Section 1. Section 48.30, Code 1993, is amended to read as  
2 follows:

3 48.30 NOTIFICATION OF CHANGES IN REGISTRATION.

4 The clerk of the district court shall promptly notify the  
5 county commissioner of registration of changes of name and of  
6 ~~convictions of felonies, as defined in section 701.7,~~ of legal  
7 declarations of incompetence made after a proceeding held  
8 pursuant to section 229.27, and of diagnosis of severe or  
9 profound mental retardation of persons of voting age. The  
10 clerk of the district court shall also notify the county  
11 commissioner of registration of the restoration of citizenship  
12 of a person who has been convicted of a felony and of the  
13 finding that a person is of good mental health. The notice  
14 will not restore voter registration. The county commissioner  
15 of registration shall notify the person whose citizenship has  
16 been restored or who has been declared to be in good mental  
17 health that the person's registration to vote was canceled and  
18 the person must register again to become a qualified elector.

19 Sec. 2. Section 124.406, subsection 1, paragraph a, and  
20 subsection 2, paragraph a, Code 1993, are amended to read as  
21 follows:

22 a. Unlawfully distributes a substance listed in schedule I  
23 or II, which is a narcotic or cocaine, to a person under  
24 eighteen years of age commits a class "B" felony and shall  
25 ~~serve a minimum term of confinement of five years. However,~~  
26 ~~if the substance was distributed in or on, or within one~~  
27 ~~thousand feet of, the real property comprising a public or~~  
28 ~~private elementary or secondary school, or in or on the real~~  
29 ~~property comprising a public park, the person shall serve a~~  
30 ~~minimum term of confinement of ten years.~~

31 a. Unlawfully distributes a counterfeit substance listed  
32 in schedule I or II which is a narcotic or cocaine, or a  
33 simulated controlled substance represented to be a narcotic or  
34 cocaine classified in schedule I or II, to a person under  
35 eighteen years of age commits a class "B" felony. However, if

1 ~~the substance was distributed in or on, or within one thousand~~  
2 ~~feet of, the real property comprising a public or private~~  
3 ~~elementary or secondary school, or in or on the real property~~  
4 ~~comprising a public park, the person shall serve a minimum~~  
5 ~~term of confinement of ten years.~~

6 Sec. 3. Section 321J.2, subsection 8, Code Supplement  
7 1993, is amended to read as follows:

8 8. The court shall order a defendant convicted of or  
9 receiving a deferred judgment for a violation of this section  
10 to make restitution, in an amount not to exceed two thousand  
11 dollars pursuant to chapter 910, for damages resulting  
12 directly from the violation. An amount paid pursuant to this  
13 restitution order shall be credited toward any adverse  
14 judgment in a subsequent civil proceeding arising from the  
15 same occurrence. However, other than establishing a credit, a  
16 restitution proceeding pursuant to this section shall not be  
17 given evidentiary or preclusive effect in a subsequent civil  
18 proceeding arising from the same occurrence.

19 Sec. 4. Section 421.17, subsection 25, unnumbered  
20 paragraph 1, Code Supplement 1993, is amended to read as  
21 follows:

22 To establish and maintain a procedure to set off against a  
23 debtor's income tax refund or rebate any debt which is in the  
24 form of a liquidated sum due, owing, and payable to the clerk  
25 of the district court as a ~~criminal fine, civil penalty,~~  
26 ~~surcharges, court costs, or restitution of attorney fees~~ as  
27 defined and ordered under sections 910.1 and 910.2 incurred as  
28 a result of services provided under chapters 13B and 815, and  
29 section 232.141. The procedure shall meet the following  
30 conditions:

31 Sec. 5. Section 602.1303, subsection 9, Code 1993, is  
32 amended to read as follows:

33 9. If a county board of supervisors, with the approval of  
34 the supreme court, elects not to maintain space for the  
35 district court, the county may enter into an agreement with a

1 contiguous county in the same judicial district to share the  
2 costs under subsections 1 through 8 and 10. For the purposes  
3 of this subsection, two counties are contiguous if they share  
4 a common boundary, including a corner.

5 Sec. 6. Section 602.1303, Code 1993, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 10. A county shall provide and maintain a  
8 law library which may be used by judicial officers and court  
9 employees.

10 Sec. 7. Section 602.8102, subsection 151, Code Supplement  
11 1993, is amended to read as follows:

12 151. Transfer the papers relating to a case transferred to  
13 another court as provided in R.C.P. 173 or 175, Ia. Ct. Rules,  
14 3d ed.

15 Sec. 8. Section 602.8104, subsection 2, Code 1993, is  
16 amended to read as follows:

17 2. The following books or electronic records shall be kept  
18 by the clerk:

19 a. ~~A record book which contains the entries~~ Entries of the  
20 proceedings of the court and ~~which has~~ an index referring to  
21 each proceeding in each cause under the names of the parties,  
22 both plaintiff and defendant, and under the name of each  
23 person named in either party.

24 b. A judgment docket which contains an abstract of the  
25 judgments having separate columns for the names of the  
26 parties, the date of the judgment, the damages recovered,  
27 costs, the date of the issuance and return of executions, the  
28 entry of satisfaction, and other memoranda. The docket shall  
29 have an index containing the information specified in  
30 paragraph "a".

31 c. A cash journal in which is listed in detail the costs  
32 and fees in each action or proceeding under the title of the  
33 action or proceeding. The cash journal shall also have an  
34 index containing the information specified in paragraph "a".

35 d. An encumbrance book or electronic record in which the

1 sheriff shall enter a statement of the levy of each attachment  
2 on real estate.

3 e. An appearance docket in which the titles of all actions  
4 or special proceedings shall be entered. The actions or  
5 proceedings shall be numbered consecutively in the order in  
6 which they commence and shall include the full names of the  
7 parties, plaintiffs and defendants, as contained in the  
8 petition or as subsequently made parties by a pleading,  
9 proceeding, or order. The entries provided for in this  
10 paragraph and paragraphs "b" and "c" may be combined in one  
11 book or electronic record, the combination docket, which shall  
12 also have an index containing the information specified in  
13 paragraph "a".

14 f. A lien book or electronic record in which an index of  
15 all liens in the court are kept.

16 g. A record of official bonds as provided in section  
17 64.24.

18 h. A cemetery record as provided in section 566.4.

19 i. A hospital lien docket as provided in section 582.4.

20 j. A marriage license book or electronic record as  
21 provided in section 595.6.

22 k. A book or electronic record of surety company  
23 certificates and revocations as provided in section 636.13.

24 l. A book or electronic record in which the deposits of  
25 funds, money, and securities kept by the clerk are recorded as  
26 provided in section 636.37.

27 Sec. 9. Section 602.8107, subsections 1 and 2, Code  
28 Supplement 1993, are amended to read as follows:

29 1. ~~Fines, penalties, court costs, fees, interest,~~  
30 ~~restitution for court appointed attorney fees, and surcharges~~  
31 Restitution as defined in section 910.1 shall be paid to the  
32 clerk of the district court. All amounts collected shall be  
33 distributed pursuant to sections 602.8106 and 602.8108 or as  
34 otherwise provided by this Code. The clerk may accept payment  
35 of an obligation or a portion thereof by credit card. The

1 clerk may charge a fee to reflect the additional cost of  
2 processing the payment by credit card.

3     2. Payments received under this section shall be applied  
4 to the balance owed under the identified case number. If a  
5 case number is not identified, payments shall be credited to  
6 any active case in the manner determined by the clerk prior to  
7 applying payments to any inactive cases. The determination of  
8 whether a case is inactive shall be based on the expiration  
9 date for supervision by a judicial district department of  
10 correctional services or for a period of incarceration.

11 Payments received under this section shall be applied in the  
12 following priority order:

13     a. ~~Fines-or-penalties-plus-any-interest-due-on-unsatisfied~~  
14 ~~judgments-and-criminal-penalty-surcharges-plus-interest-due-on~~  
15 ~~unsatisfied-amounts.~~ Pecuniary damages as defined in section  
16 910.1, subsection 2.

17     b. ~~Victim-restitution.~~ Fines or penalties and criminal  
18 penalty surcharges.

19     c. ~~Court-costs.~~ Crime victim compensation program  
20 reimbursement.

21     d. ~~Court-appointed~~ Court costs, court-appointed attorney  
22 fees, or public defender expenses.

23     Sec. 10. Section 602.8107, subsection 5, unnumbered  
24 paragraph 2, Code Supplement 1993, is amended to read as  
25 follows:

26     This subsection does not apply to amounts collected for  
27 victim restitution, the new victim restitution compensation  
28 fund, criminal penalty surcharge, or amounts collected as a  
29 result of procedures initiated under section 421.17,  
30 subsection 25.

31     Sec. 11. Section 692.8, unnumbered paragraph 1, Code 1993,  
32 is amended to read as follows:

33     Intelligence data contained in the files of the department  
34 of public safety or a criminal justice agency may be placed  
35 within a computer data storage system, provided that access to

1 the computer data storage system is restricted to authorized  
2 employees of the department or criminal justice agency and the  
3 computer data storage system is not interconnected with any  
4 other computer, computer system, or communication facility  
5 outside of the department or agency and cannot be accessed by  
6 persons outside of the department or agency. The department  
7 shall adopt rules to implement this paragraph.

8 Sec. 12. Section 714.7A, Code 1993, is amended to read as  
9 follows:

10 714.7A VETERANS' GRAVE MARKERS.

11 A person commits a simple misdemeanor when the person takes  
12 possession or control of a veteran's grave marker which was  
13 provided pursuant to section 35B.16, with the intention to  
14 deprive the owner of the marker, regardless of the value of  
15 the marker. The person shall also be liable for restitution  
16 reimbursement in an amount equal to three times the cost of  
17 the marker to be paid to the county commission of veteran  
18 affairs or other person who furnished the marker.

19 Sec. 13. Section 714.16, subsection 7, unnumbered  
20 paragraph 1, Code 1993, is amended to read as follows:

21 A civil action pursuant to this section shall be by  
22 equitable proceedings. If it appears to the attorney general  
23 that a person has engaged in, is engaging in, or is about to  
24 engage in a practice declared to be unlawful by this section,  
25 the attorney general may seek and obtain in an action in a  
26 district court a temporary restraining order, preliminary  
27 injunction, or permanent injunction prohibiting the person  
28 from continuing the practice or engaging in the practice or  
29 doing an act in furtherance of the practice. The court may  
30 make orders or judgments as necessary to prevent the use or  
31 employment by a person of any prohibited practices, or which  
32 are necessary to restore to any person in interest any moneys  
33 or property, real or personal, which have been acquired by  
34 means of a practice declared to be unlawful by this section,  
35 including the appointment of a receiver in cases of

1 substantial and willful violation of this section. If a  
2 person has acquired moneys or property by any means declared  
3 to be unlawful by this section and if the cost of  
4 administering restitution reimbursement outweighs the benefit  
5 to consumers or consumers entitled to the restitution  
6 reimbursement cannot be located through reasonable efforts,  
7 the court may order disgorgement of moneys or property  
8 acquired by the person by awarding the moneys or property to  
9 the state to be used by the attorney general for the  
10 administration and implementation of this section. Except in  
11 an action for the concealment, suppression, or omission of a  
12 material fact with intent that others rely upon it, it is not  
13 necessary in an action for restitution reimbursement or an  
14 injunction, to allege or to prove reliance, damages, intent to  
15 deceive, or that the person who engaged in an unlawful act had  
16 knowledge of the falsity of the claim or ignorance of the  
17 truth. A claim for restitution reimbursement may be proved by  
18 any competent evidence, including evidence that would be  
19 appropriate in a class action.

20 Sec. 14. Section 714.16A, subsection 1, unnumbered  
21 paragraph 2, Code 1993, is amended to read as follows:

22 A civil penalty imposed pursuant to this section shall be  
23 paid to the treasurer of state, who shall deposit the money in  
24 the elderly victim fund, a separate fund created in the state  
25 treasury and administered by the attorney general for the  
26 investigation and prosecution of frauds against the elderly.  
27 Notwithstanding section 8.33, any balance in the fund on June  
28 30 of any fiscal year shall not revert to the general fund of  
29 the state. An award of restitution reimbursement pursuant to  
30 section 714.16 has priority over a civil penalty imposed by  
31 the court pursuant to this subsection.

32 Sec. 15. NEW SECTION. 809.1A RIGHT TO USE AND OCCUPANCY  
33 OF REAL ESTATE.

34 Real estate used or needed for shelter, support, or  
35 security of dependent family members, or for legitimate trade,

1 business, or agricultural use, shall not be physically seized  
2 until a court has ordered forfeiture of the property. In lieu  
3 of such seizure the law enforcement agency may file a lien  
4 against the property and may seek an injunction temporarily  
5 restraining persons upon notice to the persons affected. The  
6 court may grant the county attorney or attorney general a  
7 hearing to determine whether an order should be entered to  
8 restrict reentry, access, utilization, or occupancy of the  
9 premises by any individual. An order shall only be entered if  
10 the state establishes by a preponderance of the evidence that  
11 the relief requested is reasonably necessary to facilitate  
12 investigation of criminal activity, preserve evidence, prevent  
13 serious damage to the premises, or prevent continued illegal  
14 use of the premises. The court may consider evidence of prior  
15 conduct of the owner or occupant in making necessary  
16 determination.

17 Sec. 16. Section 809.5, subsection 1, Code 1993, is  
18 amended to read as follows:

19 1. Seized property which is no longer required as evidence  
20 or for use in an investigation may be returned to the owner  
21 without the requirement of a hearing, provided that the  
22 person's possession of the property is not prohibited by law  
23 and there is no forfeiture claim filed on behalf of the state.  
24 The seizing agency or prosecuting attorney shall send notice  
25 by regular mail, if the value of the property is less than  
26 fifty dollars, or certified mail, if the value of the property  
27 is equal to or greater than fifty dollars, to the last known  
28 address of any person having an ownership or possessory right  
29 in the property stating that the property is released and must  
30 be claimed within thirty days. Such notice shall state that  
31 if no written claim for the property is made upon the seizing  
32 agency within thirty days after the mailing of notice, the  
33 property shall be deemed abandoned and disposed of accordingly  
34 according to the provisions of section 809.13. ~~In-the-event~~  
35 ~~that-there-is~~ If more than one party who may assert a right to

1 possession or ownership of the property, the seizing agency  
2 shall not release the property to any party until the  
3 expiration of the date for filing claims unless all other  
4 claimants execute a written waiver. ~~In-the-event-that-there~~  
5 ~~is~~ If more than one claim is filed for the return of property  
6 under this section, at the expiration of the period for filing  
7 claims, the seizing agency or prosecuting attorney shall file  
8 a copy of all such claims with the clerk of court and the  
9 clerk shall proceed as if such claims were filed by the  
10 parties under section 809.3. ~~In-the-event-that~~ If no owner  
11 can be located or no claim is filed under this section, the  
12 property shall be deemed abandoned and the seizing agency  
13 shall become the owner of such the property and may shall  
14 dispose of it in-any-reasonable-manner as provided in section  
15 809.13.

16 Sec. 17. Section 809.10, Code 1993, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 2A. At the hearing to determine whether  
19 property should be forfeited, the court may also consider any  
20 counterclaim by the person seeking return of the property with  
21 respect to damage to the property occasioned by the negligence  
22 or wrongful acts of persons acting on behalf of the state or a  
23 political subdivision of the state. Notice of such  
24 counterclaim shall be provided to the county attorney or  
25 attorney general at least five days in advance of a hearing,  
26 and the burden shall be on the counterclaimant to prove such  
27 claim by a preponderance of the evidence. Upon the conclusion  
28 of the hearing the court may, in its discretion, award  
29 attorneys fees to a person who successfully defends against an  
30 attempted forfeiture.

31 Sec. 18. Section 809.10, subsection 3, Code 1993, is  
32 amended to read as follows:

33 3. Upon a finding by the court that the property is  
34 forfeitable, the court may as a matter of equity enter an a  
35 temporary order transferring title to the property to the

1 state. The order shall become permanent upon a conviction or  
2 entering of a guilty plea in the related criminal proceeding.

3 Sec. 19. Section 809.11, subsection 1, Code 1993, is  
4 amended to read as follows:

5 1. Forfeiture is a civil proceeding. At the hearing the  
6 burden is on the state to prove by ~~a-preponderance-of-the~~  
7 clear and convincing evidence that the property is  
8 forfeitable. ~~However,-forfeiture-is-not-dependent-upon-a~~  
9 ~~prosecution-for,-or-conviction-of,-a-criminal-offense-and~~  
10 ~~forfeiture-proceedings-are-separate-and-distinct-from-any~~  
11 ~~related-criminal-action.~~ Forfeiture proceedings may occur  
12 prior to prosecution for or conviction of a public offense.  
13 However, property found to be forfeitable, if not contraband,  
14 shall be returned to the person having control of the property  
15 when it was seized or to the person proved to be entitled to  
16 the property, if an indictment or information is not found or  
17 filed in the related action within forty-five days of the  
18 finding that the property is forfeitable, or if the charges  
19 are dropped or the person is acquitted in the related action.

20 Sec. 20. Section 809.13, Code 1993, is amended to read as  
21 follows:

22 809.13 DISPOSITION OF FORFEITED PROPERTY.

23 1. Any person having control over forfeited property shall  
24 communicate that fact to the attorney general or the attorney  
25 general's designee.

26 2. Forfeited property not needed as evidence in a criminal  
27 case shall be delivered to the department of justice ~~-or-~~ ~~upon~~  
28 ~~written-authorization-of-the-attorney-general-or-the-attorney~~  
29 ~~general's-designee,-the-property-may-be-destroyed,-sold,-or~~  
30 ~~delivered-to-an-appropriate-agency~~ for disposal in accordance  
31 with this section.

32 3. Forfeited Except as provided in section 809.21,  
33 forfeited property seized from a person who is convicted of an  
34 offense, the title to which has permanently vested in the  
35 state, may be used-by-the-department-of-justice-in-the

1 enforcement-of-the-criminal-law--The-department-may-give,  
2 sell,-or-trade-property-to-any-other-state-agency-or-to-any  
3 other-law-enforcement-agency-within-the-state-if,-in-the  
4 opinion-of-the-attorney-general,-it-will-enhance-law  
5 enforcement-within-the-state sold by the state at public  
6 auction. The proceeds of a public auction conducted pursuant  
7 to this section, less department expenses reasonably incurred  
8 and the amount of any preexisting lien or purchase money  
9 security interest on the property, shall be transferred to the  
10 victim compensation fund created in section 912.14.

11 4. Forfeited property which is not used sold by the  
12 department of-justice-in-the-enforcement-of-the-law-may-be  
13 requisitioned-by-the-department-of-public-safety-or-any-law  
14 enforcement-agency-within-the-state-for-use-in-enforcing-the  
15 criminal-laws-of-this-state--Forfeited-property-not  
16 requisitioned may be delivered to the director of the  
17 department of general services to be disposed of in the same  
18 manner as property received pursuant to section 18.15.

19 5. Notwithstanding subsection 1, 2, 3, or 4, forfeited  
20 property which is:

21 a. A controlled substance or a simulated, counterfeit, or  
22 imitation controlled substance shall be disposed of as  
23 provided in section 124.506.

24 b. A weapon or ammunition shall be deposited with the  
25 department of public safety to be disposed of in accordance  
26 with the rules of the department. All weapons or ammunition  
27 may be held for use in law enforcement, testing, or comparison  
28 by the criminalistics laboratory, or destroyed. Ammunition  
29 and firearms which are not illegal and are not offensive  
30 weapons as defined by section 724.1 may shall be sold by the  
31 department as provided in section 809.21.

32 c. Material in violation of chapter 728 shall be  
33 destroyed.

34 d. Property subject to the rules of the natural resource  
35 commission shall be delivered to that commission for disposal

1 in accordance with its rules.

2 Sec. 21. Section 809.14, subsections 1 and 2, Code 1993,  
3 are amended to read as follows:

4 1. Property shall not be forfeited under this chapter to  
5 the extent of the interest of an owner, ~~other than a joint~~  
6 ~~tenant~~, who had no part in the commission of the crime and who  
7 had no knowledge of the criminal use or intended use of the  
8 property. However, if it is established by a preponderance of  
9 the evidence that the owner permitted the use of the property  
10 under circumstances in which the owner knew or should have  
11 known that the property was being used for a criminal purpose,  
12 there is a rebuttable presumption that the owner knew that the  
13 property was intended to be used in the commission of a crime.

14 2. Upon receipt of forfeited property the attorney general  
15 shall permit any owner or lienholder of record having a  
16 nonforfeitable property interest in the property the  
17 opportunity to purchase the property interest forfeited. At  
18 its lowest reasonable market value reduced by any costs which  
19 would be incurred if the property were offered for public  
20 sale. If the owner or lienholder does not exercise the option  
21 under this subsection within thirty days the option is  
22 terminated, unless the time for exercising the option is  
23 extended by the attorney general.

24 Sec. 22. NEW SECTION. 809.14A EXCESSIVE FINES  
25 PROHIBITED.

26 1. In an order for forfeiture the property interest  
27 ordered forfeited shall not exceed the total maximum fines  
28 imposed by statute upon conviction for the criminal offense  
29 related to the forfeiture. If the value of the property  
30 exceeds the maximum amount the remainder shall be treated as a  
31 nonforfeitable interest in accordance with the provisions of  
32 this chapter.

33 2. In assessing whether a forfeitable action under this  
34 chapter constitutes an excessive fine under the eighth  
35 amendment to the Constitution of the United States, or article

1 I, section 17, of the Constitution of the State of Iowa, the  
2 court shall inquire into the following circumstances and make  
3 specific findings of fact with respect to each:

4 a. The hardship imposed upon third parties with limited  
5 culpability or innocent parties to the forfeiture proceedings.

6 b. Whether the person seeking return of the property,  
7 other than a party to the alleged criminal activity, reported  
8 the alleged criminal activity to the appropriate law  
9 enforcement agency prior to the seizure of the property.

10 c. Whether the person seeking return of the property acted  
11 reasonably in attempting to prevent or terminate the unlawful  
12 use of the property.

13 d. Whether the person seeking return of the property had  
14 no prior knowledge of the criminal activity.

15 e. Whether the property is used or needed for the shelter,  
16 support, or security of dependent family members.

17 f. The effect of the proposed forfeiture on the resources  
18 available to the defendant and upon the defendant's ability to  
19 secure legal counsel and defend the action.

20 g. Reasonable relationship between the value of the  
21 property seized and the seriousness of the offense.

22 h. The extend of any other fines, drug taxes, or other  
23 financial penalties being imposed.

24 i. Whether the property is subject to other forfeiture  
25 actions.

26 Sec. 23. Section 809.21, Code 1993, is amended to read as  
27 follows:

28 809.21 SALE OF CERTAIN AMMUNITION AND FIREARMS.

29 Ammunition and firearms which are not illegal and which are  
30 not offensive weapons as defined by section 724.1 may shall be  
31 sold by the department of public safety at public auction.  
32 The department of public safety may sell at public auction  
33 forfeited legal weapons received from the director of the  
34 department of natural resources, except that rifles and  
35 shotguns shall be retained by the department of natural

1 resources for disposal according to its rules. The sale of  
2 ammunition or firearms pursuant to this section shall be made  
3 only to federally licensed firearms dealers or to persons who  
4 have a permit to purchase the firearms. Persons who have not  
5 obtained a permit may bid on firearms at the public auction.  
6 However, persons who bid without a permit must post a fifty  
7 percent of purchase price deposit with the commissioner of  
8 public safety on any winning bid. No transfer of firearms may  
9 be made to a person bidding without a permit until such time  
10 as the person has obtained a permit. If the person is unable  
11 to produce a permit within two weeks from the date of the  
12 auction, the person shall forfeit the fifty percent deposit to  
13 the department of public safety. All proceeds of a public  
14 auction pursuant to this section, less department expenses  
15 reasonably incurred, shall be deposited in the general fund of  
16 the state. The department of public safety shall be  
17 reimbursed from the proceeds for the reasonable expenses  
18 incurred in selling the property at the auction.

19 Sec. 24. Section 903A.5, unnumbered paragraph 1, Code  
20 1993, is amended to read as follows:

21 An inmate shall not be discharged from the custody of the  
22 director of the Iowa department of corrections until the  
23 inmate has served the full term for which the inmate was  
24 sentenced, less good conduct time earned and not forfeited,  
25 unless the inmate is pardoned or otherwise legally released.  
26 ~~Good-conduct-time-earned-and-not-forfeited-shall-apply-to~~  
27 ~~reduce-a-mandatory-minimum-sentence-being-served-pursuant-to~~  
28 ~~section-124.4067-124.4137-902.77-902.87-or-902.11.~~ An inmate  
29 shall be deemed to be serving the sentence from the day on  
30 which the inmate is received into the institution. However,  
31 if an inmate was confined to a county jail or other  
32 correctional or mental facility at any time prior to  
33 sentencing, or after sentencing but prior to the case having  
34 been decided on appeal, because of failure to furnish bail or  
35 because of being charged with a nonbailable offense, the

1 inmate shall be given credit for the days already served upon  
2 the term of the sentence. The clerk of the district court of  
3 the county from which the inmate was sentenced, shall certify  
4 to the warden the number of days so served.

5 Sec. 25. Section 904.311, Code 1993, is amended by adding  
6 the following new unnumbered paragraphs:

7 NEW UNNUMBERED PARAGRAPH. There is established in the  
8 office of the director an inmate tort claim fund. This fund  
9 shall be used to reimburse inmates for the damage or loss of  
10 personal property caused by the department. Reimbursement for  
11 a single loss may be up to one hundred dollars. Section 8.33  
12 notwithstanding, moneys in the fund shall not revert but shall  
13 remain in the fund. The fund shall be replenished from the  
14 general appropriation to the institutions as necessary to meet  
15 the obligations of the fund.

16 NEW UNNUMBERED PARAGRAPH. Tort claims denied at the  
17 institution shall be forwarded to the state appeal board for  
18 its consideration as if originally filed with that body. This  
19 procedure shall be used in lieu of the procedure in chapter  
20 669 for inmate tort claims of less than one hundred dollars.

21 Sec. 26. Section 904.602, subsection 1, unnumbered  
22 paragraph 1, Code 1993, is amended to read as follows:

23 The following information regarding individuals receiving  
24 or who have received services from the department or from the  
25 judicial district departments of correctional services under  
26 chapter 905 is public information and may be given to anyone  
27 ~~except that the information shall be limited to the offense~~  
28 ~~for which an individual was last convicted:~~

29 Sec. 27. Section 904.602, subsection 2, unnumbered  
30 paragraph 1 and paragraph a, Code 1993, are amended to read as  
31 follows:

32 The following information regarding individuals receiving  
33 or who have received services from the department or from the  
34 judicial district departments of correctional services under  
35 chapter 905 is confidential and shall not be disseminated by

1 the department to the public:

2 a. Home street address of the individual receiving or who  
3 has received services or that individual's family.

4 Sec. 28. Section 904.603, Code 1993, is amended to read as  
5 follows:

6 904.603 ACTION FOR DAMAGES.

7 A person receiving or who has received services, or that  
8 person's family, victim or employer may institute a civil  
9 action for damages under chapter 669 or other action to  
10 restrain the release of confidential records set out in  
11 section 904.602, subsection 2, which is in violation of that  
12 section, and a person, agency or governmental body proven to  
13 have released confidential records in violation of section  
14 904.602, subsection 2 is liable for actual damages for each  
15 violation and is liable for court costs and reasonable  
16 attorney's fees incurred by the party bringing the action.

17 Sec. 29. Section 904.905, subsections 1 through 4, Code  
18 1993, are amended to read as follows:

19 1. ~~An amount determined-to-be-the-cost-to-the-judicial~~  
20 ~~district-department-of-correctional-services-for-providing~~  
21 ~~food,-lodging-and-clothing-for~~ the inmate while under the  
22 program may be legally obligated to pay for the support of the  
23 inmate's dependents, the amount of which shall be paid to the  
24 dependents through the department of human services located in  
25 the county or city in which the dependents reside.

26 2. ~~The-actual-and-necessary-food,-travel-and-other~~  
27 ~~expenses-of-the-inmate-when-released-from-actual-confinement~~  
28 ~~under-the-program.~~ An amount determined to be the cost to the  
29 judicial district department of correctional services for  
30 providing food, lodging, and clothing for the inmate while  
31 under the program.

32 3. ~~An-amount-the-inmate-may-be-legally-obligated-to-pay~~  
33 ~~for-the-support-of-the-inmate's-dependents,-the-amount-of~~  
34 ~~which-shall-be-paid-to-the-dependents-through-the-local~~  
35 ~~department-of-human-services-in-the-county-or-city-in-which~~

1 ~~the-dependents-reside-~~ Restitution as ordered by the court  
2 pursuant to chapter 910.

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

6 Sec. 30. Section 906.16, Code 1993, is amended by striking  
7 the section and inserting in lieu thereof the following:

8 906.16 PAROLE OR WORK RELEASE TIME APPLIED.

9 1. Except as otherwise provided in this section, the time  
10 when a prisoner is on parole or work release from the  
11 institution shall apply to the sentence against the parolee or  
12 work releasee.

13 2. If a parole revocation hearing is held, the  
14 administrative parole judge or the board of parole shall  
15 determine the amount of time on parole that shall apply to the  
16 sentence against the parolee. In making the determination,  
17 the administrative parole judge or the board of parole shall  
18 apply any time that has elapsed prior to the violation during  
19 which the parolee was in compliance with the terms of the  
20 person's parole.

21 3. If a work release is revoked, the board of parole shall  
22 determine the amount of time on work release that shall apply  
23 to the sentence against the work releasee. In making the  
24 determination, the board shall apply any time that has elapsed  
25 prior to the violation during which the work releasee was in  
26 compliance with the terms of the person's work release.

27 4. The time when a prisoner is absent from the institution  
28 by reason of an escape shall not apply upon the sentence  
29 against the prisoner.

30 Sec. 31. Section 909.3, Code Supplement 1993, is amended  
31 to read as follows:

32 909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

33 ~~1-~~ All fines imposed by the court shall be paid as  
34 follows:

35 1. If the fine is ordered to be paid immediately, on the

1 day the fine is imposed.

2     ~~2. The court may, in its discretion, order a fine to be~~  
3 paid If the fine is not ordered to be paid immediately, in  
4 installments, or ~~may fix~~ by a date in the future which is not  
5 more than one hundred twenty days from the date the fine is  
6 imposed for the payment of the fine, whenever it appears that  
7 the defendant cannot make immediate payment, or should not be  
8 made to do so.

9     For good cause, the court may order that the date for  
10 payment of the fine be extended beyond one hundred twenty days  
11 from the date the fine was imposed.

12     ~~3. If the fine is not ordered to be paid immediately, in~~  
13 the manner provided in chapter 909A.

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

16     909.6 FINE AS JUDGMENT ---~~INTEREST-ASSESSED.~~

17     Whenever a court has imposed a fine on any defendant, the  
18 judgment in such case shall state the amount of the fine, and  
19 shall have the force and effect of a judgment against the  
20 defendant for the amount of the fine. The law relating to  
21 judgment liens, executions, and other process available to  
22 creditors for the collection of debts shall be applicable to  
23 such judgments; provided, that no law exempting the personal  
24 property of the defendant from any lien or legal process shall  
25 be applicable to such judgments.

26     ~~If a court imposes a fine on an offender, the court shall~~  
27 ~~impose interest charges on any amount remaining unsatisfied~~  
28 ~~from the day after sentencing at the rate provided in section~~  
29 ~~535.3.~~

30     At the time of imposing the sentence, the court shall  
31 inform the offender of the amount of the fine and that the  
32 judgment includes the imposition of a criminal surcharge,  
33 court costs, and applicable fees. The court shall also inform  
34 the offender of the duty to pay the judgment in a timely  
35 manner ~~and that interest will be charged on unsatisfied~~

1 judgments.

2 Sec. 33. NEW SECTION. 909A.1 PAYMENT IN INSTALLMENTS OR  
3 ON A FIXED FUTURE DATE -- INSTALLMENT FEE AND INTEREST --  
4 STRUCTURED CIVIL PENALTY.

5 1. If the district court orders a structured fine under  
6 section 909.3, or a structured civil penalty, the structured  
7 fine, any related criminal penalty surcharge imposed under  
8 chapter 911, any related civil penalty surcharge, the indigent  
9 defense costs assessed under chapter 910, and any related  
10 court costs imposed under chapter 602 are to be paid in  
11 installments or at a fixed date in the future and the court  
12 shall do all of the following:

13 a. Impose a time payment fee in the amount of ten dollars.

14 b. Impose interest charges on any unsatisfied civil  
15 judgment from the date of imposition of the structured civil  
16 penalty at the rate provided in section 535.3 for court  
17 judgments.

18 2. Notwithstanding any other provision of law, when a  
19 deferred judgment or deferred sentence is entered by the court  
20 pursuant to chapter 907, the court may impose a structured  
21 civil penalty that is calculated in the same manner as a  
22 structured fine. The structured civil penalty shall be  
23 subject to a structured civil penalty surcharge under section  
24 911.2. The structured civil penalty and the structured civil  
25 penalty surcharge shall be disbursed in the manner provided in  
26 section 909A.3.

27 Sec. 34. NEW SECTION. 909A.2 NO MINIMUM FINE.

28 Notwithstanding chapters 902 and 903, or any other  
29 provision of law, a structured fine imposed under this chapter  
30 shall not be subject to any minimum amount.

31 Sec. 35. NEW SECTION. 909A.3 DISTRIBUTION OF CERTAIN  
32 FEES.

33 1. Upon payment of the time payment fee, the clerk of the  
34 district court shall remit all fees collected by the fifteenth  
35 day of the month following payment to the county treasurer for

1 credit to the general fund of the county to be used to support  
2 the costs of the operating the structured fines program in the  
3 county. Upon payment of interest charges on civil penalties,  
4 the clerk of the district court shall remit the interest  
5 charges collected by the fifteenth day of the month following  
6 payment to the treasurer of state to be credited to the  
7 general fund of the state.

8 2. Notwithstanding any other provisions of law, the clerk  
9 of the district court receiving payments from structured fines  
10 or structured civil penalties, shall remit by the fifteenth  
11 day of the month following payment fifteen percent of all  
12 structured fines, criminal penalty surcharges collected on  
13 structured fines, structured civil penalties, structured civil  
14 penalty surcharges, indigent defense fees, and court costs  
15 collected in cases where a structured fine or structured civil  
16 penalty was imposed, to the county treasurer for credit to the  
17 general fund of the county to be used to support the costs of  
18 operation of the structured fines program and the remaining  
19 eighty-five percent to the treasurer of state for deposit in  
20 the general fund of the state.

21 Sec. 36. Section 910.1, subsection 3, Code 1993, is  
22 amended to read as follows:

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

34 Sec. 37. Section 910.2, Code 1993, is amended to read as  
35 follows:

1 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY  
2 SENTENCING COURT.

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

1 judicial district department of correctional services shall  
2 provide for the assignment of the offender to a public agency  
3 or private nonprofit agency to perform the required service.

4 Sec. 38. Section 910.3, Code 1993, is amended to read as  
5 follows:

6 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

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

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

9 Sec. 39. Section 910.9, unnumbered paragraph 3, Code 1993,  
10 is amended to read as follows:

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

30 Sec. 40. OFFENDER ACCOUNTABILITY PILOT PROJECT.

31 The department of corrections shall by July 1, 1995, in  
32 cooperation with the judicial district departments of  
33 corrections and the chief judges of the judicial districts,  
34 establish a two-year offender accountability pilot project in  
35 a judicial district in the state. The pilot project shall

1 include, but is not limited to, implementation of a  
2 corrections process that gives for increased discretionary  
3 disciplinary authority to the district department of  
4 corrections within parameters established in sentencing orders  
5 by the court. The discretionary disciplinary authority may  
6 include the following:

7 1. The establishment and utilization of an incremental  
8 sanctioning structure within the district department of  
9 corrections that permits, based upon offender behavior, the  
10 imposition by the district department of corrections of  
11 increased or decreased restrictions on offenders who are under  
12 district supervision without a court hearing.

13 2. An administrative review process for changes made in  
14 offender status by the district department of corrections.

15 Sec. 41. Sections 124.413, 702.11, 821.4, 901.10, 902.7,  
16 902.8, and 902.11, Code 1993, are repealed.

17 Sec. 42. Section 808B.9, Code 1993, is repealed.

18 Sec. 43. EFFECTIVE DATE. Sections 11 and 42 of this Act  
19 take effect June 30, 1994.

20 Sec. 44. EFFECTIVE DATE. Section 7 of this Act takes  
21 effect upon the effective date of the corresponding revision  
22 to R.C.P. 175, Ia. Ct. Rules, 3d ed.

23 EXPLANATION

24 This bill provides as follows:

25 1. Section 48.30 is amended to remove the requirement that  
26 the clerk of the district court notify the county commissioner  
27 of voter registration of a person's felony conviction. The  
28 county commissioner is already provided this notice under  
29 section 48.31 by the state registrar.

30 2. Section 124.406 is amended to remove mandatory minimum  
31 periods of incarceration applicable to certain persons who  
32 distribute certain controlled substances.

33 3. Section 321J.2 is amended to eliminate the \$2,000 limit  
34 on restitution which a defendant may be ordered to pay as a  
35 result of a violation of section 321J.2, prohibiting operating

1 a motor vehicle while intoxicated, and provides that the  
2 amount of any restitution is to be determined pursuant to the  
3 victim restitution chapter (chapter 910).

4 4. Sections 4, 9, 10, 12, 13, 29, and 36 through 39 of the  
5 bill relate to offender restitution. Section 36 changes the  
6 definition of what is included in the term "restitution" and  
7 sections 9, 29, and 37 make changes in the priority by which  
8 any payments made by an offender are applied to the various  
9 obligations imposed upon or assumed by the offender. The  
10 remainder of the sections make various technical changes to  
11 provide for uniform application of the new restitution  
12 definition and payment priority.

13 5. Section 602.1303 is amended to add the requirement that  
14 counties continue to provide and maintain a law library.

15 6. Section 602.8102, subsection 151, regarding the duties  
16 of the clerk of the district court is amended to add that the  
17 clerk must transfer papers in a case brought in the wrong  
18 county which is transferred to another court in accordance  
19 with Iowa rule of civil procedure 175.

20 7. Section 602.8104 is amended to allow clerks of the  
21 district court to specifically keep encumbrance, lien,  
22 marriage license, surety company certificates and revocations,  
23 and deposit records in electronic form.

24 8. Sections 602.8107 and 909.6 are amended in sections 9  
25 and 32 to eliminate the requirement that interest accrue on  
26 unsatisfied fines and criminal penalty surcharges.

27 9. Section 692.8 is amended, effective July 30, 1994, to  
28 remove the prohibition on the dissemination of criminal  
29 intelligence data between criminal justice agencies by  
30 computer. The changes also require the department of public  
31 safety to adopt rules regarding the sharing of criminal  
32 intelligence data by computer.

33 10. Sections 16 through 24 make changes in the criminal  
34 forfeiture chapter to provide the following:

35 a. That there exists a statutory right to the use and

1 occupancy of certain real estate which shall not physically be  
2 seized until the forfeiture order is entered by the court. A  
3 law enforcement agency may file a lien against the property or  
4 seek a temporary restraining order against persons using the  
5 property.

6 b. That a person whose property is subject to forfeiture  
7 may counterclaim against the state for damage caused the  
8 property by persons acting on behalf of the state or a  
9 political subdivision of the state.

10 c. That court orders transferring property found to be  
11 forfeitable are temporary in nature, only becoming permanent  
12 if a conviction or guilty plea results in the criminal action  
13 related to the seizure of the property.

14 d. That the state must prove that the property is  
15 forfeitable by clear and convincing evidence which is a higher  
16 standard of proof than the current standard.

17 e. That property found to be forfeitable, and not  
18 contraband, must be returned to the person last in control of  
19 or entitled to the property 45 days following the finding that  
20 the property is forfeitable unless an indictment or  
21 information is found or filed in the criminal action related  
22 to the seizure of the property, or must be returned when  
23 charges are dropped or the person is acquitted.

24 f. That property found to be forfeitable, the title to  
25 which has permanently been transferred to the state, shall be  
26 disposed of at public auction, if not contraband, or destroyed  
27 or delivered to the department of general services. Legal  
28 ammunition and firearms are required to be sold by the  
29 department of public safety. Funds raised through the sale of  
30 forfeited property shall be transferred to the victim  
31 compensation fund.

32 g. That a property owner who had no part in the underlying  
33 offense shall not have the person's interest in property  
34 forfeited. The bill also provides that a person holding a  
35 nonforfeitable interest in property shall be given the

1 opportunity to acquire the property at its lowest reasonable  
2 market value.

3 h. That the value of property forfeited not exceed the  
4 total maximum fines which may be imposed for a conviction of  
5 the underlying offense. Property valued in excess of this  
6 amount is to be treated to as nonforfeitable. The bill also  
7 provides criteria for the court to use in determining whether  
8 the forfeiture is excessive.

9 11. Section 903A.5 is amended to strike language that  
10 relates to the application of good conduct time to mandatory  
11 minimum penalties for certain offenses. The mandatory minimum  
12 penalties are eliminated in sections 2 and 41 of the bill.

13 12. Section 904.311 is amended to establish an inmate tort  
14 claim fund within the department of corrections for purposes  
15 of paying inmates for small personal property losses of less  
16 than \$100. Moneys in the fund come from transfers from the  
17 general appropriations to the institutions to meet fund  
18 obligations. Moneys left in the fund at the end of a fiscal  
19 year do not revert to the state treasury.

20 13. Sections 904.602 and 904.603 are amended to permit the  
21 release of information by the department of corrections or by  
22 the judicial district department of corrections relating to  
23 offenders for whom services have been previously provided, in  
24 addition to information regarding those who are currently  
25 receiving services, and extends the right of action for  
26 release of confidential information to those who have  
27 previously received services.

28 14. Section 31 rewrites section 906.16, which relates to  
29 application of time spent on work release or parole against an  
30 inmate's sentence to provide for an adjustment, by either the  
31 board of parole or by an administrative parole judge, in the  
32 amount of time to be applied to a parolee's sentence at any  
33 time that a parole revocation hearing is held. Previously the  
34 section only permitted an adjustment in the amount of time to  
35 be applied against a parolee's sentence by the board of parole

1 if the person's parole was revoked. The provision still only  
2 permits an adjustment in the amount of time that is applied  
3 against a work releasee's sentence to be made by the board of  
4 parole in the event that the person's work release is revoked.

5 15. Section 909.3 is amended and a new chapter 909A is  
6 created to permit courts to order structured fines and  
7 structured civil penalties as the court deems appropriate.

8 16. The department of corrections, in cooperation with the  
9 judicial district departments of corrections and the chief  
10 judges of the judicial districts is to establish, effective  
11 July 1, 1995, a two-year offender accountability pilot project  
12 in a judicial district which provides increased discretionary  
13 authority for the district to deal with offender behavior  
14 without a court hearing, once the offender is placed under  
15 supervision.

16 17. Section 808B.9 is repealed, effective June 30, 1994,  
17 which provides for the repeal of chapter 808B, the  
18 interception of communications chapter, on July 1, 1994.

19 Provisions of this bill may constitute a state mandate  
20 under chapter 25B.

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