

REPRINTED

FILED MAR 2 1998

SENATE FILE 2384  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2193)

(P.676)  
Passed Senate, Date 3-10-98 Passed House, Date 4-17-98  
Vote: Ayes 47 Nays 0 Vote: Ayes 95 Nays 0  
Approved [Signature] 5/20/98

A BILL FOR

1 An Act to provide for the assessment and payment of a thirty-five  
2 dollar installment payment fee for fines or court costs paid  
3 in installments under certain circumstances and providing for  
4 a contingent effective date.

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

6

SENATE FILE 2384

S-5182

1 Amend Senate File 2384 as follows:

2 1. Page 2, by striking lines 17 through 24 and  
3 inserting the following: "hearing as either a  
4 contempt or a show cause hearing."

5 2. Page 3, by striking lines 25 through 32 and  
6 inserting the following: "as either a contempt or a  
7 show cause hearing."

By O. GENE MADDOX

(P.676) Adopted 3/10/98  
S-5182 FILED MARCH 11, 1998

S.F. 2384

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1 Section 1. Section 602.8107, subsection 2, unnumbered  
2 paragraph 1, Code Supplement 1997, is amended to read as  
3 follows:

4 If the clerk receives payment from a person who is an  
5 inmate of a state institution or who is under the supervision  
6 of a judicial district department of correctional services,  
7 the payment shall be applied to the balance owed under the  
8 identified case number of the case which has resulted in the  
9 placement of the person in a state institution or under the  
10 supervision of the judicial district department of  
11 correctional services. If a case number is not identified,  
12 the clerk shall apply the payment to the balance owed in the  
13 criminal case with the oldest judgment against the person.

14 Payments After payment of any applicable thirty-five dollar  
15 installment payment fee under section 815.9 or any thirty-five  
16 dollar installment payment fee assessed under section 610B.1  
17 or 909.3, payments received under this section shall be  
18 applied in the following priority order:

19 Sec. 2. NEW SECTION. 610B.1 INSTALLMENT PAYMENT FEE.

20 1. All monetary penalties, fees, and costs imposed by the  
21 court in cases other than cases in which the person is  
22 entitled to appointed counsel under chapter 815 shall be paid  
23 within thirty days of the day the penalty, fees, and costs are  
24 imposed. If the case is dismissed, any costs and fees  
25 assessed shall also be paid within thirty days of the day the  
26 court assesses the costs and fees.

27 2. The court may, in its discretion, either order the  
28 monetary penalty or any costs and fees to be paid in  
29 installments, or may fix a date in the future which is not  
30 more than one hundred twenty days from the date the penalty,  
31 costs, or fees are imposed, whenever it appears that the  
32 defendant cannot make immediate payment, or should not be made  
33 to do so. If the court orders payment of the penalty, costs,  
34 or fees at a future date or on an installment basis, and the  
35 case is a case in which the person would be entitled to

1 appointed counsel under chapter 815 if the person is indigent,  
2 the court shall assess an installment payment fee of thirty-  
3 five dollars which shall be paid prior to crediting any  
4 payments received against any amount due from the person,  
5 notwithstanding anything in sections 910.2 and 910.9 to the  
6 contrary. The installment payment fee under this section  
7 shall not be assessed if the person has already been assessed  
8 a thirty-five dollar installment payment fee under section  
9 815.9.

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

13 Sec. 3. NEW SECTION. 610B.2 COMPLIANCE HEARINGS.

14 Any hearings held for purposes of monitoring compliance  
15 with any installment payment plan are not contempt or show  
16 cause hearings, unless the court specifically designates the  
17 hearing as either a contempt or a show cause hearing. A  
18 person who is responsible for making payments under a court-  
19 ordered installment payment plan shall receive notice prior to  
20 any hearing that is designated by the court as a contempt or  
21 show cause hearing that the court has determined that the  
22 person has failed to abide by the terms of the payment plan  
23 and should be required to show cause why the person should not  
24 be held in contempt.

25 Sec. 4. Section 909.3, Code 1997, is amended to read as  
26 follows:

27 909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

28 1. All fines imposed by the court shall be paid on the day  
29 the fine is imposed.

30 2. The court may, in its discretion, order a fine to be  
31 paid in installments, or may fix a date in the future which is  
32 not more than one hundred twenty days from the date the fine  
33 is imposed for the payment of the fine, whenever it appears  
34 that the defendant cannot make immediate payment, or should  
35 not be made to do so. If the court orders payment of a fine

1 at a future date or on an installment basis, and the case is a  
2 case in which the person would be entitled to appointed  
3 counsel if the person is indigent, the court shall assess an  
4 installment payment fee of thirty-five dollars which shall be  
5 paid prior to crediting any payments received against any  
6 amount due from the person, notwithstanding anything in  
7 sections 910.2 and 910.9 to the contrary. The fee shall not  
8 be assessed if the person has already been assessed a thirty-  
9 five dollar installment payment fee under section 815.9.

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 Sec. 5. Section 909.5, Code 1997, is amended to read as  
14 follows:

15 909.5 NONPAYMENT OF FINES AND COURT COSTS -- CONTEMPT.

16 A person who is able to pay a fine, court-imposed court  
17 costs for a criminal proceeding, or both, or an installment of  
18 the fine or the court-imposed court costs, or both, and who  
19 refuses to do so, or who fails to make a good faith effort to  
20 pay the fine, court costs, or both, or any installment  
21 thereof, shall be held in contempt of court. However, any  
22 hearings held for purposes of monitoring compliance with any  
23 installment payment plan are not contempt or show cause  
24 hearings, unless the court specifically designates the hearing  
25 as either a contempt or a show cause hearing. A person who is  
26 responsible for making payments under a court-ordered  
27 installment payment plan shall receive notice prior to any  
28 hearing that is designated by the court as a contempt or show  
29 cause hearing that the court has determined that the person  
30 has failed to abide by the terms of the payment plan and  
31 should be required to show cause why the person should not be  
32 held in contempt.

33 Sec. 6. Section 910.2, unnumbered paragraph 1, Code  
34 Supplement 1997, is amended to read as follows:

35 In all criminal cases in which there is a plea of guilty,

1 verdict of guilty, or special verdict upon which a judgment of  
2 conviction is rendered, the sentencing court shall order that  
3 restitution be made by each offender to the victims of the  
4 offender's criminal activities, to the clerk of court for  
5 fines, penalties, surcharges, and, to the extent that the  
6 offender is reasonably able to pay, for crime victim  
7 assistance reimbursement, restitution to public agencies  
8 pursuant to section 321J.2, subsection 9, paragraph "b", court  
9 costs including correctional fees approved pursuant to section  
10 356.7, court-appointed attorney's fees, or the expense of a  
11 public defender when applicable, or contribution to a local  
12 anticrime organization. However, victims shall be paid in  
13 full before fines, penalties, and surcharges, crime victim  
14 compensation program reimbursement, public agencies, court  
15 costs including correctional fees approved pursuant to section  
16 356.7, court-appointed attorney's fees, the expenses of a  
17 public defender, or contribution to a local anticrime  
18 organization are paid. ~~In~~ Except as otherwise provided in  
19 sections 610B.1, 815.9, and 909.3, in structuring a plan of  
20 restitution, the court shall provide for payments in the  
21 following order of priority: victim, fines, penalties, and  
22 surcharges, crime victim compensation program reimbursement,  
23 public agencies, court costs including correctional fees  
24 approved pursuant to section 356.7, court-appointed attorney's  
25 fees, or the expense of a public defender, and contribution to  
26 a local anticrime organization.

27 Sec. 7. Section 910.9, unnumbered paragraph 3, Code  
28 Supplement 1997, is amended to read as follows:

29 ~~Fines~~ Except as otherwise provided in section 602.8107,  
30 fines, penalties, and surcharges, crime victim compensation  
31 program reimbursement, public agency restitution, court costs,  
32 court-appointed attorney's fees, and expenses for public  
33 defenders, shall not be withheld by the clerk of court until  
34 all victims have been paid in full. Payments to victims shall  
35 be made by the clerk of court at least quarterly. Payments by

1 a clerk of court shall be made no later than the last business  
2 day of the quarter, but may be made more often at the  
3 discretion of the clerk of court. The clerk of court  
4 receiving final payment from an offender, shall notify all  
5 victims that full restitution has been made, and a copy of the  
6 notice shall be sent to the sentencing court. Each office or  
7 individual charged with supervising an offender who is  
8 required to perform community service as full or partial  
9 restitution shall keep records to assure compliance with the  
10 portions of the plan of restitution and restitution plan of  
11 payment relating to community service and, when the offender  
12 has complied fully with the community service requirement,  
13 notify the sentencing court.

14 Sec. 8. CONTINGENT EFFECTIVE DATE. The enactment of the  
15 provisions of this Act are contingent upon the enactment of  
16 1998 Iowa Acts, Senate File 2281.

17 EXPLANATION

18 The bill provides for the payment of a \$35 installment  
19 payment fee where fines or court costs are paid in  
20 installments. The enactment of the bill is made contingent  
21 upon the enactment of 1998 Iowa Acts, Senate File 2281, which  
22 pertains to the legal defense of indigent persons.

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**SENATE FILE 2384  
FISCAL NOTE**

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A fiscal note for Senate File 2384 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 2384 requires a \$35 installment fee be assessed by the Court when fines or Court costs are paid in installments under certain circumstances. Enactment is contingent upon the enactment of 1997 Iowa Acts, Senate File 2281.

**ASSUMPTIONS**

1. Installment payments will be utilized by 40.0% of eligible cases.
2. The number of non-indigent serious misdemeanor cases remains constant at the FY 1997 level of 11,855 with a collection rate of 38.0%.
3. The number of non-indigent aggravated misdemeanor cases remains constant at the FY 1997 level of 2,692 with a collection rate of 28.0%.
4. The number of non-indigent OWI cases remains constant at the FY 1997 level of 8,768 with a collection rate of 56.0%.
5. The number of non-indigent felony cases remains constant at the FY 1997 level of 4,280 with a collection rate of 17.0%.
6. The Judicial Department will follow review procedures and compliance requirements as required by the Bill. Assuming 25.0% of cases would use this review process, Clerk of Court staff time would cost \$5.97 per case. Cases would then be reviewed by a District Court Judge at a cost of \$12.77 per case or a District Associate Judge at a cost of \$11.19 per case. District Court Judges would be utilized for 25.0% of the cases and a District Associate Judge would be utilized for 75.0% of the cases. Department expenditures would increase for FY 1999 by \$121,000 for additional Clerk of Court time, District Court time, and District Court Judges' time.
7. The proposed procedures required by the Court will not affect the current collections by the Judicial Department.

**FISCAL IMPACT**

Senate File 2384 will increase revenue to the General Fund in FY 1999 by \$153,000. The Bill will increase expenditures by the Judicial Department by \$121,000 in FY 1999. The net effect to the General Fund would be an increase in revenues of \$32,000 in FY 1999 and beyond.

**SOURCE**

Judicial Department

(LSB 4358SV, DHK)

FILED MARCH 10, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR



1 Section 1. Section 602.8107, subsection 2, unnumbered  
2 paragraph 1, Code Supplement 1997, is amended to read as  
3 follows:

4 If the clerk receives payment from a person who is an  
5 inmate of a state institution or who is under the supervision  
6 of a judicial district department of correctional services,  
7 the payment shall be applied to the balance owed under the  
8 identified case number of the case which has resulted in the  
9 placement of the person in a state institution or under the  
10 supervision of the judicial district department of  
11 correctional services. If a case number is not identified,  
12 the clerk shall apply the payment to the balance owed in the  
13 criminal case with the oldest judgment against the person.

14 Payments After payment of any applicable thirty-five dollar  
15 installment payment fee under section 815.9 or any thirty-five  
16 dollar installment payment fee assessed under section 610B.1  
17 or 909.3, payments received under this section shall be  
18 applied in the following priority order:

19 Sec. 2. NEW SECTION. 610B.1 INSTALLMENT PAYMENT FEE.

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21 court in cases other than cases in which the person is  
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23 within thirty days of the day the penalty, fees, and costs are  
24 imposed. If the case is dismissed, any costs and fees  
25 assessed shall also be paid within thirty days of the day the  
26 court assesses the costs and fees.

27 2. The court may, in its discretion, either order the  
28 monetary penalty or any costs and fees to be paid in  
29 installments, or may fix a date in the future which is not  
30 more than one hundred twenty days from the date the penalty,  
31 costs, or fees are imposed, whenever it appears that the  
32 defendant cannot make immediate payment, or should not be made  
33 to do so. If the court orders payment of the penalty, costs,  
34 or fees at a future date or on an installment basis, and the  
35 case is a case in which the person would be entitled to

1 appointed counsel under chapter 815 if the person is indigent,  
2 the court shall assess an installment payment fee of thirty-  
3 five dollars which shall be paid prior to crediting any  
4 payments received against any amount due from the person,  
5 notwithstanding anything in sections 910.2 and 910.9 to the  
6 contrary. The installment payment fee under this section  
7 shall not be assessed if the person has already been assessed  
8 a thirty-five dollar installment payment fee under section  
9 815.9.

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

13 Sec. 3. NEW SECTION. 610B.2 COMPLIANCE HEARINGS.

14 Any hearings held for purposes of monitoring compliance  
15 with any installment payment plan are not contempt or show  
16 cause hearings, unless the court specifically designates the  
17 hearing as either a contempt or a show cause hearing.

18 Sec. 4. Section 909.3, Code 1997, is amended to read as  
19 follows:

20 909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

21 1. All fines imposed by the court shall be paid on the day  
22 the fine is imposed.

23 2. The court may, in its discretion, order a fine to be  
24 paid in installments, or may fix a date in the future which is  
25 not more than one hundred twenty days from the date the fine  
26 is imposed for the payment of the fine, whenever it appears  
27 that the defendant cannot make immediate payment, or should  
28 not be made to do so. If the court orders payment of a fine  
29 at a future date or on an installment basis, and the case is a  
30 case in which the person would be entitled to appointed  
31 counsel if the person is indigent, the court shall assess an  
32 installment payment fee of thirty-five dollars which shall be  
33 paid prior to crediting any payments received against any  
34 amount due from the person, notwithstanding anything in  
35 sections 910.2 and 910.9 to the contrary. The fee shall not

1 be assessed if the person has already been assessed a thirty-  
2 five dollar installment payment fee under section 815.9.

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

6 Sec. 5. Section 909.5, Code 1997, is amended to read as  
7 follows:

8 909.5 NONPAYMENT OF FINES AND COURT COSTS -- CONTEMPT.

9 A person who is able to pay a fine, court-imposed court  
10 costs for a criminal proceeding, or both, or an installment of  
11 the fine or the court-imposed court costs, or both, and who  
12 refuses to do so, or who fails to make a good faith effort to  
13 pay the fine, court costs, or both, or any installment  
14 thereof, shall be held in contempt of court. However, any  
15 hearings held for purposes of monitoring compliance with any  
16 installment payment plan are not contempt or show cause  
17 hearings, unless the court specifically designates the hearing  
18 as either a contempt or a show cause hearing.

19 Sec. 6. Section 910.2, unnumbered paragraph 1, Code  
20 Supplement 1997, is amended to read as follows:

21 In all criminal cases in which there is a plea of guilty,  
22 verdict of guilty, or special verdict upon which a judgment of  
23 conviction is rendered, the sentencing court shall order that  
24 restitution be made by each offender to the victims of the  
25 offender's criminal activities, to the clerk of court for  
26 fines, penalties, surcharges, and, to the extent that the  
27 offender is reasonably able to pay, for crime victim  
28 assistance reimbursement, restitution to public agencies  
29 pursuant to section 321J.2, subsection 9, paragraph "b", court  
30 costs including correctional fees approved pursuant to section  
31 356.7, court-appointed attorney's fees, or the expense of a  
32 public defender when applicable, or contribution to a local  
33 anticrime organization. However, victims shall be paid in  
34 full before fines, penalties, and surcharges, crime victim  
35 compensation program reimbursement, public agencies, court

1 costs including correctional fees approved pursuant to section  
2 356.7, court-appointed attorney's fees, the expenses of a  
3 public defender, or contribution to a local anticrime  
4 organization are paid. ~~In~~ Except as otherwise provided in  
5 sections 610B.1, 815.9, and 909.3, in structuring a plan of  
6 restitution, the court shall provide for payments in the  
7 following order of priority: victim, fines, penalties, and  
8 surcharges, crime victim compensation program reimbursement,  
9 public agencies, court costs including correctional fees  
10 approved pursuant to section 356.7, court-appointed attorney's  
11 fees, or the expense of a public defender, and contribution to  
12 a local anticrime organization.

13 Sec. 7. Section 910.9, unnumbered paragraph 3, Code  
14 Supplement 1997, is amended to read as follows:

15 Fines Except as otherwise provided in section 602.8107,  
16 fines, penalties, and surcharges, crime victim compensation  
17 program reimbursement, public agency restitution, court costs,  
18 court-appointed attorney's fees, and expenses for public  
19 defenders, shall not be withheld by the clerk of court until  
20 all victims have been paid in full. Payments to victims shall  
21 be made by the clerk of court at least quarterly. Payments by  
22 a clerk of court shall be made no later than the last business  
23 day of the quarter, but may be made more often at the  
24 discretion of the clerk of court. The clerk of court  
25 receiving final payment from an offender, shall notify all  
26 victims that full restitution has been made, and a copy of the  
27 notice shall be sent to the sentencing court. Each office or  
28 individual charged with supervising an offender who is  
29 required to perform community service as full or partial  
30 restitution shall keep records to assure compliance with the  
31 portions of the plan of restitution and restitution plan of  
32 payment relating to community service and, when the offender  
33 has complied fully with the community service requirement,  
34 notify the sentencing court.

35 Sec. 8. CONTINGENT EFFECTIVE DATE. The enactment of the

1 provisions of this Act are contingent upon the enactment of  
2 1998 Iowa Acts, Senate File 2281.

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## SENATE FILE 2384

H-8619

1 Amend Senate File 2384, as amended, passed, and  
2 reprinted by the Senate, as follows:

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

5 "Sec. 101. NEW SECTION. 232.6 JURISDICTION --  
6 ADOPTIONS AND TERMINATIONS OF PARENTAL RIGHTS.

7 The court may exercise jurisdiction over adoption  
8 and termination of parental rights proceedings under  
9 chapters 600 and 600A.

10 Sec. 102. Section 600.1, Code 1997, is amended to  
11 read as follows:

12 600.1 CONSTRUCTION.

13 This chapter shall be construed liberally. The  
14 best interest of the person to be adopted shall be the  
15 paramount consideration in interpreting this chapter.  
16 However, the interests of the adopting parents shall  
17 be given due consideration in this interpretation.  
18 However, in determining the best interest of the  
19 person to be adopted and the interests of the adopting  
20 parents, any evidence of interests relating to a  
21 period of time during which the person to be adopted  
22 is placed with prospective adoptive parents and during  
23 which the placement is not in compliance with the law,  
24 adoption procedures, or any action by the juvenile  
25 court or court, shall not be considered in the  
26 determination.

27 Sec. 103. Section 600.3, Code 1997, is amended to  
28 read as follows:

29 600.3 COMMENCEMENT OF ADOPTION ACTION --  
30 JURISDICTION -- FORUM NON CONVENIENS.

31 1. An action for the adoption of any natural  
32 person shall be commenced by the filing of an adoption  
33 petition, as prescribed in section 600.5, in the  
34 juvenile court or court of the county in which an  
35 adult person to be adopted is domiciled or resides, or  
36 in the juvenile court or court of the county in which  
37 the guardian of a minor person to be adopted or the  
38 petitioner is domiciled or resides.

39 2. An adoption petition shall not be filed until a  
40 termination of parental rights has been accomplished  
41 except in the following cases:

42 a. No termination of parental rights is required  
43 if the person to be adopted is an adult.

44 b. If the stepparent of the child to be adopted is  
45 the adoption petitioner, the parent-child relationship  
46 between the child and the parent who is not the spouse  
47 of the petitioner may be terminated as part of the  
48 adoption proceeding by the filing of that parent's  
49 consent to the adoption.

50 For the purposes of this subsection, a consent to

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1 adopt recognized by the juvenile courts or courts of  
2 another jurisdiction in the United States and obtained  
3 from a resident of that jurisdiction shall be accepted  
4 in this state in lieu of a termination of parental  
5 rights proceeding.

6 Any adoption proceeding pending on or completed  
7 prior to July 1, 1978, is hereby legalized and  
8 validated to the extent that it is consistent with  
9 this subsection.

10 3. If upon filing of the adoption petition or at  
11 any later time in the adoption action the juvenile  
12 court or court finds that in the interest of  
13 substantial justice the adoption action should be  
14 conducted in another juvenile court or court, it may  
15 transfer, stay, or dismiss the adoption action on any  
16 conditions that are just.

17 Sec. 104. Section 600.4, subsection 3, paragraph  
18 c, Code 1997, is amended to read as follows:

19 c. Is unable to petition with the other spouse  
20 because of the prolonged and unexplained absence,  
21 unavailability, or incapacity of the other spouse, or  
22 because of an unreasonable withholding of joinder by  
23 the other spouse, as determined by the juvenile court  
24 or court under section 600.5, subsection 7.

25 Sec. 105. Section 600.5, unnumbered paragraph 1,  
26 Code 1997, is amended to read as follows:

27 An adoption petition shall be signed and verified  
28 by the petitioner, shall be filed with the juvenile  
29 court or court designated in section 600.3, and shall  
30 state:

31 Sec. 106. Section 600.5, subsection 7, Code 1997,  
32 is amended to read as follows:

33 7. A designation of the particular provision in  
34 section 600.4 under which the petitioner is qualified  
35 to adopt and, if under section 600.4, subsection 3,  
36 paragraph "c", a request that the juvenile court or  
37 court approve the petitioner's qualification to adopt.

38 Sec. 107. Section 600.7, subsection 1, unnumbered  
39 paragraph 1, Code 1997, is amended to read as follows:

40 An adoption petition shall not be granted unless  
41 the following persons consent to the adoption or  
42 unless the juvenile court or court makes a  
43 determination under subsection 4:

44 Sec. 108. Section 600.7, subsection 2, paragraphs  
45 a and b, Code 1997, are amended to read as follows:

46 a. If by any minor person to be adopted who is  
47 fourteen years of age or older, in the presence of the  
48 juvenile court or court in which the adoption petition  
49 is filed.

50 b. If by any other person, either in the presence

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1 of the juvenile court or court in which the adoption  
2 petition is filed or before a notary public.

3 Sec. 109. Section 600.7, subsections 3 and 4, Code  
4 1997, are amended to read as follows:

5 3. A consent to the adoption may be withdrawn  
6 prior to the issuance of an adoption decree under  
7 section 600.13 by the filing of an affidavit of  
8 consent withdrawal with the juvenile court or court.  
9 Such affidavit shall be treated in the same manner as  
10 an attached verified statement is treated under  
11 subsection 4.

12 4. If any person required to consent under this  
13 section refuses to or cannot be located to give  
14 consent, the petitioner may attach to the petition a  
15 verified statement of such refusal or lack of  
16 location. The juvenile court or court shall then  
17 determine, at the adoption hearing prescribed in  
18 section 600.12, whether, in the best interests of the  
19 person to be adopted and the petitioner, any  
20 particular consent shall be unnecessary to the  
21 granting of an adoption petition.

22 Sec. 110. Section 600.8, subsection 2, paragraph  
23 a, Code 1997, is amended to read as follows:

24 a. A preplacement investigation and report of the  
25 investigation shall be completed and the prospective  
26 adoption petitioner approved for a placement by the  
27 person making the investigation prior to any agency or  
28 independent placement of a minor person in the  
29 petitioner's home in anticipation of an ensuing  
30 adoption. A report of a preplacement investigation  
31 that has approved a prospective adoption petitioner  
32 for a placement shall not authorize placement of a  
33 minor person with that petitioner after one year from  
34 the date of the report's issuance. However, if the  
35 prospective adoption petitioner is a relative within  
36 the fourth degree of consanguinity who has assumed  
37 custody of a minor person to be adopted, a  
38 preplacement investigation of this petitioner and a  
39 report of the investigation may be completed at a time  
40 established by the juvenile court or court or may be  
41 waived as provided in subsection 12.

42 Sec. 111. Section 600.8, subsections 4, 7, 8, 9,  
43 and 12, Code 1997, are amended to read as follows:

44 4. A postplacement investigation and a background  
45 information investigation and the reports of these  
46 investigations shall be completed and the reports  
47 filed with the juvenile court or court prior to the  
48 holding of the adoption hearing prescribed in section  
49 600.12. Upon the filing of an adoption petition  
50 pursuant to section 600.5, the juvenile court or court

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Page 4

1 shall immediately appoint the department, an agency,  
2 or an investigator to conduct and complete the  
3 postplacement and background information  
4 investigations and reports. In addition to filing the  
5 background information report with the juvenile court  
6 or court prior to the holding of the adoption hearing,  
7 the department, agency, or investigator appointed to  
8 conduct the background information investigation shall  
9 complete the background information investigation and  
10 report and furnish a copy to the adoption petitioner  
11 within thirty days after the filing of the adoption  
12 petition. Any person, ~~including a juvenile court,~~ who  
13 has gained relevant background information concerning  
14 a minor person subject to an adoption petition shall,  
15 upon request, fully co-operate with the conducting of  
16 the background information investigation and report by  
17 disclosing any relevant background information,  
18 whether contained in sealed records or not.

19 7. Any investigation or report required under this  
20 section shall not apply when the person to be adopted  
21 is an adult or when the prospective adoption  
22 petitioner or adoption petitioner is a stepparent of  
23 the person to be adopted. However, in the case of a  
24 stepparent adoption, the juvenile court or court, upon  
25 the request of an interested person or on its own  
26 motion stating the reasons therefor of record, may  
27 order an investigation or report pursuant to this  
28 section.

29 8. Any person designated to make an investigation  
30 and report under this section may request an agency or  
31 state agency, within or outside this state, to conduct  
32 a portion of the investigation or the report, as may  
33 be appropriate, and to file a supplemental report of  
34 such investigation or report with the juvenile court  
35 or court. In the case of the adoption of a minor  
36 person by a person domiciled or residing in any other  
37 jurisdiction of the United States, any investigation  
38 or report required under this section which has been  
39 conducted pursuant to the standards of that other  
40 jurisdiction shall be recognized in this state.

41 9. The department may investigate, on its own  
42 initiative or on order of the juvenile court or court,  
43 any placement made or adoption petition filed under  
44 this chapter or chapter 600A and may report its  
45 resulting recommendation to the juvenile court or  
46 court.

47 12. Any investigation and report required under  
48 subsection 1 of this section may be waived by the  
49 juvenile court or court if the adoption petitioner is  
50 related within the fourth degree of consanguinity to

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1 the person to be adopted.

2 Sec. 112. Section 600.9, subsection 2, unnumbered  
3 paragraph 1, Code 1997, is amended to read as follows:  
4 An adoption petitioner of a minor person shall file  
5 with the juvenile court or court, prior to the  
6 adoption hearing, a full accounting of all  
7 disbursements of any thing of value paid or agreed to  
8 be paid by or on behalf of the petitioner in  
9 connection with the petitioned adoption. This  
10 accounting shall be made by a report prescribed by the  
11 juvenile court or court and shall be signed and  
12 verified by the petitioner. Only expenses incurred in  
13 connection with the following and any other expenses  
14 approved by the juvenile court or court are allowable:

15 Sec. 113. Section 600.10, Code 1997, is amended to  
16 read as follows:

17 600.10 MINIMUM RESIDENCE OF A MINOR CHILD.

18 The adoption of a minor person shall not be decreed  
19 until that person has lived with the adoption  
20 petitioner for a minimum residence period of one  
21 hundred eighty days. However, the juvenile court or  
22 court may waive this period if the adoption petitioner  
23 is a stepparent or related to the minor person within  
24 the fourth degree of consanguinity or may shorten this  
25 period upon good cause shown when the juvenile court  
26 or court is satisfied that the adoption petitioner and  
27 the person to be adopted are suited to each other.

28 Sec. 114. Section 600.11, subsections 1 and 3,  
29 Code 1997, are amended to read as follows:

30 1. The juvenile court or court shall set the time  
31 and place of the adoption hearing prescribed in  
32 section 600.12 upon application of the petitioner.  
33 The juvenile court or court may continue the adoption  
34 hearing if the notice prescribed in subsections 2 and  
35 3 is given, except that such notice shall only be  
36 given at least ten days prior to the date which has  
37 been set for the continuation of the adoption hearing.

38 3. A notice of the adoption hearing shall state  
39 the time, place, and purpose of the hearing and shall  
40 be served in accordance with rule of civil procedure  
41 56.1. Proof of the giving of notice shall be filed  
42 with the juvenile court or court prior to the adoption  
43 hearing. Acceptance of service by the party being  
44 given notice shall satisfy the requirements of this  
45 subsection.

46 Sec. 115. Section 600.12, subsections 2 and 3,  
47 Code 1997, are amended to read as follows:

48 2. Only those persons notified under section  
49 600.11 and their witnesses and legal counsel or  
50 persons requested by the juvenile court or court to be

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1 present shall be admitted to the court chambers while  
2 an adoption hearing is being conducted. The adoption  
3 petitioner and the person to be adopted shall be  
4 present at the hearing, unless the presence of either  
5 is excused by the juvenile court or court.

6 3. Any person admitted to the hearing shall be  
7 heard and allowed to present evidence upon request and  
8 according to the manner in which the juvenile court or  
9 court conducts the hearing.

10 Sec. 116. Section 600.13, subsections 1, 2, 3, 5,  
11 and 6, Code 1997, are amended to read as follows:

12 1. At the conclusion of the adoption hearing, the  
13 juvenile court or court shall:

14 a. Issue a final adoption decree;

15 b. Issue an interlocutory adoption decree; or,

16 c. Dismiss the adoption petition if the  
17 requirements of this Act have not been met or if  
18 dismissal of the adoption petition is in the best  
19 interest of the person whose adoption has been  
20 petitioned. Upon dismissal, the juvenile court or  
21 court shall determine who is to be guardian or  
22 custodian of a minor child, including the adoption  
23 petitioner if it is in the best interest of the minor  
24 person whose adoption has been petitioned.

25 2. An interlocutory adoption decree automatically  
26 becomes a final adoption decree at a date specified by  
27 the juvenile court or court in the interlocutory  
28 adoption decree, which date shall not be less than one  
29 hundred eighty days nor more than three hundred sixty  
30 days from the date the interlocutory decree is issued.  
31 However, an interlocutory adoption decree may be  
32 vacated prior to the date specified for it to become  
33 final. Also, the juvenile court or court may provide  
34 in the interlocutory adoption decree for further  
35 observation, investigation, and report of the  
36 conditions of and the relationships between the  
37 adoption petitioner and the person petitioned to be  
38 adopted.

39 3. If an interlocutory adoption decree is vacated  
40 under subsection 2, it shall be void from the date of  
41 issuance and the rights, duties, and liabilities of  
42 all persons affected by it shall, unless they have  
43 become vested, be governed accordingly. Upon vacation  
44 of an interlocutory adoption decree, the juvenile  
45 court or court shall proceed under the provisions of  
46 subsection 1, paragraph "c".

47 5. An interlocutory or a final adoption decree  
48 shall be entered with the clerk of the court. Such  
49 decree shall set forth any facts of the adoption  
50 petition which have been proven to the satisfaction of

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1 the juvenile court or court and any other facts  
2 considered to be relevant by the juvenile court or  
3 court and shall grant the adoption petition. If so  
4 designated in the adoption decree, the name of the  
5 adopted person shall be changed by issuance of that  
6 decree. The clerk of the court shall, within thirty  
7 days of issuance, deliver one certified copy of any  
8 adoption decree to the petitioner, one copy of any  
9 adoption decree to the department and any agency or  
10 person making an independent placement who placed a  
11 minor person for adoption, and one certification of  
12 adoption as prescribed in section 144.19 to the state  
13 registrar of vital statistics. Upon receipt of the  
14 certification, the state registrar shall prepare a new  
15 birth certificate pursuant to section 144.23 and  
16 deliver to the parents named in the decree and any  
17 adult person adopted by the decree a copy of the new  
18 birth certificate. The parents shall pay the fee  
19 prescribed in section 144.46. If the person adopted  
20 was born outside the state, the state registrar shall  
21 forward the certification of adoption to the  
22 appropriate agency in the state or foreign nation of  
23 birth. A copy of any interlocutory adoption decree  
24 vacation shall be delivered and another birth  
25 certificate shall be prepared in the same manner as a  
26 certification of adoption is delivered and the birth  
27 certificate was originally prepared.

28 6. The clerk of the ~~district~~ court shall attach to  
29 the certified copy of the decree delivered to the  
30 department, a copy of the adoption information form  
31 required to be attached to the adoption petition under  
32 section 600.6, subsection 5.

33 Sec. 117. Section 600.15, subsection 1, paragraphs  
34 a and b, Code 1997, are amended to read as follows:

35 a. A decree establishing a parent-child  
36 relationship by adoption which is issued pursuant to  
37 due process of law by a juvenile court or court of any  
38 other jurisdiction in the United States shall be  
39 recognized in this state.

40 b. A decree terminating a parent-child  
41 relationship which is issued pursuant to due process  
42 of law by a juvenile court or court of any other  
43 jurisdiction in the United States shall be recognized  
44 in this state.

45 Sec. 118. Section 600.16A, subsection 2,  
46 paragraphs b and c, Code 1997, are amended to read as  
47 follows:

48 b. The juvenile court or court, for good cause,  
49 shall order the opening of the permanent adoption  
50 record of the juvenile court or court for the adopted

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1 person who is an adult and reveal the names of either  
2 or both of the biological parents following  
3 consideration of both of the following:

4 (1) A biological parent may file an affidavit  
5 requesting that the juvenile court or court reveal or  
6 not reveal the parent's identity. The juvenile court  
7 or court shall consider any such affidavit in  
8 determining whether there is good cause to order  
9 opening of the records. To facilitate the biological  
10 parents in filing an affidavit, the department shall,  
11 upon request of a biological parent, provide the  
12 biological parent with an adoption information packet  
13 containing an affidavit for completion and filing with  
14 the juvenile court or court.

15 (2) If the adopted person who applies for  
16 revelation of the biological parents' identity has a  
17 sibling who is a minor and who has been adopted by the  
18 same parents, the juvenile court or court may deny the  
19 application on the grounds that revelation to the  
20 applicant may also indirectly and harmfully permit the  
21 same revelation to the applicant's minor sibling.

22 c. A biological sibling of an adopted person may  
23 file or may request that the department file an  
24 affidavit in the juvenile court or court in which the  
25 adopted person's adoption records have been sealed  
26 requesting that the juvenile court or court reveal or  
27 not reveal the sibling's name to the adopted person.  
28 The juvenile court or court shall consider any such  
29 affidavit in determining whether there is good cause  
30 to order opening of the records upon application for  
31 revelation by the adopted person. However, the name  
32 of the biological sibling shall not be revealed until  
33 the biological sibling has attained majority.

34 Sec. 119. Section 600.16A, subsection 3, paragraph  
35 b, unnumbered paragraph 3, Code 1997, is amended to  
36 read as follows:

37 Notwithstanding the provisions of this subsection,  
38 if the adult adopted person has a sibling who is a  
39 minor and who has also been adopted by the same  
40 parents, the department, the clerk of court, or the  
41 agency which made the placement may deny the request  
42 of either the adult adopted person or the biological  
43 parent to open the adoption records and to reveal the  
44 identities of the parties pending determination by the  
45 juvenile court or court that there is good cause to  
46 open the records pursuant to subsection 2.

47 Sec. 120. Section 600.16A, subsection 4, Code  
48 1997, is amended to read as follows:

49 4. An adopted person whose adoption became final  
50 prior to July 4, 1941, and whose adoption record was

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1 not required to be sealed at the time when the  
2 adoption record was completed, shall not be required  
3 to show good cause for an order opening the adoption  
4 record under this subsection, provided that the  
5 juvenile court or court shall consider any affidavit  
6 filed under this subsection.

7 Sec. 121. Section 600.18, unnumbered paragraph 1,  
8 Code 1997, is amended to read as follows:

9 Any prospective adoptive parent desiring financial  
10 assistance shall state this fact in the petition for  
11 adoption. The department of human services shall  
12 investigate the person petitioning for adoption and  
13 the child and shall file with the juvenile court or  
14 court a statement of whether the department will  
15 provide assistance as provided in sections 600.17 to  
16 600.22, the estimated amount, extent, and duration of  
17 assistance, and any other information the juvenile  
18 court or court may order.

19 Sec. 122. Section 602.8102, subsections 42 and 43,  
20 Code Supplement 1997, are amended to read as follows:

21 42. Serve as clerk of the juvenile court and carry  
22 out duties as provided in chapter 232 and article 7 of  
23 this chapter.

24 43. Submit to the director of the division of  
25 child and family services of the department of human  
26 services a duplicate of the findings of the district  
27 court related to adoptions as provided in section  
28 235.3, subsection 7."

29 2. Page 4, line 35, by striking the words "of  
30 the" and inserting the following: "of sections 1  
31 through 7".

32 3. Page 5, line 1, by striking the word  
33 "provisions".

34 4. Title page, line 1, by striking the words "to  
35 provide" and inserting the following: "relating to  
36 certain court procedures by extending the jurisdiction  
37 of the juvenile court to include adoption and  
38 termination of parental rights proceedings and by  
39 providing".

40 5. By renumbering as necessary.

By KREIMAN of Davis

E-8619 FILED MARCH 24, 1998

W/KS 4/17/98  
(P. 1731)

Maddox  
Newhauser  
McKibben

SSB 2193

Judiciary

SENATE FILE <sup>introduced by</sup> (SF) HF 2384

BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY CHAIR-  
PERSON MCKEAN)

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

A BILL FOR

1 An Act to provide for the assessment and payment of a thirty-five  
2 dollar installment payment fee for fines or court costs paid  
3 in installments under certain circumstances and providing for  
4 a contingent effective date.

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

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1 Section 1. Section 602.8107, subsection 2, unnumbered  
2 paragraph 1, Code Supplement 1997, is amended to read as  
3 follows:

4 If the clerk receives payment from a person who is an  
5 inmate of a state institution or who is under the supervision  
6 of a judicial district department of correctional services,  
7 the payment shall be applied to the balance owed under the  
8 identified case number of the case which has resulted in the  
9 placement of the person in a state institution or under the  
10 supervision of the judicial district department of  
11 correctional services. If a case number is not identified,  
12 the clerk shall apply the payment to the balance owed in the  
13 criminal case with the oldest judgment against the person.  
14 Payments After payment of any applicable thirty-five dollar  
15 installment payment fee under section 815.9 or any thirty-five  
16 dollar installment payment fee assessed under section 610B.1  
17 or 909.3, payments received under this section shall be  
18 applied in the following priority order:

19 Sec. 2. NEW SECTION. 610B.1 INSTALLMENT PAYMENT FEE.

20 1. All monetary penalties, fees, and costs imposed by the  
21 court in cases other than cases in which the person is  
22 entitled to appointed counsel under chapter 815 shall be paid  
23 within thirty days of the day the penalty, fees, and costs are  
24 imposed. If the case is dismissed, any costs and fees  
25 assessed shall also be paid within thirty days of the day the  
26 court assesses the costs and fees.

27 2. The court may, in its discretion, either order the  
28 monetary penalty or any costs and fees to be paid in  
29 installments, or may fix a date in the future which is not  
30 more than one hundred twenty days from the date the penalty,  
31 costs, or fees are imposed, whenever it appears that the  
32 defendant cannot make immediate payment, or should not be made  
33 to do so. If the court orders payment of the penalty, costs,  
34 or fees at a future date or on an installment basis, and the  
35 case is a case in which the person would be entitled to

1 appointed counsel under chapter 815 if the person is indigent,  
 2 the court shall assess an installment payment fee of thirty-  
 3 five dollars which shall be paid prior to crediting any  
 4 payments received against any amount due from the person,  
 5 notwithstanding anything in sections 910.2 and 910.9 to the  
 6 contrary. The installment payment fee under this section  
 7 shall not be assessed if the person has already been assessed  
 8 a thirty-five dollar installment payment fee under section  
 9 815.9.

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

13 Sec. 3. NEW SECTION. 610B.2 COMPLIANCE HEARINGS.

14 Any hearings held for purposes of monitoring compliance  
 15 with any installment payment plan are not contempt or show  
 16 cause hearings, unless the court specifically designates the  
 17 hearing as either a contempt or a show cause hearing. A  
 18 person who is responsible for making payments under a court-  
 19 ordered installment payment plan shall receive notice prior to  
 20 any hearing that is designated by the court as a contempt or  
 21 show cause hearing that the court has determined that the  
 22 person has failed to abide by the terms of the payment plan  
 23 and should be required to show cause why the person should not  
 24 be held in contempt.

25 Sec. 4. Section 909.3, Code 1997, is amended to read as  
 26 follows:

27 909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

28 1. All fines imposed by the court shall be paid on the day  
 29 the fine is imposed.

30 2. The court may, in its discretion, order a fine to be  
 31 paid in installments, or may fix a date in the future which is  
 32 not more than one hundred twenty days from the date the fine  
 33 is imposed for the payment of the fine, whenever it appears  
 34 that the defendant cannot make immediate payment, or should  
 35 not be made to do so. If the court orders payment of a fine

1 at a future date or on an installment basis, and the case is a  
2 case in which the person would be entitled to appointed  
3 counsel if the person is indigent, the court shall assess an  
4 installment payment fee of thirty-five dollars which shall be  
5 paid prior to crediting any payments received against any  
6 amount due from the person, notwithstanding anything in  
7 sections 910.2 and 910.9 to the contrary. The fee shall not  
8 be assessed if the person has already been assessed a thirty-  
9 five dollar installment payment fee under section 815.9.

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 Sec. 5. Section 909.5, Code 1997, is amended to read as  
14 follows:

15 909.5 NONPAYMENT OF FINES AND COURT COSTS -- CONTEMPT.

16 A person who is able to pay a fine, court-imposed court  
17 costs for a criminal proceeding, or both, or an installment of  
18 the fine or the court-imposed court costs, or both, and who  
19 refuses to do so, or who fails to make a good faith effort to  
20 pay the fine, court costs, or both, or any installment  
21 thereof, shall be held in contempt of court. However, any  
22 hearings held for purposes of monitoring compliance with any  
23 installment payment plan are not contempt or show cause  
24 hearings, unless the court specifically designates the hearing  
25 as either a contempt or a show cause hearing. A person who is  
26 responsible for making payments under a court-ordered  
27 installment payment plan shall receive notice prior to any  
28 hearing that is designated by the court as a contempt or show  
29 cause hearing that the court has determined that the person  
30 has failed to abide by the terms of the payment plan and  
31 should be required to show cause why the person should not be  
32 held in contempt.

33 Sec. 6. Section 910.2, unnumbered paragraph 1, Code  
34 Supplement 1997, is amended to read as follows:

35 In all criminal cases in which there is a plea of guilty,

1 verdict of guilty, or special verdict upon which a judgment of  
 2 conviction is rendered, the sentencing court shall order that  
 3 restitution be made by each offender to the victims of the  
 4 offender's criminal activities, to the clerk of court for  
 5 fines, penalties, surcharges, and, to the extent that the  
 6 offender is reasonably able to pay, for crime victim  
 7 assistance reimbursement, restitution to public agencies  
 8 pursuant to section 321J.2, subsection 9, paragraph "b", court  
 9 costs including correctional fees approved pursuant to section  
 10 356.7, court-appointed attorney's fees, or the expense of a  
 11 public defender when applicable, or contribution to a local  
 12 anticrime organization. However, victims shall be paid in  
 13 full before fines, penalties, and surcharges, crime victim  
 14 compensation program reimbursement, public agencies, court  
 15 costs including correctional fees approved pursuant to section  
 16 356.7, court-appointed attorney's fees, the expenses of a  
 17 public defender, or contribution to a local anticrime  
 18 organization are paid. In Except as otherwise provided in  
 19 sections 610B.1, 815.9, and 909.3, in structuring a plan of  
 20 restitution, the court shall provide for payments in the  
 21 following order of priority: victim, fines, penalties, and  
 22 surcharges, crime victim compensation program reimbursement,  
 23 public agencies, court costs including correctional fees  
 24 approved pursuant to section 356.7, court-appointed attorney's  
 25 fees, or the expense of a public defender, and contribution to  
 26 a local anticrime organization.

27 Sec. 7. Section 910.9, unnumbered paragraph 3, Code  
 28 Supplement 1997, is amended to read as follows:

29 Fines Except as otherwise provided in section 602.8107,  
 30 fines, penalties, and surcharges, crime victim compensation  
 31 program reimbursement, public agency restitution, court costs,  
 32 court-appointed attorney's fees, and expenses for public  
 33 defenders, shall not be withheld by the clerk of court until  
 34 all victims have been paid in full. Payments to victims shall  
 35 be made by the clerk of court at least quarterly. Payments by

1 a clerk of court shall be made no later than the last business  
2 day of the quarter, but may be made more often at the  
3 discretion of the clerk of court. The clerk of court  
4 receiving final payment from an offender, shall notify all  
5 victims that full restitution has been made, and a copy of the  
6 notice shall be sent to the sentencing court. Each office or  
7 individual charged with supervising an offender who is  
8 required to perform community service as full or partial  
9 restitution shall keep records to assure compliance with the  
10 portions of the plan of restitution and restitution plan of  
11 payment relating to community service and, when the offender  
12 has complied fully with the community service requirement,  
13 notify the sentencing court.

14 Sec. 8. CONTINGENT EFFECTIVE DATE. The enactment of the  
15 provisions of this Act are contingent upon the enactment of  
16 1997 Iowa Acts, Senate File 2281.

17 EXPLANATION

18 The bill provides for the payment of a \$35 installment  
19 payment fee where fines or court costs are paid in  
20 installments. The enactment of the bill is made contingent  
21 upon the enactment of 1997 Iowa Acts, Senate File 2281, which  
22 pertains to the legal defense of indigent persons.

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OFFICE OF THE GOVERNOR

STATE CAPITOL  
DES MOINES, IOWA 50319  
515 281-5211

TERRY E. BRANSTAD  
GOVERNOR

May 20, 1998

MAY 21 1998

The Honorable Paul Pate  
Secretary of State  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

Senate File 2384, an act to provide for the assessment and payment of a thirty-five dollar installment payment fee for fines or court costs paid in installments under certain circumstances and providing for a contingent effective date, is hereby disapproved and transmitted to you in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

It is unfortunate that I must veto Senate File 2384. This legislation is only effective in conjunction with Senate File 2281, which the Senate passed overwhelmingly but the House ultimately refused to bring to a final vote.

Senate File 2384 provides that non-indigent persons requesting a payment plan for fines, fees, and costs would be required to pay an installment payment assessment of \$35 before such installment payment plan could be ordered by the Court. A similar provision placing the same assessment on indigent persons seeking a payment plan was part of Senate File 2281.

Senate File 2281 contained many positive reforms of the indigent defense program. It made uniform the processing of fee claims submitted by private attorneys for handling indigent cases. Under Senate File 2281, the state public defender would have established by administrative rule the hourly fee paid to private attorneys and the total case fee ceilings that could have been exceeded by permission of the state public defender.

At the start of the legislative session, I set forth a proposed rate increase in my Budget in Brief. Currently, appointed attorneys in indigent cases receive fee rates of \$45, \$50 or \$55 per hour depending on the severity of the case. The fees I proposed would have brought an innovative new concept to Iowa – one hourly rate for time spent out of court and a higher hourly rate for in-court time. The fees I proposed would have generally been higher than the currently authorized hourly fees.

The Honorable Paul Pate  
Senate File 2384 Page 2  
May 20, 1998

In addition, Senate File 2281 would have brought statewide uniformity in fee awards in such cases by having all fee claims approved by the state public defender rather than individual judges in every part of the state. The attorney would have the right to seek modified judicial review by the court of the fee approved by the state public defender.

Senate File 2281 would have better defined indigency than does current law and would have ensured that people who can afford to pay an attorney to represent them would not receive an attorney at taxpayer expense. A defendant's assets, as well as income, could be used to determine ability to pay and wages could be garnished to assist in repayment.

Senate File 2281 would also have allowed the court to hold informal proceedings with individuals who are behind in their payments of fines, fees, and costs, without the necessity of a formal contempt proceeding. This would avoid the appointment of new counsel and higher costs to the taxpayers.

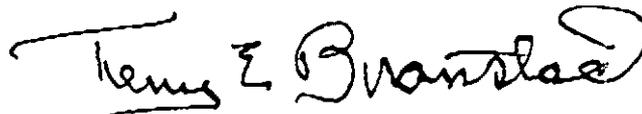
Senate File 2281 would have capped the counties' maximum liability for juvenile cases at the current level and provided greater accountability over state funds.

Attorneys in the state want higher remuneration in indigent cases. I have been willing to increase such remuneration but I insist on reforming the system and making it more uniform statewide. I am attempting to balance reasonable fees for the appointed attorney on the one hand with accountability to the taxpayers on the other.

Unfortunately, although the Senate passed Senate File 2281 by an almost unanimous margin, ultimately the legislation died in the House and the reforms and uniform fee award system, along with increased fees, died with it. As a result, the appointed lawyers get no fee increase and Senate File 2384 must be vetoed.

For the above reasons, I hereby respectfully disapprove Senate File 2384.

Sincerely,



Terry E. Branstad  
Governor

TEB/ps

cc: Secretary of the Senate  
Chief Clerk of the House

*getted*

SENATE FILE 2384

AN ACT

TO PROVIDE FOR THE ASSESSMENT AND PAYMENT OF A THIRTY-FIVE DOLLAR INSTALLMENT PAYMENT FEE FOR FINES OR COURT COSTS PAID IN INSTALLMENTS UNDER CERTAIN CIRCUMSTANCES AND PROVIDING FOR A CONTINGENT EFFECTIVE DATE.

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

Section 1. Section 602.8107, subsection 2, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments After payment of any applicable thirty-five dollar

installment payment fee under section 815.9 or any thirty-five dollar installment payment fee assessed under section 610B.1 or 909.3, payments received under this section shall be applied in the following priority order:

Sec. 2. NEW SECTION. 610B.1 INSTALLMENT PAYMENT FEE.

1. All monetary penalties, fees, and costs imposed by the court in cases other than cases in which the person is entitled to appointed counsel under chapter 815 shall be paid within thirty days of the day the penalty, fees, and costs are imposed. If the case is dismissed, any costs and fees assessed shall also be paid within thirty days of the day the court assesses the costs and fees.

2. The court may, in its discretion, either order the monetary penalty or any costs and fees to be paid in installments, or may fix a date in the future which is not more than one hundred twenty days from the date the penalty, costs, or fees are imposed, whenever it appears that the defendant cannot make immediate payment, or should not be made to do so. If the court orders payment of the penalty, costs, or fees at a future date or on an installment basis, and the case is a case in which the person would be entitled to appointed counsel under chapter 815 if the person is indigent, the court shall assess an installment payment fee of thirty-five dollars which shall be paid prior to crediting any payments received against any amount due from the person, notwithstanding anything in sections 910.2 and 910.9 to the contrary. The installment payment fee under this section shall not be assessed if the person has already been assessed a thirty-five dollar installment payment fee under section 815.9.

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

Sec. 3. NEW SECTION. 610B.2 COMPLIANCE HEARINGS.

Any hearings held for purposes of monitoring compliance with any installment payment plan are not contempt or show cause hearings, unless the court specifically designates the hearing as either a contempt or a show cause hearing.

Sec. 4. Section 909.3, Code 1997, is amended to read as follows:

909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

1. All fines imposed by the court shall be paid on the day the fine is imposed.

2. The court may, in its discretion, order a fine to be paid in installments, or may fix a date in the future which is not more than one hundred twenty days from the date the fine is imposed for the payment of the fine, whenever it appears that the defendant cannot make immediate payment, or should not be made to do so. If the court orders payment of a fine at a future date or on an installment basis, and the case is a case in which the person would be entitled to appointed counsel if the person is indigent, the court shall assess an installment payment fee of thirty-five dollars which shall be paid prior to crediting any payments received against any amount due from the person, notwithstanding anything in sections 910.2 and 910.9 to the contrary. The fee shall not be assessed if the person has already been assessed a thirty-five dollar installment payment fee under section 815.9.

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

Sec. 5. Section 909.5, Code 1997, is amended to read as follows:

909.5 NONPAYMENT OF FINES AND COURT COSTS -- CONTEMPT.

A person who is able to pay a fine, court-imposed court costs for a criminal proceeding, or both, or an installment of the fine or the court-imposed court costs, or both, and who refuses to do so, or who fails to make a good faith effort to pay the fine, court costs, or both, or any installment

thereof, shall be held in contempt of court. However, any hearings held for purposes of monitoring compliance with any installment payment plan are not contempt or show cause hearings, unless the court specifically designates the hearing as either a contempt or a show cause hearing.

Sec. 6. Section 910.2, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, restitution to public agencies pursuant to section 321J.2, subsection 9, paragraph "b", court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney's fees, or the expense of a public defender when applicable, or contribution to a local anticrime organization. However, victims shall be paid in full before fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney's fees, the expenses of a public defender, or contribution to a local anticrime organization are paid. In Except as otherwise provided in sections 610B.1, 815.9, and 909.3, in structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney's fees, or the expense of a public defender, and contribution to a local anticrime organization.

Sec. 7. Section 910.9, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

Fines Except as otherwise provided in section 602.8107, fines, penalties, and surcharges, crime victim compensation program reimbursement, public agency restitution, court costs, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender, shall notify all victims that full restitution has been made, and a copy of the notice shall be sent to the sentencing court. Each office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

Sec. 8. CONTINGENT EFFECTIVE DATE. The enactment of the provisions of this Act are contingent upon the enactment of 1998 Iowa Acts, Senate File 2281.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2384, Seventy-seventh General Assembly.

*Terry E. Branstad*  
Approved 5/20, 1998

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MARY PAT GUNDERSON  
Secretary of the Senate

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TERRY E. BRANSTAD  
Governor