

**CHAPTER 219****CORRECTIONS***S.F. 496*

**AN ACT** relating to persons convicted of public offenses, relating to the department of corrections and its programs and facilities, relating to treatment, prevention, prosecution, and sentencing concerning domestic abuse cases, and establishing additional public offenses and criminal penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

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

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

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

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

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

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

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

When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the victim's safety of the alleged victim, persons residing with the alleged victim, or

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

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

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

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

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

Sec. 7. NEW SECTION. 246.207 VIOLATOR FACILITY.

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

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

246.508 PROPERTY OF INMATE — INMATE SAVINGS FUND.

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

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

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on work release. Otherwise, the inmate's deposits shall be disposed of as provided in subsection 3. An inmate's deposits into the savings fund may be used to provide the money due the inmate upon discharge, parole, or placement on work release, as required under section 906.9. Interest earned from the savings fund shall be placed in a separate account, and may be used for purchases approved by the director to directly and collectively benefit inmates.

3. Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution, including the inmate's deposits into the inmate savings fund, and shall deliver the property to the person designated by the inmate to be contacted in case of an emergency. However, if the property left by the decedent cannot be delivered to the designated person, delivery may be made to the surviving spouse or an heir of the decedent. If the decedent's property cannot be delivered to the designated person and no surviving spouse or heir is known, the superintendent shall deliver the property to the treasurer of state for disposition as unclaimed property pursuant to chapter 556, after deducting expenses incurred in disposing of the decedent's body or property.

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

246.513 ASSIGNMENT OF OWI VIOLATORS TO TREATMENT FACILITIES.

1. a. The department of corrections in cooperation with judicial district departments of correctional services shall establish in each judicial district ~~bed space~~ a continuum of programming, including residential facilities and institutions, for the confinement supervision and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The department of corrections shall develop standardized assessment criteria for the assignment of offenders to a facility established pursuant to this section chapter. The offender shall be assigned by the director to a facility pursuant to section 321J.2, subsection 2, paragraph "b" or "c", unless initial medical treatment is necessary or there is insufficient space to accommodate the person. The offenders shall be assigned to the Iowa medical classification facility at Oakdale for classification if medical treatment is necessary or if the offender fails to satisfactorily perform in a treatment program conducted in a residential facility operated by a judicial district department of correctional services. The offender shall be assigned to an institution following classification. The facilities established shall meet all the following requirements:

a. (1) Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.

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

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

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

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

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

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

2. The assignment of an offender pursuant to subsection 1 shall be for purposes of risk management, substance abuse treatment, and education, and may include work programs for

the offender at times when the offender is not participating in substance abuse treatment or education other program components.

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

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

5.4. ~~The director department shall prepare proposed administrative adopt rules for the consideration of the administrative rules review committee for the funding of the program by means of self-contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of funding, program structure, criteria for the evaluation of facilities and offenders for participation in the programs, and all other issues the director shall deem appropriate. Proposed rules prepared pursuant to this subsection shall be submitted to the administrative rules review committee on or before September 15, 1986.~~

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

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

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

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

246.901 WORK RELEASE PROGRAM.

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

inmate's own home. This work release program is in addition to the institutional work release program established in section 246.910.

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

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

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

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

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

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

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

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

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

department of correctional services shall deduct from the earnings in the priority established in section 246.905.

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

Sec. 14. Section 321.1, subsection 43, unnumbered paragraph 3, Code 1991, is amended to read as follows:

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees in an automobile.

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

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

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

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

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

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

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

**663A.5 PAYMENT OF COSTS.**

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

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

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

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

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

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

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

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

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

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

719.1 INTERFERENCE WITH OFFICIAL ACTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

908.9 DISPOSITION OF VIOLATOR.

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

order the person's release subject to the terms of the person's parole with any modifications that the parole revocation officer or board panel determines proper.

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

908.11 VIOLATION OF PROBATION.

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

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

910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

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

Sec. 31. NEW SECTION. 910.10 RESTITUTION LIEN.

1. The state or a person entitled to restitution under a court order may file a restitution lien.
2. The restitution lien shall set forth all of the following information, if known:

- a. The name and date of birth of the person whose property or other interests are subject to the lien.
  - b. The present address of the residence and principal place of business of the person named in the lien.
  - c. The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number.
  - d. The name and business address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and residence and business address of each person entitled to restitution pursuant to a court order.
  - e. A statement that the notice is being filed pursuant to this section.
  - f. The amount of restitution the person has been ordered to pay or is likely to be ordered to pay.
3. A restitution lien may be filed by either of the following:
- a. A prosecuting attorney in a criminal proceeding in which restitution is likely to be sought after the filing of an information or indictment. At the time of arraignment, the prosecuting attorney shall give the defendant notice of any restitution lien filed.
  - b. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.
4. The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property identified in the lien to the extent of the interest held in that property by the person named in the lien.
5. This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.

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

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

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

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

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

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

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

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

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

\*Chapter 218 herein

dollars imposed in this paragraph shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

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

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

As used in this section, "district department" means a judicial district department of correctional services, established pursuant to section 905.2. A person convicted of, or receiving a deferred judgment for, domestic abuse assault shall report to the district department in order to participate in a batterers' treatment program for domestic abuse offenders, ~~if ordered to do so by the court pursuant to section 708.2A.~~ Participation in the batterers' treatment program shall not require a person to be placed on probation, but a person on probation may participate in the program. The district departments may contract for services in completing the duties relating to the batterers' treatment programs. The district departments shall assess the fees for participation in the program, and shall either collect or contract for the collection of the fees to recoup the costs of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

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

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

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

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

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

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

\*Chapter 218 herein

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

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

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

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

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

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

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

h. A timetable for implementation.

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

Approved May 29, 1991

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## CHAPTER 220

### BANKING REGULATION

*S.F. 507*

**AN ACT** relating to limiting the aggregate amount of cash value life insurance a state bank may purchase, amending the date by which the superintendent must file an annual report, providing certain regulatory authority over certain persons associated with a state bank, suspending certain laws, authorizing certain investments by a state bank, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 17.8, Code 1991, is amended to read as follows:

17.8 SUPERINTENDENT OF BANKING.

The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than September 1 December 31.

Sec. 2. NEW SECTION. 524.228 INTERIM CEASE AND DESIST ORDER — SUSPENSION.

1. If it appears to the superintendent that a state bank, or any director, officer, employee, or substantial shareholder of the state bank is engaging in or is about to engage in an unsafe