

PENAL AND CORRECTIONAL INSTITUTIONS AND
COUNTY JAILS JOINT SUBCOMMITTEE

OF THE

SENATE STANDING COMMITTEE ON JUDICIARY
AND THE
HOUSE STANDING COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT

Report to the Members of the Senate Standing Committee
on Judiciary and the House Standing Committee on
Judiciary and Law Enforcement of the
First Session of the Sixty-eighth General Assembly

State of Iowa
1979

1978 F I N A L R E P O R T

PENAL AND CORRECTIONAL INSTITUTIONS AND
COUNTY JAILS JOINT SUBCOMMITTEE

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SENATE STANDING COMMITTEE ON JUDICIARY
AND THE
HOUSE STANDING COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT

December, 1978

The Legislative Council approved the creation of the Penal and Correctional Institutions and County Jails Joint Subcommittee which was composed of five members from the Senate Standing Committee on Judiciary and five members from the House Standing Committee on Judiciary and Law Enforcement.

The members of the Subcommittee were:

Senator John R. Scott, Co-chairperson
Representative Donald V. Doyle, Co-chairperson
Senator Forest F. Ashcraft
Senator C. Joseph Coleman
Senator Edgar H. Holden
Senator Richard R. Ramsey
Representative Albert T. Garrison
Representative Julia B. Gentleman
Representative Joan Lipsky
Representative Lyle Scheelhaase

At the Joint Subcommittee's first meeting, held on September 7, 1978, the following presentations were given:

1. Victim/witness programs by Trish Harlow of the Central Iowa Area Crime Commission.
2. Iowa County Jail Survey on jail standards by Etta Cain of the Iowa Crime Commission.
3. Jail Inspection Report by George Keiser, Deputy Chief, Division of Adult Corrections, Department of Social Services.
4. Report on the August 29, 1978 inmate disturbance at the Fort Madison penitentiary and report on the "good and honor time" provisions of the Code by Ray Cornell, Deputy of Corrections, Citizens' Aide Office.
5. Report of the unitization of adult correctional facilities and on the recruitment efforts for correctional officers by Harry Woods, Director of the Division of Adult Corrections, Department of Social Services.

6. Report on the operation of community based corrections by Chuck Richard, Community Based Corrections Specialist.

7. Report on the coeducational project being undertaken at the Training School for Girls at Mitchellville by Bernita Jacobson, Director, Bureau of Child Advocacy, Department of Social Services and by Ron Stehl, the Superintendent at the Training School for Girls at Mitchellville.

At the second meeting, held on October 23, 1978, the following presentations were given:

1. Judicial sentencing and parole guidelines by the Honorable Anthony M. Critelli, Iowa District Court Judge.

2. Report concerning the congressional defeat of the federal bill to fund state programs for the compensation of innocent victims of crime by Co-chairperson Doyle.

3. The Mentally Retarded Offender, a report given by Robert Bray of the Legal Services Corporation of Iowa.

4. Updated report on the situation at the Fort Madison penitentiary by Ray Cornell, Deputy for Corrections, Citizens' Aide Office.

5. Presentation of the Department of Social Services' Task Force legislative proposals by George Keiser, Deputy Chief, Bureau of Correctional Institutions, Department of Social Services.

6. Report on the operation of the five member parole board and on the bills proposed by the Citizens' Aide Office concerning the operation of the parole board by the Parole Board.

7. Presentation of a Subcommittee bill draft by the Legislative Service Bureau to replace the traditional commercial bail bond with a ten percent deposit on an appearance bond.

At the final meeting on November 29, 1978 the Joint Subcommittee heard the following presentations:

1. Report of penal and correctional legislative proposals by the Iowa Corrections Association.

2. Presentation of penal and correctonal legislative recommendations by the Department of Social Services.

3. Presentation of legislative recommendations concerning the parole board, inmate property claims and "good and honor time" provisions of the Code by Ray Cornell, Deputy for Corrections, Citizens' Aide Office.

Recommendations made by the Joint Subcommittee follow in two parts. Part 1 summarizes the Joint Subcommittee study bills which are to be transmitted to the Senate Standing Committee on Judiciary and to the House Standing Committee on Judiciary and Law Enforcement for their consideration. Part 2 summarizes other Joint Subcommittee proposals to be transmitted to the various standing committees and the Supreme Court for their consideration.

Part 1. Joint Subcommittee recommendations in the form of proposed bill drafts:

1. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study the attached bill to limit membership on the board of parole to a single six-year term.

2. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study the attached bill to exempt personal property claims of reformatory or penitentiary inmates from the state tort claims procedure and to substitute an internal procedure within the division of adult corrections to adjust personal property claims of inmates.

3. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study the attached bill to amend the bail provisions of the criminal code revision by replacing the traditional commercial bail bond with a ten percent deposit on an appearance bond. The Joint Subcommittee further recommends that remarks on the bill to be forwarded to the Standing Committees by George Keiser, Deputy Chief, Bureau of Correctional Institutions, and Ray Cornell, Deputy for Corrections, Citizens' Aide Office be considered.

4. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study the attached bill to compensate innocent victims of criminal acts with the recommended change that the industrial commissioner administer the Act rather than the attorney general.

Part 2. Other Joint Subcommittee recommendations:

1. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study the seriousness of the conflict between the statutory "good and honor time" provisions (sections 246.39-246.43) of the Code and the long-standing practice of administering "good and honor time" contrary to those provisions, and that either the practice be brought into conformity with the statute or vice versa.

2. The Joint Subcommittee recommends that the Department of Social Services' Task Force legislative proposals be transmitted to the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement for their consideration.

3. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study sections 356.6 and 356.7 of the Code concerning the maintenance of jail calendars in order to codify statewide, uniform jail calendar requirements and to require that data be collected quarterly from the county jail calendars by the Department of Social Services.

4. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study proposals to establish minimum jail standards to be presented jointly to the Standing Committees in 1979 by the Department of Social Services, the Iowa Sheriff's Association and the Iowa Board of Supervisor's Association.

5. The Joint Subcommittee recommends that the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement consider and study a document to be prepared by the Legislative Service Bureau outlining the legal and legislative consequences of the alternative statutory distribution of correctional powers and duties either to the commissioner or department of social services or to the director or division of adult corrections.

6. The Joint Subcommittee recommends that the Legislative Service Bureau draft in bill form the proposals of the Iowa Corrections Association, on pages two through six of its prepared document of October 13, 1978, relating to the administrative structure of community based corrections, for transmittal to the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement and to the Senate Standing Committee on State Government and the House Standing Committee on State Government for their consideration.

7. The Joint Subcommittee recommends that the Legislative Service Bureau draft a letter to the Supreme Court of Iowa with a copy to the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement, containing the Iowa Corrections Association's proposed amendment to Rule 9 of Chapter 813 (Rules of Criminal Procedure) of the Code relating to the deferring of the final acceptance of a plea agreement until receipt of a presentence report, with a request that the Supreme Court respond to the proposed amendment.

The minutes of the Joint Subcommittee meetings, written testimony presented to the Joint Subcommittee, and other supportive materials are on file at the Legislative Service Bureau.

Drafts of the four Joint Subcommittee study bills are attached to this report.

PREPARED FOR THE PENAL AND CORRECTIONAL INSTITUTIONS AND
COUNTY JAILS JOINT SUBCOMMITTEE OF THE SENATE STANDING
COMMITTEE ON JUDICIARY AND THE HOUSE STANDING COMMITTEE
ON JUDICIARY AND LAW ENFORCEMENT. For Study Purposes Only.
October, 1978

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

A BILL FOR

1 An Act relating to terms of membership on the board of parole.

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

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1 Section 1. Section nine hundred four point one (904.1),
 2 Code 1979, is amended to read as follows:
 3 904.1 BOARD OF PAROLE. The board of parole shall consist
 4 of five electors of the state. Not more than three members
 5 shall belong to the same political party. At least two members
 6 shall be practicing attorneys-at-law at the time of
 7 appointment. Each member shall serve for ~~five~~ six years from
 8 July first of the year of appointment, except appointees to
 9 fill vacancies who shall serve for the balance of the unexpired
 10 term. Members, including members appointed to fill vacancies,
 11 shall serve only one term, except that persons serving on
 12 the board of parole on June 30, 1978 shall serve out their
 13 present term as provided under section nine hundred four point
 14 three (904.3) of the Code. The chairperson of the board shall
 15 be elected by the members of the board to a ~~term~~ tenure of
 16 one year and may serve more than one ~~term~~ tenure as chair-
 17 person. A majority of the members of the board shall
 18 constitute a quorum to transact business.

19 Sec. 2. This Act is effective on January first following
 20 its enactment.

21 EXPLANATION

22 This bill changes the term of membership on the board of
 23 parole to a single six-year term. Present members of the
 24 board would serve out their terms as presently provided in
 25 section 904.3 of the Code. The bill will be effective on
 26 January first following its enactment.

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PREPARED FOR THE PENAL AND CORRECTIONAL INSTITUTIONS AND
COUNTY JAILS JOINT SUBCOMMITTEE OF THE SENATE STANDING
COMMITTEE ON JUDICIARY AND THE HOUSE STANDING COMMITTEE
ON JUDICIARY AND LAW ENFORCEMENT. For Study Purposes Only.
October 1978

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

A BILL FOR

1 An Act relating to a system for settlement of personal prop-
2 erty claims of inmates in the women's reformatory and the
3 men's reformatory and penitentiary, and appropriating
4 funds to establish the system.

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

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1 Section 1. Section twenty-five A point fourteen (25A.14),
2 Code 1979, is amended by adding the following new subsection:
3 NEW SUBSECTION. 7. Any claim based upon damage to or
4 loss or destruction of personal property of an inmate, if
5 the claim is subject to the claim procedure established under
6 sections two (2) and three (3) of this Act.

7 Sec. 2. Chapter two hundred forty-five (245), Code 1979,
8 is amended by adding the following new section:

9 NEW SECTION. PERSONAL PROPERTY CLAIMS. The state director
10 shall establish by rule a procedure to consider, adjust,
11 and allow or disallow in whole or in part a claim based upon
12 damage to or loss or destruction of personal property of an
13 inmate of the women's reformatory.

14 Sec. 3. Chapter two hundred forty-six (246), Code 1979,
15 is amended by adding the following new section:

16 NEW SECTION. PERSONAL PROPERTY CLAIMS. The state director
17 shall establish by rule a procedure to consider, adjust, and
18 allow or disallow in whole or in part a claim based upon
19 damage to or loss or destruction of personal property of an
20 inmate of the penitentiary or men's reformatory.

21 Sec. 4. There is appropriated to the department of social
22 services from the general fund of the state for the fiscal
23 year beginning July 1, 1979 and ending June 30, 1980 the sum
24 of _____ to be
25 used to carry out the provisions of sections two (2) and three
26 (3) of this Act.

27 EXPLANATION

28 This bill exempts personal property claims of inmates in
29 the women's reformatory, men's reformatory and penitentiary
30 from the state tort claims procedure and mandates that the
31 director of the division of corrections of the department
32 of social services establish a procedure for such claims.

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PREPARED FOR THE PENAL AND CORRECTIONAL INSTITUTIONS AND
COUNTY JAILS JOINT SUBCOMMITTEE OF THE SENATE STANDING
COMMITTEE ON JUDICIARY AND THE HOUSE STANDING COMMITTEE
ON JUDICIARY AND LAW ENFORCEMENT. For Study Purposes Only.
September, 1978

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

A BILL FOR

1 An Act amending the bail provisions of the criminal code
2 revision to provide for a ten percent deposit on an ap-
3 pearance bond.

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

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1 Section 1. Section eight hundred eleven point one (811.1),
2 Code 1979, is amended to read as follows:

3 811.1 BAILABLE AND NONBAILABLE OFFENSES. All defendants
4 are bailable both before and after conviction, ~~by-sufficient~~
5 ~~surety,-or~~ subject to release upon ~~condition-or-on~~ their own
6 recognizance, upon condition, or upon execution of an unsecured
7 appearance bond, except that a defendant convicted of a class
8 A felony shall not be admitted to bail while appealing such
9 conviction.

10 Sec. 2. Section eight hundred eleven point two (811.2),
11 subsection one (1), Code 1979, is amended to read as follows:

12 1. CONDITIONS FOR RELEASE OF DEFENDANT. All bailable
13 defendants shall be ordered released from custody pending
14 judgment on their personal recognizance, ~~or-upon-the-execution~~
15 ~~of-an-unsecured-appearance-bond-in-an-amount-specified-by~~
16 ~~the-magistrate~~ unless the magistrate determines in the exercise
17 of his or her discretion, that such a release will not
18 reasonably assure the appearance of the defendant as required.
19 When such determination is made, the magistrate shall, either
20 in lieu of or in addition to the above ~~methods~~ method of
21 release, impose the first of the following conditions of
22 release which will reasonably assure the appearance of the
23 person for trial or, if no single condition gives that
24 assurance, any combination of the following conditions:

25 a. Place the defendant in the custody of a designated
26 person or ~~organization~~ a designated judicial district
27 department of correctional services agreeing to supervise
28 the defendant.

29 b. Place restrictions on the travel, association, or place
30 of abode of the defendant during the period of release.

31 c. Require the execution of an unsecured appearance bond
32 in a specified amount and the deposit with the clerk of court
33 in cash or other qualified security of a sum ~~not-to-exceed~~
34 ~~ten-percent-of-the-amount-of-the-bond,-such-deposit-to-be~~
35 ~~returned-to-the-defendant-upon-the-performance-of-the~~

1 ~~appearances-as-required-in-section-811-6~~ equal to ten percent
2 of the bail or twenty-five dollars, whichever is more. When
3 the conditions of the bail bond have been performed and the
4 defendant has been discharged from all obligations in the
5 cause, the clerk of court shall retain as an administrative
6 fee two percent of the bail or five dollars, whichever is
7 more, and shall return the remainder of the amount deposited
8 to the defendant.

9 If the security deposit is other than cash, the security
10 shall be justified by affidavit. The magistrate may further
11 examine the sufficiency of the security as the magistrate
12 deems necessary.

13 ~~d.--Require-the-execution-of-a-bail-bond-with-sufficient~~
14 ~~surety,-or-the-deposit-of-cash-in-lieu-thereof,-provided-that,-~~
15 ~~except~~ Except as provided in section 811.1, bail initially
16 given shall remain valid until final disposition of the
17 offense. If the amount of bail is deemed insufficient by
18 the court before whom the offense is pending, the court may
19 order an increase thereof and the defendant must provide the
20 additional undertaking, written or cash, to secure his or
21 her release.

22 d. Require the deposit of cash in lieu of bail.

23 e. Impose any other condition deemed reasonably necessary
24 to assure appearance as required, including a condition
25 requiring that the defendant return to custody after specified
26 hours.

27 Sec. 3. Section eight hundred eleven point three (811.3),
28 Code 1979, is amended to read as follows:

29 811.3 QUALIFICATION AND EXAMINATION OF SURETY.

30 ~~1.--Insurance-companies-doing-business-in-this-state-under~~
31 ~~the-provisions-of-section-515-48,-subsection-2,-may-act-as~~
32 ~~surety.--Resident-owners-of-property-which-is-located-within~~
33 ~~the-state-and-which-is-worth-the-amount-specified-in-the~~
34 ~~undertaking,-may-act-as-surety,-and-must-in-all-cases-justify~~
35 ~~by-an-affidavit-taken-before-an-officer-authorized-to~~

1 administer oaths that such surety possesses such
2 qualifications-

3 2- In taking bail, each signer may justify severally in
4 amounts less than that expressed in the undertaking, if the
5 whole justification be is equivalent to one sufficient bail.

6 3--The court in which the action is pending, or the clerk
7 thereof, or magistrate may require the personal appearance
8 of sureties offered, and may thereupon further examine them
9 upon oath concerning their sufficiency, and may also receive
10 other evidence for or against the sufficiency of the bail.
11 When such examination is closed, the official conducting such
12 examination must make an order, either allowing or disallowing
13 the bail, and forthwith cause the same, with the affidavits
14 or justification and undertaking of bail, to be filed with
15 the clerk of the court to which the papers on the preliminary
16 examination are required to be sent.

17 Sec. 4. Section eight hundred eleven point six (811.6),
18 subsections one (1) and three (3), is amended to read as
19 follows:

20 1. A defendant released pursuant to this division chapter
21 shall appear at arraignment, trial, judgment, or such other
22 proceedings where the defendant's appearance is required.
23 If the defendant fails to appear at the time and place when
24 his or her personal appearance is lawfully required, or to
25 surrender himself or herself in execution of the judgment,
26 the court must direct an entry of such failure to be made
27 of record, and the undertaking of the defendant's bail, or
28 the money deposited, is thereupon forfeited. As a part of
29 such entry, except as provided in rule 53, rules of criminal
30 procedure, the court shall direct the sheriff of the county
31 to give ten days' notice in writing to the defendant ~~and his~~
32 ~~or her sureties~~ to appear and show cause, if any, why judgment
33 should not be entered for the amount of such bail. If such
34 appearance is not made, judgment shall be entered by the
35 court. If such appearance is made, the court shall set the

1 case down for immediate hearing as an ordinary action.

2 3. The court may, upon application, set aside such judgment
3 if, within sixty days from the date thereof, the defendant
4 shall voluntarily surrender himself or herself to the sheriff
5 of the county, ~~or his or her sureties shall, at their own~~
6 ~~expense, deliver the defendant to the custody of the sheriff.~~
7 Such judgment shall not be set aside, however, unless as a
8 condition precedent thereto, the defendant ~~and the defendant's~~
9 ~~sureties~~ shall have paid all costs and expenses incurred in
10 connection therewith.

11 Sec. 5. Section eight hundred eleven point eight (811.8),
12 Code 1979, is amended to read as follows:

13 811.8 SURRENDER OF DEFENDANT.

14 1. At any time before the forfeiture of the undertaking,
15 ~~the surety may surrender the defendant, or~~ the defendant may
16 surrender himself or herself, to the officer to whose custody
17 the defendant was committed at the time of giving bail, and
18 such officer shall detain the defendant as upon a commitment
19 and must, upon such surrender and the receipt of a certified
20 copy of the undertaking of bail, acknowledge the surrender
21 by a certificate in writing.

22 2. Upon the filing of the undertaking and the certificate
23 of the officer, or the certificate of the officer alone if
24 money has been deposited instead of bail, the court or clerk
25 shall immediately order return of the money deposited to the
26 person who deposited the same, ~~or order an exoneration of~~
27 ~~the surety.~~

28 3. ~~For the purpose of surrendering the defendant, the~~
29 ~~surety, at any time before finally charged and at any place~~
30 ~~within the state, may arrest the defendant, or, by a written~~
31 ~~authority endorsed on a certified copy of the undertaking,~~
32 ~~may empower any person of suitable age and discretion to~~
33 ~~do so.~~

34 Sec. 6. This Act is effective on January first following
35 its enactment.

EXPLANATION

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The bill amends the bail provisions of the criminal code by replacing the traditional commercial bail bond with an appearance bond where a ten percent deposit is made. If the defendant appears in court as required, the deposit is refunded to him or her, except for an administration fee. The bill would be effective January first following its enactment.

PREPARED FOR THE PENAL AND CORRECTIONAL INSTITUTIONS AND
COUNTY JAILS JOINT SUBCOMMITTEE OF THE SENATE STANDING
COMMITTEE ON JUDICIARY AND THE HOUSE STANDING COMMITTEE
ON JUDICIARY AND LAW ENFORCEMENT. For Study Purposes Only.
December, 1978

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act providing for the compensation of innocent victims
2 of criminal acts, and providing penalties for fraudulent
3 claims.

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

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1 Section 1. NEW SECTION. INTENT. It is the intent of
2 the general assembly to provide a method of compensating and
3 assisting those residents of the state who are innocent victims
4 of criminal acts and who suffer bodily injury or death as
5 a consequence. To that end, it is the intent of the general
6 assembly that those types and amounts of benefits and services
7 which are available to injured employees under chapter eighty-
8 five (85) of the Code be made available to innocent victims
9 of crime as provided in this Act.

10 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
11 unless the context otherwise requires:

12 1. "Attorney general" means the attorney general of this
13 state or the designee of the attorney general.

14 2. "Criminal act" means an act committed or attempted
15 in this state on or after January 1, 1979 which is punishable
16 as a felony or as an aggravated misdemeanor under the laws
17 of this state. However, the operation of a motor vehicle,
18 motorcycle, train, boat, or aircraft in violation of law does
19 not constitute a "criminal act" for purposes of this Act
20 unless the injury or death was intentionally inflicted or
21 the operation thereof was part of the commission of another
22 criminal act as defined in this section. For purposes of
23 determining whether or not a criminal act occurred, the
24 following rules apply:

25 a. An acquittal in a criminal prosecution or the absence
26 of such a prosecution is not admissible in a claim or
27 proceeding under this chapter as evidence of the noncriminal
28 character of the acts giving rise to the claim or proceeding.

29 b. Evidence of a criminal conviction arising from acts
30 which are the basis for a claim or proceeding under this Act
31 is admissible in the claim or proceeding for the limited
32 purpose of proving the criminal character of the acts.

33 c. An act which, but for the insanity or mental
34 irresponsibility of the perpetrator, would constitute a criminal
35 act is a criminal act within the meaning of this Act.

1 3. "Victim" means a resident of the state who suffers
2 bodily injury or death as a proximate result of a criminal
3 act by another person, or of the victim's reasonable effort
4 in good faith to prevent a criminal act, or of the victim's
5 good faith effort to apprehend a person reasonably suspected
6 of engaging in a criminal act. A victim assumes those rights
7 and duties of an employee under chapter eighty-five (85) of
8 the Code assigned to the victim under this Act.

9 4. "Child", "spouse", "dependent", "beneficiary", "injury",
10 "permanent partial disability", and "permanent total
11 disability" have the meanings assigned to them in chapter
12 eighty-five (85) of the Code.

13 5. "Gainfully employed" means engaging on a regular and
14 continuous basis in a lawful activity from which a person
15 derives a livelihood.

16 6. "Resident" means a person who has established permanent
17 residence in this state prior to the criminal act which results
18 in the bodily injury or death for which a claim is made under
19 this Act.

20 Sec. 3. NEW SECTION. DUTIES OF ATTORNEY GENERAL--GENERAL
21 PROVISIONS.

22 The attorney general shall:

23 1. Establish and administer a program of benefits to
24 victims of criminal acts pursuant to this Act, and act as
25 the industrial commissioner or as the employer pursuant to
26 those rights and duties under chapter eighty-five (85) of
27 the Code assigned to the attorney general under this Act.

28 2. Promulgate rules pursuant to chapter seventeen A (17A)
29 of the Code governing the administration of this Act, the
30 filing of claims under this Act, and the hearing and
31 disposition of the claims.

32 3. Hear and determine claims for awards pursuant to this
33 Act, and reinvestigate or reopen cases as necessary.

34 4. Request from the department of public safety, department
35 of social services, Iowa department of job service, industrial

1 commissioner, county or municipal police departments or
2 agencies, or other public authorities or agencies, assistance
3 or data necessary to administer this Act. The authorities
4 and agencies shall furnish the requested assistance or data
5 unless prohibited by law.

6 5. Hold hearings, administer oaths or affirmations, examine
7 persons under oath or affirmation, and issue subpoenas
8 requiring the attendance and testimony of witnesses and the
9 production of books, papers, documents or other evidence.

10 6. Take affidavits or depositions within or without this
11 state.

12 7. Direct medical examinations of victims.

13 8. Publicize the existence of this Act through the
14 department of public safety, county or municipal police
15 departments or agencies, or other public authorities or
16 agencies including the procedures for obtaining compensation
17 under this Act.

18 9. Render annually to the governor and the general and
19 the general assembly a written report of activities undertaken
20 pursuant to this Act.

21 Sec. 4. NEW SECTION. RIGHT OF ACTION AGAINST PERPETRATOR-
22 -SUBROGATION. A right of legal action against a person who
23 has committed a criminal act is not lost as a consequence
24 of receiving benefits under the provisions of this Act. If
25 a person receiving benefits under this Act seeks a remedy
26 for damages from a person who has committed a criminal act
27 or from another person civilly liable, the attorney general
28 is subrogated to and has a lien upon the recovery to the
29 extent of the payments made by the attorney general to or
30 on behalf of the person under this Act.

31 Sec. 5. NEW SECTION. APPLICATION FOR BENEFITS. In order
32 to claim benefits under this Act:

33 1. An application for benefits shall be filed with the
34 attorney general within one hundred eighty days after the
35 date of the criminal act or within one hundred twenty days

1 after the date of death of the victim or the date that the
2 rights of dependents or beneficiaries accrue.

3 2. The criminal act shall be reported by the victim or
4 someone on the victim's behalf to a local police department
5 or sheriff's office within seventy-two hours of its occurrence
6 or, if it cannot reasonably be reported within that period,
7 within seventy-two hours of the time when a report can
8 reasonably be made.

9 Sec. 6. NEW SECTION. BENEFITS--DISQUALIFICATION. Benefits
10 to or on behalf of a victim as a result of a criminal act
11 are payable as follows:

12 1. A victim, or a spouse, child, or dependent of a victim
13 is not entitled to benefits under this Act when the bodily
14 injury or death for which benefits are sought was:

15 a. The result of consent, provocation or incitement by
16 the victim.

17 b. The result of an act committed by a person living in
18 the same household with the victim.

19 c. The result of an act committed by a person who is at
20 the time of the criminal act the spouse, child, stepchild,
21 parent, stepparent, brother, stepbrother, sister or stepsister
22 of the victim, or the parent or stepparent of the victim's
23 spouse or a brother, stepbrother, sister or stepsister of
24 the victim's spouse.

25 d. The result of the victim assisting, attempting, or
26 committing a criminal act.

27 e. Sustained while the victim was confined in a county
28 or city jail, federal jail, prison or other federal
29 institution, or state correctional institution or other
30 institution maintained and operated by the department of
31 social services.

32 2. An award shall not be made on a claim unless the
33 claimant has incurred a minimum out-of-pocket loss of one
34 hundred dollars or has lost at least two continuous weeks
35 of earnings or support. Out-of-pocket loss means unreimbursed

1 and unreimbursable expenses or indebtedness reasonably incurred
2 for medical care or other services necessary as a result of
3 the bodily injury or death on which the claim is based.

4 3. If the death of a victim is proximately caused by the
5 criminal act, the benefits established by sections eighty-
6 five point twenty-seven (85.27) through eighty-five point
7 thirty-one (85.31) of the Code and the provisions relating
8 to payment under those sections apply under this Act. However,
9 if the criminal act results in the death of a victim who was
10 not gainfully employed at the time of the criminal act and
11 for at least three consecutive months during the twelve-month
12 period immediately preceding the criminal act, benefits are
13 payable as follows:

14 a. For the services and supplies necessitated by the
15 bodily injury which resulted in the victim's death as provided
16 in section eighty-five point twenty-seven (85.27) of the Code.

17 b. For burial expenses as provided in section eighty-five
18 point twenty-eight (85.28) of the Code.

19 c. A lump sum payment of three thousand seven hundred,
20 fifty dollars to each dependent spouse or child of the victim
21 as provided for in section eighty-five point forty-two (85.42)
22 of the Code or to actual dependents of the victim as provided
23 for in section eighty-five point forty-four (85.44) of the
24 Code.

25 4. If the criminal act proximately causes the permanent
26 total disability of a victim, the benefits established in
27 sections eighty-five point twenty-seven (85.27) and eighty-
28 five point thirty-four (85.34) of the Code for permanent total
29 disability, and the provisions relating to payment contained
30 in those sections apply under this Act. However, if the
31 criminal act proximately causes the permanent total disability
32 of a victim who was not gainfully employed at the time of
33 the criminal act and for at least three consecutive months
34 during the twelve-month period immediately preceding the
35 criminal act, the victim shall receive monthly during the

1 period of the disability the following percentages of the
2 average monthly wage under the provisions of section ninety-
3 six point three (96.3) of the Code, determined as of the date
4 of the criminal act:

5 a. If married at the time of the criminal act, twenty-
6 nine percent.

7 b. If married with one child at the time of the criminal
8 act, thirty-four percent.

9 c. If married with two children at the time of the criminal
10 act, thirty-eight percent.

11 d. If married with three children at the time of the
12 criminal act, forty-one percent.

13 e. If married with four children at the time of the
14 criminal act, forty-four percent.

15 f. If married with five or more children at the time of
16 the criminal act, forty-seven percent.

17 g. If unmarried at the time of the criminal act, twenty-
18 five percent.

19 h. If unmarried with one child at the time of the criminal
20 act, thirty percent.

21 i. If unmarried with two children at the time of the
22 criminal act, thirty-four percent.

23 j. If unmarried with three children at the time of the
24 criminal act, thirty-seven percent.

25 k. If unmarried with four children at the time of the
26 criminal act, forty percent.

27 l. If unmarried with five or more children at the time
28 of the criminal act, forty-three percent.

29 5. If the criminal act proximately causes the permanent
30 partial disability of the victim the benefits established
31 in sections eighty-five point twenty-seven (85.27) and eighty-
32 five point thirty-four (85.34) of the Code for permanent
33 partial disability and the provisions relating to payment
34 contained in those sections apply under this Act. However,
35 if the criminal act proximately causes the permanent partial

1 disability of a victim who was not gainfully employed at the
2 time of the criminal act and for at least three consecutive
3 months during the twelve-month period immediately preceding
4 the criminal act, the victim shall receive the number of weeks
5 of permanent partial disability compensation as provided in
6 section eighty-five point thirty-four (85.34), subsection
7 two (2) of the Code with the weekly compensation rate figured
8 as the same percentage of the average monthly wage as provided
9 in subsection four (4) of this section.

10 6. If the criminal act proximately causes the temporary
11 total disability of the victim the benefits established in
12 sections eighty-five point twenty-seven (85.27) and eighty-
13 five point thirty-three (85.33) of the Code for temporary
14 total disability and the provisions relating to payment
15 contained in those sections apply under this Act. However,
16 a person is not eligible for temporary total disability
17 benefits under this Act if the person was not gainfully
18 employed at the time of the criminal act and for at least
19 three consecutive months during the twelve-month period
20 immediately preceding the criminal act.

21 7. The benefits established in section eighty-five point
22 seventy (85.70) of the Code for vocational rehabilitation
23 and the provisions relating to payment contained in that
24 section apply under this Act.

25 8. The provisions of sections eighty-five point thirty
26 (85.30), eighty-five point thirty-two (85.32), eighty-five
27 point thirty-six (85.36), eighty-five point thirty-seven
28 (85.37), eighty-five point thirty-nine (85.39), eighty-five
29 point forty-two (85.42), eighty-five point forty-four (85.44),
30 eighty-five point forty-five (85.45) through eighty-five point
31 forty-eight (85.48), and section eighty-five point sixty-one
32 (85.61), of the Code apply to claims for benefits under this
33 Act to the extent applicable.

34 Sec. 7. NEW SECTION. MARITAL STATUS--PAYMENT FOR OR ON
35 ACCOUNT OF CHILDREN. Notwithstanding the provisions of chapter

1 eighty-five (85) of the Code or of this Act, the marital
2 status of a victim shall be determined as of the date of the
3 criminal act. References in this Act to a surviving child
4 refer to a living or conceived child of the victim as of the
5 date of the criminal act unless the context clearly indicates
6 the contrary.

7 Payments for or on account of a child shall cease when
8 the child is no longer dependent as provided for in section
9 eighty-five point forty-two (85.42) or eighty-five point
10 forty-four (85.44) of the Code, or on the death of the child,
11 whichever occurs first.

12 Sec. 8. NEW SECTION. MEDICAL AID. The benefits provided
13 in section eighty-five point twenty-seven (85.27) of the Code
14 govern entitlement to medical benefits under section six (6)
15 of this Act. However, with respect to ambulance service,
16 benefits are limited to reasonable transportation costs from
17 the place of injury to the nearest proper place of emergency
18 treatment. The attorney general may require that the victim
19 actually incur charges before benefits are payable under this
20 section.

21 Sec. 9. NEW SECTION. ESTABLISHMENT OF FUNDS. The
22 treasurer of state shall establish a fund in the state treasury
23 to administer this Act, and payment to the fund shall be from
24 legislative appropriation, reimbursement, recoupment and
25 subrogation as provided in this Act, and from the specific
26 contributions or grants. The fund shall not be comingled
27 with other funds or accounts administered by the attorney
28 general.

29 Sec. 10. NEW SECTION. REIMBURSEMENT.

30 1. A person who has committed a criminal act resulting
31 in bodily injury or death compensated under this Act shall
32 reimburse the attorney general as provided in this section.

33 2. A payment of benefits to or on behalf of a victim
34 under this Act creates a debt due and owing to the state by
35 a person found to have committed the criminal act in either

1 a civil or criminal court proceeding in which the person is
2 a party. However, the debt is limited to the amount provided
3 for in a civil judgment against the person or in a criminal
4 judgment ordering restitution.

5 3. If a convicted person, who owes a debt to the attorney
6 general as a consequence of this section, is placed on work
7 release or is released from the custody of a state correctional
8 facility on parole the department of social services or the
9 parole board may have the schedule or amount of payments on
10 the debt set as a condition of work release or parole, subject
11 to modification based on change of circumstances.

12 4. The attorney general in the interest of justice and
13 the rehabilitation of the individual may waive, decrease,
14 or adjust a requirement for payment due and owing the attorney
15 general by a convicted person under this Act.

16 5. The attorney general may bring a civil action on behalf
17 of the state in the district court to obtain satisfaction
18 of a debt created by this section.

19 Sec. 11. NEW SECTION. ERRONEOUS OR FRAUDULENT PAYMENT-
20 -REPAYMENT, WHEN--PENALTY.

21 1. If a payment under this Act is made because of clerical
22 error, mistaken identity, innocent misrepresentation by or
23 on behalf of the recipient, or another circumstance of a
24 similar nature, not induced by fraud of the recipient, the
25 recipient is liable for repayment. One mode of authorized
26 recoupment is the reduction of future payments to the recipient
27 under this Act. The attorney general shall formally claim
28 liability for a repayment within one year of the making of
29 the payment or a claim therefor is barred. The attorney
30 general may waive, decrease, or adjust the amount of a
31 repayment claim.

32 2. If the final decision of the attorney general or of
33 a court upon appeal is that a payment was made pursuant to
34 an erroneous adjudication, the recipient is liable for
35 repayment. One mode of authorized recoupment is the reduction

1 of future payments to the recipient under this Act. The
2 attorney general may waive, decrease, or adjust, the amount
3 of a repayment claim.

4 3. If a payment under this Act has been induced by fraud
5 of a recipient, the recipient is liable for repayment together
6 with a penalty of fifty percent of the repayment due. One
7 mode of authorized recoupment for the total amount is the
8 reduction of future payments to the recipient under this Act.

9 Sec. 12. NEW SECTION. COLLATERAL SOURCES OFFSET. Benefits
10 payable pursuant to this Act shall be reduced by the amount
11 of public or private insurance, workers' compensation or
12 unemployment benefits, or medical, health or disability
13 benefits available to the recipient, notwithstanding a contract
14 provision to the contrary. Benefits payable pursuant to this
15 Act shall also be reduced by the amount of a reimbursement
16 directly to the recipient from or on behalf of the person
17 committing the criminal act.

18 Sec. 13. NEW SECTION. CONFIDENTIALITY. Information
19 maintained by the attorney general under the provisions of
20 this Act is confidential and is not subject to public
21 examination as provided in section sixty-eight A point two
22 (68A.2) of the Code. A person making a claim under this Act
23 or the person's representative may, upon the presentation
24 of the signed authorization of the person making the claim
25 review a claim file or receive specific information from the
26 file. Physicians treating or examining victims claiming
27 benefits under this Act, or physicians giving medical advice
28 to the attorney general regarding a claim under this Act may,
29 at the discretion of the attorney general, inspect the claim
30 files and records of the victims.

31 Sec. 14. NEW SECTION. RELEASE OF INFORMATION IN
32 PERFORMANCE OF OFFICIAL DUTIES. A person in possession or
33 control of investigative or other information pertaining to
34 an alleged criminal act or victim claiming benefits under
35 this Act shall, upon the request of the attorney general,

1 allow the inspection and reproduction of the information by
2 the attorney general to be used only in the administration
3 and enforcement of this Act.

4 A person shall not incur legal liability by reason of
5 releasing information to the attorney general under this Act.

6 Sec. 15. This Act is effective January first following
7 its enactment.

8 EXPLANATION

9 This bill provides a scheme for the compensation of innocent
10 victims of criminal acts and their dependents. The
11 compensation scheme is tied to workers' compensation benefits
12 as provided in chapter 85 of the Code. If the victim is not
13 gainfully employed at the time of the bodily injury or death
14 the bill establishes benefits based on the average monthly
15 wage in Iowa as determined by the director of job service.

16 The attorney general is the administrator of the victim
17 compensation scheme and is responsible for seeking
18 reimbursement from a person who has committed a criminal act
19 resulting in payments to or on behalf of a victim under the
20 compensation scheme.

21 The bill would become law on January first following its
22 enactment.

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