

FILED JAN 16 1973

Judiciary 1-17-73, Page 124

Knoke, Chairman
Jesse
Anderson
Hargrave
Oakley

Reprinted 2/21/73

SENATE FILE 26

By DeKOSTER and RILEY

Passed Senate, Date 1-30-73 (191) Passed House, Date _____

Vote: Ayes 45 Nays 2 Vote: Ayes _____ Nays _____

Approved _____

*Motion to reconsider filed 1-31-73 (202)
motion lost 2/21/73 (378)*

A BILL FOR

- 1 An Act to provide for deferred sentences.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section two hundred forty-seven point twenty
2 (247.20), Code 1973, is amended by striking the section and
3 inserting in lieu thereof the following:

4 247.20 DEFERRED SENTENCE; PROBATION. The trial court
5 before which a person has been convicted of any crime, except
6 for treason, murder, or violation of section two hundred four
7 point four hundred one (204.401), subsection one (1) or two
8 (2) of the Code, to which section two hundred four point four
9 hundred nine (204.409), subsection two (2) of the Code, is
10 not applicable and which is not proven to be an accommodation
11 offense under section two hundred four point four hundred
12 ten (204.410) of the Code, may:

13 1. Without entering judgment, and with the consent of
14 the defendant, defer further proceedings and place the de-
15 fendant on probation upon such terms and conditions as it
16 may require. Upon fulfillment of the terms of probation the
17 defendant shall be discharged without entry of judgment.
18 Upon violation of the terms, the court may enter an adjudica-
19 tion of guilt and proceed as otherwise provided.

20 2. By record entry at time of or after sentence is pro-
21 nounced but before imprisonment, suspend the sentence, and
22 place the defendant on probation upon such terms and condi-
23 tions as it may require.

24 The court may by record entry withhold execution of any
25 judgment or sentence for such time as shall be reasonably
26 necessary for an investigation with respect to deferral of
27 judgment or suspension of sentence and probation. The in-
28 vestigation shall be made by a probation officer, by the
29 agency in charge of parole agents, or by another appropriate
30 agency, as determined by the court.

31 The length of the probation shall be for such term as the
32 court may fix, unless the person is ordered placed under the
33 supervision of the chief parole officer, in which case the
34 term of probation shall be determined by the board of parole
35 and the probation of the convicted party shall be supervised

1 by the chief parole officer.

2 In cases where the court fixes the term of probation the
3 court may grant a final discharge to such person at the ex-
4 piration of the period and, in cases involving a conviction
5 of a felony, the court shall forward to the governor of the
6 state a recommendation for or against restoration of citizen-
7 ship rights to such person.

8 Sec. 2. Section two hundred forty-seven point twenty-one
9 (247.21), unnumbered paragraph two (2), Code 1973, is amended
10 to read as follows:

11 In each case wherein the court shall order said person
12 committed to the custody, care, and supervision of the chief
13 parole officer, the clerk of the district court shall at once
14 furnish the chief parole officer with certified copies of
15 the indictment or information, the minutes of testimony
16 attached thereto, the judgment entry if judgment is not
17 deferred, the original mittimus. The county attorney shall
18 at once advise the chief parole officer, by letter, that the
19 defendant has been placed under the chief parole officer's
20 supervision and give to the chief parole officer a detailed
21 statement of the facts and circumstances surrounding the crime
22 committed and the record and history of the defendant as may
23 be known to him. If the defendant is confined in the county
24 jail at the time of sentence, the court may order him so held
25 until arrangements are made by the chief parole officer for
26 his employment and he will have signed the necessary probation
27 papers. If the defendant is not confined in the county jail
28 at the time of sentence, the court may order him to remain
29 in the county wherein he has been convicted and sentenced
30 and report to the sheriff as to his whereabouts.

31 Sec. 3. Section seven hundred eighty-nine point eleven
32 (789.11), Code 1973, is amended to read as follows:

33 789.11 JUDGMENT ENTERED. If judgment is not deferred,
34 and no sufficient cause is shown why judgment should not be
35 pronounced, and none appears to the court upon the record,

1 judgment shall be rendered. In every case in which judgment
2 is entered, the court shall include in the judgment entry
3 the number of the particular section of the Code under which
4 the defendant is sentenced.

5 EXPLANATION

6 This bill provides for deferred sentencing. Upon convic-
7 tion the court may defer judgment and sentence and impose
8 probation under prescribed terms and conditions. Upon success-
9 ful completion of the probation, the defendant is discharged
10 without a judgment being entered against him. If he violates
11 probation, the court may impose judgment and sentence the
12 defendant as is presently provided.

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S-110

1 Amend Senate File 26 as amended by striking all of
2 Section 1 and inserting in lieu thereof the following:

3 Section 1. Section two hundred forty-seven point
4 twenty (247.20), Code of Iowa, 1973, is amended by
5 striking the section and inserting in lieu thereof the
6 following:

7 247.20 DEFERRED SENTENCE; PROBATION.

8 1. After a plea or verdict of guilty, the trial court
9 may, for good cause and in the sound exercise of its
10 discretion following a pre-sentence investigation, either
11 defer entering final judgment of conviction and sentence
12 and place the defendant on probation, or enter judgment
13 of conviction and sentence and grant probation to commence
14 at once thereafter. In either instance, the probation
15 shall be upon such terms and conditions and of such dura-
16 tion as the court may fix, but not less than one year nor
17 more than the period of the maximum term of confinement
18 if the offense be a felony, nor more than two years if
19 the offense be a misdemeanor, unless the person is ordered
20 placed under the supervision of the chief parole officer,
21 in which case the term of probation shall be determined
22 by the board of parole and the probation of the convicted
23 party shall be supervised by the chief parole officer.
24 Before exercising either of the foregoing sentencing
25 options, the court shall first determine which of them

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1 will provide maximum opportunity for the rehabilitation
2 of the defendant and protection of the community from
3 further offenses by the defendant and others. In
4 making this determination the court shall consider the
5 age of the defendant, his prior record of convictions,
6 if any, his employment circumstances, his family circum-
7 stances, the nature of the offense committed, whether a
8 dangerous weapon or force was used in the commission of
9 such offense, and such other factors as shall be appro-
10 priate.

11 2. Good cause for deferred sentence and probation
12 or for probation after sentence, shall be deemed not to
13 exist under any of the following circumstances:

14 a. Where deferred sentence or probation is
15 specifically prohibited by law, or

16 b. Where the crime is treason, murder, assault
17 with intent to commit murder, rape, kidnapping for
18 ransom, arson, burglary with aggravation, robbery
19 with aggravation, sale of heroin or any other dan-
20 gerous substance as referred to in the first sentence
21 of section two hundred four point four hundred six
22 (204.406) of the Code other than as an accommodation.

23 sale to a person under eighteen years of age, or
24 any felony in which the maximum statutory sentence
25 may exceed twenty years in the penitentiary, or

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1 c. Where the defendant has previously been con-
2 victed of a felony under any state or federal
3 statute, or

4 d. Where the defendant has previously received
5 a deferred sentence in a felony case in any state or
6 from any court, or

7 e. Where the defendant is able but unwilling,
8 or able and willfully refuses or neglects, to make
9 restitution in an amount fixed by the court as
10 hereinafter provided.

11 3. Before placing any defendant on probation, either
12 before or after judgment of conviction or sentence, the
13 court shall order pre-sentence investigation to include
14 whether or not there are any victims who may be entitled
15 to restitution for damages caused by the crime. If
16 there appear to be such victims, a restitution hearing
17 shall be held before imposition of any order of proba-
18 tion. Any victims who may be entitled to restitution
19 shall be given notice of such hearing and, upon their
20 motion, shall be made parties to such proceeding. A
21 determination shall be made at this hearing as to de-
22 fendant's present and future ability to make restitue-
23 tion, and a schedule of regular payments shall be made
24 for satisfaction of any portion of the restitution which
25 cannot be immediately paid. The court shall order

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1 defendant to make such continuing payment as a condition
2 of continuing probation.

3 The court shall make a separate finding of facts,
4 conclusions of law, and order as to restitution, which
5 order shall be appealable by any victim claiming resti-
6 tution, or by the defendant, as a civil proceeding and
7 in accordance with the Iowa rules of civil procedure.

8 4. Separate and apart from the court's final order
9 imposing a deferred sentence or probation after sentence,
10 the court shall enter civil judgment against the defen-
11 dant in an amount equal to the victim's actual damages.
12 Any part of this judgment outstanding upon termination
13 of defendant's probation shall remain enforceable
14 against the defendant by the victim as an ordinary civil
15 judgment.

16 5. In any subsequent civil action arising out of
17 the same occurrence as constitutes the offense, the
18 amount actually paid by defendant as restitution shall
19 be a set-off against any final judgment.

20 The portion of the judgment which defendant must
21 pay as a condition of continuing probation, and the
22 schedule of payments thereon, shall be fixed by the
23 court according to its determination of defendant's
24 ability to pay during probation.
25 6. "Victim" shall include any individual who suffers

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1 direct pecuniary cost as a proximate cause of the crime.
2 7. The court shall file in writing its reasons for
3 deferring sentence and granting probation or for granting
4 probation after sentence and show therein the probation
5 officers or others who made the pre-sentence investiga-
6 tion and when it was completed. No pre-sentence inves-
7 tigation shall be deemed to have been made as a basis
8 for deferred sentence or probation unless it contains
9 a report of the criminal history of the defendant from
10 the Iowa division of criminal investigation and bureau
11 of identification and unless the investigation is
12 initiated, concluded and filed within thirty days fol-
13 lowing the plea or verdict of guilty. Except for good
14 cause shown in the record and findings of the court,
15 deferred sentence and probation, or probation after
16 judgment of conviction and sentence, shall be entered
17 within thirty days after the pre-sentence investigation
18 report is filed.
19 8. Once a deferred sentence has been granted on a
20 plea of guilty, the defendant may not thereafter with-
21 draw such plea, notwithstanding the provisions of
22 section seven hundred seventy-seven point fifteen
23 (777.15) of the Code.
24 9. Upon violation of the terms of probation, or
25 willful failure to make restitution as ordered, the

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1 court shall enter judgment of conviction and sentence,
2 if such has not heretofore been entered, and the proba-
3 tion shall end in any event, and the sentence shall be
4 executed forthwith.
5 10. Upon fulfillment of the terms of probation
6 without violation, the defendant shall be discharged
7 and, if no judgment of conviction has been entered, the
8 court's criminal record with reference to the deferred
9 sentence shall be expunged. The court's record shall
10 never be expunged in any other circumstance, except
11 as provided in section six hundred two point fifteen
12 (602.15) of the Code, and any civil judgments entered
13 as a consequence of the crime shall survive.
14 11. Upon entry of judgment of conviction and sentence,
15 whether or not probation is granted; and upon granting
16 of probation before sentence; and upon entering sentence

17 after deferred sentence and violation of probation, the
18 court shall notify the Iowa division of criminal inves-
19 tigation and bureau of identification of the disposition
20 of the case to that stage of the proceeding, upon such
21 forms as the state bureau may provide, and no court
22 record in any deferred sentence case may be expunged
23 until the court has received a receipt or acknowledge-
24 ment in writing from the Iowa division of criminal inves-
25 tigation and bureau of identification that it has filed

Page 7

1 defendant's record in the case with its confidential
2 records and that such records will be kept and used as
3 by law provided and so that it may be ascertained
4 whether any person charged with a crime in this state
5 has previously been granted a deferred sentence in any
6 county.
7 12. In any case where a judgment of conviction and
8 sentence is entered, the court shall forward to the
9 governor a recommendation with reference to future
10 restoration of citizenship rights to such person.

Filed
February 20, 1973

By HILL

S-65

1 Amend Senate File 26 as follows:
2 1. Page 2, line 19, by adding after the word "provided."
3 the following: "The court shall withhold execution of any
4 judgment or sentence and shall not defer such under this
5 subsection until a thorough investigation is conducted.
6 The investigation shall be made by a probation officer, by
7 the agency in charge of parole agents, or by another appro-
8 priate agency, as determined by the court. Any sentence
9 deferred under this subsection shall be promptly reported
10 in all particulars to the clerk of the supreme court who
11 shall keep a permanent record of all such information.
12 Such records shall constitute confidential records exempted
13 from public access under section sixty-eight A point seven,
14 (68A.7), subsection nine (9) of the Code and shall be
15 available only to district judges ordering investigations
16 pursuant to this section."
17 2. Page 2, line 26, by striking the words "deferral
18 of".
19 3. Page 2, line 27, by striking the words "judgment
20 or".

Filed
February 9, 1973

By PLYMAT

S-95

Amend Senate File 26 as follows:

1. Page 2, line 13, by striking the word "Without" and inserting in lieu thereof the following:

"Except for crimes which would constitute a second offense for the defendant if judgment were entered against him, or crimes in which a necessary element of the offense includes placing any person in danger of serious physical injury, without".

2. Page 2, line 19, by inserting after the word "provided." the following:

"Upon fulfillment of the terms of probation without violation, the defendant shall be discharged and, if no judgment of conviction has been entered, the court's criminal record with reference to the deferred sentence shall be expunged. The court's record shall never be expunged in any other circumstances except as provided in section six hundred two point fifteen (602.15) of the Code. Upon entry of judgment of conviction and sentence, whether or not probation is granted, and upon granting of probation before sentence, and upon entering sentence after deferred sentence and violation of probation, the court shall notify the division of criminal investigation and bureau of identification of the department of public safety of the disposition of the case to that stage of the proceeding, upon such forms as the department shall

Page 2

provide, and no court record in any deferred sentence case may be expunged until the court has received a receipt of acknowledgement in writing from the division of criminal investigation and bureau of identification that it has filed defendant's record in the case with its confidential records and that such records will be kept and used as by law provided and so that it may be ascertained whether any person charged with a crime in this state has previously been granted a deferred sentence in any county."

3. Page 3, by inserting after line 30, the following new section:

"Sec. ____ . Section six hundred two point fifteen (602.15),

Code 1973, is amended to read as follows:

602.15 AMENDING OR EXPUNGING ENTRY. The record of any

court proceedings is under the control of the court and, except as provided in section two hundred forty-seven point twenty (247.20), subsection one (1) of the Code, may be amended or any entry therein expunged before it has been signed by the judge or within sixty days thereafter."

4. By renumbering remaining sections and correcting internal references as necessary in accordance with this amendment.

Filed
February 19, 1973

By HANSEN

S3

1 Amend Senate File 26, page 4, by adding after line 4 the following
2 new section:
3 Sec. _____. This Act, being deemed of immediate importance,
4 shall take effect and be in force from and after its publication
5 in The Cedar Rapids Gazette, a newspaper published in Cedar
6 Iowa, and in The Sioux County Index-Reporter, a newspaper published
7 in Hull, Iowa.

Filed - *Adopted 1-30-73*
January 17, 1973

By RILEY

S-16

1 Amend Senate File 26, page 2, line 16, by inserting after
2 the
3 word "require" the following: "and the court shall file in
4 writing its reasons for deferring such further proceedings
5 and for placing such defendant on probation".

Filed and adopted
January 29, 1973

By DE KOSTER and MC CARTNEY

S-8

1 Amend Senate File 26, page 2, line 32, by inserting
2 following the word "fix" the following:
3 "but not to exceed the period of maximum confinement
4 if the offense be a felony or not to exceed two years if the
5 offense be a misdemeanor,".

Filed - *Adopted 1-29-73*
January 22, 1973

By GLENN

S-7

1 Amend Senate File 26, page 2, line 23, by inserting the
2 following new paragraph after the word "require."
3 "Before exercising either of the foregoing sentencing
4 options, the court shall first determine which of them will
5 provide maximum opportunity for the rehabilitation of the
6 defendant and protection of the community from further offense
7 by the defendant and others. In making this determination the
8 court shall consider the age of the defendant, his prior record
9 of convictions, if any, his employment circumstances, his
10 family circumstances, the nature of the offense committed,
11 whether a dangerous weapon or force was used in the commission
12 of such offense, and such other factors as shall be appropriate

Filed - *Adopted 1-29-73*
January 22, 1973

By GLENN

February 21, 1973

Judiciary - Law Enforcement 3/22 -
Amend. Para 4/17

**SENATE AMENDMENTS
IN BOLD FACE.**

SENATE FILE 26

By DeKOSTER and RILEY

(AS PASSED BY THE SENATE)

Passed Senate, Date 5-17-73 Passed House, Date 5-10-73 (1259)

Vote: Ayes Nays Vote: Ayes 78 Nays 19

Approved 7-12-73

A BILL FOR

Motion to reconvene filed 5/10, w. & 5/14.

- 1 An Act to provide for deferred sentences.
- 2 **Be It Enacted by the General Assembly of the State of Iowa:**

Conference Committee

Senate 5/18

*DeKoster, Muller of
Marshall, Schweigert,
Glenn, Junkin*

House

*Knobe, Stanley, Edler,
McCormick, Cochran*

Passed Senate per Conference Comm. Rep.

6-21-73 (1740)

45-1

Passed House per Conference Committee Report

6-21-73 (2173)

75-10

1 Section 1. Section two hundred forty-seven point twenty
2 (247.20), Code 1973, is amended by striking the section and
3 inserting in lieu thereof the following:

4 247.20 DEFERRED SENTENCE; PROBATION. The trial court
5 before which a person has been convicted of any crime, except
6 for treason, murder, or violation of section two hundred four
7 point four hundred one (204.401), subsection one (1) or two
8 (2) of the Code, to which section two hundred four point four
9 hundred nine (204.409), subsection two (2) of the Code, is
10 not applicable and which is not proven to be an accommodation
11 offense under section two hundred four point four hundred
12 ten (204.410) of the Code, may:

13 1. Without entering judgment, and with the consent of
14 the defendant, defer further proceedings and place the de-
15 fendant on probation upon such terms and conditions as it
16 may require and the court shall file in writing its reasons
17 for deferring such further proceedings and for placing such
18 defendant on probation. Upon fulfillment of the terms of probation the
19 defendant shall be discharged without entry of judgment.
20 Upon violation of the terms, the court may enter an adjudica-
21 tion of guilt and proceed as otherwise provided.

22 2. By record entry at time of or after sentence is pro-
23 nounced but before imprisonment, suspend the sentence, and
24 place the defendant on probation upon such terms and condi-
25 tions as it may require.

26 Before exercising either of the foregoing sentencing
27 options, the court shall first determine which of them will
28 provide maximum opportunity for the rehabilitation of the
29 defendant and protection of the community from further offenses
30 by the defendant and others. In making this determination the
31 court shall consider the age of the defendant, his prior record
32 of convictions, if any, his employment circumstances, his
33 family circumstances, the nature of the offense committed,
34 whether a dangerous weapon or force was used in the commission
35 of such offense, and such other factors as shall be appropriate.

36 The court may by record entry withhold execution of any
37 judgment or sentence for such time as shall be reasonably
38 necessary for an investigation with respect to deferral of
39 judgment or suspension of sentence and probation. The in-
40 vestigation shall be made by a probation officer, by the
41 agency in charge of parole agents, or by another appropriate
42 agency, as determined by the court.

43 The length of the probation shall be for such term as the
44 court may fix **but not to exceed the period of maximum confinement**
45 **if the offense be a felony or not to exceed two years if the**
46 **offense be a misdemeanor**, unless the person is ordered placed under the
47 supervision of the chief parole officer, in which case the
48 term of probation shall be determined by the board of parole
49 and the probation of the convicted party shall be supervised

1 by the chief parole officer.

2 In cases where the court fixes the term of probation the
3 court may grant a final discharge to such person at the ex-
4 piration of the period and, in cases involving a conviction
5 of a felony, the court shall forward to the governor of the
6 state a recommendation for or against restoration of citizen-
7 ship rights to such person.

8 Sec. 2. Section two hundred forty-seven point twenty-one
9 (247.21), unnumbered paragraph two (2), Code 1973, is amended
10 to read as follows:

11 In each case wherein the court shall order said person
12 committed to the custody, care, and supervision of the chief
13 parole officer, the clerk of the district court shall at once
14 furnish the chief parole officer with certified copies of
15 the indictment or information, the minutes of testimony
16 attached thereto, the judgment entry *if judgment is not*
17 *deferred*, the original mittimus. The county attorney shall
18 at once advise the chief parole officer, by letter, that the
19 defendant has been placed under the chief parole officer's
20 supervision and give to the chief parole officer a detailed
21 statement of the facts and circumstances surrounding the crime
22 committed and the record and history of the defendant as may
23 be known to him. If the defendant is confined in the county
24 jail at the time of sentence, the court may order him so held
25 until arrangements are made by the chief parole officer for
26 his employment and he will have signed the necessary probation
27 papers. If the defendant is not confined in the county jail
28 at the time of sentence, the court may order him to remain
29 in the county wherein he has been convicted and sentenced
30 and report to the sheriff as to his whereabouts.

31 Sec. 3. Section seven hundred eighty-nine point eleven
32 (789.11), Code 1973, is amended to read as follows:

33 789.11 JUDGMENT ENTERED. *If judgment is not deferred,*
34 *and no sufficient cause is shown why judgment should not be*
35 *pronounced, and none appears to the court upon the record,*

1 judgment shall be rendered. In every case *in which judgment*
2 *is entered*, the court shall include in the judgment entry
3 the number of the particular section of the Code under which
4 the defendant is sentenced.

5 **Sec. 4. This Act, being deemed of immediate importance,**
6 **shall take effect and be in force from and after its publication**
7 **in The Cedar Rapids Gazette, a newspaper published in Cedar**
8 **Rapids, Iowa, and in The Sioux County Index-Reporter, a newspaper**
9 **published in Hull, Iowa.**

10 **EXPLANATION**

11 This bill provides for deferred sentencing. Upon convic-
12 tion the court may defer judgment and sentence and impose
13 probation under prescribed terms and conditions. Upon success-
14 ful completion of the probation, the defendant is discharged
15 without a judgment being entered against him. If he violates
16 probation, the court may impose judgment and sentence the
17 defendant as is presently provided.

1 Amend Senate File 26, as amended, passed, and re-
2 printed by the Senate, as follows:

*Adopted as
amended
by H-473
5/9*

3 1. Page 2A, by striking lines 4 through 12 and in-
4 serting in lieu thereof the following:

5 247.20 DEFERRED SENTENCE--PROBATION. The trial
6 court may, upon a plea of guilty, verdict of guilty,
7 or a special verdict upon which a judgment of convic-
8 tion may be rendered, exercise either of the sentenc-
9 ing options stated in this section. However, this
10 section shall not apply to the crimes of treason,
11 murder, assault with intent to commit murder, burglary
12 with aggravation, robbery with aggravation, rape, if
13 by force or against the will of the victim, rape, if
14 the victim is not more than twelve years of age at the
15 time of the offense, assault with intent to commit
16 rape, violation of section seven hundred five point
17 one (705.1) or seven hundred twenty-five point two
18 (725.2) of the Code if the offense is committed upon
19 or with respect to a child not more than twelve years
20 of age at the time of the offense, or violation of
21 section two hundred four point four hundred one
22 (204.401), subsections one (1) or two (2) of the Code,
23 to which section two hundred four point four hundred
24 nine (204.409), subsection two (2) of the Code is not
25 applicable and which is not proved to be an accommoda-
26 tion offense under section two hundred four point four
27 hundred ten (204.410) of the Code. The court may:

28 2. Page 2A, line 21, by inserting after the period
29 the following new sentence:

*471B
adopted
5/9*

30 This subsection shall not be available if the de-
31 fendant has previously received a deferred sentence
32 in a felony prosecution anywhere in the United States
33 or has been twice convicted of a felony anywhere in
34 the United States.

35 3. Page 2A, line 25, by inserting after the period
36 the following new sentence:

*471C
adopted
5/9*

37 This subsection shall not be available if the de-
38 fendant has previously received any combination of
39 two or more deferred sentences or suspended sentences
40 in felony prosecutions anywhere in the United States
41 or has been twice convicted of a felony anywhere in
42 the United States.

43 4. Page 3A, line 1, by inserting after the period
44 the following new sentence:

*471D
adopted 5/9*

45 The length of the probation shall not in any event
46 be less than one year, and shall not be less than two
47 years if the offense is a felony for which the maxi-
48 mum punishment includes imprisonment for five years
49 or more.

50 5. Page 3, by inserting after line 7 the following
51 new section:

*471E
adopted
5/9*

52 Sec. ____ . NEW SECTION. RESTITUTION.

53 1. As used in this section unless the context
54 otherwise requires:
55 a. "Victim" means any person who has suffered
56 pecuniary damages as a result of the defendant's crime.
57 b. "Pecuniary damages" includes any damages which
58 a victim could recover against the defendant in a
59 civil action, except damages for pain and suffering.
60 Without limitation, "pecuniary damages" includes
61 damages for wrongful death.

62 2. If the trial court exercises either of the
63 sentencing options under section two hundred forty-
64 seven point twenty (247.20) of the Code, the court
65 shall, with the consent of the defendant, require as
66 a condition of probation that the defendant shall
67 make reasonable restitution to all victims who suf-
68 fered pecuniary damages as a result of the defendant's
69 crime, unless the court finds that no person suffered
70 pecuniary damages as a result of the defendant's crime
71 or that the defendant is not able and will not be able
72 to make any restitution.

73 3. The court shall hold a hearing to determine the
74 facts pertinent to this section. The court shall give
75 reasonable notice of the hearing, in the manner
76 determined by the court, to the defendant and to all
77 persons who appear to be victims of the defendant's
78 crime. Notice may be waived by the person entitled
79 to notice or his attorney. If the court finds that
80 one or more victims suffered pecuniary damages as a
81 result of the defendant's crime, and that the defendant
82 may or will be able to make some restitution, the
83 conditions of probation shall include: a. A specific
84 amount of restitution to each victim. b. A reason-
85 able schedule of restitution payments by the defendant.
86 c. A provision for the entry of a civil judgment
87 against the defendant and in favor of the victims in
88 an amount equal to the pecuniary damages of each
89 victim, or a lesser amount which the court determines
90 to be reasonable under the circumstances. The speci-
91 fied schedule of restitution payments shall not con-
92 tinue beyond the probation period, but any unpaid part
93 of the judgment shall remain in force. If the defendant
94 refuses to consent to these conditions of probation,
95 the court shall not exercise either of the sentencing
96 options under section two hundred forty-seven point
97 twenty (247.20) of the Code as amended by this Act.

98 4. The preceding subsection shall not apply, and
99 the court may exercise either of the sentencing options
100 under section two hundred forty-seven point twenty
101 (247.20) of the Code as amended by this Act, if the
102 court finds that no person suffered pecuniary damages
103 as a result of the defendant's crime or the defendant
104 is not able and will not be able to make any restitu-
105 tion.

106 5. This section and proceedings under this section
107 shall not limit or impair the rights of victims to
108 sue and recover damages from the defendant in a civil
109 action. Rights under the civil judgment entered under
110 this section shall not be exclusive of other rights.
111 However, any restitution payment by the defendant,
112 including any payment on the civil judgment entered
113 under this section, shall be set off against any
114 damages awarded to the victim in a civil action arising
115 out of the same facts or event.

116 6. By renumbering sections and correcting internal ^{471 C} *adopted 5/10*
117 references.

118 7. Amend the title, page 1, line 1, by inserting ^{471 G} *withdrawn 5/10*
119 after the word "sentences" the words ", suspended
120 sentences, probation, restrictions and limitations,
121 and restitution to victims of crimes".

H-471 Filed
May 8, 1973

By STANLEY of Muscatine
EDELEN of Emmet
COCHRAN of Webster

H-465

1 Amend the Kreamer amendment H-416, to Senate File
2 26, as amended, passed, and reprinted by the Senate,
3 filed May 2, 1973 as follows:

4 1. By striking lines 5 through 11, and inserting
5 in lieu thereof the following:

6 "under this subsection shall be promptly reported
7 to the supreme court administrator who shall maintain
8 a permanent record thereof including the name of the
9 defendant, the district court docket number, the
10 nature of the offense, and the date of the deferral.
11 Before granting deferral in any case, the court shall
12 request of the supreme court administrator a search
13 of the deferred sentencing docket and shall consider
14 any prior record of a deferral of proceedings against
15 the defendant. The".

16 2. Line 16, by inserting after the word "to" the
17 words "justices of the supreme court,".

H-465 Filed
May 8, 1973

By OAKLEY of Clinton

H-474

1 Amend the Stanley et al. amendment, H-471, to Senate
2 File 26, as amended, passed, and reprinted by the
3 Senate as follows:

4 1. Page 1, by striking lines 23 through 27 and
5 inserting in lieu thereof the following: "except that
6 this section shall apply to a violation of those two
7 subsections if it involves only a controlled substance
8 as defined in section two hundred four point two hun-
9 dred four (204.204), subsection four (4), paragraph j
10 of the Code, or if section two hundred four point four
11 hundred nine (204.409), subsection two (2) of the Code
12 applies to the violation, or if section two hundred
13 four point four hundred ten (204.410) of the Code
14 applies to the violation. The court may:".

H-474 Filed and lost
May 9, 1973

By HIGGINS of Scott
CRAWFORD of Story

H-475

1 Amend amendment H-471 to Senate File 26, as
2 amended, passed and reprinted by the Senate,
3 as follows:
4 1. Line 3, by striking the numeral "12" and
5 inserting in lieu thereof the numeral "13".
6 2. Line 11, by striking the following:
7 "assault with intent to commit murder, burglary".
8 3. By striking lines 12 through 19.
9 4. Line 20, by striking the words "of age at
10 the time of the offense,".
11 5. By adding after line 27 the following:
12 "1. If the crime is not kidnapping for ransom,
13 assault with intent to commit murder, burglary
14 with aggravation, robbery with aggravation,
15 rape, if by force or against the will of the
16 victim, rape, if the victim is not more than
17 twelve years of age at the time of the offense,
18 assault with intent to commit rape, violation of
19 section seven hundred five point one (705.1)
20 or seven hundred twenty-five point two (725.2)
21 of the Code if the offense is committed upon or
22 with respect to a child not more than twelve
23 years of age at the time of the offense,
24 without entering judgment, and with consent of".

H-475 Filed and lost
May 9, 1973

By HILL of Polk
KNOKE of Pottawattamie
OAKLEY of Clinton

Lost
5/9

H-473

1 Amend the Stanley, Edelen and Cochran amendment
2 H-471 filed May 8, 1973, to Senate File 26, line 11,
3 by inserting after the word "murder," the words:
4 "kidnapping for ransom,".

H-473 Filed and adopted
May 9, 1973

By STANLEY of Muscatine
EDELLEN of Emmet
COCHRAN of Webster

H-425

1 Amend Senate File 26 as amended, passed and
2 reprinted by the Senate as follows:
3 1. Page 2A, by striking line 5 and inserting in
4 lieu thereof the following:
5 "~~before which a person has been convicted of any~~
6 crime upon a plea of guilty, verdict of guilty or a
7 special verdict upon which a judgment of conviction
8 may be rendered, except"

Withdrawn
5/10

H-425 Filed
May 2, 1973

By KNOKE of Pottawattamie

1 Amend Senate File 26, as amended, passed, and
2 reprinted by the Senate as follows:

3 1. Page 3 by adding after line 30 the following:

4 "Sec. 3. Section seven hundred eighty-nine
5 point two (789.2), Code 1973, is amended to read as
6 follows:

7 789.2 JUDGMENT OF CONVICTION -- TIME FOR. Upon
8 a plea of guilty, verdict of guilty, or a special
9 verdict upon which a judgment of conviction must may
10 be rendered, the court must fix a time for pronouncing
11 judgment, which must be ~~at least three days after~~
12 ~~the verdict is rendered, if the court remains in ses-~~
13 ~~sion so long, or, if not, as remote a time as can~~
14 ~~reasonably be allowed, but in no case can it be pre-~~
15 ~~nounced in less than six hours after the verdict is~~
16 ~~rendered, unless defendant consent thereto within a~~
17 reasonable time but not less than eight days after
18 the plea is entered or the verdict is rendered,
19 unless defendant consents thereto."

20 2. Page 4 by adding after line 4 the following
21 new section.

22 "Sec. NEW SECTION. PROSECUTIONS PROHIBITED.
23 All sentences or convictions deferred by courts in
24 criminal cases prior to the effective date of this
25 Act are valid. No person previously prosecuted shall
26 be tried, sentenced, or convicted based on the same
27 facts as in a prior prosecution on the grounds that
28 a sentence or conviction as a result of that prose-
29 cution was deferred, and the deferral was later
30 declared by the supreme court of this state to be
31 unauthorized by law."

32 3. By renumbering the sections.

*Amended
5/10*

H-416

1 Amend Senate File 26, as amended, passed, and re-
2 printed by the Senate as follows:
3 1. Page 2A, line 21, by adding after the word
4 "provided.", the words "Any deferral of proceedings
5 under this subsection shall be promptly reported in
6 all particulars to the supreme court administrator
7 who shall keep a permanent record thereof, and before
8 granting deferral in any case, the court shall request
9 review of the records retained under this subsection
10 and shall consider any prior record of a deferral of
11 proceedings against the individual concerned. The
12 permanent record provided for in this subsection shall
13 constitute confidential records exempted from public
14 access under section sixty-eight A point seven (68A.7),
15 subsection nine (9) of the Code and shall be available
16 only to district judges, district associate judges,
17 and judicial magistrates requesting information pur-
18 suant to this subsection."

*Adapted from
amended by - 1-2-5A-B
5/4*

H-416 Filed
May 2, 1973

By KREAMER of Polk

H-482

1 Amend the title to Senate File 26, as amended
2 and passed by the Senate, on page 1, line 1 by
3 inserting after the word "sentences" the words "
4 suspended sentences, probation, restrictions and
5 limitations, and restitution to victims of crimes".

H-482 Filed and adopted
May 10, 1973

By STANLEY of Muscatine

1 Amend the Stanley, Edelen, Cochran amendment
2 H-471E, filed May 8, 1973 to Senate File 26, as passed
3 by the Senate and reprinted by striking all of lines
4 53 through 115 and substituting in lieu thereof the
5 following:

6 "Section 1. NEW SECTION. At the time a court
7 suspends or defers a sentence and grants probation under
8 two hundred forty-seven point twenty (247.20) of the
9 Code, or at the time a person has been found guilty of
10 any crime, except a violation of the provisions of chapter
11 three hundred twenty-one (321) of the Code, and before
12 the convicted person begins the sentence imposed, the
13 court may order the convicted person to make restitu-
14 tion to any victim of the crime, other than the state,
15 or a state subdivision, or an insurance carrier for
16 actual losses or any part thereof and in a manner the
17 court deems reasonable and just. A restitution order
18 may be entered only where the victim has petitioned
19 the court for a restitution order and a hearing before
20 the court without a jury has been held, giving suffi-
21 cient notice to the defendant and giving both parties
22 and their witness an opportunity to be heard. At the
23 hearing the court shall admit as competent evidence or
24 take judicial notice of all facts and circumstances
25 proven by competent evidence or admitted by the de-
26 fendant at the trial on the criminal charge, including
27 a finding of guilty, and the defendant is estopped
28 from denying such facts and circumstances, proven or
29 admitted. The hearing shall be for the purpose of
30 proving that the crime for which the defendant was
31 convicted was the proximate cause of actual losses
32 suffered by the victim of the crime and proving the
33 nature and the extent of the victim's actual losses.

34 Sec. 2. NEW SECTION. Any restitution order
35 entered under this Act may be enforced by execution
36 or garnishment and shall be binding upon the
37 defendant's insurance carrier if the carrier is
38 ultimately liable for the damage caused by the
39 defendant. Restitution from disposable earnings
40 shall not exceed the amount disposable earnings are
41 exempt from garnishment, except that the two hundred
42 fifty dollar limitation shall not apply to court-
43 ordered restitution under this section.

44 Sec. 3. NEW SECTION. Upon its own motion or
45 the victim's motion, the court may find a defendant
46 in contempt of court for intentional and willful
47 failure to comply with the restitution order.

48 Sec. 4. NEW SECTION. This Act shall not apply
49 to actual losses of a victim, incurred solely as a
50 result of the victim's appearance as a witness on
51 the criminal charge.

1 Amend Senate File 26 as amended, passed and re-
2 printed by the Senate, as follows:

3 1. Page 2A, by striking lines 4 through 12 and in-
4 serting in lieu thereof the following:

5 247.20 DEFERRED SENTENCE; PROBATION. When a per-
6 son had pled guilty or been found guilty of any crime,
7 the court may exercise the sentencing options con-
8 tained in subsection one (1) or subsection two (2) of
9 this section. However, this section shall not apply
10 to treason, murder, or a violation of section two hun-
11 dred four point four hundred one (204.401), subsec-
12 tions one (1) or two (2) of the Code, except that this
13 section shall apply to such a violation if it involves
14 only a controlled substance as defined in section two
15 hundred four point two hundred four (204.204), sub-
16 section four (4), paragraph j of the Code, or if sec-
17 tion two hundred four point four hundred nine (204.409),
18 subsection two (2) of the Code applies to the violation,
19 or if section two hundred four point four hundred ten
20 (204.410) of the Code applies to the violation.

21 2. Page 2A, line 14, by inserting after the word
22 "defendant," the words "the court may".

23 3. Page 2A, line 23, by inserting after the word
24 "imprisonment," the words "the court may".

H-384 Filed
April 27, 1973

By HIGGINS of Scott
CRAWFORD of Story

Withdrawn
5/9

*Senate refused to concur 5/17
House inserted 5/18*

HOUSE AMENDMENT TO SENATE FILE 26

1 Amend Senate File 26, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2A, by striking lines 4 through 12
4 and inserting in lieu thereof the following:
5 247.20 DEFERRED SENTENCE--PROBATION. The trial
6 court may, upon a plea of guilty, verdict of guilty,
7 or a special verdict upon which a judgment of conviction
8 may be rendered, exercise either of the sentencing
9 options stated in this section. However, this
10 section shall not apply to the crimes of treason,
11 murder, kidnaping for ransom, assault with intent
12 to commit murder, burglary with aggravation,
13 robbery with aggravation, rape, if by force or against
14 the will of the victim, rape, if the victim is not
15 more than twelve years of age at the time of the
16 offense, assault with intent to commit rape, violation
17 of section seven hundred five point one
18 (705.1) or seven hundred twenty-five point two
19 (725.2) of the Code if the offense is committed upon
20 or with respect to a child not more than twelve years
21 of age at the time of the offense, or violation of
22 section two hundred four point four hundred one
23 (204.401), subsections one (1) or two (2) of the Code,
24 to which section two hundred four point four hundred
25 nine (204.409), subsection two (2) of the Code is not

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1 applicable and which is not proved to be an accommoda-
2 tion offense under section two hundred four point four
3 hundred ten (204.410) of the Code. The court may:
4 2. Page 2A, line 21, by adding after the word
5 "provided.", the words "Any deferral of proceedings
6 under this subsection shall be promptly reported
7 to the supreme court administrator who shall maintain a
8 permanent record thereof including the name of the
9 defendant, the district court docket number, the
10 nature of the offense, and the date of the deferral.
11 Before granting deferral in any case, the court shall
12 request of the supreme court administrator a search
13 of the deferred sentencing docket and shall consider
14 any prior record of a deferral of proceedings against
15 the defendant. The permanent record provided for in
16 this subsection shall constitute confidential records
17 exempted from public access under section sixty-eight
18 A point seven (68A.7), subsection nine (9) of the
19 Code and shall be available only to justices of
20 the supreme court, district judges, district
21 associate judges, and judicial magistrates requesting
22 information pursuant to this subsection."
23 3. Page 2A, line 21, by inserting after the period
24 the following new sentence:
25 This subsection shall not be available if the

Page 3

1 defendant has previously received a deferred sentence
2 in a felony prosecution anywhere in the United States
3 or has been twice convicted of a felony anywhere in
4 the United States.

5 4. Page 2A, line 25, by inserting after the period
6 the following new sentence:

7 This subsection shall not be available if the de-
8 fendant has previously received any combination of
9 two or more deferred sentences or suspended sentences
10 in felony prosecutions anywhere in the United States
11 or has been twice convicted of a felony anywhere in
12 the United States.

13 5. Page 3, line 1, by inserting after the period
14 the following new sentence:

15 The length of the probation shall not in any event
16 be less than one year, and shall not be less than two
17 years if the offense is a felony for which the maxi-
18 mum punishment includes imprisonment for five years
19 or more.

20 6. Page 3, by inserting after line 7 the following
21 new section:

22 Sec. _____. NEW SECTION. RESTITUTION.

23 1. As used in this section unless the context
24 otherwise requires:

25 a. "Victim" means any person who has suffered

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1 pecuniary damages as a result of the defendant's crime
2 b. "Pecuniary damages" includes any damages which
3 a victim could recover against the defendant in a
4 civil action, except damages for pain and suffering.
5 Without limitation, "pecuniary damages" includes
6 damages for wrongful death.

7 2. If the trial court exercises either of the
8 sentencing options under section two hundred forty-
9 seven point twenty (247.20) of the Code, the court
10 shall, with the consent of the defendant, require as
11 a condition of probation that the defendant shall
12 make reasonable restitution to all victims who suf-
13 fered pecuniary damages as a result of the defendant's
14 crime, unless the court finds that no person suffered
15 pecuniary damages as a result of the defendant's crime
16 or that the defendant is not able and will not be able
17 to make any restitution.

18 3. The court shall hold a hearing to determine the
19 facts pertinent to this section. The court shall give
20 reasonable notice of the hearing, in the manner
21 determined by the court, to the defendant and to all
22 persons who appear to be victims of the defendant's
23 crime. Notice may be waived by the person entitled
24 to notice or his attorney. If the court finds that
25 one or more victims suffered pecuniary damages as a

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1 result of the defendant's crime, and that the defendant
2 may or will be able to make some restitution, the
3 conditions of probation shall include: a. A specific
4 amount of restitution to each victim. b. A reason-
5 able schedule of restitution payments by the defendant.
6 c. A provision for the entry of a civil judgment
7 against the defendant and in favor of the victims in
8 an amount equal to the pecuniary damages of each
9 victim, or a lesser amount which the court determines
10 to be reasonable under the circumstances. The speci-
11 fied schedule of restitution payments shall not con-
12 tinue beyond the probation period, but any unpaid part
13 of the judgment shall remain in force. If the defendant
14 refuses to consent to these conditions of probation,
15 the court shall not exercise either of the sentencing
16 options under section two hundred forty-seven point
17 twenty (247.20) of the Code as amended by this Act.
18 4. The preceding subsection shall not apply, and
19 the court may exercise either of the sentencing options
20 under section two hundred forty-seven point twenty
21 (247.20) of the Code as amended by this Act, if the
22 court finds that no person suffered pecuniary damages
23 as a result of the defendant's crime or the defendant
24 is not able and will not be able to make any restitu-
25 tion.

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1 5. This section and proceedings under this section
2 shall not limit or impair the rights of victims to
3 sue and recover damages from the defendant in a civil
4 action. Rights under the civil judgment entered under
5 this section shall not be exclusive of other rights.
6 However, any restitution payment by the defendant,
7 including any payment on the civil judgment entered
8 under this section, shall be set off against any
9 damages awarded to the victim in a civil action arising
10 out of the same facts or event.

11 7. Page 3 by adding after line 30 the following:
12 Sec. ____ . Section seven hundred eighty-nine
13 point two (789.2), Code 1973, is amended to read as
14 follows:

15 789.2 JUDGMENT OF CONVICTION -- TIME FOR. Upon
16 a plea of guilty, verdict of guilty, or a special
17 verdict upon which a judgment of conviction ~~must~~ may
18 be rendered, the court must fix a time for pronouncing
19 judgment, which must be ~~at least three days after~~
20 ~~the verdict is rendered, if the court remains in ses-~~
21 ~~sion so long, or, if not, as remote a time as can~~
22 ~~reasonably be allowed, but in no case can it be pro-~~
23 ~~nounced in less than six hours after the verdict is~~
24 ~~rendered, unless defendant consent thereto~~ within a
25 reasonable time but not less than eight days after

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May 17, 1973

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1 the plea is entered or the verdict is rendered,
2 unless defendant consents thereto.

3 8. Page 4 by adding after line 4 the following
4 new section:

5 Sec. _____. NEW SECTION. PROSECUTIONS PROHIBITED.

6 All sentences or convictions deferred by courts in
7 criminal cases prior to the effective date of this
8 Act are valid. No person previously prosecuted shall
9 be tried, sentenced, or convicted based on the same
10 facts as in a prior prosecution on the grounds that
11 a sentence or conviction as a result of that prose-
12 cution was deferred, and the deferral was later
13 declared by the supreme court of this state to be
14 unauthorized by law.

15 13. By renumbering sections and correcting internal
16 references.

17 14. Amend the title on page 1, line 1 by inserting
18 after the word "sentences" the words ", suspended
19 sentences, probation, restrictions and limitations,
20 and restitution to victims of crimes".

Received from the House
May 16, 1973

Senate adopted 6/21

SENATE CLIP SHEET

Monday, June 18, 1973

REPORT OF THE CONFERENCE COMMITTEE
ON SENATE FILE 26

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to consider the differences between the Senate and House of Representatives on Senate File 26, a bill for an Act to provide for deferred sentences, respectfully make the following recommendations:

1. That the House recede from its amendment and that Senate File 26, as amended, passed, and reprinted by the Senate, be amended as follows:

1. By striking everything after the enacting clause and inserting in lieu thereof the following:

Section 1. NEW SECTION. DEFERRED JUDGMENT OR SUSPENDED SENTENCE--PROBATION. The trial court may, upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise either of the options contained in subsections one (1) and two (2) of this section. However, this section shall not apply to the crimes of treason, murder, or violation of section two hundred four point four hundred one (204.401), subsection one (1) or two (2) of the Code, to which section two hundred four point four hundred nine (204.409), subsection two (2) of the Code is not applicable and which is not proved to be an accommodation offense under section two hundred four point four hundred ten (204.410) of the Code.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such terms and conditions as it may require. Upon fulfillment of the terms of probation the defendant shall be discharged without entry of judgment. Upon violation of the terms, the court may enter an adjudication of guilt and proceed as otherwise provided.

However, this subsection shall not be available if any of the following is true:

a. The defendant attempted to kill anyone during the commission of the offense.

b. The defendant purposefully inflicted or attempted to inflict a serious injury upon anyone during the commission of the offense. "Serious injury" means death, permanent disability or disfigurement, protracted loss or impairment of the function of any body member or organ, an injury

requiring extended treatment or a prolonged healing period, a disabling mental illness requiring extended treatment or prolonged care, or an injury which at the time of deferment of judgment appears likely to result in any of the foregoing.

c. The defendant used, threatened to use or displayed in a threatening manner a dangerous weapon during the commission of the offense. "Dangerous weapon" means any instrument or device designed primarily for use in inflicting death or injury upon a human being or other living creature, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. "Dangerous weapon" also includes any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon anyone and which, when so used, is capable of inflicting death upon a human being.

d. The defendant kidnaped any person for ransom during the commission of the offense.

e. During the commission of the offense the defendant committed rape or sodomy by force or threat of force, committed assault with intent to commit rape by force or threat of force, committed or attempted to commit rape of or sodomy with a child twelve years of age or under, or committed a violation of section seven hundred twenty-five point two (725.2) of the Code with respect to a child twelve years of age or under and which included any of the following: force or threat of force, fondling or touching the child in a lewd manner, or soliciting a sexual act with the child.

f. The defendant has been previously convicted of a felony. "Felony" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which he was convicted at the time of his conviction.

g. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

h. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

Any deferment of judgment under this subsection shall be promptly reported to the supreme court administrator who shall maintain a permanent record thereof including the name of the defendant, the district court docket number, the nature of the offense, and the date of the deferment. Before granting deferment in any case, the court shall request of the supreme court administrator a search of the deferred judgment docket and shall consider any prior record of a deferment of judgment against the defendant. The permanent record provided for in this subsection shall constitute a confidential record exempted from public access under section sixty-eight A point seven (68A.7) of the Code and shall be available only

to justices of the supreme court, district judges, district associate judges, and judicial magistrates requesting information pursuant to this subsection.

2. By record entry at time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require.

Before exercising either of the options contained in subsections one (1) and two (2) of this section, the court shall first determine which of them will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In making this determination the court shall consider the age of the defendant, his prior record of convictions, if any, his employment circumstances, his family circumstances, the nature of the offense committed, whether a dangerous weapon or force was used in the commission of such offense, and such other factors as shall be appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment or to suspend sentence and its decision on the length of probation.

Sec. 2. NEW SECTION. LENGTH OF PROBATION. The length of the probation shall be for such term as the court may fix but not to exceed five years if the offense is a felony or unless the person is ordered placed under the supervision of the chief parole officer, in which case the term of probation shall be determined by the board of parole and the probation of the defendant shall be supervised by the chief parole officer.

The length of the probation shall not be less than one year and shall not be less than two years if the offense is a felony. However, the court may subsequently reduce the length of the probation if the court determines that the purposes of probation have been fulfilled, as provided in section six (6) of this Act.

In determining the length of the probation, the court shall first determine what period is most likely to provide maximum opportunity for the rehabilitation of the defendant, to allow enough time to determine whether or not rehabilitation has been successful, and to protect the community from further offenses by the defendant and others.

Sec. 3. NEW SECTION. PRESENTENCE INVESTIGATION. Upon a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction of any public offense may be rendered, the court shall receive from the state and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources, and may, if the offense is a felony, order a presentence investigation to be made.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment or suspension of sentence and probation. The investigation shall

be made by a probation officer, by the agency in charge of parole agents, or by another appropriate agency, as determined by the court.

Sec. 4. NEW SECTION. PRESENTENCE INVESTIGATION AND REPORT. Whenever a presentence investigation is ordered by the court, the investigator shall promptly inquire into the defendant's characteristics, family and financial circumstances, needs, and potentialities; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. With the approval of the court, a physical examination of the defendant may be ordered, or the defendant may be committed to a psychiatric facility for an evaluation of his personality and mental health. The results of any such examination shall be included in the report of the investigator.

Sec. 5. NEW SECTION. REPORT CONFIDENTIAL. The court may, in its discretion, make the presentence investigation report or parts of it available to the defendant, or the court may make the report or parts of it available while concealing the identity of the person who provided confidential information. The report of any medical examination or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. Such reports shall be part of the record but shall be sealed and opened only on order of the court. In any case where the defendant is committed to the custody of the department of social services, a copy of the presentence investigation report shall be sent to the department at the time of commitment.

Sec. 6. NEW SECTION. DISCHARGE FROM PROBATION. At any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of any person from probation. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court shall order the discharge of such person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to such person. A person who has been discharged from probation shall no longer be held to answer for his offense. Upon discharge from probation, if judgment has been deferred under section one (1) of this Act, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the supreme court administrator required by section one (1) of this Act shall not be expunged. The court's record shall never be expunged in any other circumstances except as provided in section six hundred two point fifteen (602.15) of the Code.

Sec. 7. NEW SECTION. CUSTODY OF COURT PROBATIONER--RECORD TO CHIEF PAROLE OFFICER. When probation is granted under section one (1) of this Act, the court shall order said person committed to the custody, care, and supervision:

1. Of any suitable resident of this state; or
2. Of the chief parole officer. The chief parole officer shall not, however, accept the custody, care and supervision of any person granted probation from a sentence to a term in a county jail or any other person who in the judgment of the chief parole officer could not be properly supervised.

In each case wherein the court shall order said person committed to the custody, care, and supervision of the chief parole officer, the clerk of the district court shall at once furnish the chief parole officer with certified copies of the indictment or information, the minutes of testimony attached thereto, the judgment entry if judgment is not deferred, and the original mittimus. The county attorney shall at once advise the chief parole officer, by letter, that the defendant has been placed under the chief parole officer's supervision and give to the chief parole officer a detailed statement of the facts and circumstances surrounding the crime committed and the record and history of the defendant as may be known to him. If the defendant is confined in the county jail at the time of sentence, the court may order him held until arrangements are made by the chief parole officer for his employment and he has signed the necessary probation papers. If the defendant is not confined in the county jail at the time of sentence, the court may order him to remain in the county wherein he has been convicted and sentenced and report to the sheriff as to his whereabouts.

Sec. 8. NEW SECTION. RESTITUTION.

1. As used in this section, unless the context otherwise requires:

a. "Victim" means any person who has suffered pecuniary damages as a result of the defendant's criminal activities. However, with respect to any part of a victim's pecuniary damages paid by an insurer, the insurer shall be regarded as the victim only if the insurer has no right of subrogation and the insured has no duty to pay the proceeds of restitution to the insurer.

b. "Pecuniary damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death.

c. "Criminal activities" includes any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered and any other crime committed after July 1, 1972 which is admitted or not contested by the defendant, whether or not prosecuted. However, "criminal activities" does not include misdemeanors under chapter three hundred twenty-one (321) of the Code.

d. "Restitution" means full or partial payment of pecuniary damages to a victim.

2. It is the policy of this state that restitution be made by each violator of the criminal laws to the victims

of his criminal activities to the extent that the violator is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy.

3. If the trial court exercises either of the sentencing options under section one (1) of this Act, the court shall require as a condition of probation that the defendant, in cooperation with the probation officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered pecuniary damages as a result of the defendant's criminal activities, he shall so state.

4. The defendant's plan of restitution and the comments of his probation officer shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it and providing for restitution payments to the extent that the defendant is or may become reasonably able to make restitution, taking into account the factors enumerated in subsection five (5) of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation. Restitution payments shall be made to the clerk unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of pecuniary damages to all victims, or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation period or that no person suffered pecuniary damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

5. The probation officer when assisting the defendant in preparing the plan of restitution, and the court before approving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant, his age, his education, his employment circumstances, his potential for employment and vocational training, his family circumstances, his financial condition, the number of victims, the pecuniary damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant, and such other factors as shall be appropriate. The probation officer shall attempt to determine the name and address of each victim and the amount of his pecuniary damages.

6. The clerk shall mail to each known victim a copy of the court's order approving or modifying the plan of restitu-

tion, including the court's statement, if any, under subsection four (4) of this section.

7. At any time during the probation period the defendant may request and the court shall grant a hearing on any matter related to the plan of restitution.

8. Failure of the defendant to comply with subsection three (3) of this section or to comply with the plan of restitution as approved or modified by the court shall constitute a violation of the conditions of probation. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation period specified in section two (2) of this Act.

9. This section and proceedings under this section shall not limit or impair the rights of victims to sue and recover damages from the defendant in a civil action. However, any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event. The fact that restitution was required or made shall not be admissible as evidence in a civil action unless offered by such defendant.

Sec. 9. Section two hundred forty-seven point six (247.6), Code 1973, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The rules and conditions of parole may require that restitution be made by the parolee to the victims who suffered pecuniary damages as a result of the parolee's criminal activities. Words defined in section eight (8) of this Act shall have the same meaning in this paragraph.

Sec. 10. Section three hundred twenty-one point two hundred eighteen (321.218), Code 1973, is amended to read as follows:

321.218 DRIVING WHILE LICENSE DENIED, SUSPENDED, OR REVOKED. Any person whose operator's or chauffeur's license, or driving privilege, has been denied, canceled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is denied, canceled, suspended, or revoked, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two days or more than thirty days. The sentence imposed under this section shall not be suspended by the court, notwithstanding the provisions of section ~~247.20~~ one (1) of this Act or any other provision of statute. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such person was suspended or revoked, shall extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during such additional period.

Sec. 11. Section six hundred two point fifteen (602.15), Code 1973, is amended to read as follows:

602.15 AMENDING OR EXPUNGING ENTRY. The record of any

court proceedings is under the control of the court and, except as provided in section six (6) of this Act, may be amended or any entry therein expunged before it has been signed by the judge or within sixty days thereafter.

Sec. 12. Section seven hundred eighty-nine point two (789.2), Code 1973, is amended to read as follows:

789.2 JUDGMENT OF CONVICTION--TIME FOR. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction ~~must~~ may be rendered, the court must fix a time for pronouncing judgment, which must be at least three days after the verdict is rendered, if the court remains in session so long, or, if not, as remote a time as can reasonably be allowed, but in no case can it be pronounced in less than six hours after the verdict is rendered, unless defendant consent thereto within a reasonable time but not less than eight days after the plea is entered or the verdict is rendered, unless the defendant consents thereto.

Sec. 13. Section seven hundred eighty-nine point eleven (789.11), Code 1973, is amended to read as follows:

789.11 JUDGMENT ENTERED. If judgment is not deferred, and no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. In every case in which judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced.

Sec. 14. PROSECUTIONS PROHIBITED. The action of any court in deferring judgment or conviction in a criminal case prior to the effective date of this Act is valid. No person previously prosecuted shall be tried, sentenced, or convicted based on the same facts as in a prior prosecution on the grounds that a sentence, conviction, or judgment as a result of that prosecution was deferred, and the defendant was later declared by the supreme court of this state to be unauthorized by law. This section shall not apply to any case in which an appeal was pending on June 1, 1973.

Sec. 15. This section shall take effect July 1, 1974. Section three (3) of this Act is amended to read as follows:

PRESENTENCE INVESTIGATION. Upon a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction of any public offense may be rendered, the court shall receive from the state and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources, and may shall, if the offense is a felony, order a presentence investigation to be made.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment or suspension of sentence and probation. The investigation shall be made by a probation officer, by the agency in charge of parole agents, or by another appropriate agency, as determined by the court.

Sec. 16. Sections two hundred forty-seven point twenty

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(247.20) and two hundred forty-seven point twenty-one (247.21), Code 1973, are repealed.

2. By amending the title, page 1, line 1, by striking everything after the word "Act" and inserting in lieu thereof the words "relating to sentencing in criminal cases; relating to probation and the conditions thereof; providing a procedure for restitution as a condition of probation; providing a procedure for deferring judgment in particular cases; relating to the conditions of parole; and providing procedures necessary thereto."

On the Part of the Senate:

LUCAS J. DeKOSTER, CHAIRMAN
GENE W. GLENN
LOWELL L. JUNKINS
ELIZABETH R. MILLER
BARTON L. SCHWIEGER

On the Part of the House:

GEORGE J. KNOKE, CHAIRMAN
DALE M. COCHRAN
ROLLIN C. EDELEN
HAROLD C. McCORMICK
DAVID M. STANLEY