

HOUSE FILE 2352
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

MAR 3 1994

Place On Calendar

(SUCCESSOR TO HSB 662)

Passed House, ^(P. 415) Date 3-17-94 Passed Senate, ^(P. 1551) Date 4-14-95
Vote: Ayes 99 Nays 0 Vote: Ayes 99 Nays 0
Approved May 2, 1994

A BILL FOR

1 An Act relating to criminal offenders and the department of
2 corrections, by making changes regarding payment of
3 restitution by offenders, making changes in specifications
4 relating to corrections institutions in which offenders are
5 housed, establishing an inmate tort claim fund, deleting
6 requirements relating to inmate visits by the director of the
7 department of corrections, deleting a requirement that
8 transcripts of investigations by the director be a public
9 record, and permitting the release of certain information
10 regarding offenders by the department.

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

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HF 2352

1 Section 1. Section 421.17, subsection 25, unnumbered
2 paragraph 1, Code Supplement 1993, is amended to read as
3 follows:

4 To establish and maintain a procedure to set off against a
5 debtor's income tax refund or rebate any debt which is in the
6 form of a liquidated sum due, owing, and payable to the clerk
7 of the district court as a ~~criminal-fine~~, civil penalty,
8 ~~surcharges-court-costs~~, or restitution of-attorney-fees as
9 defined and ordered under sections 910.1 and 910.2 incurred as
10 a result of services provided under chapters 13B and 815, and
11 section 232.141. The procedure shall meet the following
12 conditions:

13 Sec. 2. Section 602.8107, subsections 1 and 2, Code
14 Supplement 1993, are amended to read as follows:

15 1. ~~Fines-penalties-court-costs-fees-interest~~,
16 ~~restitution-for-court-appointed-attorney-fees-and-surcharges~~
17 Restitution as defined in section 910.1 shall be paid to the
18 clerk of the district court. All amounts collected shall be
19 distributed pursuant to sections 602.8106 and 602.8108 or as
20 otherwise provided by this Code. The clerk may accept payment
21 of an obligation or a portion thereof by credit card. The
22 clerk may charge a fee to reflect the additional cost of
23 processing the payment by credit card.

24 2. Payments received under this section shall be applied
25 to the balance owed under the identified case number. If a
26 case number is not identified, payments shall be credited to
27 any active case in the manner determined by the clerk prior to
28 applying payments to any inactive cases. The determination of
29 whether a case is inactive shall be based on the expiration
30 date for supervision by a judicial district department of
31 correctional services or for a period of incarceration.

32 Payments received under this section shall be applied in the
33 following priority order:

34 a. ~~Fines-or-penalties-plus-any-interest-due-on-unsatisfied~~
35 ~~judgments-and-criminal-penalty-surcharges-plus-interest-due-on~~

1 ~~unsatisfied-amounts:~~ Pecuniary damages as defined in section
2 910.1, subsection 2.

3 b. ~~Victim-restitution:~~ Fines or penalties plus any
4 interest due on unsatisfied judgments and criminal penalty
5 surcharges plus interest due on unsatisfied amounts.

6 c. ~~Court-costs:~~ Crime victim compensation program
7 reimbursement.

8 d. ~~Court-appointed~~ Court costs, court-appointed attorney
9 fees, or public defender expenses.

10 Sec. 3. Section 602.8107, subsection 5, unnumbered
11 paragraph 2, Code Supplement 1993, is amended to read as
12 follows:

13 This subsection does not apply to amounts collected for
14 victim restitution, the ~~new~~ victim restitution compensation
15 fund, criminal penalty surcharge, or amounts collected as a
16 result of procedures initiated under section 421.17,
17 subsection 25.

18 Sec. 4. Section 714.7A, Code 1993, is amended to read as
19 follows:

20 714.7A VETERANS' GRAVE MARKERS.

21 A person commits a simple misdemeanor when the person takes
22 possession or control of a veteran's grave marker which was
23 provided pursuant to section 35B.16, with the intention to
24 deprive the owner of the marker, regardless of the value of
25 the marker. The person shall also be liable for ~~restitution~~
26 reimbursement in an amount equal to three times the cost of
27 the marker to be paid to the county commission of veteran
28 affairs or other person who furnished the marker.

29 Sec. 5. Section 714.16, subsection 7, unnumbered paragraph
30 1, Code 1993, is amended to read as follows:

31 A civil action pursuant to this section shall be by
32 equitable proceedings. If it appears to the attorney general
33 that a person has engaged in, is engaging in, or is about to
34 engage in a practice declared to be unlawful by this section,
35 the attorney general may seek and obtain in an action in a

1 district court a temporary restraining order, preliminary
2 injunction, or permanent injunction prohibiting the person
3 from continuing the practice or engaging in the practice or
4 doing an act in furtherance of the practice. The court may
5 make orders or judgments as necessary to prevent the use or
6 employment by a person of any prohibited practices, or which
7 are necessary to restore to any person in interest any moneys
8 or property, real or personal, which have been acquired by
9 means of a practice declared to be unlawful by this section,
10 including the appointment of a receiver in cases of
11 substantial and willful violation of this section. If a
12 person has acquired moneys or property by any means declared
13 to be unlawful by this section and if the cost of
14 administering ~~restitution~~ reimbursement outweighs the benefit
15 to consumers or consumers entitled to the ~~restitution~~
16 reimbursement cannot be located through reasonable efforts,
17 the court may order disgorgement of moneys or property
18 acquired by the person by awarding the moneys or property to
19 the state to be used by the attorney general for the
20 administration and implementation of this section. Except in
21 an action for the concealment, suppression, or omission of a
22 material fact with intent that others rely upon it, it is not
23 necessary in an action for ~~restitution~~ reimbursement or an
24 injunction, to allege or to prove reliance, damages, intent to
25 deceive, or that the person who engaged in an unlawful act had
26 knowledge of the falsity of the claim or ignorance of the
27 truth. A claim for ~~restitution~~ reimbursement may be proved by
28 any competent evidence, including evidence that would be
29 appropriate in a class action.

30 Sec. 6. Section 714.16A, subsection 1, unnumbered
31 paragraph 2, Code 1993, is amended to read as follows:

32 A civil penalty imposed pursuant to this section shall be
33 paid to the treasurer of state, who shall deposit the money in
34 the elderly victim fund, a separate fund created in the state
35 treasury and administered by the attorney general for the

1 investigation and prosecution of frauds against the elderly.
2 Notwithstanding section 8.33, any balance in the fund on June
3 30 of any fiscal year shall not revert to the general fund of
4 the state. An award of ~~restitution~~ reimbursement pursuant to
5 section 714.16 has priority over a civil penalty imposed by
6 the court pursuant to this subsection.

7 Sec. 7. Section 904.203, Code 1993, is amended to read as
8 follows:

9 904.203 NORTH CENTRAL CORRECTIONAL FACILITY AT ROCKWELL
10 CITY.

11 The state correctional facility at Rockwell City shall be
12 utilized as a medium-security correctional facility for men.

13 Sec. 8. Section 904.204, Code 1993, is amended to read as
14 follows:

15 904.204 MOUNT PLEASANT CORRECTIONAL FACILITY -- SPECIAL
16 TREATMENT UNIT.

17 The correctional facility at Mount Pleasant shall be
18 utilized as a medium-security facility for men ~~primarily for~~
19 ~~treatment of inmates who exhibit treatable personality~~
20 ~~disorders, with or without accompanying history of drug or~~
21 ~~alcohol abuse. -- Such inmates may apply for and upon their~~
22 ~~application may be selected for treatment by the staff of the~~
23 ~~treatment facility at Mount Pleasant in accordance with~~
24 ~~section 904.503.~~

25 Sec. 9. Section 904.311, Code 1993, is amended by adding
26 the following new unnumbered paragraphs:

27 NEW UNNUMBERED PARAGRAPH. There is established in the
28 office of the director an inmate tort claim fund. This fund
29 shall be used to reimburse inmates for the damage or loss of
30 personal property caused by the department. Reimbursement for
31 a single loss may be up to one hundred dollars. Section 8.33
32 notwithstanding, moneys in the fund shall not revert but shall
33 remain in the fund. The fund shall be replenished from the
34 general appropriation to the institutions as necessary to meet
35 the obligations of the fund.

1 NEW UNNUMBERED PARAGRAPH. Tort claims denied at the
2 institution shall be forwarded to the state appeal board for
3 its consideration as if originally filed with that body. This
4 procedure shall be used in lieu of the procedure in chapter
5 669 for inmate tort claims of less than one hundred dollars.

6 Sec. 10. Section 904.401, unnumbered paragraph 2, Code
7 1993, is amended by striking the unnumbered paragraph.

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

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

16 Sec. 12. Section 904.602, subsection 2, unnumbered
17 paragraph 1 and paragraph a, Code 1993, are amended to read as
18 follows:

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

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

26 Sec. 13. Section 904.603, Code 1993, is amended to read as
27 follows:

28 904.603 ACTION FOR DAMAGES.

29 A person receiving or who has received services, or that
30 person's family, victim or employer may institute a civil
31 action for damages under chapter 669 or other action to
32 restrain the release of confidential records set out in
33 section 904.602, subsection 2, which is in violation of that
34 section, and a person, agency or governmental body proven to
35 have released confidential records in violation of section

1 904.602, subsection 2 is liable for actual damages for each
2 violation and is liable for court costs and reasonable
3 attorney's fees incurred by the party bringing the action.

4 Sec. 14. Section 904.905, subsections 1 through 4, Code
5 1993, are amended to read as follows:

6 1. An amount ~~determined to be the cost to the judicial~~
7 ~~district department of correctional services for providing~~
8 ~~food, lodging and clothing for the inmate while under the~~
9 program may be legally obligated to pay for the support of the
10 inmate's dependents, the amount of which shall be paid to the
11 dependents through the department of human services located in
12 the county or city in which the dependents reside.

13 2. ~~The actual and necessary food, travel and other~~
14 ~~expenses of the inmate when released from actual confinement~~
15 ~~under the program. Restitution as ordered by the court~~
16 pursuant to chapter 910.

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

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

28 Sec. 15. Section 905.12, subsections 2 and 3, Code 1993,
29 are amended to read as follows:

30 2. Restitution ordered by the court under chapter 910.

31 3. An amount determined to be the cost to the judicial
32 district department of correctional services for food,
33 lodging, and other expenses incurred by or on behalf of the
34 resident.

35 ~~3. Restitution ordered by the court under chapter 910.~~

1 Sec. 16. Section 910.1, subsection 3, Code 1993, is
2 amended to read as follows:

3 3. "Restitution" means payment of pecuniary damages to a
4 victim in an amount and in the manner provided by the
5 offender's plan of restitution. Restitution also includes
6 fines, penalties, and surcharges, the payment of crime victim
7 assistance compensation program reimbursements, court costs,
8 court-appointed attorney's fees, or the expense of a public
9 defender, and the performance of a public service by an
10 offender in an amount set by the court when the offender
11 cannot reasonably pay all or part of the court costs, court-
12 appointed attorney's fees, or the expense of a public
13 defender.

14 Sec. 17. Section 910.2, Code 1993, is amended to read as
15 follows:

16 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
17 SENTENCING COURT.

18 In all criminal cases except including but not limited to
19 simple misdemeanors under chapter 321, in which there is a
20 plea of guilty, verdict of guilty, or special verdict upon
21 which a judgment of conviction is rendered, the sentencing
22 court shall order that restitution be made by each offender to
23 the victims of the offender's criminal activities, to the
24 clerk of court for fines, penalties, surcharges, and, to the
25 extent that the offender is reasonably able to pay, for crime
26 victim assistance reimbursement, court costs, court-appointed
27 attorney's fees, or the expense of a public defender when
28 applicable. However, victims shall be paid in full before
29 restitution-is-paid-for fines, penalties, and surcharges,
30 crime victim assistance compensation program reimbursement,
31 court costs, court-appointed attorney's fees, or for the
32 expense expenses of a public defender are paid. In
33 structuring a plan of restitution, the court shall provide for
34 payments in the following order of priority: victim, fines,
35 penalties, and surcharges, crime victim assistance

1 compensation program reimbursement, court costs, and court-
2 appointed attorney's fees, or the expense of a public
3 defender. When the offender is not reasonably able to pay all
4 or a part of the crime victim assistance compensation program
5 reimbursement, court costs, court-appointed attorney's fees,
6 or the expense of a public defender, the court may require the
7 offender in lieu of that portion of the crime victim
8 assistance compensation program reimbursement, court costs,
9 court-appointed attorney's fees, or expense of a public
10 defender for which the offender is not reasonably able to pay,
11 to perform a needed public service for a governmental agency
12 or for a private, nonprofit agency which provides a service to
13 the youth, elderly, or poor of the community. When community
14 service is ordered, the court shall set a specific number of
15 hours of service to be performed by the offender. The
16 judicial district department of correctional services shall
17 provide for the assignment of the offender to a public agency
18 or private nonprofit agency to perform the required service.

19 Sec. 18. Section 910.3, Code 1993, is amended to read as
20 follows:

21 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

22 The county attorney shall prepare a statement of pecuniary
23 damages to victims of the defendant and, if applicable, any
24 award by the crime victim ~~assistance-programs~~ compensation
25 program and shall provide the statement to the presentence
26 investigator or submit the statement to the court at the time
27 of sentencing. The clerk of court shall prepare a statement
28 of court-appointed attorney's fees, the expense of a public
29 defender, and court costs, which shall be provided to the
30 presentence investigator or submitted to the court at the time
31 of sentencing. If these statements are provided to the
32 presentence investigator, they shall become a part of the
33 presentence report. If pecuniary damage amounts are not
34 available at the time of sentencing, the county attorney shall
35 provide a statement of pecuniary damages incurred up to that

1 time to the clerk of court. The statement shall be provided
2 no later than thirty days after sentencing. If a defendant
3 believes no person suffered pecuniary damages, the defendant
4 shall so state. If the defendant has any mental or physical
5 impairment which would limit or prohibit the performance of a
6 public service, the defendant shall so state. The court may
7 order a mental or physical examination, or both, of the
8 defendant to determine a proper course of action. At the time
9 of sentencing or at a later date to be determined by the
10 court, the court shall set out the amount of restitution
11 including the amount of public service to be performed as
12 restitution and the persons to whom restitution must be paid.
13 If the full amount of restitution cannot be determined at the
14 time of sentencing, the court shall issue a temporary order
15 determining a reasonable amount for ~~pecuniary-damages-incurred~~
16 restitution identified up to that time, any award by the crime
17 victim-assistance-programs, court-appointed-attorney's-fees-or
18 the-expense-of-a-public-defender, and court-costs. At a later
19 date as determined by the court, the court shall issue a
20 permanent, supplemental order, setting the full amount of
21 restitution. The court shall enter further supplemental
22 orders, if necessary. These court orders shall be known as
23 the plan of restitution.

24 Sec. 19. Section 910.9, unnumbered paragraph 3, Code 1993,
25 is amended to read as follows:

26 Court Fines, penalties, and surcharges, crime victim
27 compensation program reimbursement, court costs, court-
28 appointed attorney's fees, and expenses for public defenders,
29 shall not be withheld by the clerk of court until all victims
30 have been paid in full. Payments to victims shall be made by
31 the clerk of court at least quarterly. Payments by a clerk of
32 court shall be made no later than the last business day of the
33 quarter, but may be made more often at the discretion of the
34 clerk of court. The clerk of court receiving final payment
35 from an offender, shall notify all victims that full

1 restitution has been made, and a copy of the notice shall be
2 sent to the sentencing court. Each office or individual
3 charged with supervising an offender who is required to
4 perform community service as full or partial restitution shall
5 keep records to assure compliance with the portions of the
6 plan of restitution and restitution plan of payment relating
7 to community service and, when the offender has complied fully
8 with the community service requirement, notify the sentencing
9 court.

10 Sec. 20. Section 904.405, Code 1993, is repealed.

11 EXPLANATION

12 Sections 1 through 6 and sections 14 through 19 relate to
13 offender restitution. Section 16 changes the definition of
14 what is included in the term "restitution" and sections 2, 14,
15 15, and 17 make changes in the priority by which any payments
16 made by an offender are applied to the various obligations
17 imposed upon or assumed by the offender. The remainder of the
18 sections make various technical changes to provide for uniform
19 application of the new restitution definition and payment
20 priority.

21 Sections 7 and 8 strike language that places restrictions
22 on the utilization of the Rockwell City and Mount Pleasant
23 correctional facilities.

24 Section 9 establishes an inmate tort claim fund within the
25 department of corrections for purposes of paying inmates for
26 small personal property losses of less than \$100. Moneys in
27 the fund come from transfers from the general appropriations
28 to the institutions to meet fund obligations. Moneys left in
29 the fund at the end of a fiscal year do not revert to the
30 state treasury.

31 Section 10 strikes the portion of section 904.401, which
32 provides for visits by the director of the department of
33 corrections, or the director's designee, to the institutions
34 under the director's control. The section provides that the
35 director, or the director's designee, is to see every inmate

1 of each institution as far as is practicable and to give the
2 inmates a suitable opportunity to converse with the director
3 or designee apart from the officers and attendants.

4 Sections 11 through 13 amend language which relates to what
5 information regarding offenders may be released to the public.

6 Section 20 repeals section 904.405, which provides that
7 transcripts of testimony taken at investigations performed by
8 the director, or at the director's direction, are to filed in
9 the director's office at the seat of government within 10 days
10 after the testimony is taken, or as soon as practicable. The
11 transcripts are a public record under that section.

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HOUSE FILE 2352
FISCAL NOTE

A fiscal note for Amendment H5393 to HF 2352 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

H5393 amends House File 2352 to increase the reimbursement to crime victims for funeral and burial expenses from \$2,500 to \$5,000.

Assumptions:

1. The maximum number of victims receiving reimbursement is 70 individuals.
2. The maximum reimbursement is \$5,000.

Fiscal Impact:

The maximum cost increase to the Victim Compensation Fund for funeral and burial expenses would be \$175,000. The Office of the Attorney General indicates that restitution collections have increased, and the Fund has sufficient revenues to pay for the increase.

Source: Office of the Attorney General

(LSB 3308HV, MDF)

E) MARCH 21, 1994

BY DENNIS PROUTY, FISCAL DIRECTOR

34

35

LSB 3308HV 75

HOUSE FILE 2352

H-5313

1 Amend House File 2352 as follows:
2 1. Page 1, by striking lines 24 through 31, and
3 inserting the following:
4 "2. If the clerk receives payment from a person
5 who is an inmate of a state institution or who is
6 under the supervision of a judicial district
7 department of correctional services, the payment shall
8 be applied to the balance owed under the identified
9 case number of the case which has resulted in the
10 placement of the person in a state institution or
11 under the supervision of the judicial district
12 department of correctional services. If a case number
13 is not identified, the clerk shall apply the payment
14 to the balance owed in the criminal case with the
15 oldest judgment against the person."

By MILLAGE of Scott

H-5313 FILED MARCH 14, 1994

*Adopted 3-17-94
(p. 693)*

HOUSE FILE 2352

H-5393

1 Amend House File 2352 as follows:
2 1. Page 10, by inserting after line 9 the
3 following:
4 "Sec. ____ . Section 912.6, subsection 4, Code
5 Supplement 1993, is amended to read as follows:
6 4. Reasonable funeral and burial expenses not to
7 exceed ~~two-thousand five hundred thousand~~ thousand dollars."
8 2. Title page, line 3, by inserting after the
9 word "offenders" the following: "and payments under
10 the crime victim compensation program".
11 3. By renumbering as necessary.

By FALLON of Polk

H-5393 FILED MARCH 15, 1994

*Adopted
3-17-94 (p. 694)*

HOUSE FILE 2352

H-5443

1 Amend House File 2352 as follows:
2 1. Title page, by striking lines 7 through 9, and
3 inserting the following: "department of corrections,
4 and permitting the release of certain information".

By MILLAGE of Scott

H-5443 FILED MARCH 17, 1994

ADOPTED BY UNANIMOUS CONSENT

HOUSE FILE 2352

H-5131

1 Amend House File 2352 as follows:

2 1. Page 2, lines 3 and 4, by striking the words
3 "plus any interest due on unsatisfied judgments".

4 2. Page 2, by striking line 5 and inserting the
5 following: "surcharges."

6 3. Page 6, by inserting after line 35 the fol-
7 lowing:

8 "Sec. ____ . Section 909.6, Code Supplement 1993, is
9 amended to read as follows:

10 909.6 FINE AS JUDGMENT ---INTEREST-ASSESSED.

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

22 ~~If a court imposes a fine on an offender, the court~~
23 ~~shall impose interest charges on any amount remaining~~
24 ~~unsatisfied from the day after sentencing at the rate~~
25 ~~provided in section 995.3.~~

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

33 4. By numbering and renumbering as necessary.

By McNEAL of Hardin

H-5131 FILED MARCH 4, 1994

Adopted 3-17-94 (p. 695)

HOUSE FILE 2352

H-5191

1 Amend House File 2352 as follows:

2 1. Page 10, by striking line 10.

By MILLAGE of Scott

H-5191 FILED MARCH 8, 1994

adopted 3-17-94

(p. 694)

(P. 776) 3-21-94 Senate - Judiciary
(P. 828) 3-24-94 Senate - Do Pass

HOUSE FILE 2352
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 662)

(As Amended and Passed by the House March 17, 1994)

Passed House, (P. 1165) Date 4-12-94 Passed Senate, (P. 1551) Date 4-14-94
Vote: Ayes 48 Nays 0 Vote: Ayes 99 Nays 0
Approved May 2, 1994

A BILL FOR

1 An Act relating to criminal offenders and the department of
2 corrections, by making changes regarding payment of
3 restitution by offenders and payments under the crime victim
4 compensation program, making changes in specifications
5 relating to corrections institutions in which offenders are
6 housed, establishing an inmate tort claim fund, deleting
7 requirements relating to inmate visits by the director of the
8 department of corrections, and permitting the release of
9 certain information regarding offenders by the department.

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

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House Amendments _____
Deleted Language *

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2 paragraph 1, Code Supplement 1993, is amended to read as
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4 To establish and maintain a procedure to set off against a
5 debtor's income tax refund or rebate any debt which is in the
6 form of a liquidated sum due, owing, and payable to the clerk
7 of the district court as a ~~criminal-fine~~, civil penalty,
8 ~~surcharge~~, ~~court-costs~~, or restitution of ~~attorney-fees~~ as
9 defined and ordered under sections 910.1 and 910.2 incurred as
10 a result of services provided under chapters 13B and 815, and
11 section 232.141. The procedure shall meet the following
12 conditions:

13 Sec. 2. Section 602.8107, subsections 1 and 2, Code
14 Supplement 1993, are amended to read as follows:

15 1. ~~Fines~~, ~~penalties~~, ~~court-costs~~, ~~fees~~, ~~interest~~,
16 ~~restitution-for-court-appointed-attorney-fees~~, ~~and-surcharges~~
17 Restitution as defined in section 910.1 shall be paid to the
18 clerk of the district court. All amounts collected shall be
19 distributed pursuant to sections 602.8106 and 602.8108 or as
20 otherwise provided by this Code. The clerk may accept payment
21 of an obligation or a portion thereof by credit card. The
22 clerk may charge a fee to reflect the additional cost of
23 processing the payment by credit card.

24 2. If the clerk receives payment from a person who is an
25 inmate of a state institution or who is under the supervision
26 of a judicial district department of correctional services,
27 the payment shall be applied to the balance owed under the
28 identified case number of the case which has resulted in the
29 placement of the person in a state institution or under the
30 supervision of the judicial district department of
31 correctional services. If a case number is not identified,
32 the clerk shall apply the payment to the balance owed in the
33 criminal case with the oldest judgment against the person.
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*3 ~~unsatisfied-amounts:~~ Pecuniary damages as defined in section
4 910.1, subsection 2.

5 b. ~~Victim-restitution:~~ Fines or penalties and criminal
6 penalty surcharges.

7 c. ~~Court-costs:~~ Crime victim compensation program
8 reimbursement.

9 d. ~~Court-appointed~~ Court costs, court-appointed attorney
10 fees, or public defender expenses.

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14 This subsection does not apply to amounts collected for
15 victim restitution, the ~~new~~ victim restitution compensation
16 fund, criminal penalty surcharge, or amounts collected as a
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18 subsection 25.

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20 follows:

21 714.7A VETERANS' GRAVE MARKERS.

22 A person commits a simple misdemeanor when the person takes
23 possession or control of a veteran's grave marker which was
24 provided pursuant to section 35B.16, with the intention to
25 deprive the owner of the marker, regardless of the value of
26 the marker. The person shall also be liable for ~~restitution~~
27 reimbursement in an amount equal to three times the cost of
28 the marker to be paid to the county commission of veteran
29 affairs or other person who furnished the marker.

30 Sec. 5. Section 714.16, subsection 7, unnumbered paragraph
31 1, Code 1993, is amended to read as follows:

32 A civil action pursuant to this section shall be by
33 equitable proceedings. If it appears to the attorney general
34 that a person has engaged in, is engaging in, or is about to
35 engage in a practice declared to be unlawful by this section,

1 the attorney general may seek and obtain in an action in a
2 district court a temporary restraining order, preliminary
3 injunction, or permanent injunction prohibiting the person
4 from continuing the practice or engaging in the practice or
5 doing an act in furtherance of the practice. The court may
6 make orders or judgments as necessary to prevent the use or
7 employment by a person of any prohibited practices, or which
8 are necessary to restore to any person in interest any moneys
9 or property, real or personal, which have been acquired by
10 means of a practice declared to be unlawful by this section,
11 including the appointment of a receiver in cases of
12 substantial and willful violation of this section. If a
13 person has acquired moneys or property by any means declared
14 to be unlawful by this section and if the cost of
15 administering restitution reimbursement outweighs the benefit
16 to consumers or consumers entitled to the restitution
17 reimbursement cannot be located through reasonable efforts,
18 the court may order disgorgement of moneys or property
19 acquired by the person by awarding the moneys or property to
20 the state to be used by the attorney general for the
21 administration and implementation of this section. Except in
22 an action for the concealment, suppression, or omission of a
23 material fact with intent that others rely upon it, it is not
24 necessary in an action for restitution reimbursement or an
25 injunction, to allege or to prove reliance, damages, intent to
26 deceive, or that the person who engaged in an unlawful act had
27 knowledge of the falsity of the claim or ignorance of the
28 truth. A claim for restitution reimbursement may be proved by
29 any competent evidence, including evidence that would be
30 appropriate in a class action.

31 Sec. 6. Section 714.16A, subsection 1, unnumbered
32 paragraph 2, Code 1993, is amended to read as follows:

33 A civil penalty imposed pursuant to this section shall be
34 paid to the treasurer of state, who shall deposit the money in
35 the elderly victim fund, a separate fund created in the state

1 treasury and administered by the attorney general for the
2 investigation and prosecution of frauds against the elderly.
3 Notwithstanding section 8.33, any balance in the fund on June
4 30 of any fiscal year shall not revert to the general fund of
5 the state. An award of restitution reimbursement pursuant to
6 section 714.16 has priority over a civil penalty imposed by
7 the court pursuant to this subsection.

8 Sec. 7. Section 904.203, Code 1993, is amended to read as
9 follows:

10 904.203 NORTH CENTRAL CORRECTIONAL FACILITY AT ROCKWELL
11 CITY.

12 The state correctional facility at Rockwell City shall be
13 utilized as a medium-security correctional facility for men.

14 Sec. 8. Section 904.204, Code 1993, is amended to read as
15 follows:

16 904.204 MOUNT PLEASANT CORRECTIONAL FACILITY -- SPECIAL
17 TREATMENT UNIT.

18 The correctional facility at Mount Pleasant shall be
19 utilized as a medium-security facility for men ~~primarily for~~
20 ~~treatment of inmates who exhibit treatable personality~~
21 ~~disorders, with or without accompanying history of drug or~~
22 ~~alcohol abuse. -- Such inmates may apply for and upon their~~
23 ~~application may be selected for treatment by the staff of the~~
24 ~~treatment facility at Mount Pleasant in accordance with~~
25 ~~section 904.503.~~

26 Sec. 9. Section 904.311, Code 1993, is amended by adding
27 the following new unnumbered paragraphs:

28 NEW UNNUMBERED PARAGRAPH. There is established in the
29 office of the director an inmate tort claim fund. This fund
30 shall be used to reimburse inmates for the damage or loss of
31 personal property caused by the department. Reimbursement for
32 a single loss may be up to one hundred dollars. Section 8.33
33 notwithstanding, moneys in the fund shall not revert but shall
34 remain in the fund. The fund shall be replenished from the
35 general appropriation to the institutions as necessary to meet

1 the obligations of the fund.

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

7 Sec. 10. Section 904.401, unnumbered paragraph 2, Code
8 1993, is amended by striking the unnumbered paragraph.

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

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

17 Sec. 12. Section 904.602, subsection 2, unnumbered
18 paragraph 1 and paragraph a, Code 1993, are amended to read as
19 follows:

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

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

27 Sec. 13. Section 904.603, Code 1993, is amended to read as
28 follows:

29 904.603 ACTION FOR DAMAGES.

30 A person receiving or who has received services, or that
31 person's family, victim or employer may institute a civil
32 action for damages under chapter 669 or other action to
33 restrain the release of confidential records set out in
34 section 904.602, subsection 2, which is in violation of that
35 section, and a person, agency or governmental body proven to

1 have released confidential records in violation of section
2 904.602, subsection 2 is liable for actual damages for each
3 violation and is liable for court costs and reasonable
4 attorney's fees incurred by the party bringing the action.
5 Sec. 14. Section 904.905, subsections 1 through 4, Code
6 1993, are amended to read as follows:

7 1. ~~An amount determined to be the cost to the judicial~~
8 ~~district department of correctional services for providing~~
9 ~~food, lodging and clothing for the inmate while under the~~
10 program may be legally obligated to pay for the support of the
11 inmate's dependents, the amount of which shall be paid to the
12 dependents through the department of human services located in
13 the county or city in which the dependents reside.

14 2. ~~The actual and necessary food, travel and other~~
15 ~~expenses of the inmate when released from actual confinement~~
16 ~~under the program. Restitution as ordered by the court~~
17 pursuant to chapter 910.

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

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

29 Sec. 15. Section 905.12, subsections 2 and 3, Code 1993,
30 are amended to read as follows:

31 2. Restitution ordered by the court under chapter 910.

32 3. An amount determined to be the cost to the judicial
33 district department of correctional services for food,
34 lodging, and other expenses incurred by or on behalf of the
35 resident.

1 ~~3. Restitution ordered by the court under chapter 910.~~
2 Sec. 16. Section 909.6, Code Supplement 1993, is amended
3 to read as follows:

4 909.6 FINE AS JUDGMENT ---INTEREST-ASSESSED.

5 Whenever a court has imposed a fine on any defendant, the
6 judgment in such case shall state the amount of the fine, and
7 shall have the force and effect of a judgment against the
8 defendant for the amount of the fine. The law relating to
9 judgment liens, executions, and other process available to
10 creditors for the collection of debts shall be applicable to
11 such judgments; provided, that no law exempting the personal
12 property of the defendant from any lien or legal process shall
13 be applicable to such judgments.

14 ~~If a court imposes a fine on an offender, the court shall~~
15 ~~impose interest charges on any amount remaining unsatisfied~~
16 ~~from the day after sentencing at the rate provided in section~~
17 ~~535.3.~~

18 At the time of imposing the sentence, the court shall
19 inform the offender of the amount of the fine and that the
20 judgment includes the imposition of a criminal surcharge,
21 court costs, and applicable fees. The court shall also inform
22 the offender of the duty to pay the judgment in a timely
23 manner and that interest will be charged on unsatisfied
24 judgments.

25 Sec. 17. Section 910.1, subsection 3, Code 1993, is
26 amended to read as follows:

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

1 restitution and the persons to whom restitution must be paid.
2 If the full amount of restitution cannot be determined at the
3 time of sentencing, the court shall issue a temporary order
4 determining a reasonable amount for ~~pecuniary-damages-incurred~~
5 restitution identified up to that time, ~~any-award-by-the-crime~~
6 ~~victim-assistance-programs~~, ~~court-appointed-attorney's-fees-or~~
7 ~~the-expense-of-a-public-defender~~, ~~and-court-costs~~. At a later
8 date as determined by the court, the court shall issue a
9 permanent, supplemental order, setting the full amount of
10 restitution. The court shall enter further supplemental
11 orders, if necessary. These court orders shall be known as
12 the plan of restitution.

13 Sec. 20. Section 910.9, unnumbered paragraph 3, Code 1993,
14 is amended to read as follows:

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

* 34 Sec. 21. Section 912.6, subsection 4, Code Supplement
35 1993, is amended to read as follows:

1 restitution and the persons to whom restitution must be paid.
2 If the full amount of restitution cannot be determined at the
3 time of sentencing, the court shall issue a temporary order
4 determining a reasonable amount for ~~pecuniary-damages-incurred~~
5 restitution identified up to that time, ~~any-award-by-the-crime~~
6 ~~victim-assistance-programs, court-appointed-attorney's-fees-or~~
7 ~~the-expense-of-a-public-defender, and-court-costs~~. At a later
8 date as determined by the court, the court shall issue a
9 permanent, supplemental order, setting the full amount of
10 restitution. The court shall enter further supplemental
11 orders, if necessary. These court orders shall be known as
12 the plan of restitution.

13 Sec. 20. Section 910.9, unnumbered paragraph 3, Code 1993,
14 is amended to read as follows:

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

*34 Sec. 21. Section 912.6, subsection 4, Code Supplement
35 1993, is amended to read as follows:

1 4. Reasonable funeral and burial expenses not to exceed
2 two-thousand five hundred thousand dollars.

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HOUSE FILE 2352

S-5310

1 Amend House File 2352, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 4, by inserting after line 7, the
4 following:

5 "Sec. ____ . Section 902.7, Code 1993, is amended to
6 read as follows:

7 902.7 MINIMUM SENTENCE -- USE OF A FIREARM.

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

23 Sec. ____ . Section 902.8, Code 1993, is amended to
24 read as follows:

25 902.8 MINIMUM SENTENCE -- HABITUAL OFFENDER.

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

38 Sec. ____ . NEW SECTION. 902.8A LIFE IMPRISONMENT
39 -- HABITUAL VIOLENT OFFENDER.

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

S-5310

-1-

S-5310

Page 2

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

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

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

12 b. An offense which is a forcible felony as
13 defined under section 702.11.

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

17 Sec. ____ . Section 902.9, Code Supplement 1993, is
18 amended to read as follows:

19 902.9 MAXIMUM SENTENCE FOR FELONS.

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

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

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

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

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

36 5. A class "D" felon, not an habitual offender
37 or an habitual violent offender, shall be confined for
38 no more than five years, and in addition may be
39 sentenced to a fine of at least five hundred dollars
40 but not more than seven thousand five hundred dollars.
41 A class "D" felon, such felony being for a violation
42 of section 321J.2, may be sentenced to imprisonment
43 for up to one year in the county jail.

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

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

By ANDY MCKEAN

DONALD B. REDFERN

S-5310 FILED MARCH 28, 1994

*Out of Order
4-12-94
(p. 11/5)*

HOUSE FILE 2352

S-5327

- 1 Amend the amendment, S-5310, to House File 2352, as
 - 2 amended, passed, and reprinted by the House as
 - 3 follows:
 - 4 1. Page 2, by inserting after line 48 the
 - 5 following:
 - 6 " ". Title page, line 8, by inserting after the
 - 7 word "corrections," the following: "and providing for
 - 8 the imposition of a life sentence for habitual violent
 - 9 offenders, "."
 - 10 2. By numbering and renumbering as necessary.
- By ANDY MCKEAN

S-5327 FILED MARCH 29, 1994

Adopted 4-12-94
(P. 1165) HOUSE FILE 2352

S-5328

- 1 Amend the amendment, S-5309, to House File 2352, as
 - 2 amended, passed, and reprinted by the House as
 - 3 follows:
 - 4 1. Page 1, by inserting after line 36 the
 - 5 following:
 - 6 " ". Title page, line 8, by inserting after the
 - 7 word "corrections," the following: "providing for
 - 8 forfeiture of automobiles used to commit the offense
 - 9 of operating while intoxicated and being a third
 - 10 offender, "."
 - 11 2. By numbering and renumbering as necessary.
- By ANDY MCKEAN

Adopted 4-12-94 (P. 1164)
S-5328 FILED MARCH 29, 1994

HOUSE FILE 2352

S-5509

- 1 Amend House File 2352, as amended, passed, and re-
 - 2 printed by the House, as follows:
 - 3 1. Page 4, by striking lines 8 through 25.
 - 4 2. By renumbering as necessary.
- By TOM VILSACK
ANDY MCKEAN

Adopted 4-12-94 (P. 1165)
S-5509 FILED APRIL 6, 1994

SENATE AMENDMENT TO HOUSE FILE 2352

H-6140

- 1 Amend House File 2352, as amended, passed, and re-
- 2 printed by the House, as follows:
- 3 1. Page 4, by striking lines 8 through 25.
- 4 2. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-6140 FILED APRIL 12, 1994

House Concurred 4-14-94 (P. 1550)

HOUSE FILE 2352

S-5309

1 Amend House File 2352, as amended, passed, and
2 reprinted by the House as follows:

3 1. Page 4, by inserting after line 7 the
4 following:

5 "Sec. _____. Section 809.1, subsection 2, Code 1993,
6 is amended by adding the following new paragraph:
7 NEW PARAGRAPH. e. A motor vehicle that is
8 operated to facilitate the commission of the offense
9 of operating a motor vehicle while intoxicated by a
10 person who is convicted of being a third or subsequent
11 offender under section 321J.2, subsection 2, paragraph
12 "c".

13 Sec. _____. Section 809.1, subsection 4, Code 1993,
14 is amended to read as follows:

15 4. The definitions contained in subsections 1
16 through 3 shall not apply to violations of chapter 321
17 or 321J except as specifically provided by this
18 section.

19 Sec. _____. Section 809.2, Code 1993, is amended to
20 read as follows:

21 809.2 NOTICE OF SEIZURE.

22 The officer taking possession of seized property
23 shall make a written inventory of the property and
24 deliver a copy of the inventory to the person from
25 whom it was seized. The inventory shall include the
26 name of the person taking custody of the seized
27 property, the date and time of the seizure, and the
28 law enforcement agency seizing the property. If the
29 property seized is a motor vehicle that has been
30 seized as a result of an arrest of a person for
31 operating while intoxicated and being a third or
32 subsequent offender under section 321J.2, subsection
33 2, paragraph "c", a copy of the inventory listing the
34 motor vehicle shall also be sent to any registered
35 owner of the vehicle if the registered owner is not
36 the person from whom the vehicle was seized."

37 2. By numbering and renumbering as necessary.

By ANDY MCKEAN

S-5309 FILED MARCH 28, 1994

*out of
Order
4-12-94
(P. 1164)*

Millage
Weidman
Kreiman

HSB 662

Judiciary & Law Enforcement *New*

SENATE/HOUSE FILE 2352
BY (PROPOSED DEPARTMENT OF
CORRECTIONS BILL)

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

A BILL FOR

1 An Act relating to criminal offenders and the department of
2 corrections, by making changes regarding payment of
3 restitution by offenders, making changes in specifications
4 relating to corrections institutions in which offenders are
5 housed, establishing an inmate tort claim fund, deleting
6 requirements relating to inmate visits by the director of the
7 department of corrections, deleting a requirement that
8 transcripts of investigations by the director be a public
9 record, and permitting the release of certain information
10 regarding offenders by the department.

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

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1 Section 1. Section 421.17, subsection 25, unnumbered
2 paragraph 1, Code Supplement 1993, is amended to read as
3 follows:

4 To establish and maintain a procedure to set off against a
5 debtor's income tax refund or rebate any debt which is in the
6 form of a liquidated sum due, owing, and payable to the clerk
7 of the district court as a ~~criminal-fine~~, civil penalty,
8 ~~surcharges, court-costs~~, or restitution of-attorney-fees as
9 defined and ordered under sections 910.1 and 910.2 incurred as
10 a result of services provided under chapters 13B and 815, and
11 section 232.141. The procedure shall meet the following
12 conditions:

13 Sec. 2. Section 602.8107, subsections 1 and 2, Code
14 Supplement 1993, are amended to read as follows:

15 1. ~~Fines, penalties, court-costs, fees, interest,~~
16 ~~restitution-for-court-appointed-attorney-fees, and surcharges~~
17 Restitution as defined in section 910.1 shall be paid to the
18 clerk of the district court. All amounts collected shall be
19 distributed pursuant to sections 602.8106 and 602.8108 or as
20 otherwise provided by this Code. The clerk may accept payment
21 of an obligation or a portion thereof by credit card. The
22 clerk may charge a fee to reflect the additional cost of
23 processing the payment by credit card.

24 2. Payments received under this section shall be applied
25 to the balance owed under the identified case number. If a
26 case number is not identified, payments shall be credited to
27 any active case in the manner determined by the clerk prior to
28 applying payments to any inactive cases. The determination of
29 whether a case is inactive shall be based on the expiration
30 date for supervision by a judicial district department of
31 correctional services or for a period of incarceration.

32 Payments received under this section shall be applied in the
33 following priority order:

34 a. ~~Fines-or-penalties-plus-any-interest-due-on-unsatisfied~~
35 ~~judgments-and-criminal-penalty-surcharges-plus-interest-due-on~~

1 unsatisfied-amounts: Pecuniary damages as defined in section
2 910.1, subsection 2.

3 b. Victim-restitution: Fines or penalties plus any
4 interest due on unsatisfied judgments and criminal penalty
5 surcharges plus interest due on unsatisfied amounts.

6 c. Court-costs: Crime victim compensation program
7 reimbursement.

8 d. Court-appointed Court costs, court-appointed attorney
9 fees, or public defender expenses.

10 Sec. 3. Section 602.8107, subsection 5, unnumbered
11 paragraph 2, Code Supplement 1993, is amended to read as
12 follows:

13 This subsection does not apply to amounts collected for
14 victim restitution, the new victim restitution compensation
15 fund, criminal penalty surcharge, or amounts collected as a
16 result of procedures initiated under section 421.17,
17 subsection 25.

18 Sec. 4. Section 714.7A, Code 1993, is amended to read as
19 follows:

20 714.7A VETERANS' GRAVE MARKERS.

21 A person commits a simple misdemeanor when the person takes
22 possession or control of a veteran's grave marker which was
23 provided pursuant to section 35B.16, with the intention to
24 deprive the owner of the marker, regardless of the value of
25 the marker. The person shall also be liable for restitution
26 reimbursement in an amount equal to three times the cost of
27 the marker to be paid to the county commission of veteran
28 affairs or other person who furnished the marker.

29 Sec. 5. Section 714.16, subsection 7, unnumbered paragraph
30 1, Code 1993, is amended to read as follows:

31 A civil action pursuant to this section shall be by
32 equitable proceedings. If it appears to the attorney general
33 that a person has engaged in, is engaging in, or is about to
34 engage in a practice declared to be unlawful by this section,
35 the attorney general may seek and obtain in an action in a

1 district court a temporary restraining order, preliminary
2 injunction, or permanent injunction prohibiting the person
3 from continuing the practice or engaging in the practice or
4 doing an act in furtherance of the practice. The court may
5 make orders or judgments as necessary to prevent the use or
6 employment by a person of any prohibited practices, or which
7 are necessary to restore to any person in interest any moneys
8 or property, real or personal, which have been acquired by
9 means of a practice declared to be unlawful by this section,
10 including the appointment of a receiver in cases of
11 substantial and willful violation of this section. If a
12 person has acquired moneys or property by any means declared
13 to be unlawful by this section and if the cost of
14 administering ~~restitution~~ reimbursement outweighs the benefit
15 to consumers or consumers entitled to the ~~restitution~~
16 reimbursement cannot be located through reasonable efforts,
17 the court may order disgorgement of moneys or property
18 acquired by the person by awarding the moneys or property to
19 the state to be used by the attorney general for the
20 administration and implementation of this section. Except in
21 an action for the concealment, suppression, or omission of a
22 material fact with intent that others rely upon it, it is not
23 necessary in an action for ~~restitution~~ reimbursement or an
24 injunction, to allege or to prove reliance, damages, intent to
25 deceive, or that the person who engaged in an unlawful act had
26 knowledge of the falsity of the claim or ignorance of the
27 truth. A claim for ~~restitution~~ reimbursement may be proved by
28 any competent evidence, including evidence that would be
29 appropriate in a class action.

30 Sec. 6. Section 714.16A, subsection 1, unnumbered
31 paragraph 2, Code 1993, is amended to read as follows:

32 A civil penalty imposed pursuant to this section shall be
33 paid to the treasurer of state, who shall deposit the money in
34 the elderly victim fund, a separate fund created in the state
35 treasury and administered by the attorney general for the

1 investigation and prosecution of frauds against the elderly.
2 Notwithstanding section 8.33, any balance in the fund on June
3 30 of any fiscal year shall not revert to the general fund of
4 the state. An award of restitution reimbursement pursuant to
5 section 714.16 has priority over a civil penalty imposed by
6 the court pursuant to this subsection.

7 Sec. 7. Section 904.203, Code 1993, is amended to read as
8 follows:

9 904.203 NORTH CENTRAL CORRECTIONAL FACILITY AT ROCKWELL
10 CITY.

11 The state correctional facility at Rockwell City shall be
12 utilized as a medium-security correctional facility for men.

13 Sec. 8. Section 904.204, Code 1993, is amended to read as
14 follows:

15 904.204 MOUNT PLEASANT CORRECTIONAL FACILITY -- SPECIAL
16 TREATMENT UNIT.

17 The correctional facility at Mount Pleasant shall be
18 utilized as a medium-security facility for men ~~primarily-for~~
19 ~~treatment-of-inmates-who-exhibit-treatable-personality~~
20 ~~disorders,-with-or-without-accompanying-history-of-drug-or~~
21 ~~alcohol-abuse.--Such-inmates-may-apply-for-and-upon-their~~
22 ~~application-may-be-selected-for-treatment-by-the-staff-of-the~~
23 ~~treatment-facility-at-Mount-Pleasant-in-accordance-with~~
24 ~~section-904-503.~~

25 Sec. 9. Section 904.311, Code 1993, is amended by adding
26 the following new unnumbered paragraphs:

27 NEW UNNUMBERED PARAGRAPH. There is established in the
28 office of the director an inmate tort claim fund. This fund
29 shall be used to reimburse inmates for the damage or loss of
30 personal property caused by the department. Reimbursement for
31 a single loss may be up to one hundred dollars. Section 8.33
32 notwithstanding, moneys in the fund shall not revert but shall
33 remain in the fund. The fund shall be replenished from the
34 general appropriation to the institutions as necessary to meet
35 the obligations of the fund.

1 NEW UNNUMBERED PARAGRAPH. Tort claims denied at the
2 institution shall be forwarded to the state appeal board for
3 its consideration as if originally filed with that body. This
4 procedure shall be used in lieu of the procedure in chapter
5 669 for inmate tort claims of less than one hundred dollars.

6 Sec. 10. Section 904.401, unnumbered paragraph 2, Code
7 1993, is amended by striking the unnumbered paragraph.

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

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

16 Sec. 12. Section 904.602, subsection 2, unnumbered
17 paragraph 1 and paragraph a, Code 1993, are amended to read as
18 follows:

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

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

26 Sec. 13. Section 904.603, Code 1993, is amended to read as
27 follows:

28 904.603 ACTION FOR DAMAGES.

29 A person receiving or who has received services, or that
30 person's family, victim or employer may institute a civil
31 action for damages under chapter 669 or other action to
32 restrain the release of confidential records set out in
33 section 904.602, subsection 2, which is in violation of that
34 section, and a person, agency or governmental body proven to
35 have released confidential records in violation of section

1 904.602, subsection 2 is liable for actual damages for each
2 violation and is liable for court costs and reasonable
3 attorney's fees incurred by the party bringing the action.

4 Sec. 14. Section 904.905, subsections 1 through 4, Code
5 1993, are amended to read as follows:

6 1. ~~An amount determined-to-be-the-cost-to-the-judicial~~
7 ~~district-department-of-correctional-services-for-providing~~
8 ~~food,-lodging-and-clothing-for~~ the inmate while under the
9 program may be legally obligated to pay for the support of the
10 inmate's dependents, the amount of which shall be paid to the
11 dependents through the department of human services located in
12 the county or city in which the dependents reside.

13 2. ~~The-actual-and-necessary-food,-travel-and-other~~
14 ~~expenses-of-the-inmate-when-released-from-actual-confinement~~
15 ~~under-the-program.~~ An amount determined to be the cost to the
16 judicial district department of correctional services for
17 providing food, lodging, and clothing for the inmate while
18 under the program.

19 3. ~~An-amount-the-inmate-may-be-legally-obligated-to-pay~~
20 ~~for-the-support-of-the-inmate's-dependents,-the-amount-of~~
21 ~~which-shall-be-paid-to-the-dependents-through-the-local~~
22 ~~department-of-human-services-in-the-county-or-city-in-which~~
23 ~~the-dependents-reside.~~ Restitution as ordered by the court
24 pursuant to chapter 910.

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

28 Sec. 15. Section 910.1, subsection 3, Code 1993, is
29 amended to read as follows:

30 3. "Restitution" means payment of pecuniary damages to a
31 victim in an amount and in the manner provided by the
32 offender's plan of restitution. Restitution also includes
33 finances, penalties, and surcharges, the payment of crime victim
34 assistance compensation program reimbursements, court costs,
35 court-appointed attorney's fees, or the expense of a public

1 defender, and the performance of a public service by an
2 offender in an amount set by the court when the offender
3 cannot reasonably pay all or part of the court costs, court-
4 appointed attorney's fees, or the expense of a public
5 defender.

6 Sec. 16. Section 910.2, Code 1993, is amended to read as
7 follows:

8 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
9 SENTENCING COURT.

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

1 court-appointed attorney's fees, or expense of a public
2 defender for which the offender is not reasonably able to pay,
3 to perform a needed public service for a governmental agency
4 or for a private, nonprofit agency which provides a service to
5 the youth, elderly, or poor of the community. When community
6 service is ordered, the court shall set a specific number of
7 hours of service to be performed by the offender. The
8 judicial district department of correctional services shall
9 provide for the assignment of the offender to a public agency
10 or private nonprofit agency to perform the required service.

11 Sec. 17. Section 910.3, Code 1993, is amended to read as
12 follows:

13 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

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

1 of sentencing or at a later date to be determined by the
2 court, the court shall set out the amount of restitution
3 including the amount of public service to be performed as
4 restitution and the persons to whom restitution must be paid.
5 If the full amount of restitution cannot be determined at the
6 time of sentencing, the court shall issue a temporary order
7 determining a reasonable amount for ~~pecuniary-damages-incurred~~
8 restitution identified up to that time, ~~any-award-by-the-crime~~
9 ~~victim-assistance-programs, court-appointed-attorney's-fees-or~~
10 ~~the-expense-of-a-public-defender, and-court-costs~~. At a later
11 date as determined by the court, the court shall issue a
12 permanent, supplemental order, setting the full amount of
13 restitution. The court shall enter further supplemental
14 orders, if necessary. These court orders shall be known as
15 the plan of restitution.

16 Sec. 18. Section 910.9, unnumbered paragraph 3, Code 1993,
17 is amended to read as follows:

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

1 court.

2 Sec. 19. Section 904.405, Code 1993, is repealed.

3 EXPLANATION

4 Sections 1 through 6 and sections 14 through 18 relate to
5 offender restitution. Section 15 changes the definition of
6 what is included in the term "restitution" and sections 2, 14,
7 and 16 make changes in the priority by which any payments made
8 by an offender are applied to the various obligations imposed
9 upon or assumed by the offender. The remainder of the
10 sections make various technical changes to provide for uniform
11 application of the new restitution definition and payment
12 priority.

13 Sections 7 and 8 strike language that places restrictions
14 on the utilization of the Rockwell City and Mount Pleasant
15 correctional facilities.

16 Section 9 establishes an inmate tort claim fund within the
17 department of corrections for purposes of paying inmates for
18 small personal property losses of less than \$100. Moneys in
19 the fund come from transfers from the general appropriations
20 to the institutions to meet fund obligations. Moneys left in
21 the fund at the end of a fiscal year do not revert to the
22 state treasury.

23 Section 10 strikes the portion of section 904.401, which
24 provides for visits by the director of the department of
25 corrections, or the director's designee, to the institutions
26 under the director's control. The section provides that the
27 director, or the director's designee, is to see every inmate
28 of each institution as far as is practicable and to give the
29 inmates a suitable opportunity to converse with the director
30 or designee apart from the officers and attendants.

31 Sections 11 through 13 amend language which relates to what
32 information regarding offenders may be released to the public.

33 Section 19 repeals section 904.405, which provides that
34 transcripts of testimony taken at investigations performed by
35 the director, or at the director's direction, are to be filed in

1 the director's office at the seat of government within 10 days
2 after the testimony is taken, or as soon as practicable. The
3 transcripts are a public record under that section.

4 BACKGROUND STATEMENT

5 SUBMITTED BY THE AGENCY

6 Sections 1 through 6 and sections 14 through 18 relate to
7 offender restitution. Conflicts exist in recently passed
8 legislation and existing statutes regarding the collection of
9 victim restitution, fines, and other court-ordered
10 obligations. The bill is designed to resolve these conflicts
11 with a "victims first" approach to the collection of payments
12 for obligations of offenders.

13 Sections 7 and 8 are proposed in order to bring the Code
14 into conformity with current practice. Mount Pleasant and
15 Rockwell City are the only institutions with a security
16 designation specified in the Code of Iowa. The department
17 feels that this designation is inappropriate for several
18 reasons:

19 (1) The term "medium security" is not defined in the Code
20 and has no consistent application in policy and practice. The
21 term tends to confuse rather than clarify the institution
22 security levels.

23 (2) Most institutions contain two or more security levels.

24 (3) Each institution houses inmates with a variety of
25 security needs.

26 (4) The department should have the flexibility to alter
27 the mission of a facility as needs and resources change.

28 Section 9 establishes an inmate tort claim fund. The
29 inmate tort claim fund is a small allocation (\$1,200 to
30 \$1,500) used to reimburse inmates for small personal property
31 losses (less than \$100) caused by staff. The fund does not
32 revert at the end of the fiscal year and is periodically
33 replenished from the institutions' general appropriation.
34 Because the nonreversion clause is in the department
35 appropriation, rather than in the Code, it must be acted upon

1 in each legislative session. Codifying this provision would
2 eliminate needless administrative action over a small sum of
3 money. Claims against the fund do not preclude actions by
4 inmates under the state tort claims Act.

5 Section 10 strikes language relating to inmate visits by
6 the director. Although this is a qualified, rather than a
7 mandatory, duty and one which can be delegated, it remains an
8 antiquated, unreasonable, and impractical obligation for the
9 director. When this Code section was enacted there was a much
10 smaller inmate population. Today inmates have ample access to
11 confidential communications with the courts, citizens'
12 aide/ombudsman, and other advocates, as well as top
13 departmental staff. This requirement no longer serves a valid
14 public purpose.

15 Sections 11 through 13 amend the provisions that relate to
16 what information about offenders is public information. The
17 provisions have been interpreted as a bar to the release of
18 information about individuals who are no longer receiving
19 services. This is an unreasonable restriction when the same
20 information is generally available through other public
21 sources such as court records, police records, and newspaper
22 accounts. It is also questionable whether information can
23 later be made confidential once it is made public. The
24 department is receiving an increasing number of requests for
25 information from family members conducting genealogical
26 research. The department would like to accommodate these
27 requests when time permits, but is legally unable to do so at
28 this time.

29 Section 19 repeals a section that requires that the
30 testimony taken in investigations be open to the public. The
31 department believes that this type of testimony, taken during
32 the investigative stage, should be confidential for three
33 reasons:

34 (1) Investigative testimony may contain unsubstantiated
35 allegations, hearsay, and speculation which could be damaging

1 to an innocent employee. The employee should have some rights
2 to privacy and confidentiality.

3 (2) Disclosure could have a chilling effect on the
4 willingness of witnesses to give testimony. It is sometimes
5 important to protect confidentiality in order to get the whole
6 story.

7 (3) Other more appropriate avenues exist to make pertinent
8 testimony available to the public. Both judicial and
9 administrative processes exist for fact finding and public
10 disclosure of evidence.

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HOUSE FILE 2352

AN ACT

RELATING TO CRIMINAL OFFENDERS AND THE DEPARTMENT OF CORRECTIONS, BY MAKING CHANGES REGARDING PAYMENT OF RESTITUTION BY OFFENDERS AND PAYMENTS UNDER THE CRIME VICTIM COMPENSATION PROGRAM, MAKING CHANGES IN SPECIFICATIONS RELATING TO CORRECTIONS INSTITUTIONS IN WHICH OFFENDERS ARE HOUSED, ESTABLISHING AN INMATE TORT CLAIM FUND, DELETING REQUIREMENTS RELATING TO INMATE VISITS BY THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, AND PERMITTING THE RELEASE OF CERTAIN INFORMATION REGARDING OFFENDERS BY THE DEPARTMENT.

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

Section 1. Section 421.17, subsection 25, unnumbered paragraph 1, Code Supplement 1993, is amended to read as follows:

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

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

1. ~~Fines-penalties-court-costs-fees-interest~~ restitution-for-court-appointed-attorney-fees-and-surcharges Restitution as defined in section 910.1 shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108 or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. The clerk may charge a fee to reflect the additional cost of processing the payment by credit card.

2. If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments received under this section shall be applied in the following priority order:

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

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

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

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

Sec. 3. Section 602.8107, subsection 5, unnumbered paragraph 2, Code Supplement 1993, is amended to read as follows:

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

Sec. 4. Section 714.7A, Code 1993, is amended to read as follows:

714.7A VETERANS' GRAVE MARKERS.

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

Sec. 5. Section 714.16, subsection 7, unnumbered paragraph 1, Code 1993, is amended to read as follows:

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

to be unlawful by this section and if the cost of administering restitution reimbursement outweighs the benefit to consumers or consumers entitled to the restitution reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for restitution reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for restitution reimbursement may be proved by any competent evidence, including evidence that would be appropriate in a class action.

Sec. 6. Section 714.16A, subsection 1, unnumbered paragraph 2, Code 1993, is amended to read as follows:

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

Sec. 7. Section 904.311, Code 1993, is amended by adding the following new unnumbered paragraphs:

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

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

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

Sec. 8. Section 904.401, unnumbered paragraph 2, Code 1993, is amended by striking the unnumbered paragraph.

Sec. 9. Section 904.602, subsection 1, unnumbered paragraph 1, Code 1993, is amended to read as follows:

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

Sec. 10. Section 904.602, subsection 2, unnumbered paragraph 1 and paragraph a, Code 1993, are amended to read as follows:

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

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

Sec. 11. Section 904.603, Code 1993, is amended to read as follows:

904.603 ACTION FOR DAMAGES.

A person receiving or who has received services, or that person's family, victim or employer may institute a civil

action for damages under chapter 669 or other action to restrain the release of confidential records set out in section 904.602, subsection 2, which is in violation of that section, and a person, agency or governmental body proven to have released confidential records in violation of section 904.602, subsection 2 is liable for actual damages for each violation and is liable for court costs and reasonable attorney's fees incurred by the party bringing the action.

Sec. 12. Section 904.905, subsections 1 through 4, Code 1993, are amended to read as follows:

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

2. ~~The actual and necessary food, travel and other expenses of the inmate when released from actual confinement under the program. Restitution as ordered by the court pursuant to chapter 910.~~

3. ~~An amount the inmate may be legally obligated to pay for the support of the inmate's dependents, the amount of which shall be paid to the dependents through the local department of human services in the county or city in which the dependents reside. An amount determined to be the cost to the judicial district department of correctional services for providing food, lodging, and clothing for the inmate while under the program.~~

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

Sec. 13. Section 905.12, subsections 2 and 3, Code 1993, are amended to read as follows:

2. Restitution ordered by the court under chapter 910.

3. An amount determined to be the cost to the judicial district department of correctional services for food, lodging, and other expenses incurred by or on behalf of the resident.

~~3. Restitution ordered by the court under chapter 910.~~

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

909.6 FINE AS JUDGMENT --- INTEREST ASSESSOR.

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

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

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

Sec. 15. Section 910.1, subsection 3, Code 1993, is amended to read as follows:

3. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution also includes finer, penalties, and surcharges, the payment of crime victim assistance compensation program reimbursements, court costs,

court-appointed attorney's fees, or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees, or the expense of a public defender.

Sec. 16. Section 910.2, Code 1993, is amended to read as follows:

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

In all criminal cases except including but not limited to simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, court costs, court-appointed attorney's fees, or the expense of a public defender when applicable. However, victims shall be paid in full before restitution is paid for fines, penalties, and surcharges, crime victim assistance compensation program reimbursement, court costs, court-appointed attorney's fees, or for the expense expenses of a public defender are paid. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, finer, penalties, and surcharges, crime victim assistance compensation program reimbursement, court costs, and court-appointed attorney's fees, or the expense of a public defender. When the offender is not reasonably able to pay all or a part of the crime victim assistance compensation program reimbursement, court costs, court-appointed attorney's fees, or the expense of a public defender, the court may require the offender in lieu of that portion of the crime victim

assistance compensation program reimbursement, court costs, court-appointed attorney's fees, or expense of a public defender for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private, nonprofit agency which provides a service to the youth, elderly, or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

Sec. 17. Section 910.3, Code 1993, is amended to read as follows:

910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim ~~assistance-programs~~ compensation program and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. The clerk of court shall prepare a statement of court-appointed attorney's fees, the expense of a public defender, and court costs, which shall be provided to the presentence investigator or submitted to the court at the time of sentencing. If these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the

defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for ~~pecuniary-damages-incurred~~ restitution identified up to that time, any award by the crime victim-assistance-programs, court-appointed-attorney's-fees-or the-expense-of-a-public-defender, and court-costs. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

Sec. 18. Section 910.9, unnumbered paragraph 3, Code 1993, is amended to read as follows:

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

with the community service requirement, notify the sentencing court.

Sec. 19. Section 912.6, subsection 4, Code Supplement 1993, is amended to read as follows:

4. Reasonable funeral and burial expenses not to exceed two-thousand five hundred thousand dollars.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2352, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 2nd, 1994

TERRY E. BRANSTAD
Governor