

3/25/93 House Judiciary
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7-7-93 House - Do Pass

SENATE FILE 296
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 84)

Passed Senate, Date ^(p. 181) 3/23/93 Passed House, Date 4/27/93 (p. 1709)
Vote: Ayes 48 Nays 0 Vote: Ayes 97 Nays 0
Approved May 5, 1993

A BILL FOR

1 An Act relating to criminal proceedings and amounts available for
2 victim reparation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 296

1 Section 1. Section 912.6, subsections 1 and 6, Code 1993,
2 are amended to read as follows:

3 1. Reasonable charges incurred for medical care not to
4 exceed ten thousand five hundred dollars. Reasonable charges
5 incurred for mental health care not to exceed one three
6 thousand ~~five~~-hundred dollars which includes services provided
7 by a psychologist licensed under chapter 154B, a person
8 holding at least a master's degree in social work or
9 counseling and guidance, or a victim counselor as defined in
10 section 236A.1.

11 6. In the event of a victim's death, reasonable charges
12 incurred for counseling the victim's spouse, children,
13 parents, siblings, or persons cohabiting with or related by
14 blood or affinity to the victim if the counseling services are
15 provided by a psychologist licensed under chapter 154B, a
16 victim counselor as defined in section 236A.1, subsection 1,
17 or an individual holding at least a master's degree in social
18 work or counseling and guidance, and reasonable charges
19 incurred by such persons for medical care counseling provided
20 by a psychiatrist licensed under chapter 147 or 150A. The
21 allowable charges under this subsection shall not exceed five
22 hundred three thousand dollars per person or a total of ~~two~~
23 six thousand dollars per victim death.

24 EXPLANATION

25 This bill raises the maximum levels of compensation which
26 can be given to victims of criminal acts or to the victims'
27 families for certain medical services. The limit on medical
28 services that include psychological counseling and guidance
29 services is raised from \$1,500 to \$3,000. The limit on
30 counseling for families of homicide victims is raised from
31 \$500 to \$3,000 per person. The per homicide limit on those
32 same services is raised from \$2,000 per homicide to a total of
33 \$6,000.

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SENATE FILE 296
FISCAL NOTE

A fiscal note for Senate File 296 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.

Senate File 296 raises the maximum levels of compensation which can be given to victims of criminal acts or the victims' families for certain medical services. The limit on medical services that include psychological counseling and guidance services is raised from \$1,500 to \$3,000. The limit on counseling for families of homicide victims is raised from \$500 to \$3,000 per person. The per homicide limit on those same services is raised from \$2,000 to \$6,000.

Assumptions:

1. Claims for counseling are estimated to be \$148,000 in FY 1993.
2. Claims for counseling are expected to increase by 10% each year.
3. Forty percent of claims for counseling are reimbursed from federal Victims of Crime Act (VOCA) funds. The percentage of reimbursements may increase to 50% in the near future.
4. Approximately 10% of all victims receiving counseling are in need of the maximum benefits.

Fiscal Impact:

Based upon current law, total claims are expected to reach \$164,000 in FY 1994 and \$180,000 in FY 1995. It is estimated that counseling claims will increase above current estimates by approximately \$163,000 in FY 1994 and \$179,000 in FY 1995 under SF 296.

The federal Department of Justice reimburses 40% of all claims incurred in a given fiscal year during the subsequent fiscal year from VOCA funds. Federal reimbursements are expected to increase as the number of claims increase.

In addition, the Victims Compensation Fund covers the remaining 60% of claims realized. All funding for the Victims Compensation Fund is derived from fines, penalties, and restitutions paid by criminals. Therefore, the adoption of this bill will have no fiscal effect on the General Fund of the State.

Sources: Department of Justice

(LSB 1083sv, LAM)

FILED APRIL 8, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

STURGEON, CH.
SZYMONIAK
GIANNETTO
FLHRMAN
SLIFE

SSB 84
JUDICIARY

SENATE/HOUSE FILE 296
BY (PROPOSED ATTORNEY
GENERAL BILL)

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

A BILL FOR

1 An Act relating to criminal proceedings, providing certain
2 misdemeanor penalties, release of criminal defendants upon
3 extensions of credit by a surety, a defendant's right to
4 confront minor witnesses, and amounts available for victim
5 reparation.

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

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1 Section 1. Section 636.11, Code 1993, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3. An agent for a company authorized to
4 engage in the business of being a surety upon bonds shall not
5 extend credit to any person obtaining bail in a criminal case.
6 The license issued under chapter 522 to an insurance agent,
7 who provides credit to a person as part of a bail arrangement
8 in a criminal case, shall be revoked by the commissioner of
9 insurance. As used in this subsection, "credit" includes, but
10 is not limited to, credit as defined in section 537.1301,
11 promises to pay in the future, pledges of security, and
12 postdated negotiable instruments.

13 Sec. 2. Section 811.2, subsection 1, paragraph d, Code
14 1993, is amended to read as follows:

15 d. Require the execution of a bail bond with sufficient
16 surety, or the deposit of cash in lieu of bond. However,
17 except as provided in section 811.1, bail initially given
18 remains valid until final disposition of the offense or entry
19 of an order deferring judgment. If the amount of bail is
20 deemed insufficient by the court before whom the offense is
21 pending, the court may order an increase of bail and the
22 defendant must provide the additional undertaking, written or
23 in cash, to secure release. For purposes of this paragraph,
24 bail bonds executed upon an extension of credit to a defendant
25 shall be deemed insufficient.

26 Sec. 3. Section 811.3, subsection 1, Code 1993, is amended
27 to read as follows:

28 1. Insurance companies doing business in this state under
29 the provisions of section 515.48, subsection 2, may act as
30 surety. Any insurance company acting as surety in a criminal
31 case shall file, through a licensed agent of the company, an
32 affidavit stating that the bail bond was not obtained upon an
33 extension of credit to a defendant with the clerk of the
34 district court in which the criminal case is pending.

35 Resident owners of property which is located within the state

1 and which is worth the amount specified in the undertaking,
2 may act as surety, and must in all cases justify by an
3 affidavit taken before an officer authorized to administer
4 oaths that such surety possesses such qualifications.

5 Sec. 4. Section 903.1, subsection 1, paragraphs a and b,
6 Code 1993, are amended to read as follows:

7 a. For a simple misdemeanor, imprisonment not to exceed
8 thirty days, or a fine not to exceed one hundred dollars, or
9 both.

10 b. For a serious misdemeanor, imprisonment not to exceed
11 one year, or a fine not to exceed one two thousand five
12 hundred dollars, or both.

13 Sec. 5. Section 910A.14, subsection 1, Code 1993, is
14 amended to read as follows:

15 1. A court may, upon its own motion or upon motion of any
16 party, order that the testimony of a minor, as defined in
17 section 599.1, be taken in a room other than the courtroom and
18 be televised by closed circuit equipment in the courtroom to
19 be viewed by the court. Only the judge, parties, counsel,
20 persons necessary to operate the equipment, and any person
21 whose presence, in the opinion of the court, would contribute
22 to the welfare and well-being of the minor may be present in
23 the room with the minor during the minor's testimony. In
24 addition, upon a finding of necessity, the court may allow the
25 testimony of a victim or witness with a mental illness, mental
26 retardation, or other developmental disability to be taken as
27 provided in this subsection paragraph, regardless of the age
28 of the victim or witness.

29 The court, upon a finding of necessity, may exclude a
30 defendant from the room in which the testimony of a minor is
31 being taken. If a defendant is excluded from the room, the
32 court shall take measures to ensure that the defendant and
33 counsel can confer during the testimony.

34 Sec. 6. Section 912.6, subsections 1 and 6, Code 1993, are
35 amended to read as follows:

1 1. Reasonable charges incurred for medical care not to
2 exceed ten thousand five hundred dollars. Reasonable charges
3 incurred for mental health care not to exceed one three
4 thousand five-hundred dollars which includes services provided
5 by a psychologist licensed under chapter 154B, a person
6 holding at least a master's degree in social work or
7 counseling and guidance, or a victim counselor as defined in
8 section 236A.1.

9 6. In the event of a victim's death, reasonable charges
10 incurred for counseling the victim's spouse, children,
11 parents, siblings, or persons cohabiting with or related by
12 blood or affinity to the victim if the counseling services are
13 provided by a psychologist licensed under chapter 154B, a
14 victim counselor as defined in section 236A.1, subsection 1,
15 or an individual holding at least a master's degree in social
16 work or counseling and guidance, and reasonable charges
17 incurred by such persons for medical care counseling provided
18 by a psychiatrist licensed under chapter 147 or 150A. The
19 allowable charges under this subsection shall not exceed five
20 hundred three thousand dollars per person or a total of two
21 six thousand dollars per victim death.

22 EXPLANATION

23 Sections 1 through 3 provide that credit is not to be
24 extended by a company to a criminal defendant for purposes of
25 providing corporate surety on a bail bond.

26 Section 4 of the bill provides that a person who is
27 convicted of an offense that is a simple misdemeanor may be
28 sentenced to 30 days in jail, to a fine of no more than \$100,
29 or both fine and imprisonment. Persons convicted of simple
30 misdemeanors currently may be sentenced to either payment of a
31 fine or to 30 days in jail, but not both fine and
32 imprisonment. The section also increases the possible fine
33 for conviction of a serious misdemeanor from \$1,000 to \$2,500.

34 Section 5 of the bill provides that in matters covered
35 under the victim and witness protection Act where a minor's

1 testimony is to be taken, upon a finding of necessity, the
2 court may order that the defendant be excluded from the room
3 in which the testimony is to be taken. If a defendant is
4 excluded, the court must ensure that the defendant and the
5 defendant's counsel can confer during the testimony.

6 Section 6 of the bill raises the maximum levels of
7 compensation which can be given to victims of criminal acts or
8 the victims families for certain medical services. The limit
9 on medical services that include psychological service and
10 services is raised from \$1,500 to \$3,000. The limit on
11 counseling for families of homicide victims is raised from
12 \$500 to \$3,000 per person. The per homicide limit on those
13 same services is raised from \$2,000 per homicide to a total of
14 \$6,000.

15 BACKGROUND STATEMENT

16 SUBMITTED BY THE AGENCY

17 Sections 1 through 3 of the proposal are meant to address
18 the following situation: A defendant is arrested and is
19 allowed to either a) give a postdated check for the bond; b)
20 provide a promissory note for the bond; or c) promise to pay
21 at a later date. Then, the defendant is released and conducts
22 another drug deal (or commits some other crime) in order to
23 raise the necessary cash to meet the promise to pay.

24 The most effective punishment for some simple misdemeanor
25 offenders may be a combination of a fine and imprisonment as
26 is provided for in section 4 of the proposal. Also, for
27 example, some offenders may consider a small fine to be a cost
28 of doing business and remain undeterred from committing the
29 crime again. The maximum fine amount for conviction of a
30 serious misdemeanor has therefore been increased from \$1,000
31 to \$2,500. With greater flexibility, judges may be able to
32 combine both a fine and imprisonment in order to send a clear
33 message that the crime will not be tolerated.

34 With respect to the provisions contained in section 5 of
35 the proposal, under current Iowa law, trial courts are not

1 authorized to allow a child victim to give his or her
2 testimony outside the physical presence of the defendant. In
3 1988, the United States Supreme Court held that imposing a
4 screen between a testifying child victim/witness and a
5 defendant violated the confrontation clause of the
6 Constitution. Coy v. Iowa, 487 U.S. 1012, 108 S.Ct. 2798, 101
7 L.Ed. 2d 857 (1988). After that ruling, the Iowa statute,
8 section 910A.14, was amended to be consistent with the Coy
9 decision. However, a 1990 decision by the United States
10 Supreme Court held that the right to confrontation may be
11 outweighed by a demonstrated need to protect the physical and
12 psychological well-being of victims of child abuse. Maryland
13 v. Craig, 497 U.S. 836, 110 S.Ct. 3157, 111 L. Ed. 2d 666
14 (1990). Current Iowa law does not have the necessary language
15 to allow for the exception granted in the Craig decision.
16 Because of the lack of this express provision, the Iowa
17 Supreme Court recently reversed the convictions of two child
18 sex abusers. State v. Kasel and State v. Overmyer.
19 Consistent with the Craig decision, this amendment provides
20 the necessary language to authorize the exclusion of a
21 defendant during a child victim/witness's testimony if the
22 court believes that it would be in the best interest of the
23 child's physical and psychological well-being. Many times,
24 child abusers have been known to threaten their victims by
25 saying that they will hurt the child, or someone the child
26 cares about, if the child tells anyone about the abuse. Thus,
27 it is easy to understand how the presence of the abuser could
28 jeopardize the child's well-being and the testimony the child
29 may be able to provide. Presence of the defendant may, in
30 some cases, so traumatize the child that the child is unable
31 to testify at all, depriving the prosecution of crucial
32 testimony.

33 The crime victim assistance program in the office of
34 attorney general administers the victim reparation program
35 under chapter 912, which provides money to victims of crimes

1 to reimburse them for various costs, such as seeking medical
2 attention, counseling, homicide site clean-up, and funeral and
3 burial expenses.

4 The money provided to victims comes entirely from criminal
5 fines and surcharges. No general fund or tax dollars are
6 spent on this program. This proposal raises the caps on two
7 of the compensation categories. Mental health care caps are
8 raised from \$1,500 to \$3,000 per person and counseling for the
9 families of homicide victims is raised from \$500 to \$3,000 per
10 person. The increased caps will better provide the necessary
11 support to victims in need.

12 In fiscal year 1992, 253 victims applied for mental health
13 care counseling at a cost of \$121,273. During the same year,
14 the survivors of 17 homicide victims applied for counseling at
15 a total cost of \$4,758. On an annual basis, there is
16 approximately \$2 million available in the fund to provide
17 compensation to eligible victims for the expenses provided in
18 the statute. The eligibility guidelines are also set forth in
19 the statute and by federal guidelines.

20 The fiscal impact of this proposal is estimated to be
21 \$82,000 which represents 60 percent of the total fiscal
22 impact. The remaining 40 percent of the cost of the proposal
23 will be funded with federal funds.

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hundred three thousand dollars per person or a total of two six thousand dollars per victim death.

SENATE FILE 296

AN ACT
RELATING TO CRIMINAL PROCEEDINGS AND AMOUNTS AVAILABLE FOR
VICTIM REPARATION.

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

Section 1. Section 912.6, subsections 1 and 6, Code 1993,
are amended to read as follows:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars. Reasonable charges incurred for mental health care not to exceed one three thousand five-hundred dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

6. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed five

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN HAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 296, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 5, 1993

TERRY E. BRANSTAD
Governor