

FEB 15 1996

JUDICIARY

HOUSE FILE 2237
BY LARSON

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

A BILL FOR

1 An Act relating to oral presentation of victim impact statements,
2 which may be made in the presence of the defendant.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2237

1 Section 1. Section 901.2, Code 1995, is amended to read as
2 follows:

3 901.2 PRESENTENCE INVESTIGATION.

4 1. Upon a plea of guilty, a verdict of guilty, or a
5 special verdict upon which a judgment of conviction of a
6 public offense may be rendered, the court shall receive from
7 the state, from the judicial district department of
8 correctional services, and from the defendant any information
9 which may be offered which is relevant to the question of
10 sentencing. The court shall also consider any victim impact
11 statement, and may consider information from other sources.

12 2. Notwithstanding section 13.10, the court may determine
13 if the defendant shall be required to provide a physical
14 specimen to be submitted for DNA profiling if the defendant is
15 to be placed on probation or work release. The court shall
16 consider the deterrent effect of DNA profiling, the likelihood
17 of repeated violations by the defendant, and the seriousness
18 of the offense. When funds have been allocated from the
19 general fund of the state, or funds are provided by other
20 public or private sources, the court shall order DNA
21 profiling.

22 3. The court shall not order a presentence investigation
23 when the offense is a class "A" felony. If, however, the
24 board of parole determines that the Iowa medical and
25 classification center reception report for a class "A" felon
26 is inadequate, the board may request and shall be provided
27 with additional information from the appropriate judicial
28 district department of correctional services.

29 4. The court shall order a presentence investigation when
30 the offense is a class "B", class "C", or class "D" felony. A
31 presentence investigation for a class "B", class "C", or class
32 "D" felony shall not be waived. The court may order, with the
33 consent of the defendant, that the presentence investigation
34 begin prior to the acceptance of a plea of guilty, or prior to
35 a verdict of guilty.

1 5. The court may order a presentence investigation when
2 the offense is an aggravated misdemeanor.

3 6. The court may order a presentence investigation when
4 the offense is a serious misdemeanor only upon a finding of
5 exceptional circumstances warranting an investigation.

6 Notwithstanding section 901.3, a presentence investigation
7 ordered by the court for a serious misdemeanor shall include
8 information concerning only the following:

9 ~~1-~~ a. A brief personal and social history of the
10 defendant.

11 ~~2-~~ b. The defendant's criminal record.

12 ~~3-~~ c. The harm to the victim, the victim's immediate
13 family, and the community, including any completed victim
14 impact statement or statements and restitution plan.

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

19 8. The investigation shall be made by the judicial
20 district department of correctional services.

21 9. The purpose of the report by the judicial district
22 department of correctional services is to provide the court
23 pertinent information for purposes of sentencing and to
24 include suggestions for correctional planning for use by
25 correctional authorities subsequent to sentencing.

26 Sec. 2. NEW SECTION. 901.3A VICTIM IMPACT STATEMENT
27 PRESENTATION.

28 Prior to the time fixed by the court for pronouncement of
29 judgment and sentence, the court shall schedule a time and
30 place where the victim, the victim's attorney, or a designated
31 representative may orally present a victim impact statement,
32 according to the provisions of section 910A.5. The court
33 shall permit the victim to make the statement in the presence
34 of the defendant. A transcript of the oral presentation shall
35 be included in the presentence report, or shall be provided to

1 the court prior to sentencing if no presentence report is
2 ordered. The court shall consider the victim impact statement
3 in determining the appropriate sentence.

4 Sec. 3. Section 910A.1, Code 1995, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 1A. "Victim impact statement" means a
7 written or oral presentation to the court by the victim or the
8 victim's representative that indicates the physical,
9 emotional, financial, or other effects of the offense upon the
10 victim.

11 Sec. 4. Section 910A.5, Code 1995, is amended to read as
12 follows:

13 910A.5 VICTIM IMPACT STATEMENT.

14 1. A victim may present a victim impact statement to the
15 court using one or more of the following methods:

16 a. A victim may file a signed victim impact statement with
17 the county attorney, and a filed impact statement shall be
18 included in the presentence investigation report. If a
19 presentence investigation report is not ordered by the court,
20 a filed victim impact statement shall be provided to the court
21 prior to sentencing.

22 ~~The court shall consider a filed victim impact statement in~~
23 ~~determining the appropriate sentence and in entering any order~~
24 ~~of restitution to the victim pursuant to chapter 910.~~

25 b. Prior to the time fixed by the court for pronouncement
26 of judgment and sentence, a victim may orally present a victim
27 impact statement, according to the provisions of section
28 901.3A. The court shall permit the victim to make the
29 statement in the presence of the defendant.

30 c. If the victim is unable to make an oral or written
31 statement because of the victim's age, or mental, emotional,
32 or physical incapacity, the victim's attorney or a designated
33 representative shall have the opportunity to make a statement
34 on behalf of the victim.

35 2. The A victim impact statement shall:

1 ~~1-~~ Identify include the identification of the victim of
2 the offense, and may include the following:

3 2- a. Itemize Itemization of any economic loss suffered by
4 the victim as a result of the offense. For purposes of this
5 paragraph, a pecuniary damages statement prepared by a county
6 attorney pursuant to section 910.3, may serve as the
7 itemization of economic loss.

8 3- b. Identify Identification of any physical injury
9 suffered by the victim as a result of the offense with detail
10 as to its seriousness and permanence.

11 4- c. Describe Description of any change in the victim's
12 personal welfare or familial relationships as a result of the
13 offense.

14 5- d. Describe Description of any request for
15 psychological services initiated by the victim or the victim's
16 family as a result of the offense.

17 6- e. Contain-any Any other information related to the
18 impact of the offense upon the victim.

19 f. Recommendations regarding the sentence.

20 3. The court shall consider any victim impact statement in
21 determining the appropriate sentence and in entering any order
22 of restitution to the victim pursuant to chapter 910.

23 Sec. 5. Section 910A.6, Code 1995, is amended to read as
24 follows:

25 910A.6 NOTIFICATION BY COUNTY ATTORNEY.

26 The county attorney shall notify a victim registered with
27 the county attorney's office of the following:

28 1. The cancellation or postponement of a court proceeding
29 that was expected to require the victim's attendance.

30 2. The possibility of assistance through the crime victim
31 compensation program, pursuant to chapter 912, and the
32 procedures for applying for that assistance.

33 3. The right, pursuant to chapter 910, to restitution for
34 pecuniary losses suffered as a result of crime.

35 4. The victim's right to make a written impact statement.

1 5. The victim's right to make an oral victim impact
 2 statement, in the presence of the defendant, as well as
 3 notification of the time and place for such statement.

4 ~~5~~ 6. The date on which the offender is released on bail
 5 or appeal, pursuant to section 811.5.

EXPLANATION

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 7 This bill amends Code provisions regarding victim impact
 8 statements, to permit the victim to present an oral victim
 9 impact statement. The statement may be made in the presence
 10 of the defendant, in addition to, or instead of, the written
 11 victim impact statement currently permitted. The bill also
 12 requires that a transcript of the oral impact statement be
 13 included in the presentencing report, or be given to the judge
 14 prior to sentencing, and requires the court to consider the
 15 statement in sentencing decisions.

16 The bill also expressly permits the victim's attorney or a
 17 designated representative of the victim to make the
 18 presentation of the impact statement if the victim is unable
 19 to make the presentation due to age, or due to mental,
 20 physical, or emotional incapacity.

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