

5-3/12/96 judiciary

# REPRINTED

MAR 5 1996  
Place On Calendar

HOUSE FILE 2458  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 710)

(P. 640)  
Passed House, Date 3-12-96  
Vote: Ayes 64 Nays 33

(P. 1299)  
Passed Senate, Date 4/10/96  
Vote: Ayes 48 Nays 0

Approved May 17, 1996

## A BILL FOR

1 An Act relating to the right to appointed counsel or a public  
2 defender, by relating to the eligibility for certain  
3 indigents, the recovery of defense costs, and by restricting  
4 the right to counsel for certain parents in child in need of  
5 assistance cases.

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

### HOUSE FILE 2458

#### H-5268

- 1 Amend House File 2458 as follows:
- 2 1. Page 1, by striking lines 17 through 25.
- 3 2. Title page, by striking lines 3 through 5 and
- 4 inserting the following: "indigents and the recovery
- 5 of defense costs."
- 6 3. By renumbering as necessary.

By KREIMAN of Davis

H-5268 FILED MARCH 11, 1996

*list* 3/12/96 (P. 639)

### HOUSE FILE 2458

#### H-5269

- 1 Amend House File 2458 as follows:
- 2 1. Page 1, line 24, by striking the word "a" and
- 3 inserting the following: "an incarcerated".

By MILLAGE of Scott

H-5269 FILED MARCH 11, 1996

*Adapted* 3-12-96 (P 639)

HF 2458

1 Section 1. Section 13B.1, subsection 3, Code Supplement  
2 1995, is amended to read as follows:

3 3. "Financial statement" means a full written disclosure  
4 of all assets, liabilities, current income, dependents, and  
5 other information required to determine if a client qualifies  
6 for legal assistance ~~at-public-expense~~ by an appointed  
7 attorney.

8 Sec. 2. Section 13B.10, subsection 3, Code 1995, is  
9 amended to read as follows:

10 3. A person who knowingly submits a false financial  
11 statement for the purpose of obtaining legal assistance ~~at~~  
12 ~~public-expense~~ by an appointed attorney commits a fraudulent  
13 practice. As used in this subsection, "legal assistance"  
14 includes appointed counsel, transcripts, witness fees and  
15 expenses, and any other goods or services required by law to  
16 be provided to an indigent person ~~at-public-expense~~.

17 Sec. 3. Section 232.89, subsection 1, Code 1995, is  
18 amended to read as follows:

19 1. Upon the filing of a petition the parent, guardian, or  
20 custodian identified in the petition shall have the right to  
21 counsel in connection with all subsequent hearings and  
22 proceedings. If that person desires but is financially unable  
23 to employ counsel, the court shall appoint counsel. However,  
24 a parent without legal custody shall not have the right to  
25 counsel.

26 Sec. 4. Section 814.9, Code 1995, is amended to read as  
27 follows:

28 814.9 INDIGENT'S RIGHT TO TRANSCRIPT ON APPEAL.

29 If a defendant in a criminal cause has perfected an appeal  
30 from a judgment and is determined by the court to be indigent,  
31 the court may order the a transcript to be made at-public  
32 expense. When an attorney of record is representing an  
33 indigent, the attorney shall apply to the district court for  
34 the transcript.

35 Sec. 5. Section 814.10, Code 1995, is amended to read as

1 follows:

2 814.10 INDIGENT'S APPLICATION FOR TRANSCRIPT IN OTHER  
3 CASES.

4 If a defendant in a criminal cause has been granted  
5 discretionary review from an action of the district court and  
6 the appellate court deems a transcript or portions thereof are  
7 necessary to proper review of the question or questions  
8 raised, the district court shall order the transcript to be  
9 made at-public-expense if a-determination-is-made-that the  
10 defendant is determined to be indigent.

11 Sec. 6. Section 815.7, Code 1995, is amended to read as  
12 follows:

13 815.7 FEES TO ATTORNEYS.

14 An attorney who has not entered into a contract authorized  
15 under section 13B.4 and who is appointed by the court to  
16 represent any person charged with a crime in this state shall  
17 be entitled to a reasonable compensation which shall be the  
18 ordinary and customary charges for like services in the  
19 community to be decided in each case by a judge of the  
20 district court, including such sum or sums as the court may  
21 determine are necessary for investigation in the interests of  
22 justice and in the event of appeal the cost of obtaining the  
23 transcript of the trial and the printing of the trial record  
24 and necessary briefs in behalf of the defendant. However, the  
25 reasonable compensation awarded an attorney shall not be  
26 calculated based upon an hourly rate that exceeds the rate a  
27 contract attorney as provided in section 13B.4 would receive  
28 in a similar case. Such attorney need not follow the case  
29 into another county or into the appellate court unless so  
30 directed by the court at the request of the defendant, where  
31 grounds for further litigation are not capricious or  
32 unreasonable, but if such attorney does so, the attorney's fee  
33 shall be determined accordingly. Only one attorney fee shall  
34 be so awarded in any one case except that in class "A" felony  
35 cases, two may be authorized.

1 Sec. 7. Section 815.9, subsection 1, paragraph c, Code  
2 1995, are amended to read as follows:

3 c. A person with an income level greater than one hundred  
4 fifty percent, but less than two hundred percent, of the most  
5 recently revised poverty income guidelines published by the  
6 United States department of health and human services may be  
7 deemed partially indigent by the court pursuant to a written  
8 finding that, given the person's circumstances, not appointing  
9 counsel ~~at-public-expense~~ would cause the person substantial  
10 hardship. However, the court shall require a person deemed  
11 ~~partially-indigent~~ appointed counsel to contribute to the cost  
12 of representation in accordance with rules adopted by the  
13 state public defender.

14 Sec. 8. Section 815.9, subsection 1, Code 1995, is amended  
15 by adding the following new paragraph:

16 NEW PARAGRAPH. d. A person with an income level greater  
17 than two hundred percent of the most recently revised poverty  
18 income guidelines published by the United States department of  
19 health and human services shall not be deemed indigent or  
20 partially indigent by the court unless the person is charged  
21 with a felony and the court makes a written finding that,  
22 given the person's circumstances, not appointing counsel would  
23 cause the person substantial hardship. However, the court  
24 shall require a person appointed counsel to contribute to the  
25 cost of representation in accordance with rules adopted by the  
26 state public defender.

27 Sec. 9. Section 815.9, subsection 3, Code 1995, is amended  
28 to read as follows:

29 3. A person who knowingly submits a false financial  
30 statement for the purpose of obtaining legal assistance ~~at~~  
31 public-expense by appointed counsel commits a fraudulent  
32 practice. As used in this subsection, "legal assistance"  
33 includes legal counsel, transcripts, witness fees and  
34 expenses, and any other goods or services required by law to  
35 be provided to an indigent person ~~at-public-expense~~.

1     Sec. 10. Section 815.9A, unnumbered paragraph 1, Code  
2 1995, is amended by striking the unnumbered paragraph and  
3 inserting in lieu thereof the following:

4     All costs and fees incurred for indigent defense shall  
5 become due and payable to the clerk of the district court by  
6 the person receiving the services not later than the date of  
7 sentencing, or if the person is acquitted or the charges are  
8 dismissed, within thirty days of the acquittal or dismissal.  
9 To the extent that the costs and fees remain unpaid at the  
10 time they become due, a judgment shall be entered against the  
11 person for the amounts unpaid.

12    Sec. 11. Section 815.9A, subsection 2, Code 1995, is  
13 amended to read as follows:

14    2. If the person has an income level as determined  
15 pursuant to section 815.9 greater than one hundred fifty  
16 percent but not more than one hundred eighty-five percent of  
17 the poverty guidelines, at least two hundred dollars of the  
18 indigent defense costs shall be recovered in accordance with  
19 rules adopted by the state public defender.

20    Sec. 12. Section 815.9A, Code 1995, is amended by adding  
21 the following new subsection:

22    NEW SUBSECTION. 3. If the person has an income level as  
23 determined pursuant to section 815.9 greater than one hundred  
24 eighty-five percent of the poverty guidelines, at least three  
25 hundred dollars of the indigent defense costs shall be  
26 recovered in accordance with rules adopted by the state public  
27 defender.

28    Sec. 13. Section 815.10, subsection 1, Code Supplement  
29 1995, is amended to read as follows:

30    1. The court, for cause and upon its own motion or upon  
31 application by an indigent person or a public defender, may  
32 appoint a public defender or any attorney who is admitted to  
33 the practice of law in this state to represent an indigent  
34 person at any state stage of the proceedings or on appeal of  
35 any action in which the indigent person is entitled to legal

1 ~~assistance-at-public-expense~~ an appointed attorney. An  
2 appointment shall not be made unless the person is determined  
3 to be indigent under section 815.9.

4 Sec. 14. Section 815.10, subsection 2, Code Supplement  
5 1995, is amended by striking the subsection.

6 Sec. 15. Section 815.10, subsection 3, Code Supplement  
7 1995, is amended to read as follows:

8 3. An attorney other than a public defender who is  
9 appointed by the court under subsection 1 ~~or-2~~ shall apply to  
10 the district court for compensation and for reimbursement of  
11 costs incurred. The amount of compensation due shall be  
12 determined in accordance with section 815.7.

13 Sec. 16. Section 910.2, Code Supplement 1995, is amended  
14 to read as follows:

15 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY  
16 SENTENCING COURT.

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

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

19

## EXPLANATION

20 The bill provides that a parent without legal custody of a  
21 child does not have the right to counsel in child in need of  
22 assistance proceedings.

23 The bill also provides that reasonable compensation awarded  
24 a noncontracting attorney who is appointed to represent a  
25 defendant shall not exceed the hourly rate that would have  
26 been awarded an attorney under contract with the state public  
27 defender to represent indigents.

28 Section 8 provides that a person shall not be considered  
29 indigent or partially indigent if their income is greater than  
30 200 percent of the poverty level unless a person is charged  
31 with a felony and the court finds that not appointing counsel  
32 would cause a substantial hardship.

33 The changes to section 815.9A provide that costs for  
34 indigent defense are payable by the indigent and shall be  
35 entered as a judgment against the indigent when due. The

1 section also provides that for persons receiving services  
 2 whose income is between 150 percent and 185 percent of the  
 3 poverty level, at least \$200 shall be recovered pursuant to  
 4 rules adopted by the public defender; for persons whose income  
 5 is between 185 percent and 200 percent of the poverty level,  
 6 at least \$300 shall be recovered pursuant to rules adopted by  
 7 the public defender.

8 Section 14 strikes the provision allowing any nonindigent  
 9 person who refuses to hire an attorney the right to request  
 10 and receive appointed counsel.

11 The changes to section 910.2 provide that if a court orders  
 12 community service instead of restitution under section 910.2  
 13 concerning the costs of an indigent's defense, the value of  
 14 the number of hours of community service ordered shall be  
 15 approximately equivalent to the costs of the defense. This  
 16 portion of the bill also provides that simple misdemeanors  
 17 under chapter 321 are subject to this Code section's  
 18 requirements relating to payment of restitution.

19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31  
 32  
 33  
 34  
 35



5.3/12/96 Judiciary  
5.3/19/96 Do Pass  
w/ H- 5419

5-4/10/96 Motion to R/C

HOUSE FILE **2458** Passage by Dvorsky

BY COMMITTEE ON JUDICIARY  
5-4/10/96 Motion to R/C Adopted

(SUCCESSOR TO HSB 710)

(As Amended and Passed by the House, March 12, 1996)

Passed House, Date 4-18-96 (P. 1257) Passed Senate, Date 4/10/96 (P. 1299)  
Vote: Ayes 89 Nays 0 Vote: Ayes 48 Nays 0

Approved May 17, 1996

(P. 1945) Repassed 4-30-96  
Vote 60-34

Passed 4-10-96  
Vote 50-0

A BILL FOR  
Repassed 4/30/96 (P. 1309)  
Vote 47-0  
(P. 1540)

1 An Act relating to the right to appointed counsel or a public  
2 defender, by relating to the eligibility for certain  
3 indigents, the recovery of defense costs, and by restricting  
4 the right to counsel for certain parents in child in need of  
5 assistance cases.

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

House Amendments \_\_\_\_\_

House Conference Comm.  
4-25-95 (P. 1926)

Senate Conf. Comm.  
4-25-96 (P. 1516)

Dinkla  
Lamberti  
Van Maanen  
Graschev  
Moulond

Hansen  
Lianetto  
Vilsack  
Maddox  
Drake

1 Section 1. Section 13B.1, subsection 3, Code Supplement  
2 1995, is amended to read as follows:

3 3. "Financial statement" means a full written disclosure  
4 of all assets, liabilities, current income, dependents, and  
5 other information required to determine if a client qualifies  
6 for legal assistance at-public-expense by an appointed  
7 attorney.

8 Sec. 2. Section 13B.10, subsection 3, Code 1995, is  
9 amended to read as follows:

10 3. A person who knowingly submits a false financial  
11 statement for the purpose of obtaining legal assistance at  
12 public-expense by an appointed attorney commits a fraudulent  
13 practice. As used in this subsection, "legal assistance"  
14 includes appointed counsel, transcripts, witness fees and  
15 expenses, and any other goods or services required by law to  
16 be provided to an indigent person at-public-expense.

17 Sec. 3. Section 232.89, subsection 1, Code 1995, is  
18 amended to read as follows:

19 1. Upon the filing of a petition the parent, guardian, or  
20 custodian identified in the petition shall have the right to  
21 counsel in connection with all subsequent hearings and  
22 proceedings. If that person desires but is financially unable  
23 to employ counsel, the court shall appoint counsel. However,  
24 an incarcerated parent without legal custody shall not have  
25 the right to counsel.

26 Sec. 4. Section 814.9, Code 1995, is amended to read as  
27 follows:

28 814.9 INDIGENT'S RIGHT TO TRANSCRIPT ON APPEAL.

29 If a defendant in a criminal cause has perfected an appeal  
30 from a judgment and is determined by the court to be indigent,  
31 the court may order the a transcript to be made at-public  
32 expense. When an attorney of record is representing an  
33 indigent, the attorney shall apply to the district court for  
34 the transcript.

35 Sec. 5. Section 814.10, Code 1995, is amended to read as

1 follows:

2 814.10 INDIGENT'S APPLICATION FOR TRANSCRIPT IN OTHER  
3 CASES.

4 If a defendant in a criminal cause has been granted  
5 discretionary review from an action of the district court and  
6 the appellate court deems a transcript or portions thereof are  
7 necessary to proper review of the question or questions  
8 raised, the district court shall order the transcript to be  
9 made ~~at public expense~~ if ~~a determination is made that~~ the  
10 defendant is determined to be indigent.

11 Sec. 6. Section 815.7, Code 1995, is amended to read as  
12 follows:

13 815.7 FEES TO ATTORNEYS.

14 An attorney who has not entered into a contract authorized  
15 under section 13B.4 and who is appointed by the court to  
16 represent any person charged with a crime in this state shall  
17 be entitled to a reasonable compensation which shall be the  
18 ordinary and customary charges for like services in the  
19 community to be decided in each case by a judge of the  
20 district court, including such sum or sums as the court may  
21 determine are necessary for investigation in the interests of  
22 justice and in the event of appeal the cost of obtaining the  
23 transcript of the trial and the printing of the trial record  
24 and necessary briefs in behalf of the defendant. However, the  
25 reasonable compensation awarded an attorney shall not be  
26 calculated based upon an hourly rate that exceeds the rate a  
27 contract attorney as provided in section 13B.4 would receive  
28 in a similar case. Such attorney need not follow the case  
29 into another county or into the appellate court unless so  
30 directed by the court at the request of the defendant, where  
31 grounds for further litigation are not capricious or  
32 unreasonable, but if such attorney does so, the attorney's fee  
33 shall be determined accordingly. Only one attorney fee shall  
34 be so awarded in any one case except that in class "A" felony  
35 cases, two may be authorized.

1 Sec. 7. Section 815.9, subsection 1, paragraph c, Code  
2 1995, are amended to read as follows:

3 c. A person with an income level greater than one hundred  
4 fifty percent, but less than two hundred percent, of the most  
5 recently revised poverty income guidelines published by the  
6 United States department of health and human services may be  
7 deemed partially indigent by the court pursuant to a written  
8 finding that, given the person's circumstances, not appointing  
9 counsel ~~at-public-expense~~ would cause the person substantial  
10 hardship. However, the court shall require a person deemed  
11 ~~partially-indigent~~ appointed counsel to contribute to the cost  
12 of representation in accordance with rules adopted by the  
13 state public defender.

14 Sec. 8. Section 815.9, subsection 1, Code 1995, is amended  
15 by adding the following new paragraph:

16 NEW PARAGRAPH. d. A person with an income level greater  
17 than two hundred percent of the most recently revised poverty  
18 income guidelines published by the United States department of  
19 health and human services shall not be deemed indigent or  
20 partially indigent by the court unless the person is charged  
21 with a felony and the court makes a written finding that,  
22 given the person's circumstances, not appointing counsel would  
23 cause the person substantial hardship. However, the court  
24 shall require a person appointed counsel to contribute to the  
25 cost of representation in accordance with rules adopted by the  
26 state public defender.

27 Sec. 9. Section 815.9, subsection 3, Code 1995, is amended  
28 to read as follows:

29 3. A person who knowingly submits a false financial  
30 statement for the purpose of obtaining legal assistance ~~at~~  
31 ~~public-expense~~ by appointed counsel commits a fraudulent  
32 practice. As used in this subsection, "legal assistance"  
33 includes legal counsel, transcripts, witness fees and  
34 expenses, and any other goods or services required by law to  
35 be provided to an indigent person ~~at-public-expense~~.

1     Sec. 10. Section 815.9A, unnumbered paragraph 1, Code  
2 1995, is amended by striking the unnumbered paragraph and  
3 inserting in lieu thereof the following:

4     All costs and fees incurred for indigent defense shall  
5 become due and payable to the clerk of the district court by  
6 the person receiving the services not later than the date of  
7 sentencing, or if the person is acquitted or the charges are  
8 dismissed, within thirty days of the acquittal or dismissal.  
9 To the extent that the costs and fees remain unpaid at the  
10 time they become due, a judgment shall be entered against the  
11 person for the amounts unpaid.

12    Sec. 11. Section 815.9A, subsection 2, Code 1995, is  
13 amended to read as follows:

14    2. If the person has an income level as determined  
15 pursuant to section 815.9 greater than one hundred fifty  
16 percent but not more than one hundred eighty-five percent of  
17 the poverty guidelines, at least two hundred dollars of the  
18 indigent defense costs shall be recovered in accordance with  
19 rules adopted by the state public defender.

20    Sec. 12. Section 815.9A, Code 1995, is amended by adding  
21 the following new subsection:

22    NEW SUBSECTION. 3. If the person has an income level as  
23 determined pursuant to section 815.9 greater than one hundred  
24 eighty-five percent of the poverty guidelines, at least three  
25 hundred dollars of the indigent defense costs shall be  
26 recovered in accordance with rules adopted by the state public  
27 defender.

28    Sec. 13. Section 815.10, subsection 1, Code Supplement  
29 1995, is amended to read as follows:

30    1. The court, for cause and upon its own motion or upon  
31 application by an indigent person or a public defender, may  
32 appoint a public defender or any attorney who is admitted to  
33 the practice of law in this state to represent an indigent  
34 person at any state stage of the proceedings or on appeal of  
35 any action in which the indigent person is entitled to legal

1 ~~assistance-at-public-expense~~ an appointed attorney. An  
2 appointment shall not be made unless the person is determined  
3 to be indigent under section 815.9.

4 Sec. 14. Section 815.10, subsection 2, Code Supplement  
5 1995, is amended by striking the subsection.

6 Sec. 15. Section 815.10, subsection 3, Code Supplement  
7 1995, is amended to read as follows:

8 3. An attorney other than a public defender who is  
9 appointed by the court under subsection 1 ~~or~~-2 shall apply to  
10 the district court for compensation and for reimbursement of  
11 costs incurred. The amount of compensation due shall be  
12 determined in accordance with section 815.7.

13 Sec. 16. Section 910.2, Code Supplement 1995, is amended  
14 to read as follows:

15 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY  
16 SENTENCING COURT.

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

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

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

## HOUSE FILE 2458

S-5596

1 Amend House File 2458, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 6, by inserting after line 18 the  
4 following:

5 "Sec. \_\_\_\_ . Section 910.4, Code Supplement 1995, is  
6 amended to read as follows:

7 910.4 CONDITION OF PROBATION -- PAYMENT PLAN.

8 1. When restitution is ordered by the sentencing  
9 court and the offender is placed on probation,  
10 restitution shall be a condition of probation.

11 a. Failure of the offender to comply with the plan  
12 of restitution, plan of payment, or community service  
13 requirements when community service is ordered by the  
14 court as restitution, shall constitute a violation of  
15 probation and shall constitute contempt of court.

16 b. ~~The~~ If an offender fails to comply with  
17 restitution requirements during probation, the court  
18 may hold the offender in contempt, revoke probation,  
19 or extend the period of probation, or upon notice of  
20 such noncompliance and hearing thereon, the court may  
21 enter a civil judgment against the offender for the  
22 outstanding balance of payments under the plan of  
23 restitution and such judgment shall be governed by the  
24 law relating to judgments, judgment liens, executions,  
25 and other process available to creditors for the  
26 collection of debts.

27 (1) ~~However, if~~ If the court extends the period of  
28 probation, is extended it shall not be for more than  
29 the maximum period of probation for the offense  
30 committed as provided in section 907.7. After  
31 discharge from probation or after the expiration of  
32 the period of probation, the failure of an offender to  
33 comply with the plan of restitution ordered by the  
34 court shall constitute contempt of court. As part of  
35 the order discharging an offender from probation, the  
36 court shall enter a civil judgment against the  
37 offender for the balance, if any, of any restitution  
38 owed by the offender to the victim of the crime.

39 (2) If an offender's probation is revoked, the  
40 offender's assigned probation officer shall forward to  
41 the director of the Iowa department of corrections,  
42 information concerning the offender's restitution  
43 plan, restitution plan of payment, the restitution  
44 payment balance, and any other pertinent information  
45 concerning or affecting restitution by the offender.

46 2. When the offender is committed to a county  
47 jail, or to an alternate facility, the office or  
48 individual charged with supervision of the offender  
49 shall prepare a restitution plan of payment taking  
50 into consideration the offender's income, physical and

S-5596



S-5596

Page 2

1 mental health, age, education, employment and family  
2 circumstances.

3 a. The office or individual charged with  
4 supervision of the offender shall review the plan of  
5 restitution ordered by the court, and shall submit a  
6 restitution plan of payment to the sentencing court.

7 b. When community service is ordered by the court  
8 as restitution, the restitution plan of payment shall  
9 set out a plan to meet the requirement for the  
10 community service.

11 c. The court may approve or modify the plan of  
12 restitution and restitution plan of payment.

13 d. When there is a significant change in the  
14 offender's income or circumstances, the office or  
15 individual which has supervision of the plan of  
16 payment shall submit a modified restitution plan of  
17 payment to the court.

18 3. When there is a transfer of supervision from  
19 one office or individual charged with supervision of  
20 the offender to another, the sending office or  
21 individual shall forward to the receiving office or  
22 individual all necessary information regarding the  
23 balance owed against the original amount of  
24 restitution ordered and the balance of public service  
25 required.

26 When the offender's circumstances and income have  
27 significantly changed, the receiving office or  
28 individual shall submit a new plan of payment to the  
29 sentencing court for approval or modification based on  
30 the considerations enumerated in this section.

31 Sec. \_\_\_\_ . Section 910.5, Code Supplement 1995, is  
32 amended to read as follows:

33 910.5 CONDITION OF WORK RELEASE OR PAROLE.

34 1. a. When an offender is committed to the  
35 custody of the director of the Iowa department of  
36 corrections pursuant to a sentence of confinement, the  
37 sentencing court shall forward to the director, a copy  
38 of the offender's restitution plan, present  
39 restitution payment plan if any, and other pertinent  
40 information concerning or affecting restitution by the  
41 offender.

42 b. ~~However,--if~~ If the offender is committed to the  
43 custody of the director after revocation of probation,  
44 this all information regarding the offender's  
45 restitution plan shall be forwarded by the offender's  
46 probation officer.

47 c. An offender committed to a penal or  
48 correctional facility of the state shall make  
49 restitution while placed in that facility.

50 d. Upon commitment to the custody of the director

S-5596

-2-

S-5596

Page 3

1 of the Iowa department of corrections, the director or  
2 the director's designee shall prepare a restitution  
3 plan of payment or modify any existing plan of  
4 payment.

5 (1) The new or modified plan of payment shall  
6 reflect the offender's present circumstances  
7 concerning the offender's income, physical and mental  
8 health, education, employment, and family  
9 circumstances.

10 (2) The director or the director's designee may  
11 modify the plan of payment at any time to reflect the  
12 offender's present circumstances.

13 e. After the expiration of the offender's  
14 sentence, the failure of an offender to comply with  
15 the plan of restitution ordered by the court shall  
16 constitute contempt of court. ~~Upon the expiration of~~  
17 ~~the offender's sentence, the department shall notify~~  
18 ~~the court which sentenced the offender and the court~~  
19 ~~shall enter a civil judgment against the offender for~~  
20 ~~the balance, if any, of any restitution owed by the~~  
21 ~~offender to the victim of the crime.~~

22 2. If an offender is to be placed on work release  
23 from an institution under the control of the director  
24 of the Iowa department of corrections, restitution  
25 shall be a condition of work release.

26 a. The chief of the bureau of community  
27 correctional services of the Iowa department of  
28 corrections shall prepare a restitution plan of  
29 payment or may modify any previously existing  
30 restitution plan of payment.

31 (1) The new or modified plan of payment shall  
32 reflect the offender's present circumstances  
33 concerning the offender's income, physical and mental  
34 health, education, employment, and family  
35 circumstances.

36 (2) The bureau chief may modify the plan of  
37 payment at any time to reflect the offender's present  
38 circumstances.

39 b. Failure of the offender to comply with the  
40 restitution plan of payment, including the community  
41 service requirement, if any, shall constitute a  
42 violation of a condition of work release and the work  
43 release privilege may be revoked.

44 c. After the expiration of the offender's  
45 sentence, the failure of an offender to comply with  
46 the plan of restitution ordered by the court shall  
47 constitute contempt of court. ~~Upon the expiration of~~  
48 ~~the offender's sentence, the bureau chief shall notify~~  
49 ~~the court which sentenced the offender and the court~~  
50 ~~shall enter a civil judgment against the offender for~~

S-5596

S-5596

Page 4

~~1 the balance, if any, of any restitution owed by the~~  
~~2 offender to the victim of the crime.~~

3 3. If an offender is to be placed on work release  
4 from a facility under control of a county sheriff or  
5 the judicial district department of correctional  
6 services, restitution shall be a condition of work  
7 release.

8 a. The office or individual charged with  
9 supervision of the offender shall prepare a  
10 restitution plan of payment or may modify any  
11 previously existing restitution plan of payment.

12 (1) The new or modified plan of payment shall  
13 reflect the offender's present circumstances  
14 concerning the offender's income, physical and mental  
15 health, education, employment and family  
16 circumstances.

17 (2) Failure of the offender to comply with the  
18 restitution plan of payment including the community  
19 service requirement, if any, constitutes a violation  
20 of a condition of work release.

21 (3) The office or individual charged with  
22 supervision of the offender may modify the plan of  
23 restitution at any time to reflect the offender's  
24 present circumstances.

25 b. After the expiration of the offender's  
26 sentence, the failure of an offender to comply with  
27 the plan of restitution ordered by the court shall  
28 constitute contempt of court. ~~Upon the expiration of~~  
~~29 the offender's sentence, the office or individual~~  
~~30 charged with supervision of the offender shall notify~~  
~~31 the court which sentenced the offender and the court~~  
~~32 shall enter a civil judgment against the offender for~~  
~~33 the balance, if any, of any restitution owed by the~~  
~~34 offender to the victim of the crime.~~

35 4. If an offender is to be placed on parole,  
36 restitution shall be a condition of parole.

37 a. The district department of correctional  
38 services to which the offender will be assigned shall  
39 prepare a restitution plan of payment or may modify  
40 any previously existing restitution plan of payment.

41 (1) The new or modified plan of payment shall  
42 reflect the offender's present circumstances  
43 concerning the offender's income, physical and mental  
44 health, education, employment, and family  
45 circumstances.

46 (2) Failure of the offender to comply with the  
47 restitution plan of payment including a community  
48 service requirement, if any, shall constitute a  
49 violation of a condition of parole.

50 (3) The parole officer may modify the plan of

S-5596

S-5596

Page 5

1 payment any time to reflect the offender's present  
2 circumstances.

3 (4) A restitution plan of payment or modified plan  
4 of payment, prepared by a parole officer, must meet  
5 the approval of the director of the district  
6 department of correctional services.

7 b. After the expiration of the offender's  
8 sentence, the failure of an offender to comply with  
9 the plan of restitution ordered by the court shall  
10 constitute contempt of court. ~~Upon the expiration of~~  
11 ~~the offender's sentence, the parole officer shall~~  
12 ~~notify the court which sentenced the offender and the~~  
13 ~~court shall enter a civil judgment against the~~  
14 ~~offender for the balance, if any, of any restitution~~  
15 ~~owed by the offender to the victim of the crime.~~

16 5. The director of the Iowa department of  
17 corrections shall ~~promulgate~~ adopt rules pursuant to  
18 chapter 17A concerning the policies and procedures to  
19 be used in preparing and implementing restitution  
20 plans of payment for offenders who are committed to an  
21 institution under the control of the director of the  
22 Iowa department of corrections, for offenders who are  
23 to be released on work release from institutions under  
24 the control of the director of the Iowa department of  
25 corrections, for offenders who are placed on  
26 probation, and for offenders who are released on  
27 parole."

28 2. By renumbering as necessary.

By RANDAL J. GIANNETTO

S-5596 FILED MARCH 28, 1996

*Adopted 4-10-96*  
*(p. 1298)*

HOUSE FILE 2458

S-5521

1 Amend the amendment, S-5419, to House File 2458, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 1, by striking lines 3 through 11 and  
5 inserting the following:

6 "\_\_\_\_. Page 2, by striking lines 11 through 35."

7 2. By renumbering as necessary.

By TOM VILSACK

S-5521 FILED MARCH 25, 1996

**WITHDRAWN**

*4-10-96*

*(p. 1298)*

HOUSE FILE 2458

S-5419

1 Amend House File 2458, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 2, by striking lines 14 and 15 and  
inserting the following:

4 ~~"An attorney who has not entered into a contract~~  
5 ~~authorized under section 13B.4 and who is appointed by~~  
6 ~~the court to".~~

7 2. Page 2, by striking lines 24 through 28 and  
8 inserting the following: "and necessary briefs in  
9 behalf of the defendant. Such attorney need not  
10 follow the case".  
11

By COMMITTEE ON JUDICIARY  
RANDAL J. GIANNETTO, Chairperson

S-5419 FILED MARCH 19, 1996

*Adopted*

*4-10-96*

*p. 1298*

WITNESSETH

S-5673

1 Amend House File 2458, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, by inserting after line 25 the  
4 following:

5 "Sec. \_\_\_\_ . Section 455G.13, subsection 1, Code  
6 1995, is amended to read as follows:

7 1. FULL RECOVERY SOUGHT FROM OWNER.

8 a. The board ~~shall~~ may seek ~~full~~ recovery from the  
9 owner, operator, or other potentially responsible  
10 party liable for the released petroleum which is the  
11 subject of a corrective action, for which the fund  
12 expends moneys for corrective action or third-party  
13 liability, and for ~~all~~ its other costs, including  
14 reasonable attorney fees and costs of litigation for  
15 which moneys are expended by the fund in connection  
16 with the release, in the manner prescribed in  
17 paragraph "b". When federal cleanup funds are  
18 recovered, the funds are to be deposited to the  
19 remedial account of the fund and used solely for the  
20 purpose of future cleanup activities. Attorneys shall  
21 be retained pursuant to section 815.7 to represent the  
22 fund.

23 b. The liability of an owner, operator, or other  
24 potentially responsible party provided for under  
25 paragraph "a" shall be limited to that party's  
26 proportionate share, including the share of fault of a  
27 claimant. Each party's proportionate share shall be  
28 determined by considering the following:

29 (1) Each party's proportionate contribution to the  
30 release.

31 (2) The quantity, mobility, persistence, and  
32 toxicity of the substances contributed by the party.

33 (3) The effect of natural attenuation and  
34 bioremediation on any substances contributed by the  
35 party."

36 2. Page 2, line 16, by inserting after the word  
37 "state" the following: ", or an attorney who is  
38 retained by the Iowa comprehensive petroleum  
39 underground storage tank fund board under chapter  
40 455G,".

41 3. Page 2, line 35, by inserting after the word  
42 "authorized." the following: "An attorney retained by  
43 the Iowa comprehensive petroleum underground storage  
44 tank fund board pursuant to this section shall have  
45 the attorney's principal place of practice in the  
46 judicial district in which the contaminated site at  
47 issue is located. An attorney appointed pursuant to  
48 this section shall represent the Iowa comprehensive  
49 petroleum underground storage tank fund in a manner  
50 consistent with the procedure provided in section

S-5673

-1-

S-5673

Page 2

1 455G.13."

2 4. Title page, line 1, by inserting after the  
3 words "relating to" the following: "liability and  
4 attorney fees awarded concerning underground storage  
5 tank cost recovery proceedings and".

6 5. By renumbering as necessary.

By RANDAL J. GIANNETTO

S-5673 FILED APRIL 3, 1996

WITHDRAWN

4-10-96

(P. 1298)

HOUSE FILE 2458

S-5681

1 Amend the amendment, S-5673, to House File 2458, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 1, line 30, by inserting after the word  
5 "release." the following: "For purposes of this  
6 subparagraph, a party's proportionate contribution is  
7 deemed to be equivalent to each party's period of  
8 ownership of the site divided by the total period of  
9 ownership of all the parties."

By MICHAEL E. GRONSTAL

S-5681 FILED APRIL 8, 1996

*Out of Order*  
*4-10-96*  
*(P. 1298)*

## HOUSE FILE 2458

S-5682

1 Amend the amendment, S-5673, to House File 2458, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. By striking page 1, line 5, through page 2,  
5 line 1, and inserting the following:

6 "Sec. \_\_\_\_ . Section 455G.2, subsection 15, Code  
7 1995, is amended by striking the subsection and  
8 inserting in lieu thereof the following:

9 15. "Responsible person" means any of the  
10 following:

11 a. The owner or operator of the property, site, or  
12 facility at which, or an underground storage tank from  
13 which, a petroleum release occurred.

14 b. A person who at the time of a petroleum release  
15 owned or operated the property, site, or facility at  
16 which, or an underground storage tank from which, the  
17 release occurred.

18 c. A person who owned the property, site, or  
19 facility or owned or operated an underground storage  
20 tank at the property, site, or facility at any time  
21 when released petroleum was present unless the  
22 underground storage tank was not operated on the  
23 property, site, or facility during the period of that  
24 ownership and the owner had no actual knowledge that  
25 the underground storage tank had been operated on the  
26 property, site, or facility.

27 d. A person who by contract, agreement, or  
28 otherwise arranged for disposal or caused any release  
29 of petroleum.

30 e. A person who caused or contributed to a  
31 petroleum release on the property, site, or facility.

32 f. Successors or assigns of a responsible person.  
33 Sec. \_\_\_\_ . Section 455G.13, Code 1995, is amended  
34 to read as follows:

35 455G.13 COST RECOVERY ENFORCEMENT.

36 1. ~~FULL~~ COST RECOVERY SOUGHT-FROM-OWNER ACTIONS.

37 a. The board shall seek full recovery, a claimant,  
38 or both, may recover from the owner, operator, or  
39 other potentially a responsible party liable for the  
40 released petroleum which is the subject of a  
41 corrective action, for which the fund expends moneys  
42 person moneys that have been expended or will be  
43 expended in the future for corrective action or and  
44 third-party liability, and for all other costs,  
45 including reasonable attorney fees and costs of  
46 litigation for which moneys are expended by the fund  
47 in connection with the release. The board shall not  
48 seek recovery from past or present owners or operators  
49 and other responsible persons who are small  
50 businesses, except pursuant to subsections 2, 3, and

S-5682



S-5682

Page 2

1 4.

2 b. When The department of natural resources is  
3 authorized to recover federal cleanup funds are  
4 recovered, the funds which are to be deposited to in  
5 the remedial account of the fund and used solely for  
6 the purpose of future cleanup activities.

7 2. LIMITATION OF LIABILITY OF OWNER OR OPERATOR.  
8 Except as provided in subsection 3:

9 a. The board or the department of natural  
10 resources shall not seek recovery for expenses in  
11 connection with corrective action for a release under  
12 subsection 1 from an owner or operator eligible for  
13 regarding any site where the owner or operator  
14 receives assistance under the remedial account for  
15 that site, except for any unpaid portion of the  
16 insurance deductible under section 455G.11 or remedial  
17 copayment amounts under section 455G.9, subsection 4.  
18 This section does not affect any authorization of the  
19 department of natural resources to impose or collect  
20 civil or administrative fines or penalties or fees.  
21 The remedial account shall not be held liable for any  
22 third-party liability.

23 b. An owner or operator's liability for a release  
24 for which coverage is admitted under the insurance  
25 account shall not exceed the amount of the deductible  
26 The liability of an owner or operator who is insured  
27 under the insurance account for the release for which  
28 coverage is admitted shall not exceed the amount of  
29 the deductible.

30 c. The department of natural resources shall not  
31 seek recovery from an owner or operator regarding any  
32 site where the owner or operator receives assistance  
33 under the remedial account for that site. This  
34 section does not affect the department of natural  
35 resources' authority to impose or collect civil or  
36 administrative fines or penalties or fees.

37 3. OWNER OR OPERATOR NOT IN COMPLIANCE, SUBJECT TO  
38 FULL AND TOTAL COST RECOVERY. Notwithstanding  
39 subsection 2, the liability of an owner or operator  
40 shall be the full and total costs of corrective action  
41 and bodily injury or property damage to third parties,  
42 as specified in subsection 1, if the owner or operator  
43 has not complied with the financial responsibility or  
44 other underground storage tank rules of the department  
45 of natural resources or with this chapter and rules  
46 adopted under this chapter.

47 4. TREBLE DAMAGES FOR CERTAIN VIOLATIONS.  
48 Notwithstanding subsections 2 and 3, the owner or  
49 operator, or both, of a tank who receive benefits  
50 under section 455G.9 are liable to the fund for

S-5682

-2-

S-5682

Page 3

1 punitive damages in an amount equal to three times the  
2 amount of any ~~cost-incurred-or moneys expended-by-the~~  
3 ~~fund-as-a-result-of-a-release-of-petroleum-from-the~~  
4 tank recoverable under subsection 1, if the owner or  
5 operator did any of the following:

6 a. Failed, without sufficient cause, to respond to  
7 a release of petroleum from the tank upon, or in  
8 accordance with, a notice issued by the director of  
9 the department of natural resources.

10 b. After May 5, 1989, failed to perform any of the  
11 following:

12 (1) Failed to register the underground storage  
13 tank, which was known to exist or reasonably should  
14 have been known to exist.

15 (2) Intentionally failed to report a known  
16 release.

17 The punitive damages imposed under this subsection  
18 are in addition to any costs or expenditures recovered  
19 from the owner or operator pursuant to this chapter  
20 and in addition to any other penalty or relief  
21 provided by this chapter or any other law.

22 However, the state, a city, county, or other  
23 political subdivision shall not be liable for punitive  
24 damages.

25 The provisions of chapter 668A do not apply to this  
26 subsection.

27 5. LIEN ON UNDERGROUND STORAGE TANK SITE. Any  
28 amount for which an owner or operator a claimant is  
29 liable to the fund, if not paid when due, by statute,  
30 rule, or contract, or determination of liability by  
31 the board or department of natural resources after  
32 hearing, shall constitute a lien upon the real  
33 property where the underground storage tank, which was  
34 the subject of corrective action, is situated, and the  
35 liability shall be collected in the same manner as the  
36 environmental protection charge pursuant to section  
37 424.11.

38 6. JOINDER OF PARTIES. The department of natural  
39 resources has standing in any case or contested action  
40 related to the fund or a an underground storage tank  
41 to assert any claim that the department may have  
42 regarding the underground storage tank at issue in the  
43 case or contested action, ~~upon motion and sufficient~~  
44 ~~showing by a party to a cost recovery or subrogation~~  
45 ~~action provided for under this section, the court or~~  
46 ~~the administrative law judge shall join to the action~~  
47 ~~any potentially responsible party who may be liable~~  
48 ~~for costs and expenditures of the type recoverable~~  
49 pursuant to this section. No other action may be  
50 joined with an action brought under subsection 1.

S-5682

S-5682

Page 4

1 7. STRICT LIABILITY, DEFENSES AND DAMAGES --  
2 COMPARATIVE FAULT. The standard of liability for a  
3 release of petroleum or other regulated substance as  
4 defined in section 455B.471 is strict liability.  
5 Responsible persons are strictly liable for damages  
6 and costs recoverable under this section. The rule of  
7 joint and several liability applies in any action  
8 brought pursuant to this section.

9 In order to establish the liability of a  
10 responsible person who owned, operated, or leased the  
11 site or an underground storage tank prior to the  
12 claimant, the board or the claimant need only show  
13 petroleum contamination was present during the time of  
14 ownership, operation, or leasehold of the person.

15 The amount of money expended by the board for  
16 corrective action and third-party liability is  
17 presumed to be reasonable.

18 8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD,  
19 PROCEEDINGS AGAINST RESPONSIBLE PARTY NO TRANSFER OF  
20 LIABILITY. An insurance, indemnification, hold  
21 harmless, conveyance, or similar risk-sharing or risk-  
22 shifting agreement shall not be effective to transfer  
23 any liability for costs expenditures recoverable under  
24 this section. The fund, board, or department of  
25 natural resources may proceed directly against the  
26 owner or operator or other allegedly a responsible  
27 party person. This section does not bar any agreement  
28 to insure, hold harmless, or indemnify a party to the  
29 agreement for any costs or expenditures under this  
30 chapter, and does not modify rights between the  
31 parties to an the agreement, except to the extent the  
32 agreement shifts liability to an owner or operator  
33 eligible for assistance under the remedial account for  
34 any damages or other expenses in connection with a  
35 corrective action for which another potentially  
36 responsible party is or may be liable a claimant. Any  
37 such provision is null and void and of no force or  
38 effect.

39 9. LATER PROCEEDINGS PERMITTED AGAINST OTHER  
40 PARTIES. The entry of judgment against a party to the  
41 a cost recovery action does not bar a future action by  
42 the board, a claimant, or the department of natural  
43 resources against another person who is later alleged  
44 to be or discovered to be liable for costs and  
45 expenditures paid by the fund recoverable under this  
46 section. Notwithstanding section 668.5 no other  
47 potentially responsible party may seek contribution or  
48 any other recovery from an owner or operator eligible  
49 for assistance under the remedial account for damages  
50 or other expenses in connection with corrective action

S-5682

-4-

S-5682

Page 5

1 ~~for a release for which the potentially responsible~~  
2 ~~party is or may be liable.~~ Subsequent successful  
3 proceedings against another party shall not modify or  
4 reduce the liability of a party against whom judgment  
5 has been previously entered.  
6 ~~10. -- CLAIMS AGAINST POTENTIALLY RESPONSIBLE~~  
7 ~~PARTIES. -- Upon payment by the fund for corrective~~  
8 ~~action or third party liability pursuant to this~~  
9 ~~chapter, the rights of the claimant to recover payment~~  
10 ~~from any potentially responsible party, are assumed by~~  
11 ~~the board to the extent paid by the fund. -- A claimant~~  
12 ~~is precluded from receiving double compensation for~~  
13 ~~the same injury.~~

14 10. CLAIMANT'S ACTION. In an action brought by a  
15 claimant pursuant to this chapter seeking damages for  
16 corrective action or third party liability section,  
17 the court shall permit evidence and argument as to the  
18 replacement or indemnification of actual economic  
19 losses incurred or to be incurred in the future by the  
20 claimant by reason of insurance benefits, governmental  
21 benefits or programs, or from any other source.

22 If evidence and argument regarding previous  
23 payments or future rights of payment is permitted  
24 pursuant to this subsection, the court shall also  
25 permit evidence and argument as to the costs to the  
26 claimant of procuring the previous payments or future  
27 rights of payment and as to any existing rights of  
28 indemnification or subrogation relating to the  
29 previous payments or future rights of payment.

30 If evidence or argument is permitted pursuant to  
31 this subsection, the court shall, unless otherwise  
32 agreed to by all parties, except the board, instruct  
33 the jury to answer special interrogatories or, if  
34 there is no jury, shall make findings indicating the  
35 effect of such evidence or argument on the verdict.

36 A claimant may elect to permit the board to pursue  
37 the claimant's cause of action for any injury not  
38 compensated by the fund against any potentially  
39 responsible party moneys expended by the claimant  
40 recoverable under this section, provided the attorney  
41 general determines such representation would not be a  
42 conflict of interest. If a claimant so elects, the  
43 board's litigation expenses shall be shared on a pro  
44 rata proportionate basis with the claimant, but the  
45 claimant's share of litigation expenses are payable  
46 exclusively from any share of the settlement or  
47 judgment payable to the claimant.

48 11. EXCLUSION OF PUNITIVE DAMAGES. The fund shall  
49 not be liable in any case for punitive damages.

50 12. RECOVERY OR SUBROGATION -- INSTALLERS AND

S-5682

-5-

S-5682

Page 6

1 INSPECTORS. Notwithstanding any other provision  
2 contained in this chapter, the board or a person  
3 insured under the insurance account has no right of  
4 recovery or right of subrogation against an installer  
5 or an inspector insured by the fund ~~for~~ at the time of  
6 the installation or inspection of the underground  
7 storage tank giving rise to the liability other than  
8 for recovery of any deductibles paid.

9 13. CONTRIBUTION. A defendant to a cost recovery  
10 action under this section shall not seek contribution,  
11 fault allocation, or any recovery from the board or a  
12 claimant in an action allowed under this section.

13 14. LIMITATIONS OF ACTIONS. A suit brought under  
14 this section for the recovery of moneys expended under  
15 the remedial account must be commenced no later than  
16 five years after the last payment for corrective  
17 action.

18 15. RIGHT TO JURY TRIAL. Any party to an action  
19 brought pursuant to this section is entitled to a jury  
20 trial upon demand.

21 16. DEFINITIONS. For purposes of this section:

22 a. "Operator" means a person who has or had  
23 control of or the responsibility for the operation of  
24 an underground storage tank or the property, site, or  
25 facility where the underground storage tank is or was  
26 situated.

27 b. "Owner" means the person who owns or owned the  
28 underground storage tank or the property, site, or  
29 facility where the underground storage tank is or was  
30 situated.

31 c. "Underground storage tank" means as defined in  
32 section 455B.471, subsection 11, notwithstanding the  
33 requirement to maintain proof of financial  
34 responsibility under federal or state law.

35 17. RETROACTIVE APPLICATION. This section applies  
36 to any release whether existing before or after the  
37 effective date of this section of this Act."

38 2. Page 2, by striking lines 4 through 5 and  
39 inserting the following: "expanding underground  
40 storage tank cost recovery enforcement and".

41 3. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-5682 FILED APRIL 8, 1996

*Out of Order  
4-10-96  
(P. 1298)*

## HOUSE FILE 2458

S-5712

1 Amend Senate File 2458, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 5, by inserting after line 12 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 901A.1 CORRECTIONS  
6 CONTINUUM -- INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

7 1. The corrections continuum consists of the  
8 following:

9 a. LEVEL ONE. Noncommunity-based corrections  
10 sanctions including the following:

11 (1) SELF-MONITORED SANCTIONS. Self-monitored  
12 sanctions which are not monitored for compliance  
13 including, but not limited to, fines and community  
14 service.

15 (2) OTHER THAN SELF-MONITORED SANCTIONS. Other  
16 than self-monitored sanctions which are monitored for  
17 compliance by other than the district department of  
18 correctional services including, but not limited to,  
19 mandatory mediation, victim and offender  
20 reconciliation, and noncommunity-based corrections  
21 supervision.

22 b. LEVEL TWO. Probation and parole options  
23 consisting of the following:

24 (1) MONITORED SANCTIONS. Monitored sanctions are  
25 administrative supervision sanctions which are  
26 monitored for compliance by the district department of  
27 correctional services and include, but are not limited  
28 to, low-risk offender-diversion programs.

29 (2) SUPERVISED SANCTIONS. Supervised sanctions  
30 are regular probation or parole supervision and any  
31 conditions established in the probation or parole  
32 agreement or by court order.

33 (3) INTENSIVE SUPERVISION SANCTIONS. Intensive  
34 supervision sanctions provide levels of supervision  
35 above sanctions in subparagraph (2) but are less  
36 restrictive than sanctions under paragraph "c" and  
37 include electronic monitoring, day reporting, day  
38 programming, live out programs for persons on work  
39 release or who have violated chapter 321J, and  
40 institutional work release under section 904.910.

41 c. LEVEL THREE. Quasi-incarceration sanctions.  
42 Quasi-incarceration sanctions are those supported by  
43 residential facility placement or twenty-four hour  
44 electronic monitoring including, but not limited to,  
45 the following:

46 (1) Residential treatment facilities.

47 (2) Operating while intoxicated offender treatment  
48 facilities.

49 (3) Work release facilities.

50 (4) House arrest with electronic monitoring.

S-5712

-1-

S-5712

Page 2

1 d. LEVEL FOUR. Short-term incarceration designed  
2 to be of short duration, including, but not limited  
3 to, the following:

4 (1) Twenty-one-day shock probation for persons who  
5 violate chapter 321J.

6 (2) Jail for less than thirty days.

7 (3) Violators' facilities.

8 e. LEVEL FIVE. Incarceration which consists of  
9 the following:

10 (1) Prison.

11 (2) Jail for thirty days or longer.

12 2. "Intermediate criminal sanctions program" means  
13 a program structured around the corrections continuum  
14 in subsection 1, describing sanctions and services  
15 available in each level of the continuum in the  
16 district and containing the policies of the district  
17 department of correctional services regarding  
18 placement of a person in a particular level of  
19 sanction and the requirements and conditions under  
20 which a defendant will be transferred between levels  
21 in the corrections continuum under the program.

22 3. An intermediate criminal sanctions program  
23 shall consist of only levels two, three, and four of  
24 the corrections continuum and shall be operated in  
25 accordance with an intermediate criminal sanctions  
26 plan adopted by the chief judge of the judicial  
27 district and the director of the judicial district  
28 department of correctional services. The plan adopted  
29 shall be designed to reduce probation revocations to  
30 prison through the use of incremental, community-based  
31 sanctions for probation violations.

32 The plan shall be subject to rules adopted by the  
33 department of corrections. The rules shall include  
34 provisions for transferring individuals between levels  
35 in the continuum. The provisions shall include a  
36 requirement that the reasons for the transfer be in  
37 writing and that an opportunity for the individual to  
38 contest the transfer be made available.

39 A copy of the program and plan shall be filed with  
40 the chief judge of the judicial district, the  
41 department of corrections, and the division of  
42 criminal and juvenile justice planning of the  
43 department of human rights.

44 4. a. The district department of correctional  
45 services shall place an individual committed to it  
46 under section 907.3 to the sanction and level of  
47 supervision which is appropriate to the individual  
48 based upon a current risk assessment evaluation.  
49 Placements may be to levels two and three of the  
50 corrections continuum. The district department may,

S-5712

-2-

S-5712

Page 3

1 with the approval of the department of corrections,  
2 place an individual in a level four violator facility  
3 established pursuant to section 904.207 or use twenty-  
4 one-day shock probation under subsection 1, paragraph  
5 "d", subparagraph (1), only as a penalty for a  
6 violation of a condition imposed under this section.

7 b. The district department may transfer an  
8 individual along the intermediate criminal sanctions  
9 program operated pursuant to subsection 3 as necessary  
10 and appropriate during the period the individual is  
11 assigned to the district department. However, nothing  
12 in this section shall limit the district department's  
13 ability to seek a revocation of the individual's  
14 probation pursuant to section 908.11.

15 Sec. \_\_\_\_\_. Section 905.1, subsection 2, Code 1995,  
16 is amended to read as follows:

17 2. "Community-based correctional program" means  
18 correctional programs and services, including but not  
19 limited to an intermediate criminal sanctions program  
20 in accordance with the corrections continuum in  
21 section 901A.1, designed to supervise and assist  
22 individuals who are charged with or have been  
23 convicted of a felony, an aggravated misdemeanor or a  
24 serious misdemeanor, or who are on probation or parole  
25 in lieu of or as a result of a sentence of  
26 incarceration imposed upon conviction of any of these  
27 offenses, or who are contracted to the district  
28 department for supervision and housing while on work  
29 release.

30 An intermediate criminal sanctions program shall be  
31 designed by a district department in a manner that  
32 provides services in a manner free of disparities  
33 based upon an individual's race or ethnic origin.

34 Sec. \_\_\_\_\_. Section 907.3, subsection 1, unnumbered  
35 paragraph 1, Code Supplement 1995, is amended to read  
36 as follows:

37 With the consent of the defendant, the court may  
38 defer judgment and may place the defendant on  
39 probation upon such conditions as it may require.  
40 Upon a showing that the defendant is not co-operating  
41 cooperating with the program of probation or is not  
42 responding to it, the court may withdraw the defendant  
43 from the program, pronounce judgment, and impose any  
44 sentence authorized by law. Before taking such  
45 action, the court shall give the defendant an  
46 opportunity to be heard on any matter relevant to the  
47 proposed action. Upon fulfillment of the conditions  
48 of probation, the defendant shall be discharged  
49 without entry of judgment. Upon violation of the  
50 conditions of probation, the court may proceed as

S-5712

-3-



S-5712

Page 4

1 provided in chapter 908.

2 Sec. \_\_\_\_ . Section 907.3, subsection 2, Code

3 Supplement 1995, is amended to read as follows:

4 2. At the time of or after pronouncing judgment  
5 and with the consent of the defendant, the court may  
6 defer the sentence and assign the defendant to the  
7 judicial district department of correctional services.

8 The court may assign the defendant to supervision or  
9 services under section 901A.1 at the level of

10 supervision which the district department determines

11 to be appropriate, if an intermediate criminal

12 sanctions plan and program has been adopted in the

13 judicial district under section 901A.1. However, the

14 court shall not defer the sentence for a violation of  
15 section 708.2A if the defendant has previously

16 received a deferred judgment or sentence for a

17 violation of section 708.2 or 708.2A which was issued

18 on a domestic abuse assault, or if similar relief was

19 granted anywhere in the United States concerning that

20 jurisdiction's statutes which substantially correspond

21 to domestic abuse assault as provided in section

22 708.2A. In addition, the court shall not defer a

23 sentence if it is imposed for a conviction for or plea

24 of guilty to a violation of section 236.8 or for

25 contempt pursuant to section 236.8 or 236.14. Upon a

26 showing that the defendant is not fulfilling the

27 conditions of probation, the court may revoke

28 probation and impose any sentence authorized by law.

29 Before taking such action, the court shall give the

30 defendant an opportunity to be heard on any matter

31 relevant to the proposed action. Upon violation of

32 the conditions of probation, the court may proceed as

33 provided in chapter 908.

34 Sec. \_\_\_\_ . Section 907.3, subsection 3, Code

35 Supplement 1995, is amended to read as follows:

36 3. By record entry at the time of or after

37 sentencing, the court may suspend the sentence and

38 place the defendant on probation upon such terms and

39 conditions as it may require including commitment to

40 an alternate jail facility or a community correctional

41 residential treatment facility for a specific number

42 of days to be followed by a term of probation as

43 specified in section 907.7, or commitment of the

44 defendant to the judicial district department of

45 correctional services for supervision or services

46 under section 901A.1 at the level of supervision which

47 the district department determines to be appropriate.

48 A person so committed who has probation revoked shall

49 be given credit for such time served. However, the

50 court shall not suspend the minimum term of two days

S-5712

S-5712

Page 5

1 imposed pursuant to section 708.2A, and the court  
 2 shall not suspend a sentence imposed pursuant to  
 3 section 236.8 or 236.14 for contempt.  
 4 Sec. \_\_\_\_ . Section 907.6, Code 1995, is amended to  
 5 read as follows:  
 6 907.6 CONDITIONS OF PROBATION -- REGULATIONS.  
 7 Probationers are subject to the conditions  
 8 established by the judicial district department of  
 9 correctional services subject to the approval of the  
 10 court, and any additional reasonable conditions which  
 11 the court or district department may impose to promote  
 12 rehabilitation of the defendant or protection of the  
 13 community. Conditions may include but are not limited  
 14 to adherence to regulations generally applicable to  
 15 persons released on parole and including requiring  
 16 unpaid community service as allowed pursuant to  
 17 section 907.13."  
 18 2. By renumbering as necessary.

By ROBERT DVORSKY  
 RANDAL J. GIANNETTO

S-5712 FILED APRIL 10, 1996  
 ADOPTED

(P. 1309)

HOUSE FILE 2458

S-5711

1 Amend House File 2458, as amended, passed, and  
 2 reprinted by the House, as follows:  
 3 1. By striking page 4, line 28, through page 5,  
 4 line 12.  
 5 2. By renumbering as necessary.

By STEVEN D. HANSEN

S-5711 FILED APRIL 10, 1996  
 ADOPTED

(P. 1309)

## SENATE AMENDMENT TO HOUSE FILE 2458

H-5922

1 Amend House File 2458, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 2, by striking lines 14 and 15 and  
4 inserting the following:

5 "An attorney ~~who has not entered into a contract~~  
6 ~~authorized under section 13B-4~~ and who is appointed by  
7 the court to".

8 2. Page 2, by striking lines 24 through 28 and  
9 inserting the following: "and necessary briefs in  
10 behalf of the defendant. Such attorney need not  
11 follow the case".

12 3. By striking page 4, line 28, through page 5,  
13 line 12.

14 4. Page 5, by inserting after line 12 the  
15 following:

16 "Sec. \_\_\_\_ . NEW SECTION. 901A.1 CORRECTIONS  
17 CONTINUUM -- INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

18 1. The corrections continuum consists of the  
19 following:

20 a. LEVEL ONE. Noncommunity-based corrections  
21 sanctions including the following:

22 (1) SELF-MONITORED SANCTIONS. Self-monitored  
23 sanctions which are not monitored for compliance  
24 including, but not limited to, fines and community  
25 service.

26 (2) OTHER THAN SELF-MONITORED SANCTIONS. Other  
27 than self-monitored sanctions which are monitored for  
28 compliance by other than the district department of  
29 correctional services including, but not limited to,  
30 mandatory mediation, victim and offender  
31 reconciliation, and noncommunity-based corrections  
32 supervision.

33 b. LEVEL TWO. Probation and parole options  
34 consisting of the following:

35 (1) MONITORED SANCTIONS. Monitored sanctions are  
36 administrative supervision sanctions which are  
37 monitored for compliance by the district department of  
38 correctional services and include, but are not limited  
39 to, low-risk offender-diversion programs.

40 (2) SUPERVISED SANCTIONS. Supervised sanctions  
41 are regular probation or parole supervision and any  
42 conditions established in the probation or parole  
43 agreement or by court order.

44 (3) INTENSIVE SUPERVISION SANCTIONS. Intensive  
45 supervision sanctions provide levels of supervision  
46 above sanctions in subparagraph (2) but are less  
47 restrictive than sanctions under paragraph "c" and  
48 include electronic monitoring, day reporting, day  
49 programming, live out programs for persons on work  
50 release or who have violated chapter 321J, and

H-5922

-1-

H-5922

Page 2

1 institutional work release under section 904.910.  
2 c. LEVEL THREE. Quasi-incarceration sanctions.  
3 Quasi-incarceration sanctions are those supported by  
4 residential facility placement or twenty-four hour  
5 electronic monitoring including, but not limited to,  
6 the following:  
7 (1) Residential treatment facilities.  
8 (2) Operating while intoxicated offender treatment  
9 facilities.  
10 (3) Work release facilities.  
11 (4) House arrest with electronic monitoring.  
12 d. LEVEL FOUR. Short-term incarceration designed  
13 to be of short duration, including, but not limited  
14 to, the following:  
15 (1) Twenty-one-day shock probation for persons who  
16 violate chapter 321J.  
17 (2) Jail for less than thirty days.  
18 (3) Violators' facilities.  
19 e. LEVEL FIVE. Incarceration which consists of  
20 the following:  
21 (1) Prison.  
22 (2) Jail for thirty days or longer.  
23 2. "Intermediate criminal sanctions program" means  
24 a program structured around the corrections continuum  
25 in subsection 1, describing sanctions and services  
26 available in each level of the continuum in the  
27 district and containing the policies of the district  
28 department of correctional services regarding  
29 placement of a person in a particular level of  
30 sanction and the requirements and conditions under  
31 which a defendant will be transferred between levels  
32 in the corrections continuum under the program.  
33 3. An intermediate criminal sanctions program  
34 shall consist of only levels two, three, and four of  
35 the corrections continuum and shall be operated in  
36 accordance with an intermediate criminal sanctions  
37 plan adopted by the chief judge of the judicial  
38 district and the director of the judicial district  
39 department of correctional services. The plan adopted  
40 shall be designed to reduce probation revocations to  
41 prison through the use of incremental, community-based  
42 sanctions for probation violations.  
43 The plan shall be subject to rules adopted by the  
44 department of corrections. The rules shall include  
45 provisions for transferring individuals between levels  
46 in the continuum. The provisions shall include a  
47 requirement that the reasons for the transfer be in  
48 writing and that an opportunity for the individual to  
49 contest the transfer be made available.  
50 A copy of the program and plan shall be filed with

H-5922

-2-

H-5922

Page 3

1 the chief judge of the judicial district, the  
2 department of corrections, and the division of  
3 criminal and juvenile justice planning of the  
4 department of human rights.

5 4. a. The district department of correctional  
6 services shall place an individual committed to it  
7 under section 907.3 to the sanction and level of  
8 supervision which is appropriate to the individual  
9 based upon a current risk assessment evaluation.  
10 Placements may be to levels two and three of the  
11 corrections continuum. The district department may,  
12 with the approval of the department of corrections,  
13 place an individual in a level four violator facility  
14 established pursuant to section 904.207 or use twenty-  
15 one-day shock probation under subsection 1, paragraph  
16 "d", subparagraph (1), only as a penalty for a  
17 violation of a condition imposed under this section.

18 b. The district department may transfer an  
19 individual along the intermediate criminal sanctions  
20 program operated pursuant to subsection 3 as necessary  
21 and appropriate during the period the individual is  
22 assigned to the district department. However, nothing  
23 in this section shall limit the district department's  
24 ability to seek a revocation of the individual's  
25 probation pursuant to section 908.11.

26 Sec. \_\_\_\_ . Section 905.1, subsection 2, Code 1995,  
27 is amended to read as follows:

28 2. "Community-based correctional program" means  
29 correctional programs and services, including but not  
30 limited to an intermediate criminal sanctions program  
31 in accordance with the corrections continuum in  
32 section 901A.1, designed to supervise and assist  
33 individuals who are charged with or have been  
34 convicted of a felony, an aggravated misdemeanor or a  
35 serious misdemeanor, or who are on probation or parole  
36 in lieu of or as a result of a sentence of  
37 incarceration imposed upon conviction of any of these  
38 offenses, or who are contracted to the district  
39 department for supervision and housing while on work  
40 release.

41 An intermediate criminal sanctions program shall be  
42 designed by a district department in a manner that  
43 provides services in a manner free of disparities  
44 based upon an individual's race or ethnic origin.

45 Sec. \_\_\_\_ . Section 907.3, subsection 1, unnumbered  
46 paragraph 1, Code Supplement 1995, is amended to read  
47 as follows:

48 With the consent of the defendant, the court may  
49 defer judgment and may place the defendant on  
50 probation upon such conditions as it may require.

H-5922

-3-

H-5922

Page 4

1 Upon a showing that the defendant is not co-operating  
2 cooperating with the program of probation or is not  
3 responding to it, the court may withdraw the defendant  
4 from the program, pronounce judgment, and impose any  
5 sentence authorized by law. Before taking such  
6 action, the court shall give the defendant an  
7 opportunity to be heard on any matter relevant to the  
8 proposed action. Upon fulfillment of the conditions  
9 of probation, the defendant shall be discharged  
10 without entry of judgment. Upon violation of the  
11 conditions of probation, the court may proceed as  
12 provided in chapter 908.

13 Sec. \_\_\_\_ . Section 907.3, subsection 2, Code  
14 Supplement 1995, is amended to read as follows:

15 2. At the time of or after pronouncing judgment  
16 and with the consent of the defendant, the court may  
17 defer the sentence and assign the defendant to the  
18 judicial district department of correctional services.  
19 The court may assign the defendant to supervision or  
20 services under section 901A.1 at the level of  
21 supervision which the district department determines  
22 to be appropriate, if an intermediate criminal  
23 sanctions plan and program has been adopted in the  
24 judicial district under section 901A.1. However, the  
25 court shall not defer the sentence for a violation of  
26 section 708.2A if the defendant has previously  
27 received a deferred judgment or sentence for a  
28 violation of section 708.2 or 708.2A which was issued  
29 on a domestic abuse assault, or if similar relief was  
30 granted anywhere in the United States concerning that  
31 jurisdiction's statutes which substantially correspond  
32 to domestic abuse assault as provided in section  
33 708.2A. In addition, the court shall not defer a  
34 sentence if it is imposed for a conviction for or plea  
35 of guilty to a violation of section 236.8 or for  
36 contempt pursuant to section 236.8 or 236.14. Upon a  
37 showing that the defendant is not fulfilling the  
38 conditions of probation, the court may revoke  
39 probation and impose any sentence authorized by law.  
40 Before taking such action, the court shall give the  
41 defendant an opportunity to be heard on any matter  
42 relevant to the proposed action. Upon violation of  
43 the conditions of probation, the court may proceed as  
44 provided in chapter 908.

45 Sec. \_\_\_\_ . Section 907.3, subsection 3, Code  
46 Supplement 1995, is amended to read as follows:

47 3. By record entry at the time of or after  
48 sentencing, the court may suspend the sentence and  
49 place the defendant on probation upon such terms and  
50 conditions as it may require including commitment to

H-5922

-4-

H-5922

Page 5

1 an alternate jail facility or a community correctional  
2 residential treatment facility for a specific number  
3 of days to be followed by a term of probation as  
4 specified in section 907.7, or commitment of the  
5 defendant to the judicial district department of  
6 correctional services for supervision or services  
7 under section 901A.1 at the level of supervision which  
8 the district department determines to be appropriate.  
9 A person so committed who has probation revoked shall  
10 be given credit for such time served. However, the  
11 court shall not suspend the minimum term of two days  
12 imposed pursuant to section 708.2A, and the court  
13 shall not suspend a sentence imposed pursuant to  
14 section 236.8 or 236.14 for contempt.

15 Sec. \_\_\_\_ . Section 907.6, Code 1995, is amended to  
16 read as follows:

17 907.6 CONDITIONS OF PROBATION -- REGULATIONS.

18 Probationers are subject to the conditions  
19 established by the judicial district department of  
20 correctional services subject to the approval of the  
21 court, and any additional reasonable conditions which  
22 the court or district department may impose to promote  
23 rehabilitation of the defendant or protection of the  
24 community. Conditions may include but are not limited  
25 to adherence to regulations generally applicable to  
26 persons released on parole and including requiring  
27 unpaid community service as allowed pursuant to  
28 section 907.13."

29 5. Page 6, by inserting after line 18 the  
30 following:

31 "Sec. \_\_\_\_ . Section 910.4, Code Supplement 1995, is  
32 amended to read as follows:

33 910.4 CONDITION OF PROBATION -- PAYMENT PLAN.

34 1. When restitution is ordered by the sentencing  
35 court and the offender is placed on probation,  
36 restitution shall be a condition of probation.

37 a. Failure of the offender to comply with the plan  
38 of restitution, plan of payment, or community service  
39 requirements when community service is ordered by the  
40 court as restitution, shall constitute a violation of  
41 probation and shall constitute contempt of court.

42 b. ~~The~~ If an offender fails to comply with  
43 restitution requirements during probation, the court  
44 may hold the offender in contempt, revoke probation,  
45 or extend the period of probation, -or-upon-notice-of  
46 such-noncompliance-and-hearing-thereon,-the-court-may  
47 enter-a-civil-judgment-against-the-offender-for-the  
48 outstanding-balance-of-payments-under-the-plan-of  
49 restitution-and-such-judgment-shall-be-governed-by-the  
50 law-relating-to-judgments,-judgment-liens,-executions,

H-5922

-5-

H-5922

Page 6

1 ~~and other process available to creditors for the~~  
2 ~~collection of debts.~~

3 (1) ~~However, if~~ If the court extends the period of  
4 probation, is extended it shall not be for more than  
5 the maximum period of probation for the offense  
6 committed as provided in section 907.7. After  
7 discharge from probation or after the expiration of  
8 the period of probation, the failure of an offender to  
9 comply with the plan of restitution ordered by the  
10 court shall constitute contempt of court. ~~As part of~~  
11 ~~the order discharging an offender from probation, the~~  
12 ~~court shall enter a civil judgment against the~~  
13 ~~offender for the balance, if any, of any restitution~~  
14 ~~owed by the offender to the victim of the crime.~~

15 (2) If an offender's probation is revoked, the  
16 offender's assigned probation officer shall forward to  
17 the director of the Iowa department of corrections,  
18 information concerning the offender's restitution  
19 plan, restitution plan of payment, the restitution  
20 payment balance, and any other pertinent information  
21 concerning or affecting restitution by the offender.

22 2. When the offender is committed to a county  
23 jail, or to an alternate facility, the office or  
24 individual charged with supervision of the offender  
25 shall prepare a restitution plan of payment taking  
26 into consideration the offender's income, physical and  
27 mental health, age, education, employment and family  
28 circumstances.

29 a. The office or individual charged with  
30 supervision of the offender shall review the plan of  
31 restitution ordered by the court, and shall submit a  
32 restitution plan of payment to the sentencing court.

33 b. When community service is ordered by the court  
34 as restitution, the restitution plan of payment shall  
35 set out a plan to meet the requirement for the  
36 community service.

37 c. The court may approve or modify the plan of  
38 restitution and restitution plan of payment.

39 d. When there is a significant change in the  
40 offender's income or circumstances, the office or  
41 individual which has supervision of the plan of  
42 payment shall submit a modified restitution plan of  
43 payment to the court.

44 3. When there is a transfer of supervision from  
45 one office or individual charged with supervision of  
46 the offender to another, the sending office or  
47 individual shall forward to the receiving office or  
48 individual all necessary information regarding the  
49 balance owed against the original amount of  
50 restitution ordered and the balance of public service

H-5922

-6-



H-5922

Page 7

1 required.

2 When the offender's circumstances and income have  
3 significantly changed, the receiving office or  
4 individual shall submit a new plan of payment to the  
5 sentencing court for approval or modification based on  
6 the considerations enumerated in this section.

7 Sec. \_\_\_\_\_. Section 910.5, Code Supplement 1995, is  
8 amended to read as follows:

9 910.5 CONDITION OF WORK RELEASE OR PAROLE.

10 1. a. When an offender is committed to the  
11 custody of the director of the Iowa department of  
12 corrections pursuant to a sentence of confinement, the  
13 sentencing court shall forward to the director, a copy  
14 of the offender's restitution plan, present  
15 restitution payment plan if any, and other pertinent  
16 information concerning or affecting restitution by the  
17 offender.

18 b. ~~However, if~~ If the offender is committed to the  
19 custody of the director after revocation of probation,  
20 ~~this all information regarding the offender's~~  
21 ~~restitution plan shall be forwarded by the offender's~~  
22 ~~probation officer.~~

23 c. An offender committed to a penal or  
24 correctional facility of the state shall make  
25 restitution while placed in that facility.

26 d. Upon commitment to the custody of the director  
27 of the Iowa department of corrections, the director or  
28 the director's designee shall prepare a restitution  
29 plan of payment or modify any existing plan of  
30 payment.

31 (1) The new or modified plan of payment shall  
32 reflect the offender's present circumstances  
33 concerning the offender's income, physical and mental  
34 health, education, employment, and family  
35 circumstances.

36 (2) The director or the director's designee may  
37 modify the plan of payment at any time to reflect the  
38 offender's present circumstances.

39 e. After the expiration of the offender's  
40 sentence, the failure of an offender to comply with  
41 the plan of restitution ordered by the court shall  
42 constitute contempt of court. ~~Upon the expiration of~~  
43 ~~the offender's sentence, the department shall notify~~  
44 ~~the court which sentenced the offender and the court~~  
45 ~~shall enter a civil judgment against the offender for~~  
46 ~~the balance, if any, of any restitution owed by the~~  
47 ~~offender to the victim of the crime.~~

48 2. If an offender is to be placed on work release  
49 from an institution under the control of the director  
50 of the Iowa department of corrections, restitution

H-5922

-7-

H-5922

Page 8

1 shall be a condition of work release.

2 a. The chief of the bureau of community  
3 correctional services of the Iowa department of  
4 corrections shall prepare a restitution plan of  
5 payment or may modify any previously existing  
6 restitution plan of payment.

7 (1) The new or modified plan of payment shall  
8 reflect the offender's present circumstances  
9 concerning the offender's income, physical and mental  
10 health, education, employment, and family  
11 circumstances.

12 (2) The bureau chief may modify the plan of  
13 payment at any time to reflect the offender's present  
14 circumstances.

15 b. Failure of the offender to comply with the  
16 restitution plan of payment, including the community  
17 service requirement, if any, shall constitute a  
18 violation of a condition of work release and the work  
19 release privilege may be revoked.

20 c. After the expiration of the offender's  
21 sentence, the failure of an offender to comply with  
22 the plan of restitution ordered by the court shall  
23 constitute contempt of court. ~~Upon the expiration of~~  
24 ~~the offender's sentence, the bureau chief shall notify~~  
25 ~~the court which sentenced the offender and the court~~  
26 ~~shall enter a civil judgment against the offender for~~  
27 ~~the balance, if any, of any restitution owed by the~~  
28 ~~offender to the victim of the crime.~~

29 3. If an offender is to be placed on work release  
30 from a facility under control of a county sheriff or  
31 the judicial district department of correctional  
32 services, restitution shall be a condition of work  
33 release.

34 a. The office or individual charged with  
35 supervision of the offender shall prepare a  
36 restitution plan of payment or may modify any  
37 previously existing restitution plan of payment.

38 (1) The new or modified plan of payment shall  
39 reflect the offender's present circumstances  
40 concerning the offender's income, physical and mental  
41 health, education, employment and family  
42 circumstances.

43 (2) Failure of the offender to comply with the  
44 restitution plan of payment including the community  
45 service requirement, if any, constitutes a violation  
46 of a condition of work release.

47 (3) The office or individual charged with  
48 supervision of the offender may modify the plan of  
49 restitution at any time to reflect the offender's  
50 present circumstances.

H-5922

-8-

H-5922

Page 9

1 b. After the expiration of the offender's  
2 sentence, the failure of an offender to comply with  
3 the plan of restitution ordered by the court shall  
4 constitute contempt of court. ~~Upon the expiration of~~  
5 ~~the offender's sentence, the office or individual~~  
6 ~~charged with supervision of the offender shall notify~~  
7 ~~the court which sentenced the offender and the court~~  
8 ~~shall enter a civil judgment against the offender for~~  
9 ~~the balance, if any, of any restitution owed by the~~  
10 ~~offender to the victim of the crime.~~

11 4. If an offender is to be placed on parole,  
12 restitution shall be a condition of parole.

13 a. The district department of correctional  
14 services to which the offender will be assigned shall  
15 prepare a restitution plan of payment or may modify  
16 any previously existing restitution plan of payment.

17 (1) The new or modified plan of payment shall  
18 reflect the offender's present circumstances  
19 concerning the offender's income, physical and mental  
20 health, education, employment, and family  
21 circumstances.

22 (2) Failure of the offender to comply with the  
23 restitution plan of payment including a community  
24 service requirement, if any, shall constitute a  
25 violation of a condition of parole.

26 (3) The parole officer may modify the plan of  
27 payment any time to reflect the offender's present  
28 circumstances.

29 (4) A restitution plan of payment or modified plan  
30 of payment, prepared by a parole officer, must meet  
31 the approval of the director of the district  
32 department of correctional services.

33 b. After the expiration of the offender's  
34 sentence, the failure of an offender to comply with  
35 the plan of restitution ordered by the court shall  
36 constitute contempt of court. ~~Upon the expiration of~~  
37 ~~the offender's sentence, the parole officer shall~~  
38 ~~notify the court which sentenced the offender and the~~  
39 ~~court shall enter a civil judgment against the~~  
40 ~~offender for the balance, if any, of any restitution~~  
41 ~~owed by the offender to the victim of the crime.~~

42 5. The director of the Iowa department of  
43 corrections shall ~~promulgate~~ adopt rules pursuant to  
44 chapter 17A concerning the policies and procedures to  
45 be used in preparing and implementing restitution  
46 plans of payment for offenders who are committed to an  
47 institution under the control of the director of the  
48 Iowa department of corrections, for offenders who are  
49 to be released on work release from institutions under  
50 the control of the director of the Iowa department of

H-5922

-9-

H-5922

Page 10

1 corrections, for offenders who are placed on  
2 probation, and for offenders who are released on  
3 parole."

4 6. By renumbering, relettering, or redesignating  
5 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-5922 FILED APRIL 10, 1996

*House Concurred*

*4-18-96*

*(P. 1751)*

## HOUSE FILE 2458

H-5989

1 Amend the Senate amendment, H-5922, to House File  
2 2458, as amended, passed, and reprinted by the House,  
3 as follows:

4 1. Page 1, by inserting after line 2 the  
5 following:

6 "\_\_\_\_. Page 1, by inserting after line 16 the  
7 following:

8 "Sec. \_\_\_\_ . Section 216A.136, unnumbered paragraph  
9 1, as enacted by 1996 Iowa Acts, House File 2448,  
10 section 2, if enacted, is amended to read as follows:

11 The division shall maintain an Iowa statistical  
12 analysis center for the purpose of coordinating with  
13 data resource agencies to provide data and analytical  
14 information to federal, state, and local governments,  
15 and assist agencies in the use of criminal and  
16 juvenile justice data. Notwithstanding any other  
17 provision of state law, unless prohibited by federal  
18 law or regulation, the division shall be granted  
19 access, for purposes of research and evaluation, to  
20 criminal history records, official juvenile court  
21 records, juvenile court social records, and any other  
22 data collected or under control of the board of  
23 parole, department of corrections, district  
24 departments of correctional services, department of  
25 human services, judicial department, and department of  
26 public safety. However, intelligence data and peace  
27 officer investigative reports maintained by the  
28 department of public safety shall not be considered  
29 data for the purposes of this section. Any record,  
30 data, or information obtained by the division under  
31 this section and the division itself are subject to  
32 the federal and state confidentiality laws and  
33 regulations which are applicable to the original  
34 record, data, or information obtained by the division  
35 and to the original custodian of the record, data, or  
36 information. The access shall include but is not  
37 limited to all of the following:

38 Sec. \_\_\_\_ . Section 216A.136, subsection 4, as  
39 enacted by 1996 Iowa Acts, House File 2448, section 2,  
40 if enacted, is amended to read as follows:

41 4. Criminal history and intelligence data  
42 maintained under chapter 692."

43 2. Page 10, by inserting after line 3 the  
44 following:

45 "\_\_\_\_. Title page, line 1, by inserting after the  
46 words "relating to" the following: "criminal and  
47 juvenile justice, including criminal intelligence data  
48 and"."

By COON of Warren  
KREIMAN of Davis

H-5989 FILED APRIL 17, 1996

*Adopted*  
*4-18-96*

*(P. 1750)*

## HOUSE FILE 2458

H-6023

- 1 Amend the Senate amendment, H-5922, to House File  
2 2458, as amended, passed, and reprinted by the House,  
3 as follows:  
4 1. Page 2, line 15, by striking the word  
5 "probation" and inserting the following:  
6 "incarceration".  
7 2. Page 2, by inserting after line 18 the  
8 following:  
9 "(4) Prison with sentence reconsideration."  
10 3. Page 2, line 34, by inserting after the word  
11 "and" the following: "sublevels one and three of  
12 level".  
13 4. Page 3, lines 14 through 16, by striking the  
14 words "or use twenty-one-day shock probation under  
15 subsection 1, paragraph "d", subparagraph (1),".  
16 5. Page 4, line 21, by striking the word  
17 "supervision" and inserting the following:  
18 "sanctions".  
19 6. Page 5, line 7, by striking the word  
20 "supervision" and inserting the following:  
21 "sanctions".

By HARRISON of Scott

H-6023 FILED APRIL 18, 1996

*a dapted**4-18-96**p. 1751*

HOUSE FILE 2458

H-6022

1 Amend the Senate amendment, H-5922, to House File  
2 2458, as amended, passed, and reprinted by the House,  
3 as follows:

4 1. Page 1, by striking lines 3 through 7.

5 2. Page 1, by inserting before line 8 the

6 following:

7 "\_\_\_\_\_. Page 2, line 20, by striking the word

8 "including" and inserting the following: "including

9 pursuant to guidelines established by the supreme

10 court, except that the supreme court guidelines shall

11 not apply where the person represented is charged with

12 a class "A" felony. Reasonable compensation

13 includes"."

14 3. Page 10, by inserting after line 3 the

15 following:

16 "Sec. \_\_\_\_\_. INDICTABLE MISDEMEANORS -- STUDY --

17 REPORT. The state public defender shall conduct a

18 study to determine which indictable misdemeanors

19 should be reclassified as simple misdemeanors in order

20 to reduce the need for and costs associated with

21 appointed counsel in this state while balancing the

22 rights of those persons charged with such crimes. In

23 conducting the study the state public defender shall

24 seek input from as many individuals with knowledge on

25 this issue as possible. The state public defender

26 shall submit a report of the study's findings and

27 recommendations to the general assembly by January 13,

28 1997."

29 \_\_\_\_\_. Title page, line 3, by inserting after the

30 word "costs," the following: "conducting a study on

31 indictable misdemeanors, "."

By MILLAGE of Scott

H-6022 FILED APRIL 18, 1996

*Adopted*

*4-18-96*

*(P. 1750)*

HOUSE AMENDMENT TO SENATE AMENDMENT TO  
HOUSE FILE 2458

S-5816

1 Amend the Senate amendment, H-5922, to House File  
2 2458, as amended, passed, and reprinted by the House,  
3 as follows:

4 1. Page 1, by inserting after line 2 the  
5 following:

6 "\_\_\_\_. Page 1, by inserting after line 16 the  
7 following:

8 "Sec. \_\_\_\_ . Section 216A.136, unnumbered paragraph  
9 1, as enacted by 1996 Iowa Acts, House File 2448,  
10 section 2, if enacted, is amended to read as follows:

11 The division shall maintain an Iowa statistical  
12 analysis center for the purpose of coordinating with  
13 data resource agencies to provide data and analytical  
14 information to federal, state, and local governments,  
15 and assist agencies in the use of criminal and  
16 juvenile justice data. Notwithstanding any other  
17 provision of state law, unless prohibited by federal  
18 law or regulation, the division shall be granted  
19 access, for purposes of research and evaluation, to  
20 criminal history records, official juvenile court  
21 records, juvenile court social records, and any other  
22 data collected or under control of the board of  
23 parole, department of corrections, district  
24 departments of correctional services, department of  
25 human services, judicial department, and department of  
26 public safety. However, intelligence data and peace  
27 officer investigative reports maintained by the  
28 department of public safety shall not be considered  
29 data for the purposes of this section. Any record,  
30 data, or information obtained by the division under  
31 this section and the division itself are subject to  
32 the federal and state confidentiality laws and  
33 regulations which are applicable to the original  
34 record, data, or information obtained by the division  
35 and to the original custodian of the record, data, or  
36 information. The access shall include but is not  
37 limited to all of the following:

38 Sec. \_\_\_\_ . Section 216A.136, subsection 4, as  
39 enacted by 1996 Iowa Acts, House File 2448, section 2,  
40 if enacted, is amended to read as follows:

41 4. Criminal history and-intelligence data  
42 maintained under chapter 692."

43 2. Page 1, by striking lines 3 through 7.

44 3. Page 1, by inserting before line 8 the  
45 following:

46 "\_\_\_\_. Page 2, line 20, by striking the word  
47 "including" and inserting the following: "including  
48 pursuant to guidelines established by the supreme  
49 court, except that the supreme court guidelines shall  
50 not apply where the person represented is charged with

S-5816

-1-



S-5816

Page 2

1 a class "A" felony. Reasonable compensation  
2 includes."

3 4. Page 2, line 15, by striking the word  
4 "probation" and inserting the following:  
5 "incarceration".

6 5. Page 2, by inserting after line 18 the  
7 following:

8 "(4) Prison with sentence reconsideration."

9 6. Page 2, line 34, by inserting after the word  
10 "and" the following: "sublevels one and three of  
11 level".

12 7. Page 3, lines 14 through 16, by striking the  
13 words "or use twenty-one-day shock probation under  
14 subsection 1, paragraph "d", subparagraph (1),".

15 8. Page 4, line 21, by striking the word  
16 "supervision" and inserting the following:

17 "sanctions".

18 9. Page 5, line 7, by striking the word  
19 "supervision" and inserting the following:

20 "sanctions".

21 10. Page 10, by inserting after line 3 the  
22 following:

23 "Sec. \_\_\_\_ . INDICTABLE MISDEMEANORS -- STUDY --  
24 REPORT. The state public defender shall conduct a  
25 study to determine which indictable misdemeanors  
26 should be reclassified as simple misdemeanors in order  
27 to reduce the need for and costs associated with  
28 appointed counsel in this state while balancing the  
29 rights of those persons charged with such crimes. In  
30 conducting the study the state public defender shall  
31 seek input from as many individuals with knowledge on  
32 this issue as possible. The state public defender  
33 shall submit a report of the study's findings and  
34 recommendations to the general assembly by January 13,  
35 1997."

36 11. Page 10, by inserting after line 3 the  
37 following:

38 "\_\_\_\_. Title page, line 1, by inserting after the  
39 words "relating to" the following: "criminal and  
40 juvenile justice, including criminal intelligence data  
41 and"."

42 12. Title page, line 3, by inserting after the  
43 word "costs," the following: "conducting a study on  
44 indictable misdemeanors, "."

45 13. By renumbering, relettering, or redesignating  
46 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5816 FILED APRIL 18, 1996

*Senate Refused 4/25/96 (p. 1515)*

REPORT OF THE CONFERENCE COMMITTEE  
ON HOUSE FILE 2458

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

We, the undersigned members of the conference committee appointed to resolve the differences between the House of Representatives and the Senate on House File 2458, a bill for An Act relating to the right to appointed counsel or a public defender, by relating to the eligibility for certain indigents, the recovery of defense costs, and by restricting the right to counsel for certain parents in child in need of assistance cases, respectfully make the following report:

1. That the House recedes from its amendment, S-5816.
2. That the Senate recedes from its amendment, H-5922.
3. That House File 2458, as amended, passed, and reprinted by the House, is amended to read as follows:

1. Page 1, by inserting after line 16 the following:  
"Sec. \_\_\_\_ . Section 216A.136, unnumbered paragraph 1, as enacted by 1996 Iowa Acts, House File 2448, section 2, if enacted, is amended to read as follows:

The division shall maintain an Iowa statistical analysis center for the purpose of coordinating with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data.

Notwithstanding any other provision of state law, unless prohibited by federal law or regulation, the division shall be granted access, for purposes of research and evaluation, to criminal history records, official juvenile court records, juvenile court social records, and any other data collected or under control of the board of parole, department of corrections, district departments of correctional services, department of human services, judicial department, and department of public safety. However, intelligence data and peace officer investigative reports maintained by the

CCH-2458.2

Page 2

department of public safety shall not be considered data for the purposes of this section. Any record, data, or information obtained by the division under this section and the division itself are subject to the federal and state confidentiality laws and regulations which are applicable to the original record, data, or information obtained by the division and to the original custodian of the record, data, or information. The access shall include but is not limited to all of the following:

Sec. \_\_\_\_ . Section 216A.136, subsection 4, as enacted by 1996 Iowa Acts, House File 2448, section 2, if enacted, is amended to read as follows:

4. Criminal history ~~and-intelligence~~ data maintained under chapter 692."

2. By striking page 4, line 28, through page 5, line 12.

3. Page 5, by inserting before line 13 the following:

"Sec. \_\_\_\_ . NEW SECTION. 901A.1 CORRECTIONS CONTINUUM -- INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

1. The corrections continuum consists of the following:

a. LEVEL ONE. Noncommunity-based corrections sanctions including the following:

(1) SELF-MONITORED SANCTIONS. Self-monitored sanctions which are not monitored for compliance including, but not limited to, fines and community service.

(2) OTHER THAN SELF-MONITORED SANCTIONS. Other than self-monitored sanctions which are monitored for compliance by other than the district department of correctional services including, but not limited to, mandatory mediation, victim and offender reconciliation, and noncommunity-based corrections supervision.

b. LEVEL TWO. Probation and parole options consisting of the following:

(1) MONITORED SANCTIONS. Monitored sanctions are administrative supervision sanctions which are monitored for compliance by the district department of correctional services and include, but are not limited to, low-risk offender-

CCH-2458.2

Page 3

diversion programs.

(2) SUPERVISED SANCTIONS. Supervised sanctions are regular probation or parole supervision and any conditions established in the probation or parole agreement or by court order.

(3) INTENSIVE SUPERVISION SANCTIONS. Intensive supervision sanctions provide levels of supervision above sanctions in subparagraph (2) but are less restrictive than sanctions under paragraph "c" and include electronic monitoring, day reporting, day programming, live-out programs for persons on work release or who have violated chapter 321J, and institutional work release under section 904.910.

c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-incarceration sanctions are those supported by residential facility placement or twenty-four hour electronic monitoring including, but not limited to, the following:

- (1) Residential treatment facilities.
- (2) Operating while intoxicated offender treatment facilities.
- (3) Work release facilities.
- (4) House arrest with electronic monitoring.

d. LEVEL FOUR. Short-term incarceration designed to be of short duration, including, but not limited to, the following:

- (1) Twenty-one-day shock incarceration for persons who violate chapter 321J.
- (2) Jail for less than thirty days.
- (3) Violators' facilities.
- (4) Prison with sentence reconsideration.

e. LEVEL FIVE. Incarceration which consists of the following:

- (1) Prison.
- (2) Jail for thirty days or longer.

2. "Intermediate criminal sanctions program" means a program structured around the corrections continuum in subsection 1, describing sanctions and services available in each level of the continuum in the district and containing the

CCH-2458.2

Page 4

policies of the district department of correctional services regarding placement of a person in a particular level of sanction and the requirements and conditions under which a defendant will be transferred between levels in the corrections continuum under the program.

3. An intermediate criminal sanctions program shall consist of only levels two, three, and sublevels one and three of level four of the corrections continuum and shall be operated in accordance with an intermediate criminal sanctions plan adopted by the chief judge of the judicial district and the director of the judicial district department of correctional services. The plan adopted shall be designed to reduce probation revocations to prison through the use of incremental, community-based sanctions for probation violations.

The plan shall be subject to rules adopted by the department of corrections. The rules shall include provisions for transferring individuals between levels in the continuum. The provisions shall include a requirement that the reasons for the transfer be in writing and that an opportunity for the individual to contest the transfer be made available.

A copy of the program and plan shall be filed with the chief judge of the judicial district, the department of corrections, and the division of criminal and juvenile justice planning of the department of human rights.

4. a. The district department of correctional services shall place an individual committed to it under section 907.3 to the sanction and level of supervision which is appropriate to the individual based upon a current risk assessment evaluation. Placements may be to levels two and three of the corrections continuum. The district department may, with the approval of the department of corrections, place an individual in a level four violator facility established pursuant to section 904.207 only as a penalty for a violation of a condition imposed under this section.

b. The district department may transfer an individual

CCH-2458.2

Page 5

along the intermediate criminal sanctions program operated pursuant to subsection 3 as necessary and appropriate during the period the individual is assigned to the district department. However, nothing in this section shall limit the district department's ability to seek a revocation of the individual's probation pursuant to section 908.11.

Sec. \_\_\_\_ . Section 905.1, subsection 2, Code 1995, is amended to read as follows:

2. "Community-based correctional program" means correctional programs and services, including but not limited to an intermediate criminal sanctions program in accordance with the corrections continuum in section 901A.1, designed to supervise and assist individuals who are charged with or have been convicted of a felony, an aggravated misdemeanor or a serious misdemeanor, or who are on probation or parole in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses, or who are contracted to the district department for supervision and housing while on work release.

An intermediate criminal sanctions program shall be designed by a district department in a manner that provides services in a manner free of disparities based upon an individual's race or ethnic origin.

Sec. \_\_\_\_ . Section 907.3, subsection 1, unnumbered paragraph 1, Code Supplement 1995, is amended to read as follows:

With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon such conditions as it may require. Upon a showing that the defendant is not ~~co-operating~~ cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant

CCH-2458.2

Page 6

shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

Sec. \_\_\_\_ . Section 907.3, subsection 2, Code Supplement 1995, is amended to read as follows:

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901A.1 at the level of sanctions which the district department determines to be appropriate, if an intermediate criminal sanctions plan and program has been adopted in the judicial district under section 901A.1. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. In addition, the court shall not defer a sentence if it is imposed for a conviction for or plea of guilty to a violation of section 236.8 or for contempt pursuant to section 236.8 or 236.14. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

Sec. \_\_\_\_ . Section 907.3, subsection 3, Code Supplement 1995, as amended by 1996 Iowa Acts, Senate File 2269, section 4, is amended to read as follows:

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on

CCH-2458.2

Page 7

probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901A.1 at the level of sanctions which the district department determines to be appropriate. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend the minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph "a", or a sentence imposed under section 708.2A, subsection 6, paragraph "b", and the court shall not suspend a sentence imposed pursuant to section 236.8 or 236.14 for contempt.

Sec. \_\_\_\_ . Section 907.6, Code 1995, is amended to read as follows:

907.6 CONDITIONS OF PROBATION -- REGULATIONS.

Probationers are subject to the conditions established by the judicial district department of correctional services subject to the approval of the court, and any additional reasonable conditions which the court or district department may impose to promote rehabilitation of the defendant or protection of the community. Conditions may include but are not limited to adherence to regulations generally applicable to persons released on parole and including requiring unpaid community service as allowed pursuant to section 907.13."

4. Page 6, by inserting after line 18 the following:

"Sec. \_\_\_\_ . Section 910.4, Code Supplement 1995, is amended to read as follows:

910.4 CONDITION OF PROBATION -- PAYMENT PLAN.

1. When restitution is ordered by the sentencing court and the offender is placed on probation, restitution shall be a condition of probation.

a. Failure of the offender to comply with the plan of restitution, plan of payment, or community service



CCH-2458.2

Page 8

requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court.

b. The If an offender fails to comply with restitution requirements during probation, the court may hold the offender in contempt, revoke probation, or extend the period of probation~~7-or-upon-notice-of-such-noncompliance-and-hearing thereon7-the-court-may-enter-a-civil-judgment-against-the offender-for-the-outstanding-balance-of-payments-under-the plan-of-restitution-and-such-judgment-shall-be-governed-by-the law-relating-to-judgments7-judgment-liens7-executions7-and other-process-available-to-creditors-for-the-collection-of debts.~~

(1) However7-if If the court extends the period of probation, is-extended it shall not be for more than the maximum period of probation for the offense committed as provided in section 907.7. After discharge from probation or after the expiration of the period of probation, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. As-part-of the-order-discharging-an-offender-from-probation7-the-court shall-enter-a-civil-judgment-against-the-offender-for-the balance7-if-any7-of-any-restitution-owed-by-the-offender-to the-victim-of-the-crime7

(2) If an offender's probation is revoked, the offender's assigned probation officer shall forward to the director of the Iowa department of corrections, information concerning the offender's restitution plan, restitution plan of payment, the restitution payment balance, and any other pertinent information concerning or affecting restitution by the offender.

2. When the offender is committed to a county jail, or to an alternate facility, the office or individual charged with supervision of the offender shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and

CCH-2458.2

Page 9

family circumstances.

a. The office or individual charged with supervision of the offender shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court.

b. When community service is ordered by the court as restitution, the restitution plan of payment shall set out a plan to meet the requirement for the community service.

c. The court may approve or modify the plan of restitution and restitution plan of payment.

d. When there is a significant change in the offender's income or circumstances, the office or individual which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court.

3. When there is a transfer of supervision from one office or individual charged with supervision of the offender to another, the sending office or individual shall forward to the receiving office or individual all necessary information regarding the balance owed against the original amount of restitution ordered and the balance of public service required.

When the offender's circumstances and income have significantly changed, the receiving office or individual shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

Sec. \_\_\_\_ . Section 910.5, Code Supplement 1995, is amended to read as follows:

910.5 CONDITION OF WORK RELEASE OR PAROLE.

1. a. When an offender is committed to the custody of the director of the Iowa department of corrections pursuant to a sentence of confinement, the sentencing court shall forward to the director, a copy of the offender's restitution plan, present restitution payment plan if any, and other pertinent information concerning or affecting restitution by the offender.

CCH-2458.2

Page 10

b. ~~However, if~~ If the offender is committed to the custody of the director after revocation of probation, this all information regarding the offender's restitution plan shall be forwarded by the offender's probation officer.

c. An offender committed to a penal or correctional facility of the state shall make restitution while placed in that facility.

d. Upon commitment to the custody of the director of the Iowa department of corrections, the director or the director's designee shall prepare a restitution plan of payment or modify any existing plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) The director or the director's designee may modify the plan of payment at any time to reflect the offender's present circumstances.

e. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. ~~Upon the expiration of the offender's sentence, the department shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

2. If an offender is to be placed on work release from an institution under the control of the director of the Iowa department of corrections, restitution shall be a condition of work release.

a. The chief of the bureau of community correctional services of the Iowa department of corrections shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's

CCH-2458.2

Page 11

income, physical and mental health, education, employment, and family circumstances.

(2) The bureau chief may modify the plan of payment at any time to reflect the offender's present circumstances.

b. Failure of the offender to comply with the restitution plan of payment, including the community service requirement, if any, shall constitute a violation of a condition of work release and the work release privilege may be revoked.

c. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. ~~Upon the expiration of the offender's sentence, the bureau chief shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

3. If an offender is to be placed on work release from a facility under control of a county sheriff or the judicial district department of correctional services, restitution shall be a condition of work release.

a. The office or individual charged with supervision of the offender shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment and family circumstances.

(2) Failure of the offender to comply with the restitution plan of payment including the community service requirement, if any, constitutes a violation of a condition of work release.

(3) The office or individual charged with supervision of the offender may modify the plan of restitution at any time to reflect the offender's present circumstances.

b. After the expiration of the offender's sentence, the

CCH-2458.2

Page 12

failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. Upon ~~the-expiration-of-the-offender's-sentence, the-office-or individual-charged-with-supervision-of-the-offender-shall~~ notify ~~the-court-which-sentenced-the-offender-and-the-court~~ shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.

4. If an offender is to be placed on parole, restitution shall be a condition of parole.

a. The district department of correctional services to which the offender will be assigned shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) Failure of the offender to comply with the restitution plan of payment including a community service requirement, if any, shall constitute a violation of a condition of parole.

(3) The parole officer may modify the plan of payment any time to reflect the offender's present circumstances.

(4) A restitution plan of payment or modified plan of payment, prepared by a parole officer, must meet the approval of the director of the district department of correctional services.

b. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. Upon ~~the-expiration-of-the-offender's-sentence, the-parole-officer shall-notify-the-court-which-sentenced-the-offender-and-the court-shall-enter-a-civil-judgment-against-the-offender-for the-balance, if-any, of-any-restitution-owed-by-the-offender to-the-victim-of-the-crime.~~

5. The director of the Iowa department of corrections

CCH-2458.2

Page 13

shall ~~promulgate~~ adopt rules pursuant to chapter 17A concerning the policies and procedures to be used in preparing and implementing restitution plans of payment for offenders who are committed to an institution under the control of the director of the Iowa department of corrections, for offenders who are to be released on work release from institutions under the control of the director of the Iowa department of corrections, for offenders who are placed on probation, and for offenders who are released on parole.

Sec. \_\_\_\_ . LEGAL REPRESENTATION OF INDIGENTS -- STUDY. The legislative council is requested to establish an interim committee to study issues concerning the provision of legal representation to indigents. Matters to be reviewed by the interim committee shall include, but are not limited to, reclassification of indictable misdemeanors as simple misdemeanors, the efficiencies of the state public defender's office, and recoument of indigent defense costs. The legislative fiscal bureau, the department of justice, and the state public defender shall provide information requested by the committee pertaining to indigent defense, including but not limited to information concerning total cost expenditures by the state public defender, including costs for employee salaries and benefits and for all related office expenses, and statistical data concerning crimes for which penalties have been increased, or which have been recently reclassified as a higher level offense. The interim committee shall consider input from the Iowa state bar association, the Iowa association of criminal defense lawyers, the Iowa judges association, the Iowa magistrates association, the public defenders association, the state public defender, and the county attorneys association. The interim committee shall submit a report and recommendations to the general assembly by January 1, 1997."

5. Title page, line 1, by inserting after the words "relating to" the following: "criminal and juvenile justice, including criminal corrections sanctions and criminal

CCH-2458.2

Page 14

intelligence data and".

6. Title page, line 3, by inserting after the word "costs," the following: "conducting a study on legal representation for indigents,".

7. By renumbering, relettering, or redesignating and correcting internal references as necessary.

ON THE PART OF THE HOUSE:

DWIGHT DINKLA, Chairperson  
JEFFREY LAMBERTI  
HAROLD VAN MAANEN

ON THE PART OF THE SENATE:

STEVEN D. HANSEN, Chairperson  
RICHARD F. DRAKE  
RANDAL J. GIANNETTO  
O. GENE MADDOX  
TOM VILSACK

CCH-2458.2 FILED APRIL 29, 1996

*adopted*  
*4/30/96 (P. 1945)*

*adopted*  
*4/30/96 P. 1540*

HSB 710

JUDICIARY

S \_\_\_\_\_ ed By

S \_\_\_\_\_

SENATE/HOUSE FILE \_\_\_\_\_

BY (PROPOSED GOVERNOR'S BILL)

Harrison  
Millage  
Moreland

Passed Senate, Date \_\_\_\_\_

Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the right to appointed counsel or a public  
2 defender, by relating to the eligibility for certain  
3 indigents, the recovery of defense costs, and by restricting  
4 the right to counsel for certain parents in child in need of  
5 assistance cases.

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

- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25



1 Section 1. Section 13B.1, subsection 3, Code Supplement  
2 1995, is amended to read as follows:

3 3. "Financial statement" means a full written disclosure  
4 of all assets, liabilities, current income, dependents, and  
5 other information required to determine if a client qualifies  
6 for legal assistance ~~at-public-expense~~ by an appointed  
7 attorney.

8 Sec. 2. Section 13B.10, subsection 3, Code 1995, is  
9 amended to read as follows:

10 3. A person who knowingly submits a false financial  
11 statement for the purpose of obtaining legal assistance ~~at~~  
12 ~~public-expense~~ by an appointed attorney commits a fraudulent  
13 practice. As used in this subsection, "legal assistance"  
14 includes appointed counsel, transcripts, witness fees and  
15 expenses, and any other goods or services required by law to  
16 be provided to an indigent person ~~at-public-expense~~.

17 Sec. 3. Section 232.89, subsection 1, Code 1995, is  
18 amended to read as follows:

19 1. Upon the filing of a petition the parent, guardian, or  
20 custodian identified in the petition shall have the right to  
21 counsel in connection with all subsequent hearings and  
22 proceedings. If that person desires but is financially unable  
23 to employ counsel, the court shall appoint counsel. However,  
24 a parent without legal and physical custody shall not have the  
25 right to counsel.

26 Sec. 4. Section 814.9, Code 1995, is amended to read as  
27 follows:

28 814.9 INDIGENT'S RIGHT TO TRANSCRIPT ON APPEAL.

29 If a defendant in a criminal cause has perfected an appeal  
30 from a judgment and is determined by the court to be indigent,  
31 the court may order the a transcript to be made at-public  
32 expense. When an attorney of record is representing an  
33 indigent, the attorney shall apply to the district court for  
34 the transcript.

35 Sec. 5. Section 814.10, Code 1995, is amended to read as

1 follows:

2 814.10 INDIGENT'S APPLICATION FOR TRANSCRIPT IN OTHER  
3 CASES.

4 If a defendant in a criminal cause has been granted  
5 discretionary review from an action of the district court and  
6 the appellate court deems a transcript or portions thereof are  
7 necessary to proper review of the question or questions  
8 raised, the district court shall order the transcript to be  
9 ~~made at public expense if a determination is made that the~~  
10 defendant is determined to be indigent.

11 Sec. 6. Section 815.7, Code 1995, is amended to read as  
12 follows:

13 815.7 FEES TO ATTORNEYS.

14 An attorney who has not entered into a contract authorized  
15 under section 13B.4 and who is appointed by the court to  
16 represent any person charged with a crime in this state shall  
17 be entitled to a reasonable compensation which shall be the  
18 ordinary and customary charges for like services in the  
19 community to be decided in each case by a judge of the  
20 district court, including such sum or sums as the court may  
21 determine are necessary for investigation in the interests of  
22 justice and in the event of appeal the cost of obtaining the  
23 transcript of the trial and the printing of the trial record  
24 and necessary briefs in behalf of the defendant. However, the  
25 reasonable compensation awarded an attorney shall not be  
26 calculated based upon an hourly rate that exceeds the rate a  
27 contract attorney as provided in section 13B.4 would receive  
28 in a similar case. Such attorney need not follow the case  
29 into another county or into the appellate court unless so  
30 directed by the court at the request of the defendant, where  
31 grounds for further litigation are not capricious or  
32 unreasonable, but if such attorney does so, the attorney's fee  
33 shall be determined accordingly. Only one attorney fee shall  
34 be so awarded in any one case except that in class "A" felony  
35 cases, two may be authorized.

1     Sec. 7. Section 815.9, subsection 1, paragraph c, Code  
2 1995, are amended to read as follows:

3     c. A person with an income level greater than one hundred  
4 fifty percent, but less than two hundred percent, of the most  
5 recently revised poverty income guidelines published by the  
6 United States department of health and human services may be  
7 deemed partially indigent by the court pursuant to a written  
8 finding that, given the person's circumstances, not appointing  
9 counsel ~~at-public-expense~~ would cause the person substantial  
10 hardship. However, the court shall require a person deemed  
11 ~~partially-indigent~~ appointed counsel to contribute to the cost  
12 of representation in accordance with rules adopted by the  
13 state public defender.

14     Sec. 8. Section 815.9, subsection 1, Code 1995, is amended  
15 by adding the following new paragraph:

16     NEW PARAGRAPH. d. A person with an income level greater  
17 than two hundred percent of the most recently revised poverty  
18 income guidelines published by the United States department of  
19 health and human services shall not be deemed indigent or  
20 partially indigent by the court unless the person is charged  
21 with a felony and the court makes a written finding that,  
22 given the person's circumstances, not appointing counsel would  
23 cause the person substantial hardship. However, the court  
24 shall require a person appointed counsel to contribute to the  
25 cost of representation in accordance with rules adopted by the  
26 state public defender.

27     Sec. 9. Section 815.9, subsection 3, Code 1995, is amended  
28 to read as follows:

29     3. A person who knowingly submits a false financial  
30 statement for the purpose of obtaining legal assistance ~~at~~  
31 ~~public-expense~~ by appointed counsel commits a fraudulent  
32 practice. As used in this subsection, "legal assistance"  
33 includes legal counsel, transcripts, witness fees and  
34 expenses, and any other goods or services required by law to  
35 be provided to an indigent person ~~at-public-expense~~.

1 Sec. 10. Section 815.9A, unnumbered paragraph 1, Code  
2 1995, is amended by striking the unnumbered paragraph and  
3 inserting in lieu thereof the following:

4 All costs and fees incurred for indigent defense shall  
5 become due and payable to the clerk of the district court by  
6 the person receiving the services not later than the date of  
7 sentencing, or if the person is acquitted or the charges are  
8 dismissed, within thirty days of the acquittal or dismissal.  
9 To the extent that the costs and fees remain unpaid at the  
10 time they become due, a judgment shall be entered against the  
11 person for the amounts unpaid.

12 Sec. 11. Section 815.9A, subsection 2, Code 1995, is  
13 amended to read as follows:

14 2. If the person has an income level as determined  
15 pursuant to section 815.9 greater than one hundred fifty  
16 percent but not more than one hundred eighty-five percent of  
17 the poverty guidelines, at least two hundred dollars of the  
18 indigent defense costs shall be recovered in accordance with  
19 rules adopted by the state public defender.

20 Sec. 12. Section 815.9A, Code 1995, is amended by adding  
21 the following new subsection:

22 NEW SUBSECTION. 3. If the person has an income level as  
23 determined pursuant to section 815.9 greater than one hundred  
24 eighty-five percent of the poverty guidelines, at least three  
25 hundred dollars of the indigent defense costs shall be  
26 recovered in accordance with rules adopted by the state public  
27 defender.

28 Sec. 13. Section 815.10, subsection 1, Code Supplement  
29 1995, is amended to read as follows:

30 1. The court, for cause and upon its own motion or upon  
31 application by an indigent person or a public defender, may  
32 appoint a public defender or any attorney who is admitted to  
33 the practice of law in this state to represent an indigent  
34 person at any state stage of the proceedings or on appeal of  
35 any action in which the indigent person is entitled to legal

1 ~~assistance-at-public-expense~~ an appointed attorney. An  
2 appointment shall not be made unless the person is determined  
3 to be indigent under section 815.9.

4 Sec. 14. Section 815.10, subsection 2, Code Supplement  
5 1995, is amended by striking the subsection.

6 Sec. 15. Section 815.10, subsection 3, Code Supplement  
7 1995, is amended to read as follows:

8 3. An attorney other than a public defender who is  
9 appointed by the court under subsection 1 or 2 shall apply to  
10 the district court for compensation and for reimbursement of  
11 costs incurred. The amount of compensation due shall be  
12 determined in accordance with section 815.7.

13 Sec. 16. Section 910.2, Code Supplement 1995, is amended  
14 to read as follows:

15 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY  
16 SENTENCING COURT.

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

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

19 EXPLANATION

20 The bill provides that a parent without legal custody of a  
21 child does not have the right to counsel in child in need of  
22 assistance proceedings.

23 The bill also provides that reasonable compensation awarded  
24 a noncontracting attorney who is appointed to represent a  
25 defendant shall not exceed the hourly rate that would have  
26 been awarded an attorney under contract with the state public  
27 defender to represent indigents.

28 Section 8 provides that a person shall not be considered  
29 indigent or partially indigent if their income is greater than  
30 200 percent of the poverty level unless a person is charged  
31 with a felony and the court finds that not appointing counsel  
32 would cause a substantial hardship.

33 The changes to section 815.9A provide that costs for  
34 indigent defense are payable by the indigent and shall be  
35 entered as a judgment against the indigent when due. The

1 section also provides that for persons receiving services  
2 whose income is between 150 percent and 185 percent of the  
3 poverty level, at least \$200 shall be recovered pursuant to  
4 rules adopted by the public defender; for persons whose income  
5 is between 185 percent and 200 percent of the poverty level,  
6 at least \$300 shall be recovered pursuant to rules adopted by  
7 the public defender.

8 Section 14 strikes the provision allowing any nonindigent  
9 person who refuses to hire an attorney the right to request  
10 and receive appointed counsel.

11 The changes to section 910.2 provide that if a court orders  
12 community service instead of restitution under section 910.2  
13 concerning the costs of an indigent's defense, the value of  
14 the number of hours of community service ordered shall be  
15 approximately equivalent to the costs of the defense. This  
16 portion of the bill also provides that simple misdemeanors  
17 under chapter 321 are subject to this Code section's  
18 requirements relating to payment of restitution.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

HOUSE FILE 2458

AN ACT

RELATING TO CRIMINAL AND JUVENILE JUSTICE, INCLUDING CRIMINAL CORRECTIONS SANCTIONS AND CRIMINAL INTELLIGENCE DATA AND THE RIGHT TO APPOINTED COUNSEL OR A PUBLIC DEFENDER, BY RELATING TO THE ELIGIBILITY FOR CERTAIN INDIGENTS, THE RECOVERY OF DEFENSE COSTS, CONDUCTING A STUDY ON LEGAL REPRESENTATION FOR INDIGENTS, AND BY RESTRICTING THE RIGHT TO COUNSEL FOR CERTAIN PARENTS IN CHILD IN NEED OF ASSISTANCE CASES.

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

Section 1. Section 13B.1, subsection 3, Code Supplement 1995, is amended to read as follows:

3. "Financial statement" means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance ~~at-public-expense~~ by an appointed attorney.

Sec. 2. Section 13B.10, subsection 3, Code 1995, is amended to read as follows:

3. A person who knowingly submits a false financial statement for the purpose of obtaining legal assistance ~~at public-expense~~ by an appointed attorney commits a fraudulent practice. As used in this subsection, "legal assistance" includes appointed counsel, transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person ~~at-public-expense~~.

Sec. 3. Section 216A.136, unnumbered paragraph 1, as enacted by 1996 Iowa Acts, House File 2448, section 2, if enacted, is amended to read as follows:

The division shall maintain an Iowa statistical analysis center for the purpose of coordinating with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data. Notwithstanding any other provision of state law, unless prohibited by federal law or regulation, the division shall be granted access, for purposes of research and evaluation, to criminal history records, official juvenile court records, juvenile court social records, and any other data collected or under control of the board of parole, department of corrections, district departments of correctional services, department of human services, judicial department, and department of public safety. However, intelligence data and peace officer investigative reports maintained by the department of public safety shall not be considered data for the purposes of this section. Any record, data, or information obtained by the division under this section and the division itself are subject to the federal and state confidentiality laws and regulations which are applicable to the original record, data, or information obtained by the division and to the original custodian of the record, data, or information. The access shall include but is not limited to all of the following:

Sec. 4. Section 216A.136, subsection 4, as enacted by 1996 Iowa Acts, House File 2448, section 2, if enacted, is amended to read as follows:

4. Criminal history ~~and-intelligence~~ data maintained under chapter 692.

Sec. 5. Section 232.89, subsection 1, Code 1995, is amended to read as follows:

1. Upon the filing of a petition the parent, guardian, or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable



to employ counsel, the court shall appoint counsel. However, an incarcerated parent without legal custody shall not have the right to counsel.

Sec. 6. Section 814.9, Code 1995, is amended to read as follows:

814.9 INDIGENT'S RIGHT TO TRANSCRIPT ON APPEAL.

If a defendant in a criminal cause has perfected an appeal from a judgment and is determined by the court to be indigent, the court may order the a transcript to be made at-public expense. When an attorney of record is representing an indigent, the attorney shall apply to the district court for the transcript.

Sec. 7. Section 814.10, Code 1995, is amended to read as follows:

814.10 INDIGENT'S APPLICATION FOR TRANSCRIPT IN OTHER CASES.

If a defendant in a criminal cause has been granted discretionary review from an action of the district court and the appellate court deems a transcript or portions thereof are necessary to proper review of the question or questions raised, the district court shall order the transcript to be made at-public-expense if ~~a-determination-is-made-that~~ the defendant is determined to be indigent.

Sec. 8. Section 815.7, Code 1995, is amended to read as follows:

815.7 FEES TO ATTORNEYS.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court, including such sum or sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the

transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. However, the reasonable compensation awarded an attorney shall not be calculated based upon an hourly rate that exceeds the rate a contract attorney as provided in section 13B.4 would receive in a similar case. Such attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if such attorney does so, the attorney's fee shall be determined accordingly. Only one attorney, fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

Sec. 9. Section 815.9, subsection 1, paragraph c, Code 1995, is amended to read as follows:

c. A person with an income level greater than one hundred fifty percent, but less than two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human services may be deemed partially indigent by the court pursuant to a written finding that, given the person's circumstances, not appointing counsel ~~at-public-expense~~ would cause the person substantial hardship. However, the court shall require a person deemed ~~partially-indigent~~ appointed counsel to contribute to the cost of representation in accordance with rules adopted by the state public defender.

Sec. 10. Section 815.9, subsection 1, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. A person with an income level greater than two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be deemed indigent or partially indigent by the court unless the person is charged with a felony and the court makes a written finding that, given the person's circumstances, not appointing counsel would

cause the person substantial hardship. However, the court shall require a person appointed counsel to contribute to the cost of representation in accordance with rules adopted by the state public defender.

Sec. 11. Section 815.9, subsection 3, Code 1995, is amended to read as follows:

3. A person who knowingly submits a false financial statement for the purpose of obtaining legal assistance at public-expense by appointed counsel commits a fraudulent practice. As used in this subsection, "legal assistance" includes legal counsel, transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person at-public-expense.

Sec. 12. Section 815.9A, unnumbered paragraph 1, Code 1995, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

All costs and fees incurred for indigent defense shall become due and payable to the clerk of the district court by the person receiving the services not later than the date of sentencing, or if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal. To the extent that the costs and fees remain unpaid at the time they become due, a judgment shall be entered against the person for the amounts unpaid.

Sec. 13. Section 815.9A, subsection 2, Code 1995, is amended to read as follows:

2. If the person has an income level as determined pursuant to section 815.9 greater than one hundred fifty percent but not more than one hundred eighty-five percent of the poverty guidelines, at least two hundred dollars of the indigent defense costs shall be recovered in accordance with rules adopted by the state public defender.

Sec. 14. Section 815.9A, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 3. If the person has an income level as determined pursuant to section 815.9 greater than one hundred eighty-five percent of the poverty guidelines, at least three hundred dollars of the indigent defense costs shall be recovered in accordance with rules adopted by the state public defender.

Sec. 15. NEW SECTION. 901A.1 CORRECTIONS CONTINUUM -- INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

1. The corrections continuum consists of the following:

a. LEVEL ONE. Noncommunity-based corrections sanctions including the following:

(1) SELF-MONITORED SANCTIONS. Self-monitored sanctions which are not monitored for compliance including, but not limited to, fines and community service.

(2) OTHER THAN SELF-MONITORED SANCTIONS. Other than self-monitored sanctions which are monitored for compliance by other than the district department of correctional services including, but not limited to, mandatory mediation, victim and offender reconciliation, and noncommunity-based corrections supervision.

b. LEVEL TWO. Probation and parole options consisting of the following:

(1) MONITORED SANCTIONS. Monitored sanctions are administrative supervision sanctions which are monitored for compliance by the district department of correctional services and include, but are not limited to, low-risk offender-diversion programs.

(2) SUPERVISED SANCTIONS. Supervised sanctions are regular probation or parole supervision and any conditions established in the probation or parole agreement or by court order.

(3) INTENSIVE SUPERVISION SANCTIONS. Intensive supervision sanctions provide levels of supervision above sanctions in subparagraph (2) but are less restrictive than sanctions under paragraph "c" and include electronic

monitoring, day reporting, day programming, live-out programs for persons on work release or who have violated chapter 321J, and institutional work release under section 904.910.

c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-incarceration sanctions are those supported by residential facility placement or twenty-four hour electronic monitoring including, but not limited to, the following:

- (1) Residential treatment facilities.
- (2) Operating while intoxicated offender treatment facilities.

- (3) Work release facilities.
- (4) House arrest with electronic monitoring.

d. LEVEL FOUR. Short-term incarceration designed to be of short duration, including, but not limited to, the following:

- (1) Twenty-one-day shock incarceration for persons who violate chapter 321J.
- (2) Jail for less than thirty days.
- (3) Violators' facilities.
- (4) Prison with sentence reconsideration.

e. LEVEL FIVE. Incarceration which consists of the following:

- (1) Prison.
- (2) Jail for thirty days or longer.

2. "Intermediate criminal sanctions program" means a program structured around the corrections continuum in subsection 1, describing sanctions and services available in each level of the continuum in the district and containing the policies of the district department of correctional services regarding placement of a person in a particular level of sanction and the requirements and conditions under which a defendant will be transferred between levels in the corrections continuum under the program.

3. An intermediate criminal sanctions program shall consist of only levels two, three, and sublevels one and three of level four of the corrections continuum and shall be

operated in accordance with an intermediate criminal sanctions plan adopted by the chief judge of the judicial district and the director of the judicial district department of correctional services. The plan adopted shall be designed to reduce probation revocations to prison through the use of incremental, community-based sanctions for probation violations.

The plan shall be subject to rules adopted by the department of corrections. The rules shall include provisions for transferring individuals between levels in the continuum. The provisions shall include a requirement that the reasons for the transfer be in writing and that an opportunity for the individual to contest the transfer be made available.

A copy of the program and plan shall be filed with the chief judge of the judicial district, the department of corrections, and the division of criminal and juvenile justice planning of the department of human rights.

4. a. The district department of correctional services shall place an individual committed to it under section 907.3 to the sanction and level of supervision which is appropriate to the individual based upon a current risk assessment evaluation. Placements may be to levels two and three of the corrections continuum. The district department may, with the approval of the department of corrections, place an individual in a level four violator facility established pursuant to section 904.207 only as a penalty for a violation of a condition imposed under this section.

b. The district department may transfer an individual along the intermediate criminal sanctions program operated pursuant to subsection 3 as necessary and appropriate during the period the individual is assigned to the district department. However, nothing in this section shall limit the district department's ability to seek a revocation of the individual's probation pursuant to section 908.11.

Sec. 16. Section 905.1, subsection 2, Code 1995, is amended to read as follows:

2. "Community-based correctional program" means correctional programs and services, including but not limited to an intermediate criminal sanctions program in accordance with the corrections continuum in section 901A.1, designed to supervise and assist individuals who are charged with or have been convicted of a felony, an aggravated misdemeanor or a serious misdemeanor, or who are on probation or parole in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses, or who are contracted to the district department for supervision and housing while on work release.

An intermediate criminal sanctions program shall be designed by a district department in a manner that provides services in a manner free of disparities based upon an individual's race or ethnic origin.

Sec. 17. Section 907.3, subsection 1, unnumbered paragraph 1, Code Supplement 1995, is amended to read as follows:

With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon such conditions as it may require. Upon a showing that the defendant is not ~~co-operating~~ cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

Sec. 18. Section 907.3, subsection 2, Code Supplement 1995, is amended to read as follows:

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901A.1 at the level of sanctions which the district department determines to be appropriate, if an intermediate criminal sanctions plan and program has been adopted in the judicial district under section 901A.1. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. In addition, the court shall not defer a sentence if it is imposed for a conviction for or plea of guilty to a violation of section 236.8 or for contempt pursuant to section 236.8 or 236.14. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

Sec. 19. Section 907.3, subsection 3, Code Supplement 1995, as amended by 1996 Iowa Acts, Senate File 2269, section 4, is amended to read as follows:

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation

as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901A.1 at the level of sanctions which the district department determines to be appropriate. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend the minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph "a", or a sentence imposed under section 708.2A, subsection 6, paragraph "b", and the court shall not suspend a sentence imposed pursuant to section 236.8 or 236.14 for contempt.

Sec. 20. Section 907.6, Code 1995, is amended to read as follows:

907.6 CONDITIONS OF PROBATION -- REGULATIONS.

Probationers are subject to the conditions established by the judicial district department of correctional services subject to the approval of the court, and any additional reasonable conditions which the court or district department may impose to promote rehabilitation of the defendant or protection of the community. Conditions may include but are not limited to adherence to regulations generally applicable to persons released on parole and including requiring unpaid community service as allowed pursuant to section 907.13.

Sec. 21. Section 910.2, Code Supplement 1995, is amended to read as follows:

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

In all criminal cases ~~except 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 fines, penalties, and surcharges, crime victim compensation program reimbursement, court costs, court-appointed attorney's fees, or the 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, fines, penalties, and surcharges, crime victim 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 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 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 which, for payment of court-appointed attorney's fees or expenses of a public defender, shall be approximately equivalent in value to those costs. 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. 22. Section 910.4, Code Supplement 1995, is amended to read as follows:

910.4 CONDITION OF PROBATION -- PAYMENT PLAN.

1. When restitution is ordered by the sentencing court and the offender is placed on probation, restitution shall be a condition of probation.

a. Failure of the offender to comply with the plan of restitution, plan of payment, or community service requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court.

b. ~~The If an offender fails to comply with restitution requirements during probation, the court may hold the offender in contempt, revoke probation, or extend the period of probation, or upon notice of such noncompliance and hearing thereon, the court may enter a civil judgment against the offender for the outstanding balance of payments under the plan of restitution and such judgment shall be governed by the law relating to judgments, judgment liens, executions, and other process available to creditors for the collection of debts.~~

(1) ~~However, if If the court extends the period of probation, is extended it shall not be for more than the maximum period of probation for the offense committed as provided in section 907.7. After discharge from probation or after the expiration of the period of probation, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. As part of the order discharging an offender from probation, the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

(2) If an offender's probation is revoked, the offender's assigned probation officer shall forward to the director of the Iowa department of corrections, information concerning the offender's restitution plan, restitution plan of payment, the restitution payment balance, and any other pertinent information concerning or affecting restitution by the offender.

2. When the offender is committed to a county jail, or to an alternate facility, the office or individual charged with

supervision of the offender shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and family circumstances.

a. The office or individual charged with supervision of the offender shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court.

b. When community service is ordered by the court as restitution, the restitution plan of payment shall set out a plan to meet the requirement for the community service.

c. The court may approve or modify the plan of restitution and restitution plan of payment.

d. When there is a significant change in the offender's income or circumstances, the office or individual which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court.

3. When there is a transfer of supervision from one office or individual charged with supervision of the offender to another, the sending office or individual shall forward to the receiving office or individual all necessary information regarding the balance owed against the original amount of restitution ordered and the balance of public service required.

When the offender's circumstances and income have significantly changed, the receiving office or individual shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

Sec. 23. Section 910.5, Code Supplement 1995, is amended to read as follows:

910.5 CONDITION OF WORK RELEASE OR PAROLE.

1. a. When an offender is committed to the custody of the director of the Iowa department of corrections pursuant to a sentence of confinement, the sentencing court shall forward to

the director, a copy of the offender's restitution plan, present restitution payment plan if any, and other pertinent information concerning or affecting restitution by the offender.

b. ~~However, if~~ If the offender is committed to the custody of the director after revocation of probation, this all information regarding the offender's restitution plan shall be forwarded by the offender's probation officer.

c. An offender committed to a penal or correctional facility of the state shall make restitution while placed in that facility.

d. Upon commitment to the custody of the director of the Iowa department of corrections, the director or the director's designee shall prepare a restitution plan of payment or modify any existing plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) The director or the director's designee may modify the plan of payment at any time to reflect the offender's present circumstances.

e. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. ~~Upon the expiration of the offender's sentence, the department shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

2. If an offender is to be placed on work release from an institution under the control of the director of the Iowa department of corrections, restitution shall be a condition of work release.

a. The chief of the bureau of community correctional services of the Iowa department of corrections shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) The bureau chief may modify the plan of payment at any time to reflect the offender's present circumstances.

b. Failure of the offender to comply with the restitution plan of payment, including the community service requirement, if any, shall constitute a violation of a condition of work release and the work release privilege may be revoked.

c. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. ~~Upon the expiration of the offender's sentence, the bureau chief shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

3. If an offender is to be placed on work release from a facility under control of a county sheriff or the judicial district department of correctional services, restitution shall be a condition of work release.

a. The office or individual charged with supervision of the offender shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment and family circumstances.

(2) Failure of the offender to comply with the restitution plan of payment including the community service requirement, if any, constitutes a violation of a condition of work release.

(3) The office or individual charged with supervision of the offender may modify the plan of restitution at any time to reflect the offender's present circumstances.

b. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. ~~Upon the expiration of the offender's sentence, the office or individual charged with supervision of the offender shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

4. If an offender is to be placed on parole, restitution shall be a condition of parole.

a. The district department of correctional services to which the offender will be assigned shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) Failure of the offender to comply with the restitution plan of payment including a community service requirement, if any, shall constitute a violation of a condition of parole.

(3) The parole officer may modify the plan of payment any time to reflect the offender's present circumstances.

(4) A restitution plan of payment or modified plan of payment, prepared by a parole officer, must meet the approval of the director of the district department of correctional services.

b. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. ~~Upon the expiration of the offender's sentence, the parole officer shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.~~

5. The director of the Iowa department of corrections shall promulgate adopt rules pursuant to chapter 17A concerning the policies and procedures to be used in preparing and implementing restitution plans of payment for offenders who are committed to an institution under the control of the director of the Iowa department of corrections, for offenders who are to be released on work release from institutions under the control of the director of the Iowa department of corrections, for offenders who are placed on probation, and for offenders who are released on parole.

Sec. 24. LEGAL REPRESENTATION OF INDIGENTS -- STUDY. The legislative council is requested to establish an interim committee to study issues concerning the provision of legal representation to indigents. Matters to be reviewed by the interim committee shall include, but are not limited to, reclassification of indictable misdemeanors as simple misdemeanors, the efficiencies of the state public defender's office, and recoupment of indigent defense costs. The legislative fiscal bureau, the department of justice, and the state public defender shall provide information requested by the committee pertaining to indigent defense, including but not limited to information concerning total cost expenditures by the state public defender, including costs for employee salaries and benefits and for all related office expenses, and statistical data concerning crimes for which penalties have been increased, or which have been recently reclassified as a higher level offense. The interim committee shall consider



input from the Iowa state bar association, the Iowa association of criminal defense lawyers, the Iowa judges association, the Iowa magistrates association, the public defenders association, the state public defender, and the county attorneys association. The interim committee shall submit a report and recommendations to the general assembly by January 1, 1997.

---

RON J. CORBETT  
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 2458, Seventy-sixth General Assembly.

---

ELIZABETH ISAACSON  
Chief Clerk of the House

Approved May 17, 1996

---

TERRY E. BRANSTAD  
Governor