

H- 3/24/95 Judiciary
H- 4/6/95 Amend/Do Pass
w/ H 3787
H- 4/13/95 unfinished Business
Colander

SENATE FILE 373
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 262)

Passed Senate, Date ^(p.831) 3/22/95
Vote: Ayes 49 Nays 0

Passed House, Date ^(p.1712) 4/19/95
Vote: Ayes 95 Nays 1

~~Repassed 4/24/95~~ Approved May 1, 1995
Vote 49-0
(p. 1355)

A BILL FOR

1 An Act to permit the court to find a person in contempt for
2 failure to pay restitution after the period of probation, work
3 release, parole, or the person's sentence has ended.

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

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S.F. 373

1 Section 1. Section 910.4, unnumbered paragraph 1, Code
2 1995, is amended to read as follows:

3 When restitution is ordered by the sentencing court and the
4 offender is placed on probation, restitution shall be a
5 condition of probation. Failure of the offender to comply
6 with the plan of restitution, plan of payment, or community
7 service requirements when community service is ordered by the
8 court as restitution, shall constitute a violation of
9 probation and shall constitute contempt of court. The court
10 may hold the offender in contempt, revoke probation, or extend
11 the period of probation, or upon notice of such noncompliance
12 and hearing thereon, the court may enter a civil judgment
13 against the offender for the outstanding balance of payments
14 under the plan of restitution and such judgment shall be
15 governed by the law relating to judgments, judgment liens,
16 executions, and other process available to creditors for the
17 collection of debts. However, if the period of probation is
18 extended it shall not be for more than the maximum period of
19 probation for the offense committed as provided in section
20 907.7. After discharge from probation or after the expiration
21 of the period of probation, the failure of an offender to
22 comply with the plan of restitution ordered by the court shall
23 constitute contempt of court and the court may hold the person
24 in contempt for violation of the order or, upon notice of the
25 noncompliance and a hearing, enter a civil judgment against
26 the offender for the outstanding balance of payments under the
27 plan of restitution. The civil judgment shall be governed by
28 the law relating to judgments, judgment liens, executions, and
29 other process available to creditors for the collection of
30 debts.

31 Sec. 2. Section 910.5, subsections 2, 3, and 4, Code 1995,
32 are amended to read as follows:

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

1 work release. The chief of the bureau of community
2 correctional services of the Iowa department of corrections,
3 shall prepare a restitution plan of payment or may modify any
4 previously existing restitution plan of payment. The new or
5 modified plan of payment shall reflect the offender's present
6 circumstances concerning the offender's income, physical and
7 mental health, education, employment, and family
8 circumstances. The bureau chief may modify the plan of
9 payment at any time to reflect the offender's present
10 circumstances. Failure of the offender to comply with the
11 restitution plan of payment, including the community service
12 requirement, if any, shall constitute a violation of a
13 condition of work release and the work release privilege may
14 be revoked. After the expiration of the offender's sentence,
15 the failure of an offender to comply with the plan of
16 restitution ordered by the court shall constitute contempt of
17 court and the court may hold the person in contempt for
18 violation of the order or, upon notice of the noncompliance
19 and a hearing, enter a civil judgment against the offender for
20 the outstanding balance of payments under the plan of
21 restitution. The civil judgment shall be governed by the law
22 relating to judgments, judgment liens, executions, and other
23 process available to creditors for the collection of debts.

24 3. If an offender is to be placed on work release from a
25 facility under control of a county sheriff or the judicial
26 district department of correctional services, restitution
27 shall be a condition of work release. The office or
28 individual charged with supervision of the offender shall
29 prepare a restitution plan of payment or may modify any
30 previously existing restitution plan of payment. The new or
31 modified plan of payment shall reflect the offender's present
32 circumstances concerning the offender's income, physical and
33 mental health, education, employment and family circumstances.
34 Failure of the offender to comply with the restitution plan of
35 payment including the community service requirement, if any,

1 constitutes a violation of a condition of work release. The
2 office or individual charged with supervision of the offender
3 may modify the plan of restitution at any time to reflect the
4 offender's present circumstances. After the expiration of the
5 offender's sentence, the failure of an offender to comply with
6 the plan of restitution ordered by the court shall constitute
7 contempt of court and the court may hold the person in
8 contempt for violation of the order or, upon notice of the
9 noncompliance and a hearing, enter a civil judgment against
10 the offender for the outstanding balance of payments under the
11 plan of restitution. The civil judgment shall be governed by
12 the law relating to judgments, judgment liens, executions, and
13 other process available to creditors for the collection of
14 debts.

15 4. If an offender is to be placed on parole, restitution
16 shall be a condition of parole. The district department of
17 correctional services to which the offender will be assigned
18 shall prepare a restitution plan of payment or may modify any
19 previously existing restitution plan of payment. The new or
20 modified plan of payment shall reflect the offender's present
21 circumstances concerning the offender's income, physical and
22 mental health, education, employment, and family
23 circumstances. Failure of the offender to comply with the
24 restitution plan of payment including a community service
25 requirement, if any, shall constitute a violation of a
26 condition of parole. The parole officer may modify the plan
27 of payment any time to reflect the offender's present
28 circumstances. A restitution plan of payment or modified plan
29 of payment, prepared by a parole officer, must meet the
30 approval of the director of the district department of
31 correctional services. After the expiration of the offender's
32 sentence, the failure of an offender to comply with the plan
33 of restitution ordered by the court shall constitute contempt
34 of court and the court may hold the person in contempt for
35 violation of the order or, upon notice of the noncompliance

1 and a hearing, enter a civil judgment against the offender for
2 the outstanding balance of payments under the plan of
3 restitution. The civil judgment shall be governed by the law
4 relating to judgments, judgment liens, executions, and other
5 process available to creditors for the collection of debts.

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EXPLANATION

7 This bill permits the court to continue to either hold a
8 person in contempt or enter a civil judgment against a person,
9 if the person has been convicted of a public offense and
10 ordered to make payments for restitution owed but the period
11 of probation or the person's sentence has expired. In State
12 v. Chase, 451 N.W.2d 499 (1990), the court held that the power
13 of the court to enforce a restitution order via contempt
14 proceedings against a defendant placed on probation was
15 coterminous with probation and once probation expires the
16 obligations between the criminal and the victim are left for
17 resolution by the civil courts. Language similar to the
18 language which makes payment of restitution a condition of
19 probation is also currently contained in the Code provisions
20 relating to the payment of restitution by persons on work
21 release or parole.

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**SENATE FILE 373
FISCAL NOTE**

A fiscal note for **Senate File 373** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 373 permits the court to continue to either hold a person in contempt or enter a civil judgement against a person, if the person has been convicted of a public offense and ordered to make payments for restitution owed but the period of probation or the person's sentence has expired.

Assumptions

1. Any increase in convictions as a result of SF 373 may impact jail admissions and jail populations.
2. There is no reliable restitution tracking mechanism in place.

Fiscal Effect

The estimated court cost for each criminal contempt action is approximately \$1,600. However, there is not sufficient information available to estimate the number of convictions for contempt of court which may occur as a result of SF 373.

Sources:

Judicial Department
Criminal Juvenile Justice Planning
Department of Corrections

(LSB 2014sv, LAM)

FILED MARCH 23, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 373

H-3787

1 Amend Senate File 373, as passed by the Senate, as
2 follows:

3 1. Page 1, by striking lines 23 through 30 and
4 inserting the following: "constitute contempt of
5 court. As part of the order discharging an offender
6 from probation, the court shall enter a civil judgment
7 against the offender for the balance, if any, of any
8 restitution owed by the offender to the victim of the
9 crime."

10 2. Page 1, by inserting after line 33, the
11 following:

12 "Sec. ____ . Section 910.5, subsection 1, unnumbered
13 paragraph 2, Code 1995, is amended to read as follows:

14 An offender committed to a penal or correctional
15 facility of the state, shall make restitution while
16 placed in that facility. Upon commitment to the
17 custody of the director of the Iowa department of
18 corrections, the director or the director's designee
19 shall prepare a restitution plan of payment or modify
20 any existing plan of payment. The new or modified
21 plan of payment shall reflect the offender's present
22 circumstances concerning the offender's income,
23 physical and mental health, education, employment, and
24 family circumstances. The director or the director's
25 designee may modify the plan of payment at any time to
26 reflect the offender's present circumstances. After
27 the expiration of the offender's sentence, the failure
28 of an offender to comply with the plan of restitution
29 ordered by the court shall constitute contempt of
30 court. Upon the expiration of the offender's
31 sentence, the department shall notify the court which
32 sentenced the offender and the court shall enter a
33 civil judgment against the offender for the balance,
34 if any, of any restitution owed by the offender to the
35 victim of the crime."

36 3. Page 2, by striking lines 17 through 23 and
37 inserting the following: "court. Upon the expiration
38 of the offender's sentence, the bureau chief shall
39 notify the court which sentenced the offender and the
40 court shall enter a civil judgment against the
41 offender for the balance, if any, of any restitution
42 owed by the offender to the victim of the crime."

43 4. Page 3, by striking lines 7 through 14 and
44 inserting the following: "contempt of court. Upon
45 the expiration of the offender's sentence, the office
46 or individual charged with supervision of the offender
47 shall notify the court which sentenced the offender
48 and the court shall enter a civil judgment against the
49 offender for the balance, if any, of any restitution
50 owed by the offender to the victim of the crime."

H-3787

H-3787

Page 2

- 1 5. By striking page 3, line 34, through page 4,
2 line 5, and inserting the following: "of court. Upon
3 the expiration of the offender's sentence, the parole
4 officer shall notify the court which sentenced the
5 offender and the court shall enter a civil judgment
6 against the offender for the balance, if any, of any
7 restitution owed by the offender to the victim of the
8 crime."
- 9 6. Title page, line 3, by inserting after the
10 word "ended" the following: "and providing for the
11 entry of a civil judgment for restitution owed to a
12 victim".

By COMMITTEE ON JUDICIARY
HURLEY of Fayette, Chairperson

H-3787 FILED APRIL 6, 1995

adopted
4-19-95
(p. 1712)

HOUSE AMENDMENT TO
SENATE FILE 373

S-3491

1 Amend Senate File 373, as passed by the Senate, as
2 follows:

3 1. Page 1, by striking lines 23 through 30 and
4 inserting the following: "constitute contempt of
5 court. As part of the order discharging an offender
6 from probation, the court shall enter a civil judgment
7 against the offender for the balance, if any, of any
8 restitution owed by the offender to the victim of the
9 crime."

10 2. Page 1, by inserting after line 30, the
11 following:

12 "Sec. ____ . Section 910.5, subsection 1, unnumbered
13 paragraph 2, Code 1995, is amended to read as follows:

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15 facility of the state, shall make restitution while
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29 ordered by the court shall constitute contempt of
30 court. Upon the expiration of the offender's
31 sentence, the department shall notify the court which
32 sentenced the offender and the court shall enter a
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35 victim of the crime."

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38 of the offender's sentence, the bureau chief shall
39 notify the court which sentenced the offender and the
40 court shall enter a civil judgment against the
41 offender for the balance, if any, of any restitution
42 owed by the offender to the victim of the crime."

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45 the expiration of the offender's sentence, the office
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47 shall notify the court which sentenced the offender
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49 offender for the balance, if any, of any restitution
50 owed by the offender to the victim of the crime."

S-3491

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S-3491

Page 2

1 5. By striking page 3, line 34, through page 4,
2 line 5, and inserting the following: "of court. Upon
3 the expiration of the offender's sentence, the parole
4 officer shall notify the court which sentenced the
5 offender and the court shall enter a civil judgment
6 against the offender for the balance, if any, of any
7 restitution owed by the offender to the victim of the
8 crime."

9 6. Title page, line 3, by inserting after the
10 word "ended" the following: "and providing for the
11 entry of a civil judgment for restitution owed to a
12 victim".

RECEIVED FROM THE HOUSE

S-3491 FILED APRIL 19, 1995

Senate concurred 4/24/95 (p. 1355)

Neuhauser
Giannetto
Uilsack
Maddox
Bartz

SSB-262
Judiciary

Succeeded By
SENATE FILE 373
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON GIANNETTO)

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

A BILL FOR

1 An Act to permit the court to find a person in contempt for
2 failure to pay restitution after the period of probation, work
3 release, parole, or the person's sentence has ended.

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4 offender is placed on probation, restitution shall be a
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12 and hearing thereon, the court may enter a civil judgment
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14 under the plan of restitution and such judgment shall be
15 governed by the law relating to judgments, judgment liens,
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17 collection of debts. However, if the period of probation is
18 extended it shall not be for more than the maximum period of
19 probation for the offense committed as provided in section
20 907.7. After discharge from probation or after the expiration
21 of the period of probation, the failure of an offender to
22 comply with the plan of restitution ordered by the court shall
23 constitute contempt of court and the court may hold the person
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25 noncompliance and a hearing, enter a civil judgment against
26 the offender for the outstanding balance of payments under the
27 plan of restitution. The civil judgment shall be governed by
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31 Sec. 2. Section 910.5, subsections 2, 3, and 4, Code 1995,
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34 institution under the control of the director of the Iowa
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1 work release. The chief of the bureau of community
2 correctional services of the Iowa department of corrections,
3 shall prepare a restitution plan of payment or may modify any
4 previously existing restitution plan of payment. The new or
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6 circumstances concerning the offender's income, physical and
7 mental health, education, employment, and family
8 circumstances. The bureau chief may modify the plan of
9 payment at any time to reflect the offender's present
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11 restitution plan of payment, including the community service
12 requirement, if any, shall constitute a violation of a
13 condition of work release and the work release privilege may
14 be revoked. After the expiration of the offender's sentence,
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17 court and the court may hold the person in contempt for
18 violation of the order or, upon notice of the noncompliance
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20 the outstanding balance of payments under the plan of
21 restitution. The civil judgment shall be governed by the law
22 relating to judgments, judgment liens, executions, and other
23 process available to creditors for the collection of debts.

24 3. If an offender is to be placed on work release from a
25 facility under control of a county sheriff or the judicial
26 district department of correctional services, restitution
27 shall be a condition of work release. The office or
28 individual charged with supervision of the offender shall
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33 mental health, education, employment and family circumstances.
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35 payment including the community service requirement, if any,

1 constitutes a violation of a condition of work release. The
2 office or individual charged with supervision of the offender
3 may modify the plan of restitution at any time to reflect the
4 offender's present circumstances. After the expiration of the
5 offender's sentence, the failure of an offender to comply with
6 the plan of restitution ordered by the court shall constitute
7 contempt of court and the court may hold the person in
8 contempt for violation of the order or, upon notice of the
9 noncompliance and a hearing, enter a civil judgment against
10 the offender for the outstanding balance of payments under the
11 plan of restitution. The civil judgment shall be governed by
12 the law relating to judgments, judgment liens, executions, and
13 other process available to creditors for the collection of
14 debts.

15 4. If an offender is to be placed on parole, restitution
16 shall be a condition of parole. The district department of
17 correctional services to which the offender will be assigned
18 shall prepare a restitution plan of payment or may modify any
19 previously existing restitution plan of payment. The new or
20 modified plan of payment shall reflect the offender's present
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23 circumstances. Failure of the offender to comply with the
24 restitution plan of payment including a community service
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26 condition of parole. The parole officer may modify the plan
27 of payment any time to reflect the offender's present
28 circumstances. A restitution plan of payment or modified plan
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30 approval of the director of the district department of
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32 sentence, the failure of an offender to comply with the plan
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35 violation of the order or, upon notice of the noncompliance

1 and a hearing, enter a civil judgment against the offender for
2 the outstanding balance of payments under the plan of
3 restitution. The civil judgment shall be governed by the law
4 relating to judgments, judgment liens, executions, and other
5 process available to creditors for the collection of debts.

6

EXPLANATION

7 This bill permits the court to continue to either hold a
8 person in contempt or enter a civil judgment against a person,
9 if the person has been convicted of a public offense and
10 ordered to make payments for restitution owed but the period
11 of probation or the person's sentence has expired. In State
12 v. Chase, 451 N.W.2d 499 (1990), the court held that the power
13 of the court to enforce a restitution order via contempt
14 proceedings against a defendant placed on probation was
15 coterminous with probation and once probation expires the
16 obligations between the criminal and the victim are left for
17 resolution by the civil courts. Language similar to the
18 language which makes payment of restitution a condition of
19 probation is also currently contained in the Code provisions
20 relating to the payment of restitution by persons on work
21 release or parole.

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SENATE FILE 373

AN ACT

TO PERMIT THE COURT TO FIND A PERSON IN CONTEMPT FOR FAILURE TO PAY RESTITUTION AFTER THE PERIOD OF PROBATION, WORK RELEASE, PAROLE, OR THE PERSON'S SENTENCE HAS ENDED AND PROVIDING FOR THE ENTRY OF A CIVIL JUDGMENT FOR RESTITUTION OWED TO A VICTIM.

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

Section 1. Section 910.4, unnumbered paragraph 1, Code 1995, is amended to read as follows:

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

Sec. 2. Section 910.5, subsection 1, unnumbered paragraph 2, Code 1995, is amended to read as follows:

An offender committed to a penal or correctional facility of the state, shall make restitution while placed in that facility. 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. 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. The director or the director's designee may modify the plan of payment at any time to reflect the offender's present circumstances. 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.

Sec. 3. Section 910.5, subsections 2, 3, and 4, Code 1995, are amended to read as follows:

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. 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. 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. The bureau chief may modify the plan of payment at any time to reflect the offender's present circumstances. 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. 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. 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. 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. Failure of the offender to comply with the restitution plan of

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4. If an offender is to be placed on parole, restitution shall be a condition of parole. 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. 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. 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. The parole officer may modify the plan of payment any time to reflect the offender's present circumstances. 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. 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.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 373, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 1, 1995

TERRY E. BRANSTAD
Governor