

Senate File 2374 - Reprinted

SENATE FILE 2374
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2244)

(As Amended and Passed by the Senate March 10, 2020)

A BILL FOR

1 An Act relating to restitution ordered in a criminal
2 proceeding, court debt, and civil claims for reimbursement
3 against inmates, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 331.659, subsection 1, paragraph a,
2 unnumbered paragraph 1, Code 2020, is amended to read as
3 follows:

4 A Except for a civil claim for reimbursement under section
5 356.7, a sheriff or a deputy sheriff shall not:

6 Sec. 2. Section 356.7, subsection 2, paragraph i, Code 2020,
7 is amended by striking the paragraph.

8 Sec. 3. Section 356.7, subsection 4, Code 2020, is amended
9 by striking the subsection and inserting in lieu thereof the
10 following:

11 4. A claim for reimbursement shall be filed in a separate
12 civil action rather than as a claim in the underlying criminal
13 case.

14 Sec. 4. Section 602.8102, Code 2020, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 105C. Apply payments made to a civil claim
17 for reimbursement judgment under section 356.7 to court debt,
18 as defined in section 602.8107, in the priority order set out
19 in section 602.8107, subsection 2, if the debtor has delinquent
20 court debt.

21 Sec. 5. Section 602.8105, subsection 1, Code 2020, is
22 amended by adding the following new paragraph:

23 NEW PARAGRAPH. k. For a civil claim for reimbursement under
24 section 356.7, zero dollars.

25 Sec. 6. Section 602.8107, subsection 1, paragraph a, Code
26 2020, is amended by striking the paragraph and inserting in
27 lieu thereof the following:

28 a. "*Court debt*" means all restitution, fees, and forfeited
29 bail.

30 Sec. 7. Section 602.8107, subsection 2, paragraphs b and c,
31 Code 2020, are amended to read as follows:

32 b. (1) If Except as provided in subparagraph (2), if a case
33 number is not identified, the clerk shall apply the payment to
34 the balance owed in the criminal case with the oldest judgment
35 against the person.

1 (2) The clerk shall apply payments to pecuniary damages
2 in other criminal cases when no case number is identified in
3 priority order from the oldest judgment to the most recent
4 judgment before applying payments to any other court debt.

5 c. Payments received under **this section** shall be applied in
6 the following priority order:

7 (1) Pecuniary damages as defined in section 910.1,
8 subsection 3.

9 (2) Fines or penalties and criminal penalty and law
10 enforcement initiative surcharges.

11 (3) Crime victim compensation program reimbursement.

12 (4) Court costs, ~~including correctional fees assessed~~
13 ~~pursuant to **sections 356.7** and **904.108**~~, court-appointed
14 attorney fees, or public defender expenses.

15 Sec. 8. Section 602.8107, subsection 4, paragraph a, Code
16 2020, is amended to read as follows:

17 a. **This subsection** does not apply to amounts collected for
18 ~~victim~~ restitution involving pecuniary damages, the victim
19 compensation fund, the criminal penalty surcharge, sex offender
20 civil penalty, drug abuse resistance education surcharge,
21 the law enforcement initiative surcharge, county enforcement
22 surcharge, or amounts collected as a result of procedures
23 initiated under **subsection 5** or under **section 8A.504**, ~~or fees~~
24 ~~charged pursuant to **section 356.7**~~.

25 Sec. 9. Section 909.3, subsection 1, Code 2020, is amended
26 to read as follows:

27 1. ~~All~~ Unless a plan of payment has been issued pursuant to
28 chapter 910, fines imposed by the court shall be paid on the
29 day the fine is imposed, and the person shall be instructed to
30 pay such fines with the office of the clerk of the district
31 court on the date of imposition.

32 Sec. 10. Section 910.1, subsection 4, Code 2020, is amended
33 by striking the subsection and inserting in lieu thereof the
34 following:

35 4. "*Restitution*" means pecuniary damages, category "A"

1 restitution, and category "B" restitution.

2 Sec. 11. Section 910.1, Code 2020, is amended by adding the
3 following new subsections:

4 NEW SUBSECTION. 01. "*Category "A" restitution*" means fines,
5 penalties, and surcharges.

6 NEW SUBSECTION. 001. "*Category "B" restitution*" means
7 the contribution of funds to a local anticrime organization
8 which provided assistance to law enforcement in an offender's
9 case, the payment of crime victim compensation program
10 reimbursements, payment of restitution to public agencies
11 pursuant to section 321J.2, subsection 13, paragraph "b",
12 court costs, court-appointed attorney fees ordered pursuant to
13 section 815.9, including the expense of a public defender, and
14 payment to the medical assistance program pursuant to chapter
15 249A for expenditures paid on behalf of the victim resulting
16 from the offender's criminal activities including investigative
17 costs incurred by the Medicaid fraud control unit pursuant to
18 section 249A.50.

19 NEW SUBSECTION. 1A. "*Financial affidavit*" means a signed
20 affidavit under penalty of perjury that provides financial
21 information about the offender to enable the sentencing court
22 or the department of corrections to make a determination
23 regarding the ability of the offender to pay category "B"
24 restitution. "*Financial affidavit*" includes the offender's
25 income, physical and mental health, age, education, employment,
26 inheritance, other debts, other amounts of restitution owed,
27 family circumstances, and any assets subject to execution,
28 including but not limited to cash, accounts at financial
29 institutions, stocks, bonds, and any other property which may
30 be applied to the satisfaction of judgments.

31 NEW SUBSECTION. 3A. "*Permanent restitution order*" means an
32 order entered when the court is able to order the full amount
33 of restitution, either at the time of sentencing or at a later
34 date to be determined by the court.

35 NEW SUBSECTION. 3B. "*Plan of payment*" or "*restitution plan*"

1 *of payment* means a plan for paying restitution wherein the
2 defendant is ordered to pay a certain amount of money each
3 month to repay outstanding restitution.

4 NEW SUBSECTION. 3C. *Plan of restitution* means a temporary
5 restitution order, permanent restitution order, restitution
6 plan of payment, any other court order relating to restitution,
7 or any combination of the foregoing.

8 NEW SUBSECTION. 4A. *Temporary restitution order* means
9 an order entered when the sentencing court is unable to order
10 the full amount of restitution, whether due to incomplete
11 statements of pecuniary damages, incomplete statements
12 involving other restitution, or for any other cause.

13 Sec. 12. Section 910.2, Code 2020, is amended by striking
14 the section and inserting in lieu thereof the following:

15 **910.2 Restitution or community service ordered by sentencing**
16 **court.**

17 1. *a.* In all criminal cases in which there is a plea of
18 guilty, verdict of guilty, or special verdict upon which a
19 judgment of conviction is rendered, the sentencing court shall
20 order that pecuniary damages be paid by each offender to the
21 victims of the offender's criminal activities, and that all
22 other restitution be paid to the clerk of court subject to the
23 following:

24 (1) Pecuniary damages and category "A" restitution shall be
25 ordered without regard to an offender's reasonable ability to
26 make payments.

27 (2) Category "B" restitution shall be ordered subject to
28 an offender's reasonable ability to make payments pursuant to
29 section 910.2A.

30 *b.* Pecuniary damages shall be paid to victims in full before
31 category "A" and category "B" restitution are paid.

32 *c.* In structuring a plan of restitution, the plan of payment
33 shall provide for payments in the following order of priority:

34 (1) Pecuniary damages to the victim.

35 (2) Category "A" restitution.

- 1 (3) Category "B" restitution in the following order:
- 2 (a) Crime victim compensation program reimbursement.
- 3 (b) Public agencies.
- 4 (c) Court costs.
- 5 (d) Court-appointed attorney fees ordered pursuant to
- 6 section 815.9, including the expense of a public defender.
- 7 (e) Contribution to a local anticrime organization.
- 8 (f) The medical assistance program.

9 2. *a.* When the offender is not reasonably able to pay
10 all or a part of category "B" restitution, the court may
11 require the offender in lieu of that portion of category "B"
12 restitution for which the offender is not reasonably able to
13 pay, to perform a needed public service for a governmental
14 agency or for a private nonprofit agency which provides a
15 service to the youth, elderly, or poor of the community.

16 *b.* When community service is ordered, the court shall set
17 a specific number of hours of service to be performed by the
18 offender. When calculating the amount of community service to
19 be performed in lieu of payment of court-appointed attorney
20 fees, the court shall determine the approximate equivalent
21 value of the expenses of the public defender. The judicial
22 district department of correctional services shall provide for
23 the assignment of the offender to a public agency or private
24 nonprofit agency to perform the required service.

25 Sec. 13. NEW SECTION. 910.2A Reasonable ability to pay —
26 category "B" restitution payments.

27 1. An offender is presumed to have the reasonable ability
28 to make restitution payments for the full amount of category
29 "B" restitution.

30 2. If an offender requests that the court determine the
31 amount of category "B" restitution payments the offender is
32 reasonably able to make toward paying the full amount of such
33 restitution, the court shall hold a hearing and make such a
34 determination, subject to the following provisions:

35 *a.* To obtain relief at such a hearing, the offender must

1 affirmatively prove by a preponderance of the evidence that the
2 offender is unable to reasonably make payments toward the full
3 amount of category "B" restitution.

4 *b.* The offender must furnish the prosecuting attorney and
5 sentencing court with a completed financial affidavit. Failure
6 to furnish a completed financial affidavit waives any claim
7 regarding the offender's reasonable ability to pay.

8 *c.* The prosecuting attorney, the attorney for the defendant,
9 and the court shall be permitted to question the offender
10 regarding the offender's reasonable ability to pay.

11 *d.* Based on the evidence offered at the hearing, including
12 but not limited to the financial affidavit, the court shall
13 determine the amount of category "B" restitution the offender
14 is reasonably able to make payments toward, and order the
15 offender to make payments toward that amount.

16 3. *a.* If an offender does not make a request as provided in
17 subsection 2 at the time of sentencing or within thirty days
18 after the court issues a permanent restitution order, the court
19 shall order the offender to pay the full amount of category "B"
20 restitution.

21 *b.* An offender's failure to request a determination
22 pursuant to this section waives all future claims regarding
23 the offender's reasonable ability to pay, except as provided
24 by section 910.7.

25 4. If a court finds an offender is not reasonably able
26 to make payments toward the full amount of category "B"
27 restitution, the offender's financial affidavit shall be
28 filed of record in all criminal cases for which the offender
29 owes restitution and the affidavit shall be accessible by a
30 prosecuting attorney or attorney for the offender without court
31 order or appearance.

32 5. A court that makes a determination under this section is
33 presumed to have properly exercised its discretion. A court is
34 not required to state its reasons for making a determination.

35 Sec. 14. Section 910.3, Code 2020, is amended to read as

1 follows:

2 **910.3 Determination of amount of restitution.**

3 1. The ~~county~~ prosecuting attorney shall prepare a
4 statement of pecuniary damages to victims of the defendant
5 and, if applicable, any award by the crime victim compensation
6 program and expenses incurred by public agencies pursuant to
7 section 321J.2, subsection 13, paragraph "b", and shall provide
8 the statement to the presentence investigator or submit the
9 statement to the court at the time of sentencing.

10 2. The clerk of court shall prepare a statement of
11 court-appointed attorney fees ordered pursuant to section
12 815.9, including the expense of a public defender, and court
13 costs ~~including correctional fees claimed by a sheriff or~~
14 ~~municipality pursuant to section 356.7~~, which shall be provided
15 to the presentence investigator or submitted to the court at
16 the time of sentencing.

17 3. If ~~these~~ the statements in subsection 1 or 2 are provided
18 to the presentence investigator, they shall become a part of
19 the presentence report.

20 4. If pecuniary damage amounts are not available or are
21 incomplete at the time of sentencing, the ~~county~~ prosecuting
22 attorney shall provide a statement of pecuniary damages
23 incurred up to that time to the clerk of court.

24 5. The statement of pecuniary damages shall ordinarily be
25 provided no later than thirty days after sentencing. However,
26 a prosecuting attorney may file a statement of pecuniary
27 damages within a reasonable time after the prosecuting attorney
28 is notified by a victim of any pecuniary damages incurred.

29 6. If a defendant believes no person suffered pecuniary
30 damages, the defendant shall so state.

31 7. If the defendant has any mental or physical impairment
32 which would limit or prohibit the performance of a public
33 service, the defendant shall so state. The court may order a
34 mental or physical examination, or both, of the defendant to
35 determine a proper course of action. ~~At the time of sentencing~~

1 ~~or at a later date to be determined by the court,~~

2 8. If the full amount of restitution is known at the time of
3 sentencing, the court shall set enter a permanent restitution
4 order setting out the amount of restitution including the
5 amount of public service to be performed as restitution and
6 the persons to whom restitution must be paid. A permanent
7 restitution order entered at the time of sentencing is part of
8 the final judgment of sentence as defined in section 814.6 and
9 may be considered in a properly perfected appeal.

10 9. If the full amount of restitution cannot be determined
11 at the time of sentencing, the court shall issue a temporary
12 restitution order determining a reasonable amount for
13 restitution identified up to that time. A temporary
14 restitution order is not part of the final judgment of sentence
15 as defined in section 814.6 and is not an appealable order,
16 except by writ of certiorari as provided by section 910.7.
17 At a later date as determined by the court, the court shall
18 issue a permanent, supplemental restitution order, setting the
19 full amount of restitution. The court shall enter further
20 supplemental orders, if necessary. These court orders shall be
21 known as the plan of restitution.

22 10. A permanent restitution order may be superseded by
23 subsequent orders if additional or different restitution is
24 ordered.

25 Sec. 15. Section 910.4, subsection 1, paragraph b,
26 subparagraphs (1) and (2), Code 2020, are amended to read as
27 follows:

28 (1) If the court extends the period of probation, the period
29 of probation shall not be for more than the maximum period of
30 probation for the offense committed except for an extension of
31 a period of probation as authorized in [section 907.7](#). After
32 discharge from probation or after the expiration of the period
33 of probation, as extended if applicable, the failure of an
34 offender to comply with the plan of restitution ~~ordered by the~~
35 ~~court~~ shall constitute contempt of court.

1 (2) If an offender's probation is revoked, the offender's
2 assigned probation officer shall forward to the director of
3 the Iowa department of corrections, all known information
4 concerning the offender's restitution plan, ~~restitution plan of~~
5 ~~payment, the restitution payment balance obligations, including~~
6 but not limited to the plan of restitution, and any other
7 pertinent information concerning or affecting restitution by
8 the offender.

9 Sec. 16. Section 910.4, subsections 2 and 3, Code 2020, are
10 amended to read as follows:

11 2. When the offender is committed to a county jail, or to
12 an alternate facility, the office or individual charged with
13 supervision of the offender shall prepare a restitution plan
14 of payment ~~taking into consideration the offender's income,~~
15 ~~physical and mental health, age, education, employment and~~
16 family circumstances and shall submit the plan to the court.

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

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

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

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

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

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

7 Sec. 17. Section 910.4, Code 2020, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 4. Notwithstanding any other provision
10 in this chapter, the plan of payment shall be based on all
11 information pertinent to the offender's reasonable ability to
12 pay. The first monthly payment under such a plan shall be made
13 within thirty days of the approval of the plan.

14 Sec. 18. Section 910.6, Code 2020, is amended to read as
15 follows:

16 **910.6 Payment plan — copy to victims.**

17 An office or individual preparing a restitution plan of
18 payment or modified ~~restitution~~ plan of payment, ~~when it is~~
19 ~~approved by the court if approval is required under section~~
20 ~~910.4, or when the plan is completed if court approval~~
21 ~~under section 910.4 is not required,~~ shall forward a copy to
22 the clerk of court in the county in which the offender was
23 sentenced. The clerk of court shall forward a copy of the
24 restitution plan of payment or modified plan of payment to the
25 victim or victims.

26 Sec. 19. Section 910.7, subsections 1 and 3, Code 2020, are
27 amended to read as follows:

28 1. At any time during the period of probation, parole, or
29 incarceration, the offender, the prosecuting attorney, or the
30 office or individual who prepared the offender's restitution
31 plan may petition the court on any matter related to the plan
32 of restitution or restitution plan of payment and the court
33 shall grant a hearing if on the face of the petition it appears
34 that a hearing is warranted.

35 3. If a petition related to a plan of restitution has been

1 filed, the offender, the ~~county~~ prosecuting attorney, the
2 department of corrections if the offender is currently confined
3 in a correctional institution, the office or individual who
4 prepared the offender's restitution plan, and the victim shall
5 receive notice prior to any hearing under this section.

6 Sec. 20. Section 910.7, Code 2020, is amended by adding the
7 following new subsections:

8 NEW SUBSECTION. 4. An appellate court shall not review
9 or modify an offender's plan of restitution, restitution
10 plan of payment, or any other issue related to an offender's
11 restitution under this subsection, unless the offender has
12 exhausted the offender's remedies under this section and
13 obtained a ruling from the district court prior to the issue
14 being raised in the appellate courts.

15 NEW SUBSECTION. 5. Appellate review of a district court
16 ruling under this section shall be by writ of certiorari.

17 Sec. 21. Section 910.9, subsection 3, Code 2020, is amended
18 to read as follows:

19 3. ~~Fines, penalties, and surcharges, crime victim~~
20 ~~compensation program reimbursement, public agency restitution,~~
21 ~~court costs including correctional fees claimed by a sheriff~~
22 ~~or municipality pursuant to section 356.7, and court-appointed~~
23 ~~attorney fees ordered pursuant to section 815.9, including the~~
24 ~~expenses for public defenders, Category "A" restitution and~~
25 ~~category "B" restitution shall not be withheld by the clerk of~~
26 ~~court until all pecuniary damages to victims have been paid in~~
27 ~~full. Payments to victims shall be made by the clerk of court~~
28 ~~at least quarterly. Payments by a clerk of court shall be made~~
29 ~~no later than the last business day of the quarter, but may be~~
30 ~~made more often at the discretion of the clerk of court. The~~
31 ~~clerk of court receiving final payment from an offender shall~~
32 ~~notify all victims that full restitution has been made. Each~~
33 ~~office or individual charged with supervising an offender who~~
34 ~~is required to perform community service as full or partial~~
35 ~~restitution shall keep records to assure compliance with the~~

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1 portions of the plan of restitution and restitution plan of
2 payment relating to community service and, when the offender
3 has complied fully with the community service requirement,
4 notify the sentencing court.

5 Sec. 22. EFFECTIVE DATE. This Act takes effect October 1,
6 2020.

7 Sec. 23. FINANCIAL AFFIDAVIT — SUPREME COURT RULES. The
8 supreme court shall adopt rules prescribing the form and
9 content of the financial affidavit.