SENATE FILE 2374
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2244)

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

_____ = New Language by the Senate

A BILL FOR

An Act relating to restitution ordered in a criminal proceeding, court debt, and civil claims for reimbursement against inmates, and including effective date provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Crime victim compensation program reimbursement.

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

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

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

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

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

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

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

restitution, and category "B" restitution.

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

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

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

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

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

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

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

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

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

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

910.2 Restitution or community service ordered by sentencing court.

1. *a.* In all criminal cases 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 pecuniary damages be paid by each offender to the victims of the offender's criminal activities, and that all other restitution be paid to the clerk of court subject to the following:

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

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

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

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

(1) Pecuniary damages to the victim.

(2) Category "A" restitution.

(3) Category "B" restitution in the following order:

(a) Crime victim compensation program reimbursement.

(b) Public agencies.

(c) Court costs.

(d) Court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender.

(e) Contribution to a local anticrime organization.

(f) The medical assistance program.

2. *a.* When the offender is not reasonably able to pay all or a part of category "B" restitution, the court may require the offender in lieu of that portion of category "B" restitution 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.

b. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. When calculating the amount of community service to be performed in lieu of payment of court-appointed attorney fees, the court shall determine the approximate equivalent value of the expenses of the public defender. 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. 13. NEW SECTION. **910.2A Reasonable ability to pay — category "B" restitution payments.**

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

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

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

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

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

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

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

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

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

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

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

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

follows:

910.3 Determination of amount of restitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

(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~~,~~ all known information concerning the offender's restitution ~~plan, restitution plan of payment, the restitution payment balance~~ obligations, including but not limited to the plan of restitution, and any other pertinent information concerning or affecting restitution by the offender.

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

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~~ and shall submit the plan to the court.

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

3. *a.* 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.

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

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

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

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

910.6 Payment plan — copy to victims.

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

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

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

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

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

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

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

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

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

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

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

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

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