

c. The employees must be considered regular employees of the unit of local government involved and must be entitled to participate in benefit programs of that unit of local government, including but not limited to ~~workmen's~~ workers' compensation, but shall not be entitled to qualify for unemployment compensation benefits on the basis of employment under the project.

Sec. 28. Section 86.20 and sections 87.24 through 87.27, Code 1981, are repealed.

Approved May 3, 1982

CHAPTER 1162
VICTIM RESTITUTION
S.F. 2280

AN ACT relating to restitution by public offenders.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Sections 2 through 10 of this Act shall be enacted as a new chapter of the Code.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Victim" means any person who has suffered pecuniary damages as a result of the offender's criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation.

2. "Pecuniary damages" means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death.

3. "Criminal activities" means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982 which is admitted or not contested by the offender, whether or not prosecuted. However, "criminal activities" does not include simple misdemeanors under chapter 321.

4. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution shall also include the payment of court costs, court-appointed attorney's fees or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when no victim has suffered pecuniary damages and the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees or the expense of a public defender.

Sec. 3. NEW SECTION. RESTITUTION 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 his or her criminal activities and, to the extent that the offender is reasonably able to do so, to the

county where conviction was rendered for court costs, court-appointed attorney's fees or the expense of a public defender when applicable. However, victims shall be paid in full before restitution payments are paid to the county for court costs, court-appointed attorney's fees or for the expense of a public defender. When no victim has suffered pecuniary damages and the offender is not reasonably able to pay all or a part of the court costs, court-appointed attorney's fees or the expense of a public defender, the court may require the offender to perform a needed public service for any 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. 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. 4. NEW SECTION. DETERMINATION OF AMOUNT OF RESTITUTION. The court shall require the county attorney to promptly prepare a statement of pecuniary damages to victims of the defendant and shall require the clerk of court to prepare a statement of court-appointed attorney's fees, the expense of a public defender and court costs which shall be promptly provided to the presentence investigator. These statements shall become a part of the presentence report. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. 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, the court shall set 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. This shall be known as the plan of restitution.

Sec. 5. NEW SECTION. CONDITION OF PROBATION—PAYMENT PLAN. 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 may extend the period of probation in such circumstances. 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.

If an offender's probation is revoked, his or her assigned probation officer shall forward to the director of the division of adult 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.

When the offender is committed by the court to be supervised by a judicial district department of correctional services, is committed to a county jail, or to an alternate facility, the judicial district department of correctional services shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and family circumstances. The judicial district department of correctional services shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court. 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. The court may approve or modify the plan of restitution and restitution plan of payment. When there is a significant change in the offender's income or circumstances, the judicial district department of correctional services which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court. When

there is a transfer of supervision from one agent, agency, or judicial district department of correctional services to another, the sending agent, agency or judicial district department shall forward to the receiving agent, agency, or judicial district department, 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 agent, agency, or judicial district department shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

Sec. 6. NEW SECTION. CONDITION OF WORK RELEASE OR PAROLE.

1. When an offender is committed to the custody of the director of the division of adult 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. However, if the offender is committed to the custody of the director after revocation of probation, this information shall be forwarded by the offender's probation officer.

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 division of adult 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.

2. If an offender is to be placed on work release from an institution under the control of the director of the division of adult corrections, restitution shall be a condition of work release. The chief of the bureau of community correctional services of the division of adult 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.

3. If an offender is to be placed on work release from a facility under control of a county sheriff, restitution shall be a condition of work release. The judicial district department of correctional services 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 the community service requirement, if any, shall constitute a violation of a condition of work release. The judicial district department of correctional services may modify the plan of restitution at any time to reflect the offender's present circumstances.

4. If an offender is to be placed on parole, restitution shall be a condition of parole. The parole office 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 chief of the bureau of community correctional services of the division of adult corrections.

5. The director of the division of adult corrections shall promulgate 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 division of adult corrections, for offenders who are to be released on work release from institutions under the control of the director of the division of adult corrections, for offenders who are placed on probation, and for offenders who are released on parole.

Sec. 7. **NEW SECTION. PAYMENT PLAN—COPY TO VICTIMS.** Each agent, agency, or judicial district department of correctional services preparing a restitution plan of payment or modified restitution plan of payment shall forward, when it is approved by the court if approval is required under section 5 of this Act, or when the plan is completed if court approval under section 5 of this Act is not required, 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 plan of payment or modified plan of payment to the victim or victims.

Sec. 8. **NEW SECTION. PETITION FOR HEARING.** At any time during the period of probation, parole or incarceration, the offender or the agent, agency or judicial district department of correctional services who prepared the offender's restitution plan, may petition the court and the court shall grant a hearing on any matter related to the plan of restitution or restitution plan of payment. The court at any time prior to the expiration of the offender's sentence, may modify the plan of restitution or the restitution plan of payment, or both, and may extend the period of time for the completion of restitution.

Sec. 9. **NEW SECTION. CIVIL LIABILITY.** This chapter and proceedings under this chapter shall not limit or impair the rights of victims to sue and recover damages from the offender in a civil action. However, any restitution payment by the offender to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event.

Sec. 10. **NEW SECTION. COLLECTION OF PAYMENTS—PAYMENT BY CLERK OF COURT.** An offender making restitution pursuant to a restitution plan of payment shall make the payment monthly to the clerk of court of the county from which the offender was sentenced, unless the restitution plan of payment provides otherwise.

The clerk of court shall maintain a record of all receipts and disbursements of restitution payments and shall disburse all moneys received to the victims designated in the plan of restitution. If there is more than one victim, disbursements to the victims shall be on the basis of the victim's percentage of the total owed by the offender to all victims.

Court costs, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all 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, and a copy of the notice shall be sent to the sentencing court. Each agent, agency, or judicial district department of correctional services 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. 11. Section 906.11, Code 1981, is amended to read as follows:

906.11 ASSIGNMENT TO PAROLE OFFICER. A person released on parole shall be assigned to a parole officer by the chief parole officer. Both the person and his or her parole officer shall be furnished in writing with the conditions of his or her parole including a copy of the plan of restitution and the restitution plan of payment, if any, and the regulations which the person will be required to observe, in writing. The parole officer shall explain these conditions and regulations to the person, and supervise, assist, and counsel the person during the term of his or her parole.

Sec. 12. Section 907.8, unnumbered paragraph 1, Code 1981, is amended to read as follows:

A person released on probation shall be assigned to a probation officer. Both the person and his or her probation officer shall be furnished with the conditions of the person's probation including a copy of the plan of restitution and the restitution plan of payment, if any, and the regulations which the person will be required to observe, in writing. The probation officer shall explain these conditions and regulations to the person and shall supervise, assist, and counsel the person during the term of his or her probation.

Sec. 13. Section 907.12, Code 1981, is repealed.

Sec. 14. This Act shall take effect July 1 following its enactment and shall apply to persons sentenced after the effective date of this Act.

Approved May 7, 1982

CHAPTER 1163

APPLIANCES EQUIPPED WITH PILOT LIGHT

S.F. 2240

AN ACT repealing the statutes relating to certain appliances equipped with a pilot light.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Sections 478A.1, 478A.2, 478A.3, 478A.4, 478A.5, and 478A.6, Code 1981, are repealed.

Approved May 6, 1982