

FILED MAR 2 2005

SENATE FILE 246
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1073)

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

A BILL FOR

1 An Act prohibiting a donation or contribution to an agency,
2 organization, or political subdivision of the state in a
3 criminal proceeding.

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

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SC 246

1 Section 1. NEW SECTION. 901.11 DONATIONS -- PROHIBITED.

2 A monetary or property donation to any agency,
3 organization, or political subdivision of the state is
4 prohibited as a part of any dismissal, sentence, or other
5 penalty.

6 Sec. 2. Section 907.13, subsection 2, Code 2005, is
7 amended to read as follows:

8 2. The defendant's plan of community service, the comments
9 of the defendant's probation officer, and the comments of the
10 representative of the judicial district department of
11 correctional services responsible for the unpaid community
12 service program, shall be submitted promptly to the court.
13 The court shall promptly enter an order approving the plan or
14 modifying it. Compliance with the plan of community service
15 as approved or modified by the court shall be a condition of
16 the defendant's probation. The court thereafter may modify
17 the plan at any time upon the defendant's request, upon the
18 request of the judicial district department of correctional
19 services, or upon the court's own motion. ~~As an option for~~
20 ~~modification of a plan, the court may allow a defendant to~~
21 ~~complete some part or all of the defendant's community service~~
22 ~~obligation through the donation of property to a charitable~~
23 ~~organization other than a governmental subdivision. -- A~~
24 ~~donation of property to a charitable organization offered in~~
25 ~~satisfaction of some part or all of a community service~~
26 ~~obligation under this subsection is not a deductible~~
27 ~~contribution for the purposes of federal or state income~~
28 ~~taxes.~~

29 Sec. 3. Section 910.1, subsection 4, Code 2005, is amended
30 to read as follows:

31 4. "Restitution" means payment of pecuniary damages to a
32 victim in an amount and in the manner provided by the
33 offender's plan of restitution. "Restitution" also includes
34 fines, penalties, and surcharges, ~~the contribution of funds to~~
35 ~~a local antirime organization which provided assistance to~~

1 ~~law-enforcement-in-an-offender's-case~~, the payment of crime
2 victim compensation program reimbursements, payment of
3 restitution to public agencies pursuant to section 321J.2,
4 subsection 9, paragraph "b", court costs including
5 correctional fees approved pursuant to section 356.7, court-
6 appointed attorney fees ordered pursuant to section 815.9,
7 including the expense of a public defender, and the
8 performance of a public service by an offender in an amount
9 set by the court when the offender cannot reasonably pay all
10 or part of the court costs including correctional fees
11 approved pursuant to section 356.7, or court-appointed
12 attorney fees ordered pursuant to section 815.9, including the
13 expense of a public defender.

14 Sec. 4. Section 910.2, Code 2005, is amended to read as
15 follows:

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

18 In all criminal cases in which there is a plea of guilty,
19 verdict of guilty, or special verdict upon which a judgment of
20 conviction is rendered, the sentencing court shall order that
21 restitution be made by each offender to the victims of the
22 offender's criminal activities, to the clerk of court for
23 fines, penalties, surcharges, and, to the extent that the
24 offender is reasonably able to pay, for crime victim
25 assistance reimbursement, restitution to public agencies
26 pursuant to section 321J.2, subsection 9, paragraph "b", court
27 costs including correctional fees approved pursuant to section
28 356.7, or court-appointed attorney fees ordered pursuant to
29 section 815.9, including the expense of a public defender,
30 when applicable, ~~or contribution to a local anticrime~~
31 **organization**. However, victims shall be paid in full before
32 fines, penalties, and surcharges, crime victim compensation
33 program reimbursement, public agencies, court costs including
34 correctional fees approved pursuant to section 356.7, and
35 court-appointed attorney fees ordered pursuant to section

1 815.9, including the expenses of a public defender, ~~or~~
2 ~~contributions-to-a-local-antierime-organization~~ are paid. In
3 structuring a plan of restitution, the court shall provide for
4 payments in the following order of priority: victim, fines,
5 penalties, and surcharges, crime victim compensation program
6 reimbursement, public agencies, court costs including
7 correctional fees approved pursuant to section 356.7, and
8 court-appointed attorney fees ordered pursuant to section
9 815.9, including the expense of a public defender, ~~and~~
10 ~~contribution-to-a-local-antierime-organization~~.

11 When the offender is not reasonably able to pay all or a
12 part of the crime victim compensation program reimbursement,
13 public agency restitution, court costs including correctional
14 fees approved pursuant to section 356.7, or court-appointed
15 attorney fees ordered pursuant to section 815.9, including the
16 expense of a public defender, ~~or-contribution-to-a-local~~
17 ~~antierime-organization~~, the court may require the offender in
18 lieu of that portion of the crime victim compensation program
19 reimbursement, public agency restitution, court costs
20 including correctional fees approved pursuant to section
21 356.7, or court-appointed attorney fees ordered pursuant to
22 section 815.9, including the expense of a public defender, ~~or~~
23 ~~contribution-to-a-local-antierime-organization~~ for which the
24 offender is not reasonably able to pay, to perform a needed
25 public service for a governmental agency or for a private
26 nonprofit agency which provides a service to the youth,
27 elderly, or poor of the community. When community service is
28 ordered, the court shall set a specific number of hours of
29 service to be performed by the offender which, for payment of
30 court-appointed attorney fees ordered pursuant to section
31 815.9, including the expenses of a public defender, shall be
32 approximately equivalent in value to those costs. The
33 judicial district department of correctional services shall
34 provide for the assignment of the offender to a public agency
35 or private nonprofit agency to perform the required service.

EXPLANATION

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This bill prohibits any donation to an agency, organization, or political subdivision of the state as part of any dismissal, sentence, or other criminal penalty. The bill eliminates a provision allowing a criminal offender to make a donation in lieu of performing community service. The bill eliminates provisions allowing a contribution by a criminal offender to a local anticrime organization as part of the offender's restitution plan.

SENATE FILE 246

H-1247

1 Amend Senate File 246 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 907.13, subsection 2, Code
5 2005, is amended to read as follows:

6 2. The defendant's plan of community service, the
7 comments of the defendant's probation officer, and the
8 comments of the representative of the judicial
9 district department of correctional services
10 responsible for the unpaid community service program,
11 shall be submitted promptly to the court. The court
12 shall promptly enter an order approving the plan or
13 modifying it. Compliance with the plan of community
14 service as approved or modified by the court shall be
15 a condition of the defendant's probation. The court
16 thereafter may modify the plan at any time upon the
17 defendant's request, upon the request of the judicial
18 district department of correctional services, or upon
19 the court's own motion. As an option for modification
20 of a plan, the court may allow a defendant to complete
21 some part or all of the defendant's community service
22 obligation through the donation of property to a
23 ~~charitable organization other than a governmental~~
24 ~~subdivision~~ statewide nonprofit legal aid
25 organization. A donation of property to a ~~charitable~~
26 ~~organization~~ statewide nonprofit legal aid
27 organization offered in satisfaction of some part or
28 all of a community service obligation under this
29 subsection is not a deductible contribution for the
30 purposes of federal or state income taxes.

31 Sec. 2. Section 910.1, subsection 4, Code 2005, is
32 amended to read as follows:

33 4. "Restitution" means payment of pecuniary
34 damages to a victim in an amount and in the manner
35 provided by the offender's plan of restitution.
36 "Restitution" also includes fines, penalties, and
37 surcharges, the contribution of funds to a ~~local~~
38 ~~antierime organization which provided assistance to~~
39 ~~law enforcement in an offender's case,~~ a statewide
40 nonprofit legal aid organization, the payment of crime
41 victim compensation program reimbursements, payment of
42 restitution to public agencies pursuant to section
43 321J.2, subsection 9, paragraph "b", court costs
44 including correctional fees approved pursuant to
45 section 356.7, court-appointed attorney fees ordered
46 pursuant to section 815.9, including the expense of a
47 public defender, and the performance of a public
48 service by an offender in an amount set by the court
49 when the offender cannot reasonably pay all or part of
50 the court costs including correctional fees approved

H-1247

1 pursuant to section 356.7, or court-appointed attorney
2 fees ordered pursuant to section 815.9, including the
3 expense of a public defender.

4 Sec. 3. Section 910.2, Code 2005, is amended to
5 read as follows:

6 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE
7 ORDERED BY SENTENCING COURT.

8 In all criminal cases in which there is a plea of
9 guilty, verdict of guilty, or special verdict upon
10 which a judgment of conviction is rendered, the
11 sentencing court shall order that restitution be made
12 by each offender to the victims of the offender's
13 criminal activities, to the clerk of court for fines,
14 penalties, surcharges, and, to the extent that the
15 offender is reasonably able to pay, for crime victim
16 assistance reimbursement, restitution to public
17 agencies pursuant to section 321J.2, subsection 9,
18 paragraph "b", court costs including correctional fees
19 approved pursuant to section 356.7, court-appointed
20 attorney fees ordered pursuant to section 815.9,
21 including the expense of a public defender, when
22 applicable, or contribution to a ~~local antierime~~
23 ~~organization~~ statewide nonprofit legal aid
24 organization. However, victims shall be paid in full
25 before fines, penalties, and surcharges, crime victim
26 compensation program reimbursement, public agencies,
27 court costs including correctional fees approved
28 pursuant to section 356.7, court-appointed attorney
29 fees ordered pursuant to section 815.9, including the
30 expenses of a public defender, or contributions to a
31 ~~local antierime organization~~ statewide nonprofit legal
32 aid organization are paid. In structuring a plan of
33 restitution, the court shall provide for payments in
34 the following order of priority: victim, fines,
35 penalties, and surcharges, crime victim compensation
36 program reimbursement, public agencies, court costs
37 including correctional fees approved pursuant to
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39 pursuant to section 815.9, including the expense of a
40 public defender, and contribution to a ~~local antierime~~
41 ~~organization~~ statewide nonprofit legal aid
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43 When the offender is not reasonably able to pay all
44 or a part of the crime victim compensation program
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1 organization, the court may require the offender in
2 lieu of that portion of the crime victim compensation
3 program reimbursement, public agency restitution,
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9 aid organization for which the offender is not
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14 community service is ordered, the court shall set a
15 specific number of hours of service to be performed by
16 the offender which, for payment of court-appointed
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18 including the expenses of a public defender, shall be
19 approximately equivalent in value to those costs. The
20 judicial district department of correctional services
21 shall provide for the assignment of the offender to a
22 public agency or private nonprofit agency to perform
23 the required service."

24 2. Title page, by striking lines 1 through 3, and
25 inserting the following: "An Act relating to a
26 contribution to a statewide nonprofit legal aid
27 organization in a minimal proceeding."

By BOAL of Polk

EIGHTY FIRST GENERAL ASSEMBLY
2005 REGULAR SESSION
DAILY
SENATE CLIP SHEET

APRIL 5, 2005

HOUSE AMENDMENT TO
SENATE FILE 246

S-3075

1 Amend Senate File 246 as follows:

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3 clause and inserting the following:

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S-3075

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RECEIVED FROM THE HOUSE

Dvorsky CO-CHAIR
McKibben CO-CHAIR
Kreiman
Ward

Succeeded By
SF/HF 246

SSB# 1073
Judiciary

SENATE/HOUSE FILE _____
BY (PROPOSED JUDICIAL
BRANCH BILL)

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

A BILL FOR

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MEMORANDUM

TO: MEMBERS OF THE GENERAL ASSEMBLY

FROM: IOWA JUDICIAL BRANCH

DATE: JANUARY 11, 2005

RE: TLSB 1239DP

This bill would repeal provisions of the Code that allow defendants to make charitable contributions in lieu of community service, as well as expressly prohibiting charitable contributions and donations as a sentencing option or condition of probation. While the current statutory provisions are well-intentioned, even their legitimate application suggests favoritism and, therefore, creates an appearance of impropriety that can undermine public confidence in the impartiality of the judiciary and the integrity of the state justice system. Their application is at best widely misunderstood, and at worst subject to systematic abuse by some local officials. The situation warrants repeal of these provisions along with an amendment that expressly prohibits donations, including money, within the criminal justice system in the future.