

Holveck
Radfern
Maddox

SSB-1169
Judiciary
Succeeded By
SENATE/HOUSE FILE SE/HE 417

BY (PROPOSED JUDICIAL BRANCH BILL)

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

A BILL FOR

1 An Act relating to the qualifications and duties of the clerk of
2 court.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section. 1. Section 321.484, unnumbered paragraph 2, Code
2 2001, is amended to read as follows:

3 The owner of a vehicle shall not be held responsible for a
4 violation of a provision regulating the stopping, standing, or
5 parking of a vehicle, whether the provision is contained in
6 this chapter, or chapter 321L, or an ordinance or other
7 regulation or rule, if the owner establishes that at the time
8 of the violation the vehicle was in the custody of an
9 identified person other than the owner pursuant to a lease as
10 defined in chapter 321F or pursuant to a rental agreement as
11 defined in section 516D.3. ~~The furnishing to the clerk-of-the~~
12 ~~district-court~~ the county attorney of the county where the
13 charge is pending of a copy of the lease prescribed by section
14 321F.6 or rental agreement that was in effect for the vehicle
15 at the time of the alleged violation shall be prima facie
16 evidence that the vehicle was in the custody of an identified
17 person other than the owner within the meaning of this
18 paragraph, and the charge against ~~the~~ owner shall may be
19 dismissed. ~~The clerk-of-the-district-court~~ county attorney
20 then shall cause a uniform citation and complaint to be issued
21 against the lessee or renter of the vehicle, and the citation
22 shall be served upon the defendant by ordinary mail directed
23 to the defendant at the address shown in the lease or rental
24 agreement.

25 Sec. 2. Section 602.1215, subsection 1, Code 2001, is
26 amended to read as follows:

27 1. The district judges of each judicial election district
28 shall by majority vote appoint persons to serve as clerks of
29 the district court, one for each county within the judicial
30 election district. ~~A person does not qualify for appointment~~
31 ~~to the office of clerk of the district court unless the person~~
32 ~~is at the time of application a resident of the state.--Within~~
33 ~~three months of appointment the clerk of the district court~~
34 ~~must establish residence and physically reside in the county.~~
35 A clerk of the district court may be removed from office for

1 cause by a majority vote of the district judges of the
2 judicial election district. Before removal, the clerk of the
3 district court shall be notified of the cause for removal.

4 Sec. 3. Section 631.6, subsection 1, paragraph c, Code
5 2001, is amended to read as follows:

6 c. Postage Fees charged for the mailing of original notice
7 shall be ~~the-actual-costs-of-the-postage~~ ten dollars.

8 Sec. 4. Section 902.4, Code 2001, is amended to read as
9 follows:

10 902.4 RECONSIDERATION OF FELON'S SENTENCE.

11 For a period of ninety days from the date when a person
12 convicted of a felony, other than a class "A" felony or a
13 felony for which a minimum sentence of confinement is imposed,
14 begins to serve a sentence of confinement, the court, on its
15 own motion or on the recommendation of the director of the
16 Iowa department of corrections, may order the person to be
17 returned to the court, at which time the court may review its
18 previous action and reaffirm it or substitute for it any
19 sentence permitted by law. Copies of the order to return the
20 person to the court shall be provided to the attorney for the
21 state, the defendant's attorney, and the defendant. Upon a
22 request of the attorney for the state, the defendant's
23 attorney, or the defendant if the defendant has no attorney,
24 the court may, but is not required to, conduct a hearing on
25 the issue of reconsideration of sentence. The court shall not
26 disclose its decision to reconsider or not to reconsider the
27 sentence of confinement until the date reconsideration is
28 ordered or the date the ninety-day period expires, whichever
29 occurs first. The district court retains jurisdiction for the
30 limited purposes of conducting such review and entering an
31 appropriate order notwithstanding the timely filing of a
32 notice of appeal. The court's final order in the proceeding
33 shall be delivered to the defendant ~~personally-or-by-certified~~
34 mail by regular mail. The court's decision to take the action
35 or not to take the action is not subject to appeal. However,

1 for the purposes of appeal, a judgment of conviction of a
2 felony is a final judgment when pronounced.

3 Sec. 5. Section 903.2, Code 2001, is amended to read as
4 follows:

5 903.2 RECONSIDERATION OF MISDEMEANANT'S SENTENCE.

6 For a period of thirty days from the date when a person
7 convicted of a misdemeanor begins to serve a sentence of
8 confinement, the court may order the person to be returned to
9 the court, at which time the court may review its previous
10 action and reaffirm it or substitute for it any sentence
11 permitted by law. The sentencing court retains jurisdiction
12 for the limited purposes of conducting such review and
13 entering an appropriate order notwithstanding the timely
14 filing of a notice of appeal or an application for
15 discretionary review. The court's final order in the
16 proceeding shall be delivered to the defendant ~~personally-or~~
17 ~~by-certified-mail~~ by regular mail. Such action is
18 discretionary with the court and its decision to take the
19 action or not to take the action is not subject to appeal.
20 The other provisions of this section notwithstanding, for the
21 purposes of appeal a judgment of conviction is a final
22 judgment when pronounced.

23 Sec. 6. Section 907.8, unnumbered paragraph 4, Code 2001,
24 is amended to read as follows:

25 In each case wherein the court shall order said person
26 committed to the custody, care, and supervision of the
27 judicial district department of correctional services, the
28 clerk of the district court shall at once furnish the director
29 of the judicial district department of correctional services
30 with certified copies of the indictment or information, the
31 minutes of testimony attached thereto, and the judgment entry
32 if judgment is not deferred, ~~and-the-original-mittimus~~. The
33 county attorney shall at once advise the director, by letter,
34 that the defendant has been placed under the supervision of
35 the judicial district department of correctional services and

1 give the director a detailed statement of the facts and
 2 circumstances surrounding the crime committed and the record
 3 and history of the defendant as may be known to the county
 4 attorney. If the defendant is confined in the county jail at
 5 the time of sentence, the court may order the defendant held
 6 until arrangements are made by the judicial district
 7 department of correctional services for the defendant's
 8 employment and the defendant has signed the necessary
 9 probation papers. If the defendant is not confined in the
 10 county jail at the time of sentence, the court may order the
 11 defendant to remain in the county wherein the defendant has
 12 been convicted and sentenced and report to the sheriff as to
 13 the defendant's whereabouts.

14 EXPLANATION

15 This bill relates to the practices and duties of a clerk of
 16 court.

17 Code section 321.484, concerning traffic citations issued
 18 to a motor vehicle under lease, is amended to provide that the
 19 clerk of court shall not be responsible for dismissing a
 20 traffic citation against the owner of a motor vehicle upon
 21 receipt of a lease which states that the motor vehicle was in
 22 the custody of another person under a lease agreement. The
 23 amended Code section further provides that the county attorney
 24 shall be responsible for deciding whether to dismiss a traffic
 25 citation against the owner of a motor vehicle which is under a
 26 lease agreement and in the possession of another person. If
 27 the traffic citation is dismissed, the amended Code section
 28 further provides the county attorney shall issue a new traffic
 29 citation against the person in custody of the vehicle at the
 30 time the first citation was issued.

31 Code section 602.1215, concerning clerks of the district
 32 court, is amended to delete a requirement that the clerk be a
 33 resident of this state at the time of application for the job
 34 as clerk of the district court. The amended Code section also
 35 deletes the requirement the clerk of court establish residency

1 in the county within three months of appointment.

2 Code section 631.6, concerning postage fees assessed as
3 court costs, is amended to provide that the postage fee for
4 mailing the original notice in a small claims case shall be
5 \$10. Under current law, the postage fee for mailing the
6 original notice is the actual cost of postage.

7 Code section 907.8, concerning the duties of the clerk of
8 court when a person is placed on probation, is amended to
9 provide that if a person is assigned to a judicial district
10 department of correction services facility, the clerk of court
11 is not required to furnish the director of the facility with a
12 copy of the original mittimus. Under current law, the clerk
13 is required to furnish the original mittimus to the director.
14 A mittimus generally means a court order placing a person in
15 confinement and ordering the place of confinement to accept
16 the person.

17 Code sections 902.4 and 903.2, concerning the duties of the
18 clerk of court in a reconsideration of a sentence action, are
19 amended to provide that the clerk shall notify a felon or a
20 misdemeanor by regular mail of the final court order
21 determining whether the sentence shall be reconsidered. Under
22 current law, the clerk of court must notify the defendant of
23 the final court order by either personal service on the
24 defendant or by certified mail.

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TO: MEMBERS OF THE GENERAL ASSEMBLY

FROM: IOWA JUDICIAL BRANCH

DATE: FEBRUARY 16, 2001

RE: TLSB 1234DP

The purpose of this bill is to clarify certain duties, eliminate outdated procedures and practices, and increase efficiency in offices of the clerk of the district court.

Section 1 amends Iowa Code section 321.484 to relieve clerks of court of the responsibility for determining whether a traffic charge should be filed against a lessee of a vehicle rather than the rental company. Under the current statute, traffic charges filed against the owner of a vehicle may be dismissed by providing the clerk of the district court with a copy of the lease agreement. The clerk is then charged with issuing a uniform citation against the lessee or renter of the vehicle. The act of determining whether or not to charge someone for a crime is a prosecutorial function. It should rest with the prosecutor, not a court employee.

Section 2 eliminates certain residency requirements for clerks of the district court. Current law makes it very difficult to recruit a large pool of qualified applicants for the position of clerk of the district court. Additionally, current law makes it very difficult for an employee in one clerk's office to seek promotion to the job of clerk in another county unless they are willing to relocate, even if they are willing to commute to the other county at their own expense.

Section 3 would allow clerks of the district court to charge a flat \$10 fee in lieu of the actual cost of postage for mailing original notices in small claims proceedings. The average cost of sending a small claims petition by certified mail is approximately \$6, not including personnel costs. Establishing a fixed fee streamlines the process and enables plaintiffs to know the total charge for service by mail at the time of filing.

Sections 4 and 5 would allow the clerk to notify a felon or a misdemeanor by regular mail, rather than by personal service or certified mail, of a court's final order in a reconsideration of sentence action. Because the court's order of reconsideration of sentence is not subject to appeal, notification of the defendant by personal service or certified mail is an unnecessary expense.

Section 6 eliminates the requirement that the clerk furnish the director of the judicial district department of correctional services a certified copy of the "original mittimus" when an individual is placed on probation. Pursuant to Rule of Criminal Procedure 24(1), mittimus is no longer required.

FILED MAR 12 '01

SENATE FILE 417
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1169)

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

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SF 417

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8 of the violation the vehicle was in the custody of an
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12 district court the county attorney of the county where the
13 charge is pending of a copy of the lease prescribed by section
14 321F.6 or rental agreement that was in effect for the vehicle
15 at the time of the alleged violation shall be prima facie
16 evidence that the vehicle was in the custody of an identified
17 person other than the owner within the meaning of this
18 paragraph, and the charge against the owner ~~shall~~ may be
19 dismissed. ~~The clerk of the district court~~ county attorney
20 ~~then shall cause a uniform citation and complaint to be issued~~
21 may direct law enforcement personnel to issue a uniform
22 citation and complaint against the lessee or renter of the
23 vehicle, and the citation shall be served upon the defendant
24 by ordinary mail directed to the defendant at the address
25 shown in the lease or rental agreement.

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25 and history of the defendant as may be known to the county
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29 department of correctional services for the defendant's
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32 confinement and ordering the place of confinement to accept
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35 clerk of court in a reconsideration of a sentence action, are

1 amended to provide that the clerk shall notify a felon or a
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SENATE FILE 417

S-3307

1 Amend Senate File 417 as follows:
2 1. Page 1, by inserting after line 25 the
3 following:
4 "Sec. ____ . Section 602.1215, subsection 1, Code
5 2001, is amended to read as follows:
6 1. The district judges of each judicial election
7 district shall by majority vote appoint persons to
8 serve as clerks of the district court, one for each
9 county within the judicial election district. A
10 ~~person does not qualify for appointment to the office~~
11 ~~of clerk of the district court unless the person is at~~
12 ~~the time of application a resident of the state.~~
13 Within three months of appointment the clerk of the
14 district court must establish residence and physically
15 reside in the county state. A clerk of the district
16 court may be removed from office for cause by a
17 majority vote of the district judges of the judicial
18 election district. Before removal, the clerk of the
19 district court shall be notified of the cause for
20 removal."

By JACK HOLVECK

S-3307 FILED APRIL 9, 2001

**SENATE FILE 417
FISCAL NOTE**

A fiscal note for **Senate File 417** 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 417 relates to the qualifications and duties of the clerk of court by amending the Code of Iowa. The Bill makes the following changes:

1. Section 1 of the Bill relates to Section 321.484, Code of Iowa. The section would relieve clerks of court from the responsibility of determining whether a traffic charge should be filed against a lessee of a vehicle rather than the rental company.
2. Section 2 of the Bill relates to Section 631.6, Code of Iowa. The section would allow clerks of district court to charge a flat fee of \$10 in lieu of the actual cost of postage for mailing original notices in small claims proceedings.
3. Section 3 of the Bill relates to Section 907.8, Code of Iowa. The section would eliminate the requirements that the clerk furnish the director of the judicial district department of correctional services a certified copy of the original mittimus when an individual is placed on probation.
4. Sections 4 and 5 of the Bill relate to Sections 902.4 and 903.2, Code of Iowa. The sections would allow clerks to notify a felon or a misdemeanor by regular mail, rather than by personal service or certified mail, of a court's final order in a reconsideration of sentence action.

ASSUMPTIONS

1. The average actual cost of certified mail for service is \$7.
2. The proposed legislation would increase the charge to mail an original notice in a small claims case to a flat fee of \$10.
3. In calendar year 2000, there were 85,000 small claims cases.
4. Under the proposed legislation, the State would realize an additional \$3 per petition.
5. Approximately 30.0% to 50.0% or between 25,500 and 42,500 petitions are served by certified mail as opposed to personal mail service which would increase revenues between \$77,000 and \$128,000.

FISCAL IMPACT

Senate File 417 would increase court revenues deposited to the General Fund by an amount between \$77,000 and \$128,000 annually.

SOURCE

Judicial Branch

(LSB 1234SV, JDD)

FILED MARCH 14, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR