

CHAPTER 1177
CHILD SEXUAL ABUSE CASES
H.F. 2422

AN ACT relating to the department of human services' authority to investigate certain child sexual abuse cases and control access to certain information in child abuse cases.

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

Section 1. Section 232.68, subsection 2, paragraphs b and d, Code Supplement 1985, are amended to read as follows:

b. The commission of any a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

d. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in prostitution acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

Sec. 2. Section 235A.15, subsection 2, paragraph f, Code Supplement 1985, is amended to read as follows:

f. To a person conducting bona fide research on child abuse, if the details identifying any subject of a child abuse report are deleted but without information identifying individuals named in a child abuse report, unless having the information open to review is essential to the research or evaluation and the authorized registry official gives prior written approval and the child's guardian or guardian ad litem gives permission to release the information.

Approved May 2, 1986

CHAPTER 1178
VICTIMS AND WITNESSES OF CRIMES
H.F. 2458

AN ACT relating to victims and witnesses of criminal offenses, and providing penalties.

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

Section 1. It is the purpose of this Act to assure the fair and compassionate treatment of victims and witnesses of crimes and to increase the effectiveness of the criminal justice system by affording to them certain basic rights and consideration, and by reaffirming the criminal justice system's fundamental responsibility to victims and witnesses to ensure their equitable and fair treatment, protect them from intimidation and further injury, assist them in overcoming emotional and economic hardships resulting from criminal acts, and to keep them informed of the status of their case.

Sec. 2. Section 901.3, subsection 5, Code 1985, is amended to read as follows:

5. The harm to the victim, the victim's immediate family, and the community. Additionally, the presentence investigator shall provide a victim impact statement form to each victim, if one has not already been provided, and shall file the completed statement or statements with the presentence investigation report.

Sec. 3. Section 901.5, unnumbered paragraph 1, Code 1985, is amended to read as follows:

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

Sec. 4. NEW SECTION. 910A.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Victim" means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state. The term also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

2. "Violent crime" means a forcible felony, as defined in section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

3. "Registered" means having provided the appropriate office, agency, or department with the victim's written request for notification and current mailing address and telephone number.

4. "Notification" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency from also providing appropriate information to a registered victim by telephone.

Sec. 5. NEW SECTION. 910A.3 CITIZEN INTERVENTION.

Any person, who in good faith and without compensation, renders reasonable aid or assistance to another against whom a crime is being committed or, if rendered at the scene of the crime, to another against whom a crime has been committed is not liable for any civil damages for acts or omissions resulting from the aid or assistance and is eligible to file a claim for reimbursement as a victim pursuant to section 912.1.

Sec. 6. NEW SECTION. 910A.4 VICTIM IMPACT STATEMENT.

A victim may file a signed victim impact statement with the presentence investigator, and a filed impact statement shall be included in the presentence investigation report.

The court shall consider a filed victim impact statement in determining the appropriate sentence and in entering any order of restitution to the victim pursuant to chapter 910.

The victim impact statement shall:

1. Identify the victim of the offense.

2. Itemize any economic loss suffered by the victim as a result of the offense. For purposes of this paragraph, a pecuniary damages statement prepared by a county attorney pursuant to section 910.3, may serve as the itemization of economic loss.

3. Identify any physical injury suffered by the victim as a result of the offense with detail as to its seriousness and permanence.

4. Describe any change in the victim's personal welfare or familial relationships as a result of the offense.

5. Describe any request for psychological services initiated by the victim or the victim's family as a result of the offense.

6. Contain any other information related to the impact of the offense upon the victim.

Sec. 7. NEW SECTION. 910A.5 NOTIFICATION BY COUNTY ATTORNEY.

The county attorney shall notify a victim registered with the county attorney's office of the following:

1. The cancellation or postponement of a court proceeding that was expected to require the victim's attendance.

2. The possibility of assistance through the crime victim reparations program, pursuant to chapter 912, and the procedures for applying for that assistance.

3. The right, pursuant to chapter 910, to restitution for pecuniary losses suffered as a result of crime.

4. The victim's right to make a written impact statement.

5. The right to register for notification with other offices, departments, and agencies pursuant to sections 910A.5 through 910A.8.

Sec. 8. NEW SECTION. 910A.6 NOTIFICATION BY CLERK OF COURT.

The clerk of court shall notify a victim registered with the office of the clerk of court of all dispositional orders of the case in which the victim was involved and may advise the victim of any other orders regarding custody or confinement.

Sec. 9. NEW SECTION. 910A.7 NOTIFICATION BY LAW ENFORCEMENT.

The county sheriff or other person in charge of the local jail or detention facility shall notify a victim registered with the jail or detention facility of the following:

1. The offender's release from custody on bail and the terms or conditions of the release.
2. The offender's final release from local custody.
3. The offender's escape from custody.

Sec. 10. NEW SECTION. 910A.8 NOTIFICATION BY DEPARTMENT OF CORRECTIONS.

The department of corrections shall notify a victim registered with the department, regarding an offender convicted of a violent crime and committed to the custody of the director of the department of corrections, of the following:

1. The date on which the offender is expected to be released from custody on work release, and whether the offender is expected to return to the community where the registered victim resides.
2. The date on which the offender is expected to be temporarily released from custody on furlough, and whether the offender is expected to return to the community where the registered victim resides.
3. The offender's escape from custody.
4. The recommendation by the department of the offender for parole consideration.

Sec. 11. NEW SECTION. 910A.9 NOTIFICATION BY BOARD OF PAROLE.

1. The board of parole shall notify a victim registered with the board, regarding an offender who has committed a violent crime, as follows:

a. Not less than five days prior to conducting a hearing at which the board will interview an offender, the board shall notify the victim of the interview and inform the victim that the victim may submit the victim's opinion concerning the release of the offender in writing prior to the hearing or may appear personally or by counsel at the hearing to express an opinion concerning the offender's release.

b. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender's release on parole, the board shall notify the victim of the board's decision regarding release of the offender.

2. Offenders who are being considered for release on parole may be informed of a victim's registration with the board and the substance of any opinion submitted by the victim regarding the release of the offender.

Sec. 12. NEW SECTION. 910A.11 CIVIL INJUNCTION TO RESTRAIN HARASSMENT OR INTIMIDATION.

1. Upon application, the court shall issue a temporary restraining order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to

believe that harassment or intimidation of an identified victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this chapter.

A temporary restraining order may be issued under this subsection without written or oral notice to the adverse party or the party's attorney in a civil action under this section if the court finds, upon written certification of facts, that the notice should not be required and that there is a reasonable probability that the party will prevail on the merits. The temporary restraining order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed immediately in the office of the clerk of the court issuing the order.

A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party does not proceed with the application for a protective order when the motion is heard, the court shall dissolve the temporary restraining order.

If, after two days' notice to the party or after a shorter notice as the court prescribes, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine the motion as expeditiously as possible.

2. Upon motion of the party, the court shall issue a protective order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment or intimidation of an identified victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this chapter.

At the hearing, any adverse party named in the complaint has the right to present evidence and cross-examine witnesses.

A protective order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

The court shall set the duration of the protective order for the period it determines is necessary to prevent the harassment or intimidation of the victim or witness, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The party, at any time within ninety days before the expiration of the order, may apply for a new protective order under this section.

Sec. 13. NEW SECTION. 910A.12 EMPLOYMENT PRACTICES.

An employer shall not discharge an employee from or take or fail to take action regarding an employee's promotion or proposed promotion or take action to reduce an employee's wages or benefits, for actual time worked, due to the service of an employee as a witness in a criminal proceeding. An employer who violates this section commits a simple misdemeanor, and an employee shall be entitled to recover damages. Damages recoverable under this section include but are not limited to, actual damages, court costs, and reasonable attorney fees. The employee may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

Sec. 14. NEW SECTION. 910A.16 CHILD VICTIM SERVICES.

1. As used in this section, "victim" means a child under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony.

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians.

3. Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.

Sec. 15. NEW SECTION. 910A.17 EXCEPTION FROM PUBLIC RECORDS LAW.

A victim's registration pursuant to this chapter, shall be strictly maintained in a separate confidential file, and shall be available only to the judicial district departments of correctional services and the agencies required to provide information under sections 910A.5 through 910A.9, notwithstanding chapter 22 or any other provision of law.

Sec. 16. NEW SECTION. 910A.18 IMMUNITY.

This chapter does not create a civil cause of action and a person is not liable for damages resulting from an act or omission in regard to any responsibility or authority created by this chapter, and such acts or omissions shall not be used in any proceeding for damages. This section does not apply to acts or omissions which constitute a willful and wanton disregard for the rights or safety of another.

Sec. 17. Section 912.4, subsections 4 and 5, Code Supplement 1985, are amended to read as follows:

4. When immediate or short-term medical services or mental health services are provided to a victim under section ~~910A.5~~ 910A.16, the department of human services shall file the claim for reparation as provided in subsection 3 for the victim and the provisions of section 912.7, subsection 2, paragraphs "b" and "c" do not apply.

5. When immediate or short-term medical services to a victim are provided pursuant to section ~~910A.5~~ 910A.16 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for reparation, unless the department of human services is required to file the claim under this section, and the provisions of section 912.7, subsection 2, paragraphs "b" and "c" do not apply. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

Sec. 18. Section 912.13, Code Supplement 1985, is amended to read as follows:

912.13 RULEMAKING.

The department shall adopt rules pursuant to chapter 17A to implement the procedures for reparation payments with respect to section ~~910A.5~~ 910A.16 and section 912.4, subsections 3, 4, and 5.

Sec. 19. Sections 910A.2 through 910A.4, Code Supplement 1985, shall be moved by the Code editor to appear as sections 910A.13 through 910A.15.

Sec. 20. Section 910A.5, Code Supplement 1985, is repealed.

Approved May 5, 1986

CHAPTER 1179
DOMESTIC ABUSE
H.F. 2433

AN ACT relating to domestic abuse, and providing penalties.

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

Section 1. Section 236.5, subsection 2, paragraph d, Code 1985, is amended to read as follows: