

Reprinted
FILED MAR 05 1992

SENATE FILE 2302
BY COMMITTEE ON JUDICIARY
(S.S. 2170)
(SUCCESSOR TO SSB 2170)

Passed Senate, Date 3/23/92 (p. 928) Passed House, Date _____
Vote: Ayes 49 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to domestic abuse, changing the definition of
2 domestic abuse to include assaults between parents of the same
3 child and persons who are involved or have been involved
4 together in an engagement or marriage relationship, including
5 certain assaults involving minors, expanding the jurisdiction
6 of magistrates to cover emergency domestic abuse orders, and
7 providing penalties.

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

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SF 2302

1 Section 1. Section 236.2, subsection 2, Code Supplement
2 1991, is amended to read as follows:

3 2. "Domestic abuse" means committing assault as defined in
4 section 708.1 under either any of the following circumstances:

5 a. The assault is between family or household members who
6 resided together at the time of the assault.

7 b. The assault is between separated spouses or persons
8 divorced from each other and not residing together at the time
9 of the assault.

10 c. The assault is between persons who are parents of the
11 same child, regardless of whether they are currently or have
12 previously resided together.

13 d. The assault is between persons who are both fourteen
14 years of age or older, and who are currently, or previously
15 have been, involved together in an engagement or marriage
16 relationship, regardless of whether they are currently or have
17 previously resided together.

18 Sec. 2. Section 236.6, subsection 1, Code 1991, is amended
19 to read as follows:

20 1. When the court is unavailable from the close of
21 business at the end of the day or week to the resumption of
22 business at the beginning of the day or week, a petition may
23 be filed before a district judge, or district associate judge,
24 or magistrate designated by the chief judge of the judicial
25 district, who may grant emergency relief in accordance with
26 section 236.5, subsection 2 if the district judge, or district
27 associate judge, or magistrate deems it necessary to protect
28 the plaintiff from domestic abuse, upon good cause shown in an
29 ex parte proceeding. Present danger of domestic abuse to the
30 plaintiff constitutes good cause for purposes of this
31 subsection.

32 Sec. 3. Section 236.8, Code Supplement 1991, is amended to
33 read as follows:

34 236.8 CONTEMPT.

35 The court may hold a party in contempt for a violation of

1 an order or court-approved consent agreement entered under
2 this chapter, for violation of a temporary or permanent
3 protective order or order to vacate the homestead under
4 chapter 598, or for violation of any order that establishes
5 conditions of release or is a protective order or sentencing
6 order in a criminal prosecution arising from a domestic abuse
7 assault. If held in contempt, the defendant shall serve a
8 jail sentence. Notwithstanding sections 232.19 through
9 232.22, section 232.44, or any other provision of law to the
10 contrary, if the defendant held in contempt is under eighteen
11 years of age, the defendant shall serve the sentence imposed
12 in a detention facility and shall remain in the detention
13 facility as required by the district court pursuant to this
14 section. Any jail sentence imposed under this section shall
15 be served on consecutive days.

16 Sec. 4. Section 236.11, unnumbered paragraphs 1 and 2,
17 Code Supplement 1991, are amended to read as follows:

18 A peace officer shall use every reasonable means to enforce
19 an order or court-approved consent agreement entered under
20 this chapter, a temporary or permanent protective order or
21 order to vacate the homestead under chapter 598, a
22 dispositional order in a juvenile court proceeding arising
23 from a domestic abuse assault, or any order that establishes
24 conditions of release or is a protective order or sentencing
25 order in a criminal prosecution arising from a domestic abuse
26 assault. If a peace officer has reason to believe that
27 domestic abuse has occurred, the peace officer shall ask the
28 abused person if any prior orders exist, and shall contact the
29 twenty-four hour dispatcher to inquire if any prior orders
30 exist. If a peace officer has probable cause to believe that
31 a person has violated an order or approved consent agreement
32 entered under this chapter, a temporary or permanent
33 protective order or order to vacate the homestead under
34 chapter 598, or any order establishing conditions of release
35 or a protective or sentencing order in a criminal prosecution

1 arising from a domestic abuse assault, the peace officer shall
2 take the person into custody and shall take the person without
3 unnecessary delay before the nearest or most accessible
4 magistrate in the judicial district in which the person was
5 taken into custody. The magistrate shall make an initial
6 preliminary determination whether there is probable cause to
7 believe that an order or consent agreement existed and that
8 the person taken into custody has violated its terms. The
9 magistrate's decision shall be entered in the record.

10 If a peace officer has probable cause to believe that a
11 person has violated an order or approved consent agreement
12 entered under this chapter, a temporary or permanent
13 protective order or order to vacate the homestead under
14 chapter 598, a dispositional order in a juvenile court
15 proceeding arising from a domestic abuse assault, or any order
16 establishing conditions of release or a protective or
17 sentencing order in a criminal prosecution arising from a
18 domestic abuse assault, and the peace officer is unable to
19 take the person into custody within twenty-four hours of
20 making the probable cause determination, the peace officer
21 shall either request a magistrate to make a determination as
22 to whether a rule to show cause or arrest warrant should be
23 issued, or refer the matter to the county attorney.

24 Sec. 5. Section 236.12, Code Supplement 1991, is amended
25 by adding the following new subsection:

26 NEW SUBSECTION. 3A. If the person to be arrested pursuant
27 to this section is under eighteen years of age, the person
28 shall be taken into custody and detained in accordance with
29 chapter 232 and this chapter.

30 Sec. 6. Section 236.14, subsection 2, unnumbered paragraph
31 4, Code Supplement 1991, is amended to read as follows:

32 Violation of this no-contact order is punishable by summary
33 contempt proceedings. If held in contempt for violation of a
34 no-contact order, the person shall and must be confined in the
35 county jail for a minimum of seven days. A jail sentence

1 imposed pursuant to this paragraph shall be served on
2 consecutive days. A portion of the mandatory minimum term of
3 confinement imposed by this section shall not be deferred or
4 suspended. A deferred judgment shall not be entered for
5 violation of a no-contact order, and the court shall not
6 impose a fine in lieu of the minimum sentence, although a fine
7 may be imposed in addition to the minimum sentence.

8 Sec. 7. Section 236.14, Code Supplement 1991, is amended
9 by adding the following new subsection:

10 NEW SUBSECTION. 3. If a person taken into custody
11 pursuant to section 236.11 or 236.12 is a juvenile, the
12 juvenile may be released only after a detention hearing under
13 section 232.44. At the detention hearing, the court shall
14 make determinations regarding the entry of a no-contact order
15 as provided in subsection 2, and the notice provisions of
16 subsection 2 shall apply. Violation of the no-contact order
17 shall be subject to summary contempt proceedings. If held in
18 contempt for violation of a no-contact order, the juvenile
19 shall and must be detained in a detention facility for a
20 minimum of seven consecutive days, and a portion of this
21 sentence shall not be suspended or deferred. A deferred
22 judgment shall not be entered for a violation of a no-contact
23 order, and the court shall not impose a fine in lieu of the
24 minimum sentence, although a fine may be imposed in addition
25 to the minimum sentence.

26 Sec. 8. Section 602.6405, subsection 1, Code Supplement
27 1991, is amended to read as follows:

28 1. Magistrates have jurisdiction of simple misdemeanors,
29 including traffic and ordinance violations, and preliminary
30 hearings, search warrant proceedings, county and municipal
31 infractions, and small claims. Magistrates have jurisdiction
32 to exercise the powers specified in sections 644.2 and 644.12,
33 and to hear complaints or preliminary informations, issue
34 warrants, order arrests, make commitments, and take bail.
35 Magistrates have jurisdiction over violations of section

1 123.47 involving persons eighteen years of age, and section
2 123.49, subsection 2, paragraph "h". Magistrates who are
3 admitted to the practice of law in this state have
4 jurisdiction over all proceedings for the involuntary
5 commitment, treatment, or hospitalization of individuals under
6 chapters 125 and 229, except as otherwise provided under
7 section 229.6A, and shall have jurisdiction to issue emergency
8 orders pursuant to section 236.6; nonlawyer magistrates have
9 jurisdiction over emergency detention and hospitalization
10 proceedings under sections 125.91 and 229.22. Magistrates
11 have jurisdiction to conduct hearings authorized under section
12 809.4 and section 809.10, subsection 2.

13 Sec. 9. Section 708.2A, subsection 4, Code Supplement
14 1991, is amended to read as follows:

15 4. A person convicted of violating this section shall and
16 must serve a minimum term of two days of the sentence imposed
17 by law, and shall not be eligible for suspension of the
18 minimum sentence. The minimum term shall be served on
19 consecutive days. This section does not prohibit the court
20 from sentencing and the defendant from serving the maximum
21 term of confinement or from paying the maximum fine permitted
22 pursuant to chapters 902 and 903, and does not prohibit the
23 court from entering a deferred judgment or sentence pursuant
24 to section 907.3, if the defendant has not previously received
25 a deferred sentence or judgment for a violation of section
26 708.2 or this section which was issued on a domestic abuse
27 assault. However, once the defendant has received one
28 deferred sentence or judgment involving a violation of section
29 708.2 or this section which was issued on a domestic abuse
30 assault, the defendant shall not be eligible to receive
31 another deferred sentence or judgment for a violation of this
32 section. The court shall not impose a fine in lieu of the
33 minimum sentence, although a fine may be imposed in addition
34 to the minimum sentence.

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EXPLANATION

1 This bill expands the definition of domestic abuse provided
2 in section 236.2 in several ways. Current law limits domestic
3 abuse to assaults between separated spouses or persons
4 divorced from each other and to assaults between family or
5 household members who resided together at the time of the
6 assault. Current law also provides that "family or household
7 members" mean spouses, persons cohabiting, parents, or other
8 persons related by consanguinity or affinity, except children
9 under 18. The bill expands this definition to include
10 assaults between persons who are parents of the same child,
11 regardless of whether they have ever resided together. The
12 bill also includes within the definition assaults between
13 persons who are both 14 years of age or older, and are or have
14 been involved in an engagement or marriage relationship,
15 regardless of whether they have cohabited.

16 The bill expands the jurisdiction of magistrates to permit
17 magistrates to enter emergency orders in domestic abuse cases.

18 The bill further provides that if a juvenile is held in
19 contempt for violation of a domestic abuse protective order,
20 the juvenile shall be held in a detention facility. The bill
21 requires peace officers to use reasonable means to enforce
22 dispositional orders entered by the juvenile court, and if the
23 peace officer has probable cause to believe such an order has
24 been violated and the peace officer cannot take the juvenile
25 into custody within 24 hours, the peace officer shall refer
26 the matter to a magistrate or county attorney.

27 The bill adds provisions requiring detention of juveniles
28 violating the domestic abuse law. The bill is intended to
29 clarify that if an adult violates a no-contact order, and is
30 held in contempt, the adult shall serve a minimum term of
31 seven days, which cannot be deferred or suspended. The bill
32 prohibits entry of deferred judgments for these violations, as
33 well as fines in lieu of the mandatory minimum term. The bill
34 applies these no-contact order provisions to juveniles at a
35 detention hearing. The bill also provides that in a criminal

1 domestic abuse case under section 708.2A, the court shall not
2 impose a fine in lieu of the mandatory minimum term of two
3 days.

4 Because the bill adds additional acts included within the
5 definition of domestic abuse, it also creates additional
6 criminal offenses pursuant to section 708.2A.

7 The bill may include a state mandate as defined in section
8 25B.3.

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SENATE FILE 2302
FISCAL NOTE

A fiscal note for Senate File 2302 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 2302 expands the definition of domestic abuse to include assaults between persons who are parents of the same child, whether or not they have ever resided together. Also included within the definition is assault between persons who are both at least 14 years old, and who are or have been involved in an engagement or marriage relationship, whether or not they have cohabited. Senate File 2302 provides that if a juvenile is held in contempt for violation of a domestic abuse protective order, the juvenile is to be held in a detention facility. Clarification is provided that an adult who violates a no-contact order, and is held in contempt, shall serve a minimum term of 7 days, which cannot be suspended or deferred. The entry of deferred judgments and fines in lieu of the mandatory minimum term is prohibited. These no-contact order provisions are also applied to juveniles at a detention hearing. Senate File 2302 provides that in criminal cases of domestic abuse assault, the court shall not impose a fine in lieu of the mandatory minimum term of 2 days confinement. Additional criminal offenses are also created.

Assumptions

1. The creation of new crimes or enhancement of existing penalties potentially increases the demand for criminal justice resources.
2. There will be no impact on the State prison population, as no one is currently serving a sentence in prison for domestic abuse.
3. The clarified and unequivocal language regarding mandatory minimum jail terms will result in more jail sentences imposed for domestic abuse and violations of no-contact orders.
4. There will be increases in probation and jail populations due to the expanded definitions and additional criminal offenses created.

Fiscal Impact

Due to insufficient data to predict the number of convictions brought under SF 2302 no estimate is possible. The following is the average daily cost for certain criminal justice functions.

County jails: \$45.

Community Based Corrections facilities: \$50.

Probation/parole supervision: \$1.57

Presentence investigations: \$288 (average cost per investigation).

Pretrial interview: \$77.64 (average cost per interview).

Average indigent defense cost per case ranges from \$180 (public defender) to \$225 (court-appointed counsel for misdemeanor offenses).

PAGE 2 , FISCAL NOTE, SENATE FILE 2302

-2-

Sources: Departments of Human Rights and Corrections
Department of Inspections and Appeals and Judicial Department
Iowa State Association of Counties (S.B. 5259sv, BA.)

FILED MARCH 11, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2302

S-5289

1 Amend Senate File 2302 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 232.2, Code Supplement 1991,
5 is amended by adding the following new subsection:
6 NEW SUBSECTION. 1A. "Act of domestic abuse" means
7 an action by a child which, if committed by a person
8 eighteen years of age or older upon another person
9 eighteen years of age or older, and would fall within
10 the definition of domestic abuse contained in section
11 236.2.

12 Sec. 2. Section 232.29, Code 1991, is amended by
13 adding the following new subsection:

14 NEW SUBSECTION. 3. If the child admits to the
15 commission of a delinquent act which involves the
16 child's commission of an act of domestic abuse, in
17 determining the appropriate terms of the informal
18 adjustment agreement, the intake officer shall take
19 into account the interests of the victim and the
20 remedies which would be afforded to the victim if the
21 child were an adult.

22 Sec. 3. Section 232.46, Code 1991, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 6. The court shall consider
25 whether the delinquent act alleged in the petition
26 involves the child's commission of an act of domestic
27 abuse, and shall take into account the interests of
28 the victim and the remedies which would be afforded to
29 the victim if the child were an adult, in entering a
30 consent decree under this section.

31 Sec. 4. Section 232.52, Code Supplement 1991, is
32 amended by adding the following new subsection:

33 NEW SUBSECTION. 10. The court shall consider
34 whether the delinquent act committed by the child
35 involves the child's commission of an act of domestic
36 abuse, and shall take into account the interests of
37 the victim and the remedies which would be afforded to
38 the victim if the child were an adult, in entering a
39 dispositional order pursuant to this section."

40 2. Page 1, line 10, by inserting after the word
41 "persons" the following: "who are both eighteen years
42 of age or older and".

43 3. Page 1, line 13, by striking the word
44 "fourteen" and inserting the following: "eighteen".

45 4. By striking page 1, line 32, through page 3,
46 line 29.

47 5. Page 4, by striking lines 8 through 25.

48 6. Title page, lines 4 and 5, by striking the
49 words "including certain assaults involving minors"
50 and inserting the following: "providing for the

Page 2
1 adjudication of acts of domestic abuse as delinquent
2 acts by minors".

3 7. By renumbering and correcting internal
4 references as necessary.

By RALPH ROSENBERG

SENATE FILE 2302

S-5178

- 1 Amend Senate File 2302 as follows:
 2 1. Page 1, by striking lines 15 and 16 and
 3 inserting the following: "have been, involved
 4 together in a dating, courtship, or engagement, or
 5 marriage relationship, regardless of whether they are
 6 currently or have".
 7 2. Title, by striking line 4 and inserting the
 8 following: "together in a dating, courtship, or
 9 engagement, or marriage relationship, including".

By MARK R. HAGERLA
RICHARD J. VARN

S-5178 FILED MARCH 10, 1992
Host 3/23 (p.926)

SENATE FILE 2302

S-5301

- 1 Amend Senate File 2302 as follows:
 2 1. Page 3, line 35, by striking the word "days."
 3 and inserting the following: "days, unless the
 4 sentence is partially suspended as permitted in this
 5 section."
 6 2. Page 4, by striking lines 2 through 4 and
 7 inserting the following: "consecutive days, unless
 8 the sentence is being served after the defendant has
 9 been released due to a suspension of part of the
 10 sentence. The court may suspend all but three days of
 11 a sentence imposed under this section, including the
 12 seven-day minimum sentence. The court shall not enter
 13 a deferred judgment or sentence for".
 14 3. Page 4, by striking lines 20 through 22 and
 15 inserting the following: "minimum of seven
 16 consecutive days, except that all but three days of
 17 the sentence may be suspended. If a portion of the
 18 sentence is suspended and the juvenile is detained
 19 after receiving a partially suspended sentence, the
 20 sentence need not be served on consecutive days. The
 21 court shall not enter a deferred judgment or sentence
 22 for violation of a no-contact".

By RALPH ROSENBERG

S-5301 FILED MARCH 18, 1992

*5301A - w/d 3/23 (p.927)
5301B - Ruled out of order 3/23 (p.927)*

SENATE FILE 2302

S-5302

- 1 Amend Senate File 2302 as follows:
 2 1. Page 3, line 34, by striking the words "and
 3 must".
 4 2. Page 4, line 19, by striking the words "and
 5 must".
 6 3. Page 5, lines 15 and 16, by striking the words
 7 "and must".

By RALPH ROSENBERG

S-5302 FILED MARCH 18, 1992

*5302A Adopted 3/23 (p.927)
5302B Ruled out of order 3/23 (p.927)*

SENATE FILE 2302

S-5288

1 Amend Senate File 2302 as follows:

2 1. Page 3, by inserting after line 23 the fol-
3 lowing:

4 "Sec. ____ Section 236.11, Code Supplement 1991,
5 is amended by adding the following new unnumbered
6 paragraph after unnumbered paragraph 2:

7 NEW UNNUMBERED PARAGRAPH. However, a peace officer
8 shall not take a person into custody for violation of
9 an order as required in this section without actual
10 knowledge that a return of service has been filed with
11 respect to service of the order on the person, or
12 actual knowledge that the person is aware of the
13 order."

14 2. By renumbering and correcting internal
15 references as necessary.

By RALPH ROSENBERG

S-5288 FILED MARCH 18, 1992

Ruled out of order 5/13 (p. 921)

SENATE FILE 2302

S-5318

1 Amend Senate File 2302 as follows:
2 1. Page 1, by striking line 15 and inserting the
3 following: "have been, involved together in a dating,
4 engagement, or marriage".
5 2. Page 1, by inserting after line 17 the
6 following:
7 "Sec. ____ . Section 236.2, Code Supplement 1991, is
8 amended by adding the following new subsection:
9 NEW SUBSECTION. 7. "Dating relationship" means a
10 social relationship of a romantic nature. In
11 determining whether a dating relationship exists,
12 factors that the court may consider shall include, but
13 are not limited to, the length of time the
14 relationship has existed, the nature of the
15 relationship, and the frequency of interaction between
16 the parties."
17 3. Title page, by striking line 4 and inserting
18 the following: "together in a dating, engagement, or
19 marriage relationship, including".
20 4. By renumbering, relettering, redesignating,
21 and correcting internal references as necessary.

By RICHARD VARN

S-5318 FILED MARCH 19, 1992
w/d 3/23 (p. 926)

SENATE FILE 2302

S-5319

1 Amend Senate File 2302 as follows:
2 1. Page 1, by inserting after line 17 the
3 following:
4 "Sec. ____ . Section 236.3A, subsection 2, Code
5 Supplement 1991, is amended to read as follows:
6 2. The clerk of the district court shall furnish
7 the required forms to persons seeking protective
8 orders through pro se proceedings pursuant to this
9 chapter. The clerk may furnish information to a
10 person to enable the person to complete the forms."
11 2. By renumbering and correcting internal
12 references as necessary.

By BEVERLY A. HANNON
RALPH ROSENBERG

S-5319 FILED MARCH 19, 1992
Updated 3/23 p. 926

SENATE FILE 2302

S-5320

1 Amend Senate File 2302 as follows:
2 1. Page 1, by inserting after line 17 the fol-
3 lowing:
4 "Sec. ____ . Section 236.3A, Code Supplement 1991,
5 is amended by adding the following new subsection:
6 NEW SUBSECTION. 3. The judicial department shall
7 provide training for the clerks of the district court
8 in fulfilling their duties pursuant to this section
9 and this chapter."
10 2. By renumbering, relettering, redesignating,
11 and correcting internal references as necessary.

By BEVERLY HANNON
RALPH ROSENBERG

S-5320 FILED MARCH 19, 1992
Updated 3/23 (p. 926)

SENATE FILE 2302

S-5337

1 Amend Senate File 2302 as follows:

2 1. Page 1, by inserting after line 17 the fol-
3 lowing:

4 "Sec. ____ . Section 236.5, Code Supplement 1991, is
5 amended by adding the following new unnumbered
6 paragraph:

7 NEW UNNUMBERED PARAGRAPH. Upon a finding that the
8 defendant has not engaged in domestic abuse, the court
9 shall also make a determination as to whether the
10 petition was filed in good faith or whether the
11 petition was filed with malice and for some purpose
12 other than those permitted in this chapter. Upon a
13 finding that the plaintiff filed the petition with
14 malice and for an unlawful purpose, the court shall
15 award to the defendant and assess to the plaintiff
16 costs resulting from the defense of the action,
17 including court costs and a reasonable attorney fee.
18 The remedy provided in this paragraph is in addition
19 to, and not in lieu of, any other remedy provided."

20 2. Page 2, by inserting after line 15 the
21 following:

22 "Upon a finding that a defendant is not in contempt
23 of court, the court shall also make a determination as
24 to whether the person who is protected by the order
25 sought to have the defendant held in contempt of court
26 in good faith or whether the person sought a rule to
27 show cause or reported an alleged violation of the
28 order to a law enforcement agency with malice and for
29 some purpose other than those permitted in this chap-
30 ter. Upon a finding that a person who is protected by
31 the order initiated the contempt proceedings with
32 malice and for an unlawful purpose, the court shall
33 award to the defendant and assess against the person
34 protected by the order costs resulting from the
35 defense of the contempt proceedings, including court
36 costs and a reasonable attorney fee. The remedy
37 provided in this paragraph is in addition to, and not
38 in lieu of, any other remedy provided."

By JIM LIND

S-5337 FILED MARCH 23, 1992

WITHDRAWN (p 927)

SENATE FILE 2302

S-5341

1 Amend Senate File 2302 as follows:

2 1. Page 3, by inserting before line 30 the fol-
3 lowing:

4 "Sec. ____ . Section 236.11, Code Supplement 1991,
5 is amended by adding the following new unnumbered
6 paragraph after unnumbered paragraph 2:

7 NEW UNNUMBERED PARAGRAPH. However, a peace officer
8 shall not take a person into custody for violation of
9 an order as required in this section without actual
10 knowledge that a return of service has been filed with
11 respect to service of the order on the person, or
12 actual knowledge that the person is aware of the
13 order."

14 2. By renumbering and correcting internal
15 references as necessary.

By RALPH ROSENBERG

S-5341 FILED MARCH 23, 1992

ADOPTED 423 (p 927)

House Jud & Law Enfr. 3/24, Amendment Passed (H. 5572) 3/26

SENATE FILE **2302**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2170)

(AS AMENDED AND PASSED BY THE SENATE MARCH 23, 1992)

- _____ - New Language by the Senate
- * - Language Stricken by the Senate

Passed Senate, Date 4/16/92 (p. 1437) Passed House, Date 4/1/92 (p. 918)

Vote: Ayes 50 Nays 0 Vote: Ayes 99 Nays 1

Approved _____

*Motion to reconsider (p. 1445)
W/d (p. 1818)*

A BILL FOR

1 An Act relating to domestic abuse, changing the definition of
 2 domestic abuse to include assaults between parents of the same
 3 child and persons who are involved or have been involved
 4 together in an engagement or marriage relationship, providing
 5 for the adjudication of acts of domestic abuse as delinquent
 6 acts by minors, expanding the jurisdiction of magistrates to
 7 cover emergency domestic abuse orders, and providing
 8 penalties.

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

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SF 2302

1 Section 1. Section 232.2, Code Supplement 1991, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 1A. "Act of domestic abuse" means an
4 action by a child which, if committed by a person eighteen
5 years of age or older upon another person eighteen years of
6 age or older, and would fall within the definition of domestic
7 abuse contained in section 236.2.

8 Sec. 2. Section 232.29, Code 1991, is amended by adding
9 the following new subsection:

10 NEW SUBSECTION. 3. If the child admits to the commission
11 of a delinquent act which involves the child's commission of
12 an act of domestic abuse, in determining the appropriate terms
13 of the informal adjustment agreement, the intake officer shall
14 take into account the interests of the victim and the remedies
15 which would be afforded to the victim if the child were an
16 adult.

17 Sec. 3. Section 232.46, Code 1991, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 6. The court shall consider whether the
20 delinquent act alleged in the petition involves the child's
21 commission of an act of domestic abuse, and shall take into
22 account the interests of the victim and the remedies which
23 would be afforded to the victim if the child were an adult, in
24 entering a consent decree under this section.

25 Sec. 4. Section 232.52, Code Supplement 1991, is amended
26 by adding the following new subsection:

27 NEW SUBSECTION. 10. The court shall consider whether the
28 delinquent act committed by the child involves the child's
29 commission of an act of domestic abuse, and shall take into
30 account the interests of the victim and the remedies which
31 would be afforded to the victim if the child were an adult, in
32 entering a dispositional order pursuant to this section.

33 Sec. 5. Section 236.2, subsection 2, Code Supplement 1991,
34 is amended to read as follows:

35 2. "Domestic abuse" means committing assault as defined in

1 section 708.1 under either any of the following circumstances:

2 a. The assault is between family or household members who
3 resided together at the time of the assault.

4 b. The assault is between separated spouses or persons
5 divorced from each other and not residing together at the time
6 of the assault.

7 c. The assault is between persons who are both eighteen
8 years of age or older and who are parents of the same child,
9 regardless of whether they are currently or have previously
10 resided together.

11 d. The assault is between persons who are both eighteen
12 years of age or older, and who are currently, or previously
13 have been, involved together in an engagement or marriage
14 relationship, regardless of whether they are currently or have
15 previously resided together.

16 Sec. 6. Section 236.3A, subsection 2, Code Supplement
17 1991, is amended to read as follows:

18 2. The clerk of the district court shall furnish the
19 required forms to persons seeking protective orders through
20 pro se proceedings pursuant to this chapter. The clerk may
21 furnish information to a person to enable the person to
22 complete the forms.

23 Sec. 7. Section 236.3A, Code Supplement 1991, is amended
24 by adding the following new subsection:

25 NEW SUBSECTION. 3. The judicial department shall provide,
26 training for the clerks of the district court in fulfilling
27 their duties pursuant to this section and this chapter.

28 Sec. 8. Section 236.6, subsection 1, Code 1991, is amended
29 to read as follows:

30 1. When the court is unavailable from the close of
31 business at the end of the day or week to the resumption of
32 business at the beginning of the day or week, a petition may
33 be filed before a district judge, or district associate judge,
34 or magistrate designated by the chief judge of the judicial
35 district, who may grant emergency relief in accordance with

1 section 236.5, subsection 2 if the district judge, or district
2 associate judge, or magistrate deems it necessary to protect
3 the plaintiff from domestic abuse, upon good cause shown in an
4 ex parte proceeding. Present danger of domestic abuse to the
5 plaintiff constitutes good cause for purposes of this
6 subsection.

* 7 Sec. 9. Section 236.11, Code Supplement 1991, is amended
8 by adding the following new unnumbered paragraph after
9 unnumbered paragraph 2:

10 NEW UNNUMBERED PARAGRAPH. However, a peace officer shall
11 not take a person into custody for violation of an order as
12 required in this section without actual knowledge that a
13 return of service has been filed with respect to service of
14 the order on the person, or actual knowledge that the person
15 is aware of the order.

16 Sec. 10. Section 236.14, subsection 2, unnumbered
17 paragraph 4, Code Supplement 1991, is amended to read as
18 follows:

19 Violation of this no-contact order is punishable by summary
20 contempt proceedings. If held in contempt for violation of a
* 21 no-contact order, the person shall be confined in the county
22 jail for a minimum of seven days. A jail sentence imposed
23 pursuant to this paragraph shall be served on consecutive
24 days. A portion of the mandatory minimum term of confinement
25 imposed by this section shall not be deferred or suspended. A
26 deferred judgment shall not be entered for violation of a no-
27 contact order, and the court shall not impose a fine in lieu
28 of the minimum sentence, although a fine may be imposed in
29 addition to the minimum sentence.

* 30 Sec. 11. Section 602.6405, subsection 1, Code Supplement
31 1991, is amended to read as follows:

32 1. Magistrates have jurisdiction of simple misdemeanors,
33 including traffic and ordinance violations, and preliminary
34 hearings, search warrant proceedings, county and municipal
35 infractions, and small claims. Magistrates have jurisdiction

1 to exercise the powers specified in sections 644.2 and 644.12,
2 and to hear complaints or preliminary informations, issue
3 warrants, order arrests, make commitments, and take bail.
4 Magistrates have jurisdiction over violations of section
5 123.47 involving persons eighteen years of age, and section
6 123.49, subsection 2, paragraph "h". Magistrates who are
7 admitted to the practice of law in this state have
8 jurisdiction over all proceedings for the involuntary
9 commitment, treatment, or hospitalization of individuals under
10 chapters 125 and 229, except as otherwise provided under
11 section 229.6A, and shall have jurisdiction to issue emergency
12 orders pursuant to section 236.6; nonlawyer magistrates have
13 jurisdiction over emergency detention and hospitalization
14 proceedings under sections 125.91 and 229.22. Magistrates
15 have jurisdiction to conduct hearings authorized under section
16 809.4 and section 809.10, subsection 2.

17 Sec. 12. Section 708.2A, subsection 4, Code Supplement
18 1991, is amended to read as follows:

*19 4. A person convicted of violating this section shall
20 serve a minimum term of two days of the sentence imposed by
21 law, and shall not be eligible for suspension of the minimum
22 sentence. The minimum term shall be served on consecutive
23 days. This section does not prohibit the court from
24 sentencing and the defendant from serving the maximum term of
25 confinement or from paying the maximum fine permitted pursuant
26 to chapters 902 and 903, and does not prohibit the court from
27 entering a deferred judgment or sentence pursuant to section
28 907.3, if the defendant has not previously received a deferred
29 sentence or judgment for a violation of section 708.2 or this
30 section which was issued on a domestic abuse assault.
31 However, once the defendant has received one deferred sentence
32 or judgment involving a violation of section 708.2 or this
33 section which was issued on a domestic abuse assault, the
34 defendant shall not be eligible to receive another deferred
35 sentence or judgment for a violation of this section. The

1 court shall not impose a fine in lieu of the minimum sentence,
2 although a fine may be imposed in addition to the minimum
3 sentence.

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SENATE FILE 2302
AS AMENDED AND PASSED BY THE SENATE
FISCAL NOTE

A fiscal note for Senate File 2302 as amended and passed by the Senate 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 2302 expands the definition of domestic abuse to include assaults between persons who are both at least 18 years old, and are parents of the same child, whether or not they have ever resided together. Also included in the definition is assault between persons who are both at least 18 years old, and who are or have been involved in an engagement or marriage relationship, whether or not they have cohabited. For juveniles who commit a domestic abuse act, the courts are required to take into account the interests of the victim and the remedies which would be afforded to the victim if the offender was an adult. Clarification is provided that an adult who violates a no-contact order, and is held in contempt, shall serve a minimum term of 7 days, which cannot be suspended or deferred. The entry of deferred judgments and fines in lieu of the mandatory minimum term is prohibited. Senate File 2302 provides that in criminal cases of domestic abuse assault, the court shall not impose a fine in lieu of the mandatory minimum term of 2 days confinement. The Judicial Department is required to provide training to the clerks of court concerning domestic abuse. The clerks of court may provide assistance to persons completing forms for pro se proceedings.

Assumptions

1. Expanding the definition of domestic abuse will result in more arrests, and potentially increases the demand for criminal justice resources.
2. There will be no impact on the State prison population, as no one is currently serving a sentence in prison for domestic abuse.
3. The clarified and unequivocal language regarding mandatory minimum jail terms will result in more jail sentences imposed for domestic abuse and violations of no-contact orders.
4. There will be increases in probation and jail populations due to the expanded definition of domestic abuse.
5. There may be additional costs to the Judicial Department if the clerks of court provide assistance to persons seeking protective orders who are proceeding pro se.
6. There will be additional costs to the Judicial Department for providing training to the clerks of court.
7. Regarding the provisions of SF 2302 relating to juveniles, it is assumed there will be few cases of delinquent acts for domestic abuse. Also, detention is not required. Therefore, it is projected that demand for detention beds will not increase due to SF 2302.
8. The Department of Public Safety will incur additional data processing costs associated with maintaining the domestic abuse database.

Fiscal Impact

Due to insufficient data to predict the number of convictions brought under SF 2302 no estimate is possible. The following is the average daily cost for certain criminal justice functions.

County jails: \$45.

Community Based Corrections facilities: \$50.

Probation/parole supervision: \$1.57

Presentence investigations: \$288 (average cost per investigation).

Pretrial interview: \$77.64 (average cost per interview).

Average indigent defense cost per case ranges from \$180 (public defender) to \$250 (court-appointed counsel for misdemeanor offenses).

The required training for clerks of court is estimated to cost \$8,750. This assumes one day of training is provided to each clerk of court.

If the clerks of court provide assistance to people seeking a protective order and proceeding pro se, the Judicial Department estimates the cost to be \$76,062. This is based on an hourly salary of \$12.27 for a clerk of court, one hour of assistance provided to each person seeking a protective order, and 6,199 domestic abuse cases proceeding pro se.

There will be one-time costs of \$6,780 to the Department of Public Safety for programming and system analysis. These costs are incurred as a result of expanding the definition of domestic abuse assault.

Sources: Departments of Human Rights and Corrections

Judicial Department

Departments of Inspections and Appeals and Public Safety

Iowa State Association of Counties

(LSB 5259SV.2, BAL)

FILED MARCH 25, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2302

S-5690

1 Amend the House amendment, S-5499, to Senate File
2 2302, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by striking lines 7 through 9.

5 2. Page 1, by striking lines 10 through 21.

6 3. Page 1, by inserting before line 22 the
7 following:

8 "____. Page 2, by inserting after line 15 the
9 following:

10 "e. The assault is between persons who have been
11 family or household members together in the past."

12 4. Page 1, by inserting before line 22 the
13 following:

14 "____. Page 2, by inserting after line 15 the
15 following:

16 "f. The assault is between persons who are
17 currently, or previously have been, involved together
18 in a dating or courtship relationship, regardless of
19 whether they are currently or have previously resided
20 together, and the person committing the assault is
21 eighteen years of age or older. In determining
22 whether a dating or courtship relationship exists or
23 previously existed, consideration shall be given to
24 factors including, but not limited to, the length of
25 time the relationship has existed, the nature of the
26 relationship, the frequency and nature of the
27 interaction of the parties, the degree of intimacy
28 between the parties, whether there has been any
29 statement of commitment, whether the relationship has
30 been continuous or sporadic, and, if the relationship
31 has been terminated by either party, the length of
32 time since the relationship was terminated. The
33 determination shall not be based solely upon the
34 presence or absence of traditional indications or
35 symbols of commitment exchanged by the parties."

36 5. Page 1, by inserting after line 23 the
37 following:

38 "____. Page 3, by inserting before line 16 the
39 following:

40 "Sec. ____ Section 236.12, subsection 2, Code
41 Supplement 1991, is amended by adding the following
42 new paragraph:

43 NEW PARAGRAPH. e. The mandatory arrest provisions
44 of paragraphs "b", "c", and "d" shall not apply to
45 situations which fall within the definition of
46 domestic abuse solely because of a dating or courtship
47 relationship as provided in section 236.2, subsection
48 2, paragraph "f."

49 6. Page 1, by inserting after line 23 the
50 following:

S-5690

A-3590

Page 2

1 "_____. Page 3, by inserting before line 16 the
2 following:

3 "Sec. _____. Section 236.14, subsection 2,
4 unnumbered paragraph 1, Code Supplement 1991, is
5 amended to read as follows:

6 When a person arrested for a domestic abuse
7 assault, or taken into custody for contempt
8 proceedings pursuant to section 236.11, is brought
9 before a magistrate and the magistrate finds probable
10 cause to believe that domestic abuse or a violation of
11 an order or consent agreement has occurred and that
12 the presence of the alleged abuser in the victim's
13 residence poses a threat to the safety of the alleged
14 victim, persons residing with the alleged victim, or
15 members of the alleged victim's immediate family, the
16 magistrate shall enter an order which shall require
17 the alleged abuser to have no contact with the alleged
18 victim, persons residing with the alleged victim, or
19 members of the alleged victim's immediate family, and
20 to refrain from harassing the alleged victim, persons
21 residing with the alleged victim, or members of the
22 alleged victim's immediate family, in addition to any
23 other conditions of release determined and imposed by
24 the magistrate under section 811.2. A no-contact
25 order requiring the alleged abuser to have no contact
26 with the alleged victim's children shall prevail over
27 any existing order awarding custody or visitation
28 rights, which may be in conflict with the no-contact
29 order. As used in this subsection, unless the context
30 otherwise requires, "domestic abuse assault" means
31 domestic abuse assault as defined in section 708.2A,
32 except that it shall also include a first offense for
33 an assault which is domestic abuse due to a dating or
34 courtship relationship, as set forth in section 236.2,
35 subsection 2, paragraph "E", which is otherwise
36 excluded from the definition of domestic abuse assault
37 in section 708.2A."

38 7. Page 1, by inserting before line 24 the
39 following:

40 "_____. Page 4, by inserting after line 16 the
41 following:

42 "Sec. _____. Section 708.2, Code 1991, is amended by
43 adding the following new subsection:

44 NEW SUBSECTION. 5. If assault charges are brought
45 pursuant to this section, the court shall make a
46 finding as to whether the defendant and the victim are
47 or have been involved in a dating or courtship
48 relationship as provided in section 236.2, subsection
49 2, paragraph "E".

50 Sec. _____. Section 708.2A, subsection 1, Code

A-3590

-2-

S-5690

Page 3

1 Supplement 1991, is amended to read as follows:

2 1. For the purposes of this chapter, "domestic
3 abuse assault" means an assault, as defined in section
4 708.1, which is domestic abuse as defined in section
5 236.2. However, "domestic abuse assault" does not
6 include an assault which is domestic abuse solely
7 because of the definition set forth in section 236.2,
8 subsection 2, paragraph "f", due to a dating or
9 courtship relationship, unless the defendant has at
10 any time prior to the current proceeding been
11 convicted for, received a deferred judgment for, or
12 pled guilty to assault pursuant to section 708.2 and
13 the court has made a finding pursuant to section
14 708.2, subsection 5. A subsequent assault by the
15 defendant which is domestic abuse due to a dating or
16 courtship relationship as provided in section 236.2,
17 subsection 2, paragraph "f", shall constitute domestic
18 abuse assault, regardless of whether the defendant
19 commits the assault upon the same or a different
20 victim.

21 Sec. ____ . Section 708.2A, subsection 3, unnumbered
22 paragraph 2, Code Supplement 1991, is amended to read
23 as follows:

24 A conviction for, deferred judgment for, or plea of
25 guilty to, a violation of this section which occurred
26 more than six years prior to the date of the violation
27 charged shall not be considered in determining that
28 the violation charged is a second or subsequent
29 offense pursuant to this subsection. For the purpose
30 of determining if a violation charged is a second or
31 subsequent offense, deferred judgments issued pursuant
32 to section 907.3 for violations of section 708.2 or
33 this section, which were issued on domestic abuse
34 assaults, and convictions or the equivalent of
35 deferred judgments for violations in any other states
36 under statutes substantially corresponding to this
37 section shall be counted as previous offenses.
38 However, a conviction for, deferred judgment for, or
39 plea of guilty of a violation of section 708.2 which
40 is domestic abuse solely because of the presence of a
41 dating or courtship relationship in accordance with a
42 finding pursuant to section 708.2, subsection 5, and
43 which does not fall within the definition of domestic
44 abuse assault in subsection 1 of this section, shall
45 not be included as a previous domestic abuse assault.
46 Once the defendant receives a conviction for, deferred
47 judgment for, or enters a plea of guilty to a
48 violation of section 708.2 in which a finding of a
49 dating or courtship relationship is found pursuant to
50 section 708.2, subsection 5, any subsequent conviction

S-5690

-3-

S-5590

Page 4

1 for, deferred judgment for, or plea of guilty to a
2 violation of section 708.2, involving a finding
3 pursuant to section 708.2, subsection 5, shall be
4 included as a previous domestic abuse assault. The
5 courts shall judicially notice the statutes of other
6 states which define offenses substantially equivalent
7 to the offenses defined in this section and can
8 therefore be considered corresponding statutes. Each
9 previous violation on which conviction or deferral of
10 judgment was entered prior to the date of the offense
11 charged shall be considered and counted as a separate
12 previous offense. An offense shall be considered a
13 prior offense for the purposes of this subsection
14 regardless of whether it was committed upon the same
15 victim."

16 . Page 4, line 35, by inserting after the word
17 "section." the following: "A deferred judgment or
18 sentence for an assault pursuant to section 708.2
19 which involves a finding of a dating or courtship
20 relationship pursuant to section 708.2, subsection 5,
21 and which does not fall within the definition of
22 domestic abuse assault provided in subsection 1, shall
23 not be considered a deferred judgment or sentence on a
24 domestic abuse assault for the purposes of this
25 subsection. However, a deferred judgment or sentence
26 for an assault pursuant to section 708.2 which
27 involves a finding under section 708.2, subsection 5,
28 and which would fall within the definition of domestic
29 abuse assault in subsection 1 due to a prior assault
30 involving a finding pursuant to section 708.2,
31 subsection 5, shall be considered a deferred judgment
32 or sentence on a domestic abuse assault for the
33 purposes of this subsection."

34 . Page 5, by inserting after line 3 the
35 following:

36 "Sec. ____ . Section 708.2B, Code Supplement 1991,
37 is amended to read as follows:

38 708.2B TREATMENT OF DOMESTIC ABUSE OFFENDERS.

39 As used in this section, "district department"
40 means a judicial district department of correctional
41 services, established pursuant to section 905.2. A
42 person convicted of, or receiving a deferred judgment
43 for, domestic abuse assault shall report to the
44 district department in order to participate in a
45 batterers' treatment program for domestic abuse
46 offenders. A person convicted of or receiving a
47 deferred judgment for an assault pursuant to section
48 708.2 which involves a finding of a dating or
49 courtship relationship pursuant to section 708.2,
50 subsection 5, and which does not fall within the

S-5590

-4-

S-5690

Page 5

1 definition of domestic abuse assault provided in
2 section 708.2A, subsection 1, shall not be considered
3 a domestic abuse assault and shall not require the
4 person to participate in a batterers' treatment
5 program. However, a person convicted of or receiving
6 a deferred judgment for an assault pursuant to section
7 708.2 which involves a finding under section 708.2,
8 subsection 5, and which would fall within the
9 definition of domestic abuse assault in section
10 708.2A, subsection 1, due to a prior assault involving
11 a finding pursuant to section 708.2, subsection 5,
12 shall be considered a domestic abuse assault and shall
13 require the person to participate in a batterers'
14 treatment program. Participation in the batterers'
15 treatment program shall not require a person to be
16 placed on probation, but a person on probation may
17 participate in the program. The district departments
18 may contract for services in completing the duties
19 relating to the batterers' treatment programs. The
20 district departments shall assess the fees for
21 participation in the program, and shall either collect
22 or contract for the collection of the fees to recoup
23 the costs of treatment, but may waive the fee or
24 collect a lesser amount upon a showing of cause. The
25 fees shall be used by each of the district departments
26 or contract service providers for the establishment,
27 administration, coordination, and provision of direct
28 services of the batterers' treatment programs."
29 8. By renumbering as necessary.

By RICHARD VARN

S-5690 FILED APRIL 14, 1992

Law 4/16 (p 1438)

SENATE FILE 2302

S-5723

1 Amend the House amendment, S-5499, to Senate File
2 2302, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 22 the
5 following:

6 "____. Page 3, by inserting after line 6 the
7 following:

8 "Sec. ____ . Section 236.8, Code Supplement 1991, is
9 amended to read as follows:

10 236.8 CONTEMPT.

11 The court ~~may~~ shall hold a party in contempt for a
12 violation of an order or court-approved consent
13 agreement entered under this chapter, for violation of
14 a temporary or permanent protective order or order to
15 vacate the homestead under chapter 598, or for
16 violation of any order that establishes conditions of
17 release or is a protective order or sentencing order
18 in a criminal prosecution arising from a domestic
19 abuse assault. If held in contempt, the defendant
20 shall serve a jail sentence, and shall not be eligible
21 for a deferred judgment, deferred sentence, or
22 suspended sentence. The court shall not impose a fine
23 in lieu of a jail sentence, although a fine may be
24 imposed in addition to a jail sentence. Any jail
25 sentence imposed under this section shall be served on
26 consecutive days."

27 2. Page 1, by inserting after line 23 the
28 following:

29 "____. Page 3, by inserting after line 29 the
30 following:

31 "Sec. ____ . Section 236.14, Code Supplement 1991,
32 is amended by adding the following new subsection:

33 NEW SUBSECTION. 3. This section shall not be
34 construed to limit a pretrial release order issued
35 pursuant to chapter 811."

36 3. Page 1, by inserting after line 23 the
37 following:

38 "____. Page 3, by inserting after line 29 the
39 following:

40 "Sec. ____ . Section 811.2, subsection 1, paragraph
41 e, Code 1991, is amended to read as follows:

42 e. Impose any other condition deemed reasonably
43 necessary to assure appearance as required, or the
44 safety of another person or persons including a
45 condition requiring that the defendant return to
46 custody after specified hours, or a condition that the
47 defendant have no contact with the victim or other
48 persons specified by the court."

49 4. By renumbering as necessary.

By RALPH ROSENBERG

S-5723 FILED APRIL 16, 1992

ADOPTED (p. 1439)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 2302

H-6106

1 Amend the House amendment, S-5499, to Senate File
2 2302, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 2 the
5 following:

6 "____. Page 1, by striking lines 4 through 6 and
7 inserting the following: "action by a child which,
8 notwithstanding any age limitations contained in
9 section 236.2, would otherwise fall within the
10 definition of domestic"."

11 2. Page 1, by inserting after line 4 the
12 following:

13 "____. Page 2, line 10, by inserting after the
14 word "together" the following: ", and the person
15 committing the assault is eighteen years of age or
16 older"."

17 3. Page 1, by striking lines 7 through 9.

18 4. Page 1, by inserting before line 10 the
19 following:

20 "____. Page 2, line 15, by inserting after the
21 word "together" the following: ", and the person
22 committing the assault is eighteen years of age or
23 older"."

24 5. Page 1, by striking lines 10 through 21.

25 6. Page 1, by inserting after line 22 the
26 following:

27 "____. Page 3, by inserting after line 6 the
28 following:

29 "Sec. _____. Section 236.8, Code Supplement 1991, is
30 amended to read as follows:

31 236.8 CONTEMPT.

32 The court may shall hold a party in contempt for a
33 violation of an order or court-approved consent
34 agreement entered under this chapter, for violation of
35 a temporary or permanent protective order or order to
36 vacate the homestead under chapter 598, or for
37 violation of any order that establishes conditions of
38 release or is a protective order or sentencing order
39 in a criminal prosecution arising from a domestic
40 abuse assault. If held in contempt, the defendant
41 shall serve a jail sentence, and shall not be eligible
42 for a deferred judgment, deferred sentence, or
43 suspended sentence. The court shall not impose a fine
44 in lieu of a jail sentence, although a fine may be
45 imposed in addition to a jail sentence. Any jail
46 sentence imposed under this section shall be served on
47 consecutive days."

48 7. Page 1, by inserting after line 23 the
49 following:

50 "____. Page 3, by inserting after line 29 the

H-6106

H-6106

Page 2

1 following:

2 "Sec. _____. Section 236.14, Code Supplement 1991,
3 is amended by adding the following new subsection:
4 NEW SUBSECTION. 3. This section shall not be
5 construed to limit a pretrial release order issued
6 pursuant to chapter 811."

7 8. Page 1, by inserting after line 23 the
8 following:

9 "_____. Page 3, by inserting after line 29 the
10 following:

11 "Sec. _____. Section 811.2, subsection 1, paragraph
12 e, Code 1991, is amended to read as follows:

13 e. Impose any other condition deemed reasonably
14 necessary to assure appearance as required, or the
15 safety of another person or persons including a
16 condition requiring that the defendant return to
17 custody after specified hours, or a condition that the
18 defendant have no contact with the victim or other
19 persons specified by the court."

20 9. Page 1, by striking lines 24 through 26.

21 10. By renumbering, relettering, or redesignating
22 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6106 FILED MAY 4, 1992

SENATE FILE 2302

S-5595

1 Amend the House amendment, S-5499, to Senate File
2 2302, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 2 the
5 following:

6 "_____. Page 1, by striking lines 4 through 6 and
7 inserting the following: "action by a child which,
8 notwithstanding any age limitations contained in
9 section 236.2, would otherwise fall within the
10 definition of domestic"."

11 2. Page 1, by inserting after line 4 the
12 following:

13 "_____. Page 2, line 10, by inserting after the
14 word "together" the following: ", and the person
15 committing the assault is eighteen years of age or
16 older"."

17 3. Page 1, by inserting before line 10 the
18 following:

19 "_____. Page 2, line 15, by inserting after the
20 word "together" the following: ", and the person
21 committing the assault is eighteen years of age or
22 older"."

23 4. By renumbering and correcting internal
24 references as necessary.

By RALPH ROSENBERG

S-5595 FILED APRIL 8, 1992

ADOPTED (f-1289)

HOUSE AMENDMENT TO
SENATE FILE 2302

S-5499

- 1 Amend Senate File 2302, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, lines 7 and 8, by striking the words
- 4 "who are both eighteen years of age or older and".
- 5 2. Page 2, lines 11 and 12, by striking the words
- 6 "who are both eighteen years of age or older, and".
- 7 3. Page 2, line 13, by striking the words "an
- 8 engagement" and inserting the following: "a dating,
- 9 courtship, engagement,".
- 10 4. Page 2, by inserting after line 15, the
- 11 following:
- 12 "Sec. ____ . Section 236.2, Code Supplement 1991, is
- 13 amended by adding the following new subsection:
- 14 NEW SUBSECTION. 7. "Dating relationship" means a
- 15 social relationship of a romantic nature. In
- 16 determining whether a dating relationship exists,
- 17 factors that the court may consider shall include, but
- 18 are not limited to, the length of time the
- 19 relationship has existed, the nature of the
- 20 relationship, and the frequency of interaction between
- 21 the parties."
- 22 5. Page 2, by striking lines 16 through 27.
- 23 6. Page 3, by striking lines 7 through 15.
- 24 7. Title page, line 4, by striking the words "an
- 25 engagement" and inserting the following: "a dating,
- 26 courtship, engagement,".
- 27 8. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5499 FILED APRIL 1, 1992

Amended (5583, 5595, 5723)
+ Concurring (p. 1439)

SENATE FILE 2302

S-5583

- 1 Amend the House amendment, S-5499, to Senate File
- 2 2302, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 1, by striking lines 7 through 9.
- 5 2. Page 1, by striking lines 10 through 21.
- 6 3. Page 1, by striking lines 24 through 26.
- 7 4. By renumbering and correcting internal
- 8 references as necessary.

By AL STURGEON

S-5583 FILED APRIL 7, 1992

Adopted 4116 (p. 1439)

SENATE FILE 2302

H-5572

- 1 Amend Senate File 2302, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, lines 7 and 8, by striking the words
4 "who are both eighteen years of age or older and".
5 2. Page 2, lines 11 and 12, by striking the words
6 "who are both eighteen years of age or older, and".
7 3. Page 2, line 13, by striking the words "an
8 engagement" and inserting the following: "a dating,
9 courtship, engagement,".
10 4. Page 2, by striking lines 16 through 27.
11 5. Page 3, by striking lines 7 through 15.
12 6. Title page, line 4, by striking the words "an
13 engagement" and inserting the following: "a dating,
14 courtship, engagement,".
15 7. By renumbering as necessary.

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT
JAY of Appanoose, CHAIRPERSON

H-5572 FILED MARCH 27, 1992

Adopted 4/1 (p. 975)

SENATE FILE 2302

H-5587

- 1 Amend the amendment, H-5572, to Senate File 2302,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by striking lines 7 through 9.
5 2. Page 1, by striking lines 12 through 14.
6 3. By renumbering as necessary.

By MILLAGE of Scott

H-5587 FILED MARCH 30, 1992

lost 4/1 (p. 976)

SENATE FILE 2302

H-5651

- 1 Amend the amendment, H-5572, to Senate File 2302,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by inserting after line 9 the
5 following:
6 " ". Page 2, by inserting after line 15, the
7 following:
8 "Sec. . Section 236.2, Code Supplement 1991, is
9 amended by adding the following new subsection:
10 NEW SUBSECTION. 7. "Dating relationship" means a
11 social relationship of a romantic nature. In
12 determining whether a dating relationship exists,
13 factors that the court may consider shall include, but
14 are not limited to, the length of time the
15 relationship has existed, the nature of the
16 relationship, and the frequency of interaction between
17 the parties."
18 2. By renumbering and correcting internal
19 references as necessary.

By SHERZAN of Polk

H-5651 FILED APRIL 1, 1992 (p. 978)

ROSENBERG, W.
DELUHERY
HAGERLA 2-13-92

SSB 2170
JUDICIARY — NOW —

SENATE/HOUSE FILE 2302
BY (PROPOSED CITIZENS'
AIDE/OMBUDSMAN BILL)

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

A BILL FOR

1 An Act relating to domestic abuse, changing the definition of
2 domestic abuse to include assaults between parents of the same
3 child and persons who are involved or have been involved
4 together in a dating, courtship, engagement, or marriage
5 relationship, including certain assaults involving minors, and
6 providing penalties.

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

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1 Section 1. Section 236.2, subsection 2, Code Supplement
2 1991, is amended to read as follows:

3 2. "Domestic abuse" means committing assault as defined in
4 section 708.1 under either any of the following circumstances:

5 a. The assault is between family or household members who
6 resided together at the time of the assault.

7 b. The assault is between separated spouses or persons
8 divorced from each other and not residing together at the time
9 of the assault.

10 c. The assault is between persons who are parents of the
11 same child, regardless of whether they are currently or have
12 previously resided together.

13 d. The assault is between persons who are both fourteen
14 years of age or older, and who are currently, or previously
15 have been, involved together in a dating, courtship, or
16 engagement, or marriage relationship, regardless of whether
17 they are currently or have previously resided together.

18 Sec. 2. Section 236.8, Code Supplement 1991, is amended to
19 read as follows:

20 236.8 CONTEMPT.

21 The court may hold a party in contempt for a violation of
22 an order or court-approved consent agreement entered under
23 this chapter, for violation of a temporary or permanent
24 protective order or order to vacate the homestead under
25 chapter 598, or for violation of any order that establishes
26 conditions of release or is a protective order or sentencing
27 order in a criminal prosecution arising from a domestic abuse
28 assault. If held in contempt, the defendant shall serve a
29 jail sentence. Notwithstanding sections 232.19 through
30 232.22, section 232.44, or any other provision of law to the
31 contrary, if the defendant held in contempt is under eighteen
32 years of age, the defendant shall serve the sentence imposed
33 in a detention facility and shall remain in the detention
34 facility as required by the district court pursuant to this
35 section. Any jail sentence imposed under this section shall

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1 be served on consecutive days.

2 Sec. 3. Section 236.11, unnumbered paragraphs 1 and 2,
3 Code Supplement 1991, are amended to read as follows:

4 A peace officer shall use every reasonable means to enforce
5 an order or court-approved consent agreement entered under
6 this chapter, a temporary or permanent protective order or
7 order to vacate the homestead under chapter 598, a
8 dispositional order in a juvenile court proceeding arising
9 from a domestic abuse assault, or any order that establishes
10 conditions of release or is a protective order or sentencing
11 order in a criminal prosecution arising from a domestic abuse
12 assault. If a peace officer has reason to believe that
13 domestic abuse has occurred, the peace officer shall ask the
14 abused person if any prior orders exist, and shall contact the
15 twenty-four hour dispatcher to inquire if any prior orders
16 exist. If a peace officer has probable cause to believe that
17 a person has violated an order or approved consent agreement
18 entered under this chapter, a temporary or permanent
19 protective order or order to vacate the homestead under
20 chapter 598, or any order establishing conditions of release
21 or a protective or sentencing order in a criminal prosecution
22 arising from a domestic abuse assault, the peace officer shall
23 take the person into custody and shall take the person without
24 unnecessary delay before the nearest or most accessible
25 magistrate in the judicial district in which the person was
26 taken into custody. The magistrate shall make an initial
27 preliminary determination whether there is probable cause to
28 believe that an order or consent agreement existed and that
29 the person taken into custody has violated its terms. The
30 magistrate's decision shall be entered in the record.

31 If a peace officer has probable cause to believe that a
32 person has violated an order or approved consent agreement
33 entered under this chapter, a temporary or permanent
34 protective order or order to vacate the homestead under
35 chapter 598, a dispositional order in a juvenile court

1 proceeding arising from a domestic abuse assault, or any order
2 establishing conditions of release or a protective or
3 sentencing order in a criminal prosecution arising from a
4 domestic abuse assault, and the peace officer is unable to
5 take the person into custody within twenty-four hours of
6 making the probable cause determination, the peace officer
7 shall either request a magistrate to make a determination as
8 to whether a rule to show cause or arrest warrant should be
9 issued, or refer the matter to the county attorney.

10 Sec. 4. Section 236.12, Code Supplement 1991, is amended
11 by adding the following new subsection:

12 NEW SUBSECTION. 3A. If the person to be arrested pursuant
13 to this section is under eighteen years of age, the person
14 shall be taken into custody and detained in accordance with
15 chapter 232 and this chapter.

16 Sec. 5. Section 236.14, subsection 2, unnumbered paragraph
17 4, Code Supplement 1991, is amended to read as follows:

18 Violation of this no-contact order is punishable by summary
19 contempt proceedings. If held in contempt for violation of a
20 no-contact order, the person shall and must be confined in the
21 county jail for a minimum of seven days. A jail sentence
22 imposed pursuant to this paragraph shall be served on
23 consecutive days. A portion of the mandatory minimum term of
24 confinement imposed by this section shall not be deferred or
25 suspended. A deferred judgment shall not be entered for
26 violation of a no-contact order, and the court shall not
27 impose a fine in lieu of the minimum sentence, although a fine
28 may be imposed in addition to the minimum sentence.

29 Sec. 6. Section 236.14, Code Supplement 1991, is amended
30 by adding the following new subsection:

31 NEW SUBSECTION. 3. If a person taken into custody
32 pursuant to section 236.11 or 236.12 is a juvenile, the
33 juvenile may be released only after a detention hearing under
34 section 232.44. At the detention hearing, the court shall
35 make determinations regarding the entry of a no-contact order

1 as provided in subsection 2, and the notice provisions of
2 subsection 2 shall apply. Violation of the no-contact order
3 shall be subject to summary contempt proceedings. If held in
4 contempt for violation of a no-contact order, the juvenile
5 shall and must be detained in a detention facility for a
6 minimum of seven consecutive days, and a portion of this
7 sentence shall not be suspended or deferred. A deferred
8 judgment shall not be entered for a violation of a no-contact
9 order, and the court shall not impose a fine in lieu of the
10 minimum sentence, although a fine may be imposed in addition
11 to the minimum sentence.

12

EXPLANATION

13 This bill expands the definition of domestic abuse provided
14 in section 236.2 in several ways. Current law limits domestic
15 abuse to assaults between separated spouses or persons
16 divorced from each other and to assaults between family or
17 household members who resided together at the time of the
18 assault. Current law also provides that "family or household
19 members" mean spouses, persons cohabiting, parents, or other
20 persons related by consanguinity or affinity, except children
21 under 18. The bill expands this definition to include
22 assaults between persons who are parents of the same child,
23 regardless of whether they have ever resided together. The
24 bill also includes within the definition assaults between
25 persons who are both 14 years of age or older, and are or have
26 been involved in a dating, courtship, engagement, or marriage
27 relationship, regardless of whether they have cohabited.

28 The bill further provides that if a juvenile is held in
29 contempt for violation of a domestic abuse protective order,
30 the juvenile shall be held in a detention facility. The bill
31 requires peace officers to use reasonable means to enforce
32 dispositional orders entered by the juvenile court, and if the
33 peace officer has probable cause to believe such an order has
34 been violated and the peace officer cannot take the juvenile
35 into custody within 24 hours, the peace officer shall refer

1 the matter to a magistrate or county attorney.

2 The bill adds provisions requiring detention of juveniles
3 violating the domestic abuse law. The bill is intended to
4 clarify that if an adult violates a no-contact order, and is
5 held in contempt, the adult shall serve a minimum term of
6 seven days, which cannot be deferred or suspended. The bill
7 prohibits entry of deferred judgments for these violations, as
8 well as fines in lieu of the mandatory minimum term. The bill
9 applies these no-contact order provisions to juveniles at a
10 detention hearing.

11 Because the bill adds additional acts included within the
12 definition of domestic abuse, it also creates additional
13 criminal offenses pursuant to section 708.2A.

14 The bill may include a state mandate as defined in section
15 25B.3.

16 BACKGROUND STATEMENT

17 SUBMITTED BY THE AGENCY

18 Tragic news stories as well as citizen contacts to the
19 citizens' aide/ombudsman office within the last year indicate
20 a need for a more inclusive definition of the circumstances in
21 which the domestic abuse chapter applies.

22 For example, a woman contacted the citizens' aide office
23 regarding the difficulty she was having in getting a response
24 from a county attorney's office regarding abuse at the hand of
25 an ex-boyfriend. The county attorney was contacted and it was
26 later learned that the complainant did not fall under the
27 domestic abuse statute because she and the perpetrator were
28 never married and were not living together at the time of the
29 incident.

30 Some of these perceived "loopholes" could be closed if the
31 law is broadened to include assaults between persons who have
32 a child in common regardless of whether they have ever lived
33 together and to include assault between persons who are or
34 have been in a dating, courtship or engagement relationship,
35 regardless of whether they have ever lived together. At least

1 four states incorporate part or all of this type of language:
2 Alaska, California, Colorado, and Pennsylvania.

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