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MAR 8 1985

HOUSE FILE 549

Place On Calendar

BY COMMITTEE ON HUMAN RESOURCES

(Formerly House Study Bill 262)

Passed House, Date 3-14-85 (p. 82) Passed Senate, Date 4-16-85 (p. 1400)  
Vote: Ayes 77 Nays 2 Vote: Ayes 39 Nays 3  
Approved May 23, 1985

### A BILL FOR

1 An Act relating to domestic abuse counseling; to coordination  
2 of certain domestic abuse programs by the department of  
3 human services; to compilation and dissemination of  
4 domestic abuse information by the department of public  
5 safety; to warrantless arrests of persons committing  
6 domestic abuse, and providing penalties; and to the es-  
7 tablishment of a court fee for the entering of a final  
8 decree of dissolution of marriage.

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

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HF 549

1 Section 1. Section 22.7, subsection 2, Code 1985, is  
2 amended to read as follows:

3 2. Hospital records, medical records, and professional  
4 counselor records of the condition, diagnosis, care, or  
5 treatment of a patient or former patient or a counselee or  
6 former counselee, including outpatient. However, confidential  
7 communications between a victim of sexual assault or domestic  
8 violence and the victim's sexual assault or domestic violence  
9 counselor are not subject to disclosure except as provided in  
10 section 236.17.

11 Sec. 2. Section 236.2, Code 1985, is amended by adding the  
12 following new subsections:

13 NEW SUBSECTION. 3. "Emergency shelter services" include,  
14 but are not limited to, secure crisis shelters or housing for  
15 victims of domestic abuse.

16 NEW SUBSECTION. 4. "Support services" include, but are  
17 not limited to, legal services, counseling services,  
18 transportation services, child care services, and advocacy  
19 services.

20 NEW SUBSECTION. 5. "Department" means the department of  
21 human services.

22 NEW SUBSECTION. 6. "Commissioner" means the commissioner  
23 of human services.

24 Sec. 3. Section 236.9, Code 1985, is amended by striking  
25 the section and inserting in lieu thereof the following:

26 236.9 DOMESTIC ABUSE INFORMATION.

27 Criminal justice agencies, as defined in section 692.1,  
28 shall collect and maintain information on incidents involving  
29 domestic abuse and shall provide the information to the  
30 department of public safety in the manner prescribed by the  
31 department. The department shall receive and maintain the  
32 information, including information on the personal character-  
33 istics and identities of perpetrators and victims of domestic  
34 abuse. The department shall maintain the confidentiality of  
35 information which individually identifies perpetrators or

1 victims of domestic abuse, except that the department may  
2 disseminate the identifying information to personnel of the  
3 department of human services or of a criminal justice agency  
4 if necessary for the performance of the official duties of the  
5 personnel.

6 The department of public safety may compile statistics and  
7 issue reports on domestic abuse in Iowa, provided individual  
8 identifying details of the domestic abuse are deleted. The  
9 statistics and reports may include nonidentifying information  
10 on the personal characteristics of perpetrators and victims.  
11 The department may request the cooperation of the department  
12 of human services in compiling the statistics and issuing the  
13 reports. The department of public safety may provide  
14 nonidentifying information on individual incidents of domestic  
15 abuse to persons conducting bona fide research, including but  
16 not limited to personnel of the department of human services.  
17 Identifying information may be provided to persons conducting  
18 bona fide research if all victims of domestic abuse identified  
19 in the information consent in writing to the use of the  
20 information.

21 Sec. 4. Section 236.12, subsection 2, Code 1985, is  
22 amended by adding the following new lettered paragraph:  
23 NEW LETTERED PARAGRAPH. d. Arrest the abusing party  
24 pursuant to section 804.7, subsection 5.

25 Sec. 5. NEW SECTION. 236.13 APPLICATION FOR DESIGNATION  
26 AND FUNDING AS A PROVIDER OF SERVICES FOR VICTIMS OF DOMESTIC  
27 ABUSE.

28 Upon receipt of state or federal funding designated for  
29 victims of domestic abuse by the department, a public or  
30 private nonprofit organization may apply to the commissioner  
31 for designation and funding as a provider of emergency shelter  
32 services and support services to victims of domestic abuse.  
33 The application shall be submitted on a form prescribed by the  
34 department and shall include, but not be limited to,  
35 information regarding services to be provided, budget, and

1 security measures.

2 Sec. 6. NEW SECTION. 236.14 DEPARTMENT POWERS AND  
3 DUTIES.

4 1. The commissioner shall:

5 a. Designate and award grants for existing and pilot  
6 programs pursuant to this chapter to provide emergency shelter  
7 services and support services to victims of domestic abuse.  
8 b. Design and implement a uniform method of collecting  
9 data from domestic abuse organizations funded under this  
10 chapter.

11 2. The department shall consult and cooperate with all  
12 public and private agencies which may provide services to  
13 victims of domestic abuse, including but not limited to, legal  
14 services, social services, prospective employment  
15 opportunities, and unemployment benefits.

16 3. The commissioner may accept, use, and dispose of  
17 contributions of money, services, and property made available  
18 by an agency or department of the state or federal government,  
19 or a private agency or individual.

20 Sec. 7. NEW SECTION. 236.15 ADVISORY BOARD --  
21 MEMBERSHIP.

22 1. The domestic abuse advisory board is created. The  
23 board consists of five members appointed by the governor.  
24 Appointments shall be made of persons with knowledge in the  
25 fields of health, law enforcement, social services, domestic  
26 abuse, and victim services. Members of the board shall serve  
27 at the pleasure of the governor.

28 Members of the board must be electors of the state of Iowa.  
29 No more than three members shall belong to the same gender or  
30 the same political party. Three members are a quorum.  
31 Members shall select a chairperson and other officers as  
32 necessary.

33 2. The board shall meet at the call of the governor, the  
34 board chairperson, or three board members. The members shall  
35 be paid their actual and necessary expenses.

1     Sec. 8. NEW SECTION. 236.16 DUTIES OF THE BOARD.

2     The domestic abuse advisory board shall:

3     1. Advise the commissioner in the administration and  
4 coordination of programs awarded grants under section 236.14.

5     2. Review and comment on applications received by the  
6 commissioner for designation and awarding of grants under  
7 section 236.14.

8     3. Advise the commissioner regarding the adoption of rules  
9 relating to domestic abuse programs.

10    Sec. 9. NEW SECTION. 236.17 VICTIM COUNSELOR PRIVILEGE.

11    1. As used in this section:

12    a. "Victim" means a person who consults a victim counselor  
13 for the purpose of securing advice, counseling, or assistance  
14 concerning a mental, physical, or emotional condition caused  
15 by a sexual assault or domestic violence.

16    b. "Victim counselor" means a person who is engaged in a  
17 sexual assault center or domestic violence center, is  
18 certified as a counselor by the sexual assault or domestic  
19 violence center, and is under the control of a direct services  
20 supervisor of a sexual assault or domestic violence center,  
21 whose primary purpose is the rendering of advice, counseling,  
22 and assistance to the victims of sexual assault or domestic  
23 violence. To qualify as a "victim counselor" under this  
24 section, the person must also have completed at least twenty  
25 hours of training provided by the center in which the person  
26 is engaged, by the Iowa coalition against sexual abuse, or by  
27 the Iowa coalition against domestic violence, which shall  
28 include but not be limited to, the dynamics of victimization,  
29 substantive laws relating to sexual assault and domestic  
30 violence, crisis intervention techniques, communication  
31 skills, working with diverse populations, an overview of the  
32 state criminal justice system, information regarding pertinent  
33 hospital procedures, and information regarding state and  
34 community resources for victims of sexual assault or domestic  
35 violence.

1 c. "Sexual assault center" means any office, institution,  
2 agency, or crisis center offering assistance to victims of  
3 sexual assault and their families through crisis intervention,  
4 accompaniment during medical and legal proceedings, and  
5 follow-up counseling.

6 d. "Sexual assault" means any act of sexual abuse or other  
7 unlawful sexual conduct under chapter 709, 726 or 728.

8 e. "Domestic violence center" means any office,  
9 institution, shelter, host home, agency or crisis center  
10 offering assistance to victims of domestic violence through  
11 crisis intervention, referral to or provision of emergency  
12 shelter, and assistance and advocacy regarding medical and  
13 legal proceedings.

14 f. "Domestic violence" means any act of domestic abuse, as  
15 defined in section 236.2, subsection 1, and includes those  
16 acts commonly referred to as spouse abuse.

17 g. "Confidential communication" means information  
18 transmitted between a victim of sexual assault or domestic  
19 violence and a victim counselor in the course of the  
20 counseling relationship and in confidence by a means which, so  
21 far as the victim is aware, does not disclose the information  
22 to a third person other than any who is present to further the  
23 interests of the victim in the consultation or to whom  
24 disclosure is reasonably necessary for the transmission of the  
25 information or for accomplishment of the purposes for which  
26 the counselor is consulted, and includes all information  
27 received and any advice, report, or working paper given or  
28 prepared by the counselor in the course of the relationship  
29 with the victim.

30 2. A victim counselor shall not be examined or required to  
31 give evidence in any civil or criminal proceeding as to any  
32 confidential communication made by a victim to the counselor,  
33 nor shall a clerk, secretary, stenographer, or any other  
34 employee who types or otherwise prepares or manages the  
35 confidential reports or working papers of a sexual assault or

1 domestic violence counselor be required to produce evidence of  
2 any such confidential communication, unless the victim waives  
3 this privilege in writing. Under no circumstances shall the  
4 location of a domestic violence center or the identity of the  
5 victim counselor be disclosed in any civil or criminal  
6 proceeding.

7 3. If a victim is deceased or has been declared to be  
8 incompetent, this privilege specified in subsection 2 may be  
9 waived by the guardian of the victim or by the executor or  
10 administrator of the victim's estate.

11 4. A minor may waive the privilege under this section  
12 unless, in the opinion of the court, the minor is incapable of  
13 knowingly and intelligently waiving the privilege, in which  
14 case the parent or guardian of the minor may waive the  
15 privilege on the minor's behalf if the parent or guardian is  
16 not the defendant and does not have such a relationship with  
17 the defendant that the parent or guardian has an interest in  
18 the outcome of the proceeding being favorable to the  
19 defendant.

20 5. The privilege under this section does not apply in  
21 matters of proof concerning the chain of custody of evidence,  
22 in matters of proof concerning the physical appearance of the  
23 victim at the time of the injury or the counselor's first  
24 contact with the victim after the injury, or where the  
25 counselor has reason to believe that the victim has given  
26 perjured testimony and the defendant or the state has made an  
27 offer of proof that perjury may have been committed.

28 6. The failure of a counselor to testify due to this  
29 section shall not give rise to an inference unfavorable to the  
30 cause of the state or the cause of the defendant.

31 Sec. 10. Section 602.8105, subsection 1, Code 1985, is  
32 amended by adding the following new paragraph following  
33 paragraph k and renumbering the following paragraphs:

34 NEW PARAGRAPH. 1. For entering a final decree of dissolu-  
35 tion of marriage, fifteen dollars. The fees shall be

1 deposited in the general fund of the state. It is the intent  
2 of the general assembly that the funds generated from the  
3 dissolution fees be appropriated and used for sexual assault  
4 and domestic violence centers.

5 Sec. 11. Section 804.7, Code 1985, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 5. If the peace officer has reasonable  
8 grounds for believing that domestic abuse, as defined in  
9 section 236.2, has occurred and has reasonable grounds for  
10 believing that the person to be arrested has committed it.

11 EXPLANATION

12 Sections 1 and 9 of this bill establish a privilege for  
13 domestic violence or sexual assault counselors regarding  
14 confidential communications and testimony in a civil or  
15 criminal proceeding. Victim, victim counselor, sexual assault  
16 center, sexual assault, domestic violence center, domestic  
17 violence, and confidential communication are defined. The  
18 public records law is amended to exclude certain confidential  
19 communications between a victim of sexual assault or domestic  
20 violence and the victim's counselor.

21 Sections 2, 5, and 6 require the commissioner of human  
22 services and the department of human services to establish an  
23 application and funding process for domestic abuse programs  
24 providing emergency shelter services and support services,  
25 contingent upon receipt of state or federal funding. Sections  
26 7 and 8 require the governor to appoint a five-member advisory  
27 board to advise the commissioner of human services in the area  
28 of domestic abuse.

29 Section 3 transfers the responsibility for compiling,  
30 maintaining, and disseminating statewide domestic abuse  
31 information from the department of human services to the  
32 department of public safety. The information must be held in  
33 confidence, except if released to personnel of the department  
34 of human services or to law enforcement personnel for use in  
35 performing their official duties.

1 Sections 4 and 11 provide that a peace officer may, with or  
2 without a warrant, arrest a person if the officer has  
3 reasonable grounds to believe that the person has committed  
4 domestic abuse.

5 Section 10 establishes a new court fee of \$15 for the  
6 entering of a final decree of dissolution of marriage. Fees  
7 collected are to be deposited in the general fund of the state  
8 and are intended for use by sexual assault and domestic  
9 violence centers.

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## HOUSE FILE 549

FISCAL NOTE

REQUESTED BY REPRESENTATIVE SHOULTZ

In compliance with a written request received March 8, 1985, a fiscal note for HOUSE FILE 549 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 549 contains several provisions concerning domestic abuse. The sections with a fiscal effect are as follows:

Sections 2, 5, and 6 require the commissioner of human services and the department of human services to establish an application and funding process for domestic abuse programs that provide emergency shelter and support services, contingent upon receipt of state or federal funding. Sections 7 and 8 require the governor to appoint a five-member advisory board to advise the commissioner of human services in the area of domestic abuse.

These sections codify existing practice, and are not expected to result in increased expenditures. In FY 1985, \$97,000 will be spent for grants and \$3,000 will be spent on advisory board expenses. The Governor's recommendation for FY 1986 includes \$125,000 for the two items, and the FY 1987 recommendation includes \$135,000 for these items. The amount spent on advisory board expenses is expected to remain at current levels.

Section 3 transfers the responsibility for compiling, maintaining and disseminating statewide domestic abuse information from the department of human services to the department of public safety. The information must be held in confidence, except if released to personnel of the department of human services or to law enforcement personnel for use in performing their official duties. It is estimated that the reporting system duties will cost \$19,084 annually (this includes two .5 FTE's).

Section 10 establishes a new court fee of \$15 for the entering of a final decree of dissolution of marriage. Fees collected are to be deposited in the general fund of the state and are intended for use by sexual assault and domestic violence centers. The number of dissolution of marriages has decreased each year since 1981. Assuming the 1984 level continues, revenues are expected to increase by \$156,000 annually.

	<u>FY 1986</u>	<u>FY 1987</u>
<u>Expenditures</u>		
Domestic Abuse Programs	\$(125,000)	(135,000)
Advisory Board Expenses	\$ (3,000)	(3,000)
Domestic Abuse Reporting	\$ (19,000)	(19,000)
<u>Revenues</u>		
Marriage Dissolution Fee	<u>\$ 156,570</u>	<u>156,570</u>
<b>Net Effect of HF 549</b>	<b>\$ 9,570</b>	<b>(430)</b>

Sources: Department of Human Services  
Department of Public Safety  
Judicial Branch

FILED MARCH 13, 1985

(LSB 2759H, JMN)

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 549

H-3328

- 1 Amend House File 549 as follows:
- 2 1. Page 1, by striking line 31 and inserting the
- 3 following: "department of public safety. The
- 4 department of public safety shall receive and maintain
- 5 the".
- 6 2. Page 1, line 34, by inserting after the word
- 7 "department" the following: "of public safety".
- 8 3. Page 2, line 1, by inserting after the word
- 9 "department" the following: "of public safety".
- 10 4. Page 2, by striking lines 2 and 3 and
- 11 inserting the following: "disseminate the identifying
- 12 information to a criminal justice agency".
- 13 5. Page 2, line 5, by striking the word
- 14 "personnel" and inserting the following: "agency".
- 15 6. Page 2, line 11, by inserting after the word
- 16 "department" the following: "of public safety".
- 17 7. Page 2, by striking lines 17 through 20.

BY STURGEON of Woodbury  
SHOULTZ of Black Hawk

H-3328 FILED MARCH 12, 1985  
*Adopted 3/14/85 (p. 821)*

HOUSE FILE 549

H-3353

- 1 Amend amendment H-3328 to House File 549 as
- 2 follows:
- 3 1. Page 1, by inserting after line 17 the
- 4 following:
- 5 " 4 : By striking page 6, line 31 through page 7,
- 6 line 4."
- 7 2. By renumbering as necessary.

H-3353 FILED MARCH 14, 1985 BY JAY of Appanoose  
NOT GERMANE *(p. 821)*

HUMAN RESOURCES: Bruner, Chair; Wells and Gentleman

Amend 35424 Do Pass 4/2

HOUSE FILE 549

BY COMMITTEE ON HUMAN RESOURCES

(As Amended and Passed by the House March 14, 1985)

Passed House, Date 4-26-85 (p. 1924) Passed Senate, Date 4-16-85 (p. 1400)

Vote: Ayes 94 Nays 0 Vote: Ayes 37 Nays 3

Approved May 23, 1985

Motion to reconsider w/d

## A BILL FOR

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House Amendments \_\_\_\_\_

Deleted Language \*

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2 amended to read as follows:

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4 counselor records of the condition, diagnosis, care, or  
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30 department of public safety in the manner prescribed by the  
31 department of public safety. The department of public safety  
32 shall receive and maintain the information, including  
33 information on the personal characteristics and identities of  
34 perpetrators and victims of domestic abuse. The department of  
35 public safety shall maintain the confidentiality of

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17 human services.

\* 18 Sec. 4. Section 236.12, subsection 2, Code 1985, is  
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20 NEW LETTERED PARAGRAPH. d. Arrest the abusing party  
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23 AND FUNDING AS A PROVIDER OF SERVICES FOR VICTIMS OF DOMESTIC  
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31 department and shall include, but not be limited to,  
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8 2. The department shall consult and cooperate with all  
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10 victims of domestic abuse, including but not limited to, legal  
11 services, social services, prospective employment  
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13 3. The commissioner may accept, use, and dispose of  
14 contributions of money, services, and property made available  
15 by an agency or department of the state or federal government,  
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19 board consists of five members appointed by the governor.  
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22 abuse, and victim services. Members of the board shall serve  
23 at the pleasure of the governor.

24 Members of the board must be electors of the state of Iowa.  
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26 the same political party. Three members are a quorum.  
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35 coordination of programs awarded grants under section 236.14.

1 2. Review and comment on applications received by the  
2 commissioner for designation and awarding of grants under  
3 section 236.14.

4 3. Advise the commissioner regarding the adoption of rules  
5 relating to domestic abuse programs.

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7 1. As used in this section:

8 a. "Victim" means a person who consults a victim counselor  
9 for the purpose of securing advice, counseling, or assistance  
10 concerning a mental, physical, or emotional condition caused  
11 by a sexual assault or domestic violence.

12 b. "Victim counselor" means a person who is engaged in a  
13 sexual assault center or domestic violence center, is  
14 certified as a counselor by the sexual assault or domestic  
15 violence center, and is under the control of a direct services  
16 supervisor of a sexual assault or domestic violence center,  
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18 and assistance to the victims of sexual assault or domestic  
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28 state criminal justice system, information regarding pertinent  
29 hospital procedures, and information regarding state and  
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32 c. "Sexual assault center" means any office, institution,  
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19 interests of the victim in the consultation or to whom  
20 disclosure is reasonably necessary for the transmission of the  
21 information or for accomplishment of the purposes for which  
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33 any such confidential communication, unless the victim waives  
34 this privilege in writing. Under no circumstances shall the  
35 location of a domestic violence center or the identity of the

1 victim counselor be disclosed in any civil or criminal  
2 proceeding.

3 3. If a victim is deceased or has been declared to be  
4 incompetent, this privilege specified in subsection 2 may be  
5 waived by the guardian of the victim or by the executor or  
6 administrator of the victim's estate.

7 4. A minor may waive the privilege under this section  
8 unless, in the opinion of the court, the minor is incapable of  
9 knowingly and intelligently waiving the privilege, in which  
10 case the parent or guardian of the minor may waive the  
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21 counselor has reason to believe that the victim has given  
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25 section shall not give rise to an inference unfavorable to the  
26 cause of the state or the cause of the defendant.

27 Sec. 10. Section 602.8105, subsection 1, Code 1985, is  
28 amended by adding the following new paragraph following  
29 paragraph k and renumbering the following paragraphs:

30 NEW PARAGRAPH. 1. For entering a final decree of dissolu-  
31 tion of marriage, fifteen dollars. The fees shall be  
32 deposited in the general fund of the state. It is the intent  
33 of the general assembly that the funds generated from the  
34 dissolution fees be appropriated and used for sexual assault  
35 and domestic violence centers.

1     Sec. 11. Section 804.7, Code 1985, is amended by adding  
2 the following new subsection:

3     NEW SUBSECTION. 5. If the peace officer has reasonable  
4 grounds for believing that domestic abuse, as defined in  
5 section 236.2, has occurred and has reasonable grounds for  
6 believing that the person to be arrested has committed it.

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1 Amend House File 549, as amended, passed and  
2 reprinted by the House, as follows:

3 1. Page 5, line 34, by inserting after the word  
4 "writing" the following: "or disclosure of the  
5 information is compelled by a court pursuant to  
6 subsection 7".

7 2. Page 6, by inserting after line 26 the  
8 following:

9 "7. Upon the motion of a party, accompanied by a  
10 written offer of proof, a court may compel disclosure  
11 of certain information if the court determines that  
12 all of the following conditions are met:

13 a. The information sought is relevant and material  
14 evidence of the facts and circumstances involved in an  
15 alleged act of sexual assault or domestic violence  
16 which is the subject of a criminal proceeding.

17 b. The probative value of the information  
18 outweighs the harmful effect, if any, of disclosure on  
19 the victim, the counseling relationship, and the  
20 treatment services.

21 c. The information cannot be obtained by  
22 reasonable means from any other source.

23 8. In ruling on a motion under subsection 7, the  
24 court, or a different judge, if the motion was filed  
25 in a criminal proceeding to be tried to the court,  
26 shall adhere to the following procedure:

27 a. The court may require the counselor from whom  
28 disclosure is sought or the victim claiming the  
29 privilege, or both, to disclose the information in  
30 chambers out of the presence and hearing of all  
31 persons except the victim and any other persons the  
32 victim is willing to have present.

33 b. If the court determines that the information is  
34 privileged and not subject to compelled disclosure,  
35 the information shall not be disclosed by any person  
36 without the consent of the victim.

37 c. If the court determines that certain  
38 information may be subject to disclosure, as provided  
39 in subsection 7, the court shall so inform the party  
40 seeking the information and shall order a subsequent  
41 hearing out of the presence of the jury, if any, at  
42 which the parties shall be allowed to examine the  
43 counselor regarding the information which the court  
44 has determined may be subject to disclosure. The  
45 court may accept other evidence at that time.

46 d. At the conclusion of a hearing under paragraph  
47 "c", the court shall determine which information, if  
48 any, shall be disclosed and may enter an order  
49 describing the evidence which may be introduced by the  
50 moving party and prescribing the line of questioning

S-3730 page 2

1 which may be permitted. The moving party may then  
2 offer evidence pursuant to the court order. However,  
3 no victim counselor is subject to exclusion under Iowa  
4 rule of evidence 615.

5 9. This section does not relate to the admission  
6 of evidence of the victim's past sexual behavior which  
7 is strictly subject to Iowa rule of evidence 412."

S-3730 Filed April 12, 1985 BY MANN  
*w/d 4/16 (p. 1399)*

S-3592

HOUSE FILE 549

1 Amend House File 549 as amended, passed and  
2 reprinted by the House, as follows:

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

5 "Sec. \_\_\_\_ . Section 236.3, unnumbered paragraph 2,  
6 Code 1985, is amended to read as follows:

7 If the plaintiff files an affidavit stating that  
8 the plaintiff does not have sufficient funds available  
9 to pay the cost of filing and service, the petition  
10 shall be filed and service shall be made without  
11 payment of costs. If a petition is filed and service  
12 is made without payment of costs, the court shall  
13 determine at the hearing if the plaintiff-is-indigent  
14 payment of costs would prejudice the person's  
15 financial ability to provide economic necessities for  
16 the plaintiff or the plaintiff's dependents. If the  
17 court finds that the plaintiff-is-not-indigent payment  
18 of costs would not prejudice the person's financial  
19 ability to provide economic necessities for the  
20 plaintiff or the plaintiff's dependents, the court may  
21 order the plaintiff to pay the costs of filing and  
22 service. However, in making the determinations, the  
23 court shall not consider funds no longer available to  
24 the plaintiff as a result of the commencement of the  
25 action."

26 2. Title page, line 1, by inserting after the  
27 word "counseling;" the following: "to the  
28 commencement of a domestic abuse action;".

29 3. By renumbering as necessary.

S-3592 Filed April 2, 1985

BY COMMITTEE ON HUMAN RESOURCES

*Adopted 4/16 (p. 1399)*

1 Amend House File 549, as amended, passed and  
2 reprinted by the House, as follows:

3 1. Page 5, line 34, by inserting after the word  
4 "writing" the following: "or disclosure of the  
5 information is compelled by a court pursuant to  
6 subsection 7".

7 2. Page 6, by inserting after line 26 the  
8 following:

9 "7. Upon the motion of a party, accompanied by a  
10 written offer of proof, a court may compel disclosure  
11 of certain information if the court determines that  
12 all of the following conditions are met:

13 a. The information sought is relevant and material  
14 evidence of the facts and circumstances involved in an  
15 alleged act of sexual assault or domestic violence  
16 which is the subject of a criminal proceeding.

17 b. The probative value of the information  
18 outweighs the harmful effect, if any, of disclosure on  
19 the victim, the counseling relationship, and the  
20 treatment services.

21 c. The information cannot be obtained by  
22 reasonable means from any other source.

23 8. In ruling on a motion under subsection 7, the  
24 court, or a different judge, if the motion was filed  
25 in a criminal proceeding to be tried to the court,  
26 shall adhere to the following procedure:

27 a. The court may require the counselor from whom  
28 disclosure is sought or the victim claiming the  
29 privilege, or both, to disclose the information in  
30 chambers out of the presence and hearing of all  
31 persons except the victim and any other persons the  
32 victim is willing to have present.

33 b. If the court determines that the information is  
34 privileged and not subject to compelled disclosure,  
35 the information shall not be disclosed by any person  
36 without the consent of the victim.

37 c. If the court determines that certain  
38 information may be subject to disclosure, as provided  
39 in subsection 7, the court shall so inform the party  
40 seeking the information and shall order a subsequent  
41 hearing out of the presence of the jury, if any, at  
42 which the parties shall be allowed to examine the  
43 counselor regarding the information which the court  
44 has determined may be subject to disclosure. The  
45 court may accept other evidence at that time.

46 d. At the conclusion of a hearing under paragraph  
47 "c", the court shall determine which information, if  
48 any, shall be disclosed and may enter an order  
49 describing the evidence which may be introduced by the  
50 moving party and prescribing the line of questioning

SENATE 3  
APRIL 16, 1985

S-3736 page 2

1 which may be permitted. The moving party may then  
2 offer evidence pursuant to the court order. However,  
3 no victim counselor is subject to exclusion under Iowa  
4 rule of evidence 515.  
5 9. This section does not relate to the admission  
6 of evidence of the victim's past sexual behavior which  
7 is strictly subject to Iowa rule of evidence 412."

S-3736 Filed April 15, 1985

By MANN

*Adapted 4/16/85 (p. 1400)*

## SENATE AMENDMENT TO HOUSE FILE 549

H-3892

1 Amend House File 549 as amended, passed and  
2 reprinted by the House, as follows:

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

5 "Sec. \_\_\_\_ . Section 236.3, unnumbered paragraph 2,  
6 Code 1985, is amended to read as follows:

7 If the plaintiff files an affidavit stating that  
8 the plaintiff does not have sufficient funds available  
9 to pay the cost of filing and service, the petition  
10 shall be filed and service shall be made without  
11 payment of costs. If a petition is filed and service  
12 is made without payment of costs, the court shall  
13 determine at the hearing if the plaintiff-is-indigent  
14 payment of costs would prejudice the person's  
15 financial ability to provide economic necessities for  
16 the plaintiff or the plaintiff's dependents. If the  
17 court finds that the plaintiff-is-not-indigent payment  
18 of costs would not prejudice the person's financial  
19 ability to provide economic necessities for the  
20 plaintiff or the plaintiff's dependents, the court may  
21 order the plaintiff to pay the costs of filing and  
22 service. However, in making the determinations, the  
23 court shall not consider funds no longer available to  
24 the plaintiff as a result of the commencement of the  
25 action."

26 2. Page 5, line 34, by inserting after the word  
27 "writing" the following: "or disclosure of the  
28 information is compelled by a court pursuant to  
29 subsection 7".

30 3. Page 6, by inserting after line 26 the  
31 following:

32 "7. Upon the motion of a party, accompanied by a  
33 written offer of proof, a court may compel disclosure  
34 of certain information if the court determines that  
35 all of the following conditions are met:

36 a. The information sought is relevant and material  
37 evidence of the facts and circumstances involved in an  
38 alleged act of sexual assault or domestic violence  
39 which is the subject of a criminal proceeding.

40 b. The probative value of the information  
41 outweighs the harmful effect, if any, of disclosure on  
42 the victim, the counseling relationship, and the  
43 treatment services.

44 c. The information cannot be obtained by  
45 reasonable means from any other source.

46 8. In ruling on a motion under subsection 7, the  
47 court, or a different judge, if the motion was filed  
48 in a criminal proceeding to be tried to the court,  
49 shall adhere to the following procedure:

50 a. The court may require the counselor from whom

1 disclosure is sought or the victim claiming the  
2 privilege, or both, to disclose the information in  
3 chambers out of the presence and hearing of all  
4 persons except the victim and any other persons the  
5 victim is willing to have present.

6 b. If the court determines that the information is  
7 privileged and not subject to compelled disclosure,  
8 the information shall not be disclosed by any person  
9 without the consent of the victim.

10 c. If the court determines that certain  
11 information may be subject to disclosure, as provided  
12 in subsection 7, the court shall so inform the party  
13 seeking the information and shall order a subsequent  
14 hearing out of the presence of the jury, if any, at  
15 which the parties shall be allowed to examine the  
16 counselor regarding the information which the court  
17 has determined may be subject to disclosure. The  
18 court may accept other evidence at that time.

19 d. At the conclusion of a hearing under paragraph  
20 "c", the court shall determine which information, if  
21 any, shall be disclosed and may enter an order  
22 describing the evidence which may be introduced by the  
23 moving party and prescribing the line of questioning  
24 which may be permitted. The moving party may then  
25 offer evidence pursuant to the court order. However,  
26 no victim counselor is subject to exclusion under Iowa  
27 rule of evidence 615.

28 9. This section does not relate to the admission  
29 of evidence of the victim's past sexual behavior which  
30 is strictly subject to Iowa rule of evidence 412."

31 4. Title page, line 1, by inserting after the  
32 word "counseling;" the following: "to the  
33 commencement of a domestic abuse action;"

34 5. By renumbering, relettering, or redesignating  
35 and correcting internal references as necessary.

NSB 262

Study Bill 262

Human Resources: Shoultz, Chair; Buhr, Hammond, Hermann and Van Camp.

HUMAN RESOURCES

*now  
HF 549*

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
HUMAN RESOURCES BILL  
BY SHOULTZ)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to domestic abuse information compiled, main-  
2 tained, and disseminated by the department of public  
3 safety.

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

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1 Section 1. Section 236.9, Code 1985, is amended by  
2 striking the section and inserting in lieu thereof the fol-  
3 lowing:

4 236.9 DOMESTIC ABUSE INFORMATION.

5 Criminal justice agencies, as defined in section 692.1,  
6 shall collect and maintain information on incidents involving  
7 domestic abuse and shall provide the information to the  
8 department of public safety in the manner prescribed by the  
9 department. The department shall receive and maintain the  
10 information, including information on the personal character-  
11 istics and identities of perpetrators and victims of domestic  
12 abuse. The department shall maintain the confidentiality of  
13 information which individually identifies perpetrators or  
14 victims of domestic abuse, except that the department shall  
15 release the identifying information pursuant to court order  
16 and may disseminate the identifying information to personnel  
17 of the department of human services or of a criminal justice  
18 agency if necessary for the performance of the official duties  
19 of the personnel.

20 The department of public safety may compile statistics and  
21 issue reports on domestic abuse in Iowa, provided individual  
22 identifying details of the domestic abuse are deleted. The  
23 statistics and reports may include nonidentifying information  
24 on the personal characteristics of perpetrators and victims.  
25 The department may request the cooperation of the department  
26 of human services in compiling the statistics and issuing the  
27 reports. The department of public safety may provide  
28 information on individual incidents of domestic abuse to  
29 persons conducting bona fide research, including but not  
30 limited to personnel of the department of human services.

31 EXPLANATION

32 This bill transfers the responsibility for compiling,  
33 maintaining, and disseminating statewide domestic abuse infor-  
34 mation from the department of human services to the department  
35 of public safety. The information must be held in confidence,

1 except if released pursuant to a court order or if released to  
2 personnel of the department of human services or to law  
3 enforcement personnel for use in performing their official  
4 duties.

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HOUSE FILE 549

AN ACT

RELATING TO DOMESTIC ABUSE COUNSELING; TO THE COMMENCEMENT OF A DOMESTIC ABUSE ACTION; TO COORDINATION OF CERTAIN DOMESTIC ABUSE PROGRAMS BY THE DEPARTMENT OF HUMAN SERVICES; TO COMPILATION AND DISSEMINATION OF DOMESTIC ABUSE INFORMATION BY THE DEPARTMENT OF PUBLIC SAFETY; TO WARRANTLESS ARRESTS OF PERSONS COMMITTING DOMESTIC ABUSE, AND PROVIDING PENALTIES; AND TO THE ESTABLISHMENT OF A COURT FEE FOR THE ENTERING OF A FINAL DECREE OF DISSOLUTION OF MARRIAGE.

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

Section 1. Section 22.7, subsection 2, Code 1985, is amended to read as follows:

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a victim of sexual assault or domestic violence and the victim's sexual assault or domestic violence counselor are not subject to disclosure except as provided in section 236.17.

Sec. 2. Section 236.2, Code 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 3. "Emergency shelter services" include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

NEW SUBSECTION. 4. "Support services" include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

NEW SUBSECTION. 5. "Department" means the department of human services.

NEW SUBSECTION. 6. "Commissioner" means the commissioner of human services.

Sec. 3. Section 236.3, unnumbered paragraph 2, Code 1985, is amended to read as follows:

If the plaintiff files an affidavit stating that the plaintiff does not have sufficient funds available to pay the cost of filing and service, the petition shall be filed and service shall be made without payment of costs. If a petition is filed and service is made without payment of costs, the court shall determine at the hearing if the plaintiff is indigent payment of costs would prejudice the person's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents. If the court finds that the plaintiff is not indigent payment of costs would not prejudice the person's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents, the court may order the plaintiff to pay the costs of filing and service. However, in making the determinations, the court shall not consider funds no longer available to the plaintiff as a result of the commencement of the action.

Sec. 4. Section 236.9, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

236.9 DOMESTIC ABUSE INFORMATION.

Criminal justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving domestic abuse and shall provide the information to the department of public safety in the manner prescribed by the department of public safety. The department of public safety shall receive and maintain the information, including information on the personal characteristics and identities of perpetrators and victims of domestic abuse. The department of public safety shall maintain the confidentiality of information which individually identifies perpetrators or victims of domestic abuse, except that the department of public safety may disseminate the identifying information to a criminal justice agency if necessary for the performance of the official duties of the agency.

The department of public safety may compile statistics and issue reports on domestic abuse in Iowa, provided individual identifying details of the domestic abuse are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of human services in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of domestic abuse to persons conducting bona fide research, including but not limited to personnel of the department of human services.

Sec. 5. Section 236.12, subsection 2, Code 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. d. Arrest the abusing party pursuant to section 804.7, subsection 5.

Sec. 6. NEW SECTION. 236.13 APPLICATION FOR DESIGNATION AND FUNDING AS A PROVIDER OF SERVICES FOR VICTIMS OF DOMESTIC ABUSE.

Upon receipt of state or federal funding designated for victims of domestic abuse by the department, a public or private nonprofit organization may apply to the commissioner for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse. The application shall be submitted on a form prescribed by the department and shall include, but not be limited to, information regarding services to be provided, budget, and security measures.

Sec. 7. NEW SECTION. 236.14 DEPARTMENT POWERS AND DUTIES.

1. The commissioner shall:
  - a. Designate and award grants for existing and pilot programs pursuant to this chapter to provide emergency shelter services and support services to victims of domestic abuse.
  - b. Design and implement a uniform method of collecting data from domestic abuse organizations funded under this chapter.

2. The department shall consult and cooperate with all public and private agencies which may provide services to victims of domestic abuse, including but not limited to, legal services, social services, prospective employment opportunities, and unemployment benefits.

3. The commissioner may accept, use, and dispose of contributions of money, services, and property made available by an agency or department of the state or federal government, or a private agency or individual.

Sec. 8. NEW SECTION. 236.15 ADVISORY BOARD -- MEMBERSHIP.

1. The domestic abuse advisory board is created. The board consists of five members appointed by the governor. Appointments shall be made of persons with knowledge in the fields of health, law enforcement, social services, domestic abuse, and victim services. Members of the board shall serve at the pleasure of the governor.

Members of the board must be electors of the state of Iowa. No more than three members shall belong to the same gender or the same political party. Three members are a quorum. Members shall select a chairperson and other officers as necessary.

2. The board shall meet at the call of the governor, the board chairperson, or three board members. The members shall be paid their actual and necessary expenses.

Sec. 9. NEW SECTION. 236.16 DUTIES OF THE BOARD.

The domestic abuse advisory board shall:

1. Advise the commissioner in the administration and coordination of programs awarded grants under section 236.14.
2. Review and comment on applications received by the commissioner for designation and awarding of grants under section 236.14.

3. Advise the commissioner regarding the adoption of rules relating to domestic abuse programs.

Sec. 10. NEW SECTION. 236.17 VICTIM COUNSELOR PRIVILEGE.

1. As used in this section:

a. "Victim" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or domestic violence.

b. "Victim counselor" means a person who is engaged in a sexual assault center or domestic violence center, is certified as a counselor by the sexual assault or domestic violence center, and is under the control of a direct services supervisor of a sexual assault or domestic violence center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of sexual assault or domestic violence. To qualify as a "victim counselor" under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa coalition against sexual abuse, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to sexual assault and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of sexual assault or domestic violence.

c. "Sexual assault center" means any office, institution, agency, or crisis center offering assistance to victims of sexual assault and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

d. "Sexual assault" means any act of sexual abuse or other unlawful sexual conduct under chapter 709, 726 or 728.

e. "Domestic violence center" means any office, institution, shelter, host home, agency or crisis center offering assistance to victims of domestic violence through crisis intervention, referral to or provision of emergency shelter, and assistance and advocacy regarding medical and legal proceedings.

f. "Domestic violence" means any act of domestic abuse, as defined in section 236.2, subsection 1, and includes those acts commonly referred to as spouse abuse.

g. "Confidential communication" means information transmitted between a victim of sexual assault or domestic violence and a victim counselor in the course of the counseling relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any who is present to further the interests of the victim in the consultation or to whom disclosure is reasonably necessary for the transmission of the information or for accomplishment of the purposes for which the counselor is consulted, and includes all information received and any advice, report, or working paper given or prepared by the counselor in the course of the relationship with the victim.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a sexual assault or domestic violence counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a domestic violence center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the executor or administrator of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which

case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged act of sexual assault or domestic violence which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or

both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under Iowa rule of evidence 615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to Iowa rule of evidence 412.

Sec. 11. Section 602.8105, subsection 1, Code 1985, is amended by adding the following new paragraph following paragraph k and renumbering the following paragraphs:

NEW PARAGRAPH. 1. For entering a final decree of dissolution of marriage, fifteen dollars. The fees shall be deposited in the general fund of the state. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

Sec. 12. Section 804.7, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has reasonable grounds for believing that the person to be arrested has committed it.

---

DONALD D. AVENSON  
Speaker of the House

---

ROBERT T. ANDERSON  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 549, Seventy-first General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved May 23, 1985

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TERRY E. BRANSTAD  
Governor

**H.F. 549**