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MAR 19 1987

HOUSE FILE 591

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

Place On Calendar

(Formerly House File 466) -

Passed House, Date 3-27-87 (p. 908) Passed Senate, Date 5/7/87 (P. 1764)

Vote: Ayes 84 Nays 4 Vote: Ayes 46 Nays 0

Approved May 28, 1987

A BILL FOR

1 An Act relating to domestic abuse, assaults involving an act of
2 domestic abuse, and court orders issued and enforced pursuant
3 to the domestic abuse law, and providing penalties.

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

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HF 591

1 Section 1. Section 236.2, subsection 1, paragraph b, Code
2 1987, is amended to read as follows:

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

6 Sec. 2. Section 236.8, Code 1987, is amended to read as
7 follows:

8 236.8 CONTEMPT.

9 The court may hold a party in contempt for a violation of
10 an order issued pursuant to this chapter, ~~or~~ for violation of
11 a court-approved consent agreement, for violation of any order
12 or consent agreement in a criminal or juvenile court action
13 arising from domestic abuse, or for violation of a temporary
14 or permanent protective order or order to vacate the homestead
15 issued pursuant to chapter 598. If held in contempt, the
16 defendant shall serve a jail sentence which may be on
17 weekends.

18 Sec. 3. Section 236.11, Code 1987, is amended to read as
19 follows:

20 236.11 DUTY OF PEACE OFFICER.

21 A peace officer shall use every reasonable means to enforce
22 any a civil or criminal order or approved consent agreement
23 issued pursuant to this chapter, any order or consent
24 agreement entered in a criminal or juvenile court action
25 arising from domestic abuse, or a temporary or permanent
26 protective order or order to vacate the homestead issued
27 pursuant to chapter 598. If a peace officer has probable
28 cause to believe that a person has violated any a civil or
29 criminal order or approved consent agreement issued pursuant
30 to this chapter or chapter 598, the peace officer shall take
31 the person into custody ~~and take the~~. ~~The person before the~~
32 ~~court which issued the order or agreement, at which time the~~
33 ~~court shall determine whether the person has committed~~
34 ~~contempt pursuant to section 236.8~~ arrested shall, without
35 unnecessary delay, be taken before the nearest or most

1 accessible magistrate in the judicial district in which the
2 arrest was made. The magistrate shall make an initial
3 preliminary determination whether there is probable cause to
4 believe that an order or consent agreement existed and that
5 the person taken into custody has violated its terms. The
6 magistrate's decision shall be entered in the record.

7 If the magistrate finds probable cause, the magistrate
8 shall order the person to appear before the court which issued
9 the original order at a time specified not less than three
10 days nor more than ten days from the initial appearance
11 provided for under this section. The magistrate shall cause
12 the original court to be notified of the contents of the
13 magistrate's order. A peace officer shall not be held civilly
14 or criminally liable for acting pursuant to this section
15 provided that the peace officer acts in good faith, on
16 probable cause, and ~~such~~ the officer's acts do not constitute
17 a willful and wanton disregard for the rights or safety of
18 another.

19 Sec. 4. Section 236.12, Code 1987, is amended by adding
20 the following new subsection 3 and renumbering the existing
21 subsection 3:

22 NEW SUBSECTION. 3. If the peace officer observes that a
23 victim has suffered a bodily injury which the peace officer
24 reasonably believes was caused by an act of domestic abuse, or
25 the peace officer reasonably believes that a dangerous weapon
26 has been used or displayed in connection with an act of
27 domestic abuse, the peace officer shall arrest the abusing
28 party.

29 Sec. 5. NEW SECTION. 236.14 INITIAL APPEARANCE REQUIRED
30 -- CONTACT TO BE PROHIBITED.

31 1. Notwithstanding chapters 804 and 805, a person taken
32 into custody pursuant to section 236.11 or arrested pursuant
33 to section 236.12 may be released on bail or otherwise only
34 after an initial appearance before a magistrate as provided in
35 chapter 804 and the rules of criminal procedure or section

1 236.11, whichever is applicable.

2 2. When a person arrested for a domestic abuse assault, or
3 taken into custody for contempt proceedings pursuant to
4 section 236.11, is brought before a magistrate and the
5 magistrate finds cause to believe that domestic abuse or a
6 violation of an order or consent agreement has occurred and
7 that the presence of the alleged abuser in the victim's
8 residence poses a threat to the victim's safety, the
9 magistrate shall enter an order which shall include but not be
10 limited to requiring the alleged abuser to vacate the victim's
11 residence and to have no contact with the victim at the
12 victim's residence, place of employment or business, or school
13 and to refrain from harassing the victim or the victim's
14 relatives in addition to any other conditions of release
15 determined and imposed by the magistrate under section 811.2.

16 The court order shall contain the court's directives
17 restricting the defendant from having contact with the victim
18 or the victim's relatives.

19 The clerk of the court or other person designated by the
20 court shall provide a copy of this order to the victim
21 pursuant to chapter 910A. The order has force and effect
22 until it is modified or terminated by subsequent court action
23 in the contempt proceeding or the criminal or juvenile court
24 action and is reviewable in the manner prescribed in section
25 811.2.

26 Violation of this no-contact order is punishable by summary
27 contempt proceedings.

28 Sec. 6. NEW SECTION. 598.10 PRELIMINARY INJUNCTION.

29 1. In an action for dissolution of marriage, annulment, or
30 separate maintenance, the clerk of the district court shall
31 issue a preliminary injunction directed to each party to the
32 action. The preliminary injunction shall enjoin both parties
33 from:

34 a. Transferring, encumbering, concealing, selling, or
35 otherwise disposing of any of the joint, common, or community

1 property of the parties except in the usual course of business
2 or for the necessities of life, without the written consent of
3 the other party or the permission of the court.

4 b. Molesting, harassing, disturbing the peace of, or
5 committing an assault on the person of the other party or a
6 natural or adopted child of either of the parties.

7 c. Removing a natural or adopted child of either of the
8 parties residing in this state from the jurisdiction of the
9 court without the prior written consent of the other party or
10 the permission of the court.

11 2. At the time of filing the petition for dissolution of
12 marriage, annulment, or separate maintenance, the clerk of the
13 district court shall issue the preliminary injunction to the
14 petitioner or the petitioner's representative. The petitioner
15 is deemed to have accepted service of the petitioner's copy of
16 the preliminary injunction and to have actual notice of the
17 contents of the preliminary injunction at the time of the
18 filing of the petition. The preliminary injunction is
19 effective against the petitioner at the time of the filing of
20 the petition.

21 3. The petitioner shall cause a copy of the preliminary
22 injunction to be served upon the respondent with the service
23 of the original notice. The preliminary injunction is
24 effective against the respondent upon receipt of service of
25 the original notice and a copy of the preliminary injunction.

26 4. The preliminary injunction has the force and effect of
27 an order of the court signed by a judge and is enforceable by
28 all legal remedies available to the court, including contempt
29 of court. The preliminary injunction remains effective until
30 modified by order of the court or until a decree of
31 dissolution, annulment, or separate maintenance is entered.

32 5. The preliminary injunction shall include the following
33 statement:

34

WARNING

35 This is an official court order. If you disobey this order

1 the court may find you in contempt of court. You may also be
2 arrested and prosecuted for any other crime you may have
3 committed in disobeying this order.

4 You or your spouse may file a certified copy of this order
5 with your local law enforcement agency. A certified copy may
6 be obtained from the clerk of the district court who issued
7 this order. If you are the person who brought this action,
8 you must also file evidence with the law enforcement agency
9 that this order was served on your spouse.

10 This order is effective until a final decree of
11 dissolution, annulment, or separate maintenance is entered or
12 until this order is modified by the court or the action is
13 dismissed.

14 Sec. 7. Section 708.2, Code 1987, is amended by adding the
15 following new subsections 3 and 4, and renumbering the
16 existing subsection 3:

17 NEW SUBSECTION. 3. A person who commits an assault, as
18 defined in section 708.1, and uses or displays a dangerous
19 weapon in connection with the assault, is guilty of an
20 aggravated misdemeanor. This subsection does not apply if
21 section 708.6 or 708.8 applies.

22 NEW SUBSECTION. 4. A person who commits an assault, as
23 defined in section 708.1, and performs a sex act with the
24 other person by force or against the will of that person in
25 connection with the assault, is guilty of an aggravated misde-
26 meanor unless a greater offense applies.

27 Sec. 8. NEW SECTION. 708.2A DOMESTIC ABUSE ASSAULT --
28 PENALTIES ENHANCED.

29 Unless the person is guilty of a greater offense under
30 section 708.2 or any other provision, a person who commits an
31 assault that is domestic abuse as defined in section 236.2
32 commits:

33 1. A simple misdemeanor if the offense is the person's
34 first act of domestic abuse.

35 2. A serious misdemeanor if the person was previously

1 convicted of a prior domestic abuse assault within the two
2 years prior to the date of the instant offense.

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EXPLANATION

4 This bill relates to domestic abuse and court orders which
5 may be enforced under the domestic abuse law. The definition
6 of domestic abuse is expanded to include divorced persons who
7 are not living together.

8 Contempt citations may be applied to persons violating
9 temporary or permanent protective orders and orders to vacate
10 the homestead issued under chapter 598.

11 An officer taking a person into custody for violation of an
12 order is to take the person before the nearest magistrate
13 without undue delay for a determination of whether or not the
14 individual is guilty of contempt.

15 The officer must arrest an alleged abuser if the victim is
16 visibly injured and the officer reasonably believes the
17 injuries were caused by an act of abuse or that a dangerous
18 weapon was involved.

19 If a defendant charged with abuse is released before trial,
20 a "no contact" order must be issued for a period of not less
21 than ten days or until the hearing on the charge, whichever
22 period is less.

23 Preliminary injunctions directed to both parties in a
24 dissolution of marriage, annulment, or separate maintenance
25 action are required.

26 A person who commits an assault and displays or uses a
27 weapon is guilty of an aggravated misdemeanor, unless a
28 greater penalty applies.

29 A graduated penalty scale is established for persons found
30 to have engaged in an act of domestic abuse based upon the
31 number of prior convictions.

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HOUSE FILE 591

H-3277

1 Amend House File 591 as follows:

2 1. Page 1, by inserting after line 5 the follow-
3 ing:

4 "Sec. _____. Section 236.5, subsection 2, Code 1987,
5 is amended by adding the following new paragraph:

6 NEW PARAGRAPH. The order shall state whether a
7 person is to be taken into custody by a peace officer
8 for a violation of the terms stated in the order.

9 Sec. _____. Section 236.5, subsection 4, Code 1987,
10 is amended to read as follows:

11 4. A certified copy of any order or approved
12 consent agreement shall be issued to the plaintiff,
13 the defendant and law enforcement agencies having
14 jurisdiction to enforce the order or consent
15 agreement, and the twenty-four hour dispatcher for the
16 law enforcement agencies. Any subsequent amendment or
17 revocation of an order or consent agreement shall be
18 previously notified.

19 previously notified."
20 2. Page 1, by striking lines 13 through 15 and
21 inserting the words "arising from domestic abuse. If
22 held in contempt, the".

23 3. Page 1, by striking lines 22 through 30 and
24 inserting the following: "any a civil or criminal
25 order or, a protective order issued in a criminal
26 prosecution of a domestic abuse violation, approved
27 consent agreement issued pursuant to this chapter, or
28 any order or consent agreement entered in a juvenile
29 court action arising from domestic abuse. If a peace
30 officer has probable cause to believe that a person
31 has violated any a civil or criminal order, a
32 protective order issued in a criminal prosecution of a
33 domestic abuse violation, or approved consent
34 agreement, the peace officer shall take".

35 4. Page 2, by striking lines 22 through 28 and
36 inserting the following:

37 "NEW SUBSECTION. 3. a. A peace officer may, with
38 or without a warrant, arrest a person under section
39 708.2, subsection 3, if, upon investigation, including
40 a reasonable inquiry of the alleged victim and other
41 witnesses, the officer has probable cause to believe
42 that domestic abuse has been committed.

43 b. A peace officer shall, with or without a
44 warrant, arrest a person under section 708.2,
45 subsection 2, if, upon investigation, including a
46 reasonable inquiry of the alleged victim and other
47 witnesses, the officer has probable cause to believe
48 that domestic abuse has been committed and that bodily
49 injury has resulted therefrom.

50 c. A peace officer shall, with or without a

1 warrant, arrest a person under section 708.2,
2 subsection 1, if, upon investigation, including a
3 reasonable inquiry of the alleged victim and other
4 witnesses, the officer has probable cause to believe
5 that domestic abuse has been committed and that the
6 assault was committed with the intent to commit
7 serious injury."
8 5. Renumber sections and correct internal
9 references as necessary in accordance with this
10 amendment.

BY NEUHAUSER of Johnson
BRAMMER of Linn
DODERER of Johnson

H-3277 FILED MARCH 23, 1987
Adopted 3/27/87 (p. 907)

HOUSE FILE 591

H-3264

1 Amend House File 591 as follows:
2 1. Page 6, by inserting after line 2 the
3 following:
4 "Sec. ____ . Section 728.4, Code 1987, is amended by
5 striking the section and inserting the following:
6 728.4 SALE OF OBSCENE MATERIAL.
7 A person who knowingly sells or offers for sale
8 obscene material commits a class "D" felony. Charges
9 under this section may only be brought by a county
10 attorney or the attorney general.
11 Sec. ____ . Section 728.12, subsection 2, Code 1987,
12 is amended to read as follows:
13 2. A person commits a class "C" felony when
14 the person knowingly promotes any material visually
15 depicting a live performance of a child engaging in a
16 prohibited sexual act or in the simulation of a
17 prohibited sexual act. Notwithstanding section 902.9,
18 the court may assess a fine of not more than twenty-
19 five thousand dollars for each offense under this
20 subsection in addition to imposing any other
21 authorized sentence."

H-3264 FILED MARCH 23, 1987 BY METCALF of Polk
Filed not germane 3/27 (p. 908)

HOUSE FILE 591

H-3352

1 Amend House File 591 as follows:
2 1. Page 5, by striking line 23 and inserting the
3 following: "defined in section 708.1, who is subject
4 to mandatory arrest pursuant to section 236.12 and who
5 performs a sex act with the".

H-3352 FILED MARCH 25, 1987 BY BRAMMER of Linn
Adopted 3/27/87 (p. 908)

HOUSE FILE 591

H-3373

1 Amend House File 591 as follows:
2 1. By striking page 3, line 28, through page 5,
3 line 13.

H-3373 FILED MARCH 25, 1987 BY DODERER of Johnson
Adopted 3/27/87 (p. 907)

*Sen Judiciary
Amend (3514) + S. Pass 4/10/87 (p. 1218)*

HOUSE FILE 591

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(As Amended and Passed by the House March 27, 1987)

~~By~~ Passed House, Date 5/9/87 (p. 2249) Passed Senate, Date 5/7/87 (p. 1764)

Vote: Ayes 94 Nays 1 Vote: Ayes 46 Nays 0

Approved May 28, 1987
Motion to Reconsider (p. 1752) w/d 5/9/87

A BILL FOR

1 An Act relating to domestic abuse, assaults involving an act of
2 domestic abuse, and court orders issued and enforced pursuant
3 to the domestic abuse law, and providing penalties.

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

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House Amendments

1 Section 1. Section 236.2, subsection 1, paragraph b, Code
2 1987, is amended to read as follows:

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

6 Sec. 2. Section 236.5, subsection 2, Code 1987, is amended
7 by adding the following new paragraph:

8 NEW PARAGRAPH. The order shall state whether a person is
9 to be taken into custody by a peace officer for a violation of
10 the terms stated in the order.

11 Sec. 3. Section 236.5, subsection 4, Code 1987, is amended
12 to read as follows:

13 4. A certified copy of any order or approved consent
14 agreement shall be issued to the plaintiff, the defendant and
15 law enforcement agencies having jurisdiction to enforce the
16 order or consent agreement, and the twenty-four hour
17 dispatcher for the law enforcement agencies. Any subsequent
18 amendment or revocation of an order or consent agreement shall
19 be forwarded by the clerk to all individuals and agencies
20 previously notified.

21 Sec. 4. Section 236.8, Code 1987, is amended to read as
22 follows:

23 236.8 CONTEMPT.

24 The court may hold a party in contempt for a violation of
25 an order issued pursuant to this chapter, ~~or~~ for violation of
26 a court-approved consent agreement, for violation of any order
27 or consent agreement in a criminal or juvenile court action
28 arising from domestic abuse. If held in contempt, the
29 defendant shall serve a jail sentence which may be on
30 weekends.

31 Sec. 5. Section 236.11, Code 1987, is amended to read as
32 follows:

33 236.11 DUTY OF PEACE OFFICER.

34 A peace officer shall use every reasonable means to enforce
35 any a civil or criminal order ~~or~~, a protective order issued in

1 a criminal prosecution of a domestic abuse violation, approved
2 consent agreement issued pursuant to this chapter, or any
3 order or consent agreement entered in a juvenile court action
4 arising from domestic abuse. If a peace officer has probable
5 cause to believe that a person has violated any a civil or
6 criminal order, a protective order issued in a criminal
7 prosecution of a domestic abuse violation, or approved consent
8 agreement, the peace officer shall take the person into
9 custody and take the. ~~The person before the court which~~
10 ~~issued the order or agreement, at which time the court shall~~
11 ~~determine whether the person has committed contempt pursuant~~
12 ~~to section 236.8~~ arrested shall, without unnecessary delay, be
13 taken before the nearest or most accessible magistrate in the
14 judicial district in which the arrest was made. The
15 magistrate shall make an initial preliminary determination
16 whether there is probable cause to believe that an order or
17 consent agreement existed and that the person taken into
18 custody has violated its terms. The magistrate's decision
19 shall be entered in the record.

20 If the magistrate finds probable cause, the magistrate
21 shall order the person to appear before the court which issued
22 the original order at a time specified not less than three
23 days nor more than ten days from the initial appearance
24 provided for under this section. The magistrate shall cause
25 the original court to be notified of the contents of the
26 magistrate's order. A peace officer shall not be held civilly
27 or criminally liable for acting pursuant to this section
28 provided that the peace officer acts in good faith, on
29 probable cause, and such the officer's acts do not constitute
30 a willful and wanton disregard for the rights or safety of
31 another.

32 Sec. 6. Section 236.12, Code 1987, is amended by adding
33 the following new subsection 3 and renumbering the existing
34 subsection 3:

35 NEW SUBSECTION. 3. a. A peace officer may, with or

1 without a warrant, arrest a person under section 708.2,
2 subsection 3, if, upon investigation, including a reasonable
3 inquiry of the alleged victim and other witnesses, the officer
4 has probable cause to believe that domestic abuse has been
5 committed.

6 b. A peace officer shall, with or without a warrant,
7 arrest a person under section 708.2, subsection 2, if, upon
8 investigation, including a reasonable inquiry of the alleged
9 victim and other witnesses, the officer has probable cause to
10 believe that domestic abuse has been committed and that bodily
11 injury has resulted therefrom.

12 c. A peace officer shall, with or without a warrant,
13 arrest a person under section 708.2, subsection 1, if, upon
14 investigation, including a reasonable inquiry of the alleged
15 victim and other witnesses, the officer has probable cause to
16 believe that domestic abuse has been committed and that the
17 assault was committed with the intent to commit serious
18 injury.

19 Sec. 7. NEW SECTION. 236.14 INITIAL APPEARANCE REQUIRED
20 -- CONTACT TO BE PROHIBITED.

21 1. Notwithstanding chapters 804 and 805, a person taken
22 into custody pursuant to section 236.11 or arrested pursuant
23 to section 236.12 may be released on bail or otherwise only
24 after an initial appearance before a magistrate as provided in
25 chapter 804 and the rules of criminal procedure or section
26 236.11, whichever is applicable.

27 2. When a person arrested for a domestic abuse assault, or
28 taken into custody for contempt proceedings pursuant to
29 section 236.11, is brought before a magistrate and the
30 magistrate finds cause to believe that domestic abuse or a
31 violation of an order or consent agreement has occurred and
32 that the presence of the alleged abuser in the victim's
33 residence poses a threat to the victim's safety, the
34 magistrate shall enter an order which shall include but not be
35 limited to requiring the alleged abuser to vacate the victim's

1 residence and to have no contact with the victim at the
2 victim's residence, place of employment or business, or school
3 and to refrain from harassing the victim or the victim's
4 relatives in addition to any other conditions of release
5 determined and imposed by the magistrate under section 811.2.

6 The court order shall contain the court's directives
7 restricting the defendant from having contact with the victim
8 or the victim's relatives.

9 The clerk of the court or other person designated by the
10 court shall provide a copy of this order to the victim
11 pursuant to chapter 910A. The order has force and effect
12 until it is modified or terminated by subsequent court action
13 in the contempt proceeding or the criminal or juvenile court
14 action and is reviewable in the manner prescribed in section
15 811.2.

16 Violation of this no-contact order is punishable by summary
17 contempt proceedings.

*18 Sec. 8. Section 708.2, Code 1987, is amended by adding the
19 following new subsections 3 and 4, and renumbering the
20 existing subsection 3:

21 NEW SUBSECTION. 3. A person who commits an assault, as
22 defined in section 708.1, and uses or displays a dangerous
23 weapon in connection with the assault, is guilty of an
24 aggravated misdemeanor. This subsection does not apply if
25 section 708.6 or 708.8 applies.

26 NEW SUBSECTION. 4. A person who commits an assault, as
27 defined in section 708.1, who is subject to mandatory arrest
28 pursuant to section 236.12 and who performs a sex act with the
29 other person by force or against the will of that person in
30 connection with the assault, is guilty of an aggravated misde-
31 meanor unless a greater offense applies.

32 Sec. 9. NEW SECTION. 708.2A DOMESTIC ABUSE ASSAULT --
33 PENALTIES ENHANCED.

34 Unless the person is guilty of a greater offense under
35 section 708.2 or any other provision, a person who commits an

1 assault that is domestic abuse as defined in section 236.2
2 commits:

3 1. A simple misdemeanor if the offense is the person's
4 first act of domestic abuse.

5 2. A serious misdemeanor if the person was previously
6 convicted of a prior domestic abuse assault within the two
7 years prior to the date of the instant offense.

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HOUSE FILE 591

3514

1 Grand House File 591, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by striking lines 25 through 28 and
4 inserting the following: "an order issued pursuant to
5 this chapter or for violation of a court-approved
6 consent agreement entered under this chapter, or for
7 violation of any order that establishes conditions of
8 release or is a protective order or sentencing order
9 in a criminal prosecution arising from a domestic
10 abuse assault. If held in contempt, the".

11 2. By striking page 1, line 31 through page 2,
12 line 31.

13 3. Page 2, by striking lines 32 through 35 and
14 inserting the following:

15 "Sec. 6. Section 236.12, subsection 2, Code 1987,
16 is amended by striking the subsection and inserting in
17 lieu thereof the following:

18 2. a. A peace officer may, with or".

19 4. Page 3, line 3, by inserting after the word
20 "witnesses," the following: "if any,".

21 5. Page 3, lines 4 and 5, by striking the words
22 "domestic abuse has been committed" and inserting the
23 following: "a domestic abuse assault has been
24 committed which did not result in any injury to the
25 alleged victim".

26 6. Page 3, line 9, by inserting after the word
27 "witnesses," the following: "if any".

28 7. Page 3, by striking lines 10 and 11 and in-
29 serting the following: "believe that a domestic abuse
30 assault has been committed which resulted in the
31 alleged victim's suffering a bodily injury."

32 8. Page 3, line 15, by inserting after the word
33 "witnesses," the following: "if any,".

34 9. Page 3, by striking lines 16 and 17 and in-
35 serting the following: "believe that a domestic abuse
36 assault has been committed with the intent to inflict
37 a serious".

38 10. Page 3, by inserting after line 18 the fol-
39 lowing:

40 "d. A peace officer shall, with or without a
41 warrant, arrest a person under section 708.2,
42 subsection 3, if, upon investigation, including a
43 reasonable inquiry of the alleged victim and other
44 witnesses, if any, the officer has probable cause to
45 believe that a domestic abuse assault has been
46 committed and that the alleged abuser used or
47 displayed a dangerous weapon in connection with the
48 assault.

49 e. A peace officer shall, with or without a
50 warrant, arrest a person under section 708.2,

S-3514 pg. 2

1 subsection 4, if, upon investigation, including a
2 reasonable inquiry of the alleged victim and other
3 witnesses, if any, the officer has probable cause to
4 believe that a domestic abuse assault has been
5 committed in which the alleged abuser engaged in a sex
6 act with the alleged victim by force or against the
7 will of the alleged victim."

8 11. Page 3, line 30, by inserting after the word
9 "finds" the word "probable".

10 12. By striking page 3, line 34 through page 4,
11 line 5, and inserting the following: "magistrate
12 shall enter an order which shall require the alleged
13 abuser to have no contact with the alleged victim and
14 to refrain from harassing the alleged victim or the
15 victim's relatives in addition to any other conditions
16 of release determined and imposed by the magistrate
17 under section 811.2."

18 13. Page 4, by striking lines 27 through 31 and
19 inserting the following: "defined in section 708.1
20 and which is domestic abuse as defined in section
21 236.2, during which the person engages in a sex act
22 with the other person by force or against the will of
23 that person, is guilty of an aggravated misdemeanor
24 unless a greater offense applies."

25 14. Page 4, by inserting before line 32 the fol-
26 lowing:

27 "Sec. ____ . Section 702.18, Code 1987, is amended
28 to read as follows:

29 702.18 BODILY INJURY -- SERIOUS INJURY.

30 1. "Bodily injury" means any physical pain or
31 illness, or any impairment of physical condition.

32 2. "Serious injury" means disabling mental
33 illness, or any bodily injury which creates a
34 substantial risk of death or which causes serious
35 permanent disfigurement, or protracted loss or
36 impairment of the function of any bodily member or
37 organ."

38 15. By striking page 4, line 33 through page 5,
39 line 5, and inserting the following: "PENALTY
40 ENHANCED.

41 An assault, as defined in section 708.1 which is
42 domestic abuse as defined in section 236.2 and which
43 would otherwise be punishable as a simple misdemeanor
44 under section 708.2, is a serious misdemeanor if the
45 person who commits the assault was previously".

46 16. By renumbering as necessary.

S-3514

Filed April 10, 1987

Adopted as amended by 3103 5/7/91 (p. 1763)

BY COMMITTEE ON JUDICIARY
DONALD V. DOYLE, Chairperson

HOUSE FILE 591

3703

1 Amend the Committee Amendment, S-3514, to House
2 File 591, as amended, passed, and reprinted by the
3 House, as follows:

4 1. Page 1, line 6, by inserting after the word
5 "chapter," the following: "for violation of a
6 temporary or permanent protective order or order to
7 vacate the homestead under chapter 598,".

8 2. Page 1, by striking lines 11 and 12 and
9 inserting the following:

10 " By striking page 1, line 35 through page 2,
11 line 26, and inserting the following: "any-civil-or
12 criminal an order or approved court-approved consent
13 agreement issued-pursuant-to entered under this
14 chapter, a temporary or permanent protective order or
15 order to vacate the homestead under chapter 598, or
16 any order that establishes conditions of release or is
17 a protective order or sentencing order in a criminal
18 prosecution arising from a domestic abuse assault. If
19 a peace officer has probable cause to believe that a
20 person has violated any-civil-or-criminal an order or
21 approved consent agreement entered under this chapter,
22 a temporary or permanent protective order or order to
23 vacate the homestead under chapter 598, or any order
24 establishing conditions of release or a protective or
25 sentencing order in a criminal prosecution arising
26 from a domestic abuse assault, the peace officer shall
27 take the person into custody and shall take the person
28 without unnecessary delay before the nearest or most
29 accessible magistrate in the judicial district in
30 which the person was taken into custody. The
31 magistrate shall make an initial preliminary
32 determination whether there is probable cause to
33 believe that an order or consent agreement existed and
34 that the person taken into custody has violated its
35 terms. The magistrate's decision shall be entered in
36 the record.

37 If the magistrate finds probable cause, the
38 magistrate shall order the person to appear before the
39 court which issued the original order or approved the
40 consent agreement, whichever was allegedly violated,
41 at which a specified time the court shall determine
42 whether the person has committed contempt-pursuant-to
43 section-236-8 not less than three days nor more than
44 ten days after the initial appearance under this
45 section. The magistrate shall cause the original
46 court to be notified of the contents of the
47 magistrate's order.

PARAGRAPH DIVIDED. A peace officer shall not be
held civilly".

50 3. By striking page 1, line 49 through page 2

April 22, 1987

S-3703 pg. 2

- 1 line 7.
- 2 4. Page 2, by striking lines 18 through 24 and
- 3 inserting the following:
- 4 "____. Page 4, by striking lines 26 through 31."
- 5 5. Page 2, by striking lines 25 through 37.
- 6 6. Page 2, by inserting before line 46 the
- 7 following:
- 8 "____. Title page, line 2, by striking the words
- 9 "issued and enforced" and inserting the following:
- 10 "issued or enforced"."

S-3703

Filed April 21, 1987

BY TOM MANN, JR.

Adopted 5/1/87 (p 17621)

HOUSE FILE 591

S-3621

- 1 Amend House File 591 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 4, lines 28 and 29, by striking the words
- 4 "the other person" and inserting in lieu thereof the
- 5 words "a person other than a cohabiting spouse".

S-3621

Filed April 15, 1987

BY C. JOSEPH COLEMAN

Placed on 5/7 (p 1763)

HOUSE FILE 591

S-3622

- 1 Amend amendment S-3514 to House File 591 as amended,
- 2 passed and reprinted by the House as follows:
- 3 1. Page 2, line 22, by striking the words "the
- 4 other person" and inserting in lieu thereof the words
- 5 "a person other than a cohabiting spouse".

S-3622

Filed April 15, 1987

BY C. JOSEPH COLEMAN

Placed on 5/7 (p 1763)

SENATE AMENDMENT TO HOUSE FILE 591

H-4352

1 Amend House File 591, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by striking lines 25 through 28 and
4 inserting the following: "an order ~~issued-pursuant-to~~
5 ~~this-chapter or for-violation-of-a court-approved~~
6 consent agreement entered under this chapter, for
7 violation of a temporary or permanent protective order
8 or order to vacate the homestead under chapter 598, or
9 for violation of any order that establishes conditions
10 of release or is a protective order or sentencing
11 order in a criminal prosecution arising from a
12 domestic abuse assault. If held in contempt, the".

13 2. By striking page 1, line 35 through page 2,
14 line 26, and inserting the following: "any-civil-or
15 criminal an order or approved court-approved consent
16 agreement issued-pursuant-to entered under this
17 chapter, a temporary or permanent protective order or
18 order to vacate the homestead under chapter 598, or
19 any order that establishes conditions of release or is
20 a protective order or sentencing order in a criminal
21 prosecution arising from a domestic abuse assault. If
22 a peace officer has probable cause to believe that a
23 person has violated any-civil-or-criminal an order or
24 approved consent agreement entered under this chapter,
25 a temporary or permanent protective order or order to
26 vacate the homestead under chapter 598, or any order
27 establishing conditions of release or a protective or
28 sentencing order in a criminal prosecution arising
29 from a domestic abuse assault, the peace officer shall
30 take the person into custody and shall take the person
31 without unnecessary delay before the nearest or most
32 accessible magistrate in the judicial district in
33 which the person was taken into custody. The
34 magistrate shall make an initial preliminary
35 determination whether there is probable cause to
36 believe that an order or consent agreement existed and
37 that the person taken into custody has violated its
38 terms. The magistrate's decision shall be entered in
39 the record.

40 If the magistrate finds probable cause, the
41 magistrate shall order the person to appear before the
42 court which issued the original order or approved the
43 consent agreement, whichever was allegedly violated,
44 at which a specified time the court shall determine
45 whether the person has committed contempt pursuant to
46 section-236-8 not less than three days nor more than
47 ten days after the initial appearance under this
48 section. The magistrate shall cause the original
49 court to be notified of the contents of the
50 magistrate's order.

1 PARAGRAPH DIVIDED. A peace officer shall not be
2 held civilly".

3 3. Page 2, by striking lines 32 through 35 and
4 inserting the following:

5 "Sec. 6. Section 236.12, subsection 2, Code 1987,
6 is amended by striking the subsection and inserting in
7 lieu thereof the following:

8 2. a. A peace officer may, with or".

9 4. Page 3, line 3, by inserting after the word
10 "witnesses," the following: "if any,".

11 5. Page 3, lines 4 and 5, by striking the words
12 "domestic abuse has been committed" and inserting the
13 following: "a domestic abuse assault has been
14 committed which did not result in any injury to the
15 alleged victim".

16 6. Page 3, line 9, by inserting after the word
17 "witnesses," the following: "if any,".

18 7. Page 3, by striking lines 10 and 11 and in-
19 serting the following: "believe that a domestic abuse
20 assault has been committed which resulted in the
21 alleged victim's suffering a bodily injury."

22 8. Page 3, line 15, by inserting after the word
23 "witnesses," the following: "if any,".

24 9. Page 3, by striking lines 16 and 17 and in-
25 serting the following: "believe that a domestic abuse
26 assault has been committed with the intent to inflict
27 a serious".

28 10. Page 3, by inserting after line 18 the fol-
29 lowing:

30 "d. A peace officer shall, with or without a
31 warrant, arrest a person under section 708.2,
32 subsection 3, 15, upon investigation, including a
33 reasonable inquiry of the alleged victim and other
34 witnesses, if any, the officer has probable cause to
35 believe that a domestic abuse assault has been
36 committed and that the alleged abuser used or
37 displayed a dangerous weapon in connection with the
38 assault."

39 11. Page 3, line 30, by inserting after the word
40 "finds" the word "probable".

41 12. By striking page 3, line 34 through page 4,
42 line 5, and inserting the following: "magistrate
43 shall enter an order which shall require the alleged
44 abuser to have no contact with the alleged victim and
45 to refrain from harassing the alleged victim or the
46 victim's relatives in addition to any other conditions
47 of release determined and imposed by the magistrate
48 under section 811.2."

49 13. Page 4, by striking lines 26 through 31.

50 14. By striking page 4, line 33 through page 5,

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Page Three

1 line 5, and inserting the following: "PENALTY

2 ENHANCED.

3 An assault, as defined in section 708.1 which is
4 domestic abuse as defined in section 236.2 and which
5 would otherwise be punishable as a simple misdemeanor
6 under section 708.2, is a serious misdemeanor if the
7 person who commits the assault was previously".

8 15. Title page, line 2, by striking the words

9 "issued and enforced" and inserting the following:

10 "issued or enforced".

11 16. By renumbering as necessary.

H-4352 FILED MAY 9, 1987

RECEIVED FROM THE SENATE

#2 CONCURRED 5/9/87 (H 3249)

contempt-pursuant-to-section-236.8 not less than three days
or more than ten days after the initial appearance under this
section. The magistrate shall cause the original court to be
notified of the contents of the magistrate's order.

PARAGRAPH DIVIDED. A peace officer shall not be held
civilly or criminally liable for acting pursuant to this
section provided that the peace officer acts in good faith, on
probable cause, and such the officer's acts do not constitute
a willful and wanton disregard for the rights or safety of
another.

Sec. 6. Section 236.12, subsection 2, Code 1987, is
amended by striking the subsection and inserting in lieu
thereof the following:

2. a. A peace officer may, with or without a warrant,
arrest a person under section 708.2, subsection 3, if, upon
investigation, including a reasonable inquiry of the alleged
victim and other witnesses, if any, the officer has probable
cause to believe that a domestic abuse assault has been
committed which did not result in any injury to the alleged
victim.

b. A peace officer shall, with or without a warrant,
arrest a person under section 708.2, subsection 2, if, upon
investigation, including a reasonable inquiry of the alleged
victim and other witnesses, if any, the officer has probable
cause to believe that a domestic abuse assault has been
committed which resulted in the alleged victim's suffering a
bodily injury.

c. A peace officer shall, with or without a warrant,
arrest a person under section 708.2, subsection 1, if, upon
investigation, including a reasonable inquiry of the alleged
victim and other witnesses, if any, the officer has probable
cause to believe that a domestic abuse assault has been
committed with the intent to inflict a serious injury.

d. A peace officer shall, with or without a warrant,
arrest a person under section 708.2, subsection 3, if, upon
investigation, including a reasonable inquiry of the alleged
victim and other witnesses, if any, the officer has probable

cause to believe that a domestic abuse assault has been
committed and that the alleged abuser used or displayed a
dangerous weapon in connection with the assault.

Sec. 7. NEW SECTION. 236.14 INITIAL APPEARANCE REQUIRED
-- CONTACT TO BE PROHIBITED.

1. Notwithstanding chapters 804 and 805, a person taken
into custody pursuant to section 236.11 or arrested pursuant
to section 236.12 may be released on bail or otherwise only
after an initial appearance before a magistrate as provided in
chapter 804 and the rules of criminal procedure or section
236.11, whichever is applicable.

2. When a person arrested for a domestic abuse assault, or
taken into custody for contempt proceedings pursuant to
section 236.11, is brought before a magistrate and the
magistrate finds probable cause to believe that domestic abuse
or a violation of an order or consent agreement has occurred
and that the presence of the alleged abuser in the victim's
residence poses a threat to the victim's safety, the
magistrate shall enter an order which shall require the
alleged abuser to have no contact with the alleged victim and
to refrain from harassing the alleged victim or the victim's
relatives in addition to any other conditions of release
determined and imposed by the magistrate under section 811.2.

The court order shall contain the court's directives
restricting the defendant from having contact with the victim
or the victim's relatives.

The clerk of the court or other person designated by the
court shall provide a copy of this order to the victim
pursuant to chapter 910A. The order has force and effect
until it is modified or terminated by subsequent court action
in the contempt proceeding or the criminal or juvenile court
action and is reviewable in the manner prescribed in section
811.2.

Violation of this non-contact order is punishable by summary
contempt proceedings.

Sec. 8. Section 708.2, Code 1987, is amended by adding the
following new subsection 3:

HOUSE FILE 591

AN ACT

RELATING TO DOMESTIC ABUSE, ASSAULTS INVOLVING AN ACT OF DOMESTIC ABUSE, AND COURT ORDERS ISSUED OR ENFORCED PURSUANT TO THE DOMESTIC ABUSE LAW, AND PROVIDING PENALTIES.

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

Section 1. Section 236.2, subsection 1, paragraph b, Code 1987, is amended to read as follows:

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

Sec. 2. Section 236.5, subsection 2, Code 1987, is amended by adding the following new paragraph:

NEW PARAGRAPH. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

Sec. 3. Section 236.5, subsection 4, Code 1987, is amended to read as follows:

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and law enforcement agencies having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the law enforcement agencies. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and agencies previously notified.

Sec. 4. Section 236.8, Code 1987, is amended to read as follows:

236.8 CONTEMPT.

The court may hold a party in contempt for a violation of an order issued pursuant to this chapter or for violation of a court-approved consent agreement entered under this chapter, for violation of a temporary or permanent protective order or

order to vacate the homestead under chapter 598, or for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If held in contempt, the defendant shall serve a jail sentence which may be on weekends.

Sec. 5. Section 236.11, Code 1987, is amended to read as follows:

236.11 DUTY OF PEACE OFFICER.

A peace officer shall use every reasonable means to enforce any civil or criminal an order or approved court-approved consent agreement issued pursuant to entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If a peace officer has probable cause to believe that a person has violated any civil or criminal an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody. The magistrate shall make an initial preliminary determination whether there is probable cause to believe that an order or consent agreement existed and that the person taken into custody has violated its terms. The magistrate's decision shall be entered in the record.

If the magistrate finds probable cause, the magistrate shall order the person to appear before the court which issued the original order or approved the consent agreement, whichever was allegedly violated, at which a specified time the court shall determine whether the person has committed

NEW SUBSECTION. 3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.

Sec. 9. NEW SECTION. 708.2A DOMESTIC ABUSE ASSAULT -- PENALTY ENHANCED.

An assault, as defined in section 708.1 which is domestic abuse as defined in section 236.2 and which would otherwise be punishable as a simple misdemeanor under section 708.2, is a serious misdemeanor if the person who commits the assault was previously convicted of a prior domestic abuse assault within the two years prior to the date of the instant offense.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 591, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 28, 1987

HF 591

TERRY E. BRANSTAD
Governor