

(P. 558) 3/10/94 House - Judiciary

FILED MAR 3 1994

SENATE FILE 2265
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2090)

Passed Senate, ^(P. 602) Date 3-9-94
Vote: Ayes 50 Nays 0

Passed House, ^(P. 973) Date 3/30/94
Vote: Ayes 91 Nays 7

Approved April 19, 1994
Panel 4-5-94 (P. 1021)
Vote 49-0

A BILL FOR

1 An Act relating to the offenses of harassment and stalking, and
2 providing for penalties and other related matters.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 22.65

1 Section 1. Section 708.7, subsection 1, Code 1993, is
2 amended to read as follows:

3 1. a. A person commits harassment when, with intent to
4 intimidate, annoy, or alarm another person, the person does
5 any of the following:

6 a- (1) Communicates with another by telephone, telegraph,
7 or writing without legitimate purpose and in a manner likely
8 to cause the other person annoyance or harm.

9 b- (2) Places a simulated explosive or simulated
10 incendiary device in or near a building, vehicle, airplane,
11 railroad engine or railroad car, or boat occupied by another
12 person.

13 c- (3) Orders merchandise or services in the name of
14 another, or to be delivered to another, without the other
15 person's knowledge or consent.

16 d- (4) Reports or causes to be reported false information
17 to a law enforcement authority implicating another in some
18 criminal activity, knowing that the information is false, or
19 reports the alleged occurrence of a criminal act, knowing the
20 act did not occur.

21 b. A person commits harassment when the person,
22 purposefully and without legitimate purpose, has personal
23 contact with another person, with the intent to threaten,
24 intimidate, or alarm that other person. As used in this
25 section, unless the context otherwise requires, "personal
26 contact" means an encounter in which two or more people are in
27 visual or physical proximity to each other. "Personal
28 contact" does not require a physical touching or oral
29 communication, although it may include these types of
30 contacts.

31 Sec. 2. Section 708.11, Code 1993, is amended by striking
32 the section and inserting in lieu thereof the following:

33 708.11 STALKING.

34 1. As used in this section, unless the context otherwise
35 requires:

1 a. "Accompanying offense" means any public offense
2 committed as part of the course of conduct engaged in while
3 committing the offense of stalking.

4 b. "Course of conduct" means repeatedly maintaining a
5 visual or physical proximity to a person or repeatedly
6 conveying oral or written threats, threats implied by conduct,
7 or a combination thereof, directed at or toward a person,
8 without legitimate purpose.

9 c. "Immediate family member" means a spouse, parent,
10 child, sibling, or any other person who regularly resides in
11 the household of a specific person, or who within the prior
12 six months regularly resided in the household of a specific
13 person.

14 d. "Repeatedly" means on two or more occasions.

15 2. A person commits stalking when all of the following
16 occur:

17 a. The person purposefully engages in a course of conduct
18 directed at a specific person that would cause a reasonable
19 person to fear bodily injury to, or the death of, that
20 specific person or a member of the specific person's immediate
21 family.

22 b. The person has knowledge or should have knowledge that
23 the specific person will be placed in reasonable fear of
24 bodily injury to, or the death of, that specific person or a
25 member of the specific person's immediate family by the course
26 of conduct.

27 c. The person's course of conduct induces fear in the
28 specific person of bodily injury to, or the death of, the
29 specific person or a member of the specific person's immediate
30 family.

31 3. a. A person who commits stalking in violation of this
32 section commits a class "C" felony for a third or subsequent
33 offense.

34 b. A person who commits stalking in violation of this
35 section commits a class "D" felony if any of the following

1 apply:

2 (1) The person commits stalking in violation of a criminal
3 or civil protective order or injunction, or any other court
4 order.

5 (2) The person commits stalking while in possession of a
6 dangerous weapon, as defined in section 702.7.

7 (3) The person commits stalking by directing a course of
8 conduct at a specific person who is under eighteen years of
9 age.

10 (4) The offense is a second offense.

11 c. A person who commits stalking in violation of this
12 section commits an aggravated misdemeanor if the offense is a
13 first offense which is not included in paragraph "b".

14 4. Violations of this section and accompanying offenses
15 shall be considered prior offenses for the purpose of
16 determining whether an offense is a second or subsequent
17 offense. A conviction for, deferred judgment for, or plea of
18 guilty to a violation of this section or an accompanying
19 offense which occurred more than six years prior to the date
20 of the violation charged shall not be considered in
21 determining that the violation charged is a second or
22 subsequent offense. Deferred judgments pursuant to section
23 907.3 for violations of this section or accompanying offenses
24 and convictions or the equivalent of deferred judgments for
25 violations in any other states under statutes substantially
26 corresponding to this section or accompanying offenses shall
27 be counted as previous offenses. The courts shall judicially
28 notice the statutes of other states which define offenses
29 substantially equivalent to the offenses defined in this
30 section and its accompanying offenses and can therefore be
31 considered corresponding statutes. Each previous violation of
32 this section or an accompanying offense on which conviction or
33 deferral of judgment was entered prior to the date of the
34 violation charged shall be considered and counted as a
35 separate previous offense. In addition, however, accompanying

1 offenses committed as part of the course of conduct engaged in
2 while committing the violation of stalking charged shall be
3 considered prior offenses for the purpose of that violation,
4 even though the accompanying offenses occurred at
5 approximately the same time. An offense shall be considered a
6 second or subsequent offense regardless of whether it was
7 committed upon the same person who was the victim of any other
8 previous offense.

9 5. Notwithstanding section 804.1, R.Cr.P. 7, Ia. Ct.
10 Rules, 3d ed., or any other provision of law to the contrary,
11 upon the filing of a complaint and a finding of probable cause
12 to believe an offense has been committed in violation of this
13 section, or after the filing of an indictment or information
14 alleging a violation of this section, the court shall issue an
15 arrest warrant, rather than a citation or summons. A peace
16 officer shall not issue a citation in lieu of arrest for a
17 violation of this section. Notwithstanding section 804.21 or
18 any other provision of law to the contrary, a person arrested
19 for stalking shall be immediately taken into custody and shall
20 not be released pursuant to pretrial release guidelines, a
21 bond schedule, or any similar device, until after the initial
22 appearance before a magistrate. In establishing the
23 conditions of release, the magistrate may consider the
24 defendant's prior criminal history, in addition to the other
25 factors provided in section 811.2.

26 Sec. 3. Section 805.1, subsection 1, Code 1993, is amended
27 to read as follows:

28 1. Except for an offense for which an accused would not be
29 eligible for bail under section 811.1 or a violation of
30 section 708.11, a peace officer having grounds to make an
31 arrest may issue a citation in lieu of making an arrest
32 without a warrant or, if a warrantless arrest has been made, a
33 citation may be issued in lieu of continued custody.

34 Sec. 4. Section 811.1, subsection 3, Code 1993, is amended
35 to read as follows:

1 3. Notwithstanding subsections 1 and 2, a defendant
 2 awaiting judgment of conviction and sentencing following
 3 either a plea or verdict of guilty of, or appealing a
 4 conviction of, a felony offense under chapter 124 not provided
 5 for in subsection 1 or 2 ~~or a violation punishable under~~
 6 ~~section 708.117, subsection 2, paragraph "a",~~ is presumed to be
 7 ineligible to be admitted to bail unless the court determines
 8 that such release reasonably will not result in the person
 9 failing to appear as required and will not jeopardize the
 10 personal safety of another person or persons. ~~While the~~
 11 ~~presumption of ineligibility for bail established in this~~
 12 ~~subsection shall not apply to a violation punishable under~~
 13 ~~section 708.117, subsection 2, paragraph "b" or "c", in~~
 14 ~~considering bail for a defendant awaiting judgment of~~
 15 ~~conviction and sentencing following a plea or verdict of~~
 16 ~~guilty of, or appealing a conviction of, a violation~~
 17 ~~punishable pursuant to section 708.117, subsection 2, paragraph~~
 18 ~~"b" or "c", the court shall consider the likelihood of the~~
 19 ~~defendant reestablishing contact with the victim of the~~
 20 ~~violation.~~

21 EXPLANATION

22 This bill provides for changes in the law pertaining to
 23 harassment and stalking.
 24 The bill adds an additional offense of harassment, which
 25 occurs when a person, purposefully and without legitimate
 26 purpose, has personal contact with another person with the
 27 intent to threaten, intimidate, or alarm. The bill defines
 28 "personal contact" as an encounter in which two or more people
 29 are in a visual or physical proximity to each other, which
 30 does not require, but may include, physical contact or oral
 31 communication. Depending upon the circumstances surrounding
 32 the offense, harassment may constitute a simple, serious, or
 33 aggravated misdemeanor.
 34 The bill also strikes and rewrites the current stalking
 35 provision. Under the bill, a person commits stalking when the

1 person does all of the following: (1) the person purposefully
2 engages in a course of conduct directed at a specific person
3 that would cause a reasonable person to fear bodily injury to,
4 or the death of, that specific person or a member of the
5 person's immediate family; (2) the person has knowledge or
6 should have knowledge that the specific person will be placed
7 in reasonable fear; and (3) the course of conduct does induce
8 fear. The bill defines a "course of conduct" as, on two or
9 more occasions, maintaining a visual or physical proximity to
10 a person or conveying oral or written threats, threats implied
11 by conduct, or a combination thereof, directed at or toward a
12 person, without legitimate purpose.

13 Under the bill, third or subsequent offenses are class "C"
14 felonies, and second offenses, offenses which are in violation
15 of a court order, offenses involving possession of a dangerous
16 weapon, and offenses directed at persons under the age of 18
17 are class "D" felonies. The bill provides that all other
18 stalking offenses are aggravated misdemeanors. The bill
19 includes other public offenses committed as part of the course
20 of conduct of stalking as prior offenses, under certain
21 circumstances.

22 The bill requires that individuals charged with or arrested
23 for alleged stalking shall be taken before a magistrate prior
24 to release.

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SENATE FILE 2265
FISCAL NOTE

A fiscal note for Senate File 2265 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2265 adds an additional offense of harassment, defines "personal contact" as an encounter in which 2 or more people are in a visual or physical proximity to each other, and strikes and rewrites the current stalking provision.

Assumptions:

1. It is anticipated that 6 convictions relating to stalking and harassment will occur in FY 1995.
2. Approximately 4 admissions to correctional facilities are expected: 1 admission to prison, 1 admission to Community-Based Corrections, and 2 admissions to jail.
3. The average cost for the Court to review a stalking or harassment related case is \$479.95.

Fiscal Impact:

Because the total number of cases relating to harassment and stalking under SF 2265 is unknown, the overall fiscal effect cannot be determined.

Department of Corrections: The total increase in admissions to correctional facilities is expected to be minimal if this Bill is adopted.

Judicial Department: It is estimated that for each case filed with the Court, relating to harassment and stalking, the cost to the General Fund will be \$479.45. The General Fund cost for every 6 convictions is estimated to be \$2,877.

(Sources: Judicial Department, Department of Corrections, Parole Board, Criminal and Juvenile Justice Planning Division)

(LSB 3182SV, LAM)

FILED MARCH 8, 1994

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2265

H-5535

1 Amend Senate File 2265, as passed by the Senate, as
2 follows:

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

5 "Section 1. Section 236.14, subsection 2,
6 unnumbered paragraphs 3 and 4, Code Supplement 1993,
7 are amended to read as follows:

8 The clerk of the court or other person designated
9 by the court shall provide a copy of this order to the
10 victim pursuant to chapter 910A. The order has force
11 and effect until it is modified or terminated by
12 subsequent court action in the contempt proceeding or
13 the criminal or juvenile court action and is
14 reviewable in the manner prescribed in section 811.2.
15 If a defendant is convicted for, receives a deferred
16 judgment for, or pleads guilty to a violation of
17 section 708.2A, the court shall modify the no-contact
18 order issued by the magistrate to provide that the no-
19 contact order shall continue in effect for a period of
20 one year from the date that the judgment is entered or
21 the deferred judgment is granted, regardless of
22 whether the defendant is placed on probation. Upon an
23 application by the state which is filed within ninety
24 days prior to the expiration of the modified no-
25 contact order, the court shall modify and extend the
26 no-contact order for an additional period of one year,
27 if the court finds that the defendant continues to
28 pose a threat to the safety of the victim, persons
29 residing with the victim, or members of the victim's
30 immediate family. The number of modifications
31 extending the no-contact order permitted by this
32 subsection is not limited.

33 PARAGRAPH DIVIDED. The clerk of the district court
34 shall also provide notice and copies of the no-contact
35 order to the applicable law enforcement agencies and
36 the twenty-four hour dispatcher for the law
37 enforcement agencies, in the manner provided for
38 protective orders under section 236.5. The clerk
39 shall provide notice and copies of modifications or
40 vacations of these orders in the same manner.

41 Violation of this no-contact order, including
42 modified no-contact orders, is punishable by summary
43 contempt proceedings. A hearing in a contempt
44 proceeding brought pursuant to this section shall be
45 held not less than five and not more than fifteen days
46 after the issuance of a rule to show cause, as set by
47 the court. If held in contempt for violation of a no-
48 contact order or a modified no-contact order, the
49 person shall be confined in the county jail for a
50 minimum of seven days. A jail sentence imposed

H-5535

H-5535

Page 2

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

10 Sec. ____ . Section 708.2A, Code Supplement 1993, is
11 amended by adding the following new subsection:

12 NEW SUBSECTION. 4A. If a defendant is convicted
13 for, receives a deferred judgment for, or pleads
14 guilty to a violation of this section, the court shall
15 modify the no-contact order issued upon initial
16 appearance in the manner provided in section 236.14,
17 regardless of whether the defendant is placed on
18 probation."

19 2. Page 2, line 5, by inserting after the word
20 "person" the following: "without legitimate purpose".

21 3. Page 2, lines 7 and 8, by striking the words
22 "person, without legitimate purpose." and inserting
23 the following: "person."

24 4. Page 3, line 19, by striking the words "more
25 than six years" and inserting the following: "at any
26 time".

27 5. Page 3, line 20, by striking the word "not".

28 6. Title page, line 1, by inserting after the
29 word "stalking," the following: "providing for the
30 extension of certain no-contact orders,".

31 7. By renumbering and correcting internal
32 references as necessary.

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT
McNEAL of Hardin, Chairperson

H-5535 FILED MARCH 21, 1994

Adopted
3/30/94
(p.972)

HOUSE AMENDMENT TO
SENATE FILE 2265

S-5357

1 Amend Senate File 2265, as passed by the Senate, as
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S-5357

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S-5357

Page 2

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28 6. Title page, line 1, by inserting after the
29 word "stalking," the following: "providing for the
30 extension of certain no-contact orders,".

31 7. By renumbering and correcting internal
32 references as necessary.

RECEIVED FROM THE HOUSE

S-5357 FILED MARCH 30, 1994

Senate Concurred
4-5-94
(p. 1021)

Sturgeon
Rosenberg
Rife

SSB-2090
Judiciary

New

SENATE/HOUSE FILE 2265
BY (PROPOSED ATTORNEY GENERAL
BILL)

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

A BILL FOR

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2 providing for penalties and other related matters.

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

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23 contact with another person, with the intent to threaten,
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16 a. The person purposefully engages in a course of conduct
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19 specific person or a member of the specific person's immediate
20 family.

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22 the specific person will be placed in reasonable fear of
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24 member of the specific person's immediate family by the course
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30 3. a. A person who commits stalking in violation of this
31 section commits a class "B" felony for a third or subsequent
32 offense.

33 b. A person who commits stalking in violation of this
34 section commits a class "C" felony if any of the following
35 apply:

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2 or civil protective order or injunction, or any other court
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5 dangerous weapon, as defined in section 702.7.

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8 age.

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24 occurs when a person, purposefully and without legitimate
25 purpose, has personal contact with another person with the
26 intent to threaten, intimidate, or alarm. The bill defines
27 "personal contact" as an encounter in which two or more people
28 are in a visual or physical proximity to each other, which
29 does not require, but may include, physical contact or oral
30 communication. Depending upon the circumstances surrounding
31 the offense, harassment may constitute a simple, serious, or
32 aggravated misdemeanor.

33 The bill also strikes and rewrites the current stalking
34 provision. Under the bill, a person commits stalking when the
35 person does all of the following: (1) the person purposefully

1 engages in a course of conduct directed at a specific person
2 that would cause a reasonable person to fear bodily injury to,
3 or the death of, that specific person or a member of the
4 person's immediate family; (2) the person has knowledge or
5 should have knowledge that the specific person will be placed
6 in reasonable fear; and (3) the course of conduct does induce
7 fear. The bill defines a "course of conduct" as, on two or
8 more occasions, maintaining a visual or physical proximity to
9 a person or conveying oral or written threats, threats implied
10 by conduct, or a combination thereof, directed at or toward a
11 person.

12 Under the bill, third or subsequent offenses are class "B"
13 felonies, and second offenses, offenses which are in violation
14 of a court order, offenses involving possession of a dangerous
15 weapon, and offenses directed at persons under the age of 18
16 are class "C" felonies. The bill provides that all other
17 stalking offenses are class "D" felonies. The bill includes
18 other public offenses committed as part of the course of
19 conduct of stalking as prior offenses, under certain
20 circumstances.

21 The bill requires that individuals charged with or arrested
22 for alleged stalking shall be taken before a magistrate prior
23 to release.

24 BACKGROUND STATEMENT

25 SUBMITTED BY THE AGENCY

26 This proposal to amend Iowa's current stalker law and
27 harassment statute is due to the recent release of a national
28 model stalker law and from the experience of Iowa's law
29 enforcement officials who have worked with current law for the
30 past two years.

31 Forty states have enacted antistalking laws as of May 1993.
32 Iowa was one of the first states to enact a stalker law after
33 California enacted the first law in the nation in 1990.

34 In response to the proliferation of state laws prohibiting
35 the crime of stalking, the U.S. Department of Justice

1 established a task force to develop a national model stalker
2 law. The model was developed and released in the fall of
3 1993. The Iowa attorney general's office was a member of the
4 task force.

5 The keys to this proposal are as follows: (1) the current
6 penalty of stalking is enhanced to a felony from a
7 misdemeanor; (2) threats against family members (not just the
8 individual) are included; (3) the language concerning
9 "credible threats" in the current law, which involves the
10 necessity of proving intent, is replaced with "threats implied
11 by conduct," which is easier to prove; and (4) the harassment
12 statute is amended to include face-to-face confrontations.
13 The harassment change is crucial and would result in providing
14 a two-tiered approach to stalking, that is, the more dangerous
15 situations could be addressed by the felony stalker statute
16 and the less dangerous situations could be addressed by the
17 misdemeanor harassment statute.

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SENATE FILE 2265

AN ACT

RELATING TO THE OFFENSES OF HARASSMENT AND STALKING, PROVIDING FOR THE EXTENSION OF CERTAIN NO-CONTACT ORDERS, AND PROVIDING FOR PENALTIES AND OTHER RELATED MATTERS.

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

Section 1. Section 236.14, subsection 2, unnumbered paragraphs 3 and 4, Code Supplement 1993, are amended to read as follows:

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. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.2A, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of one year from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon an application by the state which is filed within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of one year, if the court finds that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

PARAGRAPH DIVIDED. The clerk of the district court shall also provide notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

Violation of this no-contact order, including modified no-contact orders, is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court. If held in contempt for violation of a no-contact order or a modified no-contact order, the person shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this paragraph shall be served on consecutive days. No portion of the mandatory minimum term of confinement imposed by this section shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for violation of a no-contact order or a modified no-contact order, and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

Sec. 2. Section 708.2A, Code Supplement 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of this section, the court shall modify the no-contact order issued upon initial appearance in the manner provided in section 236.14, regardless of whether the defendant is placed on probation.

Sec. 3. Section 708.7, subsection 1, Code 1993, is amended to read as follows:

1. a. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:

a+ (1) Communicates with another by telephone, telegraph, or writing without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

b+ (2) Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.

c+ (3) Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.

d+ (4) Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the act did not occur.

b. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person. As used in this section, unless the context otherwise requires, "personal contact" means an encounter in which two or more people are in visual or physical proximity to each other. "Personal contact" does not require a physical touching or oral communication, although it may include these types of contacts.

Sec. 4. Section 708.11, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

708.11 STALKING.

1. As used in this section, unless the context otherwise requires:

a. "Accompanying offense" means any public offense committed as part of the course of conduct engaged in while committing the offense of stalking.

b. "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threats,

threats implied by conduct, or a combination thereof, directed at or toward a person.

c. "Immediate family member" means a spouse, parent, child, sibling, or any other person who regularly resides in the household of a specific person, or who within the prior six months regularly resided in the household of a specific person.

d. "Repeatedly" means on two or more occasions.

2. A person commits stalking when all of the following occur:

a. The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to, or the death of, that specific person or a member of the specific person's immediate family.

b. The person has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to, or the death of, that specific person or a member of the specific person's immediate family by the course of conduct.

c. The person's course of conduct induces fear in the specific person of bodily injury to, or the death of, the specific person or a member of the specific person's immediate family.

3. a. A person who commits stalking in violation of this section commits a class "C" felony for a third or subsequent offense.

b. A person who commits stalking in violation of this section commits a class "D" felony if any of the following apply:

(1) The person commits stalking in violation of a criminal or civil protective order or injunction, or any other court order.

(2) The person commits stalking while in possession of a dangerous weapon, as defined in section 702.7.

(3) The person commits stalking by directing a course of conduct at a specific person who is under eighteen years of age.

(4) The offense is a second offense.

c. A person who commits stalking in violation of this section commits an aggravated misdemeanor if the offense is a first offense which is not included in paragraph "b".

4. Violations of this section and accompanying offenses shall be considered prior offenses for the purpose of determining whether an offense is a second or subsequent offense. A conviction for, deferred judgment for, or plea of guilty to a violation of this section or an accompanying offense which occurred at any time prior to the date of the violation charged shall be considered in determining that the violation charged is a second or subsequent offense. Deferred judgments pursuant to section 907.3 for violations of this section or accompanying offenses and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section or accompanying offenses shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and its accompanying offenses and can therefore be considered corresponding statutes. Each previous violation of this section or an accompanying offense on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense. In addition, however, accompanying offenses committed as part of the course of conduct engaged in while committing the violation of stalking charged shall be considered prior offenses for the purpose of that violation, even though the accompanying offenses occurred at approximately the same time. An offense shall be considered a second or subsequent offense regardless of whether it was committed upon the same person who was the victim of any other previous offense.

5. Notwithstanding section 804.1, R.Cr.P. 7, Ia. Ct. Rules, 3d ed., or any other provision of law to the contrary, upon the filing of a complaint and a finding of probable cause to believe an offense has been committed in violation of this section, or after the filing of an indictment or information alleging a violation of this section, the court shall issue an arrest warrant, rather than a citation or summons. A peace officer shall not issue a citation in lieu of arrest for a violation of this section. Notwithstanding section 804.21 or any other provision of law to the contrary, a person arrested for stalking shall be immediately taken into custody and shall not be released pursuant to pretrial release guidelines, a bond schedule, or any similar device, until after the initial appearance before a magistrate. In establishing the conditions of release, the magistrate may consider the defendant's prior criminal history, in addition to the other factors provided in section 811.2.

Sec. 5. Section 805.1, subsection 1, Code 1993, is amended to read as follows:

1. Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

Sec. 6. Section 811.1, subsection 3, Code 1993, is amended to read as follows:

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, a felony offense under chapter 124 not provided for in subsection 1 or 2 or a violation punishable under section 708.11, subsection 2, paragraph "a", is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the

personal safety of another person or persons. While the presumption of ineligibility for bail established in this subsection shall not apply to a violation punishable under section 708.11, subsection 2, paragraph "b" or "c", in considering bail for a defendant awaiting judgment of conviction and sentencing following a plea or verdict of guilty of, or appealing a conviction of, a violation punishable pursuant to section 708.11, subsection 2, paragraph "b" or "c", the court shall consider the likelihood of the defendant reestablishing contact with the victim of the violation.

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN MAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2265, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 19, 1994

TERRY E. BRANSTAD
Governor