

FEB 7 1995

JUDICIARY

HOUSE FILE 141

BY DODERER, JACOBS, and BELL

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

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

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to domestic abuse by providing that protection  
2 orders in domestic abuse cases have indefinite duration,  
3 providing for the seizure of dangerous weapons involved in a  
4 domestic violence assault and of the firearms of perpetrators,  
5 creating a statewide registry of protection orders, providing  
6 a presumption against joint custody of children in certain  
7 circumstances, and changing the penalty for violation of a  
8 protection order from contempt to a serious misdemeanor.

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

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HC 141

1 Section 1. Section 236.5, subsection 2, unnumbered  
2 paragraph 2, Code 1995, is amended to read as follows:

3 An order for counseling, a ~~protection~~ protective order or  
4 approved consent agreement shall be for ~~a-fixed-period-of-time~~  
5 ~~not-to-exceed-one-year~~ an indefinite period of time. The  
6 ~~court-may-amend-its-order-or-a-consent-agreement-at-any-time~~  
7 ~~upon-a-petition-filed-by-either-party-and-after-notice-and~~  
8 ~~hearing~~. The order shall specify a period, which shall not be  
9 less than fifteen days nor more than one year, during which  
10 the defendant is prohibited from petitioning the court for an  
11 amendment or revocation of the order. An order shall not be  
12 terminated at the request of the defendant without a finding  
13 by the court based on a preponderance of the evidence, that  
14 the defendant is no longer a danger to the plaintiff and  
15 family or household members. The plaintiff may petition the  
16 court at any time for an amendment or revocation of the order.

17 Sec. 2. Section 236.5, subsection 2, unnumbered paragraph  
18 3, Code 1995, is amended to read as follows:

19 The order shall state whether a person is to be ~~taken-into~~  
20 ~~custody~~ arrested by a peace officer for a violation of the  
21 terms stated in the order.

22 Sec. 3. Section 236.5, subsection 4, Code 1995, is amended  
23 to read as follows:

24 4. A certified copy of any order or approved consent  
25 agreement shall be issued to the plaintiff, the defendant and  
26 the county sheriff having jurisdiction to enforce the order or  
27 consent agreement, ~~and~~ the twenty-four hour dispatcher for the  
28 county sheriff, and the statewide protective order registry  
29 established in section 236.19. Any subsequent amendment or  
30 revocation of an order or consent agreement shall be forwarded  
31 by the clerk to all individuals, ~~and~~ the county sheriff, and  
32 the statewide registry previously notified. The clerk shall  
33 notify the county sheriff and the twenty-four hour dispatcher  
34 for the county sheriff in writing so that the county sheriff  
35 and the county sheriff's dispatcher receive written notice

1 within six hours of filing the order, approved consent  
2 agreement, amendment, or revocation. The clerk may fulfill  
3 this requirement by sending the notice by facsimile or other  
4 electronic transmission which reproduces the notice in writing  
5 within six hours of filing the order. The county sheriff's  
6 dispatcher shall notify all law enforcement agencies having  
7 jurisdiction over the matter and the twenty-four hour  
8 dispatcher for the law enforcement agencies upon notification  
9 by the clerk. The clerk shall send or deliver a written copy  
10 of any such document to the law enforcement agencies and the  
11 twenty-four hour dispatcher within twenty-four hours of filing  
12 the document.

13 Sec. 4. Section 236.8, Code 1995, is amended to read as  
14 follows:

15 236.8 ~~CONTEMPT~~---HEARINGS VIOLATION OF COURT ORDERS --  
16 PENALTY.

17 ~~The court may hold a party in contempt for a violation~~  
18 Violation of an order or court-approved consent agreement  
19 entered under this chapter, ~~for~~ violation of a temporary or  
20 permanent protective order or order to vacate the homestead  
21 under chapter 598, or ~~for~~ violation of any order that  
22 establishes conditions of release or is a protective order or  
23 sentencing order in a criminal prosecution arising from a  
24 domestic abuse assault by a defendant is a serious  
25 misdemeanor. ~~If held in contempt, the defendant shall serve a~~  
26 ~~jail sentence.--Any jail sentence of more than one day imposed~~  
27 ~~under this section shall be served on consecutive days.~~

28 ~~A hearing in a contempt proceeding brought pursuant to this~~  
29 ~~section shall be held not less than five and not more than~~  
30 ~~fifteen days after the issuance of a rule to show cause, as~~  
31 ~~set by the court.~~

32 Sec. 5. Section 236.11, Code 1995, is amended to read as  
33 follows:

34 236.11 DUTIES OF PEACE OFFICER -- MAGISTRATE.

35 A peace officer shall use every reasonable means to enforce

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

26 If a peace officer has probable cause to believe that a  
27 person has violated an order or approved consent agreement  
28 entered under this chapter, a temporary or permanent  
29 protective order or order to vacate the homestead under  
30 chapter 598, or any order establishing conditions of release  
31 or a protective or sentencing order in a criminal prosecution  
32 arising from a domestic abuse assault, and the peace officer  
33 is unable to take arrest the person into-custody within  
34 twenty-four hours of making the probable cause determination,  
35 the peace officer shall either request a magistrate to make a

1 determination as to whether a rule to show cause or arrest  
2 warrant should be issued, or refer the matter to the county  
3 attorney.

4 If the magistrate finds probable cause, the magistrate  
5 shall order the person to appear before the court which issued  
6 the original order or approved the consent agreement,  
7 whichever was allegedly violated, at a specified time not less  
8 than five days nor more than fifteen days after the initial  
9 appearance under this section. The magistrate shall cause the  
10 original court to be notified of the contents of the  
11 magistrate's order.

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

17 Sec. 6. Section 236.12, Code 1995, is amended by adding  
18 the following new subsection:

19 NEW SUBSECTION. 2A. A peace officer shall seize a  
20 dangerous weapon displayed or used in an assault when  
21 arresting a person under subsection 2, paragraph "d", and any  
22 firearms owned or possessed by the person. A law enforcement  
23 agency or peace officer shall not return possession of the  
24 dangerous weapon or firearms to the person arrested if the  
25 person is subject to an order or approved consent agreement  
26 entered under this chapter, a temporary or permanent  
27 protective order or order to vacate the homestead under  
28 chapter 598, or an order establishing conditions of release or  
29 a protective or sentencing order in a criminal prosecution  
30 arising from a domestic abuse assault.

31 Sec. 7. Section 236.14, Code 1995, is amended to read as  
32 follows:

33 236.14 INITIAL APPEARANCE REQUIRED -- CONTACT TO BE  
34 PROHIBITED -- EXTENSION OF NO-CONTACT ORDER.

35 1. Notwithstanding chapters 804 and 805, a person taken

1 ~~into-custody-pursuant-to-section-236.11-or~~ arrested pursuant  
2 to section 236.11 or 236.12 may be released on bail or  
3 otherwise only after an initial appearance before a magistrate  
4 as provided in chapter 804 and the rules of criminal procedure  
5 or section 236.11, whichever is applicable.

6 2. When a person arrested for a domestic abuse assault, or  
7 ~~taken-into-custody-for-contempt-proceedings~~ pursuant to  
8 section 236.11, is brought before a magistrate and the  
9 magistrate finds probable cause to believe that domestic abuse  
10 or a violation of an order or consent agreement has occurred  
11 and that the presence of the alleged abuser in the victim's  
12 residence poses a threat to the safety of the alleged victim,  
13 persons residing with the alleged victim, or members of the  
14 alleged victim's immediate family, the magistrate shall enter  
15 an order which shall require the alleged abuser to have no  
16 contact with the alleged victim, persons residing with the  
17 alleged victim, or members of the alleged victim's immediate  
18 family, and to refrain from harassing the alleged victim,  
19 persons residing with the alleged victim, or members of the  
20 alleged victim's immediate family, in addition to any other  
21 conditions of release determined and imposed by the magistrate  
22 under section 811.2. A no-contact order requiring the alleged  
23 abuser to have no contact with the alleged victim's children  
24 shall prevail over any existing order awarding custody or  
25 visitation rights, which may be in conflict with the no-  
26 contact order.

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

30 The clerk of the court or other person designated by the  
31 court shall provide a copy of this order to the victim  
32 pursuant to chapter 910A. The order has force and effect  
33 until it is ~~modified-or-terminated~~ amended or revoked by  
34 subsequent court action ~~in-the-contempt-proceeding-or~~ by the  
35 criminal or juvenile court action and is reviewable in the

1 manner prescribed in section 811.2. If a defendant is  
2 convicted for, receives a deferred judgment for, or pleads  
3 guilty to a violation of section 708.2A, the court shall  
4 modify the no-contact order issued by the magistrate to  
5 provide that the no-contact order shall continue in effect for  
6 a an indefinite period of one-year from the date that the  
7 judgment is entered or the deferred judgment is granted,  
8 regardless of whether the defendant is placed on probation.  
9 The order shall specify a period, which shall not be less than  
10 fifteen days, nor more than one year, during which the  
11 defendant is prohibited from petitioning for amendment or  
12 revocation of the order. Upon an application by the state  
13 which is filed within ninety days prior to the expiration of  
14 the modified no-contact order, the The court shall modify and  
15 extend may amend or revoke the no-contact order for an  
16 additional period of one year, only if the court finds that  
17 the defendant continues to pose a poses no threat to the  
18 safety of the victim, persons residing with the victim, or  
19 members of the victim's immediate family. The number of  
20 modifications extending the no-contact order permitted by this  
21 subsection is not limited. The state or the victim may  
22 petition for amendment or revocation of the order at any time.

23 The clerk of the district court shall also provide notice  
24 and copies of the no-contact order to the applicable law  
25 enforcement agencies and the twenty-four hour dispatcher for  
26 the law enforcement agencies and the statewide protective  
27 order registry established in section 236.19, in the manner  
28 provided for protective orders under section 236.5. The clerk  
29 shall provide notice and copies of modifications or vacations  
30 of these orders in the same manner.

31 Violation of this no-contact order, including modified no-  
32 contact orders, is punishable by summary contempt proceedings  
33 a serious misdemeanor. A hearing in a contempt proceeding  
34 brought pursuant to this section shall be held not less than  
35 five and not more than fifteen days after the issuance of a

1 ~~rule-to-show-cause, as set by the court.~~ If held in contempt  
2 convicted for violation of a no-contact order or a modified  
3 no-contact order, the person shall be confined in the county  
4 jail for a minimum of seven days. A jail sentence imposed  
5 pursuant to this paragraph shall be served on consecutive  
6 days. No portion of the mandatory minimum term of confinement  
7 imposed by this section shall be deferred or suspended. A  
8 deferred judgment, deferred sentence, or suspended sentence  
9 shall not be entered for violation of a no-contact order or a  
10 modified no-contact order, and the court shall not impose a  
11 fine in lieu of ~~the minimum~~ a sentence of confinement,  
12 although a fine may be imposed in addition to ~~the minimum~~  
13 sentence confinement.

14 3. This section shall not be construed to limit a pretrial  
15 release order issued pursuant to chapter 811.

16 Sec. 8. NEW SECTION. 236.19 STATEWIDE PROTECTIVE ORDER  
17 REGISTRY.

18 A central registry of protective orders is established in  
19 the department of public safety. The registry shall be  
20 staffed and accessible on a continuous basis for use by law  
21 enforcement agencies and peace officers. The registry shall  
22 contain the following:

23 1. Orders and court-approved consent agreements entered  
24 under this chapter.

25 2. Temporary and permanent protective orders and orders to  
26 vacate the homestead entered under chapter 598.

27 3. Orders establishing conditions of release, protective  
28 orders, and sentencing orders in criminal prosecutions arising  
29 from a domestic abuse assault.

30 The registry may be colocated with another department of  
31 public safety facility which operates twenty-four hours a day  
32 on a year-round basis.

33 Sec. 9. Section 598.41, Code 1995, is amended by adding  
34 the following new subsection:

35 NEW SUBSECTION. 4A. The court shall not award joint



1 custody where there is a history of domestic abuse in the  
2 family unless the person who committed the domestic abuse  
3 proves by a preponderance of the evidence that the person is  
4 no longer a danger to other family members.

5 Sec. 10. Section 598.42, Code 1995, is amended to read as  
6 follows:

7 598.42 NOTICE OF CERTAIN ORDERS BY CLERK OF COURT.

8 The clerk of the district court shall provide notice and  
9 copies of temporary or permanent protective orders and orders  
10 to vacate the homestead entered pursuant to this chapter to  
11 the applicable law enforcement agencies, and the twenty-four  
12 hour dispatcher for the law enforcement agencies, and the  
13 statewide protective order registry established in section  
14 236.19 in the manner provided for protective orders under  
15 section 236.5. The clerk shall provide notice and copies of  
16 modifications or vacations of these orders in the same manner.

17 Sec. 11. Section 708.2A, subsection 6, Code 1995, is  
18 amended to read as follows:

19 6. The clerk of the district court shall provide notice  
20 and copies of a judgment entered under this section to the  
21 applicable law enforcement agencies, and the twenty-four hour  
22 dispatcher for the law enforcement agencies, and the statewide  
23 protective order registry established in section 236.19 in the  
24 manner provided for protective orders under section 236.5.  
25 The clerk shall provide notice and copies of modifications of  
26 the judgment in the same manner.

27 Sec. 12. Section 804.7, subsection 5, Code 1995, is  
28 amended to read as follows:

29 5. If the peace officer has reasonable grounds for  
30 believing that domestic abuse, as defined in section 236.2,  
31 has occurred and has reasonable grounds for believing that the  
32 person to be arrested has committed it or if the peace officer  
33 has reasonable grounds for believing that the person to be  
34 arrested violated section 236.8.

35 Sec. 13. Section 907.3, subsection 1, paragraph i, Code

1 1995, is amended to read as follows:

2 i. The offense is a ~~finding-of-contempt-pursuant-to~~  
3 ~~section-236-8-or-236-14~~ violation of section 236.8.

4 Sec. 14. Section 907.3, subsections 2 and 3, Code 1995,  
5 are amended to read as follows:

6 2. At the time of or after pronouncing judgment and with  
7 the consent of the defendant, the court may defer the sentence  
8 and assign the defendant to the judicial district department  
9 of correctional services. However, the court shall not defer  
10 the sentence for a violation of section 708.2A if the  
11 defendant has previously received a deferred judgment or  
12 sentence for a violation of section 708.2 or 708.2A which was  
13 issued on a domestic abuse assault, or if similar relief was  
14 granted anywhere in the United States concerning that  
15 jurisdiction's statutes which substantially correspond to  
16 domestic abuse assault as provided in section 708.2A. In  
17 addition, the court shall not defer a sentence if it is  
18 imposed for ~~contempt-pursuant-to~~ a violation of section 236.8  
19 ~~or-236-14~~. Upon a showing that the defendant is not  
20 fulfilling the conditions of probation, the court may revoke  
21 probation and impose any sentence authorized by law. Before  
22 taking such action, the court shall give the defendant an  
23 opportunity to be heard on any matter relevant to the proposed  
24 action. Upon violation of the conditions of probation, the  
25 court may proceed as provided in chapter 908.

26 3. By record entry at the time of or after sentencing, the  
27 court may suspend the sentence and place the defendant on  
28 probation upon such terms and conditions as it may require  
29 including commitment to an alternate jail facility or a  
30 community correctional residential treatment facility for a  
31 specific number of days to be followed by a term of probation  
32 as specified in section 907.7. A person so committed who has  
33 probation revoked shall be given credit for such time served.  
34 However, the court shall not suspend the minimum term of two  
35 days imposed pursuant to section 708.2A, and the court shall

1 not suspend a sentence imposed pursuant to section 236.8 or  
2 ~~236.14-for-contempt.~~

3 Sec. 15. Section 910A.11, subsection 5, Code 1995, is  
4 amended to read as follows:

5 5. The clerk of the district court shall provide notice  
6 and copies of restraining orders issued pursuant to this  
7 section in a criminal case involving an alleged violation of  
8 section 708.2A to the applicable law enforcement agencies, and  
9 the twenty-four hour dispatcher for the law enforcement  
10 agencies, and the statewide protective order registry  
11 established in section 236.19, in the manner provided for  
12 protective orders under section 236.5. The clerk shall  
13 provide notice and copies of modifications or vacations of  
14 these orders in the same manner.

15

#### EXPLANATION

16 This bill provides that protective orders in domestic abuse  
17 cases shall remain in effect until the court finds that the  
18 defendant no longer poses a threat of further domestic abuse.  
19 Also, the court is to specify a minimum period, between 15  
20 days and one year, during which the defendant cannot petition  
21 the court to modify or terminate the order. The plaintiff or  
22 the state in a domestic abuse action, or the victim of  
23 domestic abuse, may petition the court at any time for a  
24 modification or termination of the order.

25 The bill establishes a statewide registry for protective  
26 orders in the department of public safety, which is to be  
27 accessible to law enforcement agencies and officers 24-hours-  
28 a-day on a year-round basis.

29 The bill also changes the punishment for violation of  
30 protective orders entered as a result of domestic abuse or  
31 dissolution of marriage from contempt to a serious  
32 misdemeanor. A person convicted of violating a protective  
33 order shall be sentenced to the same seven-day jail  
34 confinement which the person would receive currently for  
35 contempt. This sentence cannot be deferred or suspended.

1 The bill also requires law enforcement officers to seize a  
2 dangerous weapon displayed or used in the commission of a  
3 domestic abuse assault and all firearms to which the person  
4 arrested possesses or owns. The dangerous weapons and  
5 firearms shall not be returned to the person from whom they  
6 were seized while the person is subject to a protective order.

7 Further, the bill provides that a court shall not award  
8 joint custody as part of a marriage dissolution in cases with  
9 a history of domestic abuse unless the court finds that there  
10 is no further danger of domestic abuse.

11 The bill may contain a state mandate under chapter 25B.

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