

MAR 10 1997

JUDICIARY

HOUSE FILE  
BY MUNDIE

529

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act providing penalties for violations of domestic abuse  
2 protection orders, and making related and other technical  
3 changes.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 529

1 Section 1. Section 236.8, Code 1997, is amended to read as  
2 follows:

3 236.8 VIOLATION OF ORDER-----CONTEMPT-----PENALTIES---  
4 HEARINGS.

5 1. A person commits a simple misdemeanor ~~or-the-court-may~~  
6 ~~hold-a-person-in-contempt~~ for a violation of an any of the  
7 following:

8 a. An order or court-approved consent agreement entered  
9 under this chapter,~~for-violation-of-a.~~

10 b. A temporary or permanent protective order or order to  
11 vacate the homestead under chapter 598,~~for-violation-of-any.~~

12 c. An order that establishes conditions of release or is a  
13 protective order or sentencing order in a criminal prosecution  
14 arising from a domestic abuse assault,~~or-for.~~

15 d. A violation by an adult of a protective order under  
16 chapter 232.

17 2. If convicted ~~or-held-in-contempt~~ of a violation of  
18 subsection 1, the defendant shall ~~serve-a-jail-sentence~~ be  
19 sentenced to serve a jail term as follows:

20 a. For a first offense, at least one day but not more than  
21 ten days.

22 b. For a second offense, at least ten but not more than  
23 twenty days.

24 c. For a third or subsequent offense, at least twenty but  
25 not more than thirty days.

26 3. Any jail sentence of more than one day imposed under  
27 this section shall be served on consecutive days.

28 4. A defendant who is ~~held-in-contempt-or~~ convicted of a  
29 violation of subsection 1 may be ordered by the court to pay  
30 the plaintiff's attorney fees and court costs incurred in the  
31 proceedings under this section.

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

1 A-person-shall-not-be-convicted-of-and-held-in-contempt-for  
2 the-same-violation-of-an-order-or-court-approved-consent  
3 agreement-entered-under-this-chapter, for-the-same-violation  
4 of-a-temporary-or-permanent-protective-order-or-order-to  
5 vacate-the-homestead-under-chapter-598, for-violation-of-any  
6 order-that-establishes-conditions-of-release-or-is-a  
7 protective-order-or-sentencing-order-in-a-criminal-prosecution  
8 arising-from-a-domestic-abuse-assault, or-for-violation-of-a  
9 protective-order-under-chapter-232.

10 Sec. 2. Section 236.14, subsection 2, Code 1997, is  
11 amended to read as follows:

12 2. a. When a person is arrested for a domestic abuse  
13 assault, or is taken into custody ~~for contempt proceedings~~  
14 pursuant to section 236.11, and is brought before a magistrate  
15 ~~and the magistrate~~ who finds probable cause to believe that  
16 domestic abuse or a violation of an order or consent agreement  
17 has occurred and that the presence of the alleged abuser in  
18 the victim's residence poses a threat to the safety of the  
19 alleged victim, persons residing with the alleged victim, or  
20 members of the alleged victim's immediate family, the  
21 magistrate shall enter an order ~~which shall require~~ requiring  
22 all of the following:

23 (1) That the alleged abuser ~~to~~ shall have no contact with  
24 the alleged victim, persons residing with the alleged victim,  
25 or members of the alleged victim's immediate family, ~~and to.~~

26 (2) That the alleged abuser shall refrain from harassing  
27 the alleged victim, persons residing with the alleged victim,  
28 or members of the alleged victim's immediate family, ~~in~~  
29 ~~addition to any.~~

30 (3) Any other conditions of release determined and imposed  
31 by the magistrate under section 811.2.

32 b. A no-contact order requiring that the alleged abuser ~~to~~  
33 have no contact with the alleged victim's children shall  
34 prevail over any existing order awarding custody or visitation  
35 rights, which may be in conflict with the no-contact order.

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

4     d. The clerk of the court or other person designated by  
5 the court shall provide a copy of this the order issued under  
6 this subsection to the victim pursuant to chapter 910A.

7     e. The order issued under this subsection has force and  
8 effect until it is modified or terminated by subsequent court  
9 action ~~in-the-contempt-proceeding-or-the-criminal~~ or juvenile  
10 court action and is reviewable in the manner prescribed in  
11 section 811.2.

12    f. If a defendant is convicted for, receives a deferred  
13 judgment for, or pleads guilty to a violation of section  
14 708.2A, the court shall modify the no-contact order issued by  
15 the magistrate to provide that the no-contact order shall  
16 continue in effect for a period of one year from the date that  
17 the judgment is entered or the deferred judgment is granted,  
18 regardless of whether the defendant is placed on probation.  
19 Upon an application by the state which is filed within ninety  
20 days prior to the expiration of the modified no-contact order,  
21 the court shall modify and extend the no-contact order for an  
22 additional period of one year, if the court finds that the  
23 defendant continues to pose a threat to the safety of the  
24 victim, persons residing with the victim, or members of the  
25 victim's immediate family. The number of modifications  
26 extending the no-contact order permitted by this subsection is  
27 not limited.

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

35    h. Violation of this no-contact order, including modified

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

17 Sec. 3. Section 598.41, subsection 3, paragraph j, Code  
18 1997, is amended to read as follows:

19 j. Whether a history of domestic abuse, as defined in  
20 section 236.2, exists. In determining whether a history of  
21 domestic abuse exists, the court's consideration shall  
22 include, but is not limited to, commencement of an action  
23 pursuant to section 236.3, the issuance of a protective order  
24 against the parent or the issuance of a court order or consent  
25 agreement pursuant to section 236.5, the issuance of an  
26 emergency order pursuant to section 236.6, the ~~holding~~  
27 conviction of a parent ~~in-contempt~~ pursuant to section 236.8,  
28 the response of a peace officer to the scene of alleged  
29 domestic abuse or the arrest of a parent following response to  
30 a report of alleged domestic abuse, or a conviction for  
31 domestic abuse assault pursuant to section 708.2A.

32 Sec. 4. Section 907.3, subsection 1, paragraph i, Code  
33 1997, is amended to read as follows:

34 i. The offense is a conviction for or plea of guilty to a  
35 violation of section 236.8 or a finding of contempt pursuant

1 to section ~~236.8-or~~ 236.14.

2 Sec. 5. Section 907.3, subsection 2, Code 1997, is amended  
3 to read as follows:

4 2. a. At the time of or after pronouncing judgment and  
5 with the consent of the defendant, the court may defer the  
6 sentence and assign the defendant to the judicial district  
7 department of correctional services. The court may assign the  
8 defendant to supervision or services under section 901B.1 at  
9 the level of sanctions which the district department  
10 determines to be appropriate, if an intermediate criminal  
11 sanctions plan and program has been adopted in the judicial  
12 district under section 901B.1.

13 b. ~~However,-a~~ Notwithstanding paragraph "a", the court  
14 shall not defer the sentence for any of the following:

15 (1) A violation of section 708.2A, if the defendant has  
16 previously received a deferred judgment or sentence for a  
17 violation of section 708.2 or 708.2A which was issued on a  
18 domestic abuse assault, or if similar relief was granted  
19 anywhere in the United States concerning that jurisdiction's  
20 statutes which substantially correspond to domestic abuse  
21 assault as provided in section 708.2A. ~~In-addition,-the-court~~  
22 ~~shall-not-defer-a-sentence-if-it-is-imposed-for-a~~

23 (2) A conviction for or plea of guilty to a violation of  
24 section 236.8 or for contempt pursuant to section ~~236.8-or~~  
25 236.14.

26 c. Upon a showing that the defendant is not fulfilling the  
27 conditions of probation, the court may revoke probation and  
28 impose any sentence authorized by law. Before taking such  
29 action, the court shall give the defendant an opportunity to  
30 be heard on any matter relevant to the proposed action. Upon  
31 violation of the conditions of probation, the court may  
32 proceed as provided in chapter 908.

33 Sec. 6. Section 907.3, subsection 3, Code 1997, is amended  
34 to read as follows:

35 3. a. By record entry at the time of or after sentencing,

1 the court may suspend the sentence and place the defendant on  
2 probation upon such terms and conditions as it may require  
3 including commitment to an alternate jail facility or a  
4 community correctional residential treatment facility for a  
5 specific number of days to be followed by a term of probation  
6 as specified in section 907.7, or commitment of the defendant  
7 to the judicial district department of correctional services  
8 for supervision or services under section 901B.1 at the level  
9 of sanctions which the district department determines to be  
10 appropriate. A person so committed who has probation revoked  
11 shall be given credit for such time served.

12 b. However Notwithstanding paragraph "a", the court shall  
13 not suspend the any of the following sentences:

14 (1) The minimum term of two days imposed pursuant to  
15 section 708.2A, subsection 6, paragraph "a",~~or a.~~

16 (2) A sentence imposed under section 708.2A, subsection 6,  
17 paragraph "b",~~and the court shall not suspend a.~~

18 (3) A sentence imposed pursuant to a conviction for or a  
19 plea of guilty to a violation of section 236.8, or for  
20 contempt pursuant to 236.14~~for contempt.~~

21 Sec. 7. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
22 3, shall not apply to this Act.

23 EXPLANATION

24 This bill amends Code section 236.8 relating to violations  
25 of domestic abuse no-contact orders, providing specific jail  
26 sentence ranges for repeated offenses under that section. The  
27 bill also removes the contempt proceeding under that Code  
28 section, and makes conforming amendments to Code sections  
29 236.14, 598.41, and 907.3. The bill also makes other  
30 technical amendments.

31 This bill may include a state mandate as defined in Code  
32 section 25B.3. This bill makes inapplicable Code section  
33 25B.2, subsection 3, which would relieve a political  
34 subdivision from complying with a state mandate if funding for  
35 the cost of the state mandate is not provided or specified.

1 Therefore, political subdivisions are required to comply with  
2 any state mandate included in this bill.

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35