

JAN 27 1999

JUDICIARY

HOUSE FILE
BY DODERER

154

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

A BILL FOR

1 An Act defining domestic abuse to include acts of harassment, and
2 permitting the issuance of no-contact orders for acts of
3 harassment in domestic abuse circumstances.

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

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HF 154

1 Section 1. Section 236.2, subsection 2, Code 1999, is
2 amended to read as follows:

3 2. "Domestic abuse" means committing assault as defined in
4 section 708.1, or harassment as defined in section 708.7,
5 under any of the following circumstances:

6 a. The ~~assault~~ abuse is between family or household
7 members who resided together at the time of the ~~assault~~ abuse.

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

11 c. The ~~assault~~ abuse is between persons who are parents of
12 the same minor child, regardless of whether they have been
13 married or have lived together at any time.

14 d. The ~~assault~~ abuse is between persons who have been
15 family or household members residing together within the past
16 year and are not residing together at the time of the ~~assault~~
17 abuse.

18 Sec. 2. Section 236.8, unnumbered paragraphs 1 and 3, Code
19 1999, are amended to read as follows:

20 A person commits a simple misdemeanor or the court may hold
21 a person in contempt for a violation of an order or court-
22 approved consent agreement entered under this chapter, for
23 violation of a temporary or permanent protective order or
24 order to vacate the homestead under chapter 598, for violation
25 of any order that establishes conditions of release or is a
26 protective order or sentencing order in a criminal prosecution
27 arising from a domestic abuse ~~assault~~, or for violation by an
28 adult of a protective order under chapter 232. If convicted
29 or held in contempt, the defendant shall serve a jail
30 sentence. Any jail sentence of more than one day imposed
31 under this section shall be served on consecutive days. A
32 defendant who is held in contempt or convicted may be ordered
33 by the court to pay the plaintiff's attorney fees and court
34 costs incurred in the proceedings under this section.

35 A person shall not be convicted of and held in contempt for

1 the same violation of an order or court-approved consent
2 agreement entered under this chapter, for the same violation
3 of a temporary or permanent protective order or order to
4 vacate the homestead under chapter 598, for violation of any
5 order that establishes conditions of release or is a
6 protective order or sentencing order in a criminal prosecution
7 arising from a domestic abuse ~~assault~~, or for violation of a
8 protective order under chapter 232.

9 Sec. 3. Section 236.11, Code 1999, is amended to read as
10 follows:

11 | 236.11 DUTIES OF PEACE OFFICER -- MAGISTRATE.

12 | 1. A peace officer shall use every reasonable means to
13 enforce an order or court-approved consent agreement entered
14 under this chapter, a temporary or permanent protective order
15 or order to vacate the homestead under chapter 598, an order
16 that establishes conditions of release or is a protective
17 order or sentencing order in a criminal prosecution arising
18 from a domestic abuse ~~assault~~, or a protective order under
19 chapter 232.

20 | 2. If a peace officer has reason to believe that domestic
21 abuse has occurred, the peace officer shall ask the abused
22 person if any prior orders exist, and shall contact the
23 twenty-four hour dispatcher to inquire if any prior orders
24 exist.

25 | 3. a. If a peace officer has probable cause to believe
26 that a person has violated an order or approved consent
27 agreement entered under this chapter, a temporary or permanent
28 protective order or order to vacate the homestead under
29 chapter 598, an order establishing conditions of release or a
30 protective or sentencing order in a criminal prosecution
31 arising from a domestic abuse ~~assault~~, or, if the person is an
32 adult, a violation of a protective order under chapter 232,
33 the peace officer shall take the person into custody and shall
34 take the person without unnecessary delay before the nearest
35 or most accessible magistrate in the judicial district in

1 which the person was taken into custody.

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

7 4. a. If a peace officer has probable cause to believe
8 that a person has violated an order or approved consent
9 agreement entered under this chapter, a temporary or permanent
10 protective order or order to vacate the homestead under
11 chapter 598, an order establishing conditions of release or a
12 protective or sentencing order in a criminal prosecution
13 arising from a domestic abuse assault, or a protective order
14 under chapter 232, and the peace officer is unable to take the
15 person into custody within twenty-four hours of making the
16 probable cause determination, the peace officer shall either
17 request a magistrate to make a determination as to whether a
18 rule to show cause or arrest warrant should be issued, or
19 refer the matter to the county attorney.

20 b. If the magistrate finds probable cause, the magistrate
21 shall order the person to appear before the court which issued
22 the original order or approved the consent agreement,
23 whichever was allegedly violated, at a specified time not less
24 than five days nor more than fifteen days after the initial
25 appearance under this section. The magistrate shall cause the
26 original court to be notified of the contents of the
27 magistrate's order.

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

33 Sec. 4. Section 236.14, subsection 2, Code 1999, is
34 amended to read as follows:

35 2. a. When a person is arrested for a commission of an

1 act constituting domestic abuse assault, or is taken into
2 custody for-contempt-proceedings pursuant to section 236.11,
3 and is brought before a magistrate and-the-magistrate who
4 finds probable cause to believe that domestic abuse or a
5 violation of an order or consent agreement has occurred and
6 that the presence of the alleged abuser in the victim's
7 residence poses a threat to the safety of the alleged victim,
8 persons residing with the alleged victim, or members of the
9 alleged victim's immediate family, or that the actions of the
10 alleged abuser pose a threat to the physical or emotional
11 well-being of the alleged victim, persons residing with the
12 alleged victim, or members of the alleged victim's immediate
13 family, the magistrate shall enter an order ~~which-shall~~
14 ~~require~~ requiring all of the following:

15 | (1) That the alleged abuser to shall have no contact with
16 the alleged victim, persons residing with the alleged victim,
17 or members of the alleged victim's immediate family, ~~and-to.~~

18 | (2) That the alleged abuser shall refrain from harassing
19 the alleged victim, persons residing with the alleged victim,
20 or members of the alleged victim's immediate family, ~~in~~
21 ~~addition-to-any.~~

22 | (3) Any other conditions of release determined and imposed
23 by the magistrate under section 811.2.

24 | b. A no-contact order requiring that the alleged abuser to
25 have no contact with the alleged victim's children shall
26 prevail over any existing order awarding custody or visitation
27 rights, which may be in conflict with the no-contact order.

28 | c. The court order issued under this subsection shall
29 contain the court's directives restricting the defendant from
30 having contact with the victim, or the victim's relatives, and
31 persons residing with the victim.

32 | d. The clerk of the court or other person designated by
33 the court shall provide a copy of ~~this~~ the order issued under
34 this subsection to the victim pursuant to chapter 915, and to
35 all persons affected by the terms of the order.

1 e. The order issued under this subsection has force and
2 effect until it is modified or terminated by subsequent court
3 ~~action in-the-contempt-proceeding-or-the-criminal~~ or juvenile
4 court action and is reviewable in the manner prescribed in
5 section 811.2.

6 f. If a defendant is convicted for, receives a deferred
7 judgment for, or pleads guilty to a violation of section
8 708.2A or section 708.7, the court shall modify the no-contact
9 order issued by the magistrate to provide that the no-contact
10 order shall continue in effect for a period of one year from
11 the date that the judgment is entered or the deferred judgment
12 is granted, regardless of whether the defendant is placed on
13 probation. Upon an application by the state which is filed
14 within ninety days prior to the expiration of the modified no-
15 contact order, the court shall modify and extend the no-
16 contact order for an additional period of one year, if the
17 court finds that the defendant continues to pose a threat to
18 the safety or emotional or physical well-being of the victim,
19 persons residing with the victim, or members of the victim's
20 immediate family. The number of modifications extending the
21 no-contact order permitted by this subsection is not limited.

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

29 h. Violation of this no-contact order, including modified
30 no-contact orders, is punishable by summary contempt
31 proceedings. A hearing in a contempt proceeding brought
32 pursuant to this section shall be held not less than five and
33 not more than fifteen days after the issuance of a rule to
34 show cause, as set by the court. If held in contempt for
35 violation of a no-contact order or a modified no-contact

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

11 | Sec. 5. IMPLEMENTATION OF ACT. Section 25B.2, subsection
12 3, shall not apply to this Act.

13 | EXPLANATION

14 | The bill adds harassment to the definition of "domestic
15 abuse", referring to acts constituting criminal harassment
16 under Code section 708.7. The bill directs peace officers and
17 magistrates to consider whether harassment has occurred as a
18 form of domestic abuse, in addition to the current
19 consideration of domestic abuse assault.

20 | This bill amends sections of Code chapter 236 to allow for
21 the issuance of no-contact orders in domestic abuse situations
22 when harassment has occurred between the parties. Currently,
23 a no-contact order may be issued only when a party is arrested
24 for domestic abuse assault, or for a violation of a previous
25 order or agreement.

26 | The bill also makes numerous technical changes.

27 | This bill may include a state mandate as defined in Code
28 section 25B.3. This bill makes inapplicable Code section
29 25B.2, subsection 3, which would relieve a political
30 subdivision from complying with a state mandate if funding for
31 the cost of the state mandate is not provided or specified.
32 Therefore, political subdivisions are required to comply with
33 any state mandate included in this bill.

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