

Senate File 2351 - Introduced

SENATE FILE 2351
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1029)

A BILL FOR

1 An Act enhancing the penalty for certain domestic abuse assault
2 cases and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 236.12, subsection 2, Code Supplement
2 2009, is amended by adding the following new paragraphs:

3 NEW PARAGRAPH. *e.* Except as otherwise provided in
4 subsection 3, a peace officer shall, with or without a warrant,
5 arrest a person under section 708.2A, subsection 2, paragraph
6 "d", if, upon investigation, including a reasonable inquiry of
7 the alleged victim and other witnesses, if any, the officer has
8 probable cause to believe that a domestic abuse assault has
9 been committed by knowingly impeding the normal breathing or
10 circulation of the blood of another by applying pressure to the
11 throat or neck of the other person or by obstructing the nose
12 or mouth of the other person.

13 NEW PARAGRAPH. *f.* Except as otherwise provided in
14 subsection 3, a peace officer shall, with or without a warrant,
15 arrest a person under section 708.2A, subsection 4A, if,
16 upon investigation, including a reasonable inquiry of the
17 alleged victim and other witnesses, if any, the officer has
18 probable cause to believe that a domestic abuse assault has
19 been committed by knowingly impeding the normal breathing or
20 circulation of the blood of another by applying pressure to the
21 throat or neck of the other person or by obstructing the nose
22 or mouth of the other person and causes bodily injury.

23 Sec. 2. Section 236.12, subsection 3, Code Supplement 2009,
24 is amended to read as follows:

25 3. As described in subsection 2, paragraph "b", "c",
26 ~~or~~ "d", "e", or "f", the peace officer shall arrest the person
27 whom the peace officer believes to be the primary physical
28 aggressor. The duty of the officer to arrest extends only
29 to those persons involved who are believed to have committed
30 an assault. Persons acting with justification, as defined
31 in section 704.3, are not subject to mandatory arrest. In
32 identifying the primary physical aggressor, a peace officer
33 shall consider the need to protect victims of domestic abuse,
34 the relative degree of injury or fear inflicted on the persons
35 involved, and any history of domestic abuse between the persons

1 involved. A peace officer's identification of the primary
2 physical aggressor shall not be based on the consent of the
3 victim to any subsequent prosecution or on the relationship of
4 the persons involved in the incident, and shall not be based
5 solely upon the absence of visible indications of injury or
6 impairment.

7 Sec. 3. Section 708.2A, subsection 2, Code 2009, is amended
8 by adding the following new paragraph:

9 NEW PARAGRAPH. *d.* An aggravated misdemeanor, if the
10 domestic abuse assault is committed by knowingly impeding the
11 normal breathing or circulation of the blood of another by
12 applying pressure to the throat or neck of the other person or
13 by obstructing the nose or mouth of the other person.

14 Sec. 4. Section 702.11, subsection 2, Code 2009, is amended
15 by adding the following new paragraph:

16 NEW PARAGRAPH. *Oa.* Domestic abuse assault in violation of
17 section 708.2A, subsection 4A.

18 Sec. 5. Section 708.2A, Code 2009, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 4A. For a domestic abuse assault committed
21 by knowingly impeding the normal breathing or circulation of
22 the blood of another by applying pressure to the throat or neck
23 of the other person or by obstructing the nose or mouth of the
24 other person, and causing bodily injury, the person commits a
25 class "D" felony.

26 EXPLANATION

27 This bill enhances the penalty for certain domestic abuse
28 assault cases.

29 The bill provides that a person commits an aggravated
30 misdemeanor if the person commits domestic abuse assault by
31 knowingly impeding the normal breathing or circulation of the
32 blood of another by applying pressure to the throat or neck of
33 the other person, or by obstructing the nose or mouth of the
34 other person. If such a domestic abuse assault causes bodily
35 injury the person commits a class "D" felony.

1 The bill also provides that a peace officer shall arrest
2 the person performing acts which violate the bill and whom the
3 peace officer believes to be the primary physical aggressor
4 just as in other domestic abuse assault situations.

5 The offense classified as a class "D" felony under the bill
6 is exempted from the definition of a forcible felony. An
7 offense exempted from the definition of a forcible felony,
8 allows a person convicted of such an offense to be eligible for
9 a suspended or deferred sentence, or a deferred judgment.

10 An aggravated misdemeanor is punishable by confinement for
11 no more than two years and a fine of at least \$625 but not more
12 than \$6,250.

13 A class "D" felony is punishable by confinement for no more
14 than five years and a fine of at least \$750 but not more than
15 \$7,500.