

House File 2399 - Introduced

HOUSE FILE 2399
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 605)

A BILL FOR

1 An Act relating to domestic abuse and other offenses involving
2 a domestic relationship, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 236.5, subsection 1, paragraph b,
2 subparagraph (6), Code 2016, is amended to read as follows:

3 (6) Unless prohibited pursuant to 28 U.S.C. §1738B, that the
4 defendant pay the clerk a sum of money for the separate support
5 and maintenance of the plaintiff and children under eighteen.
6 The court may order the defendant to provide a certified
7 statement regarding the defendant's financial ability to pay
8 support and maintenance. If the defendant fails to provide
9 full and accurate disclosure of the defendant's ability to pay
10 support and maintenance, the court shall hold the defendant in
11 contempt.

12 Sec. 2. Section 664A.7, subsection 5, Code 2016, is amended
13 to read as follows:

14 5. a. Violation of a no-contact order entered for the
15 offense or alleged offense of domestic abuse assault in
16 violation of [section 708.2A](#) or a violation of a protective
17 order issued pursuant to [chapter 232, 235F, 236, 598, or 915](#)
18 constitutes a public offense and is punishable as a simple
19 misdemeanor. Alternatively, the court may hold a person
20 in contempt of court for such a violation, as provided in
21 subsection 3.

22 b. If a person is convicted of a violation of a no-contact
23 order or a protective order under this subsection, or
24 alternatively if the person is held in contempt of court for
25 such a violation, as provided in subsection 3, the court shall
26 order the person to submit to a risk assessment pursuant to
27 section 901.5C.

28 Sec. 3. Section 708.2A, subsection 7, paragraph b, Code
29 2016, is amended by striking the paragraph and inserting in
30 lieu thereof the following:

31 b. A person convicted of a violation referred to in
32 subsection 4 shall be sentenced as provided under section
33 902.13.

34 Sec. 4. Section 708.2B, Code 2016, is amended to read as
35 follows:

1 **708.2B Treatment of domestic abuse offenders.**

2 1. As used in [this section](#), "*district department*" means
3 a judicial district department of correctional services,
4 established pursuant to [section 905.2](#). A person convicted of,
5 or receiving a deferred judgment for, domestic abuse assault
6 as defined in [section 708.2A](#), shall report to the district
7 department in order to participate in a batterers' treatment
8 program for domestic abuse offenders. In addition, a person
9 convicted of, or receiving a deferred judgment for, an assault,
10 as defined in [section 708.1](#), which is domestic abuse, as
11 defined in [section 236.2, subsection 2](#), paragraph "e", may be
12 ordered by the court to participate in a batterers' treatment
13 program. Participation in the batterers' treatment program
14 shall not require a person to be placed on probation, but
15 a person on probation may participate in the program. The
16 district departments may contract for services in completing
17 the duties relating to the batterers' treatment programs. The
18 district departments shall assess the fees for participation
19 in the program, and shall either collect or contract for the
20 collection of the fees to recoup the costs of treatment,
21 but may waive the fee or collect a lesser amount upon a
22 showing of cause. The fees shall be used by each of the
23 district departments or contract service providers for the
24 establishment, administration, coordination, and provision of
25 direct services of the batterers' treatment programs.

26 2. In addition to the requirements of subsection 1, the
27 court shall order a person convicted of domestic abuse assault
28 in violation of section 708.2A to submit to a risk assessment
29 pursuant to section 901.5C.

30 3. District departments or contract service providers shall
31 receive upon request peace officers' investigative reports
32 regarding persons participating in programs under [this section](#).
33 The receipt of reports under [this section](#) shall not waive the
34 confidentiality of the reports under [section 22.7](#).

35 Sec. 5. Section 708.7, subsection 2, Code 2016, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. c. A person convicted of harassment in
3 the first degree shall be sentenced under section 902.13 if
4 the offense involved a domestic relationship and the sentence
5 exceeds one year.

6 Sec. 6. Section 708.11, Code 2016, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 3A. A person convicted under subsection 3,
9 paragraph "a", or subsection 3, paragraph "b", subparagraph (1),
10 shall be sentenced under section 902.13 if the offense involved
11 a domestic relationship.

12 Sec. 7. NEW SECTION. **901.5C Domestic abuse assault**
13 **— no-contact order or protective order violations — risk**
14 **assessment.**

15 1. If a person is convicted of domestic abuse assault in
16 violation of section 708.2A, a violation of a no-contact order
17 or a protective order under section 664A.7, subsection 5, or
18 alternatively the person is held in contempt of court for such
19 a violation, as provided in section 664A.7, subsection 3, and
20 ordered to be supervised by the judicial district department
21 of correctional services or to participate in a batterers'
22 treatment program for domestic abuse offenders, the court shall
23 order the person to submit to a risk assessment.

24 2. The risk assessment shall be performed by the judicial
25 district department of correctional services or a contract
26 service provider of a batterers' treatment program for domestic
27 abuse offenders, using a validated risk assessment developed
28 by the board of parole and approved by the department of
29 corrections. The court shall consider the risk assessment
30 in determining the appropriate conditions for release. In
31 determining whether to release a defendant, the court shall
32 determine whether sufficient conditions for release are
33 available that are designed to reduce the risk to another
34 individual, detect threatening or criminal behavior, and
35 increase the safety of individuals and the general public, and

1 balance those determinations with the potential risk of harm
2 if the defendant is released.

3 3. The court may order the defendant to participate in a
4 program that includes the use of an electronic tracking and
5 monitoring system as a condition of release. When ordering
6 the use of an electronic tracking and monitoring system
7 the court shall consider the safety of the victim and other
8 legitimate factors that may impact all of the parties. If
9 an electronic tracking and monitoring system is ordered, the
10 court shall order the defendant to pay the costs associated
11 with the imposition of the system. If the defendant fails to
12 pay the fees of the electronic tracking and monitoring system
13 in a timely manner, the court may impose garnishment of the
14 defendant's wages in order to meet the payment obligation.

15 Sec. 8. NEW SECTION. 902.13 **Minimum sentence for certain**
16 **domestic abuse assault, harassment, and stalking offenses.**

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

19 a. (1) "*Family or household members*" means spouses, persons
20 cohabiting, parents, or other persons related by consanguinity
21 or affinity.

22 (2) "*Family or household members*" does not include children
23 under age eighteen of persons listed in subparagraph (1).

24 b. "*Offense involving a domestic relationship*" means an
25 offense involving any of the following circumstances:

26 (1) The offense is between family or household members who
27 resided together at the time of the offense.

28 (2) The offense is between separated spouses or persons
29 divorced from each other and not residing together at the time
30 of the offense.

31 (3) The offense is between persons who are parents of the
32 same minor child, regardless of whether they have been married
33 or have lived together at any time.

34 (4) The offense is between persons who have been family or
35 household members residing together within the past year and

1 are not residing together at the time of the offense.

2 2. A person who has been convicted of a third or subsequent
3 offense of domestic abuse assault under section 708.2A,
4 subsection 4, shall be denied parole or work release until the
5 person has served a minimum term of confinement of three years.

6 3. A person who has been convicted of the offense of
7 harassment in the first degree under section 708.7, subsection
8 2, and the offense involved a domestic relationship, shall be
9 denied parole or work release until the person has served a
10 minimum term of confinement of one year.

11 4. A person who has been convicted of a third or subsequent
12 offense of stalking under section 708.11, subsection
13 3, paragraph "a", and the offense involved a domestic
14 relationship, shall be denied parole or work release until the
15 person has served a minimum term of confinement of five years.

16 5. A person who has been convicted of the offense of
17 stalking under section 708.11, subsection 3, paragraph
18 "b", subparagraph (1), and the offense involved a domestic
19 relationship, shall be denied parole or work release until the
20 person has served a minimum term of confinement of three years.

21 Sec. 9. Section 903A.2, subsection 1, paragraph a,
22 unnumbered paragraph 1, Code 2016, is amended to read as
23 follows:

24 Category "A" sentences are those sentences which are not
25 subject to a maximum accumulation of earned time of fifteen
26 percent of the total sentence of confinement under section
27 902.12 or 902.13. To the extent provided in subsection 5,
28 category "A" sentences also include life sentences imposed
29 under section 902.1. An inmate of an institution under the
30 control of the department of corrections who is serving a
31 category "A" sentence is eligible for a reduction of sentence
32 equal to one and two-tenths days for each day the inmate
33 demonstrates good conduct and satisfactorily participates in
34 any program or placement status identified by the director to
35 earn the reduction. The programs include but are not limited

1 to the following:

2 Sec. 10. Section 903A.2, subsection 1, paragraph b, Code
3 2016, is amended to read as follows:

4 b. (1) Category "B" sentences are those sentences which
5 are subject to a maximum accumulation of earned time of
6 fifteen percent of the total sentence of confinement under
7 section 902.12 or 902.13. An inmate of an institution under
8 the control of the department of corrections who is serving a
9 category "B" sentence is eligible for a reduction of sentence
10 equal to fifteen eighty-fifths of a day for each day of good
11 conduct by the inmate.

12 (2) An inmate required to participate in a domestic abuse
13 treatment program shall not be eligible for a reduction of
14 sentence unless the inmate participates in and completes a
15 domestic abuse treatment program established by the director.

16 Sec. 11. Section 904A.4, subsection 8, Code 2016, is amended
17 to read as follows:

18 8. a. The board of parole shall implement a risk assessment
19 program which shall provide risk assessment analysis for the
20 board.

21 b. The board of parole shall also develop a risk assessment
22 validated for domestic abuse-related offenses in consultation
23 with the department of corrections. The board may adopt rules
24 pursuant to chapter 17A relating to the use of the domestic
25 abuse risk assessment.

26 Sec. 12. NEW SECTION. 905.16 Electronic tracking and
27 monitoring system.

28 1. A person placed on probation, parole, work release,
29 special sentence, or any other type of conditional release
30 for any of the following offenses may be supervised by an
31 electronic tracking and monitoring system in addition to any
32 other conditions of supervision:

33 a. Domestic abuse assault in violation of section 708.2A,
34 subsection 4.

35 b. Harassment in the first degree in violation of section

1 708.7, subsection 2, if the offense involved a domestic
2 relationship as defined in section 902.13.

3 c. Stalking under section 708.11, subsection 3, paragraph
4 "a", if the offense involved a domestic relationship as defined
5 in section 902.13.

6 d. Stalking under section 708.11, subsection 3, paragraph
7 "b", subparagraph (1), if the offense involved a domestic
8 relationship as defined in section 902.13.

9 2. When considering whether to order the use of an
10 electronic tracking and monitoring system the court shall
11 consider the safety of the victim and other legitimate factors
12 that may impact all of the parties.

13 Sec. 13. Section 907.3, subsection 1, paragraph a, Code
14 2016, is amended by adding the following new subparagraphs:

15 NEW SUBPARAGRAPH. (013) The offense is a violation referred
16 to in section 708.2A, subsection 4.

17 NEW SUBPARAGRAPH. (0013) The offense is a violation
18 of section 708.7, subsection 2, and the offense involved a
19 domestic relationship as defined in section 902.13.

20 NEW SUBPARAGRAPH. (00013) The offense is a violation
21 referred to in section 708.11, subsection 3, paragraph "a",
22 and the offense involved a domestic relationship as defined in
23 section 902.13.

24 NEW SUBPARAGRAPH. (000013) The offense is a violation of
25 section 708.11, subsection 3, paragraph "b", subparagraph (1),
26 and the offense involved a domestic relationship as defined in
27 section 902.13.

28 Sec. 14. Section 907.3, subsection 2, paragraph a, Code
29 2016, is amended by adding the following new subparagraphs:

30 NEW SUBPARAGRAPH. (8) The offense is a violation referred
31 to in section 708.2A, subsection 4.

32 NEW SUBPARAGRAPH. (9) The offense is a violation of section
33 708.7, subsection 2, and the offense involved a domestic
34 relationship as defined in section 902.13.

35 NEW SUBPARAGRAPH. (10) The offense is a violation of

1 section 708.11, subsection 3, paragraph "a", and the offense
2 involved a domestic relationship as defined in section 902.13.
3 NEW SUBPARAGRAPH. (11) The offense is a violation of
4 section 708.11, subsection 3, paragraph "b", subparagraph (1),
5 and the offense involved a domestic relationship as defined in
6 section 902.13.

7 Sec. 15. Section 907.3, subsection 3, Code 2016, is amended
8 by adding the following new paragraph:

9 NEW PARAGRAPH. *0a.* The sentence imposed under section
10 902.13 for a violation referred to in section 708.2A,
11 subsection 4.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill relates to domestic abuse and other offenses
16 involving a domestic relationship, and provides penalties.

17 DOMESTIC ABUSE — PAYMENT OF SUPPORT AND MAINTENANCE. The
18 bill specifies that upon a finding that a defendant has engaged
19 in domestic abuse pursuant to Code chapter 236 (not a criminal
20 proceeding), the court may order the defendant to provide a
21 certified statement to the court regarding the defendant's
22 ability to pay support and maintenance when ordering the
23 defendant to pay such support and maintenance. Under the bill,
24 if the defendant fails to provide the certified financial
25 statement providing full and accurate disclosure, the court
26 shall hold the defendant in contempt of court.

27 MANDATORY RISK ASSESSMENT. Under the bill, if a person
28 convicted of a violation of a no-contact order or a protective
29 order pursuant to Code chapter 664A, or alternatively the
30 person is held in contempt of court for such a violation, and
31 ordered to be supervised by the judicial district department
32 of correctional services or to participate in a batterers'
33 treatment program, the court shall order the person to submit
34 to a risk assessment pursuant to new Code section 901.5C. If
35 a person is convicted of domestic abuse assault under Code

1 section 708.2A, the bill requires the person to submit to a
2 risk assessment.

3 REQUIREMENTS OF MANDATORY RISK ASSESSMENT. The bill
4 requires the risk assessment be performed by the judicial
5 district department of correctional services or a contract
6 service provider of a batterers' treatment program for domestic
7 abuse offenders, using a validated risk assessment developed
8 by the board of parole and approved by the department of
9 corrections. The bill also requires the court to consider
10 the risk assessment in determining the appropriate conditions
11 for release. In determining whether to release a defendant,
12 the court shall determine whether sufficient conditions for
13 release are available that are designed to reduce the risk to
14 another individual, detect threatening or criminal behavior,
15 and increase the safety of individuals and the general public,
16 and balance those determinations with the potential risk of
17 harm if the defendant is released.

18 ELECTRONIC TRACKING AND MONITORING. The bill provides
19 that the court may order the defendant to participate in a
20 program that includes the use of an electronic tracking and
21 monitoring system as a condition of release in a mandatory
22 risk assessment situation for violating a no-contact order or
23 protective order, being convicted of domestic abuse assault,
24 or as a condition of release for a bailable defendant if the
25 defendant is a risk to another person. The bill specifies that
26 when ordering the use of an electronic tracking and monitoring
27 system the court shall consider the safety of the victim and
28 other legitimate factors that may impact all of the parties.
29 If an electronic tracking and monitoring system is ordered,
30 the court is required to order the defendant to pay the costs
31 associated with the imposition of the system. If the defendant
32 fails to pay the fees of the electronic tracking and monitoring
33 system in a timely manner, the bill provides that the court may
34 impose garnishment of the defendant's wages in order to meet
35 the payment obligation.

1 The bill also specifies that a person placed on probation,
2 parole, work release, special sentence, or any other type of
3 conditional release may be supervised by an electronic tracking
4 and monitoring system in addition to any other conditions
5 of supervision if the person was convicted of any of the
6 following offenses: domestic abuse assault in violation of
7 Code section 708.2A(4); harassment in the first degree in
8 violation of Code section 708.7(2), and the offense involved a
9 domestic relationship; stalking in violation of Code section
10 708.11(3)(a), and the offense involved a domestic relationship;
11 and stalking in violation of Code section 708.11(3)(b)(1), and
12 the offense involved a domestic relationship.

13 The bill further specifies that when considering whether to
14 order the use of an electronic tracking and monitoring system
15 the court shall consider the safety of the victim and other
16 legitimate factors that may impact all of the parties.

17 MANDATORY MINIMUM SENTENCE — DOMESTIC ABUSE ASSAULT. If
18 a person is convicted of a third or subsequent domestic abuse
19 assault as referred to in Code section 708.2A(4), the bill
20 requires the person to serve a three-year mandatory minimum
21 prison sentence. A person who commits a third or subsequent
22 domestic abuse assault commits a class "D" felony. The bill
23 and current law also prohibit a person convicted of such a
24 domestic abuse from receiving a deferred judgment or sentence,
25 or a suspended sentence.

26 MANDATORY MINIMUM SENTENCE — DOMESTIC RELATIONSHIP.
27 The bill defines "domestic relationship" similarly to the
28 relationships required to commit "domestic abuse" in Code
29 section 236.2 except that certain "intimate relationships"
30 are excluded. If a person is convicted of harassment in the
31 first degree in violation of Code section 708.7(2), and the
32 offense involved a domestic relationship, the bill requires
33 the person serve a one-year mandatory minimum sentence, if
34 the court sentences the person to a term of confinement that
35 exceeds one year. A person who commits harassment in the

1 first degree commits an aggravated misdemeanor. The bill
2 also prohibits a person convicted of the harassment offense
3 from receiving a deferred judgment or sentence. If a person
4 convicted of a third or subsequent stalking in violation of
5 Code section 708.11(3)(a), and the offense involved a domestic
6 relationship, the bill requires the person serve a mandatory
7 five-year minimum prison sentence. A person who commits such
8 a stalking offense commits a class "C" felony. The bill also
9 prohibits the person from receiving a deferred judgment or
10 sentence. If a person convicted of stalking in violation
11 of Code section 708.11(3)(b)(1), and the offense involved a
12 domestic relationship, the bill requires the person serve a
13 mandatory three-year minimum prison sentence. A person who
14 commits such a stalking offense commits a class "D" felony.
15 The bill also prohibits the person from receiving a deferred
16 judgment or sentence.

17 ACCUMULATION OF EARNED TIME. The bill changes the following
18 offenses from a category "A" sentence under Code section 903A.2
19 to a category "B" sentence under Code section 903A.2: a third
20 or subsequent offense of domestic abuse assault in Code section
21 708.2A(4); harassment in the first degree in Code section
22 708.7(2), if the offense involved a domestic relationship
23 and the sentence by the court exceeds one year; a third or
24 subsequent offense of stalking under Code section 708.11(3)(a),
25 if the offense involved a domestic relationship; and stalking
26 under Code section 708.11(3)(b)(1), if the offense involved a
27 domestic relationship. Changing an offense from a category
28 "A" sentence to a category "B" sentence in effect reduces the
29 maximum accumulation of earned time from one and two-tenths
30 days for each day the inmate demonstrates good conduct and
31 satisfactorily participates in any program or placement to a
32 maximum accumulation of earned time of fifteen eighty-fifths
33 of a day for each day of good conduct. However, the category
34 "B" offenses in the bill are not limited to serving at least
35 seven-tenths of the maximum term of the person's sentence as

1 provided in Code section 902.12 but are required to serve the
2 mandatory minimum sentence in new Code section 902.13 in the
3 bill.

4 The bill also specifies that an inmate sentenced under new
5 Code section 902.13 is required to participate in a domestic
6 abuse treatment program, if required, and is not eligible for
7 a reduction of sentence unless the defendant participates and
8 completes such a program. If a defendant participates and
9 completes the domestic abuse treatment program, the defendant
10 is entitled to a reduction of fifteen eighty-fifths of a day
11 for each day the defendant demonstrates good conduct and
12 participates in a program or placement.

13 BOARD OF PAROLE — RULES. The bill requires the board
14 of parole to develop a validated risk assessment model for
15 domestic abuse assault in consultation with the department of
16 corrections.