

Senate File 422 - Introduced

SENATE FILE 422
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 308)

A BILL FOR

1 An Act relating to the criminal offenses of domestic abuse,
2 harassment, stalking, and unauthorized placement of a global
3 positioning device, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 664A.7, subsection 5, Code 2017, is
2 amended to read as follows:

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

11 b. If a person is convicted of a violation of a no-contact
12 order or a protective order under this subsection, or
13 alternatively if the person is held in contempt of court for
14 such a violation, as provided in subsection 3, the court shall
15 order the person to submit to a risk assessment pursuant to
16 section 901.5C.

17 Sec. 2. Section 708.2A, subsection 1, Code 2017, is amended
18 to read as follows:

19 1. For the purposes of [this chapter](#), “*domestic abuse*
20 *assault*” means an assault, as defined in [section 708.1](#), which
21 is domestic abuse as defined in [section 236.2, subsection 2,](#)
22 paragraph “*a*”, “*b*”, “*c*”, or “*d*”, or “*e*”.

23 Sec. 3. Section 708.2A, subsection 7, paragraph b, Code
24 2017, is amended by striking the paragraph and inserting in
25 lieu thereof the following:

26 b. A person convicted of a violation referred to in
27 subsection 4 shall be sentenced as provided under section
28 902.13.

29 Sec. 4. Section 708.2B, Code 2017, is amended to read as
30 follows:

31 **708.2B Treatment of domestic abuse offenders.**

32 1. As used in [this section](#), “*district department*” means
33 a judicial district department of correctional services,
34 established pursuant to [section 905.2](#). A person convicted of,
35 or receiving a deferred judgment for, domestic abuse assault

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

21 2. In addition to the requirements of subsection 1, the
22 court shall order a person convicted of domestic abuse assault
23 in violation of section 708.2A to submit to a risk assessment
24 pursuant to section 901.5C.

25 3. District departments or contract service providers shall
26 receive upon request peace officers' investigative reports
27 regarding persons participating in programs under [this section](#).
28 The receipt of reports under [this section](#) shall not waive the
29 confidentiality of the reports under [section 22.7](#).

30 Sec. 5. Section 708.7, subsection 2, Code 2017, is amended
31 by adding the following new paragraph:

32 NEW PARAGRAPH. *c.* A person convicted of harassment in
33 the first degree shall be sentenced under section 902.13 if
34 the offense involved a domestic relationship and the sentence
35 exceeds one year.

1 Sec. 6. Section 708.11, subsection 1, paragraph b, Code
2 2017, is amended to read as follows:

3 *b.* *"Course of conduct"* means repeatedly maintaining a visual
4 or physical proximity to a person without legitimate purpose,
5 repeatedly utilizing a technological device to locate, listen
6 to, or watch a person without legitimate purpose, or repeatedly
7 conveying oral or written threats, threats implied by conduct,
8 or a combination thereof, directed at or toward a person.

9 Sec. 7. Section 708.11, subsection 2, Code 2017, is amended
10 to read as follows:

11 2. A person commits stalking when all of the following
12 occur:

13 *a.* The person purposefully engages in a course of conduct
14 directed at a specific person that would cause a reasonable
15 person to feel terrorized, frightened, intimidated, or
16 threatened or to fear that the person intends to cause bodily
17 injury to, or the death of, that specific person or a member of
18 the specific person's immediate family.

19 *b.* The person has knowledge or should have knowledge
20 that ~~the specific person will be placed in reasonable fear~~
21 ~~of~~ a reasonable person would feel terrorized, frightened,
22 intimidated, or threatened or fear that the person intends to
23 cause bodily injury to, or the death of, that specific person
24 or a member of the specific person's immediate family by the
25 course of conduct.

26 ~~*c.* The person's course of conduct induces fear in the~~
27 ~~specific person of bodily injury to, or the death of, the~~
28 ~~specific person or a member of the specific person's immediate~~
29 ~~family.~~

30 Sec. 8. Section 708.11, Code 2017, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 3A. A person convicted under subsection 3,
33 paragraph "a", or subsection 3, paragraph "b", subparagraph (1),
34 shall be sentenced under section 902.13 if the offense involved
35 a domestic relationship.

1 Sec. 9. NEW SECTION. 708.11A **Unauthorized placement of**
2 **global positioning device.**

3 1. A person commits unauthorized placement of a global
4 positioning device, when, with intent to intimidate, annoy, or
5 alarm another person, the person, without the consent of the
6 other person, places a global positioning device on the other
7 person or an object in order to track the movements of the
8 other person without a legitimate purpose.

9 2. A person who commits a violation of this section commits
10 a serious misdemeanor.

11 Sec. 10. NEW SECTION. 901.5C **Domestic abuse assault**
12 **— no-contact order or protective order violations — risk**
13 **assessment.**

14 1. If a person is convicted of domestic abuse assault in
15 violation of section 708.2A, a violation of a no-contact order
16 or a protective order under section 664A.7, subsection 5, or
17 alternatively the person is held in contempt of court for
18 such a violation, as provided in section 664A.7, subsection
19 3, while under supervision by a judicial district department
20 of correctional services, the court shall order the person to
21 submit to a risk assessment.

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

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

13 Sec. 11. NEW SECTION. 902.13 **Minimum sentence for certain**
14 **domestic abuse assault, harassment, and stalking offenses.**

15 1. As used in this section, unless the context otherwise
16 requires:

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

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

22 b. "*Intimate relationship*" means a significant romantic
23 involvement that need not include sexual involvement.
24 An intimate relationship does not include casual social
25 relationships or associations in a business or professional
26 capacity.

27 c. "*Offense involving a domestic relationship*" means an
28 offense involving any of the following circumstances:

29 (1) The offense involves family or household members who
30 resided together at the time of the offense.

31 (2) The offense involves separated spouses or persons
32 divorced from each other and not residing together at the time
33 of the offense.

34 (3) The offense involves persons who are parents of the same
35 minor child, regardless of whether they have been married or

1 have lived together at any time.

2 (4) The offense involves persons who have been family or
3 household members residing together within the past year and
4 are not residing together at the time of the offense.

5 (5) (a) The offense involves persons who are in an intimate
6 relationship or have been in an intimate relationship and have
7 had contact with one another within the past year immediately
8 preceding the time of the offense. In determining whether
9 persons are or have been in an intimate relationship, the court
10 may consider the following nonexclusive list of factors:

11 (i) The duration of the relationship.

12 (ii) The frequency of interaction.

13 (iii) Whether the relationship has been terminated.

14 (iv) The nature of the relationship, characterized by
15 either party's expectation of sexual or romantic involvement.

16 (b) A person may be involved in an intimate relationship
17 with more than one person at a time.

18 2. a. A person who has been convicted of a third or
19 subsequent offense of domestic abuse assault under section
20 708.2A, subsection 4, shall be denied parole or work release
21 until the person has served between one-fifth of the maximum
22 term and the maximum term of the person's sentence as provided
23 in subsection 3.

24 b. A person who has been convicted of the offense of
25 harassment in the first degree under section 708.7, subsection
26 2, and the offense involved a domestic relationship, shall
27 be denied parole or work release until the person has served
28 between one-half of the maximum term and the maximum term of
29 the person's sentence as provided in subsection 3, if the
30 person is committed to the custody of the director of the
31 department of corrections.

32 c. A person who has been convicted of a third or subsequent
33 offense of stalking under section 708.11, subsection
34 3, paragraph "a", and the offense involved a domestic
35 relationship, shall be denied parole or work release until the

1 person has served between one-fifth of the maximum term and the
2 maximum term of the person's sentence as provided in subsection
3 3.

4 *d.* A person who has been convicted of the offense of
5 stalking under section 708.11, subsection 3, paragraph
6 "b", subparagraph (1), and the offense involved a domestic
7 relationship, shall be denied parole or work release until the
8 person has served between one-fifth of the maximum term and the
9 maximum term of the person's sentence as provided in subsection
10 3.

11 3. The sentencing court shall determine, after receiving
12 and examining all pertinent information referred to in section
13 901.5, the minimum term of confinement, within the parameters
14 set forth in subsection 2, required to be served before a
15 person may be paroled or placed on work release.

16 Sec. 12. Section 903A.2, subsection 1, paragraph a,
17 subparagraph (1), unnumbered paragraph 1, Code 2017, is amended
18 to read as follows:

19 Category "A" sentences are those sentences which are not
20 subject to a maximum accumulation of earned time of fifteen
21 percent of the total sentence of confinement under section
22 902.12 or 902.13. To the extent provided in subsection 5,
23 category "A" sentences also include life sentences imposed
24 under section 902.1. An inmate of an institution under the
25 control of the department of corrections who is serving a
26 category "A" sentence is eligible for a reduction of sentence
27 equal to one and two-tenths days for each day the inmate
28 demonstrates good conduct and satisfactorily participates in
29 any program or placement status identified by the director to
30 earn the reduction. The programs include but are not limited
31 to the following:

32 Sec. 13. Section 903A.2, subsection 1, paragraph b, Code
33 2017, is amended to read as follows:

34 *b.* (1) Category "B" sentences are those sentences which
35 are subject to a maximum accumulation of earned time of

1 fifteen percent of the total sentence of confinement under
2 section 902.12 or 902.13. An inmate of an institution under
3 the control of the department of corrections who is serving a
4 category "B" sentence is eligible for a reduction of sentence
5 equal to fifteen eighty-fifths of a day for each day of good
6 conduct by the inmate.

7 (2) An inmate required to participate in a domestic abuse
8 treatment program shall not be eligible for a reduction of
9 sentence unless the inmate participates in and completes a
10 domestic abuse treatment program established by the director.

11 Sec. 14. Section 904A.4, subsection 8, Code 2017, is amended
12 to read as follows:

13 8. a. The board of parole shall implement a risk assessment
14 program which shall provide risk assessment analysis for the
15 board.

16 b. The board of parole shall also develop a risk assessment
17 validated for domestic abuse-related offenses in consultation
18 with the department of corrections. The board may adopt rules
19 pursuant to chapter 17A relating to the use of the domestic
20 abuse risk assessment.

21 Sec. 15. NEW SECTION. 905.16 Electronic tracking and
22 monitoring system.

23 1. A person placed on probation, parole, work release,
24 special sentence, or any other type of conditional release
25 for any of the following offenses may be supervised by an
26 electronic tracking and monitoring system in addition to any
27 other conditions of supervision:

28 a. Domestic abuse assault in violation of section 708.2A,
29 subsection 4.

30 b. Harassment in the first degree in violation of section
31 708.7, subsection 2, if the offense involved a domestic
32 relationship as defined in section 902.13.

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

1 *d.* Stalking under section 708.11, subsection 3, paragraph
2 “*b*”, subparagraph (1), if the offense involved a domestic
3 relationship as defined in section 902.13.

4 2. When considering whether to order the use of an
5 electronic tracking and monitoring system the court shall
6 consider the safety of the victim and other legitimate factors
7 that may impact all of the parties.

8 Sec. 16. Section 907.3, subsection 1, paragraph a, Code
9 2017, is amended by adding the following new subparagraphs:

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

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

15 NEW SUBPARAGRAPH. (00013) The offense is a violation
16 referred to in section 708.11, subsection 3, paragraph “*a*”,
17 and the offense involved a domestic relationship as defined in
18 section 902.13.

19 NEW SUBPARAGRAPH. (000013) The offense is a violation of
20 section 708.11, subsection 3, paragraph “*b*”, subparagraph (1),
21 and the offense involved a domestic relationship as defined in
22 section 902.13.

23 Sec. 17. Section 907.3, subsection 2, paragraph a, Code
24 2017, is amended by adding the following new subparagraphs:

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

27 NEW SUBPARAGRAPH. (9) The offense is a violation of section
28 708.7, subsection 2, and the offense involved a domestic
29 relationship as defined in section 902.13.

30 NEW SUBPARAGRAPH. (10) The offense is a violation of
31 section 708.11, subsection 3, paragraph “*a*”, and the offense
32 involved a domestic relationship as defined in section 902.13.

33 NEW SUBPARAGRAPH. (11) The offense is a violation of
34 section 708.11, subsection 3, paragraph “*b*”, subparagraph (1),
35 and the offense involved a domestic relationship as defined in

1 section 902.13.

2 Sec. 18. Section 907.3, subsection 3, Code 2017, is amended
3 by adding the following new paragraph:

4 NEW PARAGRAPH. *0a.* The sentence imposed under section
5 902.13 for a violation referred to in section 708.2A,
6 subsection 4.

7 EXPLANATION

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

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

12 MANDATORY RISK ASSESSMENT. Under the bill, if a person is
13 convicted of a violation of a no-contact order or a protective
14 order pursuant to Code chapter 664A, or alternatively the
15 person is held in contempt of court for such a violation, and
16 ordered to be supervised by the judicial district department
17 of correctional services or to participate in a batterers'
18 treatment program, the court shall order the person to submit
19 to a risk assessment pursuant to new Code section 901.5C. If
20 a person is convicted of domestic abuse assault under Code
21 section 708.2A, the bill requires the person to submit to a
22 risk assessment.

23 REQUIREMENTS OF MANDATORY RISK ASSESSMENT. The bill
24 requires the risk assessment 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 bill also requires the court to consider
30 the risk assessment in determining the appropriate conditions
31 for release. In determining whether to release a defendant,
32 the court shall determine whether sufficient conditions for
33 release are available that are designed to reduce the risk to
34 another individual, detect threatening or criminal behavior,
35 and increase the safety of individuals and the general public,

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

3 ELECTRONIC TRACKING AND MONITORING. The bill provides
4 that the court may order the defendant to participate in a
5 program that includes the use of an electronic tracking and
6 monitoring system as a condition of release in a mandatory
7 risk assessment situation for violating a no-contact order or
8 protective order, being convicted of domestic abuse assault,
9 or as a condition of release for a bailable defendant if the
10 defendant is a risk to another person. The bill specifies that
11 when ordering the use of an electronic tracking and monitoring
12 system the court shall consider the safety of the victim and
13 other legitimate factors that may impact all of the parties.
14 If an electronic tracking and monitoring system is ordered,
15 the court is required to order the defendant to pay the costs
16 associated with the imposition of the system. If the defendant
17 fails to pay the fees of the electronic tracking and monitoring
18 system in a timely manner, the bill provides that the court may
19 impose garnishment of the defendant's wages in order to meet
20 the payment obligation.

21 The bill also specifies that a person placed on probation,
22 parole, work release, special sentence, or any other type of
23 conditional release may be supervised by an electronic tracking
24 and monitoring system in addition to any other conditions
25 of supervision if the person was convicted of any of the
26 following offenses: domestic abuse assault in violation of
27 Code section 708.2A(4); harassment in the first degree in
28 violation of Code section 708.7(2), and the offense involved a
29 domestic relationship; stalking in violation of Code section
30 708.11(3)(a), and the offense involved a domestic relationship;
31 and stalking in violation of Code section 708.11(3)(b)(1), and
32 the offense involved a domestic relationship.

33 The bill further specifies that when considering whether to
34 order the use of an electronic tracking and monitoring system
35 the court shall consider the safety of the victim and other

1 legitimate factors that may impact all of the parties.

2 MANDATORY MINIMUM SENTENCE — DOMESTIC ABUSE ASSAULT. If
3 a person is convicted of a third or subsequent domestic abuse
4 assault as referred to in Code section 708.2A(4), the bill
5 requires the person to serve between one-fifth of the maximum
6 term and the maximum term of the person's sentence. The bill
7 provides that the sentencing court shall determine the term of
8 confinement within the above-mentioned parameters. A person
9 who commits a third or subsequent domestic abuse assault
10 commits a class "D" felony. The bill and current law also
11 prohibit a person convicted of such a domestic abuse assault
12 offense from receiving a deferred judgment or sentence, or a
13 suspended sentence.

14 MANDATORY MINIMUM SENTENCE — DOMESTIC RELATIONSHIP.
15 The bill defines "domestic relationship" similarly to the
16 relationships required to commit "domestic abuse" in Code
17 section 236.2 except that certain "intimate relationships" are
18 excluded. If a person is convicted of harassment in the first
19 degree in violation of Code section 708.7(2), and the offense
20 involved a domestic relationship, the bill requires the person
21 to serve a one-year mandatory minimum sentence, if the court
22 sentences the person to a term of confinement that exceeds one
23 year. A person who commits harassment in the first degree
24 commits an aggravated misdemeanor. The bill also prohibits a
25 person convicted of the harassment offense from receiving a
26 deferred judgment or sentence. If a person is convicted of
27 a third or subsequent stalking offense in violation of Code
28 section 708.11(3)(a), and the offense involved a domestic
29 relationship, the bill requires the person to serve a mandatory
30 five-year minimum prison sentence. A person who commits such
31 a stalking offense commits a class "C" felony. The bill also
32 prohibits the person from receiving a deferred judgment or
33 sentence. If a person is convicted of stalking in violation
34 of Code section 708.11(3)(b)(1), and the offense involved a
35 domestic relationship, the bill requires the person to serve

1 a mandatory three-year minimum prison sentence. A person who
2 commits such a stalking offense commits a class "D" felony.
3 The bill also prohibits the person from receiving a deferred
4 judgment or sentence.

5 STALKING. The bill expands the definition of "course
6 of conduct" for purposes of the definition of the crime of
7 stalking contained in Code section 708.11 to include situations
8 where a technological device is repeatedly used to locate,
9 listen to, or watch a person without a legitimate purpose.

10 The bill modifies the elements of the criminal offense
11 of stalking to provide that a person commits the crime of
12 stalking when the person both purposefully engages in a course
13 of conduct directed at a specific person that would cause a
14 reasonable person to feel terrorized, frightened, intimidated,
15 or threatened or to fear that the person intends to cause
16 bodily injury to, or the death of, that specific person or a
17 member of the specific person's immediate family and the person
18 has knowledge or should have knowledge that a reasonable person
19 would feel terrorized, frightened, intimidated, or threatened
20 or fear that the person intends to cause bodily injury to, or
21 the death of, that specific person or a member of the specific
22 person's immediate family. The bill eliminates a current
23 element of stalking requiring the person's course of conduct to
24 actually induce fear in the victim of bodily injury to or death
25 of the victim or the victim's family member.

26 A person who commits stalking in violation of Code section
27 708.11 is subject to criminal penalties ranging from an
28 aggravated misdemeanor (confinement for no more than two years
29 and a fine of at least \$625 but not more than \$6,250) to a class
30 "C" felony (confinement for no more than 10 years and a fine of
31 at least \$1,000 but not more than \$10,000).

32 UNAUTHORIZED PLACEMENT OF GLOBAL POSITIONING DEVICE. Under
33 the bill, a person commits unauthorized placement of a global
34 positioning device, when, with intent to intimidate, annoy, or
35 alarm another person, the person, without the consent of the

1 other person, places a global positioning device on the other
2 person or an object in order to track the movements of the
3 other person without a legitimate purpose.

4 A person who commits unauthorized placement of a global
5 positioning device commits a serious misdemeanor. A serious
6 misdemeanor is punishable by confinement for no more than one
7 year and a fine of at least \$315 but not more than \$1,875.

8 ACCUMULATION OF EARNED TIME. The bill changes the following
9 offenses from a category "A" sentence under Code section 903A.2
10 to a category "B" sentence under Code section 903A.2: a third
11 or subsequent offense of domestic abuse assault in Code section
12 708.2A(4); harassment in the first degree in Code section
13 708.7(2), if the offense involved a domestic relationship
14 and the sentence by the court exceeds one year; a third or
15 subsequent offense of stalking under Code section 708.11(3)(a),
16 if the offense involved a domestic relationship; and stalking
17 under Code section 708.11(3)(b)(1), if the offense involved a
18 domestic relationship. Changing an offense from a category
19 "A" sentence to a category "B" sentence in effect reduces the
20 maximum accumulation of earned time from one and two-tenths
21 days for each day the inmate demonstrates good conduct and
22 satisfactorily participates in any program or placement to a
23 maximum accumulation of earned time of fifteen eighty-fifths
24 of a day for each day of good conduct. However, the category
25 "B" offenses in the bill are not limited to serving at least
26 seven-tenths of the maximum term of the person's sentence as
27 provided in Code section 902.12 but are required to serve the
28 mandatory minimum sentence in new Code section 902.13 in the
29 bill.

30 The bill also specifies that an inmate sentenced under new
31 Code section 902.13 is required to participate in a domestic
32 abuse treatment program, if required, and is not eligible for
33 a reduction of sentence unless the defendant participates and
34 completes such a program. If a defendant participates and
35 completes the domestic abuse treatment program, the defendant

1 is entitled to a reduction of fifteen eighty-fifths of a day
2 for each day the defendant demonstrates good conduct and
3 participates in a program or placement.

4 BOARD OF PAROLE — RULES. The bill requires the board
5 of parole to develop a validated risk assessment model for
6 domestic abuse assault in consultation with the department of
7 corrections.