

2. He or she does not intentionally injure a nonparticipant in the crime.
3. He or she acts with the consent of ~~his--or--her~~ superiors, or the necessity of immediate action precludes ~~his--or--her~~ obtaining such consent.
4. His or her actions are reasonable under the circumstances.

This section is not intended to preclude the use of undercover or surveillance persons by law enforcement agencies in appropriate circumstances and manner. It is intended to discourage such activity to tempt, urge or persuade the commission of offenses by persons not already disposed to commit offenses of that kind.

Approved June 10, 1979

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**CHAPTER 147**  
**DOMESTIC ABUSE**

H. F. 709

AN ACT relating to domestic abuse and providing a penalty.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. SHORT TITLE. This Act may be cited as the "Domestic Abuse Act" and shall appear as a separate chapter in the Code.

Sec. 2. NEW SECTION. DEFINITIONS. For purposes of this Act, unless a different meaning is clearly indicated by the context:

1. "Domestic abuse" means committing assault as defined in section seven hundred eight point one (708.1) of the Code under either of the following circumstances:

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

b. The assault is between separated spouses not residing together at the time of the assault.

2. "Family or household members" means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under eighteen.

Sec. 3. NEW SECTION. COMMENCEMENT OF ACTIONS. A person may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

1. Name of the plaintiff and the name and address of the plaintiff's attorney.

2. Name and address, if known, of the defendant.

3. Relationship of the plaintiff to the defendant.

4. Nature of the alleged domestic abuse.

5. Name and age of each child under eighteen whose welfare may be affected by the controversy.

6. Desired relief, including a request for temporary or emergency orders.

If the plaintiff files an affidavit stating that he or she does not have funds available to pay the cost of filing and service, the petition shall be filed and service shall be made without payment of costs. If a petition is filed and service is made without payment of costs, the court shall determine at the hearing if the plaintiff is indigent. If the court finds that the plaintiff is not indigent, the court may order the plaintiff to pay the costs of filing and service.

Sec. 4. NEW SECTION. HEARINGS--TEMPORARY ORDERS.

1. Within ten days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.

2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

3. If a hearing is continued, the court may make or extend any temporary order under subsection two (2) of this section that it deems necessary.

4. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.

5. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.

6. Hearings shall be recorded.

Sec. 5. NEW SECTION. DISPOSITION: Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff and the defendant receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the court expense fund.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

a. That the defendant cease domestic abuse of the plaintiff.

b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

c. That the defendant stay away from the plaintiff's residence, school or place of employment.

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen.

e. That the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

An order for counseling, a protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing.

3. An order or consent agreement under this section shall not affect title to real property.

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and law enforcement agencies having jurisdiction to enforce the order or consent agreement. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and agencies previously notified.

Sec. 6. NEW SECTION. EMERGENCY ORDERS.

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week, a petition may be filed before a district judge, or district associate judge designated by the chief judge of the judicial district, who may grant emergency relief in accordance with section five (5), subsection two (2) of this Act if the district judge or district associate judge deems it necessary to protect the plaintiff from domestic abuse, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

2. An emergency order issued under subsection one (1) of this section shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to section four (4) of this Act.

3. A petition filed and emergency order issued under this section and any documentation in support of the petition and order shall be immediately certified to the court. The certification shall commence a proceeding for purposes of section three (3) of this Act.

Sec. 7. NEW SECTION. PROCEDURE.

1. A proceeding under this Act shall be held in accordance with the rules of civil procedure, except as otherwise set forth in this Act, and is in addition to any other civil or criminal remedy.

2. The plaintiff's right to relief under this Act is not affected by leaving the residence or household to avoid domestic abuse.

Sec. 8. NEW SECTION. CONTEMPT. The court may hold a party in contempt for a violation of an order issued pursuant to this Act or for violation of a court-approved consent agreement. If held in contempt, the defendant shall serve a jail sentence which may be on weekends.

Sec. 9. NEW SECTION. DOMESTIC ABUSE INFORMATION. State and local law enforcement agencies shall collect and maintain domestic abuse information. They shall relay this information at least quarterly to the central registry for domestic abuse information within the department of social services.

The registry may compile statistics and issue reports, provided identifying details of the subject of domestic abuse are deleted.

Access to domestic abuse information in the registry is authorized only:

1. To a district court upon a finding that information is necessary for the resolution of an issue arising in a case involving domestic abuse.

2. To a person conducting bona fide research on domestic abuse, if the details identifying a subject of domestic abuse are deleted.

3. To registry or department personnel where necessary to the performance of their official duties.

Sec. 10. NEW SECTION. CONFIDENTIALITY OF RECORDS. The file in a domestic abuse case shall be sealed by the clerk of court when it is complete and after the time for appeal has expired. However, the clerk shall open the file upon application to and order of the court for good cause shown.

Sec. 11. NEW SECTION. DUTY OF PEACE OFFICER. A peace officer shall use every reasonable means to enforce an order or approved consent agreement issued pursuant to this Act. A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that he or she acts in good faith, on probable cause and without malice.

Sec. 12. This Act is effective on January first following its enactment.

Approved April 30, 1979

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CHAPTER 148  
MERCHANDISE REPAIRS BEFORE SALE

H. F. 172

AN ACT providing that repairs by the seller to new merchandise before sale do not constitute consumer fraud if within prescribed monetary limits.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section seven hundred fourteen point sixteen (714.16), subsection two (2), paragraph a, Code 1979, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. "Material fact" as used in this subsection does not include repairs of damage to or adjustments on or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, providing that the seller posts in a conspicuous place notice that repairs, adjustments or replacements will be disclosed upon request. The exemption provided in this paragraph does not apply to the concealment, suppression or omission of a material fact if the purchaser requests disclosure of any repair, adjustment or replacement.

Sec. 2. This Act is effective January first following its enactment.

Approved June 6, 1979