

capable of understanding the nature of the questions put to the child, whether the child is able to formulate intelligent answers and communicate impressions and recollections regarding the incident about which the child is to testify, and whether the child can understand the responsibility to tell the truth. In making these determinations, the court may do any or all of the following:

1. In consultation with counsels, conduct a voir dire of the child outside the courtroom. If the judge elects to conduct a voir dire of the child outside the courtroom, the judge shall allow only the court reporter, counsels, parties and those persons necessary for the welfare of the child to be present during voir dire. The judge may require a party be confined to an adjacent room or behind a screen or mirror that permits the party to see and hear the child during voir dire, but does not allow the child to see or hear the party. However, if a party is so confined, the judge shall take measures to insure that the party and counsel can confer during the voir dire.

2. Review recorded or nonrecorded evidence.

3. Receive expert testimony.

4. Take any other action permitted by Iowa rules of evidence 611 or 104.

Approved May 23, 1985

CHAPTER 175
DOMESTIC ABUSE
H.F. 549

AN ACT relating to domestic abuse counseling; to the commencement of a domestic abuse action; to coordination of certain domestic abuse programs by the department of human services; to compilation and dissemination of domestic abuse information by the department of public safety; to warrantless arrests of persons committing domestic abuse, and providing penalties; and to the establishment of a court fee for the entering of a final decree of dissolution of marriage.

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

Section 1. Section 22.7, subsection 2, Code 1985, is amended to read as follows:

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a victim of sexual assault or domestic violence and the victim's sexual assault or domestic violence counselor are not subject to disclosure except as provided in section 236.17.

Sec. 2. Section 236.2, Code 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 3. "Emergency shelter services" include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

NEW SUBSECTION. 4. "Support services" include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

NEW SUBSECTION. 5. "Department" means the department of human services.

NEW SUBSECTION. 6. "Commissioner" means the commissioner of human services.

Sec. 3. Section 236.3, unnumbered paragraph 2, Code 1985, is amended to read as follows:

If the plaintiff files an affidavit stating that the plaintiff does not have sufficient 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~~ payment of costs would prejudice the person's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents. If the court finds that the ~~plaintiff is not indigent~~ payment of costs would not prejudice the person's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents, the court may order the plaintiff to pay the costs of filing and service. However, in making the determinations, the court shall not consider funds no longer available to the plaintiff as a result of the commencement of the action.

Sec. 4. Section 236.9, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

236.9 DOMESTIC ABUSE INFORMATION.

Criminal justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving domestic abuse and shall provide the information to the department of public safety in the manner prescribed by the department of public safety. The department of public safety shall receive and maintain the information, including information on the personal characteristics and identities of perpetrators and victims of domestic abuse. The department of public safety shall maintain the confidentiality of information which individually identifies perpetrators or victims of domestic abuse, except that the department of public safety may disseminate the identifying information to a criminal justice agency if necessary for the performance of the official duties of the agency.

The department of public safety may compile statistics and issue reports on domestic abuse in Iowa, provided individual identifying details of the domestic abuse are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of human services in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of domestic abuse to persons conducting bona fide research, including but not limited to personnel of the department of human services.

Sec. 5. Section 236.12, subsection 2, Code 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. d. Arrest the abusing party pursuant to section 804.7, subsection 5.

Sec. 6. NEW SECTION. 236.13 APPLICATION FOR DESIGNATION AND FUNDING AS A PROVIDER OF SERVICES FOR VICTIMS OF DOMESTIC ABUSE.

Upon receipt of state or federal funding designated for victims of domestic abuse by the department, a public or private nonprofit organization may apply to the commissioner for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse. The application shall be submitted on a form prescribed by the department and shall include, but not be limited to, information regarding services to be provided, budget, and security measures.

Sec. 7. NEW SECTION. 236.14 DEPARTMENT POWERS AND DUTIES.

1. The commissioner shall:
 - a. Designate and award grants for existing and pilot programs pursuant to this chapter to provide emergency shelter services and support services to victims of domestic abuse.
 - b. Design and implement a uniform method of collecting data from domestic abuse organizations funded under this chapter.
2. The department shall consult and cooperate with all public and private agencies which may provide services to victims of domestic abuse, including but not limited to, legal services, social services, prospective employment opportunities, and unemployment benefits.
3. The commissioner may accept, use, and dispose of contributions of money, services, and property made available by an agency or department of the state or federal government, or a private agency or individual.

Sec. 8. NEW SECTION. 236.15 ADVISORY BOARD — MEMBERSHIP.

1. The domestic abuse advisory board is created. The board consists of five members appointed by the governor. Appointments shall be made of persons with knowledge in the fields of health, law enforcement, social services, domestic abuse, and victim services. Members of the board shall serve at the pleasure of the governor.

Members of the board must be electors of the state of Iowa. No more than three members shall belong to the same gender or the same political party. Three members are a quorum. Members shall select a chairperson and other officers as necessary.

2. The board shall meet at the call of the governor, the board chairperson, or three board members. The members shall be paid their actual and necessary expenses.

Sec. 9. NEW SECTION. 236.16 DUTIES OF THE BOARD.

The domestic abuse advisory board shall:

1. Advise the commissioner in the administration and coordination of programs awarded grants under section 236.14.
2. Review and comment on applications received by the commissioner for designation and awarding of grants under section 236.14.
3. Advise the commissioner regarding the adoption of rules relating to domestic abuse programs.

Sec. 10. NEW SECTION. 236.17 VICTIM COUNSELOR PRIVILEGE.

1. As used in this section:
 - a. "Victim" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or domestic violence.
 - b. "Victim counselor" means a person who is engaged in a sexual assault center or domestic violence center, is certified as a counselor by the sexual assault or domestic violence center, and is under the control of a direct services supervisor of a sexual assault or domestic violence center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of sexual assault or domestic violence. To qualify as a "victim counselor" under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa coalition against sexual abuse, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to sexual assault and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of sexual assault or domestic violence.

c. "Sexual assault center" means any office, institution, agency, or crisis center offering assistance to victims of sexual assault and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

d. "Sexual assault" means any act of sexual abuse or other unlawful sexual conduct under chapter 709, 726 or 728.

e. "Domestic violence center" means any office, institution, shelter, host home, agency or crisis center offering assistance to victims of domestic violence through crisis intervention, referral to or provision of emergency shelter, and assistance and advocacy regarding medical and legal proceedings.

f. "Domestic violence" means any act of domestic abuse, as defined in section 236.2, subsection 1, and includes those acts commonly referred to as spouse abuse.

g. "Confidential communication" means information transmitted between a victim of sexual assault or domestic violence and a victim counselor in the course of the counseling relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any who is present to further the interests of the victim in the consultation or to whom disclosure is reasonably necessary for the transmission of the information or for accomplishment of the purposes for which the counselor is consulted, and includes all information received and any advice, report, or working paper given or prepared by the counselor in the course of the relationship with the victim.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a sexual assault or domestic violence counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a domestic violence center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the executor or administrator of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged act of sexual assault or domestic violence which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under Iowa rule of evidence 615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to Iowa rule of evidence 412.

Sec. 11. Section 602.8105, subsection 1, Code 1985, is amended by adding the following new paragraph following paragraph k and renumbering the following paragraphs:

NEW PARAGRAPH. 1. For entering a final decree of dissolution of marriage, fifteen dollars. The fees shall be deposited in the general fund of the state. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

Sec. 12. Section 804.7, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has reasonable grounds for believing that the person to be arrested has committed it.

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