

concludes that the crime or founded abuse does not merit prohibition of employment licensure, or registration. In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

Sec. 18. Section 600.8, subsection 1, paragraph a, Code 1987, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) Whether the prospective adoption petitioner has been convicted of a violation under a law of any state of a crime or has a record of founded child abuse.

Sec. 19. Section 600.8, subsection 2, Code 1987, is amended by adding the following new lettered paragraph as paragraph b and relettering the remaining paragraph:

b. The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3) unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

Approved May 27, 1987

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## CHAPTER 154

### DOMESTIC ABUSE AND OTHER ASSAULTS

*H.F. 591*

**AN ACT** relating to domestic abuse, assaults involving an act of domestic abuse, and court orders issued or enforced pursuant to the domestic abuse law, and providing penalties.

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

Section 1. Section 236.2, subsection 1, paragraph b, Code 1987, is amended to read as follows:

b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.

Sec. 2. Section 236.5, subsection 2, Code 1987, is amended by adding the following new paragraph:

NEW PARAGRAPH. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

Sec. 3. Section 236.5, subsection 4, Code 1987, is amended to read as follows:

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, and the twenty-four hour dispatcher for the law enforcement agencies. 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. 4. Section 236.8, Code 1987, is amended to read as follows:

236.8 CONTEMPT.

The court may hold a party in contempt for a violation of an order issued pursuant to this chapter or for violation of a court-approved consent agreement entered under this chapter, for violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, or for violation of any order that establishes conditions of release or is a

protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If held in contempt, the defendant shall serve a jail sentence which may be on weekends.

Sec. 5. Section 236.11, Code 1987, is amended to read as follows:

**236.11 DUTY OF PEACE OFFICER.**

A peace officer shall use every reasonable means to enforce ~~any civil or criminal~~ an order or approved court-approved consent agreement issued pursuant to entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If a peace officer has probable cause to believe that a person has violated ~~any civil or criminal~~ an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody. The magistrate shall make an initial preliminary determination whether there is probable cause to believe that an order or consent agreement existed and that the person taken into custody has violated its terms. The magistrate's decision shall be entered in the record.

If the magistrate finds probable cause, the magistrate shall order the person to appear before the court which issued the original order or approved the consent agreement, whichever was allegedly violated, at which a specified time the court shall determine whether the person has committed contempt pursuant to section 236.8 not less than three days nor more than ten days after the initial appearance under this section. The magistrate shall cause the original court to be notified of the contents of the magistrate's order.

**PARAGRAPH DIVIDED.** A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that the peace officer acts in good faith, on probable cause, and ~~such~~ the officer's acts do not constitute a willful and wanton disregard for the rights or safety of another.

Sec. 6. Section 236.12, subsection 2, Code 1987, is amended by striking the subsection and inserting in lieu thereof the following:

2. a. A peace officer may, with or without a warrant, arrest a person under section 708.2, subsection 3, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim.

b. A peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 2, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury.

c. A peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 1, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed with the intent to inflict a serious injury.

d. A peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 3, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed and that the alleged abuser used or displayed a dangerous weapon in connection with the assault.

Sec. 7. NEW SECTION. 236.14 INITIAL APPEARANCE REQUIRED — CONTACT TO BE PROHIBITED.

1. Notwithstanding chapters 804 and 805, a person taken into custody pursuant to section 236.11 or arrested pursuant to section 236.12 may be released on bail or otherwise only after an initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure or section 236.11, whichever is applicable.

2. When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the victim's safety, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim and to refrain from harassing the alleged victim or the victim's relatives in addition to any other conditions of release determined and imposed by the magistrate under section 811.2.

The court order shall contain the court's directives restricting the defendant from having contact with the victim or the victim's relatives.

The clerk of the court or other person designated by the court shall provide a copy of this order to the victim pursuant to chapter 910A. The order has force and effect until it is modified or terminated by subsequent court action in the contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2.

Violation of this no-contact order is punishable by summary contempt proceedings.

Sec. 8. Section 708.2, Code 1987, is amended by adding the following new subsection 3: NEW SUBSECTION. 3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.

Sec. 9. NEW SECTION. 708.2A DOMESTIC ABUSE ASSAULT — PENALTY ENHANCED.

An assault, as defined in section 708.1 which is domestic abuse as defined in section 236.2 and which would otherwise be punishable as a simple misdemeanor under section 708.2, is a serious misdemeanor if the person who commits the assault was previously convicted of a prior domestic abuse assault within the two years prior to the date of the instant offense.

Approved May 28, 1987

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## CHAPTER 155

### PAYMENTS TO SUBCONTRACTORS UNDER PUBLIC IMPROVEMENT CONTRACTS

*H.F. 244*

**AN ACT** relating to progress payments, final payments, and retention from payments made to subcontractors on public improvement construction projects.

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

Section 1. Section 573.12, Code 1987, is amended to read as follows:

573.12 PAYMENTS AND RETENTION FROM PAYMENTS ON CONTRACTS.

1. RETENTION. Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment five percent of that amount which is determined to be due according to the estimate of the architect or engineer.