

division, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, all payments received under the federal social security Social Security Act, except child insurance benefits received by a member of the claimant's household, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. "Income" does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency.

Sec. 2. This Act takes effect January 1, 1994, and applies to mobile home tax claims and property tax credit claims filed on or after that date, and to rent reimbursement claims filed on or after January 1, 1995.

Approved May 21, 1993

CHAPTER 157

DOMESTIC ABUSE

S.F. 342

*AN ACT relating to domestic abuse, expanding the definition of domestic abuse, adding no-contact provisions to pretrial release conditions, and providing penalties.

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

Section 1. Section 236.2, subsection 2, Code 1993, is amended to read as follows:

2. "Domestic abuse" means committing assault as defined in section 708.1 under either any 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 or persons divorced from each other and not residing together at the time of the assault.

c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.

d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.

Sec. 2. NEW SECTION. 236.3B ASSISTANCE BY COUNTY ATTORNEY.

A county attorney's office may provide assistance to a person wishing to initiate proceedings pursuant to this chapter or to a plaintiff at any stage of a proceeding under this chapter, if the individual does not have sufficient funds to pay for legal assistance and if the assistance does not create a conflict of interest for the county attorney's office. The assistance provided may include, but is not limited to, assistance in obtaining or completing forms, filing a petition or other necessary pleading, presenting evidence to the court, and enforcing the orders of the court entered pursuant to this chapter. Providing assistance pursuant to this section shall not be considered the private practice of law for the purposes of section 331.752.

Sec. 3. Section 236.4, subsection 1, Code 1993, is amended to read as follows:

1. Within ten Not less than five and not more than fifteen 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.

*Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

Sec. 4. Section 236.5, subsection 4, Code 1993, 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 the county sheriff having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified. The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk. The clerk shall send or deliver a written copy of any such document to the law enforcement agencies and the twenty-four hour dispatcher within twenty-four hours of filing the document.

Sec. 5. Section 236.8, Code 1993, is amended to read as follows:

236.8 CONTEMPT.

The court may hold a party in contempt for a violation of an order or 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. Any jail sentence of more than one day imposed under this section shall be served on consecutive days.

A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court.

Sec. 6. Section 236.11, unnumbered paragraph 3, Code 1993, is amended to read as follows:

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 a specified time not less than three five days nor more than ten fifteen 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.

Sec. 7. Section 236.14, subsection 2, unnumbered paragraph 4, Code 1993, is amended to read as follows:

Violation of this no-contact order is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court. If held in contempt for violation of a no-contact order, the person shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this paragraph shall be served on consecutive days. No portion of the mandatory minimum term of confinement imposed by this section shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for violation of a no-contact order, and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

Sec. 8. Section 236.14, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 3. This section shall not be construed to limit a pretrial release order issued pursuant to chapter 811.

Sec. 9. Section 708.2A, subsection 4, Code 1993, is amended to read as follows:

4. A person convicted of violating this section shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum

sentence. The minimum term shall be served on consecutive days. The court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence. This section does not prohibit the court from sentencing and the defendant from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the defendant has not previously received a deferred sentence or judgment for a violation of section 708.2 or this section which was issued on a domestic abuse assault. However, once the defendant has received one deferred sentence or judgment involving a violation of section 708.2 or this section which was issued on a domestic abuse assault, the defendant shall not be eligible to receive another deferred sentence or judgment for a violation of this section.

Sec. 10. Section 811.2, subsection 1, paragraph e, Code 1993, is amended to read as follows:

e. Impose any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons including a condition requiring that the defendant return to custody after specified hours, or a condition that the defendant have no contact with the victim or other persons specified by the court.

Sec. 11. Section 907.3, subsection 1, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. The offense is a finding of contempt pursuant to section 236.8 or 236.14.

Sec. 12. Section 907.3, subsections 2 and 3, Code 1993, are amended to read as follows:

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. In addition, the court shall not defer a sentence if it is imposed for contempt pursuant to section 236.8 or 236.14. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend the minimum term of two days imposed pursuant to section 708.2A, and the court shall not suspend a sentence imposed pursuant to section 236.8 or 236.14 for contempt.

Approved May 25, 1993