

Broers, Chair
Shey
Kreiman

HSB 68

JUDICIARY

SENATE/HOUSE FILE

JD
0244

BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act establishing child endangerment offenses for certain
2 criminal acts committed in the presence of a child or minor.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 726.6, Code 2001, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. OA. For the purposes of this section, "in
4 the presence of a child or minor" means an act committed in
5 the physical presence of a child or minor, in the child's or
6 minor's home while the child or minor is present in the home,
7 or under other circumstances in which a reasonably prudent
8 person would know that a child or minor may see or hear the
9 act.

10 Sec. 2. Section 726.6, subsection 1, Code 2001, is amended
11 by adding the following new paragraphs:

12 NEW PARAGRAPH. g. In the presence of a child or minor,
13 intentionally and without justification causes bodily injury
14 or serious injury to another person, intentionally points a
15 firearm at another person, displays a dangerous weapon in a
16 threatening manner, or commits a forcible felony.

17 NEW PARAGRAPH. h. In the presence of a child or minor,
18 intentionally, maliciously, or recklessly causes the death of
19 another person or attempts to commit murder of another person.

20 EXPLANATION

21 This bill creates additional child endangerment offenses
22 under Code section 726.6 for certain criminal acts committed
23 in the presence of a child or minor. Under the child
24 endangerment statute, the perpetrator must be the child's
25 parent, guardian, or person having custody or control over a
26 child or minor under the age of 18 with a mental or physical
27 disability.

28 The bill defines the term "in the presence of a child or
29 minor" as an act committed in the physical presence of the
30 child or minor, in the child's or minor's home while the child
31 or minor is present, or under other circumstances that a
32 reasonably prudent person would know that a child or minor may
33 see or hear the act.

34 Under the bill, a child endangerment offense is committed
35 if such a person commits any of these acts against another

1 person in the presence of a child or minor: intentional and
 2 unjustified bodily injury or serious injury, intentional
 3 pointing of a firearm, display of a dangerous weapon in a
 4 threatening manner, a forcible felony, intentional or
 5 malicious or reckless causing of death, or attempted murder.

6 A child endangerment offense that does not result in a
 7 serious injury to a child or minor is an aggravated
 8 misdemeanor and such offense that results in a serious injury
 9 to a child or minor is a class "C" felony.

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Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

MEMORANDUM

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5164
FACSIMILE: 515-281-4209

TO: Members of the General Assembly
FROM: Anne M. Bunz and Marilyn Lantz, Legislative Liaisons
DATE: January 8, 2001
SUBJECT: Children Witnessing Violence

Problem:

As this Nation focuses on the negative impact of violence in music, video games and Hollywood movies, we have failed to look at the violence that children witness in their own homes.

Children who witness violence often suffer developmental and behavioral problems, which may seriously impact the quality of their lives. These children are at an increased risk for delinquency and are more likely to become violent themselves, regardless of whether they were victimized directly or indirectly.

These children who witness violence are often called "invisible victims". They children don't necessarily have broken bones or black eyes themselves, but they have witnessed broken bones and black eyes that their parents or caretakers have inflicted or incurred. Children who witness violence can experience severe long-lasting effects, just as children who are direct victims of violence experience emotional or psychological damage from their abuse.

"Experts estimate that between 3.3 and 10 million children witness violence in their homes."

According to the *Journal of Child and Adolescent Psychiatric Nursing*, "children who are exposed to domestic violence experience feelings of terror, isolation, guilt, helplessness, and grief. Children act out what they see; their demonstration of violent behavior can be a manifestation of their exposure to domestic violence."

Batterers need to be held accountable not only for harm that they have caused their cohabitant, but also for the children who witness such reprehensible behavior.

Solution:

The Attorney General's proposal holds the batterer accountable for the harm that is incurred by these "invisible victims".

This proposal allows persons to be charged with child endangerment if they: 1) inflict or attempt to inflict harm to a cohabitant, or intentionally points a dangerous weapon or firearm in a threatening manner to a cohabitant in the presence of a minor child, or 2) commit, or attempt to commit murder in the presence of a minor child.

According to the National Association of Attorney General there are 11 states that have a statutory provision for charging intimate partner abusers with additional crime (or a sentencing enhancement) if abuse occurs in front of a minor.

4/10/01 Rereferred To: Judiciary

FEB 13 2001
Place On Calendar

HOUSE FILE 244
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 68)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing domestic abuse assault penalties for such
2 assaults committed in the presence or proximity of a child.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 244

S.F. _____

H.F. 244

1 Section 1. Section 708.2A, subsection 2, paragraph b, Code
2 2001, is amended to read as follows:

3 b. A serious misdemeanor, ~~if-the~~ under any of the
4 following:

5 (1) The domestic abuse assault causes bodily injury or
6 mental illness.

7 (2) The domestic abuse assault is committed on the home
8 premises of the person who commits the assault or of the
9 victim of the assault, when a child, who is in the care,
10 custody, or control of the person who commits the assault or
11 of the victim of the assault, is present on the premises.

12 (3) The domestic abuse assault is committed within the
13 visual or physical proximity of a child who is in the care,
14 custody, or control of the person who commits the assault or
15 of the victim of the assault.

16 EXPLANATION

17 This bill establishes domestic abuse assault penalties for
18 certain assaults committed in the presence or proximity of a
19 child.

20 The bill provides that on a first offense of domestic abuse
21 assault, as defined in Code section 708.1, a person commits a
22 serious misdemeanor if the domestic abuse assault is committed
23 on the person's or the victim of the assault's home premises
24 where a child, under the supervision of the person or the
25 victim of the assault, is present, or the domestic abuse
26 assault is committed by a person within the visual or physical
27 proximity of a child under the supervision of the person or
28 the victim of the assault.

29 A serious misdemeanor is punishable by confinement for no
30 more than one year and a fine of at least \$250 but not more
31 than \$1,500.

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**HOUSE FILE 244
FISCAL NOTE**

The estimate for **House File 244** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 244 increases the penalty for a domestic abuse assault from a simple misdemeanor to a serious misdemeanor in certain cases where children are present.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. There is a six-month lag time from the effective date (July 1, 2001) of the proposed legislation to the date of first entry of affected offenders into the correctional system.
4. Average jail terms are based on the average jail term imposed for domestic abuse assault.
5. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court information. Conviction and penalty information is based on FY 2000 data.
6. During FY 2000, 1,693 people were convicted of simple misdemeanor domestic abuse. The incarceration rate for simple misdemeanor domestic abuse was 67.0%. The incarceration rate for serious misdemeanor domestic abuse was 80.0%. These rates are used to assess the correctional impact on jails.
7. According to the 1999 Uniform Crime Report, 29.0% of reported domestic abuse incidents that year involved the presence of children. It is assumed that 29.0% of simple misdemeanor domestic abuse convictions will become serious misdemeanor domestic abuse convictions.
8. During the first year, the Bill will cause 246 simple misdemeanor offenders to be convicted of a serious misdemeanor. During the second year (annualized impact), there will be 491 simple misdemeanor offenders convicted of a serious misdemeanor.
9. The median cost for a simple misdemeanor indigent defense case is \$200 while a serious misdemeanor indigent defense case is \$750.
10. The marginal cost per day for probation is \$1.55 per offender. The average length of stay for a serious misdemeanor is six months. Simple misdemeanors are rarely supervised.
11. Court costs vary by type of offense charged as well as contested versus uncontested cases. Information concerning the ratio of contested versus uncontested cases is not available.
12. The average court cost for an uncontested simple misdemeanor case is \$58 while the average court cost for a contested simple misdemeanor is \$253.

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13. The average court cost for an uncontested serious misdemeanor case is \$282 while the average court cost for a contested serious misdemeanor case is \$2,500.
14. Average length of stay in a county jail for simple misdemeanor domestic abuse is eight days.
15. Average length of stay in a county jail for a serious misdemeanor domestic abuse is 49 days.
16. The marginal cost per day for county jails is \$25.

CORRECTIONAL IMPACT

During FY 2002, there will be 246 people convicted as serious misdemeanants rather than as simple misdemeanants. These offenders will be sentenced as follows: 128 to probation and 197 to jail. Certain offenders will receive a split sentence of probation and jail. There will be 33 more admissions to county jails than under current law.

During FY 2003, there will be 491 people convicted as serious misdemeanants rather than as simple misdemeanants. These offenders will be sentenced as follows: 255 to probation and 393 to jail. Certain offenders will receive a split sentence of probation and jail. There will be 66 more admissions to county jails than under current law.

Admissions to probation will increase by 128 during FY 2002, and 255 every year thereafter. Admissions to jail will increase by 33 during FY 2002, and 66 every year thereafter.

FISCAL IMPACT**State General Fund Impact:**

Probation costs for the Community-Based Corrections (CBC) system are estimated to increase by \$72,000 during FY 2002. Future fiscal year costs are estimated to be \$144,000.

Indigent defense costs are estimated to increase by \$135,000 during FY 2002 and \$270,000 during FY 2003.

During FY 2002, assuming all 246 simple misdemeanor cases are uncontested, and remain uncontested at the serious misdemeanor level, the increased court cost is approximately \$55,000. If all 246 simple misdemeanor cases are contested, and remain contested at the serious misdemeanor level, the increased court cost is approximately \$553,000. Increased court costs range from approximately \$55,000 to \$553,000 during FY 2002.

During FY 2003, assuming all 491 simple misdemeanor cases are uncontested, and remain uncontested at the serious misdemeanor level, the increased court cost is approximately \$110,000. If all 491 simple misdemeanor cases are contested, and remain contested at the serious misdemeanor level, the increased court cost is approximately \$1.1 million. Increased court costs range from approximately \$110,000 to \$1.1 million.

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Total State costs range from approximately \$262,000 to \$760,000 during FY 2002. Total State costs for FY 2003 range from approximately \$524,000 to \$1.5 million during FY 2003.

Local Government Impact:

Local governments will experience increased costs for operating jails under the Bill. Total statewide costs for local jails on an annual basis is estimated to be \$416,000 more than current law, as follows:

327 fewer admissions for simple misdemeanor assault with an average length of stay of 8 days = 2,616 fewer jail days.

393 more admissions for serious misdemeanor assault with an average length of stay of 49 days = 19,257 more jail days.

Jail days increase by 16,641 annually which results in additional costs of \$416,000 (16,641 jail days x \$25).

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Department of Corrections
Supreme Court
State Public Defender's Office

(LSB 1125hv, BAL)

FILED FEBRUARY 15, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR