

2001 DRAFTING REQUEST

Bill

Received: **10/19/2001**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Shirley Krug (608) 266-5813**

By/Representing: **Norm**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - domestic abuse**
Criminal Law - law enforcement

Extra Copies: **rlr**
pjk

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Domestic violence mandatory arrest

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/2			kfollet 02/08/2002	_____	lrb_docadmin 02/08/2002	lrb_docadmin 02/14/2002	

FE Sent For: @entio

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FE Sent For:

Handwritten signatures and initials:
KF 1/6
SP
JF
<END>

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1/?	mdsida	lpi hmb 12/21/01	1/2/02 pg	1/2/02 self			

FE Sent For:

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Memo:

To: Mike Dsida
From: Norm Sterzenbach, Rep. Krug
Date: October 18, 2001
Re: Drafting Request for Mandatory Arrest Law

Enclosed you will find a summary of a Primary Physical Aggressor (PPA) forum held on August 9 – 10. During the forum, participants decided that the Mandatory arrest Law needed to be changed to include new language defining the PPA. Subsequent language was then recommended. I have highlighted the summary on the changes to the PPA. If you have any further questions please do not hesitate to contact me in the Krug office. Thanks for your time.

**Primary Physical Aggressor Forum
August 9-10, 2001**

DRAFT

Background: On April 1, 1989, Wisconsin implemented its Mandatory Arrest law for domestic violence crimes. This law required police to arrest perpetrators of domestic violence crimes if certain criteria were met. The law also recognized that victims of domestic violence, like victims of other types of violent crime, sometimes fight back in effort to defend themselves. As a means to address self-defending behaviors and to prevent revictimization of victims, Wisconsin's law incorporated language directing police officers to determine the Primary Physical Aggressor (PPA) when evidence exists to believe that both parties used violence. Under Wisconsin law, when an officer determines the PPA, s/he has the option of arresting only that person rather than arresting both parties.

Since implementation of the Mandatory Arrest law, the numbers of cases where both parties have been arrested has steadily increased. In 1994, the number of dual arrest cases rose as high as 22% of the total number of domestic violence arrests. Since 1995, the number of dual arrests have remain at/around 15% of the total arrests. National domestic violence and law enforcement experts recommend that dual arrests should not exceed more than 5% of the total arrests. There has also been growing concern over the increased number of women arrested for domestic abuse crimes, many of whom are later identified within the criminal justice system as victims of domestic violence. The number of women arrested for domestic abuse now exceeds more than 20% of the total arrests¹. Nationally, the Bureau of Justice Statistics reports that women offenders compose approximately 5% of the total offenders arrested for domestic violence crimes.

The Primary Physical Aggressor Forum: On August 9-10, 2001, a small group of law enforcement officers, prosecutors, and domestic violence victim advocates participated in a meeting to identify problems with implementation of Wisconsin's "primary physical aggressor" law which lead to arrests of victims and formulate recommendations for potential solutions. The Primary Physical Aggressor (PPA) Forum, a two-day meeting organized by the Wisconsin Coalition Against Domestic Violence (WCADV) with the assistance of the Wisconsin Department of Justice included the following participants:

- Detective Dale Anderson, Dane Co. Sheriff's Office;
- ADA Kelly Benjamin, Portage Co. District Attorney's Office;
- DA Paul Bucher, Waukesha Co. District Attorney;
- Tami Dzikowich, Office of Justice Assistance, Violence Against Women Act - Law Enforcement Training;
- Dr. Kevin Hamberger, Racine Family Practice Center;
- Captain Pete Helein, Appleton Police Department;
- Laurie Jorgensen, Wisconsin Coalition Against Domestic Violence;
- Kitty Kocol, Department of Justice- Office of Victim Services;
- Howard Lindstedt, Sojourner Truth House;
- Linda Madigan, New Horizons;
- Ray Maida, Wisconsin Coalition Against Sexual Assault;
- Rick McArthur, Ho Chuck Civil Legal Assistance;
- Tess Meuer, Wisconsin Coalition Against Domestic Violence;
- Detective Marion Morgan, Madison Police Department;
- ADA Judi Munaker, Dane Co. District Attorney's Office;
- DA Shawn Mutter, Lincoln Co. District Attorney;
- Sergeant Sally Newman, LaCrosse Police Department;
- Liz Marquardt, Task Force on Family Violence;
- ADA Paul Sander, Milwaukee Co. District Attorney's Office;
- Linda Shaw, Community Referral Agency;
- Chief Neil Strobel, Merrill Police Department;
- Linda Ruzicka, Department of Justice- Training and Standards;
- Jane Sandusky, Consultant;
- Becky Westerfelt, Facilitator;
- Patti Seger, Wisconsin Coalition Against Domestic Violence

¹ Wisconsin Department of Justice, Domestic Violence Arrest data, 1998.

During the first day, the participants collectively identified a number of specific problems associated with implementation the primary physical aggressor section of the mandatory arrest law and the impact on victims of domestic violence. Each of the problems were then prioritized by the group by level of importance and urgency.

Participants were eventually divided into four smaller working groups for the purpose of developing recommendations aimed at resolving the identified problems. Each group was specifically designed to include representation from law enforcement, prosecution, victim or perpetrator services, and diverse geographic locations in order to facilitate broad discussion and to produce solutions representative of the entire state. Each group was directed to address the problems through development of specific action(s) to be taken and to also identify potential resources (i.e., financial, organizational, legislative, etc.) required to implement the recommended action(s).

The assigned participants² of each group were as follows:

- **Group 1:** Anderson (Dane Co, L.E.), Helein (Outagamie Co, L.E.), Bucher (Waukesha Co, D.A.), Shaw (Polk Co, Advocacy), McArthur (Jackson Co, Tribal Atty.), and Sandusky (Statewide/National).
- **Group 2:** Ruzicka (Statewide, L.E. Trg.), Lindsted (Milwaukee Co, retired L.E.), Benjamin (Portage Co, D.A.), Madigan (LaCrosse Co, Advocacy), Dzikowich (Statewide, L.E. trg), and Meuer (Statewide, Atty).
- **Group 3:** Morgan (Dane Co, L.E.), Strobel (Lincoln Co, L.E.), Munaker (Dane Co, D.A.), Marquardt (Milwaukee Co, Advocacy), Jorgensen (Statewide, Advocacy), and Kokol (Statewide, Advocacy).
- **Group 4:** Maida (Statewide, L.E. Trg), Newman (LaCrosse Co, L.E.), Mutter (Lincoln Co, D.A.), Sander (Milwaukee Co, D.A.), Hamberger (Racine Co, Advocacy), and Seger (Statewide, Policy).

² Each participant is labeled by the County in which they work and occupation-type (i.e., L.E.= Law Enforcement, D.A.=District (or Asst.) Attorney, Advocacy=local domestic abuse program).

Each group was assigned 3-4 problems for the purpose of developing specific action(s) to resolve the issues and to identify resources. **The key problems identified were:**

- Failure to identify the PPA which results in dual arrest or arrest of victims compromises the system's ability to hold abusers accountable, results in negative impact on prosecutor/law enforcement relations, and reinforces inappropriate perceptions and beliefs about domestic violence.
- Police personal beliefs and perceptions influence their actions contrary to the law.
- Victim arrests create "system generated risks" for victims by creating distrust of police and the criminal justice system and by imposing or denying services (i.e., loss of children, batterer's treatment, advocacy and victim services)
- Police reports in response to same-sex domestic violence are usually brief, poorly investigated, and often result in dual arrests.
- There is a lack of mandated, comprehensive domestic violence training for all law enforcement officers. There is a lack of mandated training that should impact all levels of the criminal justice system (courts, prosecution, law enforcement, corrections) on: DV dynamics including power and control, self defense issues, etc. DA and law enforcement need adequate training so they understand DV dynamics, can better utilize interviewing strategies, and conduct thorough investigations.
 - Need time/money to be able to conduct training;
 - Training should be mandatory and provided annually;
 - There is inconsistent application of PPA;
 - There is a lack of commitment/leadership within law enforcement/prosecution to address DV.
- Successful investigation and appropriate arrest can improve the professional success and personal satisfaction that law enforcement attains from work in DV area.
- The current definition of PPA is too vague. PPA is a poorly defined statute because it is too subjective and still is discretionary. As a result, individual police department policies are inconsistent. A better definition would be objective and incorporate the concept of self-defense. Statutorily, the legislation fails to address mandated training, fails to mandate implementation of appropriate policies, or to place PPA under the mandate section of the law.
 - Traditional concept of self-defense does not adequately address domestic violence;
 - Ambiguous definitions of "self-defense";
 - The use of the words "domestic abuse against each other" in PPA section is misleading.
- Law enforcement needs resources and leadership's support to conduct investigations that yield the true PPA.

- Law enforcement is typically procedure vs. policy driven.
- Law enforcement needs to conduct thorough investigations.
- District Attorney's need to embrace the intent of the statute and provide leadership, communication and guidance to police.

The recommendations that resulted from the discussion of these problems fell primarily into two categories: training and statutory change. There were also some notations that domestic violence data collection could be improved and better utilized in order to evaluate the magnitude of problems associated with implementation of PPA.

Training issues focused primarily on requiring that all police officers and prosecutors receive training that would assist them in making proper PPA arrest and charging determinations. PPA Forum participants unanimously agreed that there is a lack of understanding of power and control dynamics in abusive relationships, and that police in particular are not provided adequate training on proper identification of self-defense versus defensive violence. There was some discussion that indicated that the group would also be supportive of training for all players within the justice system including judges and corrections, in addition to law enforcement and police. Additionally, the participants noted the benefit of a law enforcement training position currently housed at the Wisconsin Coalition Against Sexual Assault. This trainer, a retired police officer, provides sexual assault and domestic violence training for law enforcement by meeting with individuals from specific communities, evaluating training needs, working to educate local trainers on methods to conduct ongoing training, and promoting coordinated responses to violence against women crimes. It was recommended that another similar position be created with a retired/former prosecutor who

would perform the same type of individualized, community-based evaluation, training and coordination with county prosecutors.

The participants also highly recommended that s. 968.075, the Mandatory Arrest Law, be amended to better define PPA and to move PPA out of the “Law Enforcement Policies” (s. 968.075(3)) section of the law into the “Circumstances Requiring Arrest” section (s. 968.075(2)). Participants were also concerned that the new language include evaluation for self-defense and also strongly discourage dual arrests. **Group 3** was assigned many of the problem statements associated with implementation of PPA. They ambitiously wrote what they believed to be outstanding PPA language for our statute. To develop this new definition of Primary Physical Aggressor, the group used statutory language combined from California, Montana, New York, Duluth (St. Louis County law enforcement protocol), South Carolina, and Utah. This language, which appears just below, was endorsed by the all of the PPA Forum participants.

Draft or proposed statutory language change for Primary Physical Aggressor: (changes are in CAPS)

2) CIRCUMSTANCES REQUIRING ARREST. (a) Notwithstanding s. 968.07 and except as provided in par. (b), a law enforcement officer shall arrest and take a person into custody if:

1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime. {; and} IN DETERMINING REASONABLE GROUNDS TO ARREST, THE OFFICER SHALL EVALUATE WHICH PARTY IS THE PREDOMINANT AGGRESSOR. THE PREDOMINANT AGGRESSOR IS THE PERSON DETERMINED TO BE THE MOST SIGNIFICANT, RATHER THAN THE FIRST, AGGRESSOR. IN IDENTIFYING THE PREDOMINANT AGGRESSOR, AN OFFICER SHALL CONSIDER:
 - A. THE INTENT OF THE LAW TO PROTECT VICTIMS OF DOMESTIC VIOLENCE FROM CONTINUING ABUSE;
 - B. THE THREATS CREATING FEAR OF PHYSICAL INJURY OR THE USE OF INTIMIDATION;
 - C. THE APPARENT FEAR OR LACK OF FEAR BETWEEN THE PARTIES OR OTHERS PRESENT, INCLUDING CHILDREN;
 - D. STATEMENTS MADE BY WITNESSES PRESENT OR CANVASSED, INCLUDING CHILDREN;
 - E. WHETHER EITHER PARTY IS THREATENING OR HAS THREATENED FUTURE HARM OR USE OF INTIMIDATION AGAINST ANOTHER PARTY OR ANOTHER FAMILY OR HOUSEHOLD MEMBER;

F. THE HISTORY OF DOMESTIC VIOLENCE BETWEEN THE PERSONS INVOLVED, INCLUDING CHILDRENS' AND OTHER WITNESSES' ACCOUNTS REGARDING THE HISTORY OF DOMESTIC VIOLENCE; AND;

G. THE RELATIVE SIZES AND APPARENT STRENGTH OF EACH PARTY; AND

H. WHETHER EITHER PERSON INVOLVED ACTED IN SELF-DEFENSE AS DEFINED IN 939.48.

THE OFFICER SHALL PRESUME THAT ARREST IS NOT THE APPROPRIATE RESPONSE FOR THE PERSON OR PERSONS WHO WERE NOT THE PREDOMINANT AGRESSOR.

The 2-day forum concluded with a reading of the recommendations and the unanimous endorsement of the recommendations by the participants. Attached is a table that was generated from the work product of the participants. The table outlines the problems by Group Assignment, the Actions recommended for each problem, and the Resources that may be necessary or useful for achieving the resolution to the problems. Now its time for the real work to begin!

Report prepared by Patti Seger and Melissa Reed

MGD
2

Memo:

To: Mike Dsida

From: Norm Sterzenbach, Rep. Krug

Date: November 5, 2001

Re: Drafting Request for Mandatory Arrest Law

Here is updated language that we want to use for Primary Physical Aggressor as well as a few other things we would like added to the bill. If you have any questions feel free to give me a call.

Call me on
cell this aff

Mandatory Arrest
Wis. Stats. 968.075
Suggested Changes

1-Address problems associated with Primary Physical Aggressor definition, move from 968.075(3) to 968.075(2).

*Draft or proposed statutory language change for Primary Physical Aggressor:
(changes are in CAPS)*

2) CIRCUMSTANCES REQUIRING ARREST. (a) Notwithstanding, 968.07 and except as provided in par. (b), a law enforcement officer shall arrest and take a person into custody if:

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2-Add Dating Relationships to 968.075(1)(a) to make mandatory arrest consistent with Federal Violence Against Women Act.

See H.R.3244-39, Sec. 1109 Dating Violence:

42 U.S.C. 3996gg-2(B)(9) the term "dating violence" means violence committed by a person--

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim;
and

(B) where the existence of such a relationship shall be determined based on consideration of the following factors:

(i) the length of the relationship;

(ii) the type of the relationship; and

(iii) the frequency of interaction between the persons involved in the relationship.

3-Numerous police departments issue citations rather than arrest. A number of other police departments arrest/release from the back of their squad cars rather than to take the offender into physical custody. Neither of these responses are consistent with the intent of 968.075.

Add language to sec. 968.075(2) that states the following:

Sec. 968.08 and sec. 968.085 do not apply to this section.

4-Address Violation of 72 Hour Contact Prohibition as the commission of a crime (Class A misdemeanor)

968.075(5)(a)2. An arrested person who ***knowingly*** and intentionally violates this paragraph shall be subject **to the penalties of a Class A Misdemeanor.** - 9 mo/\$10,000 - 1 yr m.b. bail

5. The officer shall arrest for violation of 813.12. (this same language already appears in 813.12 but b/c police look to 968.075 for direction on mandatory arrest, they rarely arrest for violations of 813.12).

jumping
can it be done?

RECOMMENDED CHANGES TO WISCONSIN STATUTES RELATED TO SELF DEFENSE,
PRIMARY PHYSICAL AGGRESSOR AND CHILD WITNESSES OF DOMESTIC
VIOLENCE

Used significant portions of California law (portions of their definition of primary aggressor, including significant rather than first, and their four considerations), Montana (relative sizes and apparent fear/lack of fear), New York (current or future threat), Duluth (St. Louis County protocol), South Carolina (household member accounts of history), Utah (predominant as opposed to primary).

968.075 Domestic abuse incidents; arrest and prosecution. (1)
Definitions. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225(1), (2), or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 1., or 3.

(b) "Law enforcement agency" has the meaning specified in s. 165.83(1)(b).

(2) CIRCUMSTANCES REQUIRING ARREST. (a) Notwithstanding. 968.07 and except as provided in par. (b), a law enforcement officer shall arrest and take a person into custody if:

1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime. {; and}

IN DETERMINING PROBABLE CAUSE TO ARREST, THE OFFICER SHALL EVALUATE WHICH PARTY IS THE PREDOMINANT AGGRESSOR. THE PREDOMINANT AGGRESSOR IS THE PERSON DETERMINED TO BE THE MOST SIGNIFICANT, RATHER THAN THE FIRST, AGGRESSOR. IN IDENTIFYING THE PREDOMINANT AGGRESSOR, AN OFFICER SHALL CONSIDER:

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E. WHETHER EITHER PARTY IS THREATENING OR HAS THREATENED FUTURE HARM OR USE OF INTIMIDATION AGAINST ANOTHER PARTY OR ANOTHER FAMILY OR HOUSEHOLD MEMBER;

F. THE HISTORY OF DOMESTIC VIOLENCE BETWEEN THE PERSONS INVOLVED, INCLUDING CHILDREN'S AND OTHER WITNESSES' ACCOUNTS REGARDING THE HISTORY OF DOMESTIC VIOLENCE; AND;

G. THE RELATIVE SIZES AND APPARENT STRENGTH OF EACH PARTY; AND

H. WHETHER EITHER PERSON INVOLVED ACTED IN SELF DEFENSE AS DEFINED IN 939.48.

THE OFFICER SHALL PRESUME THAT ARREST IS NOT THE THE APPROPRIATE RESPONSE FOR THE PERSON OR PERSONS WHO WERE NOT THE PREDOMINANT AGRESSOR.

2. Either or both of the follwing circumstances are present:

a. The officer has reasonable basis for believing that continued domestic abuse against the alleged victim is likely.

b. There is evidence of physical injury to the alleged victim.

(b) If the officer's reasonable grounds for belief under par. (a)

1. are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest under par. (a) only if the report is received, within 28 days after the day the incident is alleged to have occurred, by the officer or the law enforcement agency that employs the officer.

(3) (3) LAW ENFORCEMENT POLICES. (a) Each law enforcement agency shall develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. The policies shall include, but not be limited to the following:

1. Statements emphasizing that:

a. In most circumstances, other than those under sub. (2), a law enforcment officer should arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or hsa committed domestic abuse an dthat the perosn's actions constitutue the commission of a crime.

b. When the officer has reasonable grounds to believe that spouses, former spouses or other persons who reside together or formerly resided together are committing or have committed domestic abuse against each other, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be primary physical aggressor. In determining who is the primary physical aggressor, an officer should consider the intent of this section to protect vicitms of domestic violence, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer.

c. A law enforcment officer's decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident.

d. A law enforcement officer's decision not to arrest under this section may not be based soley upon the absence of visible indications of injury or impairment.

2. A procedure for the written report and referral required under sub.(4).

3. A procedure for notifying the alleged victim of the incident of the provisions in sub.(5), the procedure for releasing the arrested person and the likihood and probable time of the arrested person's release.

Dsida, Michael

From: Dsida, Michael
Sent: Thursday, December 06, 2001 9:57 AM
To: 'Pattis@inxpress.net'
Subject: arrest and release

Patti -- I know that the forum didn't expressly require this, but I think it is the logical result of what it does want.

968.08 Release by law enforcement officer of arrested person. (1) Except as provided in sub. (2), a law enforcement officer having custody of a person arrested without a warrant may release the person arrested without requiring the person to appear before a judge if the law enforcement officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint against the person arrested.

(2) If a person is arrested without a warrant and the arrest was required under s. 968.075 (2), a law enforcement officer having custody of the person may release the person without requiring the person to appear before a judge only if the district attorney determines that there are insufficient grounds for the issuance of a criminal complaint against the person arrested.

Here's why this makes sense. If you simply say that s. 968.08 doesn't apply to DV cases, then the police may be viewed as precluded from releasing anyone without having the person appear in court -- even if subsequent investigation or consultation with the DA leads to no complaint being filed or the charges being dismissed. In other words, if that section no longer applies, the statutes should specify what rule does apply.

The only other alternative I can think of is requiring the police to hold the person in custody for a specified period of time.

Let me know what you think.

12/17/2001

Dsida, Michael

From: Dsida, Michael
Sent: Wednesday, December 12, 2001 2:44 PM
To: 'Patti Seger'
Subject: RE: mandatory arrest

I'm not sure what it adds. I don't think there are any criminal statutes in which the prosecutor has to prove that someone "knowingly and intentionally" did or didn't do something. (There are statutes that prohibit intentionally doing X, with knowledge of Y (see s. 947.015 for an example), but what is intended is different from what is known).

-----Original Message-----

From: Patti Seger [mailto:pattis@inxpress.net]
Sent: Wednesday, December 12, 2001 8:25 AM
To: Dsida, Michael
Subject: Re: mandatory arrest

I think it mostly means that the alleged defendant had knowledge (undoubtedly b/c they signed the Conditional Release form to get out of jail and were informed by the jailer about the consequences of violation) that contacting the alleged victim once the 72 contact prohibition was signed to be enforced would constitute a Class A misdemeanor. If you don't think it adds anything, let me know. It was suggested by Bob K.

----- Original Message -----

From: Dsida, Michael
To: 'Patti Seger'
Sent: Thursday, December 06, 2001 2:12 PM
Subject: RE: mandatory arrest

Do you know why "knowingly" needs to be added to s. 968.075 (5) (a)? (I'm not sure what that does.)

Dsida, Michael

From: Patti Seger [pattis@inxpress.net]
Sent: Friday, December 14, 2001 10:11 AM
To: Dsida, Michael
Subject: Re: mandatory arrest

hi mike,
i just talked w/ kitty. she says the intent of this is just to get cops to talk to others who might have information to tip the scales one way or another on who the ppa is. so, it is meant to encourage them to speak w/ neighbors, children, others who may have seen or heard the fight. she says if you don't like the words they chose, but can still capture the concept, they would still like to see it there.
does this make sense?
p.

----- Original Message -----

From: Dsida, Michael
To: 'Patti Seger'
Sent: Thursday, December 13, 2001 3:42 PM
Subject: RE: mandatory arrest

Would it be okay to call her and ask her what she meant?

-----Original Message-----

From: Patti Seger [mailto:pattis@inxpress.net]
Sent: Thursday, December 13, 2001 3:37 PM
To: Dsida, Michael
Subject: Re: mandatory arrest

kitty kocol from doj put that in there. i think she got it by looking at some other state's law. make it somehow consistent w/ 'sconnny law and we'll be happy!

----- Original Message -----

From: Dsida, Michael
To: 'Patti Seger'
Sent: Thursday, December 13, 2001 10:49 AM
Subject: RE: mandatory arrest

I don't think that the phrase "witnesses present or canvassed" works too well. Is the intent to cover any witnesses to the incident? Does "present" mean present during the investigation or at the time of the incident? (If it's the latter, it's redundant; a witness by definition has to be present.)

You can call me about this one rather than type, if you prefer.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

soon

Generate

1 AN ACT ...; relating to: domestic abuse arrests and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 968.07 (1m) of the statutes is created to read:

3 968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest
4 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
5 (1) (b), or 968.075 (2) (a) or (5) (e).

6 SECTION 2. 968.075 (1) (a) of the statutes is renumbered 968.075 (1) (ar), and
7 968.075 (1) (ar) (intro.), as renumbered, is amended to read:

8 968.075 (1) (ar) (intro.) "Domestic abuse" means any of the following engaged
9 in by an adult person against his or her spouse or former spouse, against an adult
10 with whom the person resides or formerly resided, against an adult with whom the

SECTION 2

1 individual has or had a dating relationship, or against an adult with whom the
2 person has a child in common:

3 **SECTION 3.** 968.075 (1) (ag) of the statutes is created to read:

4 968.075 (1) (ag) "Dating relationship" means a romantic or intimate social
5 relationship between 2 adults but does not include a casual relationship or ordinary
6 fraternization between 2 individuals in a business or social context. The existence
7 of a dating relationship shall be determined by considering the length of the
8 relationship, the type of the relationship, and the frequency of the interaction
9 between the individuals involved.

10 **SECTION 4.** 968.075 (1) (c) of the statutes is created to read:

11 968.075 (1) (c) "Party" means a person engaged in an act of domestic abuse or
12 a person victimized by an act of domestic abuse.

13 **SECTION 5.** 968.075 (1) (d) of the statutes is created to read:

14 968.075 (1) (d) "Predominant aggressor" means the most significant aggressor
15 in a domestic abuse incident. The "predominant aggressor" may or may not be the
16 person who commits the first act of domestic abuse during a domestic abuse incident.

17 **SECTION 6.** 968.075 (2) (title) of the statutes is amended to read:

18 968.075 (2) (title) CIRCUMSTANCES REQUIRING ARREST; PRESUMPTION AGAINST
19 CERTAIN ARRESTS.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

20 **SECTION 7.** 968.075 (2) (a) (intro.) of the statutes is amended to read:

21 968.075 (2) (a) (intro.) Notwithstanding s. 968.07 (1) and except as provided in
22 ~~par.~~ pars. (am) and (b), a law enforcement officer shall arrest and take a person into
23 custody if:

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

24 **SECTION 8.** 968.075 (2) (a) 2. (intro.) of the statutes is amended to read:

1 968.075 (2) (a) 2. (intro.) ~~Either or both~~ Any of the following ~~circumstances are~~
2 present apply:

3 History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

3 **SECTION 9.** 968.075 (2) (a) 2. c. of the statutes is created to read:

4 968.075 (2) (a) 2. c. The person is the predominant aggressor.

5 **SECTION 10.** 968.075 (2) (am) of the statutes is created to read:

6 968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is
7 required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5)

8 (e), the law enforcement officer shall presume that it is not appropriate under par.
9 (a) to arrest a person who was not the predominant aggressor.

10 **SECTION 11.** 968.075 (2) (ar) of the statutes is created to read:

11 968.075 (2) (ar) In identifying the predominant aggressor, a law enforcement
12 officer shall consider all of the following:

13 1. The intent of the law to protect victims of domestic violence from continuing
14 abuse.

15 2. Whether any party is threatening or has threatened future harm to or is
16 attempting or has attempted to intimidate any other party or any other family or
17 household member.

18 3. The extent to which each person present, including children, appears to fear
19 any party.

20 4. Statements made by witnesses or any other person, including children.

21 5. The history of domestic abuse between the parties and any information
22 provided by children or other witnesses regarding that history.

23 6. Whether either party acted in self-defense or in defense of any other person
24 under the circumstances described in s. 939.48.

X
1 SECTION 12. 968.075 (3) (a) 1. (intro.) and a. of the statutes are consolidated,
2 renumbered 968.075 (3) (a) 1. a. and amended to read:

3 968.075 (3) (a) 1. a. ~~Statements~~ A statement emphasizing that: ~~In~~ in most
4 circumstances, other than those under sub. (2), a law enforcement officer should
5 arrest and take a person into custody if the officer has reasonable grounds to believe
6 that the person is committing or has committed domestic abuse and that the person's
7 actions constitute the commission of a crime.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

8 SECTION 13. 968.075 (3) (a) 1. b. of the statutes is repealed and recreated to
9 read:

10 968.075 (3) (a) 1. b. A policy reflecting the requirements of sub. (2). ✓

X
11 SECTION 14. 968.075 (3) (a) 1. c. of the statutes is amended to read:

12 968.075 (3) (a) 1. c. A statement emphasizing that a law enforcement officer's
13 decision as to whether or not to arrest under this section may not be based on the
14 consent of the victim to any subsequent prosecution or on the relationship of the
15 persons involved in the incident.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

X
16 SECTION 15. 968.075 (3) (a) 1. d. of the statutes is amended to read:

17 968.075 (3) (a) 1. d. A statement emphasizing that a law enforcement officer's
18 decision not to arrest under this section may not be based solely upon the absence
19 of visible indications of injury or impairment.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

X
20 SECTION 16. 968.075 (3) (c) of the statutes is amended to read:

21 968.075 (3) (c) This subsection does not limit the authority of a law enforcement
22 agency to establish policies that require arrests under more circumstances than

1 those set forth in sub. (2), but the policies may not conflict with the presumption
2 under sub. (2) (am).

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

3 **SECTION 17.** 968.075 (5) (a) 2. of the statutes is amended to read:

4 968.075 (5) (a) 2. An arrested person who intentionally violates this paragraph
5 shall be required to forfeit not more than \$1,000 may be fined not more than \$10,000
6 or imprisoned for not more than 9 months or both.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

7 **SECTION 18.** 968.075 (5) (e) of the statutes is amended to read:

8 968.075 (5) (e) Notwithstanding s. 968.07 (1), a law enforcement officer shall
9 arrest and take a person into custody if the officer has reasonable grounds to believe
10 that the person has violated par. (a).

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304.

11 **SECTION 19.** 968.08 of the statutes is renumbered 968.08 (1) and amended to
12 read:

13 **968.08** (1) ^{No 2} ~~A~~ Except as provided in sub. (2), a law enforcement officer having
14 custody of a person arrested without a warrant may release the person arrested
15 without requiring the person to appear before a judge if the law enforcement officer
16 is satisfied that there are insufficient grounds for the issuance of a criminal
17 complaint against the person arrested.

History: 1993 a. 486.

18 **SECTION 20.** 968.08 (2) of the statutes is created to read:

19 968.08 (2) If a person is arrested without a warrant and the arrest was required
20 under s. 968.075 (2), a law enforcement officer having custody of the person may
21 release the person without requiring the person to appear before a judge only with
22 the approval of the district attorney.

23 **SECTION 21.** 968.085 (2) (intro.) of the statutes is amended to read.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4069/P1

MGD:hmh:pg

stays

①

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

retrieve
from hold

by 2/7
5 pm

Regenerate

1 **AN ACT** *to renumber and amend* 968.075 (1) (a) and 968.08; *to consolidate,*
2 *renumber and amend* 968.075 (3) (a) 1. (intro.) and a.; *to amend* 968.075 (2)
3 (title), 968.075 (2) (a) (intro.), 968.075 (2) (a) 2. (intro.), 968.075 (3) (a) 1. c.,
4 968.075 (3) (a) 1. d., 968.075 (3) (c), 968.075 (5) (a) 2., 968.075 (5) (e) and 968.085
5 (2) (intro.); *to repeal and recreate* 968.075 (3) (a) 1. b.; and *to create* 968.07
6 (1m), 968.075 (1) (ag), 968.075 (1) (c), 968.075 (1) (d), 968.075 (2) (a) 2. c.,
7 968.075 (2) (am), 968.075 (2) (ar), 968.08 (2) and 968.085 (8) of the statutes;
8 **relating to:** domestic abuse arrests and providing a penalty.

Analysis by the Legislative Reference Bureau

Insert

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

9 **SECTION 1.** 968.07 (1m) of the statutes is created to read:

1 968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest
2 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
3 (1) (b), or 968.075 (2) (a) or (5) (e).

4 **SECTION 2.** 968.075 (1) (a) of the statutes is renumbered 968.075 (1) (ar), and
5 968.075 (1) (ar) (intro.), as renumbered, is amended to read:

6 968.075 (1) (ar) (intro.) “Domestic abuse” means any of the following engaged
7 in by an adult person against his or her spouse or former spouse, against an adult
8 with whom the person resides or formerly resided, against an adult with whom the
9 individual has or had a dating relationship, or against an adult with whom the
10 person has a child in common:

11 **SECTION 3.** 968.075 (1) (ag) of the statutes is created to read:

12 968.075 (1) (ag) “Dating relationship” means a romantic or intimate social
13 relationship between 2 adults but does not include a casual relationship or ordinary
14 fraternization between 2 individuals in a business or social context. The existence
15 of a dating relationship shall be determined by considering the length of the
16 relationship, the type of the relationship, and the frequency of the interaction
17 between the individuals involved.

18 **SECTION 4.** 968.075 (1) (c) of the statutes is created to read:

19 968.075 (1) (c) “Party” means a person engaged in an act of domestic abuse or
20 a person victimized by an act of domestic abuse.

21 **SECTION 5.** 968.075 (1) (d) of the statutes is created to read: , but not necessarily
the first,

22 968.075 (1) (d) “Predominant aggressor” means the most significant aggressor
23 in a domestic abuse incident. The “predominant aggressor” may or may not be the
24 person who commits the first act of domestic abuse during a domestic abuse incident.

25 **SECTION 6.** 968.075 (2) (title) of the statutes is amended to read:

In order to protect victims from continuing domestic abuse,

1 968.075 (2) (title) CIRCUMSTANCES REQUIRING ARREST, PRESUMPTION AGAINST
2 CERTAIN ARRESTS.

3 SECTION 7. 968.075 (2) (a) (intro.) of the statutes is amended to read:

4 968.075 (2) (a) (intro.) Notwithstanding s. 968.07 (1) and except as provided in
5 ~~par. pars.~~ (am) and (b), a law enforcement officer shall arrest and take a person into
6 custody if:

7 SECTION 8. 968.075 (2) (a) 2. (intro.) of the statutes is amended to read:

8 968.075 (2) (a) 2. (intro.) ~~Either or both~~ Any of the following ~~circumstances are~~
9 ~~present~~ apply:

10 SECTION 9. 968.075 (2) (a) 2. c. of the statutes is created to read:

11 968.075 (2) (a) 2. c. The person is the predominant aggressor.

12 SECTION 10. 968.075 (2) (am) of the statutes is created to read:

13 968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is
14 required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5)
15 (e), ^{if identifies the predominant ~~offense~~ aggressor, the officer} a law enforcement officer shall presume that it is not appropriate under par. (a)
16 to arrest ^{anyone other than} ~~a person who was not~~ the predominant aggressor.

17 SECTION 11. 968.075 (2) (ar) of the statutes is created to read:

18 968.075 (2) (ar) In identifying the predominant aggressor, a law enforcement
19 officer shall consider all of the following:

20 1. The intent of the law to protect victims of domestic violence from continuing
21 abuse.

22 2. Whether any party is threatening or has threatened future harm to or is
23 attempting or has attempted to intimidate any other party or any other family or
24 household member.

- 1 ^{2.4} 3. The extent to which each person present, including children, appears to fear
- 2 any party.
- 3 ^{3.} 4. Statements made by witnesses or any other person, including children.
- 4 ^{4.} 5. The history of domestic abuse between the parties and any information
- 5 provided by children or other witnesses regarding that history.
- 6 ^{5.} 6. Whether either party acted in self-defense or in defense of any other person
- 7 under the circumstances described in s. 939.48.

8 **SECTION 12.** 968.075 (3) (a) 1. (intro.) and a. of the statutes are consolidated,
 9 renumbered 968.075 (3) (a) 1. a. and amended to read:

10 968.075 (3) (a) 1. a. Statements A statement emphasizing that: ~~In~~ in most
 11 circumstances, other than those under sub. (2), a law enforcement officer should
 12 arrest and take a person into custody if the officer has reasonable grounds to believe
 13 that the person is committing or has committed domestic abuse and that the person's
 14 actions constitute the commission of a crime.

15 **SECTION 13.** 968.075 (3) (a) 1. b. of the statutes is repealed and recreated to
 16 read:

17 968.075 (3) (a) 1. b. A policy reflecting the requirements of sub. (2) ³ and (2m) ✓

18 **SECTION 14.** 968.075 (3) (a) 1. c. of the statutes is amended to read:

19 968.075 (3) (a) 1. c. A statement emphasizing that a law enforcement officer's
 20 decision as to whether or not to arrest under this section may not be based on the
 21 consent of the victim to any subsequent prosecution or on the relationship of the
 22 persons involved in the incident. ^(CS) Immediate release prohibited.

23 **SECTION 15.** 968.075 (3) (a) 1. d. of the statutes is amended to read: ^{P 968.075 (2m)}

Section #. ^(CR) 968.075 (2m). Unless s. 968.08 applies,
 a law enforcement officer may not release a person whose
 arrest was required under sub. (2) until the person posts
 bail under s. 969.07 or appears before a judge under s. 970.01 (1) ✓

Section #. (CR) 968.075 (3)(a) 1. c.

A statement discouraging,
but not prohibiting, the arrest of more than one person involved in a
domestic abuse incident.

1 968.075 (3) (a) 1. d. A statement emphasizing that a law enforcement officer's
2 decision not to arrest under this section may not be based solely upon the absence
3 of visible indications of injury or impairment.

4 SECTION 16. 968.075 (3) (c) of the statutes is amended to read:

5 968.075 (3) (c) This subsection does not limit the authority of a law enforcement
6 agency to establish policies that require arrests under more circumstances than
7 those set forth in sub. (2), but the policies may not conflict with the presumption
8 under sub. (2) (am).

9 SECTION 17. 968.075 (5) (a) 2. of the statutes is amended to read:

10 968.075 (5) (a) 2. An arrested person who intentionally violates this paragraph
11 shall be required to forfeit not more than \$1,000 may be fined not more than \$10,000
12 or imprisoned for not more than 9 months or both.

13 SECTION 18. 968.075 (5) (e) of the statutes is amended to read:

14 968.075 (5) (e) Notwithstanding s. 968.07 (1), a law enforcement officer shall
15 arrest and take a person into custody if the officer has reasonable grounds to believe
16 that the person has violated par. (a).

17 SECTION 19. 968.08 of the statutes is renumbered 968.08 (1) and amended to
18 read:

19 968.08 (1) ~~A~~ Except as provided in sub. (2), a law enforcement officer having
20 custody of a person arrested without a warrant may release the person arrested
21 without requiring the person to appear before a judge if the law enforcement officer
22 is satisfied that there are insufficient grounds for the issuance of a criminal
23 complaint against the person arrested.

24 SECTION 20. 968.08 (2) of the statutes is created to read:

Section #. (CR) 968.075 (3)(a) 1. f. A statement emphasizing
that a law enforcement officer ~~shall~~, in determining whether to arrest a
person involved in a domestic abuse incident, should consider whether the person acted in self-
defense or in defense of another person.

1 968.08 (2) If a person is arrested without a warrant and the arrest was required
2 under s. 968.075 (2), a law enforcement officer having custody of the person may
3 release the person without requiring the person to appear before a judge only with
4 the approval of the district attorney.

5 SECTION 21. 968.085 (2) (intro.) of the statutes is amended to read:

6 968.085 (2) AUTHORITY TO ISSUE; EFFECT. (intro.) -A- Except as provided in sub.
7 (8), a law enforcement officer may issue a citation to any person whom he or she has
8 reasonable grounds to believe has committed a misdemeanor. A citation may be
9 issued in the field or at the headquarters or precinct station of the officer instead of
10 or subsequent to a lawful arrest. If a citation is issued, the person cited shall be
11 released on his or her own recognizance. In determining whether to issue a citation,
12 the law enforcement officer may consider whether:

13 SECTION 22. 968.085 (8) of the statutes is created to read:

14 968.085 (8) INAPPLICABILITY TO CERTAIN DOMESTIC ABUSE CASES. A law
15 enforcement officer may not issue a citation to a person for an offense if the officer
16 is required to arrest the person for that offense under s. 968.075 (2).

17 ←

(END)

INS 2/10

1

analysis INSERT

Under current law, a law enforcement officer is required to arrest a person if the person has committed domestic abuse, the person's actions constituted a crime, and either: 1) the officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely (the "continuing abuse provision"); or 2) there is evidence of physical injury to the alleged victim (the "physical injury provision"). "Domestic abuse" is defined as the commission of certain specified acts, including the intentional infliction of physical pain or injury or first, second, or third degree sexual assault, by a person who is at least 18 years of age against his or her spouse or former spouse, a current or former adult housemate or roommate, including a relative, or another adult with whom the person has a child in common.

Current law also requires law enforcement agencies to adopt certain policies relating to domestic abuse cases. Among other things, the policies must include a statement emphasizing that in domestic abuse cases involving spouses, former spouses, or other persons who reside together or formerly resided together, the officer does not have to arrest both persons but should arrest the person whom the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer should consider the goal of protecting victims of domestic violence, the relative degree of injury suffered by or fear induced in the persons involved, and any history of domestic abuse between those persons.

This bill replaces the presumption regarding arresting the primary physical aggressor with a requirement, added to the continuing abuse and physical injury provisions, that the law enforcement officer arrest the predominant aggressor in domestic abuse cases. The bill defines "predominant aggressor" to mean the most significant, but not necessarily the first, aggressor in a domestic abuse incident. It also lists what a law enforcement officer must consider in identifying the predominant aggressor. In addition, the bill requires a law enforcement officer to presume, if he or she has identified the predominant aggressor, that it is not appropriate to arrest any other person involved in the domestic abuse incident, even if the continuing abuse or physical injury provisions apply. The bill requires law enforcement agencies to adopt certain specified policies, including policies that reflect these new requirements.

The bill also establishes new post-arrest requirements. First, under the bill, a person whose arrest is required as a result of a domestic abuse incident may not be released from custody until the person posts bail at the sheriff's office or police station or appears before a judge. Second, under current law, if a person is arrested in connection with a domestic abuse incident, in most cases the person must avoid contacting the victim and must avoid the victim's residence during the 72 hours immediately following the arrest. A person who intentionally violates this prohibition is required to forfeit not more than \$1,000. The bill changes a violation of this prohibition to a misdemeanor, with the maximum fine being set at \$10,000 and the maximum term of imprisonment set at 9 months.

nine

Finally, the bill revises the definition of "domestic abuse" to cover cases involving adults who are or were in a dating relationship. The bill defines "dating relationship" ~~to mean~~^{as} a romantic or intimate social relationship between adults, but it specifies that the term does not include a casual relationship or ordinary fraternization between individuals in a business or social context.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

1 **Insert 6/16**

2 **SECTION (1) Initial applicability.** ✓

Auto Ref

3 (1) The treatment of section 968.075 (5) (a) 2. of the statutes first applies to
4 persons arrested for a domestic abuse incident on the effective date of this
5 subsection.

6 **SECTION 2. Effective dates.** This act takes effect on the first day of the third
7 month beginning after publication, except as follows:

8 (1) The treatment of sections 968.075 (5) (a) 2. of the statutes and SECTION (1)
9 of this act take effect on the day after publication.

10

Auto Ref

Recommended Changes to Draft of Mandatory Arrest/ LRB-4069/P1

1. Section 3---eliminate "2" from line 13 and line 14.
2. Section 5 --- As provided for in 968.075(ar), the predominant aggressor is the person determined to be the most significant, rather than the first, aggressor.
3. Section 11 --- In order to protect victims from continuing abuse, a law enforcement officer shall consider all of the following in determining the primary physical aggressor:
4. Line 20—Delete and start next section as number 2.
5. In Policies Section, add a statement such as: "The policy should discourage, but not prohibit, dual arrest and include consideration of whether one of the parties acted in self-defense".

Cond ⇔ ⇒ w/o bail

(2m)

Unless .08 applies,

Plc from Jim Johnson + Nancy Steinmetz

Plc from Patti.

969.065

Do not leave it to D.A.'s discretion

*Rq Bail to be posted →
that means*

conditions of release wd be rigid.

[Handwritten scribble]



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4069/12

MGD:hmh:kjf

stays

2

2001 BILL

Mon
9 AM

retrieve
from hold

Regenerate

1 **AN ACT** *to renumber and amend* 968.075 (1) (a); *to consolidate, renumber*
2 *and amend* 968.075 (3) (a) 1. (intro.) and a.; *to amend* 968.075 (2) (title),
3 968.075 (2) (a) (intro.), 968.075 (2) (a) 2. (intro.), 968.075 (3) (a) 1. c., 968.075
4 (3) (a) 1. d., 968.075 (3) (c), 968.075 (5) (a) 2., 968.075 (5) (e) and 968.085 (2)
5 (intro.); *to repeal and recreate* 968.075 (3) (a) 1. b.; and *to create* 968.07 (1m),
6 968.075 (1) (ag), 968.075 (1) (c), 968.075 (1) (d), 968.075 (2) (a) 2. c., 968.075 (2)
7 (am), 968.075 (2) (ar), 968.075 (2m), 968.075 (3) (a) 1. e. and f. and 968.085 (8)
8 of the statutes; **relating to:** domestic abuse arrests and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a law enforcement officer is required to arrest a person if the person has committed domestic abuse, the person's actions constituted a crime, and either: 1) the officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely (the "continuing abuse provision"); or 2) there is evidence of physical injury to the alleged victim (the "physical injury provision"). "Domestic abuse" is defined as the commission of certain specified acts, including the intentional infliction of physical pain or injury or first, second, or third degree sexual assault, by a person who is at least 18 years of age against his or her spouse or former spouse, a current or former adult housemate or roommate, including a relative, or another adult with whom the person has a child in common.

BILL

Current law also requires law enforcement agencies to adopt certain policies relating to domestic abuse cases. Among other things, the policies must include a statement emphasizing that in domestic abuse cases involving spouses, former spouses, or other persons who reside together or formerly resided together, the officer does not have to arrest both persons but should arrest the person whom the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer should consider the goal of protecting victims of domestic violence, the relative degree of injury suffered by or fear induced in the persons involved, and any history of domestic abuse between those persons.

This bill replaces the presumption regarding arresting the primary physical aggressor with a requirement, added to the continuing abuse and physical injury provisions, that the law enforcement officer arrest the predominant aggressor in domestic abuse cases. The bill defines "predominant aggressor" to mean the most significant, but not necessarily the first, aggressor in a domestic abuse incident. It also lists what a law enforcement officer must consider in identifying the predominant aggressor. In addition, the bill ~~requires~~ a law enforcement officer ~~to~~ ~~presume~~, if he or she has identified the predominant aggressor, ~~that~~ it is not appropriate to arrest any other person involved in the domestic abuse incident, even if the continuing abuse or physical injury provisions apply. The bill requires law enforcement agencies to adopt certain specified policies, including policies that reflect these new requirements.

*Specifies
that it*

generally

The bill also establishes new postarrest requirements. First, under the bill, a person whose arrest is required as a result of a domestic abuse incident may not be released from custody until the person posts bail at the sheriff's office or police station or appears before a judge. Second, under current law, if a person is arrested in connection with a domestic abuse incident, in most cases the person must avoid contacting the victim and must avoid the victim's residence during the 72 hours immediately following the arrest. A person who intentionally violates this prohibition is required to forfeit not more than \$1,000. The bill changes a violation of this prohibition to a misdemeanor, with the maximum fine being set at \$10,000 and the maximum term of imprisonment set at nine months.

Finally, the bill revises the definition of "domestic abuse" to cover cases involving adults who are or were in a dating relationship. The bill defines "dating relationship" as a romantic or intimate social relationship between adults, but it specifies that the term does not include a casual relationship or ordinary fraternization between individuals in a business or social context.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 968.07 (1m) of the statutes is created to read:

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1 968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest
2 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
3 (1) (b), or 968.075 (2) (a) or (5) (e).

4 **SECTION 2.** 968.075 (1) (a) of the statutes is renumbered 968.075 (1) (ar), and
5 968.075 (1) (ar) (intro.), as renumbered, is amended to read:

6 968.075 (1) (ar) (intro.) “Domestic abuse” means any of the following engaged
7 in by an adult person against his or her spouse or former spouse, against an adult
8 with whom the person resides or formerly resided, against an adult with whom the
9 individual has or had a dating relationship, or against an adult with whom the
10 person has a child in common:

11 **SECTION 3.** 968.075 (1) (ag) of the statutes is created to read:

12 968.075 (1) (ag) “Dating relationship” means a romantic or intimate social
13 relationship between adults but does not include a casual relationship or ordinary
14 fraternization between individuals in a business or social context. The existence of
15 a dating relationship shall be determined by considering the length of the
16 relationship, the type of the relationship, and the frequency of the interaction
17 between the individuals involved.

18 **SECTION 4.** 968.075 (1) (c) of the statutes is created to read:

19 968.075 (1) (c) “Party” means a person engaged in an act of domestic abuse or
20 a person victimized by an act of domestic abuse.

21 **SECTION 5.** 968.075 (1) (d) of the statutes is created to read:

22 968.075 (1) (d) “Predominant aggressor” means the most significant, but not
23 necessarily the first, aggressor in a domestic abuse incident.

24 **SECTION 6.** 968.075 (2) (title) of the statutes is amended to read:

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1 968.075 (2) (title) CIRCUMSTANCES REQUIRING ARREST, PRESUMPTION AGAINST
2 CERTAIN ARRESTS.

3 **SECTION 7.** 968.075 (2) (a) (intro.) of the statutes is amended to read:

4 968.075 (2) (a) (intro.) Notwithstanding s. 968.07 (1) and except as provided in
5 ~~par. pars. (am) and~~ (b), a law enforcement officer shall arrest and take a person into
6 custody if:

7 **SECTION 8.** 968.075 (2) (a) 2. (intro.) of the statutes is amended to read:

8 968.075 (2) (a) 2. (intro.) ~~Either or both~~ Any of the following circumstances ~~are~~
9 ~~present~~ apply:

10 **SECTION 9.** 968.075 (2) (a) 2. c. of the statutes is created to read:

11 968.075 (2) (a) 2. c. The person is the predominant aggressor.

12 **SECTION 10.** 968.075 (2) (am) of the statutes is created to read:

13 968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is
14 required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5)
15 (e), if a law enforcement officer identifies the predominant aggressor, ~~the officer shall~~

16 ~~presume that~~ ^{generally} it is ~~(not appropriate)~~ under par. (a) to arrest anyone ~~other than the~~
17 predominant aggressor. _{for a law enforcement officer}

18 **SECTION 11.** 968.075 (2) (ar) of the statutes is created to read:

19 968.075 (2) (ar) In order to protect victims from continuing domestic abuse, a
20 law enforcement officer shall consider all of the following in identifying the
21 predominant aggressor:

22 1. Whether any party is threatening or has threatened future harm to or is
23 attempting or has attempted to intimidate any other party or any other family or
24 household member.

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1 2. The extent to which each person present, including children, appears to fear
2 any party.

3 3. Statements made by witnesses or any other person, including children.

4 4. The history of domestic abuse between the parties and any information
5 provided by children or other witnesses regarding that history.

6 5. Whether either party acted in self-defense or in defense of any other person
7 under the circumstances described in s. 939.48.

8 **SECTION 12.** 968.075 (2m) of the statutes is created to read:

9 968.075 (2m) IMMEDIATE RELEASE PROHIBITED. Unless s. 968.08 applies, a law
10 enforcement officer may not release a person whose arrest was required under sub.
11 (2) until the person posts bail under s. 969.07 or appears before a judge under s.
12 970.01 (1).

13 **SECTION 13.** 968.075 (3) (a) 1. (intro.) and a. of the statutes are consolidated,
14 renumbered 968.075 (3) (a) 1. a. and amended to read:

15 968.075 (3) (a) 1. a. Statements A statement emphasizing that: ~~In~~ in most
16 circumstances, other than those under sub. (2), a law enforcement officer should
17 arrest and take a person into custody if the officer has reasonable grounds to believe
18 that the person is committing or has committed domestic abuse and that the person's
19 actions constitute the commission of a crime.

20 **SECTION 14.** 968.075 (3) (a) 1. b. of the statutes is repealed and recreated to
21 read:

22 968.075 (3) (a) 1. b. A policy reflecting the requirements of subs. (2) and (2m).

23 **SECTION 15.** 968.075 (3) (a) 1. c. of the statutes is amended to read:

24 968.075 (3) (a) 1. c. A statement emphasizing that a law enforcement officer's
25 decision as to whether or not to arrest under this section may not be based on the

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1 consent of the victim to any subsequent prosecution or on the relationship of the
2 persons involved in the incident.

3 **SECTION 16.** 968.075 (3) (a) 1. d. of the statutes is amended to read:

4 968.075 (3) (a) 1. d. A statement emphasizing that a law enforcement officer's
5 decision not to arrest under this section may not be based solely upon the absence
6 of visible indications of injury or impairment.

7 **SECTION 17.** 968.075 (3) (a) 1. e. and f. of the statutes are created to read:

8 968.075 (3) (a) 1. e. A statement discouraging, but not prohibiting, the arrest
9 of more than one person involved in a domestic abuse incident.

10 f. A statement emphasizing that a law enforcement officer, in determining
11 whether to arrest a person involved in a domestic abuse incident, should consider
12 whether the person acted in self-defense or in defense of another person.

13 **SECTION 18.** 968.075 (3) (c) of the statutes is amended to read:

14 968.075 (3) (c) This subsection does not limit the authority of a law enforcement
15 agency to establish policies that require arrests under more circumstances than
16 those set forth in sub. (2), but the policies may not conflict with the presumption
17 under sub. (2) (am).

18 **SECTION 19.** 968.075 (5) (a) 2. of the statutes is amended to read:

19 968.075 (5) (a) 2. An arrested person who intentionally violates this paragraph
20 ~~shall be required to forfeit not more than \$1,000~~ may be fined not more than \$10,000
21 or imprisoned for not more than 9 months or both.

22 **SECTION 20.** 968.075 (5) (e) of the statutes is amended to read:

23 968.075 (5) (e) Notwithstanding s. 968.07 (1), a law enforcement officer shall
24 arrest and take a person into custody if the officer has reasonable grounds to believe
25 that the person has violated par. (a).



State of Wisconsin

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February 8, 2002

MEMORANDUM

To: Representative Krug

From: Michael Dsida, Legislative Attorney

Re: LRB-4069/2 Domestic violence mandatory arrest

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9867 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

Barman, Mike

From: Barman, Mike
Sent: Tuesday, February 19, 2002 12:00 PM
To: Rep.Krug
Subject: LRB-4069/2 (attached - requested by Sharon)



01-4069/2

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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