

# State of Wisconsin



2005 Assembly Bill 436

Date of enactment: **January 5, 2006**  
Date of publication\*: **January 20, 2006**

## 2005 WISCONSIN ACT 104

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

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

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

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

**SECTION 2.** 968.075 (1) (c) of the statutes is created to read:

968.075 (1) (c) "Predominant aggressor" means the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

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

968.075 (1) (d) "Party" means a person involved in a domestic abuse incident.

**SECTION 4.** 968.075 (2) (title) of the statutes is amended to read:

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

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

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

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

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

**SECTION 7.** 968.075 (2) (a) 2. c. of the statutes is created to read:

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

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

968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5) (e), if a law enforcement officer identifies the predominant aggressor, it is generally not appropriate for a law enforcement officer to arrest anyone under par. (a) other than the predominant aggressor.

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

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

1. The history of domestic abuse between the parties, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history.
2. Statements made by witnesses.
3. The relative degree of injury inflicted on the parties.
4. The extent to which each person present appears to fear any party.
5. Whether any party is threatening or has threatened future harm against another party or another family or household member.
6. Whether either party acted in self-defense or in defense of any other person under the circumstances described in s. 939.48.

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

968.075 (2m) IMMEDIATE RELEASE PROHIBITED. 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 11.** 968.075 (3) (a) 1. (intro.) and a. of the statutes are consolidated, renumbered 968.075 (3) (a) 1. a. and amended to read:

968.075 (3) (a) 1. a. ~~Statements~~ A statement emphasizing that: ~~In~~ in most circumstances, other than those under sub. (2), a law enforcement officer should arrest and take a person into custody if 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.

**SECTION 12.** 968.075 (3) (a) 1. b. of the statutes is repealed and recreated to read:

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

**SECTION 13.** 968.075 (3) (a) 1. c. of the statutes is amended to read:

968.075 (3) (a) 1. c. A statement emphasizing that a law enforcement 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 parties.~~

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

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

**SECTION 15.** 968.075 (3) (a) 1. e. and f. of the statutes are created to read:

968.075 (3) (a) 1. e. A statement discouraging, but not prohibiting, the arrest of more than one party.

f. A statement emphasizing that a law enforcement officer, in determining whether to arrest a party, should consider whether he or she acted in self-defense or in defense of another person.

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

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

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

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

**SECTION 18.** 968.085 (2) (intro.) of the statutes is amended to read:

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

**SECTION 19.** 968.085 (8) of the statutes is created to read:

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

**SECTION 20. Effective date.**

(1) This act takes effect on the first day of the 3rd month beginning after publication.