

1987 Assembly Bill 224

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1987 Wisconsin Act 346

AN ACT to create 939.621 and 968.075 of the statutes, relating to arrest, domestic abuse and providing penalties.

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

SECTION 1. Legislative intent and purpose. (1) The legislature finds that societal attitudes have been reflected in policies and practices of law enforcement agencies, prosecutors and courts. Under these policies and practices, the treatment of a crime may vary widely depending on the relationship between the criminal offender and the victim of the crime. Only recently has public perception of the serious consequences of domestic violence to society and to individual victims led to the recognition of the necessity for early intervention by the criminal justice system.

(2) The legislature intends, by passage of this act, that:

(a) The official response to cases of domestic violence stress the enforcement of the laws, protect the victim and communicate the attitude that violent behavior is neither excused nor tolerated.

(b) Criminal laws be enforced without regard to the relationship of the persons involved.

(c) District attorneys document the extent of domestic violence incidents requiring the intervention of law enforcement agencies.

(d) Law enforcement agencies be encouraged to provide adequate training to officers handling domestic violence incidents.

(3) The purpose of this act is to recognize domestic violence as involving serious criminal offenses and to provide increased protection for the victims of domestic violence.

SECTION 2. 939.621 of the statutes is created to read:

939.621 Increased penalty for certain domestic abuse offenses. If a person commits an act of domestic abuse, as defined in s. 968.075 (1) (a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than 2 years if the crime is committed during the 24 hours immediately following an arrest for a domestic abuse incident, as set forth in s. 968.075 (5). The 24-hour period applies whether or not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the domestic abuse crime does not have

to be the same as the victim of the domestic abuse incident that resulted in the arrest. The penalty increase under this section changes the status of a misdemeanor to a felony.

SECTION 3. 968.075 of the statutes is created to read:

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, former spouse or adult relative or against an adult with whom the person resides or formerly resided:

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, or a threat in conjunction with a physical act, which may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1, 2 or 3.

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

(c) "Relative" means a parent, grandparent, step-parent, brother, sister, first cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, child, stepchild, father-in-law, mother-in-law, daughter-in-law or son-in-law.

(2) **MANDATORY ARREST.** Notwithstanding s. 968.07, a law enforcement officer shall arrest and take a person into custody if:

(a) 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

(b) Either or both of the following circumstances are present:

1. The officer has a reasonable basis for believing that there is a possibility of continued violence against the alleged victim.

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

(3) LAW ENFORCEMENT POLICIES. (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 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.

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 the primary physical aggressor. In determining who is the primary physical aggressor, an officer should consider the intent of this section to protect victims 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 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.

d. 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.

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).

(b) In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

(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).

(4) REPORT REQUIRED WHERE NO ARREST. If a law enforcement officer does not make an arrest under this section when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney's office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the

incident should be charged with the commission of a crime.

(5) CONTACT PROHIBITION. (a) 1. Unless there is a waiver under par. (c), during the 24 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than attorneys for the arrested person and alleged victim, to contact the alleged victim.

2. An arrested person who intentionally violates this paragraph shall be required to forfeit not more than \$1,000.

(b) 1. Unless there is a waiver under par. (c), a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 24 hours after the arrest shall inform the arrested person orally and in writing of the requirements under par. (a), the consequences of violating the requirements and the provisions of s. 939.621. The arrested person shall sign an acknowledgement on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of s. 939.621. If the arrested person refuses to sign the notice, he or she may not be released from custody.

2. If there is a waiver under par. (c) and the person is released under subd. 1, the law enforcement officer or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver and the provisions of s. 939.621.

3. Failure to comply with the notice requirement under subd. 1 regarding a person who is lawfully released from custody bars a prosecution under par. (a), but does not affect the application of s. 939.621 in any criminal prosecution.

(c) At any time during the 24-hour period specified in par. (a), the alleged victim may sign a written waiver of the requirements in par. (a). The law enforcement agency shall have a waiver form available.

(d) The law enforcement agency responsible for the arrest of a person for a domestic abuse incident shall notify the alleged victim of the requirements under par. (a) and the possibility of, procedure for and effect of a waiver under par. (c).

(e) Notwithstanding s. 968.07, 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).

(6) CONDITIONAL RELEASE. A person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. Unless there is a waiver under sub. (5) (c), as part of the conditions of any such release that occurs during the 24 hours immediately following such an arrest, the person shall be required to comply with the requirements under sub. (5) (a) and to sign the acknowledgement under sub. (5) (b). The

arrested person's release shall be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person. The person is not eligible for release on his or her own recognizance pursuant to a citation issued under s. 800.02 or 968.085.

(7) **PROSECUTION POLICIES.** Each district attorney's office shall develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies shall include, but not be limited to, the following:

(a) A policy indicating that a prosecutor's decision not to prosecute a domestic abuse incident should not be based:

1. Solely upon the absence of visible indications of injury or impairment;
2. Upon the victim's consent to any subsequent prosecution of the other person involved in the incident; or
3. Upon the relationship of the persons involved in the incident.

(b) A policy indicating that when any domestic abuse incident is reported to the district attorney's office, including a report made under sub. (4), a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than 2 weeks after the district attorney has received notice of the incident.

(8) **EDUCATION AND TRAINING.** Any education and training by the law enforcement agency relating to the

handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents shall cooperate in all aspects of the training.

(9) **ANNUAL REPORT.** (a) Each district attorney shall submit an annual report to the department of justice listing all of the following:

1. The number of arrests for domestic abuse incidents in his or her county as compiled and furnished by the law enforcement agencies within the county.
2. The number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents.

(b) The listing of the number of arrests, prosecutions and convictions under par. (a) shall include categories by statutory reference to the offense involved and include totals for all categories.

SECTION 4. Nonstatutory provisions. Each law enforcement agency and each district attorney's office shall develop written policies under section 968.075 (3) and (7) of the statutes, as created by this act, so that the policies are in effect on or before April 1, 1989.

SECTION 5. Effective dates. This act takes effect on April 1, 1989, except as follows:

- (1) The creation of section 968.075 (3) and (7) of the statutes and SECTION 4 of this act take effect on the day after publication.