

2001 ASSEMBLY BILL 884

March 4, 2002 – Introduced by Representatives KRUG, KAUFERT, BERCEAU, TURNER, MCCORMICK, COGGS, SYKORA and HUEBSCH, cosponsored by Senators PLACHE, HUELSMAN, BURKE, ROESSLER and DARLING. Referred to Committee on Criminal Justice.

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.

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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 specifies that if a law enforcement officer has identified the predominant aggressor it is not generally 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 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:

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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. ~~par.~~ (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, it is generally
16 not appropriate for a law enforcement officer to arrest anyone under par. (a) other
17 than the predominant aggressor.

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).

