

2005 ASSEMBLY BILL 436

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

Analysis by the Legislative Reference Bureau

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

8 **SECTION 1.** 968.07 (1m) of the statutes is created to read:
9 968.07 **(1m)** Notwithstanding sub. (1), a law enforcement officer shall arrest
10 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
11 (1) (b), or 968.075 (2) (a) or (5) (e).

ASSEMBLY BILL 436**SECTION 2**

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

2 968.075 (1) (c) “Predominant aggressor” means the most significant, but not
3 necessarily the first, aggressor in a domestic abuse incident.

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

5 968.075 (1) (d) “Party” means a person involved in a domestic abuse incident.

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

7 968.075 (2) (title) CIRCUMSTANCES REQUIRING ARREST; PRESUMPTION AGAINST
8 CERTAIN ARRESTS.

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

10 968.075 (2) (a) (intro.) Notwithstanding s. 968.07 (1) and except as provided in
11 ~~par.~~ pars. (am) and (b), a law enforcement officer shall arrest and take a person into
12 custody if:

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

14 968.075 (2) (a) 2. (intro.) ~~Either or both~~ Any of the following ~~circumstances are~~
15 ~~present~~ apply:

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

17 968.075 (2) (a) 2. c. The person is the predominant aggressor.

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

19 968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person’s arrest is
20 required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5)
21 (e), if a law enforcement officer identifies the predominant aggressor, it is generally
22 not appropriate for a law enforcement officer to arrest anyone under par. (a) other
23 than the predominant aggressor.

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

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1 968.075 (2) (ar) In order to protect victims from continuing domestic abuse, a
2 law enforcement officer shall consider all of the following in identifying the
3 predominant aggressor:

4 1. The history of domestic abuse between the parties, if it can be reasonably
5 ascertained by the officer, and any information provided by witnesses regarding that
6 history.

7 2. Statements made by witnesses.

8 3. The relative degree of injury inflicted on the parties.

9 4. The extent to which each person present appears to fear any party.

10 5. Whether any party is threatening or has threatened future harm against
11 another party or another family or household member.

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

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

15 968.075 (2m) IMMEDIATE RELEASE PROHIBITED. Unless s. 968.08 applies, a law
16 enforcement officer may not release a person whose arrest was required under sub.
17 (2) until the person posts bail under s. 969.07 or appears before a judge under s.
18 970.01 (1).

19 **SECTION 11.** 968.075 (3) (a) 1. (intro.) and a. of the statutes are consolidated,
20 renumbered 968.075 (3) (a) 1. a. and amended to read:

21 968.075 (3) (a) 1. a. Statements A statement emphasizing that: ~~In in~~ most
22 circumstances, other than those under sub. (2), a law enforcement officer should
23 arrest and take a person into custody if the officer has reasonable grounds to believe
24 that the person is committing or has committed domestic abuse and that the person's
25 actions constitute the commission of a crime.

ASSEMBLY BILL 436**SECTION 12**

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

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

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

5 968.075 **(3)** (a) 1. c. A statement emphasizing that a law enforcement officer's
6 decision as to whether or not to arrest under this section may not be based on the
7 consent of the victim to any subsequent prosecution or on the relationship of the
8 persons involved in the incident parties.

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

10 968.075 **(3)** (a) 1. d. A statement emphasizing that a law enforcement officer's
11 decision not to arrest under this section may not be based solely upon the absence
12 of visible indications of injury or impairment.

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

14 968.075 **(3)** (a) 1. e. A statement discouraging, but not prohibiting, the arrest
15 of more than one party.

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

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

20 968.075 **(3)** (c) This subsection does not limit the authority of a law enforcement
21 agency to establish policies that require arrests under more circumstances than
22 those set forth in sub. (2), but the policies may not conflict with the presumption
23 under sub. (2) (am).

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

