

2005 ASSEMBLY BILL 436

May 19, 2005 – Introduced by Representatives FRISKE, KREIBICH, BERCEAU, RHOADES, SUDER, DAVIS, HAHN, KERKMAN, BOYLE, LEMAHIEU, HINES, SHERIDAN, BIES, ALBERS, MONTGOMERY, SHILLING, HUNDERTMARK, SEIDEL and CULLEN, cosponsored by Senators BROWN, DARLING, HANSEN, HARSDFORF, LAZICH and ROESSLER. Referred to Committee on Criminal Justice and Homeland Security.

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

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; or 2) there is evidence of physical injury to the alleged victim. "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

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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 that the law enforcement officer arrest the predominant aggressor in a case in which a crime of domestic abuse has been committed. The bill defines “predominant aggressor” to mean the most significant aggressor, but not necessarily the first, 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. The bill also requires law enforcement agencies to adopt policies for domestic abuse cases that reflect these new requirements and that address certain other specified issues. Finally, 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.

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:

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

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

6 968.075 **(1)** (c) “Predominant aggressor” means the most significant, but not
7 necessarily the first, aggressor in a domestic abuse incident.

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

9 968.075 **(1)** (d) “Party” means a person involved in a domestic abuse incident.

10 **SECTION 4.** 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 5.** 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 6.** 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 7.** 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 8.** 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 9.** 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. The history of domestic abuse between the parties, if it can be reasonably
23 ascertained by the officer, and any information provided by witnesses regarding that
24 history.

25 2. Statements made by witnesses.

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

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

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

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

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

8 968.075 **(2m)** IMMEDIATE RELEASE PROHIBITED. Unless s. 968.08 applies, a law
9 enforcement officer may not release a person whose arrest was required under sub.
10 (2) until the person posts bail under s. 969.07 or appears before a judge under s.
11 970.01 (1).

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

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

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

21 968.075 **(3)** (a) 1. b. A policy reflecting the requirements of subs. (2) and (2m).

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

23 968.075 **(3)** (a) 1. c. A statement emphasizing that a law enforcement officer's
24 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 parties.

3 **SECTION 14.** 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 15.** 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 party.

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

13 **SECTION 16.** 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 17.** 968.075 (5) (e) of the statutes is amended to read:

19 968.075 (5) (e) Notwithstanding s. 968.07 (1), a law enforcement officer shall
20 arrest and take a person into custody if the officer has reasonable grounds to believe
21 that the person has violated par. (a).

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

23 968.085 (2) AUTHORITY TO ISSUE; EFFECT. (intro.) A- Except as provided in sub.
24 (8), a law enforcement officer may issue a citation to any person whom he or she has
25 reasonable grounds to believe has committed a misdemeanor. A citation may be

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1 issued in the field or at the headquarters or precinct station of the officer instead of
2 or subsequent to a lawful arrest. If a citation is issued, the person cited shall be
3 released on his or her own recognizance. In determining whether to issue a citation,
4 the law enforcement officer may consider whether:

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

6 **968.085 (8)** INAPPLICABILITY TO CERTAIN DOMESTIC ABUSE CASES. A law
7 enforcement officer may not issue a citation to a person for an offense if the officer
8 is required to arrest the person for that offense under s. 968.075 (2).

9 **SECTION 20. Effective date.**

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

12 (END)