

**2005 DRAFTING REQUEST**

**Bill**

Received: 01/27/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Donald Friske (608) 266-7694

By/Representing: Jennifer

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - domestic abuse  
Criminal Law - law enforcement

Extra Copies: pjk

Submit via email: YES

Requester's email: Rep.Friske@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us  
cathlene.hanaman@legis.state.wi.us

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Domestic violence mandatory arrest

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 02/04/2005	kfollett 02/09/2005		_____			S&L
/1			rschluet 02/11/2005	_____	sbasford 02/11/2005		S&L
/2	mdsida 02/28/2005	kfollett 03/02/2005	pgreensl 03/03/2005	_____	sbasford 03/03/2005	sbasford 04/15/2005	

FE Sent For:

<END>

## 2005 DRAFTING REQUEST

### Bill

Received: 01/27/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Donald Friske (608) 266-7694

By/Representing: Jennifer

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - domestic abuse  
Criminal Law - law enforcement

Extra Copies: pjk

Submit via email: YES

Requester's email: Rep.Friske@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us  
cathlene.hanaman@legis.state.wi.us

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Domestic violence mandatory arrest

---

### Instructions:

See Attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 02/04/2005	kfollett 02/09/2005		_____			S&L
/1			rschluet 02/11/2005	_____	sbasford 02/11/2005		S&L
/2	mdsida 02/28/2005	kfollett 03/02/2005	pgreensl 03/03/2005	_____	sbasford 03/03/2005		

FE Sent For:

**<END>**

**2005 DRAFTING REQUEST**

**Bill**

Received: 01/27/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Donald Friske (608) 266-7694

By/Representing: Jennifer

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - domestic abuse  
Criminal Law - law enforcement

Extra Copies: pjk

Submit via email: YES

Requester's email: Rep.Friske@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us  
cathlene.hanaman@legis.state.wi.us

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Domestic violence mandatory arrest

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 02/04/2005	kfollett 02/09/2005		_____			S&L
/1		12 klf 3/2	rschlue 02/11/2005	3/2 pjt/m	sbasford 02/11/2005		

FE Sent For:

<END>

**2005 DRAFTING REQUEST**

**Bill**

Received: **01/27/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Donald Friske (608) 266-7694**

By/Representing: **Jennifer**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - domestic abuse  
Criminal Law - law enforcement**

Extra Copies: **pjk**

by 2/17

Submit via email: **YES**

Requester's email: **Rep.Friske@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us  
cathlene.hanaman@legis.state.wi.us**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Domestic violence mandatory arrest

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	mdsida	11 KJF 2/9					
----	--------	---------------	---	--	--	--	--

FE Sent For:

<END>

**Dsida, Michael**

---

**From:** Western, Jennifer  
**Sent:** Thursday, January 27, 2005 11:20 AM  
**To:** Dsida, Michael  
**Subject:** Draft Request

Dear Mike,

Representative Friske would like to resurrect 2001 Assembly Bill 884, relating to domestic abuse arrests. However, he would like to strike out the inclusion of dating relationships as being part of the definition of domestic abuse in Section 2. Also strike the definition of dating relationship in Section 3.

Rep. Friske has a follow-up meeting on this draft on Feb 17th, so he was hoping to get a draft by then. Let me know if there is a problem with the time parameters.

Thank you,

Jennifer  
**Office of Donald R. Friske**  
**35th Assembly Representative**  
[www.Friskenet.net](http://www.Friskenet.net)

*see other changes too.*

PWF

KJF

2/14

# 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.

Resen

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.



ASSEMBLY BILL 884

*has been committed*

*(a) which the*

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.

*a case in which a crime of*

*also*

*for domestic abuse cases*

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.

*and that address certain other specified issues*

*the*

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:**

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

## ASSEMBLY BILL 884

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:~~

## ASSEMBLY BILL 884

## SECTION 6

1           968.075 (2) (title) <sup>✓</sup> 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) <sup>✓</sup> and except as provided in  
5           ~~par. pars.~~ <sup>✓</sup> (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) <sup>✓</sup>, unless the person's arrest is  
14          required under s. 813.12 (7) <sup>✓</sup>, 813.122 (10) <sup>✓</sup>, 813.125 (6) <sup>✓</sup>, or 813.128 (1) (b) or sub. (5) <sup>✓</sup>  
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) <sup>✓</sup> 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.

**ASSEMBLY BILL 884**

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

## ASSEMBLY BILL 884

## SECTION 15

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).

**ASSEMBLY BILL 884**

1           **SECTION 21.** 968.085 (2) (intro.) of the statutes is amended to read:

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

9           **SECTION 22.** 968.085 (8) of the statutes is created to read:

10          968.085 (8) INAPPLICABILITY TO CERTAIN DOMESTIC ABUSE CASES. A law  
11          enforcement officer may not issue a citation to a person for an offense if the officer  
12          is required to arrest the person for that offense under s. 968.075 (2).

13          **SECTION 23. Initial applicability.**

14          (1) The treatment of section 968.075 (5) (a) 2. of the statutes first applies to  
15          persons arrested for a domestic abuse incident on the effective date of this  
16          subsection. *text: NS: eff date A* → # (#)

*change component*

17          **SECTION 24. Effective dates.** This act takes effect on the first day of the third  
18          month beginning after publication, except as follows:

19          (1) The treatment of sections 968.075 (5) (a) 2. of the statutes and SECTION 23  
20          (1) of this act take effect on the day after publication.

21

(END)

## Barman, Mike

---

**From:** Hanaman, Cathlene  
**Sent:** Monday, February 14, 2005 1:00 PM  
**To:** Barman, Mike  
**Subject:** FW: LRB-1916/1

Mike:

I fixed the incorrect initials. Could you print a new copy for the file?

-C

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Monday, February 14, 2005 12:50 PM  
**To:** Kunkel, Mark  
**Cc:** Hanaman, Cathlene  
**Subject:** RE: LRB-1916/1

If it comes back for a redraft I can. Otherwise, I'm not sure what we can do. Cathlene...???

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Monday, February 14, 2005 10:53 AM  
**To:** Dsida, Michael  
**Subject:** LRB-1916/1

Looks like my initials, instead of your's, got put on this draft. Can you change that? That would be swell if you did.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1016/1  
MDK:kjf:rs

2005 BILL

changed  
02-14-2005

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 (2) (a) 2. c., 968.075 (2) (am), 968.075 (2m),

6 968.075 (3) (a) 1. e. and f. and 968.085 (8) of the statutes; **relating to:** domestic

7 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



## Dsida, Michael

---

**From:** Western, Jennifer  
**Sent:** Monday, February 28, 2005 2:06 PM  
**To:** Dsida, Michael  
**Subject:** RE: LRB 1916/1 Change

I guess you could replace "any such person" with "either party." The essence of "any such person" is that they are a party involved in the domestic abuse incident and potentially the predominant aggressor.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Monday, February 28, 2005 2:01 PM  
**To:** Western, Jennifer  
**Subject:** RE: LRB 1916/1 Change

Who is "any such person" in item 5? That provision appears to be referring back to item 4, but it is not clear whether it is referring to a "person present" or a "party."

-----Original Message-----

**From:** Western, Jennifer  
**Sent:** Thursday, February 24, 2005 4:42 PM  
**To:** Dsida, Michael  
**Subject:** LRB 1916/1 Change

Dear Mike,

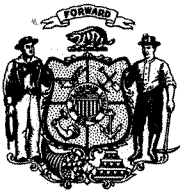
Rep. Friske would like to make the following change to LRB 1916/1, relating to predominant physical aggressor. I emailed because I thought I could explain it better, but if you have questions, just give me a call.

Thanks,  
Jennifer, 6-7694

**#1. Points a law enforcement officer must consider in identifying the predominant aggressor.** (In 2003 AB 884, these were located p.4 line 22 to p.5 line 7) I know I originally told you Don *didn't* want to change the points from what they are in current law (968.07 (3) (a) 1. b.), but he does. He would like to amend and list out the points to be as follows:

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 and any information provided by witnesses regarding that history, if that history can be reasonably ascertained by the officer;
2. Statements made by witnesses;
3. The relative degree of injury inflicted on the persons involved;
4. The extent to which each person present appears to fear any party;
5. Whether any such person 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.



other  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1916/1  
MGD:kjf:rs

## 2005 BILL

Regen

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 (2) (a) 2. c., 968.075 (2) (am), 968.075 (2m),  
6 968.075 (3) (a) 1. e. and f. and 968.085 (8) of the statutes; **relating to:** domestic  
7 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

**BILL**

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. 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 (2) (title) of the statutes is amended to read:  
9           968.075 (2) (title) CIRCUMSTANCES REQUIRING ARREST; PRESUMPTION AGAINST  
10 CERTAIN ARRESTS.

INS  
214

INS

**BILL**

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

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

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

6           968.075 (2) (a) 2. (intro.) ~~Either or both~~ Any of the following ~~circumstances are~~  
7           present apply:

8           **SECTION 6.** 968.075 (2) (a) 2. c. of the statutes is created to read:

9           968.075 (2) (a) 2. c. The person is the predominant aggressor.

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

11          968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is  
12          required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5)  
13          (e), if a law enforcement officer identifies the predominant aggressor, it is generally  
14          not appropriate for a law enforcement officer to arrest anyone under par. (a) other  
15          than the predominant aggressor.

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

17          968.075 (2m) IMMEDIATE RELEASE PROHIBITED. Unless s. 968.08 applies, a law  
18          enforcement officer may not release a person whose arrest was required under sub.  
19          (2) until the person posts bail under s. 969.07 or appears before a judge under s.  
20          970.01 (1).

21          **SECTION 9.** 968.075 (3) (a) 1. (intro.) and a. of the statutes are consolidated,  
22          renumbered 968.075 (3) (a) 1. a. and amended to read:

23          968.075 (3) (a) 1. a. ~~Statements~~ A statement emphasizing that: ~~In in~~ most  
24          circumstances, other than those under sub. (2), a law enforcement officer should  
25          arrest and take a person into custody if the officer has reasonable grounds to believe

MS  
3/15

**BILL****SECTION 9**

1 that the person is committing or has committed domestic abuse and that the person's  
2 actions constitute the commission of a crime.

3 **SECTION 10.** 968.075 (3) (a) 1. b. of the statutes is repealed and recreated to  
4 read:

5 968.075 (3) (a) 1. b. A policy reflecting the requirements of subs. (2) and (2m).

6 **SECTION 11.** 968.075 (3) (a) 1. c. of the statutes is amended to read:

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

11 **SECTION 12.** 968.075 (3) (a) 1. d. of the statutes is amended to read:

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

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

16 968.075 (3) (a) 1. e. A statement discouraging, but not prohibiting, the arrest  
17 of more than one ~~person involved in a domestic abuse incident.~~ party

18 f. A statement emphasizing that a law enforcement officer, in determining  
19 whether to arrest a ~~person involved in a domestic abuse incident,~~ party should consider  
20 whether ~~the person~~ acted in self-defense or in defense of another person.

21 <sup>he or she</sup> **SECTION 14.** 968.075 (3) (c) of the statutes is amended to read:

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

**BILL**

1           **SECTION 15.** 968.075 (5) (e) of the statutes is amended to read:

2           968.075 (5) (e) Notwithstanding s. 968.07 (1), a law enforcement officer shall  
3           arrest and take a person into custody if the officer has reasonable grounds to believe  
4           that the person has violated par. (a).

5           **SECTION 16.** 968.085 (2) (intro.) of the statutes is amended to read:

6           968.085 (2) AUTHORITY TO ISSUE; EFFECT. (intro.) ~~A- Except as provided in sub.~~  
7           (8), a law enforcement officer may issue a citation to any person whom he or she has  
8           reasonable grounds to believe has committed a misdemeanor. A citation may be  
9           issued in the field or at the headquarters or precinct station of the officer instead of  
10          or subsequent to a lawful arrest. If a citation is issued, the person cited shall be  
11          released on his or her own recognizance. In determining whether to issue a citation,  
12          the law enforcement officer may consider whether:

13          **SECTION 17.** 968.085 (8) of the statutes is created to read:

14          968.085 (8) INAPPLICABILITY TO CERTAIN DOMESTIC ABUSE CASES. A law  
15          enforcement officer may not issue a citation to a person for an offense if the officer  
16          is required to arrest the person for that offense under s. 968.075 (2).

17          **SECTION 18. Effective date.**

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

20

(END)

**2005-2006 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1916/2ins  
MGD:.....

1 ~~no ff~~ **analysis INSERT**

It also lists what a law enforcement officer must consider in identifying the predominant aggressor.

2 **INSERT 2/4**

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

4 968.075 (1) (c) "Party" means a person involved in a domestic abuse incident.

5 **INSERT 3/15**

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

7 968.075 (2) (ar) In order to protect victims from continuing domestic abuse, a  
8 law enforcement officer shall consider all of the following in identifying the  
9 predominant aggressor:

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

**Basford, Sarah**

---

**From:** Dsida, Michael  
**Sent:** Thursday, April 14, 2005 4:13 PM  
**To:** LRB.Legal  
**Subject:** plz jacket -1916/2 for assembly thanks md