



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2005 Wisconsin Act 104**  
[2005 Assembly Bill 436]

**Domestic Abuse Arrests**

2005 Wisconsin Act 104 modifies the law relating to domestic abuse arrests.

### **Mandatory Arrest**

The Act requires a law enforcement officer to 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) the officer had a reasonable basis for believing that continued domestic abuse against the alleged victim is likely; there is evidence of physical injury to the alleged victim; or the person is the predominant aggressor. The Act adds the language relating to the predominant aggressor to prior law. The Act provides that, if a law enforcement officer identifies the predominant aggressor, it is generally not appropriate for a law enforcement officer to arrest anyone involved in the domestic abuse incident other than the predominant aggressor. This provision does not apply if the person is required to be arrested because the officer has probable cause to believe the person has violated a domestic abuse, child abuse, or harassment temporary restraining order or injunction; a foreign protection order; or a contact prohibition following a domestic abuse arrest.

### **Release of Person Arrested and Citations**

The Act provides that a law enforcement officer may not release a person whose arrest was required due to a domestic abuse incident until the person has posted bail or appears before a judge unless the officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint against the person arrested. Also, a law enforcement officer may not issue a citation to a person for an offense if the officer is required to arrest the person for a domestic abuse incident.

### **Determining "Predominant Aggressor"**

The Act defines "predominant aggressor" as the most significant, but not necessarily the first, aggressor in a domestic abuse incident. Under the Act, in order to protect victims from continuing

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

domestic abuse, a law enforcement officer must consider all of the following in identifying the predominant aggressor:

- The history of domestic abuse between the parties, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history.
- Statements made by witnesses.
- The relative degree of injury inflicted on the parties.
- The extent to which each person present appears to fear any party.
- Whether any party is threatening or has threatened future harm against another party or another family or household member.
- Whether either party acted in self-defense or in defense of any other person.

### **Law Enforcement Agency Policies**

Each law enforcement agency is required to develop, adopt, and implement written policies regarding arrest procedures for domestic abuse incidents. These policies must include a statement emphasizing that, in most circumstances, 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 and a statement that a law enforcement officer's decision as to whether or not to arrest a person in a domestic abuse incident may not be based on the consent of the victim to any subsequent prosecution. The Act makes the following changes to the requirements for law enforcement policies:

- Repeals a provision requiring a statement emphasizing that, 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 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 be ascertained.
- Requires a policy reflecting the requirements of the Act for arrest in domestic abuse incidents and the prohibition against release of a person arrested.
- Requires a statement discouraging, but not prohibiting, the arrest of more than one party.
- Requires a statement emphasizing that a law enforcement officer, in determining whether to arrest a party, should consider whether he or she acted in self-defense or in defense of another person.

***Effective Date:*** The Act takes effect on April 1, 2006.

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January 20, 2006