

Mandatory Arrest Checklist: Sec. 968.075, Wis. Stats.

The following document was prepared in 1989, by the Appleton Police Department, and updated by the Wisconsin Coalition Against Domestic Violence, in 2008. This does not constitute legal advice. The Wisconsin Coalition Against Domestic Violence (WCADV) gratefully acknowledges permission to reprint this material.

When is an Arrest Mandated?

- 938.02(1) **Is the suspect 17 years of age or older?**
- 968.075(1)(a) **Can the "relationship" between the victim and the adult suspect be described as one of the following?**
- Spouse
 - Former Spouse
 - Adult with whom the person created a child
 - Adult with whom the person resides or formerly resided with
- 968.075(1)(a) **Can the suspect's actions be described as any of the following?**
[These actions are the legal definitions for domestic abuse under the mandatory arrest law.]
- 968.075(1)(a)(1) - Intentional infliction of physical pain, physical injury or illness
- 968.075(1)(a)(2) - Intentional impairment of physical condition
- 968.075(1)(a)(3) - A violation of 940.225 (first, second, or third degree sexual assault)
- 968.075(1)(a)(4) - A physical act that may cause the other person to fear imminent engagement in conduct described under subd. 1., 2. or 3. above ↑
- Does the investigating officer find the following items? If so, arrest is mandated:**
- 968.075(2)(1) **First, does the investigating officer have reasonable grounds to believe that the person is committing or has committed domestic abuse (see definitions above)?**
- 968.075(2)(1) **Second, does the person's actions constitute the commission of a crime?**
- 968.075(2)(a)2 **Third, are any of the following circumstances present?**
- 968.075(2)(a)2.a - The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely
- 968.075(2)(a)2.b - There is evidence of physical injury to the alleged victim
- 968.075(2)(a)2.c - The person is the predominant aggressor
- 968.075(2)(b) **Was the domestic abuse reported to a law enforcement officer within 28 days of when the abuse occurred?**

Additional Statutory Requirements Under the Mandatory Arrest Law

968.075(3)(a)1.a This section emphasizes 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.

Predominant Aggressor

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

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

1. 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.
2. Statements made by witnesses.
3. The relative degree of injury inflicted on the parties.
4. The extent to which each person present appears to fear any party.
5. Whether any party 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 (self-defense and defense of others)

Consent of victim

968.075(3)(a)l.c A statement emphasizing that a law enforcement officer's decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the parties.

Absence of Visible Injury

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

Report Required Where No Arrest

968.075(4) If a law enforcement officer does not make an arrest when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney's office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

Contact Prohibition

968.075(5)(a)1 Unless there is a waiver under par. (c), during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.

Waiver of Contact Prohibition

968.075(5)(b)3.c At any time during the 72-hour period specified in par.(a), the alleged victim may sign a written waiver of the requirements in par.(a). The law enforcement agency shall have a form available.

Release of Suspect

968.075 (5)(b)1 Unless there is a waiver under par. (c), a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 72 hours after the arrest shall inform the arrested person orally and in writing of the requirements under par. (a), the consequences of violating the requirements and the provisions of section 939.621(Increased penalty for certain domestic abuse offenses). The arrested person shall sign an acknowledgment on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of s. 939.621. If the arrested person refuses to sign the notice, he or she may not be released from custody.

Officer Immunity

968.075(6m) A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not

arrest an alleged offender, if the decision is made in a good faith effort to comply with s. 968.075.

Assessing The Likelihood of Continued Violence

In accordance with the Mandatory Arrest Law, the officers should evaluate the "likelihood" of continued violence when determining whether an arrest is required.

Officers should consider the following questions:

1. Does the suspect have a prior history of arrests for domestic abuse?
2. Has the suspect ever violated a restraining order?
3. Does the suspect have a **prior** history of assaultive behavior?
4. Has the suspect made statements that future abuse will occur?
5. Has the victim expressed fear that continued violence is likely if suspect is not arrested?

Predominant Aggressor/Self-Defense vs. Dual Arrest

On occasion, officers will be assigned to investigate domestic incidents and discover that both parties have sustained injuries. The mandatory arrest law does not require that both parties be arrested in these situations. A law enforcement officer is required 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. 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. 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. Law enforcement officers are discouraged, but not prohibited, from the arrest of more than one party.

Self-Defense

In accordance with State Statute 939.48(1), a person is privileged to threaten or intentionally use force against another person for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person.

939.48(1) The actor may intentionally use only such force or threat as he/she reasonably believes is necessary to prevent or terminate the interference.

939.48(1) The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless he/she reasonably believes that such force is necessary to prevent imminent death

939.48(2)(a) A person who engages in unlawful conduct of a type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing the person to reasonably believe that he/she is in imminent danger of death or great bodily harm. In such a case, the person engaging in the unlawful conduct is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant.

939.48(2)(b) The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his assailant.

939.48(2)(c) A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his or her assailant is not entitled to claim the privilege of self-defense.

939.48(4) A person is privileged to defend a third person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which he/she is privileged to defend him/herself from real or apparent unlawful interference, provided that he/she reasonably believes the facts are such that the third person would be privileged to act in self-defense and that his/her intervention is necessary for the protection of the third person.