

AMENDED IN SENATE AUGUST 26, 2002  
AMENDED IN SENATE AUGUST 12, 2002  
AMENDED IN SENATE JUNE 17, 2002  
AMENDED IN ASSEMBLY MAY 15, 2002  
AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2826**

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**Introduced by Assembly Member Daucher**  
**(Coauthors: Assembly Members Bates, Bill Campbell, Cogdill,**  
**Cohn, Cox, Leach, Longville, Robert Pacheco, Pavley,**  
**Strickland, and Vargas)**  
(Coauthor: Senator Margett)

February 25, 2002

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An act to amend Sections 836 and 13700, of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2826, as amended, Daucher. Domestic violence and familial elder adult abuse.

Under existing law, domestic violence is defined as abuse committed against an adult or a fully emancipated minor who is involved in a specified relationship or who previously had a specified relationship with the suspect.

This bill would expand that definition of domestic violence to include abuse against any minor who is involved in one of those

relationships or who previously had one of those relationships with the suspect.

Existing law provides that a peace officer may arrest a person without a warrant if he or she has probable cause to believe that the suspect has committed an assault or battery against a person with whom he or she has or has had a specified relationship and the arrest is made as soon as that probable cause arises.

This bill would expand these provisions to include an assault or battery against a person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship.

By increasing the scope of domestic violence and elder parent abuse duties on local agencies, this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

*This bill would provide that it is the intent of the Legislature that any increased costs resulting from this act are offset by savings to local agencies with respect to domestic violence and elder parent abuse.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 836 of the Penal Code is amended to  
2 read:



1 836. (a) A peace officer may arrest a person in obedience to  
2 a warrant, or, pursuant to the authority granted to him or her by  
3 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2,  
4 without a warrant, may arrest a person whenever any of the  
5 following circumstances occur:

6 (1) The officer has probable cause to believe that the person to  
7 be arrested has committed a public offense in the officer's  
8 presence.

9 (2) The person arrested has committed a felony, although not  
10 in the officer's presence.

11 (3) The officer has probable cause to believe that the person to  
12 be arrested has committed a felony, whether or not a felony, in fact,  
13 has been committed.

14 (b) Any time a peace officer is called out on a domestic violence  
15 call, it shall be mandatory that the officer make a good faith effort  
16 to inform the victim of his or her right to make a citizen's arrest.  
17 This information shall include advising the victim how to safely  
18 execute the arrest.

19 (c) (1) When a peace officer is responding to a call alleging a  
20 violation of a domestic violence protective or restraining order  
21 issued under the Family Code, Section 527.6 of the Code of Civil  
22 Procedure, Section 213.5 of the Welfare and Institutions Code,  
23 Section 136.2 of this code, or paragraph (2) of subdivision (a) of  
24 Section 1203.097 of this code, or of a domestic violence protective  
25 or restraining order issued by the court of another state, tribe, or  
26 territory and the peace officer has probable cause to believe that  
27 the person against whom the order is issued has notice of the order  
28 and has committed an act in violation of the order, the officer shall,  
29 consistent with subdivision (b) of Section 13701, make a lawful  
30 arrest of the person without a warrant and take that person into  
31 custody whether or not the violation occurred in the presence of the  
32 arresting officer. The officer shall, as soon as possible after the  
33 arrest, confirm with the appropriate authorities or the Domestic  
34 Violence Protection Order Registry maintained pursuant to  
35 Section 6380 of the Family Code that a true copy of the protective  
36 order has been registered, unless the victim provides the officer  
37 with a copy of the protective order.

38 (2) The person against whom a protective order has been issued  
39 shall be deemed to have notice of the order if the victim presents  
40 to the officer proof of service of the order, the officer confirms with



1 the appropriate authorities that a true copy of the proof of service  
2 is on file, or the person against whom the protective order was  
3 issued was present at the protective order hearing or was informed  
4 by a peace officer of the contents of the protective order.

5 (3) In situations where mutual protective orders have been  
6 issued under Division 10 (commencing with Section 6200) of the  
7 Family Code, liability for arrest under this subdivision applies  
8 only to those persons who are reasonably believed to have been the  
9 primary aggressor. In those situations, prior to making an arrest  
10 under this subdivision, the peace officer shall make reasonable  
11 efforts to identify, and may arrest, the primary aggressor involved  
12 in the incident. The primary aggressor is the person determined to  
13 be the most significant, rather than the first, aggressor. In  
14 identifying the primary aggressor, an officer shall consider (A) the  
15 intent of the law to protect victims of domestic violence from  
16 continuing abuse, (B) the threats creating fear of physical injury,  
17 (C) the history of domestic violence between the persons involved,  
18 and (D) whether either person involved acted in self-defense.

19 (d) Notwithstanding paragraph (1) of subdivision (a), if a  
20 suspect commits an assault or battery upon a current or former  
21 spouse, fiancé, fiancée, a current or former cohabitant as defined  
22 in Section 6209 of the Family Code, a person with whom the  
23 suspect currently is having or has previously had an engagement  
24 or dating relationship, as defined in paragraph (10) of subdivision  
25 (f) of Section 243, a person with whom the suspect has parented  
26 a child, or is presumed to have parented a child pursuant to the  
27 Uniform Parentage Act (Part 3 (commencing with Section 7600)  
28 of Division 12 of the Family Code), a child of the suspect, a child  
29 whose parentage by the suspect is the subject of an action under the  
30 Uniform Parentage Act, a child of a person in one of the above  
31 categories, any other person related to the suspect by  
32 consanguinity or affinity within the second degree, or any person  
33 who is 65 years of age or older and who is related to the suspect  
34 by blood or legal guardianship a peace officer may arrest the  
35 suspect without a warrant where both of the following  
36 circumstances apply:

37 (1) The peace officer has probable cause to believe that the  
38 person to be arrested has committed the assault or battery, whether  
39 or not it has in fact been committed.



1 (2) The peace officer makes the arrest as soon as probable cause  
2 arises to believe that the person to be arrested has committed the  
3 assault or battery, whether or not it has in fact been committed.

4 (e) In addition to the authority to make an arrest without a  
5 warrant pursuant to paragraphs (1) and (3) of subdivision (a), a  
6 peace officer may, without a warrant, arrest a person for a violation  
7 of Section 12025 when all of the following apply:

8 (1) The officer has reasonable cause to believe that the person  
9 to be arrested has committed the violation of Section 12025.

10 (2) The violation of Section 12025 occurred within an airport,  
11 as defined in Section 21013 of the Public Utilities Code, in an area  
12 to which access is controlled by the inspection of persons and  
13 property.

14 (3) The peace officer makes the arrest as soon as reasonable  
15 cause arises to believe that the person to be arrested has committed  
16 the violation of Section 12025.

17 SEC. 2. Section 13700 of the Penal Code is amended to read:  
18 13700. As used in this title:

19 (a) “Abuse” means intentionally or recklessly causing or  
20 attempting to cause bodily injury, or placing another person in  
21 reasonable apprehension of imminent serious bodily injury to  
22 himself or herself, or another.

23 (b) “Domestic violence” means abuse committed against an  
24 adult or a minor who is a spouse, former spouse, cohabitant,  
25 former cohabitant, or person with whom the suspect has had a child  
26 or is having or has had a dating or engagement relationship. For  
27 purposes of this subdivision, “cohabitant” means two unrelated  
28 adult persons living together for a substantial period of time,  
29 resulting in some permanency of relationship. Factors that may  
30 determine whether persons are cohabiting include, but are not  
31 limited to, (1) sexual relations between the parties while sharing  
32 the same living quarters, (2) sharing of income or expenses, (3)  
33 joint use or ownership of property, (4) whether the parties hold  
34 themselves out as husband and wife, (5) the continuity of the  
35 relationship, and (6) the length of the relationship.

36 (c) “Officer” means any officer or employee of a local police  
37 department or sheriff’s office, and any peace officer of the  
38 Department of the California Highway Patrol, the Department of  
39 Parks and Recreation, the University of California Police  
40 Department, or the California State University and College Police



1 Departments, as defined in Section 830.2, a housing authority  
2 patrol officer, as defined in subdivision (d) of Section 830.31, or  
3 a peace officer as defined in subdivisions (a) and (b) of Section  
4 830.32.

5 (d) "Victim" means a person who is a victim of domestic  
6 violence.

7 ~~SEC. 3. Notwithstanding Section 17610 of the Government  
8 Code, if the Commission on State Mandates determines that this  
9 act contains costs mandated by the state, reimbursement to local  
10 agencies and school districts for those costs shall be made pursuant  
11 to Part 7 (commencing with Section 17500) of Division 4 of Title  
12 2 of the Government Code. If the statewide cost of the claim for  
13 reimbursement does not exceed one million dollars (\$1,000,000),  
14 reimbursement shall be made from the State Mandates Claims  
15 Fund.~~

16 *SEC. 3. It is the intent of the Legislature that any increased  
17 costs resulting from any increased duties with respect to domestic  
18 violence and elder parent abuse imposed by this act are offset by  
19 savings to local agencies.*

20 *SEC. 4. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 this act provides for offsetting savings to local agencies or school  
23 districts that result in no net costs to the local agencies or school  
24 districts, within the meaning of Section 17556 of the Government  
25 Code.*

