

Assembly Bill No. 2116

CHAPTER 131

An act to amend Section 836 of the Penal Code, relating to domestic violence.

[Approved by Governor July 7, 1996. Filed with
Secretary of State July 8, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2116, Alby. Domestic violence: arrest.

Existing law specifies circumstances under which a peace officer may make an arrest without a warrant.

This bill additionally would permit a peace officer to make a warrantless arrest of a person who commits an assault or battery upon his or her spouse, upon a person with whom he or she is cohabiting, or upon the parent of his or her child if the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery and the peace officer makes the arrest as soon as that reasonable cause arises, whether or not the assault or battery has in fact been committed.

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

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

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

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

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

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

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

(c) (1) When a peace officer is responding to a call alleging a violation of a protective order issued under Division 10 (commencing with Section 6200) of the Family Code or Section 136.2 of this code, and the peace officer has reasonable cause to believe that



the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities that a true copy of the protective order has been filed, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

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

(d) Notwithstanding paragraph (1) of subdivision (a), if a person commits an assault or battery upon his or her spouse, upon a person with whom he or she is cohabiting, or upon the parent of his or her child, a peace officer may arrest the person without a warrant where both of the following circumstances apply:

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

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

