

ASSEMBLY BILL

No. 258

Introduced by Assembly Member Ma

February 11, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 258, as introduced, Ma. Domestic violence: restraining or protective order: aggressor.

Existing law provides that where a peace officer responds to a domestic violence call where there are mutual protective orders, liability for arrest applies to the person reasonably believed to be the "primary aggressor," as defined. Other existing provisions relating to domestic violence define the term "dominant aggressor" identically.

This bill would alter provisions relating to mutual protective orders by replacing the term "primary aggressor" with "dominant aggressor."

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

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

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

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

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

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

13 (c) (1) When a peace officer is responding to a call alleging a
14 violation of a domestic violence protective or restraining order
15 issued under Section 527.6 of the Code of Civil Procedure, the
16 Family Code, Section 136.2, 646.91, or paragraph (2) of
17 subdivision (a) of Section 1203.097 of this code, Section 213.5 or
18 15657.03 of the Welfare and Institutions Code, or of a domestic
19 violence protective or restraining order issued by the court of
20 another state, tribe, or territory and the peace officer has probable
21 cause to believe that the person against whom the order is issued
22 has notice of the order and has committed an act in violation of
23 the order, the officer shall, consistent with subdivision (b) of
24 Section 13701, make a lawful arrest of the person without a warrant
25 and take that person into custody whether or not the violation
26 occurred in the presence of the arresting officer. The officer shall,
27 as soon as possible after the arrest, confirm with the appropriate
28 authorities or the Domestic Violence Protection Order Registry
29 maintained pursuant to Section 6380 of the Family Code that a
30 true copy of the protective order has been registered, unless the
31 victim provides the officer with a copy of the protective order.

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

39 (3) In situations where mutual protective orders have been issued
40 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~~ *dominant* 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~~ *dominant* aggressor involved in the incident. The ~~primary~~ *dominant* aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the ~~primary~~ *dominant* 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 suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable 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 probable 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.

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

- 1 (1) The officer has reasonable cause to believe that the person
- 2 to be arrested has committed the violation of Section 12025.
- 3 (2) The violation of Section 12025 occurred within an airport,
- 4 as defined in Section 21013 of the Public Utilities Code, in an area
- 5 to which access is controlled by the inspection of persons and
- 6 property.
- 7 (3) The peace officer makes the arrest as soon as reasonable
- 8 cause arises to believe that the person to be arrested has committed
- 9 the violation of Section 12025.