

**Table 1. States With Mandatory Arrest Provisions**

State	Mandatory Arrest for Crime	Circumstances	Coded Relationships (1)
Alaska	Alaska Stat. § 18.65.530(a)	Probable cause to believe that a crime of domestic violence was committed within past 12 hours.	A,B,C,D,E
Arizona	Ariz. Rev. Stat. Ann. § 13-3601(B)	Domestic violence involving infliction of physical injury or use/threatening use deadly weapon.	A, B, C, E
Colorado	Colo. Rev. Stat. § 18-6-803.6(1)	Probable cause to believe a crime of domestic violence was committed.	A, B, C
Connecticut	Conn. Gen. Stat. § 46b-38b(a)	Speedy information that family violence was committed in jurisdiction.	A, B, C, E
District Of Columbia	D.C. Code Ann. § 16-1031	Probable cause to believe that an intrafamily offense was committed that resulted in physical injury including pain or illness or caused or was intended to cause reasonable fear of imminent serious physical injury or death.	A, B, C, D, E
Iowa	Iowa Code § 236.12(2)	Probable cause to believe that domestic abuse assault committed that resulted in bodily injury, or was committed with intent to inflict serious injury, or with use or display of dangerous weapon.	A, B, C, E
Kansas	Kan. Stat. Ann. § 22-2307(b)(1)	Probable cause to believe a crime has been committed.	A,B, C, E
Louisiana	La. Rev. Stat. Ann. § 46:2140 ; Ch. C. Art. 1573(1)	Reason to believe family or household member has been abused and (1) probable cause exists to believe that aggravated/second degree battery was committed or (2) aggravated or simple assault or simple battery committed and reasonable belief in impending danger to abused.	A,B, E
Maine	Me. Rev. Stat. Ann. tit. 19-A, § 4012(5)	Probable cause to believe there has been a violation of title 17-A, section 208 (aggravated assault statute) between members of same family or household.	A, B, C, D, E
Mississippi	Miss. Code Ann. § 99-3-7(3)	Probable cause to believe that within 24 hours offender knowingly committed a misdemeanor act of domestic violence.	A, B, E
Missouri	Mo. Rev. Stat. § 455.085	Called to same address within 12 hours and probable cause to believe same offender has committed abuse or assault against same or other family/household member.	A, B, E
Nevada	Nev. Rev. Stat. Ann. § 171.137(1)	Probable cause to believe that within 24 hours battery was committed.	A, B, C, D, E
New Jersey	N.J. Stat. Ann. § 2C:25-21(a)	Probable cause to believe that domestic violence has occurred and either victim shows signs of injury or probable cause that a weapon was involved.	A, B, C, D, E
New York	N.Y. Crim. Proc. Law § 140.10(4)(a)	Probable cause to believe a felony has been committed against a member of the same family or household or, unless victim requests otherwise, a misdemeanor family offense committed.	A, C, E
Ohio	Ohio Rev. Code Ann. § 2935.032(A)(1)(a)(i)	Reasonable cause to believe that offender committed felonious assault.	A,B,C, E
Oregon	Or. Rev. Stat. § 133.055(2)(a)	Probable cause to believe that a felonious assault or an assault resulting in injury occurred or action has placed another to reasonably fear imminent serious bodily injury or death.	A, B, C, D, E
Rhode Island	R.I. Gen. Laws § 12-29-3(c)(1)	Probable cause to believe the following: felonious assault: assault resulting in injury: action was	A, B, C, D, E

State	Mandatory Arrest for Crime	Circumstances	Coded Relationships (1)
		injury or death.	
South Carolina	S.C. Code Ann. § 16-25-70(B)	If physical injury is present and probable cause to believe person is committing or has freshly committed a misdemeanor/felony assault or battery.	A, B, C, E
South Dakota	S.D. Codified Laws § 23A-3-2.1	Probable cause to believe that within previous 4 hours (2), there has been an aggravated assault, an assault resulting in bodily injury, or an attempt by physical menace to place in fear of imminent serious bodily injury.	A, B, C, E
Utah	Utah Code Ann. § 77-36-2.2(2)(a)	Probable cause to believe that an act of domestic violence was committed and there will be continued violence or evidence perpetrator has recently caused serious bodily injury or used a dangerous weapon.	A, B, C, E
Virginia	Va. Code Ann. § 19.2-81.3(B)	Probable cause to believe assault or battery on family or household member.	A, B, C, E
Washington	Wash. Rev. Code § 10.31.100(2)(c)	Probable cause to believe a person 16 years or older within the previous 4 hours assaulted a family or household member and believes (1) felonious assault occurred, or (2) assault resulting in bodily injury occurred whether injury is visible or not, or (3) any physical action occurred which was intended to cause reasonable fear of imminent serious bodily injury or death.	A, B, C, D, E
Wisconsin	Wis. Stat. § 968.075 (2)(a)	Reasonable cause to believe that offender committing or has committed domestic abuse and either evidence of physical injury or reasonable basis for believing continued abuse is likely.	A, B, E
<p>(1) Coded Relationships: (A) current/former spouse, (B) current/former cohabitant, (C) child in common, (D) Dating relationship, (E) related by marriage or blood</p> <p>(2) Amended in 2001 to 24 hour</p>			

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**Location:**

DOMESTIC VIOLENCE;



December 11, 2009

2009-R-0460

**DOMESTIC VIOLENCE PRIMARY AGGRESSOR LAWS**

By: Soncia Coleman, Associate Legislative Attorney

You asked whether Connecticut and neighboring states have “primary aggressor” laws.

**SUMMARY**

Like Connecticut, New Jersey, New York, and Rhode Island all have mandatory arrest laws. Mandatory arrest laws remove police discretion and require arrests in all cases where officers have probable cause to believe that an act of domestic violence has occurred. These states, with the exception of Connecticut, have “primary aggressor” laws. Such laws require officers to attempt to identify the “primary aggressor” when considering the arrest of both parties in a domestic violence situation. (Massachusetts' law does not have a mandatory arrest or primary aggressor provision.)

According to the U.S. Department of Justice's (U.S. DOJ) National Institute of Justice, dual arrests (i.e., the arrest of both parties) in domestic violence situations are more prevalent in states with mandatory arrest laws. However, states with laws or policies that encourage or require the arrest of the “primary aggressor” had a dual arrest rate that was a quarter of the rate in states without such laws or policies. For instance, a 2007 report submitted to the U.S. DOJ that examined dual arrest data from 2000 pointed out that Connecticut, which was the only mandatory arrest state without a primary aggressor law at the time, also had the highest dual arrest rate. (The report can be found at <http://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>.) In 2004, the legislature's Judiciary Committee raised a bill that would have required police officer's to consider additional factors in the dual arrest context. However, most of the provisions were not adopted.

**CONNECTICUT**

In 2004, the legislature's Judiciary Committee raised House Bill 5293, which would have required an officer, in determining whether to make an arrest of more than one of the opposing parties, to consider:

1. the officer's responsibility to protect victims of family violence,

- 2. the degree of any injuries inflicted on the parties,
- 3. the extent to which the parties have been placed in fear of physical injury to themselves or to other family or household members, and
- 4. any history of family violence and potential for future family violence between such parties that can reasonably be ascertained by the officer.

Additionally, the bill prohibited an officer from arresting a person if the officer believed that the party was acting in lawful self defense or in lawful defense of a third person.

During the public hearing on the bill, the Connecticut Coalition Against Domestic Violence testified that the bill addressed the increased arrests of victims of domestic assault that developed as a result of Connecticut's Family Violence and Response Act, the mandatory arrest law, adopted in 1986. It testified that Connecticut's dual arrest rate was significantly higher than the rate in states with comparable statistical measures of domestic violence arrests. However, others, such as the Connecticut Judicial Department, testified that the bill's requirements would be extremely difficult to implement and could result in an inconsistent application of the law. Ultimately, those provisions were stripped from the bill before it was voted out of committee and only the self-defense provision became law.

**OTHER STATES**

Table 1 describes the primary aggressor laws in neighboring states.

**Table 1: Primary Aggressor Statutes**

	<i>Primary Aggressor Statutes</i>
New Jersey	In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider (1) the comparative extent of the injuries; (2) the history of domestic violence between the parties, if any; and (3) any other relevant factors. No victim can be denied relief, arrested, charged with an offense because the victim used reasonable force in self defense against domestic violence by an attacker (N.J. Stat. § 2C: 25-21(c)).
New York	When an officer has reasonable cause to believe that more than one family or household member has committed an act of domestic violence, the officer is not required to arrest each person. In these circumstances, the officer must try to identify and arrest the primary physical aggressor after considering: (1) the comparative extent of any injuries inflicted by and between the parties, (2) whether any person is threatening or has threatened future harm against another party or another family or household member, (3) whether any person has a prior history of domestic violence that the officer can reasonably ascertain, and (4) whether any person acted defensively to protect himself or herself from injury. The officer must evaluate

	<p>each complaint separately to determine who is the primary physical aggressor.</p> <p>Nothing in the statute requires the arrest of any person when the officer reasonably believes the person's conduct is justifiable under New York's self-defense law (Crim. Proc. Law § 140.10(4)).</p>
Rhode Island	<p>When an officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer must arrest the person whom the officer believes to be the primary physical aggressor (R.I. Gen. Laws § 12-29-3(c)(2)).</p>

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**NEW LANGUAGE APPEARS LIKE THIS***Stricken language appears like this*Remaining language appears like this

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**HB2561 - 431R - I Ver****Reference Title: domestic violence; primary aggressor****AN ACT****AMENDING SECTION 13-3601, ARIZONA REVISED STATUTES; RELATING TO FAMILY OFFENSES.**

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3601, Arizona Revised Statutes, is amended to read:

13-3601 . Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report; diversion

A. "Domestic violence" means any act which is a dangerous crime against children as defined in section 13-604.01 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2904, subsection A, paragraph 1, 2, 3 or 6 or section ~~13-3921~~ 13-2921 , 13-2923 or 13-3623, if the relationship between the victim and the defendant is one of marriage or former marriage or of persons of the opposite sex residing or having resided in the same household, if the victim and defendant or the defendant's spouse are related to each other by consanguinity or affinity to the second degree, if the victim and defendant have a child in common or if the victim or the defendant is pregnant by the other party.

B. A peace officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether *such* ~~THE~~ offense is a felony or a misdemeanor and whether *such* ~~THE~~ offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether *such* ~~THE~~ offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. *In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence.* An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection. **A LAW ENFORCEMENT OFFICER SHALL NOT THREATEN, SUGGEST OR OTHERWISE INDICATE THE POSSIBLE ARREST OF ALL OF THE PARTIES IN ORDER TO DISCOURAGE REQUESTS BY ANY PARTY FOR**

**LAW ENFORCEMENT INTERVENTION. IF A LAW ENFORCEMENT OFFICER RECEIVES COMPLAINTS OF DOMESTIC VIOLENCE FROM TWO OR MORE OPPOSING PERSONS, THE OFFICER SHALL EVALUATE EACH COMPLAINT SEPARATELY TO DETERMINE WHO WAS THE PRIMARY AGGRESSOR. IF THE OFFICER DETERMINES THAT ONE PERSON WAS THE PRIMARY PHYSICAL AGGRESSOR, THE OFFICER DOES NOT HAVE TO ARREST THE OTHER PERSON WHO IS BELIEVED TO HAVE COMMITTED AN ACT OF DOMESTIC VIOLENCE. IN DETERMINING IF A PERSON IS THE PRIMARY AGGRESSOR, THE OFFICER SHALL CONSIDER THE FOLLOWING:**

- 1. PRIOR COMPLAINTS OF DOMESTIC VIOLENCE.**
- 2. THE RELATIVE SEVERITY OF THE INJURIES INFLICTED ON EACH PERSON.**
- 3. THE LIKELIHOOD OF FUTURE INJURY TO EACH PERSON.**
- 4. WHETHER ONE OF THE PERSONS ACTED IN SELF-DEFENSE.**

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not

be set aside for failure to comply with this subsection.

I. A person arrested pursuant to subsection B of this section may be released from custody in accordance with the rules of criminal procedure or other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of such victim including:

1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. An offense included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified.

M. If the defendant is found guilty of an offense included in domestic violence and if probation is otherwise available for such offense, the court may, without entering a judgment of guilt and with the concurrence of the prosecutor and consent of the defendant, defer further proceedings and place the defendant on probation as provided in this subsection. The terms and conditions of probation shall include those necessary to provide for the protection of the alleged victim and other specifically designated persons and additional conditions and requirements which the court deems appropriate, including imposition of a fine, incarceration of the defendant in a county jail, payment of restitution and any counseling or diversionary programs available to the defendant. On violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided for revocation of probation. On fulfillment of the terms and conditions of probation, the court shall discharge the defendant and dismiss the proceedings against the defendant. This subsection does not apply in any case in which the defendant has previously been found guilty under this section, or in which charges under this section have previously been dismissed in accordance with this subsection.

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