

Identifying the Dominant Aggressor in Domestic Violence Cases

In identifying the dominant aggressor in a domestic violence case, 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 acted in self defense.

Officers shall not consider the following factors when deciding whether or not to arrest:

- (a) Marital status of suspect and victim;
- (b) Whether or not the suspect lives on the premises with the victim;
- (c) Existence or lack of temporary restraining order;
- (d) Potential financial consequences of arrest;
- (e) Complainant's history or prior complaints;
- (f) Verbal assurances that violence will cease;
- (g) Complainant's emotional state;
- (h) Nonvisible injuries;
- (i) Location of the incident (public/private);
- (j) Victim does not want to prosecute or make private person's arrest;
- (k) Speculation that complainant may not follow through with the prosecution; and
- (l) The case may not result in a conviction.

In accordance with state law, a **felony** arrest should be made when there is probable cause to believe a felony has occurred.

In accordance with state law, a **misdemeanor** arrest should generally be made when there is probable cause to believe a misdemeanor, including violations of court orders, has occurred.

(a) Police officers may make an arrest without a warrant for a misdemeanor assault or battery not committed in their presence when it is committed upon:

1. A current or former spouse;
2. A current or former cohabitant (Family Code § 6209 definition);
3. A fiancé or fiancée;
4. A person with whom the suspect currently is having or has previously had an engagement or dating relationship;
5. A person with whom the suspect has parented a child;
6. A child of the suspect or a child of one of the above listed categories; or
7. Any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship.

(b) Both of the following conditions must be present in order to make an arrest in this situation pursuant to Penal Code § 836(d):

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; and
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.