

Assembly Bill No. 2826

CHAPTER 534

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

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2826, 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.

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.



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 probable 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 probable 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 violence 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable 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 shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 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) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.



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

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

SEC. 2. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

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

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

(c) “Officer” means any officer or employee of a local police department or sheriff’s office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) “Victim” means a person who is a victim of domestic violence.

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

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts



that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

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