**BACKGROUND**

The current domestic abuse arrest law [ss. 939.621 and 968.075, Stats.] was created by 1987 Wisconsin Act 346. Legislation was introduced in the 1989 Legislative Session in response to suggestions for improving the administration and operation of the law. This legislation (1989 Assembly Bill 249) was enacted as 1989 Wisconsin Act 293, effective May 8, 1990. Minor changes in the law have been enacted since that time.

An example of the type of facts and statistics that prompted passage of the original law are the following statistics from a 1986 document relating to domestic abuse:

- Each year an estimated **200,000** Wisconsin women are battered.

- Nationally, **30%** of female homicide victims are killed by family members or boyfriends.

- Nationally, **70%** of all emergency room assault cases are wife beatings; **20%** of all emergency room visits by women are attributed to domestic abuse.

- Nationally, **75%** of metropolitan police time is expended to respond to domestic abuse incidents; rural police and sheriff’s departments estimate that more than **35%** of their time is devoted to responding to such incidents (from “Choices for Battered Women in Wisconsin: The Next Five Years,” prepared by the Governor’s Council on Domestic Abuse, Wisconsin Coalition Against Woman Abuse and the Office for Children, Youth and Families (June 1986)).

The domestic abuse arrest law requires arrest for domestic abuse under certain circumstances and requires law enforcement agencies to develop pro-arrest policies for other domestic abuse incidents. Representative Shirley Krug (D-Milwaukee), the author of the legislation creating, and certain legislation revising, the domestic abuse arrest law, noted in committee testimony that:

> “A great deal of recent evidence points to **arrest** as being the course of action most likely to **reduce repeat (domestic abuse) offenses** . . .

Don’t the police **always** arrest people suspected of violent assaults? The answer is that, sadly, they don’t, especially when the assault takes place in the home/family setting. A **man’s home is his castle** has been the rule of tradition. In many places, this tradition takes precedence when a law enforcement officer is deciding whether or not to arrest the perpetrator of a violent assault.
The traditional alternatives to arrest, counseling the parties or separating them temporarily have been shown to be far less effective in reducing repeat assaults. The argument that arresting an abuser increases the chance that violent retribution will be directed at the victim is simply not supported by the evidence.” (Emphasis added.)

In addition to ss. 939.621 and 968.075, Stats., other statutes are directed at controlling domestic abuse:

1. Section 46.95, Stats., provides for the distribution of grants to nonprofit corporations or public agencies providing, or proposing to provide, domestic abuse services (e.g., shelter facilities, advocacy and counseling or a 24-hour telephone service).

2. Section 165.85 (4) (b), Stats., requires that law enforcement officer recruits receive “an adequate amount of training” (emphasis added) in dealing with domestic abuse incidents.

3. Section 813.12, Stats., provides for domestic abuse restraining orders and injunctions. (See Appendix A.)

4. Section 940.19, Stats., sets forth the criminal penalties for various degrees of battery.

5. Section 971.37, Stats., permits a district attorney to enter into a deferred prosecution agreement with a domestic abuse violator.

**THE DOMESTIC ABUSE ARREST LAW**

**LEGISLATIVE INTENT AND PURPOSE**

1987 Wisconsin Act 346 contains the following statement of legislative intent and purpose:

1. The Legislature finds that societal attitudes have been reflected in policies and practices of law enforcement agencies, prosecutors and courts. Under these policies and practices, the treatment of a crime may vary widely depending on the relationship between the criminal offender and the victim of the crime. Only recently has public perception of the serious consequences of domestic violence to society and to individual victims led to the recognition of the necessity for early intervention by the criminal justice system.

2. The Legislature intends, by passage of [Act 346], that:

   (a) The official response to cases of domestic violence stress the enforcement of the laws, protect the victim and communicate the attitude that violent behavior is neither excused nor tolerated.

   (b) Criminal laws be enforced without regard to the relationship of the persons involved.

   (c) District attorneys document the extent of domestic violence incidents requiring the intervention of law enforcement agencies.

   (d) Law enforcement agencies be encouraged to provide adequate training to officers handling domestic violence incidents.

3. The purpose of [Act 346] is to recognize domestic violence as involving serious criminal
offenses and to provide increased protection for the victims of domestic violence.
(Emphasis added.)

**DEFINITION OF DOMESTIC ABUSE**

As defined under the domestic abuse arrest law, “domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3), Stats., relating to first-, second- and third-degree sexual assault. These provisions are contained in Appendix B.
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under item 1., 2. or 3., above. [s. 968.075 (1) (a), Stats.]

With reference to who is covered by the law, in 79 OAG 109 (1990), the Attorney General opined that the domestic abuse arrest law applies to roommates living in university residence halls, whether privately or state-owned.

**CIRCUMSTANCES REQUIRING ARREST FOR DOMESTIC ABUSE**

Under the domestic abuse arrest law, a law enforcement officer must arrest and take a person into custody if:

1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person’s actions constitute the commission of a crime; and

2. Either or both of the following circumstances are present:
   
   (a) The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
   
   (b) There is evidence of physical injury to the alleged victim. [Emphasis added; s. 968.075 (2) (a), Stats.]

If the officer’s reasonable grounds for belief that domestic abuse has been committed are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest under the domestic abuse arrest law only if the report is received, within 28 days after the incident is alleged to have occurred, by the officer or the law enforcement agency that employs the officer. [s. 968.075 (2) (b), Stats.]

**LAW ENFORCEMENT POLICIES**

Under the domestic abuse arrest law, each law enforcement agency is required to develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. The policies must include, but not be limited to, statements emphasizing that:

1. In most circumstances, other than those in which arrest is required, a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe: (a) that the person is committing or has committed domestic abuse; and (b) that the person’s actions constitute the commission of a crime.

2. When the officer has reasonable grounds to believe that spouses, former spouses or other persons who reside together or formerly resided together are committing or have committed domestic abuse against each other, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be the “primary physical aggressor.” In determining who is the primary physical aggressor, an officer
should consider: (a) the intent of the law to protect victims of domestic violence; (b) the relative degree of injury or fear inflicted on the persons involved; and (c) any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer.

3. A law enforcement officer’s decision as to whether or not to arrest may **not** be based: (a) on the consent of the victim to any subsequent prosecution; or (b) on the relationship of the persons involved in the incident.

4. A law enforcement officer’s decision not to arrest may **not** be based solely upon the absence of visible indications of injury or impairment (e.g., cuts, bruises or broken bones). [s. 968.075 (3) (a) 1., Stats.]

The policies must also include:

1. A procedure for the written report and referral required where no arrest is made (see below).

2. A procedure for notifying the alleged victim of the domestic incident of the “no contact” and waiver provisions described below.

3. A procedure for notifying the alleged victim of the domestic abuse incident of the procedure for releasing the arrested person and the likelihood and probable time of the arrested person’s release.

   [s. 968.075 (3) (a) 2. and 3., Stats.]

In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents. [s. 968.075 (3) (b), Stats.]

The domestic abuse arrest law specifies that these policy provisions do not limit the authority of a law enforcement agency to establish policies that require arrests under more circumstances than the statutorily prescribed circumstances described in Section C., above. [s. 968.075 (3) (c), Stats.]

**REPORT REQUIRED WHERE NO ARREST**

The domestic abuse arrest law requires a law enforcement officer, who does not make an arrest in a domestic abuse incident, to prepare a written report stating why the person was not arrested. A report is required only in cases where the officer has reasonable grounds to believe that: (1) a person is committing or has committed domestic abuse; and (2) the person’s acts constitute the commission of a crime.

The report must be sent to the district attorney’s office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney must review the report to determine whether the person involved in the incident should be charged with the commission of a crime. [s. 968.075 (4), Stats.]

**CONTACT PROHIBITION; WAIVER**

**“No Contact” Requirement; Penalty**

Under the domestic abuse arrest law, unless there is a waiver by the alleged victim (see below), during the **72 hours immediately following** an arrest for a domestic abuse incident, the arrested person is required to:

1. Avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim; and

2. Avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.

   [s. 968.075 (5) (a) 1., Stats.]

A law enforcement officer is **required** to arrest and take a person into custody, if the officer has
reasonable grounds to believe that the person has violated the “no contact” requirements. An arrested person who intentionally violates this “no contact” provision is required to forfeit not more than $1,000. [s. 968.075 (5) (a) 2., Stats.]

**Waiver**

At any time during the 72-hour period, the alleged victim may sign a written waiver of the “no contact” requirements. The law enforcement agency must make waiver forms available. [s. 968.075 (5) (c), Stats.]

**Notice Requirements**

**Notice to Arrested Person if There is No Waiver**

Unless there is a waiver, a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 72 hours after the arrest must inform the arrested person orally and in writing of:

1. The “no contact” provision requirements;

2. The consequences of violating the requirements; and

3. The possibility of an increased penalty for domestic abuse crimes committed during the 72 hours after arrest. (See below.)

The arrested person must sign an acknowledgement on the written notice that he or she has received the notice of, and understands the “no contact” requirements, the consequences of violating the requirements and the increased penalty provisions. If the arrested person refuses to sign an acknowledgement on the notice, he or she may not be released from custody.

Failure to give this notice to an arrested person who is lawfully released from custody bars prosecution for violation of the “no contact” requirements. (See above.) However, failure to give the notice to the arrested person does not prevent application of the increased penalty provisions to domestic abuse crimes committed by the person within 72 hours after his or her arrest. [s. 968.075 (5) (b) 1. and 3., Stats.]

**Notice to Arrested Person if There is a Waiver**

If there is a waiver and the person is released, the law enforcement officer or other person who releases the arrested person must inform the arrested person orally and in writing of the waiver and the increased penalty provisions. (See below.) [s. 968.075 (5) (b) 2., Stats.]

**Notice to Alleged Victim**

The law enforcement agency responsible for the arrest of a person for a domestic abuse incident must notify the alleged victim of the “no contact” requirements and the possibility of, procedure for and effect of a waiver of these requirements. [s. 968.075 (5) (d), Stats.]

**CONDITIONAL RELEASE OF PERSON ARRESTED**

Under the domestic abuse arrest law, a person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. As part of the conditions of any such release that occurs during the 72 hours immediately following arrest, the person must be required to:

1. comply with the “no contact” provisions (see above); and
2. sign an acknowledgement that he or she has received notice of the “no contact” provisions and the increased penalty provisions. (See above.) These requirements do not apply if there is a written waiver of the “no contact” provisions.

The arrested person’s release must be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person. [s. 968.075 (6), Stats.]
**INCREASED PENALTY FOR CERTAIN DOMESTIC ABUSE OFFENSES**

The domestic abuse arrest law specifies that, if a person commits an act of domestic abuse and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than two years, if the crime is committed during the 72 hours immediately following an arrest for a domestic abuse incident. The 72-hour period applies whether or not there has been a waiver by the victim.

The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the arrest (i.e., the victim could be a spouse, former spouse, an adult with whom the person resides or formerly resided or against an adult with whom the person has created a child). For example, the increased penalty is applicable to a person who is arrested for abusing his or her spouse and then, within the 72-hour period following that arrest, abuses his or her parent who also resides with the person.

If the domestic abuse offense is a misdemeanor, the increased penalty changes the status of the offense from a misdemeanor to a felony. [s. 939.621, Stats.]

**LAW ENFORCEMENT OFFICER IMMUNITY**

Under the domestic abuse arrest law, a law enforcement officer is immune from civil or criminal liability arising out of a decision by the officer to arrest or not arrest an alleged domestic abuse offender, if the officer’s decision is made in a good faith effort to comply with the law. [s. 968.075 (6m), Stats.]

**PROSECUTION POLICIES**

Under the domestic abuse arrest law, each district attorney’s office is required to develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies must include, but not be limited to, the following:

1. A policy indicating that a prosecutor’s decision not to prosecute a domestic abuse incident should not be based:
   
   (a) Solely upon the absence of visible indications of injury or impairment;
   
   (b) Upon the victim’s consent to any subsequent prosecution of the other person involved in the incident; or
   
   (c) Upon the relationship of the persons involved in the incident. [s. 968.075 (7) (a), Stats.]

2. A policy indicating that when any domestic abuse incident is reported to the district attorney’s office, including an officer’s report where no arrest is made (see above), a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than two weeks after the district attorney has received notice of the incident. [s. 968.075 (7) (b), Stats.]

**EDUCATION AND TRAINING**

The domestic abuse arrest law specifies that any education and training by a law enforcement agency on the handling of domestic abuse complaints must stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents are required, under the law, to cooperate in all aspects of the training. [s. 968.075 (8), Stats.]
ANNUAL REPORT BY DISTRICT ATTORNEY

Under the domestic abuse arrest law, each district attorney is required to submit an annual report to the Department of Justice listing the following:

1. The number of arrests for domestic abuse incidents in his or her county as compiled and furnished by the law enforcement agencies within the county.

2. The number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents.

The listing of the number of arrests, prosecutions and convictions must include categories by statutory reference to the offense involved and include totals for all categories. [s. 968.075 (9), Stats.]

[This Legal Memorandum replaces Information Memorandum 90-16, Law on Arrest and Prosecution in Domestic Abuse Incidents, as affected by 1989 Wisconsin Act 293, dated June 11, 1990. All citations in this Legal Memorandum are to the Wisconsin statutes as affected by the Laws of 1999-2000.]

This Legal Memorandum was prepared on July 21, 2000, by Don Salm, Senior Staff Attorney, Legislative Council Staff.
Appendix A

Statutes Relating to Domestic Abuse Restraining Orders and Injunctions
and Increased Penalty for Certain Domestic Abuse Offenses

813.12 Domestic abuse restraining orders and injunctions. (1) DEFINITIONS. In this section:

(a) “Domestic abuse” means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult against his or her adult former spouse or by an adult against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A threat to engage in the conduct under subd. 1., 2. or 3.

(b) “Family member” means a spouse, a parent, a child or a person related by blood or adoption to another person.

(c) “Household member” means a person currently or formerly residing in a place of abode with another person.

(d) “Tribal court” means a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin.

(e) “Tribal order or injunction” means a temporary restraining order or injunction issued by a tribal court under a tribal domestic abuse ordinance adopted in conformity with this section.

(2) COMMENCEMENT OF ACTION AND RESPONSE. (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (5) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or family court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the petitioner may serve the respondent by publication of the petition as a class 1 notice, under ch. 985, and by mailing if the respondent’s post-office address is known or can with due diligence be ascertained. The mailing may be omitted if the post-office address cannot be ascertained with due diligence.

(b) A petition may be filed in conjunction with an action affecting the family commenced under ch. 767, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition or the issuance of a temporary restraining order or an injunction. A judge or family court commissioner may not make findings or issue orders under s. 767.23 or 767.24 while granting
relief requested only under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(2m) TWO-PART PROCEDURE. Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or family court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner’s residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party’s attorney to contact the petitioner unless the petitioner consents in writing, or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner submits to the judge or family court commissioner a petition alleging the elements set forth under sub. (5) (a).

2. The judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner. In determining whether to issue a temporary restraining order, the judge or family court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or family court commissioner may grant only the remedies requested or approved by the petitioner.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner’s residence under par. (a) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. A judge or family court commissioner shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.
(d) The judge or court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk of circuit court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

(4) INJUNCTION. (a) A judge or family court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner’s residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party’s attorney to contact the petitioner unless the petitioner consents to that contact in writing, or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner. In determining whether to issue an injunction, the judge or family court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or family court commissioner may grant only the remedies requested by the petitioner.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner’s residence under par. (a) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The judge or family court commissioner may enter an injunction only against the respondent named in the petition. No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge or family court commissioner may not modify an order restraining the respondent based solely on the request of the respondent.

(c) 1. An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but not more than 2 years. An injunction granted under this subsection is not voided by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

2. When an injunction granted for less than 2 years expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 2 years after the date the court first entered the injunction.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. The petitioner shall notify the respondent after the court extends an injunction under subd. 2.
**NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) An injunction issued under sub. (4) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or family court commissioner. The judge or court commissioner shall approve the person designated by the respondent unless the judge or court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or family court commissioner, the judge or family court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or family court commissioner determines all of the following:

1. That the injunction issued under sub. (4) has been vacated or has expired and not been extended.
2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or family court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court’s satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

(5) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner is the alleged victim.

2. The name of the respondent and that the respondent is an adult.

3. That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(am) The petition shall request that the respondent be restrained from committing acts of domestic abuse against the petitioner, that the respondent be ordered to avoid the petitioner’s residence, or that the respondent be ordered to avoid contacting the petitioner or causing any person other than the respondent’s attorney to contact the petitioner unless the petitioner consents to the contact in writing, or any combination of these requests.

(b) The clerk of circuit court shall provide the simplified forms provided under s. 46.95 (3) (c) to help a person file a petition.

(c) A judge or family court commissioner shall accept any legible petition for a temporary restraining order or injunction.

(6) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner the court or family court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner’s expense, use a private process server to serve papers on the respondent.

(am) 1. If an injunction is issued or extended under sub. (4) or if a tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35 (2g) (c).
3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner’s premises.

(c) No later than 24 hours after receiving the information under par. (b), the sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system. The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(7) ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state.

(7m) TRANSCRIPTS. The judge or family court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

(8) PENALTY. (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

(9) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

939.621 Increased penalty for certain domestic abuse offenses. If a person commits an act of domestic abuse, as defined in s. 968.075 (1) (a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than 2 years if the crime is committed during the 72 hours immediately following an arrest for a domestic abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the domestic abuse crime does not have to be the same as the
victim of the domestic abuse incident that resulted in the arrest. The penalty increase under this section changes the status of a misdemeanor to a felony.
Appendix B

Statutes Relating to Sexual Assault

940.225 Sexual assault. (1) First degree sexual assault. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person’s conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person’s conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) Third degree sexual assault. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. with a person without the consent of that person is guilty of a Class D felony.
FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

CONSENT. “Consent”, as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub. (2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

DEFINITIONS. In this section:

Inpatient facility” has the meaning designated in s. 51.01 (10).

“Intoxicant” means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. “Intoxicant” does not include any alcohol beverage.

“Patient” means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an emplyoe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an emplyoe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

“Resident” means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

“Sexual contact” means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant’s or defendant’s intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is
either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) “Sexual intercourse” includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required.

(d) “State treatment facility” has the meaning designated in s. 51.01 (15).

(6) Marriage not a bar to prosecution. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) Death of victim. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.