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The University of the Pacific, McGeorge School of Law

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## Domestic Relations; mandatory arrest—victim information requirements

NEV. REV. STAT. § 171.— (new); § 171.137 (amended).

AB 69 (Williams); 1989 STAT. Ch. 21

AB 70 (Williams); 1989 STAT. Ch. 35

Existing law requires peace officers<sup>1</sup> to arrest persons who commit battery<sup>2</sup> in a domestic situation even if the officers have no warrant.<sup>3</sup> Chapter 21 allows a peace officer to deviate from the mandatory arrest policy in cases of mutual battery.<sup>4</sup> An officer who believes that a mutual battery has occurred must attempt to identify the primary physical aggressor and needs to arrest only that person.<sup>5</sup>

Existing law requires peace officers to submit a written report of all alleged batteries.<sup>6</sup> Under Chapter 21, if an arrest was made after

1. See NEV. REV. STAT. § 169.125 (1987) (definition of peace officer).

2. See *id.* § 200.400 (1987) (definition of battery).

3. *Id.* § 171.137 1 (1987) (amended by 1989 Nev. Stat. ch. 21, sec. 1, at \_\_\_). The peace officer must arrest the suspected perpetrator of the battery if the officer has probable cause to believe that the battery was committed in the preceding four hours. *Id.* The battery must have been committed against a spouse, former spouse, a blood relation, a person with whom the offender resides or resided, a person with whom the offender has a child in common, that person's minor child, or the offender's minor child. *Id.* The peace officer need not make an arrest if there are mitigating circumstances. *Id.*

4. 1989 Nev. Stat. ch. 21, sec. 2, at \_\_\_ (amending NEV. REV. STAT. § 171.137). The state of Washington has a similar statute requiring arrest of the primary physical aggressor only. See WASH. REV. CODE § 10.31.100 (1988).

5. 1989 Nev. Stat. ch. 21, sec. 2, at \_\_\_ (amending NEV. REV. STAT. § 171.137). When determining which person is the primary physical aggressor, the peace officer must consider each person's prior history of domestic violence, the relative severity of the injuries suffered by all persons, the potential for future injury, the possibility that one person committed battery in self-defense, and any other factors relevant to the decision. *Id.* Compare *id.* sec. 3, at \_\_\_ (amending NEV. REV. STAT. § 171.137) (peace officer must not consider the victim's or a witness's willingness to testify as relevant to the decision of whom to arrest) with WASH. REV. CODE § 10.31.100 2(b) (1988) (requires the officer to consider the legislative intent to protect victims of domestic violence, the comparative severity of injuries, and the history of domestic violence between the persons concerned). Unwarranted dual arrests have occurred in jurisdictions with mandatory arrest policies. See Note, *Mandatory Arrest for Domestic Violence*, 11 HARV. WOMEN'S L.J. 213, 225 (1988). The frequency of unwarranted dual arrests in Washington after implementation of that state's mandatory arrest policy was attributed to the police fear of losing discretionary powers and resentment at being excluded from the drafting of the statute. Crane, *Washington's Domestic Violence Prevention Act: Mandatory Arrest Two Years Later*, 8 WOMEN'S ADVOC. 1, 4 (Newsletter of the National Center on Women and Family Law, 1987) cited in Note, *Mandatory Arrest for Domestic Violence*, 11 HARV. WOMEN'S L.J. 213, 225 (1988).

6. NEV. REV. STAT. § 171.137 2 (1987) (amended by 1989 Nev. Stat. ch. 21, sec. 4, at \_\_\_). The peace officer must explain any mitigating circumstances that caused him not to make an arrest. *Id.* The peace officer submits the report to a supervisor or to a person that the officer's employer designates and sends a copy to the Department of Motor Vehicles and Public Safety, which compiles statistics from the reports. *Id.*

a mutual battery, the report must explain how the officer determined that the arrested person was the primary physical aggressor.<sup>7</sup>

Chapter 35 requires peace officers to attempt to explain the mandatory arrest policy and its exceptions to victims of domestic violence<sup>8</sup> and to provide the victims with information about shelters and other community services.<sup>9</sup> In addition, the officer must give any suspected victim a written statement explaining the mandatory arrest policy and the victim's recourses if the officer was not able to make an arrest.<sup>10</sup> The statement must also explain orders for protection,<sup>11</sup> how to obtain them,<sup>12</sup> and the types of protection they afford.<sup>13</sup>

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7. 1989 Nev. Stat. ch. 21, sec. 4, at \_\_\_ (amending NEV. REV. STAT. § 171.137).

8. *Compare* 1989 Nev. Stat. ch. 35, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 171.\_\_\_\_) (acts of domestic violence include: battery, assault, sexual assault, false imprisonment, unlawful or forcible entry, conduct intended to harass others, compelling others to perform acts that they have a right not to perform, or compelling them to refrain from performing acts that they have a right to perform, when the act is committed: against one to whom the offender is related by blood or marriage, with whom the offender is residing, with whom the offender has a child in common, against a minor child of that person, or against the offender's child) and NEV. REV. STAT. § 33.018 (1987) (defining acts of domestic violence in the same way as 1989 Nev. Stat. Chapter 35) with NEV. REV. STAT. § 217.400 (1987) (defining domestic violence as the causing or attempting to cause bodily injury to a family or household member or placing the member in fear of imminent physical harm by threat of force).

9. 1989 Nev. Stat. ch. 35, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 171.\_\_\_\_). Alaska and Oklahoma have similar statutes requiring peace officers to inform domestic violence victims of their rights and of the services available to them. *See* ALASKA STAT. § 18.65.520(a) (1986); OKLA. STAT. tit. 22, § 40.2 (1987).

10. 1989 Nev. Stat. ch. 35, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 171.\_\_\_\_). Officers must supply their names on the statement. *Id.* If the officer made no arrest, the victim has the right to request that the prosecutor file a criminal complaint against the perpetrator of the violence. *Id.* The officer is required to inform the victim about the procedure for filing a criminal complaint. *Id.* The statement informs the victim that the person against whom the complaint is filed can be jailed, fined, put on probation, or ordered to undergo counseling if convicted. *Id.* A peace officer who fails to explain the mandatory arrest policy and its exceptions or to provide a copy of the written statement is not liable for negligence, nor is the officer's employer. *Id.* The accused cannot use an officer's failure to carry out these provisions as a defense. *Id.*

11. *See* NEV. REV. STAT. §§ 33.017-.030 (1987) (explaining the types of orders and the requirements for issuance).

12. The statement tells the victim where to obtain forms for requesting an order for protection. 1989 Nev. Stat. ch. 35, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 171.\_\_\_\_).

13. *Id.* The statement informs the victim that an order for protection may require the accused to stop threatening or injuring the victim or the victim's children, to move out of their residence, to stay away from the victim's place of employment or from the children's school, or to avoid communicating with the victim or the children. *Id.* The statement also informs the victim that a future order for protection may award the victim custody of any minor children involved and require the accused to pay for child support, living accommodations, and court costs. *Id.* The statement says that a person who violates an order for protection may be arrested. *Id.* The statement provides victims with the telephone numbers of emergency assistance programs that can provide help when the courts are closed. *Id.*