

HOUSE BILL NO. 456

INTRODUCED BY PARKER, FACEY, FRANKLIN, MANGAN, NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT SUBSTITUTING THE TERM "PREDOMINANT AGGRESSOR" FOR THE TERM "PRIMARY AGGRESSOR" IN THAT PART OF THE PARTNER OR FAMILY MEMBER ARREST STATUTE THAT RELATES TO MUTUAL AGGRESSION; AND AMENDING SECTION 46-6-311, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant -- arrest of primary predominant aggressor. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the primary predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the primary predominant aggressor, the officer may arrest only the primary predominant aggressor. A determination of who the primary predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

- (i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;
- (ii) the relative severity of injuries received by each person;
- (iii) whether an act of or threat of violence was taken in self-defense;
- (iv) the relative sizes and apparent strength of each person;
- (v) the apparent fear or lack of fear between the partners or family members; and
- (vi) statements made by witnesses."

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