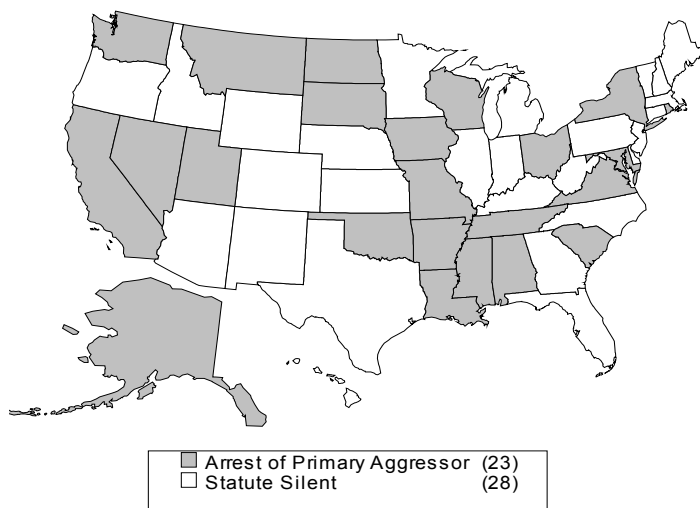


## Which States Require an Arrest of a Primary Aggressor at a Domestic Violence Incident?

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Currently, the following 23 states permit or require the arrest of a primary aggressor at a domestic violence incident: Alabama, Alaska, Arkansas, California, Iowa, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin.

Primary aggressor laws are an attempt at compromise. When the mandatory arrest laws were passed, an unintended consequence of

those laws included the arrest of both the perpetrator as well as the victim. Such arrests then had consequences in areas of domestic violence litigation, such as child custody and visitation. An arrest for domestic abuse is a factor that counts against the arrestee when awarding custody or visitation rights.

Thus, came the primary aggressor language determination, which can still also be problematic and can still end up with mutual arrests of the perpetrator and the victim. Key to making a primary aggressor

determination is training of law enforcement officers.

Generally speaking, the predominant aggressor means the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

Of the states with dominant aggressor laws, most supply law enforcement officers with a statutory test to give guidance in determining whether a person is the primary aggressor.

Before making such an arrest, the peace officer must consider the following types of factors: prior complaints of domestic violence; the relative severity of the injuries inflicted on each person; the likelihood of future injury to each person; whether one of the persons acted in self-defense or defense of others; evidence/statements from complainants and other witnesses; the future welfare of any minors who are present at the scene; the apparent fear or lack of fear between the partners or family members; and any other relevant factors.

Virginia is the only state that uses a totality of the circumstance test. Under that test, the law enforcement officer must arrest and take into custody the person he has probable cause to believe, based on the totality

of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than arrest.

For technical assistance on the issuance and enforcement of protection orders, please feel free to contact the Family Violence Department at 1-800-527-3223.

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