

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

706W0342

SENATE BILL NO. 82

Introduced by: Senators Tieszen, Brown, Buhl O'Donnell, Curd, Haverly, Novstrup (David), Peters, Sohlt, Solano, and Sutton and Representatives Bolin, Bartling, Gibson, Hawley, Hunhoff (Jean), Johns, Langer, Rozum, Schoenbeck, Soli, and Stevens

1 FOR AN ACT ENTITLED, An Act to update outdated language related to domestic abuse.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 23A-3-2.1 be amended to read as follows:

4 23A-3-2.1. Unless the provisions of § 22-18-5 apply, a law enforcement officer shall arrest
5 and take into custody, pending release on bail, personal recognizance, or court order, any person,
6 without a warrant, at any time that the opportunity presents itself, if the officer has probable
7 cause to believe that:

8 (1) An order has been issued under chapter 25-10 protecting the victim and the terms of
9 the order prohibiting acts or threats of abuse or excluding the person from a residence
10 have been violated; or

11 (2) An order has been issued under chapter 22-19A protecting the victim and the terms
12 of the order prohibiting acts of stalking or physical injury have been violated; or

13 (3) The person is eighteen years or older and within the preceding forty-eight hours has
14 assaulted:



- 1 ~~———— (a) That person's spouse;~~
- 2 ~~———— (b) That person's former spouse;~~
- 3 ~~———— (c) The mother or father of that person's child; or~~
- 4 ~~———— (d) Any person eighteen years of age or older with whom that person resides or~~
 5 ~~has formerly resided a person in a relationship as defined in § 25-10-3.1;~~
 6 and the officer believes;

- 7 ~~— (a) An that an aggravated assault has occurred;~~
- 8 ~~— (b) An an assault has occurred which has resulted in bodily injury to the victim, whether~~
 9 ~~the injury is observable by the responding officer or not; or~~
- 10 ~~— (c) An an attempt by physical menace has been made to put another in fear of imminent~~
 11 ~~serious bodily harm.~~

12 Section 2. That § 25-10-35 be amended to read as follows:

13 25-10-35. If the officer has probable cause to believe that ~~spouses, former spouses, or other~~
14 ~~persons who reside together or formerly resided together~~ persons in a relationship as defined in
15 § 25-10-3.1 have assaulted each other, the officer is not required to arrest both persons. The
16 officer shall arrest the person whom the officer believes to be the predominant physical
17 aggressor. In making this determination, the officer shall make every reasonable effort to
18 consider:

- 19 (1) The intent to protect victims of domestic abuse under this chapter;
- 20 (2) The comparative extent of injuries inflicted or serious threats creating fear of physical
 21 injury; and
- 22 (3) The history of domestic abuse between the persons involved.