

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-571)
109TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 910, L.D. 1133, Bill,
"AN ACT Concerning Abuse Between Family or Household Members."

Amend the Bill by striking out all of sections 1 and 2
and inserting in their place the following:

'Sec. 1. 17-A MRSA §15, sub-§1, ¶A, sub-¶(5-A) is enacted
to read:

(5-A) Assault, if the officer reasonably believes
that the person and the victim are members of the
same family or household, as defined in section 1331;

Sec. 2. 17-A MRSA c. 54-A is enacted to read:

CHAPTER 54-A

PROTECTIVE ORDER

§1331. Protective orders in crimes between family members

1. For purposes of this section, "members of the same
family or household" means spouses, individuals who were formerly
spouses, individuals living as spouses, individuals who were
formerly living as spouses or other adult household members
related by consanguinity or affinity. Holding oneself out to
be the husband or wife of the person with whom one is or was
living is not necessary to constitute "living as spouses."

2. When a criminal action is pending on a complaint charging
a person of violating sections 207, 208, 209, 210 or 506-A or a
person is convicted of violating those sections and that person
and the victim are members of the same family or household, then

the court may issue an order of protection, which may be a condition of release. This order may require that person:

- A. To stay away from the home, school, business or place of employment of the victim;
- B. Not to visit, or to visit only at certain times or under certain conditions, any child residing with the victim;
- C. To abstain from offensive contact against the victim; or
- D. To refrain from acts of commission or omission that tend to make the home not a proper place for the victim.

The court, with or without suspending execution of sentence, may also place that person on probation conditioned upon participation, to the satisfaction of the court, in a program of clinically appropriate treatment.

3. A copy of any order issued pursuant to subsection 2 shall be issued by the clerk of the court to the victim, the offender and the law enforcement agency with appropriate jurisdiction to enforce the order. No fee shall be charged for issuance of the required copies. Any subsequent amendment or revocation of that order shall be issued in the same manner.

4. Violation of any order issued pursuant to subsection 2 is a Class D crime.'

Further amend the Bill in section 5 in that part designated "761." in subsection 1 in the last line (same in L.D.) by striking out the underlined words "little disrupted" and inserting in their place the underlined word 'uninterrupted'

Further amend the Bill in section 5 in that part designated "§762." by striking out all of subsection 1 and inserting in its place the following:

'1. Abuse. "Abuse" means the occurrence of the following acts between family or household members:

A. Attempting to cause or recklessly causing bodily injury or offensive physical contact; or

B. Attempting to place or knowingly placing another in fear of imminent bodily injury.'

Further amend the Bill in section 5 in that part designated in subsection 2 "§762."/in the 2nd and 3rd lines (2nd line in L.D.) by striking out the underlined word "released" and inserting in its place the underlined word 'emancipated'

Further amend the Bill in section 5 in that part designated "762." in subsection 4 in the last 2 lines (last line in L.D.) by striking out the underlined words "as the term is used in this chapter"

Further amend the Bill in section 5 in that part designated "§762." by striking out all of subsection 5 and inserting in its place the following:

'5. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.'

Further amend the Bill in section 5 by striking out all of that part designated "§763." and inserting in its place the following:

'§763. Jurisdiction

1. Residence. Proceedings under this chapter shall be filed,

heard and determined in the ~~district~~/^{Court} or ~~superior~~ court of the district or county in which either the plaintiff or the defendant resides. If the plaintiff has left his residence to avoid abuse, he may bring an action in the county of his previous residence or of his new residence.

2. Self defense. The right to relief under this chapter shall not be affected by the plaintiffs use of force against the defendant as permitted under Title 17-A, section 108.'

Further amend the Bill in section 5 by striking out all of that part designated "§764." and inserting in its place the following:

'§764. Commencement of proceeding

1. Filing. Any adult who has been abused by a family or household member may seek relief by filing a sworn petition in an appropriate court alleging that abuse.

2. Assistance. The court shall provide forms and clerical assistance to assist either party in completing and filing of a petition or other necessary documents. This assistance shall not include legal advice or assistance in drafting legal documents.

3. Fees. No filing fee shall be charged for a petition. A plaintiff may apply for leave to proceed in forma pauperis.'

Further amend the Bill in section 5 by striking out all of that part designated "§765." and inserting in its place the following:

'§765. Hearings

1. Full hearing. Within 21 days of the filing of a petition, a hearing shall be held at which the plaintiff shall prove the allegation of abuse by a preponderance of the evidence.

2. Temporary orders. The court may enter any temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse, on good cause shown in an ex parte proceeding. Immediate and present danger of physical abuse to the plaintiff shall constitute good cause. Any order shall remain in effect pending a hearing pursuant to subsection 1.

3. Emergency relief. Emergency relief shall be available as follows.

A. When the court is closed and no other provision can be made for the shelter of an abused family or household member, a petition may be filed before an appropriate District/^{Court Judge}or Superior Court Judge. Upon a showing of good cause, as defined in subsection 2, the court may enter any temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse.

B. An order shall be immediately certified to the appropriate District/^{Court}or Superior Court. This certification to the court shall have the effect of commencing proceedings and invoking the other provisions of this chapter.

C. An order shall remain in effect pending a hearing pursuant to subsection 1.

4. Interim relief. The court, in an ex parte proceeding, may make an order concerning the care and custody of any minor children residing in the household and may enjoin the defendant from engaging in any of the following:

A. Imposing any restraint upon the person or liberty of the plaintiff;

B. Threatening, assaulting, molesting, harassing or otherwise disturbing the peace of the plaintiff;

C. Entering the family residence or the residence of the plaintiff; or

D. Taking, converting or damaging property in which the plaintiff may have a legal interest.

5. Dissolution or modification. Notwithstanding any statutory provision to the contrary, on 2-days' notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to an order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require. At that hearing, the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing in this section shall be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

6. Extension. If a hearing under subsection 1 is continued, the court may make or extend such temporary orders as it deems necessary.'

Further amend the Bill in section 5 by striking out all of that part designated "§766." and inserting in its place the following:

'§766. Relief

1. Protection order; consent agreement. The court, after a hearing, may grant any protective order or approve any consent agreement to bring about a cessation of abuse, which may include:

A. Directing the defendant to refrain from threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff and any minor children residing in the household;

B. When the mutual residence or household of the parties is jointly owned or jointly leased:

(1) Granting possession of the residence or household to one party with the exclusion of the other; and

(2) Restoring possession to one party;

C. When one party has a duty to support the other or their minor children living in the residence or household and that party is the sole owner or lessee:

(1) Granting possession of the residence or household to the dependent party with the exclusion of the other party by ordering his removal;

(2) Restoring possession to the dependent party; or

(3) By consent agreement, allowing/^{the}supporting party to provide suitable, alternate housing;

D. Ordering a division of the personal property and the household goods and furnishings of the parties and placing any protective orders deemed appropriate by the court;

E. Either awarding temporary custody of minor children or establishing temporary visitation rights with regard to minor children where the visitation is deemed to be in the best interests of the child, or both;

F. Requiring either or both parties to receive counseling from a social worker, family service agency, mental health

center, psychiatrist or any other guidance service that the court deems appropriate;

G. Ordering the payment of temporary support for the dependent party or any child in his custody, or both, when there is a legal obligation to support that person;

H. Ordering the payment of temporary support payments to the State as provided under chapter 7;

I. Ordering payment of monetary compensation to the abused person for losses suffered as a direct result of the abuse. Compensatory losses shall be limited to: Loss of earnings or support, reasonable expenses incurred for personal injuries or property damage and reasonable moving expenses. Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded;

J. Ordering the defendant or, if the complaint is dismissed, the plaintiff, to pay court costs or reasonable attorney fees; or

K. Entering any other orders deemed necessary or appropriate in the discretion of the court.

2. Duration. Any protective order or approved consent agreement shall be for a fixed period not to exceed one year. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from abuse. Upon motion by either party, for sufficient cause, the court may modify the

order or agreement from time to time as circumstances require.

3. Consequences of violation. Any protective order or approved consent agreement shall indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement, as provided in section 769.

4. Title to property. No order or agreement shall affect title to any real property.

5. Bond prohibited. The court shall not require the execution of a bond by the plaintiff prior to issuance of any order of protection.'

Further amend the Bill in section 5 by striking out all of that part designated "§767." and inserting in its place the following:

'§767. Notification

A copy of any order or agreement shall be issued forthwith by the clerk of the appropriate court to the plaintiff, the defendant and the law enforcement agency with appropriate jurisdiction to enforce the order or agreement. No fee shall be charged for issuance of the required copies. Any subsequent amendment or revocation of the order or agreement shall be issued in the same manner.'

Further amend the Bill in section 5 by striking out all of that part designated "§768." and inserting in its place the following:

'§768. Procedure

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure.

2. Proceedings independent. All proceedings shall be independent of any proceeding for divorce, dissolution of marriage, legal separation or separate maintenance and shall be in addition to any other available civil or criminal remedies.'

Further amend the Bill in section 5 by striking out all of that part designated "§769." and inserting in its place the following:

'§769. Violation

1. Crime committed. Violation of a protective order or a court approved consent agreement, when the defendant has prior actual notice of the order or agreement, shall be a Class D crime, except when the only provision that is violated concerns relief authorized under section 766, subsection 1, paragraphs F to J. Violation of these paragraphs shall be treated as contempt and punished in accordance with law.

2. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for violation of an order may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer. The police officer may verify, if necessary, the existence of a protective order by telephone or radio communication with the appropriate law enforcement agency.'

Further amend the Bill in section 5 by striking out all of that part designated "§770." and inserting in its place the following:

§770. Law enforcement agency responsibilities

1. Reports. Each law enforcement agency shall report all incidents of abuse by adults of family or household members as required by the State Bureau of Identification under Title 25, section 1544.
2. Agency procedures. Law enforcement agencies shall establish procedures to ensure that dispatchers and officers at the scene of an alleged incident of abuse or violation of an order of protection can be informed of any recorded prior incident of abuse involving the abused party and can verify the effective dates and terms of any recorded order of protection.
3. Officer training. Law enforcement agencies shall provide officers employed by them with an education and training program designed to inform the officers of the problems of family and household abuse, procedures to deal with these problems, the provisions of this chapter and the services and facilities available to abused family and household members. The amount and degree of officer training, beyond the distribution of information, shall be determined by each local law enforcement agency.
4. Maine Criminal Code enforcement. A law enforcement officer at the scene of an alleged incident of abuse shall use the same standard of enforcing relevant Maine Criminal Code sections when the incident involves family or household members as when it involves strangers.

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation of a protective order or a court approved consent agreement or that a violation of Title 17-A, section 208, has occurred between members of the same family or household, he shall arrest and take into custody the alleged offender.

6. Officer responsibilities. Whenever a law enforcement officer has reason to believe that a family or household member has been abused, the officer shall immediately use all reasonable means to prevent further abuse, including:

A. Remaining on the scene as long as he reasonably believes there is a danger to the physical safety of that person without the presence of a law enforcement officer, including, but not limited to, staying in the dwelling unit;

B. Assisting that person in obtaining medical treatment necessitated by an assault, including driving the victim to the emergency room of the nearest hospital;

C. Giving that person immediate and adequate written notice of his rights, which shall include information summarizing the procedures and relief available to victims of the family or household abuse; or

D. Arresting the abusing party with or without a warrant pursuant to section 769 and Title 17-A, section 15. '

Further amend the Bill by inserting at the end before the Statement of Fact the following:

'Sec. 6. 25 MRSA §1544, as repealed and replaced by PL 1975, c. 763, §7, is amended by adding at the end a new paragraph to read:

The bureau shall establish a category for abuse by adults of family or household members which shall be supplementary to its other reported information. The bureau shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

Sec. 7. Sunset provision. This Act is repealed on June 30, 1982.'

Fiscal Note

It cannot be determined if this bill will have a financial impact.

Statement of Fact

The amendment clarifies the language of the bill and makes the following changes:

1. Provides that the court's assistance in preparation of documents shall be available to either party, but it shall not include legal advice or assistance;
2. Limits emergency court relief to only when no provision for shelter can be made;
3. Limits the damages that may be ordered to reasonable expense for injury or property damage and reasonable moving expenses; and
4. Simplifies the reporting procedures.