

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1133

H. P. 910

House of Representatives, March 9, 1979

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Morton of Farmington.

Cosponsors: Mrs. Mitchell of Vassalboro, Mrs. Sewall of Newcastle and Mr. Hobbins of Saco.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Concerning Abuse Between Family or Household Members.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17-A MRSA § 15, sub-§ .1, ¶ A, sub-¶ (3), as last repealed and replaced by PL 1977, c. 671, § 19, is repealed and the following enacted in its place:

(3) **Assault, if the officer reasonably believes that the person may cause injury to others unless immediately arrested or if the officer reasonably believes that the alleged perpetrator and the victim are members of the same family or household, as defined in section 18;**

Sec. 2. 17-A MRSA § 18 is enacted to read:

§ 18. Crimes between members of the same family or household

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" as the term is used herein.

2. Except to the extent specifically authorized elsewhere, the fact that the victim and the alleged perpetrator of any crime under this code are members of the same family or household shall in no way affect the responsibility of any law enforcement officer to arrest and prosecute the alleged perpetrator.

3. 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 issued pursuant to Title 19, chapter 14, or that a violation of section 208, has occurred between members of the same family or household, he shall arrest and take into custody the alleged offender.

4. When a criminal action is pending involving a complaint charging a violation of sections 207, 208, 209, 210 or 506-A and the alleged offender and victim are members of the same family or household, the court, in addition to any other powers conferred upon it, may issue a temporary order of protection as a condition of a pretrial release. In addition to any other conditions, this order may require the defendant:

A. To stay away from the home, school, business or place of employment of the family or household member;

B. Not to visit or to visit only at certain times or under certain conditions any child residing with the family or household member;

C. To abstain from offensive contact against the family or household member;
or

D. To refrain from acts of commission or omission that tend to make the home not a proper place for the family or household member.

5. Upon conviction of a violation of sections 207, 208, 209, 210 or 506-A, when the offender and victim are members of the same family or household, the court, in addition to any other disposition, may enter an order of protection. In addition to any other conditions, the order may require the defendant:

A. To stay away from the home, school, business or place of employment of the family or household member;

B. Not to visit or to visit only at certain times or under certain conditions any child residing with the family or household member;

C. To abstain from offensive contact against the family or household member;
or

D. To refrain from acts of commission or omission that tend to make the home not a proper place for the family or household member.

6. Notwithstanding any other section of this code and without limiting any other power of the court to grant or revoke probation, whenever an offender is convicted of, or pleads guilty to, a violation of sections 207, 208, 209, 210 or 506-A and the offender and victim are members of the same family or household, the

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

7. A copy of any order issued pursuant to subsections 4 or 5 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 as provided in this section.

8. Violation of any order issued pursuant to subsections 4 or 5 is a Class D crime.

Sec. 3. 19 MRSA § 214, first ¶, as amended by PL 1965, c. 19, § 6, is further amended by adding after the first sentence, the following new sentence:

The court shall not consider abandonment of the family residence as a factor in determining custodial rights when the abandoning party has been physically harmed or seriously threatened with physical harm by his spouse, when that harm or threat of harm by his spouse was causally related to the abandonment.

Sec. 4. 19 MRSA § 752, first ¶, as amended by PL 1975, c. 293, § 5, is further amended by adding after the first sentence the following new sentence:

The court shall not consider abandonment of the family residence as a factor in determining custodial rights when the abandoning party has been physically harmed or seriously threatened with physical harm by his spouse, when that harm or threat of harm by his spouse was causally related to the abandonment.

Sec. 5. 19 MRSA c. 14 is enacted to read:

CHAPTER 14

PROTECTION FROM ABUSE

§ 761. Purpose

The purposes of this chapter are:

1. **Protection.** To allow family and household members who are victims of domestic abuse to obtain effective, short-term protection against further abuse so that the lives of the nonabusing family or household members will be as secure and as little disrupted as possible;

2. **Prevention.** To expand the ability of law enforcement officers to effectively respond to situations of domestic abuse so as to prevent further incidents of abuse and to assist the victims of that abuse; and

3. **Data collection.** To provide for the collection of data concerning domestic abuse in an effort to develop a comprehensive analysis of the incidence and causes of that abuse.

§ 762. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

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

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

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

2. Adult. "Adult" means any person 18 years of age or older or any person under 18 years of age who is released from the legal control of his parents or guardian.

3. Court. "Court" means any district or superior court.

4. Family or household members. "Family or household members" 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" as the term is used in this chapter.

5. Law enforcement agency. "Law enforcement agency" includes the Maine State Police and any other agency within a county or municipality whose duty it is to maintain public order, to prosecute offenders or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

§ 763. Jurisdiction

1. Residence. Proceedings under this chapter shall be filed, heard and determined in the district or superior court of the county in which either the plaintiff or the defendant resides. If the plaintiff has left the residence or household to avoid abuse, he shall have the option to bring an action in the county of the previous residence or household or that of the new residence or household.

2. Self-defense. The plaintiff's right to relief under this chapter shall not be affected by his use of the physical force against the abusing party as he reasonably believes to be necessary to defend himself or another from further or imminent abuse. If the abused person was the initial aggressor, his right to relief under this chapter shall not be affected provided he withdrew from the encounter and effectively communicated that withdrawal to the abusing party and the latter persisted in continuing the incident.

§ 764. Commencement of proceeding

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

2. Assistance. The court shall provide forms and clerical assistance to help a plaintiff with the writing and filing of a petition under this chapter.

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

§ 765. Hearings

1. Full hearing. Within 14 days of the filing of a petition under this chapter, 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 such temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse, upon good cause shown in an ex parte proceeding. Immediate and present danger of physical abuse to the plaintiff shall constitute good cause for purposes of this section. Any order issued pursuant to this subsection shall remain in effect pending a hearing pursuant to subsection 1.

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

A. When the court is unavailable from the close of business at the end of a day or week until the resumption of business at the beginning of the next day or week, a petition may be filed before an appropriate District or Superior Court Judge. Upon a showing of good cause, as defined in subsection 2, the court may enter such temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse.

B. Any order issued pursuant to this subsection shall be immediately certified to the appropriate District or Superior Court. This certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter.

C. Any order issued pursuant to this subsection shall remain in effect pending a hearing pursuant to subsection 1.

4. Interim relief. The court, in an ex parte proceeding commenced pursuant to this section, 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 prescribe, a defendant who is subject to an order issued under subsections 2 or 3 may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing, the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing herein shall be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of any order issued under subsections 2 or 3.

6. Extension. If a hearing under subsection 1 is continued, the court may make or extend such temporary orders under subsections 2 or 3 as it deems necessary.

§ 766. Relief

1. Protection order; consent agreement. The court shall, upon full hearing, be empowered to grant any protective order or approve any consent agreement to bring about a cessation of abuse of the plaintiff, 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 to the plaintiff of the residence or household to the exclusion of the defendant;

(2) Restoring possession to the plaintiff; or

(3) Both;

C. When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee:

(1) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by ordering the removal of the defendant;

(2) Restoring possession to the plaintiff; or

(3) By consent agreement, allowing the defendant 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 defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody, or both when the defendant has a legal obligation to support that person;

H. Ordering the defendant to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, out-of-pocket losses for injuries sustained and 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;

I. Ordering the defendant to pay court costs or reasonable attorney fees, or both; or

J. 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 which time the court may extend any 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 under this chapter shall in any way 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 issued pursuant to this chapter.

§ 767. Notification

A copy of any order under this chapter 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 shall be issued in the same manner as provided in this section.

§ 768. Procedure

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

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

§ 769. Violation

1. Crime committed. Violation of a protective order or a court approved consent agreement granted pursuant to this chapter, 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 which 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 issued pursuant to this chapter 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.

§ 770. Law enforcement agency responsibilities

1. Records. Each law enforcement agency shall maintain separate records on all incidents of family or household abuse reported to it.

2. Content. The law enforcement agency records on family or household abuse maintained pursuant to this section shall be kept under the abused party's name and shall include the names and addresses of the abused and abusing parties, the sex of the parties, the relationship between the parties, the type and extent of abuse, the number and type of weapons involved, the time involved and the action taken in the law enforcement agency's response, whether any referrals to social service agencies were made, whether any civil or criminal action was instituted, the disposition of the action and the effective dates and terms of any order of protection issued to protect the abused party.

3. Summaries submitted. All records maintained pursuant to this section, except the names and addresses of the parties, shall be summarized quarterly by each law enforcement agency. The quarterly summaries shall be submitted to the State Bureau of Identification and shall, to the maximum extent feasible, be coordinated with the bureau's uniform crime reporting responsibilities.

4. Confidentiality. All records maintained pursuant to this section shall be confidential. Information shall not be made available to any individual or institution other than the following:

- A. A person designated as the abused or abusing party in the record or the guardian or legal representative of that party;
- B. A court or grand jury conducting abuse protection proceedings;

- C. A law enforcement officer facilitating the investigation of an incident of abuse; or
- D. Any person engaged in a bona fide research project, with the permission of the affected law enforcement agency, provided that no information identifying the parties to an abuse incident in any record shall be made available to the researcher.
5. Evidence. The existence of records made pursuant to this section shall not be evidence of any wrong doing.
6. Violation of confidentiality. Any person who permits or encourages the unauthorized dissemination of information contained in the records made pursuant to this section commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.
7. Immunity. Any person, official or institution participating in good faith in the keeping of records pursuant to this section shall have immunity from any liability, civil or criminal, that may result by reason of the provisions of this chapter. The person, official or institution shall have the same immunity with respect to participating in any judicial proceeding resulting from the records.
8. 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.
9. Officer training. All law enforcement agencies in the State 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 the information mentioned in this subsection, shall be determined by each local law enforcement agency.
10. Crisis teams. All municipal law enforcement agencies with 20 or more full-time officers shall establish domestic crisis teams trained in methods of dealing with family and household abuse. The teams may be supplemented by social workers, clergy or other persons trained in counseling or crisis intervention. When an alleged incident of family or household abuse is reported, the agency shall dispatch a crisis team, if available, to the scene of the incident.
11. 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.
12. 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 there is a danger to the physical safety of the 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 Title 17-A, section 15.**

13. No civil liability. Any act of commission or omission by any law enforcement officer rendering emergency care or assistance to a victim of abuse under this chapter, including, but not limited to, transportation to medical facilities, shall not impose civil liability upon the law enforcement officer or his supervisors or employer if the care or assistance is rendered in good faith, unless the act is a result of gross negligence or willful misconduct.

STATEMENT OF FACT

The purpose of this bill is to establish a procedure to deal with incidents of domestic violence.

Adult members of a family or household who are subjected to criminal assault or criminal threatening will be able under this bill to petition a District or Superior Court for a protective order to prevent further violence against the abused party. This protective order may cover various types of relief, including:

- 1. Directing the defendant to cease assaulting or threatening the abused party;
- 2. Excluding the abuser from the mutual residence or household of the parties;
- 3. Awarding child custody and establishing visitation rights;
- 4. Requiring counseling; or
- 5. Ordering support.

Protective orders of this type would be effective for a period of up to one year. Violation of such an order would be a Class D crime in all situations except those concerned solely with counseling or payment of support or compensation, violation of which would be treated as contempt of court.

This bill also provides for emergency relief and temporary orders to offer immediate protection to a victim of domestic violence pending the full hearing, which is required to be held within 14 days of filing a petition for a more permanent protective order.

This bill also makes amendments to the Maine Criminal Code. It authorizes courts hearing a criminal assault case, when the victim and the alleged offender are members of the same household, to issue protective orders during the pretrial release period or upon conviction. The potential for court-ordered counseling is clearly emphasized.

A limited mandatory arrest provision is included for situations where abuse takes the form of an aggravated assault, using a dangerous weapon or causing serious bodily injury.

Police departments would be required to maintain records on incidents of domestic violence and to submit confidential quarterly summaries through the Maine Bureau of Identification's Uniform Crime Report.

Police responsibility for equal enforcement of all applicable laws, as well as police duties at the scene of a violent domestic dispute, are outlined in the bill.

A limitation on potential civil liability for law officers is also included.