

# MAINE STATE LEGISLATURE

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# A GUIDE TO PROTECTION FROM ABUSE AND HARASSMENT ACTIONS



State of Maine Judicial Branch

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## I. GENERAL INFORMATION

The Protection Laws allow victims of domestic or dating abuse, sexual assault, stalking or harassment to obtain both short-term emergency protection and, after a hearing, if granted, long-term protection. These laws also allow individuals accused of abuse, sexual assault, stalking or harassment to defend themselves, and to ask the court to modify (change) or vacate (terminate) any order against them. This booklet is designed to help people involved in protection cases understand and use the court procedures involved in issuing, modifying, and terminating orders. This booklet does not discuss how these orders are enforced by plaintiffs or by law enforcement.

There are two types of protection cases — one covers abuse, sexual assault and stalking; the other covers harassment. Protection cases based on abuse, sexual assault and stalking differ in some important respects from protection cases based on harassment, although many procedures apply to both. Both cases involve lawsuits in court. Thus, these procedures should be used only when court intervention is necessary to protect a person or property from real harm. The laws for these cases can be found in the Maine Revised Statutes: Title 19-A, §§ 4001-4011 (Abuse); Title 5, §§ 4651-4660-A (Harassment); and Titles 17 and 17-A (Maine Criminal Code).

Section II of this booklet explains what "abuse," "sexual assault" or "stalking" are and what "harassment" is under these laws. It also explains how other terms are defined. Read this section carefully to see how your situation fits these definitions. Section III is written particularly for plaintiffs (those claiming to have been abused, sexually assaulted, stalked or harassed) and Section IV is written particularly for defendants (those who are accused of committing abuse, sexual assault, stalking or harassment).

All parties (plaintiffs and defendants) should be aware that anyone who signs a court paper is stating that to the best of the signer's knowledge, information and belief, the allegations or statements in the pleading are true. If a party knowingly makes a false statement in a court pleading or at a court hearing, he/she may be held liable for any court expenses, including attorney's fees, incurred by the other party. Moreover, it is a crime to make a false statement under oath in a court document (see 19-A M.R.S. § 4005(5), 17-A M.R.S. § 452).

## II. DEFINITIONS

*The following definitions apply to the Protection Laws and procedures described in this handbook.*

**Abuse:** The occurrence of the following acts between family or household members, or dating partners, or by a family or household member or dating partner upon a minor child of a family or household member, or dating partner:

A. Attempting to cause, or causing, bodily injury or offensive physical contact, including sexual assaults under Title 17-A M.R.S. §§ 251-261, except that contact as described in 17-A M.R.S. § 106(1) (reasonable disciplinary force by a parent, guardian, or foster parent) is excluded from this definition;

B. Attempting to place, or placing, another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior;

C. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain, or to abstain from conduct in which the person has a right to engage;

D. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by:

1. Removing that person from that person's residence, place of business or school;
2. Moving that person a substantial distance from the vicinity where that person was found; or
3. Confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved;

E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed; or

F. Repeatedly and without reasonable cause:

1. Following the plaintiff; or
2. Being at or in the vicinity of the plaintiff's home, school, business or place of employment.

**Adult:** A person who is 18 years of age or older, or a younger person who has been emancipated by a court (see definition of “emancipated minor” below).

**Dating Partners:** People currently or formerly involved in dating each other, whether or not they are or were sexual partners.

**Defendant:** The defendant is the person who is accused of abusing or harassing the plaintiff.

**Emancipated Minor.** A minor is "emancipated" if the minor has a court order of emancipation issued by a Maine District Court.

**Family or Household Members:** Family or household members means spouses or domestic partners, or former spouses or former domestic partners, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity, or minor children of a household member when the defendant is an adult household member, and individuals presently or formerly living together and individuals who are or were sexual partners.

**Harassment:**

A. Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property; or

B. A single act or course of conduct constituting a violation of:

- Title 5, section 4681(violations of constitutional rights);
- Title 17, section 2931(prohibiting/interfering with constitutional or civil rights); or
- Title 17-A, sections 201 (murder), 202 (felony murder), 203 (manslaughter), 204 (aiding or soliciting suicide), 207 (assault), 208 (aggravated assault), 209 (criminal threatening), 210 (terrorizing), 210-A (stalking), 211 (reckless conduct), 253 (gross sexual assault), 301 (kidnapping), 302 (criminal restraint), 303 (criminal restraint by parent), 506-A (harassment), 511 (violation of privacy), 556 (incest), 802 (arson), 805 (aggravated criminal mischief) or 806 (criminal mischief).

**Minor:** Any individual who has not yet attained the age of 18, unless emancipated.

**Parties:** The plaintiff and the defendant are the parties.

**Plaintiff:** The plaintiff is the person who is complaining about abuse; or the person or business complaining about harassment.

**Sexual Assault:** Sexual assault is defined, for the purposes of protection from

abuse cases, in chapter 11 of Title 17-A of the Maine Revised Statutes (Maine Criminal Code).

Generally speaking, sexual assault includes: the crime commonly referred to as rape (called "gross sexual assault" in Maine), statutory rape, unlawful sexual contact (touching of the genitals or anus where no permission is given or the person touched is under 14 years old or otherwise incapable of resisting), exposing one's genitals to a child, showing sexually explicit materials to a child with the intent of encouraging sexual contact, soliciting a child by computer, or unlawful sexual touching (touching the breasts, buttocks, groin or inner thigh where no permission is given or the person touched is under 14 years old or otherwise incapable of resisting). Sexual assault also includes prohibited contact with a minor by certain convicted sex offenders. For more specific details of these crimes - including the specific ages that the victims and perpetrators must be for it to qualify as a "sexual assault" - please review the Maine Criminal Code directly.

**Stalking:** Stalking is defined in Title 17-A, section 201-A of the Maine Revised Statutes (Maine Criminal Code).

Stalking must be based on two or more acts by a defendant involving (for example) following, monitoring, threatening, harassing, interfering with property, or communicating with or about a specific person. The defendant must want or know that these acts will cause the specific person to: (a) suffer serious inconvenience or emotional distress; (b) fear bodily injury or death to oneself or a close relation; (c) fear damage, destruction, or tampering of property; or (d) fear injury or death of an animal owned by or kept by the specific person.

### III. PROCEDURES APPLICABLE TO A PLAINTIFF

#### A. Who Can Sue.

1. In a case based on **abuse** by a family or household member or dating partner, or on **stalking** or **sexual assault**, as defined in this booklet, the following persons may sue:
  - An adult;
  - An adult on behalf of a minor child for whom that adult is responsible;
  - An emancipated minor; or
  - An incompetent person, represented by a guardian.
2. In a case based on **harassment**, as defined in this booklet, the following persons or entities may sue:
  - An adult;

- A minor, if represented by an adult;
- An emancipated minor;
- An incompetent person, represented by a legal guardian; or
- A business.

Before seeking a protection from harassment order, many plaintiffs must show that law enforcement has already issued a notice to the defendant to stop harassing you. (The law giving law enforcement the power to issue these notices is 17-A M.R.S. § 506-A.) To prove that this requirement is met, you must file a copy of the law enforcement notice with the protection from harassment complaint. Three exceptions exist. You are not required to file a copy of a law enforcement cease-harassment notice if:

1. The alleged harassment is related to an allegation of domestic violence, violence against a dating partner, sexual assault, or stalking;
2. You can show "good cause" for not seeking or obtaining such a notice from law enforcement; or
3. You are claiming that defendant "harassed" you by engaging in a single act or course of conduct that qualifies as a violation of one of the criminal statutes mentioned in the "harassment" definition above (these include: violation of constitutional rights, murder, felony murder, manslaughter, aiding or soliciting suicide, assault, aggravated assault, criminal threatening, terrorizing, stalking, reckless conduct, gross sexual assault, kidnapping, criminal restraint, criminal restraint by parent, harassment as defined in 17-A M.R.S. § 506-A, violation of privacy, incest, arson, aggravated criminal mischief, or criminal mischief).

## **B. Who Can be Sued.**

The following types of individuals may be defendants in an **abuse** or **harassment** case:

- An adult or emancipated minor;
- A minor, if represented by an adult parent or guardian; or
- An incompetent person, represented by a legal guardian.

### **1. Relationship Requirements: Protection from Abuse Cases**

To bring an **abuse** case, the defendant (who you are suing) must be related to you in one of the following ways:

- a) Sexual abuse or stalking: If the allegations include sexual assault or stalking, no relationship between the plaintiff and the defendant is

required.

- b) Elder/Dependent/Incapacitated Adult Victim: If the plaintiff (victim of "abuse") is 60 years of age or older, or a dependent adult, or an incapacitated adult, and the defendant is an extended family member, or unpaid care provider, then a complaint for protection from abuse can be filed by the adult victim, the legal guardian of the adult victim, or a representative of DHHS.
- o Extended family member includes, but is not limited to: a person who is related to the plaintiff by blood, marriage, or adoption, whether or not the person has ever resided with the plaintiff.
  - o Unpaid care provider includes, but is not limited to: a caretaker who voluntarily provides full, intermittent, or occasional personal care to the plaintiff in the plaintiff's home similar to the ways a family member would provide care.
- c) In all other cases, the plaintiff and the defendant must have one of the following relationships with each other:
- The plaintiff and the defendant are current or former spouses;
  - The plaintiff and the defendant are current or former sexual partners or dating partners;
  - The defendant is the biological father or mother of the plaintiff's child;
  - The plaintiff and the defendant live together now or have lived together in the past; or
  - The plaintiff is a minor child of any household member and the defendant is an adult household member.

## **2. Relationship Requirements: Protection from Harassment Cases**

To bring a **harassment** case, no special relationship between the plaintiff and the defendant is required.

### **C. Where to Sue.**

Go to the District Court where either you or the defendant lives or, in the event you have left your residence to avoid abuse, go to the District Court where your old or new residence is located.

### **D. Cost.**

There is no fee to file a case based on abuse, sexual assault, domestic or dating violence or stalking.

A fee applies if the case is based on harassment that does not involve stalking, sexual assault or domestic or dating violence. Please ask the clerk for the current fee amount. If you cannot afford the fee, you may ask the clerk for the motion to proceed without payment of fees form. There is no charge for forms or to get copies of papers that are filed in a protection case.

### **E. How to File the Complaint and Related Forms.**

There are two ways you can get the complaint, which starts a protection action. The first is to go to the clerk's office in the District Court, and ask the clerk for either a Complaint for Protection from Abuse (form PA-001) or a Complaint from Protection from Harassment (form PA-006). The clerk will provide you with the form, which you may fill out at the courthouse, the local Domestic Violence project, or anywhere else. The clerk can answer some questions about the form, but is not allowed to give legal advice.

The second way to access court forms is through the Internet. If you have a computer and Internet connection, go to one of these websites:

- [www.courts.maine.gov/fees\\_forms/forms/index.shtml#pa](http://www.courts.maine.gov/fees_forms/forms/index.shtml#pa)
- [www.ptla.org/court-forms](http://www.ptla.org/court-forms)

If you do not have a computer, go to a local library or other site with a public access computer and ask the librarian to help you get to the above web pages. The computer will ask you a series of questions, and will then generate a completed complaint and other necessary forms which you can print, sign (in front of a notary public or court clerk) and file with your local court.

You must also complete a Protection Order Service Information (form PA-005) that provides information that can be used to serve the defendant with any pleadings and orders. You should return the Protection Order Service Information (PA-005) together with the complaint to the clerk.

You may also be asked to complete a Child Support Affidavit (form FM-050) before the final hearing if the complaint is based on abuse, sexual assault or stalking, you have minor children, the defendant is the parent of any of your minor children, and no child support order already exists.

Make arrangements for service in accordance with section H below (Service of the Complaint and Related Forms).

In all cases, a party's address and other identifying information can be kept confidential if the party fills out an affidavit for confidential address and phone number stating under oath that disclosure of the information would jeopardize the health, safety or liberty of the party or a child. In that case, the clerk's office will keep your contact information confidential and will use it only to contact you. The court can order the information disclosed only after a hearing, and only if the

court decides that disclosure is in the interest of justice.

In all cases, you must inform the clerk's office of any change of address that occurs after the complaint is filed - even if your address is being kept confidential.

### **TIPS FOR FILLING OUT THE COMPLAINT:**

Fill out the form completely. Be as specific as possible in describing the abuse, sexual assault, stalking or harassment. For example:

- If the complaint is based on **abuse, sexual assault or stalking**, do not rely on conclusions such as, "The defendant abused me," or "The defendant threatened or stalked me." Instead, include specific allegations such as: "On June 20, my ex-husband John Doe slapped me on the face. He then kicked me on the legs causing bruises. The next day he told me he would kill my son if I didn't obey him." If the complaint is based on or includes allegations of **abuse, sexual assault or stalking of a child**, the complaint should include the child's name and state that the complaint is brought, in whole or in part, on behalf of the child.
- If the complaint is based on **harassment**, do not rely on conclusions such as: "The defendant harassed me." Instead, include specific allegations such as: "My boyfriend's new girlfriend Mary Doe has called me 40 times in the last few weeks." If the complaint is based on or includes allegations of **harassment of a child**, the complaint should include the child's name and state that the complaint is brought, in whole or in part, on behalf of that child.

If you need immediate protection and cannot wait for a hearing to get a protection order, you should also request a temporary protection order. More information on temporary orders is available in Section G below (Temporary Protection Order).

If no immediate protection order is necessary, sign the complaint in the presence of the clerk, a notary, or an attorney, and request the clerk to file the complaint. The clerk will complete a Summons and set a date for final hearing. Final hearing in an abuse case must be held within 21 days of when the complaint was filed. There is no specific timeline for a final hearing in a harassment case.

You can also receive help filling out this form from local Domestic Violence project. Court clerks will be able to provide you information about local advocacy programs or see more information at [www.mcedv.org](http://www.mcedv.org).

### **F. Relief Available.**

Certain kinds of relief are available in a final hearing order (after the hearing), depending upon whether the complaint is based on **abuse** or **harassment**. You

should be prepared to request specific and appropriate relief based on the circumstances of your case.

In an abuse, sexual assault or stalking case, and in a harassment case the protection order may:

- Prohibit or limit the defendant from having contact, direct or indirect, with you and any children on whose behalf the complaint has been brought.
  - *Direct contact* means any contact by any means (including, but not limited to, in person contact, telephone calls, letters, notes, e-mail messages, etc.) directly by the defendant to you.
  - *Indirect contact* means any effort by the defendant to contact you through other people (such as having them give messages or forward letters or e-mails to you);
- Order the defendant to refrain from threatening, assaulting, molesting, harassing, attacking, or otherwise abusing you (and your employees in a harassment case);
- Prohibit the defendant from entering your residence;
- Prohibit the defendant from following you, or being at or in the vicinity of your home, school, business or place of employment, without reasonable cause;
- Order the defendant not to take, damage or destroy your property;
- Order payment of monetary compensation to you for losses suffered as a direct result of the abuse, sexual assault, stalking, or harassment;
- Order the defendant to pay court costs and/or reasonable attorney's fees;
- Order you to pay court costs and/or reasonable attorney's fees if you lose the case and the court decides the complaint was frivolous; and
- Any other order the court decides is necessary and appropriate.

In addition, in abuse, sexual assault and stalking cases (but not a harassment case), the protection order may:

- Order the defendant not to threaten, assault, molest, harass, attack, or otherwise abuse any minor children residing in your household;
- Prohibit the defendant from using physical force against you;
- Grant exclusive possession of the shared residence to either party (or by agreement, order a party to provide alternate housing for the other party);
- Prohibit the defendant from possessing or using a firearm or other dangerous weapon;
- Order a division of the parties' household goods and personal property;
- Award temporary custody of minor children or temporary visitation rights with minor children;
- Order the payment of temporary support for one party, or any child in that party's custody;
- Order one party to make child support payments to the state;
- Require the defendant to receive counseling;

- Order the defendant to terminate any life insurance policy on your life;
- Direct the care, custody or control of any animal owned, possessed, kept or held by either party or minor child residing in the household; and
- Direct the defendant to refrain from injuring or threatening to injure any animal owned, possessed, kept or held by either party or minor child residing in the household.

When you fill out the complaint, make sure you ask for all relief that you seek.

**Note:** If the court enters a protection from abuse order that prohibits the defendant from harassing, stalking or threatening you, then possession of a firearm and/or ammunition by the defendant may be a separate violation of state and federal law, even if the order itself does not prohibit firearm possession.

In addition, a parent's willful misuse of the protection from abuse process in order to gain tactical advantage in a divorce or paternity action may be considered by the court in that divorce or paternity action when deciding upon the allocation of parental rights and responsibilities.

### **G. Temporary Protection Order.**

If you are in immediate danger of abuse, sexual assault, stalking or harassment, you may request a temporary protection order by checking the appropriate box on the complaint form. Sign the complaint in the presence of the clerk, a notary or an attorney.

The clerk will give the complaint and the request for a temporary protection order to a judge as soon as a judge is available. You should wait at the courthouse until the judge is available. If a judge will not be available at that location, the clerk will make alternative arrangements. These may include going to another court or use of telephones and fax machines to provide a review of the complaint. You should follow the clerk's instructions in these cases.

If the judge believes the allegations qualify for a temporary protection order, the judge will sign the order. In the case of a complaint based on **abuse, sexual assault** or **stalking**, if the judge does not think a temporary order may be issued or has questions about the allegations in the complaint, the judge may interview you. If the judge signs a temporary order of protection, the temporary order remains in effect until any of the following happens: (a) a final order of protection is issued after a hearing and is served on the defendant; (b) an order modifying the temporary order is entered; or (c) an order vacating (terminating) the temporary order is entered. You must appear at the court on the hearing date.

In a case based on **abuse, sexual assault** or **stalking**, the temporary order can direct the defendant not to possess any firearms or dangerous weapons, if either

of the following is true: (a) the abuse, sexual assault, or stalking described in the complaint involved a firearm or dangerous weapon, or (b) the complaint shows a heightened risk of immediate abuse to you or a child. If the temporary order prohibits possession of dangerous weapons other than firearms, the order will specify what weapons are prohibited. A defendant prohibited from possession of firearms or other dangerous weapons must turn over any prohibited items to a law enforcement officer or other person within the time stated in the temporary order (24 hours or less after the temporary order is served on the defendant).

The relief available in a temporary order of protection is more limited than the relief available in a protection order issued after service on the defendant and notice of hearing.

In abuse, sexual assault or stalking cases, and harassment cases, the temporary order can:

- Prohibit the defendant from having direct and indirect contact with you;
- Prohibit the defendant from restricting your liberty (or the liberty of your employees in a harassment case);
- Prohibit the defendant from threatening, assaulting, attacking, molesting, harassing or otherwise disturbing your peace;
- Prohibit the defendant from entering your residence;
- Prohibit the defendant from following you or going to your home, workplace or school without reasonable cause; and
- Prohibit the defendant from taking, damaging or destroying your property.

In addition, in an abuse, sexual assault, or stalking case (but not a harassment case), the temporary protection order may:

- Award temporary exclusive parental rights and custody of children;
- Prohibit the defendant from injuring or threatening to injure any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household; and
- Require the defendant to turn over firearms to a law enforcement officer or third party.

**Note:** Unless a temporary order for protection explicitly prohibits contact between the defendant and you, contact that is neither abusive nor harassing is allowed. A temporary order is effective when it is signed but the order must be served on the defendant before he or she can be charged with a crime for violating the order, UNLESS the defendant has prior actual notice of a protection order. Usually, the complaint and all related papers are also served at the same time as the temporary order. *See Section H for information about service of temporary orders.*

The defendant has a right to ask the court to dissolve a temporary order. You

must be given at least 48 hours notice, unless a shorter time is set by the judge. If the defendant files a motion to dissolve, a hearing on the motion is held. At the hearing, you must prove (with evidence: testimony or documents) any facts alleged in the complaint that the defendant has disputed by affidavit (sworn statement). The judge may decide to consolidate (combine) the hearing on the defendant's motion to dissolve with the final hearing on your complaint. Either way, a hearing on a motion to dissolve follows the procedures set forth in section J below (The Final Hearing).

If the judge decides not to issue a temporary order, you may decide not to proceed with the case. Unless the case is dismissed at your request, it will be scheduled for final hearing. An abuse case must be scheduled for hearing within 21 days of when the complaint is filed with the court. A harassment case will be scheduling for hearing when the court's schedule permits.

#### **H. Service of the Complaint and Related Forms.**

Generally, the court will arrange service of a temporary order on an in-state defendant. To speed up service, however, the court may ask you to take the papers to the police department or sheriff's office. You should call the sheriff's department or police department to find out when the papers are served on the defendant.

If no temporary order is issued or if the defendant lives outside of Maine, you should consult with the clerk of courts to assist in the arrangement for service of the complaint and related forms on the defendant in the State where the defendant resides. You will not have to pay for service of any abuse, sexual assault or stalking papers or harassment papers based on sexual assault, domestic violence or stalking.

#### **I. If the Plaintiff Changes His/Her Mind.**

If you decide not to continue with the case, you should tell the clerk as soon as possible. The clerk will ask you to make a request to "dismiss" the case in writing. The judge may want to speak with you before dismissing the case.

#### **J. The Final Hearing.**

You must remember the date of the final hearing. If you do not attend the final hearing the case will likely be dismissed (even if the defendant hasn't been served with the paperwork yet). If you have an emergency and cannot go to the hearing, you should inform the court as soon as possible and ask for a continuance (postponement). The judge will decide whether to continue the hearing.

All final protection hearings are public. At the hearing, you have the burden to prove that the defendant abused, sexually assaulted, stalked or harassed you or

any children for whom you are responsible. A plaintiff with personal knowledge usually must testify at the hearing. If you brought the case on behalf of a child, the child will probably be required to testify if you do not have personal knowledge of the abuse, sexual assault, stalking or harassment. You may bring other witnesses to support the case, may subpoena witnesses, and may hire a lawyer. You may also bring a friend or an advocate from the local Domestic Violence project to the hearing. The defendant has a right to be at the hearing and must have notice of the date and time of the hearing.

The defendant has a right to hire a lawyer, and may testify and bring other witnesses to the hearing. If the defendant does not appear at the hearing, the judge may grant an order without requiring you to prove abuse, sexual assault, stalking or harassment.

At the hearing, the judge will first ask you to present evidence and witnesses. The Maine Rules of Evidence apply. The judge will rule on any objections. The defendant will have a chance to present witnesses after you. After hearing all the evidence and all the witnesses, the judge will make a decision on all issues.

At the final hearing, you should be ready to justify any relief you requested in the complaint. If you want money damages or restitution from the defendant, you should be ready to prove the kind and amount of damage caused by the defendant. If you want the defendant to pay money for your support, you must be prepared to give the judge specific information about your income and expenses.

In an **abuse, sexual assault or stalking case**, if you and the defendant are the parents of minor children, both the defendant and you must bring a completed Child Support Affidavit (form FM-050) to the hearing. At the hearing, the judge may ask both parties for any information about your income. If a protection order is granted, the judge may order child support, so long as there is not already a child support order in existence.

#### **K. Orders by Consent (Without Hearing).**

At the beginning of the hearing, the judge may ask each party whether the party is willing to consider agreeing to or consenting to a protection order instead of having a hearing (trial). Consent orders can include all the protection that an order issued after a hearing would provide. Violation of a consent order can be prosecuted, just like violations of an order issued after hearing. However, before giving up the right to a hearing, you should be sure the order you are agreeing includes all of the relief you want.

Consent orders are often issued without any finding that the defendant committed abuse, sexual assault, stalking or harassment. Often, consent orders are worked out by the judge speaking to the parties, or through the use of go-betweens (often lawyers or domestic violence advocates). Remember, there should not be direct discussion or contact between the parties, either before

coming to court or at the court, especially if a temporary order prohibiting contact is in effect.

#### **L. If a Final Protection Order is Issued.**

A final protection order may last up to two years in a protection from abuse case and up to one year in a protection from harassment case. Both parties should read any final order carefully. The protection order remains in effect until it expires, unless it is terminated or changed by the court before it expires. The only way a protection order can be changed is by a judicial officer. No one else, including you, has authority to change the order or to give the defendant permission to violate the order. For example, if the defendant has been ordered not to go to your house, the defendant will be violating the order if he/she goes to your house, even if you have invited him/her.

*Remember: Only the court can change the order.*

The order will state specifically what things the defendant may not do and what things the defendant must do. If the defendant violates the order, you should call the police and tell them about the protection order and the violation. It is a crime for the defendant to violate certain portions of the protection order. You should keep a copy of the order with you at all times.

#### **M. If the Plaintiff Seeks to Have a Final Order Modified (Changed).**

If you want the order changed or terminated, you must file a written request (motion) to modify or terminate with the court clerk. You must be able to show a substantial change in circumstances that happened after entry of the final order and provide a reason to change the order. The clerk will give you a time and date for the hearing. The defendant must be notified and has a right to be present.

The clerk will arrange for service of your motion and a notice of hearing on the defendant in all cases except harassment cases that do not involve sexual assault or stalking. Even if the clerk arranges service, you may be asked to bring the paperwork to the sheriff's office to speed up the process. The hearing will follow the same procedures discussed in section J above (The Final Hearing).

#### **N. If the Plaintiff Wants the Protection Order Extended.**

The protection order will have an expiration date. The maximum period of time that a protection from abuse order can last is two years, and the maximum period of time that a protection from harassment order can last is one year. If you think it is necessary to extend the order for a longer time, you must file with the court a request to extend the period. You should file the request (called a motion) 30 days before the expiration date to prevent a gap in protection.

You should go back to the same court that issued the order and ask for the form

called Motion to Extend. You should complete that form, give it to the clerk, and complete another Protection Order Service Information (form PA-005). The clerk will set a hearing date and you must be present at that hearing. The defendant must be notified of the hearing date, and the defendant has a right to be present at the hearing. Service on the defendant and procedure at the hearing is governed by the rules in section H (Service) and J (Hearings) above.

## **IV. PROCEDURES APPLICABLE TO A DEFENDANT**

If you are the defendant, you have a right to defend yourself, to contest any allegations in the complaint, to present evidence on your behalf, to ask the court to dissolve any temporary order, or to ask the court to terminate or modify any final order.

You have a right to receive a copy of the complaint and related papers, and any order. A protection order is effective once signed by a judge. The order must then be served on you before you can be charged with a crime for violating the order, **UNLESS** you had prior actual notice of a protection order. You are entitled to notice of any hearing. If the court has issued a temporary order and you ask the court to dissolve that order, you are entitled to a hearing upon at least 48 hours notice to the plaintiff, unless the judge sets a shorter time.

**Note:** If you believe that the plaintiff has abused or harassed you, you must file a separate protection complaint against the plaintiff, following the procedures set forth in section III above, (Procedures Applicable to a Plaintiff in a Protection Case). *You may not ask for protection against the plaintiff as part of your defense in the plaintiff's case.*

### **A. If a Temporary Order is Issued and Served.**

After service of any temporary order, you may file with the court a written request to dissolve the order. You have a right to a hearing on the motion to dissolve. The plaintiff must be given at least 48 hours advance notice of the hearing, unless the judge sets a shorter time. The clerk will arrange for service on the plaintiff of the written motion to dissolve and the notice of hearing.

On or before the hearing date, you must file an affidavit stating why or how the plaintiff's complaint is inaccurate or untrue. The judge may combine the hearing on the motion to dissolve the temporary order with the final hearing on the plaintiff's complaint for protection. In either event, the hearing will follow the procedures in section B below (The Final Hearing).

In an **abuse, sexual assault or stalking case**, the temporary order might direct you not to possess any firearms or dangerous weapons. If the temporary order prohibits possession of dangerous weapons other than firearms, the order will explain what types of weapons are prohibited. A defendant prohibited from

possession of firearms or other dangerous weapons must turn over any prohibited items to a law enforcement officer or other person within the time stated in the temporary order (up to 24 hours after the temporary order is served on you). If you choose to turn over the prohibited items to a person other than a law enforcement officer, you must file a statement identifying that person and listing all items turned over to that person. That statement must be filed within 24 hours and should be given to either the court or a local law enforcement agency.

If a temporary order of protection from abuse prohibits possession of firearms or dangerous weapons, you may ask to dissolve that portion of the order and the court will hold a hearing as soon as the court's schedule permits. The court will issue a written decision within 24 hours of that hearing.

You should read any temporary order carefully. Unless the temporary order is vacated, you must obey that order. Otherwise, you are subject to arrest and criminal charges. The plaintiff cannot change the terms of any temporary order and cannot give you permission to violate any terms of the temporary order. If the order states that you are prohibited from entering the plaintiff's home (or a home you used to share), you will be charged with a crime if you enter the house even if the plaintiff has invited you. Violation of a temporary order is a Class D crime that carries penalties of up to 364 days in jail and/or a fine of up to \$2,000.

**Note:** If the temporary protection order does not explicitly prohibit contact between the plaintiff and you, then contact is allowed as long as it is not abusive or harassing.

## **B. The Final Hearing.**

You are not required to file a formal written response to the plaintiff's protection complaint. The summons will give you the date, time and place of the final hearing on the protection case.

You have a right to be at the hearing and must be given notice of the date and time of the hearing. You also may hire a lawyer, may testify and bring witnesses, and may subpoena witnesses. If you wish to say anything about the case, you must be at the hearing. If you are at the hearing and the plaintiff does not show up, the case is likely to be dismissed (if the case is dismissed, the temporary protection order will no longer exist). If the plaintiff is at the hearing and you are not there, the judge will probably issue a protection order for the plaintiff and against you (without requiring the plaintiff to prove the complaint is true).

At the hearing, the plaintiff has the burden to prove that you abused, sexually assaulted, stalked or harassed the plaintiff or any children for whom the plaintiff is responsible. A plaintiff with personal knowledge of what happened usually must testify at the hearing. If the case is brought on behalf of a child, the child will probably be required to testify unless the plaintiff or another witness has personal knowledge of what happened and can testify instead. The plaintiff may bring

other witnesses to support his/her case, may subpoena witnesses, and may hire a lawyer. The Maine Rules of Evidence apply.

At the hearing, the judge will first ask the plaintiff to present evidence and witnesses. The judge will rule on any objections. You will have a turn to respond and to present witnesses after the plaintiff. After hearing all the evidence and all the witnesses, the judge will make a decision on all issues.

The plaintiff will have asked for specific kinds of relief in the complaint (see section F in the plaintiff section of the booklet for a list of the types of relief that can be requested). You should review the complaint prior to the hearing and be prepared to explain why any particular form of relief the plaintiff wants is inappropriate or to suggest a different arrangement that might be more appropriate.

In an **abuse, sexual assault or stalking case**, if the plaintiff and you are the parents of minor children, both the plaintiff and you must have completed a child support affidavit before the hearing. At the hearing, the judge may ask both the plaintiff and you for any information about the income of either party. If a protection from abuse order is granted, the judge may order child support, unless there is already a child support order in existence.

### **C. Orders by Consent (Without Hearing).**

At the beginning of the hearing, the judge may ask each party whether they are willing to agree to a protection order, instead of having a hearing. Consent orders (the name for orders by agreement) can be issued without the court specifically finding or stating that you committed abuse, sexual assault, stalking or harassment. However, before giving up the right to a hearing, you should understand that violating a consent order is just as serious as violating a protection order issued after a hearing. Violations of both kinds of orders can lead to arrest and criminal charges.

Often, consent orders are worked out by the judge speaking to the parties, or through the use of go-betweens (often lawyers or domestic violence advocates). There should be no direct discussion or contact between the parties, either before coming to court or at the court, especially if a temporary order prohibiting contact is in effect.

### **D. If a Final Protection Order is Issued.**

You should read any protection order carefully. The order will list all of the things you are prohibited from doing and all of the things you must do. Violation of certain parts of a protective order is a Class D crime, punishable by up to 364 days in jail and a \$2,000 fine. Violations of other parts of the protection order may be a Class C felony, or may be contempt of court. If you are ordered to stay away from the plaintiff's residence and you go to the residence, you will be arrested

and charged with violating a protection order. The plaintiff cannot give you permission to violate the order or change its terms.

*Remember: Only the court can change the order.*

If a final order of protection from abuse prohibits you from possessing firearms or dangerous weapons, you must turn over firearms and prohibited weapons to a law enforcement officer or other person within the time stated in the order (up to 24 hours after the final order is served on you). If you choose to turn over the prohibited items to a person other than a law enforcement officer, you must file a statement identifying that person and listing all items turned over to the person within 24 hours. That statement may be filed with either the court or a local law enforcement agency. If the court later finds probable cause to believe you have not turned over all firearms and prohibited weapons, the court can authorize a search warrant and seizure of any prohibited items found.

**Note:** If the Court enters a protection from abuse order that prohibits you from harassing, stalking or threatening the plaintiff, possession of a firearm and/or ammunition by you may be a separate violation of state and federal law, even if the order itself does not prohibit firearm possession.

In addition, a parent's willful misuse of a protection from abuse process in order to gain an advantage in a divorce or paternity action may be considered by the court in that divorce or paternity action when deciding upon the allocation of parental rights and responsibilities.

#### **E. If Defendant Seeks to Have a Final Order Modified (Changed).**

If you want the order changed or terminated, you must file a written request (motion) to modify or terminate the Order with the court clerk. A protection order may be modified if you can show that there has been a substantial change in circumstances since the entry of the permanent order. The clerk will give you a time and date for the hearing on your motion. The plaintiff must be notified of the motion and hearing, and has a right to be present. The clerk will arrange for service of the motion and notification of the hearing on the plaintiff. The hearing on your motion will follow the procedures in section B above (The Final Hearing).

The plaintiff also has a right to file a motion to modify or motion to terminate the order. If that happens, you will be given notice of the hearing and may defend yourself at that hearing using the protection in section B above (The Final Hearing).

#### **F. If the Plaintiff Wants the Protection Order Extended.**

The protection order has an expiration date. The maximum period of time that a protection from abuse order can last is two years, and the maximum period of time that a protection from harassment order can last is one year. If the plaintiff

wants the order to last longer, the plaintiff must file a motion to extend with the court clerk. The clerk will set a hearing date. You must be given notice of the hearing date and copies of the plaintiff's motion to extend. You have a right to be present at the hearing and to present witnesses and arguments against extension of the protection order.