

MAINE STATE LEGISLATURE

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Maine's Domestic Violence Law Has Made a Good Beginning

October 1981

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This report of the Maine Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. The findings and recommendations of this report should be attributed only to the Maine Advisory Committee rather than to the Commission.

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ACKNOWLEDGEMENTS

The Maine Advisory Committee wishes to thank the staff of the Commission's New England Regional Office for its assistance in this project. This report was written by Larry Riedman. Legal review was carried out by Mary Lee Walsh. Clerical support was provided by Marilyn Kittle and Sylvia Cooper. All worked under the direction of Regional Director Jacob Schlitt.

MAINE'S DOMESTIC VIOLENCE LAW

HAS MADE A GOOD BEGINNING

-A report of the Maine State Advisory Committee to the U.S. Commission on Civil Rights prepared for the information of the Commission and the citizens of Maine.

ATTRIBUTION:

Opinions quoted in this report should be attributed to the individual speaker. All other material represents the interpretations and conclusions of the Maine Advisory Committee to the U.S. Commission on Civil Rights.

The findings and recommendations contained in this report are those of the Maine Advisory Committee to the U.S. Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and it will be considered by the Commission in making its reports and in formulating its recommendations to the President, the Congress and to Federal departments and agencies.

This report is made available to the public through exercise of the Commission's authority to serve as a national clearinghouse for information in respect to discrimination or denials of equal protection.

LETTER OF TRANSMITTAL

Maine State Advisory Committee to
the U.S. Commission on Civil Rights
October 1981

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Sirs and Madames:

The Maine Advisory Committee to the U.S. Commission on Civil Rights, pursuant to its responsibility to advise the Commission on civil rights issues in Maine, submits this evaluation of the implementation of Maine's domestic violence law.

The Advisory Committee's central finding is expressed in the title of the report: Maine's Domestic Violence Law Has Made A Good Beginning. The report documents that the law has begun to produce its intended benefits in a significant degree. The Advisory Committee also identifies disappointments and implementation problems associated with the law.

The Committee has learned that the key innovation of the law -- making civil protective orders available to domestic violence victims -- is being widely used. Almost all those involved with the law regard the availability and use of the civil protective process as a great advance in protecting victims. The points of controversy in the law are secondary and less-used features, the virtues or defects of which will only be established as more experience with the law is recorded.

To smooth implementation of the law, the Advisory Committee outlines a stronger coordinative role for State government, and also details initiatives for local governments, law enforcement agencies, prosecutors, judges, and advocates and counselors for domestic violence victims.

The Committee believes that this study will be a useful addition to the Commission's knowledge of the problem of domestic violence and government responses to it. It further hopes that this analysis of the implementation of the domestic violence law will be of value to Maine's lawmakers and citizens when the law is considered for renewal by the Maine Legislature.

Respectfully,

Madeleine D. Giguere

MADELEINE D. GIGUERE, Chairperson

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Preface

Maine's statutory revisions aimed at increasing protection for victims of domestic violence have been in effect for more than a year. The law--under its "sunset" provision-- is due to expire in November 1983, and the legislature will have to determine whether to retain, modify, or abandon it.

The Maine Advisory Committee to the U.S. Commission on Civil Rights believes that it is timely to look at how the law has worked in its first year-- what's right with it, what's wrong with it, its benefits or disappointments, how it has been misunderstood or used innovatively, unanticipated problems that have arisen, and how it can be improved. Some of this analysis concerns points of law per se, while other elements concern how the law has been implemented.

Where problems have been associated with implementation, the Advisory Committee hopes that this study will lead to corrective action, so that the law will have been used properly and to its full potential when it comes up for renewal, and legislators can evaluate it on the basis of its having had a fair test. Toward this end, the report ventures some conclusions and recommendations. However, it is too early to offer any definitive assessment of the workings and value of the domestic violence law, and what changes if any ought to be made. The Committee anticipates that this report's greater contribution will be to raise and define some questions and to bring some useful ideas to the surface, so that those who administer and use the law may act to help it fulfill its potential.

The report is based on interviews with Maine officials and private citizens experienced with the operation of the domestic violence law, on examination of other reports interpreting and evaluating the law, and on the U.S. Civil Rights Commission's publications assessing domestic violence problems and laws in other States. In an earlier phase of this project, the Advisory Committee has attempted to make its own contribution to the effective implementation of the law by distributing wallet cards with emergency information for victims. This commenced in March 1981, and continues.

The Advisory Committee's study of Maine's domestic violence law follows several years of involvement in this issue by the U.S. Commission on Civil Rights. Numerous studies of domestic violence victims had found that when these victims sought security and redress through the criminal justice and judicial systems, they were likely to meet with "discrimination or denials of equal protection of the laws based on ...sex," an element of the Commission's mandate.

Consequently, in its studies, the Commission has focused on the experiences and official responses to "battered women," and the Maine Advisory Committee has done the same. Some comments and suggestions regarding child and other forms of household abuse have been included, but do not form a principal theme of this study. Thus, the term "domestic violence" as used in this report will not include every type of household violence -- just as Maine's "domestic violence" law does not cover every

act. The terms domestic violence, spouse abuse, domestic assault, woman-battering, and wife-beating as used here all mean abuse as defined in Maine's statute and related parts of the criminal code.

The Advisory Committee does not believe it necessary to reiterate the need for legislation on domestic violence. The Maine Legislature, in passing specific legislation to give domestic violence victims access to security and justice, already has acknowledged that this problem is found in Maine. The Committee has focused on the efficacy of Maine's approach to meeting these needs, and hopes this information and these recommendations will be of use to policymakers and the public alike.

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I. WHAT IS THE STATUTE?

Maine's new domestic violence is officially entitled An Act Concerning Abuse Between Family or Household Members, and its major provisions have been codified in the Maine statutes at 19 M.R.S.A. sec. 761, et seq. (1980).^{/1/} The new law went into effect on July 3, 1980, and will go out of existence under a sunset provision on November 1, 1983, unless renewed. [19 M.R.S.A. sec. 771]

The act took two sessions of the Maine Legislature to produce. The First Regular Session of the 109th Legislature enacted statutory reforms concerning domestic violence (referred to as Chapter 578 of the Public Laws of 1979), but because of procedural technicalities, this law did not go into effect. The amendments required to make the proposed law acceptable were passed by the Second Regular Session of the same legislature. The amendment is Chapter 677 of the Public Laws of 1979.^{/2/} A few clarifying amendments were added to the law in the 1981 legislative session. ^{/3/}

The new law takes four approaches toward improving access to the justice system by domestic violence victims and subsequent security for them:

- changes in criminal laws increasing police officers' powers and responsibility to intervene;
- establishing civil law procedures to provide speedy access to court protection;
- more training of police officers; and
- improved reporting and official recording of incidents of domestic violence.

The statutory changes therefore embrace both civil and criminal law. The protections apply to abuse of adult family or household members.

According to the Center for Women Policy Studies, as of September 1980, 32 States had enacted domestic violence laws.^{/4/} The numbers of States with provisions comparable to Maine's appear in Appendix A, which summarizes the Center's survey. (Although some States may have changed their laws since the survey was carried out, and although the researchers' decisions to group certain laws as equivalent may be disputable in some cases, the chart does provide a broad national perspective against which Maine's initiatives may be placed.)

Police Role

Often the first contact a victim of domestic violence has with the law enforcement system is to call the police.

The major change in police powers under the new law is that it gives the officer authority to arrest without a warrant, even if he has not witnessed the abuse himself, in many more types of domestic violence situations than formerly. Where the officer "reasonably believes" that a crime has occurred and that the persons involved in the incident are "adult

family or household members," he can make an arrest without a warrant. [17-A M.R.S.A. sec. 15(1)(A)(5-A)] By "family or household members" is meant "spouses or former spouses, individuals presently or formerly living as spouses, natural parents of the same child, or household members related by consanguinity or affinity." [19 M.R.S.A. sec. 762(4)] "Consanguinity" is blood relationship. Individuals need not characterize themselves as spouses to qualify. An "adult" is a person 18 years of age or older. [19 M.R.S.A. sec. 763(2)]

The officer may arrest for Assault, Criminal Threatening, Terrorizing, or Reckless Conduct where he has probable cause to believe such an offense has occurred, even if he has not witnessed the act himself. These are Class D (misdemeanor) crimes in the criminal code./5/ Before the new law went into effect, a police officer needed a warrant except for more serious assaults or those that occurred in his presence.

The new arrest authority applies both to public and private places, but to use it the situation must meet the two conditions described above-- the act must fall within the criminal code behaviors and the parties must have a relationship as defined in the law. [Alert, p. 15]

While the law increases police discretion in one regard, it removes discretion in other aspects of law enforcement:

--where an officer has probable cause to believe that there has been a criminal violation of a criminal or civil protective order or of a court-approved consent agreement, he must arrest the defendant. [19 M.R.S.A. sec. 770(5)] No warrant is needed. [19 M.R.S.A. sec. 769(2)]

--where the parties are family or household members and the behavior is Aggravated Assault, the officer must arrest the assailant. [19 M.R.S.A. sec. 770(5)]/6/

The new law includes one provision that is more a policy than a procedural matter. It enjoins officers to "...use the same standard of enforcing relevant Maine Criminal Code sections when the incident involves family or household members as when it involves strangers." [19 M.R.S.A. sec. 770(4)]. This specifically addresses any lingering prejudices officers may have that incidents of domestic violence are "private matters."

Officers have several other responsibilities under the new statute. When civil orders are issued, law officers serve the defendants personally with the order, the complaint, and a summons. [19 M.R.S.A. sec. 765(4-A)] Copies of the orders are to be filed in police departments. [19 M.R.S.A. sec. 767] Police departments are required to establish procedures to notify officers responding to abuse calls of prior incidents of abuse and of existing protective orders, [19 M.R.S.A. sec. 770(2)] and the police officer can telephone the department to verify the existence of the order. [15 M.R.S.A. sec. 301]. The law further enumerates four responsibilities at the scene of the abuse:

- A. Remaining on the scene as long as he [the officer] 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. [19 M.R.S.A. sec. 770(6)]

Civil Procedure

In contrast to the criminal code definitions, the domestic violence statute itself defines "abuse" as "attempting to cause or causing bodily injury or offensive physical contact," or "attempting to place or placing another in fear of imminent bodily injury." [19 M.R.S.A. sec. 762(1)].

An adult seeking protection from abuse can file a complaint in a District or Superior Court. [19 M.R.S.A. sec. 763, M.R.S.A. sec. 764] A hearing is to be scheduled within 21 days, at which the complainant has to "prove the allegation of abuse by a preponderance of the evidence" [19 M.R.S.A. sec. 765(1)] if she is to obtain the relief sought, which is a protective order lasting up to a year or approval of a consent agreement. [19 M.R.S.A. sec. 766(2)] Clearly, this aspect of the law embodies the view that an allegation of abuse is a serious charge requiring a careful examination leading to a long-term solution.

However, the new law incorporates special provisions that acknowledge the special danger and volatility of household violence. If the complainant can show that there is an immediate danger while awaiting the hearing, a temporary order can be obtained immediately [19 M.R.S.A. sec. 765(2)] covering the care and custody of the children and prohibiting the defendant from:

- 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. [19 M.R.S.A. sec. 765(4)]

This temporary order is also known as an ex parte order because it can be granted without giving the person whom it restrains a chance to respond before it becomes effective. Like the abuse complaint, the request for the temporary order can be filed in a District Court or a Superior Court in the jurisdiction in which the victim lives, to which the victim has fled, or in which the defendant lives. [19 M.R.S.A. sec. 763] The court clerk is to provide forms and clerical assistance [19 M.R.S.A. sec. 764(2)]; no fee is to be charged. [19 M.R.S.A. sec. 764(3)] The forms the complainant must complete are the Complaint for Protection from Abuse, the Motion for

Temporary Order, and the Affidavit for Temporary, Emergency Relief from Abuse. (These forms are included in Appendix B)

The statute also provides for what it terms "emergency relief" in instances when "the courthouse is closed and no other provision can be made for the shelter of an abused family or household member..." [19 M.R.S.A. sec. 765(3)] The plaintiff may appear before a judge outside the courtroom and obtain a temporary order upon showing "good cause." [19 M.R.S.A. sec. 765(3)] "Good cause" can be "immediate and present danger of physical abuse." [19 M.R.S.A. sec. 765(2)]

Temporary orders of any kind are to be personally served on the defendant by a law officer. [19 M.R.S.A. sec. 765(4-A)] One copy is filed at the police department and the plaintiff gets a copy. [19 M.R.S.A. sec. 767]

The law includes a procedure for the person subject to the temporary order to challenge it. The defendant may request that the order be dissolved or modified, and a hearing will be arranged for this purpose. At the hearing the plaintiff bears the burden of proving the necessity for the protective order. The plaintiff must be given two days' notice that the hearing is to be held, or shorter notice if the court orders it. [19 M.R.S.A. sec. 765(5)]

As stated earlier, at the hearing on the complaint to determine whether long-term (as opposed to temporary or emergency) protection will be granted, the complainant must "prove the allegation of abuse by a preponderance of the evidence." If the court finds that the defendant committed the abuse, it can grant a protective order for up to a year. The court also has authority to approve a consent decree. [19 M.R.S.A. 766(1)] These orders may have provisions:

- 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. Directing the defendant from going upon the premises of the plaintiff's residence;
- C. When the mutual residence or household of the parties is jointly owned or jointly leased or 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 or restoring possession of the residence or household to one party with the exclusion of the other or;
 - (2) By consent agreement, allowing the party with the duty to support to provide suitable alternative 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 interest 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. [19 M.R.S.A. sec. 766(1)]

As described in the previous section on police responsibilities, the statute explicitly requires law officers to arrest violators of the conditions of a protective order. However, the arrest requirement only applies in cases where violation of provisions contained in paragraphs A through E occurs. Violation of these paragraphs is defined as a crime. Violation of the provisions of paragraphs F through K would be treated as contempt. [19 M.R.S.A. sec. 769(1)]

Attorney Deborah Rice, who has handled numerous domestic violence cases both before the law's passage and since, identifies the three "most important features" of the civil action as:

- "that it was directed exclusively at domestic violence rather than simply providing a restraining order in some other kind of action";
- "that it carried criminal penalties for the violation of orders"; and
- "that relief could be provided in emergency situations even without the assistance of a lawyer."/7/

Police Training

Police departments and other law enforcement agencies are required by the law to give their officers:

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 [the new law]...and the services and facilities available to abused family and household members. [19 M.R.S.A. sec. 770(3)].

Local agencies have discretion regarding how much training to provide.

Reporting and Record-keeping

The new law includes a requirement that the Maine Bureau of Identification, the agency responsible for keeping statistics on crime, create a distinct reporting category for abuse of family or household members by adults. [25 M.R.S.A. sec. 1544] Each law enforcement agency in Maine is to report all incidents to the Bureau just as it does other types of information tabulated in the uniform crime reports. [19 M.R.S.A. sec. 770(1)]

Other Provisions of the Law

In addition to the four major areas of reform, the new law has a number of secondary provisions aimed at easing access to the legal system and increasing the safety of complainants:

--"to protect the plaintiff, the court may order the omission or deletion of his [or her] address from any papers available to the public" [19 M.R.S.A. sec. 766-A];

--action taken under the law does not preclude or supersede any other criminal or civil remedies, such as divorce or separation [19 M.R.S.A. sec. 768(2)];

--if the defendant has been charged with or convicted of certain crimes in connection with the abuse incident, the court has additional authority to impose protective orders [15 M.R.S.A. sec. 301(2)];

--claiming drunkenness is an inadequate defense if the defendant's intoxication is voluntary [19 M.R.S.A. sec. 768(4)];

--although no fee is to be charged for filing for the temporary orders, at later stages of the process there may be court costs. The law provides that the plaintiff may tell the court he or she cannot meet the costs, and be allowed to proceed without cost (in forma pauperis) [19 M.R.S.A. sec. 764(3)];

--court clerks are required to assist the plaintiff in filing the complaint, [19 M.R.S.A. sec. 764(2)] thus making it easier for the plaintiff to bring the action pro se, that is, without an attorney.

Notes to Chapter I

1. Other sections of the Maine statutes added or amended by the law include 15 M.R.S.A. sec. 301 (a new section providing for protective orders in crimes between family members); 17-A M.R.S.A. sec. 15(1)(A)(5-A) (amendment to law authorizing warrantless arrests by law enforcement officers); 19 M.R.S.A. sec. 214 (amendment to the domestic relations law concerning custody and support when parents live apart); 19 M.R.S.A. sec. 752 (amendment to the divorce law on custody and support of children); and 25 M.R.S.A. sec. 1544 (amendment to law mandating a centralized crime-reporting system).

Specific passages from the statute and other Maine laws will be cited in the text.

2. Maine Department of the Attorney General and Maine Criminal Justice Academy, Alert, January - February 1980 (hereafter cited in text as Alert).
3. 1981 Me. Acts, Ch. 420.
4. Center for Women Policy Studies, Response to Violence in the Family, vol. 3, no. 12 (August-September 1980).
5. The criminal code classifies all crimes from Class A (most serious) to Class E (least serious) for purposes of establishing penalties. Penalties are established for classes of crimes rather than for individual crimes. [17-A M.R.S.A. sec. 4]

The criminal code includes the following definitions:

--"A person is guilty of assault if he intentionally, knowingly, or recklessly causes bodily injury or offensive physical contact to another." [17-A M.R.S.A. sec. 207]

--"A person is guilty of criminal threatening if he intentionally or knowingly places another person in fear of imminent bodily injury." [17-A M.R.S.A. sec. 209]

--"A person is guilty of terrorizing if he communicates to any 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 such a threat, whether or not such consequence in fact occurs, is:

- A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed; or
- B. To cause the evacuation of a building, place of assembly, or facility of public transport." [17-A M.R.S.A. sec. 210]

[Part A is a Class D crime; Part B is a Class C crime.]

--"A person is guilty of reckless conduct if he recklessly creates a substantial risk of serious bodily injury to another person." [17-A M.R.S.A. sec. 211]

6. The criminal code defines Aggravated Assault as "intentionally, knowingly, or recklessly" causing:
 - A. Serious bodily injury to another; or
 - B. Bodily injury to another with use of a dangerous weapon; or
 - C. Bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include, but are not limited to, the number, location or nature of the injuries, or the manner or method inflicted. [17-A M.R.S.A. sec. 208]
7. Deborah Shaw Rice, Attorney-at-Law, Downeast Law Offices, letter to Larry Riedman, New England Regional Office, U.S. Commission on Civil Rights, September 16, 1981 (hereafter cited in text as Rice letter).

II. WHY WAS THE LAW ENACTED?

The purposes of the domestic violence law are set forth in its first section:

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 uninterrupted 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. [19 M.R.S.A. sec. 761]

These aims embody general perceptions that domestic violence as a social problem-- and as a particularly troubling responsibility for law enforcement-- merits attention. The breadth and severity of that problem have been established by numerous investigations-- if not specifically in Maine, at least in national studies and studies in other jurisdictions where conditions and findings clearly are comparable to Maine.

In their Alert newsletter summarizing the new law, the Maine Criminal Justice Academy and Department of the Attorney General briefly sketched the dimensions of the problem. The consensus of experts, it was reported, indicated that there were approximately 48,000 incidents of domestic violence in the State annually. Without intervention, the violence continues and often grows worse, with a high likelihood that children raised in such households will adopt the same behaviors later in life. A quarter of all law officers killed in action, and 28 percent of those injured in action, were answering domestic violence calls. The problem, the Alert summarized, "is a continuing nightmare for its victims and is one of the most dangerous areas for law enforcement personnel."

Inadequacy of Old Laws

The Maine Civil Liberties Union's recent study/¹ of the implementation of the new law notes, looking back to the period prior to its passage, "The very nature of the relationship of the perpetrator and the victim does not lend itself well to the system of protection formerly available." [MCLU Study, p. 2] The U.S. Commission on Civil Rights and several of its State Advisory Committees reached similar conclusions in studies of a number of jurisdictions in the past few years./²/

Deborah Rice, at the time a staff attorney for Pine Tree Legal Assistance, Inc., participated in the drafting of the domestic violence bill in 1979. She had represented almost 200 adult victims of domestic violence in the previous year, and had met with many district attorneys, police officers, and police administrators. On May 1, 1979, she told the Judiciary Committee why the law existing then was inadequate./³/

First, she cited the "absence of appropriate civil remedies," noting no cause of action or legal vehicle dealt exclusively with domestic violence." The need for protection was addressed by the law "as a side element of some other action, if it addresses it at all." Second, she pointed out that the overall thrust of the criminal law was at odds with the needs of domestic violence victims:

The criminal justice system is set up to punish an offender. But of all the clients with whom I have spoken, not one has had punishment as a major concern. These victims are interested in protection....But the criminal justice system does not provide this protection. [Rice Testimony]

Third, Rice testified that at scenes of domestic violence, the police officers were "...choosing not to make the arrest..." or misinforming the victim "that wife beating is a civil matter." [Rice Testimony]

Rice elaborated upon these themes, specifying several flaws in the available civil remedies. Because at that time protective orders were typically features of divorce petitions, existing law actually encouraged domestic violence victims to file for divorce. The woman who for religious or other reasons would not consider divorce was left without alternatives. And where the abuser was a former spouse, the victim was left "an even more inappropriate and awkward route," that of bringing "a civil tort suit against her ex-husband in Superior Court asking for money damages....in the hopes that the court will attach to it a restraining order." Even the available restraining orders were of little use, because violating a restraining order was not criminal. Violation meant only a "slow and laborious" contempt-of-court action. [Rice Testimony]

The minimal protection available and the extreme measures needed to get it were very discouraging to abused women. The women could reasonably fear that their unpromising efforts to seek relief might trigger even more abuse. The result, according to Rice, was that:

Numerous women go back to violent situations because of this lack of protection-- not because they like being beaten but because the beatings before divorce papers are served are known quantities. Afterwards the beating could be worse. I have had to suggest to some women that they consider leaving their homes and communities and even consider dropping out of sight. [Rice Testimony]

Rice recalled two years later that "...some legislators were annoyed that the victims, rather than the batterers, were the ones to be displaced." [Rice Letter] That concern clearly is reflected in the remedies chosen for the new statute.

Expected Benefits of Reform

The proposed law, Rice believed, would "...provide the most protection with the least disruption to the family unit." She said, "It does not force victims to file for divorce or some other relief they do not want." She noted that "a victim may call on a large number of different [court] orders for security," and "violation of several of the protective orders would then give rise to criminal penalties." [Rice Testimony] While

avoiding household disruption was one goal, Rice notes also, "It was hoped that the law would be used in conjunction with shelters." [Rice Letter]

Attorney Rice also noted the importance of court orders in criminal complaints under the proposed new law. Rice gave the rationale behind the act's provision for protective orders in criminal cases:

Victims of domestic violence needed protection, which could be provided by a law and a criminal justice system which viewed orders and sentencing as a means to the end of protection rather than to the end of punishment. It was hoped that prosecutors would be firm in obtaining guilty pleas and verdicts but creative in tailoring orders and sentencing to fit the needs of the victims. It was also expected that criminal protective orders would be used in cases that commenced with an arrest rather than with a civil protective action, obviating the need for two actions. [Rice Letter]

Instead of the fines or short jail sentences available up to that time, and the long delays that afforded the defendant opportunities to intimidate the victim, "The act would encourage judges to set conditions on abusers, again with the intent of providing the victims with protection and the least disruption possible." The abuser who disregarded the court orders would be guilty of more crimes. [Rice Testimony]

Finally, Rice saw the proposed law as according the police a more active, effective role in domestic violence complaints. In addition to its provisions for training, which she noted were supported by many in the law enforcement community, the new law would:

...provide the police with more options to arrest, especially in those more serious cases in which the victim has first made efforts on her own to obtain civil relief. The abuser would come before a judge much more quickly because an arrest has been made, and protective conditions could be placed on his release. [Rice Testimony]

Regarding the police role, Rice indicated that "improvement would come from expanded arrest provisions as well as from police training in domestic violence in general and police arrest powers and duties in particular." [Rice Letter]

Summary

While many observers, in Maine and elsewhere, had long lamented the danger and severity of the domestic violence problem, in recent years more and more social analysts and lawmakers had come to recognize that specific, correctable provisions of existing law were part of the problem. As is evident from Appendix A, more than a few States had ventured statutory changes, or even funded social service programs or other interventions aimed at alleviating the problem. Maine's lawmakers' perceptions of the nature of domestic violence and of appropriate government responses to the problem are consistent with these national developments.

Notes to Chapter II

1. Maine Civil Liberties Union, An Evaluation of Protection From Family Abuse in Maine (October 1981) (hereafter cited in text as MCLU Study).
2. See, for example, U.S. Commission on Civil Rights, Battered Women: Issues of Public Policy (1978), and Battered Women and the New Hampshire Justice System (1980).
3. Deborah Shaw Rice, Staff Attorney, Pine Tree Legal Assistance Inc., Testimony to Joint Judiciary Committee, Maine Legislature, May 1, 1979 (hereafter cited in text as Rice Testimony).

III. WHO HAS USED THE LAW?

Partly due to the obstacles to obtaining the protection of the law, spouse abuse traditionally has been a grossly under-reported crime. One key indication of whether the new law effectively addresses a genuine need is whether it is being used by those formerly excluded from protection. "Use" includes total complaint volume, preference for civil or criminal procedure, type of relief desired, and whether the presumption that women would be the principal beneficiaries has proved accurate./1/

In a sense, the law, by increasing arrest authority, also provides a tool to be "used" by police; however, the Advisory Committee's research did not include arrest statistics that might indicate patterns in this regard. (Interviewees' comments on police practices, including arrests, appear in the next chapter.)

Complaint Volume

The Maine Department of Public Safety has announced that 811 "domestic assaults" were reported to the police from July 1, 1980, to the end of that year-- the first six months the new law was in effect./2/ A department spokesperson cautioned that "the largest percentage of domestic assaults is never reported." The statistics were collected and published as part of the new law's record-keeping requirements. Although it is interesting to learn from these records, for example, that the 811 domestic assaults represented 25 percent of all assaults in the State, because this was the first year such records were kept it is impossible to ascertain whether there was an increase in reporting of such incidents since the previous year.

The Maine Civil Liberties Union did make such comparisons in a recent study. It looked at the total number of civil and criminal complaints in domestic abuse cases in four District Courts in 1981 and compared this figure to the volume of criminal complaints in 1979, before the civil procedure was instituted. Portland's complaint rate jumped 293 percent, South Paris's 283 percent, Brunswick's 225 percent, and Springvale's 170 percent. [MCLU Study, p. 26]

During the first six months of 1979, Portland had handled 30 criminal complaints; in the same period during 1981, there were 38 criminal and 80 civil complaints. Brunswick handled four criminal complaints during the first six months of 1979; two years later, the volume was two criminal and 11 civil. In Springvale, the jump was from 10 criminal to nine criminal and 18 civil. The increase in South Paris was from six criminal to 12 criminal and 11 civil. [MCLU Study, p. 26]

The MCLU acknowledges that there were some record-keeping inconsistencies that made the two periods not strictly comparable, but the increases in complaint volume are of such a magnitude as to dwarf any error owing to misinterpretation of records. Along the same line, the study acknowledges that one could plausibly believe that the increase in complaint volume merely reflected an increase in domestic violence incidents (rather than more frequent use of the legal system) proportionate to the overall rising crime rate. However, "the statistics show an increase in requests for protection far beyond the general increase in

crime." Portland's crime rate increased 74 percent, Brunswick's 34 percent, Springvale's 78 percent; South Paris experienced a decrease of 22 percent. These changes are far smaller than the changes described above in complaint volume. [MCLU Study, p. 27]

The MCLU characterized these figures as a "vast increase of requests for protection from domestic abuse since the law went into effect." [MCLU Study, p. 27] Furthermore, the study asserts, the data suggest that "victims of domestic violence are better protected from abuse under the new law." [MCLU Study, p. 27]

The perceptions of court officials add detail to the statistics on complaint volume. District Court Judge Millard E. Emanuelson was able to offer a broad perspective on the law,^{/3/} in that he sits one week each month in Portland and three weeks in rural Washington County. Judge Emanuelson said that complaints under the new law were initially at a high volume in rural areas but that this has slowed. He now handles about two complaints per week. District Court Judge Robert Donovan, with 3-1/2 years experience as a judge full-time in Cumberland County, said that in Cumberland County District Court about 10 complaints are received each week and temporary protective orders issued. Andrea Russell, the clerk in that court who handles domestic violence complaints, reported 124 requests for temporary protective orders from July 1980 to September 1981. Judge Donovan remarked that the volume of complaints had recently slowed.

In contrast, District Court Clerk Alice Monroe of Springvale said that when the law first went into effect, no one used it. During the past three months there has been about one complaint per week. Court Clerk Mary Godbout of the District Court in Augusta said that in her opinion the Augusta court gets a disproportionately high caseload of domestic violence complaints because Augusta is the capital city, and therefore something of a magnet for people seeking government services. Another factor is that Augusta has a battered women's shelter.

Different observers have differing opinions as to whether the law is being over- or under-utilized. Clerk Monroe cited a case in which the complainant "really needed the law," but she also feels that some complainants have used the law frivolously. She reported that in some instances the complainants are clearly not distraught when they file the complaint; some even laugh. Deputy Clerk Irene Lambert said that in some instances the filing of the complaint may be done as a tactic in a family dispute rather than out of fear of harm. On the other hand, shelter workers and advocates for battered women can point to caseloads greater than the complaint volumes as indications that many victims are not utilizing the available remedies. For example, Lynne Glanville of the Washington County Domestic Violence Project reported that her agency had served 71 "full-service" clients in less than a year, while the number of requests for protective orders was not so high. (In all, the eight programs of the Maine Coalition for Family Crisis Services assisted 1,557 families in 1980, giving shelter to 419 adults.^{/4/})

Referrals

Victims themselves are not the only ones who have benefited from the law. Others to whom victims have traditionally turned-- police, clergy,

private attorneys, women's rights organizations, alcoholism and mental health counselors-- may also be presumed to view the law's options as complementing their own strategies for dealing with domestic violence. Clerk Russell said the court appears to be where everyone now funnels domestic complaints. Clerk Godbout said that the court is typically the second stop for the complainant.

York Resident Judge Roland Cole stated that in his jurisdiction individuals seeking to use the civil procedure typically have been referred by the police. Judge Emanuelson said that most complainants are sent by attorneys or police officers. Deputy Clerk Russell reported that the police get a complaint call, arrest the alleged abuser, and on the morning following the incident, the victim comes to court to get a temporary order. Some referrals, she said, come from the district attorney.

Judge Henry, who hears cases all over the State, reported that the complaint activity around the State is enhanced by advocates' referrals of women to the courts.

Civil vs. Criminal Complaints

In three of the jurisdictions the MCLU studied, civil complaints far outnumbered criminal ones, and in the fourth jurisdiction the numbers were about even. [MCLU Study, p. 26] On this evidence, those who want protection are choosing, or being referred to, the civil process far more often than the criminal.

Establishing a new civil procedure created the possibility that it would be used instead of the criminal one, even though the law permits both types of actions to be pursued simultaneously. The complaint statistics from the four courts studied by the MCLU offer no consistent pattern with regard to substitution of the civil for the criminal process. In two jurisdictions, the criminal complaint volume rose, and in two it fell when civil protection became possible. [MCLU Study, p. 27].

The perceptions of court officials are also inconsistent. Clerk Godbout said there has been no dropoff on the criminal complaint side since the civil remedy was instituted. However, Clerk Monroe said there have been fewer criminal complaints in that jurisdiction since the law was implemented. In Judge Emanuelson's experience, plaintiffs have been using the civil and criminal procedures simultaneously, but police referrals to the civil procedure have reduced the volume of criminal complaints. Portland District Court Judge Donovan observed that the courts hear a "substantial number" of family assault criminal cases.

Whether a civil or a criminal complaint is filed (or both) may represent the victim's choice, or may depend on the interest or preference of the person who advises her. Some concerns about the appropriateness of police recommendations that victims seek civil protection appear in the next chapter.

Relief Sought

The law's civil procedure establishes a sequence of events leading from immediate, temporary protection to long-term protection. That these

provisions are expressed as a sequence rather than as discrete options encourages the assumption that the complainant will progress through all the steps.

However, complainants for one reason or another may feel that their situation does not require a final protective order, or that their purposes have been served by the temporary order, or may need more time to decide on a long-term solution to their problem. These complainants may withdraw the complaint, request that the temporary order be dismissed, or simply fail to appear at the hearing. To the degree complainants fail to follow the entire civil process through, it may appear that the law is not being properly utilized.

Judge Henry estimated that only a very low percentage of women who have received temporary orders return to the court for the hearing. In Judge Emanuelson's experience, most complainants come in only for the temporary order and do not pursue the final order. He viewed the failure of the complainant to follow through to the hearing stage as a problem of the use of the law. Judge Donovan estimated that attrition reduces the 10 complaints received each week to five by the time hearings are scheduled, and of the five scheduled hearings only two are actually held. He reported that in the Portland District Court, of 120 cases in which temporary orders were issued, 94 did not go to final hearing. Clerk Russell said that about half the time the complainant calls to request dismissal of the complaint and in the rest no one appears at the hearing.

The MCLU study, tabulating dispositions of civil domestic abuse cases in four jurisdictions for the first six months of 1981, found that attrition rates varied markedly. In Springvale, 12 of 18 complaints ended in dismissal, whereas in Brunswick, only two of 11 did. ("Not dismissed" means the complainant has followed the process through to obtain an active, final protective order.) In South Paris, only four dismissals occurred of the 11 complaints filed, and in Portland only 34 of 80 complaints ended in dismissal. The aggregate of the four jurisdictions is that more than half of complaints led to final orders. [MCLU Study, p. 28]

Counselor-advocate Alison Clark of the Family Violence Project in Augusta said that about 90 percent of the women counseled by her organization go through with the hearing, and she attributed this success to the support provided to the women during the process. Advice and support appear to shape the level of relief sought by the victim, who is likely to be confused, fearful, and hesitant.

Some of those who provide services to battered women asserted that it is incorrect to view the civil process as incomplete or unsuccessful because the victim fails to carry the process through to the hearing stage. They claim that the temporary protection order of itself may lead to improvements in the domestic situation, making further steps unnecessary; this and other aspects of the attrition situation are discussed in later chapters.

Repeat Complainants

The complainant who chooses not to pursue, or who fails to get, long-term relief may return eventually to the court seeking another

temporary order. The Advisory Committee did not compile statistics on rates of recurrency, but many interviewees commented on this.

In many instances, according to Clerk Russell of Portland, the complainant who dismisses the temporary order or fails to appear at the hearing will later request another temporary order. Clerk Monroe observed that in Springvale the complaint in most instances is dropped but the victim eventually returns seeking another temporary order; however, Deputy Clerk Irene Lambert added that there had not been any repeaters recently. Clerk Godbaut said there has been little evidence of recurrent complaints in Augusta, but this may be associated with the fact that many complainants come from other parts of the State. Handling of repeat complainants is discussed further in later chapters.

Pro se and In Forma Pauperis

As described in Chapter I, special provisions of the new law ease access to justice and recognize the limited resources of many homemakers.

In District Court Judge Donovan's estimation, the law was "designed to be used pro se-- in the vast majority of cases, the parties are unrepresented." Complainants have appeared at hearings before Judge Emanuelson pro se, and sometimes both defendant and complainant come pro se. Judge Donovan reported that victims seem to know about the law, but not its workings. In contrast, Judge Cole said that in his experience, often the defendant is upset and has hired an attorney, and the plaintiff has an attorney as well.

Although the pro se feature of the law is used frequently, apparently the in forma pauperis provision, allowing waiver of court fees, is less used. Court Clerk Godbaut reported no instances of this form of request in Augusta.

Male Plaintiffs

Many of those commenting on the law made a point of noting whether males had filed complaints of abuse. Judge Cole said that several husbands had used the law in complaints against their wives. Clerk Monroe reported one male had used the statute in that jurisdiction. Deputy District Attorney Paul Mathews of Augusta noted that there had been one male plaintiff under the new law. Judge Donovan said there has never been a male complainant in his court.

The Maine Department of Public Safety's figures on assaults reported to police in the first six months the law was in effect show that only 5.3 percent involved male complainants and female assailants./5/

The MCLU study of four jurisdictions found the following gender distributions of complainants (both civil and criminal) in 1979 and 1980: Portland, 5 men, 143 women; Brunswick, no men, 17 women; Springvale, one man, 36 women; and South Paris, one man, 28 women. Overall, men represented three percent of complainants in those jurisdictions. [MCLU Study, p. 27]

Notes to Chapter III

1. The law is gender-neutral and can be utilized by men as well as women. However, the protections it offers clearly acknowledge the special vulnerability of women and the likelihood that most victims of domestic violence will be female.

The Maine Advisory Committee, in occasionally using "she" or "her" in this report to refer to typical complainants or victims, also recognizes this reality. The Committee does not intend by this practice to suggest that the law was meant to be, is, or should be exclusively oriented to women.

2. "Domestic Assaults 25% of State Total," Bangor Daily News, April 7, 1981.
3. Unless attributed to other sources, statements of individuals included in this report were recorded at interviews conducted by staff of the New England Regional Office, U.S. Commission on Civil Rights, during September and October 1981. A list of interviewees and sources appears in Appendix C.
4. Maine Coalition for Family Crisis Services, untitled monograph on services provided and funding sources (1981).
5. "Domestic Assaults 25% of State Total," Bangor Daily News, April 7, 1981.

IV. HOW HAS THE LAW BEEN INTERPRETED AND APPLIED?

The domestic violence law assigns specific responsibilities to many different local justice system officials. The complexity of administration raises the possibility of inconsistent implementation. Such inconsistencies were reported by several individuals with diverse experience in the use of the law.

Lynne Glanville, acting director of the Washington County Domestic Violence Project, reported, "We've found that there is a wide range of discrepancies in interpretation of the law by the legal, judicial, and law enforcement personnel." Counselor-Advocate Sue Bradford of the Spruce Run Association said, "Both the content and the way the information about the law is given out seem to vary widely depending on which district, clerk, judge, or law enforcement agency is involved."

Police Practices

Anita St. Onge, an Assistant Attorney General who conducts training at the Maine Criminal Justice Academy, described police as generally quite accepting of the law. Ellen Rogers, Director of the Family Support Center in Presque Isle, characterized "most" local police departments as "supportive." However, Kim Stowell, of the Abused Women's Advocacy Project in Auburn, stated, "Our problems with the law have mainly been in the area of implementation on the part of the police," and that "there is a lack of consistency in general."

1. Training

The new law mandates training for police officers. According to the MCLU study in which 23 police officers were interviewed, "Nearly all felt they had received sufficient training in both [civil and criminal] aspects of family abuse." [MCLU Study, p. 18] Deputy District Attorney Paul Mathews of Kennebec County said that in his estimation, "Of all the new laws, this has been the most taught" to police officers.

Attorney Mimi Marchev of the Maine Attorney General's staff was responsible for the initial round of training in the new law at the Maine Criminal Justice Academy:

I developed a four-hour in-service course which was offered to all agencies [police departments] in the State. The course covers the problem of domestic violence, services available to the victims, provisions of the new law, and officer safety in handling domestic violence calls.

I team-taught the course with a police officer and a representative of a local domestic violence shelter or service agency.

As of July 31, 1981, she had presented 20 regional programs and by that time had trained over 600 officers, and those figures increased in the next months. (Marchev was succeeded by Anita St. Onge.) Each new class that goes through the academy gets the training. Workers in shelters for battered women regard the police academy training as "excellent." [MCLU Study, p. 23]

Some local training has occurred as well. For example, District Attorney David Crook, who is president of the State prosecuting attorneys' association, reported that after the State Criminal Justice Academy had held a statewide conference for police, "We gave our own two-county seminar." Eventually, his office conducted sessions at four or five police departments.

However, not all officers have had access to training, either State or local. Crook noted that some departments in his jurisdiction rely on part-time or reserve officers who may not have had the benefit of the training. Jacqui Clark of the Family Violence Project in Augusta asserted that "in some outlying districts and small communities, police are still saying they've never heard of the law." In contrast, she characterized the Augusta police as "fantastic, very responsive."

2. Referrals to the Civil Procedure

Considering the training that has occurred, officers certainly are aware that the civil protection exists. However, some observers believe that the police are making inappropriate use of it.

There are some indications that the civil procedure is being used as a substitute for the criminal complaint process rather than in a complementary way.

Anita St. Onge said that the ready access to civil relief for victims under the new law seems to encourage law enforcement personnel not to pursue the criminal route, and that police and court personnel direct victims to the civil remedy. At-large District Court Judge Henry said that she feels that since the change in the law, the police appear to be "dumping" what might be criminal matters into the civil process. Judge Cole of York County also stated that the new civil procedure has been something of a dumping ground for police departments. Judge Henry pointed out that there is no statewide police policy distinguishing incidents requiring civil processing from those requiring criminal.

Judge Emanuelson called the civil remedy a "catch-all" for police departments, with police sometimes making inappropriate referrals. In his experience, police referrals to the civil procedure have reduced the volume of criminal complaints. Cumberland County District Court Judge Donovan said the police department portrays the new statute as a "panacea."

In contrast to inappropriate referrals in incidents that perhaps merit criminal treatment, some referrals from police officers seem not to require either a criminal or civil law response. According to Judge Donovan, some police refer plaintiffs to the court when there is "no real abuse -- the couple loves to fight." He said that police are misinformed about and communicate misinformation about the uses of the civil process.

District Attorney Crook asserted that the police departments in his jurisdiction are good at giving appropriate advice to complainants. Attorneys in his office are available around the clock to advise officers with questions about the law. Deputy District Attorney Mathews said that he has received a "fair number" of such calls.

3. Warrantless Arrests

Another aspect of over-reliance on the civil remedy is that police may be failing to intervene in cases the new statute was designed to address. Judge Donovan asserted, "I consider police arrest authority 50 percent of the law." He "strongly emphasized" that police should be urged to use the warrantless arrest power more freely, remarking, "Police are not making warrantless arrests at all." District Attorney Arthur Brennan of Biddeford characterized police behavior since the passage of the new law as "business as usual." He said the warrantless arrest authority has not been utilized. Judge Cole also reported that the warrantless arrest authority has not been utilized by the police.

These perceptions contrast sharply with the Department of Public Safety's report that in the first six months the law was in effect, police made arrests in 93.2 percent of complaints of domestic assault.^{1/}

4. Providing Information

Law officers intervening in disputes commonly must inform both the complainant and the defendant about their rights.

The domestic violence law requires an officer, if no arrest is made, to provide the complainant written notice about rights and possible relief. [19 M.R.S.A. sec. 770(6)(c)] Although many officers regard written notices to be of particular value in incidents where alcohol is involved (as is often the case in domestic assaults), the MCLU study found that different police departments handled this responsibility in very different ways. One department, having exhausted its supply of information cards, had the officers read the victim the rights; no more cards had been produced. Other departments handed out photocopies. Even within single departments, there was a lack of uniformity. [MCLU Study, p. 18]

Provision of information to the defendant appears to be even spottier. The summons does not inform the person served of the right to challenge, Judge Henry pointed out. The temporary order does include language raising the possibility of challenging the order but the notice of this right is written in legal jargon and thus is, most likely, unclear to the defendant. The law does not require police officers to inform the defendant of this right, although both at the time of intervention in the dispute and at the time the complaint and temporary order are served, the officer has the opportunity to do so.

Officers, however, do not themselves seem to be aware of this right. The MCLU found that "nearly all the officers interviewed in all towns had no awareness of the [alleged] abuser's right to challenge a temporary order of protection." [MCLU Study, p. 19] Sue Bradford asserted, "The information provided to the defendant at the time of service is often inadequate. Police just don't seem to understand what the defendant's rights are, and may misinform him."

5. Serving Protective Orders

While the failure to inform the defendant of his rights is important, mistakes in the delivery of protective orders probably cause more hardship

for the persons the orders are intended to protect. When an order is not properly served on the defendant, the defendant cannot be charged with criminal violation of it, even though its terms are considered to be in effect.

Judge Donovan said that police departments are not serving the temporary protective orders efficiently. "Many times," Judge Emanuelson reported, the temporary restraining orders lie in the police departments after they should have been delivered. Kim Stowell of the Abused Women's Advocacy Project in Auburn recounted one case in which "the officer neglected to date the order upon serving it, and so a blatant violation was excused because it could not then be proved that the abuser had been served."

Sue Bradford said, "Service is a problem because law enforcement departments don't communicate very well." There is no accountability for the mandated coordination between law enforcement agencies, she explained.

6. Enforcement of Orders and Mandatory Arrest

Officers do not have an affirmative duty to monitor the defendant's behavior with regard to the terms of the protective order. The police department enforces orders in response to reports that the orders are not being observed. Sue Bradford pointed out that lack of enforcement of protective orders can lead to the worth of the orders being discounted in the eyes of the victims and to the dilution of their effect on abusers.

As explained in Chapter II, the law stipulates that for certain violations of protective orders, a police officer must arrest the violator. Anita St. Onge called the mandatory arrest provision the one part of the law that troubles the police, and said the police would prefer to have discretion to arrest in these situations. Similarly, the MCLU study found "officer discontent centered on the provision of the law requiring mandatory arrest if a court order of protection is violated." [MCLU Study, p. 16] (These criticisms are discussed more fully in a later chapter.)

Explaining what he described as a problem with the mandatory arrest requirement, District Attorney Crook said that "on a relatively frequent basis," a complaint is filed, the couple reconciles before there is a formal dismissal of the charge, and the officer-- perhaps learning from the neighbors that the defendant has returned to his home-- is put in the position of having to make an arrest. Officers also expressed concern about the situation where the violation of the order follows an invitation from the complainant to the defendant. [MCLU Study, p. 16]

The actual practice in mandatory arrest situations, the MCLU reports, is different than the law requires, and certainly reflects officer discomfort with the provision:

It is apparent that most officers do not follow the letter of the law in this instance, which requires arrest, but simply tell the man to leave. All officers but one said they would arrest if the violator did not leave. [MCLU Study, p. 17]

Although the type of situation described by Crook was frequently mentioned in interviews, "all officers agreed that this situation of an extended invitation contrary to a protective order is an exception and not the norm." [MCLU Study, p. 16]

Judge Henry said that she has made restraining orders reciprocal in some cases, so that if the woman invites the man into the house during the term of the order, she too is liable for contempt.

Those who counsel and assist battered women are dissatisfied with the level of enforcement of protective orders. Lynne Glanville complained that there has been "a lot of non-enforcement of the court orders." "Enforcement of the orders at this time is not uniform," Sue Bradford said. Kim Stowell charged:

There have been occasions when the police have neglected their duties of enforcing the order, or have delayed the serving of the order. There is also evidence to suggest that some officers have allowed personal biases to affect their decisions on whether or not to enforce the order, even when they would be committing a crime themselves by not enforcing it.

However, District Attorney Crook recounted that, during the first six months the law was in effect, a women's group in his jurisdiction monitored observance of the orders, and "was impressed" with police handling of this responsibility.

Civil Procedures

Judge Henry observed, "The courts have quite broad equity jurisdiction with this law." This means that the judges not only establish the facts of the case and interpret and apply the law, but also have discretion to see that just and fair solutions are reached.

The other key court official in the domestic violence law is the clerk. The victim who seeks court protection has her initial contact with the court in the person of the court clerk. The MCLU points out, "Court clerks are in contact with victims at a particularly vulnerable time. If this initial contact with the helping system is discouraging, the victim may forego further involvement." [MCLU Study, p. 37]

Sue Bradford of the Spruce Run Association in Bangor acknowledged, "This has definitely laid a very heavy load on the clerks." There are dimensions to this beyond routine performance of duties-- Clerk Andrea Russell reported that on one occasion she had received abusive phone calls from the defendant, who had learned her name from the summons.

Judges were characterized by Kim Stowell of the Abused Women's Advocacy Project as "for the most part cooperative and supportive, although they are not always well-informed, and district court personnel have been very helpful." Ellen Rogers said, "Our agency has found the local judges to be supportive of the law." Sue Bradford said of the clerks, "Ours have done a very fine job."

1. Court Accessibility

Access to the legal system consists not only of the provisions of the law, but of physical access to courthouses, clerks, and judges. This is an important consideration in emergency situations.

District Courts are typically open five days per week, from 8 a.m. to 4:30 p.m., although there is not a judge present every day in every courthouse. Complaints can also be filed at a Superior Court, and Superior Court judges can issue protective orders. The law also provides for obtaining emergency protective orders outside regular court hours, in recognition that many incidents of abuse occur late at night or on weekends.

Kim Stowell said that there is a judge in her organization's service area who can be called at odd hours, but they have never had to call him, nor have they ever tried to use the Superior Court. Sue Bradford reported, "We have had occasions to wake a judge up, and though it's been difficult, it's been done." She added, "We've had relatively good results from Superior Courts," even though initially the Superior Court judges and clerks thought they were not to handle such complaints, and these courts had no forms on hand. Clerk Mary Godbout in Augusta said that if the resident judge is unavailable, the nearby Superior Court is used. This has happened occasionally. If it is an off-hour and the defendant is released on bail, she added, the police will contact the judge so that the complainant can obtain an emergency protective order.

In Washington County, according to Judge Emanuelson, after regular court hours police refer victims to the court in Bangor. They do not transport the victim to Bangor, however. At-large Judge Harriet Henry said that she did not regard accessibility to the courts in rural communities as a severe problem, although some complainants have come as far as 50 miles to her court. She commented, "The Superior Courts have tried to keep uninvolved with the abuse provisions, and perhaps rightly so. It should be handled at the District Court level."

2. Training

Judge Henry remarked that, with this law, "The clerks are in the position of having to give legal advice." In Judge Cole's estimation, the forms to be filled out to obtain the temporary order require professional guidance.

Despite the difficulty of their roles, clerks have had to learn on the job. Deputy Clerk Russell said that court clerks had not received any training in the new domestic violence law. She had not seen the Alert newsletter -- one of the few available references on the law-- issued in 1980 by the Maine Attorney General and the Criminal Justice Academy. Clerk Godbout reported that there had been a clerks' conference last year regarding the domestic violence law changes and changes in small claims procedures, among other matters, but the session was not very informative. She had not seen the State Attorney General's newsletter. Clerk Monroe said there had been no training, although she did receive a sample packet of forms. A local police officer provided her with a copy of the Alert. All three clerks said they seek clarification when necessary from the judges.

Judge Donovan said that judicial training in the new law had consisted of a half-hour panel discussion at a judges' conference. This, he said, is typical for statutory changes. To his knowledge, copies of the State Attorney General's Alert were not widely distributed in the State. The only background information on the new statute that Judge Emanuelson reported having seen was a pamphlet prepared by Pine Tree Legal Assistance, Inc./2/

3. Complaint and Request for Temporary Order

The clerk's interpretation of and involvement with the domestic violence law varies with the jurisdiction. In some jurisdictions, a single clerk handles both civil and criminal matters. In others there is a division of labor. The clerks assist the victim in completing the forms for the Complaint For Protection From Abuse, the Motion For Temporary Order, and the Affidavit For Temporary, Emergency Relief From Abuse. Depending on what happens after the initial complaint is submitted, the clerk may also be responsible for processing the summons, temporary protective order, and final protective order.

At the Portland courthouse, the victim meets first with Clerk Russell, who handles only civil matters. Russell provides her the forms needed to file the complaint and request the order, and also gives her a list prepared by the Maine Bar Association of pro bono attorneys. Clerk Monroe said that it was her understanding that it is not permitted to refer complainants to private attorneys.

Assisting the complainant in preparing the forms may be a time-consuming task. Russell said that the portion of her time spent on domestic assault cases has increased each month, and takes about one day per week; she has spent as long as 45 minutes assisting the complainant in filling out the forms, and both she and her supervisor regard this as too much time. Another example of the complexity of the responsibility was provided by Clerk Godbout. She reported that, on one occasion, the judge initially turned down the request for the temporary order, and the clerk then assisted the complainant in re-drafting the affidavit, which was subsequently approved. Clerk Monroe said the paperwork for domestic violence complaints is "much larger than anything else in the docket." Judge Cole reported that in the York County District Court, prosecuting attorneys, in the court house on other matters, have sometimes assisted victims in filing of the civil complaints.

Judges appear to recognize the urgency of the requests for protective orders, and adjust their daily schedules accordingly, but the requirements placed upon the plaintiff and the nature of her encounter with the judge differ with the jurisdiction.

Clerk Godbout said that in Augusta the requests for temporary orders are usually received by the clerk and processed by the judge within the space of a few hours. According to Judge Donovan, judges squeeze complainants requesting temporary orders in without appointment.

Judge Henry said it has been her practice not to grant a temporary order unless an affidavit or verified complaint is present. Judge Donovan remarked, "The law is vague on requiring an affidavit, but I insist on

it." He added that a new set of forms just coming into use does not include an affidavit. "Simplifying the forms has been an improvement," Lynne Glanville noted.

Judge Cole stated that he encounters "a lot of frivolous stuff but I uniformly grant interim orders." Often, he does not interview the victim at the time of the request for temporary protection. In contrast, he points out, at hearings the complainant has to prove the need for the final protective order. Clerk Monroe said that the judges usually grant the temporary order, but one judge makes a point of talking to the plaintiff about the request. Clerk Russell noted that one judge occasionally has denied temporary orders due to insufficient evidence of physical abuse, and also swears in the complainant during a request for the temporary order.

Clerk Monroe reported that on the second request to the court for a temporary order by the same plaintiff, the plaintiff is referred to the district attorney to pursue the criminal complaint process.

Sue Bradford said that getting orders for protection pro se seems to be encouraged by the courts. She recalled that "at the very beginning, on a few occasions, the judge told the woman she had to have a lawyer, that she couldn't do it herself." Now the woman can get the emergency order pro se but the judge may suggest that she to get a lawyer for the hearing.

4. Notice to Defendant

Some early misunderstandings in the clerks' handling of the notice to the defendant are probably attributable to the lack of training in the new law.

The defendant is to receive a copy of the complaint and of the temporary order, and also a summons. Clerk Russell said the clerk prepares the summons, which is given to the appropriate police authority for delivery to the defendant. When the law first went into effect, Clerk Monroe recalled, they served the defendant only with the protective order, and did not know that the complaint had to accompany it. Another problem, Ellen Rogers said, was that initially, "The clerks were not informed that the protection orders were to be provided without charge. Also there has been a question as to whether or not the client must pay for service of the order."

5. Challenging and Dissolving Temporary Orders

The defendant's right to challenge the temporary order was described in an earlier chapter. By all accounts such challenges are very rare. "The defendants usually are unaware of their right to request a hearing in two days to dissolve the initial order," Judge Henry reported.

In many dismissed complaints, the dismissal is requested by the complainant. Court Clerk Monroe said that there had been cases where the complainant wished to have the order canceled simply by a telephone call. However, this is not possible, she said. Clerk Russell said that when there is a dismissal, she sends a notice to the police that the temporary order no longer is in effect.

6. Hearings

When the judge signs the temporary order, a hearing is set within 21 days to determine whether long-term protection is warranted. In Portland, the requests for final orders are heard in open court on Tuesdays at 11 a.m. and 3 p.m., so there is no problem meeting the 21-day requirement. In Augusta, according to Clerk Godbout, the hearings are held on Mondays at 1:30 in the afternoon. Judge Cole reported that in York County, hearings are typically held within 10 days.

At hearings, according to Judge Emanuelson, "If you can get both parties in, you can talk conciliation." However, he noted that in rural areas it is difficult to find trained counselors to facilitate this process. Judge Donovan reported that many defendants agree to the final order. However, he added, "an amazing number of defendants leave the State." Judge Henry reported that in her experience men rarely appear to contest the issuing of a final order at the hearing.

7. Issuing Final Order

The law provides that long-term protection can take the form of a court order or a consent agreement. Use of the latter is apparently rare. For example, according to Augusta Court Clerk Godbout, the resident judge there has not utilized consent agreements, but only orders.

Prosecution and Sentencing

If the police officer decides to exercise his arrest authority in a domestic abuse situation, the arrest becomes the first step in the criminal process. After the arrest has been made, the decisions and effectiveness of the prosecutor come into play. If a conviction is obtained, the judge must make a decision with regard to sentencing.

1. Prosecutorial Practices

Judge Donovan remarked, "Many prosecutors regard these as nuisance cases." One reason for this has been that the attrition rate in domestic abuse cases traditionally has been high. District Attorney Crook estimated that 50 percent of cases lead to convictions, and that the most common reason for dismissal is a request by the victim. However, Crook said, "as long as the wife tells the truth and accepts a subpoena," his office will go forward with a prosecution. The prosecuting attorney keeps the victim informed of the range of options. When the victim is reluctant to proceed, Crook said, "We listen to the victim's point of view and, if in the best interest of the State, would prosecute. We have sometimes forced them to testify and gotten convictions."

Subpoenaing the victim makes the State rather than the victim the force behind the prosecution, and thus to some degree disarms the abuser's resentment at the victim for bringing the case to court. However, Judge Donovan believes that prosecutors do not subpoena victims as much as they should in Maine. Clerk Monroe of Springvale reported that the tactic of subpoenaing the victim has not been used in that jurisdiction. Judge Henry said that prosecutors as a rule do not proceed without the cooperation of the complainant. She added, "Day by day, prosecutors ask for continuances on the basis of 'saving the family'."

Although the practice of subpoenaing the victim appears to be limited, Judge Donovan added that when the defendant attempts to intimidate the victim into dropping the complaint, "prosecutors are invariably good on threats [to the victim before the trial], which are regarded as interference with their duties." Crook observed that in the period preceding the trial the defendant is less likely to threaten the victim than to attempt to regain her favor.

In some parts of the country, and in some jurisdictions of Maine, victim-witness advocate programs have been set up to provide support and advice to prosecution witnesses and crime victims during prosecution. Counsellor-Advocate Alison Clark of Augusta stated that these advocates employed by the district attorney, although overloaded with cases, "help make the process smoother for the [domestic violence victim] who may get frightened by the system." District Attorney Crook reported that in Somerset County his office is operating a Victim-Witness Assistance Advocate Program. County funds support the activity. Crook's office is seeking county funds to establish a similar program in Kennebec County.

2. Bail Conditions and Criminal Protective Orders

Ellen Rogers expressed concern that "often when the abuser is arrested, he can be out on bail in a matter of hours, and return home to further abuse the victim before a civil order can be issued." District Attorney Crook also noted the 24-hour lag between arrest and issuing of the temporary order.

Judge Henry said that one condition of bail in a criminal cause can be nonharassment or noncontact, which might be more appropriate than seeking civil relief. Anita St. Onge said, however, that it is unclear whether bail commissioners have authority as part of the bail hearing in spouse abuse to issue protective orders. Deputy District Attorney Paul Mathews reported that bail bondsmen sometimes issued protective orders as part of the bail conditions, but this led to confusion when plaintiffs attempted to get police enforcement of the provisions./3/

While it is unclear whether bail commissioners are authorized to issue criminal protective orders as a condition of release, it is clear that judges have this authority where a person is charged with or convicted of a crime arising from an incident of domestic violence. Attorney Deborah Rice pointed out that the provision of the law authorizing criminal protective orders is "vastly underutilized." She stated that if police and district attorneys recommended such criminal orders in connection with setting the terms of release, that would diminish the problem of victims' failure to pursue the complaint until orders are issued. She said that the statute was drafted so that protective orders could emanate through either civil or criminal proceedings, but at present the criminal avenue is being neglected.

3. Sentencing

District Attorney Crook said there are very few trials and very few jail sentences for domestic assaults. Occasionally, there are "shock" sentences. Individuals with multiple convictions or other criminal records might receive a jail sentence. Typically, there are probated sentences, with conditions for rehabilitation and restraints on behavior. Very few fines are imposed, Crook said, but work release has been used.

A particular problem in obtaining convictions, Crook pointed out, is that "the defense counsel usually knows more about the case and family than anyone else does, because of the victim's assistance."

Judge Henry estimates that the law has "no deterrent effect beyond what is already provided by criminal statutes." She expressed a willingness to use innovative sentences such as work release in domestic violence cases. This is a prerogative of the judge, but she pointed out that in practical terms this depends greatly on the county sheriff's policies and cooperativeness.

Reporting and Record-Keeping

The Department of Public Safety's statistics cited at various points in this report were collected in accord with a requirement of the domestic violence law. While the current figures are of limited value because they are not comparable to data for preceding years, the new crime-reporting practice should greatly improve knowledge about domestic violence in Maine. Local participation in the crime-reporting system is still being implemented. For example, Clerk Monroe said that starting at the first of the year, domestic violence complaints in that jurisdiction will go into a separate docket incorporating both civil and criminal actions.

Referrals and Screening

Referrals, it was reported earlier, account for many of the requests for protective orders. Several observers expressed concern that some cases being referred to the courts are not really appropriate for the civil protection available under the domestic violence law. However, this situation may have been a temporary, start-up problem.

Judge Emanuelson said that initially there was little screening of victims by advocates, police, Department of Human Services staff, and private attorneys, but that this situation has improved except regarding private attorneys, who have not become more selective in referrals. Judge Emanuelson believes that this may be because they use the domestic assault complaint as a tactic in divorce cases.

Judge Donovan said he is "all in favor of screening of potential complainants by shelter workers and advocates. They are apt to do a good job. They don't just send them down here." Judge Emanuelson voiced the opinion that "as the public becomes more educated about the law, frivolous complaints will subside."

Notes to Chapter IV

1. "Domestic Assaults 25% of State Total," Bangor Daily News, April 7, 1981.
2. Pine Tree Legal Assistance, Inc., "Domestic Violence: Your Rights to Protection From Abuse" (September 1980).
3. The law was amended in 1981 to specify that violation of a criminal protective order issued pursuant to 15 M.R.S.A. sec. 301 constitutes a criminal violation under 19 M.R.S.A. 769(1), for which the police must arrest the defendant. [1981 Me. Acts, Ch. 420.]

V. WHAT PROBLEMS HAVE EMERGED?

The previous chapter's discussion of how the law has been interpreted and applied raises numerous inconsistencies and points of confusion. This chapter summarizes and attempts to further illuminate the key concerns, disappointments, and frustrations individuals and officials have encountered in dealing with the domestic violence law.

Some of these are matters that might be clarified by rulings from higher courts. Others may be resolved by legislative amendments or policy determinations by those charged with administering the law. In still other cases, one person's "problem" is the other side of the coin of his neighbor's "benefit."

Unmet Needs

If a law is too limited in scope, it may fail to alleviate the problem it presumably addresses, even if it is used to its full potential.

Several interviewees cited such limitations of the law, or of the overall State response to domestic violence (see Appendix D). Judge Henry expressed concern about separating spousal abuse from the overall problem of family violence, such as protective custody orders in child abuse cases. Similarly, District Attorney Crook complained that the statute's lack of coverage of minor children is a serious limitation.^{1/} Judge Emanuelson said that the effectiveness of the response to domestic violence victims in rural areas is diminished by the lack of shelters for victims, and that Department of Human Services regulations governing shelters seem unnecessarily burdensome for rural conditions.

Disappointments

Several aspects of the law reportedly have not been used in the ways anticipated or produced the projected results. Some of this is attributable to unwarrantedly-high expectations, and some to ineffective implementation.

1. Attrition Rate

As suggested earlier, the law fosters in some a presumption that the complainant will complete all the steps of the protective order process, resolving her problems by getting a final order. This leads court officials to feel that their efforts have been in vain when there is a dismissal or withdrawal. No result is produced that they can see. As Deputy Clerk Lambert of Springvale observed, "We don't know what happens when they're served."

However, as several advocates for battered women pointed out, there may be a resolution outside the court during the period of the temporary order-- such as the wife's deciding to permanently leave the abusive spouse, or an agreement for the spouse to enroll in counseling. In such instances, the advocates see a benefit while the clerk's perspective suggests wasted effort.

Kim Stowell said of court clerks, "I can understand their frustration, but every case is individual." Alison Clark, Counselor-Advocate for the Family Violence Project in Augusta, asserted that a high attrition rate is associated with lack of support for the complainant. She said, "These women have not had chances to make choices and take control. It's not an easy thing to do."

Jan Tewes, Police-Court Liaison for a shelter in Portland, stated that it is important to distinguish complaints that are dropped because the victim does not wish to follow through and those dismissed for technical reasons such as failure to serve the order.

Regarding causes for attrition in criminal cases, Clark pointed out one adjustment prosecutors may wish to make. She noted that the complainant is usually intimidated by, if not outright fearful of, aggressive men. Presumably, she has been abused by such an individual. Police and prosecutors also often are forceful, aggressive individuals, and that they may have the same temperament as the abuser is not likely to inspire confidence.

2. Recurring Complaints

Although no one interviewed cited statistics as to what proportion of all complaints are repeats, recurring complaints loom large in the perception of those who administer the law. Clerk Russell said, "Repeaters are the biggest problem." The MCLU survey of police officers found, "It is uniformly reported that repeat callers and victims who get protective orders and drop them make frustrating work for the police officer." [MCLU Study, p. 19]

Some observers suggested that the appropriate response to repeat complainants is to present their cumulative record of complaints and dismissals with each new request. However, the MCLU strongly disagreed with such a practice:

This suggestion seems harsh and counterproductive. The argument has been made that attrition from the system is not a failure. To institute a procedure which would penalize the individual for a former lack of follow-through simply denies the chance for future protection, without deterring others from dismissing complaints. Follow-through by victims to final orders of protection may not be necessary for the viability of this new law. [MCLU Study, p. 37]

Jan Tewes noted that some repeat complaints occur when the original complaint has not been served on the defendant, and must be instigated again. Judge Henry termed the situation of the plaintiff who recurrently seeks temporary protection while failing to attend the hearing a "necessary weakness." Advocates for battered women are aware of the frustrations of handling recurring complaints. For example, Kim Stowell said the Auburn shelter puts a limit on the number of times a woman can take refuge there. She said that the shelter conducts a "tough second interview" when a woman arrives who has been there previously. Emphasizing the importance of self-help, the staff seeks to learn how the victim expects the second stay to produce different results than the first. Stowell made clear that the discussion is intended to produce progress rather than to deter the victim,

and she pointed out that "we understand it may take a woman several times to make a decision or act effectively on her own defense."

3. Use of Arrest Authority

An earlier chapter described alleged police reluctance to arrest in domestic violence situations, even when it is mandated by the new law.

District Attorney Crook asserted that the mandatory arrest provision is based on a false assumption that the officer does not want to make arrests in domestic violence situations. In Crook's estimation, all that was needed to improve the police intervention was to expand the arrest authority by the warrantless arrest provision; increasing rather than decreasing police discretion helps resolve situations. However, former Criminal Justice Academy Trainer Mimi Marchev stated:

I think mandatory arrest is appropriate only [because of] the ways the laws have traditionally been enforced. Some police had been trained not to arrest [in domestic situations]. If police treated domestic violence as they do other crimes, mandatory arrest would be unnecessary.

Deborah Rice pointed out that it is not the police officer's responsibility but that of a judge to determine whether to punish a defendant for violation of a protective order when he has been invited in by the plaintiff. She fears that if police elect not to arrest as required by law, abusers will cease to take the law seriously.

Marchev added that as training and experience with the new law-- and with the whole new response to domestic violence-- progress, the mandatory arrest provision may become unnecessary.

The MCLU report notes that "a great many police officers who reported complete satisfaction with the law were candid enough to report an initial dissatisfaction." [MCLU Study, p. 17] The estimate of the value of the clear legal guideline appears to grow with experience, and one sergeant suggested that familiarity with the law may well lead officers to feel less threatened by the mandatory arrest requirement. [MCLU Study, p. 17]

4. Monitoring of Protective Orders

As reported earlier, many shelter workers and counselors for battered women expressed dissatisfaction with police delivery of protective orders to the defendant, and subsequent enforcement of the orders. Judge Henry said a similar deficiency is the lack of monitoring of orders requiring counseling. She said that for such orders to be effective, there has to be some requirement for the defendant to report on his participation in the required activity.

5. Pro se Provision

Ellen Rogers pointed out that, even though the pro se feature improves access to the legal system, "Abusers usually have the money to retain a lawyer for the final hearing and the victims usually do not." This may place the victim at a disadvantage at the hearing on the request for a final protective order.

New Problems

1. Work Load of Courts

In the previous chapter, court clerks described the increasing demand on their time of domestic violence cases, and other interviewees pointed out that the clerks' role calls for legal advice rather than merely clerical assistance to the complainant. Clerk Godbout said that she "didn't realize the time it would take" to implement the new law. She said that her "only complaint" was that the process was "very time-consuming."

Many communities around the country have established types of court diversion programs to ease the burden on the courts. Concord, New Hampshire, for example, operates a mediation program for domestic violence cases. Judge Donovan was asked whether mediation programs such as the one in Concord, New Hampshire, might be appropriate in Maine. He said that he serves as the coordinating judge for a court mediation program, although that program has not included domestic violence complaints. District Attorney David Crook said that in his view mediation programs are better suited to large population centers with a high volume of complaints. In a jurisdiction such as his [Kennebec and Somerset Counties], better prosecutorial services would be more effective. He added, "We need judges more than anything else."

Judge Emanuelson suggested, "Maybe the court should be used in a later stage of the procedure, if a lower or another type of commission issued the first order." He said that the civil procedure might be facilitated in rural areas by involving complaint justices. He noted that Washington County has four complaint justices. The complaint justices already are authorized to issue search warrants and to commit individuals. Judge Donovan also affirmed that it might be "good to recommend that complaint justices be given a role. They are attorneys." He added that this would require statutory reform.

Another problem was identified by Judge Emanuelson, one of particular concern in rural areas. When the court opens, everyone who has business comes in first thing in the morning, the court clerks are overwhelmed, and all the work for the clerks bogs down. He said the filing of the complaint would be expedited if whoever makes the referral of the victim would also suggest that the victim go to the courthouse later in the day.

2. Inappropriate Use of Civil Remedy

Judge Henry cited several instances in which the law has been utilized for purposes other than what she regards as its original intent. In one case, the law was invoked by parents in an effort to get an adult son who had been released from a mental health facility out of the house. She also said it has been utilized at times to prevent "child-snatching." In addition, she was concerned that provisions of restraining orders may wrongly supplant material provisions that should be handled under a divorce, motion-pending. Judge Henry added that in custody questions in domestic violence cases, the provisions of the Uniform Custody Act should apply. She cautioned that emergency procedures should not be a substitute for other procedures, specifically orders associated with divorce proceedings.

Judge Emanuelson and others expressed concern about the use of the domestic violence complaint as a tactic in divorce cases. Clerk Monroe recalled two instances in which the woman filed under the domestic violence law because the protective order would be issued more quickly than in the divorce motion. (The language of the order issued in a divorce proceeding would typically enjoin against "interfering with personal liberties" rather than physical abuse.) "Their lawyers put them up to it," Judge Donovan remarked.

As noted in earlier chapters, it may be that the civil procedure is becoming an improper substitute for the criminal complaint process. Assistant Attorney General Anita St. Onge suggested that a key but hidden effect of an emphasis on the civil remedy is that legal authorities focus on the victim rather than the abuser. The victim may indeed get protection, but the abuser is not punished or treated, and in fact is free to find other partners to abuse. St. Onge pointed out that this is not a defect of the statute, but merely reflects the tendency of those who administer it to use the "easier" route.

3. Defendants' Rights

Speeding access of one party to the legal system necessarily reduces the opportunity of an opposing party to respond. Similarly, increasing the arrest powers of the police reduces somewhat the chance of a person to avoid arrest. In the domestic violence law, these axioms are at work with regard to the property rights of the defendant barred from his residence and with regard to the abuser arrested without warrant.

Many of those interviewed expressed concern about the defendant's rights when the complainant secures the ex parte temporary order. District Attorney Crook said, "I don't like the manipulation and deprivation of property rights in the law." He said no one informs the defendant of his rights. Court Clerk Alice Monroe said that "I think that they'll have to put something in to govern the woman's behavior [such as use of the property] during the period of the temporary protective order." She said, "I can't see that it's fair." District Attorney Crook said the rights of the defendant should be addressed by some kind of provision for immediate hearing regarding access to property.

However, Judge Donovan asserted, "There's no way around it. To protect the wife you've got to have the ex parte order...[but] all judges will tell you it is dangerous [i.e., may be exploited or misused]." Although he endorsed the inclusion of an ex parte provision in the law, he felt also that the law was deficient in not setting a minimum period for notifying the defendant of the scheduling of the hearing.

The processes for dissolving orders and for challenges by the defendant were cited by Judge Henry as particular problems. She said that perhaps the hearing should be required in five days rather than 21. In addition, it might be better to make the final order of shorter duration, but renewable. She also said that in instances where no process is served, the temporary order should not remain in effect indefinitely but should be dismissed after a certain amount of time.

Several observers expressed concern about possible abuse of the authority to make warrantless arrests. Judge Donovan did not see this power as susceptible to significant abuse. For arrests in the middle of the night where the defendant may lack cash bail, he said "personal promise" bail can be used; the bail condition would be to stay away from the complainant. If the condition were not observed, the defendant could be summarily re-arrested.

Regarding the defendant's rights, Judge Cole gave the opinion that "the legislation has answered the due process question." He termed the District Court judges' role on petitions for interim orders as a "rubber stamp." Anita St. Onge pointed out that the issue of due process was considered at length when the law was drafted, and it was for this reason that the provision is included for the abuser to get a hearing, upon two days' notice to the plaintiff, to request modification of the temporary order. As far as St. Onge knew, no case alleging denial of due process had been appealed, even to the Superior Court.

Notes to Chapter V

1. A separate statute governs procedures in child abuse situations, The Child and Family Services and Child Protection Act, 22 M.R.S.A. Ch. 1071. This law establishes a comprehensive system for protecting abused or neglected children. It designates the State Department of Human Services as responsible for investigating charges of abuse and neglect and requires that it take action to remedy the situation. The law allows the Department to take measures to provide short-term emergency services. It also establishes procedures for longer term protective orders to be issued by the court usually at the request of the Department in cases of child abuse.

VI. WHAT GOOD HAS THE LAW DONE?

On the basis of its study, the Maine Civil Liberties Union concluded:

The new domestic violence statute properly addresses the needs of protection and prevention. No due process violation of the property interest of the accused batterer has been found. The overall implementation of the new law has been effective. [MCLU Study, p. 1]

As might be expected, those who counsel battered women and serve as advocates for them are most pleased with the new law.

Sue Bradford, Counselor-Advocate for the Spruce Run shelter, characterized the law as "...for the most part fulfilling the legislature's intent. It provides a means and a level of protection for adult victims of domestic violence previously unavailable." Ellen Rogers of the Family Support Center in Presque Isle asserted that the law "has many more positive aspects than negative....these problems are minimal in comparison to the benefits resulting from this relatively new law."

Jacqui Clark, Director of the Family Violence Project in Augusta, said, "The orders for protection from abuse provide a useful tool for intervention in domestic violence. The law is flexible enough to be used in a variety of situations." She listed as particularly valuable elements of the law its "definition of family; that an order can be obtained in one county while residence is in another; custody provisions; and the complainant's possession of the residence."

Both Lynne Glanville and Rogers said that the breadth of the law, applying to cohabitators and former mates, is a special advantage.

The specific benefits cited by shelter workers stand in contrast to the identification of specific problems by judges, law officers, and others in the previous chapter. However, when asked for an overview of the value of the law, such officials also estimated the law to be an improvement.

Deputy District Attorney Paul Mathews said, "I like the law," and characterized it as "a pretty good statute from a prosecutor's point of view." Judge Emanuelson observed, "The law has been abused, but has done good. It should exist." Of the 23 officers interviewed in the MCLU study, "every officer interviewed described the new law as an improvement and recommended retention..." [MCLU Study, p. 16]

Access to the Justice System

From the data on complaint volume in Chapter III, it appears that the law is achieving its purpose, as expressed in many elements of it, of easing access to justice. At-large Judge Henry noted that "with the phasing out of poverty lawyers, this is the only way for complainants to get quick access to the judge." Kim Stowell said that one key advantage of the act is that the orders can be obtained day or night. She said, "It's expedient and best of all it's free." Ellen Rogers identified the facts that the victim does not have to initiate divorce proceedings and need not retain a lawyer to get the protective order as crucial elements of the law. Glanville said the law is good because it provides temporary

protection without the necessity of going through a courtroom process.

Safety

There is consensus that the paramount benefit of the law in the short run is the safety it provides the victim in a crisis situation. Ellen Rogers said that the "primary benefit of the law is the immediate protection that is provided to the victim." Counselor-advocate Sue Bradford recalled:

Before this law took effect, women who were abused usually had no choice but to flee the home, usually with the kids and without most personal belongings necessary for day-to-day life, leaving the abuser in full possession of all the family resources.

To her mind, "allowing the victim to request exclusive possession of the home appropriately addresses the victim's rights." Kim Stowell added:

The protective order is a vast improvement over the old restraining order. It can be obtained without a witness, it expands police power to arrest without a warrant in both public and private places, violation is a criminal offense, and police are mandated to enforce it.

Deputy District Attorney Mathews endorsed the importance of the warrantless arrest feature of the law, saying it "gives the police power to act decisively." Police trainer Anita St. Onge said that police feel there are more options now. In addition to arresting, she said, they can now advise the victim of the availability of protective orders. Before the law was passed, police felt there was little they could do when they answered a domestic violence complaint where the assault was not serious. The MCLU study reported that "...officers believe they are now empowered by the law as they were not previously to defuse notoriously volatile situations."

[MCLU Study, p. 16]

Judge Emanuelson said that the relief offered by the law, as he sees it, is "mostly to separate" the parties; Judge Donovan characterized the relief as to "vacate and not harass." Judge Henry agreed that the law's strength is "to get someone out of the house." She went on to say that the greatest benefits of the change in the law are for victims in which there is not divorce pending and where the parties involved are unmarried. District Attorney Arthur Brennan of Biddeford saw the law as beneficial, combining "the effect of a court order without the finality of divorce." Ellen Rogers asserted:

Some criticism has been given to the fact that some clients do not follow through with the final hearing and protection order. It is our contention that the temporary order was still necessary and beneficial in these cases, as protection was provided during the immediate period of crisis.

The MCLU offered the same conclusion:

It is clear that the temporary order does serve the function of effectively separating the parties in a time of crisis....Regardless of whether the couple reconciles, even if it is to begin another cycle of

violence, the temporary protective order served a valuable purpose of granting a necessary 'cool off' period, presumably preventing further violence. [MCLU Study, p. 30]

Long-term Benefits

When the victim and her children have to flee the home to a shelter or the house of a relative, the day-to-day problems of such a disruption stand in the way of the search for long-term solutions. In contrast, the new law, according to Sue Bradford, "in allowing the courts to determine temporary custody and property rights,...stabilizes volatile areas of conflict, leaving time for the family to deal with the issues of violence and abuse." Along the same line, Ellen Rogers observed, "Many more women are able to remain in their homes with their children, resulting in less family stress." Kim Stowell mentioned that "the fact that it gives immediate custody of the children to the victim is a real advantage."

Judge Cole said that the law is "some force to get individuals into counseling. It does encourage more counseling." This may lead to long-term progress.

Another far-reaching benefit, according to Bradford, is that "the law gives a clear social message that violence in the home is a crime, thereby providing social and personal support to the victims of these crimes."

There are also those who claim that obtaining the temporary protective order may be the first step toward long-term resolution of a troubled domestic situation, even if no subsequent steps in the civil procedure are taken. Kim Stowell asserted, "Just filing for the temporary order is a step toward responsibility." Alison Clark of a shelter in Augusta noted that on the modest evidence of her organization's "very short followup" on clients, often the violence does slow down or cease following the filing of the complaint, even though women who fail to complete the process go back to the same relationship.

The MCLU study, on the basis of a limited number of interviews with victims, suggests that the often-cited frustration produced by the high dismissal rates may be based more on the appearance of lack of progress than actual lack of progress: "Over half the women stated that the temporary order served its purpose and terminated the relationship between the parties." [MCLU Study, p. 30]

VII. WHAT IMPROVEMENTS CAN BE MADE?

Some of the possible modifications of the domestic assault statute or of aspects of its implementation are apparent from the previous discussions of how it has worked. In this chapter, the Advisory Committee states its conclusions and makes recommendations to smooth implementation of the law, as well as recommendations concerning other government initiatives.

Conclusions

The principal conclusions the Advisory Committee has made regarding the status of implementation of the domestic violence statute are:

1. SCOPE OF LAW: The scope and strength of Maine's domestic violence law are as great as that of any domestic violence law in the Nation.
2. CONSISTENCY OF IMPLEMENTATION: In different jurisdictions, the law is administered in quite different ways. State-level coordination and training have assisted implementation in some aspects of the law, but have been lacking in other significant aspects. State training of police is a strong point, but training of court clerks has not occurred. Reference material has not been made available to many who must administer the law.
3. USE OF REMEDIES: Potential victims and those who advise them are aware that civil protective orders can be obtained. The civil remedy has been utilized extensively, but criminal protective orders have not. Many of those who administer the law report that they have encountered attempts to use the law for purposes other than those originally intended (for example, as a tactic in divorce proceedings). What proportion of the total complaint volume consists of such requests for protective orders is unclear.
4. RIGHTS OF DEFENDANT: Officials who administer the law express concern about denial of due process, but this concern appears to be more speculative than based on examples of hardship endured by defendants. However, although the law includes provisions that address the due process rights of defendants, in actuality there is widespread ignorance of these provisions.
5. ATTRITION OF COMPLAINTS: Dismissals of and repeated requests for temporary protective orders give court personnel the impression that many complainants are not serious and that the court's efforts produce no result. However, advocates for battered women assert that the temporary orders of themselves are beneficial and mark progress toward the resolution of the problem.
6. WARRANTLESS ARRESTS: Although the law empowers police officers to make warrantless arrests, observers state that this authority has not been utilized in significant degree. Law officers apparently prefer to refer victims to the civil remedy.
7. ENFORCEMENT OF ORDERS: Police officers are disturbed by the law's requirements for mandatory arrest in certain situations, and according to many reports are failing to make arrests mandated by the law.

However, as is the case regarding due process, the resentment seems to be focused on hypothetical situations that may arise rather than on actual instances where the mandatory arrest requirement has led to an injustice.

8. CONSENSUS: While most of those involved with the administration of the domestic violence statute can cite specific problems, either of design or implementation, the law by consensus is judged to be of value. For the most part, the key elements of the law are producing their intended benefits, although there is room for improvement in many areas.

Recommendations

The bulk of the problems regarding the law appear to concern implementation rather than the statute itself. The statute is adequate, even exemplary. One indication of the soundness of the statute is that the Massachusetts Legislature is now considering modifications of that State's domestic violence law to incorporate provisions Maine's law included from the outset. Three years of experience in Massachusetts has led legislators to propose, among other measures, that violations of court orders be treated as criminal rather than civil contempt, and that protective orders be served personally on the defendant by law officers./1/

Most of the recommendations that follow therefore concern implementation. Some concern matters that need to be addressed if the law is to fulfill its potential-- to have the fair test it deserves. Other recommendations concern related services and initiatives to combat domestic violence. These recommendations are submitted to the U.S. Commission on Civil Rights under the provisions of section 703.2 (e) of the Commission's regulations, empowering the Maine Advisory Committee to "[i]nitiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."

The Advisory Committee presents these findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jurisdiction.

1. GENERAL RECOMMENDATIONS

The statute provides, and the nature of domestic violence requires, roles for both civil and criminal remedies. The two remedies should be used in a coordinated manner to achieve their full potential, rather than in isolated ways as convenience suggests.

Those who administer the law should weigh the safety of the endangered member of the household more heavily than the preservation of the household, if the domestic situation of the complainant is so intractable as to require such a choice.

2. STATE COORDINATION AND GUIDANCE

The State should consider developing a comprehensive plan to coordinate the social service and the law enforcement approaches to the problem of

domestic violence. A plan would provide a framework for both State-level and local efforts. Among the matters the plan might include are: the need for shelter services; the status of shelters regarding sanitation, health, fire, and building codes; community education programs; referral procedures for social and legal services; sources and methods for funding such services; and security arrangements for shelters, including the role of local law enforcement agencies.

The Maine Criminal Justice Academy should prepare guidelines or take other measures to help police officers to distinguish domestic disturbances that appropriately should be referred to the civil remedy from those that deserve criminal handling.

Maine's Attorney General should take action to ensure that local police departments have brochures, cards, etc., describing victim's and defendant's rights under the new law.

The Administrative Office of the Courts should prepare a written reference on the domestic violence law for the use of court clerks. Furthermore, if the law or procedures under it are changed, the changes should be included in formal training for the clerks.

The Judicial Department should change the summons or other papers delivered to the defendant to include a straightforward description of the defendant's right to challenge the temporary protective order.

3. RESPONSIBILITIES OF LOCAL GOVERNMENTS

Executives of State and local governments should direct that criminal justice and social service agencies cooperate fully with private task forces on battered women.

Local governments in rural areas should promote the establishment of "safe house" networks. In rural areas, escape is a more realistic option for the victim than police intervention, yet the volume of cases may not be sufficient to make a shelter worthwhile.

Municipalities should ensure that, while applications for State welfare are being processed, local welfare is available to those who have fled dangerous homes.

Local governments should encourage hospitals and other health care providers to develop procedures to refer clients who may be domestic violence victims to criminal justice authorities, to legal aid offices, or to social services.

4. RESPONSIBILITIES OF POLICE

Law enforcement agencies should continue to improve their cooperation with social service agencies specializing in protecting and advocating for battered women. Each police department should maintain a list of local social service agencies and organizations assisting domestic violence victims, and all officers should be familiar with the list.

Heads of law enforcement agencies should reiterate to their officers the mandatory arrest provisions of the domestic violence law, and should make clear that officers are to base their responses to apparent violations of protective orders on the facts of the situation. Determinations as to whether the violation represents a danger or whether the mandated arrest works an injustice upon the defendant must be left for judges to decide.

5. RESPONSIBILITIES OF PROSECUTORS

District Attorneys' offices, if they have not already done so, should arrange to be accessible around the clock to police officers who may have questions about domestic assault situations.

Victim-witness programs should be continued, and expanded with emphasis on domestic violence cases.

In domestic violence cases, district attorneys should seriously consider using the subpoena power to require the participation of the victim in the prosecution.

Prosecutors should seriously consider recommending criminal protective orders in domestic violence cases whenever there appears to be a danger that the released defendant will resume the abuse.

6. RESPONSIBILITIES OF JUDGES

Judges who are reluctant to sentence assailants to jail terms because that would jeopardize the family's income should consider weekend or work release incarceration. County sheriffs should cooperate with these arrangements.

Where counseling is a condition of an order or consent agreement, judges should arrange for periodic monitoring or reporting of the progress of the counseling.

7. RESPONSIBILITIES OF ADVOCATES AND COUNSELORS

Organizations serving battered women should make efforts to trace complainants who dismiss their complaints or fail to appear at hearings to determine whether access to the temporary order corrected the immediate problem or proved of any lasting benefit. The goals and motives of repeat complainants, and the possible benefits they receive from the successive temporary orders, also should be studied.

The Law in Context

While the Advisory Committee's study has focused on aspects of the laws that protect persons from spousal assault, legal protections are only one element of most programs to provide safety for victims. For example, the MCLU study notes that police made "a variety of recommendations...for sustaining the family crisis shelter network, at minimum, and expanding it, if possible." [MCLU Study, p. 20]

The problem of domestic violence is not going to disappear completely

even if every legal problem in the new statutes is resolved. Most of those concerned about domestic violence have acknowledged this from the beginning, and the development of other services-- other elements of the campaign against domestic violence-- has been as high a priority as statutory reform. Existing services of this type are listed in Appendix D.

Notes to Chapter VII

1. Rep. Barbara Gray, Massachusetts House of Representatives, "Fact Sheet on Amendments to the Abuse Prevention Act," 1981.

APPENDICES

Appendix A

Domestic Violence Statutes in Maine and Other States

	Maine	No. of Other States
I. PROTECTION ORDERS¹		
A. Court May Order:	Yes	33
1. Eviction of the abuser	Y	28
(a) Allowed even if residence is in the abuser's name	Y	10
2. Abuser to provide alternative housing for the victim	Y	7
3. No further contact with the victim	Y	12
4. No further abuse	Y	32
5. No threat of abuse	Y	18
6. Abuser not to molest or disturb the peace of the victim	Y	9
7. No restrictions on the personal liberty of the victim	No	5
8. Counseling for the abuser and/or the victim ²	Y	12
9. Temporary support of spouse or minor children	Y	16
10. Temporary child custody/visitation rights	Y	22
11. Monetary compensation to the victim by the abuser	Y	4
12. Payment of the victim's court costs and/or attorney's fees by the abuser	Y	13
13. Temporary use or possession of personal property	Y	6
14. No disposition of property	N	3
15. Other terms may be set by the court ¹³	Y	24
B. Abuse for Which a Protection Order is Available		
1. Physical abuse:		
(a) of an adult	Y	32
(b) of a child	N	18
2. Threat of physical abuse	Y	29
3. Attempt at physical abuse	Y	19
4. Sexual abuse:		
(a) of an adult	N	3
(b) of a child	N	8
C. Who May Be Covered by a Protection Order (relationship to the abuser)		
1. Spouse	Y	32
2. Minor child of one or both parties	Y	18
3. Parent	N	12
4. Household member related by blood or marriage ²³	Y	21
5. Person living as a spouse	Y	12
6. Unrelated household member	N	11
7. Former spouse	Y	18
8. Person formerly living as a spouse	Y	6
9. Former household member	N	11
D. Limits on Eligibility for a Protection Order		
1. Protection order unavailable if the victim has filed for a separation or a divorce	N	4
2. Eligibility unaffected if the victim leaves the residence to avoid abuse	Y	19
E. Procedural Provisions of the Protection Order Laws		
i. In general		
(a) Petition may be filed by:		
(i) Victim	Y	19

NOTE: This is a greatly compressed version of a chart summarizing a survey by the Center for Women Policy Studies. The CWPS chart made sometimes-disputable groupings of legal provisions in different States, and here even the CWPS qualifying footnotes have been deleted. The information provided here is intended only to provide a perspective on Maine's statute, not as a precise profile of domestic violence laws in the 50 States.

Source: Center for Women Policy Studies, Response to Violence in the Family, vol. 3, no. 12, August-September 1980.

	<u>Maine</u>	<u>No. of Other States</u>
(i) Parent of the victim	No	10
(ii) Adult member of the household for another person	N	4
(b) Filing for a protection order does not preclude other court action	Yes	23
(c) Protection order has no effect on legal title to real property	Y	16
(d) Fee charged for filing a petition (\$)	N	15
(e) Court may waive the filing fee for indigents	N	12
(f) Fee charged for delivery of a protection order to an abuser (\$)	N	13
(g) Victim may file a petition without a lawyer	Y	16
(h) Court clerk must assist the victim in filing a petition	Y	9
(i) Court must:		
(i) Prepare forms useable by lay people	Y	13
(ii) Inform the victim of the availability of a protection order	N	5
(iii) Inform the abuser of his right to obtain counsel	N	7
(iv) Give protection order petitions priority over other civil actions	N	3
(j) Consent decree may be issued instead of a protection order	Y	10
2. Full protection order procedure		
(a) Maximum duration of full protection order (months) <i>(Omitted)</i>		
(b) Maximum duration of eviction order if less than protection order (days) <i>(Omitted)</i>		
(c) Hearing must be held:		
(i) Number of days after filing of a petition <i>(Omitted)</i>		
(ii) Number of days after a temporary protection order is issued <i>(Omitted)</i>		
(d) Full protection order is renewable	Y	12
(e) Full protection order is modifiable	Y	19
3. Temporary protection order procedure		
(a) Maximum duration of a temporary protection order (days) ⁴³ <i>(Omitted)</i>		
(b) Hearing must be held within number of days after a petition is filed <i>(Omitted)</i>		
(c) Temporary protection order may be granted ex parte ⁴³	Y	31
(d) Petition must list facts showing need for immediate relief ⁴³	N	4
(e) Must prove immediate danger of abuse to get an ex parte order	Y	23
(f) Available relief is more limited than under a protection order	Y	11
(g) Temporary protection order is renewable	Y	12
(h) Temporary protection order lasts until full hearing is held	Y	7
(i) Full hearing must be held before a protection order is issued ⁴⁵	Y	9
(j) Temporary protection order becomes full protection order unless the abuser requests a hearing ⁴⁵	N	2
(k) No bond requirement	Y	10
(l) Bond requirement waiveable	N	2
4. Emergency protection order procedure		
(a) Judge to issue emergency protection order at night and/or on weekends	Y	7
(b) Emergency protection order lasts until the regular court opens (max. 72 hours)	N	6
(c) Upon expiration, the victim may petition for a temporary protection order	N	4
F. Enforcement of Full Protection Orders, Temporary Protection Orders, and Emergency Protection Orders		
1. Order issued to the abuser by the court	Y	10
2. Order to be personally served on the abuser	Y	12
3. Free copy of the order given to the victim	Y	14
4. Copy of the order sent to the local police by the court	Y	20
5. Penalties for violation of protection orders	Y	28
(a) Misdemeanor	Y	14
(b) Contempt of court	Y	20
(c) Maximum jail sentence (months) <i>(Omitted)</i>		
(d) Maximum fine (\$) <i>(Omitted)</i>		

	Maine	No. of Other States
II. ORDERS PENDING DIVORCE, SEPARATION, OR CUSTODY PROCEEDINGS⁵⁴		
A. Order Restraining an Abuser is Available to a Victim Who Files for Divorce	No	26
B. Court May Order:		
1. Eviction of the abuser	N	19
2. Abuser not to molest or disturb the peace of the victim	N	18
3. No restriction on the liberty of the victim	Yes	14
4. Support of a spouse or minor children	Y	39
5. Child custody/visitation rights	Y	37
6. No removal of children from the jurisdiction	N	6
7. Payment of court costs and/or attorney's fees of the victim by the abuser	Y	27
8. Temporary use or possession of personal property	Y	12
9. No disposition of property	N	24
10. Other terms may be set by the court	N	11
C. Ex Parte Relief Available	N	18
D. Police Must Enforce Orders	N	5
E. Penalties May Be Imposed for Violation of Orders	N	10
III. CRIMINAL LAW	N	10
A. Statute Makes Domestic Violence a Separate Criminal Offense		
1. Charges include:		
(a) Simple assault	N	5
(b) Aggravated assault	N	3
(c) Criminal trespass	N	3
2. Who may be charged (relationship to the abuser):		
(a) Spouse	N	8
(b) Unmarried intimate	N	5
(c) Former spouse	N	3
3. Violation: felony	N	4
4. Violation: misdemeanor	N	8
5. Sentence upon conviction or guilty plea:		
(a) Jail (maximum months)	(Omitted)	
(c) Fine (maximum \$)	(Omitted)	
B. Alternative Dispositions Authorized by State Law		
1. Court may impose conditions on pretrial release, including:		
(a) Pretrial detention if the abuser is dangerous	N	6
(b) Protection order	Y	7
2. Deferred prosecution (diversion) program	N	6
(a) Arrest record expunged if the abuser successfully completes diversion program	N	3
(b) Court may order mandatory counseling	N	4
(c) Court may issue a protection order	N	4
(d) Evidence from the program is not admissible if prosecution is resumed	N	4
3. Court may impose conditions on probation, including:		
(a) Mandatory counseling	Y	6
(b) Protection order	Y	5
C. Law Imposes Duties on the Court or the Prosecutor		

Maine No. of Other States

IV. POLICE INTERVENTION

A. Warrantless Arrest:	Yes	22
1. Permitted if probable cause that a misdemeanor offense was committed	Y	15
2. Permitted if probable cause that a protection order was violated	Y	11
3. Arrest mandatory	Y	4
4. Arrest discretionary	Y	17
5. Abuse need not occur in presence of the police	Y	16
B. Warrantless Arrest Allowed Only If:		
1. Physical evidence of abuse is visible	No	3
2. Danger that the abuser would injure the victim or property unless arrested	Y	4
3. Police have verified the existence of an effective protection order	Y	7
C. Police Department Must/May:		
1. Establish procedure for informing officers on call of effective protection orders	Y	12
2. Develop and implement domestic violence training programs for officers	Y	8
D. Police Officer Must/May:⁶¹		
1. Use all means necessary to prevent further abuse	Y	2
2. Enforce protection order	N	9
3. Arrest the abuser where appropriate	Y	5
4. Transport the victim to a hospital	Y	7
5. Transport the victim to a shelter	N	5
6. Inform the victim of her legal rights	Y	10
7. Stay until the victim is no longer in danger	Y	4
8. Supervise the eviction of the abuser, or the abuser's return home to get personal property	N	4
9. Other duties	Y	2
E. Police Immune from Civil Liability for Good Faith Enforcement	N	10

V. DATA COLLECTION AND REPORTING

A. Records Must be Kept on All Domestic Violence Cases by:		
1. Police	Y	11
2. Social service agencies	N	2
3. Shelters	N	3
4. Hospitals	N	3
B. Statistical or Other Reports on Domestic Violence Must Be Prepared by:		
1. State agency is responsible for domestic violence services	Y	14
2. Police	Y	7
3. Shelters	N	5
C. Personal Information Included in Reports is Confidential	N	6
VI. FUNDING AND/OR SHELTER SERVICES	Y	25
A. State Appropriations	Y	20

1. Total amount appropriated (\$)

(Omitted)

2. Years covered

(Omitted)

B. Marriage License Surcharge

1. Amount of surcharge (\$) (Omitted)

2. Anticipatory appropriation (\$)

(Omitted)

3. Funds are collected and distributed statewide

N 5

C. Use of Funds Collected or Appropriated

1. Funds to be used for shelter services

Y 24

2. Shelters to provide additional services⁶²

N 13

3. Funds to be used for other services

N 16

4. Maximum number of shelters to be funded (Omitted)

5. Maximum amount per shelter per year (\$) (Omitted)

6. Maximum percentage of shelter budget that may be supplied by state funds (Omitted)

D. Other Provisions

1. AFDC or other welfare funds available to shelter residents

N 5

2. Shelter records confidential

N 5

E. Shelter Legislation Without Appropriation

N 3

APPENDIX B

FORMS TO OBTAIN CIVIL PROTECTIVE ORDERS

FORM 13A

STATE OF MAINE

, ss

DISTRICT COURT

DISTRICT

DIVISION OF

Civil Action, Docket No. _____

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PLAINTIFF

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vs.

COMPLAINT FOR PROTECTION

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*

DEFENDANT

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FROM ABUSE

(Pursuant to 19 M.R.S.A.

§761 et seq.)

* * * * *

I REQUEST THAT THIS COURT ENTER AN ORDER PROTECTING ME FROM ABUSE.

1. My full name, present street address, city and telephone number, are as follows (list only your name if address is to be kept confidential):

2. My former residence (if different from above), which I have left to avoid abuse, is as follows (street address, city, state):

3. The full name, present street address, city, state and telephone number of the person abusing me (the Defendant) is as follows (list at least town and state):

4. My relationship to the Defendant is as follows:

5. I (am) (am not) currently receiving AFDC for the children listed below:

6. I base my claim for protection from abuse on the following facts which occurred on the following dates: _____

7. THEREFORE, I ASK THAT:

- [] (a) The Court order the Defendant to stop abusing me and any minor child(ren) living in the household.
- [] (b) The Court order the Defendant not to enter my separate residence.
- [] (c) The Court give me possession of and order the Defendant to immediately leave and not again enter our residence located at: _____
- [] (d) The Court divide our personal and household property by giving me _____ and the Court protect the property by ordering _____
- [] (e) The Court award me custody of the following child(ren) (names and ages): _____

The Court grant the Defendant visitation rights as follows (no visitation or under what conditions):

8. Further, I ask the Court, at final hearing, to order the Defendant to receive counselling, to pay support for me and/or our child(ren), to pay money damages for my lost wages or injuries, and to pay Court costs and attorney fees; and I ask the Court to enter any other necessary orders.

9. I have filed the following other divorce, criminal or protection from abuse complaints against the Defendant: _____

MOTION FOR TEMPORARY ORDER

I AM IN IMMEDIATE AND PRESENT DANGER OF PHYSICAL ABUSE BY THE DEFENDANT AND I ASK THAT THE COURT MAKE ORDERS TO PROTECT ME, WITHOUT PRIOR NOTICE TO THE DEFENDANT.

DATED: _____ (signature of Plaintiff)

NOTE: If this Complaint is filed by an attorney, give attorney's name, address and telephone number.

STATE OF MAINE

155.

DISTRICT COURT, DISTRICT
Division of
Civil Action, Docket No.

vs.

PLAINTIFF

AFFIDAVIT FOR TEMPORARY,
EMERGENCY RELIEF FROM ABUSE

DEFENDANT

I am _____, the Plaintiff in this Protection from Abuse case, and I hereby state and swear to the truth of the following:

1. I live at (leave blank if impounded and kept confidential)

2. The Defendant lives at

3. The Defendant and I are members of the same family or household, we (are) (were)

(see item 4 on Complaint for relationships covered by Act)

4. On or about _____, the Defendant
abused me as follows:

In the past (describe past abuse),

I am afraid that there is an immediate and present danger

of physical abuse to me and/or my child(ren) as a result of the actions of the Defendant.

DATED: _____

(signature of Plaintiff)

STATE OF MAINE
, ss.

Subscribed and sworn to before me this day.

DATED: _____

Notary Public
Justice of the Peace

STATE OF MAINE

, ss

FORM 36
DISTRICT COURT
DISTRICT
DIVISION OF
Civil Action, Docket No. _____

* * * * *

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PLAINTIFF

*

*

vs.

*

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*

DEFENDANT

*

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* * * * *

TEMPORARY ORDER FOR
PROTECTION FROM ABUSE
AND NOTICE OF HEARING

Upon consideration of Plaintiff's Complaint and Motion, it is hereby ORDERED that:

1. The Defendant is prohibited from imposing any restraint upon the person or liberty of the Plaintiff;
2. The Defendant is prohibited from threatening, assaulting, molesting, harrassing or otherwise disturbing the peace of the Plaintiff;
3. The Defendant is prohibited from entering the family residence or the separate residence of the Plaintiff at (list unless confidential)
4. The Defendant is prohibited from taking, converting or damaging property in which the Plaintiff may have a legal interest; and,
5. The Plaintiff is awarded temporary custody of the following minor child(ren) residing in the household: _____

This Order is effective forthwith and will remain in effect until further orders are made by this Court.

VIOLATION OF THIS ORDER IS A CLASS D CRIME

Full hearing on Plaintiff's Complaint will be held at the above Court on _____ at _____ at which time the Defendant may be heard.

If the Defendant desires to dissolve or modify the above Temporary Order, he must appear and so move, otherwise a final hearing will be held at the above date and time.

Copies of this Order shall be furnished by the Clerk to the _____ (law enforcement agency). It is ORDERED that a copy of this Order be served in hand on the Defendant by the _____ (law enforcement agency).

DATED: _____

FORM 1P

STATE OF MAINE

, ss

DISTRICT COURT

DISTRICT

DIVISION OF

Civil Action, Docket No. _____

* * * * *

*

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PLAINTIFF

*

*

SUMMONS,

vs.

*

*

DEFENDANT

*

*

PROTECTION FROM ABUSE

* * * * *

To the Defendant

The Plaintiff has begun a Protection from Abuse action against you in this Court which holds sessions at in County. If you wish to oppose this action, you or your attorney must appear before this Court at Street, Maine, at A.M./P.M., 19....., and then and there state your defense to the attached Complaint. A full hearing on Plaintiff's Complaint will be heard at that time.

IMPORTANT WARNING: IF YOU FAIL TO APPEAR AT THE COURT AT THE ABOVE-STATE TIME, OR AT ANYTIME THE COURT NOTIFIES YOU TO DO SO, COURT ORDERS EFFECTIVE FOR UP TO ONE YEAR MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE, GRANTING ANY OR ALL OF THE RELIEF REQUESTED IN THE COMPLAINT. THE VIOLATION OF THESE ORDERS MAY CONSTITUTE A CLASS D CRIME OR CONTEMPT OF COURT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO APPEAR AT THE REQUIRED TIME.

[SEAL OF COURT]

Dated: Clerk of said Court

..... served on, 19....

Name of Plaintiff or
Plaintiff's Attorney

.....

Address

Deputy Sheriff/Constable
Police Officer

, ss.

On the day of, 19....., I made service of the Complaint and within Summons and Temporary Order for Protection upon the Defendant by delivering a copy of each said document to him in hand at

.....

Deputy Sheriff/Constable/Police Officer

LAW ENFORCEMENT OFFICER:

Return original Summons to Court address shown above.

FORM 34

STATE OF MAINE

, ss

DISTRICT COURT
DISTRICT
DIVISION OF
Civil Action, Docket No. _____

* * * * *

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PLAINTIFF

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*

ORDER FOR PROTECTION

vs.

*

*

*

DEFENDANT

*

*

FROM ABUSE

* * * * *

After due notice and full hearing on the merits of the Complaint for Protection from Abuse, pursuant to 19 M.R.S.A. §761 et seq., and the following PARTIES being PRESENT [] Plaintiff [] Defendant,

THE COURT FINDS THAT:

The parties are family or household members; and, the Plaintiff was abused by the Defendant.

THEREFORE, it is hereby ORDERED that:

- [] (A) The Defendant is prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise abusing the Plaintiff and any minor child(ren) residing in the household;
- [] (B) Defendant is prohibited from going upon the premises of any separate residence of the Plaintiff.
- [] (C) Plaintiff is granted possession of and the Defendant is excluded forthwith and prohibited from entering the residence at _____

- [] (D) The parties' personal property and household goods are divided as follows: _____

and
the following orders for protection of property are entered:

[] (E) Plaintiff is awarded custody of the minor child(ren), whose names and ages are as follows: _____

Defendant's rights of visitation are limited as follows:

VIOLATION OF ANY ABOVE ORDER A-E IS A CLASS D CRIME

It is further ORDERED and DECREED:

[] (F) That Defendant receive counselling from a social worker, family service agency, mental health center, psychiatric or other guidance service, to wit: _____

[] (G) That Defendant pay the sum of \$ _____ per week, per child, toward the support of said child(ren) and \$ _____ per week toward the support of the Plaintiff, first payment(s) due _____, 19 _____.
[] (H) That said child support payments be payable to the Maine Department of Human Services so long as said child(ren) are receiving Aid to Families with Dependent Children.
[] (I) That the Defendant pay to _____, the Plaintiff, the sum of \$ _____ forthwith, as monetary compensation for losses suffered as a direct result of the abuse.
[] (J) That _____ pay to _____ the sum of \$ _____ as counsel fees and the sum of \$ _____ as court costs.
[] (K) It is further ORDERED and DECREED: _____

A WILLFUL VIOLATION OF ANY ABOVE ORDER IN PARAGRAPHS F THROUGH K IS CONTEMPT OF COURT

These orders are effective forthwith and shall remain in full force and effect until _____, 19 _____ (up to one year) unless earlier modified or vacated by order of Court.

Copies of this Order shall be furnished by the Clerk to the _____.

(law enforcement agency)
this Order be served in hand on the Defendant by the _____.

(law enforcement agency)

Dated: _____

JUDGE

Attested a true copy this date _____, 19 ____.

(Deputy) Clerk of Court

Appendix C

INTERVIEWEES AND SOURCES

Interviewees

1. COURT CLERKS
 - Mary Godbout, Clerk, 7th District, Augusta (9/10/81)
 - Alice A. Monroe, Clerk, 10th District, Springvale (9/11/81)
 - Irene Lambert, Deputy Clerk, 10th District (9/11/81)
 - Andrea Russell, Deputy Clerk, Civil Division, 9th District, Portland (9/10/81)
2. DISTRICT COURT JUDGES
 - Honorable Roland A. Cole, Resident Judge, York County (9/11/81)
 - Honorable Harriet Henry, At-large Judge (9/11/81)
 - Honorable Robert W. Donovan, 9th District Judge (9/10/81)
 - Honorable Millard E. Emanuelson, 4th District Judge (9/10/81)
3. PROSECUTING ATTORNEYS
 - Arthur Brennan, District Attorney, Biddeford (9/11/81)
 - David W. Crook, District Attorney, Augusta (9/10/81)
 - Paul Matthews, Deputy District Attorney, Augusta (9/10/81)
4. ADVOCATES AND COUNSELORS
 - Alison Clark, Counselor-Advocate, Family Violence Project, Augusta (phone interview, 9/22/81)
 - Lynne Glanville, Acting Director, Washington County Domestic Violence Project, Machias (phone interview, 9/23/81)
 - Kim Stowell, VISTA worker, Abused Women's Advocacy Project, Auburn (phone interview, 9/21/81)
 - Sue Bradford, Counselor-Advocate, Spruce Run Association, Bangor (phone interview, 9/24/81)
5. OTHERS
 - Mimi Marchev, Assistant Attorney General, State of Maine (phone interview, 9/21/81)
 - Anita St. Onge, Legal Advisor, Maine Criminal Justice Academy (phone interview, 9/29/81)
 - Deborah S. Rice, Attorney-at-Law, Downeast Law Office, Portland (phone interviews, 10/13/81 and 10/14/81)

Sources

1. DESCRIPTIVE MATERIAL

Pine Tree Legal Assistance, Inc., "Domestic Violence: Your Rights to Protection From Abuse" (September 1980).

Maine Department of the Attorney General and Maine Criminal Justice Academy, Alert (January - February 1980).

Maine Coalition for Family Crisis Services, untitled monograph on services provided and funding sources (1981).

2. EVALUATIVE MATERIAL

Maine Civil Liberties Union, An Evaluation of Protection From Family Abuse in Maine (October 1981).

Deborah Shaw Rice, Staff Attorney, Pine Tree Legal Assistance, Inc., Testimony to Judiciary Committee, Maine Legislature, May 1, 1979.

3. CORRESPONDENCE

Deborah Shaw Rice, Attorney-at-Law, Downeast Law Offices, letter to Larry Riedman, Maine Field Representative, New England Regional Office, U.S. Commission on Civil Rights, September 16, 1981.

Ellen Rogers, Director, Family Support Center, Presque Isle, letter to Larry Riedman, Maine Field Representative, New England Regional Office, U.S. Commission on Civil Rights, September 30, 1981.

Appendix D

WHAT ELSE IS BEING DONE ABOUT DOMESTIC VIOLENCE?

Legal reforms, and the efforts of the police and the courts, are only one approach to the problem of domestic violence. Some Maine legislators backing the domestic violence bill viewed it as an adjunct to a system of shelters, and the law in turn is viewed by various types of counselors or other professionals as complementing their activities.

State Support for Services

In 1981, the Maine Legislature appropriated \$150,000 in the Part I budget and \$84,000 in Part II to fund services to victims of domestic violence. The programs are being administered by the Department of Human Services. The additional funds support programs in the Dover-Foxcroft and Camden-Rockland areas and in Washington County, and allow the maintenance of counseling positions previously funded by CETA.

(New Hampshire has taken a different approach to funding such services. Its 1981 Legislature passed an increase in marriage license fees to establish a fund that will support the activities of private, nonprofit, and public organizations that carry out direct services to domestic violence victims. The fee was raised from \$5 to \$20, and this is expected to raise \$100,000 per year. [Boston Globe, September 8, 1981])

Organizations Serving Battered Women

Eight organizations providing shelter and crisis intervention services to domestic violence victims in Maine have united to form the Maine Coalition for Family Crisis Services. The Coalition coordinates services and information, refers victims to appropriate other services, compiles data on domestic violence, educates the public about the problem, and helps local groups attempting to provide services to victims.

The Coalition lists its member organizations as:

Caring Unlimited, Kennebunk. This nonprofit organization serving York County operates a hotline and emergency shelter and offers advocacy, counseling, and referrals as well as emergency food and clothing.

Family Crisis Shelter, Inc., Portland. The organization has operated a 24-hour crisis shelter in Portland since 1978, serving nearly 400 families since that time. The shelter has strategies for supporting women who return to their homes as well as those who desire to leave the abusive spouse.

Family Violence Project, Augusta. The project was established in 1977 as a hotline and "safe home" network. There are now a shelter, support groups, legal advocacy, and a community education program, and the hotline operates 24 hours.

Washington County Domestic Violence Project, Machias. The project offers legal and social service referral and advocacy, and maintains a community outreach effort. A 24-hour crisis line is staffed by volunteers. By 1982 a "safe home" network is to be established. The project was developed by Womankind, Inc., a nonprofit group incorporated under Maine law.

Abused Women's Advocacy Project, Auburn. AWAP operates an emergency shelter, makes referrals, and offers 24-hour counseling, crisis intervention, and support services in Androscoggin, Franklin, and Oxford Counties. In 1980, 107 women and 159 children were temporarily housed.

Spruce Run Association, Inc., Bangor. Spruce Run makes referrals for shelter, crisis counseling, and legal advocacy; provides divorce information to domestic violence victims and women in crisis; and undertakes community education in Penobscot and Hancock Counties. There is a 24-hour hotline.

Family Support Center, Presque Isle. The Family Support Center provides client advocacy, supportive counseling, and emergency shelter, referrals, and transportation assistance, and operates a 24-hour hotline. One of the major services is assisting victims in obtaining protective orders.

Womancare, Piscataquis County. Womancare offers emergency shelter, counseling, information, and referral services.

A ninth organization, New Hope for Women, was established early in 1981 to serve the Camden-Rockland area, and is expected to begin providing services in the fall.

The Federal VISTA (Volunteers In Service To America) program last year accepted a proposal to participate in providing services to domestic violence victims in Maine. Six VISTA workers are now working with the Maine Coalition for Family Crisis Services. Each is affiliated with a shelter and has been assigned a particular project. The projects range from fundraising to establishing programs for abusive men. Three of the Volunteers conduct community outreach efforts that involve expanding the services to include rural areas, educating the public on the problem of domestic violence, and establishing weekly support groups for victims. In addition, each Volunteer spends time at the sponsoring shelter working with clients, children, and shelter staff.

EMERGENCY NUMBERS IN MAINE FOR DOMESTIC ASSAULT VICTIMS

Auburn	783-2042 (24 hrs.)
Augusta	623-3569 (24 hrs.)
Bangor	947-0496 (24 hrs.)
Kennebunk	985-6272 (24 hrs.)
Machias	255-4785 (24 hrs.)
Portland	773-5516 (24 hrs.)
Presque Isle	769-8251 (24 hrs.)

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