

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 825

H. P. 665

House of Representatives, February 28, 1979

On Motion of Mr. Hobbins of Saco, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Lewis of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Concerning Family Violence.

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

Sec. 1. 4 MRSA § 152, last ¶, as enacted by PL 1971, c. 175, is amended by adding at the end a new sentence to read:

The District Court shall also have the jurisdiction granted to it pursuant to Title 22, chapter 1071.

Sec. 2. 22 MRSA Sub-T. 3, Pt. 3-A is enacted to read:

PART 3-A

FAMILY VIOLENCE

CHAPTER 1071

PROTECTION FROM DOMESTIC ABUSE ACT

§ 3951. Short title

This Act shall be known as the Protection from Domestic Abuse Act.

§ 3952. Definitions

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

1. Abuse. "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together:

A. Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

B. Placing, by physical menace, another in fear of imminent death or serious bodily injury; or

C. The commission by an adult of any sexual act with another, not his spouse, who is a minor.

2. Adult. "Adult" means any person 18 years of age or older.

3. Court. "Court" means the District Court.

4. Family or household members. "Family or household members" means spouses, parents and children or other persons related by consanguinity or affinity.

5. Minor. "Minor" means any person under the age of 18 years.

§ 3953. Jurisdiction

The District Court shall have jurisdiction over all proceedings under this Part. The plaintiff's right to relief under this Part shall not be affected by his leaving the residence or household to avoid further abuse.

§ 3954. Commencement of proceeding

A person may seek relief under this Part for himself, or any parent or adult household member may seek relief under this Part on behalf of minor children by filing a petition with the court alleging abuse by the defendant.

§ 3955. Hearings

1. Hearing. Within 10 days of the filing of a petition under this Part a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall advise the defendant of this right to be represented by counsel.

2. Temporary orders. The court may enter such temporary orders as it deems necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

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

§ 3956. Relief

1. Protection order; consent agreement. The court shall be empowered to

grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children, which may include:

A. Directing the defendant to refrain from abusing the plaintiff or minor children;

B. Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties;

C. When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or by consent agreement allowing the defendant to provide suitable, alternate housing; or

D. Awarding temporary custody of or establishing temporary visitation rights with regard to minor children.

2. Time limitation on order. Any protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

3. Title to real property. No order or agreement under this Part shall in any manner affect title to any real property.

§ 3957. Notification

A copy of any order under this Part shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order or agreement.

§ 3958. Emergency relief

1. Filing of petition before justice. When the court is unavailable following the close of business hours, a petition may be filed before any District Court Judge or Justice of the Superior Court who may grant relief in accordance with section 3956, subsection 1, paragraphs B and C, if the judge or justice deems it necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

2. Expiration of order. Any order issued under subsection 1 shall expire as of the resumption of business of the court or within 72 hours, whichever occurs sooner; at which time, the plaintiff may seek a temporary order from the court.

3. Certification to the court. Any order issued under this section and any documentation in support thereof shall be immediately certified to the court. This

certification to the court shall have the effect of commencing proceedings under section 3954 and invoking the other provisions of this Part.

§ 3959. Procedure

Any proceeding under this Part shall be in accordance with the Maine Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

§ 3960. Contempt

Upon violation of a protection order or a court approved consent agreement the court may hold the defendant in contempt and punish him in accordance with the law governing contempt.

STATEMENT OF FACT

The purpose of this bill is to establish a procedure to deal with domestic violence. This bill provides that a victim of domestic violence may petition the District Court for the granting of certain protective orders and that the court may enforce these orders to help ensure the safety of the victims of the violence and any minor children who may be involved.