

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-918)
109TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1911, L.D. 1979, Bill,
"AN ACT to Clarify the Law Concerning Abuse Between Family or
Household Members."

Amend the Bill in section 1 by striking out all of chapter 12
and inserting in its place the following:

'CHAPTER 12

PROTECTIVE ORDERS

§301. Protective orders in crimes between family members

1. Definition. For purposes of this section, "family or household members" means spouses or former spouses, individuals presently or formerly living as spouses or other adult household members related by consanguinity or affinity. Holding oneself out to ^{be} a spouse shall not be necessary to constitute "living as spouses."

2. Grounds for order. The court may issue a protective order if:

A. A person is charged with or convicted of a violation of Title 17-A, sections 201 to 204, 207 to 211, 252,

253, 301 to 303, 506-A or 556;

B. The offender and the victim are family or household members; and

C. The court finds that there is a likelihood that the offender may injure the health or safety of the victim in the future.

3. Scope of order. A protective order may be a condition of release. It may require the offender:

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

B. Not to visit, or to visit only at certain times or under certain conditions, a child residing with the victim; or

C. Not to do specific acts which the court finds may harass, torment or threaten the victim.

4. Issuance of order. The clerk shall issue, without fee, a copy of a protective order, amendment or revocation to the offender, the victim and, as the court directs, to the law enforcement agencies most likely to enforce it.

5. Appeal. A court decision may be appealed as provided by the Maine Rules of Civil Procedure.

6. Penalty. Violation of a protective order, when the person has prior actual notice of the order, is a Class D crime.

7. Repeal. This chapter is repealed on November 1, 1983.'

Further amend the bill in section 2 by striking out all of subparagraph (5-A) and inserting in its place the following:

'(5-A) Assault, criminal threatening, terrorizing or reckless conduct, if the officer reasonably believes that the person and the victim are members of the same family or household, as defined in section 1331 Title 15, section 301. This subparagraph is repealed on November 1, 1983;'

Further amend the Bill by inserting after section 4 the following:

'Sec. 5. 19 MRSA §762, sub-§4, as enacted by PL 1979, c.578, §5, is repealed and the following enacted in its place:

4. Family or household members. "Family or household members" means spouses or former spouses, individuals presently or formerly living as spouses or other adult household members related by consanguinity or affinity. Holding oneself out to be a spouse shall not be necessary to constitute "living as spouses."'

Further amend the Bill by inserting after section 5 the following:

'Sec. 6. 19 MRSA §763-A is enacted to read:

§763-A. Application of other acts

The provisions and limitations of the Uniform Child Custody

Jurisdiction Act shall not apply to a proceeding under this chapter unless it is joined with another proceeding under section 768, subsection 2.'

Further amend the Bill by striking out all of section 6 and inserting in its place the following:

'Sec. 6. 19 MRSA §764, as enacted by PL 1979, c. 578, §5, is amended to read:

§764. Commencement of proceeding

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

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

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

Further amend the Bill by striking out all of section 8 and inserting in its place the following:

'Sec. 8. 19 MRSA §765, sub-§3, as enacted by PL 1979, c. 578, §5, is amended to read:

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

A. When the court is closed and no other provision can be made for the shelter of an abused family or household member, a ~~petition~~ complaint may be filed before an appropriate District Court Judge or Superior Court Judge. Upon a showing

of good cause, as defined in subsection 2, the court may enter any temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse.

B. An order shall be immediately certified to the ~~appropriate~~ clerk of the District Court or Superior Court having venue.

This certification to the court shall have the effect of commencing proceedings and invoking the other provisions of this chapter.

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

Further amend the Bill by striking out all of section 9 and inserting in its place the following:

'Sec. 9. 19 MRSA §765, sub-§4-A is enacted to read:

4-A. Service of order. If the court issues a temporary order or orders emergency or interim relief, it shall order a law enforcement agency to personally serve the order on the defendant. To protect the plaintiff, the court may order the omission or deletion of his address from any papers served on the defendant.'

Further amend the Bill in section 10 in subsection 1 in the 2nd line (same in L.D.) by striking out the underlined words "by a preponderance of the evidence"

Further amend the Bill by inserting after section 10 the following:

'Sec. 11. 19 MRSA §766-A is enacted to read:

§766-A. Confidentiality of plaintiff's address

To protect the plaintiff, the court may order the omission or deletion of his address from any papers available to the public.'

Further amend the Bill by striking out all of section 11 and inserting in its place the following:

'Sec. 12. 19 MRSA §767, as enacted by PL 1979, c. 578, §5, is repealed and the following enacted in its place:

§767. Notification

The clerk shall issue, without fee, a copy of an order, agreement, amendment or revocation to the plaintiff, the defendant and, as the court directs, to the law enforcement agencies most likely to enforce it.'

Further amend the Bill in section 12 by striking out all of that part designated "§768." and inserting in its place the following:

'§768. Procedure

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure. Appeals may be taken as provided by the Maine Rules of Civil Procedure. Appeals may be only for error of law or abuse of discretion.

2. Proceedings independent. All proceedings ~~shall~~ may be independent of ~~any, or joined with,~~ a proceeding for divorce, dissolution of marriage, legal separation or separate maintenance ~~and.~~ A proceeding under this chapter shall be in addition to any other available civil or criminal remedies.

3. Self defense. The right to relief under this chapter shall not be affected by the plaintiff's use of reasonable force in response to abuse by the defendant.

4. Intoxication. Voluntary intoxication shall not be a defense to an action under this chapter.'

Further amend the Bill in section 13 by striking out all of that part designated "§769." and inserting in its place the following:

'§769. Violation

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

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

Further amend the Bill by inserting after section 13 the following:

'Sec. 14. 19 MRSA §771 is enacted to read:

§771. Repeal

This chapter, as amended, is repealed on November 1, 1983.'

Further amend the Bill in section 14 by striking out all of section 7 and inserting in its place the following:

'Sec. 7. Sunset provision. This Act is repealed on June-30-1982 November 1, 1983.'

Further amend the Bill by renumbering the sections to read consecutively.

Statement of Fact

The purpose of this amendment is to clarify the language of this bill. This amendment also exempts protective order proceedings from the Uniform Child Custody Jurisdiction Act, requires automatic service of papers on the defendant, allows the court to omit or delete the plaintiff's address from the public record to protect his safety and limits the defense to a violation of a protective order of intoxication to involuntary intoxication.

Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the House
3/14/80 (Filing No. H-918)