

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1979

H. P. 1911

House of Representatives, March 6, 1980

The Committee on Judiciary suggested. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Morton of Farmington.

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

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Clarify the Law Concerning Abuse Between Family or Household Members.

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

Sec. 1. 15 MRSA c. 12 is enacted to read:

CHAPTER 12

PROTECTIVE ORDERS

§ 301. Protective orders in crimes between family members

1. Definition. For purposes of this section, "members of the same family or household" means spouses, individuals who were formerly spouses, individuals living as spouses, individuals who were formerly living as spouses or other adult household members related by consanguinity or affinity. Holding oneself out to be the husband or wife of the person with whom one is or was living is not necessary to constitute "living as spouses."

2. Order of protection. When a criminal action is pending on a complaint, information or indictment charging a person with violating or attempting to violate Title 17-A, sections 207 to 211, 252, 253, 301, 302, 506-A and 556, or

attempting to violate Title 17-A, sections 201 to 204, or when a person has been convicted of violating or attempting to violate any of those sections, and if that person and the victim are members of the same family or household, then the court may issue an order of protection which may be a condition of release. This order may require that person:

- 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, any child residing with the victim; or
- C. To abstain from any of the conduct prohibited by any of the sections in Title 17-A enumerated in this subsection.

3. Issuance of copy of order. A copy of any order issued pursuant to subsection 2 shall be issued by the clerk of the court to the victim, the offender and the law enforcement agencies most likely to enforce the order, as directed by the court. No fee may be charged for issuance of the required copies. Any subsequent amendment or revocation of that order shall be issued in the same manner.

4. Penalty. Violation of any order issued pursuant to subsection 2 is a Class D crime.

5. Appeal. A decision made pursuant to this chapter may be appealed in the manner provided by rule of the Supreme Judicial Court.

Sec. 2. 17-A MRSA § 15, sub-§ 1, ¶ A, sub-¶ (5-A), as enacted by PL 1979, c. 578, section 1, is amended to read:

(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;

Sec. 3. 17-A, c. 54-A, as enacted by PL 1979, c. 578, section 2, is repealed.

Sec. 4. 19 MRSA 762, sub-§ 1, ¶¶ A and B, as enacted by PL 1979, c. 578, § 5, is amended to read:

A. Attempting to cause or ~~recklessly~~ causing bodily injury or offensive physical contact; or

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

Sec. 5. 19 MRSA § 763, as enacted by PL 1979, c. 578, § 5, is repealed and the following enacted in its place:

§ 763. Filing of complaint

Proceedings under this chapter shall be filed, heard and determined in the District Court or Superior Court of the division or county in which either the plaintiff or the defendant resides. If the plaintiff has left his residence to avoid

abuse, he may bring an action in the division or county of his previous residence or of his new residence.

Sec. 6. 19 MRSA § 764, sub-§ 1, as enacted by PL 1979, c. 578, § 5, is amended to read:

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.

Sec. 7. 19 MRSA § 765, sub-§ 1, as enacted by PL 1979, c. 578, § 5, is amended to read:

1. Full hearing. Within 21 days of the filing of a ~~petition~~ **complaint**, a hearing shall be held at which the plaintiff shall prove the allegation of abuse by a preponderance of the evidence.

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

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

Sec. 9. 19 MRSA § 765, sub-§ 7 is enacted to read:

7. Punishment. Violation of an order issued pursuant to this section shall be **punished in the manner provided in section 769.**

Sec. 10. 19 MRSA § 766, sub-§ 1, as enacted by PL 1979, c. 578, § 5, is amended to read:

1. Protection order; consent agreement. The court, after a hearing ~~and upon finding by a preponderance of the evidence that the defendant has committed the abuses alleged,~~ may grant any protective order or approve any consent agreement to bring about a cessation of abuse, which may include:

Sec. 11. 19 MRSA § 767, first sentence, as enacted by PL 1979, c. 578, § 5, is amended to read:

A copy of any order or agreement shall be issue forthwith by the clerk of the ~~appropriate court to the plaintiff, the defendant~~ **defendant** and the law enforcement ~~agency with appropriate jurisdiction~~ **agencies most likely** to enforce the order or agreement, **as directed by the court.**

Sec. 12. 19 MRSA § 768, as enacted by PL 1979, c. 578, § 5, is amended to read:

§ 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 from any decision made pursuant to this chapter in accordance with the Maine Rules of Civil Procedure and shall be for errors of law or abuses of discretion.**

2. Proceedings independent. All proceedings ~~shall~~ **may** be independent of, or ~~may be joined with any action for~~, any proceeding for divorce, dissolution of marriage, legal separation or separate maintenance and 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. **Intoxication shall not be a defense to an action under this chapter.**

Sec. 13. 19 MRSA § 769, as enacted by PL 1979, c. 578, § 5, is amended to read:

§ 769. Violation

1. Crime committed. Violation of a protective order or a court approved consent agreement, when the defendant has prior actual notice of the order or agreement, shall be a Class D crime, except when the only provision that is violated concerns relief authorized under section 766, subsection 1, paragraphs F to ~~J~~ **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 officer. The police 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**.

Sec. 14. PL 1979, c. 578, § 7 is amended to read:

Sec. 7. Sunset provision. This Act is repealed on June 30, ~~1982~~ **1983**.

STATEMENT OF FACT

This bill amends Public Law 1979, chapter 578, which was signed by the Governor on January 5, 1980. Most of the amendments are of a technical or procedural nature. The criminal procedures are moved from Title 17-A to Title 15 of the Revised Statutes. Substantial changes are as follows.

1. Violation of a provision of an order which is not defined in the statute, those under section 766, subsection 1, paragraph K, would not be a crime. Violation would be treated as contempt.

2. Warrantless arrests can be made by law enforcement officers upon probable cause to believe that criminal threatening, terrorizing or reckless conduct is occurring between family or household members.

3. The list of charges which authorize the court to issue an order as condition of release is lengthened to include sex crimes, kidnapping and attempts, including attempts to kill. The court can also direct that the defendant refrain from any of these activities.

4. References to culpable states of mind are removed from the definition of abuse.
5. The right to appeal is specified.
6. Intoxication is eliminated as a defence.
7. Arrests can only be made for criminal violations of an order or consent agreement.
8. The sunset date is changed from June 30, 1982, to June 30, 1983.