

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 726

H. P. 636 House of Representatives, February 9, 1981
Referred to the Committee on Judiciary. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Hobbins of Saco.
Cosponsor: Representative Tarbell of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Clarify the Domestic Violence Statutes.

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

Sec. 1. 15 MRSA § 301, sub-§ 1, as enacted by PL 1979, c. 677, § 1, is amended to read:

1. Definition. For purposes of this section, "family or household members" means spouses or former spouses, individuals presently or formerly living as spouses, **natural parents of the same child**, 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."

Sec. 2. 15 MRSA § 301, sub-§ 6, as enacted by PL 1979, c. 677, § 1, is amended by adding at the end the 2 new sentences to read:

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

Sec. 3. 19 MRSA § 762, sub-§ 4, as repealed and replaced by PL 1979, c. 677, §§ 5 and 18, is amended to read:

4. Family or household members. "Family or household members" means spouses or former spouses, individuals presently or formerly living as spouses, **natural parents of the same child**, or ~~other~~ adult household members related by ~~consanguinity~~ **consanguinity** or affinity. Holding oneself out to be a spouse shall not be necessary to constitute "living as spouses."

Sec. 4. 19 MRSA § 765, sub-§ 3, ¶ A, first sentence, as amended by PL 1979, c. 677, § 10, is further amended to read:

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

Sec. 5. 19 MRSA § 765, sub-§ 3, ¶ B, as amended by PL 1979, c. 677, § 10, is repealed and the following enacted in its place:

B. If a complaint is filed under this subsection, that complaint and any order issued pursuant to it shall be forwarded immediately to the clerk of the District Court or Superior Court having venue.

Sec. 6. 19 MRSA § 765, sub-§ 4-A, as enacted by PL 1979, c. 677, § 11, is amended 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 **personally with the order, the complaint and the summons**. To protect the plaintiff, the court may order the omission or deletion of his address from any papers served on the defendant.

Sec. 7. 19 MRSA § 766, sub-§ 1, ¶ B, as enacted by PL 1979, c. 578, §§ 5 and 7, is repealed.

Sec. 8. 19 MRSA § 766, sub-§ 1, ¶ C, as enacted by PL 1979, c. 578, §§ 5 and 7, is repealed and the following enacted in its place:

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 alternate housing;**

Sec. 9. 19 MRSA § 766, sub-§ 1, ¶¶ J and K, as enacted by PL 1979, c. 578, §§ 5 and 7, are further amended to read:

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; or

Sec. 10. 19 MRSA § 766, sub-§ 1, ¶L is enacted to read:

L. Directing the defendant to refrain from going upon the premises of the plaintiff's residence.

Sec. 11. 19 MRSA § 766, sub-§ 6 is enacted to read:

6. Service of order. The court shall order a law enforcement agency to serve the defendant personally with any protective order or consent decree.

Sec. 12. 19 MRSA § 770, sub-§ 5, as enacted by PL 1979, c. 578, §§ 5 and 7, is amended to read:

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation of ~~a protective order or a court approved consent agreement or a protective order issued pursuant to this chapter or Title 15, chapter 12,~~ or that a violation of Title 17-A, section 208, has occurred between members of the same family or household he shall arrest and take into custody the alleged offender.

STATEMENT OF FACT

This bill makes minor changes in the new domestic violence laws in order to clarify ambiguities and close loopholes.

The definition of "family or household members" is amended to protect domestic violence victims who never lived together but who have a natural child in common. It also clarifies the fact that emancipated minors are covered by the law.

Furthermore, the bill clarifies the fact that the warrantless arrest and mandatory arrest provisions of the law apply equally to criminal violation of both civil protective orders and criminal protective orders.

Concerns with the procedure for getting emergency relief are addressed. The range of relief available after the final hearing is also clarified, with the key change involving the extension of protection to include the victim's residence when the parties never shared a residence and there is not legal obligation of support between the parties.