

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 749

S.P. 268

In Senate, March 16, 198

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative THISTLE of Dover-Foxcroft,  
Representative COTE of Auburn, Representative KILKELLY of  
Wiscasset.

STATE OF MAINE

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

AN ACT to Revise the Laws Concerning Bail for  
Criminal Defendants.

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

Sec. 1. 15 MRSA §321, as enacted by PL 1983, c. 619, is amended to read:

§321. Protective orders and conditions on release 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, natural parents of the same child or adult household members related by consanguinity or affinity. Holding oneself out to be a spouse shall not be necessary to constitute "living as spouses."

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

3           A. A person is charged with or convicted of a  
4 violation of Title 17-A, sections 201 to 204, 207  
5 to 211, ~~252, 253~~ to 255, 301 to 303, 506-A or  
6 556;

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

9           C. The court finds that there is a likelihood  
10 that the offender may injure the health, welfare  
11 or safety of the victim or other family or house-  
12 hold members of the victim or offender in the fu-  
13 ture.

14           2-A. Grounds for imposition of conditions on re-  
15 lease. A court or bail commissioner may impose condi-  
16 tions on release under subsection 3 upon an offender  
17 being bailed under section 942, subsection 2-A, if  
18 the offender is found by the court or bail commis-  
19 sioner to meet the grounds for a protective order un-  
20 der subsection 2.

21           3. Scope of protective order and conditions on  
22 release. A protective order may be a condition of re-  
23 lease. The court or bail commissioner issuing a  
24 protective order under subsection 2 or setting condi-  
25 tions on release under subsection 2-A may require the  
26 offender:

27           A. To stay away from the home, school, business  
28 or place of employment of the victim or other  
29 family or household members of the victim or  
30 offender;

31           B. Not to visit, or to visit only at certain  
32 times or under certain conditions, a child resid-  
33 ing with the victim; or

34           C. Not to do specific acts which the court finds  
35 may harass, torment or threaten the victim, or  
36 other family or household members of the victim  
37 or offender;

1 D. To refrain from contacting, threatening, as-  
2 saulting, molesting, harassing or otherwise dis-  
3 turbing the peace of the victim or other family  
4 or household member of the victim or offender;

5 E. To refrain from entering the family residence  
6 or the residence of the victim; or

7 F. To refrain from taking, converting or damag-  
8 ing property in which the victim or other family  
9 or household members of the victim or offender  
10 may have a legal interest.

11 4. Issuance of order. The clerk may issue, with-  
12 out fee, a copy of a protective order, amendment or  
13 revocation to the offender, the victim and, as the  
14 court directs, to the law enforcement agencies most  
15 likely to enforce it.

16 5. Appeal. A court decision regarding a protec-  
17 tive order may be appealed as provided by the Maine  
18 Rules of Civil Procedure.

19 5-A. Imposition of conditions on release. A  
20 bail commissioner setting conditions on release under  
21 subsection 2-A shall write the conditions on the bail  
22 bond and shall orally inform the offender of the con-  
23 ditions. A court may retain, delete or add condi-  
24 tions under subsection 3 to those previously set by a  
25 bail commissioner under subsection 3. The court  
26 shall write the conditions on the complaint or shall  
27 direct that the conditions be written on the bail  
28 bond by a court officer. The court shall orally in-  
29 form the offender of the conditions.

30 5-B. Appeal of conditions on release. A condi-  
31 tion on release imposed under subsection 2-A may be  
32 appealed as under section 942, subsection 3.

33 6. Penalty. Violation of a protective order or  
34 of a condition on release imposed under subsection  
35 2-A, when the person has prior actual notice of the  
36 order or the condition, is a Class D crime. Notwith-  
37 standing any statutory provision to the contrary, an  
38 arrest for such a violation of a protective order may  
39 be without warrant upon probable cause whether or not  
40 the violation is committed in the presence of the law

1 enforcement officer. The law enforcement officer may  
2 verify, if necessary, the existence of a protective  
3 order or of a condition on release imposed under sub-  
4 section 2-A by telephone or radio communication with  
5 a law enforcement agency with knowledge of the order  
6 or the condition.

7       **Sec. 2.** 15 MRSa §942, sub-§2-A is enacted to  
8 read:

9       **2-A.** Conditions on release for crimes of domes-  
10 tic abuse. If the person is charged with a violation  
11 of Title 17-A, section 201 to 204, 207 to 211, 252 to  
12 255, 301 to 303, 506-A or 556, and the victim and the  
13 person charged are family or household members as de-  
14 finied in section 321, the court or bail commissioner  
15 may impose conditions on release upon the person in  
16 accordance with section 321.

17       **Sec. 3.** 15 MRSa §942, sub-§5, as enacted by PL  
18 1983, c. 795, §4, is amended to read:

19       **5.** Violation of a condition of release. Any Ex-  
20 cept as otherwise provided in this subsection, any  
21 person charged with an offense who has been ordered  
22 released pending trial who violates a condition of  
23 release is guilty of a Class E crime. A person  
24 charged with an offense listed in subsection 2-A, who  
25 has been ordered released pending trial, who violates  
26 a condition on release imposed under subsection 2-A  
27 shall be subject to the penalty and procedures estab-  
28 lished in section 321, subsection 6.

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STATEMENT OF FACT

This bill has 2 purposes. The first is to make it clear that judges and bail commissioners may impose conditions on release under the domestic abuse laws which serve to protect the interests of others. The 2nd is to make it clear that bail commissioners have the authority to impose conditions on release on arrested alleged violators of the domestic abuse laws. This authority permits bail commissioners to set conditions on release aimed at protecting the victim, or other family or household members, should the alleged violator post sufficient bail.

Section 1 amends the law permitting the issuance of protective orders when a person is charged with or convicted of certain crimes where the victim is a family or household member. Section 1 adds to the crimes for which a protective order may issue. The added crimes are sexual abuse of minors and unlawful sexual contact.

Section 1 also permits the issuance of a protective order based on concern for the health, welfare or safety of the victim or other family or household members. Current law protects only the victim's health or safety.

Section 1 also permits restraints identical to those available under a protective order to be imposed as conditions on release in a bail decision concerning crimes of domestic abuse. The bill broadens the scope of these restraints for both protective orders and conditions on release. The conditions on release are to be written on the bail bond and orally presented to the bailed person. The person may appeal these conditions in the same manner as any other conditions on release are appealed.

Under section 1, a bailed person who violates a condition on release that is set with reference to the domestic abuse laws is guilty of a Class D crime, provided the person had actual knowledge of the condition. Under current law, bailed persons who violate other conditions on release, those not tied to the domestic abuse laws, are guilty of a Class E crime.

1           Section 2 of the bill amends the bail laws to es-  
2           tablish conditions on release specifically related to  
3           crimes of domestic abuse. The bill makes it clear  
4           that a court or bail commissioner may impose these  
5           conditions.

6           Section 3 amends the penalty section of the bail  
7           laws to make it clear that a violation of a condition  
8           on release established with reference to the domestic  
9           abuse laws is treated identically to a similar viola-  
10          tion of a protective order issued under the domestic  
11          abuse laws.

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