

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1331

H.P. 984 House of Representatives, April 22, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative RAND of Portland.

Cosponsored by Representative STEVENS of Bangor and
Senator GAUVREAU of Androscoggin.

STATE OF MAINE

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

AN ACT to Revise the Harassment Law.

1
2

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

5 Sec. 1. 5 MRSA c. 337-A is enacted to read:

6 CHAPTER 337-A

7 PROTECTION FROM HATE VIOLENCE AND ABUSE

8 §4651. Definitions

9 As used in this chapter, unless the context oth-
10 erwise indicates, the following terms have the fol-
11 lowing meanings.

1 1. Adult. "Adult" means any person 18 years of
2 age or older or any person under 18 years of age who
3 is emancipated from the legal control of his parents
4 or guardians.

5 2. Court. "Court" means any District Court or
6 Superior Court.

7 3. Hate violence and abuse. "Hate violence and
8 abuse" means any act of intimidation, harassment or
9 physical force, whether or not performed under color
10 of law, directed against any person, family or their
11 property or advocate, motivated either in whole or in
12 part by hostility to their real or perceived race,
13 color, sex, ethnic background, nationality, country
14 of origin, religious belief, age, sexual orientation
15 or disability, with the intention of causing fear or
16 intimidation or to deter free exercise or enjoyment
17 of any rights or privileges secured by the Constitu-
18 tion of Maine.

19 4. Law enforcement agency. "Law enforcement
20 agency" means the State Police, a sheriff's depart-
21 ment, a police department of the Penobscot Nation or
22 the Passamaquoddy Tribe or a municipal police depart-
23 ment.

24 §4652. Filing of petition

25 Proceedings under this chapter shall be filed,
26 heard and determined in the District Court or Superi-
27 or Court of the division or county in which either
28 the plaintiff or the defendant resides. If the
29 plaintiff has left the plaintiff's residence to avoid
30 abuse, the plaintiff may bring an action in the divi-
31 sion or county of the plaintiff's previous residence
32 or new residence.

33 §4653. Commencement of proceedings

34 1. Filing. Any adult who has been a victim of
35 hate violence and abuse may seek relief by filing a
36 sworn petition in an appropriate court alleging that
37 abuse.

38 2. Assistance. The court shall provide separate
39 forms with a summons and clerical assistance to as-

1 sist either party to proceed under this chapter in
2 completing and filing a petition or other necessary
3 documents. This assistance shall not include legal
4 advice or assistance in drafting legal documents.

5 3. Fees. No fee may be charged for forms or
6 filing of a petition. A plaintiff may apply for the
7 right to proceed in forma pauperis.

8 §4654. Hearings

9 1. Full hearing. Within 21 days of the filing
10 of a petition, a hearing shall be held at which the
11 plaintiff shall prove the allegation of hate violence
12 and abuse by a preponderance of the evidence.

13 2. Temporary orders. The court may enter any
14 temporary orders, authorized under subsection 4, as
15 it deems necessary to protect the plaintiff from hate
16 violence and abuse on good cause shown in an ex parte
17 proceeding. Immediate and present danger of physical
18 abuse to the plaintiff shall constitute good cause.
19 Any order shall remain in effect pending a hearing.
20 If the petition is filed initially in the Superior
21 Court, the Justice, after authorizing any temporary
22 order under this section, may order that further pro-
23 ceedings be transferred to the District Court of the
24 division in which either the plaintiff or the defend-
25 ant resides.

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

28 A. When the courthouse is closed and no other
29 provision can be made for protection of a victim
30 of hate violence and abuse, a petition may be
31 filed before any Judge of the District Court or
32 Justice of the Superior Court. Upon a showing of
33 good cause, as defined in subsection 2, the court
34 may enter any temporary orders, authorized under
35 subsection 4, as it deems necessary to protect
36 the plaintiff from hate violence and abuse.

37 B. If a petition is filed under this subsection,
38 the petition and any order issued pursuant to it
39 shall be immediately certified to the clerk of
40 the District Court or Superior Court having ven-

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

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

6 4. Interim relief. The court, in an ex parte
7 proceeding, may enjoin the defendant from engaging in
8 any of the following:

9 A. Imposing any restraint upon the person or
10 liberty of the plaintiff;

11 B. Threatening, assaulting, molesting, harassing
12 or otherwise disturbing the peace of the plain-
13 tiff;

14 C. Entering the plaintiff's residence; or

15 D. Taking, converting or damaging property in
16 which the plaintiff may have a legal interest.

17 5. Service of order. If the court issues a tem-
18 porary order or orders emergency or interim relief,
19 it shall order a law enforcement agency to serve the
20 defendant personally with the order, the petition and
21 the summons. To protect the plaintiff, the court may
22 order the omission or deletion of the plaintiff's ad-
23 dress from any papers served on the defendant.

24 6. Dissolution or modification. Notwithstanding
25 any statutory provision to the contrary, on 2-days'
26 notice to the plaintiff or on such shorter notice as
27 the court may order, a person who is subject to any
28 order may appear and move the dissolution or modifi-
29 cation of the order and in that event the court shall
30 proceed to hear and determine the motion expeditious-
31 ly. At that hearing, the plaintiff shall have the
32 burden of justifying any finding in the ex parte or-
33 der which the defendant has challenged by affidavit.
34 Nothing in this section may be construed to abolish
35 or limit any means, otherwise available by law, for
36 obtaining dissolution, modification or discharge of
37 an order.

1 7. Extension. If a hearing under subsection 1
2 is continued, the court may make or extend such tem-
3 porary orders as it deems necessary.

4 §4655. Relief

5 1. Protection order; consent agreement. The
6 court, after a hearing and upon finding that the de-
7 fendant has committed the hate violence and abuse al-
8 leged, may grant any protection order or approve any
9 consent agreement to bring about a cessation of hate
10 violence and abuse, which may include:

11 A. Directing the defendant to refrain from
12 threatening, assaulting, molesting, attacking or
13 otherwise abusing the plaintiff;

14 B. Directing the defendant to refrain from going
15 on the premises of the plaintiff's residence;

16 C. Directing the defendant to refrain from in-
17 terference with the plaintiff's property;

18 D. Ordering payment of monetary compensation to
19 the plaintiff for losses suffered as a direct re-
20 sult of the hate violence and abuse. Compensato-
21 ry losses shall be limited to loss of earnings or
22 support; reasonable expenses incurred for person-
23 al injuries or property damage; and reasonable
24 moving expenses. Upon the motion of either par-
25 ty, for sufficient cause, the court may set a la-
26 ter hearing on the issue of the amount of dam-
27 ages, if any, to be awarded;

28 E. Ordering the defendant to pay court costs or
29 reasonable attorneys fees; and

30 F. Entering any other orders deemed necessary or
31 appropriate in the discretion of the court.

32 2. Duration. Any protective order or approved
33 consent agreement shall be for a fixed period not to
34 exceed one year. At the expiration of that time, the
35 court may extend an order, upon motion of the plain-
36 tiff, for such additional time as it deems necessary
37 to protect the plaintiff from hate violence and
38 abuse. Upon motion by either party, for sufficient

1 cause, the court may modify the order or agreement
2 from time to time as circumstances require.

3 3. Consequences of violation. Any protective
4 order or approved consent agreement shall indicate,
5 in a clear and conspicuous manner, the potential con-
6 sequences of violation of the order or agreement.

7 4. Title to property. No order or agreement may
8 affect title to any real property.

9 5. Bond prohibited. The court shall not require
10 the execution of a bond by the plaintiff prior to is-
11 suance of any order of protection.

12 6. Law enforcement agency to serve defendant.
13 The court shall order a law enforcement agency to
14 serve the defendant personally with any protective
15 order or consent decree.

16 §4656. Confidentiality of plaintiff's address

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

20 §4657. Notification

21 The clerk shall issue, without fee, a copy of an
22 order, agreement, amendment or revocation to the
23 plaintiff, the defendant and, as the court directs,
24 to the law enforcement agencies most likely to en-
25 force it.

26 §4658. Procedure

27 1. Civil rules apply. Unless otherwise indi-
28 cated in this chapter, all proceedings shall be in
29 accordance with the Maine Rules of Civil Procedure.
30 Appeals may be taken as provided by the Maine Rules
31 of Civil Procedure and may be only for error of law
32 or abuse of discretion.

33 2. Proceedings independent. A proceeding under
34 this chapter shall be in addition to any other avail-
35 able civil or criminal remedies.

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

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

7 §4659. Violation

8 1. Crime committed. Violation of a temporary,
9 emergency, interim or final protective order or a
10 court approved consent agreement, when the defendant
11 has prior actual notice of the order or agreement, is
12 a Class D crime, except when the only provision that
13 is violated concerns relief authorized under section
14 4656, subsection 1, paragraphs D to F. Violation of
15 these paragraphs shall be treated as contempt and
16 punished in accordance with law.

17 2. Warrantless arrest. Wherever possible, war-
18 rants shall be obtained by law enforcement officers
19 before making arrests for criminal violation of an
20 order or consent agreement. Notwithstanding any
21 statutory provision to the contrary, an arrest for
22 criminal violation of an order or consent agreement
23 may be without warrant upon probable cause, whether
24 or not the violation is committed in the presence of
25 the law enforcement officer. The law enforcement of-
26 ficer may verify, if necessary, the existence of a
27 protective order by telephone or radio communication
28 with a law enforcement agency with knowledge of the
29 order, provided that the existence of such a protec-
30 tive order is confirmed immediately after arrest
31 through the law enforcement officer or his department
32 obtaining a written copy of the protective order from
33 the appropriate law enforcement agency.

34 §4660. Law enforcement agency responsibilities

35 1. Reports. Each law enforcement agency shall
36 report all incidents of hate violence and abuse as
37 required by the State Bureau of Identification under
38 Title 25, section 1544.

39 2. Agency procedures. Law enforcement agencies
40 shall establish procedures to ensure that dispatchers

1 and officers at the scene of an alleged incident of
2 hate violence and abuse or violation of an order of
3 protection can be informed of any recorded prior in-
4 cident of hate violence and abuse involving the
5 abused party and can verify the effective dates and
6 terms of any recorded protection order.

7 3. Officer training. Law enforcement agencies
8 shall provide officers employed by them with an edu-
9 cation and training program designed to inform the
10 officers of the problems of hate violence and abuse,
11 procedures to deal with these problems and the provi-
12 sions of this chapter. The amount and degree of of-
13 ficer training, beyond the distribution of informa-
14 tion, shall be determined by each local law enforce-
15 ment agency.

16 4. Maine Criminal Code enforcement. A law en-
17 forcement officer at the scene of an alleged incident
18 of hate violence and abuse shall use the same stan-
19 dard of enforcing relevant sections of the Maine
20 Criminal Code when the incident involves hate vio-
21 lence and abuse as when it involves another type of
22 violence.

23 5. Arrest in certain situations. When a law en-
24 forcement officer has probable cause to believe that
25 there has been a criminal violation of a court ap-
26 proved consent agreement or a protective order issued
27 pursuant to this chapter or that a violation of Title
28 17-A, section 208, has occurred involving hate vio-
29 lence and abuse, he shall arrest and take into custo-
30 dy the alleged offender.

31 6. Officer responsibilities. Whenever a law en-
32 forcement officer has reason to believe that a person
33 has been the victim of hate violence and abuse, the
34 officer shall immediately use all reasonable means to
35 prevent further abuse, including:

36 A. Remaining on the scene as long as he reason-
37 ably believes there is a danger to the physical
38 safety of that person without the presence of a
39 law enforcement officer;

40 B. Assisting that person in obtaining medical
41 treatment necessitated by an assault, including

1 driving the victim to the emergency room of the
2 nearest hospital;

3 C. Giving that person immediate and adequate
4 written notice of his rights, which shall include
5 information summarizing the procedures and relief
6 available to victims of hate violence and abuse;
7 or

8 D. Arresting the abusing party with or without a
9 warrant pursuant to section 4659, subsection 2.

10 Sec. 2. 14 MRSA c. 10-A is enacted to read:

11 CHAPTER 10-A

12 LIABILITY FOR HATE VIOLENCE AND ABUSE

13 §241. Hate violence and abuse

14 One who commits hate violence and abuse, as de-
15 defined in Title 5, chapter 337-A, is subject to lia-
16 bility for physical harm and mental suffering caused
17 to the victim of the hate violence and abuse.

18 Sec. 3. 17 MRSA c. 93-C is enacted to read:

19 CHAPTER 93-C

20 VIOLENCE BASED ON CHARACTERISTICS

21 §2931. Prohibition

22 No person, whether or not acting under color of
23 law, may by force or threat of force, intentionally
24 injure, intimidate or interfere with, or intentional-
25 ly attempt to injure, intimidate or interfere with or
26 intentionally oppress or threaten any other person in
27 the free exercise or enjoyment of any right or privi-
28 lege, secured to him by the Constitution of Maine or
29 laws of the State or by the United States Constitu-
30 tion or laws of the United States, on the basis of
31 the other person's real or perceived race, color,
32 sex, ethnic background, nationality, country of ori-
33 gin, religious belief, age, sexual orientation or
34 disability.

- 1 1. Providing for these individuals a method of
2 obtaining a court order to protect them from further
3 abuse;
- 4 2. Creating a law providing for civil liability
5 for hate violence and abuse;
- 6 3. Creating a special category for injury, in-
7 terference, intimidation, oppression or threats based
8 on the victim's race, color, sex, ethnic background,
9 nationality, country of origin, religious belief,
10 age, sexual orientation or disability;
- 11 4. Providing for a court to consider whether a
12 crime was committed because of a victim's character-
13 istics in setting a sentence; and
- 14 5. Requiring the State Bureau of Identification
15 to collect information on incidents of hate violence
16 and abuse.
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