

MAINE STATE LEGISLATURE

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(New Draft of H.P. 984, L.D. 1331)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1787

H.P. 1309 House of Representatives, June 9, 1987
Reported by the Majority from the Committee on Judiciary
and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored 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.

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

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

CHAPTER 337-A

PROTECTION FROM HARASSMENT

§4651. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following 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. Harassment. "Harassment" means any repeated
8 act of intimidation, harassment, physical force or
9 threat of physical force whether or not performed un-
10 der color of law, directed against any person, family
11 or their property or advocate, motivated either in
12 whole or in part by hostility to their real or
13 perceived race, color, sex, ethnic background,
14 nationality, country of origin, religious belief,
15 age, sexual orientation or disability, with the in-
16 tervention of causing fear or intimidation or to deter
17 free exercise or enjoyment of any rights or privi-
18 leges secured by the Constitution of Maine. This
19 definition does not include any act protected by the
20 constitutional guarantee of free speech.

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

26 §4652. Filing of petition

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

35 §4653. Commencement of proceedings

36 1. Filing. Any adult who has been a victim of
37 harassment may seek relief by filing a sworn petition
38 in an appropriate court alleging that abuse.

1 2. Assistance. The court shall provide separate
2 forms with a summons and clerical assistance to as-
3 sist either party to proceed under this chapter in
4 completing and filing a petition or other necessary
5 documents. This assistance shall not include legal
6 advice or assistance in drafting legal documents.

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

10 §4654. Hearings

11 1. Full hearing. Within 21 days of the filing
12 of a petition, a hearing shall be held at which the
13 plaintiff shall prove the allegation of harassment by
14 a preponderance of the evidence.

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

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

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

39 B. If a petition is filed under this subsection,
40 the petition and any order issued pursuant to it

1 shall be immediately certified to the clerk of
2 the District Court or Superior Court having ven-
3 ue. This certification to the court shall have
4 the effect of commencing proceedings and invoking
5 the other provisions of this chapter.

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

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

11 A. Imposing any restraint upon the person or
12 liberty of the plaintiff;

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

16 C. Entering the plaintiff's residence; or

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

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

26 6. Dissolution or modification. Notwithstanding
27 any statutory provision to the contrary, on 2-days'
28 notice to the plaintiff or on such shorter notice as
29 the court may order, a person who is subject to any
30 order may appear and move the dissolution or modifi-
31 cation of the order and in that event the court shall
32 proceed to hear and determine the motion expeditious-
33 ly. At that hearing, the plaintiff shall have the
34 burden of justifying any finding in the ex parte or-
35 der which the defendant has challenged by affidavit.
36 Nothing in this section may be construed to abolish
37 or limit any means, otherwise available by law, for
38 obtaining dissolution, modification or discharge of
39 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 harassment alleged, may
8 grant any protection order or approve any consent
9 agreement to bring about a cessation of harassment,
10 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 harassment. Compensatory losses
21 shall be limited to loss of earnings or support;
22 reasonable expenses incurred for personal inju-
23 ries or property damage; and reasonable moving
24 expenses. Upon the motion of either party, for
25 sufficient cause, the court may set a later hear-
26 ing on the issue of the amount of damages, if
27 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 harassment. Upon
38 motion by either party, for sufficient cause, the

1 court may modify the order or agreement from time to
2 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 4655, 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 harassment as required by the
37 State Bureau of Identification under Title 25, sec-
38 tion 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 harassment or violation of an order of protection can
3 be informed of any recorded prior incident of harass-
4 ment involving the abused party and can verify the
5 effective dates and terms of any recorded protection
6 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 harassment, procedures to
11 deal with these problems and the provisions of this
12 chapter. The amount and degree of officer training,
13 beyond the distribution of information, shall be de-
14 termined by each local law enforcement agency.

15 4. Maine Criminal Code enforcement. A law en-
16 forcement officer at the scene of an alleged incident
17 of harassment shall use the same standard of enforc-
18 ing relevant sections of the Maine Criminal Code when
19 the incident involves harassment as when it involves
20 another type of abuse.

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

29 6. Officer responsibilities. Whenever a law en-
30 forcement officer has reason to believe that a person
31 has been the victim of harassment, the officer shall
32 immediately use all reasonable means to prevent fur-
33 ther abuse, including:

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

38 B. Assisting that person in obtaining medical
39 treatment necessitated by an assault, including
40 driving the victim to the emergency room of the
41 nearest hospital;

1 C. Giving that person immediate and adequate
2 written notice of his rights, which shall include
3 information summarizing the procedures and relief
4 available to victims of harassment; or

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

7 Sec. 2. 17 MRSA c. 93-C is enacted to read:

8 CHAPTER 93-C

9 HARASSMENT BASED ON CHARACTERISTICS

10 §2931. Prohibition

11 No person, whether or not acting under color of
12 law, may by force or threat of force, intentionally
13 injure, intimidate or interfere with, or intentional-
14 ly attempt to injure, intimidate or interfere with or
15 intentionally oppress or threaten any other person in
16 the free exercise or enjoyment of any right or privi-
17 lege, secured to him by the Constitution of Maine or
18 laws of the State or by the United States Constitu-
19 tion or laws of the United States, or on the basis of
20 the other person's real or perceived race, color,
21 sex, ethnic background, nationality, country of ori-
22 gin, religious belief, age, sexual orientation or
23 disability.

24 As used in this section, "intentionally" has the
25 meaning set forth in Title 17-A, section 35.

26 §2932. Penalty

27 A violation of this chapter is a Class D crime.

28 Sec. 3. 25 MRSA §1544, last ¶, as enacted by PL
29 1979, c. 578, §6, is amended to read:

30 The bureau shall establish a category for abuse
31 by adults of family or household members and a cate-
32 gory for harassment, as defined in Title 5, chapter
33 337-A, which shall be supplementary to its other re-
34 ported information. The bureau shall prescribe the
35 information to be submitted in the same manner as for
36 all other categories of the uniform crime reports.

1 STATEMENT OF FACT

2 This amendment:

3 1. Replaces the term "hate violence and abuse"
4 with the term "harassment;"

5 2. Defines "harassment" as any repeated act of
6 intimidation, harassment, physical force or threat of
7 physical force;

8 3. Deletes provisions for statutory civil lia-
9 bility based on this harassment;

10 4. Makes a violation of the prohibition on
11 harassment based on characteristics a Class D crime,
12 rather than increasing the classification to Class B
13 if bodily injury results; and

14 5. Deletes the proposal that a court be required
15 to consider the racial, religious, sex, age and other
16 characteristics of the victim in sentencing a con-
17 victed felon.

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