

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2115

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H.P. 1555 House of Representatives, January 21, 1988  
Approved for introduction by a majority of the  
Legislative Council pursuant to Joint Rule 26.  
Reference to the Committee on Judiciary suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative CONLEY of Portland.  
Cosponsored by Senator GAUVREAU of Androscoggin.

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STATE OF MAINE

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

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1           **AN ACT to Make Certain Statutory Changes to**  
2           **Facilitate District Court Judicial Administration.**  
3

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

6           **Sec. 1. 5 MRSA §4652, as enacted by PL**  
7           **515, §1, is amended to read:**

8           §4652. Filing of petition

1 Proceedings under this chapter shall be filed,  
2 heard and determined in the District Court or Superior  
3 Court of the division or county in which either the  
4 plaintiff or the defendant resides. If the plaintiff  
5 has left the plaintiff's residence to avoid abuse  
6 harassment, the plaintiff may bring an action in the  
7 division or county of the plaintiff's previous  
8 residence or new residence.

9 Sec. 2. 5 MRSA §4653, sub-§1, as enacted by PL  
10 1987, c. 515, §1, is amended to read:

11 1. Filing. Any person who has been a victim of  
12 harassment may seek relief by filing a sworn petition  
13 in an appropriate court alleging that abuse  
14 harassment.

15 Sec. 3. 5 MRSA §4654, sub-§2, ¶A, as enacted by  
16 PL 1987, c. 515, §1, is amended to read:

17 A. It appears clearly from a verified petition or  
18 an affidavit accompanying the petition that:

19 (1) Before the defendant or his attorney can  
20 be heard, the plaintiff may be in immediate  
21 and present danger of physical abuse from the  
22 defendant or may suffer extreme emotional  
23 distress as a result of the defendant's  
24 conduct;

25 (2) Either the plaintiff has or has not  
26 contacted any law enforcement officials  
27 concerning the alleged harassment; and

28 (3) The plaintiff has provided sufficient  
29 information to substantiate the alleged  
30 harassment;

31 Sec. 4. 5 MRSA §4655, sub-§1, ¶A, as enacted by  
32 PL 1987, c. 515, §1, is amended to read:

33 A. Directing the defendant to refrain from  
34 harassing, threatening, assaulting, molesting,  
35 attacking or otherwise abusing the plaintiff;

1           Sec. 5. 5 MRSA §4658, sub-§3, as enacted by PL  
2 1987, c. 515, §1, is amended to read:

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

7           Sec. 6. 5 MRSA §4660, sub-§§2 and 6, as enacted  
8 by PL 1987, c. 515, §1, are amended to read:

9           2. Agency procedures. Law enforcement agencies  
10 shall establish procedures to ensure that dispatchers  
11 and officers at the scene of an alleged incident of  
12 harassment or violation of an order of protection can  
13 be informed of any recorded prior incident of  
14 harassment involving the ~~abused~~ harassed party and  
15 can verify the effective dates and terms of any  
16 recorded protection order.

17           6. Officer responsibilities. Whenever a law  
18 enforcement officer has reason to believe that a  
19 person has been the victim of harassment, the officer  
20 shall immediately use all reasonable means to prevent  
21 further ~~abuse~~ harassment, including:

22           A. Remaining on the scene as long as he  
23 reasonably believes there is a danger to the  
24 physical safety of that person without the  
25 presence of a law enforcement officer;

26           B. Assisting that person in obtaining medical  
27 treatment necessitated by an assault, including  
28 driving the victim to the emergency room of the  
29 nearest hospital;

30           C. Giving that person immediate and adequate  
31 written notice of his rights, which shall include  
32 information summarizing the procedures and relief  
33 available to victims of harassment; or

34           D. Arresting the ~~abusing~~ harassing party with  
35 or without a warrant pursuant to section 4659,  
36 subsection 2.

1       **Sec. 7.** 14 MRSA §3121-A, sub-§2, ¶A, as enacted  
2 by PL 1987, c. 184, §4, is amended to read:

3       A. The request for issuance of a civil order of  
4 arrest pursuant to section 3134, subsection 1, or  
5 section 3136; or

6       **Sec. 8.** 14 MRSA §3125, sub-§2, as enacted by PL  
7 1987, c. 184, §7, is amended to read:

8       2. Agreement. If the creditor or the debtor, at  
9 or prior to the disclosure hearing, presents the court  
10 with a written agreement for an order pursuant to  
11 section 3127 with affidavit signed by the judgment  
12 debtor on a form provided by the District Court, the  
13 court may enter an order for an installment payment in  
14 the amount agreed upon by the parties or a ~~lessor~~  
15 lesser amount without the necessity of appearance by  
16 the parties. In determining whether to accept, reject  
17 or modify to a ~~lessor~~ lesser amount the agreement  
18 of the parties, the court shall apply the factors set  
19 forth in section 3128.

20       **Sec. 9.** 14 MRSA §3131, sub-§6, as enacted PL  
21 1987, c. 184, §14, is amended to read:

22       6. Sale proceeds. When the property is subject  
23 to a security interest, mortgage, lien, encumbrance or  
24 other interest which is subordinate to that of the  
25 judgment creditor and which is recorded, possessory or  
26 of which the judgment ~~debtor~~ creditor has actual  
27 knowledge, which secures the payment of any  
28 indebtedness, the judgment creditor shall remit the  
29 excess of any sale proceeds over the amount owed on  
30 the judgment, costs and interest through the sale  
31 date, plus the expenses of sale, to the holder of the  
32 interest up to the amount of the indebtedness. The  
33 judgment creditor shall remit to the 3rd party any  
34 exempt portion of the sale proceeds subject to the 3rd  
35 party's interest. The judgment creditor shall remit  
36 any further excess, plus any exempt portion of the  
37 sale proceeds which is not subject to a 3rd party  
38 interest, to the judgment debtor and shall be entitled  
39 to any deficiency.

1           Sec. 10.     14 MRSA §§3141, 3142 and 3143, as  
2 enacted by PL 1987, c. 414, §2, are repealed and the  
3 following enacted in their place:

4     §3141. Scope and procedure

5           1. Applicability. The procedures established by  
6 this chapter apply to all monetary fines, however  
7 designated, imposed by a court in a civil violation or  
8 traffic infraction proceeding and shall be utilized,  
9 to the maximum extent possible, to obtain prompt and  
10 full payment of all such fines. The procedures  
11 established by this chapter shall be in addition to,  
12 and not in lieu of, those otherwise authorized by law.

13           2. Notice to defendant. At a defendant's initial  
14 appearance before a court in a civil violation or  
15 traffic infraction proceeding, the defendant shall be  
16 informed by the court that if the defendant is  
17 adjudicated to have committed the traffic infraction  
18 or civil violation and if a fine is imposed by the  
19 court, immediate payment of the fine in full is  
20 required.

21           3. Immediate payment. When a court has imposed a  
22 fine, as described in subsection 1, the imposition of  
23 such a fine constitutes an order to pay the full  
24 amount of the fine in accordance with this chapter.  
25 Following imposition of the fine, the court shall  
26 inform the defendant that full payment of the fine is  
27 due immediately and shall inquire of the defendant  
28 what arrangements the defendant has made to comply  
29 with the court's order to pay the fine. Without  
30 utilizing the provisions of subsection 4, the court  
31 may allow the defendant a period of time, not to  
32 extend beyond the time of the close of the clerk's  
33 office on that day, within which to return to the  
34 court and tender payment of the fine. If the  
35 defendant fails to appear as directed, the court may  
36 proceed under section 3142. If the underlying offense  
37 involves any violation of Title 29, the court shall  
38 suspend, upon the defendant's failure to appear, the  
39 defendant's license or permit to operate motor  
40 vehicles in this State, the defendant's right to

1 operate motor vehicles in this State and the right to  
2 apply for or obtain a license or permit to operate a  
3 motor vehicle in this State.

4 If the defendant claims an inability to pay the fine,  
5 the court shall inquire into the defendant's ability  
6 to pay and shall make a determination of the  
7 defendant's financial ability to pay the fine. If the  
8 court finds that the defendant has the financial  
9 ability to make immediate payment of the fine in full,  
10 the court shall order the defendant to pay the fine.  
11 Failure or refusal to pay as ordered by the court  
12 shall subject the defendant to the contempt procedures  
13 provided in section 3142.

14 4. Installment payments. If the court concludes  
15 that the defendant has the ability to pay the fine,  
16 but that requiring the defendant to make immediate  
17 payment in full would cause a severe and undue  
18 hardship for the defendant and the defendant's  
19 dependents, the court may authorize payment of the  
20 fine by means of installment payments in accordance  
21 with this subsection. When a court authorizes payment  
22 of a fine by means of installment payments, it shall  
23 issue, without a separate disclosure hearing, an order  
24 that the fine be paid in full by a date certain and  
25 that in default of payment the defendant must appear  
26 in court to explain the failure to pay. Failure to  
27 pay by the date fixed by court order shall subject the  
28 defendant to the contempt procedures provided in  
29 section 3142.

30 In fixing the date of payment, the court shall issue  
31 an order which will complete payment of the fine as  
32 promptly as possible without creating a severe and  
33 undue hardship for the defendant and the defendant's  
34 dependents.

35 5. Appointment of agent. Any defendant who has  
36 been authorized by the court to pay a fine by  
37 installments shall be considered to have irrevocably  
38 appointed the clerk of the court as the defendant's  
39 agent upon whom all papers affecting the defendant's  
40 liability may be served.

1           6. Ability to pay the fine. "Ability to pay"  
2 means that the resources of the defendant and the  
3 defendant's dependents, including all available income  
4 and resources, are sufficient to provide the defendant  
5 and the defendant's dependents with a reasonable  
6 subsistence compatible with health and decency.

7 §3142. Contempt hearing

8           Unless the defendant shows that the failure to pay  
9 a fine was not attributable to a willful refusal to  
10 obey the order or to a failure on the defendant's part  
11 to make a good faith effort to obtain the funds  
12 required for the payment, the court may find the  
13 defendant in civil contempt and may punish the  
14 defendant by such reasonable fine or imprisonment as  
15 the case requires. The defendant shall be allowed to  
16 purge the contempt citation by complying with the  
17 court's order to pay or to an amended order to pay.  
18 Upon a failure to pay a fine as ordered, the court  
19 shall cause the clerk to notify the defendant by  
20 regular mail at the defendant's address, on file with  
21 the court, of the date and time of hearing on civil  
22 contempt. If the defendant fails to appear at such  
23 date and time, a civil order of arrest may be issued  
24 in a form similar to a civil order of arrest under  
25 section 3135, except that there shall be no fee for  
26 service or mileage. The sheriff of each county shall  
27 arrange for service of the order and delivery of the  
28 defendant to court.

29 §3143. Default judgments

30           Notwithstanding the Maine Rules of Civil  
31 Procedure, Rule 55, or the Maine District Court Rules  
32 of Civil Procedure, Rule 55, if a person who has been  
33 summoned or ordered to answer for a civil violation or  
34 a traffic infraction fails to appear, the court, on  
35 its own motion, shall adjudicate the defendant to have  
36 committed the offense and shall impose a fine. In the  
37 case of an adjudication for a traffic infraction, the  
38 court shall immediately suspend the defendant's  
39 license or permit to operate motor vehicles in this  
40 State, the right to operate motor vehicles in this  
41 State or the right to apply for or obtain a license or



permit to operate motor vehicles in this State, in accordance with Title 29, section 2301-A. Relief from a default judgment entered pursuant to this section may be addressed to the court and may be granted in the court's discretion upon finding that it will futher the interest of justice.

STATEMENT OF FACT

This bill provides for a number of statutory changes, particularly in legislation enacted in the First Regular Session of the 113th Legislature, to facilitate judicial administration in the District Court.

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