

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2177

H.P. 1571

House of Representatives, January 10, 1990

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.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CATHCART of Orono.

Cosponsored by Representative FARNSWORTH of Hallowell and Senator HOLLOWAY of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Provide Greater Protection to Victims of Domestic Abuse.



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

2
4 Sec. 1. 19 MRSA §761, as enacted by PL 1979, c. 578, §§5, 7,
and as amended by PL 1983, c. 583, §26, is repealed.

6 Sec. 2. 19 MRSA §761-A is enacted to read:

8 §761-A. Purpose

10 The court shall liberally construe and apply this chapter to
12 promote its underlying purposes, which are:

14 1. Recognition. To recognize domestic abuse as a serious
16 crime against the individual and society, producing an unhealthy
18 and dangerous family environment, resulting in a pattern of
escalating abuse, including violence, which frequently culminates
in intrafamily homicide and creating an atmosphere that is not
conducive to healthy childhood development;

20 2. Protection. To allow family and household members who
22 are victims of domestic abuse to obtain expeditious and effective
24 protection against further abuse so that the lives of the
26 nonabusing family or household members are as secure and
28 uninterrupted as possible. Protection must be provided by
30 promptly entering and diligently enforcing court orders that
prohibit abuse and, when necessary, by reducing the abuser's
access to the victim and addressing any related issues of child
custody and economic support so that victims are not trapped in
abusive situations by fear of retaliation, loss of a child or
financial dependence;

32 3. Prevention. To expand the power of the justice system
34 to respond effectively to situations of domestic abuse, clarify
36 the responsibilities and support the efforts of law enforcement
38 officers, prosecutors and judicial officers to provide immediate,
40 effective assistance and protection for victims of abuse, and to
recognize the crucial role of law enforcement officers in
preventing further incidents of abuse and in assisting the
victims of abuse; and

42 4. Data collection. To provide for the collection of data
44 concerning domestic abuse in an effort to develop a comprehensive
analysis of the incidence and causes of that abuse.

46 5. Mutual order. To declare that a mutual order of
protection or restraint undermines the purposes of this chapter.

48 Sec. 3. 19 MRSA §762, sub-§1, ¶A, as amended by PL 1985, c.
50 557, is further amended to read:

52 A. Attempting to cause or causing bodily injury or
offensive physical contact, including sex offenses under

2 Title 17-A, chapter 11, except that contact as described in
3 Title 17-A, section 106, subsection 1, is excluded from this
4 definition; or

5 **Sec. 4. 19 MRSA §762, sub-§1, ¶B,** as amended by PL 1979, c.
6 677, §4, is further amended to read:

7 B. Attempting to place or placing another in fear of
8 imminent bodily injury;

9 **Sec. 5. 19 MRSA §762, sub-§1, ¶¶C to F** are enacted to read:

10 C. Engaging in any course of conduct with the intent to
11 harass, torment or threaten another person;

12 D. Compelling a person by force, threat of force or
13 intimidation to engage in conduct from which the person has
14 a right or privilege to abstain or to abstain from conduct
15 in which the person has a right to engage;

16 E. Restricting substantially the movements of another
17 person without that person's consent or other lawful
18 authority; or

19 F. Communicating to a person a threat to commit, or to
20 cause to be committed, a crime of violence dangerous to
21 human life against the person to whom the communication is
22 made or to another, the natural and probable consequence of
23 which, whether or not that consequence in fact occurs, is to
24 place the person to whom the threat is communicated, or the
25 person against whom the threat is made, in reasonable fear
26 that the crime will be committed.

27 **Sec. 6. 19 MRSA §762, sub-§4,** as amended by PL 1981, c. 420,
28 §3, and as amended by PL 1983, c. 583, §26, is further amended to
29 read:

30 4. **Family or household members.** "Family or household
31 members" means spouses or former spouses, individuals presently
32 or formerly living together as spouses or sexual partners,
33 natural parents of the same child, or adult household members
34 related by consanguinity or affinity. Holding oneself out to be a
35 spouse shall not be necessary to constitute "living as spouses."

36 **Sec. 7. 19 MRSA §762, sub-§6** is enacted to read:

37 6. **Mutual order.** "Mutual order of protection or restraint"
38 means an order that is granted to the defendant in an action
39 under this chapter or the inclusion of language in an order
40 granted to the plaintiff in an action under this chapter that
41 restricts or limits the plaintiff's conduct with regard to the
42 defendant absent the filing of a separate complaint by the
43 defendant.

2 defendant, service of the complaint and summons upon the
3 plaintiff and a finding by the court that the plaintiff committed
4 the abuse alleged on the complaint.

5 Sec. 8. 19 MRSA §764, sub-§2, as amended by PL 1979, c. 677,
6 §8, is repealed and the following enacted in its place:

7 2. Assistance. Assistance is available as follows.

8 A. The court shall provide separate forms and clerical
9 assistance to either party in completing and filing of a
10 complaint or other necessary documents. The assistance may
11 not include legal advice or assistance in drafting legal
12 documents.

13 B. If a judge is unavailable to review a request for
14 temporary relief under this chapter, the clerk shall
15 immediately notify the plaintiff of other courts at which a
16 judge is available.

17 C. The clerk shall provide the plaintiff written notice of
18 resources where the plaintiff may receive legal or social
19 service assistance.

20 Sec. 9. 19 MRSA §764, sub-§2-A is enacted to read:

21 2-A. Forms. The forms provided by the court must be
22 uniform throughout the State and must include a summons and an
23 affidavit for temporary emergency relief from abuse. The summons
24 must include a section in which to list places where the
25 defendant may be located or available for service. The clerk
26 shall inquire where the defendant may be located or available for
27 service and list those locations on the summons or direct the
28 plaintiff to do so.

29 Sec. 10. 19 MRSA §765, sub-§1, as amended by PL 1979, c. 677,
30 §9, and as amended by PL 1983, c. 583, §26, is further amended to
31 read:

32 1. Full hearing. Within 21 days of the filing of
33 complaint, a hearing shall must be held at which the plaintiff
34 shall must prove the allegation of abuse by a preponderance
35 preponderance of the evidence. If a request for temporary,
36 emergency or interim relief is denied, the hearing must be held
37 as soon as practicable within the 21-day period.

38 Sec. 11. 19 MRSA §765, sub-§2, as amended by PL 1985, c. 546,
39 is further amended to read:

40 2. Temporary orders. The court may enter any temporary
41 orders authorized under subsection 4 as it deems considers
42 necessary to protect the plaintiff or minor child from abuse, on
43

2 good cause shown in an ex parte proceeding, which the court shall
3 hear and determine as expeditiously as practicable after filing
4 of a complaint. Immediate and present danger of physical abuse to
5 the plaintiff or minor child shall constitute good cause. Any
6 order shall must remain in effect pending a hearing pursuant to
7 subsection 1. If the complaint is filed initially in the
8 Superior Court, the justice, after authorizing any temporary
9 order under this section, may order that further proceedings be
10 transferred to the District Court of the division in which either
11 the plaintiff or the defendant resides.

12 **Sec. 12. 19 MRSA §765, sub-§3-A** is enacted to read:

13 3-A. Denial of relief. Before a request for temporary,
14 emergency or interim relief is denied, the judge shall:

15 A. Allow the plaintiff the opportunity to be heard in
16 person to support the complaint. The plaintiff may be
17 accompanied by a person of the plaintiff's choice; and

18 B. Advise the plaintiff of reasons for the denial.
19

20
21
22 **Sec. 13. 19 MRSA §765, sub-§4-A,** as amended by PL 1981, c.
23 420, §6, is further amended to read:

24
25 4-A. Service of order. If the court issues a temporary
26 order or orders emergency or interim relief, it shall order a law
27 enforcement agency to serve the defendant personally with the
28 order, the complaint and the summons. To protect the plaintiff,
29 the court may order the omission or deletion of his the
30 plaintiff's address from any papers served on the defendant. The
31 court shall cause the order to be delivered to the law
32 enforcement agency as soon as practicable following the issuance
33 of the order and the law enforcement agency shall make a good
34 faith effort to serve process expeditiously.

35
36 **Sec. 14. 19 MRSA §765, sub-§6,** as enacted by PL 1979, c. 578,
37 §§5, 7, and as amended by PL 1983, c. 583, §26, is further
38 amended to read:

39
40 6. Extension. If a hearing under subsection 1 is
41 continued, the court may make or extend such any temporary orders
42 as it deems considers necessary. Notwithstanding any other
43 provision of this section, if a protective order is issued
44 pursuant to section 766, the temporary protective order issued
45 pursuant to this section remains in effect pending service of the
46 final order.

47
48 **Sec. 15. 19 MRSA §766, sub-§1,** as amended by PL 1981, c. 420,
49 §§7-9, and as amended by PL 1983, c. 583, §26, is further amended
50 to read:

1. **Protection order; consent agreement.** The court, after a hearing and upon finding that the defendant has committed the abuses abuse alleged, may grant any protective order or, upon making that finding, approve any consent agreement to bring about a cessation of abuse, ~~which may include.~~ This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. Relief granted under this section may include:

A. Directing the defendant to refrain from the threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff and any minor children residing in the household;

B-1. Directing the defendant to refrain from going upon the premises of the plaintiff's residence;

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 leasee 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;

D. Ordering a division of the personal property and the household goods and furnishings of the parties and placing any protective orders deemed considered appropriate by the court;

E. Either awarding temporary custody of minor children or establishing temporary visitation rights with regard to minor children where when the visitation is deemed determined to be in the best interest of the child, or both;

F. Requiring ~~either--or--both--parties~~ the defendant to receive counseling from a social worker, family service agency, mental health center, psychiatrist or any other guidance service that the court deems considers appropriate;

G. Ordering the payment of temporary support for the dependent party or any child in his that party's custody, or both, when there is a legal obligation to support that person;

H. Ordering the payment of temporary support payments to the State as provided under in chapter 7;

2 I. Ordering payment of monetary compensation to the abused
4 person for losses suffered as a direct result of the abuse.
6 Compensatory losses shall be limited to ~~to~~ less loss of
8 earnings or support, reasonable expenses incurred for
personal injuries or property damage and reasonable moving
expenses. Upon the motion of either party, for sufficient
cause, the court may set a later hearing on the issue of the
amount of damages, if any, to be awarded;

10 J. Ordering the defendant or, if the complaint is
12 dismissed, the plaintiff, to pay court costs or reasonable
attorney fees; or

14 K. Entering any other orders deemed determined necessary or
16 appropriate in the discretion of the court.

18 **Sec. 16. 19 MRSA §766, sub-§§7 to 9** are enacted to read:

20 7. Mutual order of protection or restraint. The court may
not issue a mutual order of protection or restraint.

22 8. Action by plaintiff. A plaintiff may only extinguish or
24 modify an order by legal process in accordance with the Maine
Rules of Civil Procedure. Any other action or inaction on the
26 part of the plaintiff does not alter, diminish or negate the
effectiveness of the order. Criminal sanctions may not be
28 imposed upon the plaintiff for violation of any provision of the
plaintiff's order for protection.

30 9. Financial accounting. Notwithstanding any other
32 provision of law, failure to file income or asset affidavits does
not preclude the issuance of a protective order. Failure to use
34 the affidavits by a pro se plaintiff or in the case of a default
judgment does not preclude issuance of an order for child
36 support, provided the plaintiff provides the court with adequate
information for the court to apply the child support guidelines
38 established pursuant to section 303-A, subsection 3.

40 **Sec. 17. 19 MRSA §768, sub-§5** is enacted to read:

42 5. Mediation. The court may not mandate mediation in
actions brought under this chapter.

44 **Sec. 18. 19 MRSA §769, sub-§1**, as amended by PL 1979, c. 677,
46 §16, and as amended by PL 1983, c. 583, §26, is further amended
to read:

48 1. **Crime committed.** Violation of a temporary, emergency,
50 interim or final protective order or a court approved consent
agreement, when the defendant has prior actual notice of the
52 order or agreement, is a Class D crime, except when the only
provision that is violated concerns relief authorized under

2 section 766, subsection 1, paragraphs F to K. Service in hand is
3 not required under this section. Violation of these paragraphs
4 shall section 766, subsection 1, paragraphs F to K must be
5 treated as contempt and punished in accordance with law.

6 Sec. 19. 19 MRSA §770, sub-§§7 and 8 are enacted to read:

8 7. Law enforcement agency policy. By December 1, 1990,
9 every municipal, county and state law enforcement agency, with
10 the duty to investigate, prosecute and arrest offenders of this
11 chapter and Title 17-A, shall adopt a written policy on the
12 enforcement of this chapter and the handling of domestic abuse
13 cases in general.

14 8. District attorney prosecutorial policy. By December 1,
15 1990, the Attorney General, in consultation with the prosecutors'
16 association, shall develop a written policy regarding prosecution
17 of domestic abuse cases under the provisions of Title 17-A. By
18 June 1, 1991, the district attorney, for each of the several
19 counties within the State, shall adopt a written policy regarding
20 prosecution of domestic abuse cases.

22 STATEMENT OF FACT

24 This bill provides greater protection to victims of domestic
26 abuse by encouraging the court to issue emergency protection from
28 abuse orders and imposing time restrictions on courts to inform
30 law enforcement officials of the issuance of these orders and on
the law enforcement officials to render service.