

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2287

S.P. 897

In Senate, February 7, 1990

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

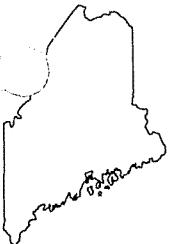
Presented by Senator HOLLOWAY of Lincoln.

Cosponsored by Representative RICHARDS of Hampden, Representative CATHCART of Orono and Representative FARNSWORTH of Hallowell.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Amend the Domestic Abuse Laws.



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

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Sec. 1. 5 MRSA §12004-I, sub-§91 is enacted to read:

<u>91. Public</u>	<u>Maine</u>	<u>Expenses</u>	<u>19 MRSA</u>
<u>Safety</u>	<u>Commission</u>	<u>Only</u>	<u>§770-B</u>
	<u>on</u>		
	<u>Domestic</u>		
	<u>Abuse</u>		

Sec. 2. 15 MRSA §891, as amended by PL 1979, c. 663, §102, is further amended to read:

§891. Dismissal on satisfaction of private injury; discharge of bail

When a person has been admitted to bail or is committed by a judge, or is indicted, or held upon a complaint and warrant for an assault or other Class D or E crime as defined by Title 17-A, section 4-A, for which the party injured has a remedy by civil action, except aggravated assaults, assaults upon or resistance of a law enforcement officer as defined by Title 17-A in the execution of his a law enforcement officer's duty, and assaults of such those officers, and assaults or violations under Title 19, chapter 14, if the injured party appears before the judge or court, and in writing acknowledges satisfaction for the injury, the court, on payment of all costs, may stay further proceedings and discharge the defendant. The judge may exonerate the bail and release the obligors, supersede the commitment by his written order and exonerate the bail of the witnesses.

Sec. 3. 19 MRSA §761, as enacted by PL 1979, c. 578, §§5 and 7, and as amended by PL 1983, c. 583, §26, is repealed.

Sec. 4. 19 MRSA §761-A is enacted to read:

§761-A. Purpose

The court shall liberally construe and apply this chapter to promote its underlying purpose, which is to protect victims of domestic violence and their families or household members by allowing the victims to obtain expeditious and effective protection against further abuse; by reducing the abuser's access to the victim; by reducing incidents of abuse and fear of retaliation, loss of a child or loss of financial support; and by collecting data in the effort to develop a comprehensive analysis of the incidence and causes of that violence.

Sec. 5. 19 MRSA §762, sub-§1, ¶A, as amended by PL 1985, c. 557, is further amended to read:

2 A. Attempting to cause or causing bodily injury or
offensive physical contact, including sex offenses under
4 Title 17-A, chapter 11, except that contact as described in
Title 17-A, section 106, subsection 1, is excluded from this
definition; or

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

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

12
14 **Sec. 7. 19 MRSA §762, sub-§1, ¶¶C to F** are enacted to read:

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

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

22 E. Restricting substantially the movements of another
24 person without that person's consent or other lawful
authority; or

26 F. Communicating to a person a threat to commit, or to
28 cause to be committed, a crime of violence dangerous to
human life against the person to whom the communication is
30 made or to another, the natural and probable consequence of
32 which, whether or not that consequence in fact occurs, is to
34 place the person to whom the threat is communicated, or the
person against whom the threat is made, in reasonable fear
that the crime will be committed.

36 **Sec. 8. 19 MRSA §762, sub-§4**, as amended by PL 1981, c. 420,
38 §3, and PL 1983, c. 583, §26, is further amended to read:

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

46
48 **Sec. 9. 19 MRSA §762, sub-§6** is enacted to read:

50 **6. Mutual order.** "Mutual order of protection or restraint"
means an order that is granted to the defendant in an action
52 under this chapter or the inclusion of language in an order
granted to the plaintiff in an action under this chapter that

2 restricts or limits the plaintiff's conduct with regard to the
3 defendant absent the filing of a separate complaint by the
4 defendant, service of the complaint and summons upon the
5 plaintiff and a finding by the court that the plaintiff committed
6 the abuse alleged on the complaint.

7 **Sec. 10. 19 MRSA §764, sub-§2, as amended by PL 1979, c. 677,**
8 **§8, is repealed and the following enacted in its place:**

9 **2. Assistance.** Assistance is available as follows.

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

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

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

22 **Sec. 11. 19 MRSA §764, sub-§2-A is enacted to read:**

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

31 **Sec. 12. 19 MRSA §765, sub-§1, as amended by PL 1979, c. 677,**
32 **§§9 and 18, and PL 1983, c. 583, §26, is further amended to read:**

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

39 **Sec. 13. 19 MRSA §765, sub-§2, as amended by PL 1985, c. 546,**
40 **is further amended to read:**

2 **2. Temporary orders.** The court may enter any temporary
orders authorized under subsection 4 as it ~~deems~~ considers
4 necessary to protect the plaintiff or minor child from abuse, on
good cause shown in an ex parte proceeding, which the court shall
6 hear and determine as expeditiously as practicable after filing
of a complaint. Immediate and present danger of ~~physical~~ physical abuse
8 to the plaintiff or minor child ~~shall constitute~~ constitutes good
cause. Any order shall ~~must~~ remain in effect pending a hearing
pursuant to subsection 1. If the complaint is filed initially in
10 the Superior Court, the justice, after authorizing any temporary
order under this section, may order that further proceedings be
12 transferred to the District Court of the division in which either
the plaintiff or the defendant resides.

14 **Sec. 14. 19 MRSA §765, sub-§3-A** is enacted to read:

16 **3-A. Denial of relief.** Before a request for temporary,
18 emergency or interim relief is denied, the judge shall:

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

24 B. Advise the plaintiff of reasons for the denial.

26 **Sec. 15. 19 MRSA §765, sub-§4-A,** as amended by PL 1981, c.
420, §6, is further amended to read:

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

40 **Sec. 16. 19 MRSA §765, sub-§6,** as enacted by PL 1979, c. 578,
§§5 and 7, and as amended by PL 1983, c. 583, §26, is further
42 amended to read:

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

2 Sec. 17. 19 MRSA §766, sub-§1, as amended by PL 1981, c. 420,
§§7 to 9, and PL 1983, c. 583, §26, is further amended to read:

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

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

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

20 C. When the mutual residence or household of the parties is
 jointly owned or jointly leased or when one party has a duty
22 to support the other or their minor children living in the
 residence or household and that party is the sole owner or
24 leasee lessee:

26 (1) Granting or restoring possession of the residence
 or household to one party with the exclusion of the
28 other; or

30 (2) By consent agreement, allowing the party with the
 duty to support to provide suitable alternate housing;

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

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

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

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

- 2 H. Ordering the payment of temporary support payments to
4 the State as provided under in chapter 7;
- 6 I. Ordering payment of monetary compensation to the abused
8 person for losses suffered as a direct result of the abuse.
10 Compensatory losses shall ~~be~~ are limited to ~~loss~~ loss of
12 earnings or support, reasonable expenses incurred for
14 personal injuries or property damage and reasonable moving
16 expenses. Upon the motion of either party, for sufficient
18 cause, the court may set a later hearing on the issue of the
20 amount of damages, if any, to be awarded;
- 22 J. Ordering the defendant or, if the complaint is
24 dismissed, the plaintiff, to pay court costs or reasonable
26 attorney fees; or
- 28 K. Entering any other orders deemed determined necessary or
30 appropriate in the discretion of the court.

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

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

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

52 9. Financial accounting. Notwithstanding any other
54 provision of law, failure to file income or asset affidavits does
56 not preclude the issuance of any order under this chapter. In
58 pro se or default proceedings, the court shall apply the child
60 support guidelines using information that the plaintiff is able
62 to provide to the court at the time of hearing. Failure of one
64 party to file an income affidavit may not unnecessarily delay a
66 proceeding.

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

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

74 **Sec. 20. 19 MRSA §769, sub-§1**, as amended by PL 1979, c. 677,
76 §16, and PL 1983, c. 583, §26, is further amended to read:

78 1. Crime committed. Violation of a temporary, emergency,
80 interim or final protective order or a court approved consent

2 agreement, when the defendant has prior actual notice of the
3 order or agreement, is a Class D crime, except when the only
4 provision that is violated concerns relief authorized under
5 section 766, subsection 1, paragraphs F to K. Service in hand is
6 not required under this section. Violation of these paragraphs
7 shall section 766, subsection 1, paragraphs F to K must be
8 treated as contempt and punished in accordance with law.

9
10 **Sec. 21. 19 MRSA §770, sub-§§7 and 8 are enacted to read:**

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

17 **8. District attorney prosecutorial policy.** By December 1,
18 1990, the Attorney General, in consultation with the Maine
19 Prosecutor's Association, shall develop a written policy
20 regarding prosecution of domestic abuse cases under the
21 provisions of Title 17-A. By June 1, 1991, the district
22 attorney, for each of the several counties within the State,
23 shall adopt a written policy regarding prosecution of domestic
24 abuse cases.

25
26 **Sec. 22. 19 MRSA §770-B is enacted to read:**

27 **§770-B. Maine Commission on Domestic Abuse**

28
29 There is created the Maine Commission on Domestic Abuse, as
30 established by Title 5, section 12004-I, subsection 91.

31
32 **1. Composition.** The commission is composed of 14 members.
33 The Governor shall appoint the chair and the following members:
34 one member who is a representative of the Maine Coalition of
35 Family Crisis Services, one member who is a representative of the
36 family counseling profession, one member who is an attorney
37 specializing in representing individuals in domestic abuse cases,
38 one member who is a district attorney or assistant district
39 attorney, one member who is chief of a municipal police
40 department, one member who is a county sheriff and 2 members who
41 represent the public at large. The President of the Senate shall
42 appoint one Senator and the Speaker of the House of
43 Representatives shall appoint one member of the House of
44 Representatives. The Chief of the State Police shall appoint one
45 member. The Attorney General or the Attorney General's designee
46 shall serve on the commission. The Chief Justice of the Supreme
47 Judicial Court is requested to appoint one person to serve the
48 commission in an advisory capacity.
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2 2. Terms of office. Those members appointed by the
3 Governor shall serve 3-year terms. All other appointed or
4 designated members shall serve at the pleasure of the appointing
5 or designating authority.

6 3. Powers and duties. The commission shall advise and
7 assist the executive, legislative and judicial branches of State
8 Government on issues related to domestic abuse. The commission
9 may make recommendations on legislative and policy actions,
10 including training of the various law enforcement officers,
11 prosecutors and judicial officers responsible for enforcing and
12 carrying out the provisions of this chapter.

14

16

STATEMENT OF FACT

18 The purpose of this bill is to address the issue of domestic
19 violence by amending the Maine Revised Statutes, Title 19,
20 regarding the issuance of protective orders. These amendments
21 are designed to reflect clearly the position that the victims of
22 domestic abuse need the assistance of the criminal justice system
23 to overcome the abuse they are suffering and that the victims are
24 in no way responsible for the abuser's actions.

26 This bill:

28 1. Repeals the current section describing the purpose of
29 the chapter addressing domestic violence in Title 19 and replaces
30 it with clearer language;

32 2. Amends the definition of abuse to make it clear that
33 sexual assault is offensive physical contact and, therefore,
34 abuse. Secondly, the definition of abuse has been amended so
35 that attempting to place or placing another in fear of bodily
36 injury is abuse regardless of whether the infliction of bodily
37 injury would be imminent or not;

38

39 3. Adds 4 new types of conduct to the definition of abuse.
40 These include harassment, compelling a person to engage in or
41 abstain from conduct that the person has a right to engage in or
42 abstain from, restricting substantially the movements of another
43 person and terrorizing;

44

45 4. Amends the definition of family or household members to
46 include individuals presently or formerly living together as
47 sexual partners;

48

49 5. Repeals and replaces Title 19, section 764, subsection
50 2, that outlines the assistance that a plaintiff or alleged
51 victim is entitled to receive from the court when that person
52 files a complaint. It reenacts the repealed language. It

2 instructs the clerk to notify the plaintiff of other courts where
a judge may be found if a judge is not immediately available at
4 the court where the plaintiff files. It also instructs the clerk
to provide written notice of possible legal or social service
6 resources to the plaintiff;

8 6. Requires the forms used to file a complaint to obtain a
protective order to be uniform throughout the State and that the
10 summons contain a section to list places where the defendant or
alleged abuser may be found. That information will assist law
12 enforcement officers in service of an order;

14 7. Amends Title 19, section 765. If a judge denies a
request for temporary, emergency or interim relief, a full
16 hearing must be held as soon as practicable. Further, if a
request for temporary relief is made, the ex parte proceeding
18 must be heard and determined as expeditiously as possible;

20 8. Requires a judge who is considering denial of a
temporary, emergency or interim relief to afford the plaintiff an
22 opportunity to be heard in person and to be accompanied by a
person of the plaintiff's choice at the time. The judge must
24 also give reasons for the denial;

26 9. Addresses the service of a temporary order. The court
is required to cause the order to be delivered to a law
28 enforcement agency for service as soon as practicable following
issuance and the law enforcement agency is required to make a
30 good faith effort to serve it expeditiously;

32 10. Amends the current laws so that a temporary order will
remain in effect until a final order, if issued, can be served.
34 Currently, the temporary order only stays in effect until the
hearing;

36 11. Requires the court to make a finding of abuse under a
consent agreement unless the parties voluntarily request that no
38 finding of abuse be made;

40 12. Amends Title 19, section 766 so that only the defendant
and not the plaintiff can be ordered by the court to receive
42 counseling upon issuance of a protective order;

44 13. Adds 3 new subsections to Title 19, section 766. The
first precludes the issuance of an order for protection or
46 restraint against the plaintiff unless the defendant files a
complaint and the court finds the plaintiff committed the alleged
48 abuse. The 2nd states that the plaintiff's actions cannot modify
or extinguish an order and that no criminal sanction can be
50 placed upon the plaintiff for violation of any provision of an
order. The 3rd outlines the manner in which the court shall
52 determine child support if necessary;

2 14. Prohibits mandatory mediation;

4 15. Amends the definition of the crime of violation of a
6 protection order to make it clear that the defendant does not
8 have to have been served in hand, if the defendant has actual
notice of the order;

10 16. Adds 2 new subsections to Title 19, section 770. The
12 first requires each of the various law enforcement agencies to
14 adopt a written policy on the handling of domestic abuse cases by
December 1, 1990. The 2nd requires the Attorney General to
develop a model policy for prosecution and for the various
district attorneys to adopt a written policy by June 1, 1991;

16 17. Creates the Maine Commission on Domestic Abuse which is
18 charged with the responsibility of continuing to study and advise
the 3 branches of government on domestic violence; and

20 18. Excludes assault or violation occurring under Title 19,
22 chapter 14 from the dismissal provision of accord and
satisfaction.