

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2458

S.P. 989

In Senate, March 29, 1990

Reported by Senator HOBBS of York for the Joint Standing Committee on
Judiciary pursuant to Joint Order S.P. 971.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Provide Greater Protection Under the Domestic Abuse Laws.



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

4 **Sec. 1. 5 MRSA §12004-I, sub-§74-C is enacted to read:**

6 74-C. Public Maine Expenses 19 MRSA
Safety Commission Only §770-B
8 on
Domestic
Abuse

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

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

18 When a person has been admitted to bail or is committed by a
20 judge, or is indicted, or held upon a complaint and warrant for
22 an assault or other Class D or E crime as defined by Title 17-A,
24 section 4-A, for which the party injured has a remedy by civil
26 action, except aggravated assaults, assaults upon or resistance
28 of a law enforcement officer as defined by Title 17-A in the
30 execution of his a law enforcement officer's duty, and assaults
of such those officers and crimes involving family or household
members as defined in 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.

32 **Sec. 3. 19 MRSA §761, as amended by PL 1983, c. 583, §26, is**
34 **repealed.**

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

38 **§761-A. Purpose**

40 The court shall liberally construe and apply this chapter to
42 promote the following underlying purposes:

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

50 2. Protection. To allow family and household members who
are victims of domestic abuse to obtain expeditious and effective
52 protection against further abuse so that the lives of the

2 nonabusing family or household members are as secure and
4 uninterrupted as possible. To provide protection by promptly
6 entering and diligently enforcing court orders that prohibit
8 abuse and, when necessary, by reducing the abuser's access to the
10 victim and addressing any related issues of child custody and
12 economic support so that victims are not trapped in abusive
14 situations by fear of retaliation, loss of a child or financial
16 dependence;

18
20 3. Prevention. To expand the power of the justice system
22 to respond effectively to situations of domestic abuse, clarify
24 the responsibilities and support the efforts of law enforcement
26 officers, prosecutors and judicial officers to provide immediate,
28 effective assistance and protection for victims of abuse and to
30 recognize the crucial role of law enforcement officers in
32 preventing further incidents of abuse and in assisting the
34 victims of abuse;

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

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

46 Sec. 5. 19 MRSA §762, sub-§1, ¶A, as amended by PL 1985, c.
48 557, is further amended to read:

50 A. Attempting to cause or causing bodily injury or
52 offensive physical contact, including sexual assaults under
54 Title 17-A, chapter 11, except that contact as described in
56 Title 17-A, section 106, subsection 1, is excluded from this
58 definition; e

60 Sec. 6. 19 MRSA §762, sub-§1, ¶B, as amended by PL 1983, c.
62 583, §26, is further amended to read:

64 B. Attempting to place or placing another in fear of
66 imminent bodily injury, through any course of conduct
68 including, but not limited to, threatening, harassing or
70 tormenting behavior;

72 Sec. 7. 19 MRSA §762, sub-§1, ¶¶C to E are enacted to read:

74 C. Compelling a person by force, threat of force or
76 intimidation to engage in conduct from which the person has
78 a right or privilege to abstain or to abstain from conduct
80 in which the person has a right to engage;

82 D. Knowingly restricting substantially the movements of
84 another person without that person's consent or other lawful
86 authority by: removing that person from that person's

2 residence, place of business or school; moving that person a
3 substantial distance from the vicinity where that person was
4 found; or confining that person for a substantial period
5 either in the place where the restriction commences or in a
6 place to which that person has been moved; or

7 E. Communicating to a person a threat to commit, or to
8 cause to be committed, a crime of violence dangerous to
9 human life against the person to whom the communication is
10 made or another, and the natural and probable consequence of
11 the threat, whether or not that consequence in fact occurs,
12 is to place the person to whom the threat is communicated,
13 or the person against whom the threat is made, in reasonable
14 fear that the crime will be committed.

15 **Sec. 8. 19 MRSA §762, sub-§4**, as amended by PL 1981, c. 420,
16 §3, is further amended to read:

17 **4. Family or household members.** "Family or household
18 members" means spouses or former spouses, individuals presently
19 or formerly living together as spouses, natural parents of the
20 same child, or adult household members related by consanguinity
21 or affinity and for the purposes of this chapter only, includes
22 individuals presently or formerly living together as sexual
23 partners. Holding oneself out to be a spouse shall is not be
24 necessary to constitute "living as spouses."
25

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

27 **6. Mutual order of protection or restraint.** "Mutual order
28 of protection or restraint" means an order that is granted to the
29 defendant in an action under this chapter or the inclusion of
30 language in an order granted to the plaintiff in an action under
31 this chapter that restricts or limits the plaintiff's conduct
32 with regard to the defendant absent the filing of a separate
33 complaint by the defendant, service of the complaint and summons
34 upon the plaintiff and a finding by the court that the plaintiff
35 committed the abuse alleged in the complaint.
36

37 **Sec. 10. 19 MRSA §764, sub-§2**, as amended by PL 1983, c. 583,
38 §26, is repealed and the following enacted in its place:

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

40 **A.** The court shall provide separate forms and clerical
41 assistance to either party in completing and filing of a
42 complaint or other necessary documents. The assistance may
43 not include legal advice or assistance in drafting legal
44 documents.
45

46 **B.** If a judge is unavailable to review a request for
47 temporary relief under this chapter, the clerk shall
48

2 immediately notify the plaintiff of other courts at which a
3 judge or justice is available.

4 C. The clerk shall provide the plaintiff written notice of
5 resources where the plaintiff may receive legal or social
6 service assistance.

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

10 2-A. Forms. The forms provided by the court must be
11 uniform throughout the State and must include a summons and an
12 affidavit for temporary emergency relief from abuse. The summons
13 must include a section in which to list places where the
14 defendant may be located or available to be served. The clerk
15 shall inquire where the defendant may be located or available to
16 be served and list those locations on the summons or direct the
17 plaintiff to do so.

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

22 1. Full hearing. Within 21 days of the filing of a
23 complaint, a hearing shall must be held at which the plaintiff
24 shall must prove the allegation of abuse by a preponderance
25 preponderance of the evidence. If a request for temporary,
26 emergency or interim relief is denied, the hearing must be held
27 as soon as practicable within the 21-day period.

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

32 2. Temporary orders. The court may enter any temporary
33 orders authorized under subsection 4 as it deems considers
34 necessary to protect the plaintiff or minor child from abuse, on
35 good cause shown in an ex parte proceeding, which the court shall
36 hear and determine as expeditiously as practicable after the
37 filing of a complaint. Immediate and present danger of physical
38 abuse to the plaintiff or minor child shall--~~constitute~~
39 constitutes good cause. Any order shall-~~remain~~ remains in effect
40 pending a hearing pursuant to subsection 1. If the complaint is
41 filed initially in the Superior Court, the justice, after
42 authorizing any temporary order under this section, may order
43 that further proceedings be transferred to the District Court of
44 the division in which either the plaintiff or the defendant
45 resides.

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

48 3-A. Denial of relief. Before a request for temporary,
49 emergency or interim relief is denied, the judge shall:
50

2 to support the other or their minor children living in the
3 residence or household and that party is the sole owner or
4 leasee lessee:

5 (1) Granting or restoring possession of the residence
6 or household to one party with the exclusion of the
7 other; or

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

10
11 D. Ordering a division of the personal property and the
12 household goods and furnishings of the parties and placing
13 any protective orders deemed considered appropriate by the
14 court;

15
16 E. Either awarding temporary custody of minor children or
17 establishing temporary visitation rights with regard to
18 minor children where when the visitation is deemed
19 determined to be in the best interest of the child, or both;

20
21 F. Requiring ~~either--or--both--parties~~ the defendant to
22 receive counseling from a social worker, family service
23 agency, mental health center, psychiatrist or any other
24 guidance service that the court deems considers appropriate;

25
26 G. Ordering the payment of temporary support for the
27 dependent party or any child in his that party's custody, or
28 both, when there is a legal obligation to support that
29 person;

30
31 H. Ordering the payment of temporary support payments to
32 the State as provided under in chapter 7;

33
34 I. Ordering payment of monetary compensation to the abused
35 person for losses suffered as a direct result of the abuse.
36 Compensatory losses ~~shall-be~~ are limited to ~~Loss loss~~ of
37 earnings or support, reasonable expenses incurred for
38 personal injuries or property damage and reasonable moving
39 expenses. Upon the motion of either party, for sufficient
40 cause, the court may set a later hearing on the issue of the
41 amount of damages, if any, to be awarded;

42
43 J. Ordering the defendant or, if the complaint is
44 dismissed, the plaintiff, to pay court costs or reasonable
45 attorney fees; or

46
47 K. Entering any other orders deemed determined necessary or
48 appropriate in the discretion of the court.

49
50 **Sec. 18. 19 MRSA §766, sub-§§7 to 9** are enacted to read:

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

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

12 9. Financial accounting. In all proceedings under this
chapter, the court shall apply the child support guidelines using
14 the information the plaintiff is able to provide the court.
Failure of any party to file an income affidavit may not
16 unnecessarily delay a proceeding and does not preclude the
issuance of any order, except that the court shall require the
18 plaintiff to complete and file an income affidavit at a final
hearing involving child support even if the defendant does not
20 appear for the hearing.

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

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

26 Sec. 20. 19 MRSA §769, sub-§1, as amended by PL 1983, c. 583,
28 §26, is further amended to read:

30 1. Crime committed. Violation of a temporary, emergency,
interim or final protective order or a court approved consent
32 agreement, when the defendant has prior actual notice, which may
be notice by means other than service in hand, of the order or
34 agreement, is a Class D crime, except when the only provision
that is violated concerns relief authorized under section 766,
36 subsection 1, paragraphs F to K. Violation of these paragraphs
shall section 766, subsection 1, paragraphs F to K, must be
38 treated as contempt and punished in accordance with law.

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

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

48 8. District attorney prosecutorial policy. By December 1,
50 1990, the Attorney General, in consultation with the prosecutors'
association, shall develop a written policy regarding prosecution
52 of domestic abuse cases under the provisions of Title 17-A. By

2 June 1, 1991, the district attorney, for each of the several
3 counties within the State, shall adopt a written policy regarding
4 prosecution of domestic abuse cases.

5 Sec. 22. 19 MRSA §770-B is enacted to read:

6 §770-B. Maine Commission on Domestic Abuse

7 There is created the Maine Commission on Domestic Abuse, as
8 established by Title 5, section 12004-I, subsection 74-C,
9 hereinafter called the "commission."

10 I. Composition. The commission is composed of 12 members
11 appointed by the Governor.

12 A. The Governor shall name the chair from among the
13 following appointed members:

14 (1) Two members who are representatives of the
15 statewide coalition of family crisis services;

16 (2) Two members who are representatives of the family
17 counseling profession, one of whom has experience
18 counseling abusers;

19 (3) One member who is a representative of the Maine
20 Commission for Women;

21 (4) Two members who are attorneys with experience in
22 domestic relations cases, one of whom has experience
23 representing victims of domestic abuse;

24 (5) One person who was a victim of domestic abuse and
25 used the court system;

26 (6) One member who is a district attorney or assistant
27 district attorney;

28 (7) One member who is chief of a municipal police
29 department;

30 (8) One member who is a county sheriff; and

31 (9) The Commissioner of Public Safety or the
32 commissioner's designee.

33 B. In addition, the Chief Justice of the Supreme Judicial
34 Court is requested to appoint one person to serve the
35 commission in an advisory capacity.

36 2. Terms of office. The members shall serve 3-year terms.

2287. The definition of abuse has been amended so that
2 attempting to place or placing another in fear of bodily injury
is abuse regardless of whether the infliction of bodily injury
4 would be imminent. In addition, the language is clarified to
cover any course of conduct that places a person in fear of
6 bodily injury;

8 4. Adds 3 new types of conduct to the definition of abuse.
These include compelling a person to engage in or abstain from
10 conduct that the person has a right to engage in or abstain from,
restricting substantially the movements of another person and
12 terrorizing. These last two types of conduct are slightly
reworded to track the crimes they represent, terrorizing and
14 criminal restraint, as defined in Title 17-A, sections 210 and
302, respectively. The bill also deletes a redundancy in the
16 proposed description of conduct constituting abuse;

18 5. Amends the definition of family or household members for
the purposes of the protection from abuse laws to include
20 individuals presently or formerly living together as sexual
partners;

22 6. Repeals and replaces Title 19, section 764, subsection
24 2, that outlines the assistance that a plaintiff or alleged
victim is entitled to receive from the court when that person
26 files a complaint. It reenacts the repealed language. It
instructs the clerk to notify the plaintiff of other courts where
28 a judge may be found if a judge is not immediately available at
the court where the plaintiff files. It also instructs the clerk
30 to provide written notice of possible legal or social service
resources to the plaintiff;

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

38 8. Amends Title 19, section 765. If a judge denies a
40 request for temporary, emergency or interim relief, a full
hearing must be held as soon as practicable. If a request for
42 temporary relief is made, the ex parte proceeding must be heard
and determined as expeditiously as possible. The wording
44 regarding what evidence constitutes good cause is amended to
delete the reference to "physical" abuse. Under this bill,
46 immediate and present danger of abuse constitutes good cause;

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

2 10. Addresses the service of a temporary order. The court
3 is required to cause the order to be delivered to a law
4 enforcement agency for service as soon as practicable following
5 issuance and the law enforcement agency is required to make a
6 good faith effort to serve it expeditiously. This bill requires
7 that the law enforcement agency that the court orders to serve
8 the order, complaint and summons upon the defendant must be an
9 appropriate law enforcement agency to carry out the purpose of
10 the service;

12 11. Amends the current laws so that a temporary order will
13 remain in effect until a final order, if issued, can be served.
14 Currently, the temporary order only stays in effect until the
15 hearing;

16 12. Requires the court to make a finding of abuse under a
17 consent agreement unless the parties voluntarily request that no
18 finding of abuse be made;

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

24 14. Adds 3 new subsections to Title 19, section 766.
25 Subsection 7 precludes the issuance of an order for protection or
26 restraint against the plaintiff unless the defendant files a
27 complaint and the court finds the plaintiff committed the alleged
28 abuse. Subsection 8 states that the plaintiff's actions can not
29 modify or extinguish an order and that no criminal sanction can
30 be placed upon the plaintiff for violation of any provision of an
31 order. Subsection 9 outlines the manner in which the court
32 shall determine child support if necessary and mentions the
33 filing of income affidavits;

36 15. Prohibits mandatory mediation;

38 16. Amends the definition of the crime of violation of a
39 protection order to make it clear that the defendant does not
40 have to have been served in hand, if the defendant has actual
41 notice of the order. This amendment clarifies that service in
42 hand is one form of actual notice to the defendant that a
43 protective order or consent agreement exists, to hold that the
44 defendant's violation of that order or consent agreement is a
45 Class D crime or contempt. The sentence stating that "service in
46 hand is not required" is deleted from the original versions
47 because it seemed to discourage service in hand, which remains
48 the best proof of prior actual notice;

50 17. Adds 2 new subsections to Title 19, section 770.
51 Subsection 7 requires each of the various law enforcement
52 agencies to adopt a written policy on the handling of domestic

abuse cases by December 1, 1990. Subsection 8 requires the
2 Attorney General to develop a model policy for prosecution and
for the various district attorneys to adopt a written policy by
4 June 1, 1991; and

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

10