

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1405

H.P. 1053

House of Representatives, May 3, 1993

An Act Concerning Tribal Protection Orders.

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CASHMAN of Old Town.
Cosponsored by Senator PEARSON of Penobscot and
Representatives: ADAMS of Portland, AHEARNE of Madawaska, BAILEY of Township 27,
CARROLL of Gray, CATHCART of Orono, CHONKO of Topsham, COFFMAN of Old Town,
COTE of Auburn, DEXTER of Kingfield, DRISCOLL of Calais, FAIRCLOTH of Bangor,
FARNSWORTH of Hallowell, FARREN of Cherryfield, GREENLAW of Standish, HALE of
Sanford, HICHBORN of Howland, KETTERER of Madison, LEMKE of Westbrook, LOOK of
Jonesboro, MARTIN of Van Buren, MARTIN of Eagle Lake, MURPHY of Berwick, PARADIS
of Augusta, PFEIFFER of Brunswick, PLOURDE of Biddeford, PLOWMAN of Hampden,
POULIOT of Lewiston, REED of Falmouth, RUHLIN of Brewer, SKOGLUND of St. George,
WHITCOMB of Waldo, Senators: BUSTIN of Kennebec, CAHILL of Sagadahoc, ESTY of
Cumberland, HANLEY of Oxford, LAWRENCE of York, PARADIS of Aroostook, SUMMERS
of Cumberland.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 Whereas, there exists a present inability to criminally
prosecute violations of protection orders issued by the tribal
courts of the Passamaquoddy Tribe and the Penobscot Nation; and

8
10 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

16 **Sec. 1. 5 MRSA §4651, sub-§1,** as amended by PL 1991, c. 760,
18 §1, is further amended to read:

20 1. **Court.** "Court" means any District Court and, with
22 regard to section 4659, the tribal court of the Passamaquoddy
Tribe or the Penobscot Nation.

24 **Sec. 2. 5 MRSA §4659,** as amended by PL 1987, c. 695, §2, is
further amended to read:

26 **§4659. Violation**

28 1. **Crime committed.** Violation of a temporary, emergency,
30 interim or final protective order, an order of a tribal court of
the Passamaquoddy Tribe or the Penobscot Nation or a court
32 approved court-approved consent agreement, when the defendant has
prior actual notice of the order or agreement, is a Class D
34 crime, except when the only provision that is violated concerns
relief authorized under section 4655, subsection 1, paragraphs D
36 to F. Violation of these paragraphs shall must be treated as
contempt and punished in accordance with law.

38 2. **Warrantless arrest.** Notwithstanding any statutory
40 provision to the contrary, an arrest for criminal violation as
defined in this section of an order or consent agreement may be
42 made without warrant upon probable cause whether or not the
violation is committed in the presence of the law enforcement
44 officer. The law enforcement officer may verify, if necessary,
the existence of a protective order by telephone or radio
46 communication with a law enforcement agency with knowledge of the
order.

48 **Sec. 3. 19 MRSA §762, sub-§3,** as amended by PL 1991, c. 760,
50 §4, is further amended to read:

2 **3. Court.** "Court" means any District Court and, with
3 regard to section 769, the tribal court of the Passamaquoddy
4 Tribe or the Penobscot Nation.

6 **Sec. 4. 19 MRSA §769, sub-§1,** as amended by PL 1989, c. 862,
7 §20, is further amended to read:

8 **1. Crime committed.** Violation of a temporary, emergency,
9 interim or final protective order, an order of a tribal court of
10 the Passamaquoddy Tribe or the Penobscot Nation or a court
11 approved consent agreement, when the defendant has prior actual
12 notice, which may be notice by means other than service in hand,
13 of the order or agreement, is a Class D crime, except when the
14 only provision that is violated concerns relief authorized under
15 section 766, subsection 1, paragraphs F to K. Violation of
16 section 766, subsection 1, paragraphs F to K, must be treated as
17 contempt and punished in accordance with law.

18 **Sec. 5. 19 MRSA §770, sub-§5,** as amended by PL 1991, c. 824,
19 Pt. A, §29, is further amended to read:

20 **5. Arrest in certain situations.** When a law enforcement
21 officer has probable cause to believe that there has been a
22 criminal violation as defined in section 769 of a ~~court-approved~~
23 court-approved consent agreement or a protection order issued
24 pursuant to this chapter or Title 15, chapter 12-A, or that a
25 violation of Title 17-A, section 208, has occurred between
26 members of the same family or household, that enforcement officer
27 shall arrest and take into custody the alleged offender.

28 **Emergency clause.** In view of the emergency cited in the
29 preamble, this Act takes effect when approved.

34 35 36 **STATEMENT OF FACT**

37 This bill makes the violation of certain provisions of a
38 protection order, issued in either abuse or harassment situations
39 by the tribal court of the Passamaquoddy Tribe or the Penobscot
40 Nation, a criminal offense. The Passamaquoddy Tribe and the
41 Penobscot Nation possess exclusive jurisdiction over the issuance
42 of protection orders between members of either tribe or nation
43 both of whom reside on the Indian reservation of the respective
44 tribe or nation. This bill creates parity of applicable
45 punishments for the violation of a protection order regardless of
46 whether the order was issued by a state or tribal court.