

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

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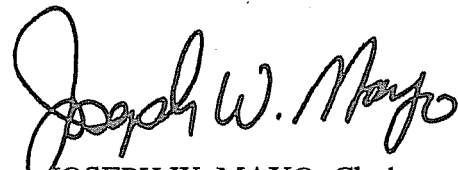
H.P. 1055

House of Representatives, May 3, 1993

**An Act Concerning Primary Care and Parental Rights and  
Responsibilities in Cases of Domestic Abuse.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative CATHCART of Orono.

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

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4 Sec. 1. 19 MRSA c. 14, first 2 lines are repealed and the following enacted in their place:

6 CHAPTER 14

8 PROTECTION FROM ABUSE

10 SUBCHAPTER I

12 DOMESTIC ABUSE

14 Sec. 2. 19 MRSA c. 14, sub-c. II is enacted to read:

16 SUBCHAPTER II

18 POST-SEPARATION FAMILY RELIEF ACT

20 §770-C. Short title

22 This subchapter may be known and cited as the  
24 Post-separation Family Relief Act.

26 §770-D. Definitions

28 As used in this subchapter, unless the context otherwise  
indicates, the following terms have the following meanings.

30 1. Abused parent. "Abused parent" means the parent who is  
a victim of domestic abuse.

32  
34 2. Injunction. "Injunction" means a temporary injunction  
or a preliminary or a permanent court order, as provided in  
36 subchapter I or chapter 13, subchapter II, that prohibits the  
violent parent from contacting the abused parent or the children  
38 except for specific purposes set forth in the injunction or order.

40 3. Supervised parent-child contact. "Supervised  
parent-child contact" means face-to-face contact between a  
42 violent parent and a child that occurs in the immediate presence  
of a supervising person approved by the court under conditions  
44 that prevent any physical abuse, threats, intimidation, abduction  
or humiliation of either the abused parent or the child by the  
46 violent parent. The supervising person must be an adult  
acceptable to both parents. The parent who perpetrated domestic  
48 abuse shall pay all costs incurred in the supervision of the  
parent-child contact. Supervised parent-child contact may not be  
50 overnight or in the home of the violent parent.

2 4. Treatment program. "Treatment program" means a course  
of evaluation and psychotherapy designed specifically for  
4 perpetrators of domestic abuse and conducted by licensed mental  
health professionals with experience in domestic abuse.

6 **§770-E. Ordered mediation prohibited**

8 Notwithstanding any other provision of law, in any  
separation, divorce, parental rights and responsibilities,  
10 parent-child contact, child support or alimony proceeding, a  
spouse or parent who satisfies the court that the spouse, parent  
12 or child has been the victim of domestic abuse perpetrated by the  
other spouse or parent may not be ordered by the court to  
14 participate in mediation.

16 **§770-F. Parental rights and responsibilities**

18 1. Domestic abuse; nonviolent parent. A parent who has a  
history of perpetrating domestic abuse may not be awarded sole or  
20 shared parental rights and responsibilities unless a  
preponderance of the evidence demonstrates that the perpetrating  
22 parent has successfully completed a treatment program as defined  
in this subchapter, that the perpetrating parent is not abusing  
24 alcohol or using illegal drugs and that the best interest of the  
child requires that parent's participation as a primary care  
26 provider because of the other parent's absence, mental illness or  
substance abuse or other circumstances that affect the best  
28 interest of the child. The court may not deny the abused parent  
primary care of the child because that parent suffers from the  
30 effects of the abuse.

32 2. Third person. If the court finds that both parents have  
a history of perpetrating domestic abuse, sole parental rights  
34 and responsibilities must be awarded to the parent who is less  
likely to continue to perpetrate domestic abuse. In this case,  
36 the court shall mandate completion of a treatment program by the  
parent providing primary care. If necessary to protect the  
38 welfare of the child, primary care may be awarded to a suitable  
3rd person, as long as the person would not allow access to a  
40 violent parent except as ordered by the court.

42 3. Supervised parent-child contact. If the court finds  
that a parent has a history of domestic abuse, the court shall  
44 allow only supervised contact with that parent, on the condition  
that the parent participates in and completes a treatment  
46 program. Unsupervised parent-child contact is allowed only if a  
preponderance of the evidence indicates that the violent parent  
48 has successfully completed a treatment program, is not abusing  
alcohol or psychoactive drugs, poses no danger to the child and  
50 that contact is in the child's best interest.

2           4. Abuse. If a court finds that a parent has sexually  
4           abused the child, the court shall prohibit all contact between  
6           the abusive parent and the child until the court, following a  
8           hearing, finds that the abusive parent has successfully completed  
10          a treatment program designed for sexual abusers and that  
12          supervised parent-child contact is in the child's best interest.  
14          Testimony by a licensed mental health professional with training,  
16          experience and expertise in treating sexual abuse victims, who is  
18          the therapist for the abused child, must be given greater weight  
20          by the court than other testimony on issues of parent-child  
22          contact.

24          **§770-G. Qualification of mental health professional**

26           A mental health professional appointed by the court to  
28           conduct an evaluation of parental rights and responsibilities  
30           when domestic abuse is an issue must be trained and experienced  
32           in working with perpetrators and victims of domestic abuse.

34          **§770-H. Injunctions**

36           1. Orders; judgments. All separation, divorce, parental  
38           rights and responsibilities and parent-child contact orders and  
40           judgments in domestic abuse cases must contain an injunction. A  
42           violation of the injunction, if proven, is contempt of court and  
44           the court shall terminate all court-ordered, parent-child contact.

46           2. Under indictment. When a parent is under indictment for  
48           a crime against a child or the other parent, the court, on the  
50           motion of the State or the other parent, shall prohibit all  
            contact between the indicted parent, the other parent and the  
            child. Supervised parent-child contact may be reinstated if,  
            upon a hearing initiated by a motion of the indicted parent, the  
            court finds it to be in the best interest of the child.

**§770-I. Costs**

            In a domestic abuse case, all court costs, attorney's fees,  
            evaluation fees and expert witness fees incurred in carrying out  
            this subchapter must be paid by the perpetrator of the domestic  
            abuse, including all costs of medical and psychological care  
            necessitated by the abuse for the abused parent or child.

**§770-J. Other remedies not affected**

            This subchapter does not affect the remedies under  
            subchapter I, the Maine Criminal Code or any other provision of  
            law; however, in any case brought under subchapter I, the court  
            may impose the remedies provided in this subchapter.

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**§770-K. Limitations**

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Public funds allocated to programs that provide services to  
victims of domestic abuse may not be used to provide services to  
the perpetrator of domestic abuse.

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**STATEMENT OF FACT**

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This bill creates the Post-separation Family Violence Relief  
Act.

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