

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

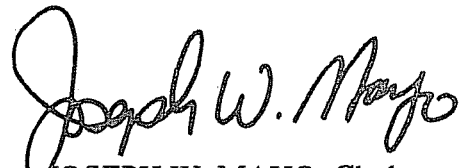
No. 1546

H.P. 1147

House of Representatives, June 3, 1993

An Act Concerning Stalking.

Reported by Representative COTE for the Joint Standing Committee on Judiciary pursuant to Joint Order H.P. 957.


JOSEPH W. MAYO, Clerk

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

2
3 **Sec. 1. 5 MRSA §4654, sub-§4**, as enacted by PL 1987, c. 515,
4 §1, is amended to read:

6 **4. Interim relief.** The court, in an ex parte proceeding,
7 may enjoin the defendant from engaging in any of the following:

8 A. Imposing any restraint upon the person or liberty of the
9 plaintiff;

10 B. Threatening, assaulting, molesting, harassing or
11 otherwise disturbing the peace of the plaintiff;

12 C. Entering the plaintiff's residence; or

13 D. Taking, converting or damaging property in which the
14 plaintiff may have a legal interest; or

15 E. Following the plaintiff or going to the plaintiff's
16 home, school, business or place of employment or repeatedly
17 being in the vicinity of the plaintiff's home, school,
18 business or place of employment without reasonable cause.

19 If the court enjoins the defendant under this subsection, and the
20 enjoined conduct constitutes harassment under Title 17-A, section
21 506-A, the court shall include in the order a warning in
22 conformity with Title 17-A, section 506-A.

23 **Sec. 2. 5 MRSA §4655, sub-§1**, as amended by PL 1987, c. 708,
24 §5, is further amended to read:

25 **1. Protection order; consent agreement.** The court, after a
26 hearing and upon finding that the defendant has committed the
27 harassment alleged, may grant any protection order or approve any
28 consent agreement to bring about a cessation of harassment, which
29 may include:

30 A. Directing the defendant to refrain from harassing,
31 threatening, assaulting, molesting, attacking or otherwise
32 abusing the plaintiff;

33 B. Directing the defendant to refrain from going on the
34 premises of the plaintiff's residence;

35 C. Directing the defendant to refrain from interference
36 with the plaintiff's property;

37 C-1. Directing the defendant to refrain from following the
38 plaintiff or going to the plaintiff's home, school, business
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2 or place of employment or repeatedly being in the vicinity
3 of the plaintiff's home, school, business or place of
4 employment without reasonable cause;

6 D. Ordering payment of monetary compensation to the
7 plaintiff for losses suffered as a direct result of the
8 harassment. Compensatory losses ~~shall~~ are limited to
9 loss of earnings or support; reasonable expenses incurred
10 for personal injuries or property damage; and reasonable
11 moving expenses. Upon the motion of either party, for
12 sufficient cause, the court may set a later hearing on the
13 issue of the amount of damages, if any, to be awarded. If
14 it appears from the petition that an order under this
15 paragraph may be granted, the plaintiff or defendant may
16 remove the issue of monetary compensation to the Superior
17 Court where a jury trial may be had. Removal ~~shall~~ must be
18 requested by motion prior to a hearing under section 4654;

20 E. Ordering the defendant to pay court costs or reasonable
21 ~~attorneys~~ attorney's fees; and

22 F. Entering any other orders deemed determined necessary or
23 appropriate in the discretion of the court.

24 If the court enjoins the defendant under this subsection, and the
25 enjoined conduct constitutes harassment under Title 17-A, section
26 506-A, the court shall include in the order a warning in
27 conformity with Title 17-A, section 506-A.

30 **Sec. 3. 17-A MRSA §15, sub-§1, ¶A**, as corrected by RR 1991, c.
31 2, §50, is amended to read:

32 A. Any person who the officer has probable cause to believe
33 has committed or is committing:

34 (1) Murder;

35 (2) Any Class A, Class B or Class C crime;

36 (3) Assault while hunting;

37 (4) Any offense defined in chapter 45;

38 (5) Assault, criminal threatening or terrorizing, if
39 the officer reasonably believes that the person may
40 cause injury to others unless immediately arrested;

41 (5-A) Assault or reckless conduct, if the officer
42 reasonably believes that the person and the victim are
43 family or household members, as defined in Title 15,
44 section 321;

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(6) Theft as defined in section 357, when the value of the services is \$1,000 or less, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(8) Negotiating a worthless instrument, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(9) A violation of a condition of probation when requested by an official of the Division of Probation and Parole;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1051, subsections 2 and 9; and Title 15, section 1092; or

(11) Theft involving a detention under Title 17, section 3521; and

(12) Harassment, as set forth in section 506-A; or

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 19, section 769, subsection 2; and Title 19, section 770, subsection 5; and

Sec. 4. 17-A MRSA §506-A, sub-§1, as amended by PL 1987, c. 736, §36, is further amended to read:

1. A person is guilty of harassment if, without reasonable cause, he that person engages in any course of conduct with the intent to harass, torment or threaten another person, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title 19, section 765 or 766.

Sec. 5. 17-A MRSA §506-A, sub-§2, as amended by PL 1991, c. 566, §2, is further amended to read:

2. Harassment is a Class E crime, except that when the defendant has 2 or more prior Maine convictions for violations of

2 this section in which the victim was the same person or a member
of that victim's immediate family, violation of this section is a
4 Class C crime. For purposes of this subsection, the dates of
both of the prior convictions must precede the commission of the
6 offense being enhanced by no more than 5 years, although both
prior ~~convictions~~ offenses may have occurred on the same day.
8 The date of a conviction is deemed to be the date that sentence
is imposed, even though an appeal was taken. The date of a the
10 commission of ~~prior--~~offenses the offense being enhanced is
presumed to be that stated in the complaint, information or
12 indictment, notwithstanding the use of the words "on or about" or
the equivalent.

14 Sec. 6. 17-A MRSA §506-B is enacted to read:

16 §506-B. Violation of protective order

18 1. Violation of a protection from harassment order issued
under Title 5, section 4654 or 4655, subsection 1, paragraphs A
20 to C-1, is a Class D crime as provided in Title 5, section 4659,
subsection 1.

22 2. Violation of a protective order in crimes between family
24 members issued under Title 15, section 321 is a Class D crime as
provided in Title 15, section 321, subsection 6.

26 3. Violation of a protection from abuse order issued under
28 Title 19, section 765 or 766, subsection 1, paragraphs A to E, is
a Class D crime as provided in Title 19, section 769, subsection
30 1.

32 Sec. 7. 19 MRSA §762, sub-§1, ¶¶D and E, as enacted by PL 1989,
c. 862, §7, are amended to read:

34 D. Knowingly restricting substantially the movements of
36 another person without that person's consent or other lawful
authority by: removing that person from that person's
38 residence, place of business or school; moving that person a
substantial distance from the vicinity where that person was
40 found; or confining that person for a substantial period
either in the place where the restriction commences or in a
42 place to which that person has been moved; ~~or~~

44 E. Communicating to a person a threat to commit, or to
cause to be committed, a crime of violence dangerous to
46 human life against the person to whom the communication is
made or another, and the natural and probable consequence of
48 the threat, whether or not that consequence in fact occurs,
is to place the person to whom the threat is communicated,
50 or the person against whom the threat is made, in reasonable
fear that the crime will be committed. ; or

2 **Sec. 8. 19 MRSA §762, sub-§1, ¶F** is enacted to read:

4 F. Following another person or repeatedly being at or in
6 the vicinity of the other person's home, school, business or
 place of employment without reasonable cause.

8 **Sec. 9. 19 MRSA §765, sub-§4**, as amended by PL 1991, c. 760,
10 §9, is further amended to read:

12 **4. Interim relief.** The court, in an ex parte proceeding,
14 may make an order concerning the care and custody of any minor
 children residing in the household and may enjoin the defendant
 from engaging in any of the following:

16 A. Imposing any restraint upon the person or liberty of the
18 plaintiff;

20 B. Threatening, assaulting, molesting, harassing, attacking
 or otherwise disturbing the peace of the plaintiff;

22 C. Entering the family residence or the residence of the
24 plaintiff; or

26 C-1. Following the plaintiff or going to the plaintiff's
28 home, school, business or place of employment or repeatedly
 being in the vicinity of the plaintiff's home, school,
 business or place of employment without reasonable cause; or

30 D. Taking, converting or damaging property in which the
32 plaintiff may have a legal interest.

34 If the court enjoins the defendant under this subsection, and the
36 enjoined conduct constitutes harassment under Title 17-A, section
 506-A, the court shall include in the order a warning in
 conformity with Title 17-A, section 506-A.

38 **Sec. 10. 19 MRSA §766, sub-§1**, as amended by PL 1991, c. 760,
40 §§10 and 11, is further amended to read:

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

50 A. Directing the defendant to refrain from the threatening,
 assaulting, molesting, harassing, attacking or otherwise

2 abusing the plaintiff and any minor children residing in the
household;

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

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8 B-2. Directing the defendant to refrain from following the
9 plaintiff or going to the plaintiff's home, school, business
10 or place of employment or repeatedly being in the vicinity
11 of the plaintiff's home, school, business or place of
12 employment without reasonable cause;

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

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

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

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

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

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36 F. Requiring the defendant to receive counseling from a
social worker, family service agency, mental health center,
38 psychiatrist or any other guidance service that the court
considers appropriate;

40 G. Ordering the payment of temporary support for the
dependent party, or any child in the dependent party's
42 custody in accordance with chapter 7, subchapter I-A, or
both, when there is a legal obligation to support that
44 person, that child, or both;

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

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50 I. Ordering payment of monetary compensation to the abused
person for losses suffered as a direct result of the abuse.

2 Compensatory losses are limited to loss of earnings or
support, reasonable expenses incurred for personal injuries
4 or property damage and reasonable moving expenses. Upon the
motion of either party, for sufficient cause, the court may
6 set a later hearing on the issue of the amount of damages,
if any, to be awarded;

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

12 K. Entering any other orders determined necessary or
appropriate in the discretion of the court.

14 If the court enjoins the defendant under this subsection, and the
16 enjoined conduct constitutes harassment under Title 17-A, section
18 506-A, the court shall include in the order a warning in
conformity with Title 17-A, section 506-A.

20
22 **FISCAL NOTE**

24 This bill may result in the prosecution of additional Class
D crimes. Sentences imposed for Class D offenses must be served
26 in a county jail. The average cost per sentence for a Class D
crime is \$7,439 based upon an average length of stay of 119
28 days. The additional costs to the counties for the housing of
each offender sentenced under this new crime will not require
30 reimbursement by the State.

32 The Judicial Department may require additional General Fund
appropriations to cover indigent defense costs related to these
34 new cases. The amounts can not be estimated at this time. The
additional workload and administrative costs associated with the
36 minimal number of new cases filed in the court system can be
absorbed within the budgeted resources of the Judicial
38 Department's administrative account. The collection of
additional fines may also increase General Fund revenues by minor
40 amounts.

42
44 **STATEMENT OF FACT**

46 This bill is the unanimous report of the Joint Standing
Committee on Judiciary, reported out pursuant to H.P. 957, a
48 Joint Order requiring the Joint Standing Committee on Judiciary
to report out a bill, "An Act Concerning Stalking." This bill is
50 the committee's resolution of the issues regarding stalking

2 presented in 4 bills introduced during the First Regular Session
of the 116th Legislature.

4 The Joint Standing Committee on Judiciary is satisfied that
6 the current crime of harassment, the Maine Revised Statutes,
8 Title 17-A, section 506-A, supplemented by the crimes of criminal
10 threatening and terrorizing in Title 17-A, sections 209 and 210,
12 respectively, cover the commonly referred to activity of
14 "stalking." The crime of harassment is made up of 3 main parts.
16 First, a person must be engaging in a course of conduct "without
18 reasonable cause." This requirement avoids the problem of
20 attempting to criminalize legitimate activities, such as legal
22 investigations and constitutionally protected activities.
24 Second, the person must have engaged in the course of conduct
26 with the intent to "harass, torment or threaten" the other
28 person. Because these terms are not given specialized meanings
in the law, their common dictionary meanings are operative. The
few cases interpreting this section and "harassment" in general
appear to approve reliance on the general meanings of these
terms. The 3rd part to the crime of harassment is that the
person must have been forbidden to engage in the conduct by a law
enforcement officer or justice of the peace and acted in the
forbidden manner anyway. This order by a law enforcement officer
or justice of the peace gives the person notice that the contact
is unwanted, and puts that person on notice that further conduct
is a crime. Engaging in the conduct after having been forbidden
to do so also serves as evidence of the person's intent to
harass, torment or threaten the other.

30 This bill addresses the problem of "stalking" by ensuring
32 that protection orders may be issued to enjoin conduct that most
34 people agree is included in the term "stalking." This conduct
36 includes following a person or going to that person's home,
38 school, business or place of employment or repeatedly being in
40 the vicinity of that person's home, school, business or place of
42 employment without reasonable cause. Violation of a protection
from abuse order, a protection from harassment order or a
protective order for crimes between family members is already a
Class D crime in most circumstances. This bill expands the list
of types of conduct that can be enjoined and that result in
criminal sanctions for violation of that injunction.

44 In addition to expanding the list of types of conduct that
46 can be enjoined in a protection order, this bill requires the
48 court to include in that order, when the order enjoins engaging
50 in conduct that constitutes harassment, a warning "in conformity
with" Title 17-A, section 506-A. This language was used by the
Law Court in State v. Cropley, 544 A.2d 302 (Me. 1988) to rule
that a particular warning was insufficient to meet the
requirements of section 506-A. This requires the court to

2 provide in the order notice to the defendant that engaging in the
enjoined conduct with the intent to harass, torment or threaten
the plaintiff violates section 506-A.

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6 The provisions concerning the crime of harassment are
amended to allow a protection order with this warning to serve as
the notice to the person that the conduct is a crime if continued
8 or repeated. This is not intended to require a person to obtain
a protection order to provide the warning required by the statute.

10
12 This bill places in the Maine Criminal Code notice to all
readers of the code that violation of protection orders is a
Class D crime except as otherwise provided and provides
14 cross-references to where those crimes are established.

16 This bill amends the section on warrantless arrests to list
3 other instances in which warrantless arrests can already be
18 made: violations of protection from abuse orders, violations of
protective orders between family members and violations of
20 protection from harassment orders. In certain circumstances,
current law requires a law enforcement officer to arrest a person
22 whose violation of the protection order is criminal.

24 This bill also amends the law regarding enhancing the
penalty of an offense when the offender has prior convictions for
26 the crime of harassment.