

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1766

H.P. 1286

House of Representatives, February 8, 1996

An Act to Prohibit Stalking.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
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 SAXL of Portland.
Cosponsored by Representative KILKELLY of Wiscasset and
Representatives: ADAMS of Portland, AHEARNE of Madawaska, BENEDIKT of
Brunswick, BERRY of Livermore, BIGL of Bucksport, BOUFFARD of Lewiston,
BRENNAN of Portland, BUNKER of Kossuth Township, CAMPBELL of Holden, CARR of
Hermon, CHARTRAND of Rockland, CHASE of China, CHIZMAR of Lisbon, CLARK of
Millinocket, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DAGGETT of Augusta,
DAVIDSON of Brunswick, DESMOND of Mapleton, DEXTER of Kingfield, DiPIETRO of
South Portland, DONNELLY of Presque Isle, DORE of Auburn, DRISCOLL of Calais,
ETNIER of Harpswell, FISHER of Brewer, FITZPATRICK of Durham, GERRY of Auburn,
GOOLEY of Farmington, GOULD of Greenville, GREEN of Monmouth, GUERRETTE of
Pittston, GWADOSKY of Fairfield, HATCH of Skowhegan, JACQUES of Waterville,
JOHNSON of South Portland, JONES of Bar Harbor, JONES of Pittsfield, JOSEPH of
Waterville, JOYNER of Hollis, KERR of Old Orchard Beach, KONTOS of Windham,
LaFOUNTAIN of Biddeford, LAYTON of Cherryfield, LEMAIRE of Lewiston, LEMKE of
Westbrook, LEMONT of Kittery, LIBBY of Kennebunk, LIBBY of Buxton, LINDAHL of
Northport, LOVETT of Scarborough, MARSHALL of Eliot, MARVIN of Cape Elizabeth,

Additional cosponsors on next page

MAYO of Bath, McALEVEY of Waterboro, MITCHELL of Vassalboro, MITCHELL of Portland, MORRISON of Bangor, MURPHY of Berwick, NADEAU of Saco, O'NEAL of Limestone, OTT of York, PAUL of Sanford, PEAVEY of Woolwich, PLOWMAN of Hampden, POULIOT of Lewiston, POVICH of Ellsworth, REED of Falmouth, REED of Dexter, RICHARDSON of Portland, ROWE of Portland, SAMSON of Jay, SAVAGE of Union, SAXL of Bangor, SHIAH of Bowdoinham, SIMONEAU of Thomaston, SIROIS of Caribou, STEDMAN of Hartland, STEVENS of Orono, STONE of Bangor, TAYLOR of Cumberland, TOWNSEND of Portland, TREAT of Gardiner, TRIPP of Topsham, TRUE of Fryeburg, TUFTS of Stockton Springs, TUTTLE of Sanford, VOLENIK of Sedgwick, WATERHOUSE of Bridgton, WATSON of Farmingdale, WHEELER of Bridgewater, WINGLASS of Auburn, WINN of Glenburn, Senators: ABROMSON of Cumberland, AMERO of Cumberland, BERUBE of Androscoggin, BUTLAND of Cumberland, CARPENTER of York, CIANCHETTE of Somerset, FAIRCLOTH of Penobscot, FERGUSON of Oxford, GOLDTHWAIT of Hancock, HARRIMAN of Cumberland, KIEFFER of Aroostook, LONGLEY of Waldo, LORD of York, MICHAUD of Penobscot, O'DEA of Penobscot, PARADIS of Aroostook, PENDEXTER of Cumberland, PINGREE of Knox, RAND of Cumberland, RUHLIN of Penobscot, SMALL of Sagadahoc.

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

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Sec. 1. 4 MRSA §18-B is enacted to read:

§18-B. Statewide computer criminal record system

The Supreme Judicial Court, with the cooperation of the Department of Public Safety, shall establish a statewide computer criminal record system for use by law enforcement officers and prosecutors to provide instant access to all available and existing criminal records, including stalking or harassment convictions, and protective orders in the State. This system must be funded in part through 1/6 of all surcharges collected by the Government Operations Surcharge Fund pursuant to section 1057. This section is repealed on January 1, 2001.

Sec. 2. 4 MRSA §1057, as amended by PL 1991, c. 733, §3, is further amended to read:

§1057. Government Operations Surcharge Fund

1. **Fund established.** There is hereby established a fund to be known as the Government Operations Surcharge Fund. This fund must be maintained by the Treasurer of State for the ~~sole-purpose~~ purposes of reimbursing counties for costs associated with operations of the jail system and until January 1, 2001, funding the statewide computer criminal record system described in section 18-B.

2. **Surcharge imposed.** A surcharge of ~~10%~~ 12% must be added to every fine, forfeiture or penalty imposed by any court in this State, which, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. Five-sixths of the surcharge collected must be earmarked for counties and disbursed pursuant to subsection 3 for the costs of jails and 1/6 of the surcharge collected must be paid to the State Court Administrator pursuant to subsection 4 for funding the statewide computer criminal record system to provide instant access to all available and existing criminal records, including stalking or harassment convictions, and protective orders. All funds collected as a result of this surcharge must be deposited monthly in the Government Operations Surcharge Fund. This subsection is repealed on January 1, 2001.

2-A. Surcharge imposed. A surcharge of 10% must be added to every fine, forfeiture or penalty imposed by any court in this State, which, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. All funds collected as a result of this surcharge must

2 be deposited monthly in the Government Operations Surcharge
3 Fund. This subsection takes effect on January 1, 2001.

4 **3. Reimbursement to counties for jail costs.** Monthly, the
5 Treasurer of State shall make payments from ~~this--fund~~ the
6 Government Operations Surcharge Fund to each county in the same
7 proportion as the total amount paid to that county from the total
8 amount deposited into the fund during the fiscal year ending June
9 30, 1991 bears to the total amount deposited into the fund during
10 the fiscal year ending June 30, 1991, except that a county may
11 not receive an amount greater than the prior year's expenditures
12 on its jail. The amount of total payments made to counties must
13 equal 2% of the total fines, forfeitures and penalties, including
14 this surcharge, received by the Treasurer of State. The balance
15 remaining in the Government Operations Surcharge Fund at the end
16 of each month must accrue to the General Fund.

17 **4. Payment for statewide computer criminal record system.**
18 Monthly, the Treasurer of State shall make payments from the
19 Government Operations Surcharge Fund to the State Court
20 Administrator. The amount of the total payments made to the
21 State Court Administrator to fund the statewide computer criminal
22 record system must equal 1/6 of the surcharges received by the
23 Treasurer of State. The balance remaining in the Government
24 Operations Surcharge Fund at the end of each month must accrue to
25 the General Fund. This subsection is repealed on January 1, 2001.

28 **Sec. 3. 17-A MRS §210-A is enacted to read:**

30 **§210-A. Stalking**

32 **1. A person is guilty of stalking if:**

34 **A. The person intentionally engages in a course of conduct**
35 **directed at another specific person that would cause a**
36 **reasonable person to suffer emotional distress, to fear**
37 **bodily injury to that person or a member of that person's**
38 **immediate family or to fear the death of that person or a**
39 **member of that person's immediate family;**

41 **B. The person knows or should have known that another**
42 **specific person will suffer or would have suffered emotional**
43 **distress, will be or would have been placed in reasonable**
44 **fear of bodily injury to that person or a member of that**
45 **person's immediate family or will be or would have been**
46 **placed in reasonable fear of the death of that person or a**
47 **member of that person's immediate family; and**

48 **C. The person's acts in fact induce in another specific**
49 **person a fear of bodily injury to that person or a member of that**
50 **person's immediate family or a fear of the death of that person or a**

2 person emotional distress, in fact induce in another
3 specific person fear of bodily injury to that person or a
4 member of that person's immediate family or in fact induce
5 in another specific person fear of the death of that person
6 or a member of that person's immediate family.

7 2. As used in this section, the following terms have the
8 following meanings.

10 A. "Course of conduct" means repeatedly maintaining a
11 visual or physical proximity to a person or repeatedly
12 conveying oral or written threats, threats implied by
13 conduct or a combination of threats and conduct directed at
14 or toward a person. For purposes of this section, "course
15 of conduct" also includes gaining unauthorized access to
16 personal, medical, financial or other identifying
17 information, including access by computer network, mail,
18 telephone or written communication. Constitutionally
19 protected activity is not included within the meaning of
20 "course of conduct."

22 B. "Immediate family" means a spouse, parent, child,
23 sibling, stepchild, stepparent or any person who regularly
24 resides in the household or who within the prior 6 months
25 regularly resided in the household.

26 C. "Repeatedly" means on 2 or more occasions.

28 3. Stalking is a Class D crime for which the court shall
29 impose a minimum sentence of imprisonment of at least 60 days, of
30 which 48 hours may not be suspended, except that stalking is a
31 Class C crime when the actor has one or more prior convictions
32 for violations of this section or has one or more violations of a
33 protection from harassment order issued under Title 5, section
34 4654 or 4655, a protective order in crimes against family members
35 issued under Title 15, section 321 or a protection from abuse
36 order issued under Title 19, section 765 or 766. The court shall
37 impose a minimum sentence of imprisonment in the case of a Class
38 C offense of at least 6 months, of which 14 days may not be
39 suspended, and shall order the actor to attend an abuser
40 education program approved by the court.

42 **Sec. 4. 19 MRSA §769, sub-§3 is enacted to read:**

44 **3. Notice to law enforcement.** To assist in the enforcement
45 of protective orders issued by tribunals outside this State, the
46 person who obtained the order may provide a copy to a Superior
47 Court or District Court clerk who, in cooperation with the
48 Department of Public Safety, shall file the order in the
49 statewide computer criminal record system under Title 4, section
50 18-B.

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STATEMENT OF FACT

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This bill creates the crime of stalking using the United States Department of Justice, National Institute of Justice's Model Anti-Stalking Code for States.

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Stalking is a Class D crime with a minimum sentence of imprisonment of 60 days, of which 48 hours may not be suspended. Stalking is a Class C crime if the actor has prior stalking violations or prior protective order violations. In these cases the court shall impose a minimum sentence of imprisonment of at least 6 months, of which 14 days may not be suspended.

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The bill also directs the Supreme Judicial Court, with the cooperation of the Maine Department of Public Safety, to establish a statewide computer criminal record system for use by law enforcement officers including prosecutors in their respective offices, to provide instant access to all available existing criminal records, including stalking or harassment convictions, and protection orders in the State. This system must be funded in part through an additional 2% surcharge on fines, forfeitures and penalties collected by the Government Operations Surcharge Fund pursuant to the Maine Revised Statutes, Title 4, section 1057. The 2% surcharge is repealed on January 1, 2001.

To assist in the enforcement of protective orders issued

2 outside Maine, the person who obtained the order may provide a
copy to any Superior Court or District Court clerk who, in
4 cooperation with the Department of Public Safety, shall file the
order in the statewide computer criminal record system.