

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2163

H.P. 1658

House of Representatives, March 11, 2002

**An Act to Implement the Recommendations of the Commission to Study
Domestic Violence.**

Reported by the Majority from the Joint Standing Committee on Criminal Justice pursuant to Resolve 1999, chapter 126.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

4 **PART A**

6 **Sec. A-1. 15 MRSA §1023, sub-§4**, as enacted by PL 1987, c. 758, §20, is repealed and the following enacted in its place:

8 **4. Limitations on authority.** A bail commissioner may not:

10 A. Set preconviction bail for a defendant confined in jail
12 or held under arrest by virtue of any order issued by a
court in which bail has not been authorized;

14 B. Change bail set by a court; or

16 C. In a case involving domestic violence, set preconviction
18 bail for a defendant before making a good faith effort to
obtain from the arresting officer, the district attorney, a
jail employee or other law enforcement officer:

20 (1) A brief history of the alleged abuser;

22 (2) The relationship of the parties;

24 (3) The name, address, phone number and date of birth
26 of the victim; and

28 (4) Existing conditions of protection from abuse
30 orders, conditions of bail and conditions of probation.

32 **Sec. A-2. 15 MRSA §1023, sub-§7**, as amended by PL 1989, c. 147, §1, is further amended to read:

34 **7. Mandatory training.** As a condition of appointment and
36 continued service, a bail commissioner must successfully complete
a bail training program, as prescribed and scheduled by the Chief
38 Judge of the District Court, not later than one-year 180 days
following appointment, unless the Chief Judge of the District
40 Court determines that the bail commissioner is qualified to carry
out the responsibilities of a bail commissioner based on
42 equivalent experience or training. The Maine Criminal Justice
Academy shall provide assistance to the Chief Judge of the
44 District Court in establishing an appropriate training program
for bail commissioners. The program shall include instruction on
46 the provisions of this chapter, the relevant constitutional
provisions on bail and any other matters pertinent to bail that
48 the Chief Judge of the District Court considers appropriate and
necessary. The Chief Judge of the District Court may shall
50 establish a regional continuing education program for bail
commissioners that includes regular meetings of the bail

2 commissioners and members of the judiciary and, at a minimum,
3 training in accepted practices in domestic violence cases and
4 best practices concerning uniform bail conditions.

6 **PART B**

8 **Sec. B-1. 19-A MRSA §4006, sub-§5, ¶¶E and F,** as enacted by PL
10 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to
read:

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

14 F. Having any direct or indirect contact with the
15 plaintiff; or

18 **Sec. B-2. 19-A MRSA §4006, sub-§5, ¶G** is enacted to read:

20 G. Possessing a firearm or other dangerous weapon for the
21 duration of the order, if the court determines that the
22 defendant has a history of violence. The court may impose
23 this condition only if the court discusses the plaintiff's
24 request for the condition prohibiting possession of firearms
25 or other dangerous weapons in person with the plaintiff, and
26 the court determines that the prohibition of possession of
27 firearms or other dangerous weapons is an appropriate
28 condition of an order after considering at least:

30 (1) The defendant's history of violence;

32 (2) The type of abuse alleged;

34 (3) Any reason that the defendant may have to possess
35 firearms or other dangerous weapons, including their
36 use in employment; and

38 (4) Any other issue that the court determines relevant
39 to the complaint.

42 **PART C**

44 **Sec. C-1. 25 MRSA §2803-B, sub-§§1, 2 and 3,** as enacted by PL
46 1993, c. 744, §5, are amended to read:

48 **1. Law enforcement policies.** All law enforcement agencies
49 shall adopt written policies regarding procedures to deal with
50 the following:

- 2 A. Use of force;
- 4 B. Barricaded persons and hostage situations;
- 6 C. Persons exhibiting deviant behavior;
- 8 D. Domestic violence, which must include, at a minimum, the
10 following:
- 12 (1) A process to ensure that a victim receives
 notification of the defendant's release from jail;
- 14 (2) A risk assessment for the defendant that includes
16 the defendant's previous history, the parties'
 relationship, the name of the victim and a process to
18 relay this information to a bail commissioner before a
 bail determination is made; and
- 20 (3) A process for the safe retrieval of personal
22 property belonging to the victim or the defendant that
 includes identification of a neutral location for
24 retrieval, the presence of at least one law enforcement
 officer during the retrieval and at least 24 hours
26 notice to each party prior to the retrieval;
- 28 E. Hate or bias crimes;
- 30 F. Police pursuits;
- 32 G. Citizen complaints of police misconduct; and
- 34 H. Criminal conduct engaged in by law enforcement officers.

36 The chief administrative officer of each agency shall certify to
38 the board that attempts are were made to obtain public comment
 during the formulation of policies.

40 **2. Minimum policy standards.** The board shall establish
42 minimum standards for each law enforcement policy no later than
 June 1, 1995, except that policies for expanded requirements for
44 domestic violence under subsection 1, paragraph D, subparagraphs
 (1) to (3) may be established no later than January 1, 2003.

46 **3. Agency compliance.** The chief administrative officer of
48 each law enforcement agency shall certify to the board no later
 than January 1, 1996 that the agency has adopted written policies
50 consistent with the minimum standards established by the board
 pursuant to subsection 2, except that certification to the board
 for expanded policies for domestic violence under subsection 1,

2 paragraph D, subparagraphs (1) to (3) must be made to the board
3 no later than June 1, 2003. This certification must be
4 accompanied by copies of the agency policies. The chief
5 administrative officer of each agency shall certify to the board
6 no later than June 1, 1996 that the agency has provided
7 orientation and training for its members with respect to the
8 policies, except that certification for orientation and training
9 with respect to expanded policies for domestic violence under
10 subsection 1, paragraph D, subparagraphs (1) to (3) must be made
11 to the board not later than January 1, 2004.

12

PART D

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Sec. D-1. 30-A MRSA §290 is enacted to read:

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§290. Investigators; appointments and removal

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19 The district attorney may appoint in one or more counties of
20 the prosecutorial district, subject to the requirements of
21 section 501, full-time or part-time investigators, whose duties
22 are to enforce the criminal laws in the county.

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25 1. Qualifications for appointment. To be eligible for
26 appointment, an investigator must be a law enforcement officer
27 who has met the requirements of Title 25, section 2804-C and is
28 certified as a full-time law enforcement officer.

28

29 2. Powers. An investigator has the statutory powers of a
30 deputy sheriff in the county in which the investigator is
31 appointed. An investigator's powers may include those under
32 sections 404 and 405.

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PART E

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Sec. E-1. 34-A MRSA §1214, sub-§5 is enacted to read:

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39 5. Report regarding batterers intervention programs.
40 Beginning January 2003 and annually thereafter, the department
41 shall report to the joint standing committee of the Legislature
42 having jurisdiction over criminal justice matters regarding the
43 work of batterers intervention programs. The report must include
44 information regarding: meeting program benchmarks and goals,
45 developing and implementing new programs, measuring effectiveness
46 of existing programs and communicating and coordinating efforts
47 with providers of substance abuse services, literacy support and
48 other services with whom batterers may need to work in order to
49 participate meaningfully in a batterers intervention program.

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PART F

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Sec. F-1. Commission established. The Commission to Study Domestic Violence, referred to in this Part as the "commission," is established.

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Sec. F-2. Commission membership. The commission consists of the members who served on the Commission to Study Domestic Violence established pursuant to Resolve 1999, chapter 126 as of that commission's final meeting. If any of those members can not serve, the person responsible for appointing that member pursuant to Resolve 1999, chapter 126 shall appoint a new member.

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Sec. F-3. Chairs. The chairs of the Commission to Study Domestic Violence pursuant to Resolve 1999, chapter 126 shall continue to serve as chairs, unless unable to do so. If new chairs must be appointed, the President of the Senate shall appoint the Senate chair of the commission and the Speaker of the House shall appoint the House chair of the commission.

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Sec. F-4. Appointments; meetings. All appointments must be made no later than 21 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs of the commission shall call and convene the first meeting of the commission no later than 30 days after all appointments have been made. The commission may hold up to 6 meetings.

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Sec. F-5. Duties. The commission shall invite the participation of experts and interested parties, gather information and request necessary data from public and private entities in order to review the following issues and develop recommendations and implementing legislation if appropriate:

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1. Predominant aggressors;

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2. Models of supervised visitation;

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3. Conflicts created by coexisting orders and conditions, including mutual orders for protection from abuse, visitation or other family law issues, probation conditions and bail conditions;

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4. Models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers;

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5. The inconsistency in the definitions of "family or household members" in the statutes;

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2 6. Confidentiality programs that allow access to public
3 records without disclosing the location of domestic violence
4 victims;

6 7. Whether Maine Rules of Criminal Procedure, Rule 4 needs
7 clarification or amendment to authorize courts to set conditions
8 of bail on warrants;

10 8. The following elements of protection from abuse
11 proceedings:

12 A. Legal representation;

14 B. Additional courthouse security and victim safety in
15 courthouses;

18 C. Space for victims to fill out protection from abuse
19 paperwork;

20 D. Twenty-four-hour availability of protection from abuse
21 orders;

24 E. Service issues;

26 F. Conditions placed on amendment or dismissal of
27 protection from abuse orders; for example, whether courts
28 should require a plaintiff to speak with a domestic violence
29 advocate or legal advocate before the court will amend or
30 dismiss an order; and

32 G. Giving the court authority to access additional
33 information about children, including the use of limited
34 hearsay and guardians ad litem;

36 9. Educational components of training and continuing
37 education for bail commissioners;

38 10. Conditions of bail that bail commissioners may order;

40 11. The status and progress of communications across the
41 criminal justice system, including a review of technology and
42 computerization of criminal history records, protection orders
43 and bail conditions;

46 12. Application of the statute authorizing a 2-year period
47 of probation for persons convicted of crimes involving domestic
48 violence since the case Charles C. Apprendi, Jr., Petitioner v.
49 New Jersey, 530 U.S. 466 (2000); and
50

13. Workplace initiatives for domestic violence victims.

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3 **Sec. F-6. Staff assistance.** Upon approval of the Legislative
4 Council, the Office of Policy and Legal Analysis shall provide
5 necessary staffing services to the commission.

6
7 **Sec. F-7. Compensation.** The members of the commission who
8 are Legislators are entitled to the legislative per diem, as
9 defined in the Maine Revised Statutes, Title 3, section 2, and
10 reimbursement for necessary expenses incurred for their
11 attendance at authorized meetings of the commission. Other
12 members of the commission who are not otherwise compensated by
13 their employers or other entities that they represent are
14 entitled to receive reimbursement of necessary expenses incurred
15 for their attendance at authorized meetings.

16
17 **Sec. F-8. Report.** The commission shall submit its report,
18 together with any necessary implementing legislation, to the
19 First Regular Session of the 121st Legislature no later than
20 November 6, 2002. The commission is authorized to introduce
21 legislation related to its report to the First Regular Session of
22 the 121st Legislature. If the commission requires a limited
23 extension of time to conclude its work, it may apply to the
24 Legislative Council, which may grant the extension.

25
26 **Sec. F-9. Budget.** The chairs of the commission, with
27 assistance from the commission staff, shall administer the
28 commission's budget. Within 10 days after its first meeting, the
29 commission shall present a work plan and proposed budget to the
30 Legislative Council for approval. The commission may not incur
31 expenses that would result in the commission exceeding its
32 approved budget. Upon request from the commission, the Executive
33 Director of the Legislative Council shall promptly provide the
34 commission chairs and staff with a status report on the
35 commission's budget, expenditures incurred and paid and available
36 funds.

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39 **PART G**

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41 **Sec. G-1. Appropriations and allocations.** The following
42 appropriations and allocations are made.

43
44 **ATTORNEY GENERAL, DEPARTMENT OF THE**
45
46 **Domestic Violence Investigative Services**

47 Initiative: Provides funds to be distributed as grants at the
48 beginning of each fiscal year in equal lump sum amounts to each
49 prosecutorial district to allow each District Attorney's office
50

2 to purchase investigative services for domestic violence
 3 matters in accordance with the purchasing procedures of its
 4 respective county.

5	General Fund	2001-02	2002-03
6	All Other	\$0	\$400,000

8

9	ATTORNEY GENERAL, DEPARTMENT OF THE		
10	DEPARTMENT TOTALS	2001-02	2002-03

11	GENERAL FUND	\$0	\$400,000
12	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$400,000

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15 **JUDICIAL DEPARTMENT**

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17 **Courts - Supreme, Superior and District**

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19 Initiative: Provides funds to establish a regional continuing
 20 education program for all bail commissioners.

21	General Fund	2001-02	2002-03
22	All Other	\$0	\$20,000

23

24	JUDICIAL DEPARTMENT		
25	DEPARTMENT TOTALS	2001-02	2002-03

26	GENERAL FUND	\$0	20,000
27	DEPARTMENT TOTAL - ALL FUNDS	\$0	20,000

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30 **LEGISLATURE**

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32 **Commission to Study Domestic Violence**

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34 Initiative: Provides funds for the per diem and expenses of
 35 legislative members and the reimbursement of necessary expenses
 36 of other members of the Commission to Study Domestic Violence
 37 and to print the required report.

38	General Fund	2001-02	2002-03
39	Personal Services	\$0	\$1,650
40	All Other	0	4,400
41	General Fund Total	\$0	\$6,050

42

43	LEGISLATURE		
44	DEPARTMENT TOTALS	2001-02	2002-03

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2	GENERAL FUND	\$0	<u>\$6,050</u>
	DEPARTMENT TOTAL - ALL FUNDS	\$0	<u>\$6,050</u>
4			
	SECTION TOTALS	2001-02	2002-03
6	GENERAL FUND	\$0	<u>\$426,050</u>
	SECTION TOTAL - ALL FUNDS	\$0	<u>\$426,050</u>

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FISCAL NOTE

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2001-02 2002-03

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APPROPRIATIONS/ALLOCATIONS

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General Fund	\$0	\$426,050
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20 This bill includes General Fund appropriations totalling
 22 \$426,050 in fiscal year 2002-03. It provides \$400,000 to the
 Department of the Attorney General to pass through a \$50,000
 24 annual grant to each prosecutorial district to be used to
 purchase investigative services for domestic violence efforts.

26 It also includes a General Fund appropriation of \$20,000 for
 the Judicial Department to establish a regional continuing
 28 education program for bail commissioners. Beginning in fiscal
 year 2003-04, the annual cost is estimated to be \$12,000.

30

32 The Legislature will require an additional General Fund
 appropriation of \$6,050 in fiscal year 2002-03 for the per diem
 and expenses of legislative members and the expenses of other
 34 members of the Commission to Study Domestic Violence and to print
 the required report.

36

38 The additional costs associated with providing staffing
 assistance to the commission during the interim between
 legislative sessions can be absorbed by the Legislature utilizing
 40 existing budgeted resources. If an extension of the reporting
 deadline is granted and the commission requires staffing
 42 assistance during the legislative session, the Legislature may
 require an additional General Fund appropriation to contract for
 44 staff services.

46 The Department of Public Safety will incur some minor
 additional costs to revise certain written policies pertaining to
 48 domestic violence. These costs can be absorbed within the
 department's existing budgeted resources.

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SUMMARY

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This bill is the majority report of the Joint Standing Committee on Criminal Justice. The bill implements recommendations of the Commission to Study Domestic Violence pursuant to Resolve 1999, chapter 126. The bill does the following.

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1. It amends the law regarding bail commissioners to specify that, in a case involving domestic violence, a bail commissioner may not set preconviction bail for a defendant before the bail commissioner has made a good faith effort to obtain from the arresting officer, the district attorney, a jail employee or other law enforcement officer, the following: a brief history of the alleged abuser; the relationship of the parties; the name, address, phone number and date of birth of the victim; and existing conditions of protection from abuse orders, conditions of bail and conditions of probation.

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2. It requires that bail commissioners receive mandatory training not later than 180 days following appointment, unless the Chief Judge of the District Court determines that the bail commissioner is qualified to carry out the responsibilities of a bail commissioner based on equivalent experience or training.

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3. It requires the Chief Judge of the District Court to establish a regional continuing education program for bail commissioners that includes regular meetings of the bail commissioners and members of the judiciary and, at a minimum, training in accepted practices in domestic violence cases and best practices concerning uniform bail conditions.

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4. It gives the court authority to prohibit the possession of firearms and other dangerous weapons as a condition of a temporary protection order if the court determines that the defendant has a history of violence. The court may impose this condition only if the court discusses the plaintiff's request for the condition prohibiting possession of firearms or other dangerous weapons in person with the plaintiff, and the court determines that the prohibition of possession of firearms or other dangerous weapons is an appropriate condition of an order after considering at least the following: the defendant's history of violence; the type of abuse alleged; any reason that the defendant may have to possess firearms or other dangerous weapons, including their use in employment; and any other issue that the court determines relevant to the complaint.

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5. It amends the requirements of law enforcement agencies to develop certain policies by specifying that policies regarding

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2 domestic violence must include, at a minimum, the following: a
3 process to ensure that victims receive notification of the
4 defendant's release from jail; a risk assessment for a defendant
5 that includes the defendant's previous history, the parties'
6 relationship, the name of the victim and a process to relay this
7 information to a bail commissioner before a bail determination is
8 made; and a process for the safe retrieval of personal property
9 belonging to the victim or the defendant that includes
10 identification of a neutral location for retrieval, the presence
11 of at least one law enforcement officer during the retrieval and
12 at least 24 hours notice to each party prior to the retrieval.

13
14 6. It enacts language that authorizes district attorneys to
15 appoint law enforcement officers as domestic violence
16 investigators. Investigators must meet the requirements of the
17 Maine Revised Statutes, Title 25, section 2804-C and be certified
18 as full-time law enforcement officers. Investigators have the
19 same statutory powers as deputy sheriffs.

20 7. It requires the Department of Corrections to report
21 annually to the joint standing committee of the Legislature
22 having jurisdiction over criminal justice matters regarding the
23 work of batterers intervention programs.

24
25 8. It reestablishes the Commission to Study Domestic
26 Violence, with the same members as the study commission
27 established pursuant to Resolve 1999, chapter 126. This
28 commission is charged with inviting the participation of experts
29 and interested parties and gathering information and requesting
30 necessary data from public and private entities in order to
31 review the following issues and develop recommendations and
32 implementing legislation if appropriate: predominant aggressors;
33 models of supervised visitation; conflicts created by coexisting
34 orders and conditions, including mutual orders; models of uniform
35 domestic violence incident reports and other standard reporting
36 tools for law enforcement officers; the inconsistency in the
37 definitions of "family or household members" in the statutes;
38 confidentiality programs that allow access to public records
39 without disclosing the location of domestic violence victims;
40 whether Maine Rules of Criminal Procedure, Rule 4 needs
41 clarification or amendment to authorize courts to set conditions
42 of bail on warrants; a number of elements of the protection from
43 abuse process; educational components of bail commissioner
44 training and continuing education; conditions of bail that bail
45 commissioners can order; and the status and progress of
46 technology and computerization of criminal history records,
47 protection orders and bail conditions. The commission shall
48 report its recommendations and legislation to the Legislature by
49 November 6, 2002.

50

2 9. It appropriates General Fund money as equal lump sum
3 grants at the beginning of each fiscal year to each district
4 attorney to contract with a law enforcement officer to fill at
5 least one dedicated investigator position in each prosecutorial
6 district to investigate and provide support in cases of crimes
7 involving domestic violence.

8 10. It appropriates General Fund money to pay for the
9 expenses of the Commission to Study Domestic Violence.
10