

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1365

H.P. 1004

House of Representatives, March 30, 2011

### An Act Regarding Protection Orders and the Prosecution of Domestic Violence Cases

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative HINCK of Portland.  
Cosponsored by Senator SHERMAN of Aroostook and  
Representatives: CLARKE of Bath, HUNT of Buxton, MORRISON of South Portland,  
STEVENS of Bangor, STRANG BURGESS of Cumberland, Senators: BARTLETT of  
Cumberland, HOBBS of York, PLOWMAN of Penobscot.

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

2 **Sec. 1. 15 MRSA §1206** is enacted to read:

3 **§1206. Certain out-of-court statements in domestic violence assault cases**

4 **1. Admissible hearsay.** A statement may not be excluded as hearsay even though  
5 the declarant is available if the statement:

6 A. Purports to narrate, describe, report or explain an incident of domestic violence  
7 assault, as defined in Title 17-A, section 207-A, subsection 1;

8 B. Is made by a victim of the domestic violence assault within 24 hours after the  
9 incident occurred;

10 C. Was recorded, either electronically or in writing, or was made to a law  
11 enforcement officer, provider of emergency medical services or firefighter; and

12 D. Has sufficient indicia of reliability.

13 **2. Reliability considerations.** In determining whether a statement has sufficient  
14 indicia of reliability under subsection 1, the court shall consider all circumstances  
15 surrounding the statement. The court may consider, but is not limited to, the following  
16 factors in determining whether a statement has sufficient indicia of reliability:

17 A. The personal knowledge of the declarant;

18 B. Whether the statement is corroborated by evidence other than statements that are  
19 subject to admission only pursuant to this section;

20 C. The timing of the statement;

21 D. Whether the statement was elicited by leading questions; and

22 E. Subsequent statements made by the declarant. Recantation by a declarant is not  
23 sufficient reason for denying admission of a statement under this section in the  
24 absence of other factors indicating unreliability.

25 **Sec. 2. 19-A MRSA §4006, sub-§9** is enacted to read:

26 **9. Evidence of past convictions.** Notwithstanding provisions of the Maine Rules of  
27 Criminal Procedure, Rule 26 to the contrary, prior convictions of domestic violence  
28 assault under Title 17-A, section 207-A, subsection 1 may be offered into evidence for  
29 purposes of a protection from abuse order issued pursuant to this section.

30 **Sec. 3. 19-A MRSA §4012, sub-§11** is enacted to read:

31 **11. Service of protection from abuse order.** Every municipal, county and state law  
32 enforcement agency shall adopt a written policy on the service of protection from abuse  
33 orders that directs that every order issued under this chapter is served on the subject of the  
34 order as quickly as possible. Service of a protection from abuse order that is not in  
35 compliance with a policy adopted under this subsection does not affect the validity of the  
36 service or the order.

1           **Sec. 4. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2003, c. 361, §1, is  
2 further amended to read:

3           D. Domestic violence, which must include, at a minimum, the following:

4           (1) A process to ensure that a victim receives notification of the defendant's  
5 release from jail;

6           (2) A process for the collection of information regarding the defendant that  
7 includes the defendant's previous history, the parties' relationship, the name of the  
8 victim and a process to relay this information to a bail commissioner before a bail  
9 determination is made; ~~and~~

10           (3) A process for the safe retrieval of personal property belonging to the victim  
11 or the defendant that includes identification of a possible neutral location for  
12 retrieval, the presence of at least one law enforcement officer during the retrieval  
13 and giving the victim the option of at least 24 hours notice to each party prior to  
14 the retrieval; and

15           (4) Standard procedures to ensure that protection from abuse orders issued under  
16 Title 19-A, section 4006 or 4007 are served on the defendant as quickly as  
17 possible;

18           **Sec. 5. 25 MRSA §2803-B, sub-§2**, as repealed and replaced by PL 2009, c. 652,  
19 Pt. A, §37, is amended to read:

20           **2. Minimum policy standards.** The board shall establish minimum standards for  
21 each law enforcement policy no later than June 1, 1995, except that policies for expanded  
22 requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1)  
23 to ~~(3)~~ (4) must be established no later than January 1, ~~2003~~ 2012; policies for death  
24 investigations under subsection 1, paragraph I must be established no later than January  
25 1, 2004; policies for public notification regarding persons in the community required to  
26 register under Title 34-A, chapter 15 under subsection 1, paragraph J must be established  
27 no later than January 1, 2006; policies for the recording and preservation of interviews of  
28 suspects in serious crimes under subsection 1, paragraph K must be established no later  
29 than January 1, 2005; policies for the expanded use of physical force, including the use of  
30 electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must  
31 be established no later than January 1, 2010; and policies for mental illness and the  
32 process for involuntary commitment under subsection 1, paragraph L must be established  
33 no later than January 1, 2010.

34           **Sec. 6. 25 MRSA §2803-B, sub-§3**, as repealed and replaced by PL 2009, c. 652,  
35 Pt. A, §38, is amended to read:

36           **3. Agency compliance.** The chief administrative officer of each law enforcement  
37 agency shall certify to the board no later than January 1, 1996 that the agency has adopted  
38 written policies consistent with the minimum standards established by the board pursuant  
39 to subsection 2, except that certification to the board for expanded policies for domestic  
40 violence under subsection 1, paragraph D, subparagraphs (1) to ~~(3)~~ (4) must be made to  
41 the board no later than June 1, ~~2003~~ 2012; certification to the board for adoption of a  
42 death investigation policy under subsection 1, paragraph I must be made to the board no

1 later than June 1, 2004; certification to the board for adoption of a public notification  
2 policy under subsection 1, paragraph J must be made to the board no later than June 1,  
3 2006; certification to the board for adoption of a policy for the recording and preservation  
4 of interviews of suspects in serious crimes under subsection 1, paragraph K must be made  
5 to the board no later than June 1, 2005; certification to the board for adoption of an  
6 expanded use of physical force policy under subsection 1, paragraph A must be made to  
7 the board no later than June 1, 2010; and certification to the board for adoption of a  
8 policy regarding mental illness and the process for involuntary commitment under  
9 subsection 1, paragraph L must be made to the board no later than June 1, 2010. The  
10 certification must be accompanied by copies of the agency policies. The chief  
11 administrative officer of each agency shall certify to the board no later than June 1, 1996  
12 that the agency has provided orientation and training for its members with respect to the  
13 policies, except that certification for orientation and training with respect to expanded  
14 policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3)  
15 must be made to the board no later than January 1, 2004; certification for orientation and  
16 training with respect to policies regarding death investigations under subsection 1,  
17 paragraph I must be made to the board no later than January 1, 2005; certification for  
18 orientation and training with respect to policies regarding public notification under  
19 subsection 1, paragraph J must be made to the board no later than January 1, 2007;  
20 certification for orientation and training with respect to policies regarding the recording  
21 and preservation of interviews of suspects in serious crimes under subsection 1,  
22 paragraph K must be made to the board no later than January 1, 2006; certification for  
23 orientation and training with respect to policies regarding expanded use of physical force  
24 under subsection 1, paragraph A must be made to the board no later than January 1, 2011;  
25 and certification for orientation and training with respect to policies regarding mental  
26 illness and the process for involuntary commitment under subsection 1, paragraph L must  
27 be made to the board no later than January 1, 2011.

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## SUMMARY

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This bill amends the laws pertaining to domestic violence as follows.

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1. It creates an exception to the hearsay rule to allow an out-of-court statement to be admitted as evidence in a court proceeding even if the person who made the statement is available if the statement meets certain criteria. The statement must purport to narrate, describe, report or explain an incident of domestic violence assault as defined in the Maine Revised Statutes, Title 17-A, section 207-A and must have been made by a victim of the domestic violence assault within 24 hours after the incident occurred. The statement must have been recorded, either electronically or in writing, or made to a law enforcement officer, provider of emergency medical services or firefighter. The statement must have sufficient indicia of reliability. The court may use specific criteria to determine reliability of the statement. The fact that the declarant withdrew the statement cannot be used to deny admission if the statement is otherwise reliable. This hearsay exception is modeled on a recently enacted Oregon statute.

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2. It allows the offering into evidence at a hearing for a protection from abuse order the defendant's prior convictions for domestic violence assault.

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1           3. It requires the Board of Trustees of the Maine Criminal Justice Academy to adopt  
2 a model policy for the serving of protection from abuse orders as quickly as possible. It  
3 also requires law enforcement agencies to adopt such policies.