

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

AT THE

SECOND REGULAR SESSION

January 2, 1980 to April 3, 1980

AND AT THE

THIRD SPECIAL SESSION

May 22, 1980

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PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND NINTH LEGISLATURE
January 2, 1980 to April 3, 1980

CHAPTER 578

H. P. 910 — L. D. 1133

AN ACT Concerning Abuse Between Family or Household Members.

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

Sec. 1. 17-A MRSA § 15, sub-§ 1, ¶ A, sub-¶ (5-A) is enacted to read:

(5-A) Assault, if the officer reasonably believes that the person and the victim are members of the same family or household, as defined in section 1331;

Sec. 2. 17-A MRSA c. 54-A is enacted to read:

CHAPTER 54-A

PROTECTIVE ORDER

§ 1331. Protective orders in crimes between family members

1. For purposes of this section, “members of the same family or household” means spouses, individuals who were formerly spouses, individuals living as spouses, individuals who were formerly living as spouses or other adult household members related by consanguinity or affinity. Holding oneself out to be the husband or wife of the person with whom one is or was living is not necessary to constitute “living as spouses.”

2. When a criminal action is pending on a complaint charging a person of violating sections 207, 208, 209, 210 or 506-A or a person is convicted of violating those sections and that person and the victim are members of the same family or household, then the court may issue an order of protection, which may be a condition of release. This order may require that person:

- A. To stay away from the home, school, business or place of employment of the victim;
- B. Not to visit, or to visit only at certain times or under certain conditions, any child residing with the victim; or
- C. To abstain from offensive physical contact against the victim.

The court, with or without suspending execution of sentence, may also place that person on probation conditioned upon participation, to the satisfaction of the court, in a program of clinically appropriate treatment.

3. A copy of any order issued pursuant to subsection 2 shall be issued by the clerk of the court to the victim, the offender and the law enforcement agency with appropriate jurisdiction to enforce the order. No fee shall be charged for issuance of the required copies. Any subsequent amendment or revocation of that order shall be issued in the same manner.

4. Violation of any order issued pursuant to subsection 2 is a Class D crime.

Sec. 3. 19 MRSA § 214, first ¶, as amended by PL 1965, c. 19, § 6, is further amended by adding after the first sentence, the following new sentence:

The court shall not consider abandonment of the family residence as a factor in determining custodial rights when the abandoning party has been physically harmed or seriously threatened with physical harm by his spouse, when that harm or threat of harm by his spouse was causally related to the abandonment.

Sec. 4. 19 MRSA § 752, first ¶, as amended by PL 1975, c. 293, § 5, is further amended by adding after the first sentence the following new sentence:

The court shall not consider abandonment of the family residence as a factor in determining custodial rights when the abandoning party has been physically harmed or seriously threatened with physical harm by his spouse, when that harm or threat of harm by his spouse was causally related to the abandonment.

Sec. 5. 19 MRSA c. 14 is enacted to read:

CHAPTER 14

PROTECTION FROM ABUSE

§ 761. Purpose

The purposes of this chapter are:

1. **Protection.** To allow family and household members who are victims of domestic abuse to obtain effective, short-term protection against further abuse so that the lives of the nonabusing family or household members will be as secure and as uninterrupted as possible;

2. **Prevention.** To expand the ability of law enforcement officers to effectively respond to situations of domestic abuse so as to prevent further incidents of abuse and to assist the victims of that abuse; and

3. **Data collection.** To provide for the collection of data concerning domestic abuse in an effort to develop a comprehensive analysis of the incidence and causes of that abuse.

§ 762. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Abuse. "Abuse" means the occurrence of the following acts between family or household members:

A. Attempting to cause or recklessly causing bodily injury or offensive physical contact; or

B. Attempting to place or knowingly placing another in fear of imminent bodily injury.

2. Adult. "Adult" means any person 18 years of age or older or any person under 18 years of age who is emancipated from the legal control of his parents or guardian.

3. Court. "Court" means any district or superior court.

4. Family or household members. "Family or household members" means spouses, individuals who were formerly spouses, individuals living as spouses, individuals who were formerly living as spouses or other adult household members related by consanguinity or affinity. Holding oneself out to be the husband or wife of the person with whom one is or was living is not necessary to constitute "living as spouses".

5. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.

§ 763. Jurisdiction

1. Residence. Proceedings under this chapter shall be filed, heard and determined in the District Court or Superior Court of the district or county in which either the plaintiff or the defendant resides. If the plaintiff has left his residence to avoid abuse, he may bring an action in the county of his previous residence or of his new residence.

2. Self defense. The right to relief under this chapter shall not be affected by the plaintiff's use of force against the defendant as permitted under Title 17-A, section 108.

§ 764. Commencement of proceeding

1. Filing. Any adult who has been abused by a family or household member may seek relief by filing a sworn petition in an appropriate court alleging that abuse.

2. Assistance. The court shall provide forms and clerical assistance to assist either party in completing and filing of a petition or other necessary documents. This assistance shall not include legal advice or assistance in drafting legal documents.

3. Fees. No filing fee shall be charged for a petition. A plaintiff may apply for leave to proceed in forma pauperis.

§ 765. Hearings

1. Full hearing. Within 21 days of the filing of a petition, a hearing shall be held at which the plaintiff shall prove the allegation of abuse by a preponderance of the evidence.

2. Temporary orders. The court may enter any temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse, on good cause shown in an ex parte proceeding. Immediate and present danger of physical abuse to the plaintiff shall constitute good cause. Any order shall remain in effect pending a hearing pursuant to subsection 1.

3. Emergency relief. Emergency relief shall be available as follows.

A. When the court is closed and no other provision can be made for the shelter of an abused family or household member, a petition may be filed before an appropriate District Court Judge or Superior Court Judge. Upon a showing of good cause, as defined in subsection 2, the court may enter any temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff from abuse.

B. An order shall be immediately certified to the appropriate District Court or Superior Court. This certification to the court shall have the effect of commencing proceedings and invoking the other provisions of this chapter.

C. An order shall remain in effect pending a hearing pursuant to subsection 1.

4. Interim relief. The court, in an ex parte proceeding, 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:

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

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

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

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

5. Dissolution or modification. Notwithstanding any statutory provision to the contrary, on 2-days' notice to the plaintiff or on such shorter notice as the

court may order, a person who is subject to an order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require. At that hearing, the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing in this section shall be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

6. Extension. If a hearing under subsection 1 is continued, the court may make or extend such temporary orders as it deems necessary.

§ 766. Relief

1. Protection order; consent agreement. The court, after a hearing, may grant any protective order or approve any consent agreement to bring about a cessation of abuse, which may include:

A. Directing the defendant to refrain from threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff and any minor children residing in the household;

B. When the mutual residence or household of the parties is jointly owned or jointly leased:

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

(2) Restoring possession to one party;

C. When one party has a duty to support the other or their minor children living in the residence or household and that party is the sole owner or lessee:

(1) Granting possession of the residence or household to the dependent party with the exclusion of the other party by ordering his removal;

(2) Restoring possession to the dependent party; or

(3) By consent agreement, allowing the supporting party to provide suitable, alternate housing;

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

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

F. Requiring either or both parties to receive counseling from a social worker, family service agency, mental health center, psychiatrist or any other guidance service that the court deems appropriate;

G. Ordering the payment of temporary support for the dependent party or any child in his custody, or both, when there is a legal obligation to support that person;

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

I. Ordering payment of monetary compensation to the abused person for losses suffered as a direct result of the abuse. Compensatory losses shall be limited to: Loss of earnings or support, reasonable expenses incurred for personal injuries or property damage and reasonable moving expenses. Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded;

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

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

2. Duration. Any protective order or approved consent agreement shall be for a fixed period not to exceed one year. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from abuse. Upon motion by either party, for sufficient cause, the court may modify the order or agreement from time to time as circumstances require.

3. Consequences of violation. Any protective order or approved consent agreement shall indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement, as provided in section 769.

4. Title to property. No order or agreement shall affect title to any real property.

5. Bond prohibited. The court shall not require the execution of a bond by the plaintiff prior to issuance of any order of protection.

§ 767. Notification

A copy of any order or agreement shall be issued forthwith by the clerk of the appropriate court to the plaintiff, the defendant and the law enforcement agency with appropriate jurisdiction to enforce the order or agreement. No fee shall be charged for issuance of the required copies. Any subsequent amendment or revocation of the order or agreement shall be issued in the same manner.

§ 768. Procedure

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure.

2. Proceedings independent. All proceedings shall be independent of any proceeding for divorce, dissolution of marriage, legal separation or separate maintenance and shall be in addition to any other available civil or criminal remedies.

§ 769. Violation

1. Crime committed. Violation of a protective order or a court approved consent agreement, when the defendant has prior actual notice of the order or agreement, shall be a Class D crime, except when the only provision that is violated concerns relief authorized under section 766, subsection 1, paragraphs F to J. Violation of these paragraphs shall be treated as contempt and punished in accordance with law.

2. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for violation of an order may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer. The police officer may verify, if necessary, the existence of a protective order by telephone or radio communication with the appropriate law enforcement agency.

§ 770. Law enforcement agency responsibilities

1. Reports. Each law enforcement agency shall report all incidents of abuse by adults of family or household members as required by the State Bureau of Identification under Title 25, section 1544.

2. Agency procedures. Law enforcement agencies shall establish procedures to ensure that dispatchers and officers at the scene of an alleged incident of abuse or violation of an order of protection can be informed of any recorded prior incident of abuse involving the abused party and can verify the effective dates and terms of any recorded order of protection.

3. Officer training. Law enforcement agencies shall provide officers employed by them with an education and training program designed to inform the officers of the problems of family and household abuse, procedures to deal with these problems, the provisions of this chapter and the services and facilities available to abused family and household members. The amount and degree of officer training, beyond the distribution of information, shall be determined by each local law enforcement agency.

4. Maine Criminal Code enforcement. A law enforcement officer at the scene of an alleged incident of abuse shall use the same standard of enforcing relevant

Maine Criminal Code sections when the incident involves family or household members as when it involves strangers.

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation of a protective order or a court approved consent agreement or that a violation of Title 17-A, section 208, has occurred between members of the same family or household, he shall arrest and take into custody the alleged offender.

6. Officer responsibilities. Whenever a law enforcement officer has reason to believe that a family or household member has been abused, the officer shall immediately use all reasonable means to prevent further abuse, including:

A. Remaining on the scene as long as he reasonably believes there is a danger to the physical safety of that person without the presence of a law enforcement officer, including, but not limited to, staying in the dwelling unit;

B. Assisting that person in obtaining medical treatment necessitated by an assault, including driving the victim to the emergency room of the nearest hospital;

C. Giving that person immediate and adequate written notice of his rights, which shall include information summarizing the procedures and relief available to victims of the family or household abuse; or

D. Arresting the abusing party with or without a warrant pursuant to section 769 and Title 17-A, section 15.

Sec. 6. 25 MRSA § 1544, as repealed and replaced by PL 1975, c. 763, § 7, is amended by adding at the end a new paragraph to read:

The bureau shall establish a category for abuse by adults of family or household members which shall be supplementary to its other reported information. The bureau shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

Sec. 7. Sunset provision. This Act is repealed on June 30, 1982.

Effective July 3, 1980

CHAPTER 579

H. P. 1470 — L. D. 1658

AN ACT to Clarify the Administration of the Department of Manpower Affairs.