

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
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to section 1754, a contract between the district and a member municipality pursuant to this section may authorize the district to issue notes and bonds that are guaranteed pro rata by that member municipality. In these cases, the pro rata share of liability of each member municipality authorizing the district to issue guaranteed notes and bonds must be established in accordance with a fraction, the numerator of which is the most recent state valuation of all property of the member municipality authorizing the district to issue the guaranteed notes and bonds and the denominator of which is the most recent state valuation of all property located within all the member municipalities authorizing the district to issue the guaranteed notes and bonds. A member municipality's fractional share of liability for guaranteed notes and bonds authorized pursuant to these contracts may be different from that member municipality's fractional share of liability for guaranteed notes and bonds calculated pursuant to section 1754. The guarantee provisions of this section apply to districts providing limited waste disposal services under this section that have authority to issue bonds and notes guaranteed by member municipalities. A member municipality may not be required to guarantee any portion of the indebtedness issued by a district providing limited waste disposal services under this section unless the municipality has entered into a contract providing for such a guarantee pursuant to this section.

6. General municipal powers. In addition to the powers granted to municipalities under this chapter, the provisions of section 1304-B apply to the member municipalities of a district providing limited waste disposal services pursuant to this section and nothing contained in this section limits the powers of a municipality under section 1304-B.

7. Relationship to other laws. The obligation of a municipality to pay any fees, assessments, contract costs or expenses, guaranteed amounts or any other payments in accordance with any agreement or contract entered into pursuant to this section does not constitute a debt or indebtedness of the municipality within the meaning of any statutory, charter, ordinance or other provision limiting the incurrence or the amount of municipal indebtedness. The authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation does not require or is not subject to any voter referendum or approval under any statutory, charter, ordinance or other provision. No contract entered into in accordance with this section may be deemed to be a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 17, 1990.

CHAPTER 862

S.P. 989 - L.D. 2458

An Act to Provide Greater Protection Under the Domestic Abuse Laws

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

Sec. 1. 5 MRSA §12004-I, sub-§74-C is enacted to read:

<u>74-C. Public</u>	<u>Maine</u>	<u>Expenses</u>	<u>19 MRSA</u>
<u>Safety</u>	<u>Commission</u>	<u>Only</u>	<u>§770-B</u>
	<u>on</u>		
	<u>Domestic</u>		
	<u>Abuse</u>		

Sec. 2. 15 MRSA §891, as amended by PL 1979, c. 663, §102, is further amended to read:

§891. Dismissal on satisfaction of private injury; discharge of bail

When a person has been admitted to bail or is committed by a judge, or is indicted, or held upon a complaint and warrant for an assault or other Class D or E crime as defined by Title 17-A, section 4-A, for which the party injured has a remedy by civil action, except aggravated assaults, assaults upon or resistance of a law enforcement officer as defined by Title 17-A in the execution of ~~his~~ a law enforcement officer's duty, and assaults of ~~such~~ those officers and crimes involving family or household members as defined in Title 19, chapter 14, if the injured party appears before the judge or court, and in writing acknowledges satisfaction for the injury, the court, on payment of all costs, may stay further proceedings and discharge the defendant. The judge may exonerate the bail and release the obligors, supersede the commitment by ~~his~~ written order and exonerate the bail of the witnesses.

Sec. 3. 19 MRSA §761, as amended by PL 1983, c. 583, §26, is repealed.

Sec. 4. 19 MRSA §761-A is enacted to read:

§761-A. Purpose

The court shall liberally construe and apply this chapter to promote the following underlying purposes:

1. Recognition. To recognize domestic abuse as a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development;

2. Protection. To allow family and household members who are victims of domestic abuse to obtain

expeditious and effective protection against further abuse so that the lives of the nonabusing family or household members are as secure and uninterrupted as possible. To provide protection by promptly entering and diligently enforcing court orders that prohibit abuse and, when necessary, by reducing the abuser's access to the victim and addressing any related issues of child custody and economic support so that victims are not trapped in abusive situations by fear of retaliation, loss of a child or financial dependence;

3. Prevention. To expand the power of the justice system to respond effectively to situations of domestic abuse, clarify the responsibilities and support the efforts of law enforcement officers, prosecutors and judicial officers to provide immediate, effective assistance and protection for victims of abuse and to recognize the crucial role of law enforcement officers in preventing further incidents of abuse and in assisting the victims of abuse;

4. 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; and

5. Mutual order. To declare that a mutual order of protection or restraint undermines the purposes of this chapter.

Sec. 5. 19 MRSA §762, sub-§1, ¶A, as amended by PL 1985, c. 557, is further amended to read:

A. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults under Title 17-A, chapter 11, except that contact as described in Title 17-A, section 106, subsection 1, is excluded from this definition; or

Sec. 6. 19 MRSA §762, sub-§1, ¶B, as amended by PL 1983, c. 583, §26, is further amended to read:

B. Attempting to place or placing another in fear of imminent bodily injury; through any course of conduct including, but not limited to, threatening, harassing or tormenting behavior;

Sec. 7. 19 MRSA §762, sub-§1, ¶C to E are enacted to read:

C. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage;

D. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by: removing that person from that person's residence, place of business or school; moving that person a substantial distance from the vicinity where that person was found; or confining that person for a substantial

period either in the place where the restriction commences or in a place to which that person has been moved; or

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

Sec. 8. 19 MRSA §762, sub-§4, as amended by PL 1981, c. 420, §3, is further amended to read:

4. Family or household members. "Family or household members" means spouses or former spouses, individuals presently or formerly living together as spouses, natural parents of the same child, or adult household members related by consanguinity or affinity and for the purposes of this chapter only, includes individuals presently or formerly living together as sexual partners. Holding oneself out to be a spouse shall is not be necessary to constitute "living as spouses."

Sec. 9. 19 MRSA §762, sub-§6 is enacted to read:

6. Mutual order of protection or restraint. "Mutual order of protection or restraint" means an order that is granted to the defendant in an action under this chapter or the inclusion of language in an order granted to the plaintiff in an action under this chapter that restricts or limits the plaintiff's conduct with regard to the defendant absent the filing of a separate complaint by the defendant, service of the complaint and summons upon the plaintiff and a finding by the court that the plaintiff committed the abuse alleged in the complaint.

Sec. 10. 19 MRSA §764, sub-§2, as amended by PL 1983, c. 583, §26, is repealed and the following enacted in its place:

2. Assistance. Assistance is available as follows.

A. The court shall provide separate forms and clerical assistance to either party in completing and filing of a complaint or other necessary documents. The assistance may not include legal advice or assistance in drafting legal documents.

B. If a judge is unavailable to review a request for temporary relief under this chapter, the clerk shall immediately notify the plaintiff of other courts at which a judge or justice is available.

C. The clerk shall provide the plaintiff written notice of resources where the plaintiff may receive legal or social service assistance.

Sec. 11. 19 MRSA §764, sub-§2-A is enacted to read:

2-A. Forms. The forms provided by the court must be uniform throughout the State and must include a summons and an affidavit for temporary emergency relief from abuse. The summons must include a section in which to list places where the defendant may be located or available to be served. The clerk shall inquire where the defendant may be located or available to be served and list those locations on the summons or direct the plaintiff to do so.

Sec. 12. 19 MRSA §765, sub-§1, as amended by PL 1983, c. 583, §26, is further amended to read:

1. Full hearing. Within 21 days of the filing of a complaint, a hearing shall must be held at which the plaintiff shall must prove the allegation of abuse by a preponderance of the evidence. If a request for temporary, emergency or interim relief is denied, the hearing must be held as soon as practicable within the 21-day period.

Sec. 13. 19 MRSA §765, sub-§2, as amended by PL 1985, c. 546, is further amended to read:

2. Temporary orders. The court may enter any temporary orders authorized under subsection 4 as it deems considers necessary to protect the plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of physical abuse to the plaintiff or minor child shall constitute constitutes good cause. Any order shall remain remains in effect pending a hearing pursuant to subsection 1. If the complaint is filed initially in the Superior Court, the justice, after authorizing any temporary order under this section, may order that further proceedings be transferred to the District Court of the division in which either the plaintiff or the defendant resides.

Sec. 14. 19 MRSA §765, sub-§3-A is enacted to read:

3-A. Denial of relief. Before a request for temporary, emergency or interim relief is denied, the judge shall:

A. Allow the plaintiff the opportunity to be heard in person to support the complaint. The plaintiff may be accompanied by a person of the plaintiff's choice; and

B. Advise the plaintiff of reasons for the denial.

Sec. 15. 19 MRSA §765, sub-§4-A, as amended by PL 1981, c. 420, §6, is further amended to read:

4-A. Service of order. If the court issues a temporary order or orders emergency or interim relief, it shall

order a an appropriate law enforcement agency to serve the defendant personally with the order, the complaint and the summons. To protect the plaintiff, the court may order the omission or deletion of his the plaintiff's address from any papers served on the defendant. The court shall cause the order to be delivered to the law enforcement agency as soon as practicable following the issuance of the order and the law enforcement agency shall make a good faith effort to serve process expeditiously.

Sec. 16. 19 MRSA §765, sub-§6, as amended by PL 1983, c. 583, §26, is further amended to read:

6. Extension. If a hearing under subsection 1 is continued, the court may make or extend such any temporary orders as it deems considers necessary. Notwithstanding any other provision of this section, if a protective order is issued pursuant to section 766, the temporary protective order issued pursuant to this section remains in effect pending service of the final order.

Sec. 17. 19 MRSA §766, sub-§1, as amended by PL 1983, c. 583, §26, is further amended to read:

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

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

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

C. When the mutual residence or household of the parties is jointly owned or jointly leased or 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 leasee lessee;

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

(2) By consent agreement, allowing the party with the duty to support 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 considered appropriate by the court;

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

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

G. Ordering the payment of temporary support for the dependent party or any child in ~~his~~ that party's 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~~ in 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~~ are limited to: Less 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~~ determined necessary or appropriate in the discretion of the court.

Sec. 18. 19 MRSA §766, sub-§§7 to 9 are enacted to read:

7. Mutual order of protection or restraint. The court may not issue a mutual order of protection or restraint.

8. Action by plaintiff. A plaintiff may only extinguish or modify an order by legal process in accordance with the Maine Rules of Civil Procedure. Any other action or inaction on the part of the plaintiff does not alter, diminish or negate the effectiveness of the order. Criminal sanctions may not be imposed upon the plaintiff for violation of any provision of the plaintiff's order for protection.

9. Financial accounting. In all proceedings under this chapter, the court shall apply the child support guidelines using the information the plaintiff is able to provide the court. Failure of any party to file an income affidavit may not unnecessarily delay a proceeding and does not

preclude the issuance of any order, except that the court shall require the plaintiff to complete and file an income affidavit at a final hearing involving child support even if the defendant does not appear for the hearing.

Sec. 19. 19 MRSA §768, sub-§5 is enacted to read:

5. Mediation. The court may not mandate mediation in actions brought under this chapter.

Sec. 20. 19 MRSA §769, sub-§1, as amended by PL 1983, c. 583, §26, is further amended to read:

1. Crime committed. Violation of a temporary, emergency, interim or final protective order or a court approved consent agreement, when the defendant has prior actual notice, which may be notice by means other than service in hand, of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 766, subsection 1, paragraphs F to K. Violation of these paragraphs shall section 766, subsection 1, paragraphs F to K, must be treated as contempt and punished in accordance with law.

Sec. 21. 19 MRSA §770, sub-§§7 and 8 are enacted to read:

7. Law enforcement agency policy. By December 1, 1990, every municipal, county and state law enforcement agency, with the duty to investigate, prosecute and arrest offenders of this chapter and Title 17-A, shall adopt a written policy on the enforcement of this chapter and the handling of domestic abuse cases in general.

8. District attorney prosecutorial policy. By December 1, 1990, the Attorney General, in consultation with the prosecutors' association, shall develop a written policy regarding prosecution of domestic abuse cases under the provisions of Title 17-A. By June 1, 1991, the district attorney, for each of the several counties within the State, shall adopt a written policy regarding prosecution of domestic abuse cases.

Sec. 22. 19 MRSA §770-B is enacted to read:

§770-B. Maine Commission on Domestic Abuse

There is created the Maine Commission on Domestic Abuse, as established by Title 5, section 12004-I, subsection 74-C, hereinafter called the "commission."

1. Composition. The commission is composed of 12 members appointed by the Governor.

A. The Governor shall name the chair from among the following appointed members:

(1) Two members who are representatives of the statewide coalition of family crisis services;

(2) Two members who are representatives of the family counseling profession, one of whom has experience counseling abusers;

(3) One member who is a representative of the Maine Commission for Women;

(4) Two members who are attorneys with experience in domestic relations cases, one of whom has experience representing victims of domestic abuse;

(5) One person who was a victim of domestic abuse and used the court system;

(6) One member who is a district attorney or assistant district attorney;

(7) One member who is chief of a municipal police department;

(8) One member who is a county sheriff; and

(9) The Commissioner of Public Safety or the commissioner's designee.

B. In addition, the Chief Justice of the Supreme Judicial Court is requested to appoint one person to serve the commission in an advisory capacity.

2. Terms of office. The members shall serve 3-year terms.

3. Powers and duties. The commission shall advise and assist the executive, legislative and judicial branches of State Government on issues related to domestic abuse. The commission may make recommendations on legislative and policy actions, including training of the various law enforcement officers, prosecutors and judicial officers responsible for enforcing and carrying out the provisions of this chapter. The entire commission shall meet at least 2 times a year. Subcommittees of the commission may meet as necessary.

See title page for effective date.

CHAPTER 863

S.P. 1001 - L.D. 2482

An Act to Allow the Maine Health Care Finance Commission to Make Individual Hospital Development Account Interim Adjustments

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

PL 1989, c. 588, Pt. A, §59, 2nd ¶ is amended to read:

The commission shall administer the hospital care financing system established by the Maine Revised Stat-

utes, Title 22, chapter 107, as those provisions of law existed prior to the effective date of this Act, with respect to all hospital payment years beginning before October 1, 1990, except that the commission may, upon application by a hospital, grant interim adjustments to financial requirements for payment years beginning on or after October 1, 1989, and before October 1, 1990, to reflect any costs resulting from projects that meet the requirements of Title 22, former section 396-K, subsection 3, paragraph E, as it existed prior to its repeal by section 38 of this Act. The continuing authority provided by this section ~~shall extend~~ extends to the determination and enforcement of compliance with revenue limits for those earlier payment years and to the settlement of payments and adjustments of overcharges and undercharges for those years, in proceedings that may be commenced after the close of those years. Nothing in this Act may be construed to limit the authority of the commission to enforce compliance with or seek penalties for violation of any provision of Title 22, chapter 107, that was in effect at the time of the act, event or failure to act with respect to which enforcement action is taken or penalties are sought.

See title page for effective date.

CHAPTER 864

H.P. 1418 - L.D. 1970

An Act to Regain Full Use of Maine Waters through the Establishment of Color Standards

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

Sec. 1. 38 MRSA §414-C is enacted to read:

§414-C. Color pollution control

1. Color pollution control; finding. The Legislature finds that further, rigorous control of color, odor and foam pollutants is consistent with modernization of the State's kraft pulp industry and that process technologies to accomplish this objective will enhance the competitive position of this industry.

2. Best practicable treatment; color pollution. For the purposes of section 414-A, subsection 1, paragraph D, "best practicable treatment" for color pollution control for discharges of color pollutants from the kraft pulping process is:

A. For discharges licensed and in existence prior to July 1, 1989, 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

B. For discharges licensed for the first time after July 1, 1989, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis.