

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF LABOR
19 UNION STREET, P.O. BOX 259
AUGUSTA, MAINE
04332-0259

JOHN ELIAS BALDACCI
GOVERNOR

LAURA A. FORTMAN
COMMISSIONER

March 23, 2007

The Honorable Lynn Bromley, Senate Chair
The Honorable Nancy E. Smith, House Chair
Members of the Joint Standing Committee on Business, Research, and Economic Development
123rd Maine State Legislature
100 State House Station
Augusta, ME 04333-0100

Dear Senator Bromley, Representative Smith and Members of the Joint Standing Committee on Business, Research and Economic Development:

It is my pleasure to present to the Committee the Report of the Taskforce on Workplace Safety and Violence in response to "Resolve, Chapter 167, To Direct the Department of Labor to Coordinate a Taskforce to Examine and Study Issues Relating to Workplace Safety and Workplace Violence." The Taskforce was to look at four specific issues relating to the workplace in order to improve safety and reduce workplace violence.

I trust this Report provides information the Committee will find useful. If you have any questions regarding the Report, please contact William Peabody, Director of the Bureau of Labor Standards, at (207) 624-6400. Mr. Peabody serves on the Taskforce.

Sincerely,

A handwritten signature in cursive script that reads "Laura A. Fortman".

Laura A. Fortman
Commissioner

LAF/ln

Enc.

L *Maine Department of Labor*
LEGISLATIVE
REPORT

*Report of the Task Force on Workplace Violence and Safety
to the Joint Standing Committee on Labor*

Submitted by the Maine Department of Labor

February 2007

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Auxiliary aids and services are available to individuals with disabilities upon request.

**Report of the Task Force on Workplace Violence and Safety to the Joint
Standing Committee on Labor
February 2007**

Executive Summary

In 2006, the Legislature established the Task Force on Workplace Violence and Safety to make recommendations to the Labor Committee in January 2007 for reducing the risk workplace violence (WPV) in Maine. The task force, accordingly, makes the following recommendations, based on a broad consensus of its members. Recommendations not achieving consensus and suggestions for additional work are included in the body of the report.

The task force recommends:

1. That the Department of Labor, in consultation with business leaders, develop and market to the business community a Workplace Violence Tool Kit.
 - Guiding Principle: If the state poses a challenge to businesses, it should also provide resources to help meet that challenge.
 - The Department has assured the task force that much of the Tool Kit can be developed with existing departmental resources.
 - The department should seek grant funds to support those Tool Kit elements, such as a sophisticated on-line training program, that are beyond the scope of current DOL budget capacity.
 - The task force recommends that the Tool Kit include, at a minimum:
 - a. A purpose statement, outlining the nature of the problem and the rationale for action;
 - b. Model policies for businesses of all sizes and types;
 - c. One or more risk assessment tools, allowing employers to evaluate their individual exposures;
 - d. A directory of community resources that can help businesses plan and implement appropriate risk management strategies;
 - e. Summaries of directly applicable Maine and federal laws;
 - f. A reference library providing business owners with access to a broad base of relevant information; and
 - g. Training resources, including an interactive, on-line training curriculum for employees, available to Maine businesses at no charge.

2. That the Department of Labor and Department of Public Safety develop and adopt WPV reporting standards.
 - Current reporting is unsystematic and incomplete, so that policy-makers in Maine lack needed information about overall prevalence and the specific patterns of violence in each business sector.
 - Anecdotal reports are too variable to serve as a sound basis for policy development.
 - A reliable source of real time and cumulative data is needed, by state and local decision-makers and by individual business owners, to inform evidence-based

policies and programs.

3. That business leaders, with assistance from the Department of Labor, organize a statewide WPV conference to:
 - Provide a platform for business leaders to communicate the importance of the issue to their constituents and to the public at large;
 - Introduce the Tool Kit to the business community; and
 - Provide an opportunity for business owners to offer input to the development of the new reporting standards.
4. That employers in retail businesses adopt the following evidence-based employee protection practices:
 - a. Parking lots be well lighted;
 - b. Entrances be provided with height markers and with notices that cash on premises is limited;
 - c. Windows be devoid of tinting and signage that obstructs the view from outside the building of service areas and cash registers; and
 - d. Cash readily available to employees should be restricted and there should be signs to that effect.

There were two other areas of general agreement. One was that, given that limiting the cash on hand is an effective deterrent, there should be a review of the Lottery requirements for payment of tickets by licensed outlets. Also, that any law specifically aimed at preventing workplace violence, including the current law on convenience stores, is more appropriate as a labor law rather than criminal law.

Report of the Task Force on Workplace Violence and Safety to the Joint Standing Committee on Labor February 2007

The Task Force on Workplace Violence and Safety was established in response to 2005 Resolves, Chapter 167, "Resolve, To Direct the Department of Labor To Coordinate a Task Force To Examine and Study Issues Relating to Workplace Safety and Workplace Violence." The Resolve called for the Task Force to study four issues and report to the Joint Standing Committee on Labor by January 15, 2007. The issues cited were:

1. The adequacy of current laws and standards that address workplace safety and workplace violence and the need for, or benefit of, developing a comprehensive policy on violence in the workplace that consolidates and supplements existing provisions of law in order to improve safety and reduce violence in the workplace;
2. The need for, or benefit of, requiring the use of "panic buttons" or other security systems in businesses open beyond regular business hours;
3. The need for, or benefit of, requiring the posting of laws and policies relating to workplace safety and workplace violence in all places of employment; and
4. The need for, or benefit of, requiring notification to employees of laws and policies relating to workplace safety and workplace violence and education and training regarding workplace safety and workplace violence for all employees, particularly new employees, and management.

The bill that became the Resolve, L. D. 1699, "An Act To Improve Workplace Safety," was a concept draft which proposed to improve workplace safety and eliminate workplace violence by:

1. Requiring the Department of Labor to develop a policy on violence in the workplace;
2. Requiring the policy to be posted in all places of employment;
3. For employers with 15 or more employees, requiring education regarding the policy for new hires and managers;
4. Requiring security systems with "panic buttons" for those businesses that are open other than during regular business hours; and
5. Creating a task force to improve workplace safety and reduce workplace violence. Members of the task force would include representatives from: law enforcement; business; the Department of Labor; the Maine Human Rights Commission; the Society for Human Resource Management or a similar association of human resource managers; and an advocate for victims of workplace violence.

Prior to the group convening, Jennifer Anderson, a departmental research intern, compiled an extensive background paper on workplace violence with a focus on retail industries. The Task Force held its first meeting on August 10, 2006. At that meeting the group reviewed their charge, had a presentation by Ms. Anderson and organized to complete the task. The task force created two committees: the Technology and Hardware Committee, chaired by Johna Lovely, to look at issues concerning security systems and facilities requirements, and the Policy and Training Committee, chaired by Ellen Ridley. The Task Force met eight times through January 11, 2007. Although not specifically mentioned in the original bill, most of the testimony at the hearing on L. D. 1699 centered around late-night retail. This area became a focus for the Task Force, especially the Technology and Hardware Committee. The Policy and Training Committee did look at these issues for all industries.

Background

The federal Occupational Safety and Health Administration (OSHA) defines workplace violence as, "any physical assault, threatening behavior, or verbal abuse occurring in the work setting," and a workplace as, "any location either permanent or temporary where an employee performs any work-related duty.

There are generally acknowledged to be four types of workplace violence. These types are outlined by The Injury Prevention Center and The University of Iowa in their report, "Workplace Violence: A Report to the Nation."

- Type I is violence with criminal intent. In these cases, the perpetrator of the violence has no connection to the business or its employees and is usually committing a crime at the time that violence occurs. Examples of this are robberies or shoplifting.
- Type II is customer/client violence. In these cases, the perpetrator of the violence has a connection with the business and generally becomes violent when being served.
- Type III is worker on worker violence. In these cases, the perpetrator is a current or past employee of the business and the victim is a current employee in the business.
- Type IV is violence stemming from a personal relationship. In these cases the perpetrator does not usually have a direct connection with the business, but rather with one or more employee(s) of the business. The most visible example of this is domestic violence that spills over into the workplace.

Maine is a relatively safe state, yet a body of evidence indicates Maine workers are sometimes at risk for workplace violence. For employers, workplace violence can result in a number of damaging effects including loss of patrons, harmful publicity, potential for litigation, employee turnover, absenteeism, increased workers' compensation costs, and the long-term emotional toll of witnessing an employee's injury or death. As with many issues of public safety, the benefits of implementing a prevention plan need to be weighed against the costs of responding to an incident of preventable workplace violence.

Based on the Maine Uniform Crime Reports (UCR), there was an annual average of 77 workplace robberies – approximately one every five days – between 1994 and 2004. Approximately 41 percent of these occurred in business establishments not provided in detail by the UCR. Of those that could be classified, about 39 percent occur in convenience stores, ten percent in banks and six percent were at gas stations. From 1990 through 2005 there were 17 workplace homicides. Type I (criminal intent) violence accounted for seven (41%); five were in a retail environment (supermarkets, a convenience store, a gas station and a clothing store). Five homicides (29%) resulted from Type IV (personal relationship) violence. Less frequent were Type III (worker-on-worker) with three (18%) and Type II (customer/client) with only two (12%).

According to Maine Workers' Compensation data about 245 workers annually report a lost-time injury due to workplace violence. Looking at occupations, nurses and nurses' aides are the largest group, accounting for 44% of the reports. Retail workers (26 %) and police (18%) were second and third. Research by the Maine Department of Labor shows that workplace violence incidents are underreported in the Workers' Compensation system.

Maine Law

Under Maine criminal law (17 MRSA §3321-A), convenience stores open 24 hours a day must have: 1) a drop safe; 2) a sign stating that between 9:00 p.m. and 5:00 a.m. the cash register contains \$50 or less, that there is a safe in the store, and that the safe is not accessible to employees; 3) a policy that between 9:00 p.m. and 5:00 a.m. no more than \$50 is available to employees; and 4) an alarm, connected to a public or private security agency, or a telephone accessible to employees. Failure to comply is a Class E crime punishable by up to one year imprisonment.

There are no labor laws nor are there any specific OSHA standards addressing workplace violence. Under the General Duty clause applicable to both the federal and state occupational safety and health (OSH) regulations, an employer could be required to address workplace violence if it were a recognized hazard in the employers operations. In Maine, federal OSHA has jurisdiction over private employers.

Federal Law and Law in Other States

There is no federal law on this subject. As noted above, federal OSHA regulations may require an employer to address workplace violence where there is a clear possibility of such violence.

Three states (Florida, New Mexico, and Washington) have laws or rules with some similarity to the Maine convenience store law. That is, they require various types of late-night retail stores to have security and crime prevention measures in place comparable to those in Maine law. California has security standards for acute care hospitals and other health care operations and New York has recently passed such requirements for public employers.

Both California and Minnesota OSHA programs go beyond the General Duty clause by requiring larger employers to establish injury-prevention programs. Although workplace violence is not specifically mentioned, the plans would have to address the issue if it was identified as a hazard in the industry or for the operation of the employer. Both California and Minnesota are state-plan states so their rules cover both private and public employers.

Due to time constraints, the task force was not able to locate specific evidence on the efficacy of the workplace violence laws in place in the above-mentioned states. However, research conducted at UCLA in 2003 indicates that businesses at high risk for violence can decrease their risks by adopting and thoroughly implementing environmental, behavioral, and administrative strategies to reduce risk. In addition, the convenience store industry has strong evidence that a workplace violence prevention program for Type 1 (criminal intent) violence can be extremely effective. For example, Southland Corporation (operator of 7-11 stores across the US), has seen a 71% decrease in the number of store robberies since the implementation of a major robbery deterrence program in 1976.

Continuing research is needed in order to provide a comprehensive picture of effective strategies to reduce workplace violence.

Technology and Hardware Committee

The committee could not agree on a set of recommendations. One presentation to the full Task Force recommended six requirements for certain convenience stores, fast food restaurants and gas stations open outside normal business hours.

1. All convenience stores, fast food restaurants and gas stations in which two or less employees are present at any time and which are open other than regular business hours of 8:00 a.m. until 5:00 p.m. will be equipped with a security system which includes a silent alarm dispatched directly to a private security company and forwarded immediately to emergency personnel;
2. A lighted parking lot which illuminates all areas of the business to include parking areas, all entrances and exits, walkways and gasoline pumps throughout hours of operations;
3. A conspicuous notice at the entrance that states the limit of cash on hand, to be no more than \$50;
4. Window signage that allows a clear and unobstructed view of the service area and cash registers from outside the building;
5. Height markers at all entrance; and
6. The business shall not have window tinting that restricts view from inside the business or out.

The second presentation outlined issues that should be considered in assessing whether certain employers should adopt some of these measures. The first step is a threat assessment, looking at:

- The crime rate in the area;
- The geography (urban versus rural, isolated versus clustered with other businesses);
- The type of business;
- The hours of operation;
- The training provided.

The purpose of the assessment is to make a determination of the need for action based on the threat level at the individual business. The report notes that requirements similar to 2 through 6 on page 3 might be appropriate for a high threat business but could be excessive for low threat businesses.

This presentation argued against alarm systems, particularly panic buttons or silent alarms. Among the problems presented were false alarms, potential to create hostage situations, and that a simple alarm gives the responders no information to assess the situation. The author believes that the telephone is a better choice. A call to E-911 gives the authorities information they need to assess the situation and determine how best to respond. The dispatcher can also apprise the employee of probable response time and assist in calming the employee.

In discussion of these reports by the full Task Force, there was a consensus that requirements 2–6 were useful but there was no agreement that they should be mandated to some specific group of employers. The issue of alarm systems was controversial throughout the process. There were strong arguments on both sides.

There were other issues with the requirements that prompted discussion. Among them:

- The coverage is overly broad as many businesses are open beyond 5:00 p.m. or before 8:00 a.m.;
- The business owner might not own the parking lot and not have control over the lighting;
- The lighting requirements might conflict with local zoning or disturb neighbors;
- The \$50 limit may be too restrictive for some businesses.

On this last issue there was a consensus that the \$50 limit was probably too low and more general language could be used to limit the cash. The cash limit needs to take into account the volume of business that a store will do during the periods covered. More specifically, for those stores that are licensed Lottery outlets, there is a conflict with the Lottery Commission requirements. An outlet needs to be able to pay up to \$100 for any instant game winner and up to \$599 to any lottery winner. This conflicts with the current law on convenience stores and should be reconciled somehow.

Policy and Training Committee

The committee returned with four recommendations. The first three recommendations were a consensus of the committee members and had the general support of the Task Force. All members of the committee did not support the fourth recommendation; likewise this recommendation was not supported by the full membership of the Task Force. The committee recognized that funding for the Department activities in these recommendations was an issue, suggesting that the Department seek grants to support the recommended actions.

Recommendation One: Workplace Violence Tool Kit: The committee recommended that the Maine Department of Labor, (MDOL) develop a comprehensive workplace violence tool kit for all Maine employers by a date to be established. The tool kit should be accessible electronically and also as a packet for employers unable to access the Internet. It would contain the following components:

- Purpose Statement: The face of workplace violence (WPV) in Maine, benefits of implementing a workplace violence policy, liability, costs to employers (public relations, loss of customers, difficulty retaining workers), compliance with law;
- Model policies highlighting prevention and response to WPV;
- Best practices regarding policy effectiveness, strategies for implementation, team approach to policy development;
- A Risk Assessment tool for employers to examine WPV risks associated with the following: industry, geography, clientele, domestic abuse in the workplace, sexual harassment and sexual assault, employee prior criminal history, and other potential WPV hazards;
- Community Resources;
- Applicable Laws;
- Training Resources
 - o On-line, interactive training on workplace violence, with separate modules specific to each type of workplace;
 - o Handouts, quizzes, and other hard copy of training resources for employers unable to access the Internet;
 - o Best practices for training effectiveness;
 - o Content created by content experts within and beyond Maine.
- Alternative, additional workplace violence resources available to employers locally and nationally.

In addition, the committee recommended that MDOL develop a long term method for directing Maine business to the workplace violence tool kit and that particular attention be paid to reaching Maine's small employers (defined as 25 employees or less).

Rationale: Maine employers have an inherent interest in preventing workplace violence, but face three potential barriers in responding to this issue. 1) they may not recognize that a risk to their business exists; 2) they may not know where to seek resources for prevention or intervention; and 3) they may have inadequate time and resources to commit to implementing a comprehensive response.

A workplace violence tool kit created by MDOL would eliminate barriers for Maine employers by enhancing public awareness of existence, extent, and impact of workplace violence in Maine and the need for a comprehensive response and offering a user-friendly, easy-to-access resource for all Maine businesses.

Recommendation Two: Statewide Workplace Violence Workshop: The committee recommended that business, labor, and state government leaders jointly convene a statewide workshop (or workshops, north/south) on the issue of workplace violence following the creation of the MDOL Workplace Violence Tool Kit. The workshop(s) would be designed to:

- Introduce the tool kit to Maine employers through a statewide kick-off event;

- Provide professional associations with a leading role in modeling their workplace violence prevention plans and evidence-based best practices; and
- Strengthen networking between and develop strategies for on-going communication between leaders in business, labor, state government, domestic and sexual assault organizations, and professional and trade associations.

Rationale: A statewide, public event will be an effective way to introduce the MDOL Workplace Violence Tool kit. In addition, it will provide an opportunity for business leaders to champion this resource. Business and industry leaders have a strong effect on their peer group; their public embrace of strategies to combat workplace violence will enhance the overall business response. When business and industry leaders apply their energy to educating peers about the benefits of a workplace violence prevention program, Maine employees and employers will both benefit.

Recommendation Three: Adoption of Workplace Violence Reporting Standards: The committee recommended that the Maine Department of Labor and the Maine Department of Public Safety adopt standards for gathering information about the incidence of workplace violence from existing sources.

Rationale: Currently it is difficult to get an accurate picture of the incidence of workplace violence in Maine. Worker's Compensation data and Public Safety Uniform Crime Reports offer only a limited look at the extent of workplace violence. Increased reporting will provide the missing prevalence data to inform prevention and intervention strategies.

Recommendation Four: Workplace Violence Prevention and Response Planning: The committee recommended passage of a law requiring Maine employers to establish a workplace violence prevention plan as follows: employers with 50 or more employees must have the plan in place by a future date; employers with 15 or more employees must have the plan in place by a later date; employers with less than 15 employees must have the plan in place by a still later date. Models and samples of every required element will be available from the MDOL tool kit no later than one year before the required deadline.

The workplace violence prevention plan must have the following minimum components:

- Completion of a risk assessment tool provided in the MDOL workplace violence tool kit.
- Adoption of a WPV policy that contains:
 - o A purpose statement – violence free-workplace, business commitment to a safe workplace, support for employees who may experience violence at work and/or be experiencing violence at home;
 - o Procedures for responding to WPV, including reporting procedures, response to immediate threats, and response to potential threats;
 - o Expectations of supervisors, managers, and other stakeholders when a threat of WPV exists;
 - o Local and statewide resources to respond to workplace violence issues, including domestic violence and sexual assault resources;
 - o A method for communicating the policy to all employees through training, with new employees trained within 30 days and all employees trained on an annual basis. Training should include, at a minimum, dissemination of the employer's written workplace violence policy and procedures for responding to WPV (including reporting procedures, response to immediate threats, and response to potential threats).

Rationale: A percentage of workplace violence is preventable through the development of a comprehensive response. In one California study, for example, businesses with a high level of compliance in a robbery and workplace violence prevention plan saw a 5% reduction in crime at their business, compared with a 94% increase in crime for the businesses with no compliance in the robbery and workplace violence prevention plan.

Those committee members that didn't support this recommendation believed that the cost, particularly to small businesses, outweighed the possible benefits.

Current Maine Law

While there are some problems with the current Maine law, specifically the \$50 cash limit, there was a consensus in the group that the law is better suited to the labor laws rather than as a criminal law. Absent any other action there should be serious consideration given to refining the cash limit based on the information in this report and move the law into Title 26.

APPENDIX A: Resolve creating the Task Force on Workplace Violence and Safety

RESOLVES

Second Regular Session of the 122nd

**CHAPTER 167
H.P. 1206 - L.D. 1699**

Resolve, To Direct the Department of Labor To Coordinate a Task Force To Examine and Study Issues Relating to Workplace Safety and Workplace Violence

Sec. 1. Coordination of task force. Resolved: That the Department of Labor shall coordinate a task force to examine and study workplace safety and workplace violence. Membership in the task force must be composed of a member of the family of a workplace violence victim and one representative from each of the following:

1. The State Police;
2. The Maine Sheriffs' Association;
3. The Maine Women's Lobby;
4. The Maine Coalition to End Domestic Violence;
5. The Maine Coalition Against Sexual Assault;
6. The Maine Merchants' Association;
7. The New England Convenience Store Association;
8. The Maine Restaurant Association; and
9. The Maine AFL-CIO; and be it further

Sec. 2. Task force study. Resolved: That the task force under section 1, assisted by the Department of Labor, shall study issues relating to the workplace in order to improve safety and reduce workplace violence. As part of its study, the task force shall review the laws and policies of other states and the Federal Government and any reports or analyses regarding the effectiveness of laws and policies in other jurisdictions. The study must include an examination of the following issues and any other issues the department or a member of the task force determines appropriate:

1. The adequacy of current laws and standards that address workplace safety and workplace violence and the need for, or benefit of, developing a comprehensive policy on violence in the workplace that consolidates and supplements existing provisions of law in order to improve safety and reduce violence in the workplace;

2. The need for, or benefit of, requiring the use of "panic buttons" or other security systems in businesses open beyond regular business hours;

3. The need for, or benefit of, requiring the posting of laws and policies relating to workplace safety and workplace violence in all places of employment; and

4. The need for, or benefit of, requiring notification to employees of laws and policies relating to workplace safety and workplace violence and education and training regarding workplace safety and workplace violence for all employees, particularly new employees, and management; and be it further

Sec. 3. Report. Resolved: That the task force under section 1, assisted by the Department of Labor, shall submit a report to the joint standing committee of the Legislature having jurisdiction over labor matters by January 15, 2007 regarding the study conducted pursuant to this resolve. The report must include findings, recommendations and any proposed implementing legislation. The joint standing committee of the Legislature having jurisdiction over labor matters may report out legislation relating to the subject matter of the study to the First Regular Session of the 123rd Legislature.

Effective August 23, 2006.

APPENDIX B: Task Force Membership

John Babb
New England Convenience Store Association

Peter Crockett
Maine Labor Group on Health

Mike Field
Maine Chief's Association

Doreen Fournier-Merrill
The Maine Coalition Against Sexual Assault

Tom Godfrey
Maine Primary Care Association

Peter Gore
Maine State Chamber of Commerce

Ed Gorham
Maine AFL-CIO

Dick Grotton
Maine Restaurant Association

Maj. Randall Liberty
Maine Sheriffs Association

Sgt. Anna Love
Maine State Police

Johna Lovely
Director, Erin's Fund

Jim McGregor
Maine Merchants Association

Anna Melbin
Maine Women's Lobby

William Peabody
Director, Bureau of Labor Standards

Lauralee Raymond
Maine Women's Lobby

Ellen Ridley
Maine Coalition to End Domestic Violence

Lt. Gary Wright
Maine State Police

Department of Labor staff:

Vanessa Santarelli
Linda Nickerson
John Rioux

APPENDIX C: State Laws and Rules Governing Workplace Violence

| State Legal References | Effective Date | Coverage | Basic Requirements | Enforcement & Penalties |
|--|-------------------|---|---|--|
| California Labor Code 6401.7 [Rules: Title 8 CCR Div. 1, Ch. 4, Sub-ch. 7, Sec. 3203] | January 1991 | All employers, except employers with fewer than 20 employees in industries that are not designated as high hazard industries and that have a workers' compensation experience modification rate of 1.1 or less; and employers with fewer than 20 employees in industries that are designated as low hazard industries | Covered employers must establish, implement, and maintain an effective injury prevention program according to specific, detailed guidelines. The guidelines are quite extensive. Basically, they require the employer to develop a comprehensive safety and health program including identification and evaluation of hazards and procedures and training to address the hazards identified. | By the Department of Industrial Relations, Division of Occupational Safety and Health with fines of no more than \$5,000 and/or imprisonment up to 6 months. |
| California Health and Safety Code 1257.7- 1257.8 | July 1995 | All licensed general acute care hospitals, acute psychiatric hospitals, and intermediate care facilities | All covered hospitals must conduct a security and safety assessment and, using the assessment, develop a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. | By the Department of Health Services or local District Attorney with fines of up to \$1,000 and/or imprisonment of up to 180 days. |
| Florida Title XXLI FS Ch. 812.171-175 [Rules: Chapter 2A-5] | April 1992 | Convenience businesses open between 11 PM and 5 AM excluding restaurants, stores with 5 or more employees on staff during those hours, stores with at least 10,000 square feet of retail floor space, or where only the owner or owner's family is on duty after 11PM | Covered business must have: 1) a security camera system; 2) a drop safe or other cash management system; 3) a lighted parking lot; 4) provide public notice that the cash register contains \$50 or less; 5) an unobtrusive view from outside to cash transaction area; 6) height markers at entrance 7) a cash management policy; 8) a silent alarm linked to law enforcement or private security agency,* and 9) train employees in robbery deterrence and safety.* A covered business which experiences a violent crime that wants to continue to conduct business between 11 PM and 5 AM must implement one of the following: 1) have at least two employees on premises during those hours; 2) provide a security guard; 3) install a secured safety enclosure; or 4) lock the premises and conduct business only through an indirect pass-through. Notes: 8) The silent alarm requirement may be waived by the AGO, although no waivers have been granted to date. 9) The training program must be approved biennially by the AGO to meet this requirement. | By Office of Attorney General (AGO) or local authorities (if approved by the AGO) with civil fines of up to \$5,000 per violation. |
| Maine 17 MRSA Sec. 3321-A | September 2003 | Convenience stores that remain open 24 hours a day | All covered convenience stores must have: 1) a drop safe; 2) a sign stating that between 9 PM and 5 AM the cash register contains \$50 or less, that there is a safe in the store, and that the safe is not accessible to employees; 3) a policy that between 9 PM and 5 AM no more than \$50 is available to employees; and 4) an alarm, connected to a public or private security agency, or a telephone accessible to employees. | By the Office of Attorney General or any District Attorney as a Class E crime punishable by no more than one year imprisonment. |
| Maine [Rules] 12-170 Chapter 11, Sec 3(B) 15 | May 2001 | All employers | Minors under 18 years of age may not work alone in a cash-based business. | By the Department of Labor, Bureau of Labor Standards. |

| State Legal References | Effective Date | Coverage | Basic Requirements | Enforcement & Penalties |
|---|-------------------|---|--|---|
| Minnesota 182 MS Sec. 653 sub-div. 8 | January 1991 | All employers with 25 or more employees, all employers in industries designated as high hazard, and employers of fewer than 25 if their Lost Workday Incident Rate is in top 10% or their Workers' Compensation Modification Rate is in the top 25% for their industry | Covered employers must establish a written work place accident and injury reduction program (AWAIR) that must include: 1) how managers, supervisors, and employees are going to be responsible; 2) the methods used to identify and control hazardous conditions; 3) how the plan will be disseminated; 4) how investigations of workplace accidents will occur; and 5) how enforcement will be executed. | By the Department of Labor and Industry with fines of up to \$7,000 for a first offense and up to \$25,000 for repeat offenses. |
| New Mexico 50 NMSA 9-7 [Rules: NMAC 11.5.6] | June 2004 | Convenience stores, defined as any business that is primarily engaged in the retail sale of convenience goods, or goods and gasoline, and employs one or more employees during the normal operating hours excluding hotels, taverns, lodging facilities, restaurants, stores that sell prescription drugs, gasoline service stations, grocery stores, supermarkets, businesses that have more than 10,000 square feet of retail floor space, farmer's markets, roadside stands, on-site farm markets, and other agricultural activities or operations | All covered convenience stores must: 1) have proper exterior lighting; 2) provide appropriate employee training; 3) have at least one of the following late-night (11 pm - 5 am) security measures: a) two employee shifts, b) controlled access area, c) pass through windows, or d) alternate operation; 4) exercise limits on store window signage; 5) have a security surveillance system (fully operational VHS or digital security surveillance system); 6) have a security alarm system; 7) provide a depository or time lock safe; 8) practice cash management; 9) post required signs notifying public of presence of previously mentioned security measures and devices; 10) have adequately lit pay phones; and 11) provide an unobstructed view of sales area. | By the Environmental Department, Bureau of Occupational Safety & Health by fines of not less than \$5,000 nor more than \$70,000. |
| New York Labor Law Ch. 10 Sec. 27-B | March 2007 | All public employers, defined as the state, a political subdivision of the state, a public authority, a public benefit corporation, or any other governmental agency | Every public employer must evaluate its workplace to determine the presence of factors that might lead to the risk of occupational assaults or homicides and provide employees with information and training on those risks. In addition to the above, covered employers with at least 20 employees must develop a written workplace violence prevention program according to certain guidelines and inform employees of the program. | By the Department of Labor, Division of Occupational Safety and Health by fines of up to \$200 a day until compliance is achieved. |
| Washington 49 RCW Ch. 22 | January 1990 | Late night retail establishments, defined as any business or commercial establishment making sales to the public between 11pm and 6 am, except restaurants, hotels, taverns, and lodging facilities | All late night retail establishments must: 1) post a sign that states that there is a safe on the premises that is not accessible to employees and that there is only enough cash in the register to conduct businesses; 2) arrange all material posted in the window so that there a clear and unobstructed view of the cash register; 3) maintain a drop-safe, limited access safe, or comparable device; and 4) ensure adequate lighting for a portion of the parking area that will accommodate all potential customers during late night hours. | By the Department of Labor and Industries, Division of Occupational Safety and Health by fines of not less than \$5,000, not exceed \$70,000. |

APPENDIX D: Johna Lovely's Recommendations for Hardware Requirements

1. All convenience stores, fast food restaurants and gas stations in which two or less employees are present at any time and which are open other than regular business hours of 8:00 a.m. until 5:00 p.m. will be equipped with a security system which includes a silent alarm dispatched directly to a private security company and forwarded immediately to emergency personnel.
2. A lighted parking lot which illuminates all areas of the business to include parking areas, all entrances and exits, walkways and gasoline pumps throughout hours of operations.
3. A conspicuous notice at the entrance that states the limit of cash on hand, to be no more than \$50.
4. Window signage that allows a clear and unobstructed view of the service area and cash registers from outside the building.
5. Height markers at all entrances.
6. The business shall not have window tinting that restricts view from inside the business or out.

APPENDIX E: Report from Dick Grotton, Hardware Sub-committee Member.

The various “hardware” options that may be required in an effort to deter or reduce the incidence of workplace violence at business establishments in Maine will vary significantly by many factors.

One size, or one deterrent, doesn’t fit or apply to every Maine business. The deterrent employed should be dependent upon the threat assessment, crime rate, and other contributing factors.

We should proceed cautiously to maximize workplace safety while avoiding the imposition of unnecessary or burdensome requirements upon Maine’s smallest family businesses. Requirements imposed should be reasonable, readily achievable, and should make a significant difference in workplace safety.

Issues to be considered should be:

Threat Assessment (Likelihood of event at any specific establishment)

Crime rate of geographical area

1. Primary threat (s)
 - a. Robbery
 1. Money
 2. Specific items of value
 - a. Drugs
 - b. Alcohol
 - c. Jewelry – firearms – explosives Etc.
2. Secondary threat (s)
 - a. Personal confrontation / violence
 1. Customer - Employee
 2. Family Member – Employee
 3. Employee – Employee

Contributing Factors

1. Geographical location
 1. Urban environment (local police department)
 2. Rural environment ((County or State Police)
 3. Near major highway or wooded escape route to other roads
 4. Isolated (as opposed to clustered with other nearby businesses).
2. Type of industry
 - a. Bank / credit union
 - b. Convenience store / gas station
 - c. Pharmacy
 - d. Veterinarian
 - e. Agency liquor store
 - f. Retail food / liquor
3. Hours of operation -
 - a. Are businesses open after 5:00 p. m. subject to a greater threat of workplace violence than other businesses? 11:00 p.m.? (The research indicates only marginal differences.)
4. Training
 - a. Customer service training
 - b. Crime – violence prevention
 - c. Confrontation / negotiating skills
 - d. Reporting policies, procedures / requirements (calling authorities – employer, third parties)

The following hardware issues may be appropriate for high threat businesses; some may be excessive for low threat businesses:

1. Exterior Lighting: Businesses should provide and maintain exterior lighting during all evening and nighttime operating hours that ensures clear visibility of the parking areas, walkways, building entrances and exits, and gasoline pump areas.
2. Cash depository – Drop Safe: Businesses should provide at least one, B or higher rated depository or time lock safe in each store.

3. Cash management – Businesses should not have more than \$50.00 in any cash register at any time between the hours of 11:00 P.M. and 5:00 A.M. To protect employee safety the business shall maintain amounts of cash in the registers at all other times that are appropriate to the business requirements.
4. Signage shall be conspicuously displayed indicating that:
5. There is a cash depository in the store.
6. That employees have no access to that cash depository.
7. Cash amount available is strictly controlled.
8. Window signage shall not obstruct the clear visibility of cash handling areas from outside the business.
9. Height markers shall be provided at all entrances – exits.
10. Window treatment – Window tinting, sun shades or screening shall not restrict the view of the interior of the business from the outside.

Alarm Systems

There has been much discussion about alarm systems, specifically panic buttons or silent alarms. It is one of the core questions of the Legislative Resolve.

I am not an advocate of alarm systems applied to an entire business segment on a mass scale without regard to the threat assessment, crime rate or other contributing factors.

Specific alarm systems may well play a role in individual circumstances. The simple presence of an alarm system however, does not appear to be a deterrent to robbery, the primary workplace violence threat.

Banks and credit unions are among the high threat businesses in Maine. They employ cameras with advanced digital videotaping, panic buttons, exploding ink blocks, and bill trap alarms in cash draws. Despite all of these deterrents, banks are among the most frequently targeted businesses for robbery.

Tim Parker of L.L. Bean gave testimony before the Task Force on September 21, 2006 stating that panic buttons or silent alarms had been removed from internal locations at L.L. Bean Stores due to slow police response times, repeated false triggering and inadvertent moves to “push the button” to call police leading to concerns about creating hostage situations.

My concerns:

- 98% of Maine’s land mass is rural in nature.
- Employees may have a false expectation that help can reach them in a few minutes when the alarm is activated. This belief may cause some employees to risk personal injury to “push the panic button.” resulting in unnecessary injuries from panicked assailants or possible hostage situations.
- Of the 490 Maine cities and towns, 107 or 21% of Maine municipalities have local police departments likely capable of responding to alarm calls within 15 minutes.
- The remaining 383 towns rely on law enforcement contracts with County Sheriff Departments or by the Maine State Police.
- Even with the employment of call sharing between County and State Police, it is unlikely that response times to alarms by agencies serving wide geographical regions would be under 30 minutes.
- If employees are appropriately trained not to attempt to activate any alarm until the perpetrator(s) have left the area, what is to be gained from using the “panic alarm?”
- The “Panic Button” can forward no information to authorities. It is simply a blind call for help.
- The responding authorities have no idea what the nature of the emergency is. They have no way to determine if they should be driving 90 mph or 50. The risk to public safety during their response is huge and police liability is enormous.
- A better, safer choice
- A telephone call is more helpful and more immediate than a silent alarm or “panic button.”

- As soon as the phone connection is made, authorities know the caller's location through the E-911 system. The police dispatcher can hear background conversations on the line. Anything heard is recorded and preserved. Even if subsequently disconnected, help is on the way.
- The exact emergency is communicated quickly and directly to the police dispatcher by people actually involved on the scene that know the facts.
- Direction of travel, vehicle or personal descriptions may be transmitted to responding law enforcement officers so they are alert to vehicles and persons they may meet en-route to the scene.
- Police dispatchers can apprise the employee of probable response time and assist in calming the employee and obtaining useful information they may not remember later.

Conclusion:

From the perspective of employee safety, I believe the phone is a better tool than silent alarms.

Whether or not an alarm should be employed in specific situations should be a decision made by law enforcement professionals upon a thorough examination of the specific business and its location, the threat assessment, local crime rate, other contributing factors and the approximate, normal response time by authorities.

APPENDIX F: Policy/Training Subgroup Recommendations

Executive Summary: Maine is a relatively safe state, yet a body of evidence indicates Maine workers are sometimes at risk for workplace violence. For employers, workplace violence can result in a number of damaging effects including loss of patrons, harmful publicity, potential for litigation, employee turnover, absenteeism, increased worker's compensation costs, and the long-term emotional toll of witnessing an employee's injury or death. As with many issues of public safety, the benefits of implementing a prevention plan far outweigh the costs of responding to an incident of preventable workplace violence.

Operating within a prevention framework, the policy/training subgroup created four recommendations that are based on both national and statewide research on the issue of workplace violence (WPV). The recommendations are purposely broad in order to accommodate the wide variety of workplace violence risks that Maine employers may face dependent on industry, number and gender of employees, geographic location, and other factors.

These recommendations seek to create a business-friendly and user-friendly approach to the issue of workplace violence by establishing protocols for an effective workplace violence prevention and response plan. A key component of these recommendations is their collaborative nature, involving the Maine Department of Labor, Maine Department of Public Safety, business and industry leaders, and local resource providers such as the Maine Coalition to End Domestic Violence and the Maine Coalition Against Sexual Assault.

These recommendations are based on real risks that face both Maine employers and Maine employees. These risks may range from the use of verbal threatening from a hostile constituent at a town office to workplace homicide that occurs when a domestic violence offender seeks out the victim at a Maine business. These recommendations seek to inform all Maine employers that no one business or industry is immune.

Finally, these recommendations are based on a research review undertaken in the time frame accorded by Legislative Resolve 2540. Further investigation by the Maine Department of Labor may enhance our findings.

Recommendation One: Workplace Violence Tool Kit

We recommend that the Maine Department of Labor Bureau of Labor Standards establish a comprehensive workplace violence tool kit for all Maine employers by DATE. The tool kit would be accessible electronically and also as a packet for employers unable to access the Internet; it would contain the following components:

- Purpose Statement: The face of WPV in Maine, Benefits of implementing a workplace violence policy, liability, costs to employers (public relations, loss of customers, difficulty retaining workers), compliance with law
- Model policies highlighting prevention and response to WPV
 - Best practices regarding policy effectiveness, strategies for implementation, team approach to policy development
- A Risk Assessment tool for employers to examine WPV risks associated with the following: industry, geography, clientele, domestic abuse in the workplace, sexual harassment and sexual assault, employee prior criminal history, and other potential WPV hazards
- Community Resources
- Applicable Laws
- Training Resources
 - On-line, interactive training on workplace violence, with separate modules specific to each type of workplace violence (Funding note: We recommend that the Maine Department of Labor Bureau of Labor Standards seek grant funding for this project due to the state's current budget climate.)

- Handouts, quizzes, and other hard copy of training resources for employers unable to access the Internet
- Best practices for training effectiveness
- Content created by content experts within and beyond Maine
- Alternative, additional workplace violence resources available to employers locally and nationally

In addition, we recommend that the Maine Department of Labor Bureau of Labor Standards develop a long term method for directing Maine business to the workplace violence tool kit, and that particular attention be paid to reaching Maine's small employers (defined as 25 employees or less).

Rationale: Maine employers have an inherent interest in preventing workplace violence, but face three potential barriers in responding to this issue. 1) They may not recognize that a risk to their business exists; 2) they may not know where to seek resources for prevention or intervention; and 3) they may have inadequate time and resources to commit to implementing a comprehensive response.

A workplace violence tool kit created by the Maine Department of Labor, Bureau of Labor Standards would eliminate barriers for Maine employers by 1) enhancing public awareness of existence, extent, and impact of workplace violence in Maine and the need for a comprehensive response; 2) offering a user-friendly, easy-to-access resource for all Maine businesses.

Recommendation Two: Statewide Workplace Violence Workshop

We recommend that business, labor, and state government leaders jointly convene a statewide workshop (or workshops, north/south) on the issue of workplace violence following the creation of the MDOL Workplace Violence Tool Kit. The workshop(s) would be designed to:

- Introduce the toolkit to Maine employers through a statewide kick-off event;
- Provide professional associations with a leading role in modeling their workplace violence prevention plans and evidence-based best practices; and
- Strengthen networking between and develop strategies for on-going communication between leaders in business, labor, state government, domestic and sexual assault organizations, and professional and trade associations

Rationale: A statewide, public event will be an effective way to introduce the MDOL Workplace Violence Tool kit. In addition, it will provide an opportunity for business leaders to champion this resource. Business and industry leaders have a strong effect on their peer group; their public embrace of strategies to combat workplace violence will enhance the overall business response. When business and industry leaders apply their energy to educating peers about the benefits of a workplace violence prevention program, Maine employees and employers will both benefit.

Recommendation Three: Adoption of Workplace Violence Reporting Standards

We recommend that the Maine Department of Labor, Bureau of Labor Standards and the Maine Department of Public Safety adopt standards for gathering information about the incidence of workplace violence from Maine employers.

Rationale: Currently it is difficult to get an accurate picture of the incidence of workplace violence in Maine. Worker's comp data and Public Safety Uniform Crime Reports offer only a limited look at the extent of workplace violence. Increased reporting will provide the missing prevalence data to inform prevention and intervention strategies.

Recommendation Four: Workplace Violence Prevention and Response Planning

We recommend that the Maine legislature pass a law requiring Maine employers to establish a workplace violence prevention plan as follows: employers with 50 or more employees must have the plan in place by DATE; employers with 15 or more employees must have the plan in place by

DATE; employers with less than 15 employees must have the plan in place by DATE. Models and samples of every required element will be available from the MDOL toolkit no later than one year before the required deadline.

The workplace violence prevention plan must have the following minimum components:

- Completion of a risk assessment tool provided in the MDOL workplace violence tool kit.
- Adoption of a WPV policy that contains
 - A purpose statement – violence free-workplace, business commitment to a safe workplace, support for employees who may experience violence at work and/or be experiencing violence at home
 - Procedures for responding to WPV, including reporting procedures, response to immediate threats, and response to potential threats
 - Expectations of supervisors, managers, and other stakeholders when a threat of WPV exists
 - Local and statewide resources to respond to workplace violence issues, including domestic violence and sexual assault resources
 - A method for communicating the policy to all employees through training, with new employees trained within 30 days and all employees trained on an annual basis. Training should include, at a minimum, dissemination of the employer’s written workplace violence policy and procedures for responding to WPV (including reporting procedures, response to immediate threats, and response to potential threats)

Rationale: A percentage of workplace violence is preventable through the development of a comprehensive response. In one California study, for example, businesses with a high level of compliance in a robbery and workplace violence prevention plan saw a 5% reduction in crime at their business, compared with a 94% increase in crime for the businesses with no compliance in the robbery and workplace violence prevention plan. (See Jennifer Anderson’s report, Workplace Violence: Maine & the Nation, p. 41.) In Maine, LL Bean saw a dramatic reduction in reported cases of workplace violence after implemented a harassment policy in 1998 (Anderson report, p. 26). It is worth noting that since the creation of the Occupational Safety and Health Administration in 1971, workplace fatalities and occupational injuries have been reduced by 50% and 40%, respectively — clearly regulations, standards, and best practices increase worker safety and health. Requiring employers to implement a workplace violence prevention plan is a logical step in ensuring safety of workers. One result will be the reduction of the direct and indirect costs associated with workplace violence.

Supporting Maine Data:

Maine Department of Public Safety Uniform Crime Reports, 1994- 2004 — Analysis of Workplace Robberies

| | '94 | '95 | '96 | '97 | '98 | '99 | '00 | '01 | '02 | '03 | '04 | |
|-------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------|
| Business (Other) | 35 | 40 | 22 | 27 | 26 | 33 | 28 | 49 | 41 | 49 | 31 | 381 44% |
| Gas Station | 3 | 6 | 5 | 7 | 4 | 3 | 3 | 3 | 7 | 9 | 4 | 54 6% |
| Convenience Store | 33 | 41 | 31 | 32 | 41 | 18 | 19 | 39 | 22 | 20 | 36 | 332 39% |
| Bank | 11 | 16 | 3 | 2 | 5 | 4 | 5 | 7 | 14 | 10 | 6 | 83 10% |

According to Maine Uniform Crime Reports, between 1994-2004 the following workplace robberies took place:

- 850 total workplace robberies 1994-2004
- 77 annual workplace robberies (average)
- Approximately every five days a workplace robbery occurs in Maine

Maine Worker's Compensation Board First Report of Injury (1997-2005)

- 2,205 cases of non-fatal workplace violence resulting in lost time from work recorded between 1997-2005, averaging 245 cases per year.
- Some occupations appear to be at greater risk than others. Between 2003-2004, nursing and aides accounted for 44% of incidents, with retail workers accounting for 26% and police, 18% of incidents.
- It has been demonstrated by Maine Department of Labor research (Workplace Violence Surveillance Initiative, 2003) that workplace violence incidents are under-reported to the Maine Worker's Compensation Board.
- Furthermore, employee medical claims resulting from workplace violence are not included in WCB data if they did not result in lost work time.

Workplace Homicides in Maine, Maine Department of Public Safety Homicide reports compiled by DPS Public Information Office), 1990-2005

Note: These homicides have been categorized in the four types of workplace violence as established by the University of Iowa Injury Prevention Research Center in 2001).

Type 1 (Criminal Intent): The perpetrator has no legitimate relationship to the business or its employees, and is usually committing a crime in conjunction with the violence. These crimes can include robbery, shoplifting, and trespassing. Of 17 workplace homicides since 1990, eight were Type 1 workplace violence.

Type 2 (Customer/Client): The perpetrator has a legitimate relationship with the business and becomes violent while being served by the business. This category includes customers, clients, patients, students, inmates, and any other group for which the business provides services. Of 17 workplace homicides since 1990, one was Type 2 violence.

Type 3 (Worker-on-Worker): The perpetrator is an employee or past employee of the business who attacks or threatens another employee(s) or past employee(s) in the workplace. Of 17 workplace homicides since 1990, three were Type 3 violence.

Type 4 (Personal Relationship): The perpetrator usually does not have a relationship with the business but has a personal relationship with the intended victim. This category includes victims of domestic violence assaulted or threatened while at work. Of 17 workplace homicides since 1990, five were Type 4 violence.

Maine Department of Labor/Family Crisis Services Research (Impact of Domestic Violence Offenders on Occupational Safety and Health, 2004; Domestic Violence Survivors at Work: How Perpetrators Impact Employment, 2005)

- Seventeen percent of domestic violence offenders reported bringing weapons to work, including rifles, handguns, and knives. (Offenders Report, 2004)
- Thirteen percent of domestic violence victims reported being assaulted at work (Survivor Report, 2005)
- Forty percent of DV survivors assaulted at work were employed in restaurant industry

- In Maine, domestic violence offenders and victims are employed in a wide variety of industries as noted in the above reports, including banking, government, restaurant/food service, convenience store, education, sales, social services, finance, insurance, and real estate. Because domestic violence is perpetrated without regard to income, education, race, or religion, all businesses are potentially affected when workers are living with domestic abuse at home.