

**STATE OF MAINE
120TH LEGISLATURE
FIRST REGULAR SESSION**

**Executive Summary
of the**

**COMMISSION TO STUDY
DOMESTIC VIOLENCE**

December 2001

Members:

**Sen. Neria R. Douglass, Chair
Sen. Michael J. McAlevey
Rep. William R. Savage, Chair
Rep. Nancy L. Chizmar
Rep. Judith B. Peavey
Nancy Bouchard
Alice Clifford
Tracy A. Cooley
Karen Dostaler
Everett Flannery**

**Susan Fuller
Denise Giles
Edward Googins
Bonnie Hardwick
Susan Harlor
Kathy Jones
Anita St. Onge
Michael Sperry
Patricia Stevens
Hon. Vendean V. Vafiades**

Staff

**Marion Hylan Barr, Esq.
Legislative Analyst
Office of Policy and Legal Analysis
Maine Legislature
(207) 287-1670
www.state.me.us/legis/opla**

**STATE OF MAINE
120TH LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the**

**COMMISSION TO STUDY
DOMESTIC VIOLENCE**

December 2001

Members:

**Sen. Neria R. Douglass, Chair
Sen. Michael J. McAlevey
Rep. William R. Savage, Chair
Rep. Nancy L. Chizmar
Rep. Judith B. Peavey
Nancy Bouchard
Alice Clifford
Tracy A. Cooley
Karen Dostaler
Everett Flannery**

**Susan Fuller
Denise Giles
Edward Googins
Bonnie Hardwick
Susan Harlor
Kathy Jones
Anita St. Onge
Michael Sperry
Patricia Stevens
Hon. Vendean V. Vafiades**

Staff

**Marion Hylan Barr, Esq.
Legislative Analyst
Office of Policy and Legal Analysis
Maine Legislature
(207) 287-1670
www.state.me.us/legis/opla**

Table of Contents

Executive Summary	i
I. INTRODUCTION	1
A. Study Creation and Charge.....	1
B. Commission Process.....	2
II. DOMESTIC VIOLENCE RELATED LEGISLATION ENACTED BY THE FIRST REGULAR SESSION OF THE 120th LEGISLATURE	3
III. FINDINGS AND RECOMMENDATIONS.....	7
A. Bail Commissioners	7
B. Law Enforcement Policies and Protocols: Victim Notification, Risk Assessment, Retrieval of Personal Property	10
C. Communication and Technology.....	11
D. Bail Conditions.....	12
E. Probation.....	13
F. Batterers Intervention Programs	15
G. Domestic Violence Investigators.....	16
H. Children in the Protection from Abuse Process	17
I. Coordination of Process, Parties and Actions	19
J. Education, Training and Communication	21
K. Protection from Abuse Orders.....	23
L. Reconvening the Commission.....	24

Appendices

- A. Authorizing Legislation: Resolve 1999, chapter 126
- B. Membership list, Commission to Study Domestic Violence
- C. Legislation proposed by Commission
- D. Domestic Violence Bail Policy (Memorandum to Bail Commissioners)
- E. New Protection from Abuse form
- F. Matrix of Key Domestic and Sexual Abuse Issues

Executive Summary

The Commission to Study Domestic Violence was created pursuant to Resolve 1999, chapter 126 during the Second Regular Session of the 119th Legislature. The Commission's charge was to invite the participation of experts and interested parties, gather information and request necessary data from public and private entities in order to study the problem of domestic violence and determine methods of alleviating this problem, including, but not limited to:

1. Strengthening protection from abuse orders, including improving communication among the courts, law enforcement and other appropriate government agencies regarding notice and verification of protection from abuse orders;
2. Increasing enforcement of probation and bail conditions; and
3. Examining the handling of all aspects of domestic violence cases from investigation to prosecution to movement through the court system.

The Commission to Study Domestic Violence met 10 times during the Second Regular Session of the 119th Legislature and the First Regular Session of the 120th Legislature. In completing its work the Commission heard presentations by and consulted with representatives from state agencies and other experts who work with victims of domestic abuse and their abusers. Topics of discussion included probation and bail in cases involving domestic abuse, bail commissioners, protection from abuse orders (PFAs), victims, children, batterers intervention programs (BIPs), technology and communication between criminal justice agencies, and training and continued education for all parties in the criminal justice system.

The Commission's recommendations to the Joint Standing Committee on Criminal Justice are outlined below.

Bail Commissioners

The Commission recommends the following.

- All bail commissioners receive mandatory training as soon after appointment as possible, unless the Chief Judge of the District Court determines that a bail commissioner is qualified to carry out the bail commissioner's responsibilities based on experience or equivalent training.
- The mandatory training regarding domestic violence cases include a component that at a minimum requires the bail commissioner to obtain the following information from the jail, the district attorney or the arresting law enforcement officer before determining whether to set bail: a brief history of the alleged abuser; the relationship of the parties; the name, address, phone number and date of birth of the victim; and any existing conditions of protection from abuse orders, bail and probation if known.

- A formal continuing regional education plan be developed by the court that includes regular meetings of bail commissioners and the judiciary by region and that involves training in accepted practices in domestic violence cases and best practices concerning uniform bail conditions.
- Potential resources be pursued to implement the education and training plan for bail commissioners, as well as for oversight and supervision of bail commissioners.
- Bail commissioners be paid on a per case basis by the Judicial Department.

Law Enforcement Policies and Protocols: Victim Notification, Risk Assessment, Retrieval of Personal Property

The Commission recommends the following.

- Law enforcement agencies adopt policies regarding domestic violence that include specific protocols for:
 - ⇒ A process to ensure notification of victims when alleged abusers are released from jail;
 - ⇒ A risk assessment of alleged abusers that includes, at a minimum: the person’s previous history; the parties’ relationship; and the name, address, phone number and date of birth of the victim. The policies must include a process for relaying this necessary information to bail commissioners before a bail determination is made; and
 - ⇒ A process for the safe retrieval of personal property belonging either to the victim or the alleged abuser, which includes at a minimum: identification of a neutral location for retrieval, if possible; the presence of law enforcement during the retrieval; and adequate notice to all parties (i.e., 24 hours) prior to the retrieval.
- The Board of Trustees of the Maine Criminal Justice Academy adopt this expanded domestic violence policy and review minimum policy standards within one year to ensure that all law enforcement agencies satisfy the additional specific requirements.

Communication and Technology

The Commission recommends the following.

- The Legislature and other relevant state agencies support initiatives that may increase the pace of technology implementation.

- Domestic violence histories be added to the information currently or soon to be available on-line.
- Additional methods of access be explored for use by advocates, agencies who provide reduced or no fee legal services to victims and bail commissioners.

Bail Conditions

The Commission recommends the following.

- Education and training of jail staff and other law enforcement officers include instruction about the immediate applicability of all conditions of bail.

Probation

The Commission recommends the following.

- The Department of Corrections be authorized to hire six additional probation officers to be dedicated only to domestic violence caseloads.
- Specialized training be provided to these probation officers, who in turn should be responsible for the training of their peers.
- All dedicated domestic violence probation officers actively participate as part of coordinated community response teams (Community Domestic Violence Task Forces).
- Other courts adopt Kennebec County's probation condition that directs abusers to initiate intake with a batterers intervention program within 5 days following their release.

Batterers Intervention Programs

The Commission recommends the following.

- A State entity be tasked with investigating and identifying underserved populations, the extent of their needs, and effective alternatives.
- All members of the Maine Association of Batterers Intervention Programs participate in coordinated community response teams.
- The Maine Association of Batterers Intervention Programs work and communicate with mental health providers, substance abuse providers and literacy support providers to help each batterer receive all treatment and support that may be needed, which may increase the batterer's ability to participate meaningfully in the batterers intervention program.
- Beginning January 2003 and annually thereafter, the Maine Association of Batterers Intervention Programs report annually to the joint standing committee

having jurisdiction over criminal justice matters regarding progress in meeting benchmarks and goals, development and implementation of programs and the measures of effectiveness of the programs.

Domestic Violence Investigators

The Commission recommends the following.

- Each prosecutorial district be authorized to subcontract for at least one domestic violence investigator;
- Each district attorney be granted funding in that district attorney's office budget to subcontract with an existing local or state law enforcement agency to hire, direct and, if necessary, replace a certified law enforcement officer to work as a domestic violence investigator in the office of that district attorney. As elected officials district attorneys are responsible to their constituents and are best able to identify the needs of their districts; therefore, it is important that each office have discretion to select its own investigator.
- Specialized training be provided to domestic violence investigators, who in turn should be responsible for providing training and support to other officers.

Children in the Protection From Abuse Process

The Commission recommends that this issue be investigated further as proposed below in the recommendation: Reconvening the Commission. The Commission makes the following initial recommendations.

- Because there is a presumption that cross-examining child victims is harmful, we encourage the judiciary to continue to explore avenues to allow and obtain access to additional information about children for cases in which such information is necessary to make informed decisions. The Commission supports a process that begins with a review of current rules of evidence and related statutes and a determination by the judiciary what amendments to those rules and statutes is appropriate to allow court access to additional information. In addition to a fresh review of the rules and statutes, the Commission recommends bifurcating certain protection from abuse hearings in order to deal immediately with the safety concern of abuse but wait until a later time to address other issues affecting the care of the children pending receipt of necessary information. The Commission recommends that such additional information may be obtained through:

1. Authorizing the court to designate non-parties (i.e., statutorily-mandated reporters of abuse pursuant to Title 22) a limited child hearsay exception in protection from abuse cases, an idea that was supported by a large majority of the Commission;
2. Authorizing the court to appoint specifically rostered guardians *ad litem* to serve in protection from abuse cases. These guardians *ad litem*

must first successfully complete advanced and specialized domestic violence training that includes, at a minimum, practical components that give trainees experience in providing ongoing response to real life scenarios with feedback and evaluation from peers. Although all guardians *ad litem* must receive domestic violence training, it is crucial in a case involving children where there are allegations of domestic violence that only guardians who have completed such advanced specialized training be appointed. This training should be provided through cooperative team teaching; and

3. Authorizing the court to interview children in chambers.

Coordination of Process, Parties and Actions

The Commission recommends that this issue be investigated further as proposed below in the recommendation: Reconvening the Commission. At this point the Commission encourages the judiciary to:

- Make efforts to coordinate the civil and criminal court processes in the areas of: protective custody (Title 22), divorce and family law (Title 19-A), criminal law (Title 17-A) and protection from abuse (Title 19-A). Creating continuity in the courtroom when appropriate in such cases where civil and criminal dockets both exist will better serve all parties and the system and will also better ensure the safety of the child and adult victims in abusive homes; and
- Look at the entire system regarding family law, child protective statutes, criminal law and the protection from abuse process and work to identify ways to remove pressures that do not involve immediate safety concerns from the protection from abuse process and the victims. Examples to look to might be recent procedural changes in the divorce laws where modifications allow temporary orders and access to the courts and ultimate relief to be obtained with greater ease for all, including pro se parties. Continued improvements in the process will maintain the purpose and efficacy of the protection from abuse process.

Education, Training and Communication

The Commission recommends the following.

- The judiciary, who has served as a leader in promoting the awareness of domestic violence, develop and convene continuing regional forums to provide cross-disciplinary team training for each court across the State. The Commission envisions that such regional forums would include a broad range of individuals, not unlike the membership of the Community Domestic Violence Task Forces (i.e., judges, court clerks, prosecutors, law enforcement officers, bail commissioners, victims advocates, probation officers, investigators and representatives from the faith community) and that those individuals would participate in their own group process to identify and define problems in the system, share and develop ideas and methods to close the gaps in coordination of

services and communication and solve other system problems. Meeting at least quarterly to discuss local issues and share concerns, participating in training including practical components like responding to case scenarios and learning about state-of-the-art techniques that may be working in other jurisdictions should have a positive impact on the system and on those who work hard to make it better. The Commission recognizes the logistical obstacles that the judiciary faces having no administrative support or regular office space. Based on this the Commission supports the coordination of regional training forums with the Peace in Our Families quarterly meetings (which include representatives from the Community Domestic Violence Task Forces throughout the State) or the Maine Commission on Domestic and Sexual Assault, which has an active working group that focuses on education and training; and

- The judiciary share with the Legislature its experience in developing and convening a continuing forum to provide cross-disciplinary team training and support to each of its courts, including feedback about the impact made by such a forum, new initiatives developed and implemented and measures of success.

Protection From Abuse Orders

The Commission recommends the following.

- Courts be authorized to prohibit the possession of firearms by persons who are subject to temporary protection from abuse orders if the following conditions have been satisfied:
 1. The court discusses the plaintiff's request for the condition prohibiting possession of firearms or other dangerous weapons in person with the plaintiff; and
 2. The court considers whether the prohibition of possession of firearms is an appropriate condition of an order after considering the alleged abuser's history of violence, the type of abuse alleged, any reason the alleged abuser may have to possess firearms (i.e., for employment) and any other reason that the court determines relevant to the case; and
- The subject of a temporary protection from abuse order who is prohibited from possessing firearms be reminded when served of that person's right to request an expedited hearing pursuant to Title 19-A, §4006.

Reconvening the Commission

The Commission recommends the following.

- This Commission reconvene in the interim following the Second Regular Session of the 120th Legislature in order to review the following issues and develop recommendations and implementing legislation if appropriate:

1. Predominant aggressors;
2. Models of supervised visitation;
3. Conflicts created between coexisting orders and conditions, including mutual orders (i.e., protection from abuse orders, visitation or other family law/divorce-related orders, probation conditions and bail conditions);
4. Models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers;
5. The inconsistency in the definitions of “family or household members” in the statutes;
6. Confidentiality programs that allow access to public records without disclosing the location of domestic violence victims;
7. Whether Maine Rules of Criminal Procedure Rule 4 requires clarification or amendment to authorize courts to set conditions of bail on warrants;
8. The following elements of protection from abuse proceedings:
 - a. Legal representation;
 - b. Additional courthouse security and victim safety in courthouses;
 - c. Space for victims to fill out protection from abuse paperwork;
 - d. Twenty-four hour availability of protection from abuse orders;
 - e. Service issues;
 - f. Conditions placed on amendment or dismissal of protection from abuse orders (i.e., should the court require plaintiff to speak with domestic violence advocate or legal advocate before court will amend or dismiss order); and
 - g. Giving the court authority to access additional information about children, including the use of limited hearsay and guardians *ad litem*;
9. Educational components of bail commissioner training and continuing education;
10. Conditions of bail that bail commissioners can order; and

11. The status/progress of technology and computerization of criminal history records, protection orders and bail conditions.

I. INTRODUCTION

A. Study Creation and Charge

The Commission to Study Domestic Violence was created pursuant to Resolve 1999, chapter 126 during the Second Regular Session of the 119th Legislature. The Commission's charge was to invite the participation of experts and interested parties, gather information and request necessary data from public and private entities in order to study the problem of domestic violence and to determine methods of alleviating this problem, including, but not limited to:

1. Strengthening protection from abuse orders, including improving communication among the courts, law enforcement and other appropriate government agencies regarding notice and verification of protection from abuse orders;
2. Increasing enforcement of probation and bail conditions; and
3. Examining the handling of all aspects of domestic violence cases from investigation to prosecution to movement through the court system.

The following persons were appointed or were designated to serve on the Commission: two members of the Senate¹, three members of the House of Representatives², a member of the Maine Sheriffs Association, a member of the Maine Chiefs of Police Association, a member of the Maine Association of Criminal Defense Lawyers, a member of the Maine Prosecutors Association, a member of the Maine Coalition to End Domestic Violence, a survivor of domestic violence, a member of the Maine Commission on Domestic Abuse³; the Victims Service Coordinator for the Department of Corrections; a member of the Maine Association of Batterers Intervention

¹ Due to the fact that the 2-year Commission met during both the 119th and the 120th Legislatures, which resulted in changes in the composition of the Legislature, a total of 3 Senators served on the Commission: one for 2 years and 2 for one year each.

² Due to the fact that the 2-year Commission met during both the 119th and the 120th Legislatures, which resulted in changes in the composition of the Legislature, a total of 4 Representatives served on the Commission: 2 for 2 years each and 2 for one year each.

³ Pursuant to Public Law 2001, chapter 240 the Commission on Domestic Abuse is now called the Commission on Domestic and Sexual Abuse.

Programs; a member of the Department of Corrections, Division of Probation and Parole; a member of the State Police; a member of the Department of Human Services; a member of the Office of the Attorney General; a judge from the District Court; and a District Court clerk⁴. Also, although not a named member in the enabling resolve, the Community Educator of the Family Violence Project participated regularly and contributed significantly to the Commission meetings. (See a list of Commission members at Appendix B.)

B. Commission Process

The Commission to Study Domestic Violence met 10 times during the Second Regular Session of the 119th Legislature and the First Regular Session of the 120th Legislature. In completing its work the Commission heard presentations by and consulted with representatives from state agencies and other experts who work with victims of domestic abuse and their abusers. Topics of discussion included probation and bail in cases involving domestic abuse, bail commissioners, protection from abuse orders (PFAs), victims, children, batterers intervention programs (BIPs), technology and communication between criminal justice agencies, and training and continued education for all parties in the criminal justice system. Some of the participants included: Honorable Jon Levy, Chief Judge, Maine District Court; Honorable Andrew Horton, Judge, Maine District Court; Mark Gozdecki and Troy Thornton, probation officers who supervise persons convicted of crimes involving domestic violence; Nancy Bouchard, Associate Commissioner of the Department of Corrections; Dan Ouellette, Regional Correctional Administrator for Region 3 of the Department of Corrections; Elizabeth Simoni, Executive Director, Maine Pretrial Services; Faye Luppi, Project Director, Violence Intervention Partnership; Richard Gribbin, bail commissioner in Kennebec County; Margaret Groban and Gail Fisk Malone, Assistant United States Attorneys; Terri Harrington, Anne Berlind, Ned Menoyo, Nicholas Worden, Martha Hallisey-Swift, Janice Stuver, Mary Kellett and Rob Langner, Assistant District Attorneys; Lt. Col. Jeffrey Harmon, Maine State Police; Marty Burgess, Mary Campbell, Bonnie Hardwick and Andrea Itkin, directors of batterers intervention programs and Chris York, a former

⁴ This member was unable to participate.

director of a batterers intervention program and former chair of the Maine Association of Batterers Intervention Programs; and Nancy Schiff-Slater and Juliet Holmes-Smith, attorneys for Pine Tree Legal Assistance, Inc.

The Commission established contacts with, heard updates from and worked in conjunction with the following organizations that address issues involving domestic violence: the Maine Commission on Domestic and Sexual Abuse, the Maine Coalition to End Domestic Violence, Community Domestic Violence Task Forces and the Governor's Subcabinet on Domestic Violence.

II. DOMESTIC VIOLENCE-RELATED LEGISLATION ENACTED BY THE FIRST REGULAR SESSION OF THE 120th LEGISLATURE

Between legislative sessions of this 2-year study, the Legislature enacted a number of laws intended to improve systems related to domestic violence, including methods to better protect victims and hold abusers more accountable. A summary of the enacted laws follows, organized alphabetically by the joint standing legislative committee in which each originated.

1. Joint Standing Committee on Appropriations and Financial Affairs

A. Public Law 2001, chapter 439 (Supplemental Budget) accomplished the following:

(1) Appropriated a total of \$1.2 million in Fiscal Year 2001-2002 and \$3 million in Fiscal Year 2002-2003 to support:

(a) adoption of school-based and community based sexual assault and domestic violence prevention education;

(b) direct services to victims of sexual assault or domestic violence; and

(c) infrastructure support, capital needs of agencies and compensation for staff for sexual assault and domestic violence intervention and prevention; and

(2) Authorized the creation of a new position in the Department of Public Safety: Domestic Violence Coordinator.

B. Private and Special Law 2001, chapter 35 authorized the Treasurer of the State of Maine to issue bonds for the Maine State Housing Authority to raise funds for affordable housing, \$2 million of which was designated to provide housing for victims of domestic violence.

2. Joint Standing Committee on Criminal Justice

A. Public Law 2001, chapter 420 specified that a person who violates a protective order by reckless conduct that creates substantial risk of death or bodily injury to the plaintiff named in protective order or by assault on the plaintiff named in protective order is a Class C crime.

B. Public Law 2001, chapter 111 amended the culpable state of mind standard required for a person to endanger the welfare of a dependent person to "intentionally," "knowingly" or "recklessly" and clarified that a legal duty for a dependent person may be inferred if a person has assumed responsibility for the care of the dependent person.

C. Public Law 2001, chapter 252 clarified that judges and bail commissioners must consider certain factors about a defendant's history and the nature of the crime when determining whether to set preconviction bail. These factors are listed in Title 15 §1026, sub-§ 4.

D. Public Law 2001, chapter 429 amended the endangering the welfare of a child law to include the Class C crime of failing to take measures to protect a child from further bodily injury when another person has committed such injury and the person responsible for the care of the child knows of the prior injury.

3. Joint Standing Committee on Judiciary

A. Public Law 2001, chapter 163 gave Probate Court Judges the authority to limit the amount of notice required before ordering a change in a person's name when the purpose is to protect that person's safety.

B. Public Law 2001, chapter 243 specified that a court does not have authority to refer issues of abuse and harassment in protection from abuse and protection from harassment actions to a referee.

C. Public Law 2001, chapter 143 did the following:

(1) Extended the definition of "harassment" to conduct constituting stalking and the violation of privacy and expanded the definition of "harassment" by adding the term "course of conduct" to accommodate the inclusion of stalking;

(2) Made violations of provisions in permanent protection from harassment orders that direct a defendant to refrain from having contact with a plaintiff punishable criminally by conferring express authority for these provisions;

(3) Allowed the clerk of the court to seal identifying information in protection from abuse and protection from harassment cases; and

(4) Criminalized the use, attempted use or threatened use of physical force in violation of a protection from abuse order by conferring express authority for such a provision.

D. Public Law 2001, chapter 273 did the following:

(1) Revised language concerning child custody in the protection from abuse laws to use terms consistent with the language governing parental rights and responsibilities in other situations (replaced the word "custody" to reflect the proper use of the terms "parental rights and responsibilities" and "rights of contact" as used elsewhere in the Maine Revised Statutes, Title 19-A); and

(2) Amended the provisions governing the award of parental rights and responsibilities or rights of contact with minor children after such an award has already been made as part of a protection from abuse order (in a parental rights and responsibilities action the court must determine the proper award de novo and may not rely on the award made in the protection order as precedent).

E. Public Law 2001, chapter 240 did the following:

(1) Added members to the membership of the Maine Commission on Domestic Abuse, and required the commission to report biennially to the Legislature; and

(2) Renamed the Maine Commission on Domestic Abuse to the Maine Commission on Domestic and Sexual Abuse.

III. FINDINGS AND RECOMMENDATIONS

Although a number of laws were recently passed by the Legislature as described above, the Commission's legislative charge presented members with many additional issues. The Commission to Study Domestic Violence was established specifically to provide a legislative forum to look at criminal issues related to domestic violence. After consulting with the experts and the interested parties mentioned above (see I. Introduction) and participating in many thoughtful and lengthy discussions, the Commission makes the following findings and recommendations.⁵

A. Bail Commissioners

The Commission recognizes that the judiciary, having few resources and little time, has made efforts to provide training and oversight to bail commissioners to ensure uniformity. The most recent example of this is training regarding the January 2001 implementation of the Domestic Violence Bail Policy for bail commissioners. These steps have been important, but both members of the Commission and the judiciary believe that a great deal more in terms of training and supervising of bail commissioners is necessary. The Commission makes the following findings.

- ⇒ Uniformity and consistency in bail conditions is integral to better ensure the safety of victims.

- ⇒ A comprehensive initial and continuing education program for bail commissioners is important, and the current statute and policies regarding the training and continuing education of bail commissioners are inadequate.

⁵ Unless otherwise indicated, a majority or all of the members participating at the time a recommendation was made support the recommendation and related findings. However, since part of the membership of the Commission changed several times over the 2-year period, some members may not have been present for the development of each recommendation.

⇒ Frequent contact and communication between the bail commissioners and the judiciary are essential to accountability, and current practices do not support adequate and frequent enough communication and contact.

⇒ The current system for payment of bail commissioners creates an appearance of impropriety that exists because a bail commissioner's fee is paid by the person being bailed. If the bail commissioner does not set bail or if the commissioner sets bail that is high and difficult for the person to post, the bail commissioner does not receive payment.

In light of these findings and the challenges that bail commissioners face making important decisions in short periods of time based on very little information, the Commission recommends that the judiciary take more responsibility over the training and supervision of bail commissioners by ensuring that the following occur.

- All bail commissioners receive mandatory training pursuant to Title 15, §1023 as soon after appointment as possible⁶, unless the Chief Judge of the District Court determines that a bail commissioner is qualified to carry out the bail commissioner's responsibilities based on experience or equivalent training. Achieving this goal will require providing the courts with additional funding to coordinate the training, employ the trainers and provide the training.
- The mandatory training regarding domestic violence cases include a component that at a minimum requires the bail commissioner to obtain the following information from the jail, the district attorney or the arresting law enforcement officer before determining whether to set bail: a brief history of the alleged abuser; the relationship of the parties; the name, address, phone number and date of birth of the victim; and any existing conditions of protection from abuse orders, bail and probation if known. Implementation of this

⁶ All Commission members agreed that bail commissioners should receive mandatory training, although members' views on when such training should occur varied. Some members suggested that bail commissioners should receive training immediately after appointment and before ever setting bail in any case. Others suggested allowing 30 to 180 days to complete training. Although members of the judiciary indicated their strong support for swifter and more structured training for bail commissioners, additional statutory training requirements will require additional resources.

recommendation involves training and oversight, but also involves coordination of criminal justice information and methods of communication, which are heavily influenced by the progress of technology. (See more below in B. Law Enforcement Policies and Protocols: Victim Notification, Risk Assessment, Retrieval of Personal Property and C. Communication and Technology.)

- A formal continuing regional education plan is developed that includes regular meetings of bail commissioners and the judiciary by region and that involves training in accepted practices in domestic violence cases and best practices around uniform bail conditions.⁷ Like speeding up the initial training for bail commissioners, achieving this goal also will require providing the courts with additional funding.
- Potential resources are pursued to implement the education and training plan for bail commissioners, as well as for oversight and supervision of bail commissioners. Training might be provided by cross-disciplinary teams of bail commissioners, district attorneys, advocates and law enforcement officers with whom the courts could contract. Training resources might also be found tapping future VAWA Stop Grant funds and other grant dollars.
- Bail commissioners be paid on a per case basis by the Judicial Department. Again, like speeding up the initial training for bail commissioners and developing a formal continuing regional education plan, this will require providing the courts with additional funding.

⁷ Some members also recommended that such training should include instruction regarding the inappropriateness of setting personal recognizance bail for repeat offenders and those who have violated bail conditions. This would require statutory changes to the Maine Bail Code that would amend the philosophy or current purpose behind preconviction bail. Because the Commission did not fully explore the implications of this idea, it is noted here and may be raised again as part of the proposal to reconvene the Commission for certain duties.

B. Law Enforcement Policies and Protocols: Victim Notification, Risk Assessment, Retrieval of Personal Property

The Commission finds that there are several areas where model law enforcement policies or protocols are necessary to better ensure the safety of victims. Specifically, the regularity and process for notification of victims is varied, not all law enforcement agencies prepare a risk assessment (standardized form) of the alleged abuser that can be utilized to provide necessary information for informed bail and supervision decisions, and the lack of a process for retrieval of the personal property puts the safety of law enforcement and victims at risk. The areas requiring new or refined policies that the Commission identified are:

- ⇒ Notification of victims when alleged abusers are released from jail;
- ⇒ Risk assessment of alleged abusers; and
- ⇒ Retrieval of personal property by the victim or alleged abuser.

Pursuant to Title 25, §2803-B, all law enforcement agencies are required to adopt policies and procedures to deal with domestic violence. The Commission recommends that Title 25 be amended to require that adoption of policies regarding domestic violence include specific protocols for:

- A process to ensure notification of victims when alleged abusers are released from jail;
- A risk assessment of alleged abusers that includes, at a minimum: the person's previous history; the parties' relationship; and the name, address, phone number and date of birth of the victim. The policies must include a process for relaying this necessary information to bail commissioners before a bail determination is made; and
- A process for the safe retrieval of personal property belonging either to the victim or the alleged abuser, which includes at a minimum: identification of a neutral location for

retrieval, if possible; the presence of law enforcement during the retrieval; and adequate notice to all parties (i.e., 24 hours) prior to the retrieval.

In order to implement these recommendations, the Commission further recommends that:

- The Board of Trustees of the Maine Criminal Justice Academy adopt this expanded domestic violence policy and review minimum policy standards within one year to ensure that all law enforcement agencies satisfy the additional specific requirements.

C. Communication and Technology

A number of initiatives regarding coordination and access to criminal history information have been implemented by the State or are in the process of final implementation. Those initiatives include: on-line access by law enforcement to temporary and permanent PFA orders, which has been implemented; on-line access to bail conditions, for which the State Police has completed its component and is waiting for the court to complete its part before final implementation; and on-line access to criminal history records.

Although these are huge improvements in access to information, some pieces include only new criminal or related records. Existing orders and conditions that were made prior to the start up of these on-line initiatives are not part of these systems. Additionally, many of the parties in the criminal justice system have different systems that can “talk” to one another in order to access information, but most are not truly integrated. The next phase of the criminal justice information sharing process involves looking specifically at how information passes through the criminal justice system with the goal of creating an integrated system. Another concern is that as the system is currently operated, bail commissioners and others, including advocates, do not have access to this information. Members of the Community Domestic Violence Task Forces suggested that service providers, like domestic violence shelters and providers of reduced or no-fee legal services to victims be authorized to access the records. The Commission encourages the State Police, the Attorney General and the Community Domestic Violence Task Forces to work to determine if and how to allow expanded access. In regard to

bail commissioners, it appears that they need to continue to talk directly with arresting law enforcement officers, district attorneys and jail staff to obtain information essential to making bail determinations.

Based on these concerns the Commission makes the following findings.

⇒ All persons involved in the criminal justice system need access to basic criminal history information about alleged abusers in order to make informed decisions about bail conditions and probation conditions and supervision to better ensure the safety of victims.

⇒ Information-sharing technology is improving and will continue to do so, but the entire infrastructure for absolute delivery of complete information provided in a timely manner is nonexistent today.

Acknowledging that improvements in technology and access to information have occurred and continue to move forward, the Commission recommends that:

- The Legislature and other relevant state agencies support initiatives that may increase the pace of technology implementation;
- Domestic violence histories be added to the information currently or soon to be available on-line; and
- Additional methods of access be explored for use by advocates, agencies who provide reduced or no fee legal services to victims and bail commissioners.

D. Bail Conditions

The Commission heard testimony of situations in which an abuser with a condition of no contact was incarcerated but continued to make harassing telephone calls to the victim and

situations in which a victim was allowed to visit an incarcerated abuser with a no contact condition. The Commission makes the following findings.

⇒ The statute indicates that bail conditions apply immediately upon being set – whether a defendant is incarcerated or not.⁸

⇒ Because assigning bail conditions of no contact has become a regular process in most domestic violence cases, and because there is a societal interest in ensuring the safety of the victim and promoting the rehabilitation of the alleged abuser by maintaining separation of the parties until a judge determines that conditions of bail should be amended or the case dismissed, conditions of no contact should be enforced immediately.

Based on these findings, the Commission recommends that:

- Education and training of jail staff and other law enforcement officers include instruction about the immediate applicability of all conditions of bail, unless a condition is expressly excluded from immediate applicability in a bail order.⁹

E. Probation

The Commission recognizes that there have been a number of improvements in the probation system that have enhanced the supervision of persons convicted of crimes involving domestic abuse, including:

1. More probation officers in the field, including two who supervise only persons convicted of crimes involving domestic violence;

⁸ One member of the Commission questioned whether bail conditions actually apply when the person is released, instead of applying immediately upon being set if the person is still incarcerated. That member identified concerns about proper notice to the defendant when bail is set and about holding a defendant accountable for contact with the victim if the jail staff allowed the victim to visit the defendant.

⁹ See Title 15, §1026, sub-§7.

2. An ongoing process involving field staff and management throughout the State working together to identify ways to better communicate; and
3. A commitment to training.

The Commission makes the following findings.

⇒ Because the coordinated response to domestic violence across the State is beginning to prove to be effective, continued and consistent training for all is important, and the State needs to be creative in funding and obtaining resources to ensure that continued training is provided.

⇒ Most of the probationers supervised by the dedicated domestic violence probation officers are not reassaulting, which is attributed to close supervision (due to smaller caseloads) and probation officers' close working relationships with the prosecutors, county jail staff, other law enforcement officers, advocates, victims and batterers intervention programs.

Because of these reported improvements and all parties' interests in supporting and creating greater supervision of abusers and enhanced safety of victims, the Commission recommends the following.

- The Department of Corrections be authorized to hire six additional probation officers to be dedicated only to domestic violence caseloads.
- Specialized training be provided to these probation officers, who in turn should be responsible for the training of other probation officers.
- All dedicated domestic violence probation officers actively participate as part of coordinated community response teams (Community Domestic Violence Task Forces).

- Other courts adopt Kennebec County’s probation condition that directs abusers to initiate intake with a batterers intervention program within 5 days following their release.

F. Batterers Intervention Programs

In the context of probation for persons convicted of crimes involving domestic violence, the Commission discussed the use of batterers intervention programs and the varied approaches that the programs utilize. The Commission makes the following findings.

- ⇒ There are many underserved populations in the State for whom current batterers intervention programs are not accessible or appropriate.
- ⇒ A coordinated community response to domestic abuse improves the effectiveness and success of batterers intervention programs.

The Commission recommends the following:

- A State entity be tasked with investigating and identifying underserved populations, the extent of their needs, and effective alternatives.
- All members of the Maine Association of Batterers Intervention Programs participate in coordinated community response teams.
- The Maine Association of Batterers Intervention Programs work and communicate with mental health providers, substance abuse providers and literacy support providers to help each batterer receive all treatment and support that may be needed, which may increase the batterer’s ability to participate meaningfully in the batterers intervention program.
- Beginning January 2003 and annually thereafter, the Maine Association of Batterers Intervention Programs report annually to the joint standing committee having jurisdiction

over criminal justice matters regarding progress in meeting benchmarks and goals, development and implementation of programs and the measures of effectiveness of the programs.

G. Domestic Violence Investigators

The Commission heard a great deal of testimony regarding the integral role that investigators play in the successful prosecution of domestic violence cases. Only a handful of investigators have been employed as dedicated domestic violence investigators, but in those counties where investigators have worked, the role that they play is evident in their contributions to the efficacy of domestic violence units and to the safety of victims. The Commission makes the following findings.

⇒ Law enforcement officers who are not dedicated investigators face the burdens of daily routine police emergencies that require immediate attention; therefore these officers often do not have the ability to thoroughly follow-up on cases involving domestic violence by: collecting additional evidence; establishing close working relationships with the victims, prosecutors, advocates, probation officers and other law enforcement officers; and carrying out searches to ensure that abusers are complying with conditions of protection orders, probation and bail.

⇒ The immediate response capability, specialized training, time and effort that investigators provide are essential components of the coordinated community response to domestic violence.

⇒ Investigators support and supplement the work of all law enforcement officers.

Therefore, the Commission recommends the following.

- Each prosecutorial district be authorized to subcontract for at least one domestic violence investigator;

- Each district attorney be granted funding in that district attorney's office budget to subcontract with an existing local or state law enforcement agency to hire, direct and, if necessary, replace a certified law enforcement officer to work as a domestic violence investigator in the office of that district attorney. As elected officials district attorneys are responsible to their constituents and are best able to identify the needs of their districts; therefore, it is important that each office have discretion to select its own investigator.
- Specialized training be provided to domestic violence investigators, who in turn should be responsible for providing training and support to other officers.

H. Children in the Protection From Abuse Process

One of the areas that raised significant concerns for the Commission and for which little has been done is that involving the safety and protection of children in the protection from abuse process. The Commission makes the following findings regarding children.

- ⇒ Direct as well as indirect exposure to domestic violence is victimization and is dangerous and traumatic to both the children and adults in a family.
- ⇒ Continued harm may result by placing children from abusive homes on the stand to be cross-examined or having them present at protection from abuse proceedings at all.
- ⇒ The current protection from abuse process is not structured necessarily to protect children; there is no system providing adequate protection when there are allegations of abuse to children, although there is such a system protecting the parent.
- ⇒ Courts need the ability to obtain more information in certain cases in order to make reasoned decisions about the safety of children.

⇒ Unlike the child protective statutes in Title 22, the family law statutes in Title 19-A and the Criminal Code in Title 17-A, the purpose of the protection from abuse statute is to provide immediate safety to victims and their children -- there is no time to conduct thorough investigations to make determinations regarding the best interests of children.

⇒ Although the use of the protection from abuse statutes to resolve other family law issues may dilute the effectiveness and compromises the integrity of the protection from abuse process, it is often the only avenue parents have to resolve these issues when there are allegations of abuse.

Since it first began discussing the welfare of children in the protection from abuse process, the Commission learned of the judiciary's ongoing work in this area. Specifically, members of the judiciary brainstormed about the need to access additional information about children in protection from abuse procedures and are reviewing rules and statutes to determine what changes might be needed to accomplish the task of accessing necessary information. Two of the issues that were on their table are the use of child hearsay and guardians *ad litem* in these cases, which are also two of the recommendations that this Commission identified. The Commission would like to commend the court on its initiative in this area and offer its support for future work in the adoption of practices that will better protect children. However, since its last meeting, the Commission also learned that the judiciary does not plan on proposing major policy changes to the rules or statutes at this time. Because these issues are so important, the Commission believes that they should be discussed further and put before the Legislature in the future for consideration as proposed in L. Reconvening the Commission. The Commission makes the following initial recommendations.

- Because there is a presumption that cross-examining child victims is harmful, we encourage the judiciary to continue to explore avenues to allow and obtain access to additional information about children for cases in which such information is necessary to make informed decisions. The Commission supports a process that begins with a review of current rules of evidence and related statutes and a determination by the judiciary what amendments to those rules and statutes is appropriate to allow court access to additional

information. In addition to a fresh review of the rules and statutes, the Commission recommends bifurcating certain protection from abuse hearings in order to deal immediately with the safety concern of abuse but wait until a later time to address other issues affecting the care of the children pending receipt of necessary information. The Commission recommends that such additional information may be obtained through:

1. Authorizing the court to designate non-parties (i.e., statutorily-mandated reporters of abuse pursuant to Title 22) a limited child hearsay exception in protection from abuse cases, an idea that was supported by a large majority of the Commission;
2. Authorizing the court to appoint specifically rostered guardians *ad litem* to serve in protection from abuse cases. These guardians *ad litem* must first successfully complete advanced and specialized domestic violence training that includes, at a minimum, practical components that give trainees experience in providing ongoing response to real life scenarios with feedback and evaluation from peers. Although all guardians *ad litem* must receive domestic violence training, it is crucial in a case involving children where there are allegations of domestic violence that only guardians who have completed such advanced specialized training be appointed. This training should be provided through cooperative team teaching; and
3. Authorizing the court to interview children in chambers.

I. Coordination of Process, Parties and Actions

The Commission did not have a great deal of time to discuss the issues regarding conflicting protection orders and conflicting conditions. However, the Commission acknowledges that such conflicts are created by the various protection order conditions, bail conditions, probation conditions and conditions of other related family law orders that exist simultaneously. Because these conflicts are confusing and dangerous to the children and other

family victims of domestic violence, the Commission would like to continue work in this area as proposed in L. Reconvening the Commission. Based on the discussions the Commission did have, it makes the following initial findings.

⇒ There is a systems issue regarding the partnership of the civil and criminal process; gaps in communication exist in some courts, which result in conflicts in civil and criminal orders and confusion and potential danger to the parties; and

⇒ Judges need to know what is happening in related proceedings involving the same parties.

Currently, advocates who are working with victims involved in multiple proceedings are single-handedly trying to coordinate and provide information to prosecutors and the courts. Other states are considering the development of domestic violence courts or domestic violence dockets to coordinate cases. Although these issues require more investigation and discussion, the Commission encourages the judiciary to:

- Make efforts to coordinate the civil and criminal court processes in the areas of: protective custody (Title 22), divorce and family law (Title 19-A), criminal law (Title 17-A) and protection from abuse (Title 19-A). Creating continuity in the courtroom when appropriate in such cases where civil and criminal dockets both exist will better serve all parties and the system and will also better ensure the safety of the child and adult victims in abusive homes; and
- Look at the entire system regarding family law, child protective statutes, criminal law and the protection from abuse process and work to identify ways to remove pressures that do not involve immediate safety concerns from the protection from abuse process and the victims. Examples to look to might be recent procedural changes in the divorce laws where modifications allow temporary orders and access to the courts and ultimate relief to be obtained with greater ease for all, including pro se parties. Continued

improvements in the process will maintain the purpose and efficacy of the protection from abuse process.

Since the Commission began discussing this issue, it has learned that Chief Judge Levy received a grant and is working to develop protocols for a pilot project in York and Cumberland Counties to better funnel both civil and criminal information arising from one incident to the judges hearing the cases. The group developing the protocols may also look at other domestic violence court models and domestic violence docket models and the possible rotation of judges to provide continuity and consistency over given periods of time. The Commission strongly supports this work of the judiciary in this area.

J. Education, Training and Communication

In each of its 10 meetings the Commission discussed education, training and communication. Regardless of the agenda topic, these three issues repeatedly overlapped all other issues and played a role in each discussion. The Commission recognizes the large amount of work that has been done in providing education and training and expanding communication and encourages the continued work and progress of the Community Domestic Violence Task Forces and others who support and promote the coordinated community response. The task forces, numbering approximately 26 across the State, have involved representatives from all aspects of the system and have provided an important forum for discussions and positive changes. The Commission also recognizes the judiciary's recent domestic violence training and ongoing commitment to work in this area. Regarding education, training and communication the Commission makes the following findings.

⇒ Initial training and ongoing education for all parties involved in the coordinated community response to domestic violence are crucial.

⇒ The State needs to find ways to help support, identify and secure resources for training and education.

⇒ Continued and frequent education and training are necessary to remedy the gaps caused by lack of communication in the system.

In addition to the support of the continued activity of the Community Domestic Violence Task Forces, the Commission recommends and encourages that:

- The judiciary, who has served as a leader in promoting the awareness of domestic violence, develop and convene continuing regional forums to provide cross-disciplinary team training for each court across the State. The Commission envisions that such regional forums would include a broad range of individuals, not unlike the membership of the Community Domestic Violence Task Forces (i.e., judges, court clerks, prosecutors, counsel for defendants (those who handle criminal issues), counsel for parents (those who handle protective custody issues), law enforcement officers, bail commissioners, victims advocates, probation officers, investigators and representatives from the faith community), and that those individuals would participate in their own group process to identify and define problems in the system, share and develop ideas and methods to close the gaps in coordination of services and communication and solve other system problems. Meeting at least quarterly to discuss local issues and share concerns, participating in training including practical components like responding to case scenarios and learning about state-of-the-art techniques that may be working in other jurisdictions should have a positive impact on the system and on those who work hard to make it better. The Commission recognizes the logistical obstacles that the judiciary faces in implementing such a program, since the judiciary has no direct administrative support or regular office space. Based on this the Commission supports the coordination of regional training forums with the Peace in Our Families quarterly meetings (which include representatives from the Community Domestic Violence Task Forces throughout the State) or the Maine Commission on Domestic and Sexual Assault, which has an active working group that focuses on education and training; and
- The judiciary share with the Legislature its experience in developing and convening continuing regional forums to provide cross-disciplinary team training and support to

each of its courts, including feedback about the impact made by such a forum, new initiatives developed and implemented and measures of success.

K. Protection From Abuse Orders

In discussing protection from abuse orders, the Commission focused on safety concerns and specifically how to better ensure victim safety. The Commission makes the following findings.

⇒ Pursuant to data maintained for the Department of Public Safety's Uniform Crime Reporting, in the year 2000 domestic violence was the number one cause of homicides in the State, which supports an historical trend that more than half of all homicides committed in Maine over the past 10 years were domestic violence related. In addition to domestic violence victims becoming homicide victims, many of the abusers in these cases also commit suicide following the homicides.

⇒ The most dangerous time for a victim is that period immediately after a protection from abuse order is issued and the 48 hours following that issuance.

⇒ The majority of domestic violence-related homicides are committed with firearms.

⇒ Courts are limited in their ability to prohibit a person who is the subject of a temporary protection from abuse order from possessing firearms.

The Commission acknowledges that the prohibition of possession of firearms in a temporary abuse order situation has been discussed and debated by the Legislature. The Commission understands and appreciates the desire to balance the public safety interest with the privacy interests and Second Amendment rights of individuals but believes that safety, especially of the victim but also of the public and the abusers themselves, is of substantial concern. Reviewing the trends and appreciating the realities of and complexities of domestic violence cases, the Commission believes that the sacrifice of being prohibited from possessing a firearm

for 48 hours to 21 days¹⁰ is reasonable compared to the State's public safety interest. Based on these observations, the Commission makes the following recommendations.

- Courts be authorized to prohibit the possession of firearms by persons who are subject to temporary protection from abuse orders if the following conditions have been satisfied:
 1. The court discusses the plaintiff's request for the condition prohibiting possession of firearms or other dangerous weapons in person with the plaintiff; and
 2. The court considers whether the prohibition of possession of firearms is an appropriate condition of an order after considering the alleged abuser's history of violence, the type of abuse alleged, any reason the alleged abuser may have to possess firearms (i.e., for employment) and any other reason that the court determines relevant to the case; and
- The subject of a temporary protection from abuse order who is prohibited from possessing firearms be reminded when served of that person's right to request an expedited hearing pursuant to Title 19-A, §4006.

L. Reconvening the Commission

Although the Commission met a total of 10 times over 2 years and a number of other groups are working simultaneously on related issues regarding domestic violence, the Commission members believe that the legislative study group has been a valuable forum connecting legislators to practitioners. The Commission hopes that implementation of its recommendations will improve victim safety, strengthen offender accountability and promote a coordinated community response to domestic violence. The Commission recognizes that

¹⁰ Pursuant to Title 19-A §4006, sub-§7 a person who is subject to a temporary protection order may appear and move dissolution or modification of the order upon 2 days notice to the plaintiff or upon such shorter notice as the court may order. Pursuant to Title 19-A §4006, sub-§1 within 21 days of the filing of a complaint for protection a hearing must be held.

domestic violence is a very complex area in which many initiatives are being developed, and continued discussions and follow-up by the Legislature are an appropriate step. The Commission would like to continue to address issues that it has identified as requiring additional time and attention. The Commission makes the following recommendations.

- This Commission should reconvene in the interim following the Second Regular Session of the 120th Legislature in order to review the following issues and develop recommendations and implementing legislation if appropriate:
 1. Predominant aggressors;
 2. Models of supervised visitation;
 3. Conflicts created between coexisting orders and conditions, including mutual orders (i.e., protection from abuse orders, visitation or other family law/divorce-related orders, probation conditions and bail conditions);
 4. Models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers;
 5. The inconsistency in the definitions of “family or household members” in the statutes;
 6. Confidentiality programs that allow access to public records without disclosing the location of domestic violence victims;
 7. Whether Maine Rules of Criminal Procedure; Rule 4 needs clarification or amendment to authorize courts to set conditions of bail on warrants;
 8. The following elements of protection from abuse proceedings:

- a. Legal representation;
 - b. Additional courthouse security and victim safety in courthouses;
 - c. Space for victims to fill out protection from abuse paperwork;
 - d. Twenty-four hour availability of protection from abuse orders;
 - e. Service issues;
 - f. Conditions placed on amendment or dismissal of protection from abuse orders (i.e., should courts require plaintiff to speak with domestic violence advocate or legal advocate before court will amend or dismiss order); and
 - g. Giving the court authority to access additional information about children, including the use of limited hearsay and guardians *ad litem*;
9. Educational components of bail commissioner training and continuing education;
10. Conditions of bail that bail commissioners can order; and
11. The status/progress of technology and computerization of criminal history records, protection orders and bail conditions.

The Commission should report its findings and recommendations to the First Regular Session of the 121st Legislature.

APPENDIX A

Authorizing Legislation: Resolve 1999, chapter 126

CHAPTER 126
H.P. 1906 - L.D. 2651

Resolve, to Establish the Commission to Study Domestic Violence

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, domestic violence is a pervasive and atrocious problem in Maine and nationwide; and

Whereas, for the health and well-being of the people of Maine, it is imperative that reasonable and sound measures be taken to alleviate the problem of domestic violence; and

Whereas, in order to adequately address the problem of domestic violence, it needs to be determined what the issues and problems are and what reasonable and sound measures need to be taken; and

Whereas, this determination needs to be undertaken as soon as possible so that the problem of domestic violence may be alleviated quickly; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Commission established. Resolved: That the Commission to Study Domestic Violence, referred to in this resolve as the "commission," is established; and be it further

Sec. 2. Commission membership. Resolved: That the commission consists of the following members:

1. Two members of the Senate, appointed by the President of the Senate. When making the appointments, the President shall give preference to members of the Joint Standing Committee on Criminal Justice and the Joint Standing Committee on Judiciary;

2. Three members of the House of Representatives, appointed by the Speaker of the House. When making the appointments, the Speaker shall give preference to members of the Joint Standing Committee on Criminal Justice and the Joint Standing Committee on Judiciary;

3. One member of the Maine Association of Clerks of Courts who works in the District Court, selected by that association;

4. One member of the Maine Sheriffs Association, selected by that association;

5. One member of the Maine Chiefs of Police Association, selected by that association;

6. The President of the Maine Association of Criminal Defense Lawyers, or the president's designee;

7. The President of the Maine Prosecutors Association, or the president's designee;
8. The Director of the Maine Coalition to End Domestic Violence, or the director's designee;
9. A survivor of domestic violence, appointed by the President of the Senate;
10. The Chair of the Maine Commission on Domestic Abuse, or the chair's designee;
11. The Victims Service Coordinator for the Department of Corrections;
12. The chair of the Maine Association of Batterers Intervention Programs or the chair's designee;
13. One member of the Department of Corrections, Division of Probation and Parole, appointed by the Commissioner of Corrections;
14. The Chief of the State Police or the chief's designee;
15. The Commissioner of Human Services or the commissioner's designee; and
16. The Attorney General or the Attorney General's designee.

The commission shall ask the Chief Justice of the Supreme Judicial Court to designate a judge or retired judge from the District Court to serve on the commission as a voting member. Members who are Legislators may serve only while Legislators. If necessary, the President of the Senate and Speaker of the House shall appoint new legislative members; and be it further

Sec. 3. Chairs. Resolved: That the first named Senate member is the Senate chair of the commission and the first named House of Representatives member is the House chair of the commission; and be it further

Sec. 4. Appointments; meetings. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs of the commission shall call and convene the first meeting of the commission no later than 30 days after all appointments have been made. The commission may hold up to 8 meetings; and be it further

Sec. 5. Duties. Resolved: That the commission shall invite the participation of experts and interested parties, gather information and request necessary data from public and private entities in order to study the problem of domestic violence and determine methods of alleviating this problem, including, but not limited to:

1. Strengthening protection from abuse orders, including improving communication between the courts, law enforcement and other appropriate government agencies regarding notice and verification of protection from abuse orders;
2. Increasing enforcement of probation and bail conditions; and
3. Examining the handling of all aspects of domestic violence cases from investigation to prosecution to movement through the court system; and be it further

Sec. 6. Staff assistance. Resolved: That, upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the commission. If requested by the commission, the Department of Public Safety, the Department of Corrections and the Office of the Attorney General also shall provide assistance; and be it further

Sec. 7. Compensation. Resolved: That the members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for necessary expenses incurred for their attendance at authorized meetings of the commission. Other members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings; and be it further

Sec. 8. Report. Resolved: That the commission shall submit its report, together with any necessary implementing legislation, to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than December 5, 2001. The joint standing committee of the Legislature having jurisdiction over criminal justice matters may introduce a bill during the Second Regular Session of the 120th Legislature. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 9. Budget. Resolved: That the chairs of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for approval. The commission may not incur expenses that would result in the commission exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chairs and staff with a status report on the commission's budget, expenditures incurred and paid and available funds; and be it further

Sec. 10. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

2000-01

LEGISLATURE

Commission to Study Domestic Violence

Personal Services \$1,100

All Other 1,000

Provides funds for the per diem and expenses of legislative members of the Commission to Study Domestic Violence.

LEGISLATURE _____

TOTAL \$2,100

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

Effective May 8, 2000.

APPENDIX B

Membership list, Commission to Study Domestic Violence

COMMISSION TO STUDY DOMESTIC VIOLENCE

Resolves 99, Chapter 126

Membership 2000

Appointment(s) by the President

Sen. William B. O'Gara **Chair**
29 Cardinal Street
Westbrook, ME 04092
(207)-774-9467

Susan Fuller Survivor of Domestic Violence
11 Thistle Lane
Falmouth, ME 04105
(207)-774-5074
e-mail: SFuller@CMHC.ORG

Sen. Paul T. Davis, Sr.
RR 1 Box 557
36 Townhouse Road
Sangerville, ME 04479
(207)-876-4047
e-mail: SENDAVIS@Midmaine.com

Appointment(s) by the Speaker

Rep. William R. Savage **Chair**
P.O. Box 417
Buxton, ME 04093
(207)-774-3949

Rep. Nancy L. Chizmar
11 School Street
P.O. Box 92
Lisbon Falls, ME 04252
(207)-353-2247
e-mail: NLCHIZMAR@AOL.COM

Sen. Michael J. McAlevey
West Road
P.O. Box 340
Waterboro, ME 04087
(207)-247-5719
e-mail: mmcalevey@cybertours.com

Ex Officio

Alice Clifford Maine Prosecutors Association (Designee)
Penobscot County District Attorney's Office
97 Hammond Street
Bangor, ME 04401-4990
(207)-942-8552

Tracy A. Cooley Director, Maine Coalition to End Domestic Violence
Maine Coalition to End Domestic Violence
170 Park Street
Bangor, ME 04401
(207)-941-1194

Karen Dostaler, Esq. Maine Association of Criminal Defense Lawyers (Designee)
555 Forest Avenue, Suite 202
Portland, ME 04101
(207)-772-1682
e-mail: dostaler@maine.rr.com

Denise Giles
Dept. of Corrections
111 State House Station
Augusta, ME 04333-0111
(207)-287-4385
e-mail: Denise.Giles@state.me.us

Victim Services Coordinator, Dept. of Corrections

Susan Harlor, Director
Community Services Ctr. - DHS
11 State House Station
Augusta, ME 04333-0011
(207)-287-5060

Department of Human Services (Designee)

Colonel Michael Sperry
Maine State Police
42 State House Station
Augusta, ME 04333-0042
(207)-624-7068
e-mail: Michael.R.Sperry@state.me.us

Chief, Maine State Police

Anita St. Onge, Research Associate
Edmund S. Muskie School of Public Service
400 Congress St, 5th Floor, PO Box 15010
Portland, ME 04112
(207)-780-5851
e-mail: anitas@usm.maine.edu

Chair, Maine Commission on Domestic Abuse

Patricia Stevens
Dept. of the Attorney General
84 Harlow St., 2nd Floor
Bangor, ME 04401
(207)-941-3070

Attorney General (Designee)

Chris York
Menswork
283 Water Street
Augusta, ME 04330
(207)-623-7252
e-mail: menswork@powerlink.net

Chair, Maine Association of Batterers Intervention Programs

Chief Justice

Honorable Vendean V. Vafiades
Maine District Court
145 State Street
Augusta, ME 04333-0111
(207)-287-8075

Representing District Court Judges

Commissioner, Department of Corrections

Ms. Ruth Quirino
Adult Community Corrections
164 Hogan Road
Bangor, ME 04401
(207)-941-4715
e-mail: Ruth.Quirino@state.me.us

Representing Division of Probation and Parole, Dept. of Corrections

Maine Association of Clerks of Courts

Kathy Jones
Maine District Court
145 State St.
Augusta, ME 04330
(207)-287-8075

Representing District Court Clerks

Maine Chiefs of Police Association

Edward Googins, Chief
South Portland Police Dept.
30 Anthoine Street
South Portland, ME 04106
(207)-799-5517
e-mail: egoogins@spsd.org

Maine Chiefs of Police Association (Designee)

Maine Sheriff's Association

Bryan Lamoreau, Sheriff
Kennebec County Sheriff's Dept.
125 State Street
Augusta, ME 04330
(207)-623-3614

President, Maine Sheriffs Association

APPENDIX C

Legislation proposed by Commission

PROPOSED LEGISLATION

Title: An Act to Implement the Recommendations of the Commission to Study Domestic Violence

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

PART A

Sec. A-1. 15 MRSA §1023, sub-§4 is repealed and replaced with the following:

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

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

B. Change the bail that has been set by a court; or

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

(1) A brief history of the defendant;

(2) The relationship of the defendant and alleged victim;

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

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

Sec. A-2. 15 MRSA §1023, sub-§5 is amended to read:

5. Fees. A bail commissioner is entitled to receive a fee not to exceed \$40 for the charges pursuant to which the defendant is presently in custody. ~~The bail commissioner shall submit such forms as the Judicial Department directs to verify the amount of fees received under this subsection. The sheriff of the county in which the defendant is detained may create a fund for the distribution by the sheriff or the sheriff's designee for the payment in whole or in part of the \$40 bail commissioner fee for those defendants who do not have the financial ability to pay that fee. The judicial department shall pay the bail commissioner's fee.~~

Sec. A-3. 15 MRSA §1023, sub-§7 is amended to read:

7. Mandatory training. As a condition of appointment and continued service, a bail commissioner must successfully complete a bail training program, as prescribed and scheduled by the Chief Judge of the District Court, not later than ~~one year~~ 180 days following

PROPOSED LEGISLATION

appointment, unless the Chief Judge of the District Court determines that the bail commissioner is qualified to carry out the responsibilities of a bail commissioner based on equivalent experience or training. The Maine Criminal Justice Academy shall provide assistance to the Chief Judge of the District Court in establishing an appropriate training program for bail commissioners. The program shall include instruction on the provisions of this chapter, the relevant constitutional provisions on bail and any other matters pertinent to bail that the Chief Judge of the District Court considers appropriate and necessary. The Chief Judge of the District Court ~~may~~ shall establish a regional continuing education program for bail commissioners that includes regular meetings of the bail commissioners and members of the judiciary and, at a minimum, training in accepted practices in domestic violence cases and best practices concerning uniform bail conditions.

PART B

Sec. B-1. 19-A MRSA §4006 sub-§5, ¶¶E and F are amended to read:

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

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

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

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

(1) The defendant's history of violence;

(2) The type of abuse alleged;

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

(4) Any other reason that the court determines relevant to the complaint.

PART C

Sec. C-1. 25 MRSA §2803-B is amended to read:

PROPOSED LEGISLATION

§2803-B. Requirements of law enforcement agencies

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

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

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

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy no later than June 1, 1995, except that policies for expanded requirements for domestic violence under paragraph D may be established no later than January 1, 2003.

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

PROPOSED LEGISLATION

under subsection 1, paragraph D must be made to the board no later than January 1, 2003. This certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D must be made no later than June 1, 2003.

4. Penalty. An agency that fails to comply with any provision of subsection 3 commits a civil violation for which the State Government or local government entity whose officer or employee committed the violation may be adjudged a forfeiture not to exceed \$500.

5. Annual standards review. The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

PART D

Sec. D-1. Commission established. Resolved: That the Commission to Study Domestic Violence, referred to in this resolve as the "commission," is established; and be it further

Sec. D-2. Commission membership. Resolved: That the commission consists of the same members last appointed or invited to serve on the Commission to Study Domestic Violence pursuant to Resolve 1999, chapter 126. If any of those members cannot serve, the person responsible for appointing that member pursuant to Resolve 1999, chapter 126 shall appoint a new member; and be it further

Sec. D-3. Chairs. Resolved: That the chairs of the Commission to Study Domestic Violence pursuant to Resolve 1999, chapter 126 shall continue to serve as chairs, unless unable. If new chairs must be appointed, the first named Senate member is the Senate chair of the commission and the first named House of Representatives member is the House chair of the commission; and be it further

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

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

PROPOSED LEGISLATION

1. Predominant aggressors;
2. Models of supervised visitation;
3. Conflicts created between coexisting orders and conditions, including mutual orders (i.e., protection from abuse orders, visitation or other family law/divorce-related orders, probation conditions and bail conditions);
4. Models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers;
5. The inconsistency in the definitions of “family or household members” in the statutes;
6. Confidentiality programs that allow access to public records without disclosing the location of domestic violence victims;
7. Whether Maine Rules of Criminal Procedure Rule 4 needs clarification or amendment to authorize courts to set conditions of bail on warrants;
8. The following elements of protection from abuse proceedings:
 - a. Legal representation;
 - b. Additional courthouse security and victim safety in courthouses;
 - c. Space for victims to fill out protection from abuse paperwork;
 - d. Twenty-four hour availability of protection from abuse orders;
 - e. Service issues;
 - f. Conditions placed on amendment or dismissal of protection from abuse orders (i.e., should courts require plaintiff to speak with domestic violence advocate or legal advocate before court will amend or dismiss order); and
 - g. Giving the court authority to access additional information about children, including limited hearsay and guardians *ad litem*;
9. Educational components of bail commissioner training and continuing education;
10. Conditions of bail that bail commissioners can order; and
11. The status/progress of technology and computerization of criminal history records, protection orders and bail conditions; and be it further

PROPOSED LEGISLATION

Sec. D-6. Staff assistance. Resolved: That, upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the commission while the Legislature is not in session; and be it further

Sec. D-7. Compensation. Resolved: That the members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for necessary expenses incurred for their attendance at authorized meetings of the commission. Other members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings; and be it further

Sec. D-8. Report. Resolved: That the commission shall submit its report, together with any necessary implementing legislation, to the Legislature no later than December 30, 2002. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. D-9. Budget. Resolved: That the chairs of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for approval. The commission may not incur expenses that would result in the commission exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chairs and staff with a status report on the commission's budget, expenditures incurred and paid and available funds; and be it further

Sec. D-10. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

2002-03

LEGISLATURE

Commission to Study Domestic Violence

Personal Services \$ to be determined

All Other \$ to be determined

Provides funds for the per diem and expenses of legislative members and expenses of other members of the Commission to Study Domestic Violence.

LEGISLATURE

TOTAL

PROPOSED LEGISLATION

PART E

Sec. E-1. Maine Association of Batterers Intervention Programs; report. Beginning January 2003 and annually thereafter, the Maine Association of Batterers Intervention Programs must report annually to the joint standing committee having jurisdiction over criminal justice matters regarding progress in meeting benchmarks and goals, development and implementation of programs and the measures of effectiveness of the programs.

PART F

Sec. F-1. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part .

CORRECTIONS, DEPARTMENT OF	2002-2003	2003-2004
Positions	(6,000)	(6,000)
Personal Services	\$	\$
All Other	\$	\$
	(to be determined)	

Appropriates funds for six dedicated probation officer positions to supervise caseloads of persons who are convicted of crimes involving domestic violence.

ATTORNEY GENERAL, DEPARTMENT OF	2002-2003	2003-2004
All Other	\$	\$
	(to be determined)	

Appropriates funds for each District Attorney to contract with a law enforcement agency to have at least one dedicated law enforcement officer investigator position in each prosecutorial district to investigate and provide support in cases of crimes involving domestic violence.

SUMMARY

This bill implements the recommendations of the Commission to Study Domestic Violence. The bill does the following.

1. It amends the law regarding bail commissioners to specify that, in a case involving domestic violence, a bail commissioner may not set preconviction bail for a defendant before the bail commissioner has made a good faith effort to obtain from the arresting officer, the district

PROPOSED LEGISLATION

attorney, a jail employee or other law enforcement officer, the following: a brief history of the defendant; the relationship of the parties; the name, address, phone number and date of birth of the victim; and existing conditions of protection from abuse orders, conditions of bail and conditions of probation.

2. It amends the law to require the bail commissioners' fees to be paid by the court, instead of by the person being bailed.

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

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

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

6. It amends the requirements of law enforcement agencies to develop certain policies by specifying that policies regarding domestic violence must include, at a minimum, the following: a process to ensure that victims receive notification of the defendant's release from jail; a risk assessment for defendant's that includes the defendant's previous history, the parties' relationship, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made; and a process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and at least 24 hours notice to each party prior to the retrieval.

7. It establishes the Commission to Study Domestic Violence whose members are the same as those of the study commission established pursuant to Resolve 1999, chapter 126. This commission is charged with inviting the participation of experts and interested parties, gathering information and requesting necessary data from public and private entities in order to review the following issues and develop recommendations and implementing legislation if appropriate: predominant aggressors; models of supervised visitation; conflicts created between coexisting orders and conditions, including mutual orders; models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers; the inconsistency in the

PROPOSED LEGISLATION

definitions of “family or household members” in the statutes; confidentiality programs that allow access to public records without disclosing the location of domestic violence victims; whether Maine Rules of Criminal Procedure Rule 4 needs clarification or amendment to authorize courts to set conditions of bail on warrants; a number of elements of the protection from abuse process; educational components of bail commissioner training and continuing education; conditions of bail that bail commissioners can order; and the status/progress of technology and computerization of criminal history records, protection orders and bail conditions. The commission shall report its recommendations and legislation to the Legislature by December 30, 2002.

8. It directs that beginning January 2003 and annually thereafter, the Maine Association of Batterers Intervention Programs must report annually to the joint standing committee having jurisdiction over criminal justice matters regarding progress in meeting benchmarks and goals, development and implementation of programs and the measures of effectiveness of the programs.

9. It appropriates general fund money to the Department of Corrections to create 6 new probation officers who will supervise persons convicted of crimes involving domestic violence.

10. It appropriates general fund money for each District Attorney to contract with a law enforcement agency to have at least one dedicated law enforcement officer investigator position in each prosecutorial district to investigate and provide support in cases of crimes involving domestic violence.

G:\OPLALHS\LHSSTUD\Domestic Violence\Proposedlegislation.doc (12/19/01 8:47 PM)

APPENDIX D

**Domestic Violence Bail Policy
(Memorandum to Bail Commissioners)**

MEMORANDUM

To: Bail Commissioners
From: Chief Judge Westcott
Date: December 6, 2000
Re: Domestic Violence Bail Policy

In order to ensure the safety of the alleged victim(s) and to create more uniformity statewide in setting bail conditions in Domestic Violence cases, the following policy shall be observed by all Bail Commissioners, effective January 1, 2001.

Domestic Violence Bail Policy

I. Bail Conditions.

A. The following bail conditions shall be presumptively (as a general rule) applied to all persons arrested for a domestic violence crime:

(1) **No Contact.** Defendant shall have no contact, direct or indirect, with the victim(s); and

(2) **Not to Enter Residence.** Defendant shall not enter or go within 100 feet of the victim(s) residence or place of employment.

B. The following bail condition shall be presumptively (as a general rule) applied to all persons arrested for a domestic violence crime who were impaired, at the time of the crime, to the slightest degree by the use of alcohol or illegal drugs:

(1) **No Possession of Alcohol or Scheduled Drugs.** Defendant shall not possess, consume or use alcoholic beverages or scheduled drugs, and shall submit to a chemical test and search of defendant's person, premises and vehicle upon the request of any police or probation officer to determine whether the defendant is in violation of this condition.

C. The following bail condition shall be presumptively (as a general rule) applied to all persons arrested for a domestic violence crime who use or threaten to use a firearm or dangerous weapon, who threaten to kill or seriously injure the victim, or who present a credible threat to the physical

safety of the victim or immediate family members:

(1) **Weapons.** Defendant shall not use or possess a firearm or dangerous weapon and shall submit to a search of defendant's person, premises and vehicle upon the request of any police or probation officer to determine whether the defendant is in violation of this condition.

II. Early Arraignment/Initial Appearance Date. In all cases in which no-contact provisions have been imposed, the Bail Commissioners shall use 30 days from the date of the arrest as the presumptive latest date for arraignment, except in those areas where criminal court meets but once a month.

Rationale for Policy. The presumptions (general conditions) are not mandatory. The commissioner in the exercise of his or her discretion may conclude that good cause exists for taking another approach. However, the presumptions (general conditions) shall be followed in most cases. The restriction on the use of alcohol or drugs lowers the risk of impulsive behavior, and the restriction on the use of a gun or dangerous weapon lessens the risk of serious bodily injury. The immediate imposition of the no contact conditions by a bail commissioner ensures the safety of the alleged victim(s), allows people "to cool down", and requires the arrested person go through a process that as much as possible ensures the safety of all involved. That process includes a bail hearing with the benefit of police reports and the opportunity for counsel for the defendant and the state, as well as input from the victim. With an early court-appearance, the conditions may be reviewed and removed or modified by a court in the appropriate cases.

III. Determination: If a bail commissioner is uncertain whether a defendant's offense involves domestic violence, the commissioner should make reasonable efforts to communicate with law enforcement officials before determining whether domestic violence bail conditions should be applied.

Examples of domestic violence crimes are: assault, terrorizing, stalking, reckless conduct with a firearm, rape, gross sexual assault, kidnapping, criminal restraint, criminal restraint by a parent, harassment violation of a protection order, and endangering the welfare of an incompetent person, involving family or household members. In other words, the offender and the victim are family or household members.

Family or household members" means spouses or former spouses, individuals presently or formerly living as spouses, natural parents of the same child, adult household members related by consanguinity or affinity, or minor children of any household member when the offender is an adult household member. (Title 15 MRSA §321(1)).

IV. Bail Commissioner's Discretion in Other Crimes. Note that any of these conditions may be appropriate in other crimes. In other words, a bail commissioner still has complete discretion to apply appropriate conditions of release in any criminal case.

APPENDIX E

New Protection from Abuse form

STATE OF MAINE

DISTRICT COURT

Location _____

Docket No. _____

Plaintiff: _____

individually and on behalf of: _____

on behalf of: _____

v.

Defendant: _____

on behalf of: _____

**ORDER FOR PROTECTION
FROM ABUSE**

(19-A M.R.S.A. §§ 4007)

After due notice and opportunity for full hearing full hearing on the merits of the Complaint for Protection from Abuse, the following parties being present: Plaintiff Defendant,

THE COURT FINDS THAT: (only checked boxes apply)

- (1) The parties are family or household members;
- (2) The plaintiff was abused by the defendant;
- (3) The defendant presents a credible threat to the physical safety of the plaintiff/minor child(ren);
- (4) The parties have agreed to the following Order, which is made without findings of abuse.

THEREFORE, it is hereby ORDERED that:

- (A-1) The defendant is prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff and any minor child(ren) residing in the household.
- (A-2) The defendant is prohibited from the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the plaintiff or a minor child residing in the household.
- (B) The defendant is prohibited from having any contact, direct or indirect with plaintiff
 - Except contact permitted in paragraphs I and/or O below.
 - Except _____
- (C) The defendant is prohibited from going upon the premises of the plaintiff's residence.
- (D) The defendant is restrained from, repeatedly and without reasonable cause, following the plaintiff.
- (E) The defendant is restrained from, repeatedly and without reasonable cause, being at or in the vicinity of the plaintiff's home, school, business or place of employment.
- (F) The defendant is prohibited from possession of a firearm or other dangerous weapon.
- (G) The plaintiff is granted possession of and the defendant is excluded forthwith and prohibited from entering the residence at _____
- (H) The parties' personal property and household goods are divided as follows: _____
and the following order for protection of property is entered: _____
- (I) The plaintiff is awarded temporary parental rights and responsibilities (custody) of minor child(ren), whose names and dates of birth are as follows: _____
The defendant's rights of contact are limited as follows: _____

VIOLATION OF AN ORDER CONTAINED IN PARAGRAPHS (A) THROUGH (I) IS ALWAYS A CLASS D, AND SOMETIMES A CLASS C CRIME. POSSESSION OF A FIREARM OR AMMUNITION WHILE THIS ORDER IS IN EFFECT MAY BE A FEDERAL OR STATE CRIME, EVEN IF PARAGRAPH F OF THIS ORDER DOES NOT PROHIBIT YOU FROM POSSESSING THESE ITEMS.

It is further ORDERED AS FOLLOWS: (only checked boxes apply)

- (J) The defendant shall pay child support pursuant to the attached child support order.
 - (K) The defendant receive counselling from a social worker, family service agency, mental health center, or psychiatric or other guidance service, as follows: _____
 - (L) The defendant pay the sum of \$ _____ per (week) (month) toward the support of the plaintiff, first payment due _____
 - (M) The defendant is prohibited from interfering with or destroying plaintiff's property.
 - (N) The parties' personal property and household goods are further divided as follows: _____
- and the following order for protection of property is entered: _____
- (O): The defendant's rights of contact are limited as follows: _____
 - (P) It is further ORDERED: _____
 - (Q) See the attached additional sheet(s) which are incorporated herein by reference.

MONEY JUDGMENT ORDERS

- (R) The defendant pay to the plaintiff, the sum of \$ _____ forthwith, as monetary compensation for losses suffered as a direct result of the abuse, execution to issue.
- (S) The (defendant) (plaintiff) pay to _____ the sum of \$ _____ as counsel fees; the sum of \$ _____ as court costs. Payment is to be made within _____ days, execution to issue.
- (T) No child support order is issued at this time (but will be issued as soon as the parties file a child support affidavit, to be filed no later than _____)(because there is a pre-existing child support order).

WARNING: VIOLATION OF PARAGRAPHS "J" THROUGH "T" MAY BE CONTEMPT OF COURT. THESE PARAGRAPHS ARE ALSO ENFORCEABLE AS A CIVIL JUDGMENT

WARNING TO THE DEFENDANT: AS LONG AS THIS ORDER IS IN EFFECT, YOU MUST OBEY IT. NO ONE, INCLUDING THE PLAINTIFF, CAN GIVE YOU PERMISSION TO VIOLATE THE PROVISIONS OF THIS ORDER.

This order is effective forthwith and shall remain in full force and effect until _____, unless earlier modified or vacated by order of court or, with respect to Child Support or Parental Rights and Responsibilities, by a Case Management Officer. It is ORDERED that a copy of this Order be served in hand on the defendant by the following law enforcement agency: _____
Copies of this order shall be furnished by the clerk to the law enforcement agency with jurisdiction in the location of the plaintiff's residence.

This Order is incorporated into the docket by reference pursuant to M.R.Civ.P 79(a).

Date: _____

Judge, District Court

A true copy, attest: _____

(Deputy) Clerk

On _____, I made service of the Order for Protection from Abuse by delivering a copy in hand to the defendant at _____

Defendant's date of birth _____

Authorized Officer

APPENDIX F

Matrix of Key Domestic and Sexual Abuse Issues

This matrix is the result of the combination and coordination of lists of issues gathered from local domestic violence task forces statewide, the Maine Coalition to End Domestic Violence, the Maine Coalition Against Sexual Assault, and the Maine Commission on Domestic Abuse. It integrates two sets of issues: domestic abuse; and intimate partner and acquaintance sexual abuse. It is the express purpose of this matrix to serve as a focal point for continued and increased communication and cooperative efforts toward the goal of ending violence against women and their children in the state of Maine. This matrix has only been possible through the active involvement of those listed above and the input of significant others. The Maine Commission on Domestic Abuse is a multi-disciplinary, advisory group including membership and/or participation by all those involved in this effort. The Commission has therefore served as the coordinator for the development of this matrix and has agreed to continue to do so as efforts at implementation, assessment and accountability continue.

In the interest of space, acronyms are used throughout the document. A Glossary of Acronyms is available on the last page. This is an ongoing work-in-progress and the following pages represent the state of this matrix as of February 5, 2001.

This matrix is presented as an outline of important issues to be addressed in the areas of domestic abuse and intimate partner/acquaintance sexual abuse. There are five primary topic areas:

1. Coordinated Community Response to DV/SA
2. Victim Safety
3. Offender Accountability
4. Education/Prevention
5. Program Effectiveness

Each topic area is then subdivided into specific issues that are delineated as follows:

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMENDED RESPONSIBLE PARTIES
-------	--	-----------------------	-----------------	--	---------------------------------------

The information included in the "RECOMMENDED RESPONSIBLE PARTIES" column is not intended to be an all-inclusive list of those who are or could be involved. Rather, it identifies the key group or agency and the key governmental/cabinet office best positioned to coordinate and focus the work being done on a particular issue. It is hoped that this will improve communication between groups focused on similar aims and avoid or minimize duplication of effort or conflict. The concept of community used in this matrix is meant to refer to the larger community affected by and addressing issues of violence against women – all of us – including agencies, groups and individuals on a state, regional and local level. This matrix is not intended to be restrictive but rather to serve as a guide to increase communication and direct our efforts toward a common goal.

IF YOU ARE DOING SOMETHING RELATED TO DOMESTIC AND SEXUAL VIOLENCE AND IT IS NOT INCLUDED IN THIS MATRIX PLEASE CONTACT US through Joseph Missbach at missbach@ctel.net or 207-474-2636. If you would like to be included on a distribution list to automatically receive an email of an updated copy of the matrix when substantive changes have been made please send your request to missbach@ctel.net.

1. Coordinated Community Response to DV/SA

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMEDED RESPONSIBLE PARTIES
a. Workplace Violence Initiative	Summer 2000 meeting to identify Leadership Team for Initiative; October 2000 Informational Session	DOL, MCEDV; MEADV	Companies not addressing the issue	Campaign for awareness of workplace laws; develop workplace policies; advocacy and funding	MEADV; DOL
b. Healthcare Campaign	Screening for DV training of healthcare professionals; training sexual assault nurse examiners (SANE)	MCEDV; MeCASA; PSR; MaineGeneral; HealthReach rural health centers; Anthem; CIGNA; MDCPI; DHS-Bureau of Health	DV/SA not recognized as a health issue	Training; screening and referrals tools; State Government coordination	MCEDV; MeCASA; DHS-Bureau of Health
c. Statewide Website	Various individual agency websites	MCEDV; MeCASA; etc.	No centralized site for statewide coordination/links	Advocacy and funding	MCEDV; MeCASA; Governor's office
d. Coordinated Community Systems Accountability	Various individual program evaluations		Lack of data; no emphasis on evaluation for quality assurance and development of best practices	Conduct community safety audits; increase interdepartmental coordination and evaluation	Maine Commission on Domestic Abuse Governor's sub-cabinet; Attorney General and courts;
e. Domestic Abuse Commission Staffing	Volunteer staff time and meeting space	DPS	Lack of funding; concerns that no other Commission receives funding for staff	Funding and advocacy	Domestic Abuse Commission; Governor
f. Homicide Review Panel Staffing	Volunteer staff time and meeting space	DPS; Attorney General	Lack of full funding	Funding and advocacy	Domestic Abuse Commission; Governor
g. Local DV Task Force Staffing	Some staffing available through grants	MCEDV; City of Portland; MACC	Lack of full funding	Funding and advocacy	MCEDV; DHS; DPS(JAC)
h. SART Community Outreach	Integrated community response to SA	MeCASA; SART community team members	Lack of coordinators	Increase staffing; funding	MeCASA; DHS; DPS(JAC)

2. Victim Safety

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMEDED RESPONSIBLE PARTIES
a. Capacity Building for Core Services (Staff and Technology)	Direct service and community education provided statewide	MCEDV; MeCASA; DHS; DMHMRSAS	Infrastructure issues make service provision more difficult; recruitment difficult for 24-hr. hotline	Increase compensation and benefits for victim services staff; consider stipends and/or hotline recruitment staff; Funding and advocacy	MCEDV; MeCASA; DHS; DMHMRSAS
b. Safety of Children	Courts fund parenting classes; standards for Guardians Ad Litem; mandatory DV training for mediators; planned training for judiciary; MDCPI	MCEDV; DHS/Child Protective; Guardians Ad Litem; lawyers; judges; case management officers	Adversarial nature of judicial system; no evaluation system; cases take too long; elapsed time too long; safety of children not addressed in custody/visitation	Funding and advocacy; response to recommendations made 4 years ago to create standards and programs for supervised visitation and adequate access to GAL services (secondary to H.P. 808-L.D. 1125); training	MCEDV; DHS; Judiciary
c. School-Based Victim Services	Crisis intervention	MeCASA; MCEDV	Lack of funding	Funding	MeCASA; MCEDV; DHS; DOE
d. Rural Victims	Education; shelter; hotline; support groups; advocacy; court; healthcare	MCEDV; MeCASA; Native community services; MSHA	Isolation of victims; lack of transportation; lack of access to services; lack of transitional and permanent housing	Funding and advocacy	MCEDV; MeCASA; DHS; MSHA
e. Economic Development	Training for MCEDV	MCEDV; DOL; DHS; MSHA	Lack of resources for victims of DV	Transitional services; increase transportation resources, childcare resources, accessible healthcare, jobs, and accessibility of adequate and affordable long-term housing	MCEDV; DOL; DHS; MSHA

2. Victim Safety

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMEDED RESPONSIBLE PARTIES
f. Civil Legal Assistance for Victims	Small percentage of legal representation in civil cases; work in process to provide unbundled legal services; Rules of Professional Responsibility are being drafted	Pine Tree Legal; Penquis Cap; Volunteer Lawyer's Project; MCEDV court advocates; UM School of Law	Too few attorneys doing this work; poor geographic distribution	Funding and advocacy	Attorney General; Pine Tree Legal
g. Effectiveness of Protection from Abuse Orders	Issues being examined by multiple groups	Judiciary; MCEDV; Homicide Review Panel; Maine Citizens Against Handgun Violence; Legislative Commission to Study Domestic Violence	Lack of consistency in orders; Lack of enforcement of orders;	Prohibit mediation referrals; Statutory change; Training	Judiciary; MCEDV
h. Elder Abuse	Curriculum in development to train law enforcement	MCEDV; UMA; COPS grantees; DHS; Legal Aid for the Elderly; MeCASA	Lack of recognition by public and service providers	Public awareness and training for professionals	DHS – Bureau of Elder and Adult Services; MCEDV; MeCASA

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMENDED RESPONSIBLE PARTIES
a. Criminal Histories/ Technology	Upgrading is currently underway	DPS/MCJUSTIS	No uniform police reporting form or standards	Create uniform reporting standards; funding and advocacy	DPS
b. Primary/ Predominant Aggressor Legislation &/or Training	Scattered trainings offered throughout the state	MCEDV; DPS	Being able to craft a well-written law with no loopholes; lack of comprehensive training	Statutory change; advocacy; training for law enforcement in law of self-defense	DPS; MCJA; MCEDV
c. Additional Staffing for Criminal Justice System: Sex Offender Specialists, SA/DV Prosecutors and Investigators and Probation Officers, Case Managers, Judges	State has specialized prosecution; Kennebec, Somerset and Cumberland have DV probation officers, rest of state has nothing; DV Investigators are grant- funded only; few sex offender specialists in state	DA's Offices; DOC	Huge caseloads for DV probation officers; not enough staffing; not enough training; not enough specialization; lack of funding	Specialized prosecution, investigation, and probation; cap probation caseloads; funding and advocacy	Attorney General; DOC
d. Enforcement of Federal Gun Laws	Violent crimes task force addresses federal gun law violations	U.S. Attorney's Office; Attorney General	Enforcement is inconsistent; inconsistent reporting to federal govt. by local police departments	Advocacy	U.S. Attorney's Office; Attorney General
e. Bail Conditions	Being examined by Legislative DV Study Commission; Judiciary conducting training of bail commissioners; Standardization of bail conditions	Bail Commissioners; Judiciary	Setting of inappropriate bail conditions; PFA order inconsistent with bail order; lack of information needed to assist in decisions on bail conditions; technology; police reports	Non-bailable DV offenses by statute; advocacy; increase funding/staffing for SBI	Legislative Study Commission; Judiciary; Governor's DV sub-cabinet

3. Offender Accountability

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMEDED RESPONSIBLE PARTIES
f. Sentencing	Being examined by judiciary for consistency	Judiciary; prosecutors	Low and inconsistent sentences; plea bargains; prosecutors not recommending BIPs; judges not sentencing to BIPs; judges not including BIP as a requirement of sentence	Training; advocacy	Attorney General; Judiciary
g. Batterer's Intervention Programs (BIPs)	State standards in place; 14 certified programs in the state of Maine	MABIP; DOC	Judges using counseling as an inappropriate alternative to a certified BIP; some judges aren't sentencing to BIP because men say they can't afford it; inadequate programs for juveniles and women	Training; statewide consistency; not enough BIPs especially in rural areas and for adolescents and females or those with cognitive disabilities; Advocacy for a funding source	MABIP; DOC
h. Compliance Monitoring	Some specialized DV probation officers	DOC; Probation	No consistency in accountability for non-compliance	Case management by the courts needs to be done	DOC; Judiciary
i. Sex Offender Treatment Programs	Limited services available	Private providers	Inadequate program availability; lack of providers	Expansion of services – more programs	DHS; DOC

	POSITIVE THINGS BEING DONE	BY WHOM		ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RESPONSIBLE PARTIES
a. School-Based	Variety of curricula	MCEDV; MeCASA; CAN Council; Health educators; DARE officers; SROs; DHS	No standard curricula; lack of receptivity by schools; lack of coordination; DOE	Involve men already working in BIPs to go into schools; support and expand existing programs; BIPs for juveniles; mandating competency for teachers, coaches, guidance; funding and advocacy	MCEDV; MeCASA; DOE; DHS
b. Public Awareness/Community Education	Silent Witness; videos; media; Shaw's campaign; Men Against Violence Against Women; quilt; MCEDV posters; PSAs; Clothesline Project; and many others	MCEDV; DV task forces; MeCASA	Public perceives DV/SA to be a hidden personal issue; cultural change slow	Statewide public awareness campaign; advocacy; contact Advertising Council	MECDV; MeCASA; Governor's Office
c. Training Professionals	Some basic and in-service training for DHS/Child Protective and other state govt., Guardian Ad Litem, healthcare and mental health providers, legal system employees, childcare providers, teachers, etc.	MCEDV; MeCASA; Muskie School; MCJA; Judiciary; Domestic Abuse Commission; and many others	DV/SA not considered a priority by many professionals	Statewide training; funding and advocacy	MCEDV; MeCASA; DHS

5. Program Effectiveness

ISSUE	CURRENT STATUS/ POSITIVE THINGS BEING DONE	BEING DONE BY WHOM	TO BE ADDRESSED	IDENTIFIED ACTION ITEMS: FUNDING, STATUTORY CHANGE, ADVOCACY, ETC.	RECOMMENDED RESPONSIBLE PARTIES
a. Outcome Measurement/ Evaluation	Contracts/DHS; national funding sources	MCEDV; MeCASA; DHS; DPS(JAC); University of Maine System	Lack of expertise, commitment and funding	Funding and advocacy; research; evaluate funded programs including in the specific areas of Coordinated Community Response, Victim Safety, Offender Accountability, and Education/Prevention	MCEDV; MeCASA; DHS; DPS(JAC)
b. Research	Data Book; Various research programs	MCEDV; MeCASA; University of Maine System	Lack of Maine specific research	Consider using national resources; re-establish DV research consortium	MCEDV; MeCASA; University of Maine System

Glossary of Acronyms:

BIP – Batters Intervention Project
 CAN – Child Abuse and Neglect
 DA – District Attorney
 DARE – Drug Awareness Resistance Education
 DHS – Department of Human Services
 DMHMRSAS – Department of Mental Health, Mental Retardation and
 Substance Abuse Services
 DOC – Department of Corrections
 DOE – Department of Education
 DOL – Department of Labor
 DPS – Department of Public Safety
 DV – Domestic Violence
 JAC – Justice Assistance Council
 MABIP – Maine Association of Batters Intervention Programs
 MACC – Maine Ambulatory Care Coalition

MDCPI – Multi-Disciplinary Child Protective Initiative
 MCEDV – Maine Coalition to End Domestic Violence
 MCJA – Maine Criminal Justice Academy
 MEADV – Maine Employers Against Domestic Violence
 MeCASA – Maine Coalition Against Sexual Assault
 MSHA – Maine State Housing Authority
 PFA – Protection From Abuse
 PSR – Physicians for Social Responsibility
 SA – Sexual Assault
 SANE – Sexual Assault Nurse Examiners
 SART – Sexual Assault Response Team
 SBI – State Bureau of Investigation
 SRO – School Resource Officer
 UMA – University of Maine at Augusta