



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1365

H.P. 1004

House of Representatives, March 30, 2011

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

Reference to the Committee on Judiciary suggested and ordered printed.

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

HEATHER J.R. PRIEST
Clerk

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

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

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

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

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

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

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

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

12 D. Has sufficient indicia of reliability.

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

17 A. The personal knowledge of the declarant;

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

20 C. The timing of the statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 SUMMARY

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

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

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

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