

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

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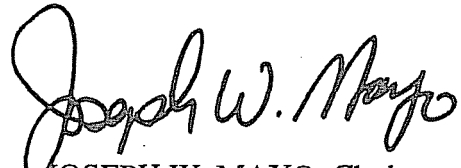
H.P. 996

House of Representatives, April 26, 1993

An Act to Clarify Child Support Laws.

(EMERGENCY)

Submitted by the Department of the Attorney General pursuant to Joint Rule 24.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative COTE of Auburn.

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

4
6 Whereas, ambiguities exist in the expedited paternity laws
that have created a situation in which the benefits of these laws
can not be realized, thus severely limiting the number of
8 paternity cases that can be processed in any given year; and

10 Whereas, this limitation restricts the amount of money
reimbursed to the State for the costs of the aid to families with
12 dependent children program, restricts the number of cases in
which child support can be paid to families utilizing the aid to
14 families with dependent children program and threatens the
ability of the State to comply with federal law; and

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

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

24 **Sec. 1. 19 MRSA §281**, as enacted by PL 1967, c. 325, §2, is
26 amended to read:

28 **§281. Judgment**

30 Judgments under this subchapter may be for periodic payments
which that may vary in amount. The court may order payments to be
32 made to the ~~mother~~ person to whom the support is owed or to some
person, corporation or agency designated to administer them under
34 the supervision of the court.

36 The court may also order an initial allocation of parental
rights and responsibilities. The order of the court must provide
38 notice that if either party objects to the allocation that party
must notify the court in writing within 20 days of entry of the
40 judgment and the matter will be referred to mediation and
hearing. The objecting party is responsible for the costs of
42 mediation.

44 **Sec. 2. 19 MRSA §521, sub-§2, ¶¶B, C, I, J and L**, as enacted by PL
1991, c. 256, are amended to read:

46 B. A statement identifying any of the following as the
48 reason for filing the record of the proceeding in court.

- 2 (1) The alleged father fails to deny paternity within
3 20 days of service of notice.
- 4 (2) The alleged father refuses to submit to blood or
5 tissue typing tests.
- 6 (3) The alleged father fails to execute and deliver to
7 the department an acknowledgment of paternity after
8 blood or tissue typing tests have failed to exclude him
9 as the father;

12 C. A statement that, if the department files a record of
13 the proceeding, the department may seek relief under section
14 522 and the Maine Rules of Court, including a default
15 judgment;

16 I. A statement that the alleged father may deny the
17 allegation of paternity by filing a written denial of
18 paternity with the department within 20 days after service
19 of the notice; that if the alleged father fails to file a
20 written denial, the proceeding will be filed in a court as a
21 paternity ~~proceeding~~ action; and that the question of
22 paternity and any related issues under this subchapter may
23 be resolved against him by the court;

26 J. A statement that if the alleged father files a written
27 denial of paternity:

28 (1) The department will provide an expert examiner of
29 blood or tissue types to conduct blood or tissue typing
30 tests on the mother, child and alleged father and the
31 tests will be conducted as follows:

34 (a) The alleged father is required to submit to
35 tests, ~~which may include, but are not limited to,~~
36 ~~tests of red cell antigens, red cell isoenzymes,~~
37 ~~human leukocyte antigens and serum proteins;~~

38 (b) The department will pay the initial cost of
39 the tests; and

42 (c) An indigent alleged father is not liable for
43 reimbursement of the cost of the tests;

44 (2) If the alleged father refuses to submit to the
45 tests under subparagraph (1), the proceeding will be
46 filed in a court as a paternity ~~proceeding~~ action;

48 (3) If the alleged father is not excluded by the test
49 results and he does not, within 15 days of the ordinary
50

mailing to him of a report and copy of the blood or
tissue typing results, execute and deliver to the
department an acknowledgment of paternity of the child
~~in accordance with the laws of the state in which the~~
~~child was born~~, the proceeding will be filed in a court
as a paternity ~~proceeding~~ action; and

(4) If the alleged father is excluded by the test
results as the natural father of the child, the
proceeding will be filed in a court as a paternity
~~proceeding~~ action for disposition under section 280,
subsection 1, paragraph A;

L. A statement that the alleged father may, within 25 20
days after notice has been mailed to him that the record has
been filed in a court, assert any defense, in law or fact,
if the record is filed because the alleged father:

(1) Refuses to submit to blood or tissue typing tests;
or

(2) Fails to execute and deliver to the department an
acknowledgment of paternity after blood or tissue
typing test have failed to exclude him as the father.

Sec. 3. 19 MRSA §522, sub-§8, as enacted by PL 1991, c. 256,
is amended to read:

8. Other relief. Grant such other relief as the court
determines just and proper, including an initial allocation of
parental rights and responsibilities as allowed by section 281.

Sec. 4. 19 MRSA §525, as enacted by PL 1991, c. 256, is
amended to read:

§525. Failure of alleged father to deny paternity

If the alleged father fails to file a written denial of
paternity with the department within 20 days after service of
notice upon him, the department's attorney may file the record of
the proceeding in a court as a paternity ~~proceeding~~ action. ~~This~~
~~filing--constitutes--a--filing--under--the--Maine--Rules--of--Civil~~
~~Procedure,--Rule--3.~~ The filing of the record, along with proof of
service pursuant to section 520, constitutes a filing under the
Maine Rules of Civil Procedure, Rule 3(1) and further service is
not required. The alleged father's failure to file a written
denial with the department constitutes a default under the Maine
Rules of Civil Procedure, Rule 55(a). The department shall
forward to the alleged father by ordinary mail a copy of any
request for a default judgment. The mailing of the request to

2 the alleged father's last known address constitutes adequate
3 notice of the default proceeding and further notice is not
4 required.

5 **Sec. 5. 19 MRSA §527**, as enacted by PL 1991, c. 256, is
6 repealed and the following enacted in its place:

7 **§527. Refusal of alleged father to submit to blood or tissue tests**

8
9
10 If the alleged father denies paternity and subsequently
11 fails to submit to blood tests ordered, the record may be filed
12 in court as a paternity action and the department may seek an
13 adjudication of paternity pursuant to section 277. The alleged
14 father's refusal to submit to a blood test constitutes a refusal
15 to submit under section 277. The filing of the record, along
16 with proof of service pursuant to section 520, constitutes
17 compliance with the Maine Rules of Civil Procedure, Rule 3(1).
18 Notice of the filing of this paternity action must be sent by
19 ordinary mail to the alleged father. Within 20 days of the
20 mailing of this notice, the alleged father may assert any
21 defense, in law or fact. The department shall forward to the
22 alleged father by ordinary mail a copy of any request for a
23 default judgment or an order pursuant to section 277. If the
24 alleged father does not notify the court in writing within 20
25 days of the date the department's request was mailed that he
26 opposes the relief requested by the department, the court may
27 grant the relief requested without a hearing. Any notice mailed
28 must contain the substance of this subsection.

29 **Sec. 6. 19 MRSA §528, sub-§§2 and 3**, as enacted by PL 1991, c.
30 256, are amended to read:

31
32 **2. Exclusion of alleged father.** If the alleged father is
33 excluded by the test results as the natural father of the child,
34 the department may file the record of the proceeding in a court
35 as a paternity proceeding action for disposition under section
36 280, subsection 1, paragraph A.

37
38 **3. Nonexclusion of alleged father.** If the alleged father
39 is not excluded by the test results and he does not, within 15
40 days of the mailing to him of a copy of the blood or tissue
41 typing results and report, execute and deliver to the department
42 by ordinary mail an acknowledgment of paternity of the child in
43 accordance with the laws of the state in which the child was
44 born, the department may file the record of the proceeding,
45 inclusive of the blood or tissue typing test results, in a court
46 as a paternity proceeding action. The filing of the record,
47 along with proof of service pursuant to section 520, constitutes
48 compliance with the Maine Rules of Civil Procedure, Rule 3(1).
49 Notice of the filing of this paternity action must be sent to the
50 alleged father by ordinary mail and must include notice that if

2 the father claims any additional defenses, in law or fact, he
4 must assert them within 20 days of the date the notice was
6 mailed. Any notice mailed must contain the substance of this
8 subsection. Section 280 applies to the action even though the
10 tests were performed and the results prepared as part of an
12 administrative proceeding. The alleged father's participation in
14 the tests may not prejudice any application by the alleged father
16 under section 278 for an order appointing an additional examiner
18 of blood or tissue types.

20 **Sec. 7. 19 MRSA §529**, as enacted by PL 1991, c. 256, is
22 amended to read:

24 **§529. Applicability; Maine Rules of Civil Procedure, Rule 12(b)**

26 If a record of the proceeding is filed under section 527 or
28 section 528, subsection 3, the alleged father is not required to
30 file an additional denial of paternity. ~~He may assert any~~
32 ~~defense, in law or fact. Any defense must be asserted within 25~~
34 ~~days after the mailing by ordinary mail of a notice to the~~
36 ~~alleged father that the record has been filed in court. The~~
38 ~~notice must contain the substance of this section. However, any~~
40 defenses or motions beyond a mere denial of paternity must be
42 asserted in compliance with the Maine Rules of Civil Procedure,
44 Rule 12.

46 **Sec. 8. 19 MRSA §530**, as corrected by RR 1991, c. 2, §52, is
48 amended to read:

50 **§530. Acknowledgment of paternity**

52 If, prior to the filing in a court, the alleged father
54 executes and delivers to the department an a notarized
56 acknowledgment of paternity of the child in accordance with the
58 laws of the state in which the child was born, the proceeding
must be terminated and the department may proceed against the
father under subchapter V with respect to any remedy provided
under that subchapter.

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

64 **STATEMENT OF FACT**

66 This bill clarifies the procedures of the expedited
68 paternity action and improves the notice received by alleged
fathers when the State is requesting a default judgment because

2 the father has refused to respond to the State's efforts to
determine paternity.

4 This bill also gives the court discretion in a paternity
6 action to make an initial allocation of parental rights and
responsibilities.