

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 861

H. P. 701

House of Representatives, March 1, 1979

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. McSweeney of Old Orchard Beach.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Amend the Alternative Method of Support Enforcement.**

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

**Sec. 1. 19 MRSA § 496, 2nd ¶**, as enacted by PL 1975, c. 532, § 3, is amended by adding at the end the following new sentence to read:

**To the extent that a court order of support has been modified by a decision pursuant to a hearing under section 500-A, the debt shall be limited to the amount stated in the decision.**

**Sec. 2. 19 MRSA § 498, sub-§ 4, ¶ C, sub-¶ (6)**, as enacted by PL 1975, c. 532, § 3, is repealed and the following enacted in its place:

**(6) The need of the responsible parent. The responsible parent shall not be relieved of his duty to provide support when he has brought about his own unstable financial situation by voluntarily incurring subsequent obligations; and**

**Sec. 3. 19 MRSA § 499**, as enacted by PL 1975, c. 532, § 3, is amended by adding at the end a new paragraph to read:

**Once the minor children are no longer receiving public assistance from the State, they, or any person having the custody of the children named in the court order, or any past custodian, may institute an action to collect any child support**

arrearage which may be due and uncollected by the Department of Human Services. The Department of Human Services shall be served with a copy of the motion or petition.

Sec. 4. 19 MRSA § 500, sub-§ 1, ¶¶ F, G, and H, are enacted to read:

F. A statement that the responsible parent has the right to request a hearing pursuant to section 500-A, or, in the alternative, to seek relief in a court of proper jurisdiction;

G. A statement that the department will stay collection action upon receipt of a request for review pursuant to section 500-A or upon service of papers filed in the court of proper jurisdiction. The request or service must be received within 21 days after the responsible parent has been served with the notice of debt; and

H. A statement that a final administrative determination of the accrued debt shall have the same force and effect as a final judgment entered by a court of proper jurisdiction.

Sec. 5. 19 MRSA § 500-A, is enacted to read:

§ 500-A. Determination of amount of support when court order exists

1. Department action upon parental request. Upon request of the responsible parent, pursuant to section 500, subsection 1, paragraph F, the department shall schedule a hearing for the purpose of reviewing the court ordered support obligation and the debt allegedly owed. The department shall serve upon the responsible parent a notice of hearing setting a hearing date not less than 15 nor more than 30 days from the date the request for review was received by the department. For any period during which public assistance is expended, the department may amend, reduce, increase or otherwise modify the court order based on the evidence presented at the hearing.

2. Hearing.

A. The hearing shall be conducted according to rules promulgated by the commissioner in conformity with the requirements of Title 5, chapter 375. The rules shall provide at least the right to confront and cross-examine witnesses, to be represented by an attorney or other person and to be notified of these rights in writing. The decision shall be limited to evidence presented at the hearing.

B. When deciding the amount of the periodic payment, the person conducting the hearing shall consider at least the following criteria:

- (1) The need of the child;
- (2) The income, real property and personal property of the responsible parent;
- (3) The ability of the responsible parent to borrow;
- (4) The ability of the responsible parent to earn;

- (5) **The amount of support debt accrued;**
- (6) **The need of the responsible parent. The responsible parent shall not be relieved of his duty to provide support when he has brought about his own unstable financial situation by voluntarily incurring subsequent obligations; and**
- (7) **The responsibility of the responsible parent for other dependents; but in any case the child for whom support is sought must benefit as much as any other dependent from the income and resources of the responsible parent.**

**The hearing officer's determination of a periodic support order shall be effective for only so long as the minor children are receiving public assistance from the State. Upon termination of public assistance, the original court order shall automatically become effective and binding upon the responsible parent.**

**C. When deciding the amount of the accrued debt owed to the department, the person conducting the hearing shall consider at least the following criteria:**

- (1) **The amount of the court order of support;**
- (2) **The number of periodic payments the responsible parent failed to make;**
- (3) **The ability of the responsible parent to borrow;**
- (4) **The ability of the responsible parent to earn; and**
- (5) **The income, real property and personal property of the responsible parent.**

**The hearing officer may defer collection of any part of the accrued debt.**

**D. The hearing officer shall render a decision within 30 days of the hearing. A copy of the decision shall be served on the responsible party. The decision shall include a determination of the debt, accrued and owing to the department, and a determination of the ongoing weekly support obligation. Written notice of the responsible parent's rights to review of the decision within the department and of the action required and the time within which the action shall be taken in order to exercise the right of review shall be given to the responsible parent with the decision.**

**3. Initiation of collection. The decision of the department in the hearing shall establish the debt of the responsible parent. The department may collect the debt 20 days after service of the review pursuant to section 515.**

**4. Final department decision. A department decision which is final shall be filed with the court which originally entered the support order.**

**Sec. 6. 19 MRSA § 503, first ¶, first sentence, as amended by PL 1977, c. 694, § 299, is further amended to read:**

**Twenty-one days after receipt of the notice of debt under section 500 or upon receipt of the decision under section 498 or 500-A, the amount stated in the notice**

of debt or in the decision shall be a lien in favor of the department against all **nonexempt** property of the responsible parent.

**Sec. 7. 19 MRSA § 504, sub-§ 1, ¶ B**, as amended by PL 1977, c. 694, § 300, is further amended to read:

**B.** Twenty-one days have elapsed from the date of receipt of the notice of debt under section 500 or a decision has been received under section 498 or **500-A**.

**Sec. 8. 19 MRSA § 515, first ¶**, as amended by PL 1975, c. 623, § 19-A, is further amended to read:

The responsible parent or the department may move for a review of any action under this subchapter by serving a request for review, together with an affidavit stating the grounds upon which the request is based, upon the other party. The department may review any action under this subchapter, except the decision under section 498, subsection 4, or **section 500-A, subsection 2**, without proceeding under this section.

#### STATEMENT OF FACT

This bill clarifies current law in the area of support enforcement. It preserves the right of the minor child to child support arrearage due but not collected by the Department of Human Services for any one of a number of reasons. The proposed legislation also outlines the role of the Department of Human Services in administrative hearings when there exists a court order for support and identifies the conditions under which the hearing officer may accept less than the actual court order for a temporary period of time.

There is no additional cost for administering this legislation.