

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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Legislative Document

No. 1991

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S. P. 793

In Senate, March 11, 1980

Reported by Senator Collins of Knox from the Committee on Judiciary and ordered printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

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**AN ACT to Remove Sex Bias and Facilitate Enforcement of Support Obligations.**

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

**Sec. 1. 14 MRSA § 252, first sentence** is amended to read:

Whenever a party or the Department of Human Services, if it is subrogated to a party under Title 19, chapter 7, subchapter V, complains in writing and under oath that the process, decree or order of court, which is not, **except as provided in Title 19, section 771**, for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue by order of any justice, requiring such person to appear on a day certain and show cause why he should not be adjudged guilty of contempt.

**Sec. 2. 19 MRSA § 214, 2nd sentence** is amended to read:

He may order ~~the father~~ **either parent** of the minor child or children to contribute to the support of ~~such that~~ minor child or children ~~such~~ sums payable weekly, monthly or quarterly as are deemed reasonable and just and may enforce obedience by appropriate decrees, execution issuing for ~~said~~ **those** sums when payable and for costs, which decrees shall be in force until further order of the judge or justice.

**Sec. 3. 19 MRSA § 301**, as amended by PL 1973, c. 479, § 2 is repealed and the following enacted in its place:

**§ 301. Spouse's or parent's obligation to support**

1. **Petition.** If a parent, spouse or child reside in this State, the parent or spouse, a guardian or a municipality providing maintenance may petition the Superior, District or Probate Court to order a nonsupporting parent or spouse to contribute to the support of his spouse or child. The petition may be brought in the court in the county or district where the parent, spouse or child reside or in the county or district in which the nonsupporting parent or spouse may be found.

2. **Military residency exception.** The right to bring a petition shall not be denied a person for failure to meet a residency requirement if that person is a member of the Armed Forces of the United States on active duty stationed in Maine or a dependent or spouse of a member. A member shall be deemed to be a resident either of the county or district in which the military installation or other place at which he has been stationed is located or of the county or district in which he has sojourned.

3. **Court action.** If the court finds that the nonsupporting parent or spouse is of sufficient ability or is able to labor and provide for his spouse or children, and that he has willfully and without reasonable cause, refused or neglected to so provide, then it may order him to contribute to the support of his spouse or child in regular amounts that it deems reasonable and just. The court shall consider the relative financial resources and abilities of both parents or spouses in determining the amount of the contribution.

4. **Order pending petition.** Pending petition, and after notice and an opportunity for a hearing, the court may order a nonsupporting parent or spouse to pay to the court for his spouse or child sufficient money for the prosecution of the petition.

5. **Enforcement.** The court may enforce an order as provided under chapter 14.

6. **Appeals.** A party aggrieved by an order may appeal in the same manner as provided for appeals from that court in other causes. No continuance of an appeal may be allowed without consent of the appellant or a showing of legal cause for it to the court to which it has been appealed.

7. **Order during pending appeal.** Pending the determination of an appeal, the order appealed from shall remain in force and obedience to it may be enforced as if no appeal has been taken.

**Sec. 4.** 19 MRSA § 722, as last amended by PL 1977, c. 439, § 4 is repealed and the following enacted in its place:

**§ 722. Payment of alimony, fees and support**

1. **Definition.** As used in this section, "decree of alimony, support or costs" means a decree or order:

A. For alimony or payment of money instead of alimony;

- B. For support of children;**
- C. For support pending a divorce action;**
- D. For payment of related counsel fees; or**
- E. For alteration of an existing decree or order for the custody or support of a child.**

**2. Order pending petition.** Pending a petition to enforce a decree of alimony, support or costs, and after notice and opportunity for a hearing, the court may order either spouse to pay to the other spouse or to his counsel sufficient money for the prosecution of or defense against the petition.

**3. Counsel fees.** When making a final decree, the court may order a party charged with payment of support, alimony or money in place of alimony to pay reasonable counsel fees. Counsel fees awarded in the nature of support may be made payable immediately or in installments.

**4. Enforcement.** The court may enforce an order as provided under chapter 14.

**Sec. 5.** 19 MRSA § 752, first paragraph, last sentence, is repealed and the following enacted in its place:

**The court may enforce an order as provided under chapter 14.**

**Sec. 6.** 19 MRSA c. 14 is enacted to read:

#### **CHAPTER 14**

#### **ALIMONY AND SUPPORT ENFORCEMENT**

##### **§ 771. Definition**

As used in this chapter, "decree of alimony, support or costs" means a decree or order for alimony or payment of money instead of alimony, for support of children, for support pending a divorce action, for payment of related costs and counsel fees, or for alteration of an existing decree or order for the custody or support of a child.

##### **§ 772. Contempt**

On a motion to enforce a decree of alimony, support or costs, the court may issue summary process and may find the defaulting person guilty of contempt as provided under Title 14, section 252.

##### **§ 773. Alimony or support orders**

**1. Installment payments.** In a decree of alimony, support or costs, the court may include an order to pay specified installment payments as provided under Title 14, sections 3127 to 3137.

**2. Future obligations.** The court may order installment payments for future

obligations under the decree. The court may enforce its decree ordering installment payments as provided under Title 14, sections 3127 to 3137. In enforcement actions under those sections the person ordered to pay shall be deemed a judgment debtor and the person entitled to receive the payments, a judgment creditor.

3. **Disclosure hearing.** The court may make an order under section 1 without a separate disclosure hearing, if the court has already determined the person's ability to pay and his receipt of money from a source that is otherwise exempt from trustee process, attachment and execution.

#### § 774. Enforcement of orders

On a motion to enforce a decree of alimony, support or costs, after notice and an opportunity for hearing, the court may make a finding of money due, render judgment for that amount, and order:

1. **Execution and levy.** Execution and levy as provided under Title 14, chapter 403;

2. **Installment payments.** Specified installment payments as provided under Title 14, sections 3127 to 3137, without a separate disclosure hearing, if the court has already determined the judgment debtor's ability to pay and his receipt of money from a source that is otherwise exempt from trustee process, attachment and execution;

3. **Order to employer or payor of earnings.** The employer or other payor of earnings to make direct payments, if the court has ordered installment payments under section 773 or otherwise;

4. **Attachment.** Attachment as provided under Title 14, chapter 507;

5. **Execution.** Execution as provided under Title 14, chapter 509; or

6. **Other methods.** Any other method of enforcement that may be used in a civil action.

#### § 775. Jail costs

If a person is committed to jail under this chapter, the county having jurisdiction of the proceeding shall bear the expense of his commitment and support in jail.

#### § 776. Orders relating to children receiving public assistance

1. **Definitions.** As used in this section, unless the context clearly indicates otherwise, the following terms have the following meanings.

A. "Department" means the Department of Human Services.

B. "Public assistance" means public assistance as provided under Title 22, section 3173, 3271 or 3741.

**C. "Support order" means a decree or order for support of a child, for support pending a divorce action or for alteration of a custody or support order.**

**D. "Support payments" means money ordered to be paid directly to a parent for the support of a child.**

**2. Pleading public assistance. In an action for a support order, to enforce a support order or to collect support arrearages, if the child is receiving public assistance, the party bringing the action shall affirmatively plead that fact.**

**3. Notice to State. In an action to enforce a support order or to collect support arrearages, if the action relates to a period when the child has or will receive public assistance, a copy of the motion or petition shall be furnished by ordinary mail to the department.**

**4. Health insurance. If a support order contains an order for a parent to provide health, medical or hospital insurance coverage and if the insured child is receiving public assistance, then the insuring parent shall provide the department with proof of the insurance coverage and with written notice of any change in that coverage.**

**5. State reimbursement. If a child is receiving public assistance, the court support order shall require that support payments be made to the department for the period of public assistance.**

#### STATEMENT OF FACT

This new draft incorporates provisions from L.D.'s 1813, 1821 and 1835. This new draft removes the present sex bias in the divorce and support laws and strengthens the enforcement methods available for support orders. In particular, it makes a summary civil contempt procedure available to enforce orders. It also makes the procedures for execution and enforcement of orders simpler by removing proceedings that are duplications. The new draft also requires those receiving public assistance to inform the State of support proceedings and health insurance coverage, and that support payments be made directly to the State when public assistance is received.