

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1390

H.P. 1001

House of Representatives, April 27, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative ALLEN of Washington.

Cosponsored by Senator GAUVREAU of Androscoggin, Representative FARNSWORTH of Hallowell and Representative CONLEY of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Ensure that Child Support Payments Benefit the Family.



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

3 Sec. 1. 19 MRSA §303-A, as amended by PL 1985, c. 652, §12,
5 is repealed.

7 Sec. 2. 19 MRSA §303-B is enacted to read:

9 §303-B. Guideline for child support awards

11 1. Creation of guideline for suggested support payments.
12 The Commissioner of Human Services shall promulgate rules in
13 accordance with the Maine Administrative Procedure Act, Title 5,
14 chapter 375, subchapter II, which reflect the percent of combined
15 gross income which parents living in the same household in this
16 State ordinarily spend on their children and which establish a
17 support guideline. The guideline shall be based on the concept
18 that children should receive the same proportion of parental
19 income after separation or divorce of their parents as they would
20 receive if their parents were living together in one household.
21 The guideline shall further provide that the child support
22 obligation shall be divided between the parents in proportion to
23 their respective gross incomes. The parent with whom the
24 children do not primarily reside shall be ordered to pay, in
25 money, that parent's share of the total support obligation to the
26 parent with whom the children primarily reside. The parent
27 providing primary residential care shall be presumed to spend
28 that parent's share for the child's support.

29 The guideline shall contain one support table, applicable to
30 children up to 18 years of age. Child care and extraordinary
31 expenses shall be treated separately from that table but shall be
32 divided between the parents in proportion to their respective
33 gross incomes. The guideline shall not result in a total support
34 obligation that would reduce a responsible parent's income to
35 below the income level protected by section 502.

37 2. Periodic review of guideline. The guideline shall be
38 reviewed and amended as necessary by the Department of Human
39 Services, but not less than once every 4 years. The guideline
40 shall contain the most current reasonably available economic data
41 which reflect the actual cost of raising children in the State.

43 3. Presumption in favor of amount set by guideline. In
44 determining the amount of a support order in administrative
45 proceedings, there shall be a rebuttable presumption that the
46 amount of the award which would result from application of the
47 guideline shall be the correct amount. The presumption may be
48 rebutted upon showing that the application of the guideline would
49 be inappropriate or unjust. Inappropriate or unjust
50 circumstances shall include, but are not limited to,
51 circumstances when:

1 A. Undue hardship would result; or

3 B. The result would not be in the best interests of the
5 dependent children.

7 The administrative hearing officer must make written findings
9 explaining any decision not to apply the guideline.

11 Sec. 3. 19 MRSA §493, as amended by PL 1985, c. 652, §§21 to
13 23, is repealed.

15 Sec. 4. 19 MRSA §§493-A and 494-B are enacted to read:

17 §493-A. Definitions

19 As used in this subchapter, unless the context otherwise
21 indicates, the following terms have the following meanings.

23 1. Child care costs. "Child care costs" means the actual
25 child care costs reasonably incurred by a parent on behalf of the
27 children due to employment or education.

29 2. Collect. "Collect" means any action by the department
31 taken for the purpose of securing or receiving payment of a debt
33 to the department. It includes, but is not limited to, written
35 or oral requests for payment and any actions taken pursuant to
37 article 3 of this subchapter.

39 3. Commissioner. "Commissioner" means the Commissioner of
41 Human Services, a designee or an authorized representative.

43 4. Department. "Department" means the Department of Human
45 Services.

47 5. Dependent child. "Dependent child" means any minor
49 child who is not emancipated.

51 6. Disposable earnings. "Disposable earnings" means that
53 part of the earnings of any individual remaining after the
55 deduction from those earnings of any amount required by law to be
57 withheld.

59 7. Extraordinary expenses. "Extraordinary expenses" means
61 any extraordinary medical or education expenses related to the
63 special needs of a child. Extraordinary medical expenses shall
65 include, but not be limited to, uninsured annual medical expenses
67 in excess of \$150.

69 8. Gross income. "Gross income" means actual gross income
71 of a parent and it shall include the following:

1 A. Income from any source, including, but not limited to,
3 income from salaries, wages, commissions, royalties,
5 bonuses, dividends, severance pay, pensions, interest, trust
7 income, annuities, gain derived from capital, from labor or
9 from both combined, worker's compensation benefits,
11 unemployment insurance benefits, disability insurance
13 benefits, gifts, prizes and spousal support actually
15 received from a person not a party to the order;

17 B. In the discretion of the hearing officer, the difference
19 between the amount a parent is earning and the amount a
21 parent has earned in cases where the parent voluntarily
23 becomes unemployed or underemployed without good cause may
25 be considered as gross income; and

27 C. Gross income shall not include:

29 (1) The amount of preexisting spousal maintenance or
31 child support obligations actually paid pursuant to
33 court order or administrative order;

35 (2) The actual cost to a parent of the provision of
37 adequate health insurance coverage for the involved
39 children; or

41 (3) The amount of money received from means-tested
43 public assistance programs, including, but not limited
45 to, Aid to Families with Dependent Children,
47 supplemental security income, food stamps and general
49 assistance.

9. Order of support. "Order of support" means any judgment
11 or order for the support of dependent children issued by any
13 court of this State or another state, including an order in a
15 final decree of divorce or any judgment or order issued in
17 accordance with an administrative procedure, which is established
19 by state law, which affords substantial due process and which is
21 subject to judicial review.

10. Person. "Person" means an individual, trust, estate,
12 partnership, association, company, corporation, political
14 subdivision of the State or instrumentality of the State.

11. Public assistance. "Public assistance" means money
13 payments and medical care furnished to or on behalf of dependent
15 children by the State.

12. Responsible parent. "Responsible parent" means the
14 parent who is responsible for paying an order of support.

1 **§494-B. Readability**

3 All notices, decisions and other written material intended
5 to be read by parents shall be designed to be easily understood
7 and shall have a readability score, as determined by a recognized
 instrument for measuring adult literacy, equivalent to no greater
 than 6th grade reading level.

9 **Sec. 5. 19 MRSA §495**, as amended by PL 1985, c. 652, §§24 and
11 **25**, is further amended to read:

13 **§495. Creation of debt to department**

15 **1. Public assistance.** Debts due the department for public
 assistance are as follows.

17 ~~A. When no court order of support has been established, a~~
19 ~~payment of public assistance for the benefit of the~~
 ~~dependent child creates a debt due the department from the~~
21 ~~responsible parent in the amount of public assistance paid.~~
 ~~When a periodic support payment has been established under~~
23 ~~section 498, the debt shall be limited to the amount stated~~
 ~~in the decision. The department shall be subrogated to the~~
25 ~~rights of child and spousal support of a recipient of Aid to~~
 ~~Families with Dependent Children or Medicaid to the extent~~
27 ~~of any payments made by the department to or on behalf of~~
 ~~the recipient. Failure to pay child or spousal support to~~
29 ~~which the department has been subrogated shall create a debt~~
 ~~due the department by the parent responsible for providing~~
 ~~support.~~

31 ~~B. Whenever a court order of support has been established,~~
33 ~~the debt due the department from the responsible parent~~
 ~~shall be the amount established under that order. The~~
35 ~~amount of debt shall be limited to amounts established~~
 ~~pursuant to a court or administrative order that accrue~~
37 ~~while the recipient receives Medicaid or Aid to Families~~
 ~~with Dependent Children. No debt may accrue prior to the~~
39 ~~entry of a court or administrative order.~~

41 ~~(1) The debt shall not be limited by the amount of~~
43 ~~public assistance paid for the benefit of the dependent~~
 ~~child. Amounts collected by the department in excess~~
45 ~~of public assistance expended shall be distributed~~
 ~~pursuant to section 513.~~

47 ~~(2) The issuance of a court order of support shall not~~
49 ~~relieve the responsible parent of any liability for a~~
 ~~debt which previously had accrued under paragraph A.~~

51 **1-A. Failure to pay child or spousal support.** For actions
 initiated pursuant to section 448-A, failure to pay support

1 obligations under a court or administrative order of support
2 shall create a debt due the applicant. Upon execution of a
3 contract between the department and the applicant, the department
4 may take action to establish, enforce or collect the debt under
5 any appropriate statute including, but not limited to, remedies
6 contained in this subchapter.

7
8 **2. Interstate cooperation.** ~~A payment of public assistance~~
9 ~~by another state for the benefit of a dependent child located~~
10 ~~within that state creates a debt due that state from a~~
11 ~~responsible parent in the amount of the public assistance paid.~~
12 Another state shall be subrogated to the rights of child and
13 spousal support of a recipient of Aid to Families with Dependent
14 Children or Medicaid to the extent of any payments made by that
15 state to the recipient. Failure to pay child or spousal support
16 to which that state has been subrogated shall create a debt due
17 that state by the parent responsible for providing support. With
18 the execution of an application for nonwelfare services between a
19 state and a resident of that state, the state may request the
20 department to enforce or collect any unpaid support debt
21 belonging to the applicant. Upon written request by a state to
22 the department, the department may attempt to collect either the
23 welfare or nonwelfare debt by action under any appropriate laws,
24 including, but not limited to, remedies established by this
25 subchapter.

26
27 **3. Definition of state.** "State" means any state, territory
28 or possession of the United States, the District of Columbia and
29 the Commonwealth of Puerto Rico.

30
31 **4. Priority of department to recipients of public**
32 **assistance.** The first priority of the department shall be the
33 collection of support payments on behalf of public assistance
34 recipients that will be distributed to those recipients under
35 section 513 and the collection of support payments on behalf of
36 custodial parents to enable those parents to live independently
37 of public assistance. Support payments made on behalf of a
38 former recipient to whose support rights the State has been
39 subrogated may be retained by the department only to the extent
40 that the remainder of support payments sent to the former
41 recipient shall be reasonably calculated to provide sufficient
42 maintenance for the former recipient or that the remainder is
43 consistent with the child support guideline established by the
44 department under section 303-B.

45
46 **Sec. 6. 19 MRSA §496,** as amended by PL 1981, c. 657, §5, is
47 repealed and the following enacted in its place:

48 **§496. Limitation of debt**

49
50 **1. Exclusion for public assistance recipients.** A debt
51 shall not be incurred under section 495 by any responsible parent
52 while that parent receives public assistance, low-income home
53

1 energy assistance under the United States Code, Title 42, Chapter
2 94, or food stamps under the United States Code, Title 7, Chapter
3 51, for the benefit of any of that parent's natural or adopted
4 children. A debt previously incurred under section 495 shall not
5 be collected from any responsible parent while that parent
6 receives assistance for the benefit of any of that parent's
7 natural or adopted children.

8 2. Exclusion for reduction in support. Whenever the
9 department seeks to establish or enforce payment of any debt
10 under section 495, it shall not establish or collect the debt
11 when establishing or collecting the debt would directly or
12 indirectly result in a decrease in the amount of the current
13 support paid to or on behalf of the child or spouse to whom, or
14 on whose behalf, it is owed.

15
16 **Sec. 7. 19 MRSA §498,** as amended by PL 1985, c. 652, §26, is
17 repealed.

18
19 **Sec. 8. 19 MRSA §498-A,** as enacted by PL 1985, c. 652, §27,
20 is amended to read:

21
22 **§498-A. Determination of amount of child support obligation in**
23 **nonwelfare cases**

24
25 If no court order of support exists, the department may, by
26 hearing and other procedures set forth in this section, establish
27 a periodic payment to satisfy the responsible parent's support
28 obligation under sections 442 and 443, on behalf of his the
29 dependent children for whom the department has agreed to provide
30 enforcement services pursuant to section 448-A or on behalf of
31 the dependent children to whose support rights the department has
32 been subrogated under section 495. The department may also
33 establish the responsible parent's obligation to maintain medical
34 insurance coverage and to provide payment for other medical
35 expenses incurred on behalf of his the dependent children.

36
37 **1. Notice of hearing.** The department shall serve on the
38 ~~responsible-parent~~ both parents a notice of hearing not less than
39 20 days before the date of the hearing.

40
41 **2. Contents of notice.** In addition to conforming with the
42 requirements of the Maine Administrative Procedure Act, Title 5,
43 section 9052, subsection 4, the notice shall contain:

44
45 **A.** A statement that the obligee has contracted with the
46 department pursuant to section 448-A, to establish a child
47 support obligation or that the department has been
48 subrogated to the rights of the obligee pursuant to section
49 495, as the case may be;

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B. A statement of the names of the dependent children for whom support is being sought;

C. A statement that the responsible parent may be liable for medical insurance coverage for his that parent's dependents, if the hearing officer determines that the coverage is available to the responsible parent through an employer or other group affiliation at reasonable cost or if current coverage could be extended to include the dependent children;

D. A statement that the responsible parent may be ordered to pay for medical, dental, optical and hospital expenses incurred for the benefit of his the dependent children, if the hearing officer determines that the responsible parent has sufficient assets to cover those expenses;

E. A statement that if the responsible parent fails to appear, periodic support payments in the future, medical insurance coverage and payment of noncovered medical expenses shall be assessed and enforced by collection action;

F. A statement that the property of the responsible parent may be subject to lien and foreclosure, administrative seizure and disposition, order to withhold and deliver or other collection actions and that any debt determined to be owed by the responsible parent may be reported to a consumer reporting agency;

G. A statement of rights at the hearing; and

H. A statement that the failure of the responsible parent to maintain any required medical insurance coverage may result in his that parent's liability for all medical expenditures made by the department on behalf of the dependent children.

3. Action upon failure to appear. If the responsible parent fails to appear at the hearing on the date specified by the notice of debt, the hearing officer shall enter a decision pursuant to subsection 4, paragraph B. Within 30 days of service of the decision, the responsible parent may petition the department to vacate the decision if the responsible parent can show any grounds which permits relief from judgment in a civil action.

4. Hearing. The hearing shall be conducted as follows.

A. The hearing shall be conducted according to rules promulgated by the commissioner. The rules shall provide at least the right to confront and cross-examine witnesses, to

1 present witnesses, to be represented by an attorney or other
3 person and to be notified of these rights in writing. The
decision shall be limited to evidence presented at the
hearing.

5
7 B. The decision shall include a statement of the
responsibility of the alleged responsible parent and a
9 statement of the periodic support payment, and a statement
11 of the liability of the responsible parent to maintain
13 medical insurance coverage and to pay for other medical
15 expenses incurred on behalf of the dependent children. A
17 copy of the decision shall be served upon the responsible
19 parent both parents. Written notice of the responsible
21 parent's parents' right to review of the decision within the
department or appeal of the decision to the courts, as the
case may be, and of the action required and the time within
which the action shall be taken in order to exercise the
right of review or appeal shall be given to the responsible
parent parents with the decision. ~~A review of the decision~~
~~within the department, except pursuant to subsection 3,~~
~~shall be limited to a review of the record generated by the~~
~~original hearing.~~

23
25 C. The person conducting the hearing shall consider, in
27 addition to the requirements of section 303-B, when deciding
on the amount of periodic payment and the availability of
medical insurance coverage, at least the following criteria:

29 (1) The need of the child;

31 (2) The income, real property and personal property of
the responsible parent;

33 (3) The ability of the responsible parent to borrow;

35 (4) The ability of the responsible parent to earn;

37 (5) The need of the responsible parent;

39 (6) The responsibility of the responsible parent for
41 other dependents; but in any case the child for whom
43 support is sought must benefit as much as any other
dependent from the income and resources of the
responsible parent;

45 (7) The responsibility of the responsible parent for
47 voluntarily creating his that parent's own unstable
49 financial condition by voluntarily incurring subsequent
obligations. This condition shall not relieve him the
51 responsible parent of his that parent's duty to provide
support;

1 (8) The availability of employer-based, or other group
2 ~~affiliation~~, affiliated medical insurance coverage at a
3 reasonable cost to the responsible parent; and

4 (9) The availability of current medical coverage to
5 the responsible parent which could be extended to
6 include the dependent child.
7

8 4-A. Initiation of collection. The decision of the
9 department in the hearing shall establish the obligation of the
10 responsible parent. The department may collect the obligation
11 after service of the decision in the hearing.
12

13 5. Subsequent court order. An administrative decision
14 under this section shall remain in effect until superseded by a
15 subsequent court order or subsequent administrative hearing.
16

17 Sec. 9. 19 MRSA §498-B is enacted to read:

18 §498-B. Amendment of administrative decisions

19 1. Review on request of parent. A parent may seek review
20 pursuant to this subsection.
21

22 A. The department shall review and appropriately amend an
23 order under section 498-A upon a showing by either parent
24 that a material change of circumstances has occurred since
25 the order was established or since the most recent amendment
26 review hearing.
27

28 B. Either parent may request a review hearing of the
29 administrative support order. A request for review is any
30 oral or written expression to the department by either
31 parent that that parent is dissatisfied with the order
32 because of a material change in circumstances.
33

34 C. Within 15 days of a request for a review hearing, the
35 department shall notify both parents in writing that the
36 department is considering the request and shall request in
37 writing that each party provide within 30 days information
38 relevant to whether amendment of the order would be
39 appropriate. If the information received is insufficient to
40 make an informed decision about whether to conduct a review
41 hearing, the department must make reasonable and timely
42 efforts to solicit the information from the parents before
43 reaching a decision as to whether to conduct the amendment
44 review hearing. Within 15 days of the above 30 days, the
45 department shall notify each parent in writing of its
46 decision whether to conduct a review hearing.
47

48 D. If the decision denies the request for a review hearing,
49 the notice must state clearly the basis for the decision.
50

1 the parents' right to review under section 515, and the
2 action required and the time within which the action shall
3 be taken in order to exercise the right of review. A review
4 hearing may not be denied if a review of the support order
5 has not occurred within 3 years of the establishment of the
6 order or the most recent review hearing.

7
8 E. If the decision grants the request for a review hearing,
9 a notice shall accompany the decision providing not less
10 than 15 days notice of the hearing. The hearing must be held
11 within 30 days of the department's decision to conduct the
12 hearing unless continued for good cause by the hearing
13 officer.

14 2. Reviews initiated by the department. The department may
15 initiate review pursuant to this subsection.

16
17 A. Not later than 3 years after the establishment of an
18 order or after the most recent review hearing, the
19 department shall notify both parents in writing that the
20 department is considering whether to conduct a review
21 hearing and shall request that each parent provide within 30
22 days information relevant to whether amendment would be
23 appropriate. The notice shall also request each parent to
24 state whether the parent desires an amendment. In any case
25 in which the State has been subrogated to the right of
26 support under section 495, the department shall also request
27 from the custodial parent information about whether it would
28 be in the best interests of the child not to review the
29 order. If the information received is insufficient to make
30 an informed decision about whether to conduct a review
31 hearing, the department must make reasonable and timely
32 efforts to solicit the information from the parents before
33 reaching a decision as to whether to conduct the review
34 hearing. Within 15 days following the above 30 days, the
35 department shall notify each parent in writing of its
36 decision whether to conduct a review hearing.

37
38 B. The department may decline to conduct a review hearing
39 only if the information received indicates that neither
40 parent desires the review and there has been no material
41 change of circumstances since the establishment of the order
42 or the most recent review hearing, or that it would not be
43 in the best interests of the child for whom the support
44 obligation is being enforced to conduct a review hearing.

45
46 C. If the department decides not to conduct a review
47 hearing, it must within 15 days of the parents' 30-day
48 deadline in paragraph A, notify the parent of its decision
49 in accordance with the standards set out in subsection 1,
50 paragraph D.

1 D. If the department decides to conduct a review hearing, it
2 shall provide not less than 15 days' notice of the hearing.
3 The hearing must be held within 30 days of the department's
4 decision to conduct the hearing unless continued for good
5 cause by the hearing officer.

7 3. Hearing. The review hearing and decision shall conform
8 to the requirements of section 498-A, subsection 4.

9
10 A. The hearing officer shall decide initially whether there
11 has been a material change of circumstances since the
12 establishment of the order or the most recent review. The
13 hearing officer must then consider the criteria listed in
14 section 498-A, subsection 4, paragraph C.

15
16 B. The hearing officer may enter no order for collection of
17 support arrearages under the following circumstances:

18 (1) The responsible parent proves:

19
20 (a) That the change of circumstances that
21 occurred was beyond that parent's control and
22 caused the parent to be unable to meet the support
23 obligation while still providing for basic
24 necessities of life for that parent or that
25 parent's other dependent children; and

26 (b) That that parent had good cause for failing
27 to seek an amendment at the time the change of
28 circumstances occurred; or

29
30 (2) That the arrearages are owed to the department
31 and the collection of the arrearages would cause
32 directly or indirectly a reduction in the support
33 payments paid to the custodial parent or dependent
34 children.

35
36 C. The review hearing decision shall include the statement
37 of any arrearages owed together with specific findings
38 justifying any decision reducing any accrued arrearages.

39
40 **Sec. 10. 19 MRSA §500, sub-§1, ¶G, as repealed and replaced by**
41 **PL 1985, c. 652, §31, is amended to read:**

42
43 G. A statement that at the administrative hearing only the
44 following issues shall be considered:

45 (1) The---receipt---of---public---assistance---by---the
46 responsible--parent Any limitation on the debt under
47 section 496;

48 (2) Uncredited cash payments;

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- (3) The amount of the debt accrued and accruing;
- (4) The accuracy of the terms of the court or administrative order as stated in the notice of debt; and
- (5) The maintenance of any required medical or dental insurance coverage; and

Sec. 11. 19 MRSA §515, sub-§2-A, ¶B, as repealed and replaced by PL 1985, c. 652, §40, is amended to read:

B. If the hearing is on a notice of debt issued under section 500, only the following issues shall be considered:

- (1) ~~The receipt of public assistance by the responsible parent~~ Any limitation on the debt under section 496;
- (2) Uncredited cash payments;
- (3) The amount of the debt accrued and accruing;
- (4) The accuracy of the terms of the court or administrative order as stated in the notice of debt; and
- (5) The maintenance of any required medical or dental insurance coverage.

STATEMENT OF FACT

This bill would establish a child support guideline designed to ensure that a parent contributes a stable percentage of income to the support of a dependent child. The bill would further revise existing provisions concerning the creation of a debt to the Department of Human Services for public assistance payments made by the department for a dependent child and modify department hearing and collection procedures. The bill further establishes a regular review procedure and modifies existing law to use gender neutral terminology.