

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 819

S.P. 310

In Senate, February 26, 1991

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOLLOWAY of Lincoln
Cosponsored by Representative OTT of York, Senator GAUVREAU of Androscoggin and
Representative CAHILL of Mattawamkeag.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Provide an Expedited Process for the Commencement of
Paternity Actions.**



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

19 MRSA c. 7, sub-c. VI is enacted to read:

SUBCHAPTER VI

EXPEDITED PROCESS FOR THE COMMENCEMENT
OF PATERNITY ACTIONS

§517. Definitions

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

1. Alleged father. "Alleged father" means:

A. A man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child;

B. A man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child that resulted in the conception of the child; or

C. A man who is presumed to be a child's father under the Maine Rules of Evidence, Rule 302.

2. Blood or tissue typing tests. "Blood or tissue typing tests" means tests that demonstrate through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child.

3. Commissioner. "Commissioner" means the Commissioner of Human Services.

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

5. Proceeding. "Proceeding" means the administrative proceeding provided in this subchapter for the commencement of an action to establish paternity under chapter 5, subchapter III.

§518. Additional persons subject to jurisdiction

1. Application. To ensure maximum protection to citizens of this State, the department shall apply this section to assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution, Amendment XIV.

2 2. Cause of action. Any person, whether or not a citizen
3 or resident of this State, who engages in sexual intercourse in
4 this State resulting in paternity within the meaning of chapter
5 5, subchapter III, submits himself to the jurisdiction of the
6 department for the purpose of commencing a paternity action under
7 chapter 5, subchapter III, as provided by this subchapter.

8 **§519. Limitation on recovery from father**

10 An alleged father's liability for past expenses incurred is
11 limited to the 6 years preceding service of the notice under
12 section 521.

14 **§520. Service**

16 Service of a notice issued under section 521 upon a person
17 in this State must be made by service in hand and may be made by
18 an authorized representative of the commissioner or by any person
19 or official authorized by the Maine Rules of Civil Procedure,
20 Rule 4.

22 Service of a notice upon any person subject to the
23 jurisdiction of this State pursuant to this subchapter, as
24 provided in section 518, must be made by personally serving the
25 notice upon the person. If served upon the person outside this
26 State, the notice has the same force and effect as a notice
27 served within this State.

28 **§521. Notice of proceeding to commence an action**

30 **1. Notice of proceeding.** The department may commence an
31 action under chapter 5, subchapter III, by serving a notice on an
32 alleged father. The department may not serve such a notice
33 unless it has a sworn statement or affirmation under the penalty
34 for unsworn falsification from the child's mother claiming that
35 the alleged father engaged in sexual intercourse with her during
36 a possible time of conception of the child, engaged in sexual
37 intercourse with her during a possible time of conception of the
38 child that resulted in the conception of the child or is a man
39 who is presumed under state law to be the child's father. If the
40 mother is a minor, the sworn statement or affirmation may be that
41 of the guardian or next friend of the mother.

44 **2. Contents of notice.** In addition to conforming with the
45 requirements of the Maine Administrative Procedure Act, Title 5,
46 section 9052, subsection 4, the notice must include:

48 A. A statement that service of the notice on the alleged
49 father constitutes the commencement of an action under
50 chapter 5, subchapter III, for the determination of
51 paternity and any related issues under this subchapter;
52

2 B. A statement identifying any of the following as the
3 reason for filing the record of the proceeding in the
4 Superior Court or the District Court.

5 (1) The alleged father fails to deny paternity.

6 (2) The alleged father refuses to submit to blood or
7 tissue typing tests.

8 (3) The alleged father fails to execute and deliver to
9 the department an acknowledgment of paternity of the
10 child within 15 days of the mailing to him by ordinary
11 mail of a copy of the blood or tissue typing results
12 that do not exclude him as the natural father of the
13 child;

14 C. A statement that, if the department files a record of
15 the proceeding, the department may seek relief under section
16 522;

17 D. The child's name and place and date of birth;

18 E. The name of the child's mother and the name of the
19 person or agency having custody of the child, if other than
20 the mother;

21 F. The probable date on or period during which the child
22 was conceived;

23 G. An allegation that the alleged father engaged in sexual
24 intercourse with the child's mother during a possible time
25 of conception of the child, engaged in sexual intercourse
26 with the child's mother during a possible time of conception
27 of the child that resulted in the conception of the child or
28 is a man who is presumed to be the child's father under the
29 Maine Rules of Evidence, Rule 302 and that the alleged
30 father is or may be the natural father of the child;

31 H. An allegation that the child was or may have been
32 conceived as a result of sexual intercourse engaged in by
33 the mother and the alleged father with each other in this
34 State, and that the alleged father is subject to personal
35 jurisdiction under section 518, if applicable;

36 I. A statement that the alleged father may deny the
37 allegation of paternity by filing a written denial of
38 paternity with the department within 20 days after service
39 of the notice; that if the alleged father fails to file a
40 written denial with the department within 20 days after
41 service of the notice upon him, the proceeding will be filed
42 in a court of proper jurisdiction as a paternity action
43 under chapter 5, subchapter III; and that the question of
44 jurisdiction under section 518, if applicable;

2 paternity and any related issues under this subchapter may
4 be resolved against him by the court without further notice
6 to him;

8 J. A statement that if the alleged father files a written
10 denial of paternity with the department within 20 days after
12 service of the notice upon him:

14 (1) The department shall provide an expert examiner of
16 blood or tissue types to conduct blood or tissue typing
18 tests on the mother, child and alleged father; the
20 alleged father is required to submit to blood or tissue
22 typing tests, which may include, but are not limited
24 to, tests of red cell antigens, red cell isoenzymes,
26 human leukocyte antigens and serum proteins; the
28 department shall pay the initial cost of the blood or
30 tissue typing tests; and an indigent alleged father is
32 not liable for reimbursement of the cost of the blood
34 or tissue typing tests;

36 (2) If the alleged father refuses to submit to those
38 tests, the proceeding will be filed in a court of
40 proper jurisdiction as a paternity action under chapter
42 5, subchapter III, and the court may resolve the
44 question of paternity and any related issues under this
46 subchapter against the alleged father;

48 (3) If the alleged father is not excluded by the test
50 results and he does not, within 15 days of the ordinary
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
of proper jurisdiction as a paternity action under
chapter 5, subchapter III; 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 of proper
jurisdiction as a paternity action under chapter 5,
subchapter III, for disposition under section 280,
subsection 1, paragraph A;

K. A statement that if, prior to the filing of the record
of the proceeding in a court of proper jurisdiction for any
of the reasons set forth in paragraph B, the alleged father
executes and delivers 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 must
terminate, and the department may proceed against him under

1 subchapter V with respect to any remedy provided under that
2 subchapter; and

4 L. A statement that the alleged father is not required to
5 file an additional denial of paternity and he may, within 25
6 days after notice has been mailed to him that the record of
7 the proceeding has been filed in a court of proper
8 jurisdiction as an action under chapter 5, subchapter III,
9 assert any defense, in law or fact, as provided by the Maine
10 Rules of Civil Procedure, Rule 12(b), if the record of the
11 proceeding is filed in Superior Court or District Court
12 because the alleged father:

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

16 (2) Fails to execute and deliver to the department an
17 acknowledgment of paternity of the child within 15 days
18 of the mailing to him, by ordinary mail, of a copy of
19 blood or tissue typing test results that do not exclude
20 him as the natural father of the child.

22 §522. Court orders; relief

24 The department may request that the court:

26 1. Establish as natural father. Establish the alleged
27 father as the natural father of the child;

28 2. Weekly support. Order the alleged father to pay such
29 sums per week in child support as the court determines reasonable
30 and just;

31 3. To whom payments made. Order the alleged father to make
32 support payments directly to the department whenever the mother
33 is receiving aid to families with dependent children from the
34 department for the child or is a support enforcement client of
35 the department and at all other times directly to the mother;

36 4. Reimbursement. Order the alleged father to reimburse
37 the mother or the department or other payor of public assistance,
38 as applicable, for the past support, birth expenses and medical
39 expenses incurred on behalf of the child to the time of trial and
40 grant judgment to the mother or the department or other payor of
41 public assistance, as applicable, in the amount of those
42 expenses, with execution to issue immediately;

43 5. Medical expenses. Order the alleged father to pay all
44 reasonable medical, dental, hospital and optical expenses for the
45 child, to provide medical and health insurance coverage for the
46 child and to provide evidence of that coverage to the department
47 under section 776;

2 6. Attorney's fees. Order the alleged father to pay
4 reasonable attorney's fees under section 271 and costs for
 prosecution of the action, including, but not limited to,
6 prejudgment interest;

8 7. Income withholding period. Order income withholding as
 available under or required by law; and

10 8. Other relief. Grant such other relief as the court
12 determines just and proper.

14 §523. Applicability; Maine Rules of Civil Procedure, Rule 5(b)

16 The Maine Rules of Civil Procedure, Rule 5(b), applies to a
 proceeding maintained under this subchapter.

18 §524. Multiple alleged fathers

20 When it appears to the department that there may be more
22 than one alleged father of a child, the department may maintain
 proceedings under this subchapter against each alleged father,
24 simultaneously or successively. Failure to serve a notice on an
 alleged father does not bar the department from maintaining a
26 proceeding under this subchapter against any other alleged father
 of the same child.

28 §525. Failure of alleged father to deny paternity

30 If the alleged father fails to file a written denial of
32 paternity with the department within 20 days after service of
 notice upon him, the department's attorney may file the record of
34 the proceeding in a court of proper jurisdiction as a paternity
 action under chapter 5, subchapter III. This filing constitutes
36 a filing under the Maine Rules of Civil Procedure, Rule 3. Upon
 this filing, the proceeding is an action under chapter 5,
38 subchapter III.

40 §526. Blood or tissue typing tests

42 1. Requirement of tests. If the alleged father files a
44 written denial of paternity with the department within 20 days
46 after service of the notice upon him, the department shall
48 schedule blood or tissue typing tests for the mother, the child
50 and the alleged father, which may include, but not be limited to,
 tests of red cell antigens, red cell isoenzymes, human leukocyte
 antigens and serum proteins. The tests must be performed by an
 expert examiner in a laboratory that is accredited for parentage
 testing by the American Association of Blood Banks and that
 performs deoxyribonucleic acid probes, selected by the department.

2 2. Scheduling of tests. The department shall notify the
4 alleged father in writing by ordinary mail of the date, time and
6 place of his blood or tissue typing tests. The tests may not be
8 conducted within less than 15 days following the mailing of the
10 department's notice, except with the consent of the alleged
12 father. The test must be conducted in an office of the
14 department, when practicable. The department shall take into
16 account the alleged father's place of residence or employment in
18 selecting the location of the test.

20 3. Rescheduling of tests. If the alleged father does not
22 submit to the tests set forth in subsection 2, the department
24 shall notify him in writing by ordinary mail that if he does not,
26 within 15 days, request the department to reschedule the tests,
28 his failure to appear constitutes a refusal to submit to the
30 tests, and the department shall proceed under section 528. If
32 the alleged father timely requests rescheduling, the department
34 shall reschedule the test. The rescheduled test may not be
36 conducted within less than 15 days following the mailing of the
38 department's notice of rescheduling. The test must be conducted
40 in an office of the department, when practicable. The department
42 shall take into account the alleged father's place of residence
44 or employment in selecting the location of the test. The notice
46 of rescheduling must also advise the alleged father that, if he
48 fails to submit to the rescheduled test, the failure constitutes
50 a refusal to submit to the tests, and the department shall
52 proceed under section 528.

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

32 If an alleged father refuses to submit to blood or tissue
34 typing tests, the department's attorney may file the record of
36 the proceeding in a court of proper jurisdiction as a paternity
38 action under chapter 5, subchapter III. The filing constitutes a
40 filing under the Maine Rules of Civil Procedure, Rule 3. Upon
42 this filing, the proceeding is an action under chapter 5,
44 subchapter III, and the alleged father's refusal to submit to
46 blood or tissue typing tests constitutes a refusal to submit to
48 those tests under section 277.

§528. Procedures after blood tests

44 1. Transmittal of test results. Upon receipt of the
46 results of the blood tests, the department shall send copies of
48 the results by ordinary mail to the alleged father and to the
50 child's mother or to the mother's guardian or next friend if the
52 mother is a minor.

50 2. Exclusion of alleged father. If the alleged father is
52 excluded by the test results as the natural father of the child,
the department's attorney may file the record of the proceeding

2 in a court of proper jurisdiction as a paternity action under
3 chapter 5, subchapter III, for disposition under section 280,
4 subsection 1, paragraph A. The filing constitutes a filing under
5 the Maine Rules of Civil Procedure, Rule 3, and the proceeding is
6 an action under chapter 5, subchapter III.

7 3. Nonexclusion of alleged father. If the alleged father
8 is not excluded by the test results and he does not, within 15
9 days of the mailing to him of a copy of the blood or tissue
10 typing results and report, execute and deliver to the department
11 by ordinary mail an acknowledgment of paternity of the child in
12 accordance with the laws of the state in which the child was
13 born, the department's attorney may file the record of the
14 proceeding, inclusive of the blood or tissue typing test results,
15 in a court of proper jurisdiction as a paternity action under
16 chapter 5, subchapter III. The filing is a filing under the
17 Maine Rules of Civil Procedure, Rule 3, and the proceeding is an
18 action under chapter 5, subchapter III. Section 280 applies to
19 the action even though the blood and tissue typing tests were
20 performed and the results prepared as part of an administrative
21 proceeding under this subchapter. The alleged father's
22 participation in the tests may not prejudice any application by
23 the alleged father under section 278 for an order appointing an
24 additional examiner of blood or tissue types.

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

26 If a record of the proceeding is filed in a court of proper
27 jurisdiction under section 527 or section 528, subsection 3, the
28 alleged father is not required to file an additional denial of
29 paternity. He may assert any defense, in law or fact, as
30 provided by the Maine Rules of Civil Procedure, Rule 12(b). Any
31 defense must be asserted within 25 days after the mailing by
32 ordinary mail of a notice to the alleged father that the record
33 of the proceeding has been filed in a court of proper
34 jurisdiction as an action under chapter 5, subchapter III. The
35 notice must contain the substance of this section.

36 **§530. Acknowledgment of paternity**

37 If, prior to the filing of the record of the proceeding in a
38 court of proper jurisdiction pursuant to section 525 or 527 or
39 section 528, subsection 3, the alleged father executes and
40 delivers to the department an acknowledgment of paternity of the
41 child in accordance with the laws of the state in which the child
42 was born, the proceeding must abate, and the department may
43 proceed against the father under subchapter V with respect to any
44 remedy provided under that section.

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STATEMENT OF FACT

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The purpose of this bill is to enable the Department of Human Services, as the State's child support enforcement agency under the federal Social Security Act, Title IV, Part D, to comply with the federal performance and audit requirements relative to the establishment of paternity set forth in 45 Code of Federal Regulations 303.5(a)(1)(2)(3), effective October 1, 1990, both with regard to new cases and the case backlog of 6,000. Presently, actions for the determination of paternity under the state Uniform Act on Paternity may be commenced only in the Superior Court or the District Court. The bill provides an expedited process for the commencement of paternity actions, which parallels the preliminary provisions of the Uniform Act on Paternity. All paternity trials and default hearings would continue to be held by either the District Court or the Superior Court, and all determinations of paternity and nonpaternity would continue to be made only by the District Court or the Superior Court.