

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1222, L.D. 1780, Bill, "An Act to Provide More Effective Recovery of Child Support"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Whereas, under current law, the Department of Human Services has no authority to distribute support payments to ensure a fair share to each family of children, a key issue currently pending before the Federal Court in Maine; and

Whereas, under current law, the Department of Human Services does not have authority to administratively order responsible parents in nonwelfare cases to pay for past necessary expenses and out-of-pocket medical costs, therefore limiting the effectiveness of the expedited paternity process enacted last year; and

Whereas, under current law, a responsible parent's past debt due the Department of Human Services for public assistance paid is the amount of public assistance paid, even if the responsible parent's past earning capacity could not provide that level of support; and

Whereas, quicker and more efficient processing of all child support cases is especially important in times when the State is reducing resources available to families, thus making the securing of child support for those families even more crucial; and

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2 Whereas, the more efficient processing of these cases will
enable the State to monitor state compliance with federal audit
4 standards; and

6 Whereas, the changes will result in a net increase in
revenue by increasing the reimbursement for state aid to families
8 with dependent children payments; and

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

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

18 **Sec. 1. 19 MRSA §280-C is enacted to read:**

20 §280-C. Presumption of legitimacy not applicable

22 1. Presumption not applicable. The presumption of
legitimacy provided in the Maine Rules of Evidence, Rule 302 does
24 not apply if:

26 A. The experts conclude that reliable blood or tissue tests
show that the presumed father is not the biological parent
28 of the child; or

30 B. The experts conclude that reliable blood or tissue tests
show that the alleged father is not excluded and that the
32 probability of the alleged father's paternity is 97% or
higher.

34 **Sec. 2. 19 MRSA §314, sub-§1, ¶D, as enacted by PL 1989, c.**
36 **834, Pt. A, is repealed and the following enacted in its place:**

38 D. If a party fails to comply with this subsection, the
court may, in its discretion:

40 (1) Impose economic sanctions; or

42 (2) Presume for the purpose of determining a current
support obligation that the party has an earning
44 capacity equal to the average weekly wage of a worker
within this State as determined by the most recent
46 Department of Labor statistics. A different annual

2 income may be used if there is sufficient reliable
3 evidence to conclude reasonably that the noncomplying
4 party earns a greater or lesser actual income.

6 **Sec. 3. 19 MRSA §405, sub-§§1 and 2, as amended by PL 1971, c.**
7 **393, §14, are further amended to read:**

8 1. **Recognizance.** To require the obligor to furnish
9 recognizance in the form of a cash deposit or bond of such a
10 character and in such an amount as the court may deem determines
11 proper to assure ensure payment of any amount required to be paid
12 by the obligor-;

14 2. **Payments.** To require the obligor to make payments at
15 specified intervals to the clerk of the court and to report
16 personally to such the clerk at such times as may be deemed
17 determined necessary-;

18 **Sec. 4. 19 MRSA §405, sub-§3, as amended by PL 1985, c. 652,**
19 **§15, is further amended to read:**

22 3. **Violations.** To punish under the power of contempt the
23 obligor who violates any order of the court, or to issue any
24 order pursuant to chapter 14-A. When the obligor is committed to
25 jail for contempt, as provided, the county having jurisdiction of
26 the process shall bear the expense of his the obligor's support
27 and commitment and he the obligor may be discharged in the same
28 manner as provided by section 722-; and

30 **Sec. 5. 19 MRSA §405, sub-§4 is enacted to read:**

32 4. Blood tests. When this State is the responding state
33 and the petition from the initiating state contains an allegation
34 of paternity that is denied by the respondent, the court, on its
35 own motion or the motion of a party, shall order the parties to
36 submit to blood tests pursuant to sections 272 to 280-B.

38 **Sec. 6. 19 MRSA §448-A, sub-§§7 and 8 are enacted to read:**

40 7. State's role in support enforcement cases. In any child
41 support action brought by the department under this Title or
42 Title 22, the department or prosecuting attorney represents
43 solely the interest of the State in providing child support
44 enforcement services under federal law. Nothing in this section
45 may be construed to modify statutory mandate, authority or
46 confidentiality required of any governmental agency, nor does
representation by a prosecuting attorney create an

2 attorney-client relationship between the attorney and any party,
3 other than the State.

4 For the purpose of this subsection, "prosecuting attorney" means
5 an assistant attorney general, an assistant district attorney, an
6 attorney under contract or an attorney in the employ of the
7 department.

8
9 8. Obligation established. The current support obligations
10 in cases brought in accordance with this section are established
11 pursuant to subchapter I-A. An obligation for past necessary
12 support due is established by application of the most current
13 child support scale to the responsible parent's income for the
14 time period in which the applicant was entitled to support
15 payments and may include reimbursement for past medical
16 expenses. In the absence of sufficient reliable information to
17 calculate a responsible parent's past income, it is presumed that
18 the responsible parent had an earning capacity equal to the
19 average weekly wage of a worker within this State as determined
20 by the Department of Labor statistics for the applicable years.
21 A different annual income may be used if there is sufficient
22 reliable evidence to conclude reasonably that the responsible
23 parent earned a greater or lesser actual income. A present
24 disability to pay child support, legal or otherwise, does not
25 operate to bar a determination of past debt due the applicant for
26 any relevant period in which the disability did not exist.

27
28 If the responsible parent defaults or otherwise fails to appear,
29 and no court or administrative order of support has been
30 established, the court or administrative hearing officer shall
31 presume that the responsible parent has an earning capacity equal
32 to the average weekly wage of a worker within this State as
33 determined by the Department of Labor statistics for the
34 applicable years. A different annual income may be used if there
35 is sufficient reliable evidence to conclude reasonably that the
36 responsible parent earned a greater or lesser actual income.

37
38 Sec. 7. 19 MRSA §495, sub-§1, ¶A, as enacted by PL 1981, c.
39 657, §4, is amended to read:

40
41
42 A. When no court order of support has been established, a
43 payment of public assistance for the benefit of the
44 dependent child creates a debt due the department from the
45 responsible parent ~~in the amount of public assistance paid.~~
46 The amount of debt due the department is established by
application of the most current child support scale to the
responsible parent's income for the time period in which the

2 department was entitled to support payments. In the absence
3 of sufficient reliable information to calculate a
4 responsible parent's past income, it is presumed that the
5 responsible parent had an earning capacity equal to the
6 average weekly wage of a worker within this State as
7 determined by the Department of Labor statistics for the
8 applicable years. A different annual income may be used if
9 there is sufficient reliable evidence to conclude reasonably
10 that the responsible parent earned a greater or lesser
11 actual income. A present disability to pay child support,
12 legal or otherwise, does not operate to bar a determination
13 of past debt due the department for any relevant period in
14 which the disability did not exist. When a periodic support
15 payment has been established under section 498, the debt
16 shall-be is limited to the amount stated in the decision.

17 **Sec. 8. 19 MRSA §495, sub-§1-B is enacted to read:**

18 1-B. Default judgment. If the responsible parent defaults
19 or otherwise fails to appear, and no court or administrative
20 order of support has been established, the court or
21 administrative hearing officer shall presume that the responsible
22 parent has an earning capacity equal to the average weekly wage
23 of a worker within this State as determined by the Department of
24 Labor statistics for the applicable years. A different annual
25 income than the one specified by this subsection may be used if
26 there is sufficient reliable evidence to conclude reasonably that
27 the responsible parent earned a greater or lesser actual income.

28 **Sec. 9. 19 MRSA §498, sub-§4, ¶B, as amended by PL 1989, c.**
29 **337, §3, is further amended to read:**

30 B. The decision shall **must** include a statement of the
31 responsibility of the alleged responsible parent, a
32 statement of the periodic support payment constituting the
33 current support obligation, the amount of public-assistance
34 the debt accrued due the department as established under
35 section 495, subsection 1, paragraph A and the obligation of
36 the responsible parent to maintain health insurance coverage
37 for any dependent children and to provide payment for other
38 medical expenses and shall **must** require the responsible
39 parent to provide written proof to the department of the
40 existence of the required health insurance coverage within
41 15 days of that parent's receipt of the decision. A copy of
42 the decision shall **must** be served upon the responsible
43 parent. The department shall provide written notice to the
44 responsible parent with its decision of that parent's right
45 to appeal.

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2 to administrative review of the decision within the
department or review of the decision by the courts and of
4 the action required and the time within which the action
shall ~~must~~ be taken to exercise the right of administrative
6 or judicial review. A review of the decision within the
department, except pursuant to subsection 3, is limited to a
review of the record generated by the original hearing.

8
10 Sec. 10. 19 MRSA §498-A, first ¶, as repealed and replaced by
PL 1989, c. 337, §4, is amended to read:

12 If no court order of support exists, the department by
14 hearing on behalf of any individual or governmental applicant for
services under section 448-A, or on behalf of any person entitled
16 by federal statute to support enforcement services as a former
recipient of public assistance, may establish a periodic payment
to satisfy the responsible parent's current support obligation
18 under ~~sections--442--and--443~~ section 443-A, establish the
responsible parent's debt accrued under sections 273 and 443-A
20 and establish the responsible parent's obligation to maintain
health insurance coverage for any dependent children and to
22 provide payment for other medical expenses incurred on behalf of
the dependent children by the other parent of the children or by
24 any other person with whom the children reside. The department
acting on behalf of another state or another state's
26 instrumentality or a person residing in another state shall
~~constitute~~ constitutes good cause within the meaning of Title 5,
28 section 9057, subsection 5. Notwithstanding ~~sections-442-and-443~~
section 443-A, after January 1, 1990, the responsible parent's
30 support obligation shall ~~continue~~ continues beyond the child's
18th birthday if the child is attending secondary school as
32 defined in Title 20-A, section 1, until the child graduates,
withdraws or is expelled from secondary school or attains the age
34 of 19, whichever first occurs.

36 Sec. 11. 19 MRSA §498-A, sub-§4, ¶B, as repealed and replaced
by PL 1989, c. 337, §4, is amended to read:

38
40 B. The decision shall ~~must~~ include a statement of the
responsibility of the responsible parent, a statement of the
42 periodic support payment constituting the current support
obligation, the debt due the applicant as established under
44 section 448-A, subsection 8 and the obligation of the
responsible parent to maintain health insurance coverage for
46 any dependent children and to provide payment for other
medical expenses and shall ~~must~~ require the responsible
parent to provide written proof to the department of the

2 existence of the required health insurance coverage within
15 days of that parent's receipt of the decision. A copy of
4 the decision shall must be served upon the responsible
parent. The department shall provide written notice to the
6 responsible parent with its decision of the parent's right
to an administrative review of the decision within the
department or review of the decision by the courts and of
8 the action required and the time within which the action
shall must be taken to exercise the right of an
10 administrative review. A review of the decision within the
department, except pursuant to subsection 3, shall must be
12 limited to a review of the record generated by the original
hearing.

14 Sec. 12. 19 MRSA §498-D is enacted to read:

16 §498-D. Discovery of past income

18 The responsible parent has an obligation to supply evidence
20 regarding past income in order to calculate the debt owed the
22 department or an applicant for services under section 448-A if
24 the evidence is reasonably available. The responsible parent has
26 30 days to supply evidence of past income if requested to do so
by the department. A request for evidence regarding past income
may be made through an administrative form developed by the
department.

28 Failure to provide the evidence, absent a showing of good
30 cause for failure to do so or notification to the department of
32 good faith attempts to secure the information, allows the
34 administrative hearing officer to draw any reasonable inference
36 from the evidence available, including an inference that the
responsible parent had a greater earning capacity than the
average weekly wage of a worker within this State as defined by
the most recent Department of Labor statistics.

38 Sec. 13. 19 MRSA §513, as enacted by PL 1975, c. 532, §3, is
repealed and the following enacted in its place:

40 §513. Distribution of proceeds

42 1. Pro rata distribution when insufficient funds received.
44 The following provisions apply when a responsible parent is under
46 court or administrative orders of support for more than one
family of children and at least one family of children is either
a recipient of public assistance or a beneficiary under section
448-A. For purposes of this subsection, a "family of children"

2 consists of all blood-related and adopted children of the
3 responsible parent that reside apart from any other children that
4 the responsible parent is under a court or administrative order
5 to support.

6 A. If the department fails to receive sufficient funds to
7 meet the responsible parent's current support obligation to
8 all of the children of all of the families, the department
9 shall distribute pro rata the funds received so that each
10 family of children receives the percentage of the funds
11 received that represents that family's share of current
12 support when calculated from the responsible parent's total
13 current support obligation for all families.

14 B. Even if the responsible parent makes a designation or
15 otherwise directs a distribution to the families of
16 children, the department shall distribute the funds received
17 as provided in paragraph A if the designation or other
18 direction would result in a distribution not in compliance
19 with paragraph A.

20 C. The department shall distribute the funds received as
21 provided in paragraph A regardless of the source of the
22 collection of the funds.

23 D. The department must be held harmless as to any claim of
24 the responsible parent for its distribution of funds
25 received as provided in paragraph A.

26 2. Reduction of debt under section 495. Any money realized
27 by the department by proceedings under this subchapter reduces
28 the debt of a responsible parent under section 495 and must be
29 paid to the recipient of assistance for the express benefit of
30 the dependent children to the extent permissible by federal law
31 and regulations.

32 **Sec. 14. 19 MRSA §777-B is enacted to read:**

33 **§777-B. Discovery of past income in department support**
34 **enforcement cases**

35 The responsible parent has an obligation to supply evidence
36 regarding past income in order to calculate the debt owed the
37 department or an applicant for services under section 448-A if
38 the evidence is reasonably available. A request for evidence
39 regarding past income may be made through a document request
40 pursuant to the Maine Rules of Civil Procedure, Rule 34.

2 child support scale that is now being used successfully to
3 determine current support. In short, the absent parent turns
4 over information regarding past years' incomes and the current
5 child support scale is utilized to determine what the child
6 support payment should have been during past years in which the
7 absent parent was liable for support. This amount becomes a
8 judgment for past debt. This mechanism is simple, fair and is
9 required by federal law.

10 2. The Maine Rules of Evidence, Rule 302 presumes that a
11 man married to a woman when a child is conceived or born is the
12 father of the child and the child is legitimate. To rebut that
13 presumption, a person must produce evidence and persuade the
14 trier of fact beyond a reasonable doubt of the illegitimacy. The
15 amendment provides that this presumption does not apply if, in a
16 paternity action, the experts conclude that reliable blood and
17 tissue tests show that the man who is presumed to be the father -
18 that is, the husband of the mother when the child is conceived or
19 born - is not the biological parent. The amendment also provides
20 that this presumption does not apply if the experts conclude that
21 when an "alleged father," a man other than the husband when the
22 child was conceived or born, is not excluded as the biological
23 father and that the probability of the alleged father being the
24 biological parent of the child is 97% or higher. This new
25 provision helps establish that an alleged father is probably the
26 biological father when the otherwise-presumed father is not
27 available for blood and tissue tests.

28 3. It authorizes the court to presume an earning capacity
29 for a party in a child support action who fails to comply with
30 the requirement to supply information about income to establish
31 child support awards under the child support guidelines. The
32 presumed income is the average weekly wage of a worker within the
33 State as determined by the Department of Labor statistics. The
34 court may presume a different income if there is sufficient
35 reliable information to conclude reasonably that the actual
36 income was greater or lesser than a worker's average weekly wage.

37 4. It clarifies that blood tests must be ordered as an
38 integral part of the Uniform Reciprocal Enforcement of Support
39 Act.

40 5. It adopts law from numerous other states regarding the
41 role of "state" attorneys in support cases and makes clear that
42 the state attorney's client is the State.
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2 6. It adds a new subsection to the Maine Revised Statutes,
4 Title 19, section 448-A that delineates how obligations for
6 current and past necessary support due are established in
8 nonwelfare cases. The child support guidelines are applied to
10 the actual past and current income, or the Department of Labor
12 statistics may be used if the actual income figures are not
available. A different annual income may be used if there is
sufficient reliable evidence. A present disability to pay child
support does not bar a determination of past debt due for any
time the disability did not exist. The obligation for past
necessary support may include reimbursement for past medical
expenses.

14 7. It amends current law regarding the creation of a debt
16 due the Department of Human Services for payment of public
18 assistance for the benefit of a dependent child. The amount of
20 debt due the department is established by applying the most
22 current child support guidelines to the responsible parent's past
24 income. Department of Labor statistics may be used, or a
different income may be used if there is sufficient reliable
evidence. A present disability to pay child support is not a
determination for past debt due for any time the disability did
not exist.

26 8. It eliminates a problem the department has had in
28 establishing and collecting the debt based on past AFDC
30 payments. Under current staffing levels, the department is able
32 to produce records on past AFDC payments for no more than 36
months in the past, thus eliminating the department's ability to
establish the responsible parent's debt for any payments made
before that time and eliminating the possibility of reimbursement
for those past payments.

34 9. It provides for a presumption of earning capacity in
36 court and administrative hearing cases in which the responsible
parent defaults or otherwise fails to appear.

38 10. It amends the administrative hearing provisions for
40 public assistance support cases to refer to the revised method
for calculating the debt due the department.

42 11. It authorizes the department to establish the
44 responsible parent's debt for past necessary support in
46 nonwelfare cases in an administrative hearing. Because the
calculation process is simplified, there is no reason to limit
this determination to the judicial process.

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2 12. It amends the administrative hearing provisions for
nonwelfare support cases to refer to the revised method for
calculating the debt due the recipient of support.

4
6 13. It provides incentive for responsible parents to
provide accurate and complete information regarding past income.
This applies to administrative hearings in both public assistance
8 and nonwelfare support cases and to court proceedings. If the
responsible parent fails to provide the evidence, absent a
10 showing of good cause or notification of good faith attempts to
obtain the information, the hearing officer or the court may draw
12 the negative inference that the responsible parent had a greater
earning capacity than the average weekly wage of a worker in this
14 State as established by Department of Labor statistics.

16 14. Current law does not address how money should be
distributed when a responsible parent does not send sufficient
18 child support to cover multiple child support orders. The
amendment requires the department to more equitably distribute
20 child support payments among these multiple families. The
department shall distribute the money received to each family in
22 the same proportion as each family's support order bears to the
total of all support orders. While this may mean that some
24 families may on occasion receive less money than their court or
administrative order directs them to receive, this establishes
26 the policy of the State to distribute whatever money is received
so that all families receive some benefit from that child support
28 payment. This addresses one of the key issues in litigation
currently pending in federal court.

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Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the
House
2/6/92 (Filing No. H-899)