

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1780

H.P. 1222

House of Representatives, May 3, 1991

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.  
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 ANTHONY of South Portland.  
Cosponsored by Senator CONLEY of Cumberland and Representative PARADIS of Augusta.

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STATE OF MAINE

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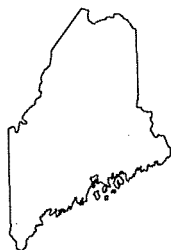
IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Provide More Effective Recovery of Child Support.**

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(AFTER DEADLINE)



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

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

6 §280-C. Rebuttal of presumption of legitimacy

8 1. Rebuttal of presumption. The presumption of legitimacy provided in the Maine Rules of Evidence, Rule 302 must be rebutted if:

10 A. The conclusions of the experts, as disclosed by reliable blood or tissue testing, is that the presumed father is not the biological parent of the child; or

12 B. The experts conclude, as disclosed by reliable blood or tissue testing, that the alleged father is not excluded and that the probability of the alleged father's paternity is 97% or higher.

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 A, is repealed and the following enacted in its place:

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

18 (1) Impose economic sanctions; or

20 (2) Presume for the purpose of determining a current support obligation that the party is capable of earning the following gross annual income: the average weekly wage of a worker within this State as determined by the most recent Department of Labor statistics multiplied times 50.

22 A different annual income than the one specified by this paragraph may be used if there is sufficient reliable evidence to reasonably conclude that the noncomplying party earns a greater or lesser actual income.

24 Sec. 3. 19 MRSA §320 is enacted to read:

26 §320. Default judgments

28 When the party is found to be in default in any court action or administrative proceeding in which a child support order is issued or modified under this Title or Title 22, the court or hearing officer shall presume that the defaulting party is capable of earning the average weekly wage of a worker within this State as determined by the most recent Department of Labor statistics. A greater annual income than the one specified by this section may be used if there is sufficient reliable evidence

2 to conclude reasonably that the noncomplying party earns a  
3 greater actual income.

4 **Sec. 4. 19 MRSA §448-A, sub-§6** is enacted to read:

6 6. State's role in support enforcement cases. In any child  
7 support action brought by the department under this Title or  
8 Title 22, the department or prosecuting attorney represents  
9 solely the interest of the State in providing child support  
10 enforcement services under federal law. Nothing in this section  
11 may be construed to modify statutory mandate, authority or  
12 confidentiality required of any governmental agency, nor does  
13 representation by a prosecuting attorney create an  
14 attorney-client relationship between the attorney and any party,  
15 other than the State.

16 For the purpose of this subsection, "prosecuting attorney" means  
17 an Assistant Attorney General, an Assistant District Attorney, an  
18 attorney under contract or an attorney in the employ of the  
19 department.

22 **Sec. 5. 19 MRSA §495, sub-§1, ¶A,** as enacted by PL 1981, c.  
23 657, §4, is amended to read:

24 A. When no court order of support has been established, a  
25 payment of public assistance for the benefit of the  
26 dependent child creates a debt due the department from the  
27 responsible parent in the amount of public assistance paid.  
28 The amount of debt due the department is established by  
29 application of the most current child support scale to the  
30 responsible parent's income for the time period in which the  
31 department was entitled to support payments. In the absence  
32 of sufficient reliable information to calculate a  
33 responsible parent's past income, it is presumed that the  
34 responsible parent was capable of earning the average weekly  
35 wage of a worker within this State as determined by the  
36 Department of Labor statistics for the applicable years. A  
37 present disability to pay child support, legal or otherwise,  
38 does not operate to bar a determination of past debt due the  
39 department for any relevant period in which the disability  
40 did not exist. When a periodic support payment has been  
41 established under section 498, the debt shall be is limited  
42 to the amount stated in the decision.

44 **Sec. 6. 19 MRSA §495, sub-§1-B** is enacted to read:

46 1-B. Default judgment. When no court or administrative  
47 order of support has been established, the court or  
48 administrative hearing officer shall utilize the procedure under  
49 section 320 to determine retrospectively the amount of the debt  
50 due the department.

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Sec. 7. 19 MRSA §495-A is enacted to read:

**§495-A. Discovery of past income**

The responsible parent has an obligation to supply evidence regarding past income in order to calculate the debt owed the department if the evidence is reasonably available. The responsible parent has 30 days to supply evidence of past income if requested to do so by the department. A request for past income may be made through an administrative form developed by the department or through a document request pursuant to the Maine Rules of Civil Procedure, Rule 34. Failure to provide the evidence, absent a showing of good cause for failure to do so, or notification to the department of good faith attempts to secure the evidence, results in a presumption that the debt owed is the full amount of public assistance paid during the time period in which the department was entitled to support payments.

Sec. 8. 19 MRSA §498, sub-§3, as amended by PL 1989, c. 711, §1, is further amended to read:

**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. 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 that the department was entitled to support payments. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent was capable of earning the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A present disability to pay child support, legal or otherwise, does not operate to bar a determination of past debt due the department for any relevant period in which the disability did not exist. Within one year of service of the decision, the responsible parent may petition the department to vacate the decision if the responsible parent shows good cause.

**STATEMENT OF FACT**

This bill clarifies and strengthens the laws concerning the collection of child support, especially in administrative cases where the responsible parent is found to be in default.