

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

Legislative Document

No. 2293

S.P. 893

In Senate, February 4, 1992

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 COLLINS of Aroostook

Cosponsored by Senator GAUVREAU of Androscoggin, Representative ANTHONY of South Portland and Representative HASTINGS of Fryeburg.

STATE OF MAINE

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

**An Act to Provide for Periodic Review and Modification of Child Support Orders.**



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

4 Sec. 1. 19 MRSA §311, sub-§3-A is enacted to read:

6 3-A. Department. "Department" means the Department of  
Human Services and its agents and authorized representatives.

8 Sec. 2. 19 MRSA §314, sub-§1, ¶D, as enacted by PL 1989, c.  
10 834, Pt. A, is repealed and the following enacted in its place:

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

14 (1) Impose sanctions;

16 (2) Presume for the purpose of determining the party's  
annual gross income that the party is capable of  
18 earning the average weekly wage of a worker within this  
State, as determined by the most recent Department of  
20 Labor statistics, multiplied by 50; or

22 (3) Presume a different average weekly wage if there  
is sufficient reliable evidence to reasonably conclude  
24 that the noncomplying party earns a greater or lesser  
actual income. The court may admit the Bureau of Labor  
26 Standards industry standards into evidence for any job  
for which that party is suited by reason of training,  
28 experience, education or background.

30 Sec. 3. 19 MRSA §316, sub-§8 is enacted to read:

32 8. Notice of right to review. Each judicial order or  
administrative order issued or modified in this State that  
34 includes an order for child support must include a statement that  
advises parents of the right to request the department to review  
36 the amount of the support order pursuant to section 320 if there  
is a substantial change of circumstances.

38 Sec. 4. 19 MRSA §319, as enacted by PL 1989, c. 834, Pt. A,  
40 is repealed and the following enacted in its place:

42 §319. Modification of existing support orders

44 1. Motion to modify support. A party, including the  
department, may file a motion to modify support. Unless a party  
46 also files a motion to amend the divorce judgment, a motion to  
amend under section 214 or a motion for judicial review under  
48 Title 22, section 4038, the child support obligation is the sole  
issue to be determined by the court on a motion to modify  
50 support. The court, in its discretion, may bifurcate the support  
issue from other issues presented by the party's pleadings.

2           **2. Substantial change of circumstances.** If a child support  
4           order, including an order in effect before the effective date of  
6           this section, varies more than 15% from a parental support  
8           obligation determined under section 316, the court or hearing  
10           officer shall consider the variation a substantial change of  
              circumstances. This section does not apply to an existing order  
              issued under section 317 that deviated from the presumptive  
              amount determined pursuant to section 316.

12           **3. Service.** Except as provided in this section, a motion  
14           to modify support is governed by the Maine Rules of Civil  
              Procedure, Rule 7 and must be served on each party pursuant to  
              the Maine Rules of Civil Procedure, Rule 4 and be accompanied by:

16           A. A notice that the court may enter an order without  
              hearing if the party does not request a hearing;

18           B. A notice of the right to request a hearing;

20           C. A notice of the requirement of mediation prior to  
22           hearing;

24           D. The income affidavit of the moving party or the party  
26           receiving the assistance of the department, as well as the  
              responsible parent's affidavit, if available;

28           E. A proposed order, incorporating the child support  
              worksheet; and

30           F. Any stipulations entered into by the parties.

32           **4. Request for hearing.** A request for hearing must be made  
34           in writing within 21 days of receipt of service and be  
36           accompanied by the requesting party's income affidavit and child  
38           support worksheet. If a party requests a hearing, the matter  
              must be referred for mediation prior to trial. This subchapter  
              applies to all proceedings to modify an order of child support.

40           **5. Order without hearing.** If a party does not request a  
42           hearing within 21 days after service, the court may enter an  
44           order modifying support without hearing using the proposed order,  
46           provided that the proposed modified support obligation is equal  
48           to or greater than the obligation resulting from the application  
              of section 315. If a downward deviation is proposed, the court  
              shall hold a hearing prior to entering an order. The court may  
              apply the presumptions set out in section 314, subsection 1,  
              paragraph D.

2 6. Motion to set aside. An order entered without hearing  
4 pursuant to this section may not be set aside except on motion in  
6 which the moving party demonstrates good cause for the failure to  
8 request a hearing and a meritorious defense to the proposed  
10 order. For purposes of this section, a meritorious defense has  
12 been presented only when the moving party has made a prima facie  
14 showing that the order entered deviated more than 25% from the  
16 order that would have been entered had that party made a timely  
18 request for hearing.

20 Sec. 5. 19 MRSA §320 is enacted to read:

22 **§320. Periodic review of support orders**

24 **1. Support obligations.** In all cases in which the  
26 department is responsible for enforcement of a support obligation  
28 assigned to the department under section 512, the department  
30 shall review, for compliance with the State's child support  
32 guidelines pursuant to this subchapter, child support obligations  
34 established by orders issued by the courts of this State or by  
36 administrative decisions issued by the department pursuant to  
38 section 498. Reviews of child support orders in which the  
40 obligation is assigned to the department must occur no less often  
42 than every 3 years, except as provided by rule.

44 **2. Request for support order reviews.** In cases in which  
46 the department provides services pursuant to section 448-A and in  
48 which a child support obligation was established by an order  
50 issued by a court of this State or by an administrative decision  
issued by the department pursuant to section 498-A, an obligor or  
an obligee may request the department to review the support order  
for compliance with the State's child support guidelines pursuant  
to this subchapter. In cases in which a support obligation is  
not assigned to the department under section 512 and the  
department does not provide services pursuant to section 448-A, a  
request to review a support order is made by applying to the  
department for child support services and indicating on the  
application for services a desire to have a child support order  
reviewed.

52 **3. Administrative order modification; support**  
54 **modification.** Following a review of an administrative child  
56 support order, the department may take action to modify the  
58 administrative order pursuant to section 498 or 498-A. Following  
60 a review of a court order of child support, the department may  
file a motion to modify support pursuant to section 319.

62 **4. Adoption of rules.** The department shall adopt rules  
64 governing the review of support orders consistent with this  
66 subchapter and shall comply with the federal Family Support Act  
68 of 1988, 42 United States Code, Chapter 7, Part D.

2 5. Schedule of fees. The department may adopt by rule a  
4 schedule of fees for the services it provides under this section.

6 **Sec. 6. 22 MRSA §4007, sub-§6** is enacted to read:

8 6. Child support guidelines. Prior to a hearing under  
10 section 4035, each parent shall file income affidavits as  
12 required by Title 19, sections 312 and 314. If a child is placed  
14 in the custody of the department, the court shall order child  
16 support from each parent according to the guidelines pursuant to  
18 Title 19, chapter 7, subchapter I-A, designate each parent as a  
20 nonprimary care provider and apportion the obligation accordingly.

22 Income affidavits and instructions must be provided to each  
24 parent by the department at the time of service of the petition.  
26 The court may order a deviation pursuant to Title 19, section  
28 317. Support ordered pursuant to this section must be paid  
30 directly to the department pursuant to Title 19, section 777-A,  
32 subsection 3. The failure of a parent to file an affidavit does  
34 not prevent the entry of a final protection order. A parent may  
36 be subject to Title 19, section 314, subsection 1, paragraph D  
38 for failure to complete and file income affidavits.

#### 26 STATEMENT OF FACT

28 This bill enables the Department of Human Services to comply  
30 with the requirements of the federal Family Support Act of 1988,  
32 which mandates that states conduct reviews and modification of  
34 child support obligations to ensure that child support awards are  
36 compatible with state child support guidelines. In order to  
38 comply with the federal requirements, a state child support  
40 enforcement agency must review the child support obligations in  
42 cases related to Aid to Families with Dependent Children and seek  
44 amendments to those orders that are not compatible with state  
46 child support guidelines. Initially, states are expected to have  
48 reviewed and sought modifications prior to October 13, 1993 in  
all appropriate cases more than 3 years old. Additionally, a  
state child support enforcement agency must also review its cases  
that are not related to Aid to Families with Dependent Children  
on request of either parent and seek modifications as appropriate.

44 This bill provides an expedited process that facilitates the  
46 ability of the Department of Human Services and the Judicial  
48 Department to cope with the thousands of reviews and actions to  
modify child support awards that occur as a result of the federal  
requirements.