

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1516

S.P. 556

In Senate, May 10, 1995

An Act to Amend the Laws Governing Child Support.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset. (GOVERNOR'S BILL).

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

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PART A

Sec. A-1. 4 MRSA §807, sub-§3, ¶G, as amended by PL 1991, c. 885, Pt. E, §4 and affected by §47, is further amended to read:

G. A person who is not an attorney, but is representing a party in any hearing, action or proceeding before the Workers' Compensation Board as provided in Title 39-A, section 317; or

Sec. A-2. 4 MRSA §807, sub-§3, ¶H, as repealed and replaced by PL 1989, c. 858, §1, is amended to read:

H. A person who is not an attorney, but has been designated to represent either the Department of Human Services, under Title 22, section 3473, subsection 3, or the Department of Mental Health and Mental Retardation, under Title 34-B, section 1204, subsection 7, in Probate Court proceedings; or

Sec. A-3. 4 MRSA §807, sub-§3, ¶I is enacted to read:

I. A person who is not an attorney, but is representing the Department of Human Services in a child support enforcement matter as provided by Title 14, section 3128-A, subsection 2 and Title 19, section 504-C, subsection 4.

Sec. A-4. 14 MRSA §3128-A is enacted to read:

§3128-A. Order to seek employment

1. Order. If an obligor claims inability to pay in a proceeding for nonpayment of child support, the court may order the obligor to seek employment and make progress reports on that activity to the court or the Department of Human Services. The order must contain, but is not limited to, the following directives:

A. That the obligor seek employment within a specified amount of time;

B. That the obligor file weekly with the court or the Department of Human Services, as applicable, a report on any new employment of the obligor or at least 5 new attempts by the obligor to find employment;

C. That the report filed pursuant to paragraph B must include the name, address and telephone number of the new employer or the names, addresses and telephone numbers of

2 the employers with whom the obligor attempted to seek
3 employment and the names of the individuals the obligor
4 contacted to inquire about or apply for employment; and

5 D. That failure to comply with the order is evidence of
6 willful nonpayment of child support for which the obligor
7 may be held in contempt.

8
9 2. Report. If an obligor is ordered to report to the
10 Department of Human Services pursuant to subsection 1, the
11 Department of Human Services shall monitor compliance with the
12 order and may petition the court to enforce the order. A person
13 who is not an attorney may represent the Department of Human
14 Services in District Court in a proceeding filed under this
15 section.

16
17 3. Failure to report. Failure to report or otherwise
18 comply with an order under this section, absent good cause, is
19 evidence of willful nonpayment of child support under section
20 3136.

21
22 4. Subsequent orders. The court may issue any order or
23 combination of orders under this chapter to enforce an order
24 under this section.

25
26 5. Rulemaking. The Department of Human Services shall
27 adopt rules to implement its responsibilities under this section.

28 **Sec. A-5. 19 MRSA §504-C is enacted to read:**

29 **§504-C. Order to appear and disclose**

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33 1. Order. The commissioner may direct a responsible parent
34 to appear before the department to disclose under oath
35 information that relates to the responsible parent's ability to
36 pay child support. The commissioner may require a responsible
37 parent who is directed to appear to provide documents, papers and
38 other evidence about the responsible parent's income and assets
39 for the purpose of enforcing a court or administrative order for
40 child support. The commissioner may issue all processes
41 necessary to accomplish the purposes of this section. The
42 District Court and the Superior Court, on the petition of the
43 commissioner, may issue summary process to enforce the lawful
44 orders of the commissioner and may grant the commissioner
45 whatever other relief the court determines is just and proper.
46 An order to appear and disclose must be served on the responsible
47 parent as provided by this section.

48
49 2. Notice. The department shall include a notice to the
50 responsible parent with each order to appear and disclose. The
notice must include the following information:

- 2 A. The date, time and place of the disclosure proceeding;
- 4 B. The amount of child support the responsible parent owes;
- 6 C. That the department may file a proceeding in court to
8 collect the debt;
- 10 D. That if the department files a proceeding in court, the
12 court will notify the responsible parent by regular mail of
14 the date, time and place of the court hearing;
- 16 E. That if a proceeding is filed in court, the court may
18 issue any lawful order, including a sale or turnover order,
20 an order to seek employment or a civil order of arrest;
- 22 F. That if a proceeding is filed in court and the
24 responsible parent is not making regular child support
26 payments, the burden of proof is on the responsible parent
 to show why regular payments can not be made; and
- G. The penalties as provided by this section that could be
 incurred by the responsible parent for failure to appear,
 failure to provide documents, papers and other evidence as
 required or intentionally providing false information.

28 The notice must be accompanied by a copy of the support order
30 under which the responsible parent owes child support.

32 3. Limitation of action. The department may issue an order
34 to appear and disclose only if the responsible parent owes \$500
 or more in overdue child support, the amount has been owed for at
 least 60 days and the responsible parent is not making
 reasonable, regular payments to reduce the debt.

36 4. Court action. The commissioner may file the record of a
38 proceeding in the District Court to ask the court for any
40 appropriate relief under Title 14, chapter 502, including an
42 order requiring the responsible parent to seek employment and
44 report that activity to the department. The department shall
46 notify the responsible parent by regular mail upon filing the
 record in court. The filing of the record, along with proof of
 service, constitutes a filing under the Maine Rules of Civil
 Procedure, Rule 3(1) and further service is not required. A
 person who is not an attorney may represent the department in
 District Court in a proceeding filed under this section.

48 5. Penalties. Failure to appear before the department,
50 absent good cause, is a civil violation for which a forfeiture
 not to exceed \$1,000 may be adjudged. Failure to provide

2 documents, papers and other evidence as required, absent good
3 cause, is a civil violation for which a forfeiture not to exceed
4 \$1,000 may be adjudged. Intentionally providing false
5 information is a civil violation for which a forfeiture not to
6 exceed \$1,000 may be adjudged for each violation.

8 PART B

9 **Sec. B-1. 19 MRSA §448-A, sub-§3,** as amended by PL 1993, c.
10 410, Pt. V, §5, is repealed.

11 **Sec. B-2. 19 MRSA §448-A, sub-§4-A,** as enacted by PL 1993, c.
12 410, Pt. V, §7, is repealed.

13 **Sec. B-3. 19 MRSA §448-A, sub-§4-B** is enacted to read:

14 **4-B. Fees and costs.** The Department of Human Services
15 shall establish by rule a schedule of fees and costs for
16 providing support enforcement services. The department may
17 impose reasonable fees and costs against the obligor and the
18 obligee. The department may collect fees and costs owed by the
19 obligor by using any remedies available for collection of child
20 support. The department may collect fees and costs owed by the
21 obligee by withholding child support otherwise payable, but only
22 to the extent permitted by federal law. The department shall
23 retain all fees and costs and apply them toward the
24 administration of the child support enforcement program.

25 **Sec. B-4. 19 MRSA §495, sub-§1, ¶A,** as amended by PL 1993, c.
26 607, §4, is further amended to read:

27 A. When a court order of support has not been established,
28 a payment of public assistance for the benefit of the
29 dependent child creates a debt due the department from the
30 responsible parent for past necessary support. The amount
31 of debt due the department is established by application of
32 the most current child support scale to the responsible
33 parent's income for the time period in which the department
34 was entitled to support payments. In the absence of
35 sufficient reliable information to calculate a responsible
36 parent's past income, it is presumed that the responsible
37 parent had an earning capacity equal to the average weekly
38 wage of a worker within this State as determined by the
39 Department of Labor statistics for the applicable years. A
40 different annual income may be used if there is sufficient
41 reliable evidence to conclude reasonably that the
42 responsible parent earned a greater or lesser actual
43 income. A present disability to pay child support, legal or
44 otherwise, does not operate to bar a determination of past
45 debt due the department for any relevant period in which the

2 disability did not exist. When the department establishes a
3 periodic support payment ~~has been established under section~~
4 ~~497-A or former section 498~~ by administrative decision, the
debt is limited to the amount stated in the decision.

6 **Sec. B-5. 19 MRSA §498-B, sub-§1**, as amended by PL 1993, c.
7 607, §8, is further amended to read:

8
9 **1. Responsible parent's failure to comply.** If a
10 responsible parent fails to ~~aquire--the~~ obtain health insurance
11 coverage as required ~~under--section--497-A--or--497-B~~ by an
12 administrative decision, that parent is liable for any expenses
13 incurred for any dependent children that would have been paid by
14 the insurance coverage, regardless of incurred expenses.
15 Incurred liability may be enforced as a child support debt under
16 this subchapter or by judicial action.

18 **Sec. B-6. 19 MRSA §504, sub-§1, ¶B**, as amended by PL 1993, c.
19 607, §10, is further amended to read:

20
21 B. Twenty-one days have elapsed from the date of receipt of
22 the a notice of debt under section 500 or a decision has
23 been received under section 497-A or 497-B of the department
24 that requires the responsible parent to pay child support.

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27 **STATEMENT OF FACT**

28
29 Part A permits the Commissioner of Human Services to direct
30 a responsible parent to appear before the Department of Human
31 Services and disclose information relating to the responsible
32 parent's ability to pay child support and permits the court to
33 order obligors to seek employment.

34
35 Part B allows the Department of Human Services to establish
36 a periodic support payment by administrative decision, to impose
37 reasonable fees and costs against the obligor and obligee and to
38 retain fees and costs and apply them toward the administration of
the child support enforcement program.