

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 234

H.P. 189

House of Representatives, January 23, 2003

**An Act To Create a Uniform Approach to the Determination of
Child Support When Parents Provide Substantially Equal Care for
Children**

Reported by Representative NORBERT of Portland for the Family Law Advisory
Commission pursuant to the Maine Revised Statutes, Title 19-A, section 354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule
218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

4 **Sec. 1. 19-A MRSA §2001, sub-§8-A** is enacted to read:

6 **8-A. Substantially equal care.** "Substantially equal care"
8 means that both parents participate substantially equally in the
10 child's total care, which may include, but is not limited to, the
12 child's residential, educational, recreational, child care and
14 medical, dental and mental health care needs.

16 **Sec. 2. 19-A MRSA §2006, sub-§4,** as enacted by PL 1995, c.
18 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

20 **4. Computation of parental support obligation.** The total
22 support obligation must be divided between the parties in
24 proportion to their respective gross incomes. The court or
26 hearing officer shall order the party not providing primary
residential care to pay, in money, that party's share of the
total support obligation to the party providing primary
residential care. The primary residential care provider is
presumed to spend the primary care provider's share directly on
each child. If the court or hearing officer determines that the
parties provide substantially equal care for a child for whom
support is sought, presumptive support must be calculated in
accordance with subsection 5, paragraph D-1.

30 **Sec. 3. 19-A MRSA §2006, sub-§5, ¶D,** as enacted by PL 1995, c.
32 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

34 D. When the parties have equal annual gross incomes and
36 provide ~~residential-care-equally~~ substantially equal care
for each child for whom support is being determined, neither
party is required to pay the other a parental support
obligation. The parties shall share equally the child care
costs, health insurance premiums and uninsured medical
expenses.

38 **Sec. 4. 19-A MRSA §2006, sub-§5, ¶D-1** is enacted to read:

40 D-1. When the parties do not have equal annual gross
42 incomes but provide substantially equal care for each child
for whom support is being determined, the presumptive
parental support obligation must be determined as follows.

44 (1) The basic support entitlement for each child must
46 be determined in accordance with subsection 1 and
48 enhanced by a multiplier of 1.5. This product is the
enhanced basic support entitlement.

2 (2) Using the enhanced basic support entitlement, a
3 total support obligation for each child must be
4 determined pursuant to subsection 3. The amount is the
5 enhanced total support obligation.

6 (3) Using the enhanced total support obligation, a
7 theoretical parental support obligation must be
8 determined for each party as though the party were the
9 nonprimary residential care provider under subsection 4.

10 (4) The party with the higher annual gross income has
11 a presumptive obligation to pay the other party the
12 lower of:

13 (a) The difference between their parental support
14 obligations as calculated in subparagraph (3); and

15 (b) The presumptive parental support obligation
16 determined for the payor party under the support
17 guidelines as though the other party provided
18 primary residential care of the child.

19 **Sec. 5. 19-A MRSA §2007, sub-§3, ¶A,** as enacted by PL 1995, c.
20 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

21
22
23 **SUMMARY**

24 This bill addresses several problems in current law. It
25 provides a standard for the courts and the parties in cases where
26 the parents provide substantially equal parenting for the child
27 but have unequal incomes. Current child support guidelines are
28 silent on this matter.

29 The bill provides a presumptive calculation in cases where
30 the parents provide substantially equal care for the child.
31 Current child support guidelines permit a deviation but provide
32 no guidance for a presumptive determination of the amount of the
33 deviation.

34 The presumptive calculation contains a recognition that when
35 both parents have substantial residential responsibility and each
36 provides a home for the child, the child expenditure is likely to
37 be significantly greater than it would be if the child were
38 living primarily with one parent. The 1.5 multiplier in the
39 calculation takes into account the increased costs of 2
40 households providing shared residence.

41 The bill eliminates the current specific child support
42 deviation criterion that is based upon 30% residential care of
43 the child.

2 the child. The 30% threshold is very close to the amount of time
that "an alternate weekend, split holidays and vacation"
4 nonresidential parent has. Litigation to defend or support a
deviation occurs, with parents fighting over a very few days and
6 nights, counting them for the court, in order to be under or over
that threshold. Such litigation focuses the court and the
parties away from the best interest of the child. The
8 elimination of the 30% deviation does not deprive a parent who is
very active in the life of the child and who provides less than
10 substantially equal parenting from petitioning the court for a
deviation under another provision that permits the court to
12 deviate when the court finds that the application of the
guidelines would be "unjust, inequitable, or not in the child's
14 best interest" pursuant to the Maine Revised Statutes, Title
19-A, section 2007, subsection 3, paragraph Q.