

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1589

H.P. 1125

House of Representatives, April 26, 2005

An Act To Improve Child Support Services

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PELLETIER-SIMPSON of Auburn.
Cosponsored by Senator NASS of York.

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

4 **Sec. 1. 15 MRSA §3314, sub-§5**, as amended by PL 1997, c. 752, §23 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

6 **5. Support orders.** Whenever the court commits a juvenile
8 to the Department of Health and Human Services, to a Department
of Corrections juvenile correctional facility or to a relative or
10 other person, the court may ~~shall~~ order either or both parents of
the juvenile to pay a ~~reasonable amount of support for the~~
12 juvenile child support in accordance with the child support
guidelines under Title 19-A, section 2006. The order is
enforceable under Title 19-A, section 2603.

14 **Sec. 2. 19-A MRSA §1615**, as enacted by PL 1997, c. 466, §3
and affected by §28, is amended to read:

18 **§1615. Representation of department**

20 The commissioner may designate employees of the department
who are not attorneys to file the record of proceedings commenced
22 under this subchapter in District Court and to represent the
department in court in both those proceedings and proceedings
24 filed by other parties. The commissioner shall ensure that
appropriate training is provided to all employees designated to
26 represent the department under this subchapter.

28 **Sec. 3. 19-A MRSA §2006, sub-§4**, as amended by PL 2003, c.
415, §8, is further amended to read:

30 **4. Computation of parental support obligation.** The total
32 basic support obligation must be divided between the parties in
proportion to their respective gross incomes. The court or
34 hearing officer shall order the party not providing primary
residential care to pay, in money, that party's share of the
36 total basic support obligation to the party providing primary
residential care. The primary residential care provider is
38 presumed to spend the primary care provider's share directly on
each child. If the court or hearing officer determines that the
40 parties provide substantially equal care for a child for whom
support is sought, presumptive support must be calculated in
42 accordance with subsection 5, paragraph D-1. Both parents are
responsible for child support if a caretaker relative provides
44 primary residential care for the child. The caretaker relative's
income may not be considered in determining the parents' child
46 support obligation.

2 **Sec. 4. 19-A MRSA §2006, sub-§8, ¶¶E and F**, as enacted by PL
1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to
read:

4
6 E. If each child for whom a parental support obligation is
being established has attained 12 years of age, a specific
8 sum to be paid depending on the number of minor children
remaining with the primary care provider. Because the
10 support guidelines are based on the actual costs of raising
a given number of children in a household, the order must
12 provide a specific dollar amount for every combination of
minor children. The Except as provided in paragraph G, the
14 court or hearing officer may not apportion support between
the parents by determining the parental support obligation
amount and dividing by the total number of children; and

16
18 F. If the court or hearing officer ultimately determines
that the order for current support is to be set under
20 section 2007, ~~the court or hearing officer shall incorporate~~
~~into the order its~~ the written findings of the court or
hearing officer in support of the deviation; and

22 **Sec. 5. 19-A MRSA §2006, sub-§8, ¶G** is enacted to read:

24
26 G. With regard to any initial or modified child support
order that affects more than one child and that was entered
before January 18, 2005, unless that order states the manner
in which the order must be modified upon the events listed
in subparagraphs (1) to (4), that the order be automatically
modified pursuant to this paragraph to address any of the
following events:

32 (1) Any child reaches 18 years of age and has
34 graduated from secondary school;

36 (2) Any child reaches 19 years of age without having
38 graduated from secondary school;

40 (3) Any child obtains an order of emancipation; or

42 (4) Any child dies.

44 As of the date of an event listed in subparagraphs (1) to
(4), the total child support amount stated in the order must
be decreased by the child support amount assigned to that
child in the worksheets accompanying the child support order
or as set forth in the order.

48 **Sec. 6. 19-A MRSA §2009, sub-§1**, as enacted by PL 1995, c.
50 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2 **1. Motion to modify support.** A party, including the
department, may file a motion to modify support. The
4 commissioner may designate employees of the department who are
not attorneys to represent the department in court proceedings to
6 hear a motion to modify support filed by the department or any
other party. Unless a party also files a motion to amend the
8 divorce judgment, a petition to amend under section 1653,
10 subsection 10 or a motion for judicial review under Title 22,
section 4038, the child support obligation is the sole issue to
12 be determined by the court on a motion to modify support. The
court, in its discretion, may bifurcate the support issue from
other issues presented by the party's pleadings.

14 **Sec. 7. 19-A MRSA §2103, sub-§2,** as enacted by PL 1995, c.
16 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

18 **2. Enforcement of support obligations.** The department may,
for a fee, locate absent parents, defend ~~against~~ child support
20 ~~reductions orders,~~ establish support obligations, seek motions to
~~increase~~ modify support obligations, enforce support obligations
22 and determine paternity on behalf of applicants who are not
recipients of public assistance, by actions under an appropriate
24 statute, including, but not limited to, remedies established in
subchapter ~~II~~ 2, article 3, to establish and enforce the support
26 obligations. The department and the applicant shall sign an
agreement in duplicate describing the fee. The department may
28 defer or waive that fee.

30 **Sec. 8. 19-A MRSA §2201, sub-§1,** as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended by amending
32 the last paragraph to read:

34 The notice must include the address and telephone number of the
department's support enforcement office that issues the notice
36 and a statement of the need to obtain a written confirmation of
compliance from that office as provided in subsection 8. The
38 department shall attach a copy of the obligor's order of support
to the notice. Service of the notice must be made by certified
40 mail, return receipt requested, ~~ex~~ by service in hand, or as
specified in the Maine Rules of Civil Procedure. For purposes of
42 this section, authorized representatives of the commissioner may
serve the notice.

44 **Sec. 9. 19-A MRSA §2304, first ¶,** as amended by PL 2001, c.
46 264, §12, is further amended to read:

48 When a support order has not been established or a support
order has not addressed a time period when child support may be
50 owed, the department may establish the responsible parent's

2 current parental support obligation pursuant to chapter 63,
3 establish the responsible parent's debt for past support,
4 including medical expenses, and establish the responsible
5 parent's obligation to maintain health insurance coverage for
6 each dependent child or to pay a proportionate share of health
7 insurance premiums. The department may proceed on its own behalf
8 or on behalf of another state or another state's instrumentality,
9 an individual or governmental applicant for services under
10 section 2103 or a person entitled by federal law to support
11 enforcement services as a former recipient of public assistance.
12 The department acting on behalf of another state, another state's
13 instrumentality or a person residing in another state constitutes
14 good cause within the meaning of Title 5, section 9057,
15 subsection 5. Notwithstanding any other provision of law, a
16 parental support obligation established under this section
17 continues beyond the child's 18th birthday, if the child is
18 attending secondary school as defined in Title 20-A, section 1,
19 until the child graduates, withdraws, is expelled or attains 19
20 years of age, whichever occurs first. For purposes of this
21 section, "debt for past support" includes a debt owed to the
22 department under section 2301, subsection 1, paragraph A, a debt
23 owed under section 2103 and a debt that accrues under sections
24 1504 and 1554.

25 **Sec. 10. 19-A MRSA §2304, sub-§4, ¶F,** as enacted by PL 1995,
26 c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

27 F. That the responsible parent may appeal the decision
28 within 30 days of the date of mailing of the decision by
29 requesting the department to hold an administrative review
30 appeal hearing. The decision must also state that the
31 resulting appeal hearing must be based on the evidence
32 submitted at the underlying hearing, if any. Evidence not
33 part of the hearing record may be considered at the appeal
34 hearing only if the evidence was offered but incorrectly
35 excluded at the underlying hearing.

36 **Sec. 11. 19-A MRSA §2358, sub-§5,** as enacted by PL 1995, c.
37 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

38 **5. Withhold and deliver.** A person served with an order to
39 withhold and deliver shall withhold immediately any property,
40 including wages, due to or belonging to the responsible parent.
41 After 20 days from the date of receipt of this order and upon
42 demand of the commissioner, the property of the responsible
43 parent must be delivered to the commissioner. An order to
44 withhold and deliver issued by an out-of-state child support
45 agency or court must be honored by a financial institution.

2 **Sec. 12. 19-A MRSA §2451, first ¶**, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

4 Within 30 days of receiving notice of any action under this
6 article, including an administrative decision establishing an
8 obligation to provide health insurance and payment for other
10 medical expenses, ~~and including an administrative decision that~~
12 ~~did not establish an obligation to provide health insurance and~~
14 ~~payment for other medical expenses~~, the responsible parent or the
16 department may move for a review of any action under this article
18 by serving a request for review, together with an affidavit
stating the grounds upon which the request is based, upon the
other party. The department may review any action under this
article without proceeding under this section. The department
acting on behalf of another state or its instrumentality or a
person residing in another state constitutes good cause within
the meaning of Title 5, section 9057, subsection 5.

20 SUMMARY

22 This bill makes the following changes to the laws governing
24 child support.

26 1. It requires the court to order either or both parents of
28 a juvenile to pay child support in accordance with the child
30 support guidelines when the court commits a juvenile to the
Department of Health and Human Services, to the Department of
Corrections juvenile correctional facility or to a relative or
other person pursuant to the Maine Juvenile Code.

32 2. It allows the Commissioner of Health and Human Services
34 to designate employees of the department who are not attorneys to
36 represent the department in proceedings involving the expedited
process for the commencement of paternity actions filed by a
party other than the department and in proceedings to hear a
motion to modify child support.

38 3. It provides that both parents are responsible for child
40 support if a caretaker relative provides primary residential care
42 for a child.

44 4. It provides that with regard to any initial or modified
46 child support order that affects more than one child and that was
entered before January 18, 2005, unless that order states the
48 manner in which the order must be modified upon the events listed
in the Maine Revised Statutes, Title 19-A, section 2006,
50 subsection 8, paragraph G, subparagraphs (1) to (4), such an
order must be automatically modified to address any of the
following events: any child reaches 18 years of age and has

2 graduated from secondary school; any child reaches 19 years of
age without having graduated from secondary school; any child
4 obtains an order of emancipation; or any child dies. This change
is made in response to the decision of the Maine Supreme Judicial
6 Court in Bartlett v. Anderson, 2005 ME 10, 806 A.2d 829.

8 5. It allows the department to assist either party in the
modification of a child support order.

10 6. It allows the department to serve notice of the
department's intention to submit an obligor's name to the
12 appropriate board as a licensee who is not in compliance with an
order of support in the same manner as a notice is served in
14 connection with the revocation of a motor vehicle license under
the Maine Revised Statutes, Title 19-A, section 2202, subsection
16 2.

18 7. It provides for the administrative establishment of a
child support debt for a time period not specifically addressed
20 by an existing court order.

22 8. It clarifies the permissible evidence at the
administrative appeal of a decision establishing or modifying a
24 child support order.

26 9. It requires that an order to withhold and deliver issued
by an out-of-state child support agency or court be honored by a
28 financial institution.