

MAINE STATE LEGISLATURE

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EIGHTY-FIRST LEGISLATURE

SENATE

NO. 122

In Senate, Feb. 20, 1923.

Referred to Committee on Legal Affairs and five hundred copies ordered printed. Sent down for concurrence.

L. ERNEST THORNTON, Secretary.

Presented by Senator Cram of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-THREE

AN ACT Relating to Children Born Out of Wedlock and to
Make Uniform the Law Relating Thereto.

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

ARTICLE I. OBLIGATION OF SUPPORT

Section 1. [Obligation of Parents.] The parents of a
2 child born out of wedlock and not legitimated (in this act
3 referred to as "the child") owe the child necessary main-
4 tenance, education, and support.

They are also liable for the child's funeral expenses.

The father is also liable to pay the expenses of the mother's
2 pregnancy and confinement.

The obligation of the parent to support the child under
2 the laws for the support of poor relatives applies to chil-
3 dren born out of wedlock.

Sect. 2. [Recovery by Mother from Father.] The mother
2 may recover from the father a reasonable share of the
3 necessary support of the child.

In the absence of a previous demand in writing (served
2 personally or by registered letter addressed to the father
3 at his last known residence), not more than two years' sup-
4 port furnished prior to the bringing of the action may be
5 recovered from the father.

Sect. 3. [Recovery by Others than Mother.] The obli-
2 gation of the father as herein provided creates also a cause
3 of action on behalf of the legal representatives of the
4 mother, or on behalf of third persons furnishing support
5 or defraying the reasonable expenses thereof, where pater-
6 nity has been judicially established by proceedings brought
7 by the mother or by or on behalf of the child or by the
8 authorities charged with its support, or where paternity has
9 been acknowledged by the father in writing or by the part
10 performance of the obligations imposed upon him.

Sect. 4. [Discharge of Father's Obligation.] The obli-
2 gation of the father other than that under the laws pro-
3 viding for the support of poor relatives is discharged by
4 complying with a judicial decree for support or with the
5 terms of a judicially approved settlement.

The legal adoption of the child into another family dis-

2 charges the obligation for the period subsequent to the
3 adoption.

Sect. 5. [Liability of the Father's Estate.] The obli-
2 gation of the father, where his paternity has been judicially
3 established in his life time, or has been acknowledged by
4 him in writing or by the part performance of his obliga-
5 tions, is enforceable against his estate in such an amount
6 as the court may determine, having regard to the age of
7 the child, the ability of the mother to support it, the amount
8 of property left by the father, the number, age, and finan-
9 cial condition of the lawful issue, if any, and the rights of
10 the widow, **if any**.

The court may direct the discharge of the obligation by
2 periodical payments or by the payment of a lump sum.

ARTICLE 2. STATUTORY PROCEEDINGS TO EN- FORCE THE OBLIGATION OF THE FATHER

Sect. 6. [Non-exclusiveness.] Proceedings to compel
2 support by the father may be brought in accordance with
3 sections seven to twenty-eight of this act. They shall not
4 be exclusive of other proceedings that may be available on
5 principles of law or equity.

Sect. 7. [Complainants.] The proceeding to compel sup-
2 port may be brought by the mother, or if the child is or
3 is likely to be a public charge, by the authorities charged
4 with its support. After the death of the mother or in case
5 of her disability, it may also be brought by the child acting
6 through its guardian or next friend.

If the proceeding is brought by the public authorities, the mother, if living, shall be made a party defendant.

Sect. 8. [Time of Bringing Complaint.] The proceeding may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child.

Sect. 9. [Complaint—Where Brought.] The complaint may be made to any judge or magistrate having power to commit for trial.

Sect. 10. [Form of Complaint.] The complaint shall be in writing, or oral and in the presence of the complainant reduced to writing by the judge or magistrate or the clerk of the court. It shall be verified by oath or affirmation of the complainant.

Sect. 11. [Substance of Complaint.] The complainant shall charge the person named as defendant with being the father of the child and demand that he be brought before the judge or magistrate to answer the charge.

Sect. 12. [Process.] The judge or magistrate shall issue his warrant for the apprehension of the defendant, directed to any officer in the state authorized to execute warrants, and such warrant may be executed in any part of the state. With the consent of the complainant, a summons may be issued in the first instance as in other civil cases, instead of a warrant, which summons shall be personally served.

Sect. 13. [Preliminary Hearing.] Upon the return of

2 the warrant, or upon return of the summons showing serv-
3 ice on the defendant, the judge or magistrate before whom
4 the complaint was made, or, in his absence, any other judge
5 or magistrate having power to commit, shall proceed to
6 examine the complainant and any other witnesses and re-
7 ceive any other evidence that may be produced, touching
8 the charge. The defendant shall have the right to be pres-
9 ent at the examination and to controvert such charge, if
10 he so desires. The examination shall be reduced to writing.

Sect. 14. [Result of Preliminary Hearing.] If the ex-
2 amination fails to show probable cause the defendant shall
3 be discharged without prejudice to further proceedings.

If the examination shows probable cause, the judge or
2 magistrate shall bind the defendant in bond or recognizance,
3 with sufficient security, to appear at the next [term] of
4 the [] court to be held in the county. On neglect
5 or refusal to furnish such security, he shall commit the
6 defendant to jail to be held to answer the complaint.

The warrant, the examination reduced to writing, and the
2 security, shall be returned to the [] court.

Sect. 15. [Continuance of Trial.] If the child is not
2 born at the time set for trial, the case shall, unless the de-
3 fendant consents to trial, be continued until the child is
4 born, and the defendant shall remain bound or held until
5 trial.

Sect. 16. [Trial.] The trial shall be by jury, if either party

2 demands a jury, otherwise by the court, and shall be con-
3 ducted as in other civil cases.

Both the mother and the alleged father shall be competent
2 but not compellable to give evidence, and if either gives
3 evidence he or she shall be subject to cross-examination.

Sect. 17. [Absence of Defendant.] If the defendant fails
2 to appear, the security for his appearance shall be forfeited
3 and shall be applied on account of the payment of the judg-
4 ment, but the trial shall proceed as if he were present; and
5 the court shall upon the findings of the judge or the verdict
6 of the jury make such orders as if the defendant were in
7 court.

Sect. 18. [Effect of Death or Absence or Insanity of
2 Mother.] If after the complaint the mother dies or be-
3 comes insane or cannot be found within the jurisdiction,
4 the proceeding does not abate, but the child shall be sub-
5 stituted as complainant. The testimony of the mother taken
6 at the preliminary hearing, and her deposition taken as in
7 other civil cases, may in any such case be read in evidence
8 and in all cases shall be read in evidence, if demanded by
9 the defendant.

Sect. 19. [Death of Defendant.] In case of the death
2 of the defendant, after the preliminary hearing, the action
3 may be prosecuted against the personal representatives of
4 the deceased with like effect as if he were living, subject
5 as regards the measure of support to the provision of sec-

6 tion six except that no arrest of such personal representa-
7 tive shall take place or bond be required of him.

Sect. 20. [Finding for Defendant.] If the verdict of
2 the jury at the trial or the finding of the court be in favor
3 of the defendant and there be a motion for a new trial, he
4 shall be held until such motion be disposed of; and if a new
5 trial is granted, the same course shall be pursued as in case
6 of a continuance.

Sect. 21. [Judgment.] If the finding or verdict be
2 against the defendant, the court shall give judgment against
3 him declaring paternity and for support of the child.

The judgment shall be for annual amounts, equal or vary-
2 ing, having regard to the obligation of the father under
3 section one, as the court directs, until the child reaches the
4 age of sixteen years.

The payments may be required to be made at such periods
2 or intervals as the court directs.

In addition to providing for support, the judgment may
2 also provide for the payment of the necessary expenses in-
3 curred by or for the mother in connection with the birth of
4 the child.

Sect. 22. [Payment to Trustee.] The court may require
2 the payments to be made to the mother, or to some person
3 or corporation to be designated by the court as trustee.

The payments shall be directed to be made to a trustee if
2 the mother does not reside within the jurisdiction of the
3 court.

The trustee shall report to the court annually, or oftener
2 as directed by the court, the amounts received and paid
3 over.

Sect. 23. [Security, Commitment, Probation.] The
2 court may require the father to give security, by bond with
3 sureties, for the payment of the judgment. In default of
4 such security, when required, the court may commit him
5 to jail. After one year the person so committed may be
6 discharged [in accordance with the law relating to the dis-
7 charge of insolvent debtors], but his liability to pay the
8 judgment shall not be thereby affected.

Instead of committing the father to jail, or as a condition
2 of his release from jail, the court may commit him to the
3 custody of a [probation officer], upon such terms regarding
4 payments and personal reports, as the court may direct.
5 Upon violation of the terms imposed, the court may com-
6 mit or recommit the father to jail.

Sect. 24. [Enforcement on Default.] Where security is
2 given and default is made in any payment, the court shall
3 cite the parties bound by the security requiring them to
4 show cause why judgment should not be given against them
5 and execution issue thereon. If the amount due and unpaid
6 be not paid before the return day of the citation, and no
7 cause be shown to the contrary, judgment shall be rendered
8 against those served with the citation for the amount due
9 and unpaid together with costs, and execution shall issue
10 therefor, saving all remedies upon the bond for future de-

11 faults. The judgment shall be enforceable as other judg-
12 ments.

Sect. 25. [Contempt Process.] The court also has pow-
2 er, on default as aforesaid, to adjudge the father in con-
3 tempt and to order him committed to jail in the same man-
4 ner and with the same powers as in case of commitment
5 for default in giving security. The commitment of the
6 father shall not operate to stay execution upon the judgment
7 on the bond.

Sect. 26. [Agreement or Compromise.] An agreement
2 or compromise made by the mother or child or by some
3 authorized person on their behalf with the father concern-
4 ing the support of the child shall be binding upon the moth-
5 er and child only when adequate provision is fully secured
6 by payment or otherwise and when approved by a court
7 having jurisdiction to compel support of the child.

The performance of the agreement or compromise, when
2 so approved, shall bar other remedies of the mother or child
3 for the support of the child.

Sect. 27. [Continuing Jurisdiction.] The court has con-
2 tinuing jurisdiction over proceedings brought to compel sup-
3 port and to increase or decrease the amount thereof, until
4 the judgment of the court has been completely satisfied, and
5 also has continuing jurisdiction to determine custody in ac-
6 cordance with the interests of the child.

ARTICLE 3. CRIMINAL OFFENSES

Sect. 28. [Failure to Support.] The failure of the father

2 without lawful excuse, to support the child where the same
3 is not in his custody, and where paternity has been judicial-
4 ly established, or has been acknowledged by him in writing
5 or by the part performance of his obligations, is a misde-
6 meanor, punishable [by fine not exceeding \$1000, or by im-
7 prisonment in the county jail for not exceeding one year or
8 by both such fine and imprisonment].

The failure of the parent to support the child where the
2 same is in his or her custody shall be governed by the laws
3 applicable to the failure to support a legitimate child.

Sect. 29. [Failure to Carry out Judgment.] The failure,
2 without lawful excuse, of a father to comply with and carry
3 out a judgment for the support of the child, whether the
4 child be a resident in the jurisdiction where the judgment
5 was rendered or not, is a misdemeanor punishable [by fine
6 not exceeding \$1000 or by imprisonment in the county jail
7 for not exceeding one year, or by both such fine and im-
8 prisonment].

Sect. 30. [Probation.] Upon a prosecution under the
2 provisions of section twenty-eight or section twenty-nine,
3 on entry of a plea of guilty or after conviction, the court,
4 instead of imposing sentence or of committing the father
5 to jail, or as a condition of his release from jail, may com-
6 mit him to the custody of a [probation officer], upon such
7 terms as to payment of support to or on behalf of the moth-
8 er or child, and as to personal reports, as the court may di-
9 rect. Upon violation of the terms imposed, the court may

10 proceed to impose the sentence and commit or recommit to
11 jail in accordance with the sentence.

ARTICLE 4. CONCURRENCE AND LIMITATION OF REMEDIES

Sect. 31. [Concurrence of Remedies.] A criminal prose-
2 cution brought in accordance with the provisions of section
3 twenty-eight or section twenty-nine shall not be a bar to,
4 or be barred by, civil proceedings to compel support; but
5 money paid toward the support of the child under the pro-
6 visions of section thirty shall be allowed for and credited
7 in determining or enforcing any civil liability.

Sect. 32. [Limitation of Actions.] Proceedings to en-
2 force the obligation of the father shall not be brought after
3 the lapse of more than two years from the birth of the
4 child, unless paternity has been judicially established, or
5 has been acknowledged by the father in writing or by the
6 furnishing of support.

ARTICLE 5. JURISDICTIONAL PROVISIONS

Sect. 33. [Available District.] Jurisdiction over pro-
2 ceedings to compel support is vested in the [] court
3 of the [] in which the alleged father is permanently or
4 temporarily resident, or in which the mother or the child
5 resides or is found. It is not a bar to the jurisdiction of
6 the court, that the complaining mother or child resides in
7 another state.

Sect. 34. [Judgment of Other State.] The judgment of
2 the court of another state rendered in proceedings to com-

3 pel support of a child born out of wedlock, and directing
4 payment either of a fixed sum or of sums payable from
5 time to time, may be sued upon in this state and be made
6 a domestic judgment so far as not inconsistent with the
7 laws of this state, and the same remedies may thereupon be
8 had upon such judgment as if it had been recovered orig-
9 inally in this state.

ARTICLE 6. GENERAL PROVISIONS

Sect. 35. [Reference to Relation of Mother and Child.]

2 In all records, certificates, or other papers hereafter made
3 or executed, other than birth records and certificates or
4 records of judicial proceedings in which the question of
5 birth out of wedlock is at issue, requiring a declaration by
6 or notice to the mother of a child born out of wedlock or
7 otherwise requiring a reference to the relation of a mother
8 to such a child, it shall be sufficient for all purposes to refer
9 to the mother as the parent having the sole custody of the
10 child or to the child as being in the sole custody of the moth-
11 er, and no explicit reference shall be made to illegitimacy,
12 and the term natural shall be deemed equivalent to the term
13 illegitimate when referring to parentage or birth out of wed-
14 lock.

Sect. 36. [Construction of Act.] This act shall be so
2 interpreted and construed as to effectuate its general pur-
3 pose to make uniform the law of those states which enact
4 it.

Sect. 37. [Short Title.] This act may be cited as the
2 Uniform Illegitimacy Act.

Sect. 38. [Operation and Repealing Clause.] This act
2 applies to all cases of birth out of wedlock where birth oc-
3 curs after this act takes effect, except that section thirty-
4 five applies to all cases occurring after this act takes effect.

As to all such cases, all acts and parts of acts inconsistent
2 with this act are hereby repealed.