

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

6. Contracts and agreements. All contracts and agreements with the Maine Dairy Promotion Board in effect prior to July 1, 1996 remain in effect following the effective date of this Act.

7. Terms of board members. Members of the Maine Dairy Promotion Board on July 1, 1996 serve as members of the board in its capacity as an independent agency until their terms expire. New members must be chosen to achieve the qualifications required in the Maine Revised Statutes, Title 7, section 2992-A at the earliest possible date.

8. Accrued fringe benefits. The accrued fringe benefits of employees transferred to the Maine Dairy Promotion Board in its capacity as an independent agency, including vacation and sick leave, health and life insurance and retirement, remain with the transferred employee.

9. Transfer of property and equipment. All property and equipment owned by the Maine Dairy Promotion Board remains the property and equipment of the board as an instrumentality.

Sec. 24. Transitional actions. From the effective date of this Act until July 1, 1996, the Maine Dairy Promotion Board is authorized to sign contracts and take planning measures necessary for transition in its capacity as an independent agency.

1. Assistance. The Department of Administrative and Financial Services shall assist the Maine Dairy Promotion Board and the board's executive director with the orderly implementation of transition provisions under this Act.

Sec. 25. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 7, sections 2956, 2993, 2999, 3153 and 3154 are effective July 1, 1996. Those sections of this Act that repeal the Maine Revised Statutes, Title 7, sections 2992, 2994, 2998 and 2998-A are effective July 1, 1996. Those sections of this Act that enact the Maine Revised Statutes, Title 7, section 2991, subsection 3-A, section 2992-A, section 2994-A, section 2997, subsection 1-A and section 2998-B are effective July 1, 1996.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 11, 1996, unless otherwise indicated.



CHAPTER 694

H.P. 1347 - L.D. 1842

**An Act to Recodify and Revise the
Maine Revised Statutes, Title 19**

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

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§52-B is enacted to read:

<u>52-B.</u>	<u>Family Law</u>	<u>None</u>	<u>19</u>
<u>Judiciary:</u>	<u>Advisory</u>	<u>Authorized</u>	<u>MRSA</u>
<u>Family Law</u>	<u>Commission</u>		<u>§2001</u>

Sec. A-2. 19 MRSA §214, sub-§9, as amended by PL 1993, c. 472, §1, is further amended to read:

9. Support order. The court may order either parent of a minor child to contribute reasonable and just sums as child support payable weekly, monthly or quarterly. The court also may order the child's nonprimary care provider to pay past support. Availability of public welfare benefits to the family may not affect the decision of the court as to the responsibility of a parent to provide child support. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V. If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section and a determination of past support must comply with chapter 7, subchapter I-A.

After January 1, 1990, the court may order either parent to provide child support beyond the child's 18th birthday if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws or is expelled from secondary school or attains the age of 19, whichever first occurs.

The court's order may include a requirement for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring the obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available

at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective immediately upon insurance being available at reasonable cost. The court may enforce a support order as provided in chapter 14-A.

When the Department of Human Services provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of any changes in that parent's current address, the name and address of that parent's current employer and whether the responsible parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information and any subsequent changes.

Sec. A-3. 19 MRSA §272, first ¶, as amended by PL 1989, c. 298, §1, is further amended to read:

Paternity may be determined upon the complaint of the mother, alleged father, child or the public authority chargeable by law with the support of the child. If paternity has been determined or has been acknowledged according to the laws of this State, the liabilities of the father may be enforced in the same or other proceedings by the mother, ~~the~~ child or the public authority ~~which that~~ has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, ~~necessary~~ support or funeral expenses; and by other persons including private agencies to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, ~~necessary~~ support or funeral expenses. Chapter 7, subchapter I-A applies to an award of past support, which is calculated by applying the current child support guidelines to the period for which past support is owed. ~~Aid to Families with Dependent Children benefits expended, pursuant to Title 22, chapter 1053, on behalf of the mother by the public authority shall be considered necessary support for the child.~~

Sec. A-4. 19 MRSA §§312 and 315, as enacted by PL 1989, c. 834, Pt. A, are amended to read:

§312. Application

Notwithstanding any other provisions of law, this subchapter applies to any court action or administrative proceeding in which a child support order is issued or modified under this Title or Title 22 and to any court action or administrative proceeding in which past support is awarded.

§315. Rebuttable presumption

In any proceeding to establish or modify child support, or to establish an award for past support, there is a rebuttable presumption that the parental support obligation derived from the support guidelines is the amount ordered to be paid, unless support is established under section 317. The court shall review the adequacy of a child support amount agreed to by the parties with reference to the parental support obligation.

Sec. A-5. 19 MRSA §316, sub-§1-A is enacted to read:

1-A. Past support. This subchapter applies to an award of past support, which is calculated by applying the current support guidelines to the period for which past support is owed.

Sec. A-6. 19 MRSA §446 is repealed.

Sec. A-7. 19 MRSA §448, as amended by PL 1991, c. 591, Pt. X, §2, is further amended to read:

§448. Enforcement of rights

The obligee may enforce the right of support against the obligor, pursuant to chapter 14-A, and the State or any political subdivision thereof may proceed on behalf of the obligee to enforce that right of support against the obligor. Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing ~~reimbursement~~ an award for past support and of obtaining continuing support. The obligee's right of support includes an independent right to seek appropriate attorney's fees for handling the action. An award of attorney's fees may be collected by any means available under the laws, including, but not limited to, remedies available under Title 14 and Title 36, section 5276-A.

Sec. A-8. 19 MRSA §522, sub-§4, as enacted by PL 1991, c. 256, is amended to read:

4. Past support. Order the alleged father to ~~reimburse~~ pay past support to the mother or the department or other payor of public assistance, as applicable, for the past support, birth expenses and medical expenses incurred on behalf of the child to the time of trial and grant judgment to the mother or the department or other payor of public assistance, as applicable, ~~in the amount of those expenses~~, with execution to issue immediately. A judgment for past support is calculated by applying the current child support guidelines to the period for which past support is owed;

Sec. A-9. 19 MRSA §1111, sub-§2, as amended by PL 1995, c. 412, §7, is further amended to read:

2. Notification. If the judge finds from the affidavit of the birth mother that the putative father's whereabouts are known, the judge shall order that notice of the mother's intent to consent to adoption or to execute a surrender and release, or the mother's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative father of the child. If the judge finds that the putative father's whereabouts are unknown, then the court shall order notice by publication in accordance with the Maine Rules of Civil Probate Procedure. If the birth mother does not know or refuses to tell the court who the birth father is, the court may order publication in accordance with the Maine Rules of Civil Probate Procedure in a newspaper of general circulation in the area where the petition is filed, where the birth mother became pregnant or where the putative father is most likely to be located. The notice must specify the names of the birth mother and the child.

Sec. A-10. 19 MRSA §1111, sub-§2-A, as enacted by PL 1995, c. 412, §8, is repealed and the following enacted in its place:

2-A. Waiver of notice by putative father or legal father who is not the biological father. A putative father or a legal father who is not the biological father may waive his right to notice in a document acknowledged before a notary public or a judge of probate. The notary public may not be an attorney who represents either the mother or any person who is likely to become the legal guardian, custodian or parent of the child.

A. The waiver of notice must indicate that the putative father or legal father understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child, and that by signing the waiver of notice the putative father or legal father voluntarily gives up any rights to the named child.

B. The waiver of notice may state that the putative father or legal father neither admits nor denies paternity.

C. The legal father shall attach to the waiver of notice an affidavit stating that, although he is the legal father, he is not the biological father.

Sec. A-11. 19 MRSA §1111, sub-§7, as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

7. Adoptive study. Upon order of the court, ~~either through its own caseworkers or through a licensed child placing agency,~~ the department or licensed child placing agency shall furnish studies and reports relevant to the proceedings.

Sec. A-12. 19 MRSA §1112, sub-§1, as amended by PL 1995, c. 412, §10, is further amended to read:

1. Surrender and release or consent to adopt. With the approval of the judge of probate of any county within the State and after a determination by the judge that a surrender and release or a consent is in the best interest of the child, the parents or surviving parent of a child may at any time after the child's birth:

A. Surrender and release all parental rights to the child and the custody and control of the child to a licensed child placing agency or the department to enable the licensed child placing agency or the department to have the child adopted by some suitable person; or

B. Consent to have the child adopted by a specified petitioner.

The parents or surviving parent must execute the surrender and release or consent in the presence of the judge. The waiver of notice by the father or putative father is governed by section 1111, subsection 2-A.

Sec. A-13. 19 MRSA §1112, sub-§8, as enacted by PL 1995, c. 412, §14, is repealed and the following enacted in its place:

8. Reciprocity. The court shall accept a consent or a surrender and release by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of that state's bar or a certificate from that court of comparable jurisdiction stating that:

A. The person executing the consent or the surrender and release followed the procedure required to make a consent or a surrender and release valid in the state in which it was executed; and

B. The court of comparable jurisdiction advised the person executing the consent or the surrender and release of the consequences of the consent or the surrender and release under the laws of the state in which the consent or the surrender and release was executed.

Sec. A-14. 19 MRSA §1129, sub-§4, as amended by PL 1995, c. 412, §26, is further amended to read:

4. Notice upon completion. Upon completion of an adoption proceeding, the birth parents who consented to an adoption or who executed a surrender and release must be notified of the completion by regular mail at their last known address. A notice under this subsection is not required to a biological parent who is also a petitioner. When the birth parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given to the department and the department shall notify the birth parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion and does not affect the rights or responsibilities of adoptees or adoptive parents.

Sec. A-15. 19 MRSA c. 25 is enacted to read:

CHAPTER 25

FAMILY LAW ADVISORY COMMISSION

§2001. Commission established

The Family Law Advisory Commission, established in Title 5, section 12004-I, subsection 52-B and referred to in this chapter as the "commission," is created for the purpose of conducting a continuing study of the family laws of this State.

§2002. Membership; terms; vacancies

1. Membership. The commission is composed of 9 members appointed by the Chief Justice of the Supreme Judicial Court. The members must have experience in practicing family law or be knowledgeable about family law. The membership of the commission must include:

- A. An active Superior Court Justice;
- B. An active District Court Judge;
- C. A current Probate Court Judge;
- D. Two members of the family law section of the Maine State Bar Association, or its successor;
- E. A representative of a legal services organization;
- F. A representative of the department; and
- G. Two public members, at least one of whom has experience in providing mental health services.

2. Terms. A member is appointed for a term of 2 years and may be reappointed.

3. Vacancies. In the event of the death or resignation of a member, the Chief Justice of the

Supreme Judicial Court shall appoint a qualified person for the remainder of the term.

§2003. Consultants; experts

Whenever it considers appropriate, the commission shall seek the advice of consultants or experts, including representatives of the legislative and executive branches of State Government, in fields related to its duties.

§2004. Duties

1. Examine, evaluate and recommend. It is the duty of the commission:

- A. To examine the sections of this Title that pertain to family law and to draft amendments to those sections that the commission considers advisable;
- B. To evaluate the operation of this Title and to recommend amendments based on the evaluation;
- C. To examine current laws pertaining to family law pleadings and to recommend changes based on the examination; and
- D. To examine any other aspects of the State's family law, including substantive, procedural and administrative matters, that the commission considers relevant.

2. Propose changes. The commission may propose to the Legislature, at the start of each session, changes in family laws and in related provisions as the commission considers appropriate. The commission may also make recommendations to the Judicial Council, the Advisory Committee on Criminal Rules, the Advisory Committee on Civil Rules and to any other organization or committee whose affairs pertain to family law and its practice in this State.

§2005. Organization; staff

The Chief Justice of the Supreme Judicial Court shall notify all members of the time and place of the first meeting. At that time the commission shall organize, elect a chair, vice-chair and secretary-treasurer from its membership and adopt rules governing the administration of the commission and its affairs. The commission shall maintain financial records as required by the State Auditor.

§2006. Federal funds

The commission may accept federal funds on behalf of the State.

Sec. A-16. Study. The Family Law Advisory Commission shall conduct a study of the statutes and

practices of awards and allocations concerning parental rights and responsibilities.

1. Content of study. The study must include an examination of the following:

- A. Equal consideration and treatment of mothers and fathers as primary care providers;
- B. Appropriate consideration and consequences of the relocation or intended relocation of the primary care provider to a place that disrupts the child's relationship with the other parent as well as the child's relationship with friends, school, community and other family;
- C. Whether the importance of the roles of the mother and the father in a child's life is recognized in law and practice; and
- D. Any other issues relating to parental rights and responsibilities, including child support, visitation and enforcement of court orders concerning parental rights and responsibilities.

2. Study protocol. The Family Law Advisory Commission shall adopt a study protocol that allows contribution to the study process by members of the public, other interested persons and recognized experts.

3. Drafting assistance. The Family Law Advisory Commission may request assistance from the Legislative Council in drafting recommendations of legislation.

4. Report. The Family Law Advisory Commission shall submit a report, including any necessary implementing legislation, to the Legislature and the joint standing committee of the Legislature having jurisdiction over judiciary matters by December 15, 1996 for consideration in the First Regular Session of the 118th Legislature. The report must include a summary of the study process, a list of participants and any recommendations, including any necessary implementing legislation.

PART B

Sec. B-1. 19 MRSA, as amended, is repealed.

Sec. B-2. 19-A MRSA is enacted to read:

TITLE 19-A

DOMESTIC RELATIONS

PART 1

GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

§101. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult. "Adult" means a person who is 18 years of age or older.

2. Child. "Child" means a person who has not attained 18 years of age.

3. Commissioner. "Commissioner" means the Commissioner of Human Services, a designee or an authorized representative.

4. Department. "Department" means the Department of Human Services and its agents and authorized representatives.

5. Minor or minor child. "Minor" or "minor child" means a person who has not attained the age of 18 years.

6. Obligee. "Obligee" means any person to whom a duty of support is owed.

7. Obligor. "Obligor" means any person owing a duty of support.

8. Parent. "Parent" means the legal parent or the legal guardian when no legal parent exists.

9. Person. "Person" means an individual, trust, estate, partnership, association, company, corporation, political subdivision of the State or instrumentality of the State.

10. State. The term "state" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico and the District of Columbia.

§102. Residency

The right to file a complaint or bring a petition under this Title may not be denied a person for failure to meet a residency requirement if the person is a member of the Armed Forces of the United States on active duty stationed in this State or the spouse of that member or a parent of a child of that member. The member is deemed to be a resident either of the county in which the military installation, or other place at which the member has been stationed, is located or of the county in which the member has sojourned.

§103. Jurisdiction

Except as otherwise expressly provided, the District Court has original jurisdiction, concurrent with the Superior Court, of all actions under this Title.

§104. Appeals

Appeals may be taken from orders under this Title as in other civil actions.

CHAPTER 3**ALTERNATIVE DISPUTE RESOLUTION****§251. Mediation**

1. Court authority to order mediation. The court may, in any case under this Title, at any time refer the parties to mediation on any issue.

2. Required mediation. Except as provided in paragraph B, prior to a contested hearing under chapter 27, chapter 29, chapter 55 or chapter 63 when there are minor children of the parties, the court shall refer the parties to mediation.

A. For good cause shown, the court, prior to referring the parties to mediation, may hear motions for temporary relief, pending final judgment on an issue or combination of issues for which good cause for temporary relief has been shown.

B. Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection.

3. Mediated agreement. An agreement reached by the parties through mediation on issues must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

4. No agreement; good faith effort required. When agreement through mediation is not reached on an issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or a part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances.

5. Failure to appear. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

6. Waiver of mediation; questions of law. The court may hear motions to waive mediation in cases in which there are no facts at issue and all unresolved issues are questions of law.

§252. Referees

1. Appointment of referee. The court may appoint a referee in any proceeding for paternity, divorce, judicial separation or modification of existing judgments brought under this Title:

A. When the parties agree the case may be tried before a referee; or

B. Upon motion demonstrating exceptional circumstances that require a referee.

2. Payment for service. Payment for the services of the referee is the responsibility of the parties, as ordered by the court. If the court finds that either or both of the parties are indigent, the court may pay the reasonable costs and expenses of the referee.

3. Referee's report. If all parties waive their right to object to acceptance of the referee's report, the court shall immediately enter judgment on the referee's report without a further hearing.

CHAPTER 5**FAMILY LAW ADVISORY COMMISSION****§351. Commission established**

The Family Law Advisory Commission, established in Title 5, section 12004-I, subsection 52-A and referred to in this chapter as the "commission," is created for the purpose of conducting a continuing study of the family laws of Maine.

§352. Membership; terms; vacancies

1. Membership. The commission is composed of 9 members appointed by the Chief Justice of the Supreme Judicial Court. The members must have experience in practicing family law or be knowledgeable about family law. The membership of the commission must include:

A. An active Superior Court Justice;

B. An active District Court Judge;

C. A current Probate Court Judge;

D. Two members of the family law section of the Maine State Bar Association, or its successor;

E. A representative of a legal services organization;

F. A representative of the department; and

G. Two public members, at least one of whom has experience providing mental health services.

2. Terms. A member is appointed for a term of 2 years and may be reappointed.

3. Vacancies. In the event of the death or resignation of a member, the Chief Justice of the Supreme Judicial Court shall appoint a qualified person for the remainder of the term.

§353. Consultants; experts

Whenever it considers appropriate, the commission shall seek the advice of consultants or experts, including representatives of the legislative and executive branches of State Government, in fields related to its duties.

§354. Duties

1. Examine, evaluate and recommend. It is the duty of the commission:

A. To examine the sections of this Title that pertain to family law and to draft amendments to those sections as the commission considers advisable;

B. To evaluate the operation of this Title and to recommend amendments based on the evaluation;

C. To examine current laws pertaining to family law pleadings and to recommend changes based on the examination; and

D. To examine any other aspects of Maine's family law, including substantive, procedural and administrative matters, that the commission considers relevant.

2. Propose changes. The commission may propose to the Legislature, at the start of each session, changes in the family laws and in related provisions as the commission considers appropriate. The commission may also make recommendations to the Judicial Council, the Advisory Committee on Criminal Rules, the Advisory Committee on Civil Rules and to any other organization or committee whose affairs pertain to family law and its practice in Maine.

§355. Organization; staff

The Chief Justice of the Supreme Judicial Court shall notify all members of the time and place of the first meeting. At that time the commission shall organize, elect a chair, vice-chair and secretary-treasurer from its membership and adopt rules governing the administration of the commission and

its affairs. The commission shall maintain financial records as required by the State Auditor.

§356. Federal funds

The commission may accept federal funds on behalf of the State.

PART 2

MARRIED PERSONS

CHAPTER 21

UNIFORM PREMARITAL AGREEMENT ACT

§601. Short title

This chapter is known and may be cited as the "Uniform Premarital Agreement Act."

§602. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Premarital agreement. "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

2. Property. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

§603. Formalities

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

§604. Content

Parties to a premarital agreement may contract with respect to:

1. Rights and obligations of parties. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

2. Right to buy, sell, use property. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property;

3. Disposition of property. The disposition of property upon separation, marital dissolution, death or the occurrence or nonoccurrence of any other event;

4. Spousal support. The modification or elimination of spousal support;

5. Making of will. The making of a will, trust or other arrangement to carry out the provisions of the agreement;

6. Death benefit. The ownership rights in and disposition of the death benefit from a life insurance policy;

7. Choice of law. The choice of law governing the construction of the agreement; and

8. Other matter. Any other matter, including their personal rights and obligations, not in violation of public policy or a law imposing a criminal penalty.

The right of a child to receive support may not be adversely affected by a premarital agreement.

§605. Effect of marriage

A premarital agreement becomes effective upon the marriage of the parties.

§606. Effect of children

Except as otherwise provided in this section, an effective premarital agreement is void 18 months after the parties to the agreement become biological or adoptive parents or guardians of a minor. The premarital agreement is not void if, within the 18-month period, the parties sign a written amendment to the agreement either stating that the agreement remains in effect or altering the agreement. Sections 607 and 608 apply to any amendment under this section.

This section does not apply to premarital agreements executed on or after October 1, 1993.

§607. Amendment; revocation

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

§608. Enforcement

1. Not enforceable. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

A. That party did not execute the agreement voluntarily; or

B. The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

2. Support required. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

3. Unconscionability. An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

§609. Enforcement; void marriage

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

§610. Limitation of actions

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. Equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

§611. Application and construction

This Act must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

CHAPTER 23

MARRIAGE

SUBCHAPTER I

GENERAL PROVISIONS

§651. Recording of intentions

1. Place of recording. Residents of the State intending to be joined in marriage shall record notice of their intentions in the office of the clerk of the municipality in which each resides. If only one of the parties resides in the State, the parties shall record notice of their intentions in the office of the clerk of the municipality in which the resident party resides. If there is no clerk in the place of their residence, the notice must be filed with the clerk of an adjoining municipality. If both parties reside out of the State, they must record notice of their intentions in the office of the clerk of the municipality in which the parties propose to have the marriage solemnized.

2. Application. The parties wishing to record notice of their intentions of marriage shall submit an application for recording notice of their intentions of marriage. The application must include a signed certification that the information recorded on the application is correct and that the applicant is free to marry according to the laws of this State. The applicant's signature must be acknowledged before an official authorized to take oaths. Applications recording notice of intentions to marry must be open for public inspection in the office of the clerk.

3. Related parties. If the parties recording notice of their intentions to marry are related as described in section 701, subsection 2, the parties shall submit to the clerk, at the time of recording their intentions to marry, a certificate from a physician stating that the parties have received genetic counseling from the physician. The physician making the certification required by this subsection shall sign the certificate.

4. Prior marriages. Persons recording notice of intention to marry, either of whom has been previously married, shall submit with the application a certificate or certified copy of the divorce decree or annulment of the last marriage or the death record of the last spouse. If both have been previously married, both shall submit the certificates or certified copies. The clerk shall make a notation on the reverse side of the application under subsection 2 showing the title and location of the courts, the names of the parties to the proceeding for the divorces or annulments and the date when the decrees became absolute. In the case of a death of a former spouse, the clerk shall show the name of the deceased along with the date and place of death.

5. Recognition of foreign divorces. A record of divorce from another state or foreign country is evidence of divorce. If the record is not in English, the record must be translated into English by a disinterested 3rd person at the parties' expense.

6. Resident defined. For the purposes of this chapter, "resident" means a person whose habitation is fixed in a place within this State and to which that person, whenever temporarily absent, has the intention to return. A person is a resident of a municipality if the place of habitation is within that particular municipality. The clerk of a municipality shall consider a person who qualifies as a resident under Title 21-A, section 112 for voting purposes a resident for the purposes of this chapter.

§652. Issuance of marriage license

1. Marriage license issued. On and after the 3rd day from the filing of notice of intentions of marriage, except as otherwise provided, the clerk shall deliver to the parties a marriage license specifying the time when the intentions were recorded.

2. Marriage license to nonresidents. Before issuing a marriage license to a person who resides and intends to continue to reside outside the State, the clerk shall require affidavits or other evidence sufficient to satisfy the clerk that the person is not prohibited to marry by the laws of the jurisdiction in which that person resides.

3. Void after 90 days. The license is void if not used within 90 days from the day the intentions were filed in the offices of the municipal clerks as specified in section 651.

4. Expedited procedure. If the parties believe that the intended marriage should be solemnized without delay, they may file an application with the Probate Court, the District Court, the Superior Court or the Supreme Judicial Court requesting a certificate from the court. Except when the application is filed with the Supreme Judicial Court, the application must be filed in the division or county in which one or both of the parties reside, or, if neither is a resident, in which the marriage will be solemnized.

A. The application must be filed by:

- (1) Both parties when both parties are residents of this State;
- (2) Both parties when neither is a resident of this State; or
- (3) The party residing in this State if only one party is a resident of this State.

B. The application must be accompanied by a fee of \$10, payable to the court with which the application is filed.

C. After hearing the evidence that is presented, the judge or justice may grant a certificate stating that in the opinion of the court it is expedient that

the intended marriage be solemnized without delay.

D. Upon presentation of the certificate or certified copy of the certificate, the clerk of each municipality in which the intention to be joined in marriage has been filed shall at once issue the license as prescribed in this section and section 656.

In extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergy, priest, rabbi or attending physician, the clerk of the municipality in which the intention to be joined in marriage has been filed shall at once issue the license as prescribed in this section and section 656.

5. Informational brochure. A marriage license may not be issued until a brochure prepared by the Department of Mental Health and Mental Retardation concerning the effects of alcohol and drugs on fetuses has been given to both parties. The department is responsible for making the brochures available to municipal clerks for distribution.

6. Related parties. A marriage license may not be issued to parties related as described in section 701, subsection 2, unless the clerk has received from the parties the physician's certificate of genetic counseling required by section 651.

7. Parties under 18 years of age. A marriage license may not be issued to persons under 18 years of age without the written consent of their parents, guardians or persons to whom a court has given custody. In the absence of persons qualified to give consent, the judge of probate in the county where each minor resides may grant consent after notice and opportunity for hearing. When 2 licenses are required and when either or both applicants for a marriage license are under the ages specified in this section, the written consent must be given for the issuance of both licenses in the presence of the clerk issuing the licenses or by acknowledgment under seal filed with that clerk.

8. Parties under 16 years of age. The clerk may not issue a marriage license to a person under 16 years of age without:

A. The written consent of that minor's parents, guardians or persons to whom a court has given custody;

B. Notifying the judge of probate in the county in which the minor resides of the filing of this intention; and

C. Receipt of that judge of probate's written consent to issue the license. If written consent from

the judge has not been received by the 10th day from the filing of notice of the intention of marriage, consent is deemed to have been received and the clerk shall issue the license. The judge of probate, in the interest of public welfare, may order, after notice and opportunity for hearing, that a license not be issued.

§653. Filing of cautions

1. Filing; enter notice. A person who believes that parties are about to contract marriage when either of them can not lawfully do so may file a caution and the reasons for the caution in the office of the clerk where notice of their intentions is required to be filed. If either party applies to enter notice of their intentions, the clerk shall withhold the license until the judge of probate from the county involved approves the marriage.

2. Procedure. Before the judge of probate may approve a marriage, the court must give due notice and an opportunity to be heard to all concerned parties. The judge of probate shall determine whether the parties may lawfully contract marriage within 7 days unless the judge of probate certifies that further time is necessary for that purpose. In that case, a license must be withheld until the expiration of the certified time. The clerk shall deliver or withhold the license in accordance with the final decision of the judge of probate.

3. Judgment for costs. If the judge of probate determines that the parties may lawfully contract marriage, the judge shall enter judgment against the person filing the caution for costs and issue execution for costs.

§654. Record of marriages

1. Copy. Every person authorized to unite persons in marriage shall make and keep a record of every marriage solemnized by that person in conformity with the forms and instructions prescribed by the State Registrar of Vital Statistics pursuant to Title 22, section 2701.

2. Return of original; copies. The person who solemnized the marriage shall return each original certificate to the clerk who issued the certificate within 7 working days following the date on which the marriage is solemnized by that person. If the marriage was solemnized in a municipality other than the place or places where the parties to the marriage reside, that person shall return a copy of the certificate, or of either certificate if 2 were issued, to the clerk of the town where the marriage was solemnized.

3. Statement including officiant and witnesses. Each certificate and copy returned must contain a statement giving the names of the parties

united in marriage, place and date of the marriage, the signature of the person by whom the marriage was solemnized and the names of the 2 witnesses. The person who solemnized the marriage shall add the title of the office by virtue of which the marriage was solemnized, the residence of the person who solemnized the marriage and:

- A. The date ordained or authorized by a religious faith to perform marriages;
- B. The date the notary public's commission expires; or
- C. The date the lawyer was admitted to the Maine Bar.

4. Recorded by clerk. The clerk shall record all certificates or copies returned under this section.

§655. Authorization; penalties

1. Persons authorized to solemnize marriages.

The following may solemnize marriages in this State:

- A. If a resident of this State:
 - (1) A justice or judge;
 - (2) A lawyer admitted to the Maine Bar;
 - (3) A justice of the peace; or
 - (4) A notary public under Title 4, chapter 19; and
- B. Whether a resident or nonresident of this State and whether or not a citizen of the United States:
 - (1) An ordained minister of the gospel;
 - (2) A cleric engaged in the service of the religious body to which the cleric belongs; or
 - (3) A person licensed to preach by an association of ministers, religious seminary or ecclesiastical body.

2. Enforcement. The State Registrar of Vital Statistics shall enforce this section as far as it comes within the state registrar's power and shall notify the district attorney of the county in which the penalty should be enforced of the facts that have come to the state registrar's knowledge. Upon receipt of this notice, the district attorney shall prosecute the person who violated this section.

§656. License

1. Contents of license. A marriage license must have conspicuously printed on it the following words:

"The laws of Maine provide that only authorized persons may solemnize marriages in this State."

2. Completed license; ceremony performed.

Each marriage license issued must be completed and the certification statement signed by both parties to the intended marriage. The completed license or licenses must be delivered by the parties to the person solemnizing the marriage. Upon completion of the solemnization, which must be performed in the presence of at least 2 witnesses other than the person officiating, the person officiating and the 2 witnesses shall sign the license or licenses, which are then known as the marriage certificate or certificates.

§657. Lack of jurisdiction or authority

A marriage, solemnized before any known inhabitant of the State professing to be a justice, judge, justice of the peace or notary public, or an ordained or licensed minister of the gospel, is not void, nor is its validity affected by any want of jurisdiction or authority in the justice, judge, justice of the peace, notary or minister or by any omission or informality in entering the intention of marriage, if the marriage is in other respects lawful and consummated with a full belief, on the part of either of the persons married, that they are lawfully married.

§658. Quaker; Baha'i

A marriage solemnized among Quakers or Friends, in the form practiced in their meeting, or solemnized among members of the Baha'i faith according to the rules and principles of the Baha'i faith, is valid and not affected by this subchapter. The clerk or the keeper of the records of the meeting or ceremony in which a marriage is solemnized shall return evidence of the solemnization of the marriage as provided in section 654. A person who willfully neglects or refuses to perform the duty imposed upon that person by this section commits a civil violation for which a forfeiture not to exceed \$100 for each offense may be adjudged for the use of the municipality in which the offense occurred.

§659. Penalties

1. Solemnization without authorization. A person who solemnizes a marriage when not authorized to do so under section 655 commits a civil violation for which a forfeiture not to exceed \$100 for each offense may be adjudged. Forfeitures collected must be distributed to the municipality in which the offense occurred.

2. Solemnization contrary to chapter. A person who intentionally or knowingly joins persons in marriage in violation of this chapter commits a civil violation for which a forfeiture of \$100 may be adjudged. The person may not join persons in

marriage after being adjudicated as violating this subsection.

3. Violation by party to the marriage. A person who contracts a marriage in violation of this chapter commits a civil violation for which a forfeiture of \$100 may be adjudged. A person who makes false representations to obtain a marriage license or to cause the solemnization of marriage in violation of this chapter commits a civil violation for which a forfeiture of \$100 may be adjudged.

4. Violation by clerk. The clerk of a municipality who intentionally violates this chapter or falsely states the residence of either of the parties named in the license or certificate commits a civil violation for which a forfeiture of \$20 for each offense may be adjudged.

SUBCHAPTER II

RESTRICTIONS

§701. Prohibited marriages; exceptions

1. Marriage out of State to evade law. When residents of this State, with intent to evade this section and to return and reside here, go into another state or country to have their marriage solemnized there and afterwards return and reside here, that marriage is void in this State.

2. Prohibitions based on degrees of consanguinity; exceptions. This subsection governs marriage between relatives.

A. A man may not marry his mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister, mother's sister, the daughter of his father's brother or sister or the daughter of his mother's brother or sister. A woman may not marry her father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother, mother's brother, the son of her father's brother or sister or the son of her mother's brother or sister.

B. Notwithstanding paragraph A, a man may marry the daughter of his father's brother or sister or the daughter of his mother's brother or sister, and a woman may marry the son of her father's brother or sister or the son of her mother's brother or sister as long as, pursuant to sections 651 and 652, the man or woman provides the physician's certificate of genetic counseling.

3. Persons under disability. A person who is impaired by reason of mental illness or mental retardation to the extent that that person lacks

sufficient understanding or capacity to make, communicate or implement responsible decisions concerning that person's property or person is not capable of contracting marriage. For the purposes of this section:

A. "Mental illness" means a psychiatric or other disease that substantially impairs a person's mental health; and

B. "Mental retardation" means a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

4. Polygamy. A marriage contracted while either party is not divorced from a living wife or husband is void.

SUBCHAPTER III

VOID MARRIAGES AND ANNULMENT

§751. Certain marriages void without process

The following marriages are void and dissolved without legal process:

1. Solemnized in State. A marriage prohibited in section 701, if solemnized in this State; or

2. Final judgment. A marriage when there is an entry of a final judgment sentencing either party to imprisonment for life.

§752. Annulment of illegal marriages

1. Complaint; court order. When the validity of a marriage is doubted, either party may file a complaint for annulment. The court shall order the marriage annulled or affirmed according to the evidence. The court's order does not affect the rights of the defendant unless the defendant was actually notified of the action or answered the complaint.

2. Parental rights and responsibilities. The court entering an order for annulment may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

3. Name change. Upon the request of either spouse to change that person's own name, the court, when entering judgment for annulment:

A. Shall change the name of that spouse to a former name requested; or

B. May change the name of that spouse to any other name requested.

4. Finalization. The trial court may, upon motion for entry of final judgment during the

pendency of the appeal period, grant a final judgment of annulment between the parties if the court expressly finds that there is not just cause for delay and entry of judgment will not prejudice the legal or equitable rights of a party during the pendency of an appeal. The filing of a motion under this subsection does not stay an award of child or spousal support or parental rights and responsibilities, except by order of the court under the Maine Rules of Civil Procedure.

5. Annulment because of prior marriage.

When a marriage is annulled due to a prior marriage, and the party who was capable of contracting the 2nd marriage contracted the 2nd marriage in good faith, believing that the prior spouse was dead, the former marriage was void or a divorce had been decreed leaving the party to the former marriage free to marry again, that fact must be stated in the decree of nullity.

§753. Action to void marriage

If, after a marriage has been solemnized, the State Registrar of Vital Statistics determines that the parties are not eligible to be married because the age or other requirements provided in this chapter are not satisfied, the state registrar may file an action in District Court to void the marriage.

CHAPTER 25

RIGHTS OF MARRIED PERSONS

§801. Holding and disposing of property

A married person, widow or widower of any age may own in the person's own right real and personal estate acquired by descent, gift or purchase.

§802. Spouse's separate property

A person having property is not deprived of any part of that property by marriage, and a person acquires no right to any property of that person's spouse. A married person may release to that person's spouse the right to control that person's property or any part of it and to dispose of the income of the property for their mutual benefit, and may in writing revoke that right of control or disposal.

§803. Spouse's earnings

A married person may receive the wages of that person's personal labor not performed for that person's own family, maintain an action for those wages in that person's own name and hold them in that person's own right against that person's spouse or any other person.

§804. No liability for spouse's debts or torts; property subject to execution; partnerships

1. Liability for debts or torts. A married person is not liable for the debts of that person's spouse contracted before marriage nor for those contracted in the spouse's own name for any lawful purpose. A married person is not liable for that person's spouse's torts in which that person takes no part.

2. Partnerships. This section may not be construed to mean that a person is not liable for the debts, contracted in the name of the partnership, of a partnership between the person and the person's spouse or among the person, the spouse and 3rd persons. This section may not be construed to prohibit or limit the formation of a partnership between a husband and a wife or among a husband, wife and 3rd persons.

§805. Actions by or against spouse; arrest

A married person may prosecute and defend civil actions, either of tort or contract, in that person's own name without the joinder of that person's spouse, for the preservation and protection of that person's property and personal rights or for the redress of that person's injuries, as if unmarried, or may prosecute these actions jointly with that person's spouse. The person's spouse may not settle or discharge any of these actions or causes of action without the written consent of the person. Neither of them can be arrested on a writ of execution arising out of these actions or causes of action, nor may the spouse alone maintain an action respecting the person's property.

§806. Proceedings between husband and wife

1. Civil action against spouse. A wife may bring a civil action against her husband for the recovery, conveyance, transfer, payment or delivery to her of any property, real or personal or both, exceeding \$100 in value, standing in his name, or to which he has legal title, or that is in his possession or under his control, that in equity and good conscience belongs to her and that he neglects or refuses to convey, transfer, pay over or deliver to her, and upon proper proof may maintain this action. A husband has the same right to bring and maintain a civil action against his wife for the same purposes, subject to the same limitations.

2. Marriage not a bar; costs. Marriage is not a bar to the maintenance of a civil action by a wife against her husband or by a husband against his wife brought for the purposes in subsection 1. Costs may not be awarded against either party in these proceedings.

3. Defrauding creditors; dismissal of action. If it satisfactorily appears to the court on hearing that the party bringing the action has conveyed or transferred any of that party's property, real or personal, to

the other party to the action for the purpose of cheating, defrauding, hindering or delaying that party's creditors, the action must be dismissed.

4. Appeal. An appeal from any final judgment under this section may be taken to the law court as in other civil actions.

5. No survival of rights. There is no survival of the right to institute proceedings under this section, and if a wife or husband dies after the commencement of proceedings under this section and before the final determination and disposition of the proceedings, these proceedings must abate.

CHAPTER 27

JUDICIAL SEPARATION

§851. Judicial separation

1. Grounds. A person may file a petition for judicial separation if:

A. The person's spouse, without just cause, deserts the person, and the desertion has continued for at least 60 days immediately before the filing of the petition; or

B. The person, with just cause, is actually living apart from the spouse and has lived apart from the spouse for at least 60 days immediately before the filing of the petition.

If the person is mentally ill, the person's guardian or next friend may file the petition.

2. Place of filing. The person may file a petition for judicial separation in the county or judicial division in which either of the parties lives, except that if the petitioner has left the county or judicial division in which the parties lived together and the respondent still lives in that county or judicial division, the petitioner must file the petition in that county or judicial division. Notice must be given as the Maine Rules of Civil Procedure provide.

3. Order. The court may enter an order stating that the person is deserted or living apart and may prohibit the spouse from imposing any restraint on the petitioner's personal liberty during such time as the court may by order direct.

4. Mediation. The court shall order the parties to participate in mediation as provided in chapter 3.

5. Parental rights and responsibilities. Upon the petition of either spouse, or of the guardian or next friend of one of the parties who may be mentally ill, the court may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

6. Enforcement. The court may enforce obedience to its orders by appropriate process including remedies provided in chapter 65. Nothing in this section may preclude the court from incarcerating a spouse for nonpayment of child support, spousal support or attorney's fees in violation of a court order to do so.

7. Marriage settlement or contract not affected. An action under this section does not invalidate a marriage settlement or contract between the parties.

§852. Preliminary injunction, effect; attachment or trustee process

1. Issue of preliminary injunction. In all actions for judicial separation the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

(1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;

(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and

(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties.

C. The preliminary injunction must include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or
- (3) The action is dismissed."

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires.

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court.

C. A preliminary injunction does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court

to issue other injunctive relief that may be proper under the circumstances.

D. A preliminary injunction terminates when:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or
- (3) The action is dismissed.

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court;

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; or

C. By appropriate processes as in other actions.

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

4. Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to chapter 101.

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for judicial separation.

CHAPTER 29

DIVORCE

SUBCHAPTER I

GROUND AND PROCEDURES

§901. Action for divorce; procedures

1. Filing of complaint; grounds. A person seeking a divorce may file a complaint for divorce in the Superior Court or the District Court if:

A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action;

B. The plaintiff is a resident of this State and the parties were married in this State;

C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or

D. The defendant is a resident of this State.

The complaint must state one or more grounds listed in section 902, subsection 1.

2. Guardian ad litem. If the alleged cause is mental illness, as provided in section 902, subsection 1, paragraph I, the court shall appoint a guardian ad litem to represent the interests of the defendant.

3. Exclusion of public. In a divorce action, at the request of either party, personally or through that party's attorney, unless the other party who has entered an appearance objects personally or through that other party's attorney, the court shall exclude the public from the court proceedings.

If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present.

4. Corroborating witness not required. When the merits of a divorce action are not contested, whether or not an answer has been filed, there is no requirement that the testimony of the complaining party be corroborated by witnesses.

5. Fraud. The court may not grant a divorce when the parties seek to procure a divorce for fraudulent purposes.

6. Attorney's fees and costs. The court may order either party to pay the costs and attorney's fees of the other party in the defense or prosecution of a divorce. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

§902. Grounds; defenses

1. Grounds. A divorce may be granted for one of the following causes:

A. Adultery;

B. Impotence;

C. Extreme cruelty;

D. Utter desertion continued for 3 consecutive years prior to the commencement of the action;

E. Gross and confirmed habits of intoxication from the use of liquor or drugs;

F. Nonsupport, when one spouse has sufficient ability to provide for the other spouse and grossly, wantonly or cruelly refuses or neglects

to provide suitable maintenance for the complaining spouse;

G. Cruel and abusive treatment;

H. Irreconcilable marital differences; or

I. Mental illness requiring confinement in a mental institution for at least 7 consecutive years prior to the commencement of the action.

2. Irreconcilable differences; counseling. If one party alleges that there are irreconcilable marital differences and the opposing party denies that allegation, the court upon its own motion or upon motion of either party may continue the case and require both parties to receive counseling by a qualified professional counselor to be selected either by agreement of the parties or by the court. The counselor shall give a written report of the counseling to the court and to both parties. The failure or refusal of the party who denies irreconcilable marital differences to submit to counseling without good reason is prima facie evidence that the marital differences are irreconcilable.

3. Recrimination. Recrimination is a comparative rather than an absolute defense in a divorce action.

4. Condonation. Condonation of the parties is not an absolute defense to any action for divorce but is discretionary with the court.

§903. Preliminary injunction, effect; attachment or trustee process

1. Issue of preliminary injunction. In all actions for divorce or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

(1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;

(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and

(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties.

C. The preliminary injunction must include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or
- (3) The action is dismissed."

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires.

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court.

C. A preliminary injunction does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court to issue other injunctive relief that may be proper under the circumstances.

D. A preliminary injunction terminates when:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or
- (3) The action is dismissed.

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court;

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; or

C. By appropriate processes as in other actions.

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

4. Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to chapter 101.

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for

divorce or spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse.

6. Application. The injunction authorized in this section does not apply to post-divorce actions.

§904. Orders pending divorce

In accordance with section 251, subsection 2, pending a divorce action, the court may:

1. Attorney's fees. Order either spouse to pay to the other spouse, or to the attorney for the other spouse, sufficient money for the defense or prosecution of the action;

2. Support. Make reasonable provision for either spouse's separate support, on a motion for which costs and attorney's fees may be ordered;

3. Minor children. Enter an order for the parental rights and responsibilities with respect to the minor children of the parties in accordance with chapter 55;

4. Enforcement. Enforce obedience by appropriate processes on which costs and attorney's fees are taxed as in other actions;

5. Determine possession. Determine the possession of owned or rented real and personal property pending the final divorce decree; or

6. Free from restraint. On motion of either spouse, prohibit a spouse from imposing restraint on the moving spouse's personal liberty. This subsection does not preclude the court from incarcerating either spouse for nonpayment of child support, spousal support or attorney's fees in violation of a court order to do so.

§905. Investigation when custody of children involved

Whenever in a divorce action the custody of a minor child is involved, the court may request the department to investigate conditions and circumstances of the child and the child's parents. Upon completion of the investigation, the department shall submit a written report to the court and to counsel of record at least 3 days before the date of hearing. The report may not be further copied or distributed by anyone. A person who violates a provision of this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Upon request of an interested party, the court shall require the person making the report to testify at the time of hearing. Whoever participates in making a report under this section or participates in a judicial proceeding as a result of the report is immune

from civil or criminal liability, unless that person acted in bad faith or with malicious purpose.

If the court requests an investigation for purposes other than suspected abuse or neglect as defined in Title 22, chapter 1071, the court shall order either or both parties to pay to the department part or all of the costs of services under this chapter, unless the court has made a finding of inability to pay. Revenue from investigations or services provided under this chapter are dedicated to the department to defray the cost of these services.

§906. Certain divorces validated

1. Writ of attachment. All divorces already granted in this State on libels inserted in a writ of attachment, and otherwise valid except for the want of attachment nominal or otherwise upon the writ, are validated.

2. Pendency of another claim. All judgments or orders already entered granting a divorce, annulment, disposition of property under section 953 or former Title 19, section 722-A or other disposition, award or division of property incident upon a divorce or annulment, and otherwise final except for the pendency of another claim or counterclaim in the same action, are declared final, nonappealable and effective for all purposes as of the date of entry of the judgment or order. This subsection does not apply to any judgment for divorce, annulment or property disposition in which the appeal period, including any extensions, has commenced but has not expired as of June 30, 1981.

3. Finalization. In an action for divorce under section 902, the trial court may, upon motion for entry of final judgment during the pendency of the appeal period, grant a final judgment of annulment or divorce between the parties if the court expressly finds that there is not just cause for delay and entry of judgment will not prejudice the legal or equitable rights of a party during the pendency of an appeal. The filing of a motion under this subsection does not stay an award of child or spousal support or parental rights and responsibilities, except by order of the court under the Maine Rules of Civil Procedure.

§907. Out-of-state divorces

When residents of the State go out of the State for the purpose of obtaining a divorce for causes that occurred here while the parties lived here or that do not authorize a divorce here, and a divorce is thus obtained, the divorce is void in this State. In all other cases, a divorce decreed out of the State according to the law of the place, by a court having jurisdiction of the cause and of both parties, is valid here.

The validity of a custody determination contained in or ancillary to a valid divorce decree granted by another state is governed by the Uniform Child Custody Jurisdiction Act.

SUBCHAPTER II

SPOUSAL SUPPORT AND PROPERTY RIGHTS

§951. Spousal support

1. Factors. The court shall consider the following factors when determining an award of spousal support:

- A. The length of the marriage;
- B. The ability of each party to pay;
- C. The age of each party;
- D. The employment history and employment potential of each party;
- E. The income history and income potential of each party;
- F. The education and training of each party;
- G. The provisions for retirement and health insurance benefits of each party;
- H. The tax consequences of the division of marital property, including the tax consequences of the sale of the marital home, if applicable;
- I. The health and disabilities of each party;
- J. The tax consequences of a spousal support award;
- K. The contributions of either party as homemaker;
- L. The contributions of either party to the education or earning potential of the other party;
- M. Economic misconduct by either party resulting in the diminution of marital property or income;
- N. The standard of living of the parties during the marriage; and
- O. Any other factors the court considers appropriate.

2. Real estate. The court may order part of the obligated party's real estate and, if necessary, the rents and profits from that real estate to be assigned and set out to the other party for life.

3. Alternative to spousal support. Instead of spousal support, the court may order either party to pay a specific sum to the other party, as the court may direct.

4. Modification. The court, at any time, may alter or amend a decree for spousal support or specific sum when it appears that justice requires it, except that a court may not increase the spousal support if the original decree prohibits an increase. In making an alteration or amendment, the court shall consider the factors listed in subsection 1.

5. Enforcement. The court may use all necessary legal provisions to enforce its decrees.

6. Limitations. This section does not limit the court, by full or partial agreement of the parties or otherwise, from awarding spousal support for a limited period, from awarding spousal support that may not be increased regardless of subsequent events or conditions or from otherwise limiting or conditioning the spousal support award in any manner or term that the court considers just.

§952. Payment of spousal support, fees and support

1. Definition. As used in this section, "decree of spousal support, support or costs" means a decree or order:

- A. For spousal support or payment of money instead of spousal support;
- B. For support of children;
- C. For support pending a divorce action;
- D. For payment of related attorney's fees; or
- E. For alteration of an existing decree or order for the custody or support of a child.

2. Order pending petition. Pending a petition to enforce a decree of spousal support, support or costs and after notice and opportunity for a hearing, the court may order either spouse to pay to the other spouse or to the other spouse's attorney sufficient money for the prosecution of or defense against the petition.

3. Attorney's fees. When making a final decree, the court may order a party to pay reasonable attorney's fees. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

4. Enforcement. The court may enforce an order as provided under chapter 65.

§953. Disposition of property

1. Disposition. In a proceeding for a divorce, for legal separation or for disposition of property following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse the spouse's property and shall divide the marital property in proportions the court considers just after considering all relevant factors, including:

A. The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

B. The value of the property set apart to each spouse; and

C. The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live in the home for reasonable periods to the spouse having custody of the children.

2. Definition. For purposes of this section, "marital property" means all property acquired by either spouse subsequent to the marriage, except:

A. Property acquired by gift, bequest, devise or descent;

B. Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise or descent;

C. Property acquired by a spouse after a decree of legal separation;

D. Property excluded by valid agreement of the parties; and

E. The increase in value of property acquired prior to the marriage.

3. Acquired subsequent to marriage. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety or community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2.

4. Disposition of marital property. If both parties to a divorce action also request the court in writing to order disposition of marital property acquired by either or both of the parties to the divorce

prior to January 1, 1972, or nonmarital property owned by the parties to the divorce action, the court shall also order disposition in accordance with subsection 1.

5. Decree contents. If the final divorce decree disposes of real property, it must name the party or parties responsible for preparing and recording the decree of divorce or abstract of the decree and paying the recording fee after the clerk has prepared or approved the abstract. The decree may name different parties to be responsible for different parcels.

6. Nonowner spouse claims. Notwithstanding the actual notice provisions of Title 14, section 4455 or any other laws, a claim of a nonowner spouse to real estate as "marital property," as defined in this section, does not affect title to the real estate of the owner spouse until the nonowner spouse records in the appropriate registry of deeds either:

A. A copy of the divorce complaint as filed in court;

B. A clerk's certificate of the divorce complaint, as described in Title 14, section 4455, subsection 2; or

C. A decree or abstract of the decree as described in this section.

This recording requirement applies to all divorce proceedings in this State or in any other jurisdiction.

7. Decree or abstract as deed. All rights acquired under former Title 19, section 721 or 723 on or before December 31, 1971 and all rights acquired under this section by a party in the real estate of the other party are effective against a person when the decree of divorce or an abstract of the decree is filed in the registry of deeds for the county or registry district where the real estate is situated. The abstract must contain the names of the parties, the date of the decree and the court that issued the decree. The failure of a party to record the decree or an abstract of the decree within a time period prescribed by former Title 19, section 725 does not affect the rights of that party as against the other party or the other party's heirs or devisees. The recording of the decree or abstract of the decree has the force and effect of a quitclaim deed releasing all interest in the real estate described in the decree or abstract of the decree, whether the interest is in fee or by statute.

8. Out-of-state divorce decrees. When a divorce has been granted out of the State, the plaintiff, or the plaintiff's attorney, shall cause a duly authenticated copy of the order to be recorded with the register of deeds in each of the counties where the real estate or any part of the real estate is situated. The appropriate recording fee must be paid prior to the recording.

9. Omitted property. If a final divorce decree fails to set apart or divide marital property over which the court had jurisdiction, the omitted property is deemed held by both parties as tenants in common. On the motion of either party, the court may set aside or divide the omitted property between the parties, as justice may require.

SUBCHAPTER III

PARENTAL RIGHTS AND RESPONSIBILITIES

§1001. Parental rights and responsibilities

The court entering an order for divorce may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

SUBCHAPTER IV

CHANGE OF NAME

§1051. Name change

Upon the request of either spouse to change that person's own name, the court, when entering judgment for divorce:

1. Former name. Shall change the name of that spouse to a former name requested; or

2. Any other name requested. May change the name of that spouse to any other name requested.

PART 3

PARENTS AND CHILDREN

CHAPTER 51

GENERAL PROVISIONS

§1501. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Allocated parental rights and responsibilities. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A

parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

2. Child support. "Child support" means money paid directly to a parent, to another person or agency awarded parental rights and responsibilities with respect to a child or to the department on behalf of a child receiving public assistance and medical or dental insurance coverage provided on behalf of a child pursuant to court order.

3. Domestic abuse. "Domestic abuse" means abuse as defined in section 4002.

4. Reasonable cost health insurance. "Reasonable cost health insurance" means health insurance that is employment-related or other group health insurance.

5. Shared parental rights and responsibilities. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities, and both parents confer and make joint decisions regarding the child's welfare.

6. Sole parental rights and responsibilities. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

§1502. Either parent dead or guilty of abandonment, rights devolve on other

If one of the parents of a minor child is dead or has abandoned the child, all parental rights respecting the child devolve upon the other parent.

§1503. Rights of children born out of wedlock

A child born out of wedlock is the child of that child's biological parents and is entitled to the same legal rights as a child born in lawful wedlock, except as otherwise expressly provided by statute.

§1504. Person's duty of support

A person shall support that person's child and that person's spouse when in need.

§1505. Extent of duties of support

An obligor present or resident in this State has the duty of support as defined in this chapter regardless of the presence or residence of the obligee.

§1506. Public assistance recipients' rights of privacy

When the department seeks to establish paternity of a dependent child, any inquiry about prior or current sexual activity of a recipient of public assistance must be limited to that necessary to resolve a genuine dispute about the parentage of a child. When a custodial mother has informed the department that a particular man is the father of her child, the department may make no further inquiry into her personal life unless the man so identified has denied that he is the father of that child or he refuses to cooperate.

§1507. Appointment of guardian ad litem in contested proceedings

1. Guardian ad litem; appointment. In contested proceedings under sections 904 and 1653 in which a minor child is involved, the court may appoint a guardian ad litem for the child. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. The court may appoint a guardian ad litem when the court has reason for special concern as to the welfare of a minor child. In determining whether an appointment must be made, the court shall consider:

- A. The wishes of the parties;
- B. The age of the child;
- C. The nature of the proceeding, including the contentiousness of the hearing;
- D. The financial resources of the parties;
- E. The extent to which a guardian ad litem may assist in providing information concerning the best interest of the child;
- F. Whether the family has experienced a history of domestic abuse;
- G. Abuse of the child by one of the parties; and
- H. Other factors the court determines relevant.

At the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.

2. Qualifications. A guardian ad litem appointed on or after September 1, 1997 must meet the qualifications established by the Supreme Judicial Court.

3. Duties. The guardian ad litem has both mandatory and optional duties.

A. A guardian ad litem shall:

- (1) Interview the child with or without another person present;
- (2) Have face-to-face contact with the child within 7 days of appointment by the court and at least once every 3 months after appointment; and
- (3) Make a written report of investigations, findings and recommendations every 6 months or as ordered by the court, with copies of the report to each party and the court.

B. The court shall specify the optional duties of the guardian ad litem. The optional duties of the guardian ad litem may include:

- (1) Interviewing the parents, teachers and other people who have knowledge of the child or family;
- (2) Reviewing mental health, medical and school records of the child;
- (3) Reviewing mental health and medical records of the parents;
- (4) Having qualified people perform medical and mental evaluations of the child;
- (5) Having qualified people perform medical and mental evaluations of the parents;
- (6) Procuring counseling for the child;
- (7) Retaining an attorney to represent the guardian ad litem in the pending proceeding, with approval of the court;
- (8) Subpoenaing witnesses and documents and examining and cross-examining witnesses;
- (9) Serving as a contact person between the parents and the child; or
- (10) Other duties that the court determines necessary, including, but not limited to, filing pleadings.

If, in order to perform the duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

4. Best interest of the child. The guardian ad litem shall use the standard of the best interest of the child as set forth in section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem. If the child and the child's guardian ad litem are not in agreement, the court shall evaluate the need for appointing special counsel for the child to serve as the child's legal advocate concerning the issues and during the proceedings as the court determines to be in the best interest of the child and shall appoint a legal advocate if the court determines that such an appointment is necessary.

5. Written report. A written report of a guardian ad litem may be admitted as evidence in the proceeding for which the guardian ad litem was appointed only if the party seeking the admission of the report has furnished a copy to all parties at least 14 days prior to the hearing. The report may not be admitted as evidence without the testimony of the guardian ad litem if a party objects to the admittance of the report at least 7 days prior to the hearing.

6. Court's agent. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.

7. Payment for services. Payment for the services of the guardian ad litem is the responsibility of the parties, as ordered by the court. In determining the responsibility for payment, the court shall consider:

- A. The income of the parties;
- B. The marital and nonmarital assets of the parties;
- C. The division of property made as part of the final divorce;
- D. Which party requested appointment of a guardian ad litem; and
- E. Other relevant factors.

8. Notice. A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.

§1508. Actions

An action under this Part may be commenced by civil summons without an order of service from the

court. The Supreme Judicial Court shall prescribe by general rule the procedure for that civil action.

CHAPTER 53

PATERNITY

SUBCHAPTER I

UNIFORM ACT ON PATERNITY

§1551. Short title

This subchapter is known and may be cited as the "Uniform Act on Paternity."

§1552. Obligations of father

The father of a child who is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, support and funeral expenses of the child, and reasonable attorney's fees for the prosecution of paternity proceedings.

§1553. Enforcement

Paternity may be determined upon the complaint of the mother, the alleged father, the child or the public authority chargeable by law with the support of the child. If paternity has been determined or has been acknowledged according to the laws of this State, the liabilities of the father may be enforced in the same or other proceedings by the mother, the child or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support or funeral expenses, and by other persons, including private agencies, to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, support or funeral expenses. Chapter 63 applies to an award of past support, which is calculated by applying the current child support guidelines to the period for which past support is owed.

In execution of the powers given the court under this subchapter, the court may employ any compulsory process that it determines proper, by execution, attachment or other effectual form, on which costs are taxed as in other actions. The court may enforce a support order established under this subchapter as provided in chapter 65. A determination or modification of child support under this section must comply with chapter 63.

§1554. Limitation on recovery from father

The father's liabilities for past education and support are limited to a period of the 6 years immediately preceding the commencement of an action.

A complainant may commence an action at any time prior to the child's 18th birthday.

§1555. Limitations on recovery from father's estate

The obligation of the estate of the father for liabilities under this subchapter are limited to amounts accrued prior to his death and sums that may be payable for dependency under other laws.

§1556. Remedies

The Superior Court or District Court has jurisdiction over an action under this subchapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, support or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and support. All remedies under the Uniform Interstate Family Support Act are available for enforcement of duties of support under this subchapter.

§1557. Time of trial

If the issue of paternity is raised in an action commenced during the pregnancy of the mother, the trial may not, without the consent of the alleged father, be held until after the birth or miscarriage.

This subchapter may not be construed to deny either party a trial by jury on the issue of paternity.

§1558. Authority for blood or tissue-typing tests

The court, upon its own initiative or upon suggestion made by or on behalf of a person whose blood or tissue is involved or the mother, may order or, upon motion of a party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood or tissue typing tests, which may include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins. If a party refuses to submit to those tests, the court may resolve the question of paternity against that party or may enforce the order, if the rights of others and the interests of justice so require.

§1559. Selection of experts

The tests required by the court order under section 1558 must be made by experts qualified as examiners of blood or tissue types who are appointed by the court. The experts may be called by the court as witnesses to testify to their findings and may be subject to cross-examination by the parties. A party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood or tissue types, perform

independent tests under order of court, the results of which may be offered in evidence. The court shall determine the number and qualifications of those experts.

§1560. Compensation of expert witnesses

The court shall set the compensation of each expert witness appointed by the court at a reasonable amount. The court may order the parties to pay the compensation in appropriate proportions and may order when the payments are to be made. The court may order that, after payment by the parties, all, part or none of the compensation may be taxed as costs in the action. The fee of an expert witness called by a party but not appointed by the court must be paid by the party calling the expert witness and may not be taxed as costs in the action.

§1561. Effect of test results

1. Effect of results. The results of the tests required pursuant to section 1558 are evidence to be used in determining paternity as follows.

A. If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the tests, is that the alleged father is not the parent of the child, the question of paternity must be resolved accordingly.

B. If the experts disagree in their findings or conclusions, the question must be submitted upon all the evidence.

C. If the experts conclude that the blood or tissue tests show that the alleged father is not excluded and that the probability of the alleged father's paternity is less than 97%, this evidence must be admitted by the court and weighed with other competent evidence of paternity.

D. If the experts conclude that the blood or tissue tests show that the alleged father is not excluded and that the probability of the alleged father's paternity is 97% or higher, the alleged father is presumed to be the father, and this evidence must be admitted.

2. Chain of custody; evidence. Notarized documentation of the chain of custody of the blood and tissue samples is competent evidence to establish the chain of custody.

3. Notarized reports; challenges. A notarized report of the blood and tissue tests, prepared by the appointed experts, must be admitted at trial, unless a written challenge to the testing procedure or the results of the blood and tissue tests has been filed with the court and delivered to opposing counsel at least 30 days before a hearing set to determine the issue of

paternity. Failure to make that timely challenge constitutes a waiver of the right to have the experts appear in person and is not grounds for a continuance of the hearing to determine paternity.

§1562. Rebuttal of presumption

An alleged father or a mother may rebut the presumption of paternity contained in section 1561, subsection 1, paragraph D by clear and convincing evidence.

§1563. Admissible evidence

1. Evidence of paternity; admissible. In an action brought under this subchapter, evidence relating to paternity may include, but is not limited to:

- A. An expert's opinion concerning the time of conception;
- B. Evidence of sexual intercourse between the mother and alleged father at a possible time of conception;
- C. Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based upon tests performed by experts; or
- D. The statistical probability of the alleged father's paternity based upon the blood or tissue tests.

2. Inadmissible evidence. Testimony relating to sexual relations or possible sexual relations of the mother at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

§1564. Presumption of legitimacy not applicable

1. Presumption not applicable. The presumption of legitimacy provided in the Maine Rules of Evidence, Rule 302 does not apply if:

- A. The experts conclude that reliable blood or tissue tests show that the presumed father is not the biological parent of the child; or
- B. The experts conclude that reliable blood or tissue tests show that the alleged father is not excluded and that the probability of the alleged father's paternity is 97% or higher.

§1565. Judgment

1. Support. Judgments under this subchapter may be for periodic payments that may vary in amount. The court may order payments to be made to the person to whom the support is owed or to the person, corporation or agency designated to

administer payments under the supervision of the court.

2. Parental rights and responsibilities. The court may order an initial allocation of parental rights and responsibilities. The order of the court must provide notice that if either party objects to the allocation, that party may file a complaint pursuant to section 1654 and that an order from that action supersedes this initial allocation of parental rights and responsibilities. It is within the court's discretion to award or allocate parental rights and responsibilities under this subchapter and the department is not a party to this issue. In resolving parental rights and responsibilities issues, the court may not delay entering a determination of paternity and an initial order concerning child support.

§1566. Security

Upon motion of the plaintiff, the court at a time before or after judgment may require the alleged or adjudicated father to give bond or other security for the payment of a judgment that exists or may exist in the future.

§1567. Settlement agreements

An agreement of settlement with the alleged father is binding only when approved by the court.

§1568. Venue

An action under this subchapter may be brought in the county or district where the alleged father is present or has property or in the county or district where the mother or child resides.

§1569. Uniformity of interpretation

This subchapter must be interpreted and construed so as to effectuate its general purpose to make uniform the laws of those states that enact it.

§1570. Rules of civil procedure

1. Procedure. The rules of civil procedure apply to this subchapter in all cases of birth out of wedlock when the birth occurs after October 7, 1967.

2. Dismissal without prejudice. Dismissals of paternity actions must be without prejudice in all cases except:

- A. When an adjudication on the merits has occurred; or
- B. When the department is a party to the action and the department consents to the dismissal with prejudice.

SUBCHAPTER II
EXPEDITED PROCESS FOR THE
COMMENCEMENT OF PATERNITY
ACTIONS

§1601. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Alleged father. "Alleged father" means:

A. A man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child; or

B. A man who is presumed to be a child's father under the Maine Rules of Evidence, Rule 302.

2. Blood or tissue-typing tests. "Blood or tissue-typing tests" means tests that demonstrate through examination of genetic markers the paternity of a child.

3. Paternity proceeding. "Paternity proceeding" means the administrative proceeding provided in this subchapter for the commencement of an action to establish paternity under subchapter I.

§1602. Additional persons subject to jurisdiction

1. Application. To ensure maximum protection to citizens of this State, the department shall apply this section to assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution, Amendment XIV.

2. Cause of action. A person who engages in sexual intercourse with a resident of this State in this State submits to the jurisdiction of the department for the purpose of the commencement of a paternity proceeding.

§1603. Limitation on recovery from father

An alleged father's liability for past expenses incurred is limited to the 6 years preceding service of the notice under section 1605.

§1604. Service

Service of a notice under section 1605 must be made by service in hand and may be made by an authorized representative of the commissioner or by a person authorized by the Maine Rules of Civil Procedure.

§1605. Notice of proceeding to commence an action

1. Notice of proceeding. The department may commence a paternity proceeding by serving a notice on an alleged father. The department may not serve such a notice unless it has a sworn statement or affirmation under the penalty for unsworn falsification from the child's mother claiming that the alleged father engaged in sexual intercourse with her during a possible time of conception of the child or is a man who is presumed under state law to be the child's father. If the mother is a minor, the sworn statement or affirmation may be that of the guardian or next friend of the mother.

2. Contents of notice. In addition to conforming with the requirements of Title 5, section 9052, subsection 4, the notice must include:

A. A statement that service of the notice on the alleged father constitutes the commencement of a paternity proceeding for the determination of paternity and any related issues under this chapter;

B. A statement identifying any of the following as the reason for filing the record of the proceeding in court.

(1) The alleged father fails to deny paternity.

(2) The alleged father refuses to submit to blood or tissue-typing tests.

(3) The alleged father fails to execute and deliver to the department an acknowledgment of paternity;

C. A statement that, if the department files a record of the proceeding, the department may seek relief under section 1606;

D. The child's name and place and date of birth;

E. The name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

F. The probable date on or period during which the child was conceived;

G. An allegation that the alleged father engaged in sexual intercourse with the child's mother during a possible time of conception of the child or is a man who is presumed to be the child's father under state law, and that the alleged father is or may be the biological father of the child;

H. If applicable, an allegation that the child may have been conceived as a result of sexual intercourse in this State and that the alleged father is

subject to personal jurisdiction under section 1602;

I. A statement that the alleged father may deny the allegation of paternity by filing a written denial of paternity with the department within 20 days after service of the notice; that if the alleged father fails to file a written denial, the proceeding will be filed in a court as a paternity proceeding; and that the question of paternity and any related issues under this chapter may be resolved against him by the court;

J. A statement that if the alleged father files a written denial of paternity:

(1) The department will provide an expert examiner of blood or tissue types to conduct blood or tissue-typing tests on the mother, child and alleged father and the tests will be conducted as follows.

(a) The alleged father is required to submit to tests, which may include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins.

(b) The department will pay the initial cost of the tests.

(c) An indigent alleged father is not liable for reimbursement of the cost of the tests;

(2) If the alleged father refuses to submit to tests under subparagraph (1), the proceeding will be filed in a court as a paternity proceeding;

(3) If the alleged father is not excluded by the test results and he does not, within 15 days of the ordinary mailing to him of a report and copy of the blood or tissue-typing results, execute and deliver to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding will be filed in a court as a paternity proceeding; and

(4) If the alleged father is excluded by the test results as the biological father of the child, the proceeding will be filed in a court as a paternity proceeding for disposition under section 1561, subsection 1, paragraph A;

K. A statement that if, prior to the filing in a court, the alleged father executes and delivers to

the department an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him under chapter 65, subchapter II, article 3; and

L. A statement that the alleged father may, within 25 days after notice has been mailed to him that the record has been filed in a court, assert any defense, in law or fact, if the record is filed because the alleged father:

(1) Refuses to submit to blood or tissue-typing tests; or

(2) Fails to execute and deliver to the department an acknowledgment of paternity.

§1606. Court orders; relief

The department may request that the court:

1. Establish as biological father. Establish the alleged father as the biological father of the child;

2. Child support. Order the alleged father to make child support payments as required under chapter 63;

3. To whom payments made. Order the alleged father to make support payments directly to the department whenever the mother is receiving Aid to Families with Dependent Children benefits from the department for the child or is a support enforcement client of the department and at all other times directly to the mother;

4. Past support. Order the alleged father to pay past support to the mother or the department or other payor of public assistance, as applicable, for the past support, birth expenses and medical expenses incurred on behalf of the child to the time of trial and grant judgment to the mother or the department or other payor of public assistance, as applicable with execution to issue immediately. A judgment for past support is calculated by applying the current child support guidelines to the period for which past support is owed;

5. Medical expenses. Order the alleged father to pay all reasonable medical, dental, hospital and optical expenses for the child, to provide medical and health insurance coverage for the child and to provide evidence of that coverage to the department under section 2605;

6. Attorney's fees. Order the alleged father to pay reasonable attorney's fees under section 1552 and costs for prosecution of the action, including, but not limited to, pre-judgment interest;

7. Income withholding period. Order income withholding as available under or required by law; and

8. Other relief. Grant such other relief as the court determines just and proper, including an initial allocation of parental rights and responsibilities as allowed by section 1565.

§1607. Applicability; Maine Rules of Civil Procedure, Rule 5(b)

The Maine Rules of Civil Procedure, Rule 5(b) applies to a proceeding under this chapter.

§1608. Multiple alleged fathers

When it appears to the department that there may be more than one alleged father, the department may maintain proceedings against each alleged father, simultaneously or successively. Failure to serve a notice on an alleged father does not bar the department from maintaining a proceeding under this chapter against any other alleged father.

§1609. Failure of alleged father to deny paternity

1. Filing of record of proceeding in court. If the alleged father fails to file a written denial of paternity with the department within 20 days after service of notice upon him, the department's attorney may file the record of the proceeding in a court as a paternity action. The filing of the record, along with proof of service pursuant to section 1604, constitutes a filing under the Maine Rules of Civil Procedure, Rule 3(1) and further service is not required.

2. Failure to file written denial constitutes default. The alleged father's failure to file a written denial with the department constitutes a default under the Maine Rules of Civil Procedure, Rule 55(a). The department shall forward to the alleged father by ordinary mail a copy of any request for a default judgment. The mailing of the request to the alleged father's last known address constitutes adequate notice of the default proceeding and further notice is not required.

§1610. Blood or tissue-typing tests

1. Requirement of tests. If the alleged father files a written denial of paternity with the department within 20 days after service of the notice upon him, the department shall schedule blood or tissue-typing tests for the mother, the child and the alleged father, which may include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins. The tests must be performed by an expert examiner in a laboratory that is accredited for parentage testing by the American Association of Blood Banks.

2. Scheduling of tests. The department shall notify the alleged father in writing by ordinary mail of the date, time and place of his blood or tissue-typing

tests. The tests must be conducted no earlier than 15 days following the mailing of the department's notice, except with the consent of the alleged father. The tests must be conducted in an office of the department, when practicable. The department shall take into account the alleged father's place of residence or employment in selecting the location of the tests.

3. Rescheduling of tests. If the alleged father does not submit to the tests, the department shall notify him in writing by ordinary mail that if he does not, within 15 days, request the department to reschedule the tests, his failure to appear constitutes a refusal to submit to the tests. If the alleged father timely requests rescheduling, the department shall reschedule the tests. The rescheduled tests must be conducted no earlier than 15 days following the mailing of the notice of rescheduling. The notice must also advise the alleged father that, if he fails to submit to the rescheduled tests, the failure constitutes a refusal to submit to the tests.

§1611. Refusal of alleged father to submit to blood or tissue-typing tests

1. Filing of record in court. If the alleged father denies paternity and subsequently fails to submit to blood or tissue-typing testing, the record may be filed in court as a paternity action and the department may seek an adjudication of paternity pursuant to section 1558. The alleged father's refusal to submit to a blood or tissue-typing test constitutes a refusal to submit under section 1558. The filing of the record, along with proof of service pursuant to section 1604, constitutes compliance with the Maine Rules of Civil Procedure, Rule 3(1).

2. Notice of filing. The department shall send to the alleged father by ordinary mail notice of the filing of the paternity proceeding and a request under section 1558. Within 20 days of the mailing of this notice, the alleged father may assert any defense, in law or fact.

3. Request for default judgment or order. The department shall forward to the alleged father by ordinary mail a copy of any request for a default judgment or an order pursuant to section 1558. If the alleged father does not notify the court in writing within 20 days of the date the department's request was mailed that he opposes the relief requested by the department, the court may grant the relief requested without a hearing. Any notice mailed must contain the substance of this section.

§1612. Procedures after blood or tissue-typing tests

1. Transmittal of test results. Upon receipt of the results of the tests, the department shall send copies of the results by ordinary mail to the alleged

father and to the child's mother or to the mother's guardian or next friend if the mother is a minor.

2. Exclusion of alleged father. If the alleged father is excluded by the test results as the biological father of the child, the department may file the record of the proceeding in a court as a paternity proceeding for disposition under section 1561, subsection 1, paragraph A.

3. Nonexclusion of alleged father. If the alleged father is not excluded by the test results and he does not, within 15 days of the mailing to him of a copy of the blood or tissue-typing test results and report, execute and deliver to the department by ordinary mail an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the department may file the record of the proceeding, including the blood or tissue-typing test results, in a court as a paternity proceeding. Section 1561 applies to the action even though the tests were performed and the results prepared as part of an administrative proceeding. The alleged father's participation in the tests may not prejudice any application by the alleged father under section 1559 for an order appointing an additional examiner of blood or tissue types.

§1613. Applicability; Maine Rules of Civil Procedure, Rule 12(b)

If a record of the proceeding is filed under section 1611 or section 1612, subsection 3, the alleged father is not required to file an additional denial of paternity. He may assert any defense, in law or fact. Any defense must be asserted within 25 days after the mailing by ordinary mail of a notice to the alleged father that the record has been filed in court. The notice must contain the substance of this section.

§1614. Acknowledgment of paternity

If, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding must be terminated and the department may proceed against the father under chapter 65, subchapter II, article 3 with respect to any remedy provided under that article.

CHAPTER 55

RIGHTS AND RESPONSIBILITIES

§1651. Parents joint natural guardians of children

The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of their children. Neither parent has any

rights paramount to the rights of the other with reference to any matter affecting their children.

§1652. Spouse's or parent's obligation to support

1. Petition. If a parent, spouse or child resides in this State, a parent, a spouse, a guardian or a municipality providing maintenance may petition the Superior Court, District Court or Probate Court to order a nonsupporting parent or spouse to contribute to the support of the nonsupporting person's spouse or child. The petition may be brought in the court in the county or district where the parent, spouse or child resides or in the county or district in which the nonsupporting person may be found.

2. Court action. If the court finds that the nonsupporting person is of sufficient ability or is able to labor and provide for that person's children or spouse, and that the person has willfully and without reasonable cause refused or neglected to so provide, then the court may order the person to contribute to the support of that person's children or spouse in regular amounts that it determines reasonable and just. Child support must be determined or modified in accordance with chapter 63.

3. Order pending petition. Pending petition, and after notice and an opportunity for a hearing, the court may order a nonsupporting person to pay to the court for the nonsupporting person's spouse or child sufficient money for the prosecution of the petition.

4. Enforcement. The court may enforce an order as provided in chapter 65.

5. Appeals. A party aggrieved by an order may appeal in the same manner as provided for appeals from that court in other causes. Continuance of an appeal may not be allowed without consent of the appellant or a showing of legal cause for the continuance to the court to which the order has been appealed.

6. Order during pending appeal. Pending the determination of an appeal, the order appealed from remains in force and obedience to it may be enforced as if no appeal had been taken.

§1653. Parental rights and responsibilities

1. Legislative findings and purpose. The Legislature makes the following findings concerning relationships among family members in determining what is in the best interest of children.

A. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

B. The Legislature finds that domestic abuse is a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development.

2. Parental rights and responsibilities; order.

This subsection governs parental rights and responsibilities and court orders for parental rights and responsibilities.

A. When the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

B. The court may award reasonable rights of contact with a minor child to a 3rd person.

C. The court may award parental rights and responsibilities with respect to the child to a 3rd person, a suitable society or institution for the care and protection of children or the department, upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

D. The order of the court awarding parental rights and responsibilities must include the following:

(1) Allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child as provided in subsection 3;

(2) Conditions of parent-child contact in cases involving domestic abuse as provided in subsection 6;

(3) A provision for child support as provided in subsection 8 or a statement of the reasons for not ordering child support;

(4) A statement that each parent must have access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the

purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access; and

(5) A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 7.

An order modifying a previous order is not required to include provisions of the previous order that are not modified.

E. The order of the court may not include a requirement that the State pay for the defendant to attend a batterers' intervention program unless the program is certified under section 4014.

3. Best interest of child. The court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interest of the child. In making decisions regarding primary residence and parent-child contact, the court shall consider as primary the safety and well-being of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

C. The preference of the child, if old enough to express a meaningful preference;

D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;

E. The stability of any proposed living arrangements for the child;

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;

G. The child's adjustment to the child's present home, school and community;

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing;

L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:

(1) The child emotionally; and

(2) The safety of the child;

M. The existence of any history of child abuse by a parent; and

N. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

4. Equal consideration of parents. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's gender or the child's age or gender.

5. Departure from family residence. The court may not consider departure from the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the departing parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the departure, or when one parent has left the family residence by mutual agreement or at the request or insistence of the other parent.

6. Conditions of parent-child contact in cases involving domestic abuse. The court shall establish conditions of parent-child contact in cases involving domestic abuse as follows.

A. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has committed domestic abuse only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child and the parent who is a victim of domestic abuse can be made.

B. In an order of parental rights and responsibilities, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order contact to be supervised by another person or agency;

(3) Order the parent who has committed domestic abuse to attend and complete to the satisfaction of the court a domestic abuse intervention program or other desig-

nated counseling as a condition of the contact;

(4) Order either parent to abstain from possession or consumption of alcohol or controlled substances, or both, during the visitation and for 24 hours preceding the contact;

(5) Order the parent who has committed domestic abuse to pay a fee to defray the costs of supervised contact;

(6) Prohibit overnight parent-child contact; and

(7) Impose any other condition that is determined necessary to provide for the safety of the child, the victim of domestic abuse or any other family or household member.

C. The court may require security from the parent who has committed domestic abuse for the return and safety of the child.

D. The court may order the address of the child and the victim to be kept confidential.

E. The court may not order a victim of domestic abuse to attend counseling with the parent who has committed domestic abuse.

F. If a court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during that contact. Conditions include but are not limited to:

(1) Minimizing circumstances when the family of the parent who has committed domestic abuse would be supervising visits;

(2) Ensuring that contact does not damage the relationship with the parent with whom the child has primary physical residence;

(3) Ensuring the safety and well-being of the child; and

(4) Requiring that supervision is provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

G. Fees set forth in this subsection incurred by the parent who has committed domestic abuse may not be considered as a mitigating factor reducing that parent's child support obligation.

7. Violation of order concerning parental rights and responsibilities and contact. Either

parent may petition the court for a hearing on the issue of noncompliance with the order issued under subsection 2. If the court finds that a parent has violated a part of the order, the court may find that parent in contempt and may:

A. Require additional or more specific terms and conditions consistent with the order;

B. Order that additional visitation be provided for a parent to take the place of visitation that was wrongfully denied; or

C. Order a parent found in contempt to pay a forfeiture of at least \$100.

8. Child support order. The court may order conditions of child support as follows.

A. Either parent of a minor child shall contribute reasonable and just sums as child support payable weekly, monthly or quarterly. In an action filed under section 1654, the court may require the child's nonprimary care provider to pay past support. Availability of public welfare benefits to the family may not affect the decision of the court as to the responsibility of a parent to provide child support. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 65, subchapter II, article 3. If an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section and a determination of past support must comply with chapter 63.

B. After January 1, 1990, if the court orders either parent to provide child support, the court order must require that the child support be provided beyond the child's 18th birthday if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws or is expelled from secondary school or attains the age of 19, whichever occurs first.

C. The court may require the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring the obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if reasonable cost health insurance is available to the obligated parent. The court order must also require the obligated parent to furnish proof of coverage to the obligee within 15 days of receipt of a copy of the court order. If reasonable cost health insurance is not available at the time of the hearing, the court order must establish the obligation to provide health insurance on the part

of the obligated parent, effective immediately upon reasonable cost health insurance being available.

When the department provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of changes in that parent's current address, the name and address of that parent's current employer and whether the responsible parent has access to reasonable cost health insurance coverage and, if so, the health insurance policy information and any subsequent changes.

9. Enforcement of child support order. The court may enforce a child support order as provided in chapter 65.

10. Modification or termination. Upon the petition of one or both of the parents, an order for parental rights and responsibilities with respect to a minor child may be modified or terminated as circumstances require.

A. Modification and termination of child support orders are governed by section 2009.

B. Modification of and termination orders for parental rights and responsibilities other than child support are governed by section 1657.

11. Mediation. Prior to a contested hearing under this chapter relating to initial or modified orders, the court shall refer the parties to mediation as provided in chapter 3.

12. Termination of order. A court order requiring the payment of child support remains in force as to each child until the order is altered by the court or until that child:

A. Attains 18 years of age. For orders issued after January 1, 1990, if the child attains 18 years of age while attending secondary school as defined in Title 20-A, section 1, the order remains in force until the child graduates, withdraws or is expelled from secondary school or attains 19 years of age, whichever occurs first;

B. Becomes married; or

C. Becomes a member of the armed services.

13. Automatic adjustments. The order of the court or hearing officer may include automatic adjustments to the amount of money paid for the support of a child when the child attains 12 or 18 years of age; or when the child graduates, withdraws or is expelled from secondary school, attains 19 years of age or is otherwise emancipated, whichever occurs first.

§1654. Parenting and support when parents live apart

If the father and mother of a minor child are living apart, the Probate Court, Superior Court or District Court in the county or division where either resides, upon complaint of either and after notice to the other as the court may order, may make an order awarding parental rights and responsibilities with respect to the child in accordance with this chapter.

The jurisdiction granted by this section is limited by the Uniform Child Custody Jurisdiction Act, if another state may have jurisdiction as provided in that Act.

§1655. Support and maintenance when parental rights and responsibilities or contact awarded to agency or person other than parent

1. Department granted parental rights and responsibilities or contact awarded. When the department has been granted parental rights and responsibilities for a child under this chapter, Title 22, chapter 1071 applies regarding subsequent reviews and governs further rights and responsibilities of the department, the parents, the child and any other party.

2. Modification of orders. Upon the motion of an agency or person who has been granted parental rights and responsibilities or contact with respect to a child under this chapter, the court may alter its order concerning parental rights and responsibilities or contact with respect to a minor child as circumstances require in accordance with section 1657.

3. Support of child committed to agency. When a child under 17 years of age is committed by the District Court, or the District Court acting as a Juvenile Court, to custody other than that of the child's parent, that commitment is subject to Title 22, sections 4038, 4061 and 4063. The court may, after giving a parent a reasonable opportunity to be heard, adjudge that the parent shall pay, in a manner as the court may direct, a sum that covers in whole or in part the support of that child. If that parent fails to pay that sum, that parent may be proceeded against as provided in chapter 65. A determination or modification of child support under this section must comply with chapter 63.

§1656. Exclusion of public

In an action for parental rights and responsibilities under this chapter, at the request of either party, personally or through that party's attorney, unless the other party who has entered an appearance objects personally or through the other party's attorney, the court shall exclude the public from the court proceedings.

If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present.

§1657. Modification or termination of orders for parental rights and responsibilities

1. Modification or termination. An order for parental rights and responsibilities may be modified or terminated as circumstances require:

A. Upon the petition of one or both of the parents; or

B. Upon the motion of an agency or person who has been granted parental rights and responsibilities or contact with a child under this chapter.

2. Change in circumstances. In reviewing a motion for modification or termination filed under chapter 59 or section 1653 or 1655, the following constitute a substantial change in circumstances:

A. The relocation, or intended relocation, of a child resident in this state to another state by a parent, when the other parent is a resident of this State and there exists an award of shared or allocated parental rights and responsibilities concerning the child; or

B. A finding by the court that domestic or family violence has occurred since the last determination of primary residence.

3. Uniform Child Custody Jurisdiction Act. The jurisdiction granted by this section to make or alter an order concerning parental rights and responsibilities with respect to a minor child is limited by the Uniform Child Custody Jurisdiction Act, if another state may have jurisdiction as provided in that Act.

CHAPTER 57**UNIFORM CHILD CUSTODY JURISDICTION ACT****§1701. Short title**

This chapter may be known and cited as the "Uniform Child Custody Jurisdiction Act."

§1702. Purposes of chapter; construction of provisions

1. General purposes. The general purposes of this chapter are to:

A. Avoid jurisdictional competition and conflict with courts of other states in matters of child custody that have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

B. Promote cooperation with the courts of other states to ensure that custody decrees rendered in those states decide cases in the best interest of the child;

C. Ensure that litigation concerning the custody of a child take place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training and personal relationships is most readily available, and that courts of this State decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state;

D. Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

E. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

F. Avoid relitigation of custody decisions of other states in this State insofar as feasible;

G. Facilitate the enforcement of custody decrees of other states;

H. Promote and expand the exchange of information and other forms of mutual assistance between the courts of this State and those of other states concerned with the same child; and

I. Make uniform the law of those states that enact this Act.

2. Construction. This chapter must be construed to promote the general purposes stated in this section.

§1703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Contestant. "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

2. Custody determination. "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. "Custody determination" does not include a decision relating to child support or any other monetary obligation of a person.

3. Custody proceeding. "Custody proceeding" includes proceedings in which custody determination

is one of the several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

4. Decree or custody decree. "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding. "Decree" or "custody decree" includes an initial decree and a modification decree.

5. Home state. "Home state" means the state in which a child, immediately preceding the time involved, lived with the child's parents, a parent or a person acting as a parent for at least 6 consecutive months and, in the case of a child less than 6 months old, the state in which the child lived from birth with the child's parents, a parent or a person acting as a parent. Periods of temporary absence of the child's parents, a parent or a person acting as a parent are counted as part of the 6-month or other period.

6. Initial decree. "Initial decree" means the first custody decree concerning a particular child.

7. Modification decree. "Modification decree" means a custody decree that modifies or replaces a prior decree, whether made by the court that rendered the prior decree or by another court.

8. Physical custody. "Physical custody" means actual possession and control of a child.

9. Person acting as a parent. "Person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

§1704. Jurisdiction

1. Grounds for jurisdiction. A court of this State that is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

A. This State is the home state of the child at the time of commencement of the proceeding or has been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of the child's removal or retention by a person claiming custody or for other reasons while a parent or person acting as a parent continues to live in this State;

B. It is in the best interest of the child that a court of this State assume jurisdiction because the child and the child's parents, or the child and at least one contestant, have a significant connection with this State and there is available in this State substantial evidence concerning the

child's present or future care, protection, training and personal relationships;

C. The child is physically present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

D. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph A, B or C, or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

2. Sufficiency of physical presence. Except under subsection 1, paragraphs C and D, physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

3. Physical presence as prerequisite. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

§1705. Notice and opportunity to be heard

Before making a decree under this chapter, reasonable notice and opportunity to be heard must be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard must be given pursuant to section 1706.

§1706. Notice to persons outside the State; submission to jurisdiction

1. Manner of notice. Notice required for the exercise of jurisdiction over a person outside this State must be given in a manner reasonably calculated to give actual notice and may be:

A. By personal delivery outside this State in the manner prescribed for service of process in this State;

B. In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in courts of general jurisdiction;

C. By any form of mail addressed to the person to be served and that requires a receipt; or

D. As directed by the court, including publication, if other means of notification are ineffective.

2. Time of notice. Notice under this section must be served, mailed or delivered, or last published at least 20 days before any hearing in this State.

3. Proof of service. Proof of service outside this State may be made by affidavit of the individual who made the service, pursuant to the laws of this State, by the order pursuant to which the service is made or pursuant to the laws of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

4. Notice not required. Notice is not required if a person submits to the jurisdiction of the court.

§1707. Simultaneous proceedings in other states

1. Prohibition on exercising jurisdiction. A court of this State may not exercise its jurisdiction under this chapter if, at the time of filing the petition, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

2. Investigating proceedings in other states. Before hearing the petition in a custody proceeding, the court must examine the pleadings and other information supplied by the parties under section 1710 and consult the child custody registry established under section 1717 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

3. Resolution of multiple proceedings. If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending so that the issue may be litigated in the more appropriate forum and information may be exchanged in accordance with sections 1720 to 1723. If a court of this State has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court so that the issues may be litigated in the more appropriate forum.

§1708. Inconvenient forum

1. Decline to exercise jurisdiction. A court that has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

2. Motion for findings. A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

3. Determination of inconvenient forum. In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose, it may take into account the following factors, among others:

A. If another state is or recently was the child's home state;

B. If another state has a closer connection with the child and the child's family or with the child and one or more of the contestants;

C. If substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;

D. If the parties have agreed on another forum that is no less appropriate; and

E. If the exercise of jurisdiction by a court of this State would contravene any of the purposes stated in section 1702.

4. Communicating with other states. Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to ensuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

5. Dismissal or stay. If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions that may be just and proper, including the condition that a moving party stipulate consent and submission to the jurisdiction of the other forum.

6. Separation of divorce and custody jurisdictions. The court may decline to exercise its jurisdiction under this chapter, if a custody determination is incidental to an action for divorce or another proceeding, while retaining jurisdiction over the divorce or other proceeding.

7. Costs. If it appears to the court that the forum is clearly inappropriate, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this State, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

8. Informing another state. Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact or, if the court that would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

9. Other state informing this State. Communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum must be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this State shall inform the original court of this fact.

§1709. Jurisdiction declined by reason of conduct

1. Reprehensible conduct. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

2. Improper removal of child. Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

3. Costs. In appropriate cases, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

§1710. Information under oath to be submitted to the court**1. Information required in first pleading.**

Every party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath or affirmation as to the child's present address, the places where the child has lived within the last 5 years and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit, every party shall further declare under oath or affirmation whether:

A. That party has participated as a party, witness or in any other capacity in any other litigation concerning the custody of the same child in this State or another state;

B. That party has information of any custody proceeding concerning the child pending in a court of this State or another state; and

C. That party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

2. Other information. If the declaration as to any item in subsection 1 is in the affirmative, the declarant shall give additional information under oath or affirmation as required by the court. The court may examine the parties under oath or affirmation as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

3. Continuing duty of parties. Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this State or another state of which the party obtained information during this proceeding.

§1711. Additional parties

If the court learns from information furnished by the parties under section 1710 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of that person's joinder as a party. If the person joined as a party is outside this State, that person must be served with process or otherwise notified in accordance with section 1706.

§1712. Appearance of parties and the child

1. Personal appearance of in-state party. The court may order a party to the proceeding who is in

this State to appear personally before the court. If that party has physical custody of the child, the court may order that that party appear personally with the child.

2. Personal appearance of out-of-state party.

If a party to the proceeding whose presence is desired by the court is outside this State with or without the child, the court may order that the notice given under section 1706 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

3. Costs. If a party to the proceeding who is outside this State is directed to appear under subsection 2 or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

§1713. Binding force and res judicata effect of custody decree

A custody decree rendered by a court of this State that had jurisdiction under section 1704 binds all parties who have been served in this State or notified in accordance with section 1306 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. Concerning these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

§1714. Recognition of out-of-state custody decrees

The courts of this State shall recognize and enforce an initial or modification decree of a court of another state that had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or that was made under factual circumstances meeting the jurisdictional standards of this chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

§1715. Modification of custody decree of another state

1. Limits on modification. If a court of another state has made a custody decree, a court of this State may not modify that decree unless it appears to the court of this State that the court that rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this State has jurisdiction.

2. Consideration of proceedings in another state. If a court of this State is authorized under subsection 1 and section 1709 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 1723.

§1716. Filing and enforcement of custody decree of another state

1. Filing a decree of another state. A certified copy of a custody decree of another state may be filed in the office of the clerk of a court of this State having jurisdiction under section 1704. The clerk shall treat the decree in the same manner as a custody decree of that court. A custody decree so filed has the same effect and must be enforced in like manner as a custody decree rendered by a court of this State.

2. Costs. A person violating a custody decree of another state making it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorney's fees incurred by the party entitled to the custody or the party's witnesses.

3. Filing in registry. Upon receiving a custody decree of another state, the clerk shall send a certified copy of that decree for filing under section 1717 to the State Court Administrator.

§1717. Registry of out-of-state custody decrees and proceedings

The State Court Administrator shall maintain a registry in which the administrator shall enter the following:

1. Copies of decrees. Certified copies of custody decrees of other states received for filing;

2. Communications on pending decrees. Communications concerning the pendency of custody proceedings in other states;

3. Communications on inconvenient forum findings. Communications concerning a finding of inconvenient forum by a court of another state; and

4. Other information. Other communications or documents concerning custody proceedings in another state that may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

§1718. Certified copies of custody decree

The State Court Administrator, at the request of the court of another state or at the request of a person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the

decree to that court or person. The administrator shall provide copies at cost.

§1719. Taking testimony in another state

In addition to other procedural devices available to a party, a party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise in another state. The court on its own motion may direct that the testimony of a person be taken in another state and prescribe the manner in which and the terms upon which the testimony must be taken.

§1720. Hearings and studies in another state; orders to appear

1. Requesting another state to hold hearings. A court of this State may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this State. A court of this State may request the appropriate court of another state to forward to the court of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the State.

2. Request another state to order personal appearance. A court of this State may request the appropriate court of another state to order a party to custody proceedings pending in the court of this State to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

§1721. Assistance to courts of other states

1. Responding to requests of other states. Upon request of the court of another state, the courts of this State that are competent to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State or may request social studies to be made for use in a custody proceeding in another state as provided under section 905 for proceedings in this State. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and the social studies prepared must be forwarded by the clerk of the court to the requesting court.

2. Voluntary testimony. A person within this State may voluntarily give testimony or a statement in this State for use in a custody proceeding outside this State.

3. Ordering personal appearance in another state. Upon request of the court of another state, a competent court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

§1722. Preservation of documents for use in other states

In any custody proceeding in this State, the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of all such documents.

§1723. Request for court records of another state

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this State, the court of this State upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 1722.

§1724. International application

The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

§1725. Priority

Upon the request of a party to a custody proceeding that raises a question of existence or exercise of jurisdiction under this chapter, the case must be given calendar priority and handled expeditiously.

CHAPTER 59

VISITATION RIGHTS OF GRANDPARENTS

§1801. Short title

This chapter is known and may be cited as the "Grandparents Visitation Act."

§1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Grandparent. "Grandparent" is a biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes a biological or adoptive parent of a child's biological or adoptive parent whose parental rights have been terminated pursuant to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter VI, but only until the child's adoption.

§1803. Petition

1. Standing to petition for visitation rights. A grandparent of a minor child may petition the court for reasonable rights of visitation or access if:

A. At least one of the child's parents or legal guardians has died;

B. There is a sufficient existing relationship between the grandparent and the child; or

C. When a sufficient existing relationship between the grandparent and the child does not exist, a sufficient effort to establish one has been made.

2. Procedure. The following procedures apply to petitions for rights of visitation or access under subsection 1, paragraph B or C.

A. The grandparent must file with the petition for rights of visitation or access an affidavit alleging a sufficient existing relationship with the child, or that sufficient efforts have been made to establish a relationship with the child. When the petition and accompanying affidavit are filed with the court, the grandparent shall serve a copy of both on at least one of the parents or legal guardians of the child.

B. The parent or legal guardian of the child may file an affidavit in response to the grandparent's petition and accompanying affidavit. When the affidavit in response is filed with the court, the parent or legal guardian shall deliver a copy to the grandparent.

C. The court shall determine on the basis of the petition and the affidavit whether it is more likely than not that there is a sufficient existing relationship or, if a sufficient relationship does not exist, that a sufficient effort to establish one has been made.

D. If the court's determination under paragraph C is in the affirmative, the court shall hold a

hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. The standard for the award of reasonable rights of visitation or access is provided in subsection 3.

3. Best interest of the child. The court may grant a grandparent reasonable rights of visitation or access to a minor child upon finding that rights of visitation or access are in the best interest of the child and would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child. In applying this standard, the court shall consider the following factors:

- A. The age of the child;
- B. The relationship of the child with the child's grandparents, including the amount of previous contact;
- C. The preference of the child, if old enough to express a meaningful preference;
- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- E. The stability of any proposed living arrangements for the child;
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
- G. The child's adjustment to the child's present home, school and community;
- H. The capacity of the parent and grandparent to cooperate or to learn to cooperate in child care;
- I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods; and
- J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child.

4. Modification or termination. The court may modify or terminate any rights granted under this section as circumstances require. Modification or termination of rights must be consistent with this section.

5. Enforcement. The court may issue any orders necessary to enforce orders issued under this section or to protect the rights of parties.

6. Costs and fees. The court may award costs, including reasonable attorney's fees, for defending or prosecuting actions under this chapter.

§1804. Mediation

The court may refer the parties to mediation at any time after the petition is filed and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

§1805. Jurisdiction

An action may be commenced in the Superior Court or the District Court in which the minor child resides. If a child protective proceeding pursuant to Title 22, chapter 1071 is under the jurisdiction of the District Court, an action filed under this chapter must be brought in the District Court and the court may consolidate the proceedings.

An action must be commenced in accordance with the Maine Rules of Civil Procedure. Proceedings under this chapter are governed by the Maine Rules of Civil Procedure.

CHAPTER 63

CHILD SUPPORT GUIDELINES

§2001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Basic support entitlement. "Basic support entitlement" means the sum derived from the child support table appropriate to the age of each child and the parties' gross income.

2. Child care costs. "Child care costs" means the actual child care costs incurred by the parties for each child for whom support is being established that are related to that party's employment, education or training and are reasonable or customary in the area in which that party resides.

3. Child support table. "Child support table" means the schedule that reflects the percentage of combined gross income that parents living in the same household in this State ordinarily spend on their children that has been adopted by the department under former Title 19, section 303-A.

4. Extraordinary medical expenses. "Extraordinary medical expenses" means uninsured expenses over \$150 in the aggregate per child or group of children supported for each calendar year and includes, but is not limited to, reasonable and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, chronic health problems and professional counseling or psychiatric therapy for diagnosed mental disorders.

5. Gross income. "Gross income" means gross income of a party as follows.

A. Gross income includes income from an ongoing source, including, but not limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust funds, annuities, capital gains, social security benefits, disability insurance benefits, prizes, workers' compensation benefits, spousal support actually received pursuant to a preexisting order, and educational grants, fellowships or subsidies that are available for personal living expenses. Gross income does not include child support received by either party for children other than children for whom support is being determined.

B. Gross income includes expense reimbursements or in-kind payments received by a party in the course of employment or self-employment or operation of a business if the expense reimbursements or in-kind payments reduce personal living expenses.

C. Gross income includes gross receipts minus ordinary and necessary expenses when a party is self-employed or derives income from proprietorship of a business, joint ownership of a partnership or a closely held business operation, and rents minus ordinary and necessary expenses. At the discretion of the court, amounts allowable by the United States Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits may or may not be treated as ordinary and necessary expenses. The court may also determine that other business expenses, including, but not limited to, business losses, are inappropriate for determining gross income for purposes of calculating child support.

D. Gross income may include the difference between the amount a party is earning and that party's earning capacity when the party voluntarily becomes or remains unemployed or under-

employed, if sufficient evidence is introduced concerning a party's current earning capacity. In the absence of evidence in the record to the contrary, a party that is personally providing primary care for a child under the age of 3 years is deemed not available for employment. The court shall consider anticipated child care and other work-related expenses in determining whether to impute income, or how much income to impute, to a party providing primary care to a child between the ages of 3 and 12 years. A party who is incarcerated in a correctional or penal institution is deemed available only for employment that is available through such institutions.

E. Gross income does not include the amount of preexisting spousal maintenance or child support obligation actually paid pursuant to court or administrative order, or an appropriate amount of child support being voluntarily paid by a party who has a legal obligation to support that child.

F. Gross income does not include the actual incremental cost to a party for the provision of adequate health insurance coverage for each involved child.

G. Gross income does not include the amount of money received from means-tested public assistance programs, including, but not limited to, Aid to Families with Dependent Children, supplemental security income, food stamps and general assistance.

6. Parental support obligation. "Parental support obligation" means the portion of total support obligation a party is ordered to pay in money as child support.

7. Primary residence. "Primary residence" means the residence of a child where that child receives residential care for more than 50% of the time on an annual basis.

8. Primary residential care provider. "Primary residential care provider" means the party who provides residential care for a child for more than 50% of the time on an annual basis.

9. Support guidelines. "Support guidelines" means the child support table and the criteria for application of the table set forth in section 2006.

10. Total support obligation. "Total support obligation" means the sum of money determined by adding the basic support entitlement, child care costs and extraordinary medical expenses.

11. Twelve through 17 years; between the ages of 12 and 18 years. The age categories "12 through 17 years" and "between the ages of 12 and 18

years" as used in the child support table and elsewhere in the support guidelines are deemed to include a child between 18 and 19 years of age who is attending a secondary school for whom an obligation of support is established or deemed to remain in force pursuant to Public Law 1989, chapter 156.

§2002. Application

Notwithstanding any other provisions of law, this chapter applies to a court action or administrative proceeding in which a child support order is issued or modified under this Title or Title 22 and to any court action or administrative proceeding in which past support is awarded.

§2003. Forms

For the purposes of this chapter, the Supreme Judicial Court is authorized to prescribe or revise forms by administrative order or rule.

§2004. Income information and child support worksheets

1. Court actions. This subsection governs the exchange and filing of income affidavits, child support worksheets and supporting documentation in court actions.

A. In a court action to determine or modify support of a minor child, the plaintiff and defendant shall exchange, prior to mediation, affidavits regarding income and assets. These affidavits must conform with the forms provided by the court and must be accompanied by supporting documentation of current income, such as pay stubs, tax returns, employer statements or, if the plaintiff or defendant is self-employed, receipts and expenses.

B. The parties shall exchange prior to the commencement of mediation a completed child support worksheet. The worksheet must be completed in accordance with the support guidelines.

C. At least 3 days prior to a court hearing, whether contested or uncontested, the parties shall file with the court and exchange, if they have not already done so, the completed affidavits and child support worksheets. The parties are not required to file with the court the supporting documentation.

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

- (1) Impose economic sanctions; or
- (2) Presume for the purpose of determining a current support obligation that the party

has an earning capacity equal to the average weekly wage of a worker in this State as determined by the most recent Department of Labor statistics. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the noncomplying party earns a greater or lesser actual income.

E. The court may admit Department of Labor statistics into evidence for purposes of computing a parental support obligation.

2. Administrative proceedings. The department shall adopt rules regarding the provision of information necessary to apply the child support guidelines in administrative proceedings.

§2005. Rebuttable presumption

In a proceeding to establish or modify child support or to establish an award for past support, there is a rebuttable presumption that the parental support obligation derived from the support guidelines is the amount ordered to be paid, unless support is established under section 2007. The court shall review the adequacy of a child support amount agreed to by the parties with reference to the parental support obligation.

§2006. Support guidelines

1. Determination of basic support entitlement. After the court or hearing officer determines the annual gross income of both parties, the 2 incomes must be added together to provide a combined annual gross income and applied to the child support table to determine the basic support entitlement for each child.

When there is a child within each age category, the court or hearing officer shall refer to the table and locate the figure in the left-hand column that is closest to the parents' combined annual gross income. In each age category the court or hearing officer shall determine the dollar figure for the total number of children for whom support is being determined, multiply the dollar figure in each age category by the number of children in that category and add the 2 products. The resulting dollar amount represents the basic support entitlement.

2. Past support. This chapter applies to an award of past support. Past support is calculated by applying the current support guidelines to the period for which past support is owed.

3. Total support obligation. The total support obligation is determined by adding the child care costs and extraordinary medical expenses to the basic support entitlement as follows.

A. When each child is under the age of 12 years, the sums actually being expended for child care costs must be added to the basic support entitlement to determine the total support obligation.

B. If a child is incurring extraordinary medical expenses, the future incidence of which is determinable because of the permanent, chronic or recurring nature of the illness or disorder, the sums actually being expended for the medical expenses must be added to the basic support entitlement to determine the total support obligation.

4. Computation of parental support obligation. The total support obligation must be divided between the parties in proportion to their respective gross incomes. The court or 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.

5. Special circumstances. The court or hearing officer shall consider the following special circumstances in determining child support.

A. When the parent who is not the primary care provider is legally obligated to support a child in that party's household other than the child for whom a support order is being sought, an adjustment must be made to that party's parental support obligation. The adjustment is made by using the nonprimary residential care provider's annual gross income to compute a theoretical support obligation under the support guidelines for each child in that household. Neither the child support received by nor the financial contributions of the other parent of each child in the household are considered in the theoretical support calculation. The obligation is then subtracted from the annual gross income, and the adjusted income is the amount used to calculate support. The adjustment is used in all appropriate cases, except when the result would be a reduction in an award previously established.

B. When the parties' combined annual gross income exceeds \$126,600, the child support table is not applicable, except that the basic weekly child support entitlement of a child is presumed to be not less than that set forth in the table for a combined annual gross income of \$126,600.

C. The subsistence needs of the nonprimary care provider must be taken into account when establishing the parental support obligation. If the annual gross income of a nonprimary care provider

is less than the federal poverty guideline, or if the nonprimary care provider's income is insufficient to meet work-related expenses and other basic necessities as defined in Title 22, section 4301, subsection 1, that nonprimary care provider's weekly parental support obligation for each child for whom a support award is being established or modified may not exceed 10% of that nonprimary care provider's weekly gross income, regardless of the amount of the parties' combined annual gross income.

D. When the parties have equal annual gross incomes and provide residential care equally 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.

E. When each party is the primary residential care provider for at least one of the children involved, a child support obligation must first be computed separately for each party for each child residing primarily with the other party, based on a calculation pursuant to the support guidelines, and using as input in each calculation the number of children in each household, rather than the total number of children. The amounts determined in this manner represent the theoretical support obligation due each party for support of each child for whom the party has primary residential responsibility. Each party's proportionate share of child care costs is added to the amounts calculated, and the party owing the greater amount of child support shall pay the difference between the 2 amounts as a parental support obligation.

6. Prospective child support award. An order establishing a child support award for a child who has attained 10 years of age must also establish an award for the child as if the child were 12 years of age. The prospective award becomes effective on the child's 12th birthday without further order or decision of the court or hearing officer, and the order establishing or modifying the prospective award must state this fact.

7. Incorporated findings. As part of its current child support order, the court or hearing officer shall make the following findings:

A. The names and dates of birth of each child for whom support is being sought;

B. The annual gross income of each party and the combined annual income of both parties;

C. The amount of the basic weekly support entitlement attributable to each child under 12 years

of age, as indicated per child per week on the child support table;

D. The amount of the basic weekly support entitlement attributable to each child 12 years of age and over, as indicated per child per week on the child support table;

E. The name and date of birth of each child for whom work-related day care expenses are paid and the amount of those expenses;

F. The name and date of birth of each child for whom extraordinary medical expenses are paid and the amount of those expenses; and

G. The parental support obligation of the non-primary care provider.

These findings are made by incorporating the completed child support worksheet into the order for current support.

8. Requirements of support provisions. To assist in a formal review proceeding, and to enable the parties to reduce the incidence of formal modification procedures, an order establishing parental support obligation must include:

A. The name of each child;

B. A beginning date for the parental support obligation;

C. A breakdown of the parental support obligation, including:

(1) The amount for basic support entitlements;

(2) The amount for child care costs;

(3) The amount for extraordinary medical expenses; and

(4) The percentage of the total child care costs and extraordinary medical expenses included in the parental support obligation;

D. For each child who has attained 10 years of age, a prospective award under subsection 6;

E. If each child for whom a parental support obligation is being established has attained 12 years of age, a specific sum to be paid depending on the number of minor children remaining with the primary care provider. Because the support guidelines are based on the actual costs of raising a given number of children in a household, the order must provide a specific dollar amount for every combination of minor children. The court or hearing officer may not apportion support be-

tween the parents by determining the parental support obligation amount and dividing by the total number of children; and

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

9. Notice of right to review. A judicial order or administrative order issued or modified in this State that includes an order for child support must include a statement that advises parents of the right to request the department to review the amount of the support order pursuant to section 2010 if there is a substantial change of circumstances.

§2007. Deviation from child support guidelines

1. Rebutting presumption. If the court or hearing officer finds that a child support order based on the support guidelines would be inequitable or unjust due to one or more of the considerations listed under subsection 3, that finding is sufficient to rebut the presumption established in section 2005.

2. Proposed findings. A party in a court action proposing deviation from the application of the support guidelines shall provide the court with written proposed findings showing that the application of the presumptive amount would be inequitable or unjust.

3. Criteria for deviating from support guidelines. Criteria that may justify deviation from the support guidelines are as follows:

A. The nonprimary residential care provider is in fact providing primary residential care for more than 30% of the time on an annual basis;

B. The number of children for whom support is being determined is greater than 6;

C. The interrelation of the total support obligation established under the support guidelines for child support, the division of property and an award of spousal support made in the same proceeding for which a parental support obligation is being determined;

D. The financial resources of each child;

E. The financial resources and needs of a party, including nonrecurring income not included in the definition of gross income;

F. The standard of living each child would have enjoyed had the marital relationship continued;

G. The physical and emotional conditions of each child;

H. The educational needs of each child;

I. Inflation with relation to the cost of living;

J. Available income and financial contributions of the domestic associate or current spouse of each party;

K. The existence of other persons who are actually financially dependent on either party, including, but not limited to, elderly, disabled or infirm relatives, or adult children pursuing post-secondary education. If the primary care provider is legally responsible for another minor child who resides in the household and if the computation of a theoretical support obligation on behalf of the primary care provider would result in a significantly greater parental support obligation on the part of the nonprimary care provider, that factor may be considered;

L. The tax consequences of a support award, including the substantial monetary benefit that a party may derive from any federal tax credit for child care expenses;

M. The fact that the incremental cost of health insurance premiums required to be paid by a party, notwithstanding the deduction of these premiums from gross income, exceeds 15% of that party's share of the total support obligation;

N. The fact that income at a reasonable rate of return may be imputed to nonincome-producing assets with an aggregate fair market value of \$10,000 or more, other than an ordinary residence or other asset from which each child derives a substantial benefit;

O. The existence of special circumstances regarding a child 12 years of age or older, for the child's best interest, requires that the primary residential care provider continue to provide for employment-related day care;

P. An obligor party's substantial financial obligation regarding the costs of transportation of each child for purposes of parent and child contact. To be considered substantial, the transportation costs must exceed 15% of the yearly support obligation; and

Q. A finding by the court or hearing officer that the application of the support guidelines would be unjust, inappropriate or not in the child's best interest.

§2008. Stipulation

A stipulation of the parties establishing child support must be reviewed by the court or hearing officer to determine if the amount stipulated is in

substantial compliance with the presumptive application of the guidelines and, if a deviation is proposed, whether it is justified and appropriate under section 2007. The court or hearing officer shall review a proposed order that gives the stipulation effect to determine its compliance with this section.

§2009. Modification of existing support orders

1. Motion to modify support. A party, including the department, may file a motion to modify support. Unless a party also files a motion to amend the divorce judgment, a petition to amend under section 1653, subsection 10 or a motion for judicial review under Title 22, section 4038, the child support obligation is the sole issue to 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.

2. Retroactive. Child support orders may be modified retroactively but only from the date that notice of a petition for modification has been served upon the opposing party, pursuant to the Maine Rules of Civil Procedure.

3. Substantial change of circumstances because of variance. If a child support order varies more than 15% from a parental support obligation determined under section 2006, the court or hearing officer shall consider the variation a substantial change of circumstances. This section does not apply to an existing order issued under section 2007 that deviated from the presumptive amount determined pursuant to section 2006.

4. Service. Except as provided in this section, a motion to modify support is governed by the Maine Rules of Civil Procedure.

A. Service in hand must be made upon the responding party, as follows:

(1) Service within the State must be made:

(a) By mailing a copy of the motion and accompanying documents by first class mail, postage prepaid, to the responding party, together with 2 copies of a notice and acknowledgement form and a return envelope, postage prepaid; or

(b) If no acknowledgement of service under division (a) is received by the sender within 20 days after the date of mailing, service of the summons and complaint may be made by a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by

a person specially appointed by the court for that purpose;

(2) Service outside the State must be made:

(a) By registered mail or certified mail, restricted delivery and return receipt requested; or

(b) By a person authorized to serve civil process by the laws of the place of service, or by a person specially appointed to serve the motion and accompanying documents; or

(3) Service by any other method specifically approved by the court.

B. The motion must be accompanied by:

(1) A notice that the court may enter an order without hearing if the party does not request a hearing;

(2) A notice of the right to request a hearing;

(3) A notice of the requirement of mediation prior to a hearing;

(4) The income affidavit of the moving party or the party receiving the assistance of the department, as well as the responding party's affidavit, if available;

(5) A proposed order, incorporating the child support worksheet; and

(6) Any stipulation entered into by the parties.

5. Request for hearing. A request for hearing must be made in writing within 30 days of receipt of service and be accompanied by the requesting party's income affidavit and child support worksheet. If a party requests a hearing, the matter must be referred for mediation prior to trial.

6. Order without hearing. If a party does not request a hearing within 30 days after service, the court may enter an order modifying support without hearing using the proposed order, as long as the proposed modified support obligation is equal to or greater than the obligation resulting from the application of section 2005. 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 2004, subsection 1, paragraph D.

7. Motion to set aside. An order entered without hearing pursuant to this section may not be set

aside except on motion in which the moving party demonstrates good cause for the failure to request a hearing and a meritorious defense to the proposed order. The Chief Justice may establish costs to be paid by a party moving to set aside an order modifying child support after an order has been entered following that party's failure to file a timely written response.

§2010. Periodic review of support orders

1. Support obligations. In all cases in which the department is responsible for enforcement of a support obligation assigned to the department under section 2369, the department shall review, for compliance with the State's child support guidelines pursuant to this chapter, child support obligations established by orders issued by the courts of this State or by administrative decisions issued by the department. Reviews of child support orders in which the current support obligation is assigned to the department must occur no less often than every 3 years, except as provided by rule.

2. Request for support order reviews. In cases in which the department provides services pursuant to section 2103 and in which a child support obligation was established by an order issued by a court of this State or by an administrative decision issued by the department, 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 chapter. In cases in which a support obligation is not assigned to the department under section 2369 and the department does not provide services pursuant to section 2103, 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.

3. Administrative order modification; support modification. Following a review of an administrative child support order, the department may take action to modify the administrative order pursuant to section 2304. Following a review of a court order of child support, the department may file a motion to modify support pursuant to section 2009.

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

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

CHAPTER 65

SUPPORT ENFORCEMENT

SUBCHAPTER I
GENERAL PROVISIONS

§2101. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means a bureau, board or commission listed in Title 10, section 8001 or 8001-A, other licensor that is affiliated with or is a part of the Department of Professional and Financial Regulation, the Board of Overseers of the Bar or any other state agency or municipality that issues a license authorizing a person to engage in a business, occupation, profession or industry.

2. Compliance with an order of support. "Compliance with an order of support" means that the support obligor is no more than 90 days in arrears in making payments in full for current support, in making periodic payments on a support arrearage pursuant to a written agreement with the department or in making periodic payments as set forth in an order of support and has obtained or maintained health insurance coverage if required by an order of support.

3. Custodial parent. "Custodial parent" means a natural or adoptive parent, caretaker relative or legal custodian of a dependent child who is the child's primary residential care provider.

4. Dependent child. "Dependent child" means any minor child who is not emancipated.

5. Disposable earnings. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

6. Earnings. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, and all gain derived from capital, from labor or from both combined, including profit gained through sale or conversion of capital assets, and unemployment compensation benefits and workers' compensation benefits.

7. License. "License" means a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry, but does not mean a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B.

8. Licensee. "Licensee" means an individual holding a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry except an individual holding a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B.

9. Order of support. "Order of support" means a judgment or order for the support of dependent children issued by any court of the State or another state, including an order in a final decree of divorce or any judgment or order issued in accordance with an administrative procedure established by state law that affords substantial due process and is subject to judicial review.

10. Order for spousal support; order for support; order for costs; spousal support order. "Order for spousal support," "order for support," "order for costs" or "spousal support order" means a judgment or order for spousal support or payment of money instead of spousal support, for support of children, for support pending a divorce action, for payment of related costs and attorney's fees or for alteration of an existing judgment or order for the custody or support of a child.

11. Public assistance. "Public assistance" means money payments and medical care furnished to or on behalf of dependent children by the State. It does not include assistance furnished by a political subdivision.

12. Responsible parent. "Responsible parent" means the natural or adoptive parent of a dependent child.

§2102. Enforcement of rights

The obligee may enforce the right of support against the obligor, and the State or any political subdivision of the State may proceed on behalf of the obligee to enforce that right of support against the obligor. When the State or a political subdivision of the State furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing an award for past support and of obtaining continuing support. The obligee's right of support includes an independent right to seek appropriate attorney's fees for handling the action. An award of attorney's fees may be collected by any means available under the law, including, but not limited to, remedies available under Title 14 and Title 36, section 5276-A.

§2103. Duty of department to enforce support obligations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicant" means an individual, state, political subdivision of a state or instrumentality of a state.

B. "Support obligations" means the amount due an obligee for support under an order of support and includes any arrearages of support that have accrued.

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

3. Fees and costs. The department shall charge a fee of \$2 per week to all obligors whose child support payments are made to the department to reduce the department's costs in providing support enforcement services. The department may collect fees owed by the obligor by using any remedies available for collection of child support. The department shall retain all fees and apply them toward Aid to Families with Dependent Children or the child support enforcement programs. The department shall apply amounts collected toward fees only after the amount owed to the family for the current period is paid. The department shall collect the fee from obligors whose child support is paid to the department under an income withholding order by notifying the payor of income to the obligor to increase withholding by \$2 per week. The department or any other person is not required to issue a new or amended withholding order to collect the fee, but shall notify the obligor in advance of the increase in withholding.

4. Attorney's fees. The Office of the Attorney General or attorneys acting under Title 5, section 191 may seek appropriate attorney's fees at the prevailing community rate for legal representation of individuals under this section. An award of attorney's fees may be collected by any means available under the laws, including, but not limited to, remedies available under Title 14 and Title 36, section 5276-A.

5. State's role in support enforcement cases.

In a child support action brought by the department under this Title or Title 22, the department or prosecuting attorney represents solely the interest of the State in providing child support enforcement services under federal law. This section may not be construed to modify statutory mandate, authority or confidentiality required of any governmental agency, nor does representation by a prosecuting attorney create an attorney-client relationship between the attorney and any party, other than the State.

For the purpose of this subsection, "prosecuting attorney" means an assistant attorney general, an assistant district attorney, an attorney under contract or an attorney in the employ of the department.

6. Obligation established. The current support obligations in cases brought in accordance with this section are established pursuant to chapter 63. An obligation for past support due is established by application of the most current child support scale to the responsible parent's income for the time period in which the applicant was entitled to support payments and may include reimbursement for past medical expenses. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not bar a determination of past debt due the applicant for any relevant period in which the disability did not exist.

If the responsible parent defaults or otherwise fails to appear, and no order of support has been established, the court or administrative hearing officer shall presume that the responsible parent has an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income.

SUBCHAPTER II

ENFORCEMENT BY DEPARTMENT

Article 1

Location of Persons, Income and Other Property

§2151. Locating those liable for support of dependents

At the request of the department, all departments, boards, bureaus and other agencies of this State shall provide information from their records to assist the department in locating parents who have deserted their children and other persons liable for support of dependents. Only information directly bearing on the identity and whereabouts of a person owing or asserted to be owing an obligation of support may be requested and used or transmitted by the department pursuant to the authority conferred by this section. The department may make such information available only to public officials and agencies of this State, other states and the political subdivisions of this State and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for support.

§2152. Disclosure of information in medical support recoupment and child support cases

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Assets" means any interest in real or personal property.

B. "Medicaid recipient" means an individual authorized by the department to receive services under the provisions of the United States Social Security Act, Title XIX and successors to it.

2. Request for information concerning responsible parents. Except as provided in subsection 5, the department may request of any person information relating to the following matters concerning a responsible parent or alleged responsible parent:

A. Complete name;

B. Social security number;

C. Date and place of birth;

D. Present and past employment status;

E. Earnings;

F. Current or last known address;

G. Assets;

H. Availability and description of present or previous health insurance coverage for a dependent child; and

I. Health insurance benefits paid or applied for under a policy of health insurance for a dependent child.

3. Request for information concerning present and former Medicaid recipients. The department may request of any person information relating to the following matters concerning a present or former Medicaid recipient:

A. Availability and description of health insurance coverage; and

B. Health insurance benefits paid or applied for under a policy of health insurance.

4. Demand for information. If a response to a request under subsection 2 or 3 is not received by the department within 2 weeks of its mailing by regular mail, the department may serve a demand upon the person to whom the request was directed for the information sought. The demand may be served by certified mail, return receipt requested, or by service in hand as specified in the Maine Rules of Civil Procedure, except that a demand may be served by any authorized representative of the commissioner.

5. Limitation. If an alleged responsible parent is a putative father of a child conceived and born out of wedlock, a request or demand is limited to information relating to the following matters concerning the alleged responsible parent:

A. Complete name;

B. Date and place of birth;

C. Present and past employment status;

D. Social security number; and

E. Current or last known address.

6. Immunity from liability. Any person may disclose to the department any of the information described in subsection 2 or 3 that is sought in a request or demand by the department, the disclosure of which is not prohibited by federal or state statute or which is not privileged under the Maine Rules of Evidence, without incurring any liability to any other person because of the disclosure.

7. Affirmation of responses. The department may require that a response to a request or demand be affirmed under the penalties for unsworn falsification under Title 17-A, section 453.

8. Facilitation of responses. A request or demand must contain or be accompanied by a business-reply or prepaid self-addressed envelope.

9. Notice. At the time that the department makes a demand, it shall notify the responsible parent or alleged responsible parent by regular mail to the last known address.

10. Penalty for knowing failure to respond or for knowing failure or knowing refusal to disclose.

The penalty for knowing failure to respond or for knowing failure or knowing refusal to disclose is governed as follows.

A. Knowing failure to respond to a demand for information within 10 days following the date of service of the demand is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

B. Knowing refusal or knowing failure to disclose to the department any of the information described in subsection 2 or 3 that is sought in a demand for information by the department, the disclosure of which is not prohibited by federal or state statute, or which is not privileged under the Maine Rules of Evidence, is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

11. Confidentiality of information; unlawful dissemination; penalty. All information collected in connection with the department's child support enforcement activity and medical support recoupment pursuant to this section is confidential and available only for the use of appropriate departmental personnel and legal counsel for the department in carrying out their functions. A person is guilty of unlawful dissemination if that person knowingly disseminates information in violation of this subsection. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A, section 1252, subsection 2, paragraph E, is punishable by a fine of not more than \$500 or by imprisonment for not more than 30 days.

§2153. Publication of delinquent child support obligors

1. Publication. The department may publish in the State's newspapers the names of delinquent child support obligors who owe unpaid child support. Publication may include the place of residence and the amount of unpaid child support of each obligor.

2. Immunity. Newspapers and their employees are immune from any criminal or civil liability as a result of publication under subsection 1, unless publication is a result of negligent or intentional misconduct.

§2154. Employment information

1. Employment information. Upon notice by the department, and except as provided in subsection

2, an employer doing business in this State shall report to the department the:

A. Hiring of a person who resides or works in this State to whom the employer anticipates paying earnings; and

B. Rehiring or return to work of an employee who was laid off, furloughed, separated, granted a leave without pay or terminated from employment.

2. Exceptions. An employer is not required to report the hiring of a person who:

A. Will be employed for less than one month's duration; or

B. Will have gross earnings of less than \$300 in every month.

The commissioner may adopt rules to establish additional exceptions if needed to reduce unnecessary or burdensome reporting.

3. W-4 form. An employer required to report under subsection 1 may report by mailing the employee's copy of the W-4 form, transmitting a facsimile of the W-4 form, sending magnetic tape in a compatible format or by other means, as mutually agreed to by the employer and the department, that will result in timely reporting.

4. Report. An employer shall submit a report within 7 days of the hiring, rehiring or return to work of the employee. The report must contain:

A. The employee's name, address, social security number and date of birth; and

B. The employer's name, address and employment security reference number or unified business identifier number.

5. Retention of records. The department may retain the information for a particular employee only if the department is responsible for establishing, enforcing or collecting a support obligation or debt of the employee. If the employee does not owe such an obligation or a debt, the department may not create a record regarding the employee and the information contained in the report must be destroyed promptly.

6. Penalties. An employer who knowingly fails to report as required under this section must be given a written warning by the department for the first violation and is subject to a civil penalty of up to \$200 per month for each subsequent violation after the warning has been given. All violations within a single month are considered a single violation for purposes of assessing the penalty.

§2155. Duty to report

A responsible parent required by law to pay child support to the department shall inform the department of any changes in the responsible parent's current address or employer. Failure to report a change of address or employer to the department within 15 days is a civil violation for which a forfeiture not to exceed \$200 may be adjudged for each violation. Each judicial order or administrative decision issued or modified in this State that includes an order for child support must include a statement that advises the responsible parent of the duty to report and the penalty for failure to report.

§2156. Annual statement

The department shall send an annual statement of arrearages to all obligors who owe past-due child support that the department is authorized to collect. The statement must include notice to the obligor that the department may collect the amount owed by issuing an order to seize and sell property. The statement may include other notices that the department considers appropriate. The department shall send the statement to the obligor by regular mail to the obligor's last known address. If the obligor disagrees with the department's statement of arrearages, the obligor must immediately notify the department.

Article 2**Enforcement****§2201. Notice to licensing boards and obligor; judicial review**

1. Notice. The department may serve notice upon a support obligor who is not in compliance with an order of support that informs the obligor of the department's intention to submit the obligor's name to the appropriate board as a licensee who is not in compliance with an order of support. The notice must inform the obligor that:

A. The obligor may request an administrative hearing to contest the issue of compliance;

B. A request for hearing must be made in writing and must be received by the department within 20 days of service;

C. If the obligor requests a hearing within 20 days of service, the department shall stay the action to certify the obligor to a board for non-compliance with an order of support pending a decision after hearing;

D. If the obligor does not request a hearing within 20 days of service and is not in compliance with an order of support, the department

shall certify the obligor to the appropriate board for noncompliance with an order of support;

E. If the department certifies the obligor to a board for noncompliance with an order of support, the board must revoke the obligor's license and refuse to issue or reissue a license until the obligor provides the board with a written confirmation of compliance from the department that states the obligor is in compliance with the obligor's order of support. A revocation by an agency or a refusal by an agency to reissue, renew or otherwise extend the license or certificate of authority is deemed a final determination within the meaning of Title 5, section 10002;

F. If the obligor files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, the department shall stay action to certify the obligor to a board for non-compliance with an order of support; and

G. The obligor can comply with an order of support by:

(1) Paying current support;

(2) Paying all past-due support or, if unable to pay all past-due support and a periodic payment for past-due support has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the department; and

(3) Meeting the obligor's health insurance obligation.

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

2. Administrative hearing. An obligor may request an administrative hearing upon service of the notice described in subsection 1. The request for hearing must be made in writing and must be received by the department within 20 days of service. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter IV. The issues that may be determined at hearing are limited to whether the

obligor is required to pay child support under an order of support and whether the obligor is in compliance with an order of support. The obligor may raise additional issues, including the reasonableness of a payment agreement in light of the obligor's current circumstances, to be preserved for appeal.

3. Decision after hearing. The department shall render a decision after hearing without undue delay as to whether the obligor is in compliance with the obligor's order of support. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record.

4. Appeal to Superior Court. If the obligor appeals the department's decision under subsection 3, the Superior Court may hear and determine issues raised at the hearing, including the reasonableness of a payment agreement in light of the obligor's current circumstances.

5. Stay. If an obligor timely requests a hearing to contest the issue of compliance, the department may not certify the name of the obligor to a board for noncompliance with an order of support until the department issues a decision after hearing that finds the obligor is not in compliance with an order of support.

6. Certification of noncompliance. The department may certify in writing to the appropriate board that a support obligor is not in compliance with an order of support if:

A. The obligor does not timely request a hearing upon service of a notice issued under subsection 1 and is not in compliance with an order of support 21 days after service of the notice;

B. The department issues a decision after hearing that finds the obligor is not in compliance with an order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 3; or

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with an order of support.

The department shall send by regular mail a copy of a certification of noncompliance filed with a board to the obligor at the obligor's most recent address of record.

7. Notice from board. A board shall notify an obligor certified by the department under subsection 6,

without undue delay, that the obligor's application for the issuance or renewal of a license may not be granted or that the obligor's license has been revoked because the obligor's name has been certified by the department as a support obligor who is not in compliance with an order of support.

8. Written confirmation of compliance. When an obligor who is served notice under subsection 1 subsequently complies with the official order of support, the department shall provide the obligor with written confirmation that the obligor is in compliance with the order of support.

9. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

10. Agreements. The department and the various boards shall enter into agreements that are necessary to carry out the requirements of this section, but only to the extent the department determines it is cost-effective.

11. Motion to modify order of support; stay. This section does not prohibit a support obligor from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. The department shall stay action to certify the obligor to a board for noncompliance with an order of support if the obligor files a motion to modify support with the court and notifies the department of the motion or requests the department to amend a support obligation established by the department.

12. Reporting. On or before April 1, 1994, or as soon as economically feasible and at least annually, all boards subject to this section and the Department of Professional and Financial Regulation, Division of Administrative Services shall provide to the department specified information, on magnetic tape or other machine-readable form, according to standards established by the department, about applicants for licensure and all current licensees. The Department of Professional and Financial Regulation, Securities Division shall provide the specified information for only those current licensees that are residents of this State. The information to be provided must include all of the following information about the licensee:

A. Name;

B. Address of record;

C. Federal employer identification number or social security number;

D. Type of license;

E. Effective date of license or renewal;

F. Expiration date of license; and

G. Active or inactive status.

13. Effect of noncompliance. The department, upon receipt of the licensee information referred to in subsection 12, shall identify and notify each board and the Department of Professional and Financial Regulation, Division of Administrative Services, of the names of its licensees who are support obligors subject to this section. The notice must include the social security number and address of the support obligor, the name, address and telephone number of the department's designee for implementing this section and a certification by the department that it has verified that the licensee is a support obligor subject to this section. When the department notifies a board under this subsection, the department shall provide adequate notice of its action to the obligor. The notice must inform the obligor of the right to request a hearing on the issue of whether the obligor is in compliance with an order of support. The board may not issue or renew a license to a person whose name is on the most recent list from the department until the board receives a copy of the written confirmation of compliance specified in subsection 8.

14. Subsequent reissuance, renewal or other extension of license or certificate. The board may reissue, renew or otherwise extend the license or certificate of authority in accordance with the board's rules after the board receives a copy of the written confirmation of compliance specified in subsection 8. A board may waive any applicable requirement for reissuance, renewal or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest.

15. Program review. In furtherance of the public policy of increasing collection of child support, the department shall report the following to the Legislature and the Governor on January 31, 1999 and biennially thereafter:

A. The number of support obligors identified as licensees subject to this section;

B. The number of support obligors identified by the department under this section who are not in compliance with a court order of support; and

C. The number of actions taken by the department under this section and the results of those actions.

§2202. Family financial responsibility

1. Purpose. The Legislature finds and declares that child support is a basic legal right of the State's parents and children, that mothers and fathers have a

legal obligation to provide financial support for their children and that child support payments can have a substantial impact on child poverty and state welfare expenditures. It is therefore the Legislature's intent to encourage payment of child support to decrease overall costs to the State's taxpayers while increasing the amount of financial support collected for the State's children. The department is authorized to initiate action under this section against individuals who are not in compliance with an order of support.

2. Notice. The commissioner may serve notice upon a support obligor who is not in compliance with an order of support that informs the obligor of the commissioner's intention to certify the obligor to the Secretary of State as an individual who is not in compliance with an order of support. The notice must inform the obligor that:

A. The obligor may contest the issue of compliance at an administrative hearing;

B. A request for hearing must be made in writing and must be received by the department within 20 days of service;

C. If the obligor requests a hearing within 20 days of service, the department shall stay the action to certify the obligor to the Secretary of State for noncompliance with an order of support pending a decision after hearing;

D. If the obligor does not timely request a hearing to contest the issue of compliance and does not obtain a written confirmation of compliance from the department, the commissioner shall certify the obligor to the Secretary of State for noncompliance with an order of support;

E. If the commissioner certifies the obligor to the Secretary of State, the Secretary of State must suspend any motor vehicle operator's licenses that the obligor holds and the obligor's right to apply for or obtain a motor vehicle operator's license;

F. If the obligor requests a hearing, the obligor shall direct the request to the department's support enforcement office that is responsible for handling the obligor's case;

G. If the obligor files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, the department shall stay action to certify the obligor to the Secretary of State for noncompliance with an order of support; and

H. The obligor can comply with an order of support by:

- (1) Paying current support;
- (2) Paying all past-due support or, if unable to pay all past-due support and a periodic payment for past-due support has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the department; and
- (3) Meeting the obligor's health insurance obligation.

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

3. Administrative hearing. An obligor may request an administrative hearing within 20 days of service of the notice described in subsection 2. The request for hearing must be in writing and must be received by the department within 20 days. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV. The issues that may be determined at hearing are limited to whether the obligor is required to pay child support under an order of support and whether the obligor is in compliance with an order of support, although the obligor may raise additional issues, including the reasonableness of a payment agreement in light of the obligor's current circumstances, to be preserved for appeal.

4. Decision after hearing. The department shall render a decision after hearing without undue delay as to whether the obligor is in compliance with the obligor's order of support. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record.

5. Appeal to Superior Court. If the obligor appeals the department's decision under subsection 4, the Superior Court may hear and determine issues raised at the hearing, including the reasonableness of a payment agreement in light of the obligor's current circumstances.

6. Stay. If an obligor timely requests a hearing to contest the issue of compliance, the department may not certify the name of the obligor to the Secretary of State for noncompliance with an order of support until the department issues a decision after hearing that finds the obligor is not in compliance with an order of support.

7. Certification. The commissioner may certify in writing to the Secretary of State that a support obligor is not in compliance with an order of support if:

A. The obligor does not timely request a hearing upon service of a notice issued under subsection 2 and is not in compliance with an order of support 21 days after service of the notice;

B. The department issues a decision after hearing that finds the obligor is not in compliance with an order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 4; or

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with an order of support.

The department shall send by regular mail a copy of a certification of noncompliance filed with the Secretary of State to the obligor at the obligor's most recent address of record.

8. Written confirmation of compliance. When an obligor who is served notice under subsection 2 subsequently complies with the order of support, the department shall provide the obligor with written confirmation that the obligor is in compliance with the order of support.

9. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

10. Agreement. The department may enter into an agreement with the Secretary of State to carry out the requirements of this section.

11. Motion to modify court order of support; stay. This section does not prohibit a support obligor from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. The department shall stay action to certify the obligor to the Secretary of State for noncompliance with an order of support if the obligor files a motion to modify support with the court and notifies the department of the motion or requests the department to amend a support obligation established by the department.

12. Program review. In furtherance of the public policy of increasing collection of child support, the department shall report the following to the Legislature and the Governor on January 31, 1999 and biennially thereafter:

A. The number of notices served upon support obligors by the department under this section;

B. The number of obligors served notice under this section who request a hearing;

C. The number of hearings held under this section, the results of the hearings and the number of cases settled without a hearing;

D. The number of support obligors certified to the Secretary of State for noncompliance with a court order of support under this section; and

E. The costs incurred in the implementation and enforcement of this section and the department's estimate of the amount of child support collected due to the department's actions under this section.

§2203. Order to seize and sell

1. Execution of support liens. The department may issue an order to seize and sell to execute a support lien established under former Title 19, section 503 or 503-A or section 2357 or to enforce and collect any money judgment assessed under chapter 51, chapter 53, chapter 55, chapter 63 or this chapter. An order to seize and sell has the same effect as a writ of execution issued by the District Court or the Superior Court.

2. Issuance of order. An order to seize and sell is an order, under official seal of the department, directed to a county sheriff or a levying officer authorized by law to enforce a District Court or Superior Court judgment. The order must command the recipient of the order to seize and sell specific nonexempt real and personal property of an obligor to satisfy the support lien upon which the order is based. The department must know or have reason to believe the obligor has a substantial ownership interest in the property identified in the order. Before issuing the order, the department must search the records of the applicable registry of deeds for real property and the records of the Secretary of State for personal property to determine if there are other persons who have an ownership interest in the property.

3. Content of order. An order to seize and sell must be signed by the commissioner or the commissioner's designee. The order must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, plus fees and costs, if any. The order must identify the specific

property that is the subject of the order. The order must include notice that tells the obligor and other persons who are known to have an ownership interest in the property how to contest the seizure and sale of the property, including notice of the right to an administrative hearing within 5 business days. The order must list the type and value of property that is exempt as provided in subsection 15.

4. Order limited. The county sheriff or levying officer may not seize property not specifically identified in the order.

5. Sheriff or levying officer. An order to seize and sell may be sent by the department to a county sheriff or levying officer. When the order is issued, the department shall serve a copy of the order on all persons other than the obligor who the department knows have an ownership interest in the property identified in the order. If personal service is unsuccessful, the department shall mail the order to the person's last known address by regular mail. Upon receipt of the order, the sheriff or levying officer shall proceed to execute the order in the same manner as prescribed for execution of a judgment. A sheriff or levying officer shall return the order, along with any funds collected, to the department within 90 days of the receipt of the order. Funds resulting from execution of the order must first be applied to the sheriff's or levying officer's costs, then to any superior liens and then to the support lien or other money obligation and any inferior liens of which the department has notice. Any amounts in excess of this distribution must be paid to the obligor. If the order is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

6. Right to hearing. Before the sale, the obligor and any other persons who claim an ownership interest in the property seized under an order to seize and sell have a right to an administrative hearing to contest the seizure and sale of the property and to establish the value of their relative interest in the property. A request for a hearing must be in writing and must be received by the department within 10 calendar days of the seizure. Upon receiving a request for a hearing, the department shall notify all persons who the department has reason to believe have an ownership interest in the property of the time, place and nature of the hearing.

A. Anyone requesting a hearing has the right to a preliminary hearing within 5 business days of the hearing request. At the preliminary hearing, if the hearing officer determines that there is reasonable ground to believe the seizure was lawful and that the obligor owes a support debt that could be satisfied in whole or in part by nonexempt property that has been seized, the hearing

officer shall require the seizure to remain in force and schedule a final hearing, allowing all parties reasonable time to collect evidence and prepare for the final hearing. If the hearing officer determines that the seizure was not lawful or that the obligor does not owe a support debt that could be satisfied in whole or in part by nonexempt property that has been seized, the hearing officer shall declare the order to seize and sell void.

B. The department shall notify any person who the department has reason to believe has an ownership interest in the seized property of the time and place of the final hearing. At the final hearing, the hearing officer shall determine:

(1) Whether the obligor owes a support debt;

(2) Whether the support debt could be satisfied in whole or in part by the property seized;

(3) The percentage share of ownership of all persons claiming an ownership interest in the property;

(4) The amount of the debtor's interest in the property that is exempt; and

(5) The value of the interest in the property owned by nonobligor parties with an interest superior to that of the department.

7. Commercially reasonable sale. The sheriff or levying officer may sell the property seized as a unit or in parcels and at any time and place and on any terms not otherwise prohibited by this section, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. The property may not be sold for less than the debtor's interest in the property that is exempt. The property may not be sold for less than the full value of the interest in the property owned by the nonobligor parties with an interest superior to that of the department. The department reserves the right to reject any and all bids.

8. Notice of sale. Within 30 days of receiving notice of a sale from the county sheriff or levying officer, the department shall send by regular mail an accounting and proposed distribution of the net proceeds of the sale to the obligor, all joint owners of the property sold and any known lienholders with an interest in the property. The accounting and proposed distribution must include notice of the right to challenge the proposed distribution at an administrative hearing within 30 days. The department may not distribute the proceeds of the sale until the appeal period has run and all appeals have been decided.

9. Release. Upon receiving payment in full of the order amount plus fees and costs, if any, the department shall release the order to seize and sell. Upon receiving partial payment of the order amount or if the department determines that a release or partial release of the order will facilitate the collection of the unpaid amount, fees and costs, the department may release or may partially release the order to seize and sell. The department shall release the order if it determines the order is unenforceable.

10. Right to redeem. An obligor or other person or entity having an interest in real or personal property seized under an order to seize and sell at any time prior to the sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the county sheriff or levying officer serving the order. Upon payment in full, the property must be restored to the obligor or other person or entity having an interest in that property and all proceedings on the order must cease.

11. Right to redeem after sale. An obligor or other person or entity having an interest in real property seized and sold by a county sheriff or levying officer pursuant to an order to seize and sell may, within 240 days after the sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser, plus interest at the statutory interest rate payable on judgments recovered in the District Court and the Superior Court.

12. Release not a bar to other action. At any time after seizure and sale of property under an order to seize and sell, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is ensured or if the release will facilitate collection of the support lien or money obligation. The release or return of the property does not prevent future action to collect the order amount from that property or other property.

13. Statute of limitations. The department may issue an order to seize and sell to collect a support lien or other money obligation under chapter 51, chapter 53, chapter 55, chapter 63 or this chapter at any time within the statutory limitation period for enforcing and collecting child support amounts.

14. Additional remedies. The use of an order to seize and sell is not exclusive and the department may use any other remedy provided by law for the collection of child support.

15. Exempt property. The following property is exempt from seizure and sale, except to the extent that it has been fraudulently conveyed by the obligor:

A. The obligor's aggregate interest, not to exceed \$12,500 in value, in real or personal property that the obligor uses as a residence;

B. The obligor's interest, not to exceed \$2,500 in value, in one motor vehicle;

C. The obligor's interest, not to exceed \$200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for the personal, family or household use of the obligor or a dependent of the obligor;

D. The obligor's aggregate interest, not to exceed \$5,000 in value, in any implements, professional books or tools of the trade of the obligor or the trade of a dependent of the obligor, including, but not limited to, power tools, materials and stock designed and procured by the obligor and necessary for carrying on the obligor's trade or business and intended to be used or wrought in that trade or business;

E. The obligor's interest in the following items held primarily for the personal, family or household use of the obligor or a dependent of the obligor:

- (1) One cooking stove;
- (2) All furnaces or stoves used for heating; and
- (3) All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal or 1,000 gallons of petroleum products or the equivalent amount of another type of fuel;

F. The obligor's interest in the following items held primarily for the personal, family or household use of the obligor or a dependent of the obligor:

- (1) All food provisions, whether raised or purchased, reasonably necessary for 6 months;
- (2) All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and
- (3) All tools and equipment reasonably necessary for raising and harvesting food;

G. The obligor's interest in one of every type of farm implement reasonably necessary for the obligor to raise and harvest agricultural products commercially, including any personal property incidental to the maintenance and operation of the farm implements;

H. The obligor's interest in one boat, not exceeding 5 tons burden, used by the debtor primarily for commercial fishing; and

I. Professionally prescribed health aids for the obligor or a dependent of the obligor.

16. Repeal. This section is repealed October 1, 1998.

Article 3

Alternative Method of Support Enforcement

Subarticle 1

General Provisions

§2251. Purpose

With this article, the Legislature intends to provide additional remedies for the enforcement of support for dependent children and spouses and former spouses caring for dependent children by establishing an alternative method directed to the real and personal property of the responsible parents. These remedies are in addition to, not in lieu of, existing law.

§2252. Limit on use

A support obligation or debt incurred before October 1, 1975 may not be enforced by the methods of this article.

§2253. Persons subject to jurisdiction

1. Declaration of purpose. It is declared, as a matter of legislative determination, that the public interest demands that the State provide its citizens with an effective means of redress against nonresident persons who, through certain significant minimal contacts with this State, incur obligations to citizens entitled to the State's protection.

This section, to ensure maximum protection to citizens of this State, must be applied so as to assert jurisdiction over nonresident responsible parents to the fullest extent permitted by the due process clause of the United States Constitution, Amendment XIV.

2. Causes of action. A person who does any of the acts enumerated in this subsection is deemed to have submitted to the jurisdiction of the department for the purpose of enforcing this article as to a cause of action arising from the doing of the following acts:

A. Maintaining a domicile in this State while subject to a marital or family relationship out of which arises a claim for child support or spousal support or the commission in this State of any act giving rise to such a claim; or

B. Conception resulting in paternity within the meaning of chapter 53, subchapter I.

3. Personal service. Service of a notice sent pursuant to section 2304 upon a person who is subject to the jurisdiction of this article, as provided in this section, must be made by personally serving the notice upon the responsible parent outside this State, with the same force and effect as though it had been served personally within this State. Service of any other notice or lien provided for in this article upon a person who is subject to the jurisdiction of this article, as provided in this section, is governed by section 2254.

§2254. Service

Service of a notice or lien described in this article may be by certified mail, return receipt requested, by service in hand as specified in civil actions or by publication as specified in civil actions. For the purposes of this article only, authorized representatives of the commissioner may serve a notice or lien described in this article.

1. Date of service. Service is completed when the certified mail is received or refused, or when specified in civil actions for service in hand or by publication.

2. Branch banks. Service on a bank or other financial institution maintaining branch offices is only effective as to the accounts, credits or other personal property of the responsible parent in the particular branch on which service is made.

§2255. Subpoena powers

In carrying out the provisions of this article, the department, through a request to the Attorney General or to an assistant attorney general assigned to the department, upon its own motion or upon the request of a party, has the power to subpoena witnesses, compel their attendance and require the production of any papers, books, records or documents that are relevant to determining the support obligation and the responsible parent's ability to pay or earn.

Subpoenas must be issued in accordance with Title 5, section 9060 and served in accordance with the Maine Rules of Civil Procedure.

§2256. Notices; readability

1. Readability score. As notices are revised by the department and as resources permit, all notices provided by the department under this article must have a readability score, as determined by a recognized instrument for measuring adult literacy levels, equivalent to no higher than a 6th-grade reading level.

2. Report. Beginning in 1992 and ending in 1997, the department shall submit a one-page annual

report on or before February 15th regarding its activities under this section to the joint standing committee of the Legislature having jurisdiction over human resource matters. This subsection is repealed December 31, 1997.

Subarticle 2

Support Debt

§2301. Creation of debt to department

1. Public assistance. Debts due the department for public assistance are as follows.

A. When an order of support has not been established, a payment of public assistance for the benefit of the dependent child creates a debt due the department from the responsible parent for past support. The amount of debt due the department is established by application of the most current child support scale to the responsible parent's income for the time period in which the department was entitled to support payments. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not bar a determination of past debt due the department for any relevant period in which the disability did not exist. When the department establishes a periodic support payment by administrative decision, the debt is limited to the amount stated in the decision.

B. When an order of support has been established, the debt due the department from the responsible parent is the amount established under that order.

(1) The debt may not be limited by the amount of public assistance paid for the benefit of the dependent child. Amounts collected by the department in excess of public assistance expended must be distributed pursuant to section 2401.

(2) The issuance of an order of support does not relieve the responsible parent of any liability for a debt that previously had accrued under paragraph A.

2. Failure to pay child or spousal support.

For actions initiated pursuant to section 2103, failure to pay support obligations under an order of support creates a debt due the applicant. Upon execution of a contract between the department and the applicant, the department may take action to establish, enforce or collect the debt under any appropriate statute, including, but not limited to, remedies contained in this article. The department is subrogated to the rights of the payee as provided in section 2351.

3. Default judgment. If the responsible parent defaults or otherwise fails to appear, and no order of support has been established, the court or administrative hearing officer shall presume that the responsible parent has an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income than the one specified by this subsection may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income.

4. Interstate cooperation. A payment of public assistance by another state for the benefit of a dependent child located within that state creates a debt due that state from a responsible parent in the amount of the public assistance paid. With the execution of an application for nonwelfare services between a state and a resident of that state, the state may request the department to enforce or collect any unpaid support debt belonging to the applicant. Upon written request by a state to the department, the department may attempt to collect either the welfare or nonwelfare debt by action under any appropriate laws, including, but not limited to, remedies established by this article.

§2302. Limitation of debt

A debt may not be incurred under section 2301 by a responsible parent while that parent receives public assistance for the benefit of a biological or adopted child of that parent. A debt previously incurred under section 2301 may not be collected from a responsible parent while that parent receives public assistance for the benefit of a biological or adopted child of that parent.

§2303. Right of support enforcement

If no order of support exists, the department has the right provided in section 2102 to enforce the duty of support.

§2304. Administrative establishment of parental support obligation; debt for past support; obligation to provide health insurance coverage

When an order of support has not been established, the department may establish the responsible parent's current parental support obligation pursuant to chapter 63, establish the responsible parent's debt for past support, including medical expenses, and establish the responsible parent's obligation to maintain health insurance coverage for each dependent child. The department may proceed on its own behalf or on behalf of another state or another state's instrumentality, an individual or governmental applicant for services under section 2103 or a person entitled by federal law to support enforcement services as a former recipient of public assistance. The department acting on behalf of another state, another state's instrumentality or a person residing in another state constitutes good cause within the meaning of Title 5, section 9057, subsection 5. Notwithstanding any other provision of law, a parental support obligation established under this section continues beyond the child's 18th birthday, if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws, is expelled or attains 19 years of age, whichever occurs first. For purposes of this section, "debt for past support" includes a debt owed to the department under section 2301, subsection 1, paragraph A, a debt owed under section 2103 and a debt that accrues under sections 1504 and 1554.

1. Notice of support order. The department shall serve the responsible parent with a notice that it intends to establish a support order and a blank income affidavit. The notice must state:

A. The names of both parents and the names of each dependent child;

B. The department's intention to establish a support order, which may include a periodic payment for current support, a debt for past support, including medical expenses, and an obligation to provide health insurance coverage;

C. That the responsible parent must submit a completed income affidavit to the department within 30 days;

D. That the department calculates a proposed support order based on the State's child support guidelines using all available information and, if there is a lack of sufficient reliable information about a parent's actual earnings for a current or past period, the department presumes for the purpose of establishing a current support obligation or a debt for past support that the responsible parent has or had an earning capacity equal to the average weekly wage as determined by the Department of Labor statistics for the applicable years;

E. That the department will send to the responsible parent by regular mail a copy of the proposed support order and the department's child support worksheets;

F. That the responsible parent may request a hearing in writing within 30 days of the date of mailing of the proposed support order;

G. That, if the department does not receive a timely request for hearing, it will issue a decision that incorporates the findings of the proposed support order and will send a copy of the decision to both parents by regular mail;

H. That, after a decision is issued, the department may enforce the decision by any lawful means, including immediate income withholding, lien and foreclosure, administrative seizure and disposition, order to withhold and deliver and tax refund intercept; and

I. That, if the department establishes a debt for past support, the department may report the responsible parent and the amount of the debt to a consumer credit reporting agency.

2. Proposed support order. After serving notice upon the responsible parent in accordance with subsection 1 and after more than 30 days have elapsed, the department shall calculate the responsible parent's parental support obligation and debt for past support pursuant to chapter 63. Based on its calculations under the support guidelines, the department shall issue a proposed support order. The proposed support order must include the department's calculations and state the amount of the responsible parent's current parental support obligation and debt for past support, including medical expenses, and must state the responsible parent's obligation to provide health insurance coverage for each dependent child and to pay a proportionate share of uninsured medical expenses. The department shall send a copy of the proposed support order to the responsible parent by regular mail, along with a copy of the department's child support worksheet. The proposed order must be accompanied by a notice that states:

A. That the responsible parent has the right to request a hearing within 30 days of the date of mailing of the proposed support order and that, if a hearing is requested, the department will send the responsible parent a notice of hearing by regular mail at least 30 days before the date of the hearing, along with a statement of the hearing rights described in subsection 3, paragraph A;

B. That, if the department does not receive a timely request for hearing, the department will issue a decision that incorporates the findings of the proposed support order into the department's

decision and will send a copy of the decision to both parents by regular mail;

C. That, if the department issues a decision that establishes a responsible parent's support obligation, the department may enforce the decision by any lawful means, including immediate income withholding, lien and foreclosure, administrative seizure and disposition, order to withhold and deliver and tax refund intercept; and

D. That, if the department establishes a debt for past support, the department may report the responsible parent and the amount of that debt to a consumer credit reporting agency.

3. Hearing. The hearing must be conducted according to rules adopted by the commissioner.

A. At the hearing, the responsible parent may present testimony, cross-examine witnesses and be represented by an attorney or other person. In rendering a decision, the department may not consider evidence that was not presented at the hearing.

B. When deciding the amount of the current parental support obligation, the debt for past support and the availability of health insurance coverage, the official conducting the hearing shall consider at least the following criteria:

(1) Each child's needs;

(2) The responsible parent's income and real and personal property;

(3) The responsible parent's ability to borrow;

(4) The responsible parent's ability to earn;

(5) The responsible parent's needs;

(6) Whether the responsible parent has a duty to support other dependents. In any case, each child for whom support is sought must benefit as much as any other dependent from the income and resources of the responsible parent;

(7) Whether the responsible parent has voluntarily incurred subsequent obligations that have reduced that parent's ability to pay support. This condition does not relieve the responsible parent of the duty to provide support;

(8) Whether employer-related or other group health insurance coverage is available to the responsible parent; and

(9) Whether the responsible parent's existing health insurance coverage may be extended to include each dependent child.

4. Decision. If a hearing is held, the department shall render a decision based on the hearing record and applicable state laws and rulemaking. If a request for hearing is not made in a timely manner or if the responsible parent does not appear at the hearing, the department shall issue a decision that incorporates the findings of the department's proposed support order. The department shall send a copy of the decision to both parents by regular mail. The decision must establish and state:

A. The responsible parent's duty to provide support, the amount of the current parental support obligation, the amount of any debt for past support including medical expenses, the obligation of the responsible parent to maintain health insurance coverage for each dependent child and to pay a proportionate share of uninsured medical expenses and that the responsible parent must provide written proof to the department of health insurance coverage that is required by the decision within 15 days of the responsible parent's receipt of the decision;

B. If an obligation for current support is established, an order for immediate income withholding is issued and made a part of the decision;

C. That, 30 days after the decision is issued, the department may enforce the decision by any lawful means, including immediate income withholding, lien and foreclosure, administrative seizure and disposition, order to withhold and deliver and tax refund intercept;

D. That, if the department establishes a debt for past support, the department may report the responsible parent and the amount of the debt to a consumer credit reporting agency;

E. That, if the responsible parent does not maintain health insurance coverage when required to do so by the department, the responsible parent may be held liable for all medical expenditures made by the department or the custodial parent on behalf of each dependent child; and

F. That the responsible parent may appeal the decision within 30 days of the date of mailing of the decision by requesting the department to hold an administrative review hearing.

5. Collection action. The department may initiate collection action 30 days after the date of mailing of a decision. If a decision includes an immediate income withholding order, the department may implement the withholding order to collect

current support immediately after the decision is issued.

6. Subsequent order. A decision under this section remains in effect until superseded by a subsequent order of support.

7. Request to set aside. Within one year of the mailing of a decision, the responsible parent may request the department to set aside the decision if the responsible parent shows good cause why the responsible parent did not request a hearing or did not appear at a hearing and presents a meritorious defense to the decision.

8. Amendment. A responsible parent may request an administrative hearing to amend a decision issued under this section prospectively based on a substantial change of circumstances. The department may seek to amend a decision issued under this section prospectively, based on a substantial change of circumstances, by using the same process permitted by this section for establishing a support obligation. When proceeding to amend a decision issued under this section, the department shall state in its notice of hearing that the purpose of the proceeding is to amend the responsible parent's support obligation based on a substantial change of circumstances.

Modification and termination of child support orders are governed by section 2009.

9. Enforcement. A decision under this section establishes a support obligation for purposes of enforcement under section 2103.

10. Provisions supplemental. The provisions of this chapter are in addition to other laws and rules that enable the department to establish child support obligations.

§2305. Effect and implementation of health insurance obligations; failure of responsible parent to comply

1. Responsible parent's failure to comply. If a responsible parent fails to obtain health insurance coverage as required by an administrative decision, that parent is liable for any expenses incurred, for each dependent child, that would have been paid by the insurance coverage, regardless of incurred expenses. Incurred liability may be enforced as a child support debt under this article or by judicial action.

2. Insurer's obligation under authorization. Upon receipt of a written authorization by a responsible parent to make health insurance payments to the department for each dependent child of that parent, whether or not public assistance is being expended for the benefit of each child, an insurer shall make all payments directly to the department until the authori-

zation is withdrawn. Upon receipt of authorization from the responsible parent, the department is subrogated to the rights of the responsible parent under the insurance policy for each child.

3. Insurer's obligation under order or decision and notice. Upon receipt of a copy of a court order or administrative decision establishing the obligation of a responsible parent to provide health insurance coverage for each dependent child of that parent, and receipt of a copy of a notice from the department that public assistance is being expended for the benefit of each dependent child of the responsible parent or that the department is furnishing support enforcement services to a person with whom each child resides other than the responsible parent, an insurer shall make all health insurance payments for each child directly to the department until otherwise notified by the department. In all such cases, the responsibility of the department is subrogated to the rights of the responsible parent under the insurance policy for each child.

4. Insurers to provide information. Upon request by the department, a nonprofit hospital or medical service organization authorized under Title 24 or an insurer authorized under Title 24-A shall provide to the department a list of persons who have health insurance coverage with that organization or insurer. The information must be transmitted in a manner prescribed by the department to allow electronic identification of responsible parents who have health insurance coverage.

§2306. Immediate withholding of earnings

1. Withholding order. A decision establishing or modifying a child support obligation under section 2304 must conform with this subsection.

A. The decision must provide for the withholding of amounts payable as child support, effective from the date of the decision, from the responsible parent's earnings, regardless of whether support payments by the responsible parent are in arrears. The withholding order must:

- (1) Specify the amount of earnings to be withheld. The amount must include \$2 per week in addition to the amount to be withheld for child support;
- (2) Specify the support enforcement case number; and
- (3) Direct that, upon receipt of a copy of the withholding order, a payor of earnings to the responsible parent shall:

(a) Immediately begin to withhold those earnings when earnings are usually paid to the responsible parent; and

(b) Send each amount of earnings withheld to the department at the address set forth in the withholding order within 10 days after each withholding of earnings.

B. This subsection does not apply if:

(1) A party demonstrates and the hearing officer finds that there is good cause not to require immediate withholding under this section; or

(2) A written agreement between the parties providing an alternative arrangement is filed with the hearing officer.

2. Priority of order. Notwithstanding any other law, a withholding order under this section has priority over any previously filed attachment, execution, garnishment or assignment of earnings that is not made for the purpose of enforcing or paying a child support obligation.

3. Obligations of payor of earnings. This subsection governs the obligations of a payor of earnings under this section.

A. Upon receipt of a copy of a withholding order, a payor of earnings to the responsible parent shall:

(1) Immediately begin to withhold earnings of the responsible parent when earnings are usually paid to the responsible parent; and

(2) Send each amount of earnings withheld to the department at the address set forth in the withholding order within 10 days after each withholding.

B. The payor shall include with all remittances of withheld earnings the responsible parent's support enforcement case number set forth in the withholding order.

C. The payor may combine amounts withheld for transmittal to the department from more than one responsible parent if the portion attributable to each responsible parent is separately designated, except that the payor may not combine amounts if that action would result in a responsible parent's withheld earnings being sent to the department more than 10 days from the withholding date.

D. The balance of earnings due the responsible parent must be paid to the responsible parent on the day that the responsible parent is usually paid.

4. Duration of order. A withholding order is binding upon the payor of earnings to the responsible parent until:

A. The order is superseded by another withholding order issued by the department under this subchapter;

B. The decision establishing the support obligation is superseded by a court order;

C. The payor has been released from the withholding order in writing by the department;

D. The child:

(1) If not attending secondary school, as defined in Title 20-A, section 1, becomes 18 years of age; or

(2) If attending secondary school, as defined in Title 20-A, section 1:

(a) Graduates, withdraws or is expelled from secondary school; or

(b) Becomes 19 years of age; or

E. The child is emancipated or adopted.

5. Payor to be held harmless. A payor of earnings to the responsible parent who honors a withholding order under this section is discharged from any liability or obligation to the responsible parent for earnings withheld in compliance with the order. The department shall defend and hold harmless a payor for honoring the order.

6. Notice of termination of payor-payee relationship. When the relationship between the payor of earnings and the responsible parent that provides for the payment of earnings to the responsible parent, whether the relationship is that of employer and employee or any other, is terminated, the payor shall, within 15 days of the termination, send the department a written notice of the termination. The notice must include:

A. The responsible parent's name, last known address and social security number;

B. The support enforcement case number;

C. The date of termination of the relationship of payor and payee; and

D. If known, the name and address of any new or other payor of earnings to the responsible parent.

7. Liability of payor; violations. A payor is liable, after service of the withholding order, for any earnings the payor fails to withhold and send to the department within 10 days of the day the payee is usually paid. The department may maintain an action against the payor for the earnings the payor did not withhold and send to the department or for the imposition of any of the following civil penalties, or both, plus attorney's fees and court costs.

A. A payor who knowingly fails to withhold earnings on the day earnings are usually paid to the responsible parent commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each failure to withhold.

B. A payor who knowingly fails to send withheld earnings to the department within 10 days of the withholding commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each failure to timely send withheld earnings.

C. A payor who knowingly fails to send the notification required by subsection 6 commits a civil violation for which a forfeiture of not more than \$100 may be adjudged.

D. A payor who discharges from employment or refuses to employ a responsible parent, or who takes disciplinary action against a responsible parent employed by the payor, or who otherwise discriminates against the responsible parent because of the existence of the withholding order or the obligations imposed upon the payor by the order, is subject to a civil penalty of not more than \$5,000, payable to the State, to be recovered in a civil action. The payor is also subject to an action by the responsible parent for compensatory and punitive damages for those actions, plus attorney's fees and court costs.

8. Other remedies. A withholding order under this section does not bar any judicial or administrative enforcement or collection action otherwise available under federal or state law regarding child or spousal support arrearages or a debt for public assistance under section 2301.

§2307. Discovery of past income

The responsible parent has an obligation to supply evidence regarding past income in order to calculate the debt owed the department or an applicant for services under section 2103 if the evidence is reasonably available. The responsible parent has 30 days to supply evidence of past income if requested to

do so by the department. A request for evidence regarding past income may be made through an administrative form developed by the department.

Failure to provide the evidence, absent a showing of good cause for failure to do so or notification to the department of good faith attempts to secure the information, allows the administrative hearing officer to draw a reasonable inference from the evidence available, including an inference that the responsible parent had a greater earning capacity than the average weekly wage of a worker within this State as defined by the most recent Department of Labor statistics.

§2308. Health insurance withholding order

1. Issuance of order. The department, on its own behalf, on behalf of a custodial parent who applies for the department's support enforcement services or on behalf of another state's Title IV-D agency, political subdivision or agent, may issue to a responsible parent's employer or other payor of income a health insurance withholding order to enforce a responsible parent's obligation to obtain or maintain health insurance coverage or other health care services for each dependent child of the responsible parent. A health insurance withholding order must be accompanied by a sworn statement issued by an authorized representative of the commissioner that states that the responsible parent is required by a court order or administrative decision to obtain or maintain health insurance coverage or other health care services for each dependent child named in the health insurance withholding order and has failed to provide the department with proof of coverage as required by law.

2. Employer notice. A health insurance withholding order must be accompanied by an employer notice that contains the substance of subsections 3 to 16.

3. Duty to enroll. An employer or other payor of income served with a health insurance withholding order shall enroll each dependent child of the employee named in the withholding order as a covered person in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, if the child is eligible for such coverage under the employer's enrollment provisions, and deduct any required premiums from the employee's earnings to pay for the insurance.

4. Choice of plan. If more than one plan is offered by the employer, the employer shall enroll each qualified child prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available, providing that the plan's services are available where the child resides. If the services of

the employee's plan or the least costly plan are not available where the child resides, the employer shall enroll each qualified child prospectively in the least costly plan that is available where the child resides.

5. Answer. An employer shall respond to a health insurance withholding order in writing within 30 days of service. The employer shall advise the department of the plan in which each child is enrolled or if a child is ineligible for any plan through the employer. The department shall include a preprinted answer form for the employer's use and shall include the form and a prepaid, self-addressed envelope with each health insurance withholding order.

6. Mistake of fact; affirmative defenses. A responsible parent may claim a mistake of fact or assert affirmative defenses to contest the issuance of a health insurance withholding order. The department shall establish by rule an administrative process for reviewing claims of mistake and investigating affirmative defenses.

7. Duration of order. A health insurance withholding order remains in force until the employee terminates employment, the employer or other payor of earnings is released from the order in writing by the department or release is ordered by a court.

8. Change of plan. After it is initially determined in response to a health insurance withholding order that a child is eligible for coverage, the employer must make subsequent enrollment changes to include the child if the group health insurance plan is changed and provide notices of any changes in coverage to the department.

9. Fee. The commissioner may establish by rule a fee that an employer may charge an employee for each withholding and for a change of plan.

10. Failure to honor. Failure of an employer or other payor of earnings to comply with the requirements of a health insurance withholding order is a civil violation for which the department may recover up to \$1,000 in a civil action.

11. Priority of order. A health insurance withholding order has priority over any previously filed attachment, execution, garnishment or assignment of earnings that is not for the purpose of enforcing or paying a child support obligation.

12. Employer protected. The department shall defend and hold harmless any employer or other payor of earnings who honors a health insurance withholding order.

13. Immunity. The employer may not be held liable for medical expenses incurred on behalf of a dependent child because of the employer's failure to

enroll the dependent child in a health insurance or health care plan after being directed to do so by the department.

14. Employee protected. An employer who discharges, refuses to employ or takes disciplinary action against a responsible parent, or who otherwise discriminates against that parent because of the existence of the order or the obligation the order imposes upon the employer, is subject to a civil penalty of not more than \$5,000 payable to the State, to be recovered in a civil action. The employer is also subject to an action by the responsible parent for compensatory and punitive damages, plus attorney's fees and court costs.

15. Service. A health insurance withholding order must be served on the responsible parent's employer or other payor of earnings. Service may be by certified mail, return receipt requested, by an authorized representative of the commissioner, by personal service as permitted by the Maine Rules of Civil Procedure, Rule 4 or as otherwise permitted by sections 2253 and 2254. The department shall send a copy of the health insurance withholding order to the responsible parent at the responsible parent's most recent address of record.

16. Withholding orders combined. The department may combine a health insurance withholding order with a child support income withholding order issued under section 2306.

17. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

Subarticle 3

Collection of Support Debt

§2351. Right of support enforcement when order exists

1. Subrogation of support rights. If an order of support or a spousal support order exists, the department is subrogated to the right of a dependent child, or person having custody of the child named in the order, to pursue any support action or administrative remedy to secure payment of the debt accrued or accruing under section 2301 and to enforce the order. The department is not required to seek an amendment to the order of support or to the spousal support order in order to subrogate itself to the rights of the payee. The department is not required to file a motion to intervene or join in any court proceeding in order to subrogate itself to the rights of the payee and to be treated as a party in any further proceedings regarding the support order.

2. Limits on subrogation. When payment of public assistance for the benefit of a dependent child has ceased, that child, or a person having the custody of the child named in the order, may pursue any support action or administrative remedy to secure payment of any support arrearage that accrued before or after the period of receiving public assistance and that is not part of the debt under section 2301. The department may not be subrogated to this right.

§2352. Notice of support debt when court order exists

When the department is subrogated to an order of support or a spousal support order under section 2351, the commissioner may issue to the responsible parent a notice of debt accrued or accruing under section 2301.

1. Notice of debt. In addition to conforming with the requirements of Title 5, section 9052, subsection 4, notice of debt must include:

A. A statement of the debt accrued or accruing under section 2301;

B. A statement of the terms of the order of support, including the names of each dependent child;

C. A statement that any property of the debtor is subject to lien and foreclosure, administrative seizure and disposition, order to withhold and deliver or other collection actions and that any debt determined to be owed by the responsible parent may be reported to a consumer reporting agency;

D. A demand for payment of the support debt within 20 days of receipt of the notice of debt;

E. A statement that the net proceeds of any collection action will be applied to the satisfaction of the support debt;

F. A statement that the responsible parent has the right to request a hearing under section 2451, or, in the alternative, to seek relief in a court of proper jurisdiction;

G. A statement that at the administrative hearing only the following issues may be considered:

(1) The receipt of public assistance by the responsible parent;

(2) Uncredited cash payments;

(3) The amount of the debt accrued and accruing;

(4) The accuracy of the terms of the order of support as stated in the notice of debt; and

(5) The maintenance of any required medical or dental insurance coverage; and

H. A statement that the department will stay collection action upon receipt of a request for review under section 2451 or on service of pleadings filed in a court of proper jurisdiction.

2. Commencement of action. Actions to collect any debt accrued or accruing under section 2301 may commence after 20 days after the date of receipt of the notice of debt described in this section.

3. Demand for immediate payment. If the commissioner finds that the collection of any support debt accrued or accruing under section 2301 is in jeopardy, the commissioner may make demand under subsection 1 for immediate payment of the support debt, and upon failure or refusal immediately to pay, the commissioner may file and serve liens pursuant to section 2357. An action under sections 2358, 2363 and 2364 may not be taken until the notice requirements of subsection 1 are met.

4. Stay of collection action. If the responsible parent requests review of a notice of debt accrued or accruing under section 2451, or seeks relief in a court of proper jurisdiction, and if the department receives the request or service of pleadings within 21 days after service of the notice of debt, the department shall stay the collection action. The department shall accept ordinary mail service of copies of all pleadings, which must be addressed to the department representative whose name appears on the face of the notice of debt. Service upon the department is in addition to any other service required under the Maine Rules of Civil Procedure.

§2353. Expeditious procedure during stay

When a responsible parent has requested a stay under section 2352, subsection 4 and that stay has been granted because the parent seeks relief in a court, the parent shall request, within 30 days of filing the papers with the court, that the court set the matter for hearing on the next available court date. If the responsible parent fails to make the request during that time, the department may remove the stay and proceed with the collection proceeding.

§2354. Interest of debt due

Interest of 6% per year on any support debt due or owing to the department under section 2301 may be collected by the commissioner.

§2355. Notice of requirement of prompt payment

In any case in which a debt is owed by a responsible parent under section 2301, the department shall notify the responsible parent, on any billing sent for the purpose of child support collection, that payment must be received in the month when due and that failure to make timely payment may result in child support being retained by the department that would otherwise be paid to that parent's child. The notice must have a readability score, as determined by a recognized instrument for measuring adult literacy levels, equivalent to no higher than a 6th-grade reading level.

§2356. Exemptions

The following exemptions apply to weekly earnings. The maximum part of the aggregate disposable earnings of a responsible parent for any workweek that is subject to garnishment or income withholding may not exceed:

1. Supporting spouse or dependent child. When the individual is supporting that individual's spouse or dependent child, other than a spouse or child with respect to whose support that order is used, 50% of that individual's disposable earnings for that week; or

2. Not supporting spouse or dependent child. When the individual is not supporting such a spouse or dependent child described in subsection 1, 60% of that individual's disposable earnings for that week.

With respect to the disposable earnings of any individual for any workweek, the 50% specified in subsection 1 is deemed to be 55% and the 60% specified in subsection 2 is deemed to be 65% if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period that is prior to the 12-week period that ends with the beginning of that workweek. In no event may the amount withheld exceed the limitations imposed by 15 United States Code, Section 1673.

§2357. Liens

1. Judgment. Twenty-one days after receipt by a responsible parent of a notice of debt under section 2352 or 30 days after the date of mailing to the responsible parent of a decision of the department that requires the responsible parent to pay child support, the amount stated in the notice of debt or in the decision is a judgment in favor of the department, the obligee, or both. The judgment is a lien against all property of the responsible parent. The lien is separate from and in addition to a lien filed under this section.

2. Filing. For real property, a lien is perfected when a notice of support lien is filed in the registry of deeds of the county or counties in which the real property is located. For personal property, including motor vehicles or other items for which a certificate of ownership is issued by the Secretary of State, the lien is perfected when a notice of support lien is delivered to the Secretary of State. The Secretary of State shall mark, hold and index the notice of support lien as if it were a financing statement within the meaning of Title 11, section 9-402. The notice of support lien must state the name and address of the responsible parent, the amount of the child support debt accrued, the date of the decision or notice of debt by which the debt was assessed and the name and address of the authorized agent of the department who issued the notice.

3. Effect. A person who knows of a support lien may not pay over, release, sell, transfer, encumber or convey property that may be subject to the lien, unless:

A. The commissioner waives or releases the lien in writing; or

B. A court of competent jurisdiction orders a release.

4. Order to seize and sell. A lien under this section may be enforced or collected through an order to seize and sell under section 2203.

This subsection is repealed October 1, 1998.

§2358. Order to withhold and deliver

The commissioner shall proceed as follows with respect to any order to withhold and deliver.

1. Service of order. The commissioner may serve on any person an order to withhold and deliver any property, including wages, that is due or belongs to the responsible parent when:

A. A lien has been filed pursuant to former Title 19, section 503 or 503-A or section 2357; or

B. Twenty-one days have elapsed from the date of receipt of a notice of debt under section 2352 or 30 days after the date of mailing to a responsible parent of a decision of the department that requires the responsible parent to pay child support.

2. Service on responsible parent. The order must also be served on the responsible parent.

3. Order; contents. The order to withhold and deliver must state the amount of the support debt accrued and accruing and the terms of former Title 19, section 503 or 503-A or sections 2357 and 2366 and

demand a listing of property, including wages, that is due or belongs to the responsible parent.

4. Answer. A person served with an order to withhold and deliver shall answer the order within 20 days of receipt of the order.

5. Withhold and deliver. A person served with an order to withhold and deliver shall withhold immediately any property, including wages, due to or belonging to the responsible parent. After 20 days from the date of receipt of this order and upon demand of the commissioner, the property of the responsible parent must be delivered to the commissioner.

6. Delivery of money. If the money is due under an express or implied contract, or if money is held subject to withdrawal by the responsible parent, the money must be delivered by check payable to the Treasurer of State.

7. Bond as alternative. Instead of the property of the responsible parent, the commissioner may accept a bond conditioned upon final determination of liability.

8. Effect of honoring order. A person who honors an order to withhold and deliver is discharged from any liability or obligation to the responsible parent for that property. The department warrants that it will defend and hold harmless any such persons for honoring the order.

9. Term of order. The order to withhold and deliver remains in effect, requiring withholding of each successive earnings disbursement, until the amount of debt stated in the order has been withheld.

10. Priority of order. Notwithstanding any other provision of law, the order to withhold and deliver has absolute priority over previously filed orders against assets, earnings and assignments of earnings not for the enforcement of a child support obligation.

§2359. Expedited income withholding

1. Order to withhold; commissioner may serve. The commissioner may direct any person by order to withhold property, including wages, that is due or belongs to the responsible parent when the responsible parent has failed to make payments under a support order and the amount in arrears is at least equal to the support payable for one month. The commissioner shall serve the order on the person directed to withhold.

2. Notice of order to withhold. Prior to implementation of the order to withhold, the department shall serve a notice of intention to withhold to the responsible parent.

3. Content of notice. In addition to conforming with the requirements of Title 5, section 9052, subsection 4, the notice of intention to withhold must include the following statements:

A. The amount of the arrearage and the amount of the current support order;

B. The amount that will be withheld or the formula by which that amount will be determined;

C. That the withholding will apply to any current or subsequent period of employment;

D. That the responsible parent may contest the withholding by requesting a review pursuant to section 2451;

E. That the only basis for contesting the withholding is a mistake of fact;

F. That the request for review must be filed within 20 days of receipt of the notice of intention and that failure to request a review within 20 days will result in the department notifying the responsible parent's employer or other person holding property belonging to the responsible parent to begin withholding; and

G. That at the review hearing the responsible parent will have an opportunity to present the responsible parent's case; that the hearing officer's decision will be based on an evaluation of the facts, including the responsible parent's statement of the responsible parent's case; that the responsible parent will be informed of the decision; if withholding is to occur, the time within which the withholding will begin; and the information to be given to the employer or other payor.

4. Implementation of order to withhold.

Upon receipt of an order to withhold issued by the department, the employer or other payor shall immediately begin withholding from the income of the responsible parent the amount specified in the order. Sums withheld must be remitted to the department within 10 days of the date the responsible parent is paid. A person who honors an order to withhold issued under this section is discharged from any liability or obligation to the responsible parent for such property. The department warrants that it will defend and hold harmless any such persons for honoring the order.

5. Priority of order. Withholding initiated under this section has priority over any other legal process under state law against the same wages.

6. Termination of withholding. The withholding must be terminated with regard to a current support obligation if:

A. The department is unable to forward funds to the obligee for 3 months. Funds not forwarded must be returned to the obligor and notice must be given to the obligor's employer or other payor to cease withholding;

B. The child or spousal support obligation has been eliminated by a subsequent court order;

C. The child has reached majority or has otherwise been emancipated; or

D. The child has been adopted.

The withholding may not be terminated while an arrearage remains, unless other provisions acceptable to the department for its repayment have been made.

§2360. Setoff of debts against lottery winnings

1. Notice to Bureau of Alcoholic Beverages and Lottery Operations. The department shall periodically notify the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, referred to in this section as the "bureau," of all persons who owe the department a child support debt that has been liquidated by judicial or administrative action. Prior to paying any state lottery winnings that must be paid directly by the bureau, the bureau shall determine whether the lottery winner is on the list of persons who owe a child support debt to the State that has been liquidated by judicial or administrative action. If the winner is on a list of persons who owe child support debts, the bureau shall suspend payment of winnings and notify the winner of its intention to offset the winner's child support debt against the winnings. The bureau shall notify the winner of the winner's right to request a hearing before the department within 15 days of the winner's receipt of that notice. The hearing is limited to the questions of whether the debt is liquidated and whether post-liquidation events have affected the winner's liability. The decision of the department as to the existence of a liquidated debt constitutes final agency action. If, within 90 days of the notice of intended setoff to the winner, the department certifies to the bureau that the winner did not make a timely request for hearing or that a hearing was held and the debt was upheld, the bureau shall offset the liquidated debt against the winnings due to the winner. Any remaining winnings are paid to the winner. If the bureau does not hear from the department within 90 days of the notice of intended setoff to the winner, the bureau shall release all winnings to the winner.

2. Notice to Tri-state Lotto Commission. The department shall periodically notify the Tri-state Lotto Commission of all persons who owe the department a child support debt that has been liquidated by judicial or administrative action.

§2361. Order to appear and disclose

1. Order. The commissioner may commence an action under Title 14, chapter 502 by directing a responsible parent to appear before the department to disclose under oath information that relates to the responsible parent's ability to pay child support. The commissioner may require a responsible parent who is directed to appear to provide documents, papers and other evidence about the responsible parent's income and assets for the purpose of enforcing an order of support. An order to appear and disclose must be served on the responsible parent as provided by the Maine Rules of Civil Procedure, Rule 4.

2. Venue. The department may commence the action by ordering the obligor to appear at an office of the department, as long as the distance to be travelled by the obligor is no more than 100 miles from the obligor's place of residence. If the department files the action in court, the department shall file the action in the division of the District Court where the obligor resides or in the division that has ordered the obligor to pay child support, if any.

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

A. The date, time and place of the disclosure proceeding;

B. The amount of child support the responsible parent owes;

C. That the department may file a record of the proceeding in court to collect the debt;

D. That, if the department files a record of the proceeding in court, the court will notify the responsible parent by regular mail of the date, time and place of the court hearing;

E. That, if a record of the proceeding is filed in court, the court may issue any lawful order, including a sale or turnover order, an order to seek employment or a civil order of arrest;

F. That, if a record of the proceeding is filed in court and the responsible parent is not making regular child support 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.

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

4. Notice to obligee. The department shall provide notice to the obligee of the time and place of the disclosure proceeding and the nature of the proceeding.

5. Limitation of action. The department may issue an order 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.

6. Continuance. The department may grant a continuance of the proceeding for good cause.

7. Transcribable record. The department shall prepare an official, transcribable record of all proceedings held under this section.

8. Failure to appear. If the responsible parent fails to appear after being served with an order to appear and disclose, the department may request a civil order of arrest pursuant to Title 14, sections 3134 and 3135 for violating the order to appear and disclose by filing a copy of the order to appear and disclose, proof of service of the order and an affidavit attesting that the responsible parent failed to appear for the administrative disclosure proceeding.

9. Court action. The commissioner may file the record of a proceeding in the District Court to ask the court for any appropriate relief under Title 14, chapter 502, including an order requiring the responsible parent to seek employment and report that activity to the department. The record must be accompanied by a motion. The department shall notify the responsible parent by regular mail upon filing the record in court. The notice to the responsible parent must include a copy of the department's motion. The filing of the record, along with proof of service of the order to appear and disclose, constitutes a filing under the Maine Rules of Civil Procedure, Rule 3(1) and further service is not required.

10. Representation of the department. The commissioner may designate employees of the department who are not attorneys to represent the department in District Court in a proceeding filed under this section. A designated employee may prepare and sign the motion as required under subsection 9. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

11. Employee protection. An employer who discharges, refuses to employ or takes disciplinary action against a responsible parent, or who otherwise discriminates against the parent because the parent must appear before the department pursuant to this section is liable in an action by the responsible parent for compensatory and punitive damages, plus attorney's fees and court costs.

12. Penalties. Failure to appear before the department, absent good cause, is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged. Failure to provide documents, papers and other evidence as required, absent good cause, is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged. Intentionally providing false information is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged for each violation.

13. Repeal. This section is repealed October 1, 1998.

§2362. Release of excess withheld

If any person has, subject to an order to withhold and deliver, earnings, deposits, accounts or balances in excess of the amount of the debt claimed by the department plus \$100, that person may, without liability under this article, release the excess to the responsible parent.

§2363. Administrative seizure and disposition of property

The commissioner shall proceed as follows with respect to administrative seizure and disposition of property.

1. Seizure and surrender. When a lien has been filed pursuant to former Title 19, section 503 or 503-A or section 2357, the commissioner may collect the debt stated in the lien by seizing, if this can be done without breach of the peace, or demanding surrender of, any property subject to the lien and disposing of that property.

2. Disposition; notice. The commissioner, as soon as practicable after seizure, shall notify the responsible parent and any person claiming an interest in the property about the seizure and proposed disposition.

3. Disposition; optional methods. Either of the following methods may be used in the disposition of any property under this section:

A. The property seized may be disposed of in any commercially reasonable manner; or

B. The seized property may be turned over to the recipient of assistance for the express benefit

of the dependent child involved, if the commissioner and the responsible parent agree on the value of the property.

4. Bill of sale or deed. The commissioner may issue a bill of sale or deed to the purchaser. The bill of sale or deed is prima facie evidence of the right of the commissioner to make the sale and conclusive evidence of the regularity of the proceedings and transfers to the purchaser all right, title and interest of the responsible parent in the property.

§2364. Foreclosure on liens

The commissioner shall proceed as follows with respect to foreclosures on filed liens.

1. Liens on real property. Actions to foreclose liens on real property filed under former Title 19, section 503 or 503-A or section 2357 may be brought in the county where the lien is filed pursuant to the procedures of Title 14, chapter 403, subchapter II.

2. Liens on personal property. Actions to foreclose liens on personal property filed under former Title 19, section 503 or 503-A or section 2357 may be brought in the county where the lien is filed pursuant to the procedures of Title 14, chapter 509, subchapter III.

§2365. Release of lien or order to withhold

The commissioner may release a support lien or order to withhold and deliver on all or part of the property of the responsible parent or return seized property without liability, if the commissioner considers adequate an assurance of payment or if the collection of the debt will be facilitated. The release or return does not prevent further action to collect from the same or other property.

§2366. Employer or holder responsibility and liability

A person who fails to honor an order to withhold and deliver, an order for expedited withholding, or a duly executed assignment of earnings, or fails to surrender property under section 2363, is liable to the department in an amount equal to the debt that is the basis of the lien, order to withhold and deliver, order for expedited withholding, demand for surrender or assignment of earnings, together with costs, interest and reasonable attorney's fees.

When an order to withhold and deliver or assignment of earnings is in effect and the obligor's employment is terminated or the periodic payment terminates, the obligor's employer or other payor of funds shall notify the department of the termination within 30 days of the termination date. The notice must include the obligor's last known home address.

the obligor's social security number, the support enforcement case number and the name and address of the obligor's new employer or payor of funds, if known.

§2367. Employee protected

An employer may not discharge an employee because a support lien or order to withhold and deliver has been served against the employee's earnings. An aggrieved employee may maintain a civil action against an employer for violation of this section.

An employer who, in contravention of this section, discharges from employment, refuses to employ or takes disciplinary action against a responsible parent because of the existence of a lien, order to withhold and deliver or assignment of earnings and the obligations or additional obligations that it imposes upon the employer is subject to a fine in an amount not to exceed \$5,000.

§2368. Assignment of earnings

A person employing a person owing a support debt shall honor a duly executed assignment of earnings presented by the commissioner. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid currently or in the future and continue in force until released in writing by the commissioner. Payment pursuant to an assignment of earnings presented by the commissioner serves as full acquittance under any contract of employment, and the State shall defend and hold harmless any person who honors the assignment of earnings. The commissioner is not liable for improper receipt of money under an assignment of earnings upon return of any money so received.

Notwithstanding any other provision of law, an assignment of earnings presented by the commissioner has absolute priority over previously filed orders against earnings and assignments of earnings not for the enforcement of a child support obligation.

An employee may not be discharged by reason of a presentation of an assignment of earnings.

§2369. Assignment of right of support enforcement

The receipt of public assistance for a child constitutes an assignment by the recipient to the department of all rights to support for the child, including any support unpaid at the time of assignment, as long as public assistance is paid.

The recipient is deemed to have appointed the commissioner as the recipient's attorney in fact to perform the specific act of endorsing over to the

department all drafts, checks, money orders or other negotiable instruments for support of the child.

§2370. Employer; payor compensation

The commissioner may by rule establish a processing fee that an employer or individual possessing property belonging to the responsible parent may charge for implementation of an order to withhold and deliver, assignment of earnings or expedited wage withholding.

Subarticle 4

Proceeds

§2401. Distribution of proceeds

1. Pro rata distribution when insufficient funds received. The following provisions apply when a responsible parent is under orders of support for more than one family of children and at least one family of children is either a recipient of public assistance or a beneficiary under section 2103. For purposes of this subsection, a "family of children" consists of all blood-related and adopted children of the responsible parent that reside apart from any other children that the responsible parent is under a court or administrative order to support.

A. If the department fails to receive sufficient funds to meet the responsible parent's current support obligation to all of the children of all of the families, the department shall distribute pro rata the funds received so that each family of children receives the percentage of the funds received that represents that family's share of current support when calculated from the responsible parent's total current support obligation for all families.

B. If the responsible parent makes a designation or otherwise directs a distribution to the families of children, the department shall distribute the funds received as provided in paragraph A if the designation or other direction would result in a distribution not in compliance with paragraph A.

C. The department shall distribute the funds received as provided in paragraph A regardless of the source of the collection of the funds.

D. The department must be held harmless as to any claim of the responsible parent for its distribution of funds received as provided in paragraph A.

2. Reduction of debt under section 2301. Any money realized by the department by proceedings under this article reduces the debt of a responsible parent under section 2301 and must be paid to the recipient of assistance for the express benefit of the

dependent children to the extent permissible by federal law and regulations.

§2402. Dedicated funds

All collections, fees and incentive payments received by the department from child support collections must be dedicated to reduce the State's General Fund share of Aid to Families with Dependent Children and to cover the costs of making such collections. The department may not expend more than \$2,654,000 in any fiscal year of incentive payment revenue for the purpose of covering the costs of making child support collections.

Subarticle 5

Review

§2451. Administrative review

Within 30 days of receiving notice of any action under this article, including an administrative decision establishing an obligation to provide health insurance and payment for other medical expenses, and including an administrative decision that did not establish an obligation to provide health insurance and payment for other medical expenses, the responsible parent or the department may move for a review of any action under this article 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.

1. Notice of hearing. If the responsible parent moves for a review, within 7 days of receipt of the request for review the department shall send, by registered or certified mail, the responsible parent a notice of hearing setting a hearing date not less than 15 nor more than 30 days from the date of service of the request for review.

If the department moves for a review, the department shall serve along with the request for review a notice of hearing, setting a date not less than 15 nor more than 30 days from the date of service of the notice.

2. Hearing. The conduct of the hearing and rendering of any decision is as follows.

A. The hearing must be conducted according to rules adopted by the commissioner. The rules must provide both the moving and responding parties at least the right to confront and cross-examine witnesses, to present witnesses, to be represented by an attorney or other person and to

be notified of these rights in writing. The decision must be limited to evidence presented at the hearing.

B. If the hearing is on a notice of debt issued under section 2352, only the following issues may be considered:

(1) The receipt of public assistance by the responsible parent;

(2) Uncredited cash payments;

(3) The amount of the debt accrued and accruing;

(4) The accuracy of the terms of the court or administrative order as stated in the notice of debt; and

(5) The maintenance of any required medical or dental insurance coverage.

C. The hearing officer shall render a decision within 30 days of the date on which the hearing was held.

D. Within 10 days of the decision being rendered, a copy of the decision together with a notice of the right to a judicial review must be sent to the responsible parent by ordinary mail.

3. Stay. If a pleading is filed in any court that requests modification of an order for support after a final administrative decision under this section is served on the responsible parent, the department's collection action may not be stayed. If a pleading is filed for judicial review of agency action, the collection action may be stayed as provided in Title 5, section 11004.

§2452. Complaint and inquiry unit

The department shall maintain a centralized system to receive and respond to complaints and inquiries from persons who are eligible for support enforcement services. The department shall also use the system to identify and eliminate chronic problems within the department's support enforcement program.

§2453. Judicial review

A person who is aggrieved by a final action of the commissioner under this article may file an action under the Maine Rules of Civil Procedure, Rule 80C seeking review of that action. Administrative remedies must be exhausted prior to such review.

SUBCHAPTER III

ENFORCEMENT BY COURT

§2601. Contempt

Upon a motion to enforce an order of support or costs, the court may issue summary process and may find the defaulting person guilty of contempt as provided under Title 14, section 252.

§2602. Support orders

1. Installment payments. In an order of support or costs, the court may include an order to pay specified installment payments as provided under Title 14, sections 3127 to 3136.

2. Future obligations. The court may order installment payments for future obligations under the decree. The court may enforce its decree ordering installment payments as provided under Title 14, sections 3127 to 3136. In enforcement actions under those sections, the person ordered to pay is deemed a judgment debtor and the person entitled to receive the payments a judgment creditor.

3. Disclosure hearing. The court may make an order under subsection 1 without a separate disclosure hearing, if the court has already determined the person's ability to pay and the person's receipt of money from a source other than a source that is otherwise exempt from trustee process, attachment and execution.

§2603. Enforcement of orders

Upon a motion to enforce a judgment of spousal support, support or costs, after notice and an opportunity for hearing, the court may make a finding of money due, render judgment for that amount, and order:

1. Execution and levy. Execution and levy as provided under Title 14, chapter 403;

2. Installment payments. Specified installment payments as provided under Title 14, sections 3127 to 3136, without a separate disclosure hearing, if the court has already determined the judgment debtor's ability to pay and the debtor's receipt of money from a source other than a source that is otherwise exempt from trustee process, attachment and execution;

3. Order to employer or payor of earnings. The employer or other payor of earnings to make direct payments, if the court has ordered installment payments under section 2602 or otherwise. This order has absolute priority over all previously filed orders against earnings and assignments of earnings not relating to enforcement of spousal support, child support or costs;

4. Attachment. Attachment as provided under Title 14, chapter 507;

5. Execution. Execution as provided under Title 14, chapter 509;

6. Other methods. Any other method of enforcement that may be used in a civil action; or

7. Security. The judgment debtor to give security, post a bond or give some other guarantee to secure payment of the judgment.

§2604. Garnishment of military retirement pay

Spouses and ex-spouses of retired military personnel may garnish by order of the court up to 50% of the disposable retired or retainer pay to satisfy child support orders and spousal support orders. This section applies regardless of the date of the child support order or spousal support order or the residence of the spouse or ex-spouse. For purposes of this section, "disposable retired or retainer pay" means the total monthly retired or retainer pay to which a retired military person is entitled, other than the retired pay of a member retired for disability under 10 United States Code, Chapter 61, less amounts excluded by 10 United States Code, Chapter 71, Section 1408.

§2605. Orders relating to the receipt of public assistance or support enforcement services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Public assistance" means public assistance as provided under Title 22, section 3173, 3271 or 3741.

B. "Support enforcement services" means the services provided by the department under section 2103.

C. "Support order" means a decree or order for support of a child, for support pending a divorce action or for alteration of a custody or support order.

D. "Support payments" means money ordered to be paid directly to a parent for the support of a child.

2. Pleading public assistance or support enforcement services. In an action to establish a support order, enforce a support order, amend a support order or to collect support arrearages, if the child is receiving or has received public assistance in a relevant time period, the party bringing the action shall affirmatively plead that fact. If the party is receiving support enforcement services, the party shall affirmatively plead that fact.

3. Notice to State. In an action to establish a support order, enforce a support order, amend a

support order or to collect support arrearages, if the action relates to a period when the child has received, is receiving or will receive public assistance or the party is receiving support enforcement services, a copy of the motion or petition must be furnished by ordinary mail to the department at least 21 days before the hearing.

4. Health insurance. If a support order contains an order for a parent to provide health, medical or hospital insurance coverage and if the insured child is receiving public assistance, then the insuring parent shall provide the department with proof of the insurance coverage within 15 days of receipt of a copy of the order and with written notice of any change in that coverage within 15 days of the change.

5. State reimbursement. If a child is receiving public assistance, the support order must require that support payments be made to the department for the period of public assistance.

§2606. Discovery of past income in department support enforcement cases

The responsible parent has an obligation to supply evidence regarding past income in order to calculate the debt owed the department or an applicant for services under section 2103 if the evidence is reasonably available. A request for evidence regarding past income may be made through a document request pursuant to the Maine Rules of Civil Procedure, Rule 34.

Failure to provide the evidence in the time period set forth in the Maine Rules of Civil Procedure, Rule 34, absent a showing of good cause for failure to do so or notification to the department of good faith attempts to secure the information, allows the court to draw any reasonable inference from the evidence available, including an inference that the responsible parent had a greater earning capacity than the average weekly wage of a worker in this State as defined by the most recent Department of Labor statistics. This remedy is in addition to remedies available under rules of discovery.

§2607. Modification of support order

Modification of child support orders is governed by section 2009.

§2608. Effect and implementation of health insurance obligations; failure of responsible party to comply

1. Failure to obtain insurance. If an obligated parent fails to acquire health insurance coverage as required under section 1653, that parent is liable for any expenses incurred for that parent's dependent

children that would have been paid by the insurance coverage, regardless of who has incurred the expenses. Incurred liability may be enforced as a child support debt under chapter 65, subchapter II, article 3 or by judicial action.

2. Direct payment; parental authorization.

Upon receipt of a written authorization from an obligated parent to an insurer to make health insurance payments for that parent's dependent children to the obligee, the insurer shall make all payments directly to the obligee until the authorization is withdrawn. Upon receipt of such authorization from the obligated parent, the obligee is deemed subrogated to the rights of the obligated parent under the insurance policy for the children.

3. Direct payment; court order. Upon receipt of a copy of the court order establishing the obligation of an obligated parent to provide health insurance coverage for that parent's dependent children, and of a demand in writing for the health insurance coverage from the obligee, the insurer shall make all health insurance payments for the children directly to the obligee until otherwise notified by the obligee. In all such cases, the obligee is deemed subrogated to the rights of the obligated parent under the insurance policy for the children.

SUBCHAPTER IV

INCOME WITHHOLDING

§2651. Income withholding

1. Immediate income withholding; issuance of orders. In any action under this Title or Title 22 in which a court establishes or modifies a support order, the court shall issue an immediate income withholding order in accordance with the requirements of this subchapter, unless the court finds good cause or approves an alternative arrangement as provided in section 2657.

2. Immediate income withholding; modification of orders. Upon the motion of an obligee, an obligor or the department, the court shall modify a support order issued before October 13, 1993 to include an immediate income withholding order.

3. Immediate income withholding; implementation of orders. An immediate income withholding order may be implemented by the department for a recipient of the department's support enforcement services, by a support obligee who does not receive the department's support enforcement services or by a support obligor. An immediate income withholding order is implemented by serving an attested copy of the order upon the obligor's payor of income.

§2652. Provisions of withholding order

An immediate income withholding order must provide for the withholding from the obligor's income of amounts payable as child support, effective from the date of the support order, regardless of whether child support payments by the obligor are past due. The withholding order must include:

1. Amount withheld. The amount of income to be withheld for payment of the obligor's current parental support obligation;

2. Department member number. The obligor's department support enforcement member number, if applicable, and if known to the court;

3. Payor instructions. An instruction to the payor that, upon receipt of a copy of the withholding order, the payor shall:

A. Immediately begin to withhold the obligor's income when the obligor is usually paid;

B. Send each amount withheld to the department at the address set forth in the order within 10 days of the withholding; and

C. Identify each amount sent to the department by indicating the department's support enforcement member number, if known;

4. Notice regarding collection of arrearages. A notice that the withholding order may be used to collect arrearages in addition to current support;

5. Limitation on withholding. A notice that the amount of the withholding may not exceed the limitations imposed by 15 United States Code, Section 1673(b); and

6. Fees. A notice to the obligor and payor of income that the payor of income shall withhold and send to the department a fee of \$2 per week in addition to the amount withheld for child support.

§2653. Administering agency

The department shall adopt and administer procedures to receive, document and distribute all support payments collected pursuant to this subchapter. The commissioner may establish by rule a fee for use of these services. The department shall retain all fees and apply them toward the administration of the division of support enforcement and recovery.

§2654. Payor duty

A payor of income to an obligor named in a withholding order issued under this subchapter must comply with the provisions of the withholding order upon receipt of a copy of the order. The balance of

income due an obligor after withholding must be paid to the obligor on the day the obligor is usually paid. A payor may combine amounts withheld for transmittal to the department from more than one obligor if the portion attributable to each obligor is separately designated, except that the payor may not combine amounts if that action would result in an obligor's withheld income being sent to the department more than 10 days from the date of withholding.

§2655. Payor notice

The department shall develop and make available to the public a payor notice that complies with the requirements of the Social Security Act, Title IV-D and the regulations issued under that Act. Whenever the department, an obligee or an obligor implements a withholding order issued under this subchapter, the party that implements the withholding order shall provide the obligor's payor of income with the payor notice at the time of service of the withholding order.

§2656. Past-due support

1. Withholding order. Upon meeting the conditions of this section, the department or an obligee may use an income withholding order issued under this subchapter to collect past-due support. Past-due support may be collected in addition to or apart from current support. Notwithstanding the provisions of this section, the court may order payment of past-due support by income withholding upon a determination by the court of the amount past due. If the court so orders, the department or obligee need not proceed in accordance with this section and may issue the withholding order to collect the past-due support immediately.

2. Collection of past-due support by department. Before the department may implement an income withholding order issued under this section to collect past-due support, the department must establish the amount of support past due, unless the amount has been established by judicial or administrative action, agreement of the parties or by operation of law.

A. If the obligor's debt for past-due support has been established by judicial or administrative action, agreement of the parties or by operation of law, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

B. If the obligor's debt for past-due support is not established, the department may establish the amount past due by proceeding under section 2352, by asking the court to determine the amount past due or by reaching agreement with the obligor as to the amount past due. Once the obligor's debt for past-due support has been es-

tablished, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

3. Collection of past-due support by private action. To collect past-due support by an income withholding order issued under this subchapter, an obligee who does not receive support enforcement services from the department must:

A. Determine that the amounts payable under the support order are equal to or greater than the amount due for 30 days; and

B. Serve written notice of the obligee's determination of past-due support upon the obligor at least 20 days before service of the determination of past-due support and a copy of the income withholding order upon the obligor's payor of income.

An obligee may serve an income withholding order upon the obligor's payor of income 21 days after service of the obligee's determination of past-due support upon the obligor unless the obligor files a motion for determination of past-due support with the court and an ex parte request for a stay of withholding in accordance with subsection 4. If the obligor does not file a motion for determination of past-due support with the court and request the court to issue an ex parte stay of withholding, the obligee may serve a copy of the obligee's determination of past-due support and a copy of the withholding order upon the obligor's payor of income. The obligee shall send copies of the determination of past-due support and the withholding order served upon the payor of income to the department by regular mail at the time of service. Upon receipt of the copies, the department shall issue a letter to the obligor and obligee that confirms receipt, provides a support enforcement case number to identify payments and explains the department's role as the administering agency.

4. Stay. The court may grant a stay of the withholding of past-due support claimed upon request of the obligor as long as the obligor timely files a motion for determination of past-due support. A stay issued by the court under this subsection must expire in 60 days and may be reissued only upon a showing by the obligor that the obligor has made reasonable efforts to obtain a hearing on the motion for determination of past-due support during the stay.

§2657. Good cause; alternative arrangements

The court may elect not to issue an immediate income withholding order under this subchapter if:

1. Written agreement. A written agreement between the parties providing an alternative arrangement is filed with and approved by the court; or

2. Demonstration of good cause. A party demonstrates and the court finds that there is good cause not to require immediate income withholding. For purposes of this subsection, a finding of good cause by the court must be based on a determination that immediate income withholding would not be in the best interest of the child and a showing by the responsible parent that any previously ordered support was paid timely. The court shall explain the basis for a finding of good cause in the support order.

§2658. Service of process

Service under this subchapter may be by certified mail or in accordance with the requirements of the Maine Rules of Civil Procedure, Rule 4. The department may serve an income withholding order as provided in section 2254.

§2659. Duration of withholding

1. Ended or released. An immediate income withholding order is binding upon an obligor's payor of income until:

A. The court orders withholding ended;

B. If the withholding order was implemented by the obligee as a private withholding action, the obligee releases the payor from the terms of the order in writing; or

C. The department releases the payor from the terms of the order in writing. The department shall issue a release to end immediate income withholding if the department is unable to forward funds to the obligee for 3 months, in which case the department shall return the funds to the obligor.

2. Support paid; refund. The department, or obligee if the obligee implemented the withholding order as a private action, shall issue promptly a release of the withholding order in all cases in which there is no longer a current support obligation and all past-due support has been paid. The department or obligee, as applicable, shall refund the obligor amounts withheld improperly because a release is not issued timely. An obligee is liable to the department for amounts received from the department that the obligee is not entitled to receive.

An income withholding order issued under this subchapter may not be released or ended if the obligor has a current parental support obligation or owes a debt for past-due support, unless the court finds good cause or approves an alternative arrangement for payment of support in accordance with section 2657.

§2660. Priority of order

Notwithstanding any other provision of law, an immediate income withholding order issued under this subchapter has priority over any previously filed attachment, execution, garnishment or assignment of income that is not made for the purpose of enforcing or paying child or spousal support.

§2661. Notice of termination

When a payor of income is unable to continue withholding from an obligor's income because the relationship between the payor and obligor ends, the payor shall send the department a written notice of termination within 15 days. The notice must include:

- 1. Obligor's identification.** The obligor's name, last known address and social security number;
- 2. Department case number.** The obligor's department support enforcement case number;
- 3. Termination date.** The date of termination of the relationship; and
- 4. New payor.** If known, the name and address of a new payor of income to the obligor.

§2662. Payor liability

Upon service of an immediate income withholding order, a payor is liable for any income that the payor knowingly fails to withhold and send to the department within 10 days of the day on which the obligor is usually paid. The department, or obligee if the obligee implemented the withholding order as a private action, may maintain a civil action against the payor for the income the payor does not withhold and send to the department as required by the withholding order and for the imposition of any of the civil penalties provided for in this section, plus attorney's fees and court costs.

- 1. Failure to withhold.** A payor who knowingly fails to withhold income when income is usually paid to the obligor commits a civil violation for which a forfeiture not to exceed \$100 for each failure to withhold may be adjudged.
- 2. Failure to send income withheld.** A payor who knowingly fails to send income withheld to the department within 10 days of its withholding commits a civil violation for which a forfeiture not to exceed \$100 for each failure to timely send income withheld from an obligor may be adjudged.
- 3. Failure to notify.** A payor who knowingly fails to send the notification required by section 2661 commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged.

4. Discrimination against obligors. A payor who discharges from employment or refuses to employ an obligor or who takes disciplinary action against an obligor employed by the payor or who otherwise discriminates against the obligor because of the existence of an income withholding order or the obligations imposed upon the payor by the order is subject to a civil penalty not to exceed \$5,000, payable to the State, to be recovered in a civil action. The payor is also subject to an action by the obligor for compensatory and punitive damages for those actions, plus attorney's fees and court costs.

§2663. Payor fee

The commissioner may establish by rule a fee for the administrative cost of each withholding that a payor may deduct in addition to the amount withheld for support.

§2664. Attested copies

The clerk of the court shall send to the department an attested copy of each order in which a child support obligation is established or modified and an attested copy of the immediate income withholding order.

§2665. Application for services

The department shall furnish and the clerk of the court shall make available to all individuals awarded child support application forms and blank contracts for the department's support enforcement services. The department shall also furnish the clerk with forms that enable an individual to refuse services. The clerk shall send to the department all application forms, contracts and refusal forms submitted together with the attested copies of the orders that the clerk is required to send the department under section 2664. Each individual who is awarded child support by the court must complete either the application form and contract or the form for refusal of services. The court shall inform a person who is awarded child support that that person must complete either the application and contract for services or the form to refuse services and submit them to the clerk.

§2666. Spousal support

Awards for spousal support are subject to immediate income withholding under this subchapter if the award is for a period during which child support is awarded.

§2667. Payor immunity

A payor of income who honors an income withholding order under this subchapter may not be held liable by the obligor for income withheld in compliance with the order.

§2668. Other remedies

An income withholding order issued under this subchapter is an additional remedy to enforce a support order and does not limit the use of other legal remedies that may be available for collection of child and spousal support.

§2669. Rulemaking

The department shall adopt rules to implement its responsibilities under this subchapter.

CHAPTER 67**UNIFORM INTERSTATE FAMILY SUPPORT ACT****SUBCHAPTER I****GENERAL PROVISIONS****§2801. Short title**

This chapter may be known and cited as the "Uniform Interstate Family Support Act."

§2802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Child. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

2. Child support order. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

3. Duty of support. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

4. Home state. "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or a person acting as parent. A period of temporary absence of a parent or a person acting as parent is counted as part of the 6-month or other period.

5. Income. "Income" includes earnings or other periodic entitlements to money from any source and

any other property subject to withholding for support under the law of this State.

6. Income-withholding order. "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided by chapter 65, subchapter IV, to withhold support from the income of the obligor.

7. Initiating state. "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

8. Initiating tribunal. "Initiating tribunal" means the authorized tribunal in an initiating state.

9. Issuing state. "Issuing state" means the state in which a tribunal issues a support order or enters a judgment determining parentage.

10. Issuing tribunal. "Issuing tribunal" means the tribunal that issues a support order or enters a judgment determining parentage.

11. Law. "Law" includes decisional and statutory law and rules and regulations having the force of law.

12. Obligee. "Obligee" means:

A. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been entered;

B. A state or political subdivision to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

C. An individual seeking a judgment determining parentage of the individual's child.

13. Obligor. "Obligor" means an individual or the estate of a decedent:

A. Who owes or is alleged to owe a duty of support;

B. Who is alleged but has not been adjudicated to be a parent of a child; or

C. Who is liable under a support order.

14. Register. "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

15. Registering tribunal. "Registering tribunal" means a tribunal in which a support order is registered.

16. Responding state. "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

17. Responding tribunal. "Responding tribunal" means the authorized tribunal in a responding state.

18. Spousal support order. "Spousal support order" means a support order for a spouse or former spouse of the obligor.

19. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter.

20. State information agency. "State information agency" in this State is the Department of Human Services.

21. Support enforcement agency. "Support enforcement agency" means a public official or agency authorized to seek:

- A. Enforcement of support orders or laws relating to the duty of support;
- B. Establishment or modification of child support;
- C. Determination of parentage; or
- D. The location of obligors or their assets.

The support enforcement agency in this State is the Department of Human Services.

22. Support order. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, that provides for monetary support, health care, arrearages or reimbursement. "Support order" may include related costs and fees, interest, income withholding, attorney's fees and other relief.

23. Tribunal. "Tribunal" means a court, administrative agency or quasi-judicial entity autho-

rized to establish, enforce or modify support orders or to determine parentage.

24. Tribunal of this State. A "tribunal of this State" means the District Court, the Superior Court or the Department of Human Services.

§2803. Remedies cumulative

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

SUBCHAPTER II

JURISDICTION

Article 1

Extended Personal Jurisdiction

§2851. Bases for jurisdiction over nonresident

In a proceeding to establish, enforce or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. Personal service. The individual is personally served with notice within this State;

2. Submits to jurisdiction. The individual submits to the jurisdiction of this State by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. Resided with child. The individual resided with the child in this State;

4. Resided and provided expenses or support. The individual resided in this State and provided prenatal expenses or support for the child;

5. Child resides. The child resides in this State as a result of the acts or directives of the individual;

6. Intercourse. The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse; or

7. Any other basis. There is any other basis consistent with the Constitution of Maine and the United States Constitution for the exercise of personal jurisdiction.

§2852. Procedure when exercising jurisdiction over nonresident

A tribunal of this State exercising personal jurisdiction over a nonresident under section 2851 may apply section 3016 to receive evidence from

another state and section 3018 to obtain discovery through a tribunal of another state. In all other respects, subchapters III, IV, V, VI and VII do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this subchapter.

Article 2

Proceedings Involving 2 or More States

§2901. Initiating and responding tribunal of this State

Under this chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§2902. Simultaneous proceedings in another state

1. Exercise of jurisdiction when filed in another state. A tribunal of this State may exercise jurisdiction to establish a support order when the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

- A. The petition or comparable pleading in this State is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
- B. The contesting party timely challenges the exercise of jurisdiction in the other state; and
- C. When relevant, this State is the home state of the child.

2. Jurisdiction may not be exercised when filed in another state. A tribunal of this State may not exercise jurisdiction to establish a support order when the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

- A. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State;
- B. The contesting party timely challenges the exercise of jurisdiction in this State; and
- C. When relevant, the other state is the home state of the child.

§2903. Continuing, exclusive jurisdiction

1. Tribunal has continuing, exclusive jurisdiction. A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

- A. As long as this State remains the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or
- B. Until each individual party has filed written consent with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

2. Tribunal may not exercise continuing, exclusive jurisdiction. A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

3. Modification by another state's tribunal. If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State and may only:

- A. Enforce the order that was modified as to amounts accruing before the modification;
- B. Enforce nonmodifiable aspects of that order; and
- C. Provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

4. Recognition of jurisdiction of another state's tribunal. A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law substantially similar to this chapter.

5. Temporary support order. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

6. Jurisdiction over spousal support order. A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having

continuing, exclusive jurisdiction over that order under the law of that state.

§2904. Enforcement and modification of support order by tribunal having continuing jurisdiction

1. Initiating tribunal to enforce or modify. A tribunal of this State may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

2. Responding tribunal to enforce or modify. A tribunal of this State having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 3016 to receive evidence from another state and section 3018 to obtain discovery through a tribunal of another state.

3. Responding tribunal to modify spousal support. A tribunal of this State that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Article 3

Reconciliation with Orders of Other States

§2951. Recognition of child support orders

1. Recognition of orders. If a proceeding is brought under this chapter, and one or more child support orders have been issued in this State or another state with regard to an obligor and a child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction.

A. If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

B. If 2 or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals has continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.

C. If 2 or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

D. If 2 or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this State may issue a child support order, which must be recognized.

2. Tribunal having continuing, exclusive jurisdiction. The tribunal that has issued an order recognized under subsection 1 is the tribunal having continuing, exclusive jurisdiction.

§2952. Multiple child support orders for 2 or more obligees

In responding to multiple registrations or petitions for enforcement of 2 or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this State shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this State.

§2953. Credit for payments

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.

SUBCHAPTER III

CIVIL PROVISIONS OF GENERAL APPLICATION

§3001. Proceedings under this Act

1. Application of subchapter. Except as otherwise provided in this chapter, this subchapter applies to all proceedings under this chapter.

2. Proceedings. This chapter provides for the following proceedings:

A. Establishment of an order for spousal support or child support pursuant to subchapter IV;

B. Enforcement of a support order and income-withholding order of another state without registration pursuant to subchapter V;

C. Registration of an order for spousal support or child support of another state for enforcement pursuant to subchapter VI;

D. Modification of an order for child support or spousal support issued by a tribunal of this State pursuant to subchapter II, article 2;

E. Registration of an order for child support of another state for modification pursuant to subchapter VI;

F. Determination of parentage pursuant to subchapter VII; and

G. Assertion of jurisdiction over nonresidents pursuant to subchapter II, article 1.

3. Commencement of proceeding. A proceeding authorized under this chapter may be commenced in any of the following ways.

A. An individual petitioner from another state or a support enforcement agency of another state may file a petition with the department.

B. An individual petitioner from another state or a support enforcement agency of another state may file a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent. The resulting order may be forwarded to the department.

C. An individual petitioner in this State or the department may file a petition with a tribunal in another state that has or can obtain personal jurisdiction over the respondent.

D. An individual petitioner in this State may file a petition with the department. The resulting order may be forwarded to a responding tribunal in another state.

E. The department may file a petition with the court in this State for forwarding to a tribunal in another state.

§3002. Action by minor parent

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§3003. Application of law of this State

Except as otherwise provided by this chapter, a responding tribunal of this State shall:

1. Procedural and substantive law; powers and remedies. Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and

2. Determine duty and amount of support. Determine the duty of support and the amount payable

in accordance with the law and support guidelines of this State.

§3004. Duties of initiating tribunal

Upon the filing of a petition authorized by this chapter, an initiating tribunal of this State shall forward 3 copies of the petition and its accompanying documents:

1. To responding tribunal or agency. To the responding tribunal or appropriate support enforcement agency in the responding state; or

2. To the state information agency. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

§3005. Duties and powers of responding tribunal

1. Duties of responding tribunal. Upon receipt of a petition or comparable pleading from the state information agency, a responding tribunal shall cause the petition or pleading to be filed and notify the petitioner by first class mail where and when it was filed.

2. Powers of responding tribunal. A responding tribunal of this State, to the extent otherwise authorized by law, may:

A. Issue or enforce a support order, modify a child support order or render a judgment to determine parentage;

B. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

C. Order income withholding;

D. Determine the amount of any arrearages and specify a method of payment;

E. Enforce orders by civil or criminal contempt, or both;

F. Set aside property for satisfaction of the support order;

G. Place liens and order execution on the obligor's property;

H. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment;

I. Issue a writ of habeas corpus for an obligor who has failed after proper notice to appear at a hearing ordered

by the tribunal and enter the capias in any local and state computer systems for criminal warrants;

J. Order the obligor to seek appropriate employment by specified methods;

K. Award reasonable attorney's fees and other fees and costs; or

L. Grant any other available remedy.

3. Calculations included. A responding tribunal of this State shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

4. Support not conditional on visitation. A responding tribunal of this State may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

5. Copies of order. If a responding tribunal of this State issues an order under this chapter, the tribunal shall send a copy of the order by first class mail to the petitioner and the respondent and to the initiating tribunal, if any.

§3006. Inappropriate tribunal

If a petition or comparable pleading is received by an inappropriate tribunal of this State, the inappropriate tribunal shall forward the petition or pleading and accompanying documents to an appropriate tribunal or to the state information agency in this State or another state.

§3007. Duties of the department as the support enforcement agency

1. Services to petitioner. The department, upon application and request by an individual or upon request of the support enforcement agency of another state, shall provide services to a petitioner in a proceeding under this chapter.

2. Duties. If the department provides services to the petitioner, the department shall:

A. Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;

B. Request an appropriate tribunal to set a date, time and place for a hearing;

C. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

D. Within 2 days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice from an initiating, responding or registering tribunal, send a copy of the notice by first class mail to the petitioner;

E. Within 2 days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first class mail to the petitioner; and

F. Notify the petitioner if jurisdiction over the respondent can not be obtained.

3. No attorney or fiduciary relationship. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between the department or the attorney for the department and the individual being assisted by the department.

§3008. Duty of Attorney General

The Attorney General shall represent the department in court proceedings brought pursuant to this chapter.

§3009. Private attorney

An individual may employ a private attorney to represent the individual in proceedings authorized by this chapter.

§3010. Duties of the department as the state information agency

1. Duties. The department shall:

A. Compile and maintain a current list, including addresses, of the tribunals in this State that have jurisdiction under this chapter and the department and transmit a copy to the state information agency of every other state;

B. Maintain a register of the lists of tribunals and support enforcement agencies received from other states;

C. Accept from initiating states all petitions and requests for registration. If the department determines that appropriate remedies under chapter 53, subchapter II and chapter 65, subchapter II, article 3 are not available with respect to the obligor, the department shall forward the petition or the documents required for registration to the appropriate court; and

D. Upon application and request by an individual or upon request by the support enforcement agency of another state, obtain information con-

cerning the location of the obligor and the obligor's property within this State not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security.

§3011. Pleadings and accompanying documents

1. Petition; contents. A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section 3012, the petition or accompanying documents must provide, so far as known, the names, residential addresses and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

2. Specify relief sought. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§3012. Nondisclosure of information in exceptional circumstances

Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

§3013. Costs and fees

1. No fees or costs by petitioner. The petitioner may not be required to pay a filing fee or other costs.

2. Fees and costs if obligee prevails. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support

enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

3. Costs and fees if hearing for delay. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under subchapter VI, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§3014. Limited immunity of petitioner

1. Personal jurisdiction in another proceeding. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney or through services provided by the department, does not confer personal jurisdiction over the petitioner in another proceeding.

2. Not amenable to service. For the purpose of participating in a proceeding under this chapter, a petitioner is not amenable to service of civil process while physically present in this State.

3. Not applicable to unrelated acts. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this State for the purpose of participating in a proceeding under this chapter.

§3015. Nonparentage as defense

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

§3016. Special rules of evidence and procedure

1. Physical presence of petitioner not required. The physical presence of the petitioner in a responding tribunal of this State is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

2. Admissible evidence. A verified petition, an affidavit, a document substantially complying with federally mandated forms and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, are admissible in evidence if given under oath by a party or witness residing in another state.

3. Copy of payment record admissible. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

4. Copies of bills admissible. Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

5. No objection based on means of transmission. Documentary evidence transmitted from another state to a tribunal of this State by telephone, telecopier or other means that does not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

6. Testimony not in person. In a proceeding under this chapter, a tribunal of this State may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this State shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

7. Adverse inference from refusal to answer. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

8. No spousal privilege. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

9. No familial immunity. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

§3017. Communications between tribunals

A tribunal of this State may communicate with a tribunal of another state in writing or by telephone or other means to obtain information concerning the laws of that state; the legal effect of a judgment, decree or order of that tribunal; and the status of a proceeding in the other state. A tribunal of this State may furnish similar information by similar means to a tribunal of another state.

§3018. Assistance with discovery

A tribunal of this State may:

1. Request another state's tribunal. Request a tribunal of another state to assist in obtaining discovery; and

2. Compel response. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§3019. Receipt and disbursement of payments

The department shall disburse promptly any amounts received pursuant to a support order as directed by the order. The department shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

SUBCHAPTER IV

ESTABLISHMENT OF SUPPORT ORDER

§3051. Petition to establish support order

1. Responding tribunal may issue support order. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this State may issue a support order if:

A. The individual seeking the order resides in another state; or

B. The support enforcement agency seeking the order is located in another state.

2. Responding tribunal may issue temporary support order. A responding tribunal of this State may issue a temporary support order pursuant to the laws of this State.

3. Tribunal shall issue support order. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 3005.

SUBCHAPTER V

DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

§3101. Enforcement of income-withholding order of another state

1. Income-withholding order. Upon application and request by an individual, upon request of the support enforcement agency of another state or pursuant to an assignment of rights, the department may implement an income-withholding order issued by another state in the same manner as an income-withholding order issued under chapter 65, subchapter IV. An income-withholding order implemented by the

department under this section has the same effect and creates the same obligations as an income-withholding order implemented under chapter 65, subchapter IV. The obligor's employer or other payor of income shall send all payments withheld from the obligor's income to the department for credit and disbursement.

2. Right to hearing. An obligor may request an administrative hearing to contest withholding. Section 3153 applies to the hearing. The department shall notify the obligor of the right to hearing when withholding is implemented.

§3102. Administrative enforcement of orders

1. Documents to state information agency. A party residing in another state seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state shall send the documents required for registering the order to the department.

2. Consider and enforce. Upon receipt of the documents, the department, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the order can not be enforced using available administrative procedures, the department may register the support order or the income-withholding order with the appropriate court.

SUBCHAPTER VI

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

Article 1

Registration and Enforcement of Support Order

§3151. Procedure to register order for enforcement

1. Required documents and information. The department may register a support order or an income-withholding order by forwarding the following documents and information to the appropriate court in this State for registration in this State for enforcement:

A. A letter of transmittal to the tribunal requesting registration and enforcement;

B. Two copies, including one certified copy, of all orders to be registered, including any modification of an order;

C. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearages;

D. The name of the obligor and, if known:

(1) The obligor's address and social security number;

(2) The name and address of the obligor's employer and any other source of income of the obligor; and

(3) A description and the location of property of the obligor in this State not exempt from execution; and

E. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

2. File as foreign judgment. Upon receipt of a request for registration, the registering tribunal shall file the order as a foreign judgment, together with one copy of the documents and information, regardless of their form.

3. Additional petition filed at same time. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration, or later. The pleading must specify the grounds for the remedy sought.

§3152. Effect of registration for enforcement

1. Registered when filed. A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this State.

2. Enforceability of registered order. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

3. Recognition and enforcement of registered order; no modification. Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

§3153. Choice of law

1. Current payments, other obligations and arrearages under order. The law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearages under the order.

2. Proceeding for arrearages. In a proceeding for arrearages, the statute of limitation under the laws of this State or of the issuing state, whichever is for a longer period of time, applies.

Article 2

Contest of Validity or Enforcement

§3201. Notice of registration of order

1. Time and method of notice. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first class, certified or registered mail or by any means of personal service authorized by the law of this State. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

2. Contents of notice. The notice must inform the nonregistering party:

A. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

B. That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

C. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

D. Of the amount of any alleged arrearages.

§3202. Procedure to contest validity or enforcement of registered order

1. Timing and remedies. A nonregistering party seeking to contest the validity or enforcement of a registered order in this State must request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 3203.

2. Order confirmed if contest not timely. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

3. Notice of hearing to the parties. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for

hearing and give notice to the parties by first class mail of the date, time and place of the hearing.

§3203. Contest of registration or enforcement

1. Defenses to contest validity or enforcement.

A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

A. The issuing tribunal lacked personal jurisdiction over the contesting party;

B. The order was obtained by fraud;

C. The order has been vacated, suspended or modified by a later order;

D. The issuing tribunal has stayed the order pending appeal;

E. There is a defense under the laws of this State to the remedy sought;

F. Full or partial payment has been made; or

G. The statute of limitation under section 3153 precludes enforcement of some or all of the arrearages.

2. Full or partial defense. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the laws of this State.

3. Confirmation of order. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

§3204. Confirmed order

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Article 3

Registration and Modification of Child Support Order

§3251. Procedure to register child support order of another state for modification

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this State in the same manner provided in article 1 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

§3252. Effect of registration for modification

A tribunal of this State may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of section 3253 have been met.

§3253. Modification of child support order of another state

1. Modification of order issued in another state. After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if, after notice and hearing, it finds that:

A. The following requirements are met:

- (1) The child, the individual obligee and the obligor do not reside in the issuing state;
- (2) A petitioner, who is either a resident or a nonresident of this State, seeks modification; and
- (3) The respondent is subject to the personal jurisdiction of the tribunal of this State; or

B. An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

2. Modification, enforcement and satisfaction. Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.

3. No modification. A tribunal of this State may not modify any aspect of a child support order

that may not be modified under the law of the issuing state.

4. Modification order; continuing, exclusive jurisdiction. Upon issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

5. Filing of modified order. Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and with each tribunal in which the party knows that the earlier order has been registered.

§3254. Recognition of order modified in another state

A tribunal of this State shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

1. Enforce amounts accruing before modification. Enforce the order that was modified only as to amounts accruing before the modification;

2. Enforce nonmodifiable aspects. Enforce only nonmodifiable aspects of that order;

3. Relief for violations before modification. Provide other appropriate relief only for violations of that order that occurred before the effective date of the modification; and

4. Recognize modifying order. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

SUBCHAPTER VII**DETERMINATION OF PARENTAGE****§3301. Proceeding to determine parentage**

1. Initiating or responding tribunal. A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

2. Law applied. In a proceeding to determine parentage, a responding tribunal of this State shall apply the procedural and substantive laws of this

State, including provisions for blood or tissue-typing tests, and the rules of this State on choice of law.

SUBCHAPTER VIII

INTERSTATE RENDITION

§3351. Grounds for rendition

1. Governor. For purposes of this chapter, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

2. Powers of Governor. The Governor may:

A. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this State with having failed to provide for the support of an obligee; or

B. Upon demand by the governor of another state, surrender an individual found in this State who is charged criminally in the other state with having failed to provide for the support of an obligee.

3. Application of provision for extradition. A provision for extradition of individuals not inconsistent with this chapter applies to the demand described in subsection 2 even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from that state.

§3352. Conditions of rendition

1. Proceedings for support as prerequisite. Before making demand that the governor of another state surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the Governor may require a prosecutor of this State to demonstrate that, at least 60 days previously, the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

2. Criminal charge in another state. If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the Governor surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the

demand for a reasonable time to permit the initiation of a proceeding.

3. Declination to honor demand. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

SUBCHAPTER IX

MISCELLANEOUS PROVISIONS

§3401. Uniformity of application and construction

This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

CHAPTER 69

UNIFORM CIVIL LIABILITY FOR SUPPORT ACT

§3501. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Child. "Child" means a son or daughter under 21 years of age or a son or daughter who is incapable of earning a living and without sufficient means.

2. Parent. "Parent" includes either a biological parent or an adoptive parent.

§3502. Jurisdiction

The Superior Court and the District Court have jurisdiction over all proceedings brought under this chapter.

§3503. Modification of order

The court retains jurisdiction to modify or vacate the order of support when justice requires.

§3504. Evidence of husband and wife

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

§3505. Rights additional to those now existing

The rights created by this chapter are in addition to and not in substitution for any other rights.

§3506. Uniformity of interpretation

This chapter must be interpreted and construed as to effectuate its general purpose to make uniform the laws of those states that enact it.

PART 4**PROTECTION FROM ABUSE****CHAPTER 101****PROTECTION FROM ABUSE****§4001. Purposes**

The court shall liberally construe and apply this chapter to promote the following underlying purposes:

1. Recognition. To recognize domestic abuse as a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development;

2. Protection. To allow family and household members who are victims of domestic abuse to obtain expeditious and effective protection against further abuse so that the lives of the nonabusing family or household members are as secure and uninterrupted as possible;

3. Enforcement. To provide protection by promptly entering and diligently enforcing court orders that prohibit abuse and, when necessary, by reducing the abuser's access to the victim and addressing related issues of child custody and economic support so that victims are not trapped in abusive situations by fear of retaliation, loss of a child or financial dependence;

4. Prevention. To expand the power of the justice system to respond effectively to situations of domestic abuse, to clarify the responsibilities and support the efforts of law enforcement officers, prosecutors and judicial officers to provide immediate, effective assistance and protection for victims of abuse and to recognize the crucial role of law enforcement officers in preventing further incidents of abuse and in assisting the victims of abuse;

5. Data collection. To provide for the collection of data concerning domestic abuse in an effort to develop a comprehensive analysis of the incidence and causes of that abuse; and

6. Mutual order. To declare that a mutual order of protection or restraint undermines the purposes of this chapter.

§4002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Abuse. "Abuse" means the occurrence of the following acts between family or household members or by a family or household member upon a minor child of a family or household member:

A. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults under Title 17-A, chapter 11, except that contact as described in Title 17-A, section 106, subsection 1 is excluded from this definition;

B. Attempting to place or placing another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior;

C. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage;

D. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by:

(1) Removing that person from that person's residence, place of business or school;

(2) Moving that person a substantial distance from the vicinity where that person was found; or

(3) Confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved;

E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed; or

F. Repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment.

2. Adult. "Adult" means a person 18 years of age or older or a person under 18 years of age who is emancipated pursuant to Title 15, section 3506-A.

3. Court. "Court" means a District Court and, with regard to section 4011, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

4. Family or household members. "Family or household members" means spouses or former spouses, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of this chapter only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses."

5. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.

6. Mutual order of protection or restraint. "Mutual order of protection or restraint" means an order that is granted to the defendant in an action under this chapter or the inclusion of language in an order granted to the plaintiff in an action under this chapter that restricts or limits the plaintiff's conduct with regard to the defendant absent the filing of a separate complaint by the defendant, service of the complaint and summons upon the plaintiff and a finding by the court that the plaintiff committed the abuse alleged in the complaint.

§4003. Filing of complaint; jurisdiction

Proceedings under this chapter must be filed, heard and determined in the District Court of the division in which either the plaintiff or the defendant resides. If the plaintiff has left the plaintiff's residence to avoid abuse, the plaintiff may bring an action in the division of the plaintiff's previous residence or new residence.

The District Court has jurisdiction over protection from abuse petitions. If a District Court Judge is not available in the division in which a complaint requesting a temporary order is to be filed, the complaint may be presented to another District Court Judge or to any Superior Court Justice. A Superior Court Justice has the same authority as a District Court Judge to grant or deny the temporary order.

§4004. Application of other acts

The provisions and limitations of the Uniform Child Custody Jurisdiction Act do not apply to a proceeding under this chapter unless it is joined with another proceeding under section 4010, subsection 2.

§4005. Commencement of proceeding

1. Filing. An adult who has been abused by a family or household member may seek relief by filing a complaint alleging that abuse.

When a minor child in the care or custody of a family or household member has been abused by a family or household member, a person responsible for the child, as defined in Title 22, section 4002, subsection 9, or a representative of the department may seek relief by filing a petition alleging that abuse.

2. Assistance. The following assistance is available.

A. The court shall provide separate forms and clerical assistance to either party in completing and filing a complaint or other necessary documents. The assistance may not include legal advice or assistance in drafting legal documents.

B. If a judge is unavailable to review a request for temporary relief under this chapter, the clerk shall immediately notify the plaintiff of other courts at which a judge or justice is available.

C. The clerk shall provide the plaintiff written notice of resources from which the plaintiff may receive legal or social service assistance.

3. Forms. The forms provided by the court must be uniform throughout the State and must include a summons and an affidavit for temporary emergency relief from abuse. The summons must include a section in which to list places where the defendant may be located or available to be served. The clerk shall inquire where the defendant may be located or available to be served and list those locations on the summons or direct the plaintiff to do so.

4. Fees. A fee may not be charged for forms or for filing a complaint. A plaintiff may apply for leave to proceed in forma pauperis.

§4006. Hearings

1. Full hearing. Within 21 days of the filing of a complaint, a hearing must be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. If a request for temporary, emergency or interim relief is denied, the hearing must be held as soon as practicable within the 21-day period.

2. Temporary orders. The court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of abuse to the plaintiff or minor child constitutes good cause. An order remains in effect pending a hearing pursuant to subsection 1.

3. Emergency relief. Emergency relief is available as follows.

A. When there is no judge available in the District Court having venue or the District Court courthouse is closed and no other provision can be made for the shelter of an abused family or household member or minor child, a complaint may be presented to another District Court Judge or Superior Court Justice. Upon a showing of good cause, as defined in subsection 2, the court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse.

B. If a complaint is presented under this subsection, that complaint and any order issued pursuant to it must be forwarded immediately to the clerk of the District Court having venue for filing.

C. An order remains in effect pending a hearing pursuant to subsection 1.

4. Denial of relief. Before a request for temporary, emergency or interim relief is denied, the judge shall:

A. Allow the plaintiff the opportunity to be heard in person to support the complaint. The plaintiff may be accompanied by a person of the plaintiff's choice; and

B. Advise the plaintiff of reasons for the denial.

5. Interim relief. The court, in an ex parte proceeding, may make an order concerning the care and custody of minor children residing in the household and may enjoin the defendant from engaging in the following:

A. Imposing a restraint upon the person or liberty of the plaintiff;

B. Threatening, assaulting, molesting, harassing, attacking or otherwise disturbing the peace of the plaintiff;

C. Entering the family residence or the residence of the plaintiff;

D. Repeatedly and without reasonable cause;

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;

E. Taking, converting or damaging property in which the plaintiff may have a legal interest; or

F. Having any direct or indirect contact with the plaintiff.

If the court enjoins the defendant under this subsection and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

6. Service of order. If the court issues a temporary order or orders emergency or interim relief, it shall order an appropriate law enforcement agency to serve the defendant personally with the order, the complaint and the summons. To protect the plaintiff, the court may order the omission or deletion of the plaintiff's address from papers served on the defendant. The court shall cause the order to be delivered to the law enforcement agency as soon as practicable following the issuance of the order and the law enforcement agency shall make a good faith effort to serve process expeditiously.

7. Dissolution or modification. Notwithstanding any statutory provision to the contrary, upon 2 days' notice to the plaintiff or upon such shorter notice as the court may order, a person who is subject to an order may appear and move the dissolution or modification of the order and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require. At that hearing, the plaintiff has the burden of justifying a finding in the ex parte order that the defendant has challenged by affidavit. This section may not be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

8. Extension. If a hearing under subsection 1 is continued, the court may make or extend temporary orders it considers necessary. Notwithstanding any other provision of this section, if a protective order is issued pursuant to section 4007, the temporary protective order issued pursuant to this section remains in effect pending service of the final order.

§4007. Relief

1. Protection order; consent agreement. The court, after a hearing and upon finding that the defendant has committed the alleged abuse, may grant

a protective order or, upon making that finding, approve a consent agreement to bring about a cessation of abuse. This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. Relief granted under this section may include:

A. Directing the defendant to refrain from threatening, assaulting, molesting, harassing, attacking or otherwise abusing the plaintiff and any minor children residing in the household;

B. Directing the defendant to refrain from going upon the premises of the plaintiff's residence;

C. Directing the defendant to refrain from repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;

D. Directing the defendant to refrain from having any direct or indirect contact with the plaintiff;

E. When the mutual residence or household of the parties is jointly owned or jointly leased or when one party has a duty to support the other or their minor children living in the residence or household and that party is the sole owner or lessee:

(1) Granting or restoring possession of the residence or household to one party, excluding the other; or

(2) A consent agreement, allowing the party with the duty to support to provide suitable alternate housing;

F. Ordering a division of the personal property and household goods and furnishings of the parties and placing any protective orders considered appropriate by the court;

G. Either awarding temporary custody of minor children or establishing temporary visitation rights with regard to minor children when the visitation is determined to be in the best interest of the child, or both;

H. Requiring the defendant to receive counseling from a social worker, family service agency, mental health center, psychiatrist or any other guidance service that the court considers appropriate. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under section 4014;

I. Ordering the payment of temporary support for the dependent party or for a child in the dependent party's custody in accordance with chapter 63, or both, when there is a legal obligation to support that dependent party or that child, or both;

J. Ordering the payment of temporary support payments to the State as provided in chapters 63 and 67;

K. Ordering payment of monetary compensation to the abused person for losses suffered as a direct result of the abuse. Compensatory losses are limited to loss of earnings or support, reasonable expenses incurred for personal injuries or property damage and reasonable moving expenses. Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded;

L. Ordering the defendant or, if the complaint is dismissed, the plaintiff to pay court costs or reasonable attorney's fees; or

M. Entering any other orders determined necessary or appropriate in the discretion of the court.

If the court enjoins the defendant under this subsection and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

2. Duration. A protective order or approved consent agreement is for a fixed period not to exceed 2 years. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it determines necessary to protect the plaintiff or minor child from abuse. The court may continue the order in effect until the hearing under section 4006, subsection 1 on the motion to extend. Upon motion by either party, for sufficient cause, the court may modify the order or agreement from time to time as circumstances require.

3. Consequences of violation. A protective order or approved consent agreement must indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement, as provided in section 4011.

4. Title to property. An order or agreement may not affect title to any real property.

5. Bond prohibited. The court may not require the execution of a bond by the plaintiff prior to issuance of an order of protection.

6. Service of order. The court shall order a law enforcement agency to serve the defendant personally with a protective order or consent decree.

7. Mutual order of protection or restraint. The court may not issue a mutual order of protection or restraint.

8. Action by plaintiff. A plaintiff may extinguish or modify an order only by legal process in accordance with the Maine Rules of Civil Procedure. Any other action or inaction on the part of the plaintiff does not alter, diminish or negate the effectiveness of the order. Criminal sanctions may not be imposed upon the plaintiff for violation of a provision of the plaintiff's order for protection.

9. Financial accounting. In all proceedings under this chapter, the court shall apply the child support guidelines in chapter 63 using the information the plaintiff is able to provide the court. Failure of a party to file an income affidavit may not unnecessarily delay a proceeding and does not preclude the issuance of an order, except that the court shall require the plaintiff to complete and file an income affidavit at a final hearing involving child support even if the defendant does not appear for the hearing.

§4008. Confidentiality of plaintiff's address

To protect the plaintiff or minor child, the court may order the omission or deletion of the plaintiff's or minor child's address from papers available to the public.

§4009. Notification

The clerk shall issue, without fee, a copy of an order, agreement, amendment or revocation to the plaintiff, the defendant and to the law enforcement agencies most likely to enforce it as determined by the court.

§4010. Procedure

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings must be in accordance with the Maine Rules of Civil Procedure. Appeals may be taken as provided by the Maine Rules of Civil Procedure. Appeals may be only for error of law or abuse of discretion.

2. Proceedings independent. All proceedings may be independent of, or joined with, a proceeding for divorce, dissolution of marriage, legal separation or separate maintenance. A proceeding under this chapter is in addition to any other available civil or criminal remedies.

3. Self-defense. The right to relief under this chapter is not affected by the plaintiff's use of

reasonable force in response to abuse by the defendant.

4. Intoxication. Voluntary intoxication is not a defense to an action under this chapter.

5. Mediation. The court may not mandate mediation in actions brought under this chapter.

§4011. Violation

1. Crime committed. Except as provided in subsection 2, violation of the following is a Class D crime:

A. A temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a similar order issued by a court of the United States or of another state, territory, commonwealth or tribe; or

B. A court-approved consent agreement, when the defendant has prior actual notice, which may be notice by means other than service in hand, of the order or agreement.

2. Exception. When the only provision that is violated concerns relief authorized under section 4007, subsection 1, paragraphs H to M, the violation must be treated as contempt and punished in accordance with law.

3. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation of an order or consent agreement may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.

§4012. Law enforcement agency responsibilities

1. Reports. A law enforcement agency shall report all incidents of abuse by adults of family or household members as required by the State Bureau of Identification under Title 25, section 1544.

2. Agency procedures. Law enforcement agencies shall establish procedures to ensure that dispatchers and officers at the scene of an alleged incident of abuse or violation of an order of protection are informed of a recorded prior incident of abuse involving the abused party and can verify the effective dates and terms of a recorded order of protection.

3. Officer training. Law enforcement agencies shall provide officers employed by them with an education and training program designed to inform the officers of the problems of family and household

abuse, procedures to deal with these problems, the provisions of this chapter and the services and facilities available to abused family and household members. The amount and degree of officer training, beyond the distribution of information, must be determined by each local law enforcement agency.

4. Maine Criminal Code enforcement. A law enforcement officer at the scene of an alleged incident of abuse shall use the same standard of enforcing relevant Maine Criminal Code sections when the incident involves family or household members as when it involves strangers.

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation under section 4011 of a court-approved consent agreement or a protection order issued pursuant to this chapter or Title 15, chapter 12-A, or that a violation of Title 17-A, section 208 has occurred between members of the same family or household, that enforcement officer shall arrest and take into custody the alleged offender.

6. Officer responsibilities. When a law enforcement officer has reason to believe that a family or household member has been abused, the officer shall immediately use all reasonable means to prevent further abuse, including:

A. Remaining on the scene as long as the officer reasonably believes there is a danger to the physical safety of that person without the presence of a law enforcement officer, including, but not limited to, staying in the dwelling unit;

B. Assisting that person in obtaining medical treatment necessitated by an assault, including driving the victim to the emergency room of the nearest hospital;

C. Giving that person immediate and adequate written notice of that person's rights, which include information summarizing the procedures and relief available to victims of the family or household abuse; or

D. Arresting the abusing party with or without a warrant pursuant to section 4011 and Title 17-A, section 15.

7. Law enforcement agency policy. Every municipal, county and state law enforcement agency with the duty to investigate, prosecute and arrest offenders of this chapter and Title 17-A shall adopt a written policy on the enforcement of this chapter and the handling of domestic abuse cases in general.

8. District attorney prosecutorial policy. The Attorney General, in consultation with the prosecutors' association, shall develop a written policy regarding

prosecution of domestic abuse cases under the provisions of Title 17-A. The district attorney for each of the several counties within the State shall adopt a written policy regarding prosecution of domestic abuse cases.

§4013. Maine Commission on Domestic Abuse

There is created the Maine Commission on Domestic Abuse, as established by Title 5, section 12004-I, subsection 74-C, referred to in this section as the "commission."

1. Composition; chair. The commission is composed as follows.

A. The Governor shall name the chair from among the following members:

(1) Two members, appointed by the Governor, who are representatives of the state-wide coalition of family crisis services;

(2) Two members, appointed by the Governor, one of whom has experience counseling abusers, who are representatives of the family counseling profession;

(3) One member, appointed by the Governor, who is a representative of victims of domestic violence;

(4) Two members, appointed by the Governor, one of whom has experience representing victims of domestic abuse, who are attorneys with experience in domestic relations cases;

(5) One person, appointed by the Governor, who was a victim of domestic abuse and used the court system;

(6) One member, appointed by the Governor, who is a district attorney or assistant district attorney;

(7) One member, appointed by the Governor, who is chief of a municipal police department;

(8) One member, appointed by the Governor, who is a county sheriff; and

(9) The Commissioner of Public Safety or the commissioner's designee.

B. The Chief Justice of the Supreme Judicial Court is requested to appoint one person to serve the commission in an advisory capacity.

2. Terms of office. The members serve 3-year terms.

3. Powers and duties. The commission shall advise and assist the executive, legislative and judicial branches of State Government on issues related to domestic abuse. The commission may make recommendations on legislative and policy actions, including training of the various law enforcement officers, prosecutors and judicial officers responsible for enforcing and carrying out the provisions of this chapter, and may undertake research development and program initiatives consistent with this section. The entire commission shall meet at least 2 times a year. Subcommittees of the commission may meet as necessary. The commission may accept funds from the Federal Government, from a political subdivision of the State or from an individual, foundation or corporation and may expend these funds for purposes that are consistent with this subsection.

§4014. Certification of batterers' intervention programs

1. Rules establishing standards and procedures for certification. The Department of Public Safety, referred to in this section as the "department," shall adopt rules pursuant to the Maine Administrative Procedure Act, in consultation with the Maine Commission on Domestic Abuse, that establish standards and procedures for certification of batterers' intervention programs. The department, in consultation with the commission, shall review and certify programs that meet the standards.

2. Temporary certification of batterers' intervention programs. The department may certify programs on a temporary basis until final standards are adopted. To receive temporary certification, a batterers' intervention program must submit to the department evidence of the following:

A. The program has established a relationship with an agency in the program's area that is a member of the statewide coalition for family crisis services funded by the Department of Human Services;

B. The program is a minimum of 26 weeks in length;

C. The program includes treatment modalities that are appropriate to each gender;

D. The primary purpose of the program is to provide safety to victims; and

E. The training received by facilitators and the curriculum used are based upon models developed by a nationally recognized program.

Sec. B-3. Transition clause; rules. All rules adopted by any state agency, department or board under the authority of the Maine Revised Statutes, Title 19 continue in force until they are repealed, rescinded, amended or revoked.

Sec. B-4. Rule-making authority. All rule-making authority enacted in this Act is a continuation of rule-making authority contained in the Maine Revised Statutes, Title 19, and is not new rule-making authority for the purposes of Title 5, chapter 375, subchapter II-A. Rules adopted pursuant to rule-making authority enacted in this Act do not require legislative review under Title 5, chapter 375, subchapter II-A.

PART C

Sec. C-1. 14 MRSA c. 13 is enacted to read:

CHAPTER 13

PARENTS, CHILDREN, SPOUSES

§301. Action for alienation of affections prohibited

A person is not liable to any other person in a civil action for the cause of alienation of affections.

§302. Action for loss of consortium

A married person may bring a civil action in that person's own name for loss of consortium of that person's spouse.

§303. Action for loss of services

The parents of a minor child jointly may maintain an action for loss of the services or earnings of that child when that loss is caused by the negligent or wrongful act of another. If one parent refuses to sue, the other may sue alone. This section does not limit, amend, supersede or affect former Title 39, the Workers' Compensation Act or Title 39-A, Part 1, the Maine Workers' Compensation Act of 1992.

§304. Liability of parents or legal guardians for damage by children

If a minor who is between 7 and 17 years of age willfully or maliciously causes damage to property or injury to a person and the minor would have been liable for the damage or injury if the minor were an adult and the minor lives with that minor's parents or legal guardians, the parents or legal guardians are jointly and severally liable with the minor for that damage or injury in an amount not exceeding \$800. This section does not relieve the minor from personal liability for that damage or injury.

Sec. C-2. 17-A MRSA §553, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. Abandonment of a child is a Class D crime, except that abandonment of a child is a Class C crime if the child is under the age of 6.

Sec. C-3. 17-A MRSA §554, sub-§1, ¶B, as amended by PL 1995, c. 263. §1, is further amended to read:

B. Knowingly sells, furnishes, gives away or offers to sell, furnish or give away to a child under 16 years of age any intoxicating liquor, cigarettes, tobacco, air rifles or ammunition for firearms; ~~or~~

Sec. C-4. 17-A MRSA §554, sub-§1, ¶B-1 is enacted to read:

B-1. Being the parent, foster parent, guardian or other person having the care and custody of the child, cruelly treats that child by abuse, neglect or extreme punishment; or

Sec. C-5. 18-A MRSA Art. 1, Pt. 7 is enacted to read:

PART 7

CHANGE OF NAME

§1-701. Petition to change name

If a person desires to have that person's name changed, the person may petition the judge of probate in the county where the person resides; or, if the person is a minor, that person's legal custodian may petition in the person's behalf, and the judge, after due notice, may change the name of the person and shall make and preserve a record of the name change. The fee for filing the petition is \$10.

Sec. C-6. 18-A MRSA §2-109, sub-§(3) is enacted to read:

(3) A divorce or judicial separation does not bar the issue of the marriage from inheriting.

Sec. C-7. 18-A MRSA Art. IX is enacted to read:

Article IX

Adoption

PART 1

GENERAL PROVISIONS

§9-101. Short title

This article may be known and cited as "The Adoption Act."

§9-102. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.

(b) "Adoption services" means services related to adoptions, including but not limited to adoptive home studies, search services and adoption counseling services.

(c) "Adult" means a person who is 18 years of age or older.

(d) "Child" means a person who is under 18 years of age.

(e) "Consent," used as a noun, means a voluntary agreement to an adoption by a specific petitioner that is executed by a parent or custodian of the adoptee.

(f) "Department" means the Department of Human Services.

(g) "Licensed child-placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

(h) "Parent" means the legal parent or the legal guardian when no legal parent exists.

(i) "Petitioner" means a person filing a petition to adopt an adult or child, and includes both petitioners under a joint petition, except as otherwise provided.

(j) "Putative father" means a man who is the alleged biological father of a child but whose paternity has not been legally established.

(k) "Surrender and release," used as a noun, means a voluntary relinquishment of all parental rights to a child to the department or a licensed child-placing agency for the purpose of placement for adoption.

§9-103. Jurisdiction

(a) The Probate Court has exclusive jurisdiction over the following:

- (1) Petitions for adoption;
- (2) Consents and reviews of withholdings of consent by persons other than a parent;
- (3) Surrenders and releases;

(4) Termination of parental rights proceedings brought pursuant to section 9-204;

(5) Proceedings to determine the rights of putative fathers of children whose adoptions or surrenders and releases are pending before the Probate Court; and

(6) Reviews conducted pursuant to section 9-205.

(b) The District Court has jurisdiction to conduct hearings pursuant to section 9-205.

§9-104. Venue; transfer

(a) If the adoptee is placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the court in the county where:

(1) The petitioner resides;

(2) The adoptee resides or was born; or

(3) An office of the agency that placed the adoptee for adoption is located.

(b) If the adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county where the adoptee resides, where the petitioners reside or where the consent has been filed.

(c) If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another probate court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

§9-105. Rights of adopted persons

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption decree so provides, as specified in section 2-109, subsection (1).

§9-106. Legal representation

(a) The biological parents are entitled to an attorney for any hearing held pursuant to this article. If the biological mother or the biological or putative father wants an attorney but is unable to afford one, the biological mother or the biological or putative father may request the court to appoint an attorney. If the court finds either or both of them indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The

attorney may not be the attorney for the adoptive parents.

(b) When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent biological parent at every stage of the proceedings unless the minor biological parent refuses representation or the court determines that representation is unnecessary.

§9-107. Indian Child Welfare Act

The Indian Child Welfare Act, United States Code, Title 25, Section 1901 et seq. governs all proceedings under this article that pertain to an Indian child as defined in that Act.

§9-108. Application of prior laws

The laws in effect on July 31, 1994 apply to proceedings for which any of the following occurred before August 1, 1994:

(a) The filing of a consent;

(b) The filing of a surrender and release;

(c) The filing of a waiver of notice by a father or putative father under former Title 19, section 532-C;

(d) The issuance of an order terminating parental rights; or

(e) The filing of an adoption petition.

PART 2

ESTABLISHMENT OF PATERNAL RIGHTS AND TERMINATION OF PATERNAL RIGHTS

§9-201. Establishment of paternity

(a) When the biological mother of a child born out of wedlock wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and the putative father has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child or waived his right to notice, the biological mother must file an affidavit of paternity with the judge of probate so that the judge may determine how to give notice of the proceedings to the putative father of the child.

(b) If the judge finds from the affidavit of the biological mother that the putative father's whereabouts are known, the judge shall order that notice of the mother's intent to consent to adoption or to execute a surrender and release, or the mother's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative father of the

child. If the judge finds that the putative father's whereabouts are unknown, then the court shall order notice by publication in accordance with the Maine Rules of Probate Procedure. If the biological mother does not know or refuses to tell the court who the biological father is, the court may order publication in accordance with the Maine Rules of Probate Procedure in a newspaper of general circulation in the area where the petition is filed, where the biological mother became pregnant or where the putative father is most likely to be located. The notice must specify the names of the biological mother and the child.

(c) A putative father or a legal father who is not the biological father may waive his right to notice in a document acknowledged before a notary public or a judge of probate. The notary public may not be an attorney who represents either the mother or any person who is likely to become the legal guardian, custodian or parent of the child.

(1) The waiver of notice must indicate that the putative father or legal father understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child, and that by signing the waiver of notice the putative father or legal father voluntarily gives up any rights to the named child.

(2) The waiver of notice may state that the putative father or legal father neither admits nor denies paternity.

(3) The legal father shall attach to the waiver of notice an affidavit stating that, although he is the legal father, he is not the biological father.

(d) If, after notice, the putative father of the child wishes to establish parental rights to the child, he must, within 20 days after notice has been given or within a longer period of time as ordered by the judge, petition the judge of probate to grant to him parental rights. The petition must include an allegation that the putative father is in fact the biological father of the child.

(e) Upon receipt of a petition under subsection (d), the judge shall fix a date for a hearing to determine the putative father's parental rights to the child.

(f) The court shall appoint an attorney who is not the attorney for the putative father, the biological mother or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests.

(g) Notice of the hearing must be given to the putative father, the biological mother, the attorney for the child and any other parties the judge determines appropriate. Notice need not be given to a putative

father or a legal father who is not the biological father and who has waived his right to notice as provided in subsection (c).

(h) Upon order of the court, the department or licensed child-placing agency shall furnish studies and reports relevant to the proceedings.

(i) If, after a hearing, the judge finds that the putative father is the biological father, that he is willing and able to protect the child from jeopardy and has not abandoned the child, that he is willing and able to take responsibility for the child and that it is in the best interests of the child, then the judge shall declare the putative father the child's parent with all the attendant rights and responsibilities.

(j) If the judge of probate finds that the putative father of the child has not petitioned or appeared within the period required by this section or has not met the requirements of subsection (i), the judge shall rule that the putative father has no parental rights and that only the biological mother of the child need consent to adoption or a surrender and release.

§9-202. Surrender and release; consent

(a) With the approval of the judge of probate of any county within the State and after a determination by the judge that a surrender and release or a consent is in the best interest of the child, the parents or surviving parent of a child may at any time after the child's birth:

(1) Surrender and release all parental rights to the child and the custody and control of the child to a licensed child-placing agency or the department to enable the licensed child-placing agency or the department to have the child adopted by a suitable person; or

(2) Consent to have the child adopted by a specified petitioner.

The parents or the surviving parent must execute the surrender and release or the consent in the presence of the judge. The waiver of notice by the legal father who is not the biological father or putative father is governed by section 9-201, subsection (c).

(b) The court may approve a consent or a surrender and release only if the following conditions are met.

(1) A licensed child-placing agency or the department certifies to the court that counseling was provided or was offered and refused. This requirement does not apply if:

(i) One of the petitioners is a blood relative; or

(ii) The adoptee is an adult.

(2) The court has explained the individual's parental rights and responsibilities, the effects of the consent or the surrender and release, that in all but specific situations the individual has the right to revoke the consent or surrender and release within 3 days and the existence of the adoption registry and the services available under Title 22, section 2706-A. The individual does not have the right to revoke the consent when the individual is a consenting party and also a petitioner.

(3) The court determines that the consent or the surrender and release has been duly executed and was given freely after the parent was informed of the parent's rights.

(4) Except when a consenting party is also a petitioner, at least 3 days have elapsed since the parents or parent executed the surrender and release or the consent and the parents or parent did not withdraw or revoke the consent or surrender and release before the judge or, if the judge was not available, before the register.

(c) The consent or the surrender and release must be executed in duplicate. One original consent or surrender and release must be filed in the Probate Court where the consent or the surrender and release is executed. The other original consent or surrender and release must be filed in the Probate Court in which the petition is filed. The court in which the consent or the surrender and release is executed shall provide an attested copy to each consenting or surrendering party and 2 attested copies to the transferee agency, the adoptive parents' attorney or the adoptive parents. The copy given to the consenting or surrendering party must contain a statement explaining the importance of keeping the court informed of a current name and address.

(d) A consent or a surrender and release is not valid until 3 days after it has been executed, except that consent by a parent petitioning to adopt that parent's own child with that parent's spouse is valid upon signature.

(e) Consent may be acknowledged before a notary public who is not an attorney for the adopting parents or a partner, associate or employee of an attorney for the adopting parents when consent is given by:

(1) The department or a licensed child-placing agency; or

(2) A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country.

(f) Except as provided in subsection (g) and section 9-205, subsection (b), a consent or a surrender and release is final and irrevocable when duly executed.

(g) A consent is final only for the adoption consented to, and, if that adoption petition is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to section 9-205.

(h) The court shall accept a consent or a surrender and release by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of that state's bar or a certificate from that court of comparable jurisdiction stating that:

(1) The party executing the consent or the surrender and release followed the procedure required to make a consent or a surrender and release valid in the state in which it was executed; and

(2) The court of comparable jurisdiction advised the person executing the consent or the surrender and release of the consequences of the consent or the surrender and release under the laws of the state in which the consent or the surrender and release was executed.

The court shall accept a waiver of notice by a putative father or a legal father who is not the biological father that meets the requirements of section 9-201, subsection (c).

§9-203. Duties and responsibilities subsequent to surrender and release

Without notice to the parent or parents, the surrender and release authorized pursuant to section 9-202 may be transferred together with all rights under section 9-202 from the transferee agency to the department or from the department as original transferee to any licensed child-placing agency. If the licensed child-placing agency or the department is unable to find a suitable adoptive home for a child surrendered and released by a parent or parents, then the licensed child-placing agency or the department to whom custody and control of that child have been surrendered and released or transferred shall request a review pursuant to section 9-205.

§9-204. Termination of parental rights

(a) A petition for termination of parental rights may be brought in Probate Court in which an adoption petition is properly filed as part of that adoption petition except when a child protection proceeding is pending or is subject to review by the District Court.

(b) Except as otherwise provided by this section, a petition for termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter VI.

(c) The court may appoint a guardian ad litem for the child. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

(1) The court shall pay reasonable costs and expenses for the guardian ad litem.

(2) The guardian ad litem must be given access to all reports and records relevant to the case. In general, the guardian ad litem shall represent the child. The guardian ad litem may conduct an investigation to ascertain the facts that includes:

(i) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;

(ii) Interviewing the child with or without other persons present;

(iii) Interviewing, subpoenaing, examining and cross-examining witnesses; and

(iv) Making recommendations to the court.

§9-205. Review

(a) The court shall conduct a judicial review if:

(1) A child is not adopted within 18 months of execution of a surrender and release;

(2) The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or

(3) An adoption petition is not finalized within 18 months.

(b) If the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a viable plan, the court shall attempt to notify the biological parents, who must be given an opportunity to present an acceptable plan for the child. If either or both parents are able and willing to assume physical custody of the child, then the court shall declare the consent or the surrender and release void.

If the biological parents are not notified or are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the biological parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, then

the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

PART 3

ADOPTION PROCEDURES

§9-301. Petition for adoption and change of name; filing fee

A husband and wife jointly or an unmarried person, resident or nonresident of the State, may petition the Probate Court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is \$10.

§9-302. Consent for adoption

(a) Before an adoption is granted, written consent to the adoption must be given by:

(1) The adoptee, if the adoptee is 14 years of age or older;

(2) Each of the adoptee's living parents, except as provided in subsection (b);

(3) The person or agency having legal custody or guardianship of the child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a judge of probate, may be overruled by the judge. In order for the judge to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence, that the person or agency acted unreasonably. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is on the petitioner, the person or agency should proceed if the person or agency has important facts necessary to the petitioner in presenting the petitioner's case. The judge shall consider the following:

(i) Whether the person or agency determined the needs and interests of the child;

(ii) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;

(iii) Whether the person or agency made the decision consistent with the facts;

(iv) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(v) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding consent; and

(4) A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent.

(b) Consent to adoption is not required of:

(1) A putative father or a legal father who is not the biological father if he:

(i) Received notice and failed to respond to the notice within the prescribed time period;

(ii) Waived his right to notice under section 9-201, subsection (c); or

(iii) Failed to meet the standards of section 9-201, subsection (i);

(2) A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter VI;

(3) A parent who has executed a surrender and release pursuant to section 9-202;

(4) A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country; or

(5) The parent of an adoptee who is 18 years of age or older.

§9-303. Petition

(a) A petition for adoption must be sworn to by the petitioner and must include:

(1) The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;

(2) The date and place of birth of the adoptee, if known;

(3) The birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name, if any;

(4) The residence of the adoptee at the time of the filing of the petition;

(5) The petitioner's intention to establish a parent and child relationship between the petitioner and the adoptee and a statement that

the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

(6) The names and addresses of all persons or agencies known to the petitioner that affect the custody, visitation or access to the adoptee;

(7) The relationship, if any, of the petitioner to the adoptee;

(8) The names and addresses of the department and the licensed child-placing agency, if any; and

(9) The names and addresses of all persons known to the petitioner at the time of filing from whom consent to the adoption is required.

(b) A petitioner shall indicate to the court what information the petitioner is willing to share with the biological parents and under what circumstances and shall provide a mechanism for updating that information.

(c) The caption of a petition for adoption may be styled "In the Matter of the Adoption Petition of (name of adoptee)." The petitioner must also be designated in the caption.

§9-304. Investigation; guardian ad litem; registry

(a) Upon the filing of a petition for adoption of a minor child, when a petitioner is not a blood relative of the child, the court shall notify the department or a licensed child-placing agency, which shall investigate the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. The department or agency shall submit the report to the court. The court may order an adoption study, investigation and home study if a petitioner is a blood relative of the child.

(b) This subsection governs the collection and disclosure of information about the child's background.

(1) The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall obtain medical and genetic information on the biological parents and the child. Specifically, the department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall attempt to obtain:

(i) A current medical, psychological and developmental history of the child, including an account of the child's prenatal care and medical condition at birth, results of newborn screening, any drug or medication

taken by the child's biological mother during pregnancy, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and

(ii) Relevant information concerning the medical, psychological and social history of the biological parents, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health of the biological mother during her pregnancy and the health of the biological parents at the time of the child's birth.

(2) Prior to the child being placed for adoption, the department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall provide the information described in paragraph (1) to the prospective adoptive parents.

(3) If the department, the licensed child-placing agency or other person who acts to place or assists in placing the child for adoption has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents.

(4) The prospective adoptive parents must be informed in writing if any of the information described in this subsection can not be obtained, either because the records are unavailable or because the biological parents are unable or unwilling to consent to its disclosure or to be interviewed.

(5) If, after a child is placed for adoption and either before or after the adoption is final, the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the biological parents or the child may be useful in diagnosis or treatment, the prospective adoptive or adoptive parents may request that the department, the licensed child-placing agency or other person who placed or assisted to place the child attempt to obtain additional information. The department, licensed child-placing agency or other person shall attempt to obtain the information promptly and shall disclose any information collected to the prospective adoptive or adoptive parents as soon as reasonably possible. The department, the licensed child-placing agency or other person may charge a fee to the prospective adoptive or adoptive parents to cover the cost of obtaining and providing the additional information. Fees col-

lected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents.

(6) The department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall file the information collected with the court and, if it appears that the adoption will be granted and this information has not previously been made available to the adoptive parents pursuant to Title 22, section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection (f), with protection for the identity of persons other than the child.

(7) If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be compliance with this subsection.

(c) The court may require that the child live for one year in the home of the petitioner before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.

(d) The court may appoint a guardian ad litem for the child at any time during the proceedings.

(e) Before the adoption is decreed, the court shall ensure that the petitioners are informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

(f) If the judge is satisfied with the identity and relations of the parties, of the ability of the petitioner to bring up and educate the child properly, considering the condition of the child's biological parents, and of the fitness and propriety of the adoption, the judge shall make a decree setting forth the facts and declaring that from that date the child is the child of the petitioner and that the child's name is changed, without requiring public notice of that change.

(g) A certified copy of the birth record of the child proposed for adoption must be presented with the petition for adoption if the certified copy can be obtained or made available by filing a delayed birth registration. After the adoption has been decreed, the register of probate shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

§9-305. Evidence; procedure

(a) The judge may interview any adoptee, and shall interview an adoptee who is 12 years of age or older, outside the presence of the prospective adoptive parents to determine the adoptee's attitudes and desires about the adoption and other relevant issues.

(b) The judge may conduct an inspection in camera of records of relevant child protective proceedings and may disclose only that information necessary for the determination of any issue before the court. Any disclosure of information must be done pursuant to Title 22, section 4008, subsection 3.

(c) The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

§9-306. Allowable payments; expenses

(a) Except when one of the petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this article:

- (1) The actual cost of legal services related to the consent or the surrender and release and to the adoption process;
- (2) Prenatal and postnatal counseling expenses for the biological mother;
- (3) Prenatal, birthing and other related medical expenses for the biological mother;
- (4) Necessary transportation expenses to obtain the services listed in paragraphs (1), (2) and (3);
- (5) Foster care expenses for the child;
- (6) Necessary living expenses for the biological mother and the child;
- (7) For the biological father, legal and counseling expenses related to the consent, the surrender and release and the adoption process; and
- (8) Fees to a licensed child-placing agency providing services in connection with the pending adoption.

(b) Prior to the dispositional hearing pursuant to section 9-308, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report must be signed under penalty of perjury and must be submitted to the court on or before the date the final decree is granted. The accounting report must be itemized and show the services related to the adoption or to the placement of the adoptee for adoption that

were received by the adoptee's biological parents, by the adoptee or on behalf of the petitioner. The accounting must include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed child-placing agency or other person or organization who received funds or anything of value from the petitioner in connection with the adoption or the placement of the adoptee with the petitioner or participated in any way in the handling of the funds, either directly or indirectly. This subsection does not apply when one of the petitioners is a blood relative or the adoptee is an adult.

(c) Payment for expenses allowable under subsection (a), if provided, may not be contingent upon any future decision a biological parent might make pertaining to the child. Other expenses or payments to biological parents are not authorized.

§9-307. Adoption not granted

If the court determines that it is unable to finalize an adoption to which biological parents have consented, the court shall notify the biological parents that the court has not granted the adoption and shall conduct a review pursuant to section 9-205.

§9-308. Final decree; dispositional hearing

(a) The court shall grant a final decree of adoption if:

- (1) All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court;
- (2) An adoption study, when required by section 9-304, has been filed with the court;
- (3) A list of all disbursements as required by section 9-306 has been filed with the court;
- (4) The petitioner is a suitable adopting parent and desires to establish a parent and child relationship with the adoptee;
- (5) The best interests of the adoptee are served by the adoption; and
- (6) All other requirements of this article have been met.

(b) In determining the best interests of the adoptee, the court shall consider and evaluate the following factors to give the adoptee a permanent home at the earliest possible date:

- (1) The love, affection and other emotional ties existing between the adoptee and the adopting person or persons, the biological parent or biological parents or the putative father;

(2) The capacity and disposition of the adopting person or persons, the biological parent or biological parents or the putative father to educate and give the adoptee love, affection and guidance and to meet the needs of the adoptee, taking into account the adoptee's cultural, ethnic or racial background. An adoption may not be delayed or denied solely because the adoptive parent and the child do not share the same race, color or national origin; and

(3) The capacity and disposition of the adopting person or persons, the biological parent or biological parents or the putative father to provide the adoptee with food, clothing and other material needs, education, permanence and medical care or other remedial care recognized and permitted in place of medical care under the laws of this State.

(c) The court shall enter its findings in a written decree that includes the new name of the adoptee. The final decree must further order that from the date of the decree the adoptee is the child of the petitioner and must be accorded the status set forth in section 9-105. If the court determines that it is in the best interest of the child, the court may require that the names of the child and of the petitioner be kept confidential.

(d) Upon completion of an adoption proceeding, the biological parents who consented to an adoption or who executed a surrender and release must be notified of the completion by regular mail at their last known address. Notice under this subsection is not required to a biological parent who is also a petitioner. When the biological parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given to the department and the department shall notify the biological parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion and does not affect the rights or responsibilities of adoptees or adoptive parents.

(e) The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-B.

§9-309. Appeals

(a) Any party may appeal from any order entered under this article to the Supreme Judicial Court sitting as the Law Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child or next friend and costs may not be awarded against either.

(b) An appeal from any order under this article must be expedited.

(c) An attorney or guardian ad litem appointed to represent a party in an adoption proceeding in Probate Court continues to represent the interests of that party in any appeal unless otherwise ordered by the court.

§9-310. Records confidential

Notwithstanding any other provision of law, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. If a judge of probate court determines that examination of records pertaining to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the register of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure.

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18 and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court.

§9-311. Interstate placements

(a) A person or agency who intends to bring a child to this State from another state for the purpose of adoption must provide to the Probate Court the certification of compliance as required by the department pursuant to Title 22, chapter 1153.

(b) A person or agency who intends to remove a child from this State for the purpose of adoption in another state must obtain from the department certification of compliance with Title 22, chapter 1153 prior to the removal of the child from this State.

(c) The Probate Court may not grant a petition to adopt a child who has been brought to or will be removed from this State for the purpose of adoption without department certification of compliance with Title 22, chapter 1153.

(d) An agency or person who fails to comply with this section commits a civil violation for which a penalty of not less than \$100 and not more than \$5,000 may be adjudged.

§9-312. Foreign adoptions

If an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this State to give recognition to the foreign adoption, a judge of probate may

enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adopting parents.

§9-313. Advertisement

Advertising for adoption services or soliciting adoptions is prohibited, except that licensed child-placing agencies may advertise in accordance with rules adopted by the department.

§9-314. Immunity from liability for good faith reporting; proceedings

A person, including an agent of the department, who participates in good faith in reporting violations of this chapter or participates in a related child protection investigation or proceeding is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false.

§9-315. Annulment of the adoption decree

(a) A judge of probate may, on petition of 2 or more persons and after notice and hearing, reverse and annul a decree of the Probate Court for one of the following reasons.

(1) The court finds that the adoption was obtained as a result of fraud, duress or illegal procedures.

(2) The court finds other good cause shown consistent with the best interest of the child.

(b) Notice of a petition to annul must be given to the biological parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

(c) After the Probate Court annuls a decree of adoption, the register of probate shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

PART 4

ADOPTION ASSISTANCE PROGRAM

§9-401. Authorization; special needs children

(a) There is established in the Department of Human Services the Adoption Assistance Program, referred to in this Part as "the program."

(b) Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the department may provide through the program adoption assistance for special needs children in its care or custody or in the custody of a nonprofit private licensed child-placing agency in this State if those children are legally eligible for adoption and, when reasonable but unsuccessful efforts have been made to place them without adoption assistance, would not otherwise be adopted without the assistance of this program.

(c) The department shall, subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, reimburse adoptive parents of a special needs child for one-time adoption expenses when reasonable but unsuccessful efforts have been made to place the child without such assistance.

(d) A "special needs child" means a child who:

(1) Has a physical, mental or emotional handicap that makes placement difficult;

(2) Has a medical condition that makes placement difficult;

(3) Is a member of a sibling group that includes at least one member who is difficult to place;

(4) Is difficult to place because of age or race;

(5) Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or

(6) Has in the family background factors such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems.

(e) For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E.

(f) The amount of adoption assistance may vary depending upon the resources of the adoptive parents and the special needs of the child, as well as the availability of other resources, but may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

(g) The duration of assistance may continue until the cessation of legal parental responsibility or until the parents are no longer supporting the child, at which time the adoption assistance ceases. However, if the child has need of educational benefits or has a physical, mental or emotional handicap, adoption

assistance may continue until the adoptee has attained 21 years of age if the adoptee, the parents and the department agree that the need for care and support exists.

(h) Children who are in the custody of a person or agency in another state who are brought to this State for the purpose of adoption are not eligible for adoption assistance through the program except for reimbursement of nonrecurring expenses if the child meets the requirements of the United States Social Security Act, 42 United States Code, Section 673 (c).

§9-402. Adoption assistance

(a) Applications for the program may be submitted by the following persons:

(1) Foster parents interested in adopting an eligible child in their care;

(2) Other persons interested in adopting an eligible child; or

(3) Adoptive parents who were not informed of the program or of facts relevant to the child's eligibility when they adopted a child who was at the time of adoption eligible for participation in the program.

(b) All applicants for the program must meet department standards for adoption except for financial eligibility.

(c) Assistance may be provided for special needs only and may be varied based on the special needs of the child. Assistance may be provided for a period of time based on the special needs of the child.

§9-403. Administration

(a) A written agreement between the family entering into the program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not apprised of the program.

(b) If assistance continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the family continues to be eligible based on the annual redetermination of need.

(c) Upon the death of both adoptive parents, adoption assistance may be transferred to the legal

guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

§9-404. Rules

The department shall adopt rules for the program consistent with this Part.

Sec. C-8. 22 MRSA c. 260 is enacted to read:

CHAPTER 260

CONSENT OF MINORS FOR HEALTH SERVICES

§1501. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Health care practitioner. "Health care practitioner" has the same meaning as set forth in Title 24, section 2502, subsection 1-A.

2. Health care provider. "Health care provider" has the same meaning as set forth in Title 24, section 2502, subsection 2.

3. Minor. "Minor" means a person under 18 years of age.

§1502. Consent

In addition to the ability to consent to treatment for health services as provided in sections 1823 and 1908 and Title 32, sections 2595, 3292, 3817, 6221 and 7004, a minor may consent to treatment for abuse of alcohol or drugs or for emotional or psychological problems.

§1503. Authority

A minor may give consent to all medical, mental, dental and other health counseling and services if the minor:

1. Living separately; independent of parental support. Has been living separately from parents or legal guardians for at least 60 days and is independent of parental support;

2. Married. Is or was legally married;

3. Armed Forces. Is or was a member of the Armed Forces of the United States; or

4. Emancipated. Has been emancipated by the court pursuant to Title 15, section 3506-A.

§1504. Good faith reliance on consent

A health care practitioner or health care provider who takes reasonable steps to ascertain that a minor is authorized to consent to health treatment as authorized in section 1503 and who subsequently renders treatment in reliance on that consent is not liable for failing to have secured consent of the minor's parent or guardian prior to providing health care services to the minor.

§1505. Confidentiality; notification

1. Confidentiality. Except as otherwise provided by law, a minor who may consent to health care services, as provided in this chapter or by other provision of law, is entitled to the same confidentiality afforded to adults.

2. Parental notification. A health care practitioner or health care provider may notify the parent or guardian of a minor who has sought health care under this chapter if, in the judgment of the practitioner or provider, failure to inform the parent or guardian would seriously jeopardize the health of the minor or would seriously limit the practitioner's or provider's ability to provide treatment.

§1506. Financial responsibility

Unless the parent or guardian expressly agrees to assume full or partial responsibility, a minor who consents to health care services as provided in this chapter is responsible for the costs of those services. A minor may not be denied benefits or services to which the minor is entitled from a health care practitioner, health care provider, insurer or public agency because the minor has given the consent for those services as provided in this chapter.

PART D

Sec. D-1. 4 MRSA §18, sub-§6, as amended by PL 1995, c. 123, §1, is further amended to read:

6. Fees. When the court refers parties to the Court Mediation Service after the filing of a complaint or petition under Title ~~19~~ 19-A, section ~~244~~ 851, 1653 or ~~584~~ 1654, or Title ~~19~~ 19-A, chapter 7, subchapter III or Title ~~19-A~~, chapter ~~43~~ 55, the court shall assess the parties a fee to be apportioned equally between the parties, unless the court otherwise directs. The court may not assess the parties any fees beyond the initial fee, unless one or both of the parties ~~files~~ file, under Title ~~19~~ 19-A, section ~~244~~ 851, 1653 or ~~584~~, 1654 or Title ~~19~~ 19-A, chapter 7, subchapter III or Title ~~19-A~~, chapter ~~43~~ 55, a motion to amend a final decree, a motion to enforce a final decree or a motion for contempt. When the court refers the parties to the Court Mediation Service after the filing, under Title ~~19~~ 19-A, section ~~244~~ 851, 1653 or ~~584~~, 1654 or Title

~~19~~ 19-A, chapter 7, subchapter III or Title ~~19-A~~, chapter ~~43~~ 55, of a motion to amend a final decree, a motion to enforce a final decree or a motion for contempt, the court shall assess the parties another fee to be apportioned equally between the parties, unless the court otherwise directs.

A party may file an in forma pauperis application for waiver of a fee. If the court finds that the party does not have sufficient funds to pay the fee, it shall order the fee waived.

When the court refers parties to the Court Mediation Service pursuant to Title 38, section 347-A, subsection 4, paragraph E, the court shall assess a fee to be apportioned equally ~~among~~ between the parties. The fee must be deposited in the dedicated account created in subsection 6-A. The court shall set the fees at a level sufficient to cover the full cost of mediation services provided pursuant to Title 38, section 347-A, subsection 4, paragraph E.

Sec. D-2. 4 MRSA §152, sub-§5, ¶A, as repealed and replaced by PL 1983, c. 796, §1, is amended to read:

A. Actions for divorce, annulment of marriage or judicial separation and ~~of~~ proceedings under Title ~~19~~ 19-A;

Sec. D-3. 4 MRSA §152, sub-§5, ¶M, as enacted by PL 1989, c. 392, §1, is amended to read:

M. Actions to hear and determine property matters between spouses as provided in Title ~~19~~ 19-A, section ~~466~~, 806 and to make all necessary orders and decrees relating to these matters, to issue all necessary process to enforce the orders and decrees and to cause all the orders and decrees to be enforced;

Sec. D-4. 4 MRSA §807, sub-§3, ¶I, as enacted by PL 1995, c. 419, §3, is amended 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 7 and Title ~~19~~ 19-A, section ~~504-C~~ 2361, subsection 10. This paragraph is repealed October 1, 1998.

Sec. D-5. 5 MRSA §12004-I, sub-§52-A is enacted to read:

<u>52-A.</u>	<u>Family Law</u>	<u>None</u>	<u>19-A</u>
Judiciary:	<u>Advisory</u>	<u>Authorized</u>	<u>MRSA</u>
Family Law	<u>Commission</u>		<u>§351</u>

Sec. D-6. 5 MRSA §12004-I, sub-§74-C, as enacted by PL 1989, c. 862, §1, is amended to read:

74-C. Maine Expenses ~~49~~ 19-A
 Public Safety Commission Only MRSA
 on Domestic Abuse ~~§770-B-~~
~~§4013~~

Sec. D-7. 10 MRSA §8005, as enacted by PL 1993, c. 410, Pt. V, §1, is amended to read:

§8005. Compliance with support orders; license qualifications and conditions

In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by the various acts of bureaus, boards or commissions that compose or are affiliated with the department, applicants for licensure or registration, licensees renewing their licenses and existing licensees must also comply with the requirements of Title ~~49~~ 19-A, section ~~305~~ 2201.

Sec. D-8. 10 MRSA §8006, sub-§2, as enacted by PL 1993, c. 410, Pt. V, §1, is amended to read:

2. Noncompliance with a court order of support. An applicant for the issuance or renewal of a license or an existing licensee regulated by a board who is not in compliance with a court order of support is subject to the requirements of Title ~~49~~ 19-A, section ~~305~~ 2201.

Sec. D-9. 12 MRSA §6308, as enacted by PL 1993, c. 410, Pt. V, §2, is amended to read:

§6308. Compliance with support orders; license qualifications and conditions

In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by the various acts of the department, applicants for licensure or registration, licensees renewing their licenses and existing licensees must also comply with the requirements of Title ~~49~~ 19-A, section ~~305~~ 2201, but only if the license is for commercial use.

Sec. D-10. 12 MRSA §6309, sub-§2, as enacted by PL 1993, c. 410, Pt. V, §2, is amended to read:

2. Noncompliance with a court order of support. An applicant for the issuance or renewal of a license or an existing licensee regulated by the department under this subpart who is not in compliance with a court order of support is subject to the requirements of Title ~~49~~ 19-A, section ~~305~~ 2201, but only if the license is for commercial use.

Sec. D-11. 12 MRSA §7079-A, as enacted by PL 1993, c. 410, Pt. V, §3, is amended to read:

§7079-A. Compliance with support orders; license qualifications and conditions

In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by the various acts of the department, applicants for licensure or registration, licensees renewing their licenses and existing licensees must also comply with the requirements of Title ~~49~~ 19-A, section ~~305~~ 2201, but only if the license is for commercial use.

Sec. D-12. 12 MRSA §7079-B, sub-§2, as enacted by PL 1993, c. 410, Pt. V, §3, is amended to read:

2. Noncompliance with a court order of support. An applicant for the issuance or renewal of a license or an existing licensee who is not in compliance with a court order of support is subject to the requirements of Title ~~49~~ 19-A, section ~~305~~ 2201, but only if the license is for commercial use.

Sec. D-13. 14 MRSA §252, as amended by PL 1989, c. 121, is further amended to read:

§252. Summary process where decree disobeyed; contempt

Whenever a party or the Department of Human Services, if it is subrogated to a party under Title ~~49~~ 19-A, chapter ~~7~~ 65, subchapter ~~V~~ II, article ~~3~~, complains in writing and under oath that the process, decree or order of court, which is not, except as provided in Title ~~49~~ 19-A, section ~~774~~ 2101, for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue by order of any justice, requiring that person to appear on a day certain and show cause why that person should not be adjudged guilty of contempt. Such a process ~~shall~~ must fix a time for answer to the complaint and may fix a time for hearing on oral testimony, depositions or affidavits, or may fix successive times for proof, counterproof and proof in rebuttal, or the time for hearing and manner of proof may be subsequently ordered upon the return day or thereafter. The court may for good cause enlarge the time for the hearing. If the person ~~so~~ summoned does not appear as directed or does not attend the hearing at the time appointed ~~therefor~~ as enlarged, or if, upon hearing, the person is found guilty of such disregard or disobedience, the person ~~shall~~ must be adjudged in contempt and the court may issue a capias to bring the person before it to receive sentence and may punish the person by ~~such~~ any reasonable fine or imprisonment ~~as~~ the case requires. The court may allow the offender to give bail to appear at a time certain, when the punishment may be imposed if the person continues in contempt; but when a second time found guilty of contempt in disregarding or disobeying the same order or decree, no bail ~~shall~~ may be allowed. When

the person purges that contempt, the justice may remit the fine or imprisonment or any portion thereof. Appeal from any order or decree or judgment under this section ~~shall~~ must be governed by the Maine Rules of Civil Procedure. Such an appeal ~~shall~~ may not suspend the enforcement of any such order or decree unless the court so directs.

Sec. D-14. 14 MRSA §704-A, sub-§2, ¶E, as enacted by PL 1975, c. 770, §80, is amended to read:

E. Conception resulting in paternity within the meaning of Title ~~49~~ 19-A, chapter ~~5~~ 53, subchapter ~~III~~ I;

Sec. D-15. 14 MRSA §705, last ¶, as enacted by PL 1993, c. 101, §1, is amended to read:

This section does not apply to service or execution of a protection from harassment order issued under Title 5, chapter 337-A or a protection from abuse order issued under Title ~~49~~ 19-A, chapter ~~44~~ 101.

Sec. D-16. 14 MRSA §2401, sub-§2, as amended by PL 1993, c. 114, §1 and affected by §4, is further amended to read:

2. Identification on docket. On and after January 1, 1992, judicial proceedings in any Maine court, including appeals from judicial proceedings, that affect title to real estate must be identified on the docket. Judicial proceedings subject to this section include but are not limited to proceedings involving:

- A. Partition actions;
- B. Boundary and access disputes;
- C. Insolvency;
- D. Mortgage foreclosure;
- E. Declaratory judgment actions;
- F. Attachment, mechanics liens and other statutory liens;
- G. Dissolution; and
- H. Actions to quiet title.

This section does not apply to the descent of real estate in divorce governed by Title ~~49~~ 19-A, section ~~725~~ 953, small claims actions in District Court or proceedings over which the Probate Court has exclusive jurisdiction.

Sec. D-17. 14 MRSA §3121-A, sub-§1, as amended by PL 1995, c. 419, §7, is further amended to read:

1. Commencement of proceedings. Notwithstanding Title 4, section 155; and any provisions set forth elsewhere, and except as provided in subsection 2 and Title ~~49~~ 19-A, section ~~504-C~~ 2361, subsection 2, any proceeding under this chapter must be commenced in a division of the District Court as follows.

A. Except as provided in paragraph D, if the judgment debtor is an individual who resides within this State, the proceeding must be commenced in the division in which the judgment debtor resides.

B. Except as provided in paragraph D, if the judgment debtor is a nonresident individual, the proceeding must be commenced in the division in which the debtor is commorant.

C. Except as provided in paragraph D, if the judgment debtor is not an individual, the proceeding must be commenced in a division in which the debtor maintains a place of business. If the judgment debtor does not maintain a place of business in this State, the proceeding must be commenced in a division in which a civil summons could be served upon the debtor or in any division in which the action resulting in the judgment could have been brought.

D. Any proceeding under this chapter may be commenced in the division where the judgment creditor, if an individual, resides or, if not an individual, has a place of business, except that a consumer debt proceeding must be commenced, at the option of the creditor, in the division where the consumer transaction occurred or where the judgment debtor resides. Consumer debts are limited to debts arising from purchases that are primarily for personal, family or household purposes.

Sec. D-18. 14 MRSA §3128-A, sub-§1, as enacted by PL 1995, c. 419, §8, is amended to read:

1. Order; exceptions. If a child support obligor claims inability to pay in a disclosure proceeding under section 3125 or Title ~~49~~ 19-A, section ~~504-C~~ 2361, 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 unless:

A. The obligor proves by a preponderance of the evidence that the obligor is engaged in diligent, bona fide efforts to seek work; or

B. The obligor proves by a preponderance of the evidence that the obligor does not have the ability to seek work.

Sec. D-19. 14 MRSA §3134, sub-§1, as amended by PL 1995, c. 419, §9, is further amended to read:

1. Issuance of civil order of arrest. If the judgment debtor fails to appear after being duly served with a subpoena under section 3123 or with an order to appear and disclose under Title ~~19~~ 19-A, section ~~504-C~~ 2361, and the judgment creditor appears at the time and place named in that subpoena, the creditor may request the court to issue a civil order of arrest. The court shall issue a civil order of arrest upon the written request of the creditor stating that the creditor knows of no infirmity, disability or good cause preventing the appearance of the debtor. The request must contain the address and telephone number where the creditor or the creditor's representative can be reached and the address of the debtor.

Sec. D-20. 14 MRSA §3135, last ¶, as amended by PL 1995, c. 419, §10, is further amended to read:

Unless the judgment debtor shows good cause for failure to appear after being duly served with a disclosure subpoena under section 3123, a contempt subpoena under section 3136 or an order to appear and disclose under Title ~~19~~ 19-A, section ~~504-C~~ 2361, the debtor must be ordered to pay the costs of issuing and serving the civil order for arrest. The costs of issuing and serving the civil order for arrest are \$25 plus mileage at a rate of 22¢ per mile. The fee payable to sheriffs and their deputies for civil orders for arrest is governed by Title 30-A, section 421, subsection 6.

Sec. D-21. 14 MRSA §6051, sub-§9 is amended to read:

9. Property matters between husband and wife. To hear and determine property matters between wife and husband or husband and wife as provided in Title ~~19~~ 19-A, section ~~466~~ 806 and to make all necessary orders and decrees relating to such matters, ~~and~~ to issue all necessary process to enforce such orders and decrees, and to cause all such orders and decrees to be enforced;

Sec. D-22. 15 MRSA §891, as amended by PL 1989, c. 862, §2, is further amended to read:

§891. Dismissal on satisfaction of private injury; discharge of bail

When a person has been admitted to bail or is committed by a judge, or is indicted, or held upon a complaint and warrant for an assault or other Class D or E crime, as defined by Title 17-A, section 4-A, for which the party injured has a remedy by civil action, except aggravated assaults, assaults upon or resistance of a law enforcement officer as defined by Title 17-A in the execution of a law enforcement officer's duty,

assaults of those officers and crimes involving family or household members as defined in Title ~~19~~ 19-A, chapter ~~44~~ 101, if the injured party appears before the judge or court, and in writing acknowledges satisfaction for the injury, the court, on payment of all costs, may stay further proceedings and discharge the defendant. The judge may exonerate the bail and release the obligors, supersede the commitment by written order and exonerate the bail of the witnesses.

Sec. D-23. 17-A MRSA §212, sub-§1, as enacted by PL 1991, c. 866, §1, is amended to read:

1. A violation of this chapter committed against a member of the actor's family or household that would otherwise be a Class D crime is a Class C crime if the actor has 2 or more prior Maine convictions for violations of any combination of this chapter or of Title ~~19~~ 19-A, section ~~769~~ 4011. For purposes of this section, the dates of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same date. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of the offense being enhanced is presumed to be that date stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

Sec. D-24. 17-A MRSA §506-A, sub-§1, as amended by PL 1993, c. 475, §4, is further amended to read:

1. A person is guilty of harassment if, without reasonable cause, that person engages in any course of conduct with the intent to harass, torment or threaten another person, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title ~~19~~ 19-A, section ~~765~~ 4006 or ~~766~~ 4007.

Sec. D-25. 17-A MRSA §506-B, sub-§3, as enacted by PL 1993, c. 475, §6, is amended to read:

3. Violation of a protection from abuse order issued under Title ~~19~~ 19-A, section ~~765~~ 4006 or ~~766~~ 4007, subsection 1, paragraphs A to E ~~G~~, is a Class D crime as provided in Title ~~19~~ 19-A, section ~~769~~ 4011, subsection 1.

Sec. D-26. 17-A MRSA §1204, sub-§2-A, ¶D, as amended by PL 1995, c. 405, §1, is further amended to read:

D. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition is considered

only as a violation of probation and may not, in itself, authorize involuntary treatment or hospitalization. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title ~~19~~ 19-A, section ~~770-C~~ 4014;

Sec. D-27. 22 MRSA §12, last ¶, as enacted by PL 1993, c. 415, Pt. E, §1, is amended to read:

The department may expend any unidentified child support payments and any interest earned on those funds that the department has received when the department can not identify the child for which payment was made. The department may expend these funds only in its efforts to enforce child support laws in accordance with Title ~~19~~ 19-A, ~~chapter 7~~ chapters 53, 63, 65 and 67. Before making any expenditure, the department must wait at least 12 months from the date the unidentified funds were received.

Sec. D-28. 22 MRSA §1711-B, sub-§4, as enacted by PL 1991, c. 142, §2, is amended to read:

4. Minors. This section does not affect the right of minors to have their treatment records treated confidentially pursuant to the provisions of ~~Title 19~~, chapter ~~48~~ 260.

Sec. D-29. 22 MRSA §2701, sub-§2, as amended by PL 1987, c. 268, §1, is repealed and the following enacted in its place:

2. Supervision. The state registrar has charge of the Office of Vital Statistics and is custodian of its files and records. The state registrar:

A. Shall preserve all certificates, records and other reports returned to the state registrar under this Title;

B. Has general supervision of this Title and rules of the department relating to the registration of vital statistics;

C. Has general supervision of Title 19-A, chapter 23;

D. Shall direct, supervise and control the activities of all persons engaged in the operation of the system of vital statistics;

E. Shall conduct training programs to promote uniformity of policy and procedures throughout the State in matters pertaining to the system of vital statistics; and

F. Shall monitor the accuracy, completeness and validity of all information returned to the state

registrar under this Title and Title 19-A, chapter 23.

Sec. D-30. 22 MRSA §2765, sub-§1, ¶A, as amended by PL 1993, c. 686, §6 and affected by §13, is further amended to read:

A. A certificate of adoption as provided in Title ~~19~~ 18-A, section ~~4125~~ 9-304, or a certified copy of the decree of adoption along with the information necessary to identify the original certificate and establish the new certificate of birth, except that a new certificate may not be established if so requested by the adopting parents or the adopted person if the adopted person is at least 18 years of age;

Sec. D-31. 22 MRSA §2765, sub-§1-A, ¶A, as amended by PL 1993, c. 686, §7 and affected by §13, is further amended to read:

A. A certificate of adoption as provided in Title ~~19~~ 18-A, section ~~4125~~ 9-304; and

Sec. D-32. 22 MRSA §2801, as amended by PL 1977, c. 9, is repealed.

Sec. D-33. 22 MRSA §2802, as amended by PL 1989, c. 225, §6, is repealed.

Sec. D-34. 22 MRSA §3754, last ¶, as amended by PL 1989, c. 834, Pt. B, §14, is further amended to read:

The department may bring proceedings in the District Court or Superior Court in the county where the child resides or in the county where the parent may be found to compel any person liable under this section to contribute to the support of any child receiving such aid, if after reasonable efforts on the part of the department, voluntary contributions have not been made. The department shall bring the action as a petition for support upon not less than 7 days' notice. The court may order either one or both parents of the child to contribute to the support of the child sums payable weekly or monthly as determined in accordance with Title ~~19~~ 19-A, chapter ~~7~~, ~~subchapter 1-A~~, 63 and may enforce obedience by appropriate decrees, execution issuing for said sums when payable. An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the children or an order to provide a policy or contract for coverage of those expenses. When the defendant is committed to jail on execution under this section, the county having jurisdiction of the process shall bear the expense of the defendant's commitment and support. The defendant may petition the court issuing such execution for relief, whereupon the judge of the court, after due notice to the department and hearing on the petition,

may order the defendant's discharge from imprisonment on ~~such~~ the terms and conditions as justice requires.

Sec. D-35. 22 MRSA §3755-A, sub-§1, ¶¶B, C, E and F, as enacted by PL 1989, c. 255, are amended to read:

B. "Dependent child" has the same meaning as in Title ~~19~~ 19-A, section ~~493~~ 2101.

C. "Earnings" has the same meaning as in Title ~~19~~ 19-A, section ~~493~~ 2101.

E. "Person" has the same meaning as in Title ~~19~~ 19-A, section ~~493~~ 101.

F. "Responsible parent" has the same meaning as in Title ~~19~~ 19-A, section ~~493~~ 2101.

Sec. D-36. 22 MRSA §4005-B, sub-§6, as enacted by PL 1995, c. 290, §4, is amended to read:

6. Reasonable rights of visitation or access. In any proceeding in which standing and intervenor status have been granted, the grandparent may request the court to grant the grandparent reasonable rights of visitation or access. When a child is placed in the prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines, after a hearing, that the contact is not in the child's best interest. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title ~~19~~ 18-A, section ~~4129~~ 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when rights of contact have been previously ordered by a court.

Sec. D-37. 22 MRSA §4007, sub-§6, as repealed and replaced by PL 1993, c. 248, §1, is amended to read:

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title ~~19~~ 19-A, chapter ~~43~~ 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits, and shall provide any

necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title ~~19~~ 19-A, sections ~~342~~ 2002 and ~~344~~ 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title ~~19~~ 19-A, chapter ~~7~~ subchapter I-A 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title ~~19~~ 19-A, section ~~317~~ 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title ~~19~~ 19-A, section ~~777~~ 3 19-A, chapter 65, subchapter IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title ~~19~~ 19-A, section ~~344~~ 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

Sec. D-38. 22 MRSA §4008, sub-§3, ¶B, as enacted by PL 1993, c. 686, §8 and affected by §13 is amended to read:

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-A, section 9-304 or Title ~~19~~ 19-A, section ~~751~~ or 1125 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court;

Sec. D-39. 22 MRSA §4008, sub-§3, ¶G, as amended by PL 1995, c. 391, §2, is further amended to read:

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title ~~19~~ 18-A, section ~~4125~~ 9-304, subsection ~~2~~ (b) and section 8205.

Sec. D-40. 22 MRSA §4031, sub-§1, ¶D, as enacted by PL 1993, c. 686, §9 and affected by §13, is amended to read:

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title ~~49~~ 18-A, section ~~445~~ 9-205.

Sec. D-41. 22 MRSA §4031, sub-§3, as amended by PL 1991, c. 548, Pt. A, §19, is further amended to read:

3. Scope of authority. The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title ~~49~~ 19-A, chapter ~~16~~ 57, the Uniform Child Custody Jurisdiction Act, do not apply to child protection proceedings. If custody is an issue in another pending proceeding, the proceedings may be consolidated in the District Court, with respect to the custody issue. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any ~~other~~ prior order regarding the child's care and custody.

Sec. D-42. 22 MRSA §4036, sub-§1, ¶G, as amended by PL 1989, c. 834, Pt. B, §15, is further amended to read:

G. Payment by the parents of a reasonable amount of support for the child as determined or modified according to Title ~~49~~ 19-A, chapter ~~7~~ subchapter I-A ~~63~~;

Sec. D-43. 22 MRSA §4036, sub-§1, ¶I, as enacted by PL 1995, c. 405, §23, is amended to read:

I. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title ~~49~~ 19-A, section ~~770-C~~ 4014.

Sec. D-44. 22 MRSA §4037, as amended by PL 1993, c. 686, §10 and affected by §13, is further amended to read:

§4037. Authority of custodian

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law. Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title ~~49~~ 18-A, section ~~442~~ 9-302.

Sec. D-45. 22 MRSA §4038-A, as enacted by PL 1993, c. 686, §11 and affected by §13, is amended to read:

§4038-A. Transfer to District Court

If a case is transferred to the District Court pursuant to Title ~~49~~ 18-A, section ~~445~~ 9-205, the

court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038.

Sec. D-46. 22 MRSA §4041, sub-§1, as repealed and replaced by PL 1983, c. 772, §5, is amended to read:

1. Rehabilitation and reunification. When a child has been ordered into the custody of the department under this chapter or under Title ~~49~~ 19-A, section ~~214~~ or section 752 ~~1653~~, the responsibility for reunification and rehabilitation of the family ~~shall~~ must be shared as follows.

A. The department shall:

(1) Develop a rehabilitation and reunification plan, which ~~shall~~ must include the following:

(a) The reasons for the child's removal;

(b) Any changes ~~which~~ that must occur for the child to return home;

(c) Rehabilitation services ~~which~~ that must be completed satisfactorily prior to the return home;

(d) Services available to assist the parents in rehabilitating and reunifying with the child, including reasonable transportation within the area in which the child is located for visits if the parents are unable to afford that transportation;

(e) A schedule of visits between the child and the parents when visits are not detrimental to the child's best interests, including any special conditions under which the visits ~~shall~~ must take place;

(f) A reasonable time schedule for proposed reunification, which is reasonably calculated to meet the child's needs; and

(g) A delineation of the financial responsibilities of the parents and the department during the reunification process;

(2) Provide the parents with prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

- (a) The child's residence and, when practicable, at least 7 days' advance written notice of a planned change of residence; and
- (b) Any serious injuries, major medical care received or hospitalization of the child;
- (3) Make good faith efforts to cooperate with the parents in the development and pursuit of the plan;
- (4) Periodically review with the parents the progress of the reunification plan and make any appropriate changes in that plan;
- (5) Petition for judicial review and return of custody of the child to ~~his~~ the parents at the earliest appropriate time; and
- (6) Petition for termination of parental rights at the earliest possible time that it is determined that family reunification efforts will be discontinued pursuant to subsection 2 and that termination is in the best interests of the child;

B. Parents are responsible for rectifying and resolving problems ~~which that~~ prevent the return of the child to the home and shall take part in a reasonable rehabilitation and reunification plan and shall:

- (1) Maintain meaningful contact with the child pursuant to the reunification plan. When a parent has left the area where the child has been placed, this ~~shall~~ must include making arrangements to visit the child at or near ~~his~~ the child's placement;
- (2) Seek and utilize appropriate services to assist in rehabilitating and reunifying with the child;
- (3) Pay reasonable sums toward the support of the child within the limits of their ability to pay;
- (4) Maintain contact with the department, including prompt written notification to the department of any change of address; and
- (5) Make good faith efforts to cooperate with the department in developing and pursuing the plan; and

C. ~~Where~~ When the parties ~~cannot~~ can not agree as to contents of a reasonable rehabilitation and reunification plan, any party may file a motion for judicial review pursuant to section 4038. At the review, the court shall review the proposed

plans of either party and shall order reasonable reunification plans as it ~~deems~~ determines necessary.

Sec. D-47. 22 MRSA §4052, sub-§2, as amended by PL 1983, c. 249, §1, is further amended to read:

2. Time filed. A termination petition may be brought no earlier than 3 months after disposition under section 4036 or under Title ~~19~~ 19-A, section ~~213, 214~~ 1502 or ~~752~~ 1653.

Sec. D-48. 22 MRSA §4055, sub-§1, ¶A, as amended by PL 1983, c. 249, §2, is further amended to read:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

- (a) Section 4035 or 4038;
- (b) Title ~~19~~ 19-A, section ~~213, 214~~ 1502 or ~~752~~ 1653; or
- (c) Section 3792 prior to the effective date of this chapter; or

(2) The petition has been filed as part of an adoption proceeding in Title ~~19~~ 18-A, ~~chapter 9~~ article IX; and

Sec. D-49. 22 MRSA §4171, sub-§1, ¶A, as enacted by PL 1983, c. 721, is amended to read:

A. Finding adoptive families for children for whom state assistance is desirable, pursuant to the Adoption Assistance Program established in Title ~~19, chapter 10, the Adoption Subsidy Act~~ 18-A, article IX, Part 4, and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and

Sec. D-50. 24-A MRSA §1535, sub-§1, ¶A, as amended by PL 1995, c. 329, §19, further amended to read:

A. The agent is subject to suspension or revocation of license under section 1539, Title ~~19~~ 19-A, section ~~305~~ 2201, subsections 6 and 7 or Title 36, section 175;

Sec. D-51. 25 MRSA §2003, sub-§4, ¶A, as enacted by PL 1985, c. 478, §2, is amended to read:

A. Information of record relative to incidents of abuse by the applicant of family or household

members, provided pursuant to Title ~~49~~ 19-A, section ~~770~~ 4012, subsection 1;

Sec. D-52. 25 MRSA §2003, sub-§5, as enacted by PL 1985, c. 478, §2, is amended to read:

5. Access to confidential records. Notwithstanding that certain records retained by governmental entities are by law made confidential, the records pertaining to patient committals to Augusta Mental Health Institute and Bangor Mental Health Institute, and records compiled pursuant to Title ~~49~~ 19-A, section ~~770~~ 4012, subsection 1, ~~which that~~ are necessary to the issuing authority's determination of the applicant's good moral character and compliance with the additional requirements of this section and of section 2005 ~~shall~~ must, at the request of the issuing authority, be made available for inspection by and dissemination to the issuing authority.

Sec. D-53. 26 MRSA §1191, sub-§7, ¶B, as amended by PL 1993, c. 6, Pt. C, §10, is further amended to read:

B. Notwithstanding any other provisions of this chapter, the commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations and who has been reported under paragraph A:

(1) Amounts in excess of income exempt under Title ~~49~~ 19-A, section ~~502~~ 2356, if neither subparagraph (2) nor subparagraph (3) applies;

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under the United States Social Security Act, Section 454 (20) (B) (i), by the state or local child support enforcement agency, unless subparagraph (3) applies; or

(3) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to legal process, as that term is defined in the United States Social Security Act, Section 462 (e), properly served upon the commissioner, whether or not the individual has been reported under paragraph A.

Sec. D-54. 29-A MRSA §2459, sub-§§1 and 2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to read:

1. Compliance with support orders. In addition to other qualifications and conditions established by this Title, the right of an individual to hold a motor vehicle operator's license or permit

issued by the State is subject to the requirements of Title ~~49~~ 19-A, section ~~306~~ 2202.

2. Certification of noncompliance. Upon receipt of a written certification from the Commissioner of Human Services, as provided for in Title ~~49~~ 19-A, section ~~306~~ 2202, subsection 7, that a support obligor who owns or operates a motor vehicle is not in compliance with a court order of support, the Secretary of State shall suspend the license and right to operate and obtain the license of the individual so certified. The Secretary of State may not reinstate an operator's license suspended for noncompliance with a court order of support until the Commissioner of Human Services issues a release that states the obligor is in compliance with a court order of support or the court orders reinstatement.

Sec. D-55. 30-A MRSA §2652, sub-§1, ¶B, as amended by PL 1993, c. 405, §1, is further amended to read:

B. A birth, marriage or death as required by Title 19-A, section 654 and Title 22, sections 2702, 2703, and 2763 and 2802, 50¢;

(1) The municipality shall pay this fee;

Sec. D-56. 32 MRSA §8105, sub-§4, ¶A, as enacted by PL 1981, c. 126, §2, is amended to read:

A. Records of incidents of abuse by the applicant of family or household members provided pursuant to Title ~~49~~ 19-A, section ~~770~~ 4012, subsection 1;

Sec. D-57. 32 MRSA §9405, sub-§2-C, ¶A, as enacted by PL 1987, c. 170, §10, is amended to read:

A. Information of record relative to incidents of abuse by the applicant of family or household members, provided pursuant to Title ~~49~~ 19-A, section ~~770~~ 4012, subsection 1;

Sec. D-58. 32 MRSA §9405, sub-§4, ¶B, as enacted by PL 1987, c. 170, §10, is amended to read:

B. The records compiled pursuant to Title ~~49~~ 19-A, section ~~770~~ 4012, subsection 1;

Sec. D-59. 32 MRSA §9410-A, sub-§5, ¶B, as enacted by PL 1987, c. 170, §12, is amended to read:

B. The records compiled pursuant to Title ~~49~~ 19-A, section ~~770~~ 4012, subsection 1;

Sec. D-60. 33 MRSA §480, sub-§2, as enacted by PL 1983, c. 748, §2, is amended to read:

2. Divorce action. The nonowner spouse has filed a claim in the registry of deeds pursuant to Title ~~49~~ 19-A, section ~~725~~ 953, and either the divorce action is still pending or the nonowner spouse has been granted an interest in the real estate by the court.

Sec. D-61. 36 MRSA §191, sub-§3, as amended by PL 1995, c. 419, §33, is further amended to read:

3. Additional restrictions for information provided by Internal Revenue Service. Federal returns and federal return information provided to the State by the Internal Revenue Service may not be disclosed to other states, districts and territories of the United States or provinces of Canada, to legislative committees or the agents of the committees, to any person retained on an independent contract basis or the employee of that person, or to the Attorney General for the purpose of criminal investigations and prosecutions unrelated to this Title. These restrictions are in addition to those imposed by subsection 1. Upon request by the Department of Human Services under Title ~~22~~ 19-A, section ~~3755-A~~ 2152, information provided by the Internal Revenue Service concerning the location of interest-bearing accounts in the names and social security numbers of delinquent payors of child support may be disclosed to an authorized representative of the Department of Human Services in the form of a list or automated computer match list.

Sec. D-62. 36 MRSA §5276-A, sub-§1, as amended by PL 1993, c. 395, §23, is further amended to read:

1. Generally. Any agency of the State, including the University of Maine System or the Maine Technical College System, that is authorized to collect from any individual or corporation a liquidated debt greater than \$25 shall notify in writing the State Tax Assessor and supply information necessary to identify the debtor whose refund is sought to be set off. The State Tax Assessor, upon any such notification, shall assist the requesting agency by setting off that debt, pursuant to rules promulgated by the State Tax Assessor, against any refund to which that individual or corporation is entitled under this Part. Liquidated child support debts that the Department of Human Services has contracted to collect, pursuant to Title ~~49~~ 19-A, section ~~448-A~~ 2103 or ~~495~~ 2301, subsection 2, are eligible, under the provisions of this section, for setoff against any refund due the obligated individual. The State Tax Assessor shall provide the creditor agency with the name, address and social security number of each debtor whose refund is subject to setoff.

Sec. D-63. 39-A MRSA §106, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§106. Invalidity of waiver of rights; claims not assignable

No agreement by an employee, unless approved by the board or by the Commissioner of Labor, to waive the employee's rights to compensation under this Act is valid. No claims for compensation under this Act are assignable or subject to attachment or liable in any way for debt, except for the enforcement of a current support obligation or support arrears pursuant to Title ~~49~~ 19-A, chapter ~~7~~ 65, subchapter ~~V~~ II, article ~~3~~ or Title ~~49~~ 19-A, chapter ~~44-A~~ 65, subchapter ~~III~~, or for reimbursement of general assistance pursuant to Title 22, section 4318.

PART E

Sec. E-1. Policy changes. This Act contains the following policy changes.

1. It resolves ambiguities related to marriage licenses and the authority of the State Registrar of Vital Statistics in the Maine Revised Statutes, Title 19-A, chapter 23.

2. It revises the divorce laws to prohibit divorce on the basis of fraud rather than collusion in Title 19-A, chapter 29.

3. It extends the provisions covering domestic abuse to all proceedings that award or allocate parental rights and responsibilities, rather than limiting those provisions to divorce in Title 19-A, chapter 55.

4. It revises the provisions covering the crimes of cruelty to children and abandonment of children and places those crimes in the Maine Criminal Code in Part C.

5. It creates the Family Law Advisory Commission.

6. It revises the waiver requirements for putative fathers and legal fathers under the adoption laws, Title 18-A, Article IX, Part 2. A "putative father" is a person alleged to be the father of a child.

7. It revises consideration of "abandonment of the family residence" in the context of determining parental rights and responsibilities.

8. It requires that all awards of past child support be calculated using the child support guidelines, overruling White v. Allen, 667 A. 2d 112 (Me. 1995).

Sec. E-2. Effective date. Parts B, C, D and E of this Act take effect October 1, 1997.

See title page for effective date, unless otherwise indicated.

CHAPTER 695

S.P. 666 - L.D. 1726

An Act to Implement the Recommendations of the Task Force to Study the Operations of the Department of Inland Fisheries and Wildlife

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, these improvements in the operations of the Department of Inland Fisheries and Wildlife must take effect July 1, 1996; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA §7794, sub-§9, as amended by PL 1989, c. 493, §53, is repealed.

Sec. 2. 12 MRSA §7794, sub-§9-A is enacted to read:

9-A. Certificate of number; term. A certificate of number issued to the owner of a watercraft:

A. If issued prior to July 1, 1996, is valid from the date of issuance of that certificate of number until midnight on the last day of the 12th month after the month of issuance or midnight on December 31, 1996, whichever comes first; and

B. If issued on or after July 1, 1996, must be issued for a specific calendar year and is valid from January 1st to December 31st of the calendar year for which the certificate of number is issued.

A certificate of number issued to a dealer expires at midnight on December 31st of the calendar year for which the certificate was issued.

Sec. 3. 36 MRSA §1503, sub-§8, as amended by PL 1985, c.726, §2, is repealed.

Sec. 4. 36 MRSA §1503, sub-§8-A is enacted to read:

8-A. Registration period. The term "registration period" means, for watercraft having a certificate of number issued under Title 12, section 7794:

A. Prior to July 1, 1996, the period from the date of issuance of that certificate of number until midnight on the last day of the 12th month after the month of issuance or midnight on December 31, 1996, whichever comes first; and

B. On or after July 1, 1996, from January 1st to December 31st of the calendar year for which the certificate of number is issued.

Sec. 5. PL 1995, c. 455, §44, sub-§8 is enacted to read:

8. Additional task force meeting. The chair of the task force shall call a meeting of the task force on any day between June 1, 1996 and June 30, 1996 to review the progress of the Department of Inland Fisheries and Wildlife in implementing the recommendations of the task force. Members of the task force are not entitled to compensation or reimbursement of expenses for any meeting held under this section.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1996-97

INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF Savings Fund Program

All Other	\$178,000
Appropriates funds to be used only to avoid future license fee increases.	

Sec. 7. Retroactivity. That section of this Act that amends Public Law 1995, chapter 455 applies retroactively to December 1, 1995.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 11, 1996.