

# MAINE STATE LEGISLATURE

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# MAINE FAMILY LAW ADVISORY COMMISSION

## Report to Maine Legislature Joint Standing Committee on Judiciary On LD 1024

### **“Resolve, to Study the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity”**

#### Introduction

The Maine Family Law Advisory Commission hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 1024, “Resolve, to Study the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity”

#### Discussion

This resolve establishes the Study Commission on the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity.

As presented, there is a question as to whether the current system of child support and spousal support can cause systemic inequities in the system toward male parents as opposed to female parents. The Judiciary Committee has asked for FLAC's input on whether FLAC could itself study the issues raised in the bill and public testimony.

In response to the Committee’s request, FLAC created an *ad hoc* committee that engaged with other agencies to develop and provide information that we hope will be helpful in responding to most, if not all the Committee’s concerns surrounding these issues.

It is necessary to first explain the process of the Family Law Magistrates and the significant role they play in avoiding inequities in divorce, child support and custody issues relating to health, poverty, and housing insecurity.

#### Family Law Magistrates

All family matters involving children are assigned first to a Family Law Magistrate. M.R. Civ. P. 110A. Family Law Magistrates are judicial officers with limited jurisdiction. There are eight Family Law Magistrates serving Maine’s District Courts. They are all well-respected and qualified members of the Maine Bar with substantial experience in family law and a strong commitment to public service. As explained below, the Family Law Magistrates provide a significant benefit to Maine families and to the Maine Judicial Branch.

Family Law Magistrates conduct a case management conference to promptly assess and address a family’s needs as the first step in processing family matters involving children. At the case management conference, the Family Law Magistrate (1) explains the court process to the

parties; (2) helps the parties identify issues on which the parties agree; (3) enters interim court orders; and (4) determines how to help the parties resolve any issues remaining in dispute.

One of the Family Law Magistrate's primary role is to ensure that the children's financial needs are met while the case is pending. If the parties are unable to agree to an interim order of child support at the case management conference, the Family Law Magistrate will hold an interim child support hearing immediately following the conference or not more than 63 days after the case management conference. M.R. Civ. P. 108(f)(2). All interim orders entered by a Family Law Magistrate may be "decided de novo [i.e., anew] at the final hearing." M.R. Civ. P. 110A(b)(7).

The Legislature has determined that when minor children are involved in a family matter, the court must refer the parties to mediation, except for "extraordinary cause shown." 19-A M.R.S. § 251(2)(B). In cases involving domestic abuse, the court may find "extraordinary cause" and waive mediation or may give the parties the option to mediate in separate rooms. At mediation, the parties are assisted by a professional mediator who is rostered by the Court Alternative Dispute Resolution Services (CADRES).

When the parties are unable to reach a full agreement through mediation, the court will schedule their case for a final hearing. When all parties consent, a Family Law Magistrate is authorized to hear and dispose of all elements of a Family Division matter, except adoptions, provided that the Family Law Magistrate determines that it is reasonably likely that the hearing can be completed within 3 hours. [M.R. Civ. P. 114 (b) (3).]

A judge will preside over all other final hearings in family matters. See 4 M.R.S. § 183(1)(D); M.R. Civ. P. 110A(5)(B). All final orders entered by Family Law Magistrates are subject to review by a District Court Judge if a party files an objection within 21 days after entry of the Family Law Magistrate's final order. M.R. Civ. P. 118(a). When an objection is filed, a Judge will review the record established before the Family Law Magistrate and, with or without a hearing, may (1) adopt, modify, or reject the order; (2) set the matter for further hearing; or (3) recommit the matter to the Family Law Magistrate with instructions. M.R. Civ. P. 118(a)(2). A party whose timely objection to the Family Law Magistrate's order was unsuccessful may appeal from a judge's final judgment in accordance with the Maine Rules of Appellate Procedure. M.R. Civ. P. 118(b).

When there has been a "substantial change in circumstances" since the entry of the most recent decree, and a modification would serve the best interest of a child, a party may ask the court to change provisions relating to parental rights and responsibilities in that decree by filing a post-judgment motion to modify. All post-judgment motions asking to modify or enforce provisions related to minor children are assigned to a Family Law Magistrate for case management. M.R. Civ. P. 110A(b)(6).

#### The Interrelation Between Child Support and the Parties.

In Maine, the statutory method for calculating child support takes into account both the obligor parent's ability to pay and the obligee parent's capacity to support the child. 19-A M.R.S. § 2006 (2023); *see Levy, Maine Family Law* § 6.5[1] at 6-43 (8th ed. 2013) ("The financial support of a child of divorced parents is the equal responsibility of each parent to be discharged in accordance with each parent's capacity and ability to support the child . . . ."); *cf. Twomey v.*

*Twomey*, 2005 ME 124, ¶ 13, 888 A.2d 272 (tying, in part, the showing of a substantial change in circumstances that may support a downward modification of a child support order to the obligor parent's diminished ability to contribute to the child's financial support); *Absher v. LaCombe*, 432 A.2d 1241, 1242-43 (Me. 1981) (requiring a party seeking an upward modification of a child support order to prove that the obligor parent had "sufficient financial resources to meet the requested increase"); 10-144 C.M.R. ch. 351, ch. 7, § 1(A)-(C) (effective July 6, 2016) (ensuring that, when imputing income based on a parent's voluntary unemployment or underemployment, the amount ordered for support is based on evidence of the obligor's ability to pay).

Child support is calculated under an "income share formula." Levy, *Maine Family Law* § 6.5[2][a] at 6-45 (quotation marks omitted). Under this approach, a support figure is "based upon an estimate of the share of each parent's income that would have been allocated to the child if the parents of the child were living in an intact household." *Id.* (quotation marks omitted); *see also* 19-A M.R.S. § 2006(1), (4). Accordingly, although increasing an obligor parent's gross income results in a greater payment to the obligee parent, the same reasoning is applied in calculating the obligee parent's income: an increase to the obligee parent's income results in a lower child support payment by the obligor parent. [ *Howard v White*, 24 ME 9].

The Judges and Family Law Magistrates in a vast majority of the cases regarding Child Support follow the presumptive amount from the table. However, the Court does not in all cases utilize the presumptive amount of Child Support. When there is good reason (more than "just by the parties' agreement") the Court can and does deviate from the presumptive child support amount.

## **§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 application of section 2006, subsection 5, paragraph D or D-1 would be unjust, inequitable or not in the child's best interest.
- 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 if the obligor is awarded any tax benefits. In determining the allocation of tax exemptions for children, the court may consider which party will have the greatest benefit from receiving the allocation;
- M. Repealed.
- N. The fact that income at a reasonable rate of return may be imputed to non-income-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.

The Court may also utilize the actual earnings of the obligor rather than impute the State of Maine minimum wage. For example, someone who does not have a high school education and has consistently earned less than minimum wage would not be imputed to the State of Maine minimum wage of \$29,423. Another is the subsistence needs of the obligor. It does not help the child or children if the obligor cannot meet their expenses and then have a very burdensome child support obligation to be able to care for the children.

In light of all of the above, the Court takes into consideration the subsistence needs of the parties when ordering a fair amount of Child Support that meets the needs of the children yet is also in the child's best interest. Families do not benefit from an obligation that exceeds what a parent can legitimately afford to pay.

There is also support provided to parents through the Department of Health and Human Services in the Division of Support Enforcement and Recovery ("DSER"). Attached to this report is the Maine Child Support Services information sheet for parents who seek enforcement and/or assistance regarding child support obligations. This information provides helpful and instructional tools for parents regarding child support.

Finally, FLAC reached out to Jerry Joy, Director of the Division of Support Enforcement and Recovery at the Maine Department of Health and Human Services, and requested assistance specifically related to child support regarding the Committee's concerns about the potential negative impacts the current child support guidelines, statutes, and enforcement have on families at or near the poverty line. FLAC was aware of a recent child support guidelines review by Dr. Jane Venohr, and the recent updates to the child support table which would help shed some light. FLAC felt that many of the Committee's concerns are addressed in Dr. Venohr's comprehensive report.

Director Joy graciously responded to our request. Attached to this report is a letter from Director Joy outlining Dr. Venohr's report, which FLAC feels will be most helpful.

Please do not hesitate to reach out to FLAC for further assistance in this regard.

Dated: March 4, 2024

Respectfully submitted:

Maine Family Law Advisory Commission  
Hon. John Martin, District Court Judge (Chair)  
Hon. Stephen Nelson, Superior Court Justice  
Hon. Steven Chandler, Family Law Magistrate  
Hon. Scott Houde, Probate Court Judge  
Christopher McLaughlin, MSW, LCSW  
Timothy E. Robbins, Esq., Executive Director, Kids First Center  
Edward S. David, Esq.  
Diane E. Kenty, Esq., Maine Judicial Branch, CADRES  
Catherine Miller, Esq.  
Linsey Ruhl, Esq., Pine Tree Legal Assistance  
Debby Willis, AAG., Maine Dept. of Health and Human Services Appointee



Janet T. Mills  
Governor

Jeanne M. Lambrew, Ph.D.  
Commissioner



Maine Department of Health and Human Services  
Office for Family Independence  
Division of Support Enforcement and Recovery  
109 Capitol Street, 11 State House Station  
Augusta, Maine 04333-0011  
Tel.: (207) 624-4100; Fax: (207) 287-6882  
TTY: Dial 711 (Maine Relay)

Wednesday, February 14, 2024

Honorable John Martin, District Court Judge  
Chair, Family Law Advisory Commission  
Maine District Court  
P.O. Box 249  
Wiscasset, Maine 04578-0249

Re: LD 1024, Resolve, to Study the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity – Response to Child Support Concerns Raised by Senator Anne M. Carney and Representative Matthew W. Moonen in Letter Dated May 5, 2023 to the Family Law Advisory Commission

Dear Judge Martin,

The Division of Support Enforcement and Recovery (“DSER”) of the Office for Family Independence of the Department of Health and Human Services (“DHHS”), is the State of Maine’s child support program. Among DSER’s program requirements (established under both federal and state law) are to: (1) assist parents in establishing and enforcing support orders, including requests to locate noncustodial parents; (2) to establish paternity in child support cases; and (3) to initiate proceedings to establish and collect support awards. Child support is calculated and determined using guidelines that have been adopted pursuant to state statute and promulgated by rule. Federal law requires that states review guidelines at least once every four years and adjust them to reflect the cost of living in each state. Maine most recently updated its guidelines in 2022 (Maine 2023 table, <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/Maine%20Child%20Support%20Table.pdf>). DSER published a report, *Review of the Maine Child Support Guidelines*, that explains in detail the guidelines review process, federal and state statutory requirements, and the economic data used to update the table. (2022 Guidelines Report, <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/2022%20Guidelines%20Review.pdf>).

Of concern during the review process was the impact of recent year increases in the cost of living and, in particular, the impact of rising costs on lower income families. A nationally recognized economist, Dr. Jane Venohr, Ph.D., reviewed up-to-date economic studies and adjusted them to Maine which are reflected in the support amounts now listed in the guidelines table. The overall effect of the adjustments was to reduce the amount of child support required of low-income obligors which arguably may result in less support available to obligees at least from the noncustodial parent. Thankfully, inflation has begun to slow and wages have risen which hopefully will provide some measure of relief to low-income families. DSER will study and consider these economic impacts during the next quadrennial guidelines review due under federal law in 2026.

Federal requirements for state guidelines require a state to:

- Consider all income and the evidence of ability to pay;



- Consider the basic subsistence needs of the obligated parent with limited ability to pay;
- Take into consideration the individual circumstances of the obligated parent when income imputation is authorized; and
- Provide that incarceration is not voluntary unemployment.

Maine meets all these requirements as discussed further below.

#### *Income Shares Model.*

Maine has a shared income model that combines the income of both parents. The obligation is per child and is split in proportion to each parent's share of the total income. In addition, Maine's guidelines rely on economic studies estimating child-rearing expenditures for a range of incomes. This is based on the premise that children should share in the lifestyle afforded by their parents. If the parent's income affords the parent a higher standard of living, the support order should be more for the higher-income parent. The children should benefit from the same level of expenditures had the children and both parents lived together. The underlying economic studies look at the costs for housing, food, transportation, entertainment, and apparel. There are some other costs including personal care products, reading materials, education fees, banking fees, interest paid on lines of credit and other expenses.

#### *Low Income Adjustment, Self-Support Reserve & the Presumptive Basic Support Obligation.*

As federally required, Maine considers the subsistence needs of the obligated parent. Obligor's who are in poverty (that is, whose gross income is less than \$16,800 per the guidelines table) pay no more than 10% of their gross income for support. Obligor's whose income is above the 10% threshold and within the shaded area of the table (the "self-support reserve") pay child support per the amounts set forth in the table plus a portion of shared costs. Above the self-support reserve in the table, the child support amounts in the table are based upon the parent's combined annual gross income and are presumptive, basic support obligations plus a portion of shared costs. The intent of federal and state law is that full payment of the guidelines-determined amount should allow an obligated parent to live at least as a subsistence level or above.

#### *Order Review, Change in Circumstances, Imputation of Income for Unemployed and Underemployed Parents & Incarcerated Obligor's.*

State law allows child support orders to be reviewed every 3 years and sooner if there is a substantial change in the circumstances of the parties. A child support order that varies by more than 15% is considered a substantial change in circumstances. Child support orders based upon the up-to-date financial information of the parties should not drive the family into poverty or create homelessness. If post-separation or post-divorce events (such as job loss or a parent starting a new family) result in changed circumstances, a party may seek to modify the support order. Maine is fortunate to have a dual system of order establishment and review; child support orders may be entered into or modified both through the courts and an administrative process that is often more expedited than the judicial system.

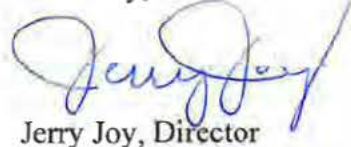
In general, the income of parents is taken into account when determining child support and not the income of nonparents who have no legal obligation to support the child. However, a particular parent's living situation may demonstrate an increased ability to pay (that is, more income of the parent may be

available for support due to fewer household obligations or payments in kind may be taken into account). The law also allows for the imputation of income to a parent who is unemployed, underemployed or declines to provide current financial information. Except when a parent is not working because they are taking care of a child under the age of 2, income is assigned to each parent during the child support calculation process. When imputation is used, the law requires that the process take into consideration the individual circumstances of the obligated parent and provides that incarceration not be considered voluntary unemployment.

I understand that a request was made that the Family Law Advisory Commission use its expertise to examine the State's child support laws and the impact that these laws may have on housing insecurity and poverty. While the guidelines review and report conducted by DSER did not single out housing, economic considerations and conditions in Maine were taken into account as the recommended guidelines were determined. Obligor living in poverty, the need for self-support and subsistence, and the effect of the guidelines on low-income families were considered. The review and adoption process of the guidelines was open for public comment and the Department reached out to various stakeholders in the community prior to finalizing the guidelines.

If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jerry Joy", with a stylized flourish extending from the end.

Jerry Joy, Director



# Maine Child Support Services

## Thank you for your interest in Maine's Child Support Services

Whether you are considering applying, or have recently applied, welcome. We have a lot of resources available to help you collect your child support. If you would like an application or have questions at any point in your child support journey, please feel free to reach out to us. You can do this by :

- Calling us between 10am – 3pm @ 207-624-7830 or 800-371-7179
- Emailing us at [Case.Review@Maine.Gov](mailto:Case.Review@Maine.Gov)
- Using our customer portal @ <https://gateway.maine.gov/DHHS/m-cportal/auth>

## What happens when a Child Support case is opened?

Before a new or reopened case can be sent to the field office where enforcement work is done, DSER's Central Office must create or amend the computer file for the case and confirm the information you have provided. Once your application is complete, your case could be in a field office in 4-6 weeks, often even less. If you have little information about the other parent, it could take longer as we must verify the individual's address before the case can be assigned.

Once your case goes to a field office it is assigned to an agent who will manage the case.

## Services DSER can help provide:

- Locating the non-custodial parent
- Establishing paternity for children born out of wedlock including arranging genetic testing for both parents and child.
- Establishing child support orders for current and past support; also including medical support/insurance and childcare.
- Enforcing child support, spousal support that accompanies child support, medical support/insurance, and childcare obligations.
- Collecting, recording and disbursing child support payments.
- Reviewing and taking necessary steps to modify child support orders when circumstances change. The timeframe of this service is subject to the availability of resources.

## Services DSER cannot provide:

- Legal advice.
- Obtaining divorce judgments or spousal support orders.
- Enforcing visitation rights or getting involved in custody matters.
- Enforcing property settlements.
- Services to children seeking child support from a parent. Your guardian or custodian, however, may seek assistance from DSER.
- Legal representation to you or the non-custodial parent. When an Assistant Attorney General is assigned to a case, that attorney's client is DHHS, not you or the other parent. You may hire your own attorney representative if you desire.
- Charging interest on child support debts.
- Establishing or enforcing orders for tuition.

DSER will decide which actions should be taken to achieve success for you. We cannot guarantee success, but we will give our best effort given our resources. By signing the application, you acknowledge your understanding of what we can and can't provide for you.

#### **Distribution of non- Federal Tax child support collections in non-TANF cases:**

- Non-TANF collections normally are processed within two days of the date payment is received by DHHS.
- If the other parent is ordered to pay support for more than one family, collections are divided among the families according to a federally established formula.
- Current support is always paid first.
- If you are owed past support, your debt will be paid first from collections applied to your case.

#### **Distribution of Federal Tax Offset collections in non-TANF cases:**

- Federal Tax Offset collections are first applied to public assistance debt.
- Collections from federal income tax refunds may not be disbursed for up to 6 months as they may be subject to adjustment.

#### **When services end:**

If at any time you no longer want DSER's services, tell us in writing. We will need your signature. If DSER wants to end services, we will tell you in writing and explain why. We will give you a chance to respond before ending services. Some of the reasons for ending services are:

- The other parent no longer owes child support.
- You or your representative will not cooperate with us.
- We cannot contact you because we do not have your current address.

#### **Child Support –Annual Federal Fee of \$35**

Under 42 United States Code, section 654(6)(B)(ii), states are required to pay a \$35 annual federal fee for certain child support cases. To reimburse this fee, Maine Revised Statutes, Title 19-A, section 2103(3-A) requires DSER to charge the custodial parent a \$35 fee every year for each case in which:

- DSER has disbursed at least \$550 of child support to the family; and
- the family has **never** received cash assistance from Temporary Assistance to Needy Families (TANF)

Each year, in each eligible case, DSER will redirect \$35 from the custodial parent's child support payments, but only after it has disbursed \$550 to the custodial parent. DSER will collect the fee on each of the custodial parent's eligible cases. The federal fiscal year (October 1 to September 30) is used to determine when DSER has disbursed \$550 of support in an eligible case. If you have questions after reading this page, or you believe you are exempt from this fee, please contact the Case Review Unit at 1-800-371-7179 or 207-624-7830, or e-mail [case.review@maine.gov](mailto:case.review@maine.gov), or the Client Portal at: <https://gateway.maine.gov/DHHS/m-cportal/auth>