

Maine Revised Statutes
Title 19-A: DOMESTIC RELATIONS

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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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §7 (REV) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1997, c. 537, §11 (AMD); 1997, c. 537, §62 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §11 (AMD). 1997, c. 537, §62 (AFF). 2003, c. 689, §§B6,7 (REV).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§103. JURISDICTION

Except as otherwise expressly provided, the District Court has original jurisdiction of all actions under this Title. [1999, c. 731, Pt. ZZZ, §26 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ26 (AMD). 1999, c. 731, §ZZZ42 (AFF).

§104. APPEALS

Appeals may be taken from orders under this Title as in other civil actions. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§105. AWARD AND PAYMENT OF ATTORNEY'S FEES AND OTHER FEES

1. Attorney's fees and costs. In an action under this Title, including actions to modify or enforce existing orders, the court may, after an opportunity for hearing, order a party, including a party in interest, to pay another party or another party's attorney reasonable attorney's fees, including costs, for participation in the proceedings.

[2005, c. 323, §1 (NEW) .]

2. While pending; part of final decision. In appropriate cases, the court may order fees and costs paid while an action is pending, including while on appeal, or may make an order as part of a final decision in a case.

[2005, c. 323, §1 (NEW) .]

3. Fees and expenses of 3rd-party participants. The court may order a party to pay reasonable fees and expenses of 3rd-party participants in the proceedings, including guardians ad litem, expert witnesses and providers of services, whether retained by a party or the court.

[2005, c. 323, §1 (NEW) .]

4. Interest; means of collection. Awards under this section are subject to the accumulation of statutory interest and may be collected by any means available under law, including, but not limited to, remedies available under Title 14 and Title 36, section 5276-A. Additional fees may be assessed in appropriate cases when additional fees are incurred for prosecuting collection actions.

[2005, c. 323, §1 (NEW) .]

SECTION HISTORY

2005, c. 323, §1 (NEW).

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Required mediation. Except as provided in paragraph B, prior to a contested hearing under chapter 27, chapter 29, chapter 55, chapter 61 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2015, c. 296, Pt. C, §6 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §6 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Upon motion demonstrating exceptional circumstances that require a referee. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§352. MEMBERSHIP; TERMS; VACANCIES

1. Membership. The commission is composed of 11 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. An active District Court Judge; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B-1. An active family law magistrate; [2007, c. 466, Pt. B, §13 (AMD).]

C. A current Probate Court Judge; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Two members of the family law section of the Maine State Bar Association, or its successor; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. A representative of a legal services organization; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E-1. A representative of the Court Alternative Dispute Resolution Service; [2005, c. 323, §2 (NEW).]

F. A representative of the department; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

G. Two public members, at least one of whom has experience providing mental health services. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2007, c. 466, Pt. B, §13 (AMD) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §2 (AMD). 2007, c. 466, Pt. B, §13 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. To evaluate the operation of this Title and to recommend amendments based on the evaluation; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. To examine current laws pertaining to family law pleadings and to recommend changes based on the examination; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. To examine any other aspects of Maine's family law, including substantive, procedural and administrative matters, that the commission considers relevant. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 Chief Justice of the Supreme Judicial Court, 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.

[1997, c. 134, §12 (AMD); 1997, c. 134, §13 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 134, §12 (AMD). 1997, c. 134, §13 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§356. FEDERAL FUNDS

The commission may accept federal funds on behalf of the State. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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." [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§602. DEFINITIONS

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§603. FORMALITIES

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§604. CONTENT

Parties to a premarital agreement may contract with respect to: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§605. EFFECT OF MARRIAGE

A premarital agreement becomes effective upon the marriage of the parties. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 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. [2015, c. 296, Pt. C, §7 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

This section does not apply to premarital agreements executed on or after October 1, 1993. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §7 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

Chapter 23: MARRIAGE

Subchapter 1: GENERAL PROVISIONS

§650. FINDINGS AND PURPOSES

All municipal clerks and courts of this State shall have a duty and shall be legally required to construe the provisions of Maine's marriage laws in accordance with the following findings and purposes: [1997, c. 65, §2 (NEW).]

1. Findings. The people of the State of Maine find that:

A. The union of one man and one woman joined in traditional monogamous marriage is of inestimable value to society; the State has a compelling interest to nurture and promote the unique institution of traditional monogamous marriage in the support of harmonious families and the physical and mental health of children; and that the State has the compelling interest in promoting the moral values inherent in traditional monogamous marriage. [1997, c. 65, §2 (NEW).]

[1997, c. 65, §2 (NEW) .]

2. Purposes. The purposes of this chapter are:

A. To encourage the traditional monogamous family unit as the basic building block of our society, the foundation of harmonious and enriching family life; [1997, c. 65, §2 (NEW).]

B. To nurture, sustain and protect the traditional monogamous family unit in Maine society, its moral imperatives, its economic function and its unique contribution to the rearing of healthy children; and [1997, c. 65, §2 (NEW).]

C. To support and strengthen traditional monogamous Maine families against improper interference from out-of-state influences or edicts. [1997, c. 65, §2 (NEW).]

[1997, c. 65, §2 (NEW) .]

SECTION HISTORY

1997, c. 65, §2 (NEW).

§650-A. CODIFICATION OF MARRIAGE

Marriage is the legally recognized union of 2 people. Gender-specific terms relating to the marital relationship or familial relationships must be construed to be gender-neutral for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law or any other source of civil law. [2011, c. 1, §1 (NEW).]

SECTION HISTORY

IB 2011, c. 1, §1 (NEW).

§650-B. RECOGNITION OF MARRIAGE LICENSED AND CERTIFIED IN ANOTHER JURISDICTION

A marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this State. [2011, c. 1, §2 (NEW).]

SECTION HISTORY

IB 2011, c. 1, §2 (NEW).

§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 at least one of them 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 to a marriage reside outside the State, they must file intentions in any municipal office. Once the intentions are filed and the license is issued, the parties are free to marry anywhere within the State.

[2001, c. 574, §2 (AMD) .]

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 may be issued to any 2 persons otherwise qualified under this chapter regardless of the sex of each person. 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. An application recording notice of intention to marry is not open for public inspection for 50 years from the date of the application except that:

A. The names of the parties for whom intentions to marry are filed and the intended date of marriage are public records and open for public inspection; and [2013, c. 424, Pt. B, §5 (RPR).]

B. A person with a researcher identification card under Title 22, section 2706, subsection 8 is permitted to inspect records and may be issued a noncertified copy of an application. [2013, c. 424, Pt. B, §5 (RPR).]

[2013, c. 424, Pt. B, §5 (RPR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §12 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 574, §2 (AMD). IB 2011, c. 1, §3 (AMD). 2011, c. 511, §1 (AMD). 2013, c. 424, Pt. B, §5 (AMD).

§652. ISSUANCE OF MARRIAGE LICENSE

1. Marriage license issued. After 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.

[2001, c. 574, §3 (AMD) .]

2. Marriage license to nonresidents.

[2001, c. 574, §4 (RP) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Expedited procedure.

[2001, c. 574, §4 (RP) .]

5. Informational brochure. A marriage license may not be issued until a brochure prepared by the Department of Health and Human Services 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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Notifying the judge of probate in the county in which the minor resides of the filing of this intention; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Receipt of that judge of probate's written consent to issue the license. The judge of probate shall base a decision on whether to issue consent on the best interest of the parties under 16 years of age and shall consider the age of both parties and any criminal record of a party who is 18 years of age or older. The judge of probate, in the interest of public welfare, may order, after notice and opportunity for hearing, that a license not be issued. The judge of probate shall issue a decision within 30 days of receiving the notification under paragraph B. [1997, c. 683, Pt. E, §5 (AMD); 1997, c. 683, Pt. E, §6 (AFF).]

[1997, c. 683, Pt. E, §5 (AMD); 1997, c. 683, Pt. E, §6 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 507, §1 (AMD). 1997, c. 507, §4 (AFF). 1997, c. 683, §E5 (AMD). 1997, c. 683, §E6 (AFF). 2001, c. 354, §3 (AMD). 2001, c. 574, §§3,4 (AMD). 2003, c. 689, §B6 (REV).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Return of marriage license. The person who solemnized the marriage shall return the marriage license to the clerk who issued the license within 7 working days following the date on which the marriage is solemnized by that person. The clerk and the State Registrar of Vital Statistics each shall retain a copy of the license.

[2011, c. 111, §1 (AMD) .]

3. Statement including officiant and witnesses. The marriage license 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The date the notary public's commission expires; [2011, c. 111, §1 (AMD).]
- C. The date the lawyer was admitted to the Maine Bar; or [2011, c. 111, §1 (AMD).]

D. The date the person's temporary registration certificate was issued under section 655, subsection 1-A. [2011, c. 111, §1 (NEW).]

[2011, c. 111, §1 (AMD) .]

4. Recorded by clerk. The clerk shall record all marriage licenses returned under this section.

[2011, c. 111, §1 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 574, §5 (AMD). 2011, c. 111, §1 (AMD).

§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; or
- (4) A notary public under Title 4, chapter 19; [2011, c. 111, §2 (AMD).]

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; and [2011, c. 111, §3 (AMD).]

C. A nonresident of the State who has a temporary registration certificate issued by the Office of Data, Research and Vital Statistics pursuant to subsection 1-A. [2011, c. 111, §4 (NEW).]

[2011, c. 111, §§2-4 (AMD) .]

1-A. Temporary registration certificate. The Office of Data, Research and Vital Statistics may issue a temporary registration certificate to solemnize a marriage ceremony to an individual who is a resident of another state and who is authorized under the laws of that state to solemnize marriages.

A. An individual seeking a temporary registration certificate under this subsection must submit to the Office of Data, Research and Vital Statistics:

- (1) A copy of a valid commission or other indicia of authority to perform marriage ceremonies in the individual's state of residence as proof of existence of the authority;
- (2) A copy of the other state's statute that grants the individual authority to solemnize marriages in that state;
- (3) The names and residences of the 2 parties whose marriage the individual proposes to solemnize and the expected date of the marriage ceremony; and
- (4) A \$100 registration fee. [2011, c. 111, §5 (NEW).]

B. Upon finding that the individual has satisfied the requirements of paragraph A, the Office of Data, Research and Vital Statistics shall issue to the individual a temporary registration certificate authorizing the individual to solemnize the marriage of the parties whose names were provided pursuant to paragraph A, subparagraph (3). The Office of Data, Research and Vital Statistics may decline to issue a temporary

registration certificate if complaints filed against the individual for actions in this State have been substantiated or for other good cause, even if the state in which the individual is authorized to solemnize marriages has not taken disciplinary action. [2011, c. 111, §5 (NEW).]

C. A temporary registration certificate does not authorize the individual to solemnize any marriage other than the marriage of the parties provided pursuant to paragraph A, subparagraph (3). [2011, c. 111, §5 (NEW).]

D. A temporary registration certificate under this subsection expires upon the individual's signing the marriage license or 90 days after issuance, whichever occurs first. [2011, c. 111, §5 (NEW).]

E. The Office of Data, Research and Vital Statistics shall keep a permanent record of all temporary registration certificates issued under this subsection. The records must contain the name and residence of each individual to whom a temporary registration certificate is issued. [2011, c. 111, §5 (NEW).]

[2011, c. 111, §5 (NEW) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Religious exemption. This chapter does not require any member of the clergy to perform or any church, religious denomination or other religious institution to host any marriage in violation of the religious beliefs of that member of the clergy, church, religious denomination or other religious institution. The refusal to perform or host a marriage under this subsection cannot be the basis for a lawsuit or liability and does not affect the tax-exempt status of the church, religious denomination or other religious institution.

[2011, c. 1, §4 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 574, §6 (AMD). IB 2011, c. 1, §4 (AMD). 2011, c. 111, §§2-5 (AMD).

§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."

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§657. LACK OF JURISDICTION OR AUTHORITY

A marriage, solemnized before any known inhabitant of the State professing to be a justice, judge, 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, 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. [2001, c. 574, §7 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 574, §7 (AMD).

§658. QUAKER; BAHAI

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§660. LATE-FILED APPLICATION FOR CERTIFICATE OF MARRIAGE

1. Application. The parties, or the legal representatives of the parties, to a marriage that occurred more than one year previously may apply for a certificate of marriage under this section by submitting to the State Registrar of Vital Statistics the following:

- A. The license and certification statement completed in accordance with section 656; [2015, c. 193, §1 (NEW) .]
- B. The required filing fee; and [2015, c. 193, §1 (NEW) .]
- C. An application for a certificate of marriage, which must include, if available, a copy of the marriage intentions obtained from the clerk of the municipality where the intentions were filed and other documents specified in rules adopted by the State Registrar of Vital Statistics. [2015, c. 193, §1 (NEW) .]

[2015, c. 193, §1 (NEW) .]

2. Indication of date of filing. The certificate of marriage issued under this section must be marked "delayed" and must indicate the date that the certificate of marriage was filed.

[2015, c. 193, §1 (NEW) .]

3. Rules. The State Registrar of Vital Statistics shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2015, c. 193, §1 (NEW) .]

SECTION HISTORY

2015, c. 193, §1 (NEW) .

Subchapter 2: 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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

1-A. Certain marriages performed in another state not recognized in this State. Any marriage performed in another state that would violate any provisions of subsections 2 to 4 if performed in this State is not recognized in this State and is considered void if the parties take up residence in this State.

[2011, c. 1, §5 (AMD) .]

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. A person may not marry that person's parent, grandparent, child, grandchild, sibling, nephew, niece, aunt or uncle. [2011, c. 1, §5 (AMD) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2011, c. 1, §5 (AMD) .]

3. Persons legally determined to be incapacitated under the law. A person who has been found to be an incapacitated person, as defined in Title 18-A, section 5-101, subsection (1), by a court of competent jurisdiction and for whom a guardian or limited guardian has been appointed may not contract marriage without the approval of the appointed guardian. For persons under limited guardianship, this subsection applies only if the court has granted the specific power to contract for marriage to the guardian.

A. [2011, c. 542, Pt. A, §20 (RP).]

B. [2011, c. 542, Pt. A, §20 (RP).]

[2011, c. 542, Pt. A, §20 (AMD) .]

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

[2007, c. 695, Pt. C, §4 (RPR) .]

5. Same sex marriage prohibited.

[2011, c. 1, §5 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 65, §3 (AMD). 2007, c. 695, Pt. C, §4 (AMD). IB 2011, c. 1, §5 (AMD). 2011, c. 542, Pt. A, §20 (AMD).

Subchapter 3: VOID MARRIAGES AND ANNULMENT

§751. CERTAIN MARRIAGES VOID WITHOUT PROCESS

The following marriages are void and dissolved without legal process: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[2009, c. 96, §1 (AMD) .]

2. Final judgment.

[2009, c. 96, §1 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 96, §1 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. May change the name of that spouse to any other name requested. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

Chapter 27: JUDICIAL SEPARATION**§851. JUDICIAL SEPARATION****1. Grounds.**

[1997, c. 224, §5 (AFF); 1997, c. 224, §1 (RP) .]

1-A. Jurisdiction. The District Court has jurisdiction to enter a separation decree:

A. Upon the petition of a married person who lives apart or who desires to live apart from that person's spouse for a period in excess of 60 continuous days; or [1997, c. 224, §2 (NEW); 1997, c. 224, §5 (AFF).]

B. Upon joint petition of a married couple who live apart or who desire to live apart for a period in excess of 60 continuous days. [1997, c. 224, §2 (NEW); 1997, c. 224, §5 (AFF).]

[1999, c. 731, Pt. ZZZ, §27 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Order.

[1997, c. 224, §5 (AFF); 1997, c. 224, §3 (RP) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

8. Orders pending final separation decree. Pending a final separation decree, the court may:

A. 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 separation action; [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

B. Make reasonable provision for either spouse's support; [2005, c. 323, §3 (AMD).]

C. Enter a decree for parental rights and responsibilities, including support of minor children in accordance with chapter 55. An order for child support under this section may include an order for the payment of all or part 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. Availability of public assistance to the family may not affect the decision of the court relating to the responsibility of a parent to provide child support; [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

D. By order, determine the possession of owned or rented real and personal property; and [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

E. Enforce obedience by appropriate processes. [2005, c. 323, §3 (AMD).]

[2005, c. 323, §3 (AMD) .]

9. Spousal support. The court may:

A. Order spousal support, which must be determined in accordance with the factors set forth in section 951-A; [1999, c. 634, §1 (AMD).]

B. Order periodic spousal support payments, payments of a specific sum or any combination of both; [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

C. Order either spouse to maintain a policy of health insurance for the benefit of the other spouse and to pay all or a portion of the uninsured health care expenses of the other spouse; [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

D. Order either spouse to maintain a policy of life insurance upon that person for the benefit of the other spouse or the couple's children; [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

E. Order either party to pay the costs and attorney's fees of the other party in the defense or prosecution of a judicial separation; [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

F. At any time, alter or amend an order for spousal support or a 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 set forth in section 951-A; and [1999, c. 634, §1 (AMD).]

G. Enforce an order for spousal support or attorney's fees and costs in accordance with section 952. [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

This subsection 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 otherwise limiting or conditioning the spousal support award in any manner or term that the court considers just.

[1999, c. 634, §1 (AMD) .]

10. Disposition of property. The court may order the disposition of the parties' property in accordance with section 953. Descent of real estate is governed by section 953.

[1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF) .]

11. Freedom from restraint and interference. The court may order either spouse to refrain from imposing any restraint on the personal liberty of the other or interfering with the personal privacy of the other and may order other conditions necessary to ensure the peaceful coexistence of the parties.

[1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF) .]

12. Modification and termination of separation decrees. A separation decree may be modified or is terminated as follows.

A. Upon motion by either party served in accordance with the Maine Rules of Civil Procedure, Rule 4, and after notice and hearing, the court may order the modification of a separation decree upon showing of a substantial change of circumstances justifying the modification. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to modification and remains in full force. [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

B. Upon the filing of a written declaration signed and acknowledged by both parties stating that they have resumed marital relations, the separation decree terminates. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to termination and remains in full force. [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

C. Upon entry of a final judgment of divorce between the parties, the separation agreement terminates. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to termination and remains in full force. [1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF).]

[1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF) .]

13. Joinder with divorce action. If a complaint or counterclaim seeking a divorce pursuant to section 901 is filed in an action in which a complaint or counterclaim seeking a separation decree has also been filed, the court shall order the dismissal of the complaint or counterclaim seeking a separation decree if the court grants a divorce.

[1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF) .]

14. Inheritance not barred. A separation decree does not bar the spouses or the issue of the marriage from inheriting.

[1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF) .]

15. Fraud. The court may not grant a judicial separation when the parties seek to procure a judicial separation for fraudulent purposes.

[1997, c. 224, §4 (NEW); 1997, c. 224, §5 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 224, §§1-4 (AMD). 1997, c. 224, §5 (AFF). 1999, c. 634, §1 (AMD). 1999, c. 731, §ZZZ27 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2005, c. 323, §3 (AMD).

§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, 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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." [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1999, c. 731, Pt. ZZZ, §28 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. By appropriate processes as in other actions. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ28 (AMD). 1999, c. 731, §ZZZ42 (AFF).

Chapter 29: DIVORCE

Subchapter 1: GROUNDS 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 District Court if:

- A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The plaintiff is a resident of this State and the parties were married in this State; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. The defendant is a resident of this State. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1999, c. 731, Pt. ZZZ, §29 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF) .]

2. Guardian ad litem. If the alleged cause is that one of the parties is an incapacitated person, as provided in section 902, subsection 1, paragraph J, the court shall appoint a guardian ad litem to represent the interests of the incapacitated person.

[2005, c. 594, §1 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Attorney's fees and costs. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

[2005, c. 323, §4 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ29 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2005, c. 323, §4 (AMD). 2005, c. 594, §1 (AMD).

§902. GROUNDS; DEFENSES

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

A. Adultery; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Impotence; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Extreme cruelty; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Utter desertion continued for 3 consecutive years prior to the commencement of the action; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. Gross and confirmed habits of intoxication from the use of liquor or drugs; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

G. Cruel and abusive treatment; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

H. Irreconcilable marital differences; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

I. [2005, c. 594, §2 (RP).]

J. A judicial determination has been made that one of the parties is an incapacitated person, as defined in Title 18-A, section 5-101, for whom a guardian with full powers has been appointed, other than a temporary guardian appointed pursuant to Title 18-A, section 5-310-A. [2005, c. 594, §3 (NEW).]

[2005, c. 594, §§2, 3 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 594, §§2,3 (AMD) .

§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, 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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." [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1999, c. 731, Pt. ZZZ, §30 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. By appropriate processes as in other actions. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ30 (AMD). 1999, c. 731, §ZZZ42 (AFF).

§904. ORDERS PENDING DIVORCE

In accordance with section 251, subsection 2, pending a divorce action, the court may: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Attorney's fees.

[2005, c. 323, §5 (RP) .]

2. Support. Make reasonable provision for either spouse's separate support;

[2005, c. 323, §6 (AMD) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Enforcement. Enforce obedience by appropriate processes;

[2005, c. 323, §6 (AMD) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §§5,6 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 and Enforcement Act. [2013, c. 424, Pt. B, §6 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2013, c. 424, Pt. B, §6 (AMD).

§908. DISCLOSURE AND RECORDING OF SOCIAL SECURITY NUMBERS

An individual who is a party to a divorce action must disclose that individual's social security number to the court. The social security number of any individual who is subject to a divorce decree must be placed in the court records relating to the decree. The record of an individual's social security number is confidential

and is not open to the public. The court shall disclose an individual's social security number to the department for child support enforcement purposes. [1997, c. 537, §13 (NEW); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1997, c. 537, §13 (NEW). 1997, c. 537, §62 (AFF).

Subchapter 2: SPOUSAL SUPPORT AND PROPERTY RIGHTS

§951. SPOUSAL SUPPORT

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 9, §2 (AMD). 1997, c. 9, §3 (AFF). 1997, c. 629, §1 (AMD). 1999, c. 634, §2 (RP).

§951-A. SPOUSAL SUPPORT

1. Statement by court. An order granting, denying or modifying spousal support must state:

A. The type or types of support, if support is awarded; [1999, c. 634, §3 (NEW).]

B. The method or methods of payment, and the term and limitations imposed, if support is awarded; [1999, c. 634, §3 (NEW).]

C. If the support awarded is not, in whole or in part, subject to future modification; and [1999, c. 634, §3 (NEW).]

D. The factors relied upon by the court in arriving at its decision to award or deny spousal support, if the proceeding was contested. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

2. Types of spousal support. The court may, after consideration of all factors set forth in subsection 5, award or modify spousal support for one or more of the following reasons.

A. General support may be awarded to provide financial assistance to a spouse with substantially less income potential than the other spouse so that both spouses can maintain a reasonable standard of living after the divorce.

(1) There is a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the action for divorce. There is also a rebuttable presumption that general support may not be awarded for a term exceeding 1/2 the length of the marriage if the parties were married for at least 10 years but not more than 20 years as of the date of the filing of the action for divorce.

(2) If the court finds that a spousal support award based upon a presumption established by this paragraph would be inequitable or unjust, that finding is sufficient to rebut the applicable presumption. [1999, c. 634, §3 (NEW).]

B. Transitional support may be awarded to provide for a spouse's transitional needs, including, but not limited to:

(1) Short-term needs resulting from financial dislocations associated with the dissolution of the marriage; or

(2) Reentry or advancement in the work force, including, but not limited to, physical or emotional rehabilitation services, vocational training and education. [1999, c. 634, §3 (NEW).]

C. Reimbursement support may be awarded to achieve an equitable result in the overall dissolution of the parties' financial relationship in response to exceptional circumstances. Exceptional circumstances include, but are not limited to:

- (1) Economic misconduct by a spouse; and
- (2) Substantial contributions a spouse made towards the educational or occupational advancement of the other spouse during the marriage.

Reimbursement support may be awarded only if the court determines that the parties' financial circumstances do not permit the court to fully address equitable considerations through its distributive order pursuant to section 953. [1999, c. 634, §3 (NEW).]

D. Nominal support may be awarded to preserve the court's authority to grant spousal support in the future. [1999, c. 634, §3 (NEW).]

E. Interim support may be awarded to provide for a spouse's separate support during the pendency of an action for divorce or judicial separation. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

3. Methods of payment; term and limitations. The order must state the method or methods of payment that the court determines just, including, but not limited to, lump-sum and installment payments. The order must also state the term of and any limitations on the award that the court determines just, including, but not limited to:

- A. A limit on any increases or decreases in the amount of support; [1999, c. 634, §3 (NEW).]
- B. A limit on any increases or decreases in the term of support; [1999, c. 634, §3 (NEW).]
- C. A limit on the method or methods of payment of support; [1999, c. 634, §3 (NEW).]
- D. A limit on the payment of support related to the remarriage of the payee; and [1999, c. 634, §3 (NEW).]
- E. A limit on the payment of support related to cohabitation by the payee. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

4. Modification. An award of spousal support issued before October 1, 2013 is subject to modification when it appears that justice requires unless and to the extent the order awarding or modifying spousal support expressly states that the award, in whole or in part, is not subject to future modification. An award of spousal support issued on or after October 1, 2013 is subject to modification when it appears that justice requires.

[2013, c. 327, §1 (AMD) .]

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

- A. The length of the marriage; [1999, c. 634, §3 (NEW).]
- B. The ability of each party to pay; [1999, c. 634, §3 (NEW).]
- C. The age of each party; [1999, c. 634, §3 (NEW).]
- D. The employment history and employment potential of each party; [1999, c. 634, §3 (NEW).]
- E. The income history and income potential of each party; [1999, c. 634, §3 (NEW).]
- F. The education and training of each party; [1999, c. 634, §3 (NEW).]

G. The provisions for retirement and health insurance benefits of each party; [1999, c. 634, §3 (NEW).]

H. The tax consequences of the division of marital property, including the tax consequences of the sale of the marital home, if applicable; [1999, c. 634, §3 (NEW).]

I. The health and disabilities of each party; [1999, c. 634, §3 (NEW).]

J. The tax consequences of a spousal support award; [1999, c. 634, §3 (NEW).]

K. The contributions of either party as homemaker; [1999, c. 634, §3 (NEW).]

L. The contributions of either party to the education or earning potential of the other party; [1999, c. 634, §3 (NEW).]

M. Economic misconduct by either party resulting in the diminution of marital property or income; [1999, c. 634, §3 (NEW).]

N. The standard of living of the parties during the marriage; [1999, c. 634, §3 (NEW).]

O. The ability of the party seeking support to become self-supporting within a reasonable period of time; [1999, c. 634, §3 (NEW).]

P. The effect of the following on a party's need for spousal support or a party's ability to pay spousal support:

(1) Actual or potential income from marital or nonmarital property awarded or set apart to each party as part of the court's distributive order pursuant to section 953; and

(2) Child support for the support of a minor child or children of the marriage pursuant to chapter 63; and [1999, c. 634, §3 (NEW).]

Q. Any other factors the court considers appropriate. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

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

[1999, c. 634, §3 (NEW) .]

7. Real estate and other property; life insurance and other security. The court may order part of the obligated party's real estate or other property, as well as the rents, profits or income from real estate or other property, to be assigned and set out to the other party for life or for such other period determined to be just. The court may also order the obligated party to maintain life insurance or to otherwise provide security for the payment of spousal support in the event the obligation may survive the obligated party's death.

[1999, c. 634, §3 (NEW) .]

8. Cessation upon death of payee or payor. An order awarding, denying or modifying spousal support may provide that the award survives the death of the payee or payor, or both. Unless otherwise stated in the order awarding spousal support, the obligation to make any payment pursuant to this section ceases upon the death of either the payee or the payor with respect to any payment not yet due and owing as of the date of death.

[1999, c. 634, §3 (NEW) .]

9. Effect of no award or termination of spousal support. A final judgment that does not award spousal support forever precludes such an award in that action. The complete termination of a spousal support award pursuant to the terms of the award or a final post-judgment order forever precludes the reinstatement of spousal support in that action.

[1999, c. 634, §3 (NEW) .]

10. Application. This section applies to:

- A. Orders granting or denying spousal support entered on or after September 1, 2000; and [1999, c. 634, §3 (NEW).]
- B. The modification, termination and enforcement of orders granting spousal support entered on or after September 1, 2000. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

11. Support while pending. The trial court may make, modify or enforce an award of spousal support under this section while an action is pending, including while on appeal.

[2005, c. 594, §4 (NEW) .]

12. Cessation upon cohabitation. When it appears that justice requires, an order awarding spousal support is subject to modification to terminate spousal support when it can be shown that the payee and another person have entered into a mutually supportive relationship that is the functional equivalent of marriage that has existed for at least 12 months of a period of 18 consecutive months.

[2013, c. 327, §2 (NEW) .]

SECTION HISTORY

1999, c. 634, §3 (NEW). 2005, c. 594, §4 (AMD). 2013, c. 327, §§1, 2 (AMD).

§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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. For support of children; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. For support pending a divorce action; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. For payment of related attorney's fees; [2005, c. 323, §7 (AMD).]
- E. For alteration of an existing decree or order for the custody or support of a child; or [2005, c. 323, §7 (AMD).]
- F. For division and disposition of property ancillary to a divorce judgment, including, but not limited to, proceedings to effectuate a qualified domestic relations order; to reach, attach or liquidate property; or to quiet title. [2005, c. 323, §8 (NEW).]

[2005, c. 323, §§7, 8 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Attorney's fees. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

[2005, c. 323, §9 (AMD) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §§7-9 (AMD).

§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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The value of the property set apart to each spouse; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise or descent; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Property acquired by a spouse after a decree of legal separation; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Property excluded by valid agreement of the parties; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The increase in value of property acquired prior to the marriage and the increase in value of a spouse's nonmarital property as defined in paragraphs A to D.

(1) "Increase in value" includes:

(a) Appreciation resulting from market forces; and

(b) Appreciation resulting from reinvested income and capital gain unless either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property.

(2) "Increase in value" does not include:

(a) Appreciation resulting from the investment of marital funds or property in the nonmarital property;

(b) Appreciation resulting from marital labor; and

(c) Appreciation resulting from reinvested income and capital gain if either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property. [1999, c. 665, §1 (AMD); 1999, c. 665, §2 (AFF).]

[1999, c. 665, §1 (AMD); 1999, c. 665, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A clerk's certificate of the divorce complaint, as described in Title 14, section 4455, subsection 2; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. A decree or abstract of the decree as described in this section. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6-A. Nonowner spouse interest in certain payments or accounts. After the filing of a divorce complaint under section 901, a nonowner spouse has an inchoate equitable ownership interest, without the need to obtain an attachment, levy or court order, in the individual retirement account or similar plan or contract on account of illness, disability, death, age or length of service of the owner spouse, to the extent the account or plan is either exempt or beyond the reach of an attaching or judgment lien creditor under state or federal law.

[2005, c. 298, §1 (NEW) .]

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 decree or abstract, at a minimum, must contain:

A. The caption of the case, including the names of the parties, and any changes to the parties' names after the decree; [2003, c. 18, §1 (NEW).]

B. The date the judgment is final and the court that issued the decree; [2003, c. 18, §1 (NEW) .]

C. An adequate description of the real estate, such as by reference to the volume and page number of an instrument recorded in the registry of deeds or the probate court record, or an adequate description by metes and bounds or by reference to the volume and page number of the registry of deeds' records of a survey plan of the property; [2003, c. 18, §1 (NEW) .]

D. Any provision of the decree intended by the court to constitute an encumbrance against real estate, including any conditions pertaining to the encumbrance, in the verbatim language used by the court. If the abstract does not contain the provision required by this paragraph, an encumbrance may not be considered effective against a 3rd party unless the encumbrance has been memorialized in a separate, duly recorded instrument; and [2003, c. 18, §1 (NEW) .]

E. A clear statement of the ownership interest of the parties in the real estate intended by the court to result from that decree. [2003, c. 18, §1 (NEW) .]

An inconsequential failure to provide all the details required pursuant to paragraphs A to E does not create an invalid abstract for purposes of this section.

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.

[2003, c. 18, §1 (RPR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 665, §1 (AMD). 1999, c. 665, §2 (AFF). 2003, c. 18, §1 (AMD). 2005, c. 298, §1 (AMD).

§954. INCOME WITHHOLDING

1. Availability and establishment of income withholding. Spousal support orders issued or modified by the courts in this State must have a provision for the withholding of income to ensure that withholding as a means of obtaining spousal support is available if arrearages occur. Except as provided in chapter 65, subchapter IV, income withholding against all spousal support obligations ordered by a court within the State must be implemented as follows.

A. New orders of spousal support must include a provision withholding the amount of spousal support from the income, regardless of the source, of the person obligated to pay the support. If an existing order of alimony or spousal support does not include a withholding order, the obligee may file a motion to amend the spousal support order to include an order for withholding, which the court shall grant.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

B. Each order for withholding must provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the spousal support payments and that no withholding may be made until the following conditions are met:

- (1) Either the obligor requests that income withholding be implemented or the obligee determines that the payments the obligor has failed to make under the spousal support order are at least equal to the amount payable for one month;
- (2) The obligee serves written notice of the amount of arrearage upon the obligor and informs the obligor that the obligee has procured a court order for income withholding;
- (3) The obligee mails a copy of the determination of arrearage and a copy of the court's withholding order to the payor of funds;
- (4) The obligee mails to the Department of Health and Human Services a copy of the determination of arrearage and a copy of the court's withholding order to enable the department to proceed pursuant to subsection 2; and
- (5) The obligor has a 20-day period, after receiving the notice pursuant to subparagraph (2), to file a motion for determination of arrearages with respect to the amount of spousal support owed and to simultaneously request an ex parte stay of service on the payor of funds until the motion for determination is heard. Any stay issued by the court under this subsection expires 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 arrearages during the effective period of the stay. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

C. An order modifying the amount of spousal support issued after a hearing on a motion to modify spousal support may provide that payments be made outright by withholding. If so, paragraph B does not apply. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

D. Notwithstanding any law to the contrary, the withholding order is binding on the payor of funds once service has been made upon the payor. The payor is liable for any amounts the payor fails to withhold after receiving notice. The payor shall withhold from the income payable to the obligor the amount specified in the order and shall monthly or more frequently remit the amounts withheld to the department. The payor may withhold a \$2 processing fee in addition to the amount withheld for support. The amount withheld may not exceed the limitations imposed by section 2356 or by 15 United States Code, Section 1673. An employer who, in contravention of this section, discharges from employment, refuses to employ or takes disciplinary action against any obligor because of the existence of an order 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. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

E. When a withholding order 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 home address and the name and address of the obligor's new employer or payor of funds, if known. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

F. The order of withholding with regard to a current support obligation must be terminated if:

- (1) The department is unable to forward funds to the obligee for 3 months; or
- (2) The spousal support obligation has been eliminated by a subsequent court order.

A termination may not occur while an arrearage remains unless other provisions for its repayment have been made. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

If the department is unable to forward the funds to the obligee for 3 months the funds must be returned to the obligor and notice must be given to the obligor's employer or other payor to cease withholding.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

2. Department designated as administering agency. The department is designated as the agency responsible for adopting and administering procedures to receive, record and disburse all spousal support payments collected pursuant to this section.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF) .]

3. Liability of payor to obligee. An obligee may maintain an action for compensatory damages, including attorney's fees and court costs, against a payor who knowingly fails to comply with this section.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF) .]

SECTION HISTORY

1997, c. 433, §1 (NEW). 1997, c. 433, §2 (AFF). 2003, c. 689, §B6 (REV).

Subchapter 3: 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

Subchapter 4: 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: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Reasonable cost health insurance.

[2009, c. 290, §1 (RP) .]

4-A. Medical support. "Medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance.

[2009, c. 290, §2 (NEW) .]

4-B. Private health insurance. "Private health insurance" means fee-for-service, health maintenance organization, preferred provider organization and other types of coverage available to either parent under which medical services could be provided to a child. "Private health insurance" does not include insurance that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care or other limited benefit health insurance policies and contracts.

[2009, c. 290, §3 (NEW) .]

4-C. Reasonable cost. "Reasonable cost" means the cost of private health insurance to the parent responsible for providing medical support that does not exceed amounts adopted by the Department of Health and Human Services in a rule implementing a cost-reasonableness standard. "Cost of private health

insurance" means the cost of adding the child to existing coverage or the difference between self-only and family coverage, unless that cost is determined to be unjust by a court or the Department of Health and Human Services.

[2009, c. 290, §4 (NEW) .]

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. Matters pertaining to the child's welfare include, but are not limited to, education, religious upbringing, medical, dental and mental health care, travel arrangements, child care arrangements and residence. Parents who share parental rights and responsibilities shall keep one another informed of any major changes affecting the child's welfare and shall consult in advance to the extent practicable on decisions related to the child's welfare.

[1997, c. 187, §1 (AMD); 1997, c. 187, §5 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 187, §1 (AMD). 1997, c. 187, §5 (AFF). 2009, c. 290, §§1-4 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1503. RIGHTS OF CHILDREN BORN OUT OF WEDLOCK (REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §8 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§1504. PERSON'S DUTY OF SUPPORT

A person shall support that person's child and that person's spouse when in need. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1507. APPOINTMENT OF GUARDIAN AD LITEM IN CONTESTED PROCEEDINGS

1. Guardian ad litem; appointment. In contested proceedings under sections 904, 1653 and 1803 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The age of the child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. The nature of the proceeding, including the contentiousness of the hearing; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. The financial resources of the parties; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E. The extent to which a guardian ad litem may assist in providing information concerning the best interest of the child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. Whether the family has experienced a history of domestic abuse; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- G. Abuse of the child by one of the parties; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- H. Other factors the court determines relevant. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[2005, c. 360, §2 (AMD) .]

2. Qualifications. A guardian ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court.

[1999, c. 251, §1 (AMD) .]

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

A. A guardian ad litem shall:

- (1) Interview the child face-to-face with or without another person present; and
- (3) Make a written report of investigations, findings and recommendations as ordered by the court, with copies of the report to each party and the court. [1997, c. 257, §3 (AMD); 1997, c. 257, §6 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[2005, c. 683, Pt. B, §9 (AMD) .]

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.

[1997, c. 257, §4 (AMD); 1997, c. 257, §6 (AFF) .]

5. Written report. A guardian ad litem shall make a final written report to the parties and the court reasonably in advance of the hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

[2001, c. 253, §3 (RPR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The marital and nonmarital assets of the parties; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The division of property made as part of the final divorce; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Which party requested appointment of a guardian ad litem; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. Other relevant factors. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 257, §§2-4 (AMD). 1997, c. 257, §6 (AFF). 1999, c. 251, §1 (AMD). 2001, c. 253, §3 (AMD). 2005, c. 360, §2 (AMD). 2005, c. 683, §B9 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1509. LOCATOR INFORMATION; PRESUMPTION CONCERNING NOTICE

1. Duty of parties to file and update locator information when a support order is issued. Upon entry of a decision, order or judgment, each party to a paternity action or proceeding involving child support shall file with the tribunal that issued the decision, order or judgment and update as the information changes, the party's full name, social security number, residential and mailing addresses, home telephone number, driver's license number and the names, addresses and telephone numbers of the party's employers.

[1997, c. 537, §14 (NEW); 1997, c. 537, §62 (AFF) .]

2. Presumption of adequate notice if mailed to last reported address. In any subsequent child support enforcement action or proceeding involving one or more of the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party and upon delivery of written notice to the most recent residential or employer address filed with the tribunal, the tribunal may deem that the state due process requirements have been met for notice and service of process with respect to the party.

[1997, c. 537, §14 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

1997, c. 537, §14 (NEW). 1997, c. 537, §62 (AFF).

§1510. STATEWIDE JURISDICTION

In child support and paternity cases, the jurisdiction of the District Court and the department extends to all parts of the State. Once an action has been commenced, a case may be transferred between local jurisdictions in the State without need for an additional filing by the petitioner or service of process on the respondent to retain jurisdiction over the parties. [1999, c. 731, Pt. ZZZ, §31 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

1997, c. 537, §15 (NEW). 1997, c. 537, §62 (AFF). 1999, c. 731, §ZZZ31 (AMD). 1999, c. 731, §ZZZ42 (AFF).

Chapter 53: PATERNITY

Subchapter 1: PATERNITY

§1551. SHORT TITLE

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §1 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§1552. OBLIGATIONS OF FATHER

The father of a child is liable for the reasonable expense of the mother's pregnancy and confinement and for the education, support and funeral expenses of the child. [2015, c. 296, Pt. B, §2 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §10 (AMD). 2015, c. 296, Pt. B, §2 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§1553. ENFORCEMENT

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. Bills and records of expenses paid for pregnancy, childbirth and genetic testing are admissible as evidence without requiring 3rd-party foundation testimony and are prima facie evidence of amounts incurred for those services

or for testing on behalf of the child. 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. [2015, c. 296, Pt. B, §3 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §16 (AMD). 1997, c. 537, §62 (AFF). 2015, c. 296, Pt. B, §3 (AMD). 2015, c. 296, Pt. D, §1 (AMD).

§1554. LIMITATION ON RECOVERY FROM FATHER

The father's liabilities for past education and support are limited to the 6-year period preceding the commencement of an action. [1997, c. 537, §17 (AMD); 1997, c. 537, §62 (AFF).]

A complainant may commence an action at any time prior to the child's 18th birthday. Notwithstanding the effective date of this paragraph, an action may be commenced for the benefit of a child whose paternity has not been established or to establish paternity of a child for whom an action had been commenced but dismissed because a statute of limitations of less than 18 years was then in effect. [1997, c. 537, §17 (AMD); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §17 (AMD). 1997, c. 537, §62 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1556. REMEDIES

The District Court has jurisdiction for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, support or funeral expenses for legitimate children and all remedies for the enforcement of these judgments 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. [2015, c. 296, Pt. B, §4 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 704, §1 (AMD). 1999, c. 731, §ZZZ32 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2001, c. 471, §A23 (RPR). 2015, c. 296, Pt. B, §4 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 704, §2 (AMD).

§1558. AUTHORITY FOR BLOOD OR TISSUE-TYPING TESTS

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §5 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§1559. SELECTION OF EXPERTS

The tests required by the court order under chapter 61, subchapter 6 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. [2015, c. 296, Pt. B, §6 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §6 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§1560. COMPENSATION OF EXPERT WITNESSES

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §7 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§1561. EFFECT OF TEST RESULTS

1. Effect of results. The results of the tests required pursuant to chapter 61, subchapter 6 are evidence to be used in determining paternity as follows.

A. [2015, c. 296, Pt. B, §8 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

B. If the experts disagree in their findings or conclusions, the question must be submitted upon all the evidence. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. [2015, c. 296, Pt. B, §8 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

D. [2015, c. 296, Pt. B, §8 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. B, §8 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Chain of custody; evidence.

[2015, c. 296, Pt. B, §8 (RP); 2015, c. 296, Pt. D, §1 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §18 (AMD). 1997, c. 537, §62 (AFF). 2015, c. 296, Pt. B, §8 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§1562. REBUTTAL OF PRESUMPTION

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §9 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. Evidence of sexual intercourse between the mother and alleged father at a possible time of conception; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based upon tests performed by experts; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. The statistical probability of the alleged father's paternity based upon the blood or tissue tests. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Inadmissible evidence.

[2015, c. 296, Pt. B, §10 (RP); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §10 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§1564. PRESUMPTION OF LEGITIMACY NOT APPLICABLE

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §11 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Parental rights and responsibilities.

[2015, c. 296, Pt. B, §12 (RP); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Temporary support order.

[2015, c. 296, Pt. B, §12 (RP); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Disclosure and recording of social security numbers.

[2015, c. 296, Pt. B, §12 (RP); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §19 (AMD). 1997, c. 537, §62 (AFF). 2007, c. 164, §1 (AMD). 2015, c. 296, Pt. B, §12 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1567. SETTLEMENT AGREEMENTS

An agreement of settlement with the alleged father is binding only when approved by the court. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1568. VENUE

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §13 (RP). 2015, c. 296, Pt. D, §1 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1570. DISMISSALS

1. Procedure.

[2015, c. 296, Pt. B, §14 (RP); 2015, c. 296, Pt. D, §1 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. When the department is a party to the action and the department consents to the dismissal with prejudice. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. B, §14 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 2: 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A man who is presumed to be a child's father under chapter 61. [2015, c. 296, Pt. C, §9 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. C, §9 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §9 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1604. SERVICE

Service of a notice under section 1605 must be made by personal service as provided for personal service of summons by the Maine Rules of Civil Procedure, Rule 4(d). Personal service within the State of a notice under section 1605 may be made by an authorized representative of the commissioner. Personal service outside the State of a notice under section 1605 may be made in the manner provided for personal service of summons outside the State by the Maine Rules of Civil Procedure, Rule 4(e). [2009, c. 290, §5 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 290, §5 (AMD) .

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. A statement that, if the department files a record of the proceeding, the department may seek relief under section 1606; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. The child's name and place and date of birth; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

F. The probable date on or period during which the child was conceived; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 genetic father of the child; [2015, c. 296, Pt. C, §10 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 genetic father of the child, the proceeding will be filed in a court for disposition under chapter 61; [2015, c. 296, Pt. C, §11 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

K. A statement that if, prior to the filing in a court, the alleged father executes and delivers to the department and the department accepts an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him under chapter 65, subchapter II, article 3; [2001, c. 554, §3 (AMD).]

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; and [2001, c. 554, §3 (AMD).]

M. A statement that the department may require the alleged father to submit to blood or tissue-typing tests prior to accepting an acknowledgment of paternity if it appears that there may be more than one alleged father, and may file the action in court if the alleged father refuses to submit to testing. [2001, c. 554, §4 (NEW).]

[2015, c. 296, Pt. C, §§10, 11 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 554, §§3,4 (AMD). 2015, c. 296, Pt. C, §§10, 11 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§1606. COURT ORDERS; RELIEF

The department may request that the court: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[2015, c. 296, Pt. C, §12 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. To whom payments made. Order the alleged father to make support payments directly to the department whenever the mother is receiving Temporary Assistance for Needy Families 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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 1997, c. 530, Pt. A, §34 (AMD) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Attorney's fees.

[2005, c. 323, §11 (RP) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 1840.

[2015, c. 296, Pt. C, §13 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A34 (AMD). 2005, c. 323, §11 (AMD). 2015, c. 296, Pt. C, §§12, 13 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

When the department initiates proceedings against one alleged father when there may be more than one alleged father, the department may require the parties to submit to blood or tissue-typing tests prior to accepting an acknowledgment of paternity from the alleged father. If the alleged father refuses to participate in testing, the department may file the action in court. [2001, c. 554, §5 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 554, §5 (AMD) .

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Additional genetic testing. If additional samples are needed to complete genetic testing, the department may require the mother, alleged father and child to submit to additional testing. If a person refuses to submit to additional testing, the court, upon motion by the department, may resolve the question of paternity against that person or order the person to submit to testing. If an original test result is contested, upon request and advance payment by the contestant, the department shall obtain additional test results.

[1997, c. 537, §20 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §20 (AMD). 1997, c. 537, §62 (AFF).

§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 1914. The alleged father's refusal to submit to a blood or tissue-typing test constitutes a refusal to submit under section 1914. 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).

[2015, c. 296, Pt. C, §14 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

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 1911. Within 20 days of the mailing of this notice, the alleged father may assert any defense, in law or fact.

[2015, c. 296, Pt. C, §14 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

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 1911 or 1914. 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.

[2015, c. 296, Pt. C, §14 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §14 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Exclusion of alleged father. If the alleged father is excluded by the test results as the genetic father of the child, the department may file the record of the proceeding in a court for disposition under section 1915.

[2015, c. 296, Pt. C, §15 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

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. Sections 1903, 1904 and 1913 apply 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 1906 for an order appointing an additional examiner of blood or tissue types.

[2015, c. 296, Pt. C, §15 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §15 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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, and if the department does not require the alleged father to participate in blood or tissue-typing tests, 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. [2001, c. 554, §6 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 554, §6 (AMD) .

§1615. REPRESENTATION OF DEPARTMENT

The commissioner may designate employees of the department who are not attorneys to file the record of proceedings commenced under this subchapter in District Court and to represent the department in court in both those proceedings and proceedings filed by other parties. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subchapter. [2005, c. 352, §2 (AMD) .]

§1615. Voluntary acknowledgment of paternity

(As enacted by PL 1997, c. 537, §21 is REALLOCATED TO TITLE 19-A, SECTION 1616)

SECTION HISTORY

RR 1997, c. 1, §15 (RAL). 1997, c. 466, §3 (NEW). 1997, c. 466, §28 (AFF). 1997, c. 537, §21 (NEW). 1997, c. 537, §62 (AFF). 2005, c. 352, §2 (AMD).

§1616. VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

(REPEALED)

(REALLOCATED FROM TITLE 19-A, SECTION 1615)

SECTION HISTORY

RR 1997, c. 1, §15 (RAL). 2015, c. 296, Pt. C, §16 (RP). 2015, c. 296, Pt. D, §1 (AFF).

Chapter 55: RIGHTS AND RESPONSIBILITIES

§1651. PARENTS JOINT NATURAL GUARDIANS OF CHILDREN

The parents 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. [2015, c. 296, Pt. C, §17 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §17 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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 state providing maintenance may petition the 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 district or county where the parent, spouse or child resides or in the district or county in which the nonsupporting person may be found.

[2001, c. 554, §7 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ33 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2001, c. 554, §7 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The Legislature finds and declares that, except when a court determines that the best interest of a child would not be served, it is the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. [2009, c. 593, §1 (AMD).]

[2009, c. 593, §1 (AMD) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The court may award reasonable rights of contact with a minor child to a 3rd person. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. An award of shared parental rights and responsibilities may include either an allocation of the child's primary residential care to one parent and rights of parent-child contact to the other parent, or a sharing of the child's primary residential care by both parents. If either or both parents request an award of shared primary residential care and the court does not award shared primary residential care of the child, the court shall state in its decision the reasons why shared primary residential care is not in the best interest of the child;
- (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 and other information on school activities, 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;
- (5) A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 7; and
- (6) A statement of the definition of shared parental rights and responsibilities contained in section 1501, subsection 5, if the order of the court awards shared parental rights and responsibilities.

An order modifying a previous order is not required to include provisions of the previous order that are not modified. [2015, c. 494, Pt. A, §11 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2015, c. 494, Pt. A, §11 (AMD) .]

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 the child's 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. The preference of the child, if old enough to express a meaningful preference; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E. The stability of any proposed living arrangements for the child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- G. The child's adjustment to the child's present home, school and community; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- I. The capacity of each parent to cooperate or to learn to cooperate in child care; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- K. The effect on the child if one parent has sole authority over the child's upbringing; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:
- (1) The child emotionally;
 - (2) The safety of the child; and
 - (3) The other factors listed in this subsection, which must be considered in light of the presence of past or current domestic abuse; [2009, c. 593, §2 (AMD).]
- M. The existence of any history of child abuse by a parent; [1997, c. 187, §3 (AMD); 1997, c. 187, §5 (AFF).]
- N. All other factors having a reasonable bearing on the physical and psychological well-being of the child; [1999, c. 702, §1 (AMD).]
- O. A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary dismissal of a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the protection from abuse process; [2001, c. 665, §1 (AMD).]
- P. If the child is under one year of age, whether the child is being breast-fed; [2005, c. 567, §1 (AMD).]
- Q. The existence of a parent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203; [2009, c. 593, §3 (AMD).]
- R. If there is a person residing with a parent, whether that person:

- (1) Has been convicted of a crime under Title 17-A, chapter 11 or 12 or a comparable crime in another jurisdiction;
- (2) Has been adjudicated of a juvenile offense that, if the person had been an adult at the time of the offense, would have been a violation of Title 17-A, chapter 11 or 12; or
- (3) Has been adjudicated in a proceeding, in which the person was a party, under Title 22, chapter 1071 as having committed a sexual offense; and [2009, c. 593, §4 (AMD).]

S. Whether allocation of some or all parental rights and responsibilities would best support the child's safety and well-being. [2009, c. 593, §5 (NEW).]

[2009, c. 593, §§2-5 (AMD).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

5-A. Effect of protective order. Although the court shall consider the fact that a protective order was issued under chapter 101, the court shall determine the proper award of parental rights and responsibilities and award of rights of contact de novo and may not use as precedent the award of parental rights and responsibilities and rights of contact included in the protective order.

[2001, c. 273, §1 (NEW).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 designated 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The court may require security from the parent who has committed domestic abuse for the return and safety of the child. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. The court may order the address of the child and the victim to be kept confidential. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The court may not order a victim of domestic abuse to attend counseling with the parent who has committed domestic abuse. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6-A. Custody and contact limited; convictions for sexual offenses. The award of primary residence and parent-child contact with a person who has been convicted of a child-related sexual offense is governed by this subsection.

A. For the purposes of this section, "child-related sexual offense" means the following sexual offenses if, at the time of the commission of the offense, the victim was under 18 years of age or the victim was a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the person was a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student:

- (1) Sexual exploitation of a minor, under Title 17-A, section 282;
- (2) Gross sexual assault, under Title 17-A, section 253;
- (3) Sexual abuse of a minor, under Title 17-A, section 254;
- (4) Unlawful sexual contact, under Title 17-A, section 255-A or former section 255;
- (5) Visual sexual aggression against a child, under Title 17-A, section 256;
- (6) Sexual misconduct with a child under 14 years of age, under Title 17-A, section 258;
- (6-A) Solicitation of a child to commit a prohibited act, under Title 17-A, section 259-A; or
- (7) An offense in another jurisdiction that involves conduct that is substantially similar to that contained in subparagraph (1), (2), (3), (4), (5), (6) or (6-A). For purposes of this subparagraph, "another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands,

the United States Virgin Islands, Guam, American Samoa and each of the several states except Maine. "Another jurisdiction" also means the Passamaquoddy Tribe when that tribe has acted pursuant to Title 30, section 6209-A, subsection 1, paragraph A or B and the Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209-B, subsection 1, paragraph A or B. [2015, c. 509, §4 (AMD).]

B. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has been convicted of a child-related sexual offense 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 can be made. [2001, c. 665, §4 (NEW).]

C. In an order of parental rights and responsibilities, a court may require that parent-child contact between a minor child and a person convicted of a child-related sexual offense may occur only if there is another person or agency present to supervise the contact. If the 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, those that:

- (1) Minimize circumstances when the family of the parent who is a sex offender or sexually violent predator would be supervising visits;
- (2) Ensure that contact does not damage the relationship with the parent with whom the child has primary physical residence;
- (3) Ensure the safety and well-being of the child; and
- (4) Require that supervision be 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. [2001, c. 665, §4 (NEW).]

[2015, c. 509, §4 (AMD).]

6-B. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if any contact were to be permitted and that any contact is not in the best interests of the child if the court finds that the person seeking primary residence or contact with the child:

A. Has been convicted of an offense listed in subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or [2007, c. 513, §3 (AMD).]

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse. [2005, c. 366, §3 (NEW).]

The person seeking primary residence or contact with the child may present evidence to rebut the presumption.

[2007, c. 513, §3 (AMD).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Order that additional visitation be provided for a parent to take the place of visitation that was wrongfully denied; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Order a parent found in contempt to pay a forfeiture of at least \$100. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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, biweekly, 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 2, 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. [2007, c. 142, §1 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 at least one parent to obtain and maintain private health insurance for the child, if private health insurance for the child is available at reasonable cost. The court order must also require the parent providing insurance to furnish proof of coverage to the other parent within 15 days of receipt of a copy of the court order. If private health insurance for the child is not available at reasonable cost at the time of the hearing, the court order must include a provision requiring at least one parent to obtain and maintain private health insurance for the child that must be effective immediately upon private health insurance for the child being available at reasonable cost. [2009, c. 290, §6 (AMD).]

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.

[2009, c. 290, §6 (AMD) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Modification of and termination orders for parental rights and responsibilities other than child support are governed by section 1657. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Becomes married; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Becomes a member of the armed services. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

13. Automatic adjustments.

[2017, c. 30, §1 (RP) .]

14. Notice of relocation. The order must require notice of the intended relocation of a child by a parent awarded shared parental rights and responsibilities or allocated parental rights and responsibilities. At least 30 days before the intended relocation of a child by a parent, the parent shall provide notice to the other parent of the intended relocation. If the relocation must occur in fewer than 30 days, the parent who is relocating shall provide notice as soon as possible to the other parent. If the parent who is relocating believes notifying the other parent will cause danger to the relocating parent or the child, the relocating parent shall notify the court of the intended relocation, and the court shall provide appropriate notice to the other parent in a manner determined to provide safety to the relocating parent and child.

[1997, c. 403, §1 (NEW); 1997, c. 403, §4 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 187, §§2,3 (AMD). 1997, c. 187, §5 (AFF). 1997, c. 403, §1 (AMD). 1997, c. 403, §4 (AFF). 1997, c. 415, §3 (AMD). 1997, c. 415, §5 (AFF). 1999, c. 702, §§1-3 (AMD). 2001, c. 273, §1 (AMD). 2001, c. 329, §§1,2 (AMD). 2001, c. 665, §§1-4 (AMD). 2003, c. 711, §C1 (AMD). 2005, c. 323, §12 (AMD). 2005, c. 366, §§2,3 (AMD). 2005, c. 567, §§1-3 (AMD). 2007, c. 142, §1 (AMD). 2007, c. 513, §§2, 3 (AMD). 2009, c. 290, §6 (AMD). 2009, c. 345, §1 (AMD). 2009, c. 593, §§1-5 (AMD). 2011, c. 597, §4 (AMD). 2015, c. 494, Pt. A, §11 (AMD). 2015, c. 509, §4 (AMD). 2017, c. 30, §1 (AMD).

§1654. PARENTING AND SUPPORT WHEN PARENTS LIVE APART

If the parents of a minor child are living apart, the Probate 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. [2015, c. 296, Pt. C, §18 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

The jurisdiction granted by this section is limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state may have jurisdiction as provided in that Act. [2013, c. 424, Pt. B, §7 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ34 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2013, c. 424, Pt. B, §7 (AMD). 2015, c. 296, Pt. C, §18 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1997, c. 403, §2 (AMD); 1997, c. 403, §4 (AFF).]

A-1. The relocation, or intended relocation, of a child that will disrupt the parent-child contact between the child and the parent who is not relocating, if there exists an award of shared or allocated parental rights and responsibilities concerning the child. Relocating the child more than 60 miles from the residence of the parent who is relocating or more than 60 miles from the residence of the parent who is not relocating is presumed to disrupt the parent-child contact between the child and the parent who is not relocating; [1997, c. 403, §3 (NEW); 1997, c. 403, §4 (AFF).]

A-2. The receipt of notice of the intended relocation of the child as required under section 1653, subsection 14; or [1997, c. 403, §3 (NEW); 1997, c. 403, §4 (AFF).]

B. A finding by the court that domestic or family violence has occurred since the last determination of primary residence. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 403, §§2, 3 (AMD); 1997, c. 403, §4 (AFF) .]

3. Uniform Child Custody Jurisdiction and Enforcement 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 and Enforcement Act, if another state may have jurisdiction as provided in that Act.

[1999, c. 486, §1 (AMD); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 403, §§2,3 (AMD). 1997, c. 403, §4 (AFF). 1999, c. 486, §1 (AMD). 1999, c. 486, §6 (AFF).

§1658. TERMINATION OF PARENTAL RIGHTS AND RESPONSIBILITIES IN CASES INVOLVING SEXUAL ASSAULT

This section applies to the termination of parental rights and responsibilities with respect to a specific child conceived as a result of an act of sexual assault by the parent of that child. [2015, c. 427, §1 (RPR).]

1. Petitioner. The petition for termination may be filed by the other parent or, if the other parent is a minor, the parent or guardian of the other parent.

[2015, c. 427, §1 (RPR).]

2. Petition. The petitioner may file a petition with the District Court that requests the termination of the parental rights and responsibilities of the parent and alleges:

A. That the parent was convicted of a crime involving sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction, that resulted in the conception of the child; or [2015, c. 427, §1 (RPR).]

B. That the child was conceived as a result of an act of sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction. [2015, c. 427, §1 (RPR).]

[2015, c. 427, §1 (RPR).]

3. Termination. Except as provided in subsection 4, if the petitioner proves the allegation in subsection 2, paragraph A by a preponderance of the evidence, the court shall terminate the parental rights and responsibilities of the parent. If the petitioner proves the allegation in subsection 2, paragraph B by clear and convincing evidence, the court may terminate the parental rights and responsibilities of the parent.

[2015, c. 427, §1 (RPR).]

4. Exception. The court is not required to terminate the parental rights and responsibilities of a parent convicted of gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B that resulted in the conception of the child if:

A. The parent or guardian of the other parent filed the petition; [2015, c. 427, §1 (RPR).]

B. The other parent informs the court that the sexual act was consensual; and [2015, c. 427, §1 (RPR).]

C. The other parent opposes the termination of the parental rights and responsibilities of the parent convicted of the gross sexual assault. [2015, c. 427, §1 (RPR).]

[2015, c. 427, §1 (RPR).]

SECTION HISTORY

1997, c. 363, §1 (NEW). 2015, c. 427, §1 (RPR).

§1659. PARENTING COORDINATION AND ASSISTANCE (REPEALED)

SECTION HISTORY

2009, c. 345, §2 (NEW). MRSA T. 19-A, §1659, sub-§9 (RP).

Chapter 57: UNIFORM CHILD CUSTODY JURISDICTION ACT

§1701. SHORT TITLE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1702. PURPOSES OF CHAPTER; CONSTRUCTION OF PROVISIONS*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1703. DEFINITIONS*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1704. JURISDICTION*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1705. NOTICE AND OPPORTUNITY TO BE HEARD*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1706. NOTICE TO PERSONS OUTSIDE THE STATE; SUBMISSION TO JURISDICTION*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1707. SIMULTANEOUS PROCEEDINGS IN OTHER STATES*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1708. INCONVENIENT FORUM*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1709. JURISDICTION DECLINED BY REASON OF CONDUCT*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1710. INFORMATION UNDER OATH TO BE SUBMITTED TO THE COURT*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1711. ADDITIONAL PARTIES*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1712. APPEARANCE OF PARTIES AND THE CHILD*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1713. BINDING FORCE AND RES JUDICATA EFFECT OF CUSTODY DECREE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1714. RECOGNITION OF OUT-OF-STATE CUSTODY DECREES*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1715. MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1716. FILING AND ENFORCEMENT OF CUSTODY DECREE OF ANOTHER STATE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1717. REGISTRY OF OUT-OF-STATE CUSTODY DECREES AND PROCEEDINGS*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1718. CERTIFIED COPIES OF CUSTODY DECREE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1719. TAKING TESTIMONY IN ANOTHER STATE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1720. HEARINGS AND STUDIES IN ANOTHER STATE; ORDERS TO APPEAR*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1721. ASSISTANCE TO COURTS OF OTHER STATES*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1722. PRESERVATION OF DOCUMENTS FOR USE IN OTHER STATES *(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1723. REQUEST FOR COURT RECORDS OF ANOTHER STATE *(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1724. INTERNATIONAL APPLICATION *(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

§1725. PRIORITY *(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §6 (AFF). 1999, c. 486, §2 (RP).

Chapter 58: UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Subchapter 1: GENERAL PROVISIONS

§1731. SHORT TITLE

This chapter may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1732. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

1. Abandoned. "Abandoned" means left without provision for reasonable and necessary care or supervision.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Child. "Child" means an individual who has not attained 18 years of age.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Child custody determination. "Child custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Child custody proceeding. "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under subchapter III.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

5. Commencement. "Commencement" means the filing of the first pleading in a proceeding.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

6. Court. "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

7. Home state. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

8. Initial determination. "Initial determination" means the first child custody determination concerning a particular child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

9. Issuing court. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

10. Issuing state. "Issuing state" means the state in which a child custody determination is made.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

11. Modification. "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

13. Person acting as a parent. "Person acting as a parent" means a person, other than a parent, who:

A. Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

14. Physical custody. "Physical custody" means the physical care and supervision of a child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

15. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

16. Tribe. "Tribe" means an Indian tribe or band or an Alaskan Native village recognized by federal law or formally acknowledged by a state.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

17. Warrant. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1733. PROCEEDINGS GOVERNED BY OTHER LAW

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1734. APPLICATION TO INDIAN TRIBES

1. Proceedings governed by Indian Child Welfare Act. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Tribe treated as state. A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying this subchapter and subchapter II.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Tribal custody determinations. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter III.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1735. INTERNATIONAL APPLICATION OF CHAPTER

1. Foreign country treated as a state. A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying this subchapter and subchapter II.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Recognition and enforcement of foreign determination. Except as otherwise provided in subsection 3, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter III.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Application not required. A court of this State need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1736. EFFECT OF CHILD CUSTODY DETERMINATION

A child custody determination made by a court of this State that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this State or notified in accordance with section 1738 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1737. PRIORITY

If a question of existence or exercise of jurisdiction under this Act is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1738. NOTICE TO PERSONS OUTSIDE STATE

1. Notice given by service of process. Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Proof of service. Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Notice not required. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1739. APPEARANCE AND LIMITED IMMUNITY

1. Not subject to personal jurisdiction for other purpose. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated or of having been physically present for the purpose of participating in the proceeding.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Not immune from service of process if subject to personal jurisdiction. A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Immunity does not extend to unrelated acts. The immunity granted by subsection 1 does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this State.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1740. COMMUNICATION BETWEEN COURTS

1. Communication permitted. A court of this State may communicate with a court in another state concerning a proceeding arising under this chapter.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Participation of parties. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Communication without informing parties; no record required. Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Communication and informing parties; record required. Except as otherwise provided in subsection 3, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

5. Record. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1741. TAKING TESTIMONY IN ANOTHER STATE

1. Testimony of witnesses in another state. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Forms of testimony. A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Exclusion of documentary evidence. Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1742. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS

1. Request to court of another state. A court of this State may request the appropriate court of another state to:

A. Hold an evidentiary hearing; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

B. Order a person to produce or give evidence pursuant to procedures of that state; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

C. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

D. Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

E. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Hearing or order upon request by court of another state. Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection 1.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Assessment of expenses. Travel and other necessary and reasonable expenses incurred under subsections 1 and 2 may be assessed against the parties according to the law of this State.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Preservation of records. A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

Subchapter 2: JURISDICTION

§1745. INITIAL CHILD CUSTODY JURISDICTION

1. Jurisdiction over initial determination. Except as otherwise provided in section 1748, a court of this State has jurisdiction to make an initial child custody determination only if:

A. This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. A court of another state does not have jurisdiction under paragraph A or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under section 1751 or 1752 and:

(1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

(2) Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. All courts having jurisdiction under paragraph A or B have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section 1751 or 1752; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

D. No court of any other state would have jurisdiction under the criteria specified in paragraph A, B or C. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Exclusive jurisdictional basis. Subsection 1 is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Physical presence or personal jurisdiction not necessary or sufficient. Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1746. EXCLUSIVE, CONTINUING JURISDICTION

1. Exclusive, continuing jurisdiction. Except as otherwise provided in section 1748, a court of this State that has made a child custody determination consistent with section 1745 or 1747 has exclusive, continuing jurisdiction over the determination until:

A. A court of this State determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training and personal relationships; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. A court of this State or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this State. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Modification without exclusive, continuing jurisdiction. A court of this State that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 1745.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1747. JURISDICTION TO MODIFY DETERMINATION

Except as otherwise provided in section 1748, a court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under section 1745, subsection 1, paragraph A or B and: [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

1. Jurisdiction of other state; more convenient forum. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 1746 or that a court of this State would be a more convenient forum under section 1751; or

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Not residents of other state. A court of this State or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1748. TEMPORARY EMERGENCY JURISDICTION

1. Abandoned child; emergency. A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. No previous determination and no pending proceeding. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1745 to 1747, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1745 to 1747. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1745 to 1747, a child custody determination made under this section becomes a final determination, if it so provides, and this State becomes the home state of the child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Previous determination or pending proceeding. If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 1745 to 1747, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 1745 to 1747. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Communication with court in another state. A court of this State that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 1745 to 1747, shall immediately communicate with the other court. A court of this State that is exercising jurisdiction pursuant to sections 1745 to 1747, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1749. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER

1. Notice and opportunity to be heard required. Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 1738 must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Enforceability without notice and opportunity to be heard. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Joinder and intervention of parties. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this State as in child custody proceedings between residents of this State.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1750. SIMULTANEOUS PROCEEDINGS

1. Pending proceeding in another state. Except as otherwise provided in section 1748, a court of this State may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state

having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under section 1751.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Examination of documents; communication with court. Except as otherwise provided in section 1748, a court of this State, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 1753. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Modification proceeding; enforcement proceeding in another state. In a proceeding to modify a child custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

A. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. Enjoin the parties from continuing with the proceeding for enforcement; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. Proceed with the modification under conditions it considers appropriate. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1751. INCONVENIENT FORUM

1. Court of this State an inconvenient forum. A court of this State that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Factors relevant to determining whether inconvenient forum. Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

A. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

B. The length of time the child has resided outside this State; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. The distance between the court in this State and the court in the state that would assume jurisdiction; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

D. The relative financial circumstances of the parties; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

E. Any agreement of the parties as to which state should assume jurisdiction; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

F. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

G. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

H. The familiarity of the court of each state with the facts and issues in the pending litigation. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Determination of inconvenient forum. If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Divorce or other proceeding. A court of this State may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1752. JURISDICTION DECLINED BY REASON OF CONDUCT

1. Jurisdiction based on unjustifiable conduct. Except as otherwise provided in section 1748 or by other law of this State, if a court of this State has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

A. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. A court of the state otherwise having jurisdiction under sections 1745 to 1747 determines that this State is a more appropriate forum under section 1751; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. No court of any other state would have jurisdiction under the criteria specified in sections 1745 to 1747. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Appropriate remedy. If a court of this State declines to exercise its jurisdiction pursuant to subsection 1, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 1745 to 1747.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Assessment of expenses. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this State unless authorized by law other than this chapter.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1753. INFORMATION TO BE SUBMITTED TO COURT

1. Required information. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last 5 years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

A. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

B. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

C. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Stay until information furnished. If the information required by subsection 1 is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Additional information. If the declaration as to any of the items described in subsection 1, paragraphs A to C is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Continuing duty to inform court. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

5. Confidentiality. Notwithstanding any other provision of law, if a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

[2009, c. 202, §3 (AMD) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF). 2009, c. 202, §3 (AMD).

§1754. APPEARANCE OF PARTIES AND CHILD

1. Appearance of party or other persons in this State. In a child custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Appearance of party outside this State. If a party to a child custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to section 1738 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Orders to ensure safety. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Payment of travel and other expenses. If a party to a child custody 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 reasonable and necessary travel and other expenses of the party so appearing and of the child.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

Subchapter 3: ENFORCEMENT

§1761. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

1. Petitioner. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Respondent. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1762. ENFORCEMENT UNDER HAGUE CONVENTION

Under this subchapter a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1763. DUTY TO ENFORCE

1. Recognition and enforcement of determination of another state. A court of this State shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Remedies. A court of this State may utilize any remedy available under other law of this State to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1764. TEMPORARY VISITATION

1. Temporary order for enforcement. A court of this State that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

A. A visitation schedule made by a court of another state; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Duration of order. If a court of this State makes an order under subsection 1, paragraph B, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in subchapter II. The order remains in effect until an order is obtained from the other court or the period expires.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1765. REGISTRATION OF CHILD CUSTODY DETERMINATION

1. Registration procedure. A child custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

A. A letter or other document requesting registration; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. Except as otherwise provided in section 1753, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Filing and notice. On receipt of the documents required by subsection 1, the registering tribunal shall:

A. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. Serve notice upon the persons named pursuant to subsection 1, paragraph C and provide them with an opportunity to contest the registration in accordance with this section. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Information in notice. The notice required by subsection 2, paragraph B must state that:

A. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Hearing to contest. A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

A. The issuing court did not have jurisdiction under subchapter II; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which registration is sought. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

5. Confirmation of registration. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

6. Further contest precluded. 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.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1766. ENFORCEMENT OF REGISTERED DETERMINATION

1. Any relief normally available. A court of this State may grant any relief normally available under the law of this State to enforce a registered child custody determination made by a court of another state.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Recognition and enforcement without modification. A court of this State shall recognize and enforce, but may not modify, except in accordance with subchapter II, a registered child custody determination of a court of another state.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1767. SIMULTANEOUS PROCEEDINGS

If a proceeding for enforcement under this subchapter is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter II, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1768. EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION

1. Petition for enforcement verified. A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Petition contents. A petition for enforcement of a child custody determination must state:

A. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

D. The present physical address of the child and the respondent, if known; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

E. Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

F. If the child custody determination has been registered and confirmed under section 1765, the date and place of registration. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Order directing appearance; hearing. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Contents of order. An order issued under subsection 3 must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 1772 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

- A. The child custody determination has not been registered and confirmed under section 1765 and that:
- (1) The issuing court did not have jurisdiction under subchapter II;
 - (2) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II; or
 - (3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which enforcement is sought; or [1999, c. 790, Pt. A, §21 (AMD).]
- B. The child custody determination for which enforcement is sought was registered and confirmed under section 1764, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under subchapter II. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 790, Pt. A, §21 (AMD) .]

5. Military members; expedited enforcement of visitation provisions. Notwithstanding any other provision of law, upon 2 days' notice to a custodial parent or upon such shorter notice as the court may order, a person who is subject to a child custody determination, is a resident of this State, is on active duty serving in the United States Armed Forces or in the National Guard and is either permanently stationed at a military, naval or National Guard post, station or base outside this State or deployed for military or National Guard service may appear and move for enforcement of visitation provisions of a child custody determination and, in that event, the court shall proceed to determine the motion as expeditiously as the ends of justice require.

[2015, c. 273, §1 (NEW) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF). 1999, c. 790, §A21 (AMD). 2015, c. 273, §1 (AMD).

§1769. SERVICE OF PETITION AND ORDER

Except as otherwise provided in section 1771, the petition and order must be served by any method authorized by the law of this State upon the respondent and any person who has physical custody of the child. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1770. HEARING AND ORDER

1. Immediate physical custody of child. Unless the court issues a temporary emergency order pursuant to section 1748, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

- A. The child custody determination has not been registered and confirmed under section 1765 and that:
- (1) The issuing court did not have jurisdiction under subchapter II;
 - (2) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under subchapter II; or

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which enforcement is sought; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. The child custody determination for which enforcement is sought was registered and confirmed under section 1765 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under subchapter II. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Award of fees, costs and expenses. The court shall award the fees, costs and expenses authorized under section 1772 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Refusal to answer. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Privilege and immunity may not be invoked. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1771. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

1. Application for warrant. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Issuance of warrant; hearing. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 1768, subsection 2.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

3. Contents of warrant. A warrant to take physical custody of a child must:

A. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

B. Direct law enforcement officers to take physical custody of the child immediately; and [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

C. Provide for the placement of the child pending final relief. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

4. Service of petition, warrant, order. The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

5. Enforcement of warrant. A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

6. Conditions to ensure appearance. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1772. COSTS, FEES AND EXPENSES

1. Award to prevailing party; exception. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the court finds that special circumstances make the award of these expenses unjust.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Award against a state. The court may not assess fees, costs or expenses against a state unless authorized by law other than this chapter.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1773. RECOGNITION AND ENFORCEMENT

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1774. APPEALS

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 1764, the enforcing court may not stay an order enforcing a child custody determination pending appeal. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1775. ROLE OF PROSECUTOR

1. Action by prosecutor. In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action, including resorting to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child or enforce a child custody determination if there is:

- A. An existing child custody determination; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]
- B. A request to do so from a court in a pending child custody proceeding; [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]
- C. A reasonable belief that a criminal statute has been violated; or [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]
- D. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

2. Prosecutor acts on behalf of court. A prosecutor acting under this section acts on behalf of the court and may not represent any party.

[1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF) .]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1776. ROLE OF LAW ENFORCEMENT

At the request of a prosecutor acting under section 1775, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under section 1775. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1777. COSTS AND EXPENSES

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under section 1775 or 1776. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

Subchapter 4: MISCELLANEOUS PROVISIONS

§1781. APPLICATION AND CONSTRUCTION

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1782. EFFECTIVE DATE

This chapter takes effect January 1, 2000. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

§1783. TRANSITIONAL PROVISION

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before January 1, 2000 is governed by the law in effect at the time the motion or other request was made. [1999, c. 486, §3 (NEW); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1999, c. 486, §3 (NEW). 1999, c. 486, §6 (AFF).

Chapter 59: VISITATION RIGHTS OF GRANDPARENTS

§1801. SHORT TITLE

This chapter is known and may be cited as the "Grandparents Visitation Act." [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1802. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Grandparent. "Grandparent" is a parent of a child's parent. "Grandparent" includes a parent of a child's parent whose parental rights have been terminated pursuant to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter 6, but only until the child's adoption.

[2015, c. 296, Pt. C, §19 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §19 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. There is a sufficient existing relationship between the grandparent and the child; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. When a sufficient existing relationship between the grandparent and the child does not exist, a sufficient effort to establish one has been made. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. If the court's determination under paragraph C is in the affirmative, the court may appoint a guardian ad litem as provided in section 1507. 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. If the court has appointed a guardian ad litem, the court shall also consider the report of the guardian ad litem. The standard for the award of reasonable rights of visitation or access is provided in subsection 3. [2005, c. 360, §3 (AMD).]

[2005, c. 360, §3 (AMD) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The relationship of the child with the child's grandparents, including the amount of previous contact; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The preference of the child, if old enough to express a meaningful preference; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The stability of any proposed living arrangements for the child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

G. The child's adjustment to the child's present home, school and community; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

H. The capacity of the parent and grandparent to cooperate or to learn to cooperate in child care; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods; [2001, c. 665, §5 (AMD).]

J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child; and [2001, c. 665, §5 (AMD).]

K. The existence of a grandparent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203. [2001, c. 665, §6 (NEW).]

[2001, c. 665, §§5, 6 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Costs and fees.

[2005, c. 323, §13 (RP) .]

7. Supervision required; convictions for sexual offenses. Notwithstanding any other provision of this chapter, the court may award a grandparent who is convicted of a child-related sexual offense visitation with a minor grandchild only if the court finds that contact between the grandparent and the child is in the best interest of the child and that adequate provision for the safety of the child can be made. For purposes of this section, "child-related sexual offense" has the same meaning as in section 1653, subsection 6-A.

The court may require that visitation may occur only if there is another person or agency present to supervise visitation. If the court allows a family or household member to supervise grandparent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

A. Minimize circumstances when the family of the grandparent who is a sex offender or sexually violent predator would be supervising visits; [2001, c. 665, §7 (NEW).]

B. Ensure the safety and well-being of the child; and [2001, c. 665, §7 (NEW).]

C. Require that supervision be 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. [2001, c. 665, §7 (NEW).]

[2001, c. 665, §7 (NEW) .]

8. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption that the grandparent would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the grandparent:

A. Has been convicted of an offense listed in section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the grandparent was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the grandparent and the minor victim at the time of the offense; or [2007, c. 513, §4 (AMD).]

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse. [2005, c. 366, §4 (NEW).]

The grandparent seeking contact with the child may present evidence to rebut the presumption.

[2007, c. 513, §4 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 665, §§5-7 (AMD). 2005, c. 323, §13 (AMD). 2005, c. 360, §3 (AMD). 2005, c. 366, §4 (AMD). 2007, c. 513, §4 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§1805. JURISDICTION

An action may be commenced in the District Court for the district in which the minor child resides. If a child protective proceeding pursuant to Title 22, chapter 1071 that involves the minor child is pending, the court may consolidate the action filed under this chapter with that child protection proceeding. [1999, c. 731, Pt. ZZZ, §35 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ35 (AMD). 1999, c. 731, §ZZZ42 (AFF).

Chapter 61: MAINE PARENTAGE ACT

Subchapter 1: SHORT TITLE, SCOPE, DEFINITIONS AND GENERAL PROVISIONS

§1831. SHORT TITLE

This chapter may be known and cited as "the Maine Parentage Act." [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1832. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Acknowledged father. "Acknowledged father" means a man who has established parentage under subchapter 3.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Adjudicated parent. "Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Assisted reproduction. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:

A. Intrauterine or vaginal insemination; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Donation of gametes; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Donation of embryos; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. In vitro fertilization and transfer of embryos; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. Intracytoplasmic sperm injection. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Child. "Child" means an individual of any age whose parentage may be determined under this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Donor. "Donor" means a person who contributes a gamete or gametes or an embryo or embryos to another person for assisted reproduction or gestation, whether or not for consideration.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

6. Embryo. "Embryo" means a cell or group of cells containing a diploid complement of chromosomes or a group of such cells, not including a gamete, that has the potential to develop into a live born human being if transferred into the body of a woman under conditions in which gestation may be reasonably expected to occur.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

7. Gamete. "Gamete" means a cell containing a haploid complement of deoxyribonucleic acid that has the potential to form an embryo when combined with another gamete. "Gamete" includes:

A. Sperm; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Eggs; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Deoxyribonucleic acid from one human being combined with the cytoplasm, including without limitation cytoplasmic deoxyribonucleic acid, of another human being. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

8. Genetic population group. "Genetic population group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

9. Genetic testing. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the genetic father or a woman as the genetic mother of a child. "Genetic testing" includes an analysis of one or a combination of the following:

A. Deoxyribonucleic acid; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Blood group antigens, red cell antigens, human leukocyte antigens, serum enzymes, serum proteins or red cell enzymes; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Genetic markers other than those in paragraphs A and B. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

10. Gestational carrier. "Gestational carrier" means an adult woman who is not an intended parent and who enters into a gestational carrier agreement to bear a child conceived using the gametes of other persons and not her own, except that a woman who carries a child for a family member using her own gametes and who fulfills the requirements of subchapter 8 is a gestational carrier.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

11. Gestational carrier agreement. "Gestational carrier agreement" means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

12. Intended parent. "Intended parent" means a person, married or unmarried, who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a gestational carrier agreement. In the case of a married couple, any reference to an intended parent includes both spouses for all purposes of this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

13. Parent. "Parent" means an individual who has established parentage that meets the requirements of this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

14. Parentage. "Parentage" means the legal relationship between a child and a parent as established in this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

15. Paternity or maternity index. "Paternity or maternity index" means, with respect to a person who has undergone genetic testing, the likelihood of genetic paternity or maternity calculated by computing the ratio between:

A. The likelihood that the tested person is the genetic father or genetic mother based on the genetic markers of the tested person, birth mother and child and conditioned on the hypothesis that the tested person is the father or mother of the child; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The likelihood that the tested person is not the genetic father or genetic mother based on the genetic markers of the tested person, birth mother and child and conditioned on the hypothesis that the tested person is not the genetic father or genetic mother of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

16. Presumed parent. "Presumed parent" means a person who pursuant to section 1881 is recognized as the parent of a child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

17. Probability of paternity; probability of maternity. "Probability of paternity" and "probability of maternity" mean the measure, for the genetic population group to which the alleged genetic father or genetic mother belongs, of the probability that the person in question is the genetic father or genetic mother of the child compared with a random, unrelated person of the same genetic population group and expressed as a percentage incorporating the paternity or maternity index and a prior probability.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

18. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

19. Sign. "Sign" means, with the intent to authenticate or adopt a record, to:

A. Execute or adopt a tangible symbol; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Attach to or logically associate with the record an electronic symbol, sound or process. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

20. Signatory. "Signatory" means an individual who signs a record and is bound by its terms.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1833. SCOPE AND APPLICATION

1. Scope. This chapter applies to determination of parentage in this State.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Choice of law. The court shall apply the law of this State to adjudicate parentage. The applicable law does not depend on:

A. The place of birth of the child; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The past or present residence of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Effect on parental rights. This chapter does not create, enlarge or diminish parental rights or duties under other laws of this State or the equitable powers of the courts, except as provided in this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1834. PARENTAGE PROCEEDING

1. Proceeding authorized. A proceeding to adjudicate the parentage of a child may be maintained in accordance with this chapter and applicable rules of procedure.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Original actions. Original actions to adjudicate parentage may be commenced only in District Court.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Other proceedings. The District Court and the Probate Court are authorized to adjudicate parentage under this chapter when parentage is an issue in any other pending proceeding.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. No right to jury. There is no right to demand a jury trial in an action to determine parentage.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Disclosure of social security numbers. A person who is a party to a parentage action shall disclose that person's social security number to the court. The social security number of a person subject to a parentage adjudication must be placed in the court records relating to the adjudication. The record of a person's social security number is confidential and is not open to the public. The court shall disclose a person's social security number to the department for child support enforcement purposes.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1835. STANDING TO MAINTAIN PROCEEDING

Subject to other provisions of this chapter, a proceeding to adjudicate parentage may be maintained by:
[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Child. The child;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Woman giving birth. The woman who gave birth to the child;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Person whose parentage to be adjudicated. A person whose parentage is to be adjudicated;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Department of Health and Human Services. The department; or

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Representative of individual. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1836. PARTIES TO PROCEEDING

In addition to a child whose parentage is to be adjudicated, all parents of the child must be joined as parties in a proceeding to adjudicate parentage. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1837. PERSONAL JURISDICTION

1. Personal jurisdiction. An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Personal jurisdiction over nonresident. A court of this State having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in section 2961 are fulfilled.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Adjudication. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1838. VENUE

Venue for a proceeding to adjudicate parentage is in the county or division in which: [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Child. The child resides or is present or, for purposes of subchapter 7 or 8, is or will be born;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Parent. The parent or intended parent resides;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Respondent. The respondent resides or is present if the child does not reside in this State;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Estate proceeding. A proceeding for probate or administration of the parent or alleged parent's estate has been commenced; or

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Child protection proceeding. A child protection proceeding with respect to the child has been commenced.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1839. JOINDER OF PROCEEDINGS

1. Joinder permitted. Except as otherwise provided in subsection 2, a proceeding to adjudicate parentage may be joined with a proceeding for parental rights and responsibilities, child support, child protection, termination of parental rights, child custody or visitation, divorce, annulment, legal separation, guardianship, probate or administration of an estate or other appropriate proceeding or a challenge or rescission of acknowledgment of paternity.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Joinder not permitted. A respondent may not join a proceeding described in subsection 1 with a proceeding to adjudicate parentage brought as part of an interstate child support enforcement action under chapter 67.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1840. ORDERS

1. Interim order for support. In a proceeding under this subchapter, the court may issue an interim order for support of a child in accordance with the child support guidelines under chapter 63 with respect to a person who is:

A. A presumed, acknowledged or adjudicated parent of the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Petitioning to have parentage adjudicated; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Identified as the genetic parent through genetic testing under subchapter 6; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. An alleged parent who has declined to submit to genetic testing; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. The woman who gave birth to the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Interim order for parental rights and responsibilities. In a proceeding under this subchapter, 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. In resolving parental rights and responsibilities issues, the court may not delay entering a determination of parentage and an initial order concerning child support.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Final orders. Final orders concerning child support or parental rights and responsibilities are governed by chapters 51 and 55, respectively.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1841. ADMISSION OF PARENTAGE AUTHORIZED

1. Admission of parentage. A respondent in a proceeding to adjudicate parentage may admit to the parentage of a child by filing a pleading to that effect or by admitting parentage under penalty of perjury when making an appearance or during a hearing.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Order adjudicating parentage. If the court finds that an admission of parentage satisfies the requirements of this section and finds that there is no reason to question the admission, and no other party contests it, the court may issue an order adjudicating the child to be the child of the person admitting parentage.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1842. ORDER ON DEFAULT

The court may issue an order adjudicating the parentage of a person who is in default, as long as:
[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Served with notice. The person was served with notice of the proceeding; and

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Found to be parent. The person is found by the court to be the parent of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1843. ORDER ADJUDICATING PARENTAGE

1. Issuance of order. In a proceeding under this subchapter, the court shall issue a final order adjudicating whether a person alleged or claiming to be a parent is the parent of a child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Identify child. A final order under subsection 1 must identify the child by name and date of birth.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Change of name. On request of a party and for good cause shown, the court may order that the name of the child be changed.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Amended birth registration. If the final order under subsection 1 is at variance with the child's birth certificate, the State Registrar of Vital Statistics shall issue an amended birth registration.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1844. BINDING EFFECT OF DETERMINATION OF PARENTAGE

1. Determination binding; signatories and parties. Except as otherwise provided in subsection 2, a determination of parentage is binding on:

A. All signatories to an acknowledgment of paternity or denial of parentage as provided in subchapter 3; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 2961. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Adjudication in proceeding to dissolve marriage. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of section 2961 and the final order:

A. Expressly identifies a child as a "child of the marriage" or "issue of the marriage" or by similar words indicates that the parties are the parents of the child; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Provides for support of the child by the parent or parents. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Determination a defense. Except as otherwise provided in this chapter, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Challenge to adjudication. A party to an adjudication of parentage may challenge the adjudication only by appeal or in a manner otherwise consistent with the Maine Rules of Civil Procedure.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1845. FULL FAITH AND CREDIT

A court of this State shall give full faith and credit to a determination of parentage, including but not limited to an acknowledgment of paternity, from another state if the determination is valid and effective in accordance with the law of the other state. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 2: ESTABLISHMENT OF PARENTAGE

§1851. ESTABLISHMENT OF PARENTAGE

Parentage may be established by: [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Birth. Giving birth to the child, except as otherwise provided in subchapter 8;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Adoption. Adoption of the child pursuant to Title 18-A, Article 9;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Acknowledgment. An effective voluntary acknowledgment of paternity under subchapter 3;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Presumption. An un rebutted presumption of parentage under subchapter 4;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. De facto parentage. An adjudication of de facto parentage, under subchapter 5;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

6. Genetic parentage. An adjudication of genetic parentage under subchapter 6;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

7. Assisted reproduction. Consent to assisted reproduction under subchapter 7; and

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

8. Gestational carrier agreement. Consent to a gestational carrier agreement under subchapter 8 by the intended parent or parents.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1852. NONDISCRIMINATION

Every child has the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of the child's birth. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1853. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE

1. All purposes. Unless parental rights are terminated, parentage established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this State.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Preservation of parent-child relationship. Consistent with the establishment of parentage under this chapter, a court may determine that a child has more than 2 parents.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1854. DETERMINATION OF MATERNITY

Provisions of this chapter relating to determination of paternity may apply to determination of maternity as needed to determine parentage consistent with this chapter. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1855. NO LIMITATION ON CHILD

Nothing in this subchapter limits the right of a child to bring an action to adjudicate parentage. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 3: VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

§1861. ACKNOWLEDGMENT OF PATERNITY

The woman who gives birth to a child and a man, not her spouse, claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish paternity. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1862. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY

1. Requirements. An acknowledgment of paternity under section 1861 must:

A. Be in a record; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Be signed, or otherwise authenticated, under penalty of perjury by the woman giving birth and by the man seeking to establish his paternity; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. State that:

(1) There is no other presumed parent of the child or, if there is another presumed parent, state that parent's full name; and

(2) There is no other acknowledged father and no adjudicated parent of the child other than the woman giving birth; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. State that the man signing the acknowledgment believes himself to be the biological father; and [2015, c. 1, §12 (COR).]

F. State that the signatories understand that the acknowledgment is the equivalent of a court determination of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after 2 years. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 1, §12 (COR) .]

2. Notice. Before the woman giving birth or alleged father may sign an acknowledgment of paternity under section 1861, the woman giving birth and the putative father must be given oral and written notice of the alternatives to, the legal consequences of and the rights and responsibilities that arise from signing the acknowledgment.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Acknowledgment voidable. An acknowledgment of paternity under section 1861 is voidable if it:

A. States that another person is a presumed parent, unless a denial of parentage signed or otherwise authenticated by the presumed parent is filed with the State Registrar of Vital Statistics; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. States that another person is an acknowledged father or adjudicated parent; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Falsely denies the existence of a presumed parent, acknowledged father or adjudicated parent of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Presumed parent. A man who is a presumed parent under section 1881, subsection 3 may sign or otherwise authenticate an acknowledgment of paternity in accordance with the requirements of this subchapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

RR 2015, c. 1, §12 (COR). 2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1863. DENIAL OF PARENTAGE

A person presumed to be a parent under section 1881 may execute a denial of parentage only in the limited circumstances set forth in this section. A denial of parentage is valid only if: [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Acknowledgment. An acknowledgment of paternity signed or otherwise authenticated by another man is filed pursuant to this subchapter;

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Under penalty of perjury. The denial is in a record and is signed or otherwise authenticated under penalty of perjury; and

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Person executing. The person executing the denial has not previously:

A. Acknowledged paternity, unless the previous acknowledgment has been rescinded pursuant to section 1867 or successfully challenged pursuant to section 1868; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Been adjudicated to be the parent of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1864. FILING OF AN ACKNOWLEDGMENT OF PATERNITY AND RELATED DENIAL OF PARENTAGE

1. Acknowledgment and denial. An acknowledgment of paternity and related denial of parentage under this subchapter must be filed with the State Registrar of Vital Statistics and may be contained in a single document or may be signed in counterparts and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Effective date. Subject to subsection 1, an acknowledgment of paternity or denial of parentage takes effect on the filing of the document with the State Registrar of Vital Statistics, whichever occurs later.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Signed by minor. An acknowledgment of paternity or denial of parentage signed by a minor is valid if it is otherwise in compliance with this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1865. EQUIVALENT TO ADJUDICATION

1. Acknowledgment. Except as otherwise provided in sections 1867 and 1868, a valid acknowledgment of paternity under section 1861 filed with the State Registrar of Vital Statistics is equivalent to an adjudication of parentage of a child and confers upon the acknowledged father all of the rights and duties of a parent.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Denial. Except as otherwise provided in section 1867 and section 1868, subsection 1, a valid denial of parentage under section 1863 filed with the State Registrar of Vital Statistics in conjunction with a valid acknowledgment of paternity under section 1861 is equivalent to an adjudication of the nonparentage of the presumed parent and discharges the presumed parent from all rights and duties of a parent.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1866. NO FILING FEE

The State Registrar of Vital Statistics may not charge a fee for filing an acknowledgment of paternity or denial of parentage under section 1864. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1867. PROCEEDING FOR RESCISSION

A signatory may rescind an acknowledgment of paternity or denial of parentage under this subchapter by commencing a proceeding to rescind before the earlier of: [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Sixty days after effective date. Sixty days after the effective date of the acknowledgment or denial, as provided in section 1864; and

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Date of first hearing. The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding seeking child support.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1868. CHALLENGE TO ACKNOWLEDGMENT

1. Challenge by signatory. After the period for rescission under section 1867 has expired, a signatory of an acknowledgment of paternity or denial of parentage may commence a proceeding to challenge the acknowledgment or denial only:

A. On the basis of fraud, duress or material mistake of fact; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Within 2 years after the acknowledgment or denial is filed with the State Registrar of Vital Statistics. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Challenge by person not a signatory. If an acknowledgment of paternity has been made in accordance with this subchapter, an individual who is neither the child nor a signatory to the acknowledgment of paternity and who seeks to challenge the validity of the acknowledgment and adjudicate parentage must commence a proceeding not later than 2 years after the effective date of the acknowledgment, as provided in section 1864, unless the individual did not know and could not reasonably have known of the individual's potential genetic parentage on account of material misrepresentation or concealment, in which case the proceeding must be commenced no later than 2 years after discovery.

[2015, c. 1, §13 (COR) .]

3. Burden of proof. A party challenging an acknowledgment of paternity or denial of parentage pursuant to this section has the burden of proof.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

RR 2015, c. 1, §13 (COR). 2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1869. PROCEDURE FOR RESCISSION OR CHALLENGE

1. Every signatory party. Every signatory to an acknowledgment of paternity and any related denial of parentage under this subchapter must be made a party to a proceeding under section 1867 or 1868 to rescind or challenge the acknowledgment or denial.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Submission to personal jurisdiction. For the purpose of rescission of or challenge to an acknowledgment of paternity or denial of parentage, a signatory submits to personal jurisdiction of this State by signing the acknowledgment or denial, effective upon the filing of the document with the State Registrar of Vital Statistics pursuant to section 1864.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Suspension of legal responsibilities. Except for good cause shown, during the pendency of a proceeding under section 1867 or 1868 to rescind or challenge an acknowledgment of paternity or denial of parentage, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Proceeding to rescind or challenge. A proceeding under section 1867 or 1868 to rescind or challenge an acknowledgment of paternity or denial of parentage must be conducted as a proceeding to adjudicate parentage under subchapter 1.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Amendment to birth record. At the conclusion of a proceeding under section 1867 or 1868 to rescind or challenge an acknowledgment of paternity or denial of parentage, the court shall order the State Registrar of Vital Statistics to amend the birth record of the child, if appropriate.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1870. RATIFICATION NOT PERMITTED

A court or administrative agency conducting a judicial or administrative proceeding may not ratify an unchallenged acknowledgment of paternity under section 1861. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1871. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY

To facilitate compliance with this subchapter, the State Registrar of Vital Statistics shall prescribe forms for the acknowledgment of paternity and the denial of parentage. A valid acknowledgment of paternity or denial of parentage is not affected by a later modification of the prescribed form. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1872. RELEASE OF INFORMATION

The State Registrar of Vital Statistics may release information relating to an acknowledgment of paternity under section 1861 as provided in Title 22, section 2706. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1873. ADOPTION OF RULES

The State Registrar of Vital Statistics may adopt rules to implement this subchapter. Rules adopted pursuant to this section are routine technical rules for the purposes of Title 5, chapter 375, subchapter 2-A. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 4: PRESUMED PARENTAGE

§1881. PRESUMPTION OF PARENTAGE

1. Marital presumption established. A person is presumed to be the parent of a child if:

A. The person and the woman giving birth to the child are married to each other and the child is born during the marriage; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The person and the woman giving birth to the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, divorce or declaration of invalidity or after a decree of separation; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Before the birth of the child, the person and the woman giving birth to the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, divorce or declaration of invalidity or after a decree of separation. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Equivalent status in other jurisdictions. The marital presumption in subsection 1 applies to a legal relationship that provides substantially the same rights, benefits and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Nonmarital presumption established. A person is presumed to be a parent of a child if the person resided in the same household with the child and openly held out the child as that person's own from the time the child was born or adopted and for a period of at least 2 years thereafter and assumed personal, financial or custodial responsibilities for the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Rebuttal of presumption. A presumption established under this subchapter may be rebutted only by a court determination.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1882. CHALLENGE TO PRESUMED PARENT

1. Two-year limitation. Except as provided in subsection 2, a proceeding to challenge the parentage of an individual whose parentage is presumed under section 1881 must be commenced not later than 2 years after the birth of the child; otherwise the presumption cannot be rebutted.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Later than 2 years. A proceeding to challenge the parentage of an individual whose parentage is presumed under section 1881 may be commenced more than 2 years after the birth of the child in the following situations.

A. A presumed parent under section 1881, subsection 1 who is not the genetic parent of a child and who could not reasonably have known about the birth of the child may commence a proceeding under this subsection within 2 years after learning of the child's birth. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. An alleged genetic parent who did not know of the potential genetic parentage of a child, and who could not reasonably have known on account of material misrepresentation or concealment, may commence a proceeding under this subsection within 2 years after discovering the potential genetic parentage. If the individual is adjudicated to be the genetic parent of the child, the court may not disestablish a presumed parent and, consistent with section 1853, subsection 2, the court shall determine parental rights and responsibilities of the parents in accordance with section 1653. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. A mother or a presumed parent under section 1881, subsection 3 disputing the validity of the presumption may commence a proceeding under this subsection at any time. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1883. MULTIPLE PRESUMPTIONS

If 2 or more conflicting presumptions arise under this subchapter, the court shall adjudicate parentage and determine parental rights and responsibilities in accordance with section 1653. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 5: DE FACTO PARENTAGE

§1891. DE FACTO PARENTAGE

1. De facto parentage. The court may adjudicate a person to be a de facto parent.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Standing to seek de facto parentage. A person seeking to be adjudicated a de facto parent of a child under this subchapter must establish standing to maintain the action in accordance with the following.

A. A person seeking to be adjudicated a de facto parent of a child shall file with the initial pleadings an affidavit alleging under oath specific facts to support the existence of a de facto parent relationship with the child as set forth in subsection 3. The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. An adverse party, parent or legal guardian who files a pleading in response to the pleadings in paragraph A shall also file an affidavit in response, serving all parties to the proceeding with a copy. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. The court shall determine on the basis of the pleadings and affidavits under paragraphs A and B whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the requirements set forth in subsection 3. The court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine disputed facts that are necessary and material to the issue of standing. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. If the court's determination under paragraph C is in the affirmative, the party claiming de facto parentage has standing to proceed to adjudication under subsection 3. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Adjudication of de facto parent status. The court shall adjudicate a person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child's life. Such a finding requires a determination by the court that:

A. The person has resided with the child for a significant period of time; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The person has engaged in consistent caretaking of the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. A bonded and dependent relationship has been established between the child and the person, the relationship was fostered or supported by another parent of the child and the person and the other parent have understood, acknowledged or accepted that or behaved as though the person is a parent of the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. The person has accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. The continuing relationship between the person and the child is in the best interest of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Orders. The court may enter the following orders as appropriate.

A. The court may enter an interim order concerning contact between a person with standing seeking adjudication under this subchapter as a de facto parent and the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Adjudication of a person under this subchapter as a de facto parent establishes parentage, and the court shall determine parental rights and responsibilities in accordance with section 1653. The court shall make appropriate orders for the financial support for the child in accordance with the child support

guidelines under chapter 63. An order requiring the payment of support to or from a de facto parent does not relieve any other parent of the obligation to pay child support unless otherwise ordered by a court. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Other parents. The adjudication of a person under this subchapter as a de facto parent does not disestablish the parentage of any other parent.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 6: GENETIC PARENTAGE

§1901. SCOPE OF SUBCHAPTER

This subchapter governs procedures and requirements of genetic testing and genetic testing results of an individual to determine parentage and adjudication of parentage based on genetic testing, whether the individual voluntarily submits to testing or is tested pursuant to an order of the court or the department. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1902. REQUIREMENTS FOR GENETIC TESTING

1. Type of genetic testing. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

A. A national association of blood banks approved by the department; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. An accrediting body designated by the federal Secretary of Health and Human Services. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Specimen. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Selection of databases; objections. Based on the genetic population group of an individual, a testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of genetic parentage. If there is disagreement as to the testing laboratory's choice, the following provisions apply.

A. The court, upon motion, may require the testing laboratory, prior to adjudication, to recalculate the test results using a different database for genetic population groups from that used by the laboratory. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The individual objecting to the testing laboratory's initial choice shall:

(1) If the frequencies are not available to the testing laboratory for the genetic population groups requested, provide the requested frequencies compiled in a manner recognized by an accrediting body under subsection 1; or

(2) Engage another accredited testing laboratory to perform the calculations. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. The testing laboratory may use its own statistical estimate if there is a question regarding which database for genetic population groups is appropriate. The testing laboratory shall calculate the frequencies using statistics, if available, for any other database requested. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Additional genetic testing. If, after recalculation under subsection 3 using a different database for genetic population groups, genetic testing does not rebuttably identify the genetic parent of a child under section 1904, an individual who has been tested may be required to submit to additional genetic testing.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1903. REPORT OF GENETIC TESTING

1. Report; self-authenticating. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this subchapter is self-authenticating.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Documentation. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

A. The names and photographs of the individuals whose specimens have been taken; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The names of the individuals who collected the specimens; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. The places and dates the specimens were collected; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. The names of the individuals who received the specimens in the testing laboratory; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. The dates the specimens were received. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1904. GENETIC TESTING RESULTS

1. Results identify as genetic parent. Under this chapter, a person is rebuttably identified as the genetic parent of a child if the genetic testing of the person complies with this subchapter and the results disclose:

A. In the case of paternity:

(1) That the man has at least a 99% probability of paternity, using a prior probability of 0.50, as calculated by using the paternity index obtained in the testing; and

(2) A paternity index of at least 100 to 1; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. In the case of maternity:

(1) That the woman has at least a 99% probability of maternity, using a prior probability of at least 0.50, as calculated by using the maternity index obtained in the testing; and

(2) A maternity index of at least 100 to 1. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Identification of genetic parent. Identification of a genetic parent through genetic testing does not establish parentage absent adjudication under this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Rebuttal. A person identified under subsection 1 as the genetic father or genetic mother of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this subchapter that:

A. Excludes the person as a genetic father or genetic mother of the child; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. In the case of a genetic father, identifies another man as the possible genetic father of the child or, in the case of a genetic mother, identifies another woman as the possible genetic mother of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Further genetic testing. Except as otherwise provided in section 1909, if more than one person is identified by genetic testing as the possible genetic father or genetic mother of the child, the court shall order them to submit to further genetic testing to identify the sole genetic father or genetic mother.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1905. COSTS OF GENETIC TESTING

1. Payment for the costs advanced. The payment for the costs, if any, of initial genetic testing must be advanced:

A. By the department in a proceeding in which the department is providing services; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. By the individual who made the request; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. As agreed by the parties; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. As ordered by the court. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Reimbursement. In cases in which the payment for the costs of initial genetic testing is advanced pursuant to subsection 1, paragraph A, the department may seek reimbursement from a person who is rebuttably identified through the genetic testing as the genetic father or genetic mother.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1906. ADDITIONAL GENETIC TESTING

The court shall order additional genetic testing upon the request of a party who contests the result of the initial testing. If the initial genetic testing identified a person as the genetic father or genetic mother of the child under section 1904, the court or agency may not order additional testing unless the party provides advance payment for the testing. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1907. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE

1. Specimen not available; submission of specimens. Subject to subsection 2, if a genetic testing specimen is not available from a person who may be the genetic father or genetic mother of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for genetic testing:

A. The parents of the person; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Brothers and sisters of the person; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Other children of the person and their mothers; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. Relatives of the person necessary to complete genetic testing. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Finding required. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1908. DECEASED PERSON

For good cause shown, the court may order genetic testing of a deceased person. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1909. IDENTICAL SIBLING

1. Genetic testing of sibling. The court may order genetic testing of a sibling of a person if the person is commonly believed to have an identical sibling and evidence suggests that the sibling may be the genetic father or genetic mother of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Nongenetic evidence. If a person and a sibling of the person tested pursuant to subsection 1 satisfy the requirements as the identified genetic father or genetic mother of the child under section 1904 without consideration of another identical sibling being identified as the genetic father or genetic mother of the child, the court may rely on nongenetic evidence to adjudicate parentage under this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1910. CONFIDENTIALITY OF GENETIC TESTING

1. Release of report. A report of genetic testing for parentage is confidential and may not be released except as provided in this subchapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Intentional release of identifiable specimen. An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to a proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen commits a Class E crime.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1911. COURT ORDER FOR TESTING

1. Order to submit to genetic testing. Except as provided in section 1912 or as otherwise provided in this chapter, the court may order a child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to a proceeding setting forth a reasonable, good faith basis for alleging or denying genetic parentage.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Presumption of genetic maternity. Genetic testing of the woman who gave birth to a child is not required and may not be ordered to prove that she is the genetic mother, unless there is a reasonable, good faith basis to dispute genetic maternity.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. No presumed, acknowledged or adjudicated parent. The department may seek an order for genetic testing only if there is no presumed parent, acknowledged father, adjudicated parent or intended parent who consented to assisted reproduction pursuant to this chapter. Genetic testing may not be ordered if the person who is the subject of the request for order is a donor.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. In utero testing. If a request for genetic testing of a child is made before birth, the court may not order in utero testing.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Concurrent or sequential testing. If 2 or more individuals are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1912. AUTHORITY TO DENY REQUESTED ORDER FOR GENETIC TESTING OR ADMISSION OF TEST RESULTS

1. Grounds for denial. In a proceeding to adjudicate parentage, the court may deny a motion seeking an order for genetic testing or deny admissibility of the test results at trial if the court determines that:

- A. The conduct of the parties estops a party from denying parentage; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]
- B. It would be an inequitable interference to the relationship between the child and a parent or otherwise contrary to the best interest of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Factors. In determining whether to deny a motion seeking an order for genetic testing under this chapter or a request for admission of such test results at trial, the court shall consider the best interest of the child, including the following factors, if relevant:

- A. The length of time between the proceeding to adjudicate parentage and the time that a parent was placed on notice that genetic parentage is at issue; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]
- B. The length of time during which the parent has assumed a parental role for the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]
- C. The facts surrounding discovery that genetic parentage is at issue; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]
- D. The nature of the relationship between the child and the parent; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. The age of the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

F. Any adverse effect on the child that may result if parentage is successfully disproved; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

G. The nature of the relationship between the child and any alleged parent; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

H. The extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

I. Factors in addition to those in paragraphs A to H that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of other adverse effect to the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Guardian ad litem. In a proceeding involving the application of this section, a minor or incapacitated child may be represented by a guardian ad litem.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Order. In cases involving an acknowledged or presumed parent, if the court denies a motion seeking an order for genetic testing, the court shall issue an order adjudicating the acknowledged or presumed parent to be the parent of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1913. ADMISSIBILITY OF RESULTS OF GENETIC TESTING; EXPENSES

1. Record admissible; objection. Except as otherwise provided in subsection 3, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within 14 days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

A. Voluntarily or pursuant to an order of the court; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Before or after the commencement of the proceeding. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Testimony of experts. A party objecting to the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert's testifying.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Results inadmissible; exceptions. If a child has a presumed parent, acknowledged father or adjudicated parent, the results of genetic testing are admissible to adjudicate parentage only:

A. With the consent of each person who is a parent of the child under this chapter, unless the court otherwise orders under section 1912; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Pursuant to an order of the court under section 1911. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Copies of bills and records as evidence. Copies of bills and records of expenses paid for prenatal care, childbirth, postnatal care and genetic testing are admissible as evidence without requiring 3rd-party foundation testimony and are prima facie evidence of amounts incurred for those expenses or testing on behalf of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1914. CONSEQUENCES OF DECLINING GENETIC TESTING

1. Adjudication contrary to position. If an individual whose paternity is being determined under this chapter declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Testing of woman giving birth; unavailable or declines. Genetic testing of the woman who gave birth to a child is not a condition precedent to testing the child and a man whose paternity is being determined under this chapter. If the woman who gave birth is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every person whose genetic parentage is being adjudicated.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1915. ADJUDICATION OF PARENTAGE BASED ON GENETIC TESTING

1. Parentage based on genetic testing. If the court adjudicates parentage based on genetic testing, the following apply.

A. Unless the results of genetic testing are admitted to rebut other results of genetic testing:

(1) If genetic testing results pursuant to section 1904 exclude a person as the genetic parent of a child, the court shall find that person is not a genetic parent of the child and may not adjudicate the person as the child's parent on the basis of genetic testing; and

(2) If genetic testing results pursuant to section 1904 identify a person as the genetic parent of a child, the court shall find that person to be the genetic parent and may adjudicate the person as the child's parent, unless otherwise provided by this chapter. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. If the court finds that genetic testing under section 1904 neither identifies nor excludes a person as the genetic parent of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of parentage. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Inadmissible evidence. Testimony relating to sexual relations or possible sexual relations of the woman giving birth at a time other than the probable time of conception of the child is inadmissible in evidence.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Adjudication consistent with this chapter. An adjudication of parentage based on genetic testing is subject to the requirements and limitations of this chapter.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 7: PARENTAGE BY ASSISTED REPRODUCTION

§1921. SCOPE OF SUBCHAPTER

This subchapter does not apply to the birth of a child conceived by means other than assisted reproduction. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1922. PARENTAL STATUS OF DONOR

1. Donor not a parent. A donor is not a parent of a child conceived through assisted reproduction.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Exceptions. Notwithstanding subsection 1:

A. A person who provides a gamete or gametes or an embryo or embryos to be used for assisted reproduction for the person's spouse is a parent of the resulting child; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. A person who provides a gamete or gametes or an embryo or embryos for assisted reproduction is a parent of the resulting child if the person has a written agreement or agreements with the person giving birth and any intended parent that the person will be a parent. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1923. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

A person who provides gametes for and consents to or a person who consents to assisted reproduction by a woman as provided in section 1924 with the intent to be the parent of a resulting child is a parent of the resulting child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1924. CONSENT TO ASSISTED REPRODUCTION

1. Written consent. Consent by a person who intends to be a parent of a child born through assisted reproduction must be set forth in a signed record that is executed by each intended parent and provides that the signatories consent to use of assisted reproduction to conceive a child with the intent to parent the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Lack of written consent; parentage. Failure of a person to sign a consent required by subsection 1 before or after birth of the child does not preclude a finding of parentage:

A. If consent can be proved by other means and the consenting individual resided with the child after birth and undertook to develop a parental relationship with the child; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. As provided in this chapter. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Consent form. Consent under subsection 1 executed via a consent form adopted by the Office of Data, Research and Vital Statistics must be accepted and relied upon for purposes of issuing a birth record.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1925. CHALLENGE BY SPOUSE TO CONSENT

1. Challenge by spouse to consent. The spouse of a person who gives birth to a child through assisted reproduction may challenge the spouse's own parentage of the child only if:

A. The spouse did not provide gametes or embryos for the assisted reproduction; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The spouse did not before or after the birth of the child consent to the assisted reproduction by the person who gave birth; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. The spouse and the person who gave birth to the child have not cohabitated since the time of the child's birth; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. The spouse did not openly hold out the child as the spouse's own. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1926. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT

1. Dissolution of marriage prior to transfer or implantation. If a marriage is dissolved before transfer or implantation of gametes or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a signed record with notice to the other spouse and the woman giving birth that, if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Withdrawal of consent prior to transfer or implantation. The consent of a person to assisted reproduction under section 1924 may be withdrawn by that person in a signed record with notice to the person giving birth and any other intended parent before transfer or implantation of gametes or embryos. A person who withdraws consent under this subsection is not a parent of the resulting child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1927. PARENT STATUS OF DECEASED PERSON

If a person who consented in a signed record under section 1924 to be a parent by assisted reproduction dies before transfer or implantation of gametes or embryos, the deceased person is not a parent of the resulting child unless the deceased person consented in a signed record that, if assisted reproduction were to occur after death, the deceased person would be a parent of the child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1928. BIRTH ORDERS

1. Proceeding for birth order. Before or after the birth of the resulting child, a party consenting to assisted reproduction, a person who has a written agreement to be a parent pursuant to section 1922, subsection 2, paragraph B, the intended parent or parents or the person giving birth may commence a proceeding in District Court to obtain an order:

A. Declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Sealing the record from the public to protect the privacy of the child and the parties; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. For any relief that the court determines necessary and proper. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. State not a necessary party. Neither this State nor the State Registrar of Vital Statistics is a necessary party to a proceeding under subsection 1.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1929. LABORATORY ERROR

If due to a laboratory error the resulting child is not genetically related to either of the intended parents, the intended parents are the parents of the child unless otherwise determined by the court. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

Subchapter 8: GESTATIONAL CARRIER AGREEMENT

§1931. ELIGIBILITY TO ENTER GESTATIONAL CARRIER AGREEMENT

1. Eligibility of gestational carrier. In order to execute an agreement to act as a gestational carrier, a woman must:

A. Be at least 21 years of age; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Have previously given birth to at least one child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Have completed a medical evaluation that includes a mental health consultation; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. Have had independent legal representation of her own choosing and paid for by the intended parent or parents regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. Not have contributed gametes that will ultimately result in an embryo that she will attempt to carry to term, unless the gestational carrier is entering into an agreement with a family member. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Eligibility of intended parent or parents. Prior to executing a gestational carrier agreement, a person or persons intending to become a parent or parents, whether genetically related to the child or not, must:

A. Complete a medical evaluation and mental health consultation; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Retain independent legal representation regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1932. GESTATIONAL CARRIER AGREEMENT AUTHORIZED

1. Written agreement. A prospective gestational carrier who is eligible pursuant to section 1931, her spouse if she is married and the intended parent or parents may enter into a written agreement that:

A. The prospective gestational carrier agrees to pregnancy by means of assisted reproduction; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The prospective gestational carrier and her spouse, if she is married, have no rights and duties as the parents of a child conceived through assisted reproduction; and [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. The intended parent or parents will be the parents of any resulting child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Intended parents. The intended parent or parents must be parties to a gestational carrier agreement.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Enforceable. A gestational carrier agreement is enforceable only if it meets the following requirements.

A. The agreement must be in writing and signed by all parties. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. The agreement must require no more than a one-year term to achieve pregnancy. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. At least one of the parties must be a legal resident of the State. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. The agreement must be executed before the commencement of any medical procedures other than the medical evaluations required by section 1931 and, in every instance, before transfer of embryos. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

E. The gestational carrier and the intended parent or parents must meet the eligibility requirements of section 1931. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

F. If any party is married, the party's spouse also must be required to execute the agreement. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

G. The gestational carrier and the intended parent or parents must be represented by independent legal counsel in all matters concerning the agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations must state that the agreement meets the requirements of this chapter and must be solely relied upon by health care providers and staff at the time of birth and by the Office of Data, Research and Vital Statistics for birth registration and certification purposes. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

H. The gestational carrier and each intended parent must sign a written acknowledgment of having received a copy of the agreement. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

I. The signature of each party to the agreement must be notarized, acknowledged or attested by a person authorized to take oaths in accordance with the laws of the jurisdiction where it is executed. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

J. The agreement must expressly provide that:

(1) The gestational carrier:

(a) Must undergo assisted reproduction and attempt to carry and give birth to any resulting child;

(b) Has no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child or children regardless of whether a court order has been issued at the time of birth; and

(c) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;

(2) If the gestational carrier is married, her spouse:

(a) Must acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the gestational carrier agreement;

(b) Has no claim to parentage of any resulting children to the intended parent or parents immediately upon the birth of the children regardless of whether a court order has been issued at the time of birth; and

(c) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;

(3) The gestational carrier has the right to use the services of a health care provider of her choosing to provide her care during her pregnancy;

(4) The intended parent or parents must:

(a) Be the exclusive parent or parents and accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender or mental or physical condition of the child or children; and

(b) Assume responsibility for the financial support of all resulting children immediately upon the birth of the children; and

(5) All parties must provide records related to the medical evaluations conducted pursuant to section 1931, subsection 2, paragraph A. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Reasonable expenses. Except as provided in section 1939, a gestational carrier agreement may provide for payment of reasonable expenses, which, if paid to a prospective gestational carrier, must be negotiated in good faith between the parties.

[2015, c. 456, §1 (AMD) .]

5. Decision of gestational carrier. A gestational carrier agreement may not limit the right of the gestational carrier to make decisions to safeguard her health.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF). 2015, c. 456, §1 (AMD).

§1933. PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

If a gestational carrier agreement satisfies the requirements of this chapter: [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

1. Parentage. The intended parent or parents are by operation of law the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents immediately upon the birth of the child.

A. Neither the gestational carrier nor her spouse, if any, is the parent of the resulting child. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. A person who is determined to be a parent of the resulting child is obligated to support the child. The breach of the gestational carrier agreement by the intended parent or parents does not relieve the intended parent or parents of the obligation to support the resulting child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Parental rights and responsibilities. Parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the resulting child; and

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Laboratory error. If due to a laboratory error the resulting child is not genetically related to either the intended parent or parents or any donor who donated to the intended parent or parents, the intended parent or parents are considered the parent or parents of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1934. BIRTH ORDERS

1. Action for birth order. Pursuant to a valid gestational carrier agreement under this subchapter, before or after the birth of the resulting child a party to the gestational carrier agreement may commence a proceeding in District Court to obtain an order:

A. Designating the contents of the birth certificate in accordance with Title 22, section 2761 and directing the Office of Data, Research and Vital Statistics to designate the intended parent or parents as the parent or parents of the child. The State Registrar of Vital Statistics may charge a reasonable fee for the issuance of a birth certificate; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

B. Declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child; [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

C. Sealing the record from the public to protect the privacy of the child and the parties; or [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

D. For any relief that the court determines necessary and proper. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. State not a necessary party. Neither this State nor the State Registrar of Vital Statistics is a necessary party to a proceeding under subsection 1.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1935. EXCLUSIVE, CONTINUING JURISDICTION

Subject to the jurisdictional standards of section 1745, the court conducting a proceeding under this subchapter has exclusive, continuing jurisdiction of all matters arising out of the gestational carrier agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days. [2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1936. TERMINATION OF GESTATIONAL CARRIER AGREEMENT

1. Termination of agreement; parties. A party to a gestational carrier agreement may withdraw consent to any medical procedure and may terminate the gestational carrier agreement at any time prior to any embryo transfer or implantation by giving written notice of termination to all other parties.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Obligations upon termination; no liability to gestational carrier. Upon termination of the gestational carrier agreement under subsection 1, the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the gestational carrier through the date of termination. The gestational carrier is entitled to keep all payments she has received and obtain all payments to which she is entitled. Neither a prospective gestational carrier nor her spouse, if any, is liable to the intended parent or parents for terminating a gestational carrier agreement.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1937. EFFECT OF SUBSEQUENT MARRIAGE

1. Agreement valid. The subsequent marriage of the gestational carrier does not affect the validity of a gestational carrier agreement.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Subsequent consent not required. The consent of the subsequent spouse of the gestational carrier to the agreement is not required.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. No marital presumption. The subsequent spouse of the gestational carrier is not presumed to be a parent of the resulting child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1938. EFFECT OF NONCOMPLIANCE; STANDARD OF REVIEW; REMEDIES

1. Not enforceable. Except as otherwise provided, a gestational carrier agreement that does not meet the requirements of this subchapter is not enforceable.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

2. Standard of review. In the event of noncompliance with the requirements of this subchapter or with a gestational carrier agreement, a court shall determine the respective rights and obligations of the parties to the gestational carrier agreement, including evidence of the intent of the parties at the time of execution.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Remedies. Except as expressly provided in a gestational carrier agreement and in subsection 4, in the event of a breach of the gestational carrier agreement by the gestational carrier or the intended parent or parents, the gestational carrier or the intended parent or parents are entitled to all remedies available at law or in equity.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Genetic testing. If the parentage of a child born to a gestational carrier is alleged to not be the result of assisted reproduction, and this question is relevant to the determination of parentage, the court may order genetic testing.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Specific performance. Specific performance is not an available remedy for a breach by the gestational carrier of any term in a gestational carrier agreement that requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon birth of the child.

[2015, c. 296, Pt. A, §1 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY

2015, c. 296, Pt. A, §1 (NEW). 2015, c. 296, Pt. D, §1 (AFF).

§1939. LIABILITY FOR PAYMENT OF GESTATIONAL CARRIER HEALTH CARE COSTS

1. Liability for health care costs. The intended parent or parents are liable for the health care costs of the gestational carrier that are not paid by her health insurance. As used in this section, "health care costs" means the expenses of all health care provided for assisted reproduction, prenatal care, labor and delivery.

[2015, c. 456, §2 (NEW) .]

2. Agreement. A gestational carrier agreement must explicitly detail how the health care costs of the gestational carrier are paid. The breach of a gestational carrier agreement by a party to the agreement does not relieve the intended parent or parents of the liability for health care costs imposed by subsection 1.

[2015, c. 456, §2 (NEW) .]

3. Effect on insurance coverage. This section is not intended to supplant any health insurance coverage that is otherwise available to the gestational carrier or an intended parent for the coverage of health care costs. This section does not change the health insurance coverage of the gestational carrier or the responsibility of the insurance company to pay benefits under a policy that covers a gestational carrier.

[2015, c. 456, §2 (NEW) .]

SECTION HISTORY

2015, c. 456, §2 (NEW).

Chapter 63: CHILD SUPPORT GUIDELINES

§2001. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[2017, c. 30, §2 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Child support table. "Child support table" means the schedule that has been adopted by the department under section 2011.

[2001, c. 554, §8 (AMD) .]

3-A. Enhanced support entitlement. "Enhanced support entitlement" means the basic support entitlement multiplied by a factor of 1.5.

[2003, c. 415, §1 (NEW) .]

4. Extraordinary medical expenses. "Extraordinary medical expenses" means recurring, uninsured medical expenses in excess of \$250 per child or group of children per calendar year that can reasonably be predicted by the court or hearing officer at the time of establishment or modification of a support order. Responsibility for nonrecurring or subsequently occurring uninsured medical expenses in excess of \$250 in the aggregate per child or group of children supported per calendar year must be divided between the parties in proportion to their adjusted gross incomes. These expenses include, but are not limited to, insurance copayments and deductibles, reasonable and necessary costs for orthodontia, dental treatment, eye care, eyeglasses, prescriptions, asthma treatment, physical therapy, chronic health problems and professional counseling or psychiatric therapy for diagnosed mental disorders.

[2001, c. 554, §9 (AMD) .]

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 from a spouse who is not the parent of the child for whom support is being determined and educational grants, fellowships or subsidies that are available for personal living expenses. Gross income does not include child support or permanency guardianship subsidies received by either party for children other than the child for whom support is being determined. [2007, c. 284, §5 (AMD) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 underemployed, 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 24 months 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 24 months 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. [2015, c. 186, §2 (AMD) .]

E. Gross income of an obligor does not include the amount of a preexisting spousal support obligation to a former spouse who is not the parent of the child for whom support is being determined, a preexisting child support obligation pursuant to court or administrative order, or an appropriate amount of preexisting child support being voluntarily paid by a party who has a legal obligation to support that child. [2009, c. 290, §7 (AMD).]

F. [2001, c. 264, §2 (RP).]

G. Gross income does not include the amount of money received from means-tested public assistance programs, including, but not limited to, Temporary Assistance for Needy Families, supplemental security income, food stamps and general assistance. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 1997, c. 530, Pt. A, §34 (AMD).]

[2015, c. 186, §2 (AMD) .]

5-A. Health plan.

[2009, c. 290, §8 (RP) .]

5-B. Medical care costs.

[2009, c. 290, §9 (RP) .]

5-C. Medical support.

[2009, c. 290, §10 (RP) .]

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

[2003, c. 415, §2 (AMD) .]

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 if the parents do not provide substantially equal care as defined in subsection 8-A.

[2003, c. 415, §2 (AMD) .]

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 if the parents do not provide substantially equal care as defined in subsection 8-A.

[2003, c. 415, §2 (AMD) .]

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

[2003, c. 415, §3 (NEW) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[2003, c. 415, §4 (AMD) .]

10-A. Total enhanced support obligation. "Total enhanced support obligation" means the sum of money determined by calculating the enhanced support entitlement. "Total enhanced support obligation" does not include child care costs, extraordinary medical expenses and health insurance premiums.

[2003, c. 415, §5 (NEW) .]

11. Twelve through 17 years; between the ages of 12 and 18 years.

[2017, c. 30, §3 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A34 (AMD). 2001, c. 264, §§1,2 (AMD). 2001, c. 554, §§8,9 (AMD). 2003, c. 123, §1 (AMD). 2003, c. 415, §§1-5 (AMD). 2007, c. 284, §5 (AMD). 2007, c. 448, §§1-3 (AMD). 2009, c. 290, §§7-10 (AMD). 2015, c. 186, §2 (AMD). 2017, c. 30, §§2, 3 (AMD).

§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 Title 18-A, section 5-204, this Title or Title 22 and to any court action or administrative proceeding in which past support is awarded. [1999, c. 46, §2 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 46, §2 (AMD).

§2003. FORMS

For the purposes of this chapter, the Supreme Judicial Court is authorized to prescribe or revise forms by administrative order or rule. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The court may admit Department of Labor statistics into evidence for purposes of computing a parental support obligation. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 2006, subsection 5 or section 2007. The court or hearing officer shall review the adequacy of a child support amount agreed to by the parties with reference to the parental support obligation. [2003, c. 415, §6 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 415, §6 (AMD).

§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.

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. The court or hearing officer shall determine the dollar figure for the total number of children for whom support is being determined and multiply the dollar figure by the number of children. The resulting dollar amount represents the basic support entitlement.

[2017, c. 30, §4 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Total basic support obligation. The total basic support obligation is determined by adding the child care costs, health insurance premiums 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 basic support obligation. [2003, c. 415, §7 (AMD) .]

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 basic support obligation. [2003, c. 415, §7 (AMD) .]

C. If private health insurance for the child is available at reasonable cost, the cost of private health insurance must be added to the basic support entitlement to determine the total basic support obligation. For the purposes of this paragraph, "the cost of private health insurance" is the cost of adding the child to existing coverage or the difference between self-only and family coverage. [2009, c. 290, §11 (AMD) .]

[2009, c. 290, §11 (AMD) .]

4. Computation of parental support obligation. The total basic 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 basic support obligation to the party providing primary residential care. The primary residential care provider is presumed to spend the primary care provider's share directly on each child. If the court or hearing officer determines that the parties provide substantially equal care for a child for whom support is sought, presumptive support must be calculated in accordance with subsection 5, paragraph D-1. Both parents are responsible for child support if a caretaker relative provides primary residential care for the child. The caretaker relative's income may not be considered in determining the parents' child support obligation.

[2005, c. 352, §3 (AMD) .]

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. [2015, c. 186, §3 (AMD) .]

B. When the parties' combined annual gross income exceeds \$400,000, 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 \$400,000. [2009, c. 290, §12 (AMD) .]

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 the nonprimary care provider is less than the federal poverty guideline, the nonprimary care provider's weekly parental support obligation may not exceed 10% of the nonprimary care provider's weekly gross income, regardless of the amount of the parties' combined annual gross income. The child support table includes a self-support reserve for obligors earning \$22,800 or less per year. If, within an age category, the nonprimary care provider's annual gross income, without adjustments, is in the self-support reserve for the total number of children for whom support is being determined, the amount listed in the self-support reserve multiplied by the number of children in the age category is the nonprimary care provider's support obligation for the children in that age category, regardless of the parties' combined annual gross income. The nonprimary care provider's proportional share of childcare, health insurance premiums and extraordinary medical expenses are added to this basic support obligation. This paragraph does not apply if its application would result in a greater support obligation than a support obligation determined without application of this paragraph. [2011, c. 34, §2 (AMD).]

D. When the parties have equal annual gross incomes and provide substantially equal care for each child for whom support is being determined, neither party is required to pay the other a parental support obligation. The parties shall share equally the child care costs, health insurance premiums and uninsured medical expenses. [2003, c. 415, §9 (AMD).]

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

- (1) The enhanced support entitlement for each child must be determined.
- (2) Using the enhanced support entitlement, a parental support obligation for each child must be determined by dividing the total enhanced support obligation between the parties in proportion to their respective gross incomes.
- (3) The party with the higher annual gross income has a presumptive obligation to pay the other party the lower of:
 - (a) The difference between their parental support obligations as calculated in subparagraph (2); and
 - (b) The presumptive parental support obligation determined for the payor party using the basic support entitlement under the support guidelines as though the other party provided primary residential care of the child.
- (4) The parties shall share the child care costs, health insurance premiums and uninsured medical expenses in proportion to their incomes. [2003, c. 415, §10 (NEW).]

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 and health insurance premiums 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. [2001, c. 264, §4 (AMD).]

[2015, c. 186, §3 (AMD).]

6. Prospective child support award.

[2017, c. 30, §5 (RP).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The annual gross income of each party and the combined annual income of both parties; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. The amount of the basic weekly support entitlement attributable to each child as indicated per child per week on the child support table; [2017, c. 30, §6 (AMD).]
- D. [2017, c. 30, §7 (RP).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. The name and date of birth of each child for whom extraordinary medical expenses are paid and the amount of those expenses; [2001, c. 264, §5 (AMD).]
- G. The parental support obligation of the party ordered to pay child support; and [2003, c. 415, §11 (AMD).]
- H. The name and date of birth of each child for whom health insurance premiums are paid and the amount of those premiums. [2001, c. 264, §6 (NEW).]

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

[2017, c. 30, §§6, 7 (AMD) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. A beginning date for the parental support obligation; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. A breakdown of the parental support obligation, including:
 - (1) The amount for basic support entitlements and the amount for enhanced support entitlements, if applicable;
 - (2) The amount for child care costs;
 - (3) The amount for extraordinary medical expenses;
 - (4) The percentage of the total child care costs and extraordinary medical expenses included in the parental support obligation, if applicable; and
 - (5) The amount for health insurance premiums; [2003, c. 415, §12 (AMD).]
- D. [2017, c. 30, §8 (RP).]
- E. If a parental support obligation is being established for more than one child and a child has attained 15 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. Except as provided in paragraph G, the court or hearing officer may not apportion support between the parents by determining the parental support obligation amount and dividing by the total number of children; [2017, c. 30, §9 (AMD).]

F. If the court or hearing officer ultimately determines that the order for current support is to be set under section 2007, the written findings of the court or hearing officer in support of the deviation; [2009 , c. 290 , §14 (AMD) .]

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

- (1) Any child reaches 18 years of age and has graduated from secondary school;
- (2) Any child reaches 19 years of age without having graduated from secondary school;
- (3) Any child obtains an order of emancipation; or
- (4) Any child dies.

As of the date of an event listed in subparagraphs (1) to (4), the total child support amount stated in the order must be decreased by the child support amount assigned to that child in the worksheets accompanying the child support order or as set forth in the order; and [2009 , c. 290 , §15 (AMD) .]

H. A requirement that private health insurance must be provided for the benefit of the child, if private health insurance for the child is available at reasonable cost. If private health insurance for the child is not available at reasonable cost at the time of the hearing, a requirement that private health insurance for the child must be provided effective immediately upon being available at reasonable cost. [2009 , c. 290 , §16 (NEW) .]

[2017 , c. 30 , §§8 , 9 (AMD) .]

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 issuing authority to review and, if appropriate, modify the child support order according to the State's child support guidelines.

[1997 , c. 537 , §22 (AMD); 1997 , c. 537 , §62 (AFF) .]

10. Disclosure and recording of social security numbers. A person who is a party to an action to establish or modify a support order shall disclose that person's social security number to the court or the department, whichever conducts the proceeding. The social security number of a person who is subject to a support order must be placed in the records relating to the support order. The record of a person's social security number is confidential and is not open to the public. The court shall disclose a person's social security number to the department for child support enforcement purposes.

[1997 , c. 537 , §23 (NEW); 1997 , c. 537 , §62 (AFF) .]

11. Child between 18 and 19 years of age attending secondary school. The child support table and the support guidelines 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 section 1653, subsection 8, paragraph B; section 1653, subsection 12, paragraph A; or section 2306, subsection 4, paragraph D.

[2017 , c. 30 , §10 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §§22,23 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 264, §§3-7 (AMD). 2001, c. 554, §10 (AMD). 2003, c. 415, §§7-12 (AMD). 2005, c. 352, §§3-5 (AMD). 2009, c. 290, §§11-16 (AMD). 2011, c. 34, §2 (AMD). 2015, c. 186, §3 (AMD). 2017, c. 30, §§4-10 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [2003, c. 415, §13 (RPR).]

B. The number of children for whom support is being determined is greater than 6; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. The financial resources of each child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The financial resources and needs of a party, including nonrecurring income not included in the definition of gross income; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

F. The standard of living each child would have enjoyed had the marital relationship continued; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

G. The physical and emotional conditions of each child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

H. The educational needs of each child; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

I. Inflation with relation to the cost of living; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

J. Available income and financial contributions of the domestic associate or current spouse of each party; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [2001, c. 264, §8 (AMD).]

M. [2001, c. 264, §9 (RP).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2003, c. 415, §13 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 264, §§8,9 (AMD). 2003, c. 415, §13 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2009. MODIFICATION OF EXISTING SUPPORT ORDERS

1. Motion to modify support. A party, including the department, may file a motion to modify support. The commissioner may designate employees of the department who are not attorneys to represent the department in court proceedings to hear a motion to modify support filed by the department or any other party. 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.

[2005, c. 352, §6 (AMD) .]

1-A. Motion to modify by department. When a parent receives public assistance for the benefit of a dependent child, the department may file a motion to modify support regardless of whether the parent has been allocated the primary residential care of the dependent child pursuant to chapter 55.

[2009, c. 290, §17 (NEW) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 and if it has been less than 3 years since the order was issued or modified, the court or hearing officer shall modify the order according to the child support guidelines under chapter 63. If it has been 3 years or longer since the order was issued or modified, the court or hearing officer shall review the order without requiring proof or showing of a change of circumstances and shall modify the order if the amount of the child support award under the order differs from the amount that would be awarded under the guidelines. If a child support order was established under section 2007, a 15% variation between the amount of the order and the parental support obligation determined under section 2006 does not constitute a substantial change of circumstances.

[1997, c. 537, §24 (AMD); 1997, c. 537, §62 (AFF) .]

4. Service.

[2009, c. 290, §18 (RP) .]

4-A. Service. Except as otherwise provided in this subsection, service of a motion to modify support must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For the purpose of this subsection, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. When the department is providing child support services, personal service within the State of a motion to modify support may be made by authorized representatives of the commissioner. Service of the motion must be accompanied by:

A. A notice that the court may enter an order without hearing if the party does not request a hearing; [2009, c. 290, §19 (NEW).]

B. A notice of the right to request a hearing; [2009, c. 290, §19 (NEW).]

C. A notice of the requirement of mediation prior to a hearing; [2009, c. 290, §19 (NEW).]

D. 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; [2009, c. 290, §19 (NEW).]

E. A proposed order, incorporating the child support worksheet; and [2009, c. 290, §19 (NEW).]

F. Any stipulation entered into by the parties. [2009, c. 290, §19 (NEW).]

[2009, c. 290, §19 (NEW) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

8. Motions by department. When the department provides child support enforcement services, the commissioner may designate employees of the department who are not attorneys to prepare motions under this section, to file those motions in District Court and to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this section.

[1997, c. 466, §4 (NEW); 1997, c. 466, §28 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §4 (AMD). 1997, c. 466, §28 (AFF). 1997, c. 537, §24 (AMD). 1997, c. 537, §62 (AFF). 2005, c. 352, §6 (AMD). 2009, c. 290, §§17-19 (AMD).

§2010. PERIODIC REVIEW OF SUPPORT ORDERS

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §62 (AFF). 1997, c. 537, §25 (RP).

§2011. CHILD SUPPORT TABLE ESTABLISHED

The department, in consultation with the Supreme Judicial Court and interested parties, shall adopt rules in accordance with Title 5, chapter 375, establishing a child support table that reflects the percentage of combined gross income that parents living in the same household in this State ordinarily spend on their children. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 554, §11 (NEW).]

SECTION HISTORY

2001, c. 554, §11 (NEW).

§2012. MEDICAL SUPPORT

The department, after consultation with the Supreme Judicial Court and interested parties, shall adopt rules in accordance with Title 5, chapter 375 establishing medical support. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 448, §4 (NEW) .]

SECTION HISTORY

2007, c. 448, §4 (NEW) .

Chapter 65: SUPPORT ENFORCEMENT

Subchapter 1: GENERAL PROVISIONS

§2101. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 and any state agency, bureau, board, commission or municipality that issues a license or permit to hunt, fish, operate a boat, operate a snowmobile, operate an ATV or engage in any other sporting or recreational activity.

[2007, c. 206, §1 (AMD) .]

2. Compliance with a support order. "Compliance with a support order" means that the support obligor has obtained or maintained health insurance coverage if required by a support order and is:

A. No more than 60 days in arrears in making any of the following payments:

- (1) Payments in full for current support;
- (2) Periodic payments on a support arrearage pursuant to a written agreement with the department; and
- (3) Periodic payments as set forth in a support order; and [2003, c. 396, §7 (NEW) .]

B. No more than 30 days in arrears in making payments as described in paragraph A if the obligor has been in arrears for more than 30 days in making payments as described in paragraph A at least 2 times within the past 24 months. [2003, c. 396, §7 (NEW) .]

[2003, c. 396, §7 (RPR) .]

3. Custodial parent. "Custodial parent" means a parent, caretaker relative or legal custodian of a dependent child who is the child's primary residential care provider.

[2015, c. 296, Pt. C, §20 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

4. Dependent child. "Dependent child" means any minor child who is not emancipated.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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, and a license or permit to hunt, fish, operate a boat, operate a snowmobile, operate an ATV or engage in any other sporting or recreational activity, 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.

[2007, c. 206, §2 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

9. Order of support.

[1997, c. 466, §28 (AFF); 1997, c. 466, §6 (RP) .]

9. Support order.

[1997, c. 683, Pt. B, §9 (RP) .]

10. Order for spousal support; order for support; order for costs; spousal support order.

[1997, c. 537, §62 (AFF); 1997, c. 537, §28 (RP) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

12. Responsible parent. "Responsible parent" means the parent of a dependent child.

[2015, c. 296, Pt. C, §20 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

13. Support order. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of

the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

[1997, c. 466, §7 (NEW); 1997, c. 466, §28 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §§5-7 (AMD). 1997, c. 466, §28 (AFF). 1997, c. 537, §§26-28 (AMD). 1997, c. 537, §62 (AFF). 1997, c. 683, §B9 (AMD). 2003, c. 396, §7 (AMD). 2007, c. 206, §§1, 2 (AMD). 2015, c. 296, Pt. C, §20 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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. 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. [2005, c. 323, §14 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §14 (AMD).

§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, including a person receiving services under section 2108, state, political subdivision of a state or instrumentality of a state. [1999, c. 704, §3 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1999, c. 704, §3 (AMD) .]

2. Enforcement of support obligations. The department may, for a fee, locate absent parents, defend child support orders, establish support obligations, seek motions to modify 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 2, 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.

[2005, c. 352, §7 (AMD) .]

3. Fees and costs. The department shall charge a fee of \$2 per pay period 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 nonfederal share of the fee collected pursuant to this subsection must be deposited as General Fund undedicated revenue. The department shall deposit amounts collected as

General Fund undedicated revenue 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 pay period. 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.

[2011, c. 477, Pt. L, §1 (AMD) .]

3-A. Service fee. In the case of an individual who has never received assistance under a state program and for whom the State has collected at least \$500 in child support, the State shall impose an annual \$25 fee for each child support enforcement case that is:

A. Retained by the State from child support collected on behalf of the individual after the collected support exceeds \$500; [2007, c. 365, §1 (NEW) .]

B. Paid by the individual applying for services; [2007, c. 365, §1 (NEW) .]

C. Recovered from the noncustodial parent; or [2007, c. 365, §1 (NEW) .]

D. Paid by the State out of its own funds. The annual fee may not be considered as an administrative cost of the State for operation of child support enforcement services and must be considered income to the program under which the individual has received child support enforcement services. [2007, c. 365, §1 (NEW) .]

The nonfederal share of the annual fee collected pursuant to this subsection must be deposited as General Fund undedicated revenue.

[2011, c. 477, Pt. L, §2 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A34 (AMD). 1999, c. 704, §3 (AMD). 2005, c. 352, §7 (AMD). 2007, c. 365, §1 (AMD). 2011, c. 477, Pt. L, §§1, 2 (AMD).

§2104. STATE REGISTRY OF SUPPORT ORDERS

1. Record of all support orders. On or before October 1, 1998, the department shall maintain a record of each support order established or modified in the State. The record must include standardized data elements, including the names, social security numbers and dates of birth of the parties. The department shall update and monitor the record relating to each support order in all cases in which support rights are assigned to the department or for which the department otherwise provides support enforcement services. The department and the judicial branch shall work cooperatively to develop efficient procedures for implementing the requirements of this subsection.

[1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF) .]

2. Automated data matching. The department shall compare by automated data processing the record of each support order maintained by the department with the records of the Federal Government, other states and other state agencies for the purposes of matching, receiving and disclosing information as required by 42 United States Code, Chapter 7, Subchapter IV, Part D (1996). All state agencies shall work cooperatively with the department to develop automated procedures for providing the department with information the department is permitted access to for purposes of carrying out its responsibilities under the Social Security Act, Chapter 7, Subchapter IV, Part D.

§2104. Credit for dependent benefits

(As enacted by PL 1997, c. 466, §8 and affected by §28 is REALLOCATED TO TITLE 19-A, SECTION 2107)

[1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

RR 1997, c. 1, §16 (RAL). 1997, c. 466, §8 (NEW). 1997, c. 466, §28 (AFF). 1997, c. 537, §29 (NEW). 1997, c. 537, §62 (AFF).

§2105. DUTY OF DEPARTMENT TO RECOGNIZE AND ENFORCE ACTIONS OF OTHER STATES

The department shall recognize and enforce the authority of agencies of other states that are responsible for administering the Social Security Act, 42 United States Code, Chapter 7, Subchapter IV (1996) to take actions under Section 325(a)(2) of the Personal Responsibility and Work Opportunity Act of 1996, Public Law 104-193, 110 Stat. 2105. The department shall enforce the actions of other states as necessary by filing a civil action in the District Court. [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF) .]

§2105. State child support enforcement services

(As enacted by PL 1997, c. 466, §8 and affected by §28 is REALLOCATED TO TITLE 19-A, SECTION 2108)

SECTION HISTORY

RR 1997, c. 1, §16 (RAL). 1997, c. 466, §8 (NEW). 1997, c. 466, §28 (AFF). 1997, c. 537, §29 (NEW). 1997, c. 537, §62 (AFF).

§2106. DEPENDENT HEALTH CARE COVERAGE

1. Enrollment of dependent children in employer health plans. If a parent is required by a support order to provide private health insurance for a child and the parent is eligible for health insurance through an employer doing business in the State then, upon application by either parent or notice from the court or the department, the employer or plan administrator shall enroll the child, if otherwise eligible, in the employer health plan without regard to any enrollment season restrictions, except as provided by subsection 2. If the employer offers more than one plan, the employer or plan administrator shall enroll the child in the plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available, if 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 or plan administrator shall enroll the child in the least costly plan that is available where the child resides. If the plan requires that the participant be enrolled in order for the child to be enrolled, and the participant is not currently enrolled, the employer or the plan administrator must enroll both the participant and the child. The enrollments must be without regard to open season restrictions. The court or the department may issue to a parent's employer or other payor of income a medical support notice to enforce a parent's obligation to obtain or maintain health insurance coverage or other health care services for each dependent child of the parent. The format of the medical support notice must be the federal National Medical Support Notice as required by the Child Support Performance and Incentives Act of 1998, Public Law 105-200, 42 United States Code, Section 666(a)(19)(A) and the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1169(a)(5)(C). The employer or other payor of income shall complete Part A of the National Medical Support Notice and the plan administrator shall complete Part B.

[2009, c. 290, §20 (AMD) .]

2. Employer duty to withhold premiums from employee and pay insurer. An employer who enrolls a dependent child under this section shall withhold from the employee's compensation the employee's share, if any, of the cost of the health care coverage for the child enrolled and pay that amount to the insurer, except that the amount of compensation withheld by the employer may not exceed the limits provided for in section 2356. If withholding the maximum amount of the employee's disposable earnings under section 2356 does not cover the employee's initial share of the cost, the employer may elect not to enroll the employee's dependent child.

[1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF) .]

3. Duty to maintain coverage. An employer may not disenroll or eliminate coverage for a child enrolled under this section unless:

A. The employer is provided with satisfactory written evidence that the court or administrative order is no longer in effect; [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

B. The employer is provided with satisfactory written evidence that the child is or will be enrolled in comparable health coverage that will take effect no later than the date when the child is disenrolled; [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

C. The employer has eliminated family health care coverage for all of its employees; or [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

D. The parent who is ordered to provide health care coverage for the child terminates employment. [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

[1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF) .]

4. Answer. The employer shall respond within 20 days to a parent who requests enrollment or, if a medical support notice has been issued, to the court or the department within 20 days and confirm:

A. That the child has been enrolled in the employer's health plan; [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

B. The date when the child will be enrolled, if enrollment is pending; or [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

C. That coverage can not be provided, stating the reasons why coverage can not be provided. [1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF).]

[2009, c. 290, §21 (AMD) .]

5. Notice of coverage and plan changes. If a child is enrolled under this section, the employer shall provide information to the custodial parent that includes the name of the insurer and the extent of the coverage provided and make available any necessary claim forms or enrollment membership cards. The employer shall inform the custodial parent of a change in coverage, change in insurer or if the plan is terminated. The employer shall provide the custodial parent with any information about the plan that the employer provides to covered employees.

[1997, c. 537, §29 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

1997, c. 537, §29 (NEW). 1997, c. 537, §62 (AFF). 2001, c. 554, §§12,13 (AMD). 2009, c. 290, §§20, 21 (AMD).

§2107. CREDIT FOR DEPENDENT BENEFITS

(REALLOCATED FROM TITLE 19-A, SECTION 2104)

If a child receives dependent benefits as a result of the obligor parent's disability, any tribunal establishing, reviewing or modifying the child support obligation or debt shall give the obligor parent credit for the dependent benefits paid to the child. [1999, c. 327, §1 (RPR).]

1. Calculation of child support obligation; order. The tribunal shall calculate the obligor's child support obligation and issue a child support order pursuant to the child support guidelines in chapter 63. The obligation may not be reduced by the dependent benefits paid to the child.

[1999, c. 327, §1 (NEW) .]

2. Findings; credit for benefits paid. The tribunal shall make the following findings:

A. That the child currently receives dependent benefits as a result of the obligor parent's disability; [1999, c. 327, §1 (NEW).]

B. That the receipt of these benefits satisfied part or all of the obligation; and [1999, c. 327, §1 (NEW) .]

C. That the obligor must receive credit against the established obligation for the benefits received. Credit may not exceed the amount of the current obligation for the period for which the benefits are paid. Credit may not be given toward a past or future obligation for dependent benefits that exceed the current obligation. [1999, c. 327, §1 (NEW).]

[1999, c. 327, §1 (NEW) .]

SECTION HISTORY

RR 1997, c. 1, §16 (RAL). 1999, c. 327, §1 (RPR).

§2108. STATE CHILD SUPPORT ENFORCEMENT SERVICES

(REALLOCATED FROM TITLE 19-A, SECTION 2105)

Notwithstanding any other provision of law, upon written authorization by the Secretary of the United States Department of Health and Human Services, the judicial branch and the department shall provide child support enforcement services in accordance with the United States Social Security Act, Title IV-D, without need of an application for services. When a person is seeking or has been awarded child support, the court shall provide written notice to that person that explains the services provided by the State and the right to refuse services if services are not wanted. [1997, c. 1, §16 (RAL).]

SECTION HISTORY

RR 1997, c. 1, §16 (RAL).

§2109. LIMITATIONS ON COLLECTION OF CHILD SUPPORT

A person other than an employee of the department who enters into an agreement with another to collect child support is subject to the following limitations. [2003, c. 562, §1 (NEW).]

1. Fee limitation. In a contingent-fee contract for the collection of child support, the fee may be based only upon the amount of unpaid past child support arrearage calculated as of the date when the contract is signed. A fee may not be based on current or future child support payments and may be assessed only on funds actually received by the child support obligee.

[2003, c. 562, §1 (NEW) .]

2. Collection practices limitations. Each person who enters into an agreement with another to collect child support is subject to the provisions of Title 32, chapter 109-A if either the support obligee or the support obligor is a resident of this State.

[2003, c. 562, §1 (NEW) .]

3. Requirement for written contract. Each agreement between a person who collects or offers to collect child support and a child support obligee must be in writing, dated and signed by the support obligee. The contract must contain a full and detailed description of the services to be performed for the support obligee and the terms and conditions of payment. The contract may not contain a penalty for termination at any time by the support obligee.

[2003, c. 562, §1 (NEW) .]

4. Basis of compensation. A collector of child support obligations may not impose a charge or fee for any child support payments collected primarily through the efforts of a governmental agency.

[2003, c. 562, §1 (NEW) .]

SECTION HISTORY

2003, c. 562, §1 (NEW).

§2110. EXEMPT PROPERTY OF CHILD SUPPORT OBLIGOR

1. Exempt property. The property of a child support obligor that is exempt pursuant to section 2203, subsection 15 from an order to seize and sell is also exempt from any other enforcement and collection action regarding a support order, except to the extent that it has been fraudulently conveyed by the obligor.

[2015, c. 212, §1 (NEW) .]

2. Application of law. Title 14, chapter 507, subchapter 2, article 7 exemptions to collection do not apply to enforcement and collection of a support order.

[2015, c. 212, §1 (NEW) .]

SECTION HISTORY

2015, c. 212, §1 (NEW).

Subchapter 2: ENFORCEMENT BY DEPARTMENT

Article 1: LOCATION OF PERSONS, INCOME AND OTHER PROPERTY

§2151. LOCATING THOSE LIABLE FOR SUPPORT OF DEPENDENTS

To assist in locating parents who have deserted their children and other persons liable for support of dependents, the department may request information from the records of all departments, boards, bureaus and other agencies of this State and those departments, boards, bureaus and other agencies shall provide the necessary information. 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. The department may make information available to federal agencies conducting activities under 42 United States Code, Chapter 7, Subchapter IV, Part D (1996). The department must be provided automated access to records it is permitted access to under this section if the records are maintained in an automated data base. [1997, c. 537, §30 (AMD); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §30 (AMD). 1997, c. 537, §62 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Request for information concerning responsible parents. Except as provided in subsection 5, the department may request of any person information needed to establish, modify or enforce a support order, including a responsible parent's or alleged responsible parent's:

- A. Complete name; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. Social security number; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. Date and place of birth; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. Present and past employment status; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E. Earnings; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. Current or last known address; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- G. Assets and liabilities; [1997, c. 537, §31 (AMD); 1997, c. 537, §62 (AFF).]
- H. Availability and description of present or previous health insurance coverage for a dependent child; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- I. Health insurance benefits paid or applied for under a policy of health insurance for a dependent child. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 537, §31 (AMD); 1997, c. 537, §62 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. Health insurance benefits paid or applied for under a policy of health insurance. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Demand for information.

[1997, c. 537, §62 (AFF); 1997, c. 537, §32 (RP) .]

5. If paternity has not been established. If an alleged responsible parent is a putative father of a child conceived and born out of wedlock, a request for information must be limited to the following matters concerning the alleged responsible parent:

- A. Complete name; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. Date and place of birth; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. Present and past employment status; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. Social security number; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. Current or last known address. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 537, §33 (AMD); 1997, c. 537, §62 (AFF) .]

5-A. Duty to disclose. All persons, as defined in section 101, subsection 9, shall respond fully and promptly to a request for information made by the department under this section and to a request for similar information made by another state's child support enforcement agency, except that information that is privileged under the Maine Rules of Evidence need not be disclosed.

[1997, c. 537, §34 (NEW); 1997, c. 537, §62 (AFF) .]

6. Immunity from liability. A person who discloses information requested by the department under this section or who discloses similar information requested by another state's child support enforcement agency is immune from liability to any other person because of the disclosure, unless the information is privileged under the Maine Rules of Evidence.

[1997, c. 537, §62 (AFF); 1997, c. 537, §35 (RPR) .]

7. Affirmation of responses. The department may require that a response to a request for information be affirmed under the penalties for unsworn falsification under Title 17-A, section 453.

[1997, c. 537, §36 (AMD); 1997, c. 537, §62 (AFF) .]

8. Facilitation of responses. The department or other requesting agency shall provide a prepaid, preaddressed envelope with each request for information.

[1997, c. 537, §62 (AFF); 1997, c. 537, §37 (RPR) .]

9. Notice to responsible parent or alleged responsible parent. When requesting information as provided by this section, the department shall send a copy of the request to the responsible parent or alleged responsible parent by regular mail to the responsible parent or alleged responsible parent's last known address.

[1997, c. 537, §62 (AFF); 1997, c. 537, §37 (RPR) .]

10. Penalties for nondisclosure. A person who knowingly fails to respond to a request for information, who knowingly fails to disclose information requested or who knowingly refuses to disclose, commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

A. [1997, c. 537, §62 (AFF); 1997, c. 537, §37 (RP).]

B. [1997, c. 537, §62 (AFF); 1997, c. 537, §37 (RP).]

[1997, c. 537, §62 (AFF); 1997, c. 537, §37 (RPR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

12. Admissible evidence. If a person, in response to a request for information pursuant to this section, provides records or data from regularly conducted business, the information is admissible as a public record pursuant to the Maine Rules of Evidence 803(8)(A) and is not within the investigative report exception found in the Maine Rules of Evidence 803(8)(B) because the information is provided pursuant to a duty imposed by law and is inherently reliable.

[2001, c. 264, §10 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §§31-37 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 264, §10 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2154. EMPLOYMENT INFORMATION

1. Employment information; definition. An employer doing business in this State shall report to the department the hiring of a newly hired employee. For the purposes of this section, "newly hired employee" means a person who resides or works in this State to whom the employer anticipates paying earnings and who:

A. [2013, c. 279, §1 (RP).]

B. [2013, c. 279, §1 (RP).]

C. Was previously employed by the employer but who has been separated from that prior employment for at least 60 consecutive days; or [2013, c. 279, §1 (NEW).]

D. Has not previously been employed by the employer. [2013, c. 279, §1 (NEW).]

[2013, c. 279, §1 (AMD) .]

2. Exceptions.

[1997, c. 669, §3 (RP) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Report. An employer shall submit a report within 7 days of the date that services for remuneration are first performed by a newly hired employee. The report must contain:

A. The employee's name, address, social security number, date of birth and the most recent date that services for remuneration were first performed by the employee; and [2013, c. 279, §2 (AMD).]

B. The employer's name, address and employment security reference number or unified business identifier number. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2013, c. 279, §2 (AMD).]

4-A. Independent contractors.

[2009, c. 198, §1 (RP).]

4-B. Independent contractors. An employer who reports under subsection 1 shall also report the contracting for services in this State with an independent contractor when reimbursement for such services is anticipated to equal or exceed \$2,500.

A. An employer required to report under this subsection may report by mailing a copy of the employer's federal Internal Revenue Service 1099-MISC form, transmitting a facsimile of the 1099-MISC 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. [2009, c. 198, §2 (NEW).]

B. The employer shall report the information in this paragraph within 7 days of the earlier of first making payments that in the aggregate equal or exceed \$2,500 in any year to an independent contractor and entering into a contract or contracts with an independent contractor providing for payments that in the aggregate equal or exceed \$2,500 in any year:

- (1) The independent contractor's name, address and social security number;
- (2) The employer's name, business name, address and telephone number;
- (3) The employer's social security number, employment security reference number or unified business identifier number;
- (4) The date the contract is executed or, if no contract, the date payments in the aggregate first equal or exceed \$2,500; and
- (5) The total dollar amount of the contract, if any, and the contract expiration date. [2009, c. 198, §2 (NEW).]

[2009, c. 198, §2 (NEW).]

5. Retention of records.

[1997, c. 537, §62 (AFF); 1997, c. 537, §38 (RP).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

7. Transmissions to the National Directory of New Hires. Within 3 business days after the date information regarding a newly hired or rehired employee or independent contractor is entered into the department's computer system, the department shall transmit the information to the National Directory of New Hires maintained by the federal Department of Health and Human Services. After obtaining the information from the Department of Labor, the department shall send the National Directory of New Hires quarterly reports of wages and unemployment compensation benefits paid to persons who are reported to the department under this section as specified by federal regulations.

[2009, c. 198, §3 (AMD) .]

8. Use of new hire information. The department shall use the information it receives under this section to locate persons and identify sources of income for purposes of:

A. Establishing, enforcing and modifying child support obligations; [1997, c. 537, §39 (NEW); 1997, c. 537, §62 (AFF).]

B. Collecting overpayments of public assistance and overissue of food stamps when benefits are no longer being paid; and [1997, c. 537, §39 (NEW); 1997, c. 537, §62 (AFF).]

C. Determining eligibility and enforcing eligibility rules for cash assistance, food stamps, Medicaid and other benefit programs funded or administered by the department. [1997, c. 537, §39 (NEW); 1997, c. 537, §62 (AFF).]

[1997, c. 537, §39 (NEW); 1997, c. 537, §62 (AFF) .]

9. Access to information. The Department of Labor, the Workers' Compensation Board and the State Tax Assessor may have access to the information reported to the department for purposes of program administration.

[1997, c. 537, §39 (NEW); 1997, c. 537, §62 (AFF) .]

10. Independent contractor. For purposes of this section, "independent contractor" means an individual who is not an employee of the employer and who receives compensation or executes a contract for services performed for that employer within or without this State. "Independent contractor" does not include a direct seller as defined in 26 United States Code, Section 3508(b)(2).

[2009, c. 198, §4 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §§38,39 (AMD). 1997, c. 537, §62 (AFF). 1997, c. 669, §§2,3 (AMD). 2003, c. 224, §1 (AMD). 2009, c. 198, §§1-4 (AMD). 2013, c. 279, §§1, 2 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2157. NOTICE OF RIGHT TO HAVE SUPPORT ORDER REVIEWED

Not less than once every 3 years, the department shall send written notice to parents who are subject to a support order being enforced by the department of the right to have the order reviewed and, if appropriate, modified according to the applicable child support guidelines. [1997, c. 537, §40 (NEW); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1997, c. 537, §40 (NEW). 1997, c. 537, §62 (AFF).

§2158. ACCESS TO WIRELESS SERVICE PROVIDER'S RECORDS OF INDIVIDUALS WHO OWE CHILD SUPPORT

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Account holder" means an individual who has executed an agreement with a wireless service provider for cellular telephone service. [2005, c. 566, §1 (NEW).]
- B. "Match" means an automated comparison by name, date of birth and social security number of a list of obligors provided to a wireless service provider by the department with a list of account holders of the wireless service provider for the purpose of providing the department with a list of addresses of account holders delinquent in support allowing the department to locate and enforce support obligations. [2005, c. 566, §1 (NEW).]
- C. "Obligor" means a person who owes a child support obligation. [2005, c. 566, §1 (NEW).]
- D. "Wireless service provider" means an entity that provides cellular telephone service. [2005, c. 566, §1 (NEW).]

[2005, c. 566, §1 (NEW) .]

2. Match. Upon request from the department to a wireless service provider conducting business in this State, the wireless service provider shall perform a match using the list of obligors' names provided by the department. The department may not request a wireless service provider to perform a match under this section more often than once every calendar quarter.

[2005, c. 566, §1 (NEW) .]

3. Compilation of match list. After completing a match under subsection 2, a wireless service provider shall compile for the department a list of those account holders whose names match names on the list of obligors provided by the department. The list must contain the following information, if available to the wireless service provider through its matching procedure, for each account holder identified:

- A. The account holder's full name; [2005, c. 566, §1 (NEW) .]
- B. The account holder's date of birth; [2005, c. 566, §1 (NEW) .]
- C. The account holder's social security number; [2005, c. 566, §1 (NEW) .]
- D. The account holder's address; and [2005, c. 566, §1 (NEW) .]
- E. The account holder's employer. [2005, c. 566, §1 (NEW) .]

[2005, c. 566, §1 (NEW) .]

4. Notice to department. A wireless service provider that has compiled a match list under subsection 3 shall send the list to the department at the address designated by the department.

[2005, c. 566, §1 (NEW) .]

5. Reasonable fee. To cover the costs of carrying out the requirements of this section, a wireless service provider may assess a reasonable fee to the department not to exceed the actual costs incurred by the wireless service provider.

[2005, c. 566, §1 (NEW) .]

6. Confidentiality. A list of obligors provided by the department to a wireless service provider under subsection 2 is confidential. The information may be used only for the purpose of carrying out the requirements of this section. Knowing or intentional use of the information, without authorization from the department, is a civil violation for which a fine not to exceed \$1,000 may be adjudged.

[2005, c. 566, §1 (NEW) .]

7. Immunity from liability; hold harmless. A wireless service provider is immune from any liability for its good faith actions to comply with this section. The department shall defend and hold harmless, including compensation for attorney's fees, a wireless service provider that acts in good faith to carry out the requirements of this section.

[2005, c. 566, §1 (NEW) .]

8. Rulemaking. The department shall adopt rules to carry out this section. Rules adopted under this subsection are routine technical rules as provided in Title 5, chapter 375, subchapter 2-A.

[2005, c. 566, §1 (NEW) .]

SECTION HISTORY

2005, c. 566, §1 (NEW) .

Article 2: ENFORCEMENT

§2201. NOTICE TO LICENSING BOARDS AND OBLIGOR; JUDICIAL REVIEW

1. Notice. 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 in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this subsection, this must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. Personal service within the State of the notice described in this subsection may be made by an authorized representative of the commissioner.

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. A request for hearing must be made in writing and must be received by the department within 20 days of service; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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 noncompliance with an order of support pending a decision after hearing; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; and [2009, c. 158, §1 (AMD).]
- F. [2009, c. 158, §2 (RP).]
- 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 158, §§1, 2 (AMD); 2009, c. 290, §22 (AMD) .]

1-A. Written agreement to pay past-due support. An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the department and by complying with that agreement. A condition of a written payment agreement must be that the obligor pay the current child support when due. Before a written payment agreement is executed, the obligor shall:

- A. Disclose fully to the department in writing on a form prescribed by the department the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year; and [1997, c. 466, §9 (NEW); 1997, c. 466, §28 (AFF).]
- B. Provide documentation to the department concerning the obligor's financial circumstances, including copies of the most recent state and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor. [1997, c. 466, §9 (NEW); 1997, c. 466, §28 (AFF).]

After full disclosure, the department shall determine the obligor's ability to pay past-due support and request the obligor to execute a written payment agreement consistent with the obligor's ability to pay, not to exceed the limits on income withholding in section 2356.

[1997, c. 466, §9 (NEW); 1997, c. 466, §28 (AFF) .]

1-B. Failure to comply with written agreement. Failure to comply with a written payment agreement is grounds for license revocation unless the obligor notifies the department that the obligor is unable to comply with the agreement and provides the department with evidence of the obligor's current financial circumstances to support the claim. The consequences of failing to comply with a written payment agreement and the requirements to avoid license revocation, if the obligor can not comply with the agreement, must be stated in the agreement. If the obligor claims inability to comply with a written payment agreement, the department, upon motion to the District Court, may request the court to determine the obligor's ability to pay past-due support. After notice and an opportunity for hearing, the court may make a finding of money due, render judgment in that amount and order any relief provided under sections 2603 and 2603-A. For purposes of this subsection, the commissioner may designate employees of the department who are not attorneys to represent the department in District Court. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

[1997, c. 466, §9 (NEW); 1997, c. 466, §28 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The department issues a decision after a 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; [1997, c. 466, §10 (AMD); 1997, c. 466, §28 (AFF).]

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with a support order; [1997, c. 466, §10 (AMD); 1997, c. 466, §28 (AFF).]

D. The obligor abandons a timely request for a hearing on the department's notice of noncompliance and is not in compliance with the support order; or [1997, c. 466, §11 (NEW); 1997, c. 466, §28 (AFF).]

E. The obligor fails to comply with a written payment agreement, does not notify the department that the obligor is unable to comply with the agreement and does not provide the department with evidence of the obligor's current financial circumstances. [1997, c. 466, §11 (NEW); 1997, c. 466, §28 (AFF).]

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.

[1997, c. 466, §§10, 11 (AMD); 1997, c. 466, §28 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

9. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[2009, c. 158, §3 (AMD) .]

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, Office of Securities 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. Address of record; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. Federal employer identification number or social security number; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. Type of license; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E. Effective date of license or renewal; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. Expiration date of license; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- G. Active or inactive status. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2001, c. 182, §6 (AMD) .]

12-A. Commissioner of Inland Fisheries and Wildlife report. The Commissioner of Inland Fisheries and Wildlife shall provide annually to the department on magnetic tape or other machine-readable form, according to standards established by the department, watercraft, snowmobile and ATV registration information concerning obligors who are residents of this State. The information to be provided must include all of the following information about the registrant:

- A. Name; [2007, c. 206, §3 (NEW).]
- B. Address of record; [2007, c. 206, §3 (NEW).]
- C. Make, model and identification number for each watercraft registered under Title 12, section 13052; each snowmobile registered under Title 12, section 13104; and each ATV registered under Title 12, section 13155; [2007, c. 206, §3 (NEW).]
- D. Type of registration; [2007, c. 206, §3 (NEW).]
- E. Effective date of registration or registration renewal; and [2007, c. 206, §3 (NEW).]
- F. Expiration of registration. [2007, c. 206, §3 (NEW).]

[2007, c. 206, §3 (NEW) .]

13. Effect of noncompliance. The department, upon receipt of the licensee information referred to in subsection 12 and registration information referred to in subsection 12-A, shall identify and notify each board and the Department of Professional and Financial Regulation, Division of Administrative Services, of the names of their licensees and registrants 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 or registrant 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 or registration 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.

[2007, c. 206, §4 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The number of support obligors identified by the department under this section who are not in compliance with a support order; and [2003, c. 396, §8 (AMD).]

C. The number of actions taken by the department under this section and the results of those actions. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2003, c. 396, §8 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §§9-11 (AMD). 1997, c. 466, §28 (AFF). 2001, c. 182, §6 (AMD). 2003, c. 396, §8 (AMD). 2005, c. 352, §8 (AMD). 2007, c. 206, §§3, 4 (AMD). 2009, c. 158, §§1-3 (AMD). 2009, c. 290, §22 (AMD).

§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 parents 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.

[2015, c. 296, Pt. C, §21 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

1-A. Written agreement to pay past-due support. An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the department and by complying with that agreement. A condition of a written payment agreement must be that the obligor pay the current child support when due. Before a written payment agreement is executed, the obligor shall:

A. Disclose fully to the department in writing on a form prescribed by the department the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year; and [1997, c. 466, §12 (NEW); 1997, c. 466, §28 (AFF).]

B. Provide documentation to the department concerning the obligor's financial circumstances, including copies of the most recent state and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor. [1997, c. 466, §12 (NEW); 1997, c. 466, §28 (AFF).]

After full disclosure, the department shall determine the obligor's ability to pay past-due support and request the obligor to execute a written payment agreement consistent with the obligor's ability to pay, not to exceed the limits on income withholding in section 2356.

[1997, c. 466, §12 (NEW); 1997, c. 466, §28 (AFF) .]

1-B. Failure to comply with written agreement. Failure to comply with a written payment agreement is grounds for license revocation unless the obligor notifies the department that the obligor is unable to comply with the agreement and provides the department with evidence of the obligor's current financial circumstances to support the claim. The consequences of failing to comply with a written payment agreement and the requirements to avoid license revocation, if the obligor can not comply with the agreement, must be stated in the agreement. If the obligor claims inability to comply with a written payment agreement, the department, upon motion to the District Court, may request the court to determine the obligor's ability to pay past-due support. After notice and an opportunity for hearing, the court may make a finding of money due, render judgment in that amount and order any relief provided under sections 2603 and 2603-A. For purposes of this subsection, the commissioner may designate employees of the department who are not attorneys to represent the department in District Court. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

[1997, c. 466, §12 (NEW); 1997, c. 466, §28 (AFF) .]

2. Notice. 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 made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this subsection, this notice must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. Personal service within the State of the notice described in this subsection may be made by an authorized representative of the commissioner.

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A request for hearing must be made in writing and must be received by the department within 20 days of service; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; and [2009, c. 158, §4 (AMD).]

G. [2009, c. 158, §5 (RP).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 158, §§4, 5 (AMD); 2009, c. 290, §23 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The department issues a decision after a 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; [1997, c. 466, §13 (AMD); 1997, c. 466, §28 (AFF).]

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with a support order; [1997, c. 466, §13 (AMD); 1997, c. 466, §28 (AFF) .]

D. The obligor abandons a timely request for a hearing on the department's notice of noncompliance and is not in compliance with the support order; or [1997, c. 466, §14 (NEW); 1997, c. 466, §28 (AFF) .]

E. The obligor fails to comply with a written payment agreement, does not notify the department that the obligor is unable to comply with the agreement and does not provide the department with evidence of the obligor's current financial circumstances. [1997, c. 466, §14 (NEW); 1997, c. 466, §28 (AFF) .]

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.

[1997, c. 466, §§13, 14 (AMD); 1997, c. 466, §28 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

9. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

10. Agreement. The department may enter into an agreement with the Secretary of State to carry out the requirements of this section.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[2009, c. 158, §6 (AMD) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The number of obligors served notice under this section who request a hearing; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. The number of hearings held under this section, the results of the hearings and the number of cases settled without a hearing; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. The number of support obligors certified to the Secretary of State for noncompliance with a court order of support under this section; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

13. Premium from noncustodial parents. The Department of Health and Human Services, Division of Support Enforcement and Recovery shall collect a premium from noncustodial parents whose children are MaineCare members and who have legally been determined to be responsible for medical care contributions for these children.

This subsection is repealed upon adoption of the final federal rules to implement the premium assistance provisions of the federal Deficit Reduction Act of 2005.

[2007, c. 448, §5 (AMD) .]

13-A. Premium from noncustodial parents. The Department of Health and Human Services, Division of Support Enforcement and Recovery shall collect a premium from noncustodial parents whose children are MaineCare members, including those who receive assistance under Title 22, section 3174-T, and from parents who have legally been determined to be responsible for medical care contributions for these children but do not have access to other health insurance that is at a reasonable cost and that is accessible and comprehensive as determined by rules adopted by the department. The department shall adopt rules to establish a sliding scale for premiums required under this section in accordance with the sliding scale that is applied by the department to custodial parents under 42 United States Code, Section 1396o-1 (2007) or 42 Code of Federal Regulations, Section 457.560 (2006). Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A. This subsection takes effect upon adoption of the final federal rules to implement the premium assistance provisions of the federal Deficit Reduction Act of 2005.

[2007, c. 448, §6 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §§12-14 (AMD). 1997, c. 466, §28 (AFF). 2003, c. 20, §K1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 448, §§5, 6 (AMD). 2009, c. 158, §§4-6 (AMD). 2009, c. 290, §23 (AMD). 2015, c. 296, Pt. C, §21 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Order limited. The county sheriff or levying officer may not seize property not specifically identified in the order.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Sheriff or levying officer. An order to seize and sell may be sent by the department to a county sheriff or levying officer. 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.

[2009, c. 290, §24 (AMD) .]

6. Right to hearing. At least 20 calendar days before the sale, the department shall serve a copy of the order on the obligor and all other persons that the department knows have an ownership interest in the property identified in the order. Service of an order under this subsection must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this subsection, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. Personal service within the State of a copy of the order may be made by an authorized representative of the commissioner. 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 service of a copy of the order. 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 290, §25 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 \$47,500 in value, in real or personal property that the obligor uses as a residence; [2015, c. 212, §2 (AMD) .]

B. The obligor's interest, not to exceed \$5,000 in value, in one motor vehicle; [2015, c. 212, §2 (AMD) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

H. The obligor's interest in one boat, not exceeding 5 tons burden, used by the debtor primarily for commercial fishing; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

I. Professionally prescribed health aids for the obligor or a dependent of the obligor. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2015, c. 212, §2 (AMD) .]

16. Repeal.

[1997, c. 669, §4 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §4 (AMD). 2009, c. 290, §§24, 25 (AMD). 2015, c. 212, §2 (AMD).

§2204. CARETAKER RELATIVE; CHANGE OF PAYEE

When the department pays cash aid to a caretaker relative who provides primary residential care for a dependent child for whom a support order has been issued, the obligor's obligation under the support order to pay child support and provide medical support continues. The child support is payable to the department for as long as the department pays cash aid for the child. Upon notice to the obligor and the payee named in the support order, the department may redirect payments under the support order to the caretaker relative if the caretaker relative states under penalty of perjury that physical custody of the child was not obtained illegally. The obligor and the payee may contest action to redirect payments at an administrative hearing.

The department shall notify the obligor and the payee of the right to a hearing in the notice. If payments are redirected to a caretaker relative, the department may seek to establish an administrative support order against the nonobligated parent. [1997, c. 466, §15 (NEW); 1997, c. 466, §28 (AFF).]

SECTION HISTORY

1997, c. 466, §15 (NEW). 1997, c. 466, §28 (AFF).

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2252. LIMIT ON USE

A support obligation or debt incurred before October 1, 1975 may not be enforced by the methods of this article. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

B. Conception resulting in parentage within the meaning of chapter 61. [2015, c. 296, Pt. C, §22 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

[2015, c. 296, Pt. C, §22 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

3. Personal service.

[2009, c. 290, §26 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 290, §26 (AMD). 2015, c. 296, Pt. C, §22 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§2254. SERVICE

Service of a notice, order or lien described in this article must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this section, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. Personal service within the State of a notice, order or lien described in this article may be made by an authorized representative of the commissioner. [2009, c. 290, §27 (AMD).]

1. Date of service.

[2009, c. 290, §27 (RP) .]

2. Branch banks.

[2009, c. 290, §27 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 290, §27 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

Subpoenas must be issued in accordance with Title 5, section 9060 and served in accordance with the Maine Rules of Civil Procedure. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Report.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); T. 19-A, §2256, sub-§2 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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 a support order 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. [1997, c. 466, §16 (AMD); 1997, c. 466, §28 (AFF).]

B. When a support order 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 a support order does not relieve the responsible parent of any liability for a debt that previously had accrued under paragraph A. [1997, c. 466, §16 (AMD); 1997, c. 466, §28 (AFF).]

[1997, c. 466, §16 (AMD); 1997, c. 466, §28 (AFF) .]

2. Failure to pay child or spousal support. For actions initiated pursuant to section 2103, failure to pay support obligations under a support order 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.

[1997, c. 466, §16 (AMD); 1997, c. 466, §28 (AFF) .]

3. Default judgment. If the responsible parent defaults or otherwise fails to appear, and no support order 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.

[1997, c. 466, §16 (AMD); 1997, c. 466, §28 (AFF) .]

4. Interstate cooperation. 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.

[2001, c. 264, §11 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §16 (AMD). 1997, c. 466, §28 (AFF). 2001, c. 264, §11 (AMD).

§2302. SUPPORT OBLIGATIONS WHEN OBLIGOR RECEIVES PUBLIC ASSISTANCE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Assisted obligor" means an obligor under a court or administrative child support order who receives:

(1) Supplemental security income; or

(2) Public assistance for the benefit of a child of that obligor. [2001, c. 255, §1 (NEW).]

B. "Order" means a court or administrative child support order in existence at the time an obligor becomes an assisted obligor. [2001, c. 255, §1 (NEW).]

C. "Public assistance" has the same meaning as set forth in section 2101, subsection 11, except that it does not include medical care only. [2001, c. 255, §1 (NEW).]

[2001, c. 255, §1 (NEW) .]

2. Child support obligation during period that obligor is assisted obligor. For the period during which an obligor is an assisted obligor and for 2 weeks thereafter, the assisted obligor's child support obligation is automatically suspended. At the end of the 2 weeks, the obligor's child support obligation resumes automatically at the same level at which it was suspended unless modified by an order entered pursuant to subsection 3.

A debt previously incurred under section 2301 may not be collected from a responsible parent while that parent is an assisted obligor, except that such a debt may be collected from nonrecurring lump sum income, as defined in Title 22, section 3762, subsection 11, paragraph A, of a responsible parent while that parent is an assisted obligor.

[2011, c. 550, §1 (AMD) .]

3. Obligee's opportunity for modification. The obligee may seek to modify the effect of subsection 2 by filing a petition for modification with the court or the department, whichever issued the affected order. The court or administrative hearing officer may, by order after hearing, modify the effect of subsection 2. The court or administrative hearing officer, in determining whether to make such a modification, shall consider the suspension in subsection 2 and the child support guidelines under chapter 63. For purposes of the hearing, a substantial change in circumstances is deemed to have occurred.

[2001, c. 255, §1 (NEW) .]

4. Department notification responsibilities. As soon as practicable after the department knows that an obligor has become an assisted obligor, the department shall send notices to the obligor and obligee notifying them of:

- A. The obligor's status as an assisted obligor; [2001, c. 255, §1 (NEW).]
- B. The existence of the suspension in subsection 2; [2001, c. 255, §1 (NEW).]
- C. The obligee's opportunity to contest the suspension by seeking a modification as set forth in subsection 3; and [2001, c. 255, §1 (NEW).]
- D. The location where forms for modification proceedings can be obtained. [2001, c. 255, §1 (NEW).]

[2015, c. 186, §4 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 255, §1 (RPR). 2011, c. 550, §1 (AMD). 2015, c. 186, §4 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2304. ADMINISTRATIVE ESTABLISHMENT OF PARENTAL SUPPORT OBLIGATION; DEBT FOR PAST SUPPORT; OBLIGATION TO PROVIDE HEALTH INSURANCE COVERAGE

When a support order 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 or to pay a proportionate share of health insurance premiums. 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. [2001, c. 264, §12 (AMD).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. That the responsible parent must submit a completed income affidavit to the department within 30 days; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

F. That the responsible parent may request a hearing in writing within 30 days of the date of mailing of the proposed support order; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. If an obligation for current support is established, an order for immediate income withholding is issued and made a part of the decision; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 appeal hearing. The decision must also state that the resulting appeal hearing must be based on the evidence submitted at the underlying hearing, if any. Evidence not part of the hearing record may be considered at the appeal hearing only if the evidence was offered but incorrectly excluded at the underlying hearing. [2005, c. 352, §9 (AMD).]

[2005, c. 352, §9 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Subsequent order. A decision under this section remains in effect until superseded by a subsequent support order.

[1997, c. 466, §18 (AMD); 1997, c. 466, §28 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

9. Enforcement. A decision under this section establishes a support obligation for purposes of enforcement under section 2103.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §§17,18 (AMD). 1997, c. 466, §28 (AFF). 2001, c. 264, §12 (AMD). 2005, c. 352, §9 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 authorization 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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 7 business days after each withholding of earnings. [1997, c. 669, §5 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 669, §5 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 7 business days after each withholding. [1997, c. 537, §41 (AMD); 1997, c. 537, §62 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 7 business days from the withholding date. [1997, c. 669, §6 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 669, §6 (AMD) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The decision establishing the support obligation is superseded by a court order; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The payor has been released from the withholding order in writing by the department; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The child is emancipated or adopted. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The support enforcement case number; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The date of termination of the relationship of payor and payee; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. If known, the name and address of any new or other payor of earnings to the responsible parent. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 7 business 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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A payor who knowingly fails to send withheld earnings to the department within 7 business 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. [1997, c. 669, §7 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 669, §7 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §41 (AMD). 1997, c. 537, §62 (AFF). 1997, c. 669, §§5-7 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2308. MEDICAL SUPPORT NOTICE

1. Issuance of notice. 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 parent's employer or other payor of income a medical support notice to enforce a parent's obligation to obtain or maintain health insurance coverage or other health care services for each dependent child of the parent. The medical support notice must be in the format of the federal National Medical Support Notice as required by the Child Support Performance and Incentives Act of 1998, Public Law 105-200, 42 United States Code, Section 666(a)(19)(A) and the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1169(a)(5)(C). The employer or other payor of income shall complete Part A of the National Medical Support Notice and the plan administrator shall complete Part B.

[2009, c. 290, §28 (AMD) .]

2. Employer notice. A medical support notice must be accompanied by an employer notice that contains the substance of subsections 3 to 16.

[2001, c. 554, §14 (AMD) .]

3. Duty to enroll. An employer or other payor of income served with a medical support notice 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, without regard to any enrollment season restrictions, 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.

[2001, c. 554, §14 (AMD) .]

4. Choice of plan. If more than one plan is offered by the employer, the employer or the plan administrator 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, as long as 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 or the plan administrator shall enroll each qualified child prospectively in the least costly plan that is available where the child resides. If the plan requires that the participant be enrolled in order for the child to be enrolled, and the participant is not currently enrolled, the employer or the plan administrator must enroll both the participant and the child. The enrollments must be made without regard to enrollment season restrictions.

[2001, c. 554, §14 (AMD) .]

5. Answer. An employer shall respond to a medical support notice in writing within 20 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 preprinted answer forms for the employer's and plan administrator's use and shall include the forms and a prepaid, self-addressed envelope with each medical support notice. The plan administrator must complete and return the Part B response within 40 business days of service.

[2001, c. 554, §14 (AMD) .]

6. Mistake of fact; affirmative defenses. A parent may claim a mistake of fact or assert affirmative defenses to contest the issuance of a medical support notice. The department shall establish by rule an administrative process for reviewing claims of mistake and investigating affirmative defenses.

[2009, c. 290, §29 (AMD) .]

7. Duration of notice. A medical support notice 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.

[2001, c. 554, §14 (AMD) .]

8. Change of plan. After it is initially determined in response to a medical support notice that a child is eligible for coverage, the employer or plan administrator 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.

[2001, c. 554, §14 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

10. Failure to honor. Failure of an employer or other payor of earnings or the plan administrator to comply with the requirements of a medical support notice is a civil violation for which the department may recover up to \$1,000 in a civil action.

[2001, c. 554, §14 (AMD) .]

11. Priority of notice. A medical support notice 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.

[2001, c. 554, §14 (AMD) .]

12. Employer protected. The department shall defend and hold harmless any employer or other payor of earnings or plan administrator who honors a medical support notice.

[2001, c. 554, §14 (AMD) .]

13. Immunity. The employer or plan administrator may not be held liable for medical expenses incurred on behalf of a dependent child because of the employer's or plan administrator's failure to enroll the dependent child in a health insurance or health care plan after being directed to do so by the department.

[2001, c. 554, §14 (AMD) .]

14. Employee protected. An employer who discharges, refuses to employ or takes disciplinary action against a parent, or who otherwise discriminates against a parent because of the existence of the medical support notice or the obligation the medical support notice 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 parent for compensatory and punitive damages, plus attorney's fees and court costs.

[2009, c. 290, §30 (AMD) .]

15. Service. A medical support notice must be served on the parent's employer or other payor of earnings. Service must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this subsection, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. Personal service within the State of a copy of the notice may be made by an authorized representative of the commissioner. The department shall send a copy of the medical support notice to the parent at the parent's most recent address of record.

[2009, c. 290, §31 (AMD) .]

16. Withholding order and support notice combined. The department may combine a medical support notice with a child support income withholding order issued under section 2306.

[2001, c. 554, §14 (AMD) .]

17. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §§42,43 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 554, §14 (AMD). 2009, c. 290, §§28-31 (AMD).

§2309. RECOVERY OF HEALTH CARE BENEFITS

1. Remedies available. After notice and opportunity for hearing, the department may use any remedies available for collection of child support to recover money from a responsible parent who:

A. Is required by a court or administrative order to provide health care coverage for a dependent child; [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF).]

B. Has received payment from a 3rd party for health care costs incurred by the dependent child and paid for by the custodial parent, the department or another payor of public assistance; and [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF).]

C. Has not reimbursed the custodial parent, department or another payor of public assistance who has paid for the dependent child's care. [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

A claim for current or past-due child support takes priority over a claim under this section.

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

2. Notice to responsible parent. An action to recover health care benefits under this section may be commenced by serving notice on the responsible parent. The notice must:

A. Explain the nature of the proceeding; [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

B. Explain to the responsible parent that the responsible parent may contest the claim set forth in the notice at a department administrative hearing; [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

C. State the responsible parent's basic hearing rights; [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

D. Inform the responsible parent of what the department may do to collect the claim if the responsible parent does not contest it; and [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

E. Explain to the responsible parent about the stay of collection provided for by subsection 7. [1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF).]

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

3. Service. The department shall attach a copy of the responsible parent's support order to the notice. Service of the notice must be made by certified mail, return receipt requested, or by personal service as specified in the Maine Rules of Civil Procedure, Rule 4. For purposes of this section, authorized representatives of the commissioner may serve the notice.

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

4. Notice to custodial parent. If the department commences an action under this section for the benefit of a custodial parent, the department shall mail a copy of the notice to the custodial parent by regular mail. The notice to the custodial parent must state the custodial parent's basic hearing rights. If the custodial parent's rights are at issue, the department shall send to the custodial parent by regular mail notice of the date, time and place of the hearing if one is requested.

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

5. Administrative hearing. A responsible parent may request an administrative hearing upon service of the notice described in subsection 2. 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 considered at the hearing are limited to whether the responsible parent is required to provide health care coverage for each dependent child, whether the responsible parent has received payment from a 3rd party for health care costs incurred by each dependent child and paid for by the custodial parent, the department or another payor of public assistance and whether the responsible parent has reimbursed the custodial parent, the department or another payor of public assistance for the cost of care provided.

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

6. Decision after hearing. The department shall issue a decision after hearing without undue delay as to whether the responsible parent is required to provide health care coverage for each dependent child, whether the responsible parent has received payment from a 3rd party for health care costs incurred by each dependent child and paid for by the custodial parent, the department or another payor of public assistance and whether the responsible parent has reimbursed the custodial parent, the department or another payor of public assistance, as applicable, for the cost of care provided. The decision must be based on the hearing record and rules adopted by the commissioner. The responsible parent must be informed of the right to file a petition for judicial review of the decision in Superior Court within 30 days of the date of the decision. The department shall send an attested copy of the decision to the responsible parent by regular mail to the responsible parent's most recent address of record. If the decision affects the rights of the custodial parent, the department shall send the custodial parent a copy of the decision, which must state the custodial parent's right to judicial review.

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

7. Stay; collection. If a responsible parent requests a hearing in a timely manner, the department may not take collection action until a decision after hearing is issued or until the responsible parent abandons the request for a hearing. If a decision establishes that the custodial parent, the department or another payor of public assistance is entitled to reimbursement by the responsible parent, the department may begin collection

30 days after the decision is mailed to the responsible parent. If a responsible parent who is served notice under subsection 2 does not request a hearing in a timely manner, the department may begin collection of the amount claimed in the notice 30 days after the date of service.

[1997, c. 537, §44 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

1997, c. 537, §44 (NEW). 1997, c. 537, §62 (AFF).

Subarticle 3: COLLECTION OF SUPPORT DEBT

§2351. RIGHT OF SUPPORT ENFORCEMENT WHEN ORDER EXISTS

1. Subrogation of support rights. If a 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 support 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 to subrogate itself to the rights of the payee and to be treated as a party in any further proceedings regarding the support order. Upon notice to the parties, the department may order an obligor or other payor of child support to redirect payments to the department if payments are owed to the department or another state pursuant to an assignment of support rights or if payments are otherwise required to be made through the department. A person who knowingly violates the department's order commits a civil violation for which the court may adjudge a forfeiture not to exceed \$500 plus interest, attorney's fees and costs.

[1997, c. 683, Pt. A, §10 (RPR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §19 (AMD). 1997, c. 466, §28 (AFF). 1997, c. 537, §45 (AMD). 1997, c. 537, §62 (AFF). 1997, c. 683, §A10 (AMD).

§2352. NOTICE OF SUPPORT DEBT WHEN COURT ORDER EXISTS

When the department is subrogated to a support order 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. [1997, c. 466, §20 (AMD); 1997, c. 466, §28 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A statement of the terms of the support order, including the names of each dependent child; [1997, c. 466, §21 (AMD); 1997, c. 466, §28 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. A demand for payment of the support debt within 20 days of receipt of the notice of debt; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. A statement that the net proceeds of any collection action will be applied to the satisfaction of the support debt; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 support order as stated in the notice of debt; and
- (5) The maintenance of any required medical or dental insurance coverage; and [1997, c. 466, §21 (AMD); 1997, c. 466, §28 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 466, §21 (AMD); 1997, c. 466, §28 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §§20,21 (AMD). 1997, c. 466, §28 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 9-1102, subsection (39). 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.

[1999, c. 699, Pt. D, §17 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A court of competent jurisdiction orders a release. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1997, c. 669, §8 (AMD) .]

5. Notice and hearing prior to disposition. When the department is provided with reliable information that another person, in addition to the responsible parent, has an ownership interest in the property of the responsible parent subject to a support lien, the department shall provide written notice to the other person before the foreclosure or other disposition of the property explaining that:

A. The department has a support lien against the property; and [1997, c. 407, §1 (NEW); 1997, c. 407, §5 (AFF).]

B. The person may request a hearing to establish the value of that person's interest in the property before the foreclosure or other disposition of the property. [1997, c. 407, §1 (NEW); 1997, c. 407, §5 (AFF).]

[1997, c. 407, §1 (NEW); 1997, c. 407, §5 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 407, §1 (AMD). 1997, c. 407, §5 (AFF). 1997, c. 669, §8 (AMD). 1999, c. 699, §D17 (AMD). 1999, c. 699, §D30 (AFF).

§2358. ORDER TO WITHHOLD AND DELIVER

The commissioner shall proceed as follows with respect to any order to withhold and deliver. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Notice to responsible parent. When an order is issued, the department shall send a copy of the order to the responsible parent by regular mail at the responsible parent's last known address.

[1997, c. 466, §28 (AFF); 1997, c. 466, §22 (RPR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Answer. A person served with an order to withhold and deliver shall answer the order within 20 days of receipt of the order.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. An order to withhold and deliver issued by an out-of-state child support agency or court must be honored by a financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A or credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection 12-A.

[2005, c. 352, §10 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

7. Bond as alternative. Instead of the property of the responsible parent, the commissioner may accept a bond conditioned upon final determination of liability.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §22 (AMD). 1997, c. 466, §28 (AFF). 2005, c. 352, §10 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The amount that will be withheld or the formula by which that amount will be determined; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. That the withholding will apply to any current or subsequent period of employment; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. That the responsible parent may contest the withholding by requesting a review pursuant to section 2451; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. That the only basis for contesting the withholding is a mistake of fact; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Priority of order. Withholding initiated under this section has priority over any other legal process under state law against the same wages.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

B. The child or spousal support obligation has been eliminated by a subsequent court order; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

C. The child has reached majority or has otherwise been emancipated; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

D. The child has been adopted. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

The withholding may not be terminated while an arrearage remains, unless other provisions acceptable to the department for its repayment have been made.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2360-A. LUMP-SUM SETTLEMENT; WORKERS' COMPENSATION CLAIMS

On a monthly basis, the department shall notify the Workers' Compensation Board, referred to in this section as the "board," of the names and social security numbers of all persons who owe the department child support debts that have been liquidated by judicial or administrative action. Before approving any lump-sum settlement, the board shall determine whether the person receiving the settlement is on the list of persons who owe to the department child support debts that have been liquidated by judicial or administrative action. If the person is on the list, the board shall notify the department of the pending settlement and inform the person of the notification to the department. [1997, c. 654, §1 (NEW).]

SECTION HISTORY

1997, c. 654, §1 (NEW).

§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 a support order. Notwithstanding section 2254, an order to appear and disclose must be served on the responsible parent by personal service as provided for personal service

of summons by the Maine Rules of Civil Procedure, Rule 4(d). Personal service within the State of an order to appear and disclose may be made by an authorized representative of the commissioner. Personal service outside the State of an order to appear and disclose may be made in the manner provided for personal service of summons outside the State by the Maine Rules of Civil Procedure, Rule 4(e).

[2009, c. 290, §32 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The amount of child support the responsible parent owes; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. That the department may file a record of the proceeding in court to collect the debt; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1997, c. 407, §2 (AMD); 1997, c. 407, §5 (AFF); 1997, c. 537, §46 (AMD); 1997, c. 537, §62 (AFF).]

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; [1997, c. 1, §17 (COR).]

H. That the responsible parent must provide to the department the name and last known address of any other person that has an ownership in any property in which the responsible parent has an ownership interest; and [1997, c. 1, §18 (COR).]

I. That failure to comply with the order to appear and disclose may result in revocation of the obligor's driver's license, occupational licenses or other licenses as defined in section 2101, subsection 7. [1997, c. 1, §19 (RAL).]

The notice must be accompanied by a copy of the support order under which the responsible parent owes child support.

[1997, c. 1, §§17-19 (COR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Continuance. The department may grant a continuance of the proceeding for good cause.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

7. Transcribable record. The department shall prepare an official, transcribable record of all proceedings held under this section.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

13. Repeal.

[1997, c. 669, §9 (RP) .]

14. License revocation. If an obligor who is served with a support order under subsection 1 fails to appear without good cause or fails to provide documents, papers and other evidence as required by the order without good cause, the department may certify the obligor's noncompliance to the Secretary of State for suspension of the obligor's driver's license and right to operate a motor vehicle and to any board or other entity in the State that issues a license as defined in section 2101, subsection 7. Upon receipt of a certification of noncompliance from the department, the Secretary of State, board or other entity shall cause any licenses held by the obligor to be suspended or revoked and may not issue or renew a license to the obligor until the department issues a written statement that the obligor has complied with the order. A suspension, revocation or refusal by a board or other licensing entity to reissue, renew or otherwise extend a license or permit of an obligor certified by the department is a final determination within the meaning of Title 5, section 10002.

[1997, c. 537, §48 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). RR 1997, c. 1, §§17-19 (COR). 1997, c. 407, §§2,3 (AMD). 1997, c. 407, §5 (AFF). 1997, c. 466, §23 (AMD). 1997, c. 466, §28 (AFF). 1997, c. 537, §§46-48 (AMD). 1997, c. 537, §62 (AFF). 1997, c. 669, §9 (AMD). 2009, c. 290, §32 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2363. ADMINISTRATIVE SEIZURE AND DISPOSITION OF PROPERTY

The commissioner shall proceed as follows with respect to administrative seizure and disposition of property. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2364. FORECLOSURE ON LIENS

The commissioner shall proceed as follows with respect to foreclosures on filed liens. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Liens; hearing to determine ownership interest. Before the foreclosure, the obligor and any other persons who claim an ownership interest in the property subject to the lien have a right to an administrative hearing 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 notice of the foreclosure. Upon receiving a request for a hearing, the department shall notify all persons the department has reason to

believe have an ownership interest in the property of the time, place and nature of the hearing. At the hearing, the hearing officer shall determine the value of the interests of all persons with an ownership interest in the property.

[1997, c. 407, §4 (NEW); 1997, c. 407, §5 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 407, §4 (AMD). 1997, c. 407, §5 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 for the greater of \$500 or the amount the person was required to remit to the department under a 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. [1997, c. 332, §1 (AMD); 1997, c. 332, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 332, §1 (AMD). 1997, c. 332, §2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

An employee may not be discharged by reason of a presentation of an assignment of earnings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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 and spousal support that accrue during the period that the recipient receives public assistance for the child. [2011, c. 34, §3 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 264, §13 (AMD). 2011, c. 34, §3 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The department shall distribute the funds received as provided in paragraph A regardless of the source of the collection of the funds. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2402. DEDICATED FUNDS

Except as provided in section 2103, subsections 3 and 3-A, 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 Temporary Assistance for Needy Families and to cover the costs of making such collections. The department may not expend more than \$5,500,000 in any fiscal year of incentive payment revenue for the purpose of covering the costs of making child support collections. [2013, c. 595, Pt. P, §1 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A34 (AMD). 1999, c. 401, §S1 (AMD). 2011, c. 477, Pt. L, §3 (AMD). 2013, c. 595, Pt. P, §1 (AMD).

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, 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. [2005, c. 352, §11 (AMD).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. Except as provided by section 2304, subsection 4, paragraph F, 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. [2005, c. 352, §12 (AMD).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The hearing officer shall render a decision within 30 days of the date on which the hearing was held. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2005, c. 352, §12 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 352, §§11,12 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

Subchapter 3: ENFORCEMENT BY COURT

§2601. CONTEMPT

Upon a motion to enforce a support order or costs, the court may issue summary process and may find the defaulting person guilty of contempt as provided under Title 14, section 252. [1997, c. 466, §24 (AMD); 1997, c. 466, §28 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §24 (AMD). 1997, c. 466, §28 (AFF).

§2602. SUPPORT ORDERS

1. Installment payments. In a support order or costs, the court may include an order to pay specified installment payments as provided under Title 14, sections 3126-A to 3136.

[1999, c. 587, §11 (AMD) .]

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 3126-A 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.

[1999, c. 587, §12 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 466, §25 (AMD). 1997, c. 466, §28 (AFF). 1999, c. 587, §§11,12 (AMD).

§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: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Execution and levy. Execution and levy as provided under Title 14, chapter 403;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Installment payments. Specified installment payments as provided under Title 14, sections 3126-A 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;

[1999, c. 587, §13 (AMD) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Attachment. Attachment as provided under Title 14, chapter 507;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Execution. Execution as provided under Title 14, chapter 509;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Other methods. Any other method of enforcement that may be used in a civil action; or

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

7. Security. The judgment debtor to give security, post a bond or give some other guarantee to secure payment of the judgment.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 587, §13 (AMD).

§2603-A. LICENSE REVOCATION FOR NONPAYMENT OF CHILD SUPPORT

Upon a motion to enforce a support order, after notice and an opportunity for a hearing, the court may make a finding of money due, render judgment for that amount and, to compel payment, order: [1997, c. 466, §26 (NEW); 1997, c. 466, §28 (AFF).]

1. Suspension of driver's license. Suspension of the obligor's driver's license or licenses and right to operate a motor vehicle;

[1997, c. 466, §26 (NEW); 1997, c. 466, §28 (AFF) .]

2. Revocation of occupational licenses. Revocation of the obligor's occupational, business, trade or professional licenses; and

[1997, c. 466, §26 (NEW); 1997, c. 466, §28 (AFF) .]

3. Revocation of recreational licenses. Revocation of the obligor's hunting, fishing, boating and other recreational or sporting licenses.

[1997, c. 466, §26 (NEW); 1997, c. 466, §28 (AFF) .]

The court may issue an order to prevent issuance or renewal of licenses under this section. An order to suspend, revoke or prevent issuance or renewal of licenses must be based on a finding by the court that the obligor has the present ability to pay all or part of the support owed. The court shall specify in its order ways to avoid the loss of licenses and requirements for obtaining licenses that are lost or may not be obtained as a result of an order issued under this section. [1997, c. 466, §26 (NEW); 1997, c. 466, §28 (AFF) .]

The court shall notify the Secretary of State of a driver's license suspension ordered pursuant to this section. Upon receipt of such an order, the Secretary of State shall immediately notify the person of the court order of suspension. The Secretary of State may not terminate a suspension issued pursuant to this section until the court orders reinstatement and the person pays a reinstatement fee to the Secretary of State. The court shall immediately notify the Secretary of State when a person complies with a child support order. The court orders of suspension and reinstatement must be on a form acceptable to the Secretary of State. [1997, c. 466, §26 (NEW); 1997, c. 466, §28 (AFF) .]

SECTION HISTORY

1997, c. 466, §26 (NEW). 1997, c. 466, §28 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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, 3762 or 3790. [1997, c. 530, Pt. A, §4 (AMD) .]

B. "Support enforcement services" means the services provided by the department under section 2103. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. "Support payments" means money ordered to be paid directly to a parent for the support of a child. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1997, c. 530, Pt. A, §4 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Notice to State. In an action to establish or vacate a paternity order or 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 pursuant to section 2103, the party bringing the action must send a copy of the motion or petition and all accompanying documents by ordinary mail to the department when the motion or petition is filed with the court. If the party bringing the action fails to comply with this subsection, the court may allow the department additional time to file all necessary pleadings.

[2001, c. 554, §15 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A4 (AMD). 2001, c. 554, §15 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2607. MODIFICATION OF SUPPORT ORDER

Modification of child support orders is governed by section 2009. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2609. DEFINITION

As used in this subchapter, "order of support or costs" or "judgment of spousal support, support or costs" 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. [1997, c. 537, §49 (NEW); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1997, c. 537, §49 (NEW). 1997, c. 537, §62 (AFF).

Subchapter 4: INCOME WITHHOLDING

§2651. INCOME WITHHOLDING

1. Immediate income withholding. Every support order established or modified under this Title or Title 22 is subject to immediate income withholding in accordance with the requirements of this subchapter, unless the court finds good cause or approves an alternative arrangement as provided in section 2657.

[2011, c. 528, §1 (AMD) .]

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 provide for immediate income withholding.

[2011, c. 528, §1 (AMD) .]

3. Immediate income withholding; implementation of orders. Immediate income withholding 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. Immediate income withholding is implemented by serving an attested copy of the support order, along with the notice required under section 2655, upon the obligor's payor of income. Notwithstanding this subsection, the department may implement immediate income withholding by serving the notice required under section 2655 upon the obligor's payor of income without providing an attested copy of the support order.

[2011, c. 528, §1 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §1 (AMD).

§2652. PROVISIONS OF CHILD SUPPORT ORDER

Except as provided in section 2657, a child support order must provide that the obligor is subject to immediate income 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 support order must include: [2011, c. 528, §2 (AMD).]

1. Amount withheld. The amount of income to be withheld for payment of the obligor's current parental support obligation;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Department member number.

[2011, c. 528, §2 (RP) .]

3. Payor instructions.

[2011, c. 528, §2 (RP) .]

3-A. Notice about implementing income withholding. Notice that immediate income withholding can only be implemented by serving an attested copy of the support order, along with the notice required under section 2655, upon the obligor's payor of income. Notwithstanding this subsection, the department may implement immediate income withholding by serving the notice required under section 2655 upon the obligor's payor of income without providing an attested copy of the support order;

[2011, c. 528, §2 (NEW) .]

3-B. Instructions. Instructions on where to obtain the payor notice required under section 2655;

[2011, c. 528, §2 (NEW) .]

4. Notice regarding collection of arrearages. A notice that income withholding may be used to collect arrearages in addition to current support;

[2011, c. 528, §2 (AMD) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 pay period in addition to the amount withheld for child support.

[2015, c. 186, §5 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 537, §50 (AMD). 1997, c. 537, §62 (AFF). 2011, c. 528, §2 (AMD). 2015, c. 186, §5 (AMD).

§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. Except as provided in section 2103, subsections 3 and 3-A, the department shall retain all fees and apply them toward the administration of the division of support enforcement and recovery. [2011, c. 477, Pt. L, §4 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 477, Pt. L, §4 (AMD).

§2654. PAYOR DUTY

A payor of income to an obligor named in a support order subject to immediate withholding issued under this subchapter shall comply with the provisions of the order upon receipt of the notice required under section 2655. 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 7 business days from the date of withholding. [2011, c. 528, §3 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §10 (AMD). 2011, c. 528, §3 (AMD).

§2655. PAYOR NOTICE

The department shall make available to the court and the public a payor notice, which also constitutes an income withholding order, that conforms to standard formats prescribed by the federal Secretary of Health and Human Services and complies with the requirements of the Social Security Act, Title IV-D and the regulations issued under that Act. [2011, c. 528, §4 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §4 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 established, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2657. GOOD CAUSE; ALTERNATIVE ARRANGEMENTS

The court may elect not to render a child support order subject to immediate income withholding under this subchapter if: [2011, c. 528, §5 (AMD).]

1. Written agreement. A written agreement between the parties providing an alternative arrangement is filed with and approved by the court; or

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §5 (AMD).

§2658. SERVICE OF PROCESS

Service under this subchapter must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this section, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. When the department is providing child support services, personal service within the State of an income withholding order may be made by an authorized representative of the commissioner. [2009, c. 290, §33 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 290, §33 (AMD).

§2659. DURATION OF WITHHOLDING

1. Ended or released. Immediate income withholding under a support order is binding upon an obligor's payor of income until:

- A. The court orders withholding ended; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. If the withholding was implemented by the obligee as a private withholding action, the obligee releases the payor from the terms of the order in writing; or [2011, c. 528, §6 (AMD).]
- C. The department releases the payor from the terms of the support 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. [2011, c. 528, §6 (AMD).]

[2011, c. 528, §6 (AMD) .]

2. Support paid; refund. The department, or obligee if the obligee implemented the withholding as a private action, shall issue promptly a release of the withholding provisions of the support 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.

Income withholding ordered 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.

[2011, c. 528, §6 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §6 (AMD).

§2660. PRIORITY OF ORDER

Notwithstanding any other provision of law, immediate income withholding ordered 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. [2011, c. 528, §7 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §7 (AMD).

§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: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Obligor's identification. The obligor's name, last known address and social security number;
[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Department case number. The obligor's department support enforcement case number;
[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Termination date. The date of termination of the relationship; and
[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. New payor. If known, the name and address of a new payor of income to the obligor.
[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2662. PAYOR LIABILITY

Upon service of the notice required under section 2655, a payor is liable for any income that the payor knowingly fails to withhold and send to the department within 7 business days of the day on which the obligor is usually paid. The department, or obligee if the obligee implemented the withholding 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 support order and for the imposition of any of the civil penalties provided for in this section, plus attorney's fees and court costs. [2011, c. 528, §8 (AMD).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Failure to send income withheld. A payor who knowingly fails to send income withheld to the department within 7 business 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.

[1997, c. 669, §12 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 a support order or an income withholding order

or the obligations imposed upon the payor by an 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.

[2011, c. 528, §9 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §§11,12 (AMD). 2011, c. 528, §§8, 9 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2664. COPIES

The clerk of the court shall send to the department a copy of each order in which a child support obligation is established or modified. [2011, c. 528, §10 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §10 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2667. PAYOR IMMUNITY

A payor of income who honors a child support order subject to income withholding, an income withholding order under this subchapter or a notice under section 2655 may not be held liable by the obligor for income withheld in compliance with the order. [2011, c. 528, §11 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §11 (AMD).

§2668. OTHER REMEDIES

Income withholding ordered 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. [2011, c. 528, §12 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2011, c. 528, §12 (AMD).

§2669. RULEMAKING

The department shall adopt rules to implement its responsibilities under this subchapter. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2670. INCOME WITHHOLDING ORDERS ISSUED BY OTHER STATES

1. Use of this State's income withholding law. When a payor receives an income withholding order issued by another state for an obligor whose principal place of employment is in this State, the payor shall apply the provisions of this subchapter when determining:

A. The payor's fee for processing an income withholding order; [1997, c. 537, §51 (NEW); 1997, c. 537, §62 (AFF).]

B. The maximum amount permitted to be withheld from the obligor's income; [1997, c. 537, §51 (NEW); 1997, c. 537, §62 (AFF).]

C. The time in which the payor must implement the income withholding order and forward the child support payment; [1997, c. 537, §51 (NEW); 1997, c. 537, §62 (AFF).]

D. The priorities for withholding and allocating income withheld for multiple child support obligees; and [1997, c. 537, §51 (NEW); 1997, c. 537, §62 (AFF).]

E. Any withholding terms or conditions not specified in the order. [1997, c. 537, §51 (NEW); 1997, c. 537, §62 (AFF).]

[2009, c. 290, §34 (AMD) .]

2. Compliance. A payor who complies with an income withholding order or notice that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order or notice.

[1997, c. 537, §51 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY

1997, c. 537, §51 (NEW). 1997, c. 537, §62 (AFF). 2009, c. 290, §34 (AMD).

§2671. STANDARD FORMAT OF ORDERS AND NOTICES

(REPEALED)

SECTION HISTORY

1997, c. 537, §52 (NEW). 1997, c. 537, §62 (AFF). 2011, c. 528, §13 (RP).

§2672. AUTOMATED ISSUANCE OF INCOME WITHHOLDING ORDERS

The department may issue an income withholding order electronically if the payor of income has the ability to receive the order in that manner. [1997, c. 537, §52 (NEW); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1997, c. 537, §52 (NEW). 1997, c. 537, §62 (AFF).

§2673. DEFINITION OF INCOME

For purposes of this subchapter, "income" means any periodic form of payment due to a person, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability benefits, payments pursuant to a pension or retirement program and interest. [1997, c. 537, §52 (NEW); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1997, c. 537, §52 (NEW). 1997, c. 537, §62 (AFF).

§2674. MAXIMUM AMOUNT PERMITTED TO BE WITHHELD

The maximum amount permitted to be withheld from the obligor's income must be determined in accordance with section 2356. [2009, c. 290, §35 (NEW).]

SECTION HISTORY

2009, c. 290, §35 (NEW).

§2675. ALLOCATING INCOME WITHHELD FOR MULTIPLE CHILD SUPPORT OBLIGEEES

A payor of earnings that receives 2 or more withholding orders for the purpose of enforcing or paying a child support obligation with respect to the earnings of the same obligor shall withhold the full amount of all current support obligations before withholding the obligor's support arrears. If the payor is prohibited by section 2356 from withholding the full amount of current support obligations, the payor satisfies the terms of the orders if the payor withholds a pro rata amount of current support pursuant to each order. If the payor is prohibited by this section or section 2356 from withholding the full amount of support arrears, the payor satisfies the terms of the orders if the payor withholds a pro rata amount of support arrears pursuant to each order. [2009, c. 290, §36 (NEW).]

SECTION HISTORY

2009, c. 290, §36 (NEW).

Chapter 67: UNIFORM INTERSTATE FAMILY SUPPORT ACT

Subchapter 1: GENERAL PROVISIONS

§2801. SHORT TITLE

This chapter may be known and cited as the "Uniform Interstate Family Support Act." [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§2802. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 or foreign country.

[2009, c. 95, §1 (AMD); 2009, c. 95, §87 (AFF) .]

2-A. Convention. "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded at The Hague on November 23, 2007.

[2009, c. 95, §2 (NEW); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3-A. Foreign country. "Foreign country" means a country, including a political subdivision thereof, other than the United States, that under its law authorizes the issuance of support orders and:

A. Has been declared under the law of the United States to be a foreign reciprocating country; [2009, c. 95, §3 (NEW); 2009, c. 95, §87 (AFF).]

B. Has established a reciprocal arrangement for child support with this State as provided in section 3008-A; [2009, c. 95, §3 (NEW); 2009, c. 95, §87 (AFF).]

C. Has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under this chapter; or [2009, c. 95, §3 (NEW); 2009, c. 95, §87 (AFF).]

D. In which the Convention is in force with respect to the United States. [2009, c. 95, §3 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §3 (NEW); 2009, c. 95, §87 (AFF) .]

3-B. Foreign support order. "Foreign support order" means a support order issued by a foreign tribunal.

[2009, c. 95, §4 (NEW); 2009, c. 95, §87 (AFF) .]

3-C. Foreign tribunal. "Foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country authorized to establish, enforce or modify support orders or to determine parentage of a child. "Foreign tribunal" includes a competent authority under the Convention.

[2009, c. 95, §5 (NEW); 2009, c. 95, §87 (AFF) .]

4. Home state. "Home state" means the state or foreign country 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 or foreign country 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.

[2009, c. 95, §6 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

7. Initiating state. "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter.

[2003, c. 436, §1 (AMD) .]

8. Initiating tribunal. "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

[2009, c. 95, §7 (AMD); 2009, c. 95, §87 (AFF) .]

8-A. Issuing foreign country. "Issuing foreign country" means the foreign country in which a tribunal issues a support order or judgment determining parentage.

[2009, c. 95, §8 (NEW); 2009, c. 95, §87 (AFF) .]

9. Issuing state. "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

[2009, c. 95, §9 (AMD); 2009, c. 95, §87 (AFF) .]

10. Issuing tribunal. "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

[2009, c. 95, §10 (AMD); 2009, c. 95, §87 (AFF) .]

11. Law. "Law" includes decisional and statutory law and rules and regulations having the force of law.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

11-A. Outside this State. "Outside this State" means a location in another state or a country other than the United States, whether or not the country meets the definition of "foreign country" under subsection 3-A.

[2009, c. 95, §11 (NEW); 2009, c. 95, §87 (AFF) .]

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 or a judgment determining parentage of a child has been issued; [2009, c. 95, §12 (AMD); 2009, c. 95, §87 (AFF).]

B. A foreign country or a state or a political subdivision of a state 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 in place of child support; [2009, c. 95, §12 (AMD); 2009, c. 95, §87 (AFF).]

C. An individual seeking a judgment determining parentage of the individual's child; or [2009, c. 95, §12 (AMD); 2009, c. 95, §87 (AFF).]

D. A person that is a creditor in a proceeding subject to subchapter 7-A. [2009, c. 95, §12 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §12 (AMD); 2009, c. 95, §87 (AFF) .]

13. Obligor. "Obligor" means an individual or the estate of a decedent:

A. Who owes or is alleged to owe a duty of support; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Who is alleged but has not been adjudicated to be a parent of a child; [2009, c. 95, §13 (AMD); 2009, c. 95, §87 (AFF).]

C. Who is liable under a support order; or [2009, c. 95, §13 (AMD); 2009, c. 95, §87 (AFF).]

D. Who is a debtor in a proceeding under subchapter 7-A. [2009, c. 95, §13 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §13 (AMD); 2009, c. 95, §87 (AFF) .]

13-A. Person. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency or instrumentality; or any other legal or commercial entity.

[2009, c. 95, §14 (AMD); 2009, c. 95, §87 (AFF) .]

13-B. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2003, c. 436, §2 (NEW) .]

14. Register. "Register" means to file in a tribunal of this State a support order or judgment determining parentage of a child issued in another state or foreign country.

[2009, c. 95, §15 (AMD); 2009, c. 95, §87 (AFF) .]

15. Registering tribunal. "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

[2009, c. 95, §16 (AMD); 2009, c. 95, §87 (AFF) .]

16. Responding state. "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

[2009, c. 95, §17 (AMD); 2009, c. 95, §87 (AFF) .]

17. Responding tribunal. "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

[2009, c. 95, §18 (AMD); 2009, c. 95, §87 (AFF) .]

18. Spousal support order. "Spousal support order" means a support order for a spouse or former spouse of the obligor.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

19. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian nation or tribe.

A. [2009, c. 95, §87 (AFF); 2009, c. 95, §19 (RP).]

B. [2009, c. 95, §87 (AFF); 2009, c. 95, §19 (RP).]

[2009, c. 95, §19 (AMD); 2009, c. 95, §87 (AFF) .]

20. State information agency. "State information agency" in this State is the Department of Health and Human Services.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

21. Support enforcement agency. "Support enforcement agency" means a public official or agency authorized to:

A. Seek enforcement of support orders or laws relating to the duty of support; [2009, c. 95, §20 (AMD); 2009, c. 95, §87 (AFF).]

B. Seek establishment or modification of child support; [2009, c. 95, §20 (AMD); 2009, c. 95, §87 (AFF).]

C. Request determination of parentage; [2009, c. 95, §20 (AMD); 2009, c. 95, §87 (AFF).]

D. Attempt to locate obligors or their assets; or [2009, c. 95, §20 (AMD); 2009, c. 95, §87 (AFF).]

E. Request determination of the controlling child support order. [2009, c. 95, §20 (AMD); 2009, c. 95, §87 (AFF).]

The support enforcement agency in this State is the Department of Health and Human Services.

[2009, c. 95, §20 (AMD); 2009, c. 95, §87 (AFF) .]

22. Support order. "Support order" means a judgment, decree, order, decision or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, that provides for monetary support, health care, arrearages, retroactive support or

reimbursement for financial assistance provided to an individual obligee in place of child support. "Support order" may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees and other relief.

[2009, c. 95, §21 (AMD); 2009, c. 95, §87 (AFF) .]

23. Tribunal. "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

24. Tribunal of this State. A "tribunal of this State" means the District Court or the Department of Health and Human Services.

[1999, c. 731, Pt. ZZZ, §36 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §13 (AMD). 1999, c. 731, §ZZZ36 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2003, c. 436, §§1-7 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 95, §§1-21 (AMD). 2009, c. 95, §87 (AFF).

§2802-A. STATE TRIBUNAL AND SUPPORT ENFORCEMENT AGENCY

1. State tribunals. The District Court and the Department of Health and Human Services are tribunals of this State.

[2009, c. 95, §22 (NEW); 2009, c. 95, §87 (AFF) .]

2. State support enforcement agency. The Department of Health and Human Services is the support enforcement agency of this State.

[2009, c. 95, §22 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §22 (NEW). 2009, c. 95, §87 (AFF).

§2803. REMEDIES CUMULATIVE

1. Remedies cumulative. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a support order on the basis of comity.

[2009, c. 95, §23 (AMD); 2009, c. 95, §87 (AFF) .]

2. Not exclusive method; jurisdiction. This chapter does not:

A. Provide the exclusive method of establishing or enforcing a support order under the laws of this State; or [2003, c. 436, §8 (NEW).]

B. Grant a tribunal of this State jurisdiction to render judgment or issue an order relating to parental rights and responsibilities other than child support in a proceeding under this chapter. [2003, c. 436, §8 (NEW).]

[2003, c. 436, §8 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §8 (RPR). 2009, c. 95, §23 (AMD). 2009, c. 95, §87 (AFF).

§2804. APPLICATION OF CHAPTER TO RESIDENT OF FOREIGN COUNTRY AND FOREIGN SUPPORT PROCEEDING

1. Support proceeding. A tribunal of this State shall apply this subchapter, subchapters 2 to 6 and, as applicable, subchapter 7-A to a support proceeding involving:

A. A foreign support order; [2009, c. 95, §24 (NEW); 2009, c. 95, §87 (AFF).]

B. A foreign tribunal; or [2009, c. 95, §24 (NEW); 2009, c. 95, §87 (AFF).]

C. An obligee, obligor or child residing in a foreign country. [2009, c. 95, §24 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §24 (NEW); 2009, c. 95, §87 (AFF) .]

2. Comity. A tribunal of this State that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of this subchapter and subchapters 2 to 6.

[2009, c. 95, §24 (NEW); 2009, c. 95, §87 (AFF) .]

3. Proceeding subject to the Convention. Subchapter 7-A applies only to a support proceeding under the Convention. In such a proceeding, if a provision of subchapter 7-A is inconsistent with a provision of this subchapter or subchapters 2 to 6, subchapter 7-A controls.

[2009, c. 95, §24 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §24 (NEW). 2009, c. 95, §87 (AFF).

Subchapter 2: JURISDICTION

Article 1: EXTENDED PERSONAL JURISDICTION

§2851. BASES FOR JURISDICTION OVER NONRESIDENT

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

§2852. PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

Article 2: PROCEEDINGS INVOLVING 2 OR MORE STATES

§2901. INITIATING AND RESPONDING TRIBUNAL OF THIS STATE

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

§2902. SIMULTANEOUS PROCEEDINGS IN ANOTHER STATE

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

§2903. CONTINUING, EXCLUSIVE JURISDICTION

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

§2904. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER BY TRIBUNAL HAVING CONTINUING JURISDICTION

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

Article 3: RECONCILIATIONS OF MULTIPLE ORDERS

§2951. RECOGNITION OF CONTROLLING CHILD SUPPORT ORDERS

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §15 (AMD). 2003, c. 436, §9 (RP).

§2952. MULTIPLE CHILD SUPPORT ORDERS FOR 2 OR MORE OBLIGEEES

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

§2953. CREDIT FOR PAYMENTS*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §9 (RP).

Subchapter 2-A: JURISDICTION

§2961. BASES FOR JURISDICTION OVER NONRESIDENT

1. Exercise of jurisdiction. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- A. The individual is personally served with notice within this State; [2003, c. 436, §10 (NEW).]
- B. The individual submits to the jurisdiction of this State by consent in a record, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; [2015, c. 186, §6 (AMD).]
- C. The individual resided with the child in this State; [2003, c. 436, §10 (NEW).]
- D. The individual resided in this State and provided prenatal expenses or support for the child; [2003, c. 436, §10 (NEW).]
- E. The child resides in this State as a result of the acts or directives of the individual; [2003, c. 436, §10 (NEW).]
- F. The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse; or [2003, c. 436, §10 (NEW).]
- G. There is any other basis consistent with the Constitution of Maine and the United States Constitution for the exercise of personal jurisdiction. [2003, c. 436, §10 (NEW).]

[2015, c. 186, §6 (AMD).]

2. Use of bases to establish personal jurisdiction. The bases of personal jurisdiction set forth in subsection 1 or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of this State to modify a child support order of another state unless the requirements of section 3253 are met or, in the case of a foreign support order, unless the requirements of section 3261 are met.

[2009, c. 95, §25 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §25 (AMD). 2009, c. 95, §87 (AFF). 2015, c. 186, §6 (AMD).

§2962. DURATION OF PERSONAL JURISDICTION

Personal jurisdiction acquired by a tribunal of this State in a proceeding under this chapter or other law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 2965, 2966 and 2971. [2003, c. 436, §10 (NEW).]

SECTION HISTORY

2003, c. 436, §10 (NEW).

§2963. 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 a tribunal of another state and as a responding tribunal for proceedings initiated in another state or foreign country. [2009, c. 95, §26 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §26 (AMD). 2009, c. 95, §87 (AFF).

§2964. SIMULTANEOUS PROCEEDINGS

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 or a foreign country only if:

- A. The petition or comparable pleading in this State is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country; [2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]
- B. The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and [2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]
- C. This State is the home state of the child, if that is a relevant factor. [2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]

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 or a foreign country if:

- A. The petition or comparable pleading in the other state or the foreign country 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; [2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]
- B. The contesting party timely challenges the exercise of jurisdiction in this State; and [2003, c. 436, §10 (NEW).]
- C. The other state or the foreign country is the home state of the child, if that is a relevant factor. [2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §27 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §27 (AMD). 2009, c. 95, §87 (AFF).

§2965. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD SUPPORT ORDER

1. Tribunal has continuing, exclusive jurisdiction. A tribunal of this State that has issued a support order consistent with the laws of this State has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

A. At the time of the filing of a request for modification this State is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or [2003, c. 436, §10 (NEW) .]

B. Even if this State is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order. [2003, c. 436, §10 (NEW) .]

[2003, c. 436, §10 (NEW) .]

2. Tribunal may not exercise continuing, exclusive jurisdiction. A tribunal of this State that has issued a child support order consistent with the laws of this State may not exercise its continuing, exclusive jurisdiction to modify the order if:

A. All of the parties who are individuals file consent in a record with the tribunal of this State that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or [2003, c. 436, §10 (NEW) .]

B. The tribunal's order is not the controlling order. [2003, c. 436, §10 (NEW) .]

[2003, c. 436, §10 (NEW) .]

3. Recognition of jurisdiction of another state's tribunal. If a tribunal of another state that has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter that modifies a child support order of a tribunal of this State, tribunals of this State shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

[2003, c. 436, §10 (NEW) .]

4. Initiating tribunal to request modification. A tribunal of this State that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

[2003, c. 436, §10 (NEW) .]

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.

[2003, c. 436, §10 (NEW) .]

SECTION HISTORY

2003, c. 436, §10 (NEW) .

§2966. CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER

1. Initiating tribunal to enforce. A tribunal of this State that has issued a child support order consistent with the laws of this State may serve as an initiating tribunal to request a tribunal of another state to enforce:

A. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or [2003, c. 436, §10 (NEW) .]

B. A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order. [2009, c. 95, §28 (AMD); 2009, c. 95, §87 (AFF).]

[2003, c. 436, §10 (NEW); 2009, c. 95, §28 (AMD); 2009, c. 95, §87 (AFF) .]

2. Responding tribunal to enforce. A tribunal of this State having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

[2003, c. 436, §10 (NEW) .]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §28 (AMD). 2009, c. 95, §87 (AFF).

§2967. DETERMINATION OF CONTROLLING CHILD SUPPORT ORDERS

1. Recognition of orders; one tribunal. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

[2003, c. 436, §10 (NEW) .]

2. Recognition of orders; 2 or more tribunals. If a proceeding is brought under this chapter and 2 or more child support orders have been issued by tribunals of this State or another state or a foreign country with regard to the same obligor and same child, a tribunal of this State having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized.

A. If only one of the tribunals has continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls. [2009, c. 95, §29 (AMD).]

B. If more than one of the tribunals has continuing, exclusive jurisdiction under this chapter:

- (1) An order issued by a tribunal in the current home state of the child controls; or
- (2) If an order has not been issued in the current home state of the child, the order most recently issued controls. [2003, c. 436, §10 (NEW).]

C. If none of the tribunals have continuing, exclusive jurisdiction under this chapter, the tribunal of this State shall issue a child support order, which controls. [2003, c. 436, §10 (NEW).]

[2009, c. 95, §29 (AMD); 2009, c. 95, §87 (AFF) .]

3. Request for order. If 2 or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this State having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection 2. The request may be filed with a registration for enforcement or registration for modification pursuant to subchapter 6 or may be filed as a separate proceeding.

[2009, c. 95, §30 (AMD); 2009, c. 95, §87 (AFF) .]

4. Copy of orders required. A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

[2003, c. 436, §10 (NEW) .]

5. Tribunal having continuing, exclusive jurisdiction. The tribunal that issued the controlling order under subsection 1, 2 or 3 has continuing jurisdiction to the extent provided in section 2965 or 2966.

[2003, c. 436, §10 (NEW) .]

6. Basis for order. A tribunal of this State that determines by order which is the controlling order under subsection 2, paragraph A or B or subsection 3, or that issues a new controlling order under subsection 2, paragraph C, shall state in that order:

A. The basis upon which the tribunal made its determination; [2003, c. 436, §10 (NEW) .]

B. The amount of prospective support, if any; and [2003, c. 436, §10 (NEW) .]

C. The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 2969. [2003, c. 436, §10 (NEW) .]

[2003, c. 436, §10 (NEW) .]

7. Filing certified copy of order. Within 30 days after issuance of an order determining which order is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

[2003, c. 436, §10 (NEW) .]

8. Controlling order or judgment must be recognized. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

[2003, c. 436, §10 (NEW) .]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §§29, 30 (AMD). 2009, c. 95, §87 (AFF).

§2968. CHILD SUPPORT ORDERS FOR 2 OR MORE OBLIGEEES

In responding to 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 or a foreign country, a tribunal of this State shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this State. [2009, c. 95, §31 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §31 (AMD). 2009, c. 95, §87 (AFF).

§2969. CREDIT FOR PAYMENTS

A tribunal of this State shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this State or another state or a foreign country. [2009, c. 95, §32 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §32 (AMD). 2009, c. 95, §87 (AFF).

§2970. APPLICATION OF CHAPTER TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION

A tribunal of this State exercising personal jurisdiction over a nonresident in a proceeding under this chapter or under other laws of this State relating to a support order or recognizing a foreign support order may receive evidence from outside this State pursuant to section 3016, communicate with a tribunal outside this State pursuant to section 3017 and obtain discovery through a tribunal outside this State pursuant to section 3018. In all other respects, subchapters 3 to 7-A do not apply and the tribunal shall apply the procedural and substantive law of this State. [2009, c. 95, §33 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §33 (AMD). 2009, c. 95, §87 (AFF).

§2971. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL SUPPORT ORDER

1. Tribunal of this State; continuing, exclusive jurisdiction. A tribunal of this State issuing a spousal support order consistent with the law of this State has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

[2003, c. 436, §10 (NEW) .]

2. Spousal support issued by another state or foreign country. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

[2009, c. 95, §34 (AMD); 2009, c. 95, §87 (AFF) .]

3. Tribunal of this State; initiating or responding tribunal. A tribunal of this State that has continuing, exclusive jurisdiction over a spousal support order may serve as:

A. An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this State; or [2003, c. 436, §10 (NEW) .]

B. A responding tribunal to enforce or modify its own spousal support order. [2003, c. 436, §10 (NEW) .]

[2003, c. 436, §10 (NEW) .]

SECTION HISTORY

2003, c. 436, §10 (NEW). 2009, c. 95, §34 (AMD). 2009, c. 95, §87 (AFF).

Subchapter 3: CIVIL PROVISIONS OF GENERAL APPLICATION

§3001. PROCEEDINGS UNDER THIS CHAPTER

1. Application of subchapter. Except as otherwise provided in this chapter, this subchapter applies to all proceedings under this chapter.

[2003, c. 436, §11 (RPR) .]

1-A. Initiation of proceedings. An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country that has or can obtain personal jurisdiction over the respondent.

[2009, c. 95, §35 (AMD); 2009, c. 95, §87 (AFF) .]

2. Proceedings.

[2003, c. 436, §11 (RP) .]

3. Commencement of proceeding.

[2003, c. 436, §11 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §11 (RPR). 2009, c. 95, §35 (AMD). 2009, c. 95, §87 (AFF).

§3002. PROCEEDING 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. [2003, c. 436, §12 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §12 (AMD) .

§3003. APPLICATION OF LAW OF THIS STATE

Except as otherwise provided in this chapter, a responding tribunal of this State shall: [2003, c. 436, §12 (AMD) .]

1. Procedural and substantive law; powers and remedies. Apply the procedural and substantive law generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and

[2003, c. 436, §12 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §12 (AMD).

§3004. DUTIES OF INITIATING TRIBUNAL

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §13 (RP).

§3004-A. DUTIES OF INITIATING TRIBUNAL

1. Forward petition and accompanying documents. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this State shall forward the petition and its accompanying documents:

A. To the responding tribunal or appropriate support enforcement agency in the responding state; or [2003, c. 436, §14 (NEW).]

B. 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. [2003, c. 436, §14 (NEW).]

[2003, c. 436, §14 (NEW) .]

2. Issue certificate or document; make findings; specify amount. If requested by the responding tribunal, a tribunal of this State shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this State shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under the applicable official or market exchange rate as publicly reported and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

[2009, c. 95, §36 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2003, c. 436, §14 (NEW). 2009, c. 95, §36 (AMD). 2009, c. 95, §87 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Powers of responding tribunal. A responding tribunal of this State, to the extent not prohibited by other law, may:

A. Establish or enforce a support order, modify a child support order, determine the controlling child support order or render a judgment to determine parentage of a child; [2009, c. 95, §37 (AMD); 2009, c. 95, §87 (AFF).]

B. Order an obligor to comply with a support order, specifying the amount and the manner of compliance; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

- C. Order income withholding; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. Determine the amount of any arrearages and specify a method of payment; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E. Enforce orders by civil or criminal contempt, or both; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. Set aside property for satisfaction of the support order; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- G. Place liens and order execution on the obligor's property; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- H. Order an obligor to keep the tribunal informed of the obligor's current residential address, e-mail address, telephone number, employer, address of employment and telephone number at the place of employment; [2009, c. 95, §38 (AMD); 2009, c. 95, §87 (AFF).]
- 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 writ in any local and state computer systems for criminal warrants; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- J. Order the obligor to seek appropriate employment by specified methods; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- K. Award reasonable attorney's fees and other fees and costs; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- L. Grant any other available remedy. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 95, §§ 37, 38 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Convert foreign currency amount to dollar amount. If requested to enforce a support order, arrears or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

[2003, c. 436, §16 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §§15,16 (AMD). 2009, c. 95, §§37, 38 (AMD). 2009, c. 95, §87 (AFF).

§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 and notify the petitioner where and when the pleading was sent. [1997, c. 669, §16 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §16 (AMD).

§3007. DUTIES OF THE DEPARTMENT AS THE SUPPORT ENFORCEMENT AGENCY

1. Services to petitioner. The department, upon request, shall provide services to a petitioner in a proceeding under this chapter.

[2009, c. 95, §39 (AMD); 2009, c. 95, §87 (AFF) .]

2. Duties. If the department provides services to the petitioner, the department shall:

A. Take all steps necessary to enable an appropriate tribunal of this State or another state or a foreign country to obtain jurisdiction over the respondent; [2009, c. 95, §40 (AMD); 2009, c. 95, §87 (AFF).]

B. Request an appropriate tribunal to set a date, time and place for a hearing; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Within 2 days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice in a record from an initiating, responding or registering tribunal, send a copy of the notice to the petitioner; [2003, c. 436, §17 (AMD).]

E. Within 2 days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and [2003, c. 436, §17 (AMD).]

F. Notify the petitioner if jurisdiction over the respondent can not be obtained. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 95, §40 (AMD); 2009, c. 95, §87 (AFF) .]

2-A. Registration; reasonable efforts. If the department requests registration of a child support order in this State for enforcement or for modification, the department shall make reasonable efforts:

A. To ensure that the order to be registered is the controlling order; or [2003, c. 436, §18 (NEW).]

B. If 2 or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so. [2003, c. 436, §18 (NEW).]

[2003, c. 436, §18 (NEW) .]

2-B. Conversion of amounts to dollars. If the department requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency, the department shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

[2003, c. 436, §18 (NEW) .]

2-C. Issuance upon request. The department shall issue or request a tribunal of this State to issue a child support order and an income-withholding order that redirect payment of current support, arrears and interest if requested to do so by a support enforcement agency of another state pursuant to section 3019.

[2009, c. 95, §41 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §§17,18 (AMD). 2009, c. 95, §§39-41 (AMD). 2009, c. 95, §87 (AFF).

§3008. DUTY OF ATTORNEY GENERAL

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §17 (RP).

§3008-A. DUTY OF COMMISSIONER

If the commissioner determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the commissioner may order the agency to perform its duties under this chapter or may otherwise provide those services directly to the individual. [1997, c. 669, §18 (NEW).]

The Attorney General may determine that a foreign country has established a reciprocal arrangement for child support with this State and take appropriate action for notification of the determination. [2009, c. 95, §42 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

1997, c. 669, §18 (NEW). 2003, c. 436, §19 (AMD). 2009, c. 95, §42 (AMD). 2009, c. 95, §87 (AFF).

§3009. PRIVATE ATTORNEY

An individual may employ a private attorney to represent the individual in proceedings authorized by this chapter. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§3010. DUTIES OF THE DEPARTMENT AS THE STATE INFORMATION AGENCY

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §20 (AMD). 2009, c. 95, §87 (AFF). 2009, c. 95, §43 (RP).

§3010-A. DUTIES OF THE DEPARTMENT AS THE STATE INFORMATION AGENCY

1. State information agency. The department is the state information agency.

[2009, c. 95, §44 (NEW); 2009, c. 95, §87 (AFF) .]

2. Duties. The state information agency 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; [2009, c. 95, §44 (NEW); 2009, c. 95, §87 (AFF).]

B. Maintain a register of the names and addresses of tribunals and support enforcement agencies received from other states; [2009, c. 95, §44 (NEW); 2009, c. 95, §87 (AFF).]

C. Forward to the appropriate tribunal in the state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from another state or a foreign country; and [2009, c. 95, §44 (NEW); 2009, c. 95, §87 (AFF).]

D. Obtain information concerning 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. [2009, c. 95, §44 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §44 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §44 (NEW). 2009, c. 95, §87 (AFF).

§3011. PLEADINGS AND ACCOMPANYING DOCUMENTS

1. Petition; contents. In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage of a child or to register and modify a support order of a tribunal of another state or a foreign country must file a 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 or the parent and alleged parent, and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

[2009, c. 95, §45 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §21 (AMD). 2009, c. 95, §45 (AMD). 2009, c. 95, §87 (AFF).

§3012. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice. [2003, c. 436, §22 (RPR) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §22 (RPR) .

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Fees and costs if obligee prevails. If an obligee prevails, a responding tribunal of this State 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 or foreign country, 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.

[2009, c. 95, §46 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 95, §46 (AMD). 2009, c. 95, §87 (AFF).

§3014. LIMITED IMMUNITY OF PETITIONER

1. Personal jurisdiction in another proceeding. Participation by a petitioner in a proceeding under this chapter 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.

[2003, c. 436, §23 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §23 (AMD).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§3016. SPECIAL RULES OF EVIDENCE AND PROCEDURE

1. Physical presence not required. The physical presence of a nonresident party who is an individual in a 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 of a child.

[2009, c. 95, §47 (AMD); 2009, c. 95, §87 (AFF) .]

2. Admissible evidence. An affidavit, a document substantially complying with federally mandated forms or a document incorporated by reference in any of them that would not be excluded under the hearsay rule if given in person is admissible in evidence if given under penalty of perjury by a party or witness residing outside this State.

[2009, c. 95, §48 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Copies of bills admissible. Copies of bills for testing for parentage of a child 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.

[2009, c. 95, §49 (AMD); 2009, c. 95, §87 (AFF) .]

5. No objection based on means of transmission. Documentary evidence transmitted from outside this State to a tribunal of this State by telephone, telecopier or other electronic means that does not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

[2009, c. 95, §50 (AMD); 2009, c. 95, §87 (AFF) .]

6. Testimony not in person. In a proceeding under this chapter, a tribunal of this State shall permit a party or witness residing outside this State to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location. A tribunal of this State shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

[2009, c. 95, §51 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

8. No spousal privilege. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

10. Voluntary acknowledgment admissible. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

[2003, c. 436, §25 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §§24,25 (AMD). 2009, c. 95, §§47-51 (AMD). 2009, c. 95, §87 (AFF).

§3017. COMMUNICATIONS BETWEEN TRIBUNALS

A tribunal of this State may communicate with a tribunal outside this State in a record, in an e-mail or by telephone or other means to obtain information concerning the laws; the legal effect of a judgment, decree or order of that tribunal; and the status of a proceeding. A tribunal of this State may furnish similar information by similar means to a tribunal outside this State. [2009, c. 95, §52 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §26 (AMD). 2009, c. 95, §52 (AMD). 2009, c. 95, §87 (AFF).

§3018. ASSISTANCE WITH DISCOVERY

A tribunal of this State may: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Request a tribunal outside this State. Request a tribunal outside this State to assist in obtaining discovery; and

[2009, c. 95, §53 (AMD); 2009, c. 95, §87 (AFF) .]

2. Compel response. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal outside this State.

[2009, c. 95, §53 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 95, §53 (AMD). 2009, c. 95, §87 (AFF).

§3019. RECEIPT AND DISBURSEMENT OF PAYMENTS

1. Disburse promptly. 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 or foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

[2009, c. 95, §54 (AMD); 2009, c. 95, §87 (AFF) .]

2. Direct payment; issue withholding order or administrative notice. If neither the obligor, nor the obligee who is an individual, nor the child resides in this State, upon request from the department or the support enforcement agency of another state, the department or a tribunal of this State shall:

A. Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and [2003, c. 436, §27 (NEW) .]

B. Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments. [2003, c. 436, §27 (NEW) .]

[2003, c. 436, §27 (NEW) .]

3. Statement of record of payments. If the department receives redirected payments from another state pursuant to a law similar to subsection 2, the department shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

[2003, c. 436, §27 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §27 (RPR). 2009, c. 95, §54 (AMD). 2009, c. 95, §87 (AFF).

Subchapter 4: ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE

§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 with personal jurisdiction over the parties may issue a support order if:

A. The individual seeking the order resides outside this State; or [2009, c. 95, §55 (AMD); 2009, c. 95, §87 (AFF).]

B. The support enforcement agency seeking the order is located outside this State. [2009, c. 95, §55 (AMD); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §55 (AMD); 2009, c. 95, §87 (AFF) .]

2. Responding tribunal may issue temporary support order. A responding tribunal of this State may issue a temporary support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

A. The presumed father of the child; [2003, c. 436, §28 (NEW).]

B. Petitioning to have his paternity of the child adjudicated; [2003, c. 436, §28 (NEW).]

C. Identified as the father of the child through genetic testing; [2003, c. 436, §28 (NEW).]

D. An alleged father of the child who has declined to submit to genetic testing; [2003, c. 436, §28 (NEW).]

E. Shown by clear and convincing evidence to be the father of the child; [2003, c. 436, §28 (NEW).]

F. An acknowledged father of the child as provided in chapter 61, subchapter 3; [2015, c. 2, §10 (COR).]

G. The mother of the child; or [2003, c. 436, §28 (NEW).]

H. An individual who has been ordered to pay child support to the child in a previous proceeding and the order has not been reversed or vacated. [2003, c. 436, §28 (NEW).]

[2015, c. 2, §10 (COR) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §28 (AMD). 2009, c. 95, §55 (AMD). 2009, c. 95, §87 (AFF). RR 2015, c. 2, §10 (COR). 2015, c. 296, Pt. C, §23 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§3052. PROCEEDING TO DETERMINE PARENTAGE

A tribunal of this State authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this chapter or a law or procedure substantially similar to this chapter. [2009, c. 95, §56 (NEW); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2009, c. 95, §56 (NEW). 2009, c. 95, §87 (AFF).

Subchapter 5: ENFORCEMENT OF SUPPORT ORDER WITHOUT REGISTRATION

§3101. EMPLOYER'S RECEIPT OF OUT-OF-STATE INCOME-WITHHOLDING ORDER

An income-withholding order issued in another state may be sent by or on behalf of the obligee or by the support enforcement agency to the obligor's employer, described as a payor of income under chapter 65, subchapter 4, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. [2003, c. 436, §29 (AMD).]

1. Income-withholding order.

[1997, c. 669, §20 (RP) .]

2. Right to hearing.

[1997, c. 669, §20 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §20 (RPR). 2003, c. 436, §29 (AMD).

§3101-A. EMPLOYER'S COMPLIANCE WITH OUT-OF-STATE INCOME-WITHHOLDING ORDER

1. Copy of order to obligor. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

[1997, c. 669, §21 (NEW) .]

2. Recognition of out-of-state order. The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this State.

[1997, c. 669, §21 (NEW) .]

3. Employer to withhold and distribute funds. Except as otherwise provided in subsection 4 and section 3101-B, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

A. The duration and amount of periodic payments of current child support, stated as an exact sum; [1997, c. 669, §21 (NEW).]

B. The person or support enforcement agency designated to receive payments and the address to which payments are to be forwarded; [1997, c. 669, §21 (NEW).]

C. Medical support, whether in the form of periodic cash payments stated as an exact sum or an order that the obligor provide health insurance coverage for the child under a policy available through the obligor's employment; [1997, c. 669, §21 (NEW).]

D. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as exact sums; and [1997, c. 669, §21 (NEW).]

E. The amount of periodic payments of arrearages and interest on arrearages, stated as exact sums. [1997, c. 669, §21 (NEW).]

[1997, c. 669, §21 (NEW) .]

4. Compliance with state laws. An employer shall comply with the laws of the state of the obligor's principal place of employment with respect to:

A. The employer's fee for processing an income-withholding order; [1997, c. 669, §21 (NEW).]

B. The maximum amount permitted to be withheld from the obligor's income; and [1997, c. 669, §21 (NEW).]

C. The times within which the employer must implement the income-withholding order and forward the child support payment. [1997, c. 669, §21 (NEW).]

[1997, c. 669, §21 (NEW) .]

SECTION HISTORY

1997, c. 669, §21 (NEW).

§3101-B. EMPLOYER'S COMPLIANCE WITH 2 OR MORE INCOME-WITHOLDING ORDERS

If an employer receives 2 or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the laws of the state of the obligor's principal place of employment when establishing the priorities for withholding and allocating income withheld for 2 or more child support obligees. [2003, c. 436, §30 (AMD).]

SECTION HISTORY

1997, c. 669, §21 (NEW). 2003, c. 436, §30 (AMD).

§3101-C. IMMUNITY FROM CIVIL LIABILITY

An employer that complies with an income-withholding order issued in another state in accordance with this subchapter is not subject to civil liability to an individual or support enforcement agency with regard to the employer's withholding of child support payments from the obligor's income. [2009, c. 95, §57 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

1997, c. 669, §21 (NEW). 2009, c. 95, §57 (AMD). 2009, c. 95, §87 (AFF).

§3101-D. PENALTIES FOR NONCOMPLIANCE

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State. [2009, c. 95, §58 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

1997, c. 669, §21 (NEW). 2009, c. 95, §58 (AMD). 2009, c. 95, §87 (AFF).

§3101-E. OPTION TO APPOINT DEPARTMENT AS PAYMENT AGENT

(REPEALED)

SECTION HISTORY

1997, c. 669, §21 (NEW). 2015, c. 186, §7 (RP).

§3101-F. CONTEST BY OBLIGOR

1. Contesting the validity or enforcement of an order. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this State by registering the order in a tribunal of this State and filing a contest to that order as provided in subchapter 6, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this State. Section 3153 applies to the contest.

[2003, c. 436, §31 (AMD) .]

2. Notice of the contest. The obligor shall give notice of the contest to:

A. The support enforcement agency providing services to the obligee; [1997, c. 669, §21 (NEW) .]

B. Each employer that has directly received an income-withholding order relating to the obligor; and [2003, c. 436, §32 (AMD) .]

C. The person designated to receive payments in the income-withholding order or, if a person is not designated, to the obligee. [2003, c. 436, §33 (AMD) .]

[2003, c. 436, §§32, 33 (AMD) .]

SECTION HISTORY

1997, c. 669, §21 (NEW). 2003, c. 436, §§31-33 (AMD).

§3102. ADMINISTRATIVE ENFORCEMENT OF ORDERS

1. Documents to state information agency. A party residing in another state or a support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order shall send the documents required for registering the order to the department.

[2009, c. 95, §59 (AMD); 2009, c. 95, §87 (AFF) .]

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 obligor does not

contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

[2009, c. 95, §59 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §34 (AMD). 2009, c. 95, §59 (AMD). 2009, c. 95, §87 (AFF).

Subchapter 6: REGISTRATION, ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER

Article 1: REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

§3150. REGISTRATION OF ORDER FOR ENFORCEMENT

A support order or income-withholding order issued in another state or a foreign country may be registered in this State for enforcement. [2009, c. 95, §60 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §60 (NEW). 2009, c. 95, §87 (AFF).

§3151. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT

1. Required documents and information. Except as otherwise provided in section 3316, a support order or an income-withholding order of another state or a foreign support order may be registered in this State by sending the following records to the appropriate tribunal in this State:

- A. A letter of transmittal to the tribunal requesting registration and enforcement; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]
- B. Two copies, including one certified copy, of the order to be registered, including any modification of an order; [2003, c. 436, §36 (AMD) .]
- C. A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearages; [2003, c. 436, §36 (AMD) .]
- 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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]
- E. Except as otherwise provided in section 3012, the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted. [2009, c. 95, §61 (AMD); 2009, c. 95, §87 (AFF) .]

[2009, c. 95, §61 (AMD); 2009, c. 95, §87 (AFF) .]

2. File as foreign judgment. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of another state or foreign country, together with one copy of the documents and information, regardless of their form.

[2009, c. 95, §62 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Two or more orders in effect. If 2 or more orders are in effect, the person requesting registration shall:

A. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section; [2003, c. 436, §36 (NEW) .]

B. Specify the order alleged to be the controlling order, if any; and [2003, c. 436, §36 (NEW) .]

C. Specify the amount of consolidated arrears, if any. [2003, c. 436, §36 (NEW) .]

[2003, c. 436, §36 (NEW) .]

5. Request for determination of controlling order. A request for a determination of which order is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

[2003, c. 436, §36 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §36 (AMD). 2009, c. 95, §§61, 62 (AMD). 2009, c. 95, §87 (AMD).

§3152. EFFECT OF REGISTRATION FOR ENFORCEMENT

1. Registered when filed. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this State.

[2009, c. 95, §63 (AMD); 2009, c. 95, §87 (AFF) .]

2. Enforceability of registered order. A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

[2009, c. 95, §63 (AMD); 2009, c. 95, §87 (AFF) .]

3. Recognition and enforcement of registered order; no modification. Except as otherwise provided in this chapter, a tribunal of this State shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

[2009, c. 95, §63 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 95, §63 (AMD). 2009, c. 95, §87 (AFF).

§3153. CHOICE OF LAW

1. Current payments, other obligations and arrearages under order. Except as otherwise provided in subsection 4, the law of the issuing state or foreign country governs:

A. The nature, extent, amount and duration of current payments under a registered support order; [2003, c. 436, §37 (NEW).]

B. The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and [2003, c. 436, §37 (NEW).]

C. The existence and satisfaction of other obligations under the support order. [2003, c. 436, §37 (NEW).]

[2009, c. 95, §64 (AMD); 2009, c. 95, §87 (AFF) .]

2. Proceeding for arrears. In a proceeding for arrears under a registered support order, the statute of limitation of this State or of the issuing state or foreign country, whichever is for a longer period of time, applies.

[2009, c. 95, §64 (AMD); 2009, c. 95, §87 (AFF) .]

3. Procedures and remedies of this State. A responding tribunal of this State shall apply the procedures and remedies of this State to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this State.

[2009, c. 95, §64 (AMD); 2009, c. 95, §87 (AFF) .]

4. Application of law of state issuing controlling order. After a tribunal of this State or another state determines which order is the controlling order and issues an order consolidating arrears, if any, a tribunal of this State shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support and on consolidated arrears.

[2009, c. 95, §64 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §37 (RPR). 2009, c. 95, §64 (AMD). 2009, c. 95, §87 (AFF).

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 or a foreign support order is registered, the registering tribunal of this State shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

[2009, c. 95, §65 (AMD); 2009, c. 95, §87 (AFF) .]

2. Contents of notice. A 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is subject to section 3317; [2009, c. 95, §66 (AMD); 2009, c. 95, §87 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Of the amount of any alleged arrearages. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 95, §66 (AMD); 2009, c. 95, §87 (AFF) .]

3. Notice if 2 or more orders. If the registering party asserts that 2 or more orders are in effect, a notice must also:

A. Identify the 2 or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any; [2009, c. 95, §67 (AMD); 2009, c. 95, §87 (AFF).]

B. Notify the nonregistering party of the right to a determination of which order is the controlling order; [2003, c. 436, §38 (NEW).]

C. State that the procedures provided in subsection 2 apply to the determination of which order is the controlling order; and [2003, c. 436, §38 (NEW).]

D. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order. [2003, c. 436, §38 (NEW).]

[2009, c. 95, §67 (AMD); 2009, c. 95, §87 (AFF) .]

4. Notice of income-withholding order. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to chapter 65, subchapter 4.

[2009, c. 95, §68 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §38 (AMD). 2009, c. 95, §§65-68 (AMD). 2009, c. 95, §87 (AFF).

§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 support order in this State shall request a hearing within the time required by section 3201. 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.

[2009, c. 95, §69 (AMD); 2009, c. 95, §87 (AFF) .]

2. Order confirmed if contest not timely. If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

[2009, c. 95, §70 (AMD); 2009, c. 95, §87 (AFF) .]

3. Notice of hearing to the parties. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support 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.

[2009, c. 95, §71 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §39 (AMD). 2009, c. 95, §§69-71 (AMD). 2009, c. 95, §87 (AFF).

§3203. CONTEST OF REGISTRATION OR ENFORCEMENT

1. Defenses to contest validity or enforcement. A party contesting the validity or enforcement of a registered support 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The order was obtained by fraud; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

F. Full or partial payment has been made; [2003, c. 436, §40 (AMD).]

G. The statute of limitation under section 3153 precludes enforcement of some or all of the alleged arrearages; or [2003, c. 436, §40 (AMD).]

H. The alleged controlling order is not the controlling order. [2003, c. 436, §41 (NEW).]

[2009, c. 95, §72 (AMD); 2009, c. 95, §87 (AFF) .]

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 support order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the laws of this State.

[2009, c. 95, §72 (AMD); 2009, c. 95, §87 (AFF) .]

3. Confirmation of order. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

[2009, c. 95, §72 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §§40,41 (AMD). 2009, c. 95, §72 (AMD). 2009, c. 95, §87 (AFF).

§3204. CONFIRMED ORDER

Confirmation of a registered support 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. [2009, c. 95, §73 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 95, §73 (AMD). 2009, c. 95, §87 (AFF).

Article 3: REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

§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 sections 3150 to 3204 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. [2009, c. 95, §74 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2009, c. 95, §74 (AMD). 2009, c. 95, §87 (AFF).

§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 support order may be modified only if the requirements of section 3253 or 3255 have been met. [2009, c. 95, §75 (AMD); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §42 (AMD). 2009, c. 95, §75 (AMD). 2009, c. 95, §87 (AFF).

§3253. MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

1. Modification of child support order of another state. If section 3255 does not apply, upon petition a tribunal of this State may modify a child support order issued in another state that has been registered in this State if, after notice and hearing, the tribunal finds that:

A. The following requirements are met:

- (1) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;
- (2) A petitioner who is a nonresident of this State seeks modification; and
- (3) The respondent is subject to the personal jurisdiction of the tribunal of this State; or [2003, c. 436, §43 (RPR).]

B. This State is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction. [2009, c. 95, §76 (AMD); 2009, c. 95, §87 (AFF).]

C. [2003, c. 436, §43 (RP).]

[2009, c. 95, §76 (AMD); 2009, c. 95, §87 (AFF) .]

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.

[2003, c. 436, §43 (RPR) .]

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, including the duration of the obligation of support. If 2 or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be recognized under section 2967 establishes the aspects of the child support order that are nonmodifiable.

[2009, c. 95, §77 (AMD); 2009, c. 95, §87 (AFF) .]

3-A. Issuing state's law governs. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State.

[2003, c. 436, §43 (NEW) .]

4. Modification order; continuing, exclusive jurisdiction. Upon issuance of an order by a tribunal of this State modifying a child support order issued in another state, the tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

[2003, c. 436, §43 (RPR) .]

5. Filing of modified order.

[2003, c. 436, §43 (RP) .]

6. Retained jurisdiction to modify an order issued in this State. Notwithstanding subsections 1 to 4 and section 2961, subsection 2, a tribunal of this State retains jurisdiction to modify an order issued by a tribunal of this State if:

A. One party resides in another state; and [2009, c. 95, §78 (NEW); 2009, c. 95, §87 (AFF).]

B. The other party resides outside the United States. [2009, c. 95, §78 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §78 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 669, §22 (AMD). 2003, c. 436, §43 (RPR). 2009, c. 95, §§76-78 (AMD). 2009, c. 95, §87 (AFF).

§3254. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE

If a child support order issued by a tribunal of this State is modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this State: [2015, c. 186, §8 (AMD).]

1. Enforce amounts accruing before modification. May enforce the order that was modified only as to arrears and interest accruing before the modification;

[2003, c. 436, §44 (AMD) .]

2. Enforce nonmodifiable aspects.

[2003, c. 436, §44 (RP) .]

3. Relief for violations before modification. May provide appropriate relief for violations of its order that occurred before the effective date of the modification; and

[2003, c. 436, §44 (AMD) .]

4. Recognize modifying order. Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

[2003, c. 436, §44 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §44 (AMD). 2015, c. 186, §8 (AMD).

§3255. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN STATE

1. Jurisdiction to modify. If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

[2003, c. 436, §45 (NEW) .]

2. Application of laws. A tribunal of this State exercising jurisdiction under this section shall apply the provisions of subchapters 1 and 2-A, this subchapter and the procedural and substantive law of this State to the proceeding for enforcement or modification. Subchapters 3, 4, 5, 7-A and 8 do not apply.

[2009, c. 95, §79 (AMD); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2003, c. 436, §45 (NEW). 2009, c. 95, §79 (AMD). 2009, c. 95, §87 (AFF) .

§3256. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION

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 in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal

in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction. [2003, c. 436, §45 (NEW) .]

SECTION HISTORY

2003, c. 436, §45 (NEW) .

§3257. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION

(REPEALED)

SECTION HISTORY

2003, c. 436, §45 (NEW) . 2009, c. 95, §87 (AFF) . 2009, c. 95, §80 (RP) .

Article 4: REGISTRATION AND MODIFICATION OF FOREIGN CHILD SUPPORT ORDER

§3261. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF FOREIGN COUNTRY

1. Assumption of jurisdiction. Except as otherwise provided in section 3321, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this State may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to section 3253 has been given or whether the individual seeking modification is a resident of this State or of the foreign country.

[2009, c. 95, §81 (NEW); 2009, c. 95, §87 (AFF) .]

2. Controlling order. An order issued by a tribunal of this State modifying a foreign child support order pursuant to this section is the controlling order.

[2009, c. 95, §81 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §81 (NEW) . 2009, c. 95, §87 (AFF) .

§3262. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF FOREIGN COUNTRY FOR MODIFICATION

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this State as provided in sections 3150 to 3204 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification. [2009, c. 95, §81 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §81 (NEW) . 2009, c. 95, §87 (AFF) .

Subchapter 7: DETERMINATION OF PARENTAGE

§3301. PROCEEDING TO DETERMINE PARENTAGE*(REPEALED)*

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §46 (AMD). 2009, c. 95, §87 (AFF). 2009, c. 95, §82 (RP).

Subchapter 7-A: SUPPORT PROCEEDINGS SUBJECT TO CONVENTION**§3311. DEFINITIONS**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

1. Application. "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Central authority. "Central authority" means the entity designated by the United States or a foreign country described in section 2802, subsection 3-A to perform the functions specified in the Convention.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Convention support order. "Convention support order" means a support order of a tribunal of a foreign country described in section 2802, subsection 3-A.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4. Direct request. "Direct request" means a petition filed by an individual in a tribunal of this State in a proceeding involving an obligee, obligor or child residing outside the United States.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4-A. Foreign central authority. "Foreign central authority" means the entity designated by a foreign country as defined in section 2802, subsection 3-A to perform the functions specified in the Convention.

[2015, c. 186, §9 (NEW) .]

5. Foreign support agreement. "Foreign support agreement" means an agreement for support in a record that:

A. Is enforceable as a support order in the country of origin; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. Has been formally drawn up or registered as an authentic instrument by a foreign tribunal or authenticated by or concluded, registered or filed with a foreign tribunal; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

C. May be reviewed and modified by a foreign tribunal. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

"Foreign support agreement" includes a maintenance arrangement or authentic instrument under the Convention.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

6. United States central authority. "United States central authority" means the Secretary of the United States Department of Health and Human Services.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF). 2015, c. 186, §9 (AMD).

§3312. APPLICABILITY

This subchapter applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this subchapter is inconsistent with a provision in subchapters 1 to 6, this subchapter controls.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3313. RELATIONSHIP OF THE DEPARTMENT TO UNITED STATES CENTRAL AUTHORITY

The Department of Health and Human Services of this State is recognized as the agency designated by the United States central authority to perform specific functions under the Convention. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3314. INITIATION BY DEPARTMENT OF SUPPORT PROCEEDINGS

1. Duty of department. In a proceeding pursuant to this subchapter, the department shall:

A. Transmit and receive applications; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this State. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Proceedings available to obligee. The following support proceedings are available to an obligee under the Convention:

A. Recognition or recognition and enforcement of a foreign support order; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. Enforcement of a support order issued or recognized in this State; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

C. Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

D. Establishment of a support order if recognition of a foreign support order is refused under section 3318; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

E. Modification of a support order of a tribunal of this State; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

F. Modification of a support order of a tribunal of another state or a foreign country. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Proceedings available to obligor. The following support proceedings are available under the Convention to an obligor against whom there is an existing support order:

A. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this State; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. Modification of a support order of a tribunal of this State; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

C. Modification of a support order of a tribunal of another state or a foreign country. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4. Tribunal may not require guarantee of payment of costs and expenses. A tribunal of this State may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3315. DIRECT REQUEST

1. Establishment or modification of support or determination of parentage. A petitioner may file a direct request seeking the establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this State applies.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Recognition and enforcement of support order or agreement. A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, the provisions of sections 3316 to 3323 apply.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Guarantee of payment of costs may not be required; free legal assistance. In a direct request seeking recognition and enforcement of a Convention support order or foreign support agreement:

A. A security, bond or deposit is not required to guarantee the payment of costs and expenses; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. An obligee or obligor who in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the laws of this State under the same circumstances. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4. No assistance from the department. A petitioner filing a direct request is not entitled to receive assistance from the department.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

5. Application of laws of this State. This subchapter does not prevent the application of laws of this State that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3316. REGISTRATION OF CONVENTION SUPPORT ORDER

1. General requirement. Except as otherwise provided in this subchapter, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this State as provided in subchapter 6.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Additional requirements. Notwithstanding section 3011 and section 3151, subsection 1, a request for registration of a Convention support order must be accompanied by:

A. A complete text of the support order, or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. A record stating that the support order is enforceable in the issuing country; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

C. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the support order and an opportunity to challenge or appeal it on fact or law before a tribunal; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

D. A record showing the amount of arrears, if any, and the date the amount was calculated; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

E. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

F. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Recognition and partial enforcement. A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4. Refusal to register. A tribunal of this State may vacate the registration of a Convention support order, without the filing of a contest under section 3317, only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

5. Notice. A tribunal of this State shall promptly notify the parties to a foreign support order of the registration or the order vacating the registration of a Convention support order.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3317. CONTEST OF REGISTERED CONVENTION SUPPORT ORDER

1. General requirements. Except as otherwise provided in this subchapter, sections 3201 to 3204 apply to a contest of a registered Convention support order.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Additional requirements. A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, except that if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Enforceable by operation of law. If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection 2, the order is enforceable.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4. Basis. A contest of a registered convention support order may be based only on grounds set forth in section 3318. The contesting party bears the burden of proof.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

5. Limitations. In a contest of a registered Convention support order, a tribunal of this State:

A. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

B. May not review the merits of the support order. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

6. Notice of decision. A tribunal of this State deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

7. No stay on appeal. A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3318. RECOGNITION AND ENFORCEMENT OF REGISTERED CONVENTION SUPPORT ORDER

1. Recognition and enforcement. Except as otherwise provided in subsection 2, a tribunal of this State shall recognize and enforce a registered Convention support order.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Exceptions. The following grounds are the only grounds on which a tribunal of this State may refuse recognition and enforcement of a registered Convention support order.

A. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. The issuing tribunal lacked personal jurisdiction consistent with section 2961; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

C. The order is not enforceable in the issuing country; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

D. The order was obtained by fraud in connection with a matter of procedure; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

E. A record transmitted in accordance with section 3316 lacks authenticity or integrity; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

F. A proceeding between the same parties and having the same purpose is pending before a tribunal of this State and that proceeding was the first to be filed; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

G. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this chapter in this State; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

H. The payment of arrears, to the extent alleged arrears have been paid in whole or in part; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

I. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(1) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(2) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

J. The order was made in violation of section 3321. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Convention support orders not recognized. If a tribunal of this State does not recognize a Convention support order under subsection 2, paragraph B, D, F or I:

A. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. The department shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 3314. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3319. PARTIAL ENFORCEMENT

If a tribunal of this State does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3320. FOREIGN SUPPORT AGREEMENT

1. Recognition. Except as provided in subsections 3 and 4, a tribunal of this State shall recognize and enforce a foreign support agreement registered in this State.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Requirements. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

A. A complete text of the foreign support agreement; and [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. A record stating that the foreign support agreement is enforceable as a decision in the issuing foreign country. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

3. Vacate registration. A tribunal of this State may vacate the registration of a foreign support agreement only if, acting on its motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

4. Refusal of recognition and enforcement. In a contest of a foreign support agreement, a tribunal of this State may refuse recognition and enforcement of the agreement if it finds:

A. Recognition and enforcement of the agreement is manifestly incompatible with public policy; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. The agreement was obtained by fraud or falsification; [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

C. The agreement is incompatible with a support order involving the same parties and having the same purpose in this State, another state or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this State; or [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

D. The record submitted under subsection 2, paragraph B lacks authenticity or integrity. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

5. Suspension of proceeding. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3321. MODIFICATION OF CHILD SUPPORT ORDER SUBJECT TO CONVENTION

1. Oblige resident of the foreign country. A tribunal of this State may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

A. The obligee submits to the jurisdiction of a tribunal of this State, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

B. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

2. Application of section 3318. If a tribunal of this State cannot modify the foreign child support order because the order is unable to be recognized in this State, the provisions of section 3318, subsection 3 apply.

[2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF) .]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3322. PERSONAL INFORMATION; LIMIT ON USE

Personal information gathered or transmitted under this subchapter may be used only for the purposes for which it was gathered or transmitted. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

§3323. RECORD IN ORIGINAL LANGUAGE; ENGLISH TRANSLATION

A record filed with a tribunal of this State under this subchapter must be in the original language and, if not in English, must be accompanied by an English translation. [2009, c. 95, §83 (NEW); 2009, c. 95, §87 (AFF).]

SECTION HISTORY

2009, c. 95, §83 (NEW). 2009, c. 95, §87 (AFF).

Subchapter 8: 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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Criminal charge in another state. If, under this chapter or a law substantially similar to this chapter, 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.

[2003, c. 436, §47 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §47 (AMD).

Subchapter 9: MISCELLANEOUS PROVISIONS

§3401. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2003, c. 436, §48 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 436, §48 (AMD).

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Parent. "Parent" includes either a biological parent or an adoptive parent.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§3502. JURISDICTION

The District Court has jurisdiction over all proceedings brought under this chapter. [1999, c. 731, Pt. ZZZ, §37 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ37 (AMD). 1999, c. 731, §ZZZ42 (AFF).

§3503. MODIFICATION OF ORDER

The court retains jurisdiction to modify or vacate the order of support when justice requires. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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:
[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 parental rights and responsibilities and economic support so that victims are not trapped in abusive situations by fear of retaliation, loss of a child or financial dependence;

[2001, c. 273, §2 (AMD) .]

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;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Mutual order. To declare that a mutual order of protection or restraint undermines the purposes of this chapter.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 273, §2 (AMD) .

§4002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Abuse. "Abuse" means the occurrence of the following acts between family or household members or dating partners or by a family or household member or dating partner upon a minor child of a family or household member or dating partner:

- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [2015, c. 410, Pt. B, §1 (AMD); 2015, c. 443, §9 (AMD).]
- 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; [2017, c. 288, Pt. A, §17 (AMD).]
- G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or [2017, c. 288, Pt. A, §18 (RPR).]
- H. Engaging in aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively. [2017, c. 288, Pt. A, §19 (NEW).]

[2017, c. 288, Pt. A, §§17-19 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Court. "Court" means a District Court and, with regard to section 4011, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3-A. Dating partners. "Dating partners" means individuals currently or formerly involved in dating each other, whether or not the individuals are or were sexual partners.

[2007, c. 340, §3 (NEW) .]

4. Family or household members. "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, 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 Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 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." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

[2015, c. 296, Pt. C, §24 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

5. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 672, §16 (AMD). 2005, c. 265, §19 (AMD). 2007, c. 340, §§2, 3 (AMD). 2007, c. 518, §8 (AMD). 2011, c. 640, Pt. C, §1 (AMD). 2013, c. 478, §7 (AMD). 2015, c. 296, Pt. C, §24 (AMD). 2015, c. 296, Pt. D, §1 (AFF). 2015, c. 410, Pt. B, §§1, 2 (AMD). 2015, c. 443, §§9, 10 (AMD). 2017, c. 288, Pt. A, §§17-19 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§4004. APPLICATION OF OTHER ACTS

The provisions and limitations of the Uniform Child Custody Jurisdiction and Enforcement Act apply to a proceeding under this chapter regardless of whether it is joined with another proceeding under section 4010, subsection 2. [1999, c. 486, §4 (AMD); 1999, c. 486, §6 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 486, §4 (AMD). 1999, c. 486, §6 (AFF).

§4005. COMMENCEMENT OF PROCEEDING

1. Filing. An adult who has been abused by a family or household member or a dating partner 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 or a dating partner has been abused by a family or household member or a dating partner, 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.

An adult who has been a victim of conduct defined as stalking in Title 17-A, section 210-A or described as sexual assault in Title 17-A, chapter 11 or described as unauthorized dissemination of certain private images in Title 17-A, section 511-A or described as aggravated sex trafficking or sex trafficking in Title 17-A, section 852 or 853, respectively, whether or not the conduct was perpetrated by a family or household member or dating partner, may seek relief by filing a complaint alleging that conduct without regard to whether criminal prosecution has occurred. When a minor has been a victim of such conduct, the minor's parent, other person responsible for the child or a representative of the department may seek relief by filing a petition alleging that conduct.

When an adult who is 60 years of age or older or a dependent adult, as defined in Title 22, section 3472, subsection 6, or an incapacitated adult, as defined in Title 22, section 3472, subsection 10, has been the victim of abuse as defined in section 4002, subsection 1 or Title 22, section 3472, subsection 1 by an extended family member or an unpaid care provider, the adult victim, the adult victim's legal guardian or a representative of the department may seek relief by filing a complaint alleging the abusive conduct. For the purposes of this subsection, "extended family member" includes, but is not limited to: a person who is related to the victim by blood, marriage or adoption, whether or not the person resides or has ever resided with the victim. "Unpaid care provider" includes, but is not limited to, a caretaker who voluntarily provides full, intermittent or occasional personal care to the adult victim in the victim's home similar to the way a family member would provide personal care.

[2015, c. 443, §11 (AMD) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The clerk shall provide the plaintiff written notice of resources from which the plaintiff may receive legal or social service assistance. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Notice. Prior to the plaintiff signing a complaint, the court shall notify the plaintiff, orally or in writing, that it is a crime to make a false statement under oath in a court document.

[2003, c. 372, §1 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 372, §1 (AMD). 2007, c. 340, §4 (AMD). 2011, c. 201, §1 (AMD). 2015, c. 339, §2 (AMD). 2015, c. 443, §11 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2-A. Temporary orders; possession of dangerous weapons. The court may direct the defendant not to possess a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the temporary order if the complaint demonstrates:

A. Abuse that involves a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon; or [2015, c. 217, §1 (AMD) .]

B. A heightened risk of immediate abuse to the plaintiff or a minor child. In determining whether a heightened risk of immediate abuse is present, the court shall consider, but is not limited to consideration of, whether:

- (1) The temporary order of protection is not likely to achieve its purpose in the absence of such a condition;
- (2) The defendant has violated orders of protection;
- (3) Past or present abuse to a victim resulted in injury;
- (4) The abuse occurred in public; and
- (5) The abuse includes:
 - (a) Threats of suicide or homicide;
 - (b) Killing or threatening to kill pets;
 - (c) An escalation of violence;
 - (d) Stalking behavior or extreme obsession;
 - (e) Sexual violence;
 - (f) Excessive alcohol or drug use; and
 - (g) Abuse against a pregnant victim. [2003, c. 372, §2 (NEW) .]

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order and if the defendant moves for dissolution or modification of an order pursuant to subsection 7, the court must hear and decide the motion as expeditiously as possible and must issue a written decision on the motion within 24 hours after a hearing on that motion.

If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow in a temporary order, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms, muzzle-loading firearms, bows, crossbows and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms, muzzle-loading firearms, bows, crossbows and other dangerous weapons at any location if there is probable cause to believe such firearms, muzzle-loading firearms, bows, crossbows or dangerous weapons have not been relinquished by the defendant.

[2015, c. 217, §1 (AMD) .]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. An order remains in effect pending a hearing pursuant to subsection 1. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Advise the plaintiff of reasons for the denial. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Interim relief. The court, in an ex parte proceeding, may make an order concerning the parental rights and responsibilities relating to 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Threatening, assaulting, molesting, harassing, attacking or otherwise disturbing the peace of the plaintiff; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Entering the family residence or the residence of the plaintiff; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. Taking, converting or damaging property in which the plaintiff may have a legal interest; [2015, c. 410, Pt. B, §3 (AMD); 2015, c. 443, §12 (AMD).]

F. Having any direct or indirect contact with the plaintiff; [2017, c. 288, Pt. A, §20 (AMD).]

G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or [2017, c. 288, Pt. A, §21 (RPR).]

H. Destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's possession. [2017, c. 288, Pt. A, §22 (NEW).]

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.

[2017, c. 288, Pt. A, §§20-22 (AMD) .]

5-A. Interim relief; care, custody or control of animals. The court may make an order concerning the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household and may enjoin the defendant from injuring or threatening to injure any such animal.

[2013, c. 109, §1 (NEW) .]

6. Service of order. If the court issues a temporary order or orders emergency or interim relief, the court shall order an appropriate law enforcement agency or, if the defendant is present in the courthouse, a court security officer qualified pursuant to Title 4, section 17, subsection 15 or, if the defendant is in the custody of the Department of Corrections, the Department of Corrections to serve the defendant personally with the order, the complaint and the summons. The court shall cause the order to be delivered to the law enforcement agency, court security officer or the correctional facility in which the defendant is incarcerated as soon as practicable following the issuance of the order and the law enforcement agency, court security officer or chief administrative officer of a correctional facility or the chief administrative officer's designee shall make a good faith effort to serve process expeditiously.

A. Notwithstanding any other provision of law, service of an order may be made pursuant to this section through the use of electronically transmitted printed copies of orders that have been transmitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service. [2009, c. 555, §4 (NEW) .]

B. In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order. [2009, c. 555, §5 (NEW) .]

[2009, c. 555, §§4, 5 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 67, §1 (AMD). 2001, c. 134, §5 (AMD). 2001, c. 273, §3 (AMD). 2003, c. 372, §2 (AMD). 2009, c. 94, §5 (AMD). 2009, c. 555, §§4, 5 (AMD). 2013, c. 109, §1 (AMD). 2015, c. 217, §1 (AMD). 2015, c. 410, Pt. B, §§3, 4 (AMD). 2015, c. 443, §§12, 13 (AMD). 2017, c. 288, Pt. A, §§20-22 (AMD).

§4007. RELIEF

1. Protection order; consent agreement. The court, after a hearing and upon finding that the defendant has committed the alleged abuse or engaged in the alleged conduct described in section 4005, subsection 1, may grant a protective order or, upon making that finding, approve a consent agreement to bring about a cessation of abuse or the alleged conduct. This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. The court may enter a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor child residing in the plaintiff's household. 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- A-1. Directing the defendant not to possess a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the order; [2015, c. 217, §2 (AMD).]
- A-2. Prohibiting the defendant from the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the plaintiff or a minor child residing in the household; [2001, c. 134, §6 (NEW).]
- B. Directing the defendant to refrain from going upon the premises of the plaintiff's residence; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. Directing the defendant to refrain from repeatedly and without reasonable cause:
 - (1) Following the plaintiff;
 - (2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; or
 - (3) Engaging in conduct defined as stalking in Title 17-A, section 210-A; [2007, c. 340, §5 (AMD).]
- D. Directing the defendant to refrain from having any direct or indirect contact with the plaintiff; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- 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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E-1. Directing the defendant to refrain from injuring or threatening to injure any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household; [2013, c. 109, §2 (NEW).]
- 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, including an order to refrain from taking, converting or damaging property in which the plaintiff has a legal interest; [2007, c. 340, §5 (AMD).]

F-1. Ordering the termination of a life insurance policy or rider under that policy owned by the defendant if the plaintiff is the insured life under the policy or rider. Upon issuance, a copy of the court order must be sent to the insurer that issued the policy; [2003, c. 106, §1 (NEW).]

G. Either awarding some or all temporary parental rights and responsibilities with regard to minor children or awarding temporary rights of contact with regard to minor children, or both, under such conditions that the court finds appropriate as determined in accordance with the best interest of the child pursuant to section 1653, subsections 3 to 6-B. The court's award of parental rights and responsibilities or rights of contact is not binding in any separate action involving an award of parental rights and responsibilities pursuant to chapter 55 or in a similar action brought in another jurisdiction exercising child custody jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act; [2005, c. 366, §5 (AMD).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

J. Ordering the payment of temporary support payments to the State as provided in chapters 63 and 67; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

L. Ordering the defendant to pay court costs or reasonable attorney's fees; [2011, c. 303, §1 (AMD).]

L-1. Ordering the plaintiff to pay court costs or reasonable attorney's fees, or both, only if a judgment is entered against the plaintiff after a hearing in which both the plaintiff and the defendant are present and the court finds that the complaint is frivolous; [2011, c. 303, §2 (NEW).]

M. Entering any other orders determined necessary or appropriate in the discretion of the court; [2015, c. 410, Pt. B, §5 (AMD); 2015, c. 443, §14 (AMD).]

N. Directing the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household; [2017, c. 288, Pt. A, §23 (RPR).]

O. With regard to conduct described as aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively, entering any other orders determined necessary or appropriate in the discretion of the court, including, but not limited to, requiring the defendant to pay economic damages related to the return or restoration of the plaintiff's passport or other immigration document and any debts of the plaintiff arising from the trafficking relationship; [2017, c. 288, Pt. A, §24 (RPR).]

P. With respect to unauthorized dissemination of certain private images as described in Title 17-A, section 511-A, entering any orders determined necessary or appropriate in the discretion of the court, including but not limited to ordering the defendant to pay costs associated with removal, destruction or return of the private images; or [2017, c. 288, Pt. A, §25 (AMD).]

Q. With respect to unauthorized dissemination of certain private images as described in Title 17-A, section 511-A, ordering the defendant to remove, destroy or return or to direct the removal, destruction or return of the private images, ordering the defendant to cease the dissemination of the private images and prohibiting the defendant from disseminating the private images. [2017, c. 288, Pt. A, §26 (NEW) .]

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.

[2017, c. 288, Pt. A, §§23-26 (AMD) .]

1-A. No possession of firearm, muzzle-loading firearm, bow or crossbow or dangerous weapons for duration of order. If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms, muzzle-loading firearms, bows, crossbows and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms, muzzle-loading firearms, bows, crossbows and other dangerous weapons at any location if there is probable cause to believe such firearms, muzzle-loading firearms, bows, crossbows or dangerous weapons have not been relinquished by the defendant.

[2015, c. 217, §3 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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 and Title 15, section 393, subsection 1, paragraph D, if applicable.

[1997, c. 334, §6 (AMD) .]

4. Title to property. An order or agreement may not affect title to any real property.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Bond prohibited. The court may not require the execution of a bond by the plaintiff prior to issuance of an order of protection.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Service of order or consent decree. The court shall order a law enforcement agency; or, if the defendant is present in the courthouse, a court security officer qualified pursuant to Title 4, section 17, subsection 15; or, if the defendant is in the custody of the Department of Corrections, the chief administrative officer or the chief administrative officer's designee at the correctional facility, to serve the defendant personally with a protective order or consent decree.

A. Notwithstanding any other provision of law, service of an order may be made pursuant to this section through the use of electronically transmitted printed copies of orders that have been transmitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service. [2009, c. 555, §6 (NEW).]

B. In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order. [2009, c. 555, §7 (NEW).]

[2009, c. 555, §§6, 7 (AMD) .]

7. Mutual order of protection or restraint. The court may not issue a mutual order of protection or restraint.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 187, §4 (AMD). 1997, c. 187, §5 (AFF). 1997, c. 334, §§4-6 (AMD). 1999, c. 67, §2 (AMD). 1999, c. 486, §5 (AMD). 1999, c. 486, §6 (AFF). 2001, c. 134, §6 (AMD). 2001, c. 273, §4 (AMD). 2003, c. 106, §1 (AMD). 2003, c. 372, §3 (AMD). 2005, c. 366, §5 (AMD). 2005, c. 510, §§10-12 (AMD). 2007, c. 340, §5 (AMD). 2009, c. 94, §6 (AMD). 2009, c. 555, §§6, 7 (AMD). 2011, c. 303, §§1, 2 (AMD). 2013, c. 109, §2 (AMD). 2015, c. 217, §§2, 3 (AMD). 2015, c. 410, Pt. B, §§5-7 (AMD). 2015, c. 443, §§14-16 (AMD). 2017, c. 288, Pt. A, §§23-26 (AMD).

§4008. IDENTIFYING INFORMATION SEALED

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed by the clerk and not disclosed to the other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. [2001, c. 134, §7 (RPR).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 134, §7 (RPR).

§4008-A. ACCESS TO CERTAIN PRIVATE IMAGES AND WRITTEN INFORMATION

Access to and dissemination of certain private images as described in Title 17-A, section 511-A and any written information describing and directly pertaining to the images contained in court records are governed by rule or administrative order adopted by the Supreme Judicial Court. [2015, c. 410, Pt. B, §8 (NEW).]

SECTION HISTORY

2015, c. 410, Pt. B, §8 (NEW).

§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. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Intoxication. Voluntary intoxication is not a defense to an action under this chapter.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Mediation and referees. The court may not mandate mediation or appointment of referees in actions brought under this chapter. If an action under this chapter is joined with another proceeding pursuant to subsection 2, this subsection does not prohibit the court from mandating mediation or the appointment of a referee on any issue, other than abuse, that is part of the other proceeding.

[2001, c. 243, §2 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2001, c. 243, §2 (AMD).

§4011. VIOLATION

1. Crime committed. Except as provided in subsections 2 and 4, violation of the following is a Class D crime when the defendant has prior actual notice, which may be notice by means other than service in hand, of the order or agreement:

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A court-approved consent agreement. [1997, c. 683, Pt. C, §7 (AMD); 1997, c. 683, Pt. C, §8 (AFF).]

[2001, c. 420, §1 (AMD) .]

2. Exception. When the only provision that is violated concerns relief authorized under section 4007, subsection 1, paragraph F or F-1 or section 4007, subsection 1, paragraphs H to O, the violation must be treated as contempt and punished in accordance with law.

[2015, c. 443, §17 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Reckless conduct; assault. A defendant who violates a protective order issued pursuant to section 4007 through conduct that is reckless and that creates a substantial risk of death or serious bodily injury to the plaintiff named in the protective order or who assaults the plaintiff named in the protective order commits a Class C crime.

[2001, c. 420, §2 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 683, §C7 (AMD). 1997, c. 683, §C8 (AFF). 2001, c. 420, §§1,2 (AMD). 2005, c. 510, §13 (AMD). 2011, c. 178, §1 (AMD). 2015, c. 443, §17 (AMD).

§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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Assisting that person in obtaining medical treatment necessitated by an assault, including driving the victim to the emergency room of the nearest hospital; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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 [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Arresting the abusing party with or without a warrant pursuant to section 4011 and Title 17-A, section 15. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

Beginning no later than January 1, 2015, in addition to the actions specified in this subsection, the law enforcement officer shall make a good faith effort to administer a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety. The law enforcement officer administering this assessment shall provide the results of the assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the abuse took place.

[2011, c. 680, §3 (AMD) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

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.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

9. Notification of attempted purchase of firearm. When the Department of Public Safety receives notification from a federal agency that a background criminal records check conducted under the system established pursuant to 18 United States Code, Section 922(t) indicates that a potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to a temporary or final protection from abuse order, the department shall make every reasonable effort to notify as quickly as practicable both the individual intended to be protected by the protection from abuse order and another law enforcement agency with jurisdiction in the municipality in which that individual resides of the information received from the federal agency.

For the purposes of this subsection, notification may be made by the Department of Public Safety to the individual intended to be protected by the protection from abuse order through a law enforcement agency within the county in which the individual resides. When the department makes notification through such a law enforcement agency, that agency then must make reasonable effort to notify as quickly as practicable the individual intended to be protected by the protection from abuse order. If, when notifying a law enforcement agency, the department is informed by that agency that it cannot notify the individual intended to be protected by the protection from abuse order, the department must continue to make a reasonable effort to notify that individual as quickly as practicable, including through a different law enforcement agency within the county in which the individual resides.

[2005, c. 671, §1 (NEW) .]

10. Liability for damages. The State, a political subdivision of the State or a law enforcement officer is not liable for damage that may be caused by the failure or inability to inform an individual who is the subject of a protection from abuse order in accordance with subsection 9. This subsection does not prohibit the State or a political subdivision of the State from pursuing legally authorized disciplinary action.

[2005, c. 671, §2 (NEW) .]

11. Service of protection from abuse order. Every municipal, county and state law enforcement agency shall adopt a written policy on the service of protection from abuse orders that directs that every order issued under this chapter is served on the subject of the order as quickly as possible. Service of a protection from abuse order that is not in compliance with a policy adopted under this subsection does not affect the validity of the service or the order.

[2011, c. 265, §1 (NEW) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 671, §§1,2 (AMD). 2011, c. 265, §1 (AMD). 2011, c. 680, §3 (AMD).

§4013. MAINE COMMISSION ON DOMESTIC AND SEXUAL ABUSE

There is created the Maine Commission on Domestic and Sexual Abuse, as established by Title 5, section 12004-I, subsection 74-C, referred to in this section as the "commission." [2001, c. 240, §2 (AMD) .]

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 statewide coalition of domestic violence projects;
- (1-A) Two members, appointed by the Governor, who are representatives of the statewide coalition of sexual assault centers;
- (2) One member, appointed by the Governor, who is a representative of the mental health profession;
- (3) One member, appointed by the Governor, who is a representative of victims of domestic violence;
- (3-A) One member, appointed by the Governor, who is a representative of victims of sexual assault;
- (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 member, appointed by the Governor, who was a victim of domestic abuse and used the court system;
- (5-A) One member, appointed by the Governor, who was a victim of sexual assault 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;
- (8-A) One member, appointed by the Governor, who is the statewide coordinator of a statewide coalition to end domestic violence;
- (8-B) One member, appointed by the Governor, who is the executive director of a statewide coalition against sexual assault;
- (8-C) The Attorney General or the Attorney General's designee;
- (8-D) The Chief of the Maine State Police or the chief's designee;
- (9) The Commissioner of Public Safety or the commissioner's designee;
- (9-A) The Commissioner of Health and Human Services or the commissioner's designee;

- (9-C) The Commissioner of Education or the commissioner's designee;
 - (9-D) The Commissioner of Labor or the commissioner's designee;
 - (9-E) The Commissioner of Corrections or the commissioner's designee;
 - (9-F) One member, appointed by the Governor, who has experience working in batterers' intervention programs;
 - (10) Up to 6 members-at-large, appointed by the Governor;
 - (11) Up to 4 members, appointed by the Governor, representing underserved populations; and
 - (12) One member, appointed by the Governor, who is a tribal member and provides services through a tribal program to tribal members who are victims of domestic or sexual violence.
- [2009, c. 257, §1 (AMD).]

B. The Chief Justice of the Supreme Judicial Court is requested to appoint one person to serve the commission in an advisory capacity. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2009, c. 257, §1 (AMD) .]

2. Terms of office. The members serve 3-year terms.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Powers and duties. The commission shall advise and assist the executive, legislative and judicial branches of State Government on issues related to domestic and sexual 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.

[2001, c. 240, §2 (AMD) .]

4. Domestic Abuse Homicide Review Panel. The commission shall establish the Domestic Abuse Homicide Review Panel, referred to in this subsection as the "panel," to review the deaths of persons who are killed by family or household members as defined by section 4002.

A. The chair of the commission shall appoint members of the panel who have experience in providing services to victims of domestic and sexual abuse and shall include at least the following: the Chief Medical Examiner, a physician, a nurse, a law enforcement officer, the Commissioner of Health and Human Services, the Commissioner of Corrections, the Commissioner of Public Safety, a judge as assigned by the Chief Justice of the Supreme Judicial Court, a representative of the Maine Prosecutors Association, an assistant attorney general responsible for the prosecution of homicide cases designated by the Attorney General, an assistant attorney general handling child protection cases designated by the Attorney General, a victim-witness advocate, a mental health service provider, a facilitator of a certified batterers' intervention program under section 4014 and 3 persons designated by a statewide coalition for family crisis services. Members who are not state officials serve a 2-year term without compensation, except that of those initially appointed by the chair, 1/2 must be appointed for a one-year term. [2001, c. 240, §2 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

B. The panel shall recommend to state and local agencies methods of improving the system for protecting persons from domestic and sexual abuse, including modifications of laws, rules, policies and procedures following completion of adjudication. [2001, c. 240, §2 (AMD) .]

C. The panel shall collect and compile data related to domestic and sexual abuse, including data relating to deaths resulting from domestic abuse when the victim was pregnant at the time of death. [2005 , c. 88, Pt. A, §1 (AMD).]

D. In any case subject to review by the panel, upon oral or written request of the panel, any person that possesses information or records that are necessary and relevant to a homicide review shall as soon as practicable provide the panel with the information and records. Persons disclosing or providing information or records upon the request of the panel are not criminally or civilly liable for disclosing or providing information or records in compliance with this paragraph. [1997, c. 507, §3 (NEW); 1997, c. 507, §4 (AFF).]

E. The proceedings and records of the panel are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commission shall disclose conclusions of the review panel upon request, but may not disclose information, records or data that are otherwise classified as confidential. [1997, c. 507, §3 (NEW); 1997, c. 507, §4 (AFF).]

The commission shall submit a report on the panel's activities, conclusions and recommendations to the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 30, 2002 and biennially thereafter.

[2005, c. 88, Pt. A, §1 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 507, §§2,3 (AMD). 1997, c. 507, §4 (AFF). 2001, c. 240, §2 (AMD). 2003, c. 689, §B7 (REV). 2005, c. 88, §A1 (AMD). 2005, c. 397, §A14 (AMD). 2009, c. 257, §1 (AMD).

§4014. CERTIFICATION OF BATTERERS' INTERVENTION PROGRAMS

1. Rules establishing standards and procedures for certification. The Department of Corrections, 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 and Sexual 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 424, Pt. B, §8 (AMD) .]

2. Temporary certification of batterers' intervention programs.

[2001, c. 386, §4 (RP) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 292, §2 (AMD). 1997, c. 292, §3 (AFF). 2001, c. 240, §3 (AMD). 2001, c. 386, §4 (AMD). 2013, c. 424, Pt. B, §8 (AMD).

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