



**WILLIAM J. SCOTT**  
**ATTORNEY GENERAL**  
**STATE OF ILLINOIS**  
**SPRINGFIELD**

July 27, 1971

FILE NO. S-318

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT:  
Determination of Paternity in Responding Jurisdiction

Honorable William V. Hopf  
State's Attorney  
DuPage County  
Wheaton, Illinois 60187

Dear Mr. Hopf:

I have your letter and attachment asking that I give you an opinion as to whether the question of paternity can be initially determined in the State of Illinois as the responding jurisdiction in a Uniform Reciprocal Enforcement of Support Action, where only the respondent is present in this jurisdiction. You are asked to have paternity adjudicated by the responding court under an Oregon statute reading as follows:

"Any person who without just or sufficient cause deserts or abandons his wife, or who deserts or abandons any of his or her minor children, born in or out of wedlock, under the age of 16 years, without providing necessary and proper shelter, food, care or clothing for any of them, or who, without just or sufficient cause,

fails or neglects to support his wife, or any such minor children, shall be punished upon conviction by confinement in the penitentiary for not more than five years or by imprisonment in the county jail for not more than one year. If any person leaves the state and fails, for the period of 60 days, to provide necessary and proper shelter, food, care or clothing for his wife or children, who come within this section, it is prima facie evidence that such person deserted or abandoned his wife, children, or both." (Emphasis Supplied)  
Oregon Revised Statute 167.605

The only section of the Illinois Reciprocal Act which concerns itself with paternity is Paragraph 127, Chapter 68, Illinois Revised Statutes 1969. It provides as follows:

"If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated."

Paragraph 127 requires that both parties be present for the adjudication of paternity under the Reciprocal Act except in unusual circumstances where, the implication is, the defendant can very obviously sustain his affirmative defense denying paternity.

Under the Illinois Paternity Act, a confrontation between the complainant and the defendant is required

(Paragraphs 55, 56, 57, Illinois Revised Statutes 1969, Chapter 106 3/4) before an order can be entered.

Paragraph 102 (b) of the Reciprocal Act defines duty of support. It states:

"'Duty of support' means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid."

The phrase "imposed or imposable" must be interpreted to reach an answer to your question. It would appear, especially in view of the contents of Paragraph 127, and the Paternity Act provisions together, that an "imposable duty" means generally a legal, establishable duty in both the initiating and responding state. Apparently no paternity adjudication can be had in Oregon without confrontation, or this route would have been followed as being the easier. If Illinois undertakes the adjudication of paternity under these circumstances, it is not only making a finding that cannot be had in Oregon, but it is affording to an Oregon resident greater protection and ease of prosecution than it gives to its own citizens similarly situated. This is in my opinion a discriminatory result, violating the equal protection clause of the 14th Amendment to the United States Constitution.

This opinion is bolstered by the decision of an Ohio court in 1954, under a prior Reciprocal Act, in Commonwealth of Pennsylvania v. Mong, 117 N.E. 2d 32. Pennsylvania, the initiating jurisdiction, imposed a liability upon children for the support of their parents, and its Reciprocal law provided, "Duties of support enforceable under this law are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought, or where the obligee was present when the failure to support commenced, at the election of the obligee." Ohio statute exempted from liability to support a child who had been abandoned by a parent; Pennsylvania did not do so. The facts were unquestioned that the respondent in Ohio had been abandoned by the parent suing for support. The court said, at page 34:

"The respondent is a citizen and resident of Ohio. He is entitled to all the rights and privileges accorded by the laws of Ohio to its citizens. He is entitled to the equal protection of its laws. Subjecting him to the making of support payments compulsory under the law of another state, as to which payments the law of Ohio specifically exempts all Ohio citizens similarly situated, is violative of his right to equal protection."

It is therefore my opinion that there is no proper statutory basis in Illinois for suit against the putative

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father of a child born and residing with its mother outside this state, absent the presence of both parties in this jurisdiction.

Very truly yours,

A T T O R N E Y G E N E R A L