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THE AFFILIATION LAW (10 of 1973)

(1995 Revision)

Consolidated with Laws 11 of 1986 and 19 of 1992.

Revised under the authority of the Law Revision Law (19 of 1975).

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Law 10 of 1973-29th June, 1973

Law 11 of 1986-21st May, 1986

Law 19 of 1992-11th September, 1992

Consolidated and revised this 8th day of August, 1995.

AFFILIATION LAW

(1995 Revision)

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AFFILIATION LAW

(1995 Revision)

1. This Law may be cited as the Affiliation Law (1995 Revision). Short title

2. In this Law- Definitions

“affiliation order” means an order adjudging a man to be the putative father of a child, and ordering him to pay a sum of money weekly or otherwise;

“child” means a child born out of wedlock;

“court” means a court of summary jurisdiction;

“Grand Court” means the Grand Court sitting without a jury;

“guardian” means the person appointed as such under this Law; and

“putative father” means the person adjudged by an affiliation order to be the putative father of a child.

3. (1) Any single woman who is with child or who is delivered of a child may- Complaints by single women or by guardians appointed by the court
 - (a) either before or at any time within twelve months after the birth of such child;
 - (b) at any time thereafter upon proof that the man alleged to be the father of such child has, within the twelve months after the birth of such child, paid money for its maintenance or contributed to its support; or
 - (c) at any time within the twelve months next after the return to the Islands of the man alleged to be the father of such child upon proof that he ceased to reside in the Islands within the twelve months next after the birth of such child,

make complaint, on oath or affirmation, before a Justice of the Peace alleging some man to be the father of the child.

- (2) Where the mother of a child has died, is of unsound mind, is in prison or is not within the Islands, the court may, if it sees fit, upon the application of any person who has the actual care and custody of the child, by order under its hand appoint that person to be guardian of and have custody of such child and the court may, at any time, revoke the appointment of that person and may, upon the

application of some other person, appoint that other person to be guardian of such child.

(3) The guardian of a child in respect of whom no affiliation order has been made on the application of its mother shall have the same right to make complaint under subsection (1) as is conferred upon a single woman who has been delivered of such a child and that subsection shall apply accordingly.

Summons to issue on complaint

4. Upon any such complaint being made under section 3, the Justice of the Peace shall thereupon issue a summons to the person alleged to be the father of the child to appear before the court on a day specified in such summons:

Provided that when a complaint is made before the birth of the child the summons shall be issued to the person alleged to be the father of the child to appear before the court at a time after the woman expects the child to be born, and if on such day the woman has not been delivered or the court is satisfied that she has been delivered at so short a period before such day that she cannot appear, it shall be lawful for the court to adjourn the hearing of the case until the child is born and the woman is able to attend.

Court to decide issue and make order

5. (1) After the birth of such child, on the appearance of the person so summoned or on proof that the summons was duly served on such person or left at his last place of abode six days at least before the day specified in such summons, the court shall hear the evidence of the complainant and such other evidence as may be produced, including any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the complainant is corroborated by other evidence to the satisfaction of the court, the court may adjudge the man to be the putative father of the child:

Provided that-

- (a) if the complainant fails to give evidence and the court is satisfied that such failure is due to the inability or unavailability of the complainant by reason of death, illness or other sufficient cause, the court may accept in lieu of such evidence, the evidence of some other person who appears to the court to be worthy of belief and to have sufficient knowledge of the case, and the provisions of this subsection relating to corroboration of the evidence of the complainant shall apply to any evidence accepted in lieu thereof; and
- (b) if the person alleged to be the father of such child attends the hearing and, in open court, admits the truth of the allegation, the court may thereupon adjudge that person to be the putative father

of such child, whether or not the court has heard the evidence of the complainant or of any other person.

(2) If the court adjudges the man to be the putative father, it may also, if it sees fit having regard to all the circumstances of the case, proceed to make an order (hereinafter called an affiliation order) on the putative father for the payment to the mother or guardian of the child of a sum of money weekly for the maintenance and education of the child.

(3) If the child has died before the making of an order under subsection (2), the court may make an order on the said putative father for the payment of a sum of money for the expense incurred in the burial of the said child.

(4) If the application is made before the birth of the child, or within two calendar months after the birth of the child, the weekly sum may, if the court thinks fit, be calculated from the birth of the child, and if the child is dead may be calculated at a rate not exceeding the rate aforesaid from the birth of the child up to the date of its death.

(5) In addition to the said weekly sum, the court may, by the order, order payment of a sum for the expenses of the confinement.

(6) In any case the court may also by the said order direct the putative father to pay such sum as it may see fit and provide in the order for the costs incurred in obtaining the same.

(7) At any time after an affiliation order has been made the court may, upon the application of the putative father or of the mother or guardian of the child, vary such order in such manner and to such extent as it may think fit, or suspend such order, or, such order having been suspended, may revive the same.

(8) Any affiliation order may, after the expiration of one week from the making thereof, be from time to time enforced in the court, if the payments required by it to be made or any of them are in arrear, in the manner prescribed by law for the enforcing of orders of justices requiring the payment of a sum of money:

Provided that where, by an affiliation order, it is provided that payment be made to a collecting officer under this Law, nothing in this section shall preclude the collecting officer from enforcing such order in the manner hereinafter prescribed.

(9) For the purpose of calculating any sum of money to be paid under subsection (2), (3) or (5) the court shall have regard to the means of the parties and all the circumstances of the case.

Collecting officer to be appointed by court

6. (1) The court shall, from time to time, subject to the approval of the Governor, appoint one or more collecting officers who shall be styled “the collecting officer” for the place to which they are appointed and, in default of such appointment, the Clerk of the Court shall be the collecting officer for Grand Cayman and the District Commissioner shall be the collecting officer for Cayman Brac and Little Cayman.

(2) Where the court makes an affiliation order it may, upon the application of the mother or guardian of the child, either at the time of making the order or subsequently on an *ex parte* application to vary the same, if it is satisfied that it is desirable so to do, provide in the order that all payments made under such order shall be made to the collecting officer.

(3) Payment of the amount ordered may be made to the collecting officer in person, or by letter sent by registered post properly addressed to the collecting officer and posted in time to be delivered to him on the day appointed for payment.

(4) It shall be the duty of the collecting officer to receive all payments directed to be made to him under this Law and to make payment fortnightly to the mother of the child or to such other person as is named in the affiliation order of the sum directed to be paid under the order or such part thereof as he receives without making any deduction therefrom.

If payment fourteen days in arrear distress may issue

7. (1) Where, under an affiliation order which provides that payment thereunder shall be made to the collecting officer, payment is fourteen clear days in arrear, the court may, upon the application of the collecting officer, issue a warrant directing the sum due under such order or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, to be recovered by distress and sale of the goods and chattels of the putative father, and if upon the return to such warrant it appears that no sufficient distress can be had, the court may issue a warrant to bring the putative father before it, and in case the putative father neglects or refuses without reasonable cause to pay the sum so due together with such costs, the court may commit him to prison for any period not exceeding three months unless such sum and costs, together with the costs of commitment, be sooner paid.

(2) Where the court commits a putative father to prison under subsection (1), then, unless the court otherwise directs, no arrears shall accrue under the order during the time that the putative father is in prison.

(3) Notwithstanding anything to the contrary in any law limiting the time within which summary proceedings are to be taken to six months, such limitation shall not apply to proceedings for enforcing the payment of sums under an order made under this Law.

8. (1) An appeal shall lie to the Grand Court, in manner provided by any law in force for the time being regulating appeals in cases tried by a court of summary jurisdiction, from any order made by the court under this Law, or from any refusal to make such an order, or from the revocation, revival or variation of such an order, and the decision of the Grand Court shall be final and binding for all purposes and shall not be subject to any appeal to any other court or tribunal whatsoever. Appeals

(2) The Grand Court may, upon the hearing of the appeal, confirm, reverse or modify the decision of the court or make such order as the Grand Court thinks just, and may, by such order, exercise any power which the court might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the court. The Grand Court may also make such order as to costs to be paid by either party as it may think just.

9. When an affiliation order has been made, the court, in any case where there is any pension or income payable to the person to whom the affiliation order has been made and capable of being attached, after giving the person to whom the pension or income is payable an opportunity of being heard, and provided that the court is satisfied that such person has, without reasonable cause, made a default under the order, may order that such an amount each week as is specified in the affiliation order, or any part of such amount, be attached and paid to the collecting officer. Such order shall be an authority to the person by whom such pension or income is payable to make payment so ordered, and the receipt of the collecting officer shall be a good discharge to such first-named person. Pensions liable to attachment

10. No order for the maintenance and education of any such child made under this Law shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of fifteen years, or after the death of such child: Order to cease on child dying or attaining fifteen years unless extended by court

Provided that the court making the order may thereby direct that the payments to be made under it in respect of the child shall continue until the child

attains the age of seventeen years, in which case such order shall be in force until that period.

Change of address to be given to collecting officer by putative father, mother or guardian

11. Where, by an affiliation order, it is provided that payment be made to the collecting officer, the putative father, mother or guardian of the child, if he or she changes his or her address shall give notice thereof to the collecting officer, and on failure so to do without reasonable excuse is liable on summary conviction to a fine of twenty dollars.

Tests

12. (1) If a man disputes being the putative father of a child the court may require that man, the child and its mother to undergo a test for the purpose of proving or disproving that the man is the father of the child.

(2) In subsection (1)-

“test” means any test which the court is satisfied is capable of providing evidence that a man is or is not the father of a child.

Proof of service of summons

13. Where a summons has been served on a putative father under this Law, it shall be lawful to prove by affidavit in the form referred to in the Schedule or in a form to the like effect that such summons has been duly served.

Power of Governor to make rules

14. (1) The Governor in Council may make rules and prescribe forms for carrying into effect the provisions of this Law.

(2) All rules made and forms prescribed under this section shall be published by Government Notice and shall come into force on such publication or at such other time as may be named.

SCHEDULE

(Section 13)

Affidavit of Service

I, _____ make oath and say
that I did, the _____ day of _____, 19____, duly serve the
defendant, C.D., with a summons a true copy whereof is herewith annexed,
marked A, by delivering the same personally to the defendant (or by leaving the
same with _____ at the place of abode of the
defendant).

Sworn at
this _____ day of _____, 19____, before me

Justice of the Peace.

Endorse the copy summons thus-

This paper marked A is the paper referred to in the annexed affidavit.

Publication in consolidated and revised form authorised by the Governor in
Council this 8th day of August, 1995.

Mona N. Banks-Jackson
Clerk of Executive Council