

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
New Draft of: S. P. 514, L. D. 1436  
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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1601**

S. P. 604

House of Representatives, May 12, 1981

Reported by Senator Devoe of Penobscot from the Committee on Judiciary  
and Printed under Joint Rules No. 2

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT Concerning the Consent Requirements and Termination of Parental  
Rights for Adoption Proceedings.**

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**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under the current adoption laws of this State, it is difficult, if not impossible, to process an adoption without the written consent of both parents; and

Whereas, this is an undue hardship when one parent has willfully abandoned the child and refused to take responsibility for the child; and

Whereas, this is preventing many children from being adopted into homes where they are wanted and loved; and

Whereas, in adoption cases, termination of parental rights must now be brought in District Court, requiring 2 separate court actions; and

Whereas, certain due process requirements and equal protection requirements are currently omitted from the law in adoption hearings for the consent of a putative father; and

Whereas, all these inadequacies are creating a hinderance to adoption proceedings resulting in a detriment to the best interests of the child being adopted; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 19 MRSA § 532, sub-§ 2, ¶ A-1, as enacted by PL 1979, c. 733, § 9, is amended to read:**

**A-1. A parent whose parental rights have been terminated under section 533-A or Title 22, section 4051, et seq chapter 1071, subchapter VI;**

**Sec. 2. 19 MRSA § 532, sub-§ 5, ¶ B, as amended by PL 1979, c. 733, § 9, is further amended to read:**

**B. The Department of Human Services or by an adoption agency duly licensed in Maine; or**

**Sec. 3. 19 MRSA § 532, sub-§ 5, ¶ D, as repealed and replaced by PL 1979, c. 733, § 9, is amended to read:**

**D. A public agency or duly licensed private agency to whom parental rights have been transferred under the law of another state or country; or**

**Sec. 4. 19 MRSA § 532, sub-§ 5, ¶ E is enacted to read:**

**E. The parents, guardian or legal custodian, provided that one of the petitioners is a blood relative of the child.**

**Sec. 5. 19 MRSA § 532-C, as amended by PL 1975, c. 293, § 4, is further amended by adding after the 3rd paragraph a new paragraph to read:**

**The mother is entitled to legal counsel for any hearing held pursuant to this section. The putative father, if he is entitled to notice under this section, is entitled to legal counsel for any hearing held pursuant to this section. If the mother or the putative father wants an attorney but is unable to afford one, he or she may request the court to appoint legal counsel. The court, if it finds either or both of them indigent, shall appoint and pay the reasonable costs and expenses of the legal counsel of either or both of them.**

**Sec. 6. 19 MRSA § 532-C, 5th ¶, as enacted by PL 1973, c. 791, § 2, is repealed and the following enacted in its place:**

**If, after a hearing, the judge finds that the putative father is the natural father but that, based on clear and convincing evidence, that parent is unwilling or unable to protect the child from jeopardy, or has willfully abandoned the child, or has refused to take responsibility for the child, and the circumstances are unlikely to change in a reasonable time, he shall rule, if it appears to be in the best interest of the child, that the natural father has not established parental rights to that child and has abandoned the child, and that only the mother of the illegitimate child**

**must consent to the adoption of that child or execute a surrender and release for the purpose of adoption of that child.**

**Sec. 7. 19 MRSA § 532-C, 6th ¶, first sentence, as enacted by PL 1973, c. 791, § 2, is repealed and the following enacted in its place:**

**If the judge finds that the putative father is the natural father and that he is willing and able to protect the child from jeopardy, or has not willfully abandoned the child, or has not refused to take responsibility for the child, he may rule, if it appears to be in the best interest of the child, that the natural father has established parental rights to that child.**

**Sec. 8. 19 MRSA § 533-A is enacted to read:**

**§ 533-A. Termination of parental rights**

**1. Jurisdiction. A petition for termination of parental rights may be brought in Probate Court as part of an adoption petition when a child protection petition has not been initiated.**

**2. Except as otherwise provided by this section, a termination petition is subject to the provisions of Title 22, chapter 1071, subchapter VI.**

**3. Guardian ad litem. The following provisions govern guardians ad litem.**

**A. The court may appoint a guardian ad litem for the child. His reasonable costs and expenses shall be paid by the Probate Court. The appointment shall be made as soon as possible after the proceeding is initiated.**

**B. The guardian ad litem shall be given access to all reports and records relevant to the case. In general, the guardian ad litem shall represent the child. He may investigate to ascertain the facts, including reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child, interviewing the child with or without other persons present, interviewing, subpoenaing, examining and cross-examining witnesses and making recommendations to the court.**

**Sec. 9. 22 MRSA § 4051, as enacted by PL 1979, c. 733, § 18, is amended by adding at the end a new sentence to read:**

**A petition for termination of parental rights may also be brought in a Probate Court as part of an adoption proceeding as provided in Title 19, chapter 9, when a child protective proceeding has not been initiated.**

**Sec. 10. 22 MRSA § 4052, sub-§ 3, ¶ D, as enacted by PL 1979, c. 733, § 18, is amended to read:**

**D. The names and address of the guardian ad litem of the child in the related child protection proceeding or adoption proceeding;**

**Sec. 11. 22 MRSA § 4055, sub-§ 1, ¶ A, as enacted by PL 1979, c. 733, § 18, is repealed and the following enacted in its place:**

**A. One of the following conditions has been met:**

**(1) Custody has been removed from the parent under:**

- (a) Section 4035 or 4338;**
- (b) Title 19, section 752; or**
- (c) Section 3792 prior to the effective date of this chapter; or**

**(2) The petition has been filed as part of an adoption proceeding in Title 19, chapter 9; and**

**Sec. 12. 22 MRSA § 4055, sub-§ 1, ¶B, sub-¶ (2), div. (a), as enacted by PL 1979, c. 733, § 18, is amended to read:**

- (a) The parent is unwilling or unable to protect the child from jeopardy or has willfully abandoned the child or has refused to take responsibility for the child;**

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

#### STATEMENT OF FACT

This new draft adds an emergency preamble and emergency clause and makes the following changes in the original bill.

1. It adds additional grounds for termination of parental rights by District Court or Probate Court, as part of an adoption proceeding. The additional grounds are willful abandonment of the child or refusal to take responsibility for the child. These standards were repealed in 1979 and originally thought to be included in the language of the current law. Current law has not been interpreted to include these additional standards and they should be reinstated in the law.

2. It clarifies the wording of section 5 of the original bill without making any substantive changes.

3. It makes appointment of a guardian ad litem optional in proceedings to terminate parental rights. The original bill made them mandatory.

4. It clarifies the language in section 9 to remove any ambiguity in which court to bring a petition for termination of parental rights.

5. It deletes section 10 of the original bill as unnecessary. Section 10 was a cross reference section and the language of the current law is adequate to avoid conflict.