

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 826

S.P. 257

In Senate, February 6, 1997

**An Act to Amend the Adoption Laws Relating to Consent and Forms for
Surrender and Release.**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2
3 **Sec. 1. 18-A MRSA §9-104, sub-§(b)**, as enacted by PL 1995, c.
4 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

6 (b) If the adoptee is not placed by a licensed
7 child-placing agency or the department, the petition for adoption
8 must be filed in the county where the adoptee resides, or where
9 the petitioners reside ~~or where the consent has been filed.~~

10 **Sec. 2. 18-A MRSA §9-202, sub-§(a)**, as enacted by PL 1995, c.
11 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

12 (a) With the approval of the judge of probate of any county
13 within the State and after a determination by the judge that a
14 surrender and release or a consent is in the best interest of the
15 child, the parents or surviving parent of a child may at any time
16 after the child's birth:

17 (1) Surrender and release all parental rights to the child
18 and the custody and control of the child to a licensed
19 child-placing agency or the department to enable the
20 licensed child-placing agency or the department to have the
21 child adopted by a suitable person; or

22 (2) Consent to have the child adopted by a specified
23 petitioner.

24 The parents or the surviving parent must execute the surrender
25 and release or the consent in the presence of the judge. The
26 adoptee, if 14 years of age or older, must execute the consent in
27 the presence of the judge. The waiver of notice by the legal
28 father who is not the biological father or putative father is
29 governed by section 9-201, subsection (c).

30 **Sec. 3. 18-A MRSA §9-202, sub-§(c)**, as enacted by PL 1995, c.
31 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

32 (c) ~~The consent or the surrender and release must be~~
33 ~~executed in duplicate. One~~ The original consent or surrender and
34 release must be filed in the Probate Court where the consent or
35 the surrender and release is executed. ~~The other original~~ An
36 attested copy of the consent or surrender and release must be
37 filed in the Probate Court in which the petition is filed. The
38 court in which the consent or the surrender and release is
39 executed shall provide an attested copy to each consenting or
40 surrendering party and 2 an attested ~~copies~~ copy to the
41 ~~transferee transferring agency, the adoptive parents' attorney or~~
42 ~~the adoptive parents.~~ The copy given to the consenting or
43 surrendering party must contain a statement explaining the

2 importance of keeping the court informed of a current name and
address.

4 **Sec. 4. 18-A MRSA §9-302, sub-§(a)**, as enacted by PL 1995, c.
694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

6 (a) Before an adoption is granted, written consent to the
8 adoption must be given by:

10 (1) The adoptee, if the adoptee is 14 years of age or older;

12 (2) Each of the adoptee's living parents, except as
provided in subsection (b);

14 (3) The person or agency having legal custody or
16 guardianship of the child or to whom the child has been
surrendered and released, except that the person's or
18 agency's lack of consent, if adjudged unreasonable by a
judge of probate, may be overruled by the judge. In order
20 for the judge to find that the person or agency acted
unreasonably in withholding consent, the petitioner must
22 prove, by a preponderance of the evidence, that the person
or agency acted unreasonably. The court may hold a pretrial
24 conference to determine who will proceed. The court may
determine that even though the burden of proof is on the
26 petitioner, the person or agency should proceed if the
person or agency has important facts necessary to the
28 petitioner in presenting the petitioner's case. The judge
shall consider the following:

30 (i) Whether the person or agency determined the needs
32 and interests of the child;

34 (ii) Whether the person or agency determined the
ability of the petitioner and other prospective
36 families to meet the child's needs;

38 (iii) Whether the person or agency made the decision
consistent with the facts;

40 (iv) Whether the harm of removing the child from the
42 child's current placement outweighs any inadequacies of
that placement; and

44 (v) All other factors that have a bearing on a
46 determination of the reasonableness of the person's or
agency's decision in withholding consent; and
48

2 (4) A guardian appointed by the court, if the adoptee is a
child, when the child has no living parent, guardian or
4 legal custodian who may consent.

6 A petition for adoption must be pending before a consent is
executed.

8 **Sec. 5. 18-A MRSA §9-304, sub-§(a)**, as enacted by PL 1995, c.
694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

10 (a) Upon the filing of a petition for adoption of a minor
12 child, when a petitioner is not a blood relative of the child,
14 unless a petitioner has received the child from the department or
from a licensed child-placing agency, the court shall notify the
16 department or a licensed child-placing agency, which shall
investigate the conditions and antecedents of the child to
18 determine whether the child is a proper subject for adoption and
whether the proposed home is suitable for the child. The
20 department or agency shall submit the report to the court within
45 days. The court may order an adoption study, investigation
and home study if a petitioner is a blood relative of the child.

22 **Sec. 6. Effective date.** This Act takes effect October 1, 1997.

24 SUMMARY

26 This bill makes the following changes to the laws regarding
28 adoption.

30 1. It repeals the provision that allows a petition for
32 adoption to be filed in the county where the consent has been
filed in cases in which the adoptee is not placed by a licensed
34 child-placing agency or the department.

36 2. It requires that the adoptee, if 14 years of age or
older, must execute the consent in the presence of the judge.

38 3. It amends provisions regarding the disposition of the
40 original consent or surrender and release and attested copies of
these documents.

42 4. It provides that a petition for adoption must be pending
44 before a consent is executed.

46 5. It exempts cases involving a petitioner who receives a
48 child from the Department of Human Services or from a licensed
child-placing agency from the requirement that the court notify
the department or an agency for the purpose of investigating the

2 appropriateness of the adoption and it requires the department or
the agency to report to the court within 45 days when such an
investigation is required.