

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1382

S.P. 481

In Senate, March 22, 2005

An Act To Establish Permanent Subsidized Guardianship

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
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 ROSEN of Hancock.
Cosponsored by Representative SOCKALEXIS of the Penobscot Nation and
Representatives: FAIRCLOTH of Bangor, WALCOTT of Lewiston.

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

4 **Sec. 1. 18-A MRSA §5-201**, as enacted by PL 1979, c. 540, §1,
is amended to read:

6 **§5-201. Status of guardian of minor; general**

8 A person becomes a guardian of a minor by acceptance of a
10 testamentary appointment or upon appointment by the court. The
guardianship status continues until terminated, without regard to
12 This section does not apply to permanency guardians appointed in
District Court child protective proceedings under Title 22,
14 section 4038-C. If a minor has a permanency guardian, the court
may not appoint another guardian without leave of the District
16 Court in which the child protective proceeding is pending.

18 **Sec. 2. 22 MRSA §4002, sub-§7-A**, as amended by PL 1987, c.
769, Pt. A, §77, is repealed.

20 **Sec. 3. 22 MRSA §4036-B, sub-§5**, as enacted by PL 2003, c.
22 408, §1, is amended to read:

24 **5. Reasonable efforts to finalize permanency plan.** The
26 department shall make reasonable efforts to finalize the
permanency plan. In each order determining a permanency plan
pursuant to section ~~4038,--subsection-7-A~~ 4038-B, the court shall
28 make a finding whether or not the department has made reasonable
efforts to finalize the permanency plan.

30 **Sec. 4. 22 MRSA §4038, sub-§7-A**, as amended PL 2001, c. 696,
32 §32, is repealed.

34 **Sec. 5. 22 MRSA §4038-A**, as amended by PL 1995, c. 694, Pt.
D, §45 and affected by Pt. E, §2, is further amended to read:

36 **§4038-A. Transfer to District Court**

38 If a case is transferred to the District Court pursuant to
40 Title 18-A, section 9-205, the court shall conduct a hearing and
enter a dispositional order using the same standards as set forth
42 in section 4036. The court after the hearing and entering of a
dispositional order shall conduct reviews in accordance with
44 section 4038 and permanency planning hearings in accordance with
section 4038-B.

46 **Sec. 6. 22 MRSA §§4038-B to 4038-D** are enacted to read:

48 **§4038-B. Permanency plans**

50

2 1. Mandated permanency planning hearing. Unless subsequent
3 judicial reviews are not required pursuant to section 4038,
4 subsection 1-A, the District Court shall conduct a permanency
5 planning hearing and shall determine a permanency plan within the
6 earlier of:

7 A. Thirty days after a court order to cease reunification;
8 or

10 B. Twelve months after the time a child is considered to
11 have entered foster care. For the purposes of this
12 paragraph, a child is considered to have entered foster care
13 on the date of the first judicial finding that the child has
14 been subjected to child abuse or neglect or on the 60th day
15 after removal of the child from home, whichever occurs first.

16 2. Subsequent permanency planning hearings. Unless
17 subsequent judicial reviews are not required pursuant to section
18 4038, subsection 1-A, the District Court shall conduct a
19 permanency planning hearing within 12 months of the date of any
20 prior permanency planning order.

22 3. Permanency planning orders. After each permanency
23 planning hearing, the District Court shall adopt a permanency
24 plan for a child that complies with subsection 4. The court
25 shall enter the order within the time limitations contained in
26 subsection 1 or 2, whichever is applicable to the permanency
27 planning hearing.

28 4. Contents of permanency plan. A permanency plan for a
29 child under this section must contain determinations on the
30 following issues.

31 A. The permanency plan must determine whether and when, if
32 applicable, the child will be:

33 (1) Returned to a parent. Before the court may enter an
34 order returning the custody of the child to a parent,
35 the parent must show that the parent has carried out
36 the responsibilities set forth in section 4041,
37 subsection 1-A, paragraph B; that to the court's
38 satisfaction the parent has rectified and resolved the
39 problems that caused the removal of the child from home
40 and any subsequent problems that would interfere with
41 the parent's ability to care for the child and protect
42 the child from jeopardy; and that the parent can
43 protect the child from jeopardy;

2 (2) Placed for adoption, in which case the department
3 shall file a petition for termination of parental
4 rights;

5 (3) Cared for by a permanency guardian, as provided in
6 section 4038-C or a guardian appointed by the Probate
7 Court pursuant to Title 18-A, sections 5-206 and 5-207;

8 (4) Placed with a fit and willing relative; or

9 (5) Placed in another planned permanent living
10 arrangement. The District Court may adopt another
11 planned permanent living arrangement as the permanency
12 plan for the child only after the department has
13 documented to the court a compelling reason for
14 determining that it would not be in the best interests
15 of the child to be returned home, be referred for
16 termination of parental rights or be placed for
17 adoption, be cared for by a permanency guardian or be
18 placed with a fit and willing relative.

19 B. In the case of a child placed outside the state in which
20 the parents of the child live, the permanency plan must
21 determine whether the out-of-state placement continues to be
22 appropriate and in the best interests of the child.

23 C. In the case of a child who is 16 years of age or older,
24 the permanency plan must determine the services needed to
25 assist the child to make the transition from foster care to
26 independent living.

27 5. Wishes of child 12 years of age or older. The District
28 Court shall consider, but is not bound by, the wishes of a child
29 in making a determination under this section if the child is 12
30 years of age or older.

31 **§4038-C. Permanency guardian**

32 As part of the permanency plan under section 4038-B, the
33 District Court may appoint a person or persons as guardian of a
34 minor, to be known as a permanency guardian. "Permanency
35 guardian," when used in this section and in section 4038-D, means
36 the person or persons appointed as the permanency guardian.

37 1. Powers and duties of permanency guardian. A permanency
38 guardian has all of the powers and duties of a guardian of a
39 minor pursuant to Title 18-A, section 5-209.

40 2. Limitations on powers and duties of permanency
41 guardian. When it is in a child's best interests, the District
42 guardian.

2 Court may limit the powers of the permanency guardian in the same
3 manner as the Probate Court may limit the powers of a guardian of
4 a minor pursuant to Title 18-A, section 5-105, except that the
5 District Court may not limit a permanency guardian's powers to:

6 A. Protect the child;

8 B. Educate the child;

10 C. Maintain care and control over the person of the child;

12 D. Maintain physical custody of the child; and

14 E. Make decisions concerning the child.

16 3. Jurisdiction over permanency guardian. The District
17 Court has exclusive jurisdiction to appoint, remove or limit the
18 powers of a permanency guardian.

20 4. Proceedings to terminate or limit permanency
21 guardianship. Termination or limitation of a permanency
22 guardianship is as follows.

24 A. Any party to the child protective proceeding may
25 petition to terminate a permanency guardianship or to limit
26 the powers of a permanency guardian. A person who
27 petitioned unsuccessfully to terminate a permanency
28 guardianship or limit the powers of a permanency guardian
29 may not bring a new petition to terminate or modify that
30 permanency guardianship within 12 months after the end of
31 the previous proceeding, and then only if the petitioner
32 alleges and proves that there has been a substantial change
33 of circumstances regarding the child's welfare. The court
34 may not appoint counsel for a person bringing a petition to
35 terminate a permanency guardianship or to limit the powers
36 of a permanency guardian unless the person is a parent of
37 the child.

38 B. A permanency guardianship may be terminated or modified
39 if the petitioner proves by a preponderance of the evidence
40 that the termination or modification is in the best
41 interests of the child. Notice of any such petition must be
42 given in the manner provided by Rule 4 of the Maine Rules of
43 Civil Procedure to all parties to the child protective case
44 and to the permanency guardian.

46 **§4038-D. Guardianship subsidy**

48 1. Establishment of program; use of federal funds. There
49 is established in the department the Guardianship Subsidy
50

2 Program, referred to in this section as "the program." For the
3 purposes of this section, the department is authorized to use
4 funds that are appropriated for child welfare services and funds
5 provided under the United States Social Security Act, Titles IV-B
6 and IV-E, or under any waiver that the department receives
7 pursuant to those titles.

8 2. Eligibility for guardianship subsidy payments. Subject
9 to rules adopted by the department, the department may provide
10 through the program subsidies for a special needs child who is
11 placed in a permanency guardianship or in a similar status by a
12 Native American tribe, when reasonable but unsuccessful efforts
13 have been made to place the child without guardianship subsidies,
14 if the child would not otherwise be placed in a permanency
15 guardianship without the assistance of the program.

16 3. Assistance with legal costs. The department shall,
17 subject to rules adopted by the department, reimburse a
18 prospective permanency guardian of a special needs child for
19 legal expenses incurred by the permanency guardian for legal
20 costs to complete the permanency guardianship legalization,
21 capped at \$400.

22 4. Definition of "special needs child." For purposes of
23 this section, a "special needs child" means a child who:

24 A. Has a physical, mental or emotional handicap that makes
25 placement difficult;

26 B. Has a medical condition that makes placement difficult;

27 C. Is a member of a sibling group that includes at least
28 one member who is difficult to place;

29 D. Is difficult to place because of age or race;

30 E. Has been a victim of physical, emotional or sexual abuse
31 or neglect that places the child at risk for future
32 emotional difficulties; or

33 F. Has in the family background factors such as severe
34 mental illness, substance abuse, prostitution or genetic or
35 medical conditions or illnesses that place the child at risk
36 for future problems.

37 5. Amount of guardianship subsidy. The amount of a
38 guardianship subsidy under the program may vary depending upon
39 the resources of the permanency guardian and the special needs of
40 the child as well as the availability of other resources but may
41 not exceed the total cost of caring for the child if the child
42 is placed in a permanency guardianship without the assistance of the
43 program.

2 were to remain in the care or custody of the department, without
3 regard to the source of the funds. Assistance may be provided
4 for special needs only.

6 6. Duration of guardianship subsidy. Under the program,
7 assistance may be provided for a period of time based on the
8 special needs of a child. Except as otherwise provided in this
9 subsection, the duration of the subsidy may continue until the
10 termination of the permanency guardianship or until the
11 permanency guardian is no longer supporting the child, at which
12 time the guardianship subsidy ceases. If the child has need of
13 educational benefits or has a physical, mental or emotional
14 handicap, the guardianship subsidy may continue until the child
15 has attained 21 years of age if the child, the parents and the
16 department agree that the need for care and support exists.

18 7. Administration of program. Applications for the program
19 may be submitted by a prospective permanency guardian. A written
20 agreement between the family entering into the program and the
21 department must precede the order under section 4038-C creating
22 the permanency guardianship, except that an application may be
23 filed subsequent to the creation of the permanency guardianship
24 if there were facts relevant to the child's eligibility that were
25 not presented at the time of the request for the subsidy or if
26 the child was eligible for participation in the program at the
27 time of placement and the permanency guardian was not apprised of
28 the program.

30 8. Annual redetermination required. If the subsidy
31 continues for more than one year, the need for the subsidy must
32 be annually redetermined. The subsidy continues regardless of the
33 state in which the permanency guardian resides, or the state to
34 which the permanency guardian moves, if the family continues to
35 be eligible based on the annual redetermination of need.

36 9. Death of permanency guardian. Upon the death of all
37 persons serving as permanency guardian for a child, the subsidy
38 under the program may be transferred to a new legal guardian if
39 the child continues to be eligible for the guardianship subsidy
40 pursuant to the terms of the most recent agreement with the
41 permanency guardian. The department shall enter into a new
42 agreement with the new legal guardian.

44 10. Adoption of rules. The department shall adopt rules
45 for the program consistent with this section. Those rules are
46 routine technical rules pursuant to Title 5, chapter 375,
47 subchapter 2-A.

50 Sec. 7. 22 MRSA §4052, sub-§2-A, ¶A, as amended by PL 2003, c.
51 408, §7, is further amended to read:

2 A. When a child has been in foster care for 15 of the most
4 recent 22 months. The department must file the petition
6 before the end of the child's 15th month in foster care. In
calculating when to file a termination petition:

8 (1) The time the child has been in foster care begins
10 when the child is considered to have entered foster
care as specified in section 4038, ~~subsection 7-A,~~
paragraph-A 4038-B, subsection 1, paragraph B;

12 (2) When a child experiences multiple exits from and
14 entries into foster care during the 22-month period,
all periods in foster care must be accumulated; and

16 (3) The time in foster care does not include trial
18 home visits or times during which the child is a
runaway.

20 This paragraph does not apply if the department is required
22 to undertake reunification efforts and the department has
not provided to the family of the child such services as the
24 court determines to be necessary for the safe return of the
child to the child's home consistent with the time period in
26 the case plan;

28 SUMMARY

30 The purpose of this bill is to add the concept of permanent
32 legal guardianship to the dispositional alternatives available to
District Courts under the Maine Revised Statutes, Title 22. This
34 concept would allow relatives and other parties to be awarded
permanent legal guardianship of children subject to child
36 protection orders and actions and allow payment of a guardianship
subsidy for special needs children who have been in the custody
of the State or for Native American children in the custody of
38 the tribe who move into a permanent legal guardianship status.