

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2476

H. P. 1939 House of Representatives, February 1, 1974
Referred to Committee on Judiciary. Sent up for concurrence and ordered
printed.

E. LOUISE LINCOLN, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to Consent to or Surrender and Release for Adoption.

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

Whereas, recent United States Supreme Court rulings have applied constitutional due process rights to certain situations involving fathers of illegitimate children; and

Whereas, existing Maine statutes do not define procedures for giving notice and an opportunity to be heard to certain putative fathers of illegitimate children when their child is to be adopted or surrendered and released for adoption; and

Whereas, the absence of clearly defined procedures in existing Maine statutes may result in varying interpretations of the Maine statutes and of the recent United States Supreme Court rulings; and

Whereas, a number of court decisions in other states which have attempted to interpret the recent United States Supreme Court rulings have resulted in the adoptions of children being set aside; and

Whereas, there is a danger in Maine that the adoption of children may be subject to question by the courts; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the fol-

lowing 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. R. S., T. 19, § 532, amended. The 2nd and 3rd paragraphs of section 532 of Title 19 of the Revised Statutes, as amended, are repealed and the following enacted in place thereof:

When any child has been committed to the custody of the Department of Health and Welfare under Title 22, section 3792, and the commitment order is still in effect, consent shall be given by the department and no notice need be given to the parents. The consent of the parents and the child when required must be acknowledged before a justice of the peace or notary public, but in no event shall an attorney acting for the adopting parents nor an employee of such attorney serve as such justice of the peace or notary public. If there are no parents or if the parents have abandoned the child and ceased to provide for its support or if the parents are considered by the judge unfit to have the custody of the child, consent may be given by the legal guardian; if no such guardian, then by some person appointed by the judge to act in the proceedings as the next friend of such child. If an illegitimate child and under the age of 14 years, such consent may be given by the mother or by the mother and putative father if the judge so requires under section 532-C. If only one parent has abandoned the child and ceased to provide for its support, consent may be given by the parent who has not abandoned said child.

When a surrender and release has been executed and approved in accordance with section 532-A, the consent to adoption may be given by the incorporated society, asylum or home, or State Department of Health and Welfare to whom a child has been surrendered and released or to whom a surrendered and released child has been transferred.

When the parental rights of a minor living in this State have been terminated voluntarily or by judicial determination to a duly licensed public or private agency in another state or country in accordance with the laws of such state or country, consent shall be given by such duly authorized agency and no notice need be given to the parents.

Sec. 2. R. S., T. 19, §§ 532-A - 532-C, additional. Title 19 of the Revised Statutes is amended by adding 3 new sections, 532-A, 532-B and 532-C, to read as follows:

§ 532-A. Surrender and release

The parents or surviving parent of a child, or, if the child is illegitimate, the mother or the mother and putative father if the judge so requires under section 532-C, with the approval of the judge of probate of any county within the State and after a determination by such judge of probate that a surrender and release is for the best interest of all parties, may surrender and release all parental rights or interests in and to such child and the custody and control thereof to an incorporated and licensed society, asylum, child placing agency or home in this State, or to the State Department of Health and Wel-

fare for the purpose of enabling such incorporated society, asylum or home, or State Department of Health and Welfare to have such child adopted by some suitable person, and its name changed when a change is desirable, and the child made an heir at law under this chapter. The effect of this surrender and release shall be fully explained by the judge of probate to the parent or parents executing the same. The surrender and release approved as aforesaid shall be filed with the petition of adoption of the child in the probate court. The surrender and release shall be executed in triplicate; one of the copies shall be filed in the court in which it is executed and the original and other copy shall be given to the transferee thereunder.

§ 532-B. Transfer

The surrender and release authorized under section 532-A may, without notice to the parent or parents, be transferred, together with all rights thereunder, from the transferee agency to the Department of Health and Welfare, or from the Department of Health and Welfare as original transferee to any duly licensed child placing agency. In the event that it becomes impossible, for good and sufficient reason, to find an adoptive home for any child so surrendered and released by its parent or parents, then the child placing agency, or the Department of Health and Welfare, to whom the custody and control of such child has been surrendered and released or transferred as herein provided may arrange for placement in foster care in the same manner as for children committed into custody under Title 22, section 3792.

§ 532-C. Notice

When the mother of an illegitimate child wishes to consent to, or execute a surrender and release for the purpose of, adoption of the child and the putative father has not consented or joined in a surrender and release, she must first appear before the probate judge so that the judge may inquire of the mother as to the putative father of the child for the purpose of giving notice of the procedure to the putative father.

If the judge finds upon such inquiry that the mother will not or cannot identify the putative father of the child, the judge shall dismiss the proceedings. If the judge finds that the putative father has waived his right to notice in a document acknowledged before a justice of the peace, notary public or the judge of probate, which document must indicate that the putative father understands the consequences of the waiver of notice, the judge may rule that only the mother of the illegitimate child must consent to the adoption of the child or execute a surrender and release for the purpose of adoption of the child. The notary public or justice of the peace may not be an attorney representing the mother or the possible transferee nor an employee of either.

If upon such inquiry the judge finds the identity of the putative father, the judge shall order that notice of the mother's intent to consent to adoption or to execute a surrender and release for the purpose of adoption of the child be given to the putative father of the child in such manner as the judge deems proper. If, after notice, the putative father of the child wishes to estab-

lish a parental interest in the child, he must, within 20 days after notice has been given or within such longer period as the judge may require in the order, petition the judge of probate not to permit the adoption of the child or the surrender and release of the child for the purpose of adoption upon the consent or execution of surrender and release by the mother, and to grant to him the exclusive care and custody of the illegitimate child.

If the judge of probate finds that the putative father of the child has not so petitioned or appeared within the required period, he may rule that the putative father has abandoned the child and that only the mother of the child must consent to the adoption of that child or execute a surrender and release for the purpose of adoption of that child.

If the putative father of the child does so petition, the judge shall fix a date for a hearing for the purpose of determining the putative father's parental interest in the child. Notice of such hearing shall be given to the putative father and the mother of the child, and to any other parties the judge deems appropriate. If, after a hearing, the judge finds that the putative father has not undertaken or is unwilling to undertake parental responsibilities in regard to that child, he may rule that the putative father has not established a parental interest in 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.

If the judge finds that the putative father has undertaken or is willing to undertake parental responsibilities in regard to that child, he may rule that the putative father has established a parental interest in that child, and that he as well as the mother of the child must consent to the adoption of that child or execute a surrender and release for the purpose of adoption of that child, or if the putative father will not consent to the adoption of that child or execute a surrender and release for the purpose of adoption of that child, the judge may grant to the putative father the exclusive care and custody of the child.

A record of all proceedings conducted pursuant to this section shall be entered into the records of the court, and a copy of such proceedings shall be attached to the petition for adoption filed with the court. All such records shall be confidential, as provided in section 534.

An appeal shall lie from any ruling under this section to the supreme court of probate, and no consent to the adoption of or surrender and release for the purpose of adoption of the illegitimate child shall be approved pending such appeal.

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

STATEMENT OF FACT

The purpose of this bill is stated in the emergency preamble.