

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1385

S. P. 455

In Senate, March 23, 1979

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

Presented by Senator Devoe of Penobscot.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Clarify the Consent Requirements for Adoptions.

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

19 MRSA § 532, as last amended by PL 1977, c. 515, § 1, is repealed and the following enacted in its place:

§ 532. **Consent**

Before any adoption petition is granted, written consent to the adoption shall be given by the child, if of the age of 14 years, and by each of the child's living parents.

1. Consent not required of certain persons. Consent to adoption is not required of:

A. A parent who, after notice and hearing, is adjudged to have willfully and intentionally abandoned a child or a parent who is adjudged, after notice and hearing, to be unwilling or unable to undertake parental responsibility;

B. A parent of a child who is, after notice and hearing, in the custody of another if the parent, after notice and hearing, is adjudged to have failed for a period of at least one year substantially and without justifiable cause:

(1) To communicate with the child; or

(2) To provide for the care and support of the child as required by law or judicial decree;

C. The father of a child if that father's consent is not required by reason of the operation of section 532-C;

D. A parent judicially determined to be incompetent or mentally ill and who, after notice and hearing, is adjudged to be incapable of knowingly and voluntarily giving consent, in which case consent shall be given by that parent's legal guardian, if any, or if none, by a guardian ad litem appointed by the court;

E. Consent given by agency or department. A parent when a surrender and release has been executed in accordance with section 532-A. In such cases the consent to adoption may be given by the duly licensed child-placing agency or Department of Human Services to whom a child has been surrendered and released or to whom a surrendered and released child has been transferred; and

F. Consent given by agency in another state. A parent whose parental rights 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 that state or country. The consent in those cases shall be given by that public or private agency and no notice need be given to the parents.

The consent of the parents and the child, when required, shall be acknowledged before a justice of the peace or notary public, but in no event shall an attorney acting for the adopting parent nor an employee of the attorney serve as justice of the peace or notary public.

Notwithstanding any other provision of this section, any written consent for a child to be adopted shall be given in front of the judge of probate, unless one of the petitioners to adopt the child is a blood relative of the child or unless the petitioners have received the child from the Department of Human Services or from a licensed adoption agency, provided that a putative father shall not be required to give the consent in front of a judge of probate. Before this consent is given, the effect of the consent shall be fully explained by the judge of probate to the person giving the consent. Before allowing the consent, the judge of probate shall make a determination that the consent is freely and knowledgeably given.

STATEMENT OF FACT

This bill will reorganize and clarify present provisions controlling the requirements for consent in adoption situations.

Present law creates an unconstitutional irrebuttable presumption that when a divorce has been granted, the divorced noncustodial legal parent is unfit by reason of the award of custody itself and that he has thereby waived the necessity for his consent to a subsequent adoption of his child.

Subject to exceptions for noncommunication or nonsupport, this bill requires that a natural, legal parent shall be found to be unfit before he can be stripped of his parental rights. He shall be given notice of a proposed adoption and the right to a meaningful hearing.