

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 629

H.P. 463

House of Representatives, February 23, 1995

**An Act to Correct Problems Created in Implementing Recent Changes in
the Adoption Laws.**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Speaker GWADOSKY of Fairfield.
Cosponsored by Representatives: LaFOUNTAIN of Biddeford, MADORE of Augusta,
RICHARDSON of Portland, Senator: HARRIMAN of Cumberland.

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

4
6 **Whereas,** many adoptions have been unnecessarily delayed
because of differing interpretations of the effect of Public Law
1993, chapter 686; and

8
10 **Whereas,** some adoptions will not be finalized until the
meaning of the laws is clarified through legislation; and

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

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

20 **Sec. 1. 19 MRSA §1107** is enacted to read:

22 **§1107. Application**

24 **1. Initiation of adoption.** For the purposes of this
chapter, an adoption is initiated when any of the following
26 occurs:

28 A. The filing of a consent;

30 B. The filing of a surrender and release;

32 C. The filing of a waiver of notice by a putative father;

34 D. The issuance of an order terminating parental rights; or

36 E. The filing of an adoption petition.

38 **2. Adoptions initiated on or after August 1, 1994.** This
chapter applies to adoptions initiated on or after August 1, 1994.

40 **3. Adoptions initiated before August 1, 1994.** Except as
expressly provided, this chapter does not apply to adoptions
42 initiated before August 1, 1994. The law in effect on July 31,
44 1994 applies to adoptions initiated before August 1, 1994.

46 **Sec. 2. 19 MRSA §1111, sub-§2-A** is enacted to read:

48 **2-A. Waiver of notice by putative father.** A putative
father may waive his right to notice in a document acknowledged
50 before a notary public or a judge of probate. The document must
indicate that the putative father understands the consequences of

2 the waiver of notice. The notary public may not be an attorney
3 who represents either the mother or the possible transferee.

4 **Sec. 3. 19 MRSA §1111, sub-§6**, as enacted by PL 1993, c. 686,
5 §5 and affected by §13, is amended to read:

6
7 **6. Notice.** Notice of the hearing must be given to the
8 putative father, the birth mother, the attorney for the child and
9 any other parties the judge determines appropriate. Notice need
10 not be given to a putative father who has waived his right to
11 notice as provided in subsection 2-A.

12
13 **Sec. 4. 19 MRSA §1112, sub-§2, ¶¶A and B**, as enacted by PL
14 1993, c. 686, §5 and affected by §13, are amended to read:

15
16 A. A licensed child placing agency or the department
17 certifies to the court that counseling was provided or was
18 offered and refused. Counseling is not required if the
19 petitioner is married to or otherwise related to a birth
20 parent of the child;

21
22 B. ~~The court has,--at-least-3-days-prior-to-receiving-the~~
23 ~~parent's-signature,-explained~~ shall explain the individual's
24 parental rights and responsibilities and the effects of the
25 consent or the surrender and release. The consent or the
26 surrender and release must be accompanied by a sworn
27 statement by the parent or parents who signed the consent or
28 surrender and release that the parent or parents received
29 the explanation required by this subsection. The court
30 shall accept the consent or the surrender and release as
31 final only after 3 days have passed since the explanation of
32 the individual's parental rights and responsibilities; and

33 **Sec. 5. 19 MRSA §1112, sub-§8** is enacted to read:

34
35 **5. Reciprocity.** The court may accept a consent or a
36 surrender and release accepted by a court of comparable
37 jurisdiction in another state if that court has complied with the
38 requirements of that state.

39
40 **Sec. 6. 19 MRSA §1122, sub-§2, ¶A**, as enacted by PL 1993, c.
41 686, §5 and affected by §13, is amended to read:

42
43 A. A putative father who received notice and who failed to
44 respond to the notice within the prescribed time period, who
45 waived his right to notice under section 1111, subsection
46 2-A or who failed to meet the standards of section 1111,
47 subsection 8;

48
49 **Sec. 7. 19 MRSA §1129, sub-§1, ¶C**, as enacted by PL 1993, c.
50 686, §5 and affected by §13, is amended to read:

2 C. Service of the notice ~~of dependency of~~ that the adoption
4 proceeding is pending has been made to all persons entitled
to receive notice pursuant to section 1124;

6 **Sec. 8. 19 MRSA §1129, sub-§4**, as enacted by PL 1993, c. 686,
8 §5 and affected by §13, is amended to read:

10 **4. Notice upon finalization.** Upon finalization of an
12 adoption, the birth parents who consented to an adoption or who
14 executed a surrender and release must be notified of the
16 finalization by certified mail, restricted delivery and return
18 receipt requested, at their last known address. When the birth
20 parents' rights have been terminated pursuant to Title 22,
22 section 4055, the notice must be given to the department and the
department shall notify the birth parents of the finalization by
certified mail, restricted delivery and return receipt requested,
at their last known address. If the birth parents are located in
a state that prohibits notice to the parents when the adoption is
finalized, notice must be given to the appropriate court in that
state. Actual receipt of the notice is not a precondition of
finalization and does not affect the rights or responsibilities
of adoptees or adoptive parents.

24 **Sec. 9. 19 MRSA §1131, first ¶**, as enacted by PL 1993, c. 686,
26 §5 and affected by §13, is amended to read:

28 ~~All Notwithstanding any other provision of law, all~~ Probate
30 Court records relating to any adoption decreed on or after August
32 8, 1953 are ~~declared to be~~ confidential. The Probate Court shall
34 keep records of those adoptions segregated from all other court
36 records. ~~The adoption records may be examined only upon
authorization by the judge of the Probate Court. In any case
where it is considered proper that an examination be authorized,
the judge may in lieu of an examination, or in addition to an
examination, grant authority to~~ If a Probate Court Judge
determines that examination of records pertaining to a particular
adoption is proper, the judge may authorize that examination by
specified persons, authorize the register of probate to disclose
to specified persons any information contained in the records by
letter, certificate or copy of the record or authorize a
combination of both examination and disclosure.

44 **Emergency clause.** In view of the emergency cited in the
46 preamble, this Act takes effect when approved.

STATEMENT OF FACT

2

4 This bill makes changes to the new adoption laws. The
6 intent is to clarify procedures that have been subject to
8 differing interpretations by the Probate Courts and others
10 involved with adoptions, rather than to make policy changes.

8 The bill clarifies the application of the new adoption laws
10 enacted in Public Law 1993, chapter 686. It applies the new
12 laws, effective August 1, 1994, to all adoptions initiated on or
14 after that date. Adoptions initiated before August 1, 1994 are
16 subject to the provisions of the laws in existence before August
18 1, 1994. An adoption is initiated when a consent is filed, a
20 surrender and release is filed, a putative father submits a
22 waiver of notice, the court issues an order terminating parental
24 rights or an adoption petition is filed.

18 The bill allows a putative father to waive his right to
20 notice and further participation in the adoption proceedings.
22 This was part of the law before the changes made in 1993.

22 The bill amends the requirement that birth parents receive
24 or at least be offered counseling by exempting situations in
26 which a stepparent or other relative is the person adopting the
28 child.

26 The bill protects against birth parents agreeing to give up
28 their child for adoption without understanding their rights and
30 the consequences of their actions. It requires the birth parent
32 or parents who sign the consent or surrender and release to sign
34 an additional statement affirming that they received the
36 explanation of their parental rights and responsibilities as well
38 as the effect of the consent or the surrender and release. It
40 also clarifies that once the judge explains the parents' rights
42 and responsibilities, the parents need not appear before the
44 judge again to sign the consent or surrender and release after
46 the 3-day waiting period.

38 The bill addresses a problem that is apparently hindering
40 several interstate adoptions. It allows the court to accept a
42 consent or a surrender and release that was accepted by a court
44 of comparable jurisdiction in another state if the court complied
46 with the requirements of that state.

44 The bill amends the laws to accommodate laws of other states
46 concerning notification of the finalization of an adoption.
48 Maine law requires that the birth parents receive notice; other
50 states prohibit that notice. This bill amends the laws to allow
notice to the appropriate court in a state in which notice to the
birth parents is prohibited.

2 The bill amends the adoption laws concerning confidentiality
of records. Before Public Law 1993, chapter 686, there was no
4 question that adoption records were confidential. Although there
are no substantive changes to the confidentiality provisions
6 between the laws prior to chapter 686 and chapter 686 itself,
there are varying interpretations about the confidentiality of
8 records. The bill ensures that adoption records continue to
remain confidential. If the Probate Court Judge determines that
10 examination or disclosure of the records is proper in a
particular case, the judge may authorize an examination or
12 disclosure, or both, to specified persons.