

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1400

S.P. 515

Received by the Secretary, April 18, 1995

An Act to Amend the Adoption Laws.

Referred to the Committee on Judiciary and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2
4 **Sec. 1. 19 MRSA §1102, sub-§4**, as enacted by PL 1993, c. 686,
§5 and affected by §13, is amended to read:

6 **4. Birth parent.** "Birth parent" means a person who is the
~~biological~~ legal parent of a child.

8 A. "Birth father" means the male birth parent of a child.

10 B. "Birth mother" means the female birth parent of a child.

12 **Sec. 2. 19 MRSA §1104, sub-§2**, as enacted by PL 1993, c. 686,
14 §5 and affected by §13, is amended to read:

16 **2. Independent adoption.** If the adoptee is not placed by a
18 licensed child placing agency or the department, the petition for
adoption must be filed in the county where the adoptee resides,
where the petitioners reside or where the consent has been filed.

20 **Sec. 3. 19 MRSA §1104, sub-§4**, as enacted by PL 1993, c. 686,
22 §5 and affected by §13, is repealed.

24 **Sec. 4. 19 MRSA §1111, sub-§2**, as enacted by PL 1993, c. 686,
§5 and affected by §13, is amended to read:

26 **2. Notification.** If the judge finds from the affidavit of
28 the birth mother that the putative father's whereabouts are
known, the judge shall order that notice of the mother's intent
30 to consent to adoption or to execute a surrender and release for
the purpose of adoption of the child be served upon the putative
32 father of the child. If the judge finds that the putative
father's whereabouts are unknown, then the court shall order
34 notice by publication. If the birth mother does not know or
refuses to tell the court who the birth father is, the court may
36 order publication in a newspaper of general circulation in the
area where the petition is filed, where the birth mother ~~became~~
38 pregnant resides or where the putative father is most likely to
be located. The notice must specify the names of the birth
40 mother and the child.

42 **Sec. 5. 19 MRSA §1112, sub-§1**, as enacted by PL 1993, c. 686,
§5 and affected by §13, is amended to read:

44 **1. Surrender and release or consent to adopt.** With the
46 approval of the judge of probate of any county within the State
and after a determination by the judge that a surrender and
48 release or a consent is in the best ~~interests~~ interest of all
parties the child, the parents or surviving parent of a child may:

2 A. Surrender and release all parental rights to the child
and the custody and control of the child to a licensed child
4 placing agency or the department to enable the licensed
child placing agency or the department to have the child
adopted by some suitable person; or

6 B. Consent to have the child adopted by a specified
8 petitioner.

10 **Sec. 6. 19 MRSA §1112, sub-§2, ¶A**, as enacted by PL 1993, c.
686, §5 and affected by §13, is repealed.

12 **Sec. 7. 19 MRSA §1112, sub-§2, ¶B**, as enacted by PL 1993, c.
14 686, §5 and affected by §13, is amended to read:

16 B. The court has, ~~at least 3 days prior to receiving the~~
~~parent's signature,~~ explained the individual's parental
18 rights and responsibilities and, the effects of the consent
or the surrender and release and the existence of the
20 adoption registry and the services available under Title 22,
section 2706-A; and

22 **Sec. 8. 19 MRSA §1112, sub-§3**, as enacted by PL 1993, c. 686,
24 §5 and affected by §13, is amended to read:

26 **3. Records.** The original consent or surrender and release
must be filed ~~with the petition for adoption of the child in the~~
28 Probate Court where the petition for adoption is filed or will be
filed. ~~The consent or the surrender and release must be executed~~
30 ~~in quadruplicate, one copy to the court, one copy to the~~
~~surrendering party, and the original and one copy to the~~
32 ~~transferee agency. The copy given to the consenting or~~
~~surrendering party must contain a statement explaining the~~
34 ~~importance of keeping the court informed of a current name and~~
~~address.~~

36 **Sec. 9. 19 MRSA §1112, sub-§4**, as enacted by PL 1993, c. 686,
38 §5 and affected by §13, is amended to read:

40 **4. Validity.** ~~To be valid, a~~ A consent or a surrender and
release ~~executed in this State must be in accordance with this~~
42 ~~chapter is not valid until 3 days after it has been executed.~~

44 **Sec. 10. 19 MRSA §1112, sub-§8** is enacted to read:

46 **8. Reciprocity.** The court shall accept a surrender and
release by a court of comparable jurisdiction in another state if
48 that court has complied with the requirements of that state. The
court shall accept a consent by a court of comparable
50 jurisdiction in another state if that court has complied with the

2 requirements of that state and if that court shows that the
3 consequences of the consent under Maine law have been explained.

4 **Sec. 11. 19 MRSA §1114, sub-§3**, as enacted by PL 1993, c. 686,
5 §5 and affected by §13, is repealed.

6 **Sec. 12. 19 MRSA §1115, sub-§2**, as enacted by PL 1993, c. 686,
7 §5 and affected by §13, is repealed.

8 **Sec. 13. 19 MRSA §1123, sub-§1, ¶E**, as enacted by PL 1993, c.
9 686, §5 and affected by §13, is repealed.

10 **Sec. 14. 19 MRSA §1123, sub-§2**, as enacted by PL 1993, c. 686,
11 §5 and affected by §13, is repealed.

12 **Sec. 15. 19 MRSA §1124**, as enacted by PL 1993, c. 686, §5 and
13 affected by §13, is amended to read:

14 **§1124. Notice of petition; service**

15 **1. Persons.** The court petitioners shall serve notice of a
16 petition to adopt on any person, agency or institution whose
17 consent is required by section 1122 and any other person
18 designated by the court. If the court determines that it is in
19 the best interest of the child, the court may require that the
20 names of the petitioners not be included on the notice.

21 **2. Service.** Service must be made in accordance with the
22 Maine Rules of Civil Probate Procedure.

23 **Sec. 16. 19 MRSA §1125, sub-§6**, as enacted by PL 1993, c. 686,
24 §5 and affected by §13, is amended to read:

25 **6. Approval of petition.** If the judge is satisfied of the
26 identity and relations of the parties, of the ability of the
27 petitioners to bring up and educate the child properly, ~~having~~
28 ~~reference to the condition of the child's biological parents,~~ and
29 of the fitness and propriety of the adoption, the judge shall
30 make a decree setting forth the facts and declaring that from
31 that date the child is the child of the petitioners and that the
32 child's name is changed, without requiring public notice of that
33 change.

34 **Sec. 17. 19 MRSA §1127, sub-§1**, as enacted by PL 1993, c. 686,
35 §5 and affected by §13, is amended to read:

36 **1. Allowable payments.** Only Except when one of the
37 petitioners is a birth parent, only the following expenses may be
38 paid by or on behalf of a petitioner in any proceeding under this
39 chapter:
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- 2 A. The actual cost of legal services related to the
4 consent or the surrender and release and to the adoption
 process;
- 6 B. Prenatal and postnatal counseling expenses for the birth
 mother;
- 8 C. Prenatal, birthing and other related medical expenses
10 for the birth mother;
- 12 D. Necessary transportation expenses to obtain the services
 listed in paragraphs A, B and C;
- 14 E. Foster care expenses for the child;
- 16 F. Necessary living expenses for the birth mother and the
18 child; and
- 20 G. For the birth father, legal and counseling expenses
22 related to the consent, the surrender and release and the
 adoption process; and
- 24 H. Fees to licensed child placing agency providing services
 in connection with the pending adoption.

26 **Sec. 18. 19 MRSA §1127, sub-§2**, as enacted by PL 1993, c. 686,
28 §5 and affected by §13, is amended to read:

30 **2. Accounting.** Prior to the dispositional hearing pursuant
32 to section 1129, the petitioner shall file a full accounting of
34 all disbursements of anything of value made or agreed to be made
36 by or on behalf of the petitioner in connection with the
38 adoption. The accounting report must be signed under penalty of
40 perjury and must be submitted to the court on or before the final
42 decree is granted. The accounting report must be itemized and
44 show the services related to the adoption or to the placement of
46 the adoptee for adoption that were received by the adoptee's
 parents, by the adoptee, or on behalf of the petitioner. The
 accounting must include the dates of each payment and the names
 and addresses of each attorney, physician, hospital, licensed
 adoption agency or other person or organization who received any
 funds or anything of value from the petitioner in connection with
 the adoption or the placement of the adoptee with the petitioner,
 or participated in any way in the handling of the funds, either
 directly or indirectly. This subsection does not apply when one
 of the petitioners is a birth parent.

48 **Sec. 19. 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. 20. 19 MRSA §1129, sub-§2, ¶B**, as enacted by PL 1993, c.
686, §5 and affected by §13, is amended to read:

8 B. The capacity and disposition of the adopting person or
10 persons, the birth parent or birth parents or the putative
12 father to educate and give the adoptee love, affection and
14 guidance and to educate and create a milieu that fosters the
~~religion, racial identity and culture of the adoptee;~~ and

16 **Sec. 21. 19 MRSA §1129, sub-§3**, as enacted by PL 1993, c. 686,
§5 and affected by §13, is amended to read:

18 **3. Final decree.** The court shall enter its findings in a
20 written decree that includes the new name of the adoptee ~~and any~~
~~other name by which the adoptee has been known.~~ The final decree
22 must further order that from the date of the decree the adoptee
24 is the child of the petitioner and must be accorded the status
set forth in section 1105. If the court determines that it is in
the best interest of the child, the court may require that the
names of the child and of the petitioners be kept confidential.

26 **Sec. 22. 19 MRSA §1129, sub-§4**, as enacted by PL 1993, c. 686,
28 §5 and affected by §13, is amended to read:

30 **4. Notice upon completion.** Upon ~~finalization~~ completion of
32 an adoption proceeding, the birth parents who consented to an
adoption or who executed a surrender and release must be notified
34 of the finalization completion by certified regular mail,
~~restricted-delivery and return receipt requested,~~ at their last
known address. When the birth parents' rights have been
36 terminated pursuant to Title 22, section 4055, the notice must be
given to the department and the department shall notify the birth
38 parents of the finalization completion by certified regular mail,
~~restricted-delivery and return receipt requested,~~ at their last
40 known address. Actual receipt of the notice is not a
precondition of finalization completion and does not affect the
42 rights or responsibilities of adoptees or adoptive parents.

44 **Sec. 23. 19 MRSA §1130, sub-§1**, as enacted by PL 1993, c. 686,
46 §5 and affected by §13, is amended to read:

48 **1. Appeal to Supreme Judicial Court.** Any party petitioner
may appeal from any order entered under this chapter to the
Supreme Judicial Court sitting as the Law Court, as in other

2 civil actions, but no bond to prosecute an appeal is required of
a child or next friend and no costs may be awarded against either.

4 **Sec. 24. 19 MRSA §1130, sub-§3**, as enacted by PL 1993, c. 686,
§5 and affected by §13, is amended to read:

6 **3. Representation.** An attorney or guardian ad litem
8 appointed to represent a party in an adoption proceeding in
Probate Court continues to represent the interests of that ~~elient~~
10 party in any appeal unless otherwise ordered by the court.

12 **Sec. 25. 19 MRSA §1134**, as enacted by PL 1993, c. 686, §5
and affected by §13, is repealed.

14 **Sec. 26. 19 MRSA §1136, sub-§1**, as enacted by PL 1993, c.
16 686, §5 and affected by §13, is amended to read:

18 **1. Grounds.** A judge of probate may, on petition of 2 or
more persons, after notice and hearing, reverse and annul a
20 decree of the Probate Court if the court finds that the adoption
was obtained as a result of fraud, duress, ~~error~~ or illegal
22 procedures.

24 STATEMENT OF FACT

26 This bill makes several changes to the new adoption laws.

28 This bill allows the filing of adoption petitions in the
Probate Court in the county where the petitioners reside. It
30 repeals venue provisions that are inconsistent with other
provisions in the adoption laws.

32 This bill requires the court to proceed with the surrender
and release only if it is in the best interest of the child,
34 deleting reference to the best interests of all parties.

36 This bill removes the counseling requirement for a consent
or a surrender and release when one of the petitioners is a birth
38 parent or the adoptee is an adult. It deletes the 3-day waiting
period before a surrender and release may be granted and requires
40 the court to explain the existence of the adoption registry and
services available. It deletes the requirement that multiple
42 copies of the surrender and release be executed and clarifies
where it must be filed.

44 This bill requires the court to try to notify the birth
46 parents if adoption is no longer a viable plan for the child. It
also requires the court to find that it is in the best interest
48 of the child to declare the surrender and release void. Failure

2 to find the birth parents, in addition to existing factors,
2 allows the court to transfer the case to the District Court.

4 This bill deletes required elements of a petition for
adoption because that information is not included in the adoption
6 order.

8 This bill requires the petitioners, rather than the court,
to serve notice of the petition to all appropriate persons. It
10 requires that service be in accordance with the Maine Rules of
Probate Procedure, rather than the Maine Rules of Civil Procedure.
12

14 This bill deletes mention of the "condition of the child's
biological parents" in the requirements for approval of the
adoption petition.
16

18 This bill exempts petitioners from the limitation on payment
of expenses when one of the petitioners is a birth parent. It
adds as an allowable expense fees to a licensed child placing
20 agency. It also exempts petitioners from the accounting
requirement when one of the petitioners is a birth parent.
22

24 This bill amends the law to delete the factor of creating "a
milieu that fosters the religion, racial identity and culture of
the adoptee" in determining whether the adoption is in the best
26 interest of the child.

28 This bill changes "finalization of an adoption" to
"completion of an adoption proceeding" because there is a right
30 to appeal from the Probate Court.

32 This bill amends the law to allow only petitioners to appeal
to the Law Court, rather than any party. It also clarifies that
34 the person represented by an attorney or guardian ad litem is a
"party" as opposed to a "client."
36

38 This bill repeals the section providing for annulment of an
adoption.

40 This bill revises the definition of "birth parent" to
accommodate situations in which the legal parent of the child is
42 not the biological parent.

44 This bill allows publication of a notice to establish
paternity where the birth mother resides rather than where she
46 become pregnant.

48 This bill repeals the counseling requirement that applies to
birth parents.
50

2 This bill provides that a consent or surrender and release
is not valid until 3 days after it has been executed.

4 This bill provides for reciprocity for consents and
surrender and releases from other states.

6 This bill repeals the guardian ad litem provisions.

8 This bill repeals the prohibition on advertising for
10 adoption services and soliciting adoptions.

12 This bill removes "error" as a ground for annulment of an
14 adoption.