

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1009

S.P. 298

In Senate, February 20, 2001

### An Act to Amend the Child and Family Services and Child Protection Act.

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Submitted by the Judicial Department 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 RAND of Cumberland.

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

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**Sec. 1. 22 MRSA §4005-A, sub-§1, ¶A,** as amended by PL 1997, c. 343, §1, is further amended to read:

A. "Foster parent" means a person who has had a the child who is the subject of the child protection proceeding in that person's home for at least 120 days and who either has received a license for a family foster home as defined in section 8101, subsection 3, or who is a relative.

**Sec. 2. 22 MRSA §4005-A, sub-§2,** as amended by PL 1991, c. 176, §1, is further amended to read:

**2. Petition.** A foster parent may petition for standing and intervenor status in any child protection proceeding under this chapter regarding a ~~foster~~ child that lives or has lived in the foster parent's home. The standing and intervenor status is limited to that proceeding unless otherwise ordered by the court.

**Sec. 3. 22 MRSA §4006, first ¶,** as repealed and replaced by PL 1997, c. 715, Pt. A, §3, is amended to read:

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal the order. These appeals must be directly to the Supreme Judicial Court sitting as the Law Court and ~~such appeals~~ are governed by the Maine Rules of Civil Procedure, chapter 9.

**Sec. 4. 22 MRSA §4031, sub-§3,** as corrected by RR 1999, c. 1, §29, is amended to read:

**3. Scope of authority.** The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the custody issue. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any ~~prior~~ other order regarding the child's care and custody.

**Sec. 5. 22 MRSA §4033, sub-§5,** as enacted by PL 1997, c. 715, Pt. B, §6, is amended to read:

**5. Notice to foster parents, preadoptive parents and relatives providing care.** The department shall provide written notice of all reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing

2 care. The notice must be dated and signed, must include a  
3 statement that foster parents, preadoptive parents and relatives  
4 providing care are entitled to notice of and an opportunity to be  
5 heard in any review or hearing held with respect to the child and  
6 must contain the following language:

7 "The right to be heard includes only the right to  
8 testify and does not include the right to present other  
9 witnesses or evidence, ~~to attend any other portion of~~  
10 ~~the review or hearing~~ or to have access to pleadings or  
11 records."

12 A copy of the notice must be filed with the court prior to the  
13 review or hearing.

14 **Sec. 6. 22 MRSA §4038, sub-§3**, as amended by PL 1997, c. 715,  
15 Pt. B, §8, is further amended to read:

16 **3. Notice of review.** Notice of the reviews must be given  
17 to all parties to the initial proceeding according to District  
18 Court Civil Rule 4. Notice may not be given to a parent whose  
19 rights have been terminated under subchapter VI. The department  
20 shall provide written notice of all reviews and hearings in  
21 advance of the proceeding to the foster parent, preadoptive  
22 parent and relative providing care. The notice must be dated and  
23 signed, must include a statement that the foster parent,  
24 preadoptive parent and relative providing care are entitled to  
25 notice of and an opportunity to be heard in any review or hearing  
26 held with respect to the child and must contain the following  
27 language:

28 "The right to be heard includes only the right to  
29 testify and does not include the right to present other  
30 witnesses or evidence, ~~to attend any other portion of~~  
31 ~~the review or hearing~~ or to have access to pleadings or  
32 records."

33 A copy of the notice must be filed with the court prior to the  
34 review or hearing.

35 **Sec. 7. 22 MRSA §4038, sub-§7-A, ¶B**, as enacted by PL 1997, c.  
36 715, Pt. B, §10, is amended to read:

37 B. The permanency plan for the child must contain  
38 determinations on the following issues.

39 (1) The permanency plan must determine whether and  
40 when, if applicable, the child will be:

2 (a) Returned to the parent. Before the court may  
4 enter an order returning the custody of the child  
6 to a parent, the parent must show that the parent  
8 has carried out the responsibilities set forth in  
10 section 4041, subsection 1, paragraph B; that to  
12 the court's satisfaction the parent has rectified  
and resolved the problems that caused the removal  
of the child from home and any subsequent problems  
that would interfere with the parent's ability to  
care for and protect the child from jeopardy; and  
that the parent can protect the child from  
jeopardy;

14 (b) Placed for adoption, in which case the  
16 department shall file a petition for termination  
of parental rights;

18 (c) Referred for legal guardianship or placed in  
20 the long-term care and custody of an appropriate  
relative or 3rd party; or

22 (d) Placed in another planned permanent living  
24 arrangement when the department has documented to  
26 the court a compelling reason for determining that  
28 it would not be in the best interests of the child  
to be returned home, be referred for termination  
of parental rights or be placed for adoption, be  
placed with a fit and willing relative or 3rd  
30 party, or be placed with a legal guardian.

32 (2) In the case of a child placed in foster care  
34 outside the state in which the parents of the child  
live, the permanency plan must determine whether the  
out-of-state placement continues to be appropriate and  
in the best interests of the child.

36 (3) In the case of a child who is 16 years of age or  
38 older, the permanency plan must determine the services  
40 needed to assist the child to make the transition from  
foster care to independent living.

42 **Sec. 8. 22 MRSA §4053, first ¶**, as amended by PL 1997, c. 715,  
44 Pt. B, §15, is further amended to read:

46 The petition and the notice of hearing must be served on the  
48 parents and the guardian ad litem for the child at least 10 days  
50 prior to the hearing date. Service must be made in accordance  
with the District Court Civil Rules. The department shall  
provide written notice of all reviews and hearings in advance of  
the proceeding to foster parents, preadoptive parents and

2 relatives providing care. The notice must be dated and signed,  
3 must include a statement that foster parents, preadoptive parents  
4 and relatives providing care are entitled to notice of and an  
5 opportunity to be heard in any review or hearing held with  
6 respect to the child and must contain the following language:

7 "The right to be heard includes only the right to  
8 testify and does not include the right to present other  
9 witnesses or evidence, ~~to attend any other portion of~~  
10 ~~the review or hearing~~ or to have access to pleadings or  
11 records."

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### 14 SUMMARY

16 This bill clarifies the definition of "foster parent" and  
17 amends the notification required to be given to foster parents,  
18 preadoptive parents and relatives in reviews or hearings on  
19 protection orders and termination of parental rights.