

MAINE STATE LEGISLATURE

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Date: 6-10-11

(Filing No. S-294)

JUDICIARY

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STATE OF MAINE

SENATE

125TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 352, L.D. 1152, Bill, "An Act To Amend the Child and Family Services and Child Protection Act"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 22 MRSA §4002, sub-§9-D is enacted to read:

9-D. Resource family. "Resource family" means a person or persons who provide care to a child in the child welfare system and who are foster parents, permanency guardians, adoptive parents or members of the child's extended birth family.

Sec. 2. 22 MRSA §4012, sub-§1, as enacted by PL 1979, c. 733, §18, is amended to read:

1. Immediate report. Reports regarding abuse or neglect shall must be made immediately by telephone to the department and shall must be followed by a written report within 48 hours if requested by the department.

Hospitals, medical personnel and law enforcement personnel may submit emergency reports through password-protected e-mail submissions. A faxed report may also be accepted when preceded by a telephone call informing the department of the incoming fax transmission.

Sec. 3. 22 MRSA §4031, sub-§1, as amended by PL 1995, c. 694, Pt. D, §40 and affected by Pt. E, §2, is further amended to read:

1. Jurisdiction. The following provisions shall govern jurisdiction.

A. The District Court shall have has jurisdiction over child protection proceedings and jurisdiction over petitions for adoption from permanency guardianship filed by the department.

B. The Probate Court and the Superior Court shall have concurrent jurisdiction to act on requests for preliminary child protection orders under section 4034. As soon as the

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1 action is taken by the Probate Court or the Superior Court, the matter ~~shall~~ must be
2 transferred to the District Court.

3 D. The District Court has jurisdiction over judicial reviews transferred to the District
4 Court pursuant to Title 18-A, section 9-205.

5 **Sec. 4. 22 MRSA §4036-B, sub-§3-A** is enacted to read:

6 **3-A. Notification to relatives.** Except as required by family or domestic violence
7 safety precautions, the department shall exercise due diligence to identify and provide
8 notice to all known grandparents and other adult relatives within 30 days after the
9 removal of a child from the custody of a parent or custodian. Failure to comply with this
10 provision does not affect service on a parent or custodian.

11 **Sec. 5. 22 MRSA §4037-A** is enacted to read:

12 **§4037-A. Extended care**

13 **1. Extended care requirements.** A person who is 18, 19 or 20 years of age and
14 who attained 18 years of age while in the care and custody of the State may continue to
15 receive care and support if the person:

16 A. Is enrolled in secondary school or its equivalent or is enrolled in postsecondary or
17 career and technical school;

18 B. Is participating in a program or activity that promotes employment or removes
19 barriers to employment;

20 C. Is employed for at least 80 hours per month; or

21 D. Is found to be in special circumstances, including but not limited to being
22 incapable of qualifying under paragraphs A to C due to a documented medical or
23 behavioral health condition.

24 **2. Placement.** A person who qualifies for care and support under this section may
25 be placed in a supervised setting in which the person lives independently, in a foster
26 home or in a group home.

27 **3. Judicial review.** The District Court shall hold a judicial review for each person
28 who qualifies for care and support under this section at least once every 12 months. The
29 court shall hear evidence and shall consider the original reason for the extended care and
30 support of the person and the agreement of extended care and support between the
31 department and the person. The court shall, after hearing or by agreement, make written
32 findings, based on a preponderance of the evidence, that determine:

33 A. The safety of the person in the person's placement;

34 B. The services needed to transition the person from extended care and support to
35 independent living; and

36 C. The compliance of the parties to the agreement of extended care and support.

37 In a judicial review order, the court may order either the department or the person or both
38 to comply with the agreement of extended care and support but may not order the
39 department to pay for a specific placement.

1 **4. Termination; notice.** A person receiving care and support under this section or
2 the department may terminate the agreement of extended care and support without
3 approval by the court. The department shall notify the court of the termination of
4 extended care and support within 30 days of the termination.

5 **5. Guardian ad litem; attorney.** The appointments of the guardian ad litem and
6 attorneys for the parents are terminated when a person receiving care and support under
7 this section attains 18 years of age, and a new guardian ad litem or attorney may not be
8 appointed for or on behalf of the person or the parents.

9 **Sec. 6. 22 MRSA §4038-C, sub-§1, ¶C,** as enacted by PL 2005, c. 372, §6, is
10 amended to read:

11 C. Is willing and able to make an informed, long-term commitment to the child; ~~and~~

12 **Sec. 7. 22 MRSA §4038-C, sub-§1, ¶D,** as enacted by PL 2005, c. 372, §6, is
13 amended to read:

14 D. Has the skills to care for the child ~~and to obtain needed information about and~~
15 ~~assistance with any special needs of the child; and~~

16 **Sec. 8. 22 MRSA §4038-C, sub-§1, ¶E** is enacted to read:

17 E. Has submitted to having fingerprints taken for the purposes of a national criminal
18 history record check.

19 **Sec. 9. 22 MRSA §4038-C, sub-§13** is enacted to read:

20 **13. Resource family license.** The department shall issue a resource family license
21 in accordance with standards adopted by the department to a resource family that meets
22 the requirements and standards for permanency guardianship of children in foster care
23 under subsection 1 and for a license fee established by the department.

24 **Sec. 10. 22 MRSA §4038-D, sub-§2,** as enacted by PL 2005, c. 372, §6, is
25 amended to read:

26 **2. Eligibility for guardianship subsidy payments.** Subject to rules adopted to
27 implement this section, the department may provide subsidies for a ~~special-needs~~ child
28 who is placed in a permanency guardianship or in a similar status by a Native American
29 tribe, when reasonable but unsuccessful efforts have been made to place the child without
30 guardianship subsidies and if the child would not be placed in a permanency guardianship
31 without the assistance of the program.

32 **Sec. 11. 22 MRSA §4038-D, sub-§3,** as enacted by PL 2005, c. 372, §6, is
33 repealed.

34 **Sec. 12. 22 MRSA §4038-D, sub-§4,** as enacted by PL 2005, c. 372, §6, is
35 amended to read:

36 **4. Amount of guardianship subsidy.** The amount of a guardianship subsidy is
37 determined according to this subsection.

38 A. The amount may vary depending upon the resources of the permanency guardian,
39 the ~~special~~ needs of the child and the availability of other resources.

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1 B. The amount may not exceed the total cost of caring for the child if the child were
2 to remain in the care or custody of the department, without regard to the source of the
3 funds.

4 ~~C. Except as provided in paragraph D, assistance may be provided only for special~~
5 ~~needs.~~

6 D. Subject to rules adopted by the department, ~~the amount may include up to \$400~~
7 ~~for expenses of up to \$2,000 per child may be reimbursed. This reimbursement is for~~
8 ~~legal expenses required to complete the permanency guardianship, including~~
9 ~~attorney's fees, incurred by the permanency guardian to complete the permanency~~
10 ~~guardianship in Indian tribal court cases and travel expenses.~~

11 **Sec. 13. 22 MRSA §4038-D, sub-§5**, as enacted by PL 2005, c. 372, §6, is
12 amended to read:

13 **5. Duration of guardianship subsidy.** A guardianship subsidy may be provided for
14 a period of time based on the special needs of a child. The subsidy may continue until the
15 termination of the permanency guardianship or until the permanency guardian is no
16 longer caring for the child, at which time the guardianship subsidy ceases. If the child
17 has need of educational benefits or has a physical, mental or emotional handicap, the
18 guardianship subsidy may continue until the child has attained 21 years of age if the
19 child, the parents and the department agree that the need for care and support exists.

20 **Sec. 14. 22 MRSA §4038-D, sub-§8**, as enacted by PL 2005, c. 372, §6, is
21 repealed.

22 **Sec. 15. 22 MRSA §4038-E** is enacted to read:

23 **§4038-E. Adoption from permanency guardianship**

24 The department may petition the District Court to have a permanency guardian adopt
25 the child in the permanency guardian's care and to change the child's name.

26 **1. Contents of petition for adoption from permanency guardianship.** The
27 petition for adoption from permanency guardianship must be sworn and must include at
28 least the following:

29 A. The name, date and place of birth, if known, of the child and the child's current
30 residence;

31 B. The child's proposed new name, if any;

32 C. The name and residence of the permanency guardian and the relationship to the
33 child;

34 D. The name and residence, if known, of each of the child's parents;

35 E. The name and residence of the former guardian ad litem of the child in the related
36 child protection proceeding;

37 F. The names and residences of all persons known to the department that affect
38 custody, visitation or access to the child;

1 G. A summary statement of the facts that the petitioner believes constitute the basis
2 for the request for the adoption from permanency guardianship, including a statement
3 that the permanency guardian intends to establish a parent and child relationship and
4 that the permanency guardian is a fit and proper person able to care and provide for
5 the child's welfare;

6 H. A statement of the intent of the biological parents to consent to the adoption;

7 I. A statement of the effects of a consent and adoption order; and

8 J. A statement that the biological parents are entitled to legal counsel in the adoption
9 from permanency guardianship proceeding and that, if they want an attorney and are
10 unable to afford one, they should contact the court as soon as possible to request
11 appointed counsel.

12 **2. Accompanying documents and information.** The sworn petition must be
13 accompanied by:

14 A. The birth certificate of the child;

15 B. A background check for each prospective adoptive parent, which must include:

16 (1) A screening of the permanency guardian for child abuse cases in the records
17 of the department;

18 (2) The national criminal history record check for noncriminal justice purposes
19 for each permanency guardian under subsection 7, paragraph A or updated check
20 if the original was completed more than 2 years prior to the filing of the petition;
21 and

22 (3) The state criminal history record check for noncriminal justice purposes for
23 each permanency guardian under subsection 7, paragraph A or updated check if
24 the original was completed more than 2 years prior to the filing of the petition;

25 C. The home study of the permanency guardian under subsection 7, paragraph B or
26 an updated home study if the original was completed more than 2 years prior to the
27 filing of the petition; and

28 D. The child's background information collected pursuant to subsection 7, paragraph
29 B.

30 **3. Scheduling of case management conference.** On the filing of the petition, the
31 court shall set a time and date for a case management conference.

32 **4. Venue.** A petition for adoption from permanency guardianship must be brought
33 in the court that issued the final permanency guardianship appointment. The court, for
34 the convenience of the parties or other good cause, may transfer the petition to another
35 district or division.

36 **5. Guardian ad litem; attorneys.** The court shall appoint a guardian ad litem and
37 attorneys for indigent parents and custodians, including the permanency guardians, in the
38 same manner as guardians ad litem and attorneys are appointed under section 4005.

39 **6. Service.** The petition and the notice of the case management conference must be
40 served on the parent whose rights were terminated and the guardian ad litem for the child

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1 at least 10 days prior to the scheduled case management conference date. Service must
2 be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered
3 by the court.

4 **7. Background checks for each permanency guardian seeking to adopt the child.**
5 The department may, pursuant to rules adopted by the department, at any time before the
6 filing of the petition for adoption from permanency guardianship, conduct background
7 checks of each permanency guardian of the child and a home study.

8 A. The department may, pursuant to rules adopted pursuant to Title 18-A, section
9 9-304, subsection (a-2), request a background check for each permanency guardian.
10 The background check must include criminal history record information obtained
11 from the Maine Criminal Justice Information System and the Federal Bureau of
12 Investigation.

13 (1) The criminal history record information obtained from the Maine Criminal
14 Justice Information System must include a record of Maine conviction data.

15 (2) The criminal history record information obtained from the Federal Bureau of
16 Investigation must include other state and national criminal history record
17 information.

18 (3) Each permanency guardian of the child shall submit to having fingerprints
19 taken. The State Police, upon receipt of the fingerprint card, may charge the
20 department for the expenses incurred in processing state and national criminal
21 history record checks. The State Police shall take or cause to be taken the
22 applicant's fingerprints and shall forward the fingerprints to the State Bureau of
23 Identification so that the bureau can conduct state and national criminal history
24 record checks. Except for the portion of the payment, if any, that constitutes the
25 processing fee charged by the Federal Bureau of Investigation, all money
26 received by the State Police for purposes of this paragraph must be paid over to
27 the Treasurer of State. The money must be applied to the expenses of
28 administration incurred by the Department of Public Safety.

29 (4) The subject of a Federal Bureau of Investigation criminal history record
30 check may obtain a copy of the criminal history record check by following the
31 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
32 The subject of a state criminal history record check may inspect and review the
33 criminal history record information pursuant to Title 16, section 620.

34 (5) State and federal criminal history record information may be used by the
35 department for the purpose of screening each permanency guardian in
36 determining whether the adoption is in the best interests of the child.

37 (6) Information obtained pursuant to this paragraph is confidential. The results
38 of background checks received by the department are for official use only and
39 may not be disseminated outside the department except to a court considering an
40 adoption petition under this section.

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B. The home study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child.

8. Consent. Before an adoption is granted, written consent to the adoption must be given by:

- A. The child, if the child is 12 years of age or older;
- B. The child's biological parents, if parental rights have not been terminated; and
- C. The permanency guardian who has legal custody of the child.

The consents to adoption must be written and voluntarily and knowingly executed before a judge. The judge shall explain the effects of the consent to adoption. Before the adoption is granted, the court shall ensure that each permanency guardian is informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

9. Dismissal. If the parents do not consent, the court shall dismiss the adoption petition and conduct a judicial review hearing consistent with section 4038-C, subsection 12.

10. Hearing on petition for adoption from permanency guardianship. The court shall hold a hearing prior to granting the petition for adoption from permanency guardianship. The department, as the petitioner, has the burden of proof.

A. The judge may interview the child. If the judge chooses to interview the child and the child is 12 years of age or older, the judge shall interview the child outside of the presence of a permanency guardian in order to determine the child's perspective about the adoption and other relevant issues.

- B. The court shall grant an order of adoption if:
- (1) All necessary consents have been duly executed;
 - (2) The permanency guardian is a suitable adopting parent and desires to establish a parent and child relationship with the child; and
 - (3) The adoption is in the best interest of the child.

C. If the judge is satisfied by a preponderance of the evidence with the identity and relations of the parties, the ability of the permanency guardian to bring up and educate the child properly and the fitness and propriety of the adoption and that the adoption is in the best interest of the child, the judge shall grant the adoption setting forth the facts and ordering that from that date the child is the child of the permanency guardian and must be accorded that status set forth in subsection 12 and that the child's name is changed, without requiring public notice of that change.

After the adoption has been granted, the department shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

1 The department shall notify the biological parents whose parental rights have been
2 terminated and grandparents who were granted reasonable rights of visitation or
3 access pursuant to section 4005-E or Title 19-A, section 1803.

4 **11. Effect of consent to adoption by the biological parent.** An order granting the
5 adoption has the following effect.

6 A. An order granting the adoption of the child by the permanency guardian divests
7 the consenting parent and child of all legal rights, powers, privileges, immunities,
8 duties and obligations to each other as parent and child, except the inheritance rights
9 between the child and the biological parent.

10 B. An adoption order may not disentitle a child to benefits due the child from any
11 3rd person, agency, state or the United States and may not affect the rights and
12 benefits that a Native American derives from descent from a member of a federally
13 recognized Indian tribe.

14 **12. Rights of adopted persons.** Except as otherwise provided by law, an adopted
15 person has all the same rights, including inheritance rights, that a child born to the
16 adoptive parent would have. An adoptee also retains the right to inherit from the
17 adoptee's biological parents if the adoption order so provides.

18 **Sec. 16. 22 MRSA §4059** is enacted to read:

19 **§4059. Reinstatement of parental rights**

20 The department may petition the District Court to reinstate the parental rights of a
21 parent whose parental rights have been previously terminated by an order of the District
22 Court.

23 **1. Contents of petition for reinstatement of parental rights.** The petition for
24 reinstatement of parental rights must be sworn and must include at least the following:

25 A. The name, date and place of birth, if known, of the child and the child's current
26 residence;

27 B. The name and residence of the parent whose rights were terminated;

28 C. The name and residence of the former guardian ad litem of the child in the related
29 child protection proceeding;

30 D. The names and residences of all persons known to the department that affect
31 custody, visitation or access to the child;

32 E. A summary of the reasons for the termination of parental rights;

33 F. A summary statement of the facts that the petitioner believes constitute a
34 substantial change in circumstances of the parent that demonstrate the parent has the
35 capacity and willingness to provide for the health and safety of the child;

36 G. A statement of the intent of the parent whose rights were terminated to consent to
37 the reinstatement of parental rights; and

38 H. A statement of the intent or willingness of the child as to the reinstatement of
39 parental rights.

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2. Permanency plan. The sworn petition must be accompanied by the permanency plan that provides for the health and safety of the child, outlines the transition services to the family and outlines the conditions and supervision required by the department for placing the child in the home on a trial basis.

3. Scheduling of case management conference. On the filing of the petition, the court shall set a time and date for a case management conference under subsection 7.

4. Withdrawal of petition. The department may withdraw the petition without leave of the court at any time prior to the final hearing.

5. Guardian ad litem. The court shall appoint a guardian ad litem for the child.

6. Service. The petition and the notice of the case management conference under subsection 7 must be served on the parent whose rights were terminated and the guardian ad litem for the child at least 10 days prior to the scheduled case management conference date. Service must be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered by the court.

7. Case management conference. Upon the filing of a petition for reinstatement of parental rights, the court shall hold a case management conference to review the permanency plan filed by the department to provide for transition services to the family. The permanency plan must outline the conditions and supervision required by the department for placing the child in the home on a trial basis.

8. Reinstatement of parental rights. Parental rights may be reinstated as follows.

A. The court shall hold a hearing prior to the reinstatement of parental rights.

B. The department has the burden of proof.

C. The court may order reinstatement of parental rights if the court finds, by clear and convincing evidence, that:

(1) The child has been in the custody of the department for at least 12 months after the issuance of the order terminating parental rights;

(2) The child has lived for at least 3 months in the home of the parent after the petition for reinstatement has been filed;

(3) The parent consents to the reinstatement of parental rights. Consent must be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of reinstatement of parental rights;

(4) If the child is 12 years of age or older, the child consents to the reinstatement of parental rights; and

(5) Reinstatement of parental rights is in the best interest of the child.

D. In determining whether to reinstate parental rights, the court shall consider the age and maturity of the child, the child's ability to express a preference, the child's ability to integrate back into the home of the parent whose rights were terminated, the ability of the parent whose rights were terminated to meet the child's physical and emotional needs, the extent that the parent whose rights were terminated has

COMMITTEE AMENDMENT

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- 1 remedied the circumstances that resulted in the termination of parental rights and the
- 2 likelihood of future risk to the child.
- 3 E. The court shall enter its findings in a written order that further states that from the
- 4 date of the order of reinstatement of parental rights, the child is the child of the parent
- 5 whose rights were terminated and must be accorded all the same rights as existed
- 6 prior to the order terminating parental rights, including inheritance rights. The order
- 7 must further state that all legal rights, powers, privileges, immunities, duties and
- 8 obligations to each other as parent and child are reinstated.
- 9 F. The reinstatement of one parent's rights does not affect the rights of the other
- 10 parent.

11 **Sec. 17. Maine Revised Statutes headnote amended; revision clause.** In
 12 the Maine Revised Statutes, Title 22, chapter 1071, subchapter 4, in the subchapter
 13 headnote, the words "protection orders" are amended to read "protection orders;
 14 permanency guardianship" and the Revisor of Statutes shall implement this revision when
 15 updating, publishing or republishing the statutes.'

SUMMARY

17 This amendment replaces the bill but retains some of the sections with minor changes
 18 and continues to carry out the intent of the bill.

19 This amendment authorizes hospitals, medical personnel and law enforcement
 20 personnel to submit emergency reports of child abuse or neglect to the Department of
 21 Health and Human Services via an e-mail or a faxed report.

22 This amendment clarifies that the District Court has jurisdiction over petitions for
 23 adoption from permanency guardianship filed by the department.

24 This amendment revises the provisions on extended care for persons who are 18, 19
 25 or 20 years of age who attained 18 years of age while in the care and custody of the State.
 26 In addition to reformatting the language, it provides additional details on the District
 27 Court's required review that must occur at least once every 12 months. The person or the
 28 department may terminate the agreement of extended care and support without approval
 29 by the court; the department must notify the court of the termination. Guardians ad litem
 30 and attorneys may not be appointed for persons who are at least 18 years of age.

31 This amendment provides specific elements that must be included in a petition for
 32 adoption from permanency guardianship. A background check of each prospective
 33 adoptive parent must be included, as well as the home study of the permanency guardian
 34 or an updated home study if the original home study was completed more than 2 years
 35 before the filing of the petition. This amendment requires a case management conference
 36 after a petition has been filed and requires the court to appoint a guardian ad litem and
 37 attorneys for indigent parents and custodians. This amendment also requires service of
 38 the petition for adoption and the notice of the case management conference on the child's
 39 parents. If the parents do not consent, the court must dismiss the adoption petition.

40 This amendment revises the language on the reinstatement of parental rights. As
 41 provided in the bill, only the department may petition to have parental rights reinstated,

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COMMITTEE AMENDMENT "A" to S.P. 352, L.D. 1152

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and only in specific circumstances. This amendment includes specific elements of the petition for reinstatement and includes a specific process that the court must follow.

FISCAL NOTE REQUIRED

(See attached)



125th MAINE LEGISLATURE

LD 1152

LR 796(02)

An Act To Amend the Child and Family Services and Child Protection Act

Fiscal Note for Bill as Amended by Committee Amendment "A" S-294

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium savings - General Fund

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Health and Human Services can be absorbed within existing budgeted resources. The bill's provisions to allow persons 19, 20, or 21 years of age to continue in care if they were in care at the age of 18 could result in the State claiming federal funds under Title IV-E for these services. The amount of this claim and any savings to the State cannot be determined at this time.