

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1152

S.P. 352

In Senate, March 17, 2011

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

Reference to the Committee on Health and Human Services suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator CRAVEN of Androscoggin.
Cosponsored by Representative WEBSTER of Freeport and
Senators: ALFOND of Cumberland, ROSEN of Hancock, SULLIVAN of York,
Representatives: NASS of Acton, PETERSON of Rumford, SANBORN of Gorham,
STUCKEY of Portland, WAGNER of Lewiston.

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

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

3 **9-D. Resource family.** "Resource family" means a person or persons who provide
4 care to a child in the child welfare system and who is a foster parent, adoptive parent or a
5 member of the child's extended birth family.

6 **Sec. 2. 22 MRSA §4036-B, sub-§3-A** is enacted to read:

7 **3-A. Notification to relatives.** Except as required by family or domestic violence
8 safety precautions, the department shall exercise due diligence to identify and provide
9 notice to all known grandparents and other adult relatives within 30 days after the
10 removal of a child from the custody of a parent or custodian.

11 **Sec. 3. 22 MRSA §4037-A** is enacted to read:

12 **§4037-A. Extended care**

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

16 **1. School enrollment.** Is enrolled in secondary school or its equivalent or is
17 enrolled in postsecondary or vocational school;

18 **2. Removal of barriers to employment.** Is participating in a program or activity
19 that promotes employment or removes barriers to employment;

20 **3. Employment.** Is employed for at least 80 hours per month; or

21 **4. Special circumstances.** Is found to be in special circumstances, including but not
22 limited to being incapable of qualifying under subsection 1, 2 or 3 due to a documented
23 medical or behavioral health condition.

24 A person who qualifies for care and support under this section may be placed in a
25 supervised setting in which the person lives independently, in a foster home or in a group
26 residential setting. The District Court shall hold a judicial review in accordance with the
27 procedures under section 4038, subsections 5 and 6 for each person who qualifies for care
28 and support under this section at least once every 12 months.

29 **Sec. 4. 22 MRSA §4038, sub-§5**, as amended by PL 2003, c. 408, §6, is further
30 amended to read:

31 **5. Hearing.** The court shall hear evidence and shall consider the original reason for
32 the adjudication and disposition under sections 4035 and 4036, the events that have
33 occurred since then ~~and~~, the efforts of the parties as set forth under section 4041 and the
34 provision of extended care under section 4037-A. After hearing or by agreement, the
35 court shall make written findings that determine:

- 1 A. The safety of the child in the child's placement;
- 2 B. The continuing necessity for and appropriateness of the child's placement;
- 3 C. The effect of a change in custody on the child;
- 4 D. The extent of the parties' compliance with the case plan and the extent of
5 progress that has been made toward alleviating or mitigating the causes necessitating
6 placement in foster care;
- 7 E. A likely date by which the child may be returned to and safely maintained in the
8 home or placed for adoption or legal guardianship; and
- 9 F. If the child is 16 years of age or older, whether or not the child is receiving
10 instruction to aid the child in independent living.

11 **Sec. 5. 22 MRSA §4038-C, sub-§1**, as enacted by PL 2005, c. 372, §6, is
12 amended to read:

13 **1. Criteria.** The District Court may appoint a person to be a permanency guardian
14 only if the court finds that the prospective permanency guardian:

- 15 A. Has the ability to provide a safe home for the child;
- 16 B. Has a close emotional bond with the child and that the child has a close
17 emotional bond with the prospective permanency guardian;
- 18 C. Is willing and able to make an informed, long-term commitment to the child; ~~and~~
- 19 D. Has the skills to care for the child ~~and to obtain needed information about and~~
20 ~~assistance with any special needs of the child; and~~
- 21 E. Has submitted to having fingerprints taken for the purposes of a national criminal
22 history record check.

23 **Sec. 6. 22 MRSA §4038-C, sub-§13** is enacted to read:

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

28 **Sec. 7. 22 MRSA §4038-D, sub-§2**, as enacted by PL 2005, c. 372, §6, is
29 amended to read:

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

36 **Sec. 8. 22 MRSA §4038-D, sub-§3**, as enacted by PL 2005, c. 372, §6, is
37 repealed.

1 **Sec. 9. 22 MRSA §4038-D, sub-§4**, as enacted by PL 2005, c. 372, §6, is
2 amended to read:

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

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

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

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

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

17 **Sec. 10. 22 MRSA §4038-D, sub-§5**, as enacted by PL 2005, c. 372, §6, is
18 amended to read:

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

26 **Sec. 11. 22 MRSA §4038-D, sub-§8**, as enacted by PL 2005, c. 372, §6, is
27 repealed.

28 **Sec. 12. 22 MRSA §4038-E** is enacted to read:

29 **§4038-E. Adoption from permanency guardianship**

30 The District Court in a judicial review of a permanency guardianship appointment
31 may accept a petition for the adoption of the subject of the permanency guardianship
32 appointment. The District Court's decision regarding adoption must be guided by the best
33 interest of the child, and an adoption is subject to the agreement of all parties to the
34 review. The District Court is granted jurisdiction over adoptions under this section.

35 **Sec. 13. 22 MRSA §4059** is enacted to read:

1 permanency guardian. It provides that a permanency guardian is subject to a
2 fingerprint-based background check.

3 4. It establishes a new category of licensure in child welfare services, the resource
4 family license. This license is for a person or persons who are foster parents, adoptive
5 parents or members of a child's extended birth family who provide care to a child.

6 5 It provides for the adoption of a child who was previously in foster care and is the
7 subject of a permanency guardianship order when the permanency guardian and the child
8 determine adoption is in the best interest of the child.

9 6. It allows for the reinstatement of parental rights for a parent after a period of 12
10 months after a termination of parental rights upon a finding that there has been a material
11 change in circumstances that indicate the parent is now able to provide a safe home and is
12 willing to care for the child. The bill allows the court to hold a hearing to determine
13 reinstatement in accordance with the best interest of the child, whether the parent has
14 remedied conditions and the child's wishes. The bill provides that only the department
15 may petition to reinstate parental rights.