

MAINE STATE LEGISLATURE

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L.D. 1187

Date: 4/6/18

(Filing No. H-724)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 824, L.D. 1187, Bill, "An Act To Amend the Child Protective Services Statutes"

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

Sec. 1. 18-A MRSA §9-308, sub-§(e), as amended by PL 2001, c. 696, §9, is further amended to read:

(e). The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E ~~4005-H~~.

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

1-C. Best interest of the child. "Best interest of the child," "best interests of the child," "child's best interest" and "child's best interests" mean the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

Sec. 3. 22 MRSA §4002, sub-§5-C is enacted to read:

5-C. Grandparent. "Grandparent" means the parent of a child's parent.

Sec. 4. 22 MRSA §4002, sub-§9-B, as amended by PL 2007, c. 371, §1, is further amended to read:

9-B. Relative. "Relative" means ~~the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of a family member related to the child within the 3rd degree through parentage established under Title 19-A, chapter 61 or any spouse of that family member.~~ "Relative" also includes the adoptive parent of the child's siblings. "Relative" includes, for an Indian child as defined by the Indian Child Welfare Act of 1978, 25 United States Code, Section 1903, Subsection 4, an extended family member as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, an extended family member

COMMITTEE AMENDMENT

1 as defined by the Indian Child Welfare Act of 1978, 25 United States Code, Section 1903,
2 Subsection 2.

3 **Sec. 5. 22 MRSA §4003, sub-§2**, as enacted by PL 1979, c. 733, §18, is amended
4 to read:

5 **2. Removal from parental custody.** Provide that children will be ~~taken~~ removed
6 from the custody of their parents only where failure to do so would jeopardize their health
7 or welfare;

8 **Sec. 6. 22 MRSA §4003, sub-§3-A**, as enacted by PL 2005, c. 374, §1, is
9 amended to read:

10 **3-A. Kinship placement.** ~~Place~~ Consistent with sections 4005-G and 4005-H, place
11 children who are ~~taken~~ removed from the custody of their parents with an adult relative
12 when possible;

13 **Sec. 7. 22 MRSA §4003, sub-§3-B** is enacted to read:

14 **3-B. Sibling placement.** Consistent with sections 4005-G and 4005-H, place
15 children who are removed from the custody of their parents with as many of those
16 children's siblings as possible;

17 **Sec. 8. 22 MRSA §4005-D, sub-§1, ¶B**, as enacted by PL 2001, c. 696, §16, is
18 amended to read:

19 B. ~~"Grandparent" means the biological or adoptive parent of a child's biological or~~
20 ~~adoptive parent "Grandparent"~~ "Grandparent," in addition to the meaning set forth in
21 section 4002, subsection 5-C, includes the a parent of a child's parent whose parental
22 rights have been terminated, but only until the child is placed for adoption.

23 **Sec. 9. 22 MRSA §4005-D, sub-§2**, as enacted by PL 2001, c. 696, §16, is
24 amended to read:

25 **2. Interested persons.** Upon request, the court shall designate a foster parent,
26 grandparent, preadoptive parent or a relative of a child ~~by blood or marriage~~ as an
27 interested person unless the court finds good cause not to do so. The court may also grant
28 interested person status to other individuals who have a significant relationship to the
29 child, including, but not limited to, teachers, coaches, counselors or a person who has
30 provided or is providing care for the child.

31 **Sec. 10. 22 MRSA §4005-E**, as amended by PL 2007, c. 513, §5, is repealed.

32 **Sec. 11. 22 MRSA §§4005-G and 4005-H** are enacted to read:

33 **§4005-G. Department responsibilities regarding kinship and sibling placement**

34 **1. Kinship preference.** Except as provided in subsections 3, 5 and 6, in the
35 residential placement of a child, the department shall give preference to an adult relative
36 over a nonrelated caregiver when determining placement for a child, as long as the adult
37 relative meets all relevant state child protection standards.

38 **2. Sibling preference.** Except as provided in subsection 3, in the residential
39 placement of a child, the department shall make reasonable efforts to place a child with

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1 all of the child's siblings at the earliest possible time unless the placement is contrary to
2 the safety or well-being of the child or one or more of the siblings. If placing a child with
3 all of the child's siblings is impossible or contrary to the safety or well-being of the child
4 or one or more of the siblings, the department shall place the child with as many of the
5 child's siblings as is possible and consistent with the safety and well-being of the child
6 and the siblings.

7 **3. Exception; reunification.** The department is not required to apply the placement
8 preferences in subsections 1 and 2 if documented facts support the conclusion that the
9 placement will interfere with active reunification under section 4041. If the court orders
10 the department not to commence reunification or to cease reunification or if the court
11 terminates parental rights pursuant to section 4055, the department must apply the
12 placement preferences in subsections 1 and 2.

13 **4. Identification of adult relatives.** Prior to filing a child protection petition under
14 section 4032, the department shall exercise due diligence to ask each individual that the
15 department has identified as a parent of a child that is the subject of the petition to
16 provide the names and contact information of the following:

- 17 A. Relatives who have provided care for the child on a temporary basis in the past;
- 18 B. Relatives who the parent believes would be safe caregivers during family
19 reunification under section 4041; and
- 20 C. Relatives who the parent believes would be able to serve as a safe resource to
21 support family reunification under section 4041, including by safely supervising
22 visits between the parent and the child.

23 The department shall include the names and contact information of relatives identified by
24 a parent in the petition pursuant to section 4032, subsection 2, paragraphs J and K. When
25 the department identifies or locates a parent after filing the petition, the department shall
26 exercise due diligence to ask that parent to provide the names and contact information of
27 relatives as required by this subsection as soon as possible.

28 **5. Background check.** Within 14 days of receiving information about a relative
29 pursuant to subsection 4, the department shall conduct a background check on that
30 relative unless the relative has informed the department that the relative does not want to
31 provide a residential placement for the child or to serve as a safe resource under
32 subsection 4, paragraph C for the child. The background check must include, at a
33 minimum, obtaining public criminal history record information as defined in Title 16,
34 section 703, subsection 8 from the Maine Criminal Justice Information System and
35 determining whether the relative has been the subject of a child abuse and neglect finding
36 in this or another state.

37 Notwithstanding any other provision of this chapter, the department is not required to
38 consider residential placement of the child with a relative or use a relative as a safe
39 resource under subsection 4, paragraph C if:

- 40 A. The department has substantiated any report of child abuse or neglect regarding
41 that relative or a substantially equivalent determination regarding that relative has
42 been made in another state; or

1 B. The relative has been convicted of a criminal offense relevant to the relative's
2 ability to provide a safe placement for the child or serve as a safe resource under
3 subsection 4, paragraph C.

4 6. License as a family foster home. The department is not required to consider
5 residential placement of a child with a relative who does not exercise due diligence to
6 obtain a license as a family foster home, including by applying for a license, attending all
7 required trainings, cooperating with a home study and promptly addressing any problems
8 identified by the department that prevent the department from granting the license. The
9 department is also not required to consider or to continue residential placement of a child
10 with a relative who has exercised due diligence to obtain a license as a family foster home
11 but whose application for a license has been denied. As used in this subsection, "family
12 foster home" has the same meaning as in section 8101, subsection 3.

13 §4005-H. Relatives; visitation or access; placement by court

14 1. Grandparent visitation or access. A grandparent who is designated as an
15 interested person or a participant under section 4005-D or who has been granted
16 intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the
17 court to grant reasonable rights of visitation or access. When a child is placed in a
18 prospective adoptive home and the prospective adoptive parents have signed an adoptive
19 placement agreement, a grandparent's rights of visitation or access that were granted
20 pursuant to this chapter are suspended unless a court determines that it is in the best
21 interest of the child to continue the grandparent's rights of visitation or access. A
22 grandparent's rights of visitation or access terminate when the adoption is finalized
23 pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective
24 adoptive parents from independently facilitating or permitting contact between a child
25 and a grandparent, especially when a court has previously ordered rights of visitation or
26 access.

27 For the purposes of this subsection, "grandparent" includes a parent of a child's parent
28 whose parental rights have been terminated, but only until the child is adopted.

29 2. Placement by court. A relative may request that the court order that the
30 department place a child with that relative in accordance with this subsection.

31 A. A relative who is designated as an interested person or a participant under section
32 4005-D or who has been granted intervenor status under the Maine Rules of Civil
33 Procedure, Rule 24 may request either orally or in writing that the court order that the
34 child be placed with that relative. A relative who has not been designated as an
35 interested person, a participant or an intervenor may request in writing that the child
36 be placed with that relative.

37 B. If one or more relatives request placement under paragraph A, the court may by
38 order refer the relatives to mediation with the foster parents, if the child has been
39 placed with foster parents, and the guardian ad litem. The court may order the
40 department to attend the mediation. The order must designate the mediator and
41 specify responsibility for the costs of mediation. An agreement reached by the
42 parties through mediation involving placement or visitation must be reduced to
43 writing, signed by all parties and presented to the court. The court shall consider but
44 is not bound by an agreement under this paragraph.

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1 C. In making a decision on a request under paragraph A, the court shall, consistent
2 with section 4003, place the child with a relative who made a request if that
3 placement is in the best interest of the child.

4 D. If a court order placing a child with a relative under paragraph C is made part of a
5 permanency planning order entered pursuant to section 4038-B, subsection 3,
6 placement with that relative is the preferred placement in all future proceedings on
7 the child protection petition with respect to the child unless evidence is presented that
8 remaining in that placement will negatively affect the child's emotional or physical
9 health, safety, stability or well-being.

10 **3. Conviction or adjudication for certain sex offenses; presumption.** There is a
11 rebuttable presumption that the relative would create a situation of jeopardy for the child
12 if any contact were to be permitted and that contact is not in the best interest of the child
13 if the court finds that the relative:

14 A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection
15 6-A, paragraph A in which the victim was a minor at the time of the offense and the
16 relative was at least 5 years older than the minor at the time of the offense except
17 that, if the offense was gross sexual assault under Title 17-A, section 253, subsection
18 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is
19 substantially similar to that contained in Title 17-A, section 253, subsection 1,
20 paragraph B or C, and the minor victim submitted as a result of compulsion, the
21 presumption applies regardless of the ages of the relative and the minor victim at the
22 time of the offense; or

23 B. Has been adjudicated in an action under this chapter of sexually abusing a person
24 who was a minor at the time of the abuse.

25 The relative seeking visitation with or access to the child may produce evidence to rebut
26 the presumption.

27 **Sec. 12. 22 MRSA §4038-E, sub-§10, ¶C,** as enacted by PL 2011, c. 402, §15,
28 is amended to read:

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

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

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

42 **Sec. 13. 22 MRSA §4062, sub-§4,** as enacted by PL 1999, c. 382, §1, is amended
43 to read:

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4. Kinship and sibling preferences. In the residential placement of a child, the department shall ~~consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards~~ comply with section 4005-G.

SUMMARY

This amendment replaces the bill and makes the following changes to the Child and Family Services and Child Protection Act.

1. It specifies that the standard of the best interest of the child set forth in the Maine Revised Statutes, Title 19-A, section 1653, subsection 3 applies to child protection proceedings.

2. It amends the definition of "relative" to be consistent with the Maine Parentage Act and the federal Indian Child Welfare Act of 1978.

3. It establishes the Legislature's intent that a child who has been removed from the custody of the child's parents be placed with as many of the child's siblings as is possible and consistent with the safety and well-being of the child and the child's siblings.

4. It outlines the process and timelines that the Department of Health and Human Services must follow to effectuate the Legislature's intent that the department place a child who has been removed from the custody of the child's parents with an adult relative rather than a nonrelated caregiver as long as the adult relative passes child welfare and criminal background checks and exercises due diligence to obtain a license as a family foster home.

5. It changes the laws outlining a court's authority to order grandparent visitation or access to a child and to order placement of a child with a relative and moves those laws to a section of the Act immediately following the section outlining the department's responsibilities for relative and sibling placement. The amendment authorizes the court to order a relative who requests placement to participate in mediation with the foster parents, if any, the guardian ad litem and the department, when appropriate. The court must consider but is not bound by an agreement involving placement or visitation reached by the parties at mediation. The amendment also provides that if a court orders that a child be placed with a relative as part of a permanency planning order, that placement is the preferred placement in all future proceedings on the child protection petition unless the court finds that remaining in that placement will negatively affect the child.

FISCAL NOTE REQUIRED

(See attached)

Approved: 04/01/18 *MJC*



128th MAINE LEGISLATURE

LD 1187

LR 1257(02)

An Act To Amend the Child Protective Services Statutes

Fiscal Note for Bill as Amended by Committee Amendment *A(H-724)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.