

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

lature having jurisdiction over human resources matters of its findings and recommendations concerning the effectiveness, impact and benefits derived from the special programs as provided for in this chapter. This report ~~shall~~ must be delivered on or before ~~the first day of~~ February 1st and ~~shall~~ must contain evaluations of these special programs and recommendations in final draft form of any legislation ~~deemed~~ determined necessary and proper.

Sec. B-4. 22 MRSA §8106, as enacted by PL 1981, c. 260, §6, is repealed.

Sec. B-5. 32 MRSA §1100-H, as amended by PL 1981, c. 440, §23, is repealed.

See title page for effective date.

CHAPTER 686

S.P. 309 - L.D. 942

An Act to Amend the Adoption Laws

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

Sec. 1. 18-A MRSA §2-109, sub-§(1), as enacted by 1979, c. 540, §1, is amended to read:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child ~~will also inherit~~ inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status;

Sec. 2. 18-A MRSA §5-206, as enacted by PL 1979, c. 540, §1, is amended to read:

§5-206. Court appointment of guardian of minor; qualifications; priority of minor's nominee

The court may appoint as guardian any person whose appointment ~~would be~~ is in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption.

Sec. 3. 19 MRSA cc. 9 and 10, as amended, are repealed.

Sec. 4. 19 MRSA §1002, sub-§1, as enacted by PL 1991, c. 414, is amended to read:

1. Grandparent. "Grandparent" is the biological or adoptive parent of the child's biological ~~parent~~ or ~~the child's~~ adoptive parent. "Grandparent" does not include the biological or adoptive parent of a child's biological or adoptive parent who consented to adoption under section ~~532~~ 1122 or whose parental rights have been terminated pursuant to section ~~533-A~~ 1114 or Title 22, chapter 1071, subchapter VI.

Sec. 5. 19 MRSA c. 21 is enacted to read:

CHAPTER 21

ADOPTION

SUBCHAPTER I

GENERAL PROVISIONS

§1101. Short title

This chapter may be known and cited as the "Adoption Act."

§1102. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Adoptee. "Adoptee" means the person who will be or who has been adopted, regardless of whether the person is a child or an adult.

2. Adoption services. "Adoption services" means services related to adoptions including but not limited to adoptive home studies, search services and adoption counseling services.

3. Adult. "Adult" means a person who is 18 years of age or older.

4. Birth parent. "Birth parent" means a person who is the biological parent of a child.

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

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

5. Child. "Child" means a person who is under 18 years of age.

6. Consent. "Consent" means a voluntary agreement to an adoption by a specific petitioner, executed by a parent or custodian of the adoptee.

7. Department. "Department" means the Department of Human Services.

8. Licensed child placing agency. "Licensed child placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

9. Petitioner. "Petitioner" includes both petitioners under a joint petition.

10. Putative father. "Putative father" means a man who is the alleged biological father of a child but whose paternity has not been legally established.

11. Surrender and release. "Surrender and release" means a voluntary relinquishment of all parental rights to a child to the department or a child placing agency for the purpose of placement for adoption.

§1103. Jurisdiction

1. Probate Court. The Probate Court has exclusive jurisdiction over the following:

- A. Petitions for adoption;
- B. Consents and reviews of withholdings of consent by persons other than a parent;
- C. Surrenders and releases;
- D. Termination of parental rights proceedings brought pursuant to section 1114;
- E. Proceedings to determine the rights of putative fathers of children whose adoptions or surrenders and releases are pending before the Probate Court; and
- F. Reviews conducted pursuant to section 1115.

2. District Court. The District Court has jurisdiction to conduct hearings pursuant to section 1104, subsection 4.

§1104. Venue; transfer

1. Agency or department. If the adoptee is placed by a licensed child placing agency or the department, the petition for adoption must be filed in the court in the county where:

- A. The petitioner resides;
- B. The adoptee resides or was born; or
- C. An office of the agency that placed the adoptee for adoption is located.

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

3. Authority to transfer, stay or dismiss. If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another probate court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

4. Mandatory transfer. A probate court with venue pursuant to this section shall transfer the case to the District Court for a hearing pursuant to Title 22, section 4038-A if:

- A. The child was the subject of a surrender and release and adoption did not take place within 18 months; or
- B. The court has conducted a review pursuant to section 1115 and determined that the child is unadoptable and neither parent is willing or able to resume responsibility for the child or the child would be in jeopardy as defined by Title 22, section 4002 if custody were restored to either parent.

§1105. Rights of adopted persons

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, as a child born to the adoptive parents. An adoptee also retains the right to inherit from the adoptee's birth parents, if the adoption decree so provides as specified in Title 18-A, section 2-109, subsection (1).

§1106. Legal representation

1. Birth parents generally. The birth parents are entitled to an attorney for any hearing held pursuant to this chapter. If the birth mother, the birth father or the putative father wants an attorney, but is unable to afford one, the birth mother, the birth father or the putative father may request the court to appoint an attorney. If the court finds either or both of them indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

2. Minor birth parent. When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent birth parent at every stage of the proceedings unless the minor birth parent refuses representation or unless the court determines that representation is unnecessary.

SUBCHAPTER II**ESTABLISHMENT OF PATERNAL RIGHTS
AND TERMINATION OF PARENTAL RIGHTS****§1111. Establishment of paternity**

1. Affidavit required. When the birth mother of a child born out of wedlock wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and the putative father has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child, the birth mother must file an affidavit of paternity with the judge of probate so that the judge may determine how to give notice of the proceedings to the putative father of the child.

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

3. Request for hearing. If, after notice, the putative father of the child wishes to establish parental rights to the child, the putative father must, within 20 days after notice has been given or within a longer period of time as ordered by the judge, petition the judge of probate to grant to the putative father parental rights. The petition must include an allegation that the putative father is in fact the birth father of the child.

4. Hearing. Upon receipt of the petition, the judge shall fix a date for a hearing for the purpose of determining the putative father's parental rights to the child.

5. Legal representative. The court shall appoint an attorney who is not the attorney for the putative father, the birth mother or the potential transferee to represent the child and to protect the child's interests.

6. Notice. Notice of the hearing must be given to the putative father, the birth mother, the attorney

for the child and any other parties the judge determines appropriate.

7. Adoptive study. Upon order of the court, either through its own caseworkers or through a licensed child placing agency, the department shall furnish studies and reports relevant to the proceedings.

8. Consequences. If, after a hearing, the judge finds that the putative father is the birth father, that he is willing and able to protect the child from jeopardy, and has not abandoned the child, and is willing and able to take responsibility for the child, and that it is in the best interests of the child, then the putative father is deemed the child's parent with all the attendant rights and responsibilities.

9. Failure to appear after notice. If the judge of probate finds that the putative father of the child has not petitioned or appeared within the required period as set out in this section, or has not met the requirements of subsection 8, the judge shall rule that the putative father has no parental rights and that only the birth mother of the child need consent to adoption or a surrender and release.

§1112. Surrender and release; consent

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

A. Surrender and release all parental rights to the child and the custody and control of the child to a licensed child 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

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

2. Conditions. The court may approve a consent or a surrender and release only if the following conditions are met:

A. A licensed child placing agency or the department certifies to the court that counseling was provided or was offered and refused;

B. The court has, at least 3 days prior to receiving the parent's signature, explained the individual's parental rights and responsibilities and the effects of the consent or the surrender and release; and

C. The court determines that the consent or the surrender and release has been duly executed and was given freely after the parent was informed of the parent's rights.

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

4. Validity. To be valid, a consent or a surrender and release executed in this State must be in accordance with this chapter.

5. Acknowledgement. Consent may be acknowledged before a notary public who is not an attorney or a partner, associate or employee of an attorney for the adopting parents if consent is given by:

A. The department or a licensed child placing agency; or

B. A public agency or duly licensed private agency to whom parental rights have been transferred under the law of another state or country.

6. Irrevocability. Except as provided in subsection 7, a consent or a surrender and release is final and irrevocable when duly executed.

7. Finality. A consent is final only for the adoption consented to and, if that adoption petition is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to section 1115.

§1113. Duties and responsibilities subsequent to surrender and release

The surrender and release authorized pursuant to section 1112, without notice to the parent or parents, may be transferred together with all rights under section 1112 from the transferee agency to the department or from the department as original transferee to any licensed child placing agency. If the licensed child placing agency or the department is unable to find a suitable adoptive home for any child surrendered and released by a parent or parents, then the licensed child placing agency or the department to whom custody and control of that child have been surrendered and released or transferred shall request a review pursuant to section 1115.

§1114. Termination of parental rights

1. Petition. A petition for termination of parental rights may be brought in Probate Court as part of an adoption petition, except when a child protection proceeding is pending or subject to review by the District Court.

2. Applicability of other laws. Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter VI.

3. Guardian ad litem. The following provisions govern a guardian ad litem.

A. The court shall appoint a guardian ad litem for the child. The court shall pay reasonable costs and expenses for the guardian ad litem. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

B. The guardian ad litem must be given access to all reports and records relevant to the case. In general, the guardian ad litem shall represent the child. The guardian ad litem may conduct an investigation to ascertain the facts that includes:

(1) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;

(2) Interviewing the child with or without other persons present;

(3) Interviewing, subpoenaing, examining and cross-examining witnesses; and

(4) Making recommendations to the court.

§1115. Review

1. Mandatory review. The court shall conduct a judicial review if:

A. A child is not adopted within 18 months of execution of a surrender and release;

B. The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or

C. An adoption petition is not finalized within 18 months.

2. Determinations. If the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a

viable plan, the court shall notify the birth parents, who must be given an opportunity to present an acceptable plan for the child. If either or both parents are able and willing to assume physical custody of the child, then the court shall declare the consent or the surrender and release void.

If the birth parents are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the birth parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, then the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

SUBCHAPTER III

ADOPTION PROCEDURES

§1121. Petition for adoption and change of name; filing fee

A husband and wife jointly or an unmarried person, resident or nonresident of the State, may petition the Probate Court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is \$10.

§1122. Consent for adoption

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

A. The adoptee, if the adoptee is 14 years of age or older;

B. Each of the adoptee's living parents, except as provided in subsection 2;

C. The person or agency having legal custody or guardianship of the child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a judge of probate, may be overruled by the judge. In determining whether the custodian acted unreasonably in withholding the custodian's consent, the petitioner must prove, by a preponderance of the evidence, that the custodian acted unreasonably. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is on the petitioner, the custodian should proceed if the custodian has important facts necessary to the petitioner in presenting the petitioner's case. The judge shall consider the following:

(1) Whether the custodian determined the needs and interests of the child;

(2) Whether the custodian determined the ability of the petitioner and other prospective families to meet the child's needs;

(3) Whether the custodian made its decision consistent with the facts;

(4) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(5) All other factors that have a bearing on a determination of the reasonableness of the agency's decision in withholding its consent; and

D. A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent.

2. Consent not required. Consent to adoption is not required of the following:

A. A putative father who received notice and who failed to respond to the notice within the prescribed time period or who failed to meet the standards of section 1111, subsection 8;

B. A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter VI;

C. Parents who have executed a surrender and release pursuant to section 1112;

D. A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country; or

E. The parents of an adoptee who is 18 years of age or older.

§1123. Petition

1. Requirements. A petition for adoption must be sworn to by the petitioner and include the following:

A. The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;

B. The date and place of birth of the adoptee, if known;

C. The birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name, if any;

D. The residence of the adoptee at the time of the filing of the petition;

E. When the petitioner intends to acquire custody if the adoptee is a child and is not in the custody of a petitioner;

F. The petitioner's intention to establish a parent and child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. The names and addresses of all persons or agencies known to the petitioner that affect the custody, visitation or access to the adoptee;

H. The relationship, if any, of the petitioner to the adoptee;

I. The names and addresses of the department and the licensed child placing agency, if any; and

J. The names and addresses of all persons known to the petitioner at the time of filing from whom consent to the adoption is required.

2. Information to birth parents. A petitioner shall indicate to the court what information the petitioner is willing to share with the birth parents and under what circumstances and provide a mechanism for updating that information.

3. Caption. The caption of a petition for adoption may be styled "In the Matter of the Adoption Petition of (name of adoptee)." The petitioner must also be designated in the caption.

§1124. Notice of petition; service

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

2. Service. Service must be made in accordance with the Maine Rules of Civil Procedure.

§1125. Investigation; guardian ad litem; registry

1. Adoption study. Upon the filing of a petition for adoption of a minor child, unless one of the petitioners is a blood relative of the child or the petitioners have received the child from the department or from a licensed child placing agency, the court shall notify the department, which shall, either through its own workers or through a licensed adoption agency, investigate 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.

2. Child's background. The Department of Human Services or licensed adoption agency shall obtain medical or genetic information on the biological parents and child and whatever information may be reasonably available regarding the child's background and history that pertains to serious sexual, emotional or physical abuse of or harm to the child. This information must be filed with the court and, if it appears that the adoption will be granted and this information has not previously been made available to the adoptive parents pursuant to Title 22, section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection 6, with protection for the identity of persons other than the child.

3. Probationary period. The court may require that the child live for one year in the home of the petitioners before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.

4. Guardian ad litem. The court may appoint a guardian ad litem for the child at any time during the proceedings.

5. Adoption registry. Before the adoption is decreed, the court shall ensure that the petitioners are informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

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

7. Birth record. A certified copy of the birth record of the child proposed for adoption must be presented with the petition for adoption, provided the certified copy can be obtained or made available by filing a delayed birth registration. After the adoption has been decreed, the register of probate shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

§1126. Evidence; procedure

1. Interview adoptee. The judge may interview any adoptee, and shall interview an adoptee who is 12 years of age or older, outside the presence of the prospective adoptive parents to determine the adoptee's attitudes and desires about the adoption and other relevant issues.

2. In camera inspection. The judge may conduct an in camera inspection of records of relevant child protective proceedings and may disclose only that information necessary for the determination of any issue before the court. Any disclosure of information must be done pursuant to Title 22, section 4008, subsection 3.

3. Recording. The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

§1127. Allowable payments; expenses

1. Allowable payments. Only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this chapter:

A. The actual cost of legal services related to the consent or the surrender and release and to the adoption process;

B. Prenatal and postnatal counseling expenses for the birth mother;

C. Prenatal, birthing and other related medical expenses for the birth mother;

D. Necessary transportation expenses to obtain the services listed in paragraphs A, B and C;

E. Foster care expenses for the child;

F. Necessary living expenses for the birth mother and the child; and

G. For the birth father, legal and counseling expenses related to the consent, the surrender and release and the adoption process.

2. Accounting. Prior to the dispositional hearing pursuant to section 1129, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report must be signed under penalty of perjury and must be submitted to the court on or before the final decree is granted. The accounting report must be itemized and show the services related to the adoption or to the placement of 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.

3. Payments not contingent. Payment for expenses allowable under subsection 1, if provided, may not be contingent upon any future decision a birth parent may make pertaining to the child. Other expenses or payments to birth parents are not authorized.

§1128. Adoption not granted

If the court determines that it is unable to finalize an adoption to which birth parents have consented, the court shall notify the birth parents that the court has not granted the adoption and shall conduct a review pursuant to section 1115.

§1129. Final decree; dispositional hearing

1. Findings. The court shall grant a final decree of adoption if:

A. All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court;

B. An adoption study, when required by section 1125, has been filed with the court;

C. Service of the notice of dependency of the adoption proceeding has been made to all persons entitled to receive notice pursuant to section 1124;

D. A list of all disbursements as required by section 1127 has been filed with the court;

E. The petitioner is a suitable adopting parent and desires to establish a parent and child relationship between the petitioner and the adoptee;

F. The best interests of the adoptee are served by the adoption; and

G. All other requirements of this chapter have been met.

2. Best interests of adoptee. In determining the best interests of the adoptee, the court shall consider and evaluate the following factors to give the adoptee a permanent home at the earliest possible date:

A. The love, affection and other emotional ties existing between the adoptee and the adopting

person or persons, the birth parent or birth parents or the putative father;

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

C. The capacity and disposition of the adopting person or persons, the birth parent or birth parents or the putative father to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted in place of medical care under the laws of this State and other material needs.

3. Final decree. The court shall enter its findings in a written decree that includes the new name of the adoptee and any other name by which the adoptee has been known. The final decree must further order that from the date of the decree the adoptee 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.

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

§1130. Appeals

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

2. Expedited appeals. An appeal from any order under this chapter must be expedited.

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

§1131. Records of adoption

All Probate Court records relating to any adoption decreed on or after August 8, 1953 are declared to be confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. The adoption records may be examined only upon authorization by the judge of the Probate Court. In any case where it is considered proper that an examination be authorized, the judge may in lieu of an examination, or in addition to an examination, grant authority to the register of probate to disclose any information contained in the records by letter, certificate or copy of the record.

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18, the adopted child's descendants, adoptive parents or legal guardian on petition of the court.

§1132. Interstate placements

1. Adoption of child from another state. A person or agency who intends to bring a child to this State from another state for the purpose of adoption must provide to the Probate Court the certification of compliance as required by the department pursuant to Title 22, chapter 1153.

2. Adoption of child taken to another state. A person or agency who intends to remove a child from this State for the purpose of adoption in another state must obtain from the department certification of compliance with Title 22, chapter 1153, prior to the removal of the child from this State.

3. Probate Court; petition without certification. The Probate Court may not grant a petition to adopt a child who has been brought to or will be removed from this State for the purpose of adoption without department certification of compliance with Title 22, chapter 1153.

4. Civil violation. An agency or person who fails to comply with this section commits a civil violation for which a fine of not less than \$100 and not more than \$5,000 may be adjudged.

§1133. Foreign adoptions

If an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this State to give recognition to the foreign adoption, a judge of probate may enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adopting parents.

§1134. Advertisement

Advertising for adoption services or soliciting adoptions is prohibited, except that licensed child placing agencies may advertise in accordance with rules adopted by the department.

§1135. Immunity from liability for good faith reporting; proceedings

A person, including an agent of the department, participating in good faith in reporting violations of this chapter or participating in a related child protection investigation or proceeding, is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false.

§1136. Annulment of the adoption decree

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

2. Notice. Notice of a petition to annul must be given to the birth parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

SUBCHAPTER IV**ADOPTION ASSISTANCE PROGRAM****§1141. Authorization; special needs children**

1. Assistance authorized. Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the department may provide, through the Adoption Assistance Program created in this subchapter, adoption assistance for special needs children in its care or custody or in the custody of a nonprofit private licensed child placing agency in this State if those children are legally eligible for adoption and, when reasonable but unsuccessful efforts have been made to place them without adoption assistance, would not otherwise be adopted without the assistance of this program.

2. Expense reimbursement. The department shall, subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, reimburse adoptive parents of a

special needs child for one-time adoption expenses when reasonable but unsuccessful efforts have been made to place the child without such assistance.

3. Special needs child defined. A "special needs child" means a child who:

A. Has a physical, mental or emotional handicap that makes placement difficult;

B. Has a medical condition that makes placement difficult;

C. Is a member of a sibling group that includes at least one member who is difficult to place;

D. Is, because of age or race, difficult to place;

E. Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or

F. Has factors in the child's background such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems.

4. Funds. For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E.

5. Amount. The amount of adoption assistance may vary depending upon the resources of the adoptive parents and the special needs of the child, as well as the availability of other resources, but may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

6. Duration. The duration of assistance may continue until the cessation of legal parental responsibility or until the parents are no longer supporting the child, at which time the adoption assistance ceases, except that, if the child has need of educational benefits or has a physical, mental or emotional handicap, adoption assistance may continue until the adoptee has attained 21 years of age if the adoptee, the parents and the department agree that the need for care and support exists.

7. Out-of-state children. Children who are in the custody of another person or agency in another state who are brought to this State for the purpose of adoption are not eligible for adoption assistance through the State's Adoption Assistance Program except for reimbursement of nonrecurring expenses if the child meets the requirements of the United States Social Security Act, 42 United States Code, Section 673 (c).

§1142. Eligibility and terms

Foster parents interested in adopting an eligible child in their care and other persons interested in adopting an eligible child may apply for adoption assistance. All applicants for adoption assistance must meet department standards for adoption with the exception of financial ability. Assistance may be provided for special needs only, for a limited period of time, for a long period of time or for a combination. The adoption assistance may vary depending on the special needs of the child.

§1143. Administration

1. Written agreement. A written agreement between the family entering into the Adoption Assistance Program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not apprised of the program.

2. Annual redetermination. If assistance continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the family continues to be eligible based on the annual redetermination of need.

3. Transferral to legal guardian. Upon the death of both adoptive parents, adoption assistance may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

§1144. Rules

The department shall adopt rules for the Adoption Assistance Program consistent with this subchapter by October 31, 1994.

Sec. 6. 22 MRSA §2765, sub-§1, as amended by PL 1989, c. 818, §8, is further amended to read:

1. New certificate of birth. The state registrar shall establish a new certificate of birth for a person born in this State when ~~he~~ the state registrar receives the following:

A. A certificate of adoption as provided in Title 19, section ~~533~~ 1125, or a certified copy of the decree of adoption along with the information necessary to identify the original certificate and establish the new certificate of birth, except that a new certificate may not be established if so requested by the adopting parents or the adopted person if the adopted person is at least 18 years of age;

B. A request that a new certificate be established and such evidence as the department may require by ~~regulation rule~~ proving that such the person has been legitimated.

Sec. 7. 22 MRSA §2765, sub-§1-A, ¶A, as amended by PL 1991, c. 167, §1, is further amended to read:

A. A certificate of adoption as provided in Title 19, section ~~533~~ 1125; and

Sec. 8. 22 MRSA §4008, sub-§3, ¶B, as amended by PL 1985, c. 739, §5, is further amended to read:

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a ~~report~~ home study from the department pursuant to Title 19, section ~~533 or 751 or 1125~~. Access to such a report or record ~~shall be~~ is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records ~~shall be~~ is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before ~~the court~~;

Sec. 9. 22 MRSA §4031, sub-§1, ¶D is enacted to read:

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title 19, section 1115.

Sec. 10. 22 MRSA §4037, as amended by PL 1981, c. 369, §11, is further amended to read:

§4037. Authority of custodian

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, ~~he shall have~~ the custodian has full custody of the child subject to the terms of the order and other applicable law. Custody ~~shall~~ does not include the right to initiate adoption proceedings without parental consent, except as provided under Title 19, section ~~532~~ 1122.

Sec. 11. 22 MRSA §4038-A is enacted to read:

§4038-A. Transfer to District Court

If a case is transferred to the District Court pursuant to Title 19, section 1115, the court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038.

Sec. 12. 24-A MRSA §2834, first ¶, as enacted by PL 1975, c. 770, §108, is amended to read:

All group and blanket health insurance policies providing coverage on an expense incurred basis ~~which~~ that provide coverage for a family member of the insured or subscriber ~~shall must, as to such family members' coverage,~~ also provide that the health insurance benefits applicable for children shall be payable ~~with respect to~~ for a newly born child of the insured or subscriber from the moment of birth. An adopted child is deemed to be newly born to the adoptive parents from the date of the signed placement agreement. Preexisting conditions of an adopted child may not be excluded from coverage.

Sec. 13. Effective date. This Act takes effect August 1, 1994 and applies to petitions filed on or after that date.

Effective August 1, 1994.

CHAPTER 687

H.P. 347 - L.D. 450

**An Act to Expand Protection to
Persons with Mental Illness and
Mental Retardation**

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

Sec. 1. 17-A MRSA §253, sub-§2, ¶¶H and I, as enacted by PL 1989, c. 401, Pt. A, §4, are amended to read:

H. The other person has not in fact attained the age of 18 years and the actor is a parent, step-parent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person; or

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other

person, not the actor's spouse, is a patient or client for mental health therapy of the actor. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, which therapy is based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse; or

Sec. 2. 17-A MRSA §253, sub-§2, ¶J is enacted to read:

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Mental Health and Mental Retardation or the Department of Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3.

Sec. 3. 17-A MRSA §253, sub-§5, as amended by PL 1991, c. 569, is further amended to read:

5. Violation of subsection 2, paragraph A, B, C, D, E or H is a Class B crime. Violation of subsection 2, paragraph F, G or I or J is a Class C crime.

Sec. 4. 17-A MRSA §255, sub-§1, ¶G, as amended by PL 1993, c. 453, §2, is further amended to read:

G. The other person has not in fact attained the age of 18 years and the actor is a parent, step-parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person; or

Sec. 5. 17-A MRSA §255, sub-§1, ¶H, as enacted by PL 1993, c. 453, §3, is amended to read:

H. The other person submits as a result of compulsion; or

Sec. 6. 17-A MRSA §255, sub-§1, ¶I is enacted to read:

I. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Mental Health and Mental Retardation or the Department of Human Ser-