

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

CHAPTER 372

S.P. 481 - L.D. 1382

**An Act To Establish Permanent
Subsidized Guardianship****Be it enacted by the People of the State of
Maine as follows:****Sec. 1. 18-A MRSA §5-201**, as enacted by PL 1979, c. 540, §1, is amended to read:**§5-201. Status of guardian of minor; general**

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.

Sec. 2. 22 MRSA §4002, sub-§7-A, as amended by PL 1987, c. 769, Pt. A, §77, is repealed.**Sec. 3. 22 MRSA §4036-B, sub-§5**, as enacted by PL 2003, c. 408, §1, is amended to read:

5. Reasonable efforts to finalize permanency plan. The department shall make reasonable efforts to finalize the permanency plan. In each order determining a permanency plan pursuant to section 4038, ~~subsection 7-A~~ **4038-B**, the court shall make a finding whether or not the department has made reasonable efforts to finalize the permanency plan.

Sec. 4. 22 MRSA §4038, sub-§7-A, as amended by PL 2001, c. 696, §32, is repealed.**Sec. 5. 22 MRSA §4038-A**, as amended by PL 1995, c. 694, Pt. D, §45 and affected by Pt. E, §2, is further amended to read:**§4038-A. Transfer to District Court**

If a case is transferred to the District Court pursuant to Title 18-A, section 9-205, 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 and permanency planning hearings in accordance with section 4038-B.

Sec. 6. 22 MRSA §§4038-B to 4038-D are enacted to read:**§4038-B. Permanency plans**

1. Mandated permanency planning hearing. Unless subsequent judicial reviews are not required pursuant to section 4038, subsection 1-A, the District Court shall conduct a permanency planning hearing and shall determine a permanency plan within the earlier of:

A. Thirty days after a court order to cease reunification; and

B. Twelve months after the time a child is considered to have entered foster care. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first.

2. Subsequent permanency planning hearings. Unless subsequent judicial reviews are not required pursuant to section 4038, subsection 1-A, the District Court shall conduct a permanency planning hearing within 12 months of the date of any prior permanency planning order.

3. Permanency planning orders. After each permanency planning hearing, the District Court shall adopt a permanency plan for a child that complies with subsection 4. The court shall enter the order within the time limitations contained in subsection 1 or 2, whichever is applicable to the permanency planning hearing.

4. Contents of permanency plan. A permanency plan for a child under this section must contain determinations on the following issues.

A. The permanency plan must determine whether and when, if applicable, the child will be:

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

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

(3) Cared for by a permanency guardian, as provided in section 4038-C, or a guardian appointed by the Probate Court pursuant to Title 18-A, sections 5-206 and 5-207;

(4) Placed with a fit and willing relative; or

(5) Placed in another planned permanent living arrangement. The District Court may adopt another planned permanent living arrangement as the permanency plan for the child only after the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home, be referred for termination of parental rights or be placed for adoption, be cared for by a permanency guardian or be placed with a fit and willing relative.

B. In the case of a child placed outside the state in which the parents of the child live, the permanency plan must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.

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

5. Wishes of child. The District Court shall consider, but is not bound by, the wishes of a child in making a determination under this section.

§4038-C. Permanency guardian

As part of the permanency plan, the District Court may appoint a person or persons as guardian of a minor, to be known as a permanency guardian, "Permanency guardian," when used in this section and in section 4038-D, means the person or persons appointed as the permanency guardian.

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

A. Has the ability to provide a safe home for the child;

B. Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian;

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

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

2. Powers and duties of permanency guardian. A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to Title 18-A, section 5-209.

3. Parental and relative contact. A parent, grandparent or sibling of a child subject to a permanency guardianship or to a proceeding to establish a permanency guardianship may petition the court to determine rights of contact as provided in subsection 6. If the District Court determines that it is in the best interest of the child, it may order that the parent, grandparent or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration and conditions of that contact.

4. Child support. The parents shall pay the permanency guardian child support. Title 19-A, section 1652 and Title 19-A, chapter 63 govern the award of child support to the permanency guardian. The child support obligation may be enforced pursuant to Title 19-A, chapter 65 or 67.

If there is an existing child support order or obligation regarding the child, and if the District Court fails to make a child support order at the time of appointing a permanency guardian, the permanency guardian becomes the obligee under the existing support order or obligation. A copy of the order appointing the permanency guardian is sufficient proof of the permanency guardian's status as obligee.

5. Jurisdiction over permanency guardian. The District Court has exclusive jurisdiction to appoint or remove a permanency guardian and to establish any rights of contact between a child and a parent, grandparent or sibling.

6. Proceedings to terminate permanency guardianship or to determine rights of contact. Proceedings to terminate permanency guardianship or to determine rights of contact are governed by the following.

A. Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent or sibling of the child may petition the court to establish rights of contact with the child, except that a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship or to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare.

B. Notice of a petition under paragraph A must be given in the manner provided for by Rule 4 of the Maine Rules of Civil Procedure to all parties to the child protective case and to the permanency guardian.

C. The permanency guardianship may be terminated only if the petitioner proves by a preponderance of the evidence that the termination is in the best interest of the child.

7. Effect on inheritance rights and public benefits. The appointment of a permanency guardian does not affect the inheritance rights between a child and the child's parent or parents.

The appointment of a permanency guardian may not affect the child's entitlement to benefits due that child from any 3rd person, agency or state or the United States. The permanency guardian's resources and income are counted in determining eligibility for any public benefit to which the child may be entitled.

The permanency guardianship does not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

8. Resignation, death or incapacity of permanency guardian. Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the court. If a permanency guardian resigns, dies or becomes incapacitated, the District Court shall hold a judicial review and a permanency planning hearing at the earliest practicable time.

9. Preference. The District Court shall give preference for placement and permanency guardianship to a person nominated by a deceased permanency guardian in a valid will or by an incapacitated permanency guardian in a valid power of attorney, unless the District Court finds that the placement or permanency guardianship is not in the child's best interest.

10. Limitation. The District Court does not have authority to provide a guardianship subsidy for permanency guardianship under section 4308-D.

§4038-D. Guardianship subsidy

1. Establishment of program; use of federal funds. There is established in the department the Guardianship Subsidy Program, referred to in this section as "the program." 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, or under any waiver that the department receives pursuant to those Titles.

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

3. Definition of "special needs child." For purposes of this section, "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 difficult to place because of age or race;

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

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

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

B. The amount 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.

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

D. Subject to rules adopted by the department, the amount may include up to \$400 for reimbursement for legal expenses, including attorney's fees, incurred by the permanency guardian to complete the permanency guardianship in Indian tribal court cases.

5. Duration of guardianship subsidy. A guardianship subsidy may be provided for a period of time based on the special needs of a child. The

subsidy may continue until the termination of the permanency guardianship or until the permanency guardian is no longer caring for the child, at which time the guardianship subsidy ceases. If the child has need of educational benefits or has a physical, mental or emotional handicap, the guardianship subsidy may continue until the child has attained 21 years of age if the child, the parents and the department agree that the need for care and support exists.

6. Administration of program. Applications for the program may be submitted by a prospective permanency guardian. A written agreement between the permanency guardian entering into the program and the department must precede the order creating the permanency guardianship, except that an application may be filed subsequent to the creation of the permanency guardianship if there were facts relevant to the child's eligibility that were not presented at the time of placement or if the child was eligible for participation in the program at the time of placement and the permanency guardian was not apprised of the program.

7. Annual review required. If the subsidy continues for more than one year, the need for the subsidy must be reviewed annually. The subsidy continues regardless of the state in which the permanency guardian resides, or the state to which the permanency guardian moves, if the permanency guardian continues to be responsible for the child.

8. Death of permanency guardian. Upon the death of all persons serving as permanency guardian, the subsidy may be transferred to a new legal guardian as long as the child continues to be eligible for the guardianship subsidy pursuant to the terms of the most recent agreement with the permanency guardian. The department shall enter into a new agreement with the new legal guardian.

9. Adoption of rules. The department shall adopt rules for the program consistent with this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

10. Permanency guardian's eligibility for public benefits. The guardianship subsidy may not be counted as resources or income in the determination of the permanency guardian's eligibility for any public benefit.

Sec. 7. 22 MRSA §4052, sub-§2-A, ¶A, as amended by PL 2003, c. 408, §7, is further amended to read:

A. When a child has been in foster care for 15 of the most recent 22 months. The department must file the petition before the end of the child's 15th

month in foster care. In calculating when to file a termination petition:

(1) The time the child has been in foster care begins when the child is considered to have entered foster care as specified in section 4038, ~~subsection 7-A, paragraph A~~ 4038-B, subsection 1, paragraph B;

(2) When a child experiences multiple exits from and entries into foster care during the 22-month period, all periods in foster care must be accumulated; and

(3) The time in foster care does not include trial home visits or times during which the child is a runaway.

This paragraph does not apply if the department is required to undertake reunification efforts and the department has not provided to the family of the child such services as the court determines to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan;

See title page for effective date.

CHAPTER 373

H.P. 357 - L.D. 482

An Act To Ensure Adequate Health Care for Children

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

Sec. 1. 17-A MRSA §554, sub-§1, ¶B-2, as enacted by PL 2001, c. 429, §2, is amended to read:

B-2. Being a parent, foster parent, guardian or other person responsible for the long-term general care and welfare of a child under 16, recklessly fails to take reasonable measures to protect the child from the risk of further bodily injury after knowing:

(1) That the child had, in fact, sustained serious bodily injury or bodily injury under circumstances posing a substantial risk of serious bodily injury; and

(2) That such bodily injury was, in fact, caused by the unlawful use of physical force by another person; ~~or~~

Sec. 2. 17-A MRSA §554, sub-§1, ¶B-3 is enacted to read: