

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

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FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

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Lewiston, Maine
2005

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:

B-3. Being the parent, foster parent, guardian or other person having the care and custody of the child, knowingly deprives the child of necessary health care, with the result that the child is placed in danger of serious harm; or

Sec. 3. 17-A MRSA §557, as amended by PL 1995, c. 110, §2, is further amended to read:

§557. Other defenses

For the purposes of this chapter, a person who in good faith provides treatment for a child or dependent person by spiritual means through prayer ~~alone~~ may not for that reason alone be ~~deemed~~ determined to have knowingly endangered the welfare of that child or dependent person.

Sec. 4. 22 MRSA §4002, sub-§6, ¶B, as enacted by PL 1979, c. 733, §18, is amended to read:

B. Deprivation of adequate food, clothing, shelter, supervision or care, ~~including health care when that deprivation causes a threat of serious harm;~~

Sec. 5. 22 MRSA §4002, sub-§6, ¶B-1 is enacted to read:

B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;

Sec. 6. 22 MRSA §4013, as amended by PL 1983, c. 343, §2, is repealed.

See title page for effective date.

CHAPTER 374

H.P. 918 - L.D. 1320

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

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

Sec. 1. 22 MRSA §4003, sub-§3-A is enacted to read:

3-A. Kinship placement. Place children who are taken from the custody of their parents with an adult relative when possible;

See title page for effective date.

CHAPTER 375

S.P. 593 - L.D. 1611

An Act To Clarify That Certain Maine Landowner Liability Protection Laws Apply to Certain Railroad Properties, Railroad Rights-of-way and Utility Corridors

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

Sec. 1. 14 MRSA §159-A, sub-§1, ¶A, as amended by PL 1993, c. 622, §1, is further amended to read:

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted.

See title page for effective date.

CHAPTER 376

S.P. 476 - L.D. 1378

An Act To Amend the Medical Liability Laws Concerning Communications of Sympathy or Benevolence

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

Sec. 1. 24 MRSA §2907 is enacted to read:

§2907. Communications of sympathy or benevolence

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Relative" means an alleged victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister or spouse's parents. "Relative" includes these relationships that are created as a result of adoption. In addition, "relative" includes any person who has a domestic partner relationship with an alleged victim. As used in this paragraph, "domestic partner" is a person who has registered as a domestic partner pursuant to Title 22, section 2710.