

MAINE STATE LEGISLATURE

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STATE OF MAINE
129TH LEGISLATURE
FIRST SPECIAL AND SECOND REGULAR SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

November 2020

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STATE OF MAINE

129TH LEGISLATURE
FIRST REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 129th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE..... emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT..... legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 129th Legislature is Thursday, September 19, 2019. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

of a permit must be made available to a member of the public upon a request made to the municipal clerk.

LD 2041 An Act To Allow Access to and Ensure the Confidentiality of Records of Child Advocacy Centers ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BAILEY D	ONTP	

This bill allows confidential information related to services provided by a child advocacy center to be disclosed to a court if the court finds the information may be necessary for the determination of an issue before the court. If the court determines the information is necessary for the resolution of the issue, the bill authorizes the court to issue a protective order allowing the counsel of record and the clients of the counsel of record to review the information.

LD 2079 An Act To Implement the Recommendations of the Family Law Advisory Commission Concerning Adoption and Minor Guardianship PUBLIC 664

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM ONTP	H-758

This bill was reported by the committee pursuant to Joint Rule 353 and then referred back to the committee for processing in the normal course. This bill implements the recommendations of the Family Law Advisory Commission as submitted to the Joint Standing Committee on Judiciary on December 1, 2019, pursuant to Public Law 2019, chapter 417, Part A, section 111.

Part A addresses the consent to an adoption by a minor adoptee and the person or agency having legal custody or guardianship of a minor adoptee. It also eliminates the ambiguity in the statute regarding whether the Department of Health and Human Services may consent to more than one petitioner by explicitly allowing the department to consent to more than one petitioner if the department concludes that multiple petitioners could each provide a suitable adoptive home for the child. Part A amends the Adoption Act (Title 18-C, Article 9 of the Maine Revised Statutes) to lower the age of a minor's consent to the minor's adoption from 14 years of age to 12 years of age. Currently, a child 12 years of age or older must consent to the child's adoption by a permanency guardian.

Part B addresses the termination of parental rights in the context of adoption.

Part C addresses post-adoption contact rights for siblings separated by adoption. It requires the court to provide notice of an adoption to any sibling of the child who has visitation or contact with the child under Title 22, section 4068. Part C also amends the Adoption Act to authorize an adoption court to order post-adoption sibling contact for adoptees who lived with a sibling for two or more years if such contact would be in the adoptee's and sibling's best interests and each sibling's parent, guardian or custodian has consented to the order. This language permits certain rights in Title 22, section 4068 to be extended potentially to any child separated from siblings by adoption, not only those in the child protection system.

Part D addresses adoptions from permanency guardianship. The parental consent requirement that is now in Title 22, section 4038-E, subsection 8, paragraph B is retained but amended to provide that the adoption petition must be filed and adjudicated in accordance with the Adoption Act. It clarifies that a permanency guardian may not seek an order terminating the parental rights of a parent as part of a petition to adopt the child. With this change, if a parent whose rights have not been terminated does not consent to the adoption, the adoption cannot proceed so long as the permanency guardianship is in place.

Joint Standing Committee on Judiciary

Part D amends the permanency guardianship provisions to clearly state that the appointment terminates when the child is no longer a minor or upon the minor's death or adoption.

Part E addresses post-guardianship contact for former guardians and minors. It gives courts an additional tool to mitigate or avoid harm or unnecessary trauma to a minor who has a strong relationship with the minor's guardian by providing some rights of contact between the former guardian and the minor after the guardianship is terminated. The language also makes clear that a court terminating a guardianship has jurisdiction to enter an order and that the court has continuing jurisdiction unless a different court has exclusive jurisdiction under the so-called Home Court Act.

Committee Amendment "A" (H-758)

This amendment is the majority report of the committee. It clarifies that when the parent of a child is petitioning with that parent's spouse to adopt the child as a couple, often referred to as a stepparent adoption, the court is required to make findings about the background and qualities of the prospective adoptive parent, also referred to as the stepparent, and not the person who is already the child's parent.

This amendment strikes all of Part C of the bill, which proposes post-adoption contact for siblings separated by adoption.

Enacted Law Summary

Public Law 2019, chapter 664 implements the recommendations of the Family Law Advisory Commission as submitted to the Joint Standing Committee on Judiciary on December 1, 2019, pursuant to Public Law 2019, chapter 417, Part A, section 111.

Part A addresses the consent to an adoption by a minor adoptee and the person or agency having legal custody or guardianship of a minor adoptee. It amends the statute to make clear that courts are to take a bifurcated approach to the adoption proceeding if a petitioner is challenging the lack of consent from the person or agency, such as the Department of Health and Human Services. This change ensures that the court resolves the question of whether the person or agency unreasonably withheld its consent before the court makes findings regarding the requirements for the adoption itself, such as those set out in the Maine Revised Statutes, Title 18-C, section 9-308. The changes clarify that the court may alter the order of presentation of evidence if the person or agency has facts that the petitioner would need to include to prove the petitioner's contention that the person or agency unreasonably withheld its consent. Part A enables a court to require the person or agency to present its reasons for withholding consent and the facts supporting the decision before the petitioner presents evidence while the petitioner retains the burden of proof on the question of the person's or agency's alleged unreasonableness.

Part A amends the factors a court must consider when reviewing the reasonableness of an agency's withholding of consent to include a new factor: whether the agency granted consent to another petitioner who was previously approved by the agency or the court as the child's permanency placement.

Part A eliminates the ambiguity in the statute regarding whether the Department of Health and Human Services may consent to more than one petitioner by explicitly allowing the department to consent to more than one petitioner if the department concludes that multiple petitioners could each provide a suitable adoptive home for the child. The language gives the court authority to request the department to provide information and to make recommendations regarding the petitioners.

Part A amends the Adoption Act (Title 18-C, Article 9 of the Maine Revised Statutes) to lower the age of a minor's consent to the minor's adoption from 14 years of age to 12 years of age. Currently, a child 12 years of age or older must consent to the child's adoption by a permanency guardian.

Joint Standing Committee on Judiciary

Part B addresses the termination of parental rights in the context of adoption. The Adoption Act permits an adoption petitioner to file a petition to terminate the parental rights of the child's parent if that parent does not consent to the adoption or join the petition. The termination of parental rights standard in Title 18-C, section 9-204, subsection 3 is consistent with the Title 22 standard used in child protection cases, except that it does not include the language regarding the parent's failure to make a good faith effort to follow a reunification plan. Such plans are features of child protection matters but not adoption proceedings. The Adoption Act instead permits the court to consider the extent to which the parent had opportunities to rehabilitate and to reunify with the child, including actions by the child's other parent to foster or to interfere with a relationship between the parent and child or services provided by public or nonprofit agencies. This recent change to the termination of parental rights standard, however, does not entirely address the concerns about private termination of parental rights noted by the Law Court in *Adoption of Isabelle T.*, 2017 ME 220, a stepparent adoption case in which a child's mother and stepfather successfully petitioned to terminate the parental rights of the child's father. The Law Court vacated the termination and emphasized the importance of considering the merits of the adoption petitioner who would be added as a parent as part of the best interests determination when ruling on a petition to terminate parental rights. Part B includes language expressly requiring courts terminating parental rights to make specific written findings. Title 18-C, section 9-204 is amended to require that the findings address the background and qualities of the prospective adoptive parent. In addition, Part B requires a court to consider the parent's attempts to reunify or maintain a relationship with a child as part of its analysis of the parent's alleged unfitness. Finally, Part B revises the consent to termination provision to make clear that a judge's explanation of the effects of a termination order must be provided to the parent prior to the parent's execution of the consent.

Part C addresses adoptions from permanency guardianship. The parental consent requirement that is now in Title 22, section 4038-E, subsection 8, paragraph B is retained but amended to provide that the adoption petition must be filed and adjudicated in accordance with the Adoption Act. It clarifies that a permanency guardian may not seek an order terminating the parental rights of a parent as part of a petition to adopt the child. With this change, if a parent whose rights have not been terminated does not consent to the adoption, the adoption cannot proceed so long as the permanency guardianship is in place.

Part C amends the permanency guardianship provisions to clearly state that the appointment terminates when the child is no longer a minor or upon the minor's death or adoption.

Part D addresses post-guardianship contact for former guardians and minors. It gives courts an additional tool to mitigate or avoid harm or unnecessary trauma to a minor who has a strong relationship with the minor's guardian by providing some rights of contact between the former guardian and the minor after the guardianship is terminated. Specifically, the new provision permits a court, on timely motion of a parent or guardian, to order, at the time of the termination of the guardianship or the expiration of any transitional arrangement, rights of communication or contact, including overnight visitation, between a minor and the former guardian after the termination of the guardianship. The court may award such rights only if the parent and guardian consent or the court finds by clear and convincing evidence that the order is necessary to avoid a likelihood of harm to the minor resulting from severing the legal relationship with the former guardian; would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the minor; and is in the best interest of the minor due to the existing relationship between the minor and the former guardian because the former guardian was a primary caregiver and custodian of the minor for a significant period of time. The court is required to give due consideration to the specific objections of the parent to the entry of an order and to determine whether ordering a period of transitional arrangements is sufficient to mitigate harm to the minor. The language also makes clear that a court terminating a guardianship has jurisdiction to enter an order and that the court has continuing jurisdiction unless a different court has exclusive jurisdiction under the so-called Home Court Act.