

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY

H.P. 1480 - L.D. 2079

**An Act To Implement the Recommendations of the Family Law Advisory  
Commission Concerning Adoption and Minor Guardianship**

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

**PART A**

**Sec. A-1. 18-C MRSA §9-302**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

**§9-302. Consent for adoption**

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

A. The adoptee, if the adoptee is ~~14~~ 12 years of age or older;

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

C. A person or agency having legal custody or guardianship of the adoptee if the adoptee is a 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 court, may be overruled by the court. In order for the court to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence, that the person or agency acted unreasonably. The court shall determine whether the person or agency acted unreasonably in withholding consent prior to any hearing on whether to grant the adoption. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is remains on the petitioner, the person or agency should proceed ~~if the person or agency has important facts necessary to the petitioner in presenting the petitioner's case~~ present its reasons for withholding consent and the facts supporting the decision before the petitioner presents its evidence. The court shall consider the following:

(1) Whether the person or agency determined the needs and interests of the child;

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

(3) Whether the person or agency made the 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

(4-A) Whether an agency withholding consent to the petitioner consented to the adoption of the child by a person who is a preadoptive parent as defined in Title 22, section 4002, subsection 9-A or who was identified as an appropriate permanency placement in a court-approved permanency plan pursuant to Title 22, section 4038-B; and

(5) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding 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.

A petition for adoption must be pending before a consent is executed.

**2. Consent not required.** Consent to adoption is not required of:

A. A putative parent if the putative parent:

(1) Received notice and failed to respond to the notice within the prescribed time period;

(2) Waived the right to notice under section 9-201, subsection 3;

(3) Does not establish parentage of the child under section 9-201, subsection 9; or

(4) Holds no parental rights regarding the adoptee under the laws of the foreign country in which the adoptee was born;

B. A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter 6;

C. A parent who has executed a surrender and release pursuant to section 9-202;

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. A parent of an adoptee who is 18 years of age or older.

~~**3. Consent by department; notice.** When the department consents to the adoption of a child in its custody, the department shall immediately notify:~~

~~A. The District Court in which the action under Title 22, chapter 1071 is pending; and~~

~~B. The guardian ad litem for the child.~~

**4. Consent by department; notice.** This subsection applies when the department consents to the adoption of a child in its custody.

A. When the department consents to the adoption of a child in its custody, the department shall immediately notify:

(1) The District Court in which the action under Title 22, chapter 1071 is pending; and

(2) The guardian ad litem for the child.

B. The department may consent to more than one person petitioning to adopt a child in its custody. In such cases, the court may request that the department provide information and a recommendation regarding petitioners.

## **PART B**

**Sec. B-1. 18-C MRSA §9-204, sub-§3,** as amended by PL 2019, c. 417, Pt. A, §105, is further amended to read:

**3. Grounds for termination.** The court may order termination of parental rights if:

A. ~~The parent consents to the termination.—Consent must be after a judge has fully explained the effects of a termination order and the consent is written and voluntarily and knowingly executed in court before a judge.—The judge shall explain the effects of a termination order;~~ or

B. The court finds, based on clear and convincing evidence, that:

(1) Termination is in the best interest of the child; and

(2) Either:

(a) The parent is unwilling or unable to protect the child from jeopardy, as defined by Title 22, section 4002, subsection 6, and these circumstances are unlikely to change within a time that is reasonably calculated to meet the child's needs;

(b) The parent has been unwilling or unable to take responsibility for the child within a time that is reasonably calculated to meet the child's needs; or

(c) The parent has abandoned the child, as described in Title 22, section 4002, subsection 1-A.

~~In making findings pursuant to this paragraph, the court may 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.~~

**Sec. B-2. 18-C MRSA §9-204, sub-§3-A** is enacted to read:

**3-A. Required findings.** The court shall make specific written findings addressing the standards in subsection 3, paragraph B and the court shall consider the following:

A. With respect to subsection 3, paragraph B, subparagraph (1), the background and qualities of a prospective adoptive parent who is not already the parent of the child; and

B. With respect to subsection 3, paragraph B, subparagraph (2), the extent to which the parent who is the subject of the petition had opportunities to rehabilitate and to reunify with the child or to maintain a relationship with the child, including actions by the child's other parent to foster or to interfere with a relationship between the parent and the child or services provided by public or nonprofit entities.

## **PART C**

**Sec. C-1. 22 MRSA §4038-C, sub-§2**, as amended by PL 2017, c. 402, Pt. C, §66 and affected by PL 2019, c. 417, Pt. B, §14, is further amended to read:

**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-C, sections 5-207 and 5-208. A permanency guardianship terminates upon the minor's death, adoption or attainment of majority or as ordered by the court pursuant to this section.

**Sec. C-2. 22 MRSA §4038-E**, as amended by PL 2017, c. 402, Pt. C, §67 and Pt. D, §1 and c. 411, §12 and affected by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

### **§4038-E. Adoption from permanency guardianship**

A permanency guardian may petition the District Court to adopt the child in the permanency guardian's care and to change the child's name upon the issuance of the adoption decree. The petition must be filed and adjudicated in accordance with Title 18-C, Article 9, except that the adoption may not be granted unless each living parent identified in the child protection action whose rights have not been terminated has executed a consent to the adoption pursuant to Title 18-C, section 9-202 or the court finds that such consent is not required pursuant to Title 18-C, section 9-302, subsection 2. A permanency guardian may not seek an order terminating the parental rights of a parent as part of a petition to adopt the child.

## **PART D**

**Sec. D-1. 18-C MRSA §5-211**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

### **§5-211. Transitional arrangement for minors; continued contact with former guardian after termination**

**1. Transitional arrangements.** In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the minor. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation. Such orders must be time-limited and

expire not later than 6 months after the entry of the order or at the conclusion of the minor's current school year, whichever is later. In determining the best interest of the minor, a court may consider the minor's relationship with the guardian and need for stability.

**2. Continued contact with former guardian after termination.** On timely motion of a parent or a guardian, the court terminating a guardianship may enter an order at the time of the termination or the expiration of a transitional arrangement pursuant to subsection 1 providing for communication or contact, including overnight visitation, between a minor and the former guardian after the termination of the guardianship if:

A. The parent and guardian consent to the order; or

B. The court finds by clear and convincing evidence that ordering such continued communication or contact over the objection of the minor's parent:

(1) Is necessary to avoid a likelihood of harm to the minor resulting from severing the legal relationship with the former guardian;

(2) Would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the minor; and

(3) 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.

Before ordering communication or contact pursuant to paragraph B the court shall grant due consideration to the specific objections of the parent to the entry of an order and determine whether ordering a period of transitional arrangements pursuant to subsection 1 is sufficient to mitigate harm to the minor. Except as Title 4, section 152, subsection 5-A may otherwise require, the court issuing the order for post-guardianship contact has continuing jurisdiction to modify, enforce or terminate the order and shall follow the procedure set forth in section 5-210.