

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Specify the Rights of Parents

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

Sec. 1. 22 MRSA §4004, sub-§4 is enacted to read:

4. Nontraditional parenting. In determining whether to take action under this chapter, and in determining the action to take, the department may not discriminate against parents who engage in nontraditional methods of parenting.

Sec. 2. 22 MRSA §4005, sub-§2, as amended by PL 1983, c. 783, §2, is further amended to read:

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel. The court shall notify parents at the first available opportunity that the parents have the right to inspect all discovery provided by the department.

Sec. 3. 22 MRSA §4005-E, sub-§2, as amended by PL 2007, c. 371, §2, is further amended to read:

2. Placement. A relative who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to order that the child be placed with the relative. A relative who has not been designated as a participant under section 4005-D may make the request for placement in writing. In making a decision on the request, the court shall ~~make placement~~place the child with a relative ~~a priority for consideration for placement if that placement is in the best interests of the child and consistent with section 4003, as long as placement with a relative does not place the child in jeopardy or substantially interfere with reunification.~~

Sec. 4. 22 MRSA §4008, sub-§3, ¶L, as amended by PL 2015, c. 381, §2, is further amended to read:

L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; ~~and~~

Sec. 5. 22 MRSA §4008, sub-§3, ¶M, as enacted by PL 2015, c. 381, §3, is amended to read:

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B); and

Sec. 6. 22 MRSA §4008, sub-§3, ¶N is enacted to read:

N. A person designated by one or both parents as a participant.

Sec. 7. 22 MRSA §4008, sub-§8 is enacted to read:

8. Sharing of information. Nothing in this section prohibits a parent, other family member, participant or caretaker of a child from sharing any information about the child, the family or the circumstances involving the child that is the subject of an investigation or proceeding under this chapter.

Sec. 8. 22 MRSA §4021-A is enacted to read:

§ 4021-A. Independent testimony

1. Roster. The department shall develop a roster of appropriate professionals capable and appropriately credentialed to investigate, interview or provide expert testimony that may be admissible in a proceeding under this chapter.

2. Additional expert testimony. At the request of a parent, the court shall order a professional on the roster under subsection 1 to investigate, interview or provide expert testimony as an additional expert in addition to any investigation, interview or expert testimony provided by one or more persons already involved by the department. The State shall pay the costs of the additional expert's services.

Sec. 9. 22 MRSA §4033, sub-§2-A is enacted to read:

2-A. Temporary guardian designated by parent. Upon receipt of notice served in accordance with subsection 2, a parent is authorized to designate a temporary guardian for the parent's child or children, with priority given to keeping siblings together, prior to a hearing on a preliminary protection order. The temporary guardian must be present at the hearing unless the petitioner has agreed to the parent's designation of guardian. The district court may issue an order separate from the child protection matter setting forth the length of temporary guardianship and any conditions or restrictions of contact and any other provisions the court believes are in the child's best interest.

Sec. 10. 22 MRSA §4041, sub-§1-A, ¶A, as enacted by PL 2001, c. 559, Pt. CC, §5, is amended to read:

A. The department shall:

(1) Develop a rehabilitation and reunification plan as provided in this subparagraph.

(a) In developing the rehabilitation and reunification plan, the department shall make good faith efforts to seek the participation of the parent. Information that must be included in developing the plan includes the problems that present ~~a risk of harm~~serious harm or a threat of serious harm to the child, the services needed to address those problems, provisions to ensure the safety of the child while the parent engages in services, a means to measure the extent to which progress has been made, and visitation that protects the child's physical and emotional well-being. With this information, the department shall prepare a written rehabilitation and reunification plan.

(b) The department shall circulate the plan to the parties at least 10 days before a scheduled court hearing and shall present the plan to the court for filing at that hearing.

(c) The rehabilitation and reunification plan must include the following:

(i) The reasons for the removal of the child from home;

(ii) The changes that are necessary to eliminate jeopardy to the child while in the care of a parent;

(iii) Rehabilitation services that ~~will be provided~~the department is responsible for providing or making available and that must be completed satisfactorily prior to the child's returning home;

(iv) Services that ~~must be provided or made~~the department is responsible for providing or making available to assist the parent in rehabilitating and reunifying with the child, as appropriate to the child and family, including, but not limited to, reasonable transportation for the parent for visits and services, child care, housing assistance, assistance with transportation to and from required services and other services that support reunification;

(v) A schedule of and conditions for visits between the child and the parent designed to provide the parent and child time together in settings that provide as positive a parent-child interaction as can practicably be achieved while ensuring the emotional and physical well-being of the child when visits are not detrimental to the child's best interests;

(vi) Any use of kinship support, including, but not limited to, placement, supervision of visitation, in-home support or respite care;

(vii) A reasonable time schedule for proposed reunification, reasonably calculated to meet the child's needs; and

(viii) A statement of the financial responsibilities of the parent and the department during the reunification process;

(d) The department is responsible for providing or making available all rehabilitation services required in the rehabilitation and reunification plan. If the department fails to provide or make available the required services within a reasonable time schedule, the department shall report the failure to the court, which shall extend the time schedule for the proposed reunification as provided in the plan to take into account the failure to provide or make available the required services;

(2) Provide the parent with prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(a) The child's residence and, when practicable, at least 7 days' advance written notice of a planned change of residence; and

(b) Any serious injuries, major medical care received or hospitalization of the child;

(3) Make good faith efforts to cooperate with the parent in the pursuit of the plan;

(4) Periodically review with the parent the progress of the plan and make any appropriate changes in that plan. If the parties disagree about the proposed changes in the plan, any party may seek an informal conference with all other parties in an effort to resolve the disagreement, prior to initiating court action. If the parties are unable to agree after an informal conference, the parties may have access to the court's case management system. This subparagraph may not be construed to limit the court's authority to manage and control any cases within the court;

(5) Petition for judicial review and return of custody of the child to the parent at the earliest appropriate time; and

(6) Petition for termination of parental rights at the earliest possible time that it is determined that family reunification efforts will be discontinued pursuant to subsection 2 and that termination is in the best interests of the child.

Sec. 11. 22 MRSA §4052, sub-§2-A, ¶A, as amended by PL 2005, c. 372, §7, is further amended to read:

A. When a child has been in foster care for ~~15~~24 of the most recent ~~22~~30 months. The department must file the petition before the end of the child's ~~15th~~24th 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-B, subsection 1, paragraph B;

(2) When a child experiences multiple exits from and entries into foster care during the ~~22-~~30-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. The time during which the department failed to provide or make available the services required in the rehabilitation and reunification plan under section 4041, subsection 1-A within a reasonable time schedule is not included in the calculation of the time in foster care;

Sec. 12. 22 MRSA §4055, sub-§1-A, ¶B, as amended by PL 2015, c. 360, §4, is further amended to read:

B. The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding or soliciting suicide;

(5) Aggravated assault;

(6) Rape;

- (7) Gross sexual misconduct or gross sexual assault;
- (8) Sexual abuse of minors;
- (9) Incest;
- (10) Kidnapping;
- (11) Promotion of prostitution, sexual exploitation of a minor, sex trafficking or aggravated sex trafficking; or
- (12) A comparable crime in another jurisdiction;

The court may consider rehabilitative measures taken by the parent to address the underlying criminal behavior identified in this paragraph.

Sec. 13. Review. The Department of Health and Human Services shall provide within available resources review of all cases where the courts have denied preliminary protection, jeopardy or termination of parental rights petitions. This review must include but is not limited to the quality of evidence presented, the thoroughness of case workers' investigations, the timeliness and good faith efforts at reunification, or any other information that is pertinent. By December 6, 2017, the department shall provide a report on its findings to the Joint Standing Committee on Health and Human Services.

SUMMARY

This bill amends the Child and Family Services and Child Protection Act in several ways.

1. The bill prohibits the Department of Health and Human Services from discriminating against parents who engage in nontraditional methods of parenting when the department determines whether to take any child protective actions and in determining what actions to take.

2. The bill requires the court to give appropriate weight to the importance of maintaining the familial bond connecting the child and the relative requesting placement when determining the best interests of the child.

3. The bill requires the department to share confidential records with a person one or both parents designate as a participant.

4. The bill clarifies that the restrictions on the release of confidential information do not prohibit a parent, other family member, participant or caretaker of a child from sharing any information about the child, the family or the circumstances involving the child that is the subject of an investigation or proceeding under this Act as long as the information shared was not obtained by the parent, other family member, participant or caretaker from confidential records of the department.

5. The bill requires the department to develop a roster of appropriate professionals capable and appropriately credentialed to investigate, interview or provide expert testimony that may be admissible in a proceeding under this Act. At the request of a parent, the court is required to order a professional on the roster to investigate, interview or provide expert testimony in addition to any investigation, interview or expert testimony provided by one or more persons already involved by the department. The State is responsible for paying the costs of the additional expert's services.

6. The bill amends the law concerning rehabilitation and reunification plans to ensure that the department provide or make available any services the department identifies as necessary for a parent to receive and complete to be reunited with the child. If the department fails to provide or make those services available, the department is required to report the failure to the court, and the court will extend the time within which the parent is required to meet the requirements of the plan. Related to the failure of the department to provide or make available the identified services is the adjustment to the calculation of the time the child is considered in foster care for the purpose of triggering the termination of parental rights. The period of time during which the department is required to provide or make available services but fails to do so is not included in the time the child is considered in foster care.

7. Current law provides that the department may file a termination of parental rights petition when the child has been in foster care for at least 15 of the most recent 22 months. The bill extends those periods to 24 months and 30 months, respectively.

8. The bill provides an opportunity for a parent who has been convicted of a crime to show the rehabilitative steps taken to address the underlying criminal behavior, and thus rebut the presumption favoring termination of parental rights.