



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1152

S.P. 352

In Senate, March 17, 2011

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

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator CRAVEN of Androscoggin.  
Cosponsored by Representative WEBSTER of Freeport and  
Senators: ALFOND of Cumberland, ROSEN of Hancock, SULLIVAN of York,  
Representatives: NASS of Acton, PETERSON of Rumford, SANBORN of Gorham,  
STUCKEY of Portland, WAGNER of Lewiston.

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

2 **Sec. 1. 22 MRSA §4002, sub-§9-D** is enacted to read:

3 **9-D. Resource family.** "Resource family" means a person or persons who provide  
4 care to a child in the child welfare system and who is a foster parent, adoptive parent or a  
5 member of the child's extended birth family.

6 **Sec. 2. 22 MRSA §4036-B, sub-§3-A** is enacted to read:

7 **3-A. Notification to relatives.** Except as required by family or domestic violence  
8 safety precautions, the department shall exercise due diligence to identify and provide  
9 notice to all known grandparents and other adult relatives within 30 days after the  
10 removal of a child from the custody of a parent or custodian.

11 **Sec. 3. 22 MRSA §4037-A** is enacted to read:

12 **§4037-A. Extended care**

13 A person who is 18, 19 or 20 years of age and who attained the age of 18 years while  
14 in the care and custody of the State may continue to receive care and support if the  
15 person:

16 **1. School enrollment.** Is enrolled in secondary school or its equivalent or is  
17 enrolled in postsecondary or vocational school;

18 **2. Removal of barriers to employment.** Is participating in a program or activity  
19 that promotes employment or removes barriers to employment;

20 **3. Employment.** Is employed for at least 80 hours per month; or

21 **4. Special circumstances.** Is found to be in special circumstances, including but not  
22 limited to being incapable of qualifying under subsection 1, 2 or 3 due to a documented  
23 medical or behavioral health condition.

24 A person who qualifies for care and support under this section may be placed in a  
25 supervised setting in which the person lives independently, in a foster home or in a group  
26 residential setting. The District Court shall hold a judicial review in accordance with the  
27 procedures under section 4038, subsections 5 and 6 for each person who qualifies for care  
28 and support under this section at least once every 12 months.

29 **Sec. 4. 22 MRSA §4038, sub-§5,** as amended by PL 2003, c. 408, §6, is further  
30 amended to read:

31 **5. Hearing.** The court shall hear evidence and shall consider the original reason for  
32 the adjudication and disposition under sections 4035 and 4036, the events that have  
33 occurred since then ~~and~~, the efforts of the parties as set forth under section 4041 and the  
34 provision of extended care under section 4037-A. After hearing or by agreement, the  
35 court shall make written findings that determine:

- 1 A. The safety of the child in the child's placement;
- 2 B. The continuing necessity for and appropriateness of the child's placement;
- 3 C. The effect of a change in custody on the child;
- 4 D. The extent of the parties' compliance with the case plan and the extent of
- 5 progress that has been made toward alleviating or mitigating the causes necessitating
- 6 placement in foster care;
- 7 E. A likely date by which the child may be returned to and safely maintained in the
- 8 home or placed for adoption or legal guardianship; and
- 9 F. If the child is 16 years of age or older, whether or not the child is receiving
- 10 instruction to aid the child in independent living.

11 **Sec. 5. 22 MRSA §4038-C, sub-§1**, as enacted by PL 2005, c. 372, §6, is  
12 amended to read:

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

- 15 A. Has the ability to provide a safe home for the child;
- 16 B. Has a close emotional bond with the child and that the child has a close
- 17 emotional bond with the prospective permanency guardian;
- 18 C. Is willing and able to make an informed, long-term commitment to the child; ~~and~~
- 19 D. Has the skills to care for the child ~~and to obtain needed information about and~~
- 20 ~~assistance with any special needs of the child; and~~
- 21 E. Has submitted to having fingerprints taken for the purposes of a national criminal
- 22 history record check.

23 **Sec. 6. 22 MRSA §4038-C, sub-§13** is enacted to read:

24 **13. Resource family license.** The department shall issue a resource family license  
25 in accordance with standards adopted by the department to a resource family that meets  
26 the requirements and standards for permanency guardianship of children in foster care  
27 under subsection 1 and for a license fee established by the department.

28 **Sec. 7. 22 MRSA §4038-D, sub-§2**, as enacted by PL 2005, c. 372, §6, is  
29 amended to read:

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

36 **Sec. 8. 22 MRSA §4038-D, sub-§3**, as enacted by PL 2005, c. 372, §6, is  
37 repealed.

1           **Sec. 9. 22 MRSA §4038-D, sub-§4**, as enacted by PL 2005, c. 372, §6, is  
2 amended to read:

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

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

7           B. The amount may not exceed the total cost of caring for the child if the child were  
8 to remain in the care or custody of the department, without regard to the source of the  
9 funds.

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

12          D. Subject to rules adopted by the department, ~~the amount may include up to \$400~~  
13 ~~for expenses up to \$2,000 per child may be reimbursed. This reimbursement is for~~  
14 ~~legal expenses required to complete the permanency guardianship, including~~  
15 ~~attorney's fees, incurred by the permanency guardian to complete the permanency~~  
16 ~~guardianship in Indian tribal court cases and travel expenses.~~

17           **Sec. 10. 22 MRSA §4038-D, sub-§5**, as enacted by PL 2005, c. 372, §6, is  
18 amended to read:

19           **5. Duration of guardianship subsidy.** A guardianship subsidy may be provided for  
20 a period of time based on the ~~special~~ needs of a child. The subsidy may continue until the  
21 termination of the permanency guardianship or until the permanency guardian is no  
22 longer caring for the child, at which time the guardianship subsidy ceases. If the child  
23 has need of educational benefits or has a physical, mental or emotional handicap, the  
24 guardianship subsidy may continue until the child has attained 21 years of age if the  
25 child, the parents and the department agree that the need for care and support exists.

26           **Sec. 11. 22 MRSA §4038-D, sub-§8**, as enacted by PL 2005, c. 372, §6, is  
27 repealed.

28           **Sec. 12. 22 MRSA §4038-E** is enacted to read:

29           **§4038-E. Adoption from permanency guardianship**

30           The District Court in a judicial review of a permanency guardianship appointment  
31 may accept a petition for the adoption of the subject of the permanency guardianship  
32 appointment. The District Court's decision regarding adoption must be guided by the best  
33 interest of the child, and an adoption is subject to the agreement of all parties to the  
34 review. The District Court is granted jurisdiction over adoptions under this section.

35           **Sec. 13. 22 MRSA §4059** is enacted to read:

1 **§4059. Reinstatement of parental rights**

2 The department may petition the District Court to reinstate the parental rights of a  
3 parent who has an order terminating parental rights in effect. The child must have been  
4 in the custody of the department for at least 12 months after the termination of parental  
5 rights. The petition must indicate evidence of a material change in circumstances since  
6 the termination of parental rights that can be reasonably expected to provide for safety for  
7 the child, the initial reasons for termination of parental rights and verification of the  
8 willingness and capacity of the parent and child to have parental rights reinstated. The  
9 department shall develop and attach to the petition a permanency plan that provides  
10 transition services to the family, which may include a trial home visit by the child to the  
11 family. The department may assess the trial home visit and may dismiss the petition if it  
12 is in the child’s best interest without leave of the court. The court may hold a preliminary  
13 hearing and issue a temporary order in which the child may be conditionally placed with  
14 the parent for up to 3 months. The court shall hold a final hearing after the child has been  
15 placed with the parent for 3 months. At the final hearing, the court may issue an order of  
16 reinstatement of parental rights and terminate jurisdiction if the court finds that  
17 reinstatement is in the child’s best interest, taking into account whether the parent has  
18 remedied conditions, the age and maturity of the child, the child’s ability to express a  
19 preference and any likelihood of future risk to the child. Both the parent and child must  
20 consent to reinstatement. Reinstatement of parental rights may include both parents.

21 **SUMMARY**

22 This bill makes the following changes to the Child and Family Services and Child  
23 Protection Act.

24 1. It requires that the Department of Health and Human Services, within 30 days of  
25 the removal of a child from the custody of the child's parents, exercise due diligence to  
26 identify and provide notice to all grandparents and other adult relatives of the child,  
27 except in cases of family or domestic violence. This legislation is required under the  
28 federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public  
29 Law 110-351.

30 2. It provides services for youth who are in foster care at 18 years of age and are at  
31 risk of leaving care without a permanent family or sufficient life skills and supports to  
32 manage independence. This legislation is consistent with provisions of the federal  
33 Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law  
34 110-351 that allow states to draw federal funds to support older youth but require judicial  
35 oversight and support by a state agency.

36 3. It amends language in the statutes governing permanency guardianship. It removes  
37 the requirement that a child must be identified as a special needs child to receive a  
38 guardianship subsidy. It amends the law to allow permanency guardians the option of  
39 receiving nonrecurring reimbursement for expenses associated with becoming  
40 permanency guardians. It removes language that allows the guardianship subsidy to be  
41 transferred to a new permanency guardian upon death or disability of the original

1 permanency guardian. It provides that a permanency guardian is subject to a  
2 fingerprint-based background check.

3 4. It establishes a new category of licensure in child welfare services, the resource  
4 family license. This license is for a person or persons who are foster parents, adoptive  
5 parents or members of a child's extended birth family who provide care to a child.

6 5 It provides for the adoption of a child who was previously in foster care and is the  
7 subject of a permanency guardianship order when the permanency guardian and the child  
8 determine adoption is in the best interest of the child.

9 6. It allows for the reinstatement of parental rights for a parent after a period of 12  
10 months after a termination of parental rights upon a finding that there has been a material  
11 change in circumstances that indicate the parent is now able to provide a safe home and is  
12 willing to care for the child. The bill allows the court to hold a hearing to determine  
13 reinstatement in accordance with the best interest of the child, whether the parent has  
14 remedied conditions and the child's wishes. The bill provides that only the department  
15 may petition to reinstate parental rights.