

**§9-304. Investigation; guardian ad litem; registry**

**1. Background check; study and report.** Upon the filing of a petition for adoption of a minor child, the court shall request a background check and shall direct the department or a licensed child-placing agency to conduct a study and make a report to the court.

A. The study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. The department or licensed child-placing agency shall submit the report to the court within 60 days.

(1) If the court has a report that provides sufficient, current information, the court may waive the requirement of a study and report.

(2) If the petitioner is a relative of the child or the spouse or domestic partner of the child's parent, the court may waive the requirement of a study and report. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court shall request a background check for each prospective adoptive parent who is not a parent of the child. The background check must include a screening for child abuse cases in the records of the department and criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each prospective parent who is not a parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the court for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the court are for official use only and may not be disseminated outside the court except as required under Title 22, section 4011-A.

(7) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The court shall collect the total fee and transfer

the appropriate funds to the Department of Public Safety and the department. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

The court may waive the background check of a prospective adoptive parent if a previous background check was completed by a court or by the department under this subsection within a reasonable period of time and the court is satisfied that nothing new that would be included in the background check has transpired since the last background check.

This subsection does not authorize the court to request a background check for a petitioner who is also the current legal parent of the child.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §17 (AFF).]

**2. Background checks by department.** The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption, conduct background checks for each prospective adoptive parent of a minor child in its custody.

A. The department may request a background check for each prospective adoptive parent who is not a parent of the child. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each prospective parent who is not a parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering a petition for adoption under subsection 1. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Child's background.** This subsection governs the collection and disclosure of information about the background of a child subject to a petition for adoption under subsection 1.

A. The department, the licensed child-placing agency or any other person who acts to place or assist in placing a child for adoption shall make reasonable efforts to obtain medical and genetic information about the child, the parent who gave birth to the child and a parent who was a source of the gametes used in the child's conception. Specifically, the department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall attempt to obtain from the child's parents any information concerning:

(1) A current medical, psychological and developmental history of the child, including an account of the child's prenatal care and medical condition at birth, results of newborn screening, any drug or medication taken during pregnancy by the parent who gave birth to the child, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and

(2) Relevant information concerning the medical, psychological and social history of a parent who was the source of the gametes used in the child's conception, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health during pregnancy of the parent who gave birth to the child and the health of a parent who was the source of the gametes used in the child's conception at the time of the child's birth. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption may request from donors or gestational carriers, as defined in Title 19-A, section 1832, their medical or genetic information identical to that described in paragraph A, subparagraphs (1) and (2) and shall make reasonable efforts to obtain any medical and genetic information concerning such individuals that is in the possession of the child's parent or parents. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Prior to the child being placed for adoption, the department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall provide the information described in paragraph A to the prospective adoptive parents. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If the department, the licensed child-placing agency or any other person who acts to place or assists in placing the child for adoption has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The prospective adoptive parents must be informed in writing if any of the information described in this subsection cannot be obtained, either because the records are unavailable or because the parents are unable or unwilling to consent to its disclosure or to be interviewed. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. If after a child is placed for adoption and either before or after the adoption is final the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the child's parents, donors or gestational carriers or the child may be useful in diagnosis or treatment, the prospective adoptive or adoptive parents may request that the department, the licensed child-placing agency or any other person who placed or assisted to place the child attempt to obtain additional information. The department, licensed child-placing agency or other person shall attempt to obtain the information promptly and shall disclose any information collected to the

prospective adoptive or adoptive parents as soon as reasonably possible. The department, licensed child-placing agency or other person may charge a fee to the prospective adoptive or adoptive parents to cover the cost of obtaining and providing the additional information. Fees collected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall file the information collected with the court and, if it appears that the adoption will be granted and this information has not previously been made available to the adoptive parents pursuant to Title 22, section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection 8, with protection for the identity of persons other than the child. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be in compliance with this subsection. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Rebuttable presumption; sexual offenses.** There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if the adoption were granted and that the adoption is not in the best interest of the child if the court finds that the petitioner for the adoption of a minor child:

A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the petitioner was at least 5 years older than the minor at the time of the offense, except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the petitioner and the minor victim at the time of the offense; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

The petitioner may present evidence to rebut the presumption.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Probationary period.** The court may require that a minor child subject to a petition for adoption under this section live for one year in the home of the petitioner before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Guardian ad litem.** The court may appoint a guardian ad litem for a minor child subject to a petition for adoption under this section at any time during the proceedings.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Adoption registry and services.** Before the adoption of a minor child is decreed, the court shall ensure that the petitioners are informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Declaration; name change.** If the court is satisfied with the identity and relations of the parties to a petition for adoption under this section, with the ability of the petitioner to bring up and educate the child properly, considering the condition of the child's parents, and with the fitness and propriety of the adoption, the court shall make a decree setting forth the facts and declaring that from that date the child is the child of the petitioner and that the child's name is changed, without requiring public notice of that change.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**9. Certified copy of birth certificate; certificate of adoption.** A certified copy of the birth certificate of the child proposed for adoption must be presented with the petition for adoption if the certified copy can be obtained or made available by filing a delayed birth registration. After the adoption has been decreed, the register shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**10. Transfer of long-term care or custody without court order.** Before the adoption is decreed under subsection 8, the court shall ensure that the petitioners are informed that the transfer of the long-term care and custody of the child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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