



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1304

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H.P. 901

House of Representatives, April 4, 2017

### An Act To Specify the Rights of Parents

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative SAMPSON of Alfred.  
Cosponsored by Senator KEIM of Oxford and  
Representatives: ESPLING of New Gloucester, GILLWAY of Searsport, MALABY of  
Hancock, O'CONNOR of Berwick, SIROCKI of Scarborough.

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

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

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

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

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

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

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

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

28 L. To a licensing board of a mandated reporter, in the case of a mandated reporter  
29 under section 4011-A, subsection 1 who appears from the record or relevant  
30 circumstances to have failed to make a required report. Any information disclosed by  
31 the department personally identifying a licensee's client or patient remains  
32 confidential and may be used only in a proceeding as provided by Title 5, section  
33 9057, subsection 6; ~~and~~

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

36 M. Law enforcement authorities for entry into the National Crime Information  
37 Center database of the Federal Bureau of Investigation and to a national information  
38 clearinghouse for missing and exploited children operated pursuant to 42 United  
39 States Code, Section 5773(b). Information disclosed pursuant to this paragraph is

1 limited to information on missing or abducted children or youth that is required to be  
2 disclosed pursuant to 42 United States Code, Section 671(a)(35)(B); and

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

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

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

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

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

11 **§4021-A. Independent testimony**

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

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

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

21 **2-A. Temporary guardian designated by parent.** Upon receipt of notice served in  
22 accordance with subsection 2, a parent is authorized to designate a temporary guardian  
23 for the parent's child or children, with priority given to keeping siblings together, prior to  
24 a hearing on a preliminary protection order. The temporary guardian must be present at  
25 the hearing unless the petitioner has agreed to the parent's designation of guardian. The  
26 district court may issue an order separate from the child protection matter setting forth the  
27 length of temporary guardianship and any conditions or restrictions of contact and any  
28 other provisions the court believes are in the child's best interest.

29 **Sec. 10. 22 MRSA §4041, sub-§1-A, ¶A**, as enacted by PL 2001, c. 559, Pt. CC,  
30 §5, is amended to read:

31 A. The department shall:

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

34 (a) In developing the rehabilitation and reunification plan, the department  
35 shall make good faith efforts to seek the participation of the parent.  
36 Information that must be included in developing the plan includes the  
37 problems that present ~~a risk of harm~~ serious harm or a threat of serious harm

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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;

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

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

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

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

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

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

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

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

24 A. When a child has been in foster care for ~~15~~ 24 of the most recent ~~22~~ 30 months.  
25 The department must file the petition before the end of the child's ~~15th~~ 24th month in  
26 foster care. In calculating when to file a termination petition:

27 (1) The time the child has been in foster care begins when the child is considered  
28 to have entered foster care as specified in section 4038-B, subsection 1,  
29 paragraph B;

30 (2) When a child experiences multiple exits from and entries into foster care  
31 during the ~~22-month~~ 30-month period, all periods in foster care must be  
32 accumulated; and

33 (3) The time in foster care does not include trial home visits or times during  
34 which the child is a runaway.

35 This paragraph does not apply if the department is required to undertake reunification  
36 efforts and the department has not provided to the family of the child such services as  
37 the court determines to be necessary for the safe return of the child to the child's  
38 home consistent with the time period in the case plan. The time during which the  
39 department failed to provide or make available the services required in the  
40 rehabilitation and reunification plan under section 4041, subsection 1-A within a  
41 reasonable time schedule is not included in the calculation of the time in foster care;



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

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

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

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

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

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

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