

Title 18-A: PROBATE CODE

Article 9: Adoption

Table of Contents

Part 1. GENERAL PROVISIONS	3
Section 9-101. SHORT TITLE.....	3
Section 9-102. DEFINITIONS.....	3
Section 9-103. JURISDICTION.....	4
Section 9-104. VENUE; TRANSFER.....	5
Section 9-105. RIGHTS OF ADOPTED PERSONS.....	5
Section 9-106. LEGAL REPRESENTATION.....	6
Section 9-107. INDIAN CHILD WELFARE ACT.....	6
Section 9-108. APPLICATION OF PRIOR LAWS.....	6
Part 2. ESTABLISHMENT OF PATERNAL RIGHTS AND TERMINATION OF PARENTAL RIGHTS	7
Section 9-201. ESTABLISHMENT OF PATERNITY.....	7
Section 9-202. SURRENDER AND RELEASE; CONSENT.....	8
Section 9-203. DUTIES AND RESPONSIBILITIES SUBSEQUENT TO SURRENDER AND RELEASE.....	10
Section 9-204. TERMINATION OF PARENTAL RIGHTS.....	11
Section 9-205. REVIEW.....	11
Part 3. ADOPTION PROCEDURES	12
Section 9-301. PETITION FOR ADOPTION AND CHANGE OF NAME; FILING FEE.....	12
Section 9-302. CONSENT FOR ADOPTION.....	12
Section 9-303. PETITION.....	14
Section 9-304. INVESTIGATION; GUARDIAN AD LITEM; REGISTRY.....	15
Section 9-305. EVIDENCE; PROCEDURE.....	19
Section 9-306. ALLOWABLE PAYMENTS; EXPENSES.....	19
Section 9-307. ADOPTION NOT GRANTED.....	20
Section 9-308. FINAL DECREE; DISPOSITIONAL HEARING.....	20
Section 9-309. APPEALS.....	22
Section 9-310. RECORDS CONFIDENTIAL.....	22
Section 9-311. INTERSTATE PLACEMENTS.....	23
Section 9-312. FOREIGN ADOPTIONS.....	23
Section 9-313. ADVERTISEMENT.....	23
Section 9-314. IMMUNITY FROM LIABILITY FOR GOOD FAITH REPORTING; PROCEEDINGS.....	24
Section 9-315. ANNULMENT OF THE ADOPTION DECREE.....	25
Part 4. ADOPTION ASSISTANCE PROGRAM	25
Section 9-401. AUTHORIZATION; SPECIAL NEEDS CHILDREN.....	25

Section 9-402. ADOPTION ASSISTANCE..... 26
Section 9-403. ADMINISTRATION..... 27
Section 9-404. RULES..... 28

Maine Revised Statutes
Title 18-A: PROBATE CODE
Article 9: Adoption

Part 1: GENERAL PROVISIONS

§9-101. SHORT TITLE

This article may be known and cited as "The Adoption Act." [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-102. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(a). "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). "Adoption services" means services related to adoptions, including but not limited to adoptive home studies, search services and adoption counseling services.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). "Adult" means a person who is 18 years of age or older.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). "Child" means a person who is under 18 years of age.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). "Consent," used as a noun, means a voluntary agreement to an adoption by a specific petitioner that is executed by a parent or custodian of the adoptee.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). "Department" means the Department of Health and Human Services.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

(g). "Licensed child-placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). "Parent" means a person who:

(1). Has established a parent-child relationship with the child under Title 19-A, chapter 61; or [2015, c. 296, Pt. C, §5 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

(2). When no person described in paragraph (1) exists, is the legal guardian of the child. [2015, c. 296, Pt. C, §5 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. C, §5 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

(i). "Petitioner" means a person filing a petition to adopt an adult or child, and includes both petitioners under a joint petition, except as otherwise provided.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(j). "Putative father" means a man who is the alleged biological father of a child but whose paternity has not been legally established.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(k). "Surrender and release," used as a noun, means a voluntary relinquishment of all parental rights to a child to the department or a licensed child-placing agency for the purpose of placement for adoption.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 689, §B6 (REV). 2015, c. 296, Pt. C, §5 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§9-103. JURISDICTION

(a). Subject to Title 4, section 152, subsection 5-A, the Probate Court has exclusive jurisdiction over the following:

(1). Petitions for adoption; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Consents and reviews of withholdings of consent by persons other than a parent; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). Surrenders and releases; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). Termination of parental rights proceedings brought pursuant to section 9-204; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). Proceedings to determine the rights of putative fathers of children whose adoptions or surrenders and releases are pending before the Probate Court; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). Reviews conducted pursuant to section 9-205. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2015, c. 460, §7 (AMD) .]

(b). The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection (a) if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

[2015, c. 460, §7 (AMD) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 460, §7 (AMD).

§9-104. VENUE; TRANSFER

(a). If the adoptee is placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the court in the county where:

- (1). The petitioner resides; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). The adoptee resides or was born; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (3). An office of the agency that placed the adoptee for adoption is located. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). If the adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county where the adoptee resides or where the petitioners reside.

[1997, c. 239, §1 (AMD); 1997, c. 239, §6 (AFF) .]

(c). If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another probate court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §1 (AMD). 1997, c. 239, §6 (AFF).

§9-105. RIGHTS OF ADOPTED PERSONS

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption decree so provides, as specified in section 2-109, subsection (1). [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-106. LEGAL REPRESENTATION

(a). The biological parents are entitled to an attorney for any hearing held pursuant to this article. If the biological mother or the biological or putative father wants an attorney but is unable to afford one, the biological mother or the biological or putative father may request the court to appoint an attorney. If the court finds either or both of them indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent biological parent at every stage of the proceedings unless the minor biological parent refuses representation or the court determines that representation is unnecessary.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-107. INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act, United States Code, Title 25, Section 1901 et seq. governs all proceedings under this article that pertain to an Indian child as defined in that Act. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-108. APPLICATION OF PRIOR LAWS

The laws in effect on July 31, 1994 apply to proceedings for which any of the following occurred before August 1, 1994: [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(a). The filing of a consent;

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). The filing of a surrender and release;

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The filing of a waiver of notice by a father or putative father under former Title 19, section 532-C;

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). The issuance of an order terminating parental rights; or

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). The filing of an adoption petition.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

Part 2: ESTABLISHMENT OF PATERNAL RIGHTS AND TERMINATION OF PARENTAL RIGHTS

§9-201. ESTABLISHMENT OF PATERNITY

(a). When the biological mother of a child born out of wedlock wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and the putative father has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child or waived his right to notice, the biological mother must file an affidavit of paternity with the judge of probate so that the judge may determine how to give notice of the proceedings to the putative father of the child.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). If the judge finds from the affidavit of the biological mother that the putative father's whereabouts are known, the judge shall order that notice of the mother's intent to consent to adoption or to execute a surrender and release, or the mother's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative father of the child. If the judge finds that the putative father's whereabouts are unknown, then the court shall order notice by publication in accordance with the Maine Rules of Probate Procedure. If the biological mother does not know or refuses to tell the court who the biological father is, the court may order publication in accordance with the Maine Rules of Probate Procedure in a newspaper of general circulation in the area where the petition is filed, where the biological mother became pregnant or where the putative father is most likely to be located. The notice must specify the names of the biological mother and the child.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). A putative father or a legal father who is not the biological father may waive his right to notice in a document acknowledged before a notary public or a judge of probate. The notary public may not be an attorney who represents either the mother or any person who is likely to become the legal guardian, custodian or parent of the child.

(1). The waiver of notice must indicate that the putative father or legal father understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child, and that by signing the waiver of notice the putative father or legal father voluntarily gives up any rights to the named child. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The waiver of notice may state that the putative father or legal father neither admits nor denies paternity. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The legal father shall attach to the waiver of notice an affidavit stating that, although he is the legal father, he is not the biological father. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). If, after notice, the putative father of the child wishes to establish parental rights to the child, he must, within 20 days after notice has been given or within a longer period of time as ordered by the judge, petition the judge of probate to grant to him parental rights. The petition must include an allegation that the putative father is in fact the biological father of the child.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). Upon receipt of a petition under subsection (d), the judge shall fix a date for a hearing to determine the putative father's parental rights to the child.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). The court shall appoint an attorney who is not the attorney for the putative father, the biological mother or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). Notice of the hearing must be given to the putative father, the biological mother, the attorney for the child and any other parties the judge determines appropriate. Notice need not be given to a putative father or a legal father who is not the biological father and who has waived his right to notice as provided in subsection (c).

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). Upon order of the court, the department or licensed child-placing agency shall furnish studies and reports relevant to the proceedings.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(i). If, after a hearing, the judge finds that the putative father is the biological father, that he is willing and able to protect the child from jeopardy and has not abandoned the child, that he is willing and able to take responsibility for the child and that it is in the best interests of the child, then the judge shall declare the putative father the child's parent with all the attendant rights and responsibilities.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(j). If the judge of probate finds that the putative father of the child has not petitioned or appeared within the period required by this section or has not met the requirements of subsection (i), the judge shall rule that the putative father has no parental rights and that only the biological mother of the child need consent to adoption or a surrender and release.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-202. SURRENDER AND RELEASE; CONSENT

(a). With the approval of the judge of probate of any county within the State and after a determination by the judge that a surrender and release or a consent is in the best interest of the child, the parents or surviving parent of a child may at any time after the child's birth:

(1). Surrender and release all parental rights to the child and the custody and control of the child to a licensed child-placing agency or the department to enable the licensed child-placing agency or the department to have the child adopted by a suitable person; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Consent to have the child adopted by a specified petitioner. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The parents or the surviving parent must execute the surrender and release or the consent in the presence of the judge. The adoptee, if 14 years of age or older, must execute the consent in the presence of the judge. The waiver of notice by the legal father who is not the biological father or putative father is governed by section 9-201, subsection (c).

[1997, c. 239, §2 (AMD); 1997, c. 239, §6 (AFF) .]

(b). The court may approve a consent or a surrender and release only if the following conditions are met.

(1). A licensed child-placing agency or the department certifies to the court that counseling was provided or was offered and refused. This requirement does not apply if:

(i) One of the petitioners is a blood relative; or

(ii) The adoptee is an adult. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The court has explained the individual's parental rights and responsibilities, the effects of the consent or the surrender and release, that in all but specific situations the individual has the right to revoke the consent or surrender and release within 3 days and the existence of the adoption registry and the services available under Title 22, section 2706-A. The individual does not have the right to revoke the consent when the individual is a consenting party and also a petitioner. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The court determines that the consent or the surrender and release has been duly executed and was given freely after the parent was informed of the parent's rights. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). Except when a consenting party is also a petitioner, at least 3 days have elapsed since the parents or parent executed the surrender and release or the consent and the parents or parent did not withdraw or revoke the consent or surrender and release before the judge or, if the judge was not available, before the register. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The original consent or surrender and release must be filed in the Probate Court where the consent or the surrender and release is executed. An attested copy of the consent or surrender and release must be filed in the Probate Court in which the petition is filed. The court in which the consent or the surrender and release is executed shall provide an attested copy to each consenting or surrendering party and an attested copy to the transferring agency. The copy given to the consenting or surrendering party must contain a statement explaining the importance of keeping the court informed of a current name and address.

[1997, c. 239, §3 (AMD); 1997, c. 239, §6 (AFF) .]

(d). A consent or a surrender and release is not valid until 3 days after it has been executed, except that consent by a parent petitioning to adopt that parent's own child with that parent's spouse is valid upon signature.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). Consent may be acknowledged before a notary public who is not an attorney for the adopting parents or a partner, associate or employee of an attorney for the adopting parents when consent is given by:

- (1). The department or a licensed child-placing agency; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). Except as provided in subsection (g) and section 9-205, subsection (b), a consent or a surrender and release is final and irrevocable when duly executed.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). A consent is final only for the adoption consented to, and, if that adoption petition is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to section 9-205.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). The court shall accept a consent or a surrender and release by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of that state's bar or a certificate from that court of comparable jurisdiction stating that:

- (1). The party executing the consent or the surrender and release followed the procedure required to make a consent or a surrender and release valid in the state in which it was executed; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). The court of comparable jurisdiction advised the person executing the consent or the surrender and release of the consequences of the consent or the surrender and release under the laws of the state in which the consent or the surrender and release was executed. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The court shall accept a waiver of notice by a putative father or a legal father who is not the biological father that meets the requirements of section 9-201, subsection (c).

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §§2,3 (AMD). 1997, c. 239, §6 (AFF).

§9-203. DUTIES AND RESPONSIBILITIES SUBSEQUENT TO SURRENDER AND RELEASE

Without notice to the parent or parents, the surrender and release authorized pursuant to section 9-202 may be transferred together with all rights under section 9-202 from the transferee agency to the department or from the department as original transferee to any licensed child-placing agency. If the licensed child-placing agency or the department is unable to find a suitable adoptive home for a child surrendered and released by a parent or parents, then the licensed child-placing agency or the department to whom custody

and control of that child have been surrendered and released or transferred shall request a review pursuant to section 9-205. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-204. TERMINATION OF PARENTAL RIGHTS

(a). A petition for termination of parental rights may be brought in Probate Court in which an adoption petition is properly filed as part of that adoption petition except when the District Court has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection 5-A.

[2015, c. 460, §8 (AMD) .]

(b). Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter VI.

[1997, c. 683, Pt. A, §8 (AMD) .]

(c). The court may appoint a guardian ad litem for the child. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

(1). The court shall pay reasonable costs and expenses for the guardian ad litem. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The guardian ad litem must be given access to all reports and records relevant to the case. In general, the guardian ad litem shall represent the child. The guardian ad litem may conduct an investigation to ascertain the facts that includes:

- (i) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;
- (ii) Interviewing the child with or without other persons present;
- (iii) Interviewing, subpoenaing, examining and cross-examining witnesses; and
- (iv) Making recommendations to the court. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 683, §A8 (AMD). 2015, c. 460, §8 (AMD).

§9-205. REVIEW

(a). The court shall conduct a judicial review if:

(1). A child is not adopted within 18 months of execution of a surrender and release; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). An adoption petition is not finalized within 18 months. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). If the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a viable plan, the court shall attempt to notify the biological parents, who must be given an opportunity to present an acceptable plan for the child. If either or both parents are able and willing to assume physical custody of the child, then the court shall declare the consent or the surrender and release void.

If the biological parents are not notified or are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the biological parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, then the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

Part 3: ADOPTION PROCEDURES

§9-301. PETITION FOR ADOPTION AND CHANGE OF NAME; FILING FEE

A husband and wife jointly or an unmarried person, resident or nonresident of the State, may petition the Probate Court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is \$65 plus: [2005, c. 654, §4 (AMD).]

(a). The fee for a national criminal history record check for noncriminal justice purposes set by the Federal Bureau of Investigation for each prospective adoptive parent who is not the biological parent of the child; and

[2001, c. 52, §1 (NEW) .]

(b). The fee for a state criminal history record check for noncriminal justice purposes established pursuant to Title 25, section 1541, subsection 6 for each prospective adoptive parent who is not the biological parent of the child.

[2001, c. 52, §1 (NEW) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 18, §3 (AMD). 1997, c. 18, §6 (AFF). 2001, c. 52, §1 (AMD). 2005, c. 654, §4 (AMD).

§9-302. CONSENT FOR ADOPTION

(a). Before an adoption is granted, written consent to the adoption must be given by:

(1). The adoptee, if the adoptee is 14 years of age or older; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Each of the adoptee's living parents, except as provided in subsection (b); [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The person or agency having legal custody or guardianship of the 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 judge of probate, may be overruled by the judge. In order for the judge 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 may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is 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. The judge shall consider the following:

- (i) Whether the person or agency determined the needs and interests of the child;
- (ii) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;
- (iii) Whether the person or agency made the decision consistent with the facts;
- (iv) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and
- (v) 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 [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). 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. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

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

[1997, c. 239, §4 (AMD); 1997, c. 239, §6 (AFF) .]

(b). Consent to adoption is not required of:

(1). A putative father or a legal father who is not the biological father if he:

- (i) Received notice and failed to respond to the notice within the prescribed time period;
- (ii) Waived his right to notice under section 9-201, subsection (c);
- (iii) Failed to meet the standards of section 9-201, subsection (i); or
- (iv) Holds no parental rights regarding the adoptee under the laws of the foreign jurisdiction in which the adoptee was born; [1999, c. 790, Pt. G, §1 (AMD).]

(2). A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter VI; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). A parent who has executed a surrender and release pursuant to section 9-202; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). 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 [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). The parent of an adoptee who is 18 years of age or older. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1999, c. 790, Pt. G, §1 (AMD) .]

(c). 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 [1997, c. 715, Pt. C, §1 (NEW).]

(2). The guardian ad litem for the child. [1997, c. 715, Pt. C, §1 (NEW).]

[1997, c. 715, Pt. C, §1 (NEW) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §4 (AMD). 1997, c. 239, §6 (AFF). 1997, c. 715, §C1 (NEW). 1999, c. 790, §G1 (AMD).

§9-303. PETITION

(a). A petition for adoption must be sworn to by the petitioner and must include:

(1). The full name, age and place of residence of the petitioner and, if married, the place and date of marriage; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The date and place of birth of the adoptee, if known; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name, if any; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). The residence of the adoptee at the time of the filing of the petition; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). The petitioner's intention to establish a parent and child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). The names and addresses of all persons or agencies known to the petitioner that affect the custody, visitation or access to the adoptee; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(7). The relationship, if any, of the petitioner to the adoptee; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(8). The names and addresses of the department and the licensed child-placing agency, if any; [2015, c. 274, §3 (AMD).]

(9). The names and addresses of all persons known to the petitioner at the time of filing from whom consent to the adoption is required; and [2015, c. 274, §3 (AMD).]

(10). A statement that the petitioner acknowledges that after the adoption is finalized, 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. [2015, c. 274, §3 (NEW).]

[2015, c. 274, §3 (AMD) .]

(b). A petitioner shall indicate to the court what information the petitioner is willing to share with the biological parents and under what circumstances and shall provide a mechanism for updating that information.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The caption of a petition for adoption may be styled "In the Matter of the Adoption Petition of (name of adoptee)." The petitioner must also be designated in the caption.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 274, §3 (AMD).

§9-304. INVESTIGATION; GUARDIAN AD LITEM; REGISTRY

(a).

[2001, c. 52, §2 (RP) .]

(a-1). 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.

(1). 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.

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

(ii) If the petitioner is a blood relative of the child, the court may waive the requirement of a study and report. [2001, c. 52, §3 (NEW) .]

(2). The court shall request a background check for each prospective adoptive parent who is not the biological 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.

(i) 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.

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

(iii) Each prospective parent who is not the biological 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.

(iv) 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.

(v) 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 interests of the child.

(vi) 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.

(vii) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The Probate Court shall collect the total fee and transfer the appropriate funds to the Department of Public Safety and the department. [2013, c. 267, Pt. B, §12 (AMD).]

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 the biological parent who is also the current legal parent of the child.

[2013, c. 267, Pt. B, §12 (AMD) .]

(a-2). 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.

(1). The department may request a background check for each prospective adoptive parent who is not the biological 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.

(i) 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.

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

(iii) Each prospective parent who is not the biological 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.

(iv) 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.

(v) 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 interests of the child.

(vi) 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 an adoption petition under subsection (a-1). [2013, c. 267, Pt. B, §13 (AMD).]

(2). Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 575, §2 (NEW).]

[2013, c. 267, Pt. B, §13 (AMD) .]

(b). This subsection governs the collection and disclosure of information about the child's background.

(1). The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall obtain medical and genetic information on the biological parents and the child. Specifically, the department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall attempt to obtain:

(i) 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 by the child's biological mother during pregnancy, 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

(ii) Relevant information concerning the medical, psychological and social history of the biological parents, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health of the biological mother during her pregnancy and the health of the biological parents at the time of the child's birth. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Prior to the child being placed for adoption, the department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall provide the information described in paragraph (1) to the prospective adoptive parents. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). If the department, the licensed child-placing agency or 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. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). The prospective adoptive parents must be informed in writing if any of the information described in this subsection can not be obtained, either because the records are unavailable or because the biological parents are unable or unwilling to consent to its disclosure or to be interviewed. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). 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 biological parents 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 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, the 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. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). The department, the licensed child-placing agency or 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 (f), with protection for the identity of persons other than the child. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(7). 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 compliance with this subsection. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b-1). 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:

(1). 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 [2007, c. 513, §1 (AMD).]

(2). 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. [2005, c. 366, §1 (NEW).]

The petitioner may present evidence to rebut the presumption.

[2007, c. 513, §1 (AMD) .]

(c). The court may require that the child 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.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). The court may appoint a guardian ad litem for the child at any time during the proceedings.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). Before the adoption 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.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). If the judge is satisfied with the identity and relations of the parties, of the ability of the petitioner to bring up and educate the child properly, considering the condition of the child's biological parents, and of the fitness and propriety of the adoption, the judge 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.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). A certified copy of the birth record 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 of probate shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). Before the adoption is decreed, 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.

[2015, c. 274, §4 (NEW) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §5 (AMD). 1997, c. 239, §6 (AFF). RR 2001, c. 1, §21 (COR). 2001, c. 52, §§2,3 (AMD). 2001, c. 546, §1 (AMD). 2003, c. 575, §§1,2 (AMD). 2005, c. 366, §1 (AMD). 2007, c. 513, §1 (AMD). 2013, c. 267, Pt. B, §§12, 13 (AMD). 2015, c. 274, §4 (AMD).

§9-305. EVIDENCE; PROCEDURE

(a). The judge may interview any adoptee, and shall interview an adoptee who is 12 years of age or older, outside the presence of the prospective adoptive parents to determine the adoptee's attitudes and desires about the adoption and other relevant issues.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). The judge may conduct an inspection in camera of records of relevant child protective proceedings and may disclose only that information necessary for the determination of any issue before the court. Any disclosure of information must be done pursuant to Title 22, section 4008, subsection 3.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-306. ALLOWABLE PAYMENTS; EXPENSES

(a). Except when one of the petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this article:

(1). The actual cost of legal services related to the consent or the surrender and release and to the adoption process; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(2). Prenatal and postnatal counseling expenses for the biological mother; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(3). Prenatal, birthing and other related medical expenses for the biological mother; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(4). Necessary transportation expenses to obtain the services listed in paragraphs (1), (2) and (3); [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). Foster care expenses for the child; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). Necessary living expenses for the biological mother and the child; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(7). For the biological father, legal and counseling expenses related to the consent, the surrender and release and the adoption process; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(8). Fees to a licensed child-placing agency providing services in connection with the pending adoption. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). Prior to the dispositional hearing pursuant to section 9-308, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report must be signed under penalty of perjury and must be submitted to the court on or before the date the final decree is granted. The accounting report must be itemized and show the services related to the adoption or to the placement of the adoptee for adoption that were received by the adoptee's biological parents, by the adoptee or on behalf of the petitioner. The accounting must include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed child-placing agency or other person or organization who received funds or anything of value from the petitioner in connection with the adoption or the placement of the adoptee with the petitioner or participated in any way in the handling of the funds, either directly or indirectly. This subsection does not apply when one of the petitioners is a blood relative or the adoptee is an adult.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). Payment for expenses allowable under subsection (a), if provided, may not be contingent upon any future decision a biological parent might make pertaining to the child. Other expenses or payments to biological parents are not authorized.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-307. ADOPTION NOT GRANTED

If the court determines that it is unable to finalize an adoption to which biological parents have consented, the court shall notify the biological parents that the court has not granted the adoption and shall conduct a review pursuant to section 9-205. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-308. FINAL DECREE; DISPOSITIONAL HEARING

(a). The court shall grant a final decree of adoption if the petitioner who filed the petition has been heard or has waived hearing and the court is satisfied from the hearing or record that:

(1). All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). An adoption study, when required by section 9-304, has been filed with the court; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). A list of all disbursements as required by section 9-306 has been filed with the court; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). The petitioner is a suitable adopting parent and desires to establish a parent and child relationship with the adoptee; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). The best interests of the adoptee are served by the adoption; [2015, c. 274, §5 (AMD).]

(5-A). The petitioner has acknowledged that the petitioner understands 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; and [2015, c. 274, §5 (NEW).]

(6). All other requirements of this article have been met. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2015, c. 274, §5 (AMD) .]

(b). In determining the best interests of the adoptee, the court shall consider and evaluate the following factors to give the adoptee a permanent home at the earliest possible date:

(1). The love, affection and other emotional ties existing between the adoptee and the adopting person or persons, the biological parent or biological parents or the putative father; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The capacity and disposition of the adopting person or persons, the biological parent or biological parents or the putative father to educate and give the adoptee love, affection and guidance and to meet the needs of the adoptee. An adoption may not be delayed or denied because the adoptive parent and the child do not share the same race, color or national origin; and [1999, c. 78, §1 (AMD).]

(3). The capacity and disposition of the adopting person or persons, the biological parent or biological parents or the putative father to provide the adoptee with food, clothing and other material needs, education, permanence and medical care or other remedial care recognized and permitted in place of medical care under the laws of this State. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1999, c. 78, §1 (AMD) .]

(c). The court shall enter its findings in a written decree that includes the new name of the adoptee. The final decree must further order that from the date of the decree the adoptee is the child of the petitioner and must be accorded the status set forth in section 9-105. If the court determines that it is in the best interest of the child, the court may require that the names of the child and of the petitioner be kept confidential.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). Upon completion of an adoption proceeding, the biological parents who consented to an adoption or who executed a surrender and release must be notified of the completion by regular mail at their last known address. Notice under this subsection is not required to a biological parent who is also a petitioner. When the biological parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given

to the department and the department shall notify the biological parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion and does not affect the rights or responsibilities of adoptees or adoptive parents.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E.

[2001, c. 696, §9 (AMD) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 78, §1 (AMD). 2001, c. 696, §9 (AMD). 2013, c. 137, §1 (AMD). 2015, c. 274, §5 (AMD).

§9-309. APPEALS

(a). Any party may appeal from any order entered under this article to the Supreme Judicial Court sitting as the Law Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child or next friend and costs may not be awarded against either.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). An appeal from any order under this article must be expedited.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). An attorney or guardian ad litem appointed to represent a party in an adoption proceeding in Probate Court continues to represent the interests of that party in any appeal unless otherwise ordered by the court.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-310. RECORDS CONFIDENTIAL

Notwithstanding any other provision of law and except as provided in Title 22, section 2768, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. If a judge of probate court determines that examination of records pertaining to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the register of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure. [2007, c. 409, §1 (AMD); 2007, c. 409, §6 (AFF).]

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18 and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2007, c. 409, §1 (AMD). 2007, c. 409, §6 (AFF).

§9-311. INTERSTATE PLACEMENTS

(a). A person or agency who intends to bring a child to this State from another state for the purpose of adoption must provide to the Probate Court the certification of compliance as required by the department pursuant to Title 22, chapter 1153 or 1154, as applicable.

[2007, c. 255, §1 (AMD) .]

(b). A person or agency who intends to remove a child from this State for the purpose of adoption in another state must obtain from the department certification of compliance with Title 22, chapter 1153 or 1154, as applicable, prior to the removal of the child from this State.

[2007, c. 255, §1 (AMD) .]

(c). The Probate Court may not grant a petition to adopt a child who has been brought to or will be removed from this State for the purpose of adoption without department certification of compliance with Title 22, chapter 1153 or 1154, as applicable.

[2007, c. 255, §1 (AMD) .]

(d). An agency or person who fails to comply with this section commits a civil violation for which a penalty of not less than \$100 and not more than \$5,000 may be adjudged.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2007, c. 255, §1 (AMD).

§9-312. FOREIGN ADOPTIONS

If an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this State to give recognition to the foreign adoption, a judge of probate may enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adopting parents. The fee for filing the petition is \$55. [2005, c. 654, §5 (AMD).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 654, §5 (AMD).

§9-313. ADVERTISEMENT

1. Definitions. As used in this section, the following terms have the following meanings.

A. "Advertise" means to communicate by any public medium that originates within this State, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television or by any computerized communication system, including by e-mail, website, Internet account or any similar medium of communication provided via the Internet. [2015, c. 274, §6 (NEW).]

B. "Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information in an electronic device in order to view, create, use or edit the user's account information, profile, display, communications or stored data. [2015, c. 274, §6 (NEW).]

[2015, c. 274, §6 (NEW) .]

2. Advertising prohibited. A person may not:

A. Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody; [2015, c. 274, §6 (NEW).]

B. Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement or any other permanent physical placement of a child; [2015, c. 274, §6 (NEW).]

C. Advertise that the person will place a child for adoption or in any other permanent physical placement; or [2015, c. 274, §6 (NEW).]

D. Advertise for the purpose of finding a person to adopt or otherwise take into permanent custody a particular child. [2015, c. 274, §6 (NEW).]

[2015, c. 274, §6 (NEW) .]

3. Exceptions. This section does not prohibit:

A. The department or a child placing agency from advertising in accordance with rules adopted by the department; or [2015, c. 274, §6 (NEW).]

B. An attorney licensed to practice in this State from advertising the attorney's availability to practice or provide services relating to the adoption of children. [2015, c. 274, §6 (NEW).]

[2015, c. 274, §6 (NEW) .]

4. Violation. A person who violates subsection 2 commits a civil violation for which a fine of not more than \$5,000 may be adjudged.

[2015, c. 274, §6 (NEW) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 274, §6 (RPR).

§9-314. IMMUNITY FROM LIABILITY FOR GOOD FAITH REPORTING; PROCEEDINGS

A person, including an agent of the department, who participates in good faith in reporting violations of this article or participates in a related child protection investigation or proceeding is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false. [1997, c. 683, Pt. A, §9 (AMD).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 683, §A9 (AMD).

§9-315. ANNULMENT OF THE ADOPTION DECREE

(a). A judge of probate may, on petition of 2 or more persons and after notice and hearing, reverse and annul a decree of the Probate Court for one of the following reasons.

(1). The court finds that the adoption was obtained as a result of fraud, duress or illegal procedures. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The court finds other good cause shown consistent with the best interest of the child. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). Notice of a petition to annul must be given to the biological parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). After the Probate Court annuls a decree of adoption, the register of probate shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

Part 4: ADOPTION ASSISTANCE PROGRAM**§9-401. AUTHORIZATION; SPECIAL NEEDS CHILDREN**

(a). There is established in the Department of Health and Human Services the Adoption Assistance Program, referred to in this Part as "the program."

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

(b). Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the department may provide through the program adoption assistance for special needs children in its care or custody or in the custody of a nonprofit private licensed child-placing agency in this State if those children are legally eligible for adoption and, when reasonable but unsuccessful efforts have been made to place them without adoption assistance, would not otherwise be adopted without the assistance of this program.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The department shall, subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, reimburse adoptive parents of a special needs child for one-time adoption expenses when reasonable but unsuccessful efforts have been made to place the child without such assistance.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). A "special needs child" means a child who:

- (1). Has a physical, mental or emotional handicap that makes placement difficult; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). Has a medical condition that makes placement difficult; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (3). Is a member of a sibling group that includes at least one member who is difficult to place; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (4). Is difficult to place because of age or race; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (5). Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (6). Has in the family background factors such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). The amount of adoption assistance may vary depending upon the resources of the adoptive parents and the special needs of the child, as well as the availability of other resources, but may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). The duration of assistance may continue until the cessation of legal parental responsibility or until the parents are no longer supporting the child, at which time the adoption assistance ceases. However, if the child has need of educational benefits or has a physical, mental or emotional handicap, adoption assistance may continue until the adoptee has attained 21 years of age if the adoptee, the parents and the department agree that the need for care and support exists.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). Children who are in the custody of a person or agency in another state who are brought to this State for the purpose of adoption are not eligible for adoption assistance through the program except for reimbursement of nonrecurring expenses if the child meets the requirements of the United States Social Security Act, 42 United States Code, Section 673 (c).

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 689, §B6 (REV).

§9-402. ADOPTION ASSISTANCE

(a). Applications for the program may be submitted by the following persons:

(1). Foster parents interested in adopting an eligible child in their care; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Other persons interested in adopting an eligible child; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). Adoptive parents who were not informed of the program or of facts relevant to the child's eligibility when they adopted a child who was at the time of adoption eligible for participation in the program. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). All applicants for the program must meet department standards for adoption except for financial eligibility.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). Assistance may be provided for special needs only and may be varied based on the special needs of the child. Assistance may be provided for a period of time based on the special needs of the child.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

§9-403. ADMINISTRATION

(a). A written agreement between the family entering into the program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not apprised of the program.

Except as provided by section 9-401, subsection (h), once an adoption assistance payment is agreed upon and the agreement signed by the prospective adoptive parents, the department may not reduce the adoption assistance payment amounts.

[2013, c. 411, §1 (AMD) .]

(b). If assistance continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the family continues to be eligible based on the annual redetermination of need.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). Upon the death of both adoptive parents, adoption assistance may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2013, c. 411, §1 (AMD) .

§9-404. RULES

The department shall adopt rules for the program consistent with this Part. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

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