

APPENDIX B - Family Law Advisory Commission Recommendations for 18-C, Article 9

PROPOSED RECODIFICATION BILL <u>[Proposed FLAC recommendations (Revised January 2018)]</u>
<u>ARTICLE 9</u>
<u>ADOPTION</u>
<u>PART 1</u>
<u>GENERAL PROVISIONS</u>
§9-101. Short title [18-A, §9-101]
This Article may be known and cited as "the Adoption Act."
§9-102. Definitions [18-A, §9-102]
<p>As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.</p> <ol style="list-style-type: none">1. Adoptee. "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.2. Adult. "Adult" means a person who is 18 years of age or older.3. Child. "Child" means a person who is under 18 years of age.4. Consent. "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.5. Department. "Department" means the Department of Health and Human Services.6. Genetic father. "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother.7. Genetic mother. "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.8. Genetic parent. "Genetic parent" means a child's genetic father or genetic mother.96. Licensed child-placing agency. "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 1671.107. Parent. "Parent" means a person who, with respect to a child:<ol style="list-style-type: none">A. Has established a parent-child relationship with the child <u>has established parentage pursuant to under</u> Title 19-A, chapter 61; orB. When no person described in paragraph A exists, is the legal guardian of the child.118. Petitioner. "Petitioner" means a person filing a petition to adopt an adult or a child, and includes both petitioners under a joint petition, except as otherwise provided in this Article.129. Putative father parent. "Putative <u>father parent</u>" means a <u>man person</u> who is the alleged genetic father <u>parent</u> of a child but whose paternity parentage <u>has not been legally established but may be legally determined in accord with Title 19-A, Chapter 61.</u>130. Surrender and release. "Surrender and release," used as a noun, means a voluntary relinquishment of all

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parental rights to a child to the department or a licensed child-placing agency for the purpose of placement for adoption.

§9-103. Jurisdiction [18-A, §9-103]

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

- A. Petitions for adoption;
- B. Consents and reviews of withholdings of consent by persons other than a parent;
- C. Surrenders and releases;
- D. Termination of parental rights proceedings brought pursuant to section 9-204;
- E. Proceedings to determine the rights of putative ~~fathers~~ parents of children whose adoptions or surrenders and releases are pending before the Probate Court; and
- F. Reviews conducted pursuant to section 9-205.

2. District Court jurisdiction. The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection 1 if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

§9-104. Venue; transfer [18-A, §9-104]

1. Venue if adoptee placed by agency or department. If an 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 or division where:

- A. The petitioner resides;
- B. The adoptee resides or was born; ~~or~~
- C. An office of the agency that placed the adoptee for adoption is located; or
- D. Parental rights of the minor adoptee's parents have been terminated.

2. Venue if agency or department not involved in placement. If an adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county or division where the adoptee resides or where the petitioners reside.

3. Transfer. 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.

§9-105. Rights of adopted persons [18-A, §9-105]

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 ~~genetic~~ former parents if the adoption decree so provides, as specified in section 2-119, subsection 6.

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§9-106. Legal representation [18-A, §9-106]

1. Attorney for genetic parents. The genetic parents are entitled to an attorney for any hearing held pursuant to this Article. If ~~the genetic mother a parent or putative parent or the genetic legal or putative father~~ wants an attorney but is unable to afford one, the ~~genetic mother or the genetic parent~~ or putative ~~father parent~~ may request the court to appoint an attorney. If the court finds ~~either or both of the requesting party to be~~ 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.

2. Attorney for minor indigent genetic parent. 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 genetic parent at every stage of the proceedings unless the minor indigent genetic parent refuses representation or the court determines that representation is unnecessary.

§9-107. Indian Child Welfare Act of 1978 [18-A, §9-107]

The federal Indian Child Welfare Act of 1978, 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.

§9-108. Application of prior laws [18-A, §9-108]

The laws in effect on July 31, 1994 apply to proceedings for which any of the following occurred before August 1, 1994:

- 1. Consent.** The filing of a consent;
- 2. Surrender and release.** The filing of a surrender and release;
- 3. Waiver of notice.** The filing of a waiver of notice by a ~~father parent~~ or putative ~~father parent~~ under former Title 19, section 532-C;
- 4. Order terminating parental rights.** The issuance of an order terminating parental rights; or
- 5. Adoption petition.** The filing of a petition for adoption.

§9-109. Mediation [no prior statute]

The court may refer the parties to mediation at any time after a petition is filed and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

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PART 2

ESTABLISHMENT OF PATERNAL RIGHTS-DETERMINATION OF PARENTAGE-AND
TERMINATION OF PARENTAL RIGHTS

§9-201. Establishment Determination of paternity-parentage [18-A, §9-201]

1. Affidavit of paternity-parentage. When ~~the genetic mother~~ a parent 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~~ a putative father parent 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~~ their right to notice, the ~~genetic mother~~ parent must file an affidavit of paternity parentage with the court so that the court may determine how to give notice of the proceedings to the putative father parent.

2. Notice of intent to consent or execute surrender and release. If a court finds from the affidavit of the ~~genetic mother~~ parent submitted pursuant to subsection 1 that the putative father's parent's whereabouts are known, the court shall order that notice of the ~~mother's~~ parent's intent to consent to adoption or to execute a surrender and release, or the ~~mother's~~ parent's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative father parent. If the court finds that the putative father's parent's whereabouts are unknown, the court shall order notice by publication in accordance with the applicable Maine Rules of Probate Procedure. If the ~~genetic mother~~ parent does not know or refuses to tell the court who the ~~genetic father~~ a putative parent 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 ~~genetic mother became pregnant~~ child was conceived or where the putative father parent is most likely to be located. The notice must specify the names of the ~~genetic mother~~ parent and the child.

3. Waiver of notice. A putative parent father or a legal father who is not the genetic father may waive ~~his~~ their right to notice under this section in a document acknowledged before a notary public or a judge. The notary public may not be an attorney who represents either the ~~mother~~ parent or any person who is likely to become the legal guardian, custodian or parent of the child.

A. The waiver of notice must indicate that the putative parent 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 parent father or legal father voluntarily gives up any rights to the child.

B. The waiver of notice may state that the putative parent father or legal father neither admits nor denies paternity parentage.

~~C. The legal father shall attach to the waiver of notice an affidavit stating that, although he is the legal father, he is not the genetic father.~~

~~**4. Petition by putative father for parental rights.** If, after notice under this section, the putative father 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 court, petition the court to grant to him parental rights. The petition must include an allegation that the putative father is in fact the genetic father of the child.~~

4. Determination of Parentage of Putative Parent. If, after notice, the putative parent of the child wishes to establish their parentage of the child, they must, within 20 days after notice has been given or within a longer period of time as ordered by the court, petition the court to initiate proceedings to establish parentage under Title

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19-A, chapter 61.

5. Hearing date. Upon receipt of a petition under subsection 4, the court shall fix a date for a hearing to determine the putative ~~parent's father's parental rights to parentage of~~ the child.

6. Appointment of attorneys. The court shall appoint an attorney who is not the attorney for the putative ~~father parent~~, the ~~genetic mother parent~~ or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests in the proceedings under this section.

7. Notice of hearing. Notice of a hearing under this section must be given to ~~the a parent, a putative parent father, the genetic mother,~~ the attorney for the child and any other parties the court determines appropriate. Notice need not be given to a putative ~~parent father or a legal father who is not the genetic father and~~ who has waived ~~his their~~ right to notice as provided in subsection 3.

8. Studies and reports. Upon order of the court, the department or licensed child-placing agency shall furnish studies and reports relevant to the proceedings under this section.

~~**9. Findings; putative father declared parent.** If, after a hearing under this section, the court finds that the putative father is the genetic 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, the court shall declare the putative father the child's parent with all the attendant rights and responsibilities.~~

~~**10. Findings; putative father.** If the court finds that the putative father has not petitioned or appeared within the period required by this section or has not met the requirements of subsection 9, the court shall rule that the putative father has no parental rights and that only the genetic mother of the child need consent to adoption or a surrender and release.~~

~~**9. Findings; effect of parent not waiving notice.** If the putative parent is determined to be the child's parent pursuant to one or more of the means of establishing parentage under Title 19-A, chapter 61, and they do not execute a waiver of notice pursuant to paragraph (3), then the petitioners must bring a petition to terminate the parent's parental rights pursuant to § 9-204 if they proceed with the adoption.~~

~~**10. Findings; putative parent does not seek or establish parentage of the child.** If the putative parent does not bring a petition to establish parentage under paragraph (4) or does not establish parentage of the child under Title 19-A, chapter 61, the Court shall rule that their consent or surrender and release is not needed for the adoption.~~

§9-202. Surrender and release; consent [18-A, §9-202]

1. Surrender and release or consent; presence of judge. With the approval of the court of any county within the State and after a determination by the court 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 at least 72 hours after the child's birth:

A. 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

B. Consent to have the child adopted by a specified petitioner.

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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 genetic father or~~ putative ~~father~~ parent is governed by section 9-201, subsection 3.

2. Approval of surrender and release or consent. The court may approve a surrender and release or a consent only if:

A. 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:

- (1) One of the petitioners is a blood relative; or
- (2) The adoptee is an adult;

B. The court has explained the individual's parental rights and responsibilities, the effects of the surrender and release or the consent, that in all but specific situations the individual has the right to revoke the surrender and release or consent 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;

C. The court determines that the surrender and release or the consent has been duly executed and was given freely after the parent was informed of the parent's rights; and

D. Except when a consenting party is also a petitioner, at least 3 5 working 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 surrender and release or consent before the judge or, if the judge was not available, before the register.

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

4. Valid after 3 days; exception. A surrender and release or a consent is not valid until 3 5 working 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.

5. Consent acknowledged. 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:

- A. The department or a licensed child-placing agency; or
- B. A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country.

6. Final and irrevocable; exceptions. Except as provided in subsection 7 and section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable when duly executed.

7. Consent; limitations. A consent is final only for the adoption consented to, and if that petition for adoption 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.

8. Surrender and release or consent from another state. The court shall accept a surrender and release or a consent by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of

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that state's bar or a certificate from that court of comparable jurisdiction stating that:

- A. The party executing the surrender and release or the consent followed the procedure required to make a surrender and release or a consent valid in the state in which it was executed; and
- B. The court of comparable jurisdiction advised the person executing the surrender and release or the consent of the consequences of the surrender and release or the consent under the laws of the state in which the surrender and release or the consent was executed.

The court shall accept a waiver of notice by a putative parent ~~father or a legal father who is not the genetic father~~ that meets the requirements of section 9-201, subsection 3.

§9-203. Duties and responsibilities subsequent to surrender and release [18-A, §9-203]

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, 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.

§9-204. Termination of parental rights [18-A, §9-204]

1. Petition for termination; ~~Probate Court or District Court~~ adoption petition brought solely by a parent. A petition for termination of parental rights may be brought in the ~~Probate~~ Court in which a petition for adoption is properly filed as part of that petition for adoption ~~except when the District Court has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection 5-A; A petition for termination of parental rights may not be included as part of a petition for adoption brought solely by another parent of the child unless the adoption is sought to confirm the parentage status of the petitioning parent.~~

2. Title 22, chapter 1071, subchapter 6 applies. Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter 6.

2-A. Grounds for Termination. The court may order termination of parental rights if:

A. The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

B. The court finds, based on clear and convincing evidence, that:

(1) Termination is in the best interest of the child; and

(2) Either:

(a) The parent is unwilling or unable to protect the child from jeopardy, as defined by 22 M.R.S. § 4002(6), and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;

(b) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs; or

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(c) The parent has abandoned the child, as defined by 22 M.R.S. § 4002(1-A);

In making findings pursuant to this paragraph, the court may consider the extent to which the parent had opportunities to rehabilitate and to reunify with the child, including actions by the child's other parent to foster or to interfere with a relationship between the parent and child or services provided by public or non-profit agencies.

3. Guardian ad litem for child. The court may appoint a guardian ad litem for a child who is the subject of a petition for termination of parental rights under subsection 1. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

A. The court shall pay reasonable costs and expenses for the guardian ad litem.

B. In general, the guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate:

- (1) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;
- (2) Review of relevant school records and other pertinent materials;
- (3) Interviewing the child with or without other persons present; and
- (4) Interviews with parents, guardians, teachers and other persons who have been involved in caring for or treating the child.

The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make recommendations to the court.

§9-205. Review [18-A, §9-205]

1. Judicial review required; 18 months. The court shall conduct a judicial review if:

- A. A child is not adopted within 18 months of the execution of a surrender and release;
- B. The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or
- C. A petition for adoption is not finalized within 18 months.

2. Determination whether adoption viable plan; review; plan; District Court. If, after judicial review under subsection 1, 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 **genetic** 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, the court shall declare the surrender and release or the consent void.

If the **genetic** 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 **genetic** parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

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PART 3

ADOPTION PROCEDURES

§9-301. Petition for adoption and change of name; filing fee [18-A, §9-301]

~~A husband and wife~~ Spouses or unmarried persons jointly or an unmarried person, resident or nonresident of the State, may petition the court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is \$65 plus:

1. National criminal history record check fee. 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 genetic~~ a parent of the child; and

2. State criminal history record check fee. 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 genetic~~ a parent of the child.

§9-302. Consent for adoption [18-A, §9-302]

1. Written consent. Before an adoption is granted, written consent to the adoption must be given by:

A. The adoptee, if the adoptee is 14 years of age or older;

B. Each of the adoptee's living parents, except as provided in subsection 2;

C. A person or agency having legal custody or guardianship of the adoptee if the adoptee is a 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 court, may be overruled by the court. In order for the court 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 court shall consider the following:

(1) Whether the person or agency determined the needs and interests of the child;

(2) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;

(3) Whether the person or agency made the decision consistent with the facts;

(4) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(5) 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

D. 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.

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

2. Consent not required. Consent to adoption is not required of:

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- A. A putative ~~parent father or a legal father who is not the genetic father~~ if ~~he~~ they:
 - (1) Received notice and failed to respond to the notice within the prescribed time period;
 - (2) Waived ~~his~~ their right to notice under section 9-201, subsection 3; or
 - (3) ~~Failed to meet the standards of section 9-201, subsection 9~~ Does not establish parentage of the child under section 9-201, subsection 9; or
 - (4) Holds no parental rights regarding the adoptee under the laws of the foreign country in which the adoptee was born;
- B. A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter 6;
- C. A parent who has executed a surrender and release pursuant to section 9-202;
- D. 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
- E. A parent of an adoptee who is 18 years of age or older.

3. Consent by department; notice. When the department consents to the adoption of a child in its custody, the department shall immediately notify:

- A. The District Court in which the action under Title 22, chapter 1071 is pending; and
- B. The guardian ad litem for the child.

§9-303. Petition [18-A, §9-303]

- 1. Sworn; contents.** A petition for adoption must be sworn to by the petitioner and must include:
- A. The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;
 - B. The date and place of birth of the adoptee, if known;
 - C. 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;
 - D. The residence of the adoptee at the time of the filing of the petition;
 - E. A statement of the petitioner's intention to establish a parent-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;
 - F. The names and addresses of all persons or agencies known to the petitioner that affect the custody of, visitation with or access to the adoptee;
 - G. The relationship, if any, of the petitioner to the adoptee;
 - H. The names and addresses of the department and the licensed child-placing agency, if any;
 - I. 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
 - J. If the petition is for the adoption of a minor child, a statement that the petitioner acknowledges that after the adoption is finalized, the transfer of the long-term care and custody of the adoptee without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

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2. Information to be shared and updated. A petitioner shall indicate to the court what information the petitioner is willing to share with the ~~genetic~~ parents and under what circumstances and shall provide a mechanism for updating that information.

3. Caption. 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.

§9-304. Investigation; guardian ad litem; registry [18-A, §9-304]

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 blood or step-parent relative of the child or the domestic partner of the child's parent, the court may waive the requirement of a study and report.

B. The court shall request a background check for each prospective adoptive parent who is not ~~the genetic 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 ~~the genetic 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.

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(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 interests 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.

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 genetic parent~~ a petitioner who is also the current legal parent of the child.

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 ~~the genetic~~ 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 ~~the genetic~~ 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 interests of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks

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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.

B. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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 attempt to obtain medical and genetic information about ~~the genetic parents and~~ the child, a 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 child's genetic mother~~ a parent who gave birth to the child 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

(2) Relevant information concerning the medical, psychological and social history of ~~the genetic parents~~ a parent who was a 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 genetic mother~~ a parent who gave birth to the child during her pregnancy and the health of ~~the genetic parents~~ a parent who was a source of the gametes used in the child's conception at the time of the child's birth.

A-1. 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 sections (3)(A)(1) and (2), and shall attempt to obtain any medical and genetic information concerning such individuals that is in the possession of the child's parent or parents.

B. 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.

C. 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.

D. 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 ~~genetic~~ parents are unable or unwilling to consent to its disclosure or to be interviewed.

E. 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 ~~genetic parents~~ 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

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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.

F. 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.

G. 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.

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

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.

The petitioner may present evidence to rebut the presumption.

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.

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.

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.

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 **genetic** 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.

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

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certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

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.

§9-305. Evidence; procedure [18-A, §9-305]

The court may proceed as follows in considering a petition for adoption.

1. Adoptee interview. The court 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.

2. Inspection of records; disclosure. The court 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.

3. Recording; expenses. The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

§9-306. Allowable payments; expenses [18-A, §9-306]

1. Allowable payments by or on behalf of petitioner. 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:

- A. The actual cost of legal services related to the surrender and release or the consent and to the adoption process;
- B. Prenatal and postnatal counseling expenses for the ~~genetic mother~~ person giving birth to the child;
- C. Prenatal, birthing and other related medical expenses for the ~~genetic mother~~ person giving birth to the child;
- D. Necessary transportation expenses to obtain the services listed in paragraphs A, B and C;
- E. Foster care expenses for the child;
- F. Necessary living expenses for the ~~genetic mother~~ person giving birth to the child and the child;
- G. For ~~the genetic father~~ a putative parent, legal and counseling expenses related to the surrender and release, the consent and the adoption process; and
- H. Fees to a licensed child-placing agency providing services in connection with the pending adoption.

2. Full accounting of disbursements by petitioner. 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

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for adoption that were received by the adoptee's **genetic** 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.

3. Payments not contingent; other expenses and payments prohibited. Payment for expenses allowable under subsection 1 may not be contingent upon any future decision a **genetic** parent might make pertaining to the child. Other expenses or payments to **genetic** parents are not authorized.

§9-307. Adoption not granted [18-A, §9-307]

If the court determines that it is unable to finalize an adoption to which **genetic** parents have consented, the court shall notify the **genetic** parents that the court has not granted the adoption and shall conduct a review pursuant to section 9-205.

§9-308. Final decree; dispositional hearing; effect of adoption [18-A, §9-308]

1. Final decree of adoption; requirements. 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:

- A. All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court;
- B. An adoption study, when required by section 9-304, has been filed with the court;
- C. A list of all disbursements as required by section 9-306 has been filed with the court;
- D. The petitioner is a suitable adopting parent and desires to establish a parent-child relationship with the adoptee;
- E. The best interests of the adoptee, described in subsection 2, are served by the adoption;
- F. The petitioner has acknowledged that the petitioner understands that the transfer of the long-term care and custody of an adoptee who is a minor child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D; and
- G. All requirements of this Article have been met.

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

- A. The love, affection and other emotional ties existing between the adoptee and the adopting person or persons, a the genetic parent or genetic parents or the a putative parent father;
- B. The capacity and disposition of the adopting person or persons, the **genetic** parent or **genetic** parents or the putative **parent 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 adoptee do not share the same race, color or national origin; and

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C. The capacity and disposition of the adopting person or persons, the ~~genetic~~ parent or ~~genetic~~ parents or the putative ~~parent~~ ~~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.

3. Findings; decree; confidentiality. The court shall enter its findings in a written final 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 adoptee, the court may require that the names of the adoptee and of the petitioner be kept confidential.

4. Notice to ~~genetic~~ parents. Upon completion of an adoption proceeding, the ~~genetic~~ parents who consented to an adoption or who executed a surrender and release must be notified by the court of the completion by regular mail at their last known address. Notice under this subsection is not required to a ~~genetic~~ parent who is also a petitioner. When the ~~genetic~~ 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 ~~genetic~~ 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.

5. Notice to grandparents. 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.

6. Effect of adoption. An order granting the adoption has the following effect:

A. An order granting the adoption of the child by the petitioner divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except an adoptee inherits from the adoptee's former parents if so provided in the adoption decree.

B. An adoption order may not disentitle a child to benefits due the child from any 3rd person, agency or state or the United States and may not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

§9-309. Appeals [18-A, §9-309]

1. Appeal; bond not required of child or next friend. 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.

2. Appeal expedited. An appeal from any order under this Article must be expedited.

3. Attorney, guardian ad litem continues. An attorney or guardian ad litem appointed to represent a party in an adoption proceeding continues to represent the interests of that party in any appeal unless otherwise ordered by the court.

§9-310. Records confidential [18-A, §9-310]

Notwithstanding any other provision of law and except as provided in Title 22, section 2768, all court records relating to an adoption decreed on or after August 8, 1953 are confidential. The court shall keep records of those

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adoptions segregated from all other court records. If a court determines that examination of records pertaining to a particular adoption is proper, the court may authorize that examination by specified persons, authorize the register 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.

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child when the adopted child attains 18 years of age and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court.

§9-311. Interstate placements [18-A, §9-311]

1. Certificate of compliance; bring child to this State. 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 court the certification of compliance as required by the department pursuant to Title 22, chapter 1153 or 1154, as applicable.

2. Certificate of compliance; remove child from this State. 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.

3. Department certification required. The 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.

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

§9-312. Foreign adoptions [18-A, §9-312]

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 court 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.

§9-313. Advertisement [18-A, §9-313]

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.

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.

2. Advertising prohibited. A person may not:

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- A. Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody;
- 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;
- C. Advertise that the person will place a child for adoption or in any other permanent physical placement; or
- D. Advertise for the purpose of finding a person to adopt or otherwise take into permanent custody a particular child.

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
- 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.

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.

§9-314. Immunity from liability for good faith reporting; proceedings [18-A, §9-314]

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.

§9-315. Annulment of the adoption decree [18-A, §9-315]

1. Annulment; reasons and limitations. ~~The court, on petition of 2 or more persons and after notice and hearing, may reverse and annul an adoption decree for one of the following reasons:~~

- ~~A. The court finds that the adoption was obtained as a result of fraud, duress or illegal procedures; or~~
- ~~B. The court finds good cause shown consistent with the best interest of the child.~~

A court may, on petition filed within one year of the decree of adoption, and after notice and hearing, reverse and annul an adoption decree based on findings by clear and convincing evidence that the adoption was obtained as a result of fraud, duress, or illegal procedures.

A. If the adoptee is a minor, the court shall appoint a Guardian ad Litem on behalf of the minor adoptee and shall consider the best interests of the child, taking into account the factors set forth in Title 19-A, section 1653, subsection 3. The court shall sustain the decree unless there is clear and convincing evidence of one or more bases for annulment and that the decree is not in the best interests of the child.

The Court may allocate the costs of the Guardian ad litem to one or more of the parties and may appoint counsel for a minor adoptee or a party to the annulment proceedings. A minor adoptee may appear and be represented by counsel.

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B. Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

2. Notice. Notice of a petition to annul must be given to the **genetic** 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.

3. Certified copy of annulment. After the court annuls a decree of adoption, the register shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

PART 4

ADOPTION ASSISTANCE PROGRAM

§9-401. Authorization; special needs children [18-A, §9-401]

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

2. Adoption assistance for special needs children. 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.

3. One-time adoption expenses. 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.

4. "Special needs child" defined. As used in this Part, "special needs child" means a child who:

- A. Has a physical, mental or emotional handicap that makes placement difficult;
- B. Has a medical condition that makes placement difficult;
- C. Is a member of a sibling group that includes at least one member who is difficult to place;
- D. Is difficult to place because of age or race;
- E. Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or
- F. Has in that child's 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.

5. Funds. 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.

6. Amount of adoption assistance. The amount of adoption assistance under the program may vary

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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.

7. Duration of assistance. The duration of assistance under the program 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.

8. Children from another state. 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).

§9-402. Adoption assistance [18-A, §9-402]

1. Eligible applicants. An application for the program may be submitted by the following persons:

- A. A foster parent interested in adopting an eligible child in the foster parent's care;
- B. A person interested in adopting an eligible child; or
- C. An adoptive parent who was not informed of the program or of facts relevant to a child's eligibility when adopting a child who was at the time of adoption eligible for participation in the program.

2. Standards for adoption apply. All applicants for the program must meet department standards for adoption except for financial eligibility.

3. Assistance based on special needs. Assistance under the program 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.

§9-403. Administration [18-A, §9-403]

1. Written agreement before final decree; exceptions; reduction in payments. A written agreement between an applicant 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 informed of the program.

Except as provided by section 9-401, subsection 8, 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.

2. Annual determination. If assistance under the program 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 adoptive parents continue to be eligible based on the annual redetermination of need.

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3. Transfer to legal guardian; new agreement. Upon the death of all adoptive parents, adoption assistance under the program 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.

§9-404. Rules [18-A, §9-404]

The department shall adopt rules for the program consistent with this Part.