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## Adoption from Permanency Guardianship

### Philosophy:

It is the goal of the Department of Health and Human Services to ensure that children have and maintain permanency through the most secure legal means possible. Adoption is the preferred permanency plan as adoption allows the child membership in a legally recognized, socially accepted, permanent family unit. Permanency Guardianship also provides a legally sound relationship, however, does not carry the full security as adoption. Adoption from Permanency Guardianship allows a family to extend their relationship to the child that will enable the child to become a permanent member of a family and to provide the benefits of family security, love and nurture for child.

### Purpose:


The intent of facilitating an adoption from a Permanency Guardianship Order through the District Court allows a family to have a more secure legal relationship with the child while ensuring that all of the financial and health care benefits of Permanency Guardianship are not disrupted so that the family may meet the special needs of the child. An adoption from Permanency Guardianship should be considered when it meets the best interest of the child. Adoption from Permanency Guardianship may be considered when the biological parents are in agreement and will consent to a termination or if there has been a termination of parental rights.

Legal Base: MRSA 22, §4038-E Adoption from Permanency Guardianship

### Procedure:

#### **I. Assessment**

When the Department is contacted by an individual or couple who have previously been appointed Permanency Guardianship under MRSA Title 22, §4038 - C of a child who had formally been in Maine foster care, the Department shall conduct an assessment of the current living circumstances of the family and the child. This request should be routed to the district office covering the PG at the time that was completed and a worker is assigned to determine the basis for the request and establish that the request is in the best interest of the child.

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The Department shall determine:


- A. The name, date and place of birth of the child and the child's current residence;
- B. The name and residence of the permanency guardian;
- C. The name and residence, if known, of each of the child's parents;
- D. Determine if a termination of parental rights has occurred or if not, if the birth parents are in agreement with the adoption;
- E. The name and residence of the former guardian ad litem of the child in the related child protection proceeding;
- F. The names and residences of all persons known to the department that affect custody, visitation or access to the child;
- G. The basis for the request for the adoption from permanency guardianship, including confirmation that the permanency guardian intends to establish a parent and child relationship and that the permanency guardian is a fit and proper person able to care and provide for the child's welfare; and
- H. Confirmation of the intent of the biological parents to consent to the Adoption.

A Family Team Meeting shall be organized by the assigned worker and be held with the prospective adoptive parents, the biological parents when possible, the child and any other family or community supports the family requests. The intent of the Family Team Meeting is to ensure all parties are in concurrence with the adoption plan and that all services and supports are planned for or in place.

The Department shall conduct a home study of the permanency guardian if the prior home study was conducted more than two (2) years prior to the filing of the adoption petition. An updated home study is otherwise conducted. All other background checks shall be completed if not done in two years or less.

An independent meeting with the child shall be conducted to verify the child's wishes and to address questions and concerns related to this change in legal status that the child may have.

The Assistant Attorney General should be contacted to ensure the court is prepared for the adoption petition.

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## **II. Adoption Assistance**

A new application for Adoption Assistance shall be completed with the family. In the negotiation of subsidy, the Department may take into consideration the family's circumstances, the needs of the child, health insurance provisions for adopted children and any third party benefits to which the child and/or family are entitled. The worker will complete the Adoption Assistance Packet consisting of:


- A. Application and Agreement for Adoption Assistance in triplicate which shall give notice of the right to appeal a denial of Adoption Assistance.
- B. Worker's statement in duplicate.
- C. Third Party Resource Information Request Form.
- D. Copy of the Petition to Adopt from Permanency Guardianship

The completed packet shall be sent to the Adoption/Permanency Program Manager for review and approval. The adoption may not be finalized until approval is granted.

## **III. Adoption Petition**

The sworn petition must be accompanied by:

- A. The birth certificate of the child;
- B. A background check for each prospective adoptive parent, which must include:
  - (1) A screening of the permanency guardian for child abuse cases in the records of the department;
  - (2) The national criminal history check completed through the fingerprint process or updated check if the original was completed more than five (5) years prior to the filing of the petition; and
    - a) If a need is identified for a national criminal history check to be completed or updated, then the same process will be used as is currently used for initial licensing and approval of resource families.
    - b) The results of fingerprint based national background checks will be sent by the State Bureau of Identification to OCFS Central Office which will send a certified letter to the district office notifying of results.
    - c) The criminal history check results letter will be included with other documents supporting the adoption petition.

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(3) The state criminal history record check (SBI) or updated check if the original was completed more than 2 years prior to the filing of the petition.

#### **IV. Court Activities**

A. Scheduling: On the filing of the petition, the court shall set a time and date for a case management conference.

B. Venue: A petition for adoption from permanency guardianship must be brought in the court that issued the final permanency guardianship appointment. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division.

C. Guardian ad litem and attorneys. The court shall appoint a guardian ad litem for the child and attorneys for indigent parents and custodians, including the permanency guardians.

D. Service. The petition and the notice of the case management conference must be served on the parent whose rights have not been terminated and the guardian ad litem for the child at least 10 days prior to the scheduled case management conference date. Service must be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered by the court.

#### **V. Consent and Dismissal.**

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

- A. The child, if the child is 12 years of age or older;
- B. The child's biological parents, if parental rights have not been terminated;
- and
- C. The permanency guardian who has legal custody of the child.


The consents to adoption must be written and voluntarily and knowingly executed before a judge. Before the adoption is granted, the new adoptive parent shall be informed of the existence of the adoption registry.

If the parents do not consent, the adoption petition shall be dismissed.

#### **VI. Hearing on Petition for Adoption from Permanency Guardianship.**

The court shall hold a hearing prior to granting the petition for adoption from permanency guardianship. The department, as the petitioner, has the burden of proof.

- A. The judge may interview the child who should be informed of the process

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and understand their right to state their wishes.

B. After the adoption has been granted, the department shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the State Registrar.

C. The department shall notify the biological parents whose parental rights have been terminated and grandparents who were granted reasonable rights of visitation or access of the completed adoption.

### **VII. Interstate Situations**

In circumstances where the permanency guardianship family is residing out-of-state the Maine case worker may do an initial assessment over the phone. Should it appear that conditions identified in the Assessment section above, especially G. and H. are met, the worker would then move forward do an Interstate Compact on the Placement of Children (ICPC) Adoptive Home Study Request.

The adoption petition would need to be provided to and finalized in the Maine District Court of jurisdiction.

### **VIII. 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 parent would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption order so provides.