Draft Language (provided by DHHS):
An Act to Make Specified Changes to MRS 22, Chapter 1071, Child and Family Services and Child Protection Act.

- **Title 22, §4003, 3-B. Notification of Relatives.** The department shall exercise due diligence to identify and provide notice to all known grandparents and other adult relatives within 30 days after the removal of a child from the parent's custody. Notification is subject to exceptions due to family or domestic violence safety precautions.

Summary: This is new legislation required under The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law (P.L.) 110-351) which requires that state agencies within 30 days of the removal of a child from the custody of their parents, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child, subject to exceptions due to family/domestic violence.

Title 22 MRSA § 4037-A Extended Care. A child who has attained the age of 18 while in the care and custody of the state, but who has not attained 19, 20, or 21 years old may continue to receive care and support when the youth meets prescribed conditions: 1.)completing secondary school (or equivalent), 2.) enrolled in post-secondary or vocational school, 3.) participating in a program or activity that promotes or removes barriers to employment, 4.) employed for at least 80 hours per month, or 5.) be incapable of any of these due to a documented medical or behavioral health condition.
These youth could be placed in a supervised setting in which they are living independently, in a foster home, or in a group/residential setting. The District Court shall hold a Judicial Review for each youth every 12 months

Summary: This is new legislation to support services for youth who are in foster care at age 18 and are at risk of leaving care without a permanent family and/or sufficient life skills and supports to manage independence. This legislation is consistent with provisions of The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law (P.L.) 110-351) that allows states to draw federal funds to support older youth, but requires judicial oversight and support by the state agency. The Guardian ad litum will be relieved of their duties when the youth becomes 18 years old. Placement decisions will be made only in concurrence with the wishes of the youth.

Title 22, §4038-C Permanency Guardian. As part of the permanency plan, the District Court may appoint a person or persons as guardian of a minor, to be known as a permanency guardian. "Permanency guardian," when used in this section and in section 4038-D, and Title 20-A, section 12572, means the person or persons appointed as the permanency guardian.

1. Criteria. The District Court may appoint a person to be a permanency guardian only if the court finds that the prospective permanency guardian:

A. Has the ability to provide a safe home for the child;

B. Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian;

C. Is willing and able to make an informed, long-term commitment to the child; and

D. Has the skills to care for the child ~~and to obtain needed information about and assistance with any special needs of the child.~~

E. Has submitted to having fingerprints taken for the purposes of a Federal Bureau of Investigation criminal history record check.

1.-(A.) The department shall issue a resource family license to those families that meet the requirements and standards for permanency guardianship of children in foster care.

2. Powers and duties of permanency guardian. A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to Title 18-A, section 5-209.

3. Parental and relative contact. A parent, grandparent or sibling of a child subject to a permanency guardianship or to a proceeding to establish a permanency guardianship may petition the court to determine rights of contact as provided in subsection 6. If the District Court determines that it is in the best interest of the child, it may order that the parent, grandparent or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration and conditions of that contact.

4. Child support. The parents shall pay the permanency guardian child support. Title 19-A, section 1652 and Title 19-A, chapter 63 govern the award of child support to the permanency guardian. The child support obligation may be enforced pursuant to Title 19-A, chapter 65 or 67.

If there is an existing child support order or obligation regarding the child, and if the District Court fails to make a child support order at the time of appointing a permanency guardian, the permanency guardian becomes the obligee under the existing support order or obligation. A copy of the order appointing the permanency guardian is sufficient proof of the permanency guardian's status as obligee.

5. Jurisdiction over permanency guardian. The District Court has exclusive jurisdiction to appoint or remove a permanency guardian and to establish any rights of contact between a child and a parent, grandparent or sibling.

6. Proceedings to terminate permanency guardianship or to determine rights of contact. Proceedings to terminate permanency guardianship or to determine rights of contact are governed by the following.

A. Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent or sibling of the child may petition the court to establish rights of contact with the child, except that a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship or to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare.

B. Notice of a petition under paragraph A must be given in the manner provided for by Rule 4 of the Maine Rules of Civil Procedure to all parties to the child protective case and to the permanency guardian.

C. The permanency guardianship may be terminated only if the petitioner proves by a preponderance of the evidence that the termination is in the best interest of the child.

7. Effect on inheritance rights and public benefits. The appointment of a permanency guardian does not affect the inheritance rights between a child and the child's parent or parents.

The appointment of a permanency guardian may not affect the child's entitlement to benefits due that child from any 3rd person, agency or state or the United States. Except as required by federal law or regulation, the permanency guardian's resources and income are not counted in determining eligibility for any public benefit to which the child may be entitled.

The permanency guardianship does not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

8. Resignation, death or incapacity of permanency guardian. Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the court. If a permanency guardian resigns, dies or becomes incapacitated, the District Court shall hold a judicial review and a permanency planning hearing at the earliest practicable time.

9. Preference. The District Court shall give preference for placement and permanency guardianship to a person nominated by a deceased permanency guardian in a valid will or by an incapacitated permanency guardian in a valid power of attorney, unless the District Court finds that the placement or permanency guardianship is not in the child's best interest.

10. Limitation. The District Court does not have authority to provide a guardianship subsidy for permanency guardianship under section 4038-D.

11. Application to pending cases. The District Court may appoint a permanency guardian in a proceeding pending on September 17, 2005 or in a proceeding on or after September 17, 2005.

12. Appointments terminate; later appointments. Unless the District Court has scheduled a judicial review or orders otherwise, the court's appointments of the guardian ad litem and attorneys for parents and guardians terminate, and the attorneys and guardian ad litem have no futher responsibilities to their clients or the court upon appointment of a permanency guardian pursuant to this section. If a party files a motion for judicial review when no judicial review is required pursuant to section 4038, subsection 1-A, or if a party files a petition pursuant to subsection 6 to terminate a permanency guardianship or determine rights of contact, the court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including permanency guardians, as required by section 4005.

§4038-D. Guardianship subsidy

1. Establishment of program; use of federal funds. There is established in the department the Guardianship Subsidy Program, referred to in this section as "the program." 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, or under any waiver that the department receives pursuant to those Titles.

2. Eligibility for guardianship subsidy payments. Subject to rules adopted to implement this section, the department may provide subsidies for a ~~special needs~~ child who is placed in a permanency guardianship or in a similar status by a Native American tribe, when reasonable but unsuccessful efforts have been made to place the child without guardianship subsidies and if the child would not be placed in a permanency guardianship without the assistance of the program.

~~**3. Definition of "special needs child."** For purposes of this section, "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 the family background factors such as severe mental illness, substance abuse, genetic or medical conditions or illnesses that place the child at risk for future problems.~~

~~**4.**~~ **3. Amount of guardianship subsidy**. The amount of a guardianship subsidy is determined according to this subsection.

A. The amount may vary depending upon the resources of the permanency guardian, the ~~special~~ needs of the child and the availability of other resources.

B. The amount 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.

~~**C.** Except as provided in paragraph D, assistance may be provided only for special needs.~~

~~**D.**~~ **C**. Subject to rules adopted by the department, ~~the amount may include up to $400~~ non-recurring expenses up to $2000.00 per child may be reimbursement for ~~legal~~ one time expenses required to complete the permanency guardianship, including attorney's fees and travel. ~~incurred by the permanency guardian to complete the permanency guardianship in Indian tribal court cases.~~

~~**5.**~~ **4. Duration of guardianship subsidy**. A guardianship subsidy may be provided for a period of time based on the ~~special~~ needs of a child. The subsidy may continue until the termination of the permanency guardianship or until the permanency guardian is no longer caring for the child, at which time the guardianship subsidy ceases. If the child has need of educational benefits or has a physical, mental or emotional handicap, the guardianship subsidy may continue until the child has attained 21 years of age if the child, the parents and the department agree that the need for care and support exists.

~~**6.**~~ **5. Administration of program**. Applications for the program may be submitted by a prospective permanency guardian. A written agreement between the permanency guardian entering into the program and the department must precede the order creating the permanency guardianship, except that an application may be filed subsequent to the creation of the

permanency guardianship if there were facts relevant to the child's eligibility that were not presented at the time of placement or if the child was eligible for participation in the program at the time of placement and the permanency guardian was not apprised of the program.

~~7.~~ **6. Annual review required**. If the subsidy continues for more than one year, the need for the subsidy must be reviewed annually. The subsidy continues regardless of the state in which the permanency guardian resides, or the state to which the permanency guardian moves, if the permanency guardian continues to be responsible for the child.

~~**8. Death of permanency guardian**. Upon the death of all persons serving as permanency guardian, the subsidy may be transferred to a new legal guardian as long as the child continues to be eligible for the guardianship subsidy pursuant to the terms of the most recent agreement with the permanency guardian. The department shall enter into a new agreement with the new legal guardian.~~

~~9.~~ **7. Adoption of rules**. The department shall adopt rules for the program consistent with this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

~~10.~~ **8. Permanency guardian's eligibility for public benefits**. Except as required by federal law or regulation, the guardianship subsidy may not be counted as resources or income in the determination of the permanency guardian's eligibility for any public benefit.

~~11.~~ **9. Application to pending cases.** The department may provide a guardianship subsidy pursuant to this section to a child who is the subject of a child protection proceeding pending on September 17, 2005 or to a child who is the subject of a child protection proceeding commenced on or after September 17, 2005.

Summary: This is amended language in the section of statute governing the Permanency Guardianship Program. Language is removed that requires a child to be identified as special needs to be eligible for placement in a permanency guardianship status and receipt of subsidy. It is also amended to allow Permanency Guardianship families the option of receiving non-recurring reimbursement for expenses associated with becoming Permanency Guardians. Language that has allowed the subsidy to be transferred to a new Permanency Guardian upon death or disability of the original Permanency Guardian is deleted as that is not allowed under federal legislation. Permanency Guardians are also subject to the fingerprint based background checks.

Title 22, §4040 Adoption From Permanency Guardianship. The District Court in a Judicial Review of a Permanency Guardianship Order may accept a Petition to Adopt the subject of the Permanency Guardianship Order. Adoption of this child is guided by the best interest of the child and is subject to the agreement of all parties. The District Court is granted jurisdiction over this specified adoption process.

Summary: This is new legislation to support the transition from a Permanency Guardianship status to Adoption for youth who had previously been in foster care, was the subject of a Permanency Guardianship Order and now both the Permanency Guardian and the child/youth determine adoption is a more legally stable, permanent option. District Court may re-open the dormant Child Protection Order that originally brought the child into care and amend the

Permanency Guardianship disposition to adoption to afford the family the option of applying for the benefits of adoption assistance.

Title 22 §4070 Reinstatement of Parental Rights. The department may petition the District Court to reinstate the parental rights of a parent or parents who has a Termination of Parental Rights (TPR) order in effect. The child must have been in custody for at least 12 months post TPR. The petition must indicate evidence of material change in circumstances since the TPR that will lead to safety for the child, the initial reasons for TPR, and verification of parent's and child's willingness and capacity to have rights reinstated. The Department shall develop and attach to the petition a permanent plan that includes transition services to the family which can include a trial home visit. The Department may assess the trial home visit and may dismiss the petition if it is in the child's best interest without leave of court. The court may hold a preliminary hearing and issue a temporary order in which, the child may be conditionally placed with parent for up to 3 months. The court will hold a final hearing after the child has been placed with the parent/s for 3 months. At the final hearing, the court may issue an Order of Reinstatement and terminate jurisdiction, provided the court finds that reinstatement is in child's best interest, taking into account whether the parent/s have remedied conditions, the age and maturity of child and child's ability to express preference, and any likelihood of future risk to the child. Both parent and child must consent to reinstatement. Reinstatement of parental rights may or may not include both parents.

Summary: This is proposed new law that will allow for the reinstatement of parental rights for a parent after a period of 12 months post TPR upon a finding that there has been material change in circumstances that indicate a parent is now able to provide a safe home and is willing to care for the child. The proposed statute will allow the court to hold a hearing that determines reinstatement is in the best interest of the child and which takes into account whether the parent has remedied conditions and the child's wishes. Only the department may petition to reinstatement of parental rights.