

**STATE OF MAINE
120TH LEGISLATURE
SECOND REGULAR SESSION**

**Final Report
of the
COMMISSION ON FATHERHOOD ISSUES**

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Executive Summary

The 120th Legislature authorized the establishment of the Commission on Fatherhood Issues by enacting Resolve 2001, Chapter 121, during the Second Regular Session. The Commission included five members of the Legislature and four public members, including individuals with expertise in providing community-based and faith-based programs to support parents across the State. The Commission was established to study issues associated with being a father in the State and the enabling legislation specifically charged the Commission to examine the following issues:

- A. To determine the multiple barriers to fathers' involvement in the lives of their children;
- B. To identify significant personal, institutional, legal and cultural barriers to active, positive parenting by fathers;
- C. To identify the availability of private and public services statewide to enhance the parenting abilities of fathers; and
- D. To identify and develop strategies to improve the parenting abilities of fathers across the socioeconomic spectrum and varying resident status.

The Commission was directed to submit its report by November 6, 2002 and was also authorized to submit legislation to implement its recommendations to the 121st Legislature.

Commission Recommendations

The Commission was convened on August 27, 2002 and held three other meetings on the following dates: September 16, 2002; October 10, 2002 and October 28, 2002. Commission members received information from a number of state executive and judicial branch officials, as well as from key resource people in the public and private sector, regarding the significant “barriers to fatherhood” and the availability of existing resources and promising strategies to improve the parenting abilities of fathers. The Commission received spoken and written public testimony at each of its meetings. The following recommendations were approved at the final meeting of the Commission:

1. Keeping Women, Children and Men Safe. While the Commission was directed to contemplate issues confronting fathers, the Commission recommends, by general consensus, that state policies and programs designed to promote fatherhood and to improve the parenting abilities of fathers must be measured against the guiding principle of keeping women, children and men safe.

2. The Importance of Fathers in the Lives of Their Children. The Commission recommends, by general consensus, that the policies and programs of state and local governments should reflect the importance of fathers in the lives of their children. Towards that end, the Commission recommends that:

- A. State and local government agencies, whenever appropriate, should provide program resources and services to both mothers and fathers;
- B. State agencies should provide training for personnel to ensure a respectful climate;
- C. The tone of Department of Human Services correspondence to putative or non-custodial fathers should be moderated and that any antagonistic language related to legal actions should be relegated to an attachment; and
- D. State agencies and schools should maintain records of both parents, including the non-custodial parent, in records related to their children.

3. Community Information and Referral System. The Commission recommends, by general consensus, that the Department of Human Services should support the creation of a Community Information and Referral System that makes use of a toll-free phone number or Internet site that can provide statewide access to resource directory information.

4. Presumption of Shared Primary Residential Care. A *majority*¹ of the Commission members recommend that legislation be submitted to the 121st Legislature proposing that the Legislature should amend current law to establish a presumption of shared primary residential care when a motion is filed to seek primary residential care. Under this proposal, the “starting point” for District Court deliberations would be the standard of “shared primary residential care.” The Court could then consider other mitigating factors as required by current law, (e.g., the “best interests of the child” standard), in moving away from a 50% - 50% sharing of primary residential care. A *minority* of the Commission members recommends that the Legislature should maintain the current law regarding the determination of “parental rights and responsibilities.”

5. Case Management Officers (“CMOs”). The Commission unanimously recommends that legislation be submitted to the 121st Legislature proposing that the Legislature should provide the additional State funds necessary to the Family Division of the District Court to match Federal grant funds that will allow the deployment of an additional five CMOs to serve in the District Courts across the State.

6. Access and Visitation Services. The Commission recommends, by general consensus, that “access and visitation services” -- including child contact centers, neutral drop-off and pick-up sites and parent education programs -- be expanded to meet the needs of parents across the State. To determine how to effectively make use of the resources available for “access and visitation services,” the Commission recommends that:

¹ Rep. Cummings contacted the Commission chairs a few days after the final meeting seeking the opportunity to change his vote on this recommendation. Without the authority for additional Commission meetings and in keeping with the spirit of Maine law on public proceedings, the Commission chairs did not agree on approving this request. Despite that outcome, Rep. Cummings wished the record to reflect his intent to reconsider his vote in support of this particular recommendation.

- A. A letter be sent to the Children’s Cabinet to request that they conduct a needs assessment for “access and visitation” programs and services across the State;
- B. A letter be sent to the Department of Human Services (“DHS”) to request that the Commissioner review the allocation of Federal funds received through the Access and Visitation Grant Project, including the deployment of these funds for non-DHS cases; and
- C. The Children’s Cabinet and the Commissioner of DHS report the findings of their respective inquiries, together with any recommendations, by May 30, 2003 to the Joint Standing committees of the Legislature having jurisdiction over judiciary and health and human service matters, with copies to the Advisory Council on Families and Children.

7. Non-Custodial Parent Outreach and Investigation Project (“NCPOIP”). The Commission unanimously recommends that legislation be submitted to the 121st Legislature proposing that the Legislature should provide the State funds necessary to allow the Department of the Attorney General to continue the NCPOIP once the Federal grant funds that support this project lapse.

8. Data Collection on Cases Involving “Parental Rights and Responsibilities.” The Commission recommends, by general consensus, that the Family Division of the District Court should maintain court records regarding the number, types and outcomes of cases involving the allocation of “parental rights and responsibilities.” In particular, the Court should collect and maintain data on the number of cases and the outcome of “contested” and “uncontested” cases; and should further record the primary residence of the child and the “access and visitation” schedule for the non-custodial parent in each case. Finally, the Commission recommends that data should be maintained through an appropriate information system, (e.g., MCJUSTIS), such that this data may be accessible to state policymakers and the public in a format that permits policy analysis and research while excluding any personally-identifying information about individuals involved in such cases.

9. Parental Access to Information on School Activities and Programs. A *majority* of the Commission members recommend that legislation be submitted to the 121st Legislature proposing that the Legislature should strengthen the requirement that non-custodial parents have access to school information and receive notification of their child’s involvement in school activities and programs. Under this proposed amendment to current law, a school administrative unit must provide written notification to non-custodial parents of all school activities and programs for which parental participation, notification or awareness is in the best interest of the student as defined by the Court. A custodial parent may negate such notification of a non-custodial parent upon a written request to the school administrative unit. This written request must provide a rationale for the negation. A *minority* of the Commission members recommends that the Legislature should maintain the current law regarding parental access to information on school activities and programs.

I. INTRODUCTION

The Commission on Fatherhood Issues (“Commission”) was convened during the interim following the Second Regular Session of the 120th Legislature. The authorizing legislation for the Commission grew out of LD 472, “Resolve, to Establish a Fatherhood Issues Study Commission,” which was sponsored by Representative Paul Tessier and introduced as a concept draft to the First Regular Session of the 120th Legislature. This bill was referred to the Joint Standing Committee on the Judiciary (“Judiciary Committee”). The concept draft proposed to establish a study commission to examine various issues associated with being a father in Maine, including the rights of divorced fathers, the availability of services in the State to enhance fathering, the special needs of single parents who are fathers and the availability of assistance for fathers insufficiently trained to support their children. The majority report of the Judiciary Committee proposed to replace the bill with a resolve to create the Commission on Fatherhood Issues consisting of 11 members appointed by the President of the Senate and the Speaker of the House of Representatives. The resolve proposed that the commission study issues concerning the barriers to being an involved father in Maine.

Since LD 472 was not funded “off of the Appropriation’s Table,” the bill was “carried over” to the Second Regular Session by the Joint Standing Committee on Appropriations and Financial Affairs (“Appropriations Committee”). The report of the Appropriations Committee was identical to the Judiciary Committee amendment, except that the membership of the Commission was reduced from 11 to 9 members. The proposed Commission would study issues concerning the barriers to being an involved father in Maine and would also identify and develop strategies to improve the parenting abilities of fathers.

Charge to the Commission

The 120th Legislature authorized the establishment of the Commission on Fatherhood Issues by enacting Resolve 2001, Chapter 121, during the Second Regular Session. A copy of the law is attached as **Appendix A**. The Commission was established to study issues associated with being a father in the State and the enabling legislation specifically charged the Commission to examine the following issues:

- A. To determine the multiple barriers to fathers' involvement in the lives of their children;
- B. To identify significant personal, institutional, legal and cultural barriers to active, positive parenting by fathers;
- C. To identify the availability of private and public services statewide to enhance the parenting abilities of fathers; and
- D. To identify and develop strategies to improve the parenting abilities of fathers across the socioeconomic spectrum and varying resident status.

The Commission was directed to submit its report by November 6, 2002 and was also authorized to submit legislation to implement its recommendations to the 121st Legislature.

The Commission included five members of the Legislature and four public members, including individuals with expertise in providing community-based and faith-based programs to support parents across the State. Senator Michael McAlevey of Waterboro and Representative Deborah Simpson of Auburn chaired the Commission. The full roster of Commission members also includes: Sen. Peggy Pendleton of Scarborough, Representative Glenn Cummings of Portland, Representative Marie Laverriere-Boucher of Biddeford, Emily Douglas, Ph.D. of the Muskie Institute of Public Service; Donald Farrell² of Families First in Kennebec County, Michael Heath of the Christian Civic League of Maine and Heidi Leinonen of Caring Unlimited in York County. The roster of Commission members, including contact information, is appended as **Appendix B**.

Scope and Focus of the Commission Process

Convening the Commission

The Commission was convened on August 27, 2002 and held three other meetings on the following dates: September 16, 2002; October 10, 2002 and October 28, 2002. The Commission used its first meeting to formulate a work plan. Commission members reviewed the purposes of the study, discussed their perspectives on the significant “barriers to fatherhood” that they would focus on and identified the key resource people they would need to meet with in order to receive information that would enable the Commission to effectively complete its duty.

Commission Meeting # 2

Committee members decided to focus the next meeting on gathering information about the legislative intent behind the study, cultural barriers to fatherhood and the existing policies and programs to improve the parenting abilities of fathers. During its second meeting, information regarding the following fatherhood issues was presented to the Commission.

Legislative Intent. Representative Paul Tessier, the sponsor of LD 472 and a social worker with 25 years experience, cited the lack of local programs across the State that are intentionally designed to provide services to fathers, the impression that State program priorities are not always supportive of father’s needs, the availability of Federal funds to create State fatherhood initiatives and a sense of responsibility to eliminating barriers facing fathers as the foundation of his legislative intent in seeking to establish the Commission.

“Gauntlet of Cruelty.” Stephen Andrew, MSW, a consultant affiliated with Inner Edge and the Men’s Resource Center of Southern Maine, described the prevalence of a “gauntlet of cruelty” that boys (between the ages of 10 and 15) experience in our culture -- including taunting, bullying and harassment; and from which boys learn to be tough, to depend on themselves and to

² Mr. Farrell resigned from the Commission before the third Commission meeting.

not show affection. These messages make it difficult for boys to connect emotionally with others during their youth and across their lifespan. He also provided information related to programs and initiatives *supporting* boys, men and fathers and *opposing* violence, including a description of the Fathers Leadership Involvement Project in Portland. This project sought to train and develop a small cadre of fathers and adult men who can overcome cultural and institutional barriers by engaging youth in schools and their community to reduce the incidence of violence and substance abuse and to improve educational aspirations and school performance.

“Kids First” and Parent Education Programs. Staci Fortunato, Executive Director of Families First of Kennebec County (the county’s child prevention and abuse council), presented information on the education, advocacy and family support programs provided for parents and families involved in separation and divorce, including “Kids First,” “Boot Camp for New Dads,” “Steps” programs and “Parent Circle” programs;

Temporary Assistance to Needy Families (“TANF”). Judy Williams, Director of the Department of Human Services (“DHS”) Bureau of Family Independence, provided information on the use of Federal “block grant” funds through the TANF program. Maine uses TANF funds: (1) to end the dependence of needy parents on government benefits by promoting work, job preparation and employment, (including childcare and transportation), through the ASPIRE program; (2) to provide financial assistance to needy families, including child care and social services, so that children may be cared for in their own homes or in the homes of relatives; (3) to encourage the formation and maintenance of two-parent families and (4) to prevent and reduce the incidence of out-of-wedlock and teen pregnancies. She also reported that -- out of a total of roughly 7,000 “heads of household” receiving TANF program benefits -- a male is the “head of household” in 335 TANF program cases.

Child Support Enforcement Efforts. Stephen Hussey, Director of the DHS Division of Support Enforcement & Recovery, provided information on child support enforcement efforts, including an increase in enforceable orders for the collection of child support, a reduction in “unestablished paternity” caseloads and an overview of the Non-Custodial Parent Outreach and Investigation Project (“NCPOIP”), a Federal grant-funded project providing outreach and support to non-custodial parents who may be defaulting on their obligation to provide child support. He also described the Federal grant-funded “Access & Visitation” project that supports supervised visitation programs, as well as parenting programs for parents involved in the process of separation or divorce in the Portland and Augusta areas.

Adoptive and Foster Parent Programs. Michael Norton, Director of the Division of Public Affairs/Quality Assurance within the DHS Bureau of Child & Family Services, provided information on adoptive and foster parent programs, including training programs for prospective adoptive and foster parents.

Fatherhood Initiatives in Head Start Programs. Kerry Wiersma, Director of the Division of Contracted Community Services within the DHS Bureau of Child & Family Services, together with Lisa Ayotte, Augusta Head Start Program and Chris Rolace, the Bath Head Start Program, provided information about fatherhood initiatives set up through Head Start programs across the

State through the support of \$2,000 Federal grants for “Good Guys” programs focusing on literacy activities and parenting skills. New initiatives also include parent orientations, school and home visitation programs and the “Hooked on Fishing, Not on Drugs” program.

Commission Meeting # 3

For the third meeting, Commission members requested clarification of the State laws related to parental rights and responsibilities, sought further information regarding the Non-Custodial Parent Outreach and Investigation Project and reviewed other programs and strategies to improve the parenting abilities of fathers. The Commission also requested that Commission staff provide a draft of potential findings for Commission members to discuss during time set aside for Commission deliberations. During its third meeting, the following analyses and perspectives on state policies and local fatherhood initiatives were provided to the Commission.

Parental Rights and Responsibilities. Peggy Reinsch, Senior Legislative Analyst with the Legislature’s Office of Policy & Legal Analysis, provided analyses of state statutes and recent amendments to the Maine statutes regarding parental rights and responsibilities, including: (1) definitions of “allocated,” “shared” and “sole” parental rights and responsibilities; (2) the standard of the “best interests of the child” and factors the Court must consider in determining these interests; (3) public policy declarations that a minor child should have “frequent and continuing contact” with both parents, that it is in “the public interest to encourage parents to share the rights and responsibilities of child rearing” and that the Court is prohibited from applying a preference for one parent over another because of the parent’s gender; (4) statutory directives to the Court with respect to court orders involving “shared primary residential care” when parties agree to, as compared to when they contest, “shared parental rights and responsibilities”; and (5) statutory directives to the Court with respect to Protection from Abuse (“PFA”) orders, including willful misuse of the PFA process.

Non-Custodial Parent Outreach and Investigation Project (“NCPOIP”). A NCPOIP panel of Department of the Attorney General and Muskie School of Public Service staff, including Jessica Maurer, Diane Friese, George Shaler and Alan Robitaille, provided a detailed briefing on this project, which is a two-year demonstration project (July, 2001 to July, 2003) funded by the Federal Office of Child Support Enforcement and awarded to the DHS Division of Support Enforcement and Recovery, which works in partnership with the Attorney General and Muskie School staff. The purpose of the NCPOIP project is to facilitate payment of child support from chronic non-paying parents and putative fathers who are in default. In a review of the first 100 cases handled, project investigators have identified the following barriers to payment of child support -- literacy, mental illness, substance abuse, access to education, access to health care, housing, transportation, visitation, and prior involvement with the criminal justice system; and investigators have worked with individuals to overcome these barriers by provided referrals to community-based organizations who were able to help parents in obtaining health care, transportation, job training and counseling services.

“The Gender Project.” Aileen Fortune, Extension Educator from the York County Office of the University of Maine Cooperative Extension Service, provided information on “Gender

Project” programs and the following perspectives: (1) the socialization of boys and girls in our culture is shaped by factors that include the overwhelming influence of media, bullying and violence in schools, body image and eating disorders, an emphasis on school achievement and the rise in dating violence, alcohol and substance abuse and dangerous risk-taking behaviors; (2) “masculinity” is defined in positive and less affirmative ways -- we celebrate characteristics like strength, independence, boldness, loyalty, risk-taking and leadership, but we must challenge harmful expectations such as never showing feelings (except anger), always be independent, be first and stay on top, separate from all things female and be tough and don’t back down; (3) we need to move beyond the limiting expectations of boys and empower them to grow into men who can find satisfaction and success in all aspects of their lives, including a full range of feelings, respect and a deep appreciation of connected relationships; and (4) both boys and girls need to develop a full repertoire of skills to become happy, successful adults, including the development of a strong identity, the capacity to develop and maintain healthy relationships and the opportunities to achieve their full potential.

“Boys to Men” Conference. Lane Gregory and Daryl Fort, Steering Committee Members for the “Boys to Men” Conference, provided a history of this successful event that brings fathers and adult male mentors together with boys to supports positive, non-violent, male development. The annual conference held in Portland combines sessions on substantive issues related to growing up male and building relationships with a variety of recreational and vocational activities that are fun. In its third year running, the “Boys to Men” conference consistently attracts more than 400 boys and their adult male mentors from all across the State.

Commission Meeting # 4

For the final meeting, the Commission examined some unresolved issues, including a focus on the operations of the Family Division of the District Court, perceptions of the impact of Maine’s divorce laws on fathers and an overview of fatherhood initiatives in the Department of Education and the Department of Human Services. The meeting also represented the final opportunity for Commission members to deliberate on the findings, recommendations and proposed legislation that they would submit as part of the Commission report. The following perspectives on state policy and fatherhood initiatives were provided to the Commission.

Perspectives on Fatherhood and Maine’s Divorce Laws. Paul Ouellette, MSW, with 25 years experience as a social worker, a divorced father and an advocate for Maine divorced fathers, presented the following perspectives on fatherhood and Maine’s divorce laws: (1) non-custodial fathers won’t often have much of a relationship with their children following a divorce, due, in many cases, to fathers’ decisions to avoid putting their children through more conflict (which is often instigated by the children’s mother); (2) the folklore among fathers is that they expect to be treated unfairly when they get to divorce court; (3) while some male law school professors confided that the courts view men seeking custody as only trying to get even with their ex-wives and that men would soon forget about their children; some female law school professors were rude and dismissive of men seeking custody; (4) Maine divorce laws need to be reformed so that the Courts are committed to treating men and women equally by promoting mediated divorces, developing standards for determining custody and residency decisions and by addressing issues

related to domestic violence; (5) research findings on physical assaults in domestic relationships indicated that 50% of the perpetrators are men and 50% are women and, moreover, that children are 40% more likely to be physically assaulted by a woman than by a man; (6) recommends that a toll-free number be set up so that men have a safe place to go with their problems and where they can be directed to appropriate resources for assistance; and (7) recommends that a Maine Commission for Fathers be established to collect and analyze Maine data before legislative solutions are proposed.

Perspectives on Maine Family Law, the Family Division of the District Court and Perceptions of Gender Bias in the Courts. Chief Judge Vendean Vafiades, Judge Joyce Wheeler, Wendy Rau, Court Administrator and Barbara Cardone, Chair of the Family Law Section of the Maine Bar Association, provided perspectives on the creation of the Family Division of the District Court, on Maine family law and on perceptions of institutional or gender bias in the Courts. Chief Judge Vafiades reported that: (1) the District Court has been modernized in terms of how it addresses cases involving family law matters; (2) the Court makes decisions based on factual information regarding situations from which it is often difficult to distinguish between conventional wisdom and reality and from which the litigants sometimes perceive themselves to be “winners” and “losers”; and (3) while the Court is extremely busy, there is a system in place to take an internal look at the workings of the Family Division.

Maine Commission on Gender, Justice & Courts. Judge Wheeler described the investigation conducted from 1993 to 1996 by the Maine Commission on Gender, Justice & Courts (“Gender Commission”) that surveyed other state’s gender bias studies, analyzed Court policies and procedures and gathered data from 23 focus groups comprised of litigants, attorneys, judges and Court personnel. Among the Gender Commission’s conclusions: (1) the judicial system, which applies otherwise gender-neutral laws and procedures, must not perpetuate gender inequities and imbalances that exist in our culture and society; (2) on most issues, inequities and unfairness were not attributable to bias *per se*, but rather to other, more complex factors related to economic and cultural aspects of our society; (3) there is a widely-held perception in Maine and the U.S. that gender bias affects the way people are treated in court and the outcomes of various legal matters; (4) while both men and women perceived process bias and outcome bias, male litigants commonly perceived a systemic bias favoring mothers in custody proceedings; and (5) any gender-related unfairness was aggravated by persistent under-funding of the Judiciary.

The Gender Commission’s report recommended that: (1) judges, litigators and mediators be provided with training regarding gender fairness, bias and disparate impact; (2) the Courts make greater use of non-adversarial forums; (3) judges’ orders explain to litigants the factors taken into account in determining custody; (4) additional resources be provided so that the Court can provide early access to litigants and expedite proceedings to preempt the use of inappropriate tactics; and (5) the Family Division be established and that the position of Case Management Officer (CMO) be created to inform litigants of their rights and the legal process in family proceedings before the Court.

The Family Division: Mission, Goals and Proceedings. Ms. Rau provided an overview of the Family Division, which was established in 1998, including its *mission*: “to provide a system of

justice that is responsive to the needs of families and the support of their children” and its *goals*: (1) to promptly address and resolve family cases in a timely manner; (2) to provide effective case management for family cases involving children; (3) to facilitate parenting arrangements in the best interests of the child; (4) to provide Court users with a better understanding of Court processes and information about support services for parents and families; and (5) to make appropriate referrals to alternative dispute resolution services.

Ms. Rau went on to describe the initial case management conference, which usually occurs within 35-45 days of the initiation of the Court action, as the starting point of the process where a CMO meets with litigants to make sure they understand the process, to focus on the children’s needs and protect their interests and to identify the issues involved in the conflict. If the parties agree, the CMO presents a case précis or, if parties are unable to agree, the CMO makes initial decisions on a process to move the case towards resolution, which may involve mediation, parent education or appointment of a guardian ad litem. She also reported that 8 CMOs travel to the 31 District Courts in the State; that the Family Division leverages child support funds to finance the employment of CMOs, with 1/3 of CMO funding coming from state General Funds and 2/3 coming from child support funds; and that the Family Division utilizes federal “Access & Visitation” grant funds to promote the establishment; of county agencies that can provide support services for parents and families.

Observations on Proceedings of the Family Division. Attorney Cardone provided the following observations on family law proceedings in the Court: (1) statistics, generalities and stereotypes -- in and of themselves -- should not unreasonably influence the law, policies and operations of the Court since, to a certain extent, judges needs to address individual situations and specific circumstances; and (2) to mandate that the Court must implement a “shared parenting presumption” would be detrimental to maintaining the current focus on the “best interests of child” standard and would diminish the discretion that judges and Court officers require to deal with individual circumstances of each case.

Initiatives Promoting Gender Equity. Judge Wheeler described initiatives launched by the Court during the past 3-4 years related to providing training on gender equity: (1) judges, CMOs and Court officers now take part in training to raise awareness regarding their own gender biases; (2) juvenile and adult drug treatment courts have focused on restoring families and are now able to provide support systems that help men and women with alcohol and drug problems to get clean and sober so they can deal with their parenting rights and responsibilities; and (3) domestic violence Court “pilot project” permits a non-custodial parent to interact with their children during a domestic violence case.

Perspectives on Determining “Parental Rights and Responsibilities.” Commission members and Family Division panelists discussed the following policy issues related to legal “presumptions,” the “best interests of the child” standard and other factors the Court considers in determining “parental rights and responsibilities” for a minor child:

(1) Why not adopt a gender-neutral policy that both the mother and father have an equal capacity to raise their child and that directs the Court to establish a “presumption” of *shared* parental rights and responsibilities as the *starting point* for the Court to begin its deliberations of

“parental rights and responsibilities” and then the Court can consider the “best interests of the child” standard and other appropriate factors in its deliberations;

(2) New Hampshire’s public policy and law has two “presumptions” -- “*joint legal custody*” which pertains to parental decision-making about the child’s life (analogous to “parental rights and responsibilities” in Maine law) the “*best interests of the child*” where a domestic violence finding can override the “joint legal custody” presumption. Some Commission members wondered why a similar policy could not be implemented in Maine. They suggested that the “joint legal custody” presumption puts fathers’ issues “on the table” and declares that state policy to both parents; and, therefore has the benefit of responding to perceptions of bias, particularly if fathers are discouraged from even going to Court due to such perceptions;

(3) Current Maine law declares that a minor child should have “frequent and continuing contact” with both parents, that it is in “the public interest to encourage parents to share the rights and responsibilities of child rearing” and directs the Court to honor “shared parenting” arrangements -- including “shared primary residential care” -- when both parties agree *unless* the Court finds substantial evidence (and states its reasons in an order) as to why such “shared parenting” arrangements should not be ordered;

(4) The difference between a public policy declaration and a legal standard or “presumption” is that the former is a policy finding or statement and the latter is a binding, legal requirement;

(5) Chief Judge Vafiades believes that the Legislature achieved the proper balance in crafting legislation that both declared public policy and directed the Court to consider certain factors in determining “parental rights and responsibilities” and also suggested that to add further legal standards or presumptions would be “over-legislating.” In her view, current statutes support the public interest in promoting shared parenting, support the notion that what works best for children also works for parents and support the public interest in defeating domestic violence;

(6) The Family Law Advisory Council stated that the foremost concerns with establishing a “presumption” of “shared primary residential care” (e.g., a “50-50” residential arrangement such as alternating weeks with each parent) are factors related to the “best interests of the child,” including: (a) it would not take into account the developmental stages of each individual child; (b) it may disregard the ability of parents to cooperate in making the schedule work and the geographic realities involved; (c) it would limit the Court’s discretion in dealing with the individual circumstances of each case; (d) it may create conflict where none exists (e.g., parents may prefer something other than a “50-50” residential arrangement) and may result in more litigation; and (e) it would overturn current statutory provisions requiring consultation and regular communication and would likely require greater enforcement efforts;

(7) Enforcement mechanisms include resources for parenting education and enforcement actions; if a Court order is not being followed, a CMO conference can be arranged and, if a conflict occurs that the parties cannot resolve themselves, shared parenting agreements sometimes include *automatic* mediation provisions;

(8) Noncustodial fathers sense a “double standard” in how the Court handles cases involving the determination of parental rights and responsibilities. Fathers are held “responsible” for paternity and making child support payments, but -- once the Court order determines access and visitation rights -- they often face barriers to having their access and visitation “rights” enforced and must file additional motions with the Court to enforce the order, to hold the “custodial parent” in contempt or to make a motion to modify the order; and

(9) Chief Judge Vafiades also observed that the Court frequently see adults more concerned with their own interests than the child's interests; and parents who may have their own personal challenges (e.g., ego needs, insecurity) to overcome; if parents come to Court in an honest attempt to resolve problems, then our Courts can help the situation; we should focus on child development and parental responsibilities -- it's all about children ending up okay regardless of their parents' legal status and encouraging adults to carry out their childrearing responsibilities.

Perspectives on the Operations and Programs of the Family Division. Commission members and Family Division panelists discussed the following policy issues related to the operations and programs of the Family Division: (1) the need for additional resources to support "Access and Visitation" centers and to provide for safe exchanges and supervised visits in a conflict-free and comfortable environment; (2) the current backlog of cases scheduled before the Court is 45 to 50 days and the Court would prefer to reduce this time to 21 days; (3) the need for additional funds to deploy 4-5 additional CMOs which would reduce the time it takes to conduct initial case management conferences, would greatly assist families with low-cost intervention in their time of need and would shorten or eliminate the backlog of cases scheduled before the Court; (4) the average CMO caseload is 1,200 per year; ideal workload would be 500 per year; and (5) Judge Wheeler suggested the case management process works as she sees far fewer unresolved cases coming to her following the case management conferences.

Department of Human Services (DHS) Initiatives. Peter Walsh, DHS Deputy Commissioner, noted that Maine is near the top of the nation in divorce rates with 25% to 30% of children currently living in single parent households and with more than 50% living in single parent households by 18 years of age. He provided an overview of DHS initiatives, including the establishment of the Governor's Children's Cabinet, Communities for Children, Parents as Children's First Teachers and the Task Force on Early Childcare and Education; and highlighted a number of state initiatives and community-based programs coordinated through the Children's Cabinet -- which is comprised of the Commissioner's of the five child- and family-serving state agencies -- over the past 5 years that hold promise in enhancing the parenting abilities of fathers: (1) Family Home Visitation -- conducted 5,000 home visits for first-time families, including mothers, children and fathers; and provide information and access to programs and services; (2) Promotion of parents as children's first teacher; (3) Head Start programs and fatherhood initiatives in a substantial number of counties; (4) Integrated Case Management System -- this model, which places the family at the center of service providers and designates a "lead" case manager to view the overall needs of the family, has taken hold in region 3 and is expanding to regions 1 and 2; (5) Maine Mentoring -- this initiative to increase the number of mentors across the State from 3,500 to 33,000 can provide adult leadership to aid and support families in a prevention effort to reduce the growth in child welfare cases (we have 400 child welfare officers and don't need more cases); (6) Family Impact Committee -- the committee focus is on strengthening families and addressing the impacts of divorce, violence, trauma, economics and education on families; and (7) Welfare reform -- the triangle of responsible parties includes the mother, the father and the government; and child support enforcement efforts have collected \$100,000,000 out of \$500,000,000 due in child support.

Department of Education (DOE) Initiatives. David Stockford, DOE Director of Special Services, provided an overview of DOE curricular and cocurricular initiatives that address gender socialization issues and the skills and competencies necessary for developing fathers who are active, positive parents. He also discussed Federal and State requirements regarding access to confidential student records under the Federal law, including the Family Educational Rights and Privacy Act (FERPA) requirements, which may be in conflict with “permissive” State law related to a noncustodial parents’ access to such information. He suggested that a conflict may exist between Federal and State laws if a court order is not explicit about providing noncustodial parents with access to their children’s school records and to receive notice of their children’s school activities -- information that may otherwise be deemed confidential under FERPA. He also noted that recent Federal requirements related to safe schools, bomb threats, homeland security, confidentiality of health records and the residency status of noncustodial parents add complexity to these matters since school officials are required to see evidence of specific rights granted under court orders.

Perspectives on Providing Non-custodial Parents with Access and Notice of their Children’s School Activities and Programs.” Commission members and Mr. Stockford discussed the policy issues related to the need for school officials to collect and maintain contact information on both parents so that they can be involved in their children’s education. Some Commission members urged that such policies are necessary given the emergence of more “blended families” and the neglected rights of some non-custodial parents, who have the right and responsibility to share in educational decisions regarding their children’s education and are entitled to appropriate notice of their children’s school activities. Other Commission members remained concerned that there are too many ways for innocuous information to cause harm to a child and that she didn’t want to place any additional burdens on custodial parents or foster parents who, for safety reasons, may wish to deny a child’s non-custodial parent or biological parents from having access to such school information. To address these differing concerns, a few Commission members supported the proposed that the Legislature may wish to have the Maine Office of the Attorney General review the legal implications of recent Federal requirements and Maine statutes related to access and notice to noncustodial parents.

Public Comment Presented to the Commission

The Commission received public comment, in the form of spoken and written public testimony, at each of its meetings. The names of individuals who presented public comment, including a brief summary of their testimony, is attached as **Appendix C**. For further details on public comment, please see: (1) the meeting summaries of the Commission meetings, which are available through the Office of Policy and Legal Analysis’ pages on the Legislature’s web site at the following URL: “<http://www.state.me.us/legis/opla/father.htm>”; and (2) the written testimony provided to the Commission, which is contained as part of the master file of Commission materials and is available through the Office of Policy and Legal Analysis or the Maine State Law and Legislative Reference Library located in the State House.

II. SUMMARY OF KEY FINDINGS

The Commission on Fatherhood Issues reviewed a considerable amount of information regarding the barriers to father involvement and existing efforts to overcome these barriers during the course of four Commission meetings. After a fair amount of discussion, Commission members reached a general consensus on the following summary of key findings regarding barriers to fatherhood. Conversely, the Commission did not spend a great deal of time deliberating on the most promising strategies to enhance the parenting abilities of fathers. All the same, the summary of key findings includes those programs, services and strategies that were identified during the Commission process.

Findings Related to the Multiple Barriers to Fathers' Involvement in the Lives of their Children and to Active, Positive Parenting By Fathers

Personal Barriers

- ⊕ Some fathers may not understand the importance of being an active parent who is engaged in their children's life;
- ⊕ Some fathers may lack job skills, may be unemployed/underemployed and may have increased commuting time to work;
- ⊕ Some fathers may lack access to affordable housing and child care;
- ⊕ Some fathers may abuse alcohol and other drugs;
- ⊕ Some fathers may not manage their emotions or separate their emotions from aggression, abuse and violence;
- ⊕ Some fathers may lack reliable transportation and may face significant travel time to their children's primary residence; and
- ⊕ The physical absence of fathers in their children's homes is a major barrier to fatherhood.

Cultural Barriers

- ⊕ Cultural expectations regarding the roles that boys, men and fathers play in society, communities and families differ from those related to girls, women and mothers;
- ⊕ Boys and men may lack developmental opportunities that can serve to cultivate caring and engaged fathers; and
- ⊕ For fathers and mothers, our society seems to value a "provider ethic" and to devalue a "family ethic" which often creates a dilemma with regard to the time they devote to work and the time they devote to parenting.

Institutional Barriers

- ⊕ Some schools are not providing a welcoming environment for fathers and some fail to foster and maintain the lines of communication necessary to engage fathers more fully in their children's learning;
- ⊕ The statute defining the duty that school officials have in providing notification to the non-custodial parent of their child's school activities is too "permissive" and some schools are not providing this information to fathers as required by law and by court orders;
- ⊕ Some fathers perceive a lack of respect when they contact state agency personnel;
- ⊕ State government and local education agencies may not include contact information for fathers (particularly non-custodial fathers) in their records which may prevent fathers from accessing resources available to them and information about their children in periods of crisis;
- ⊕ Some non-custodial fathers are unable to have contact with their children due to inadequate resources for providing visitation centers, including "supervised" child contact centers and services to enable them to have contact with their children;
- ⊕ Low-income, non-custodial fathers often have fewer resources available to them in terms of programs that can provide them with the assistance necessary to become self-sufficient and meet their child support obligations; and
- ⊕ Maine does not currently have an agency eligible to receive federal funds that are available to support faith-based initiatives.

Legal Barriers

- ⊕ Some federal and state policies, laws and programs may not reflect the importance of fathers in the lives of their children;
- ⊕ Court is an adversarial place and an uncomfortable environment for parents in the process of divorce or separation;
- ⊕ Some fathers lack access to affordable mediation and legal services;
- ⊕ Fathers need alternative approaches -- other than having to take further legal action -- to resolve disputes and problems in the areas of "parental rights and responsibilities"; and
- ⊕ Non-custodial fathers need the family case management process to continue when disputes arise following a court order.

While some Commission members suggested that the Commission report should include a general statement that the perception of a barrier is nonetheless a real barrier for the person who perceives it, other Commission members could not support such a statement and instead proposed that a perceived “legal barrier” may actually be a lack of understanding of the law and misperceptions about the court process.

**Findings Related to the Availability of Private and Public Services
Statewide to Enhance the Parenting Abilities of Fathers**

The scope and focus of the Commission succeeded in identifying numerous barriers to father involvement and a range of existing initiatives and efforts to overcome these barriers. In the course of the process, Commission members discussed the feasibility of having Commission staff identify, compile and produce a resource guide, including private and public services statewide to enhance the parenting abilities of fathers. Considering the limited time available to devote to effectively accomplish this undertaking and given the existing community information and referral initiatives launched by Ingraham, the United Way of Portland and the Non-Custodial Parent Outreach and Investigation Project, Commission members determined that this project should not be pursued. Instead, the Commission directed Commission staff to summarize and provide contact information for the useful information sources and resource guides already available in the State. This summary of resource guides and useful information sources is attached as **Appendix D**.

III. RECOMMENDATIONS

The Commission on Fatherhood Issues presents the following recommendations for the consideration of the 121st Legislature. These recommendations, including proposed legislation necessary to implement selected Commission recommendations, were approved by a majority of the 7 Commission members who were present when the votes were taken during the final Commission meeting.³ While the preceding “findings” section focused primarily on the barriers to fatherhood and to active parenting by fathers, the Commission recommendations that follow are presented in accordance with the duties that directed the Commission to identify available services to overcome barriers to fatherhood and to develop strategies to improve the parenting abilities of fathers.

Recommendation # 1: Keeping Women, Children and Men Safe. While the Commission was directed to contemplate issues confronting fathers, the Commission recommends, by general consensus, that state policies and programs designed to promote fatherhood and to improve the parenting abilities of fathers must be measured against the guiding principle of keeping women, children and men safe.

Recommendation # 2: The Importance of Fathers in the Lives of Their Children. The Commission recommends, by general consensus, that the policies and programs of state and local governments should reflect the importance of fathers in the lives of their children. Towards that end, the Commission recommends that:

- E. State and local government agencies, whenever appropriate, should provide program resources and services to both mothers and fathers;
- F. State agencies should provide training for personnel to ensure a respectful climate;
- G. The tone of Department of Human Services correspondence to putative or non-custodial fathers should be moderated and that any antagonistic language related to legal actions should be relegated to an attachment; and
- H. State agencies and schools should maintain records of both parents, including the non-custodial parent, in records related to their children.

Recommendation # 3: Community Information and Referral System. The Commission recommends, by general consensus, that the Department of Human Services should support the creation of a Community Information and Referral System that makes use of a toll-free phone number or Internet site that can provide statewide access to resource directory information.

Recommendation # 4: Presumption of Shared Primary Residential Care. A majority of the Commission members recommend that legislation be submitted to the 121st Legislature proposing that the Legislature should amend current law to establish a presumption of shared

³ Mr. Farrell and Mr. Heath were not present for the final Commission meeting and did not vote on these recommendations.

primary residential care when a motion is filed to seek primary residential care. Under this proposal, the “starting point” for District Court deliberations would be the standard of “shared primary residential care. The Court could then consider other mitigating factors as required by current law, (e.g., the “best interests of the child” standard), in moving away from a 50% - 50% sharing of primary residential care. (Note: The “majority report” included Sen. McAlevee, Sen. Pendleton, Rep. Cummings⁴ and Ms. Douglas).

A minority of the Commission members recommends that the Legislature should maintain the current law regarding the determination of “parental rights and responsibilities.” (Note: The “minority report” included Rep. Simpson, Rep. Laverriere-Boucher and Ms. Leinonen).

Recommendation # 5: Case Management Officers (“CMOs”). The Commission unanimously recommends that legislation be submitted to the 121st Legislature proposing that the Legislature should provide the additional State funds necessary to the Family Division of the District Court to match Federal grant funds that will allow the deployment of an additional five CMOs to serve in the District Courts across the State.

Recommendation # 6: Access and Visitation Services. The Commission recommends, by general consensus, that “access and visitation services” -- including child contact centers, neutral drop-off and pick-up sites and parent education programs -- be expanded to meet the needs of parents across the State. To determine how to effectively make use of the resources available for “access and visitation services,” the Commission recommends that:

D. A letter be sent to the Children’s Cabinet to request that they conduct a needs assessment for “access and visitation” programs and services across the State;

E. A letter be sent to the Department of Human Services (“DHS”) to request that the Commissioner review the allocation of Federal funds received through the Access and Visitation Grant Project, including the deployment of these funds for non-DHS cases; and

F. The Children’s Cabinet and the Commissioner of DHS report the findings of their respective inquiries, together with any recommendations, by May 30, 2003 to the Joint Standing committees of the Legislature having jurisdiction over judiciary and health and human service matters, with copies to the Advisory Council on Families and Children.

Recommendation # 7: Non-Custodial Parent Outreach and Investigation Project (“NCPOIP”). The Commission unanimously recommends that legislation be submitted to the 121st Legislature proposing that the Legislature should provide the State funds necessary to allow the Department of the Attorney General to continue the NCPOIP once the Federal grant funds that support this project lapse.

⁴ Rep. Cummings contacted the Commission chairs a few days after the final meeting seeking the opportunity to change his vote on this recommendation. Without the authority for additional Commission meetings and in keeping with the spirit of Maine law on public proceedings, the Commission chairs did not agree on approving this request. Despite that outcome, Rep. Cummings wished the record to reflect his intent to reconsider his vote in support of this particular recommendation.

Recommendation # 8: Data Collection on Cases Involving “Parental Rights and Responsibilities.” The Commission recommends, by general consensus, that the Family Division of the District Court should maintain court records regarding the number, types and outcomes of cases involving the allocation of “parental rights and responsibilities.” In particular, the Court should collect and maintain data on the number of cases and the outcome of “contested” and “uncontested” cases; and should further record the primary residence of the child and the “access and visitation” schedule for the non-custodial parent in each case. Finally, the Commission recommends that data should be maintained through an appropriate information system, (e.g., MCJUSTIS), such that this data may be accessible to state policymakers and the public in a format that permits policy analysis and research while excluding any personally-identifying information about individuals involved in such cases.

Recommendation # 9: Parental Access to Information on School Activities and Programs. A majority of the Commission members recommend that legislation be submitted to the 121st Legislature proposing that the Legislature should strengthen the requirement that non-custodial parents have access to school information and receive notification of their child’s involvement in school activities and programs. Under this proposed amendment to current law, a school administrative unit must provide written notification to non-custodial parents of all school activities and programs for which parental participation, notification or awareness is in the best interest of the student as defined by the Court. A custodial parent may negate such notification of a non-custodial parent upon a written request to the school administrative unit. This written request must provide a rationale for the negation. (Note: The “majority report” included Sen. McAlevey, Sen. Pendleton, Rep. Cummings and Ms. Douglas).

A minority of the Commission members recommends that the Legislature should maintain the current law regarding parental access to information on school activities and programs. (Note: The “minority report” included Rep. Simpson, Rep. Laverriere-Boucher and Ms. Leinonen).

APPENDIX A

Authorizing Legislation: Resolve 2001, Chapter 121

APPENDIX B

Membership List, Commission on Fatherhood Issues

APPENDIX C

Summary of Public Comment Presented to the Commission on Fatherhood Issues

APPENDIX D

**Identification of Available Private and Public Services Statewide
to Enhance the Parenting Abilities of Fathers**