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Commission to Develop a Pilot Program to Provide Legal Representation
to Families in the Child Protection System (Resolve 2021, c. 181)
Senator Donna Bailey, Chair
Representative Holly Stover, Chair
c/o Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333

VIA EMAIL SUBMISSION

Senator Bailey, Representative Stover and members of the Commission:

My name is Erika Simonson, Child and Family Programs Coordinator at the Maine Coalition to End Domestic Violence (MCEDV).¹ Thank you for the opportunity to provide public comment to the Commission to highlight the ways in which pre-petition legal representation for survivors of domestic abuse and violence is not only needed and likely to have significant positive impacts on outcomes for families but is also economical and highly achievable in light of existing supports and resources.

As part of its work to date, the Commission has heard about Greater Boston Legal Aid's pre-petition representation program focused on supporting domestic violence survivors, as well as the positive outcomes for families achieved through that project. Attached, please find MCEDV's recommendation to the Commission for a similar Maine-based pilot project focused on supporting domestic abuse survivors and their children in

¹ MCEDV serves a membership of eight regional domestic violence resource centers as well as the Immigrant Resource Center of Maine. Our member programs provided support and advocacy services to more than 13,000 victims of domestic violence and their children in Maine last year, including more than 1,100 survivors who were concurrently engaged in the child welfare system.

both a rural and urban area of the state. Before turning to the very practical reasons why this proposal should have the Commission's support, I'd like to first share two relevant experiences of survivors who have recently been served by our network.

During early interactions with the Office of Child and Family Services (OCFS), the first survivor-parent found herself consumed by all that is required to build a safe and stable household, independent from her former partner. As is the case for many survivors navigating an early interaction with OCFS, this included: finding a new home for her and her children, enrolling the children in a new school, initiating a divorce, shifting bills and finances into her own name, and navigating the complicated maze of public benefits that might be available to support her and the children in the short-term. All of this was happening while dealing with post-separation abusive tactics by her former partner. This survivor was desperate to prove to OCFS that there was no need to remove her children from her care just because the children's father made the choice to perpetrate abuse and violence. And then OCFS staff requested a psychological evaluation as part of their case plan. This parent had no history of mental illness, and there was no articulable reason for OCFS to conclude a psychological evaluation was a box that needed to be checked. Fortunately, this survivor was able to privately retain legal counsel to advocate with OCFS staff for a reasonable and attainable plan – a plan which did not put the burden or blame for domestic violence on the survivor, and which did not include a psychological evaluation. This survivor's access to legal representation made the difference in her ability to timely meet OCFS' expectations, have her case closed and avoid the removal of her children from her care. Unfortunately, not every parent victim has the same opportunities to access legal counsel.

The second parent-survivor did not have the same access to counsel. The early days of her interaction with OCFS created additional and ultimately, unsurmountable barriers to her efforts to keep her family intact upon leaving her abusive husband. The initial report to OCFS was made against her by her husband's family in retaliation for her separating from him and filing for divorce, a post-separation abuse tactic that is not uncommon. From the moment OCFS became involved, this survivor struggled to understand what was expected of her. Although she tried to comply with OCFS, they were never clear about their desired outcomes. A few weeks later, her children were removed from her care and placed with the very relatives who had made the report against her. Once the children were removed, the survivor started losing many of the public benefits that were critical to her stability, importantly including her housing voucher (which had been for a family apartment). And so now she had decreased means to meet the new, more rigorous expectations of OCFS as she entered the next phase of the process: trying to reunify with her children.

Over the next several months, what she described to me was a chaotic struggle: trying to stay safe from ongoing and unacknowledged abuse from her ex-husband; supporting herself with substantially reduced resources; navigating homelessness; pursuing family court litigation while her ex-husband failed to pay court ordered spousal support; interacting with multiple legal systems with which she had no experience or expertise – while four separate parent-attorneys were assigned throughout her case due to roster

challenges; and all of this while trying to prove to OCFS and now the court that she was a safe and stable parent for her children. This, unfortunately, is a too-common reality for so many survivors who have experienced the child welfare system.

Imagine if this survivor had the benefit of an attorney in those early days – to interpret the expectations of OCFS, to make sure she understood her rights and what she should prioritize, to advocate on her behalf with OCFS staff for support in meeting their expectations, to help retain or regain her housing and other benefits, and to pursue unpaid spousal support through the family courts on her behalf. Perhaps then she wouldn't believe that she had “lost the battle for custody before it even began.”

As noted in the attached proposal, a pre-petition pilot project focused on supporting survivors of domestic abuse and violence and their children has several practical benefits. Perhaps most importantly to the project's success is that, due to an already funded statewide program which places a domestic violence advocate in each of the OCFS district offices, case management support for any pilot project attorney would be available without needing to build that cost into the project. Additionally, such a pilot project would come with an already established referral process in place. And project attorneys would have access to in-district office space, again without cost to the project.

Beyond the practicalities, this pilot project aligns with the recommendation in the 2021 Maine Child Welfare Advisory Annual report which calls for “OCFS to update its domestic abuse and violence response policies and practices to prioritize efforts to decrease children from being removed, or threatened to be removed, from non-offending parents for “failure to protect” the child from exposure to domestic violence committed against the non-offending parent by the offending parent.”² Over the last year, MCEDV has been closely working with a team from OCFS to update OCFS' domestic violence response policy to be responsive to this recommendation and the longstanding need for a practice shift. We understand that policy is likely to be finalized in 2023. A pre-petition pilot project focused on

² “Annual Report 2021: Maine Child Welfare Advisory Panel,” at page 14, available at: <https://www.mecitizenreviewpanels.com/wp-content/uploads/2022/02/MCWAPAnnualReport2021.pdf> (January 2022).

supporting domestic violence survivors would help support the effective implementation of this enhanced response – with survivor parents, project attorneys, and OCFS staff working together to help ensure the safety and stability of the survivor parent and their children.

If the survivor parent who lost her children were here today, you would hear from her, as I did, “I should have stayed. If I had known leaving and filing for divorce would result in me losing my children, before I lost everything else, I would have stayed.” A parent responding to the Maine Child Welfare Advisory Panel’s 2020 parent survey echoed a similar sentiment, “If people are made to feel like asking for help or calling the police is going to result in getting in trouble, then they aren’t going to call for help ...” Our network of advocates hears a variation of these statements from survivors across the state every day. When the systems in place to help our most vulnerable community members fail to support them in creating a safe path forward, it reinforces the fear, not only for that survivor, but for others in the community who may be experiencing abuse, that separating from the person abusing them causes more unmanageable harm than staying.

MCEDV, our member programs, and the survivors we serve are very hopeful that the Commission will agree that survivors in Maine need, and could substantially benefit from, greater access to legal representation. Such representation would lead to better and safer long-term outcomes for survivors and their children and better direct resources in the child welfare system. To help realize that outcome, our network will commit to putting forward tangible resources to support such a project. Together, we can reduce the frequency that advocates, doctors, teachers, clinicians and service providers hear from survivors, “I should never have said anything; I just should have stayed.”

Thank you for the opportunity to present our perspective today. I would be happy to answer any question or provide any additional information that might be helpful to the Commission as this work to develop a pilot project continues.

Proposal for Pre-Petition Legal Representation Pilot Project

The Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System (the Commission) should recommend a geographically limited pilot project focused on providing pre-petition representation to survivors of domestic violence for many reasons, importantly including that several essential components of such a project can be supported with existing resources.

- ❖ Full-time case management and support services for child welfare involved survivors of domestic abuse and violence already exists;
- ❖ In-district, confidential meeting space for project attorneys could be provided by a local domestic violence resource center (DVRC); and
- ❖ The pilot project could utilize the long-standing referral process already in place between the Office of Child and Family Services (OCFS) and the local DVRCs.

The Commission has repeatedly heard about the importance and efficacy of not only providing legal representation to parents involved in the child welfare system prior to a petition for custody of the children being filed, but also pairing that representation with some form of case-management and support services. Member programs of the Maine Coalition to End Domestic Violence (MCEDV) work with more than 1,100 survivors each year who have concurrent involvement with Maine's child welfare system. Given this significant intersection, for more than fifteen years, federal funds have supported a full time, domestic violence child protection services advocate (DV-CPS Advocate) in each of Maine's child welfare districts. These DV-CPS Advocates are employed by the local DVRC and are embedded into the local child welfare district office in order to encourage referrals of child welfare involved families to domestic violence services with the goal of increasing the safety and stability of child welfare involved survivors and their children. The Department of Justice Office on Violence Against women recently renewed the funds for this project for another three-year period, to begin in March 2023.

MCEDV also notes the long-standing practice of OCFS staff referring all cases involving domestic abuse and violence to the local DV-CPS Advocate. Statewide, in any given year, OCFS staff refers more than 1,100 families to the DV-CPS Advocate Program. This practice is an OCFS commitment reflected in their domestic violence response policy. In the pilot-project district(s), the DV-CPS Advocate(s) would therefore be well positioned to refer parents to a project attorney in the early days and weeks of the parent's child welfare involvement and at the same time help project attorneys prioritize these referrals. That the DV-CPS Advocate(s) in the relevant district(s) would serve as both the referral source and

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the case management support, without the need for the Commission to re-create process or allocate additional funds for these essential program components, underscores the utility of the Commission supporting the pre-petition legal representation pilot project focusing on survivors of domestic abuse and violence.

In constructing a project designed to serve low-income families, transportation challenges should also be a consideration. In-person meetings between any participating parent and the project attorney would be an important part of building a strong and trauma-informed relationship. To that end, the local DVRC could make confidential office space available for project attorneys. An additional benefit of co-locating a project attorney within the offices of the local DVRC is that survivors could then access services and supports through the DVRC staff at the same time and in the same location.

Project Outline:

- **Two Full Time Attorneys** – one deployed in Androscoggin County (District 3) and one deployed in Knox and Waldo Counties (District 4) (employed by the Maine Commission on Indigent Legal Services (MCILS) or alternative legal organization or law firm identified by the Commission; funded by pilot project);

Scope of Work: Civil legal needs of the parent (including protection from abuse orders, family matters, housing advocating and litigation, etc.) as well as representation and advocacy throughout the parent’s involvement with the Office of Child and Family Services (“agency advocacy”);

- **Full Time DV-CPS Advocates** (one per pilot project district) – providing referrals to project attorneys as well as case management and support services to participating parents (employed and supported by the local DVRC through existing funding);
- **In-District, Confidential Office Space** (available to project attorneys by the local DVRC through existing funding);
- **Training** to project attorneys provided by (at a minimum) the Maine Commission on Indigent Legal Services and the Maine Coalition to End Domestic Violence (funded through pilot project funds);
- **Case consultation/mentoring** of project attorneys provided by MCILS (or alternative legal organization or law firm), MCEdV, and/or additional legal services organizations as needed (funded through pilot project funds).
- **Program data collection and evaluation** (to be supported through Court Improvement Project (CIP) funding).