

# **MAINE FAMILY LAW ADVISORY COMMISSION**

## **Comments to the Maine Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System**

The Maine Family Law Advisory Commission (“FLAC”) hereby submits these public comments to the Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System (“Commission”). FLAC was established by the Maine Legislature to “conduct [] a continuing study of the family laws of Maine.” FLAC’s members “have experience in practicing family law or [are] knowledgeable about family law.” Its current membership, listed below, includes State and Probate Court judicial officers, a Maine Judicial Branch employee, a public member with experience providing mental health services to children, the Executive Director of the Kids First program, and representatives of the Maine State Bar Association Family Law Section, the Office of the Attorney General, and a civil legal aid program. FLAC’s duties include examining any “aspects of Maine’s family law, including substantive, procedural and administrative matters, that the commission considers relevant.”

FLAC is pleased that the Maine Legislature established the Commission through Resolve 2021, c. 181. FLAC regards the expansion of free legal assistance to families involved in the child protection system as an important measure that can improve outcomes for children and families. Foremost, access to legal information and advice early in the process can ensure that individuals are apprised of their rights and legal options and therefore can make informed choices when working with the Department of Health and Human Services. These choices can include measures that decrease the likelihood that the child will be removed from their home, a drastic measure that can be traumatizing for the child and often leads to costly and protracted litigation, perhaps resulting in the termination of a parent’s rights. The Department has the benefit of legal representation by the Office of the Attorney General throughout every stage of the child protection process; parents and other legally responsible caregivers do not. The right to counsel for parents only attaches once a Petition is filed and often much too late for remedial (and possibly cooperative) steps to be taken to avoid litigation. The introduction of legal assistance earlier in the process will enhance the likelihood of a positive outcome for the child involved. Similarly, FLAC suggests that it is likely this intervention will also help promote systemic reforms of the child protection process.

FLAC notes that involvement in the child protection system can be exceptionally complicated and overwhelming for families, particularly because it can involve multiple statutes, systems, and government or non-profit agencies. FLAC encourages the Commission to develop a pilot project that will ensure that parents and actual or proposed custodians who cannot afford to hire an attorney will have the benefit of qualified counsel as soon as the Department opens a safety assessment or similar initial evaluation. Such counsel should be in a position to advise these individuals, not only about the Maine Child Protection Act but also about other legal measures, including petitioning for protection from abuse and minor guardianship, as well as non-legal measures that can address potential risks to the child while preserving the child’s parental and kinship relationships to the extent safely possible. FLAC further notes that the causes of child abuse are complex and varied, though poverty is clearly a contributing factor.

Currently the system requires some of Maine’s most vulnerable parents to navigate the complexities of the system by themselves until it is too late to positively impact the outcome for the child.

While FLAC is not taking a position at this time about the specific design of the pilot program, it is glad to serve as a resource for the Commission as it carries out the duties described in Resolve 2021, c. 181. FLAC may provide public comments once the Commission’s recommendations are presented in legislature for the First Regular Session of the 131st Legislature.

Dated: October 1, 2022

Respectfully submitted:  
Maine Family Law Advisory Commission

Hon. E. Mary Kelly, District Court Judge (Chair)  
Hon. Wayne Douglas, Superior Court Justice  
Hon. Steven Chandler, Family Law Magistrate  
Hon. Libby Mitchell, Probate Court Judge  
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