

AARON M. FREY  
ATTORNEY GENERAL



STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL  
6 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0006

TEL: (207) 626-8800  
TTY USERS CALL MAINE RELAY 711

REGIONAL OFFICES  
84 HARLOW ST. 2ND FLOOR  
BANGOR, MAINE 04401  
TEL: (207) 941-3070  
FAX: (207) 941-3075

125 PRESUMPSCOT ST., SUITE 26  
PORTLAND, MAINE 04103  
TEL: (207) 822-0260  
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1  
CARIBOU, MAINE 04736  
TEL: (207) 496-3792  
FAX: (207) 496-3291

January 25, 2023

Senator Anne Carney, Chair  
Representative Matt Moonen, Chair  
Joint Standing Committee on Judiciary  
100 State House Station  
Augusta, ME 04333-0100

Re: *LD 136, "An Act to Clarify Court Jurisdiction of Actions Involving Children Brought Under the Maine Uniform Probate Code"*

Dear Senator Carney and Representative Moonen:

My office has reviewed LD 136, "An Act to Clarify Court Jurisdiction of Actions Involving Children Brought Under the Maine Uniform Probate Code," and is concerned that certain provisions of this bill will conflict with provisions under Title 22 that are designed to protect children, particularly in situations where they are in immediate risk of serious harm.

Early last year, the Child Protection Division Chief Ariel Gannon and Professor Deirdre Smith, who advises and drafts for the Family Law Advisory Commission (FLAC), discussed a reemerging issue wherein parents whose rights were terminated to their children were later filing actions in Probate Court to reestablish parental rights. The language proposed in Title 4, Section 152 (5-A) (A) and (B) as well as Title 4, Section 251-A (1) and (2) was seen and agreed to by the Chief of the Child Protection Division and is fully supported by our office to address that problem. However, the language in sections 152 (5-A) (C) and 251-A (3) was not previously shared and we believe it creates a conflict with Title 22, Section 4031(3), which deals with District Court jurisdiction and authority in child protection proceedings.

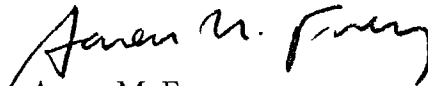
Section 4031(3) of Title 22 states that the District Court "shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody.... In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any prior order regarding the child's care and custody." If the transfer exceptions in LD 136 are enacted, a Probate Court could issue an order that conflicts with a child protection order if "a testimonial hearing on the Title 18-C matter has concluded and the

Probate Court has that matter under advisement.” If that were to occur, the Department of Health and Human Services would have to re-petition the District Court to address the conflict. The practical impact of this need to petition and re-petition the District Court would be to insert confusion as to who has custody of a child who would likely be in immediate risk of serious harm without the Department’s intervention.

There are two straightforward ways to address this conflict: (1) The last sentence of Title 22, Section 4031(3) could be amended to state, “That order takes precedence over any ~~prior~~ other order regarding the child’s care and custody” and the relevant provisions in Title 4 could make reference to this provision in Title 22, or (2) The transfer exceptions in 4 M.R.S. §152 (5-A) (C) and §251-A (3) could explicitly exclude child protection cases.

I appreciate the work of FLAC and Professor Smith in addressing the issues raised by the Chief of the Child Protection Division and trust that the practical solutions offered to address our remaining concerns will not undermine this important work.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron M. Frey". The signature is fluid and cursive, with the first name "Aaron" being more prominent.

Aaron M. Frey  
Attorney General