

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary

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

The Maine Family Law Advisory Commission (FLAC) is submitting proposed legislation pursuant to Title 19-A, section 354, subsection 2, to amend P.L. 2015, c. 460, the so-called “Home Court Act.” This brief report provides the background of the proposed legislation along with an explanation of each proposed amendment.

Background

In 2016, the 127th Maine Legislature enacted Chapter 460, “An Act to Ensure a Continuing Home Court for Cases Involving Children,” which made an important change to the Maine District Court’s jurisdiction over family law matters. Chapter 460, commonly referred to as “the Home Court Act,” allows the District Court to hear cases brought under Title 18-C, the Maine Uniform Probate Code (Title 18-C), involving children—and specifically adoption, minor guardianship, and name change petitions—if there is a pending proceeding involving the child in the District Court (such as a divorce, child protection, or parentage matter). The District Court then becomes the child’s “home court” and has exclusive jurisdiction over all of the pending matters involving the child. 4 M.R.S.A. § 152(5-A). This means that a petition in a Title 18-C matter involving a child must be filed in the District Court, rather than in the Probate Court, if there is a pending proceeding involving that child in the District Court at the time of the filing. Previously, such Title 18-C matters were under the exclusive jurisdiction of the Probate Court. The central aim and effect of the Home Court Act is eliminate the possibility of simultaneous proceedings involving the same child in both Probate and District Courts.

Chapter 460 has now been in effect for six years, and it is working reasonably well in achieving the aims of the legislation. However, FLAC has learned that there are certain scenarios in which the current language of the statute does not provide sufficient clarity to litigants, practitioners, and judges about which court has jurisdiction over a matter involving a child or in which the literal application of the statute does not enable courts to best serve the interests of children and families. After consulting with practitioners, judges, and court employees, FLAC proposes certain amendments to the Home Court Act in the draft legislation provided with this report.

Explanation of Proposed Amendments

Section 1 of the proposed bill makes several changes to 4 M.R.S.A § 152, sub-§5-A, which sets forth when the District Court has jurisdiction over actions brought under Title 18-C concerning children. First, Section 1 adds proceedings pursuant to the Juvenile Code to the list of pending actions involving a child that will give District Court exclusive, continuing jurisdiction over Title 18-C actions involving that child, and it removes actions for protection from abuse and harassment from that list. These amendments would ensure that the District Court has

jurisdiction over Title 18-C matters when adjudicating ongoing proceedings involving custody or parental rights. Juvenile Court matters sometimes involve questions of custody of a child with a guardian, especially for older children, but it is not currently identified in the statute as a matter that would trigger Home Court jurisdiction. This amendment would ensure that the District Court exercising jurisdiction over the child in a Juvenile Court matter also has jurisdiction over any 18-C matters that arise concerning the child while such juvenile matter is pending. FLAC also recommends the statute be amended to remove Protection from Abuse and Protection from Harassment matters from the list of case types that can trigger Home Court jurisdiction. The summary, expedited nature of these proceedings, which may be pending for only a few weeks, have made it difficult for courts to implement the Home Court Act in the rare instances when there was a briefly pending Protection from Abuse matter involving a child in the District Court while there was an ongoing action in the Probate Court concerning that same child.

Next, Section 1 provides that the District Court shall have exclusive, continuing jurisdiction over Title 18-C actions involving the child if the child has been the subject of a District Court order for the termination of parental rights, the appointment of a guardian including a permanency, emergency or interim guardian, an award of parental rights to a third party, or an adoption. The aim of these proposed amendments is to ensure that the District Court can continue to exercise jurisdiction over a child who was the subject of a child protection proceeding under Title 22 resulting in the appointment of a guardian or the termination of parental rights or a Title 18-C proceeding involving the appointment of a guardian or an adoption. Such outcomes arise in cases where a child's welfare was at stake and a high standard has been applied to provide a permanent change in custody for the child. In these contexts, FLAC concluded, the child's interests would be best served by having the same court hear any subsequent proceeding brought under Title 18-C. There have been some occasions in which a later proceeding involving a child had to be brought in a different court from the one that had adjudicated significant issues about that child's welfare, generally involving the same parties. FLAC believes that maintaining the jurisdiction of the original court makes sense in these contexts.

Third, Section 1 provides a definition for the term "pending" used in Subsection 5-A to clarify when the District Court's jurisdiction is triggered by pending actions in two courts. The proposed bill would also prohibit the transfer of jurisdiction of a pending Probate Court matter to the District Court where the action is under advisement with the Probate Court after a testimonial hearing, unless the Probate Court determines that the District Court is the more appropriate forum for the action. Under a literal reading of the current statutory language, a case that had been fully adjudicated through a final testimonial hearing in the Probate Court would need to be transferred to the District Court if a person initiates an action in the District Court while the Probate Court matter was under advisement with that court. This could, for example, enable a party fearing an unfavorable result in the Probate Court as a result of the evidence presented at the final hearing to file an action in District Court with the aim of removing jurisdiction from the Probate Court before the final decision is issued. Such result is not only highly inefficient but would reward attempts to exploit a loophole in the statute that was not intended by the original enactment. In most instances, it would be appropriate for the matter to remain with the Probate Court to enable that court to issue its decision. If the Probate Court determines that a transfer to the District Court would be more appropriate in a particular case, it would have the discretion to effectuate that transfer.

Section 2 of the bill would enact amendments to 4 M.R.S.A. §251-A, which addresses the jurisdiction of the Probate Court, to be consistent with those set forth in Section 1.

Conclusion

FLAC believes that these amendments will serve the aims of the Home Court Act and provide clarity for practitioners, litigants, and courts who are involved with these important matters involving children and families. A representative of FLAC will attend the public hearing and work sessions on the bill to provide further information and answer questions.

Thank you for your consideration of this proposed legislation.

Dated: December 5, 2022

Respectfully submitted:
Maine Family Law Advisory Commission

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