

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary On LD 765

“An Act to Permit Recordings of Protected Persons to Be Admissible As Evidence”

Introduction

The Maine Family Law Advisory Commission hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 765 “An Act to Permit Recordings of Protected Person to Be Admissible as Evidence.” For the reasons set out below, FLAC supports LD 765 as it relates to family law cases.

Discussion

LD 765 does two things (1) gives access to forensic interview recordings from Children’s Advocacy Centers to litigants in family court proceedings after judicial review; and (2) allows these interviews to be admissible as evidence in family court proceedings. Because FLAC believes these portions of the bill allow courts to have access to important evidence to help make determinations of children’s best interest, FLAC supports this bill. **FLAC submits this report on LD 765 only as it relates to family law cases. FLAC takes no position on the portions of this bill that relate to criminal cases.**

FLAC supports access to the forensic interview recordings in Children’s Advocacy Centers for a variety of reasons. First, some FLAC members who have had the opportunity to review these interviews in other types of cases have found the recordings to be valuable, non-leading, thorough interviews that could be valuable evidence in evaluating a child’s best interest. Second, FLAC identified that these interviews could be just as valuable evidence in a family matter case as a child protective case. The law currently allows access in child protective cases but not family law cases. Finally, FLAC supports the rigorous process for allowing access, which involves judicial review and a protective order, because it protects the sensitive material in the recording. It also mirrors the current process litigants use for accessing child protective records in a family court case, records which similarly contain sensitive information.

FLAC largely supports the admissibility portion because it recognizes that minimizing a child needing to retell their narrative will reduce the trauma children experience if forced to testify in the court process. FLAC also understands that forensic interview recordings are already frequently being admitted in child protective proceedings, which have greater due process protections than family court proceedings, pursuant to a broader child hearsay exception¹. Finally, FLAC members also highlight that some cases of child sexual assault may never be

¹ Pursuant to Title 22, Section 4034, in a request for a Preliminary Protection Order, the Court may consider evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence.

brought forward as a criminal or child protective matter for a variety of reasons, including but not limited to the child's age, the child's ability to testify in open court at a criminal proceeding, or the other reasons that make criminal prosecution disfavored. Nonetheless, this valuable piece of evidence can still be utilized to protect children and ensure their best interest is met by allowing them to be reviewed by the judge in the family matter case when relevant. The reviewing judge can then determine what weight to give the interview as part of the court's analysis and decision of what is in the child's best interests.

FLAC does not support the inclusion of proposed §358(5) "Certification of forensic interview recordings." Unlike business records, medical records, and bank records, forensic interviews are conducted for investigative purposes. In that sense, they are more akin to police reports than business records. FLAC's position is that the court has an important gate-keeping function to serve pursuant to proposed §358(3) and proposed §358(5) side-steps that process.

Conclusion

For all these reasons, FLAC supports LD 765 as a necessary improvement to the equitable administration of justice for children and families in family matters.

Dated: March 3, 2023

Respectfully submitted:
Maine Family Law Advisory Commission

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