MAINE COMMISSION ON DOMESTIC AND SEXUAL ABUSE

Testimony of Lucia Chomeau Hunt

Speaking Neither for Nor Against L.D. 1408
An Act to Increase the Protection of Children from Domestic Abuse and Violence
Before the Joint Standing Committee on Criminal Justice and Public Safety
Date of Public Hearing: May 10, 2021

Senator Deschambault, Representative Warren, and members of the Joint Standing Committee on Criminal Justice and Public Safety:

My name is Lucia Hunt. I am the chair of the Maine Commission on Domestic and Sexual Abuse ("the Commission"). I am here today speaking on behalf of the Commission neither for nor against L.D. 1408, An Act to Increase the Protection of Children from Domestic Abuse and Violence.

The Commission is comprised of law enforcement, attorneys, advocates, survivors, a judicial advisory member, and representatives from within state government.[1] The Commission is tasked with advising and assisting the executive, legislative and judicial branches of State Government on issues related to domestic and sexual abuse.[2]

I want to thank Senator Diamond and his co-sponsors for their long-standing commitment to addressing the impact of childhood abuse and adverse experiences, particularly those involving domestic violence and sexual abuse. Senator Diamond's understanding of the way adverse childhood experiences ("ACES") have a negative impact on future violence victimization and perpetration, and lifelong health and opportunity[3] is consistent with the academic literature on these topics, and the Commission recognizes his dedication to protecting children from harm.

The Commission discussed this bill at our April meeting, and members expressed concerns about the proposed legislation, including concerns about technical implications from a criminal law perspective. Those concerns include questions about the proposed language of this law, such as:

- What culpable mental state would the State have to prove with respect to the child's presence? In other words, does the State have to prove that the child was "in fact" present, whether or not the defendant knew or had reason to believe the child was present? Or, does the state have to prove that the defendant knew the child was present?

[1] 19-A M.R.S. § 4013 (1)
[2] 19-A M.R.S. § 4013 (2)
[3] https://www.cdc.gov/violenceprevention/aces/index.html

- Would the State have to prove that the defendant knew the child had not attained the age of 14? Or is it sufficient for the State to prove that the child had in fact not attained the age of 14, regardless of what the defendant knew or believed?
- What does "present" mean, in this context? Does the State have to prove the child saw or heard the crime? Or is it sufficient if the child was asleep in the next room?
- Would the State have to put a child witness on the stand to testify that she heard it from the next room? Prosecutors might be reluctant to subject a child to cross-examination to prove this element, and charge the Class D, relying on proximity of the child as an aggravating factor in sentencing.

Commission members also pointed out that the presence of a child is already an aggravating factor in sentencing.[4] Additional concerns were raised about whether this intervention was likely to have a practical deterrent effect, and potential equity considerations regarding the impact of a new felony crime on low-income families.

The Commission heard from MCEDV about their proposed amendment to this bill that would address the problem of child exposure to domestic violence through another lens- increasing the requirements for training on domestic violence for guardians ad litem. The Commission has long recognized the issue of inadequate training for guardians ad litem in family matters cases that involve the complex and frequently-litigated issue of domestic violence, and supports the MCEDV amendment that would increase initial training and support on-going education specific to domestic violence, its impact on children, and appropriate interventions for families.

The Commission's members also articulated concerns about the impact that guardians ad litem can have on a case involving domestic violence. Although they are well-intentioned, the lack of uniform education and training for Maine's guardians ad litem means that there is very little consistency in a GAL's approach to a family matter where domestic violence is a factor. Even though the statutory framework that guardians and the court use to evaluate the best interests of a minor child require that all of the factors be considered "in light of the presence of past or current domestic abuse," [5] practitioners who represent victims of domestic violence have noted wide discrepancies in the application of this standard, stemming primarily from the vastly different perspectives that guardians have about domestic violence and its impact on a family, including ongoing impacts after separation and the lasting effects of domestic violence on children.

Adding evidence-based training on domestic violence to the core curriculum and the ongoing certification requirements for guardians ad litem would significantly improve Maine's response to the problem of children witnessing domestic violence.

The Commission thanks this Committee for its ongoing support of families impacted by domestic violence and hopes that the Committee will consider the MCEDV amendment to LD 1408, which approaches the problem of children exposed to domestic violence with a long-needed intervention.

Thank you and I would be happy to answer any questions.

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[4] Gaston, 2021 ME 25 at note 13 and State v. Leng, 2021 ME 3, ¶ 21, 244 A.3d 238, 243–44.
[5] 19-A M.R.S. §1653(L)

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