

**Testimony of Andrea Mancuso
Neither for Nor Against LD 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
Monday, May 10, 2021**

Senator Deschambault, Representative Warren, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, I am writing on behalf of the Maine Coalition to End Domestic Violence (MCEDV)¹ neither for nor against LD 1408, “An Act to Increase the Protection of Children from Domestic Abuse and Violence” to raise several issues that we believe should be part of your deliberations on this proposal and to offer an amendment for your consideration.

MCEDV appreciates the many years that Senator Diamond has dedicated to advancing policies around protecting children in Maine, particularly those children who have experienced childhood trauma. We absolutely agree that Maine must do better at addressing the impact of domestic violence abuse and violence on children. However, in our experience, the court that is best positioned to attend to the long-term impacts of domestic abuse and violence on children and their long-term wellbeing is not the criminal court. It is the civil court. Our family court and child protection court have long been ill-equipped to screen for domestic abuse and violence, understand its impact on children, and structure court orders that are appropriately protective of both the child and the non-offending parent. A foundational place to start addressing this challenge is by providing adequate training and support for Maine’s guardians *ad litem*.

Concerns with Enhancing Misdemeanor Assault to a Felony

Maine’s criminal code as it currently stands represents one of the most comprehensive criminal justice responses to domestic violence in the country. We have several concerns with elevating a misdemeanor assault to a felony charge on the basis of it having been committed in the presence of a child:

- It is unlikely to have the intended deterrent impact.

¹ MCEDV represents a membership of the eight regional domestic violence resource centers across Maine as well as the Immigrant Resource Center of Maine. Last year, our programs provided services to more than 12,000 survivors of domestic abuse and violence and their children in our state.

- It would likely have a disproportional impact on those families who are in the lower income bracket and therefore reside in smaller houses or apartments. For those families with larger homes, children would be much more likely to be several rooms, or several floors, away from one parent engaging in violent behavior towards another. For families who live in 1-2 bedroom homes, and for whom the kitchen is the dining room, children are much more likely to be present for an assault.
- It sets a troubling public policy precedent that we should, as a community, be less concerned with intimate partner assault when it is committed outside the presence of a child.
- The consequences of a felony conviction on a low-income parent are likely to also have a negative impact on the long-term wellbeing of children.

It's Past Time to Ensure Maine's Guardians *ad Litem* Have Adequate Training

As noted in a 2010 report issued by the Maine Commission on Domestic and Sexual Abuse (Abuse Commission), “Guardians’ reports and recommendations have an enormous importance within the system as all actors in the court system rely on them.”² The report goes on to assert that, despite the important role guardians play, training for guardians *ad litem* on issues related to domestic abuse and violence is neither consistent nor comprehensive; that there is no systemic or coordinated training in place; and that “domestic violence and high conflict cases are both misunderstood and confused with each other.” The Abuse Commission recommended that GALs who take on domestic violence cases need to possess domestic violence expertise and receive thorough domestic violence training. This guidance was advised in 2010. More than ten years later, these challenges have not abated. There still exists no thorough, consistent, coordinated, or systemic training program for those acting as a GAL in cases involving domestic abuse and violence.

To be rostered as a guardian *ad litem* in Maine, a person must go through a four day training that is provided by the Maine Judicial Branch. However, **less than 2 hours** of this training is dedicated to domestic abuse and violence. Basic DV 101 training takes more time than that, and yet this continues to be how much time is allocated in our state for guardians *ad litem* to understand one of the most complicated family dynamics that is present in the vast majority of cases they are called upon to work on. There is no requirement that these professionals ever engage with domestic violence training thereafter to remain on the roster. So, a guardian can continue to be appointed on cases involving domestic abuse and violence ten years later, having only had the benefit of less than two hours of issue-specific training.

² Maine Commission on Domestic and Sexual Abuse, “Report to the Joint Standing Committee on Judiciary, Pursuant to LD 1143: Resolve, Directing a Study of Domestic Violence and Parental Rights and Responsibilities,” (February 2010).

The lack of appropriate training and acuity around these issues leads to harmful long-term results for survivors of domestic abuse and violence and their children. A national, multi-year study found real gender disparity in terms of outcomes for survivors alleging abuse in the family court, and it was particularly acute when guardians *ad litem* were involved. Mothers are more likely to lose custody of their children when alleging abuse when guardians *ad litem* are involved. In contrast, guardians have no impact on protective fathers' likelihood to lose custody.³ This reflects the lived experiences of survivors that programs in our network work with every year in Maine – throughout the state.

Guardians *ad litem* play such an important role in the decisions being made in our civil courts that have long-term impact on the wellbeing of children. We must do better. One of the best things this Committee can do to advance the long-term wellbeing of children who have been abused by a parent, or who have witnessed one parent abusing the other parent, is to require guardians *ad litem* to be better equipped to respond to these cases. Attached to this testimony is a proposed amendment that would require guardians *ad litem* to receive no less than 6 hours of training on issues related to domestic violence and its impact on children, as well as allocating 2 hours of continuing legal education each year to this issue, to ensure that guardians have up to date information on best practice screening and responses to domestic abuse and violence.

Thank you for the opportunity to highlight these issues for the Committee. MCEDV and our member programs would enthusiastically be a resource to the Committee as you continue to discuss LD 1408.

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³ Meier, Joan S. and Dickson, Sean and O'Sullivan, Chris and Rosen, Leora and Hayes, Jeffrey, Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations (2019).

§1553. Roster of guardians ad litem

Rules adopted by the Supreme Judicial Court govern the establishment and maintenance of a roster of guardians ad litem. The rules must address: [PL 2013, c. 406, §1 (NEW).]

1. Application process. The process for applying to be included on the roster, including application forms;

[PL 2013, c. 406, §1 (NEW).]

2. Criteria. Criteria for initial listing on the roster, including:

A. Credentials, including professional licenses and minimum education requirements; [PL 2013, c. 406, §1 (NEW).]

B. Core training. Core training must include no less than 6 hours on domestic abuse and violence, developed and provided in collaboration with the statewide coalition of domestic violence resource centers, on the following topics:

(1) the domestic abuse tactics affecting adult and child safety and security post-separation;

(2) the impacts of domestic abuse and violence on children and conditions that support resilience;

(3) best practices for recognizing, asking about, and assessing the effects of abuse on the parenting relationship; and

(4) methods for reducing post-separation abuse of the non-abusive parent and promoting child safety and security;

-and [PL 2013, c. 406, §1 (NEW).]

C. Good character; [PL 2013, c. 406, §1 (NEW).]
[PL 2013, c. 406, §1 (NEW).]

3. Continuing education. Continuing education requirements, including no less than 2 hours of training annually on the impact of domestic abuse and violence on children and the services available in Maine for victims of domestic violence and their children and interventions for those who commit domestic abuse;

[PL 2013, c. 406, §1 (NEW).]

4. Criminal background check. Obtaining criminal history record information on an individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification;

[PL 2013, c. 406, §1 (NEW).]

5. Other requirements. Any other requirements necessary to remain in good standing and included on the roster; and

[PL 2013, c. 406, §1 (NEW).]

6. Removal. The process for removing a guardian ad litem from the roster.

[PL 2013, c. 406, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 406, §1 (NEW).

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