State of Maine
130th Legislature, Second Regular Session

Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

December 2022

Office of Policy and Legal Analysis

STATE OF MAINE
130th LEGISLATURE
SECOND REGULAR SESSION

Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Staff:
Janet Stocco , Legislative Analyst
Samuel Senft, Legislative Analyst
Lucia Nixon, Legislative Analyst (OFPR)
Office of Policy & Legal Analysis
13 State House Station Room 215
Cross Office Building
Augusta, ME 04333-0013
(207) 287-1670
http://legislature.maine.gov/opla

Members:
Sen. Donna Bailey, Chair
Rep. Holly Stover, Chair
Sen. Marianne Moore
Rep. Tavis Hasenfus
Rep. Kathy Javner
Julian Richter
Kelly Dell'Aquila
Justin Andrus
Andrea Mancuso
Lucia Hunt
Stephanie Leblanc
Todd A. Landry
Ariel Gannon
Hon. Lea-Anne Sutton

Table of Contents

Appendices

K. Staff handouts on potential sources of federal funding (for Oct. 3, 2022 meeting)
   - Potential Sources of Federal Funding - Update
   - Title IV-E Foster Care Program Federal Reimbursement for Pre-Petition Legal Representation (*revised and redistributed at Oct. 17, 2022 meeting*)
   - TANF Funding for Pre-Petition Legal Representation
   - Supplemental Funding for Child Abuse Prevention - American Rescue Plan Act

L. Staff handout: Mandatory Reporting and Confidentiality in an Interdisciplinary Legal Team

M. Designing the Pilot Program (revised after Oct. 17, 2022 meeting to reflect commission vote tallies)

Executive Summary

The foremost goals of Maine's child protective system, operated by the Department of Health and Human Services' Office of Child and Family Services (OCFS), are promoting the best interests of Maine's children and protecting children who are experiencing or who are at risk of experiencing abuse or neglect. While OCFS recognizes all parents' rights to raise their children, parents subject to OCFS child protection investigations must demonstrate that they can provide the safe environments their children need to thrive. Unfortunately, surveys demonstrate that the child protection investigation process is both confusing and intimidating for parents, making it difficult for them to comply with the process. In many cases, socioeconomic challenges also present significant barriers for parents seeking to maintain custody of their children. For example, housing instability, inability to access necessary services, domestic violence, and other challenging circumstances can all contribute to situations in which parents may have difficulty demonstrating that their home environments are safe.

In an effort to overcome these challenges, a promising new model of legal advocacy, sometimes referred to as pre-petition legal representation, has emerged. Pre-petition legal representation aims to provide information, advice and legal assistance to parents in the early stages of child protection investigation. Typically, the family receiving services from a pre-petition legal representation program will have had some contact with the child protection system, but a court petition to remove the family's child or children from the home will not yet have been filed. Pre-petition legal representation programs seek to intervene at this critical stage either by assisting parents in understanding their rights and responsibilities and in advocating for parents during the child protection investigation or by assisting parents in ameliorating the ancillary conditions contributing the child welfare agency's concern for the child's safety, or both. Recognizing the promise this legal advocacy model presents, the 130th Legislature established the Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System through Resolve 2021, chapter 181 to develop a pilot pre-petition legal representation program in the State.

Pursuant to the resolve, the commission was comprised of 13 voting members, including: two members of the Senate appointed by the President of the Senate; three members of the House of Representatives appointed by the Speaker of the House; a member of the Maine State Bar Association with experience as an attorney for parents, appointed by the President of the Senate; a member of the Maine Child Welfare Advisory Panel recommended by the panel and appointed by the President of the Senate; a member representing the Maine Commission on Indigent Legal Services, appointed by the President of the Senate; a member of a statewide organization providing services or representation on domestic violence issues, appointed by the Speaker of the House; a member representing an organization that provides free civil legal assistance statewide to low-income residents of the State, appointed by the Speaker of the House; a member representing a statewide organization of providers of behavioral health or substance use disorder treatment, appointed by the Speaker of the House; the Commissioner of Health and Human Services or the Commissioner's designee; and the Attorney General or the Attorney General's designee. The Speaker of the House was also directed to appoint a member of the Justice for Children Task Force to serve as a nonvoting member of the commission.

Resolve 2021, chapter 181 charged the commission with the following duties:

- To study programs in other jurisdictions that provide legal counsel to parents or custodians at the initial stages of a child protection investigation, rather than only after that jurisdiction petitions for removal of a child; and
- To solicit public comment regarding the establishment of a pilot program to provide legal counsel to parents or custodians in the State as soon as a safety assessment to determine if a child is at risk

of harm has been opened, and to then make recommendations to the Legislature regarding the design of such a pilot program, including recommendations regarding:

- The cost of the pilot program as well as options for federal or grant funding;
- The number of cases to be referred to the pilot program;
- The appropriate duration of the pilot program;
- The appropriate organization(s) to provide legal counsel for the pilot program;
- Methods for the Department of Health and Human Services to notify the pilot program of potential clients while maintaining appropriate confidentiality protections; and
- Assessment data required to determine whether to expand the pilot program.

The commission sought input from experts in the field and over the course of four meetings, receiving presentations from the following individuals:

- Rob Wyman, Attorney Consultant with the Judicial Engagement Team at Casey Family Programs, who provided background on the goals of preventative legal advocacy and the design of existing programs in several jurisdictions;
- Dr. Todd Landry, commission member and Director of Maine's Office of Child and Family Services, who presented data regarding child protection investigations in the State and information on federal funding available under Title IV-E of the Social Security Act;
- Betsy Boardman, Child Protective and Juvenile Process Specialist at the Maine Judicial Branch, who provided information on potential funding from the State's Court Improvement Program;
- Alyssa Rao, Equal Justice Fellow Attorney at Greater Boston Legal Services (GBLS), who provided information on GBLS's Domestic Violence Family Preservation Project;
- Ronald Baze, General Counsel for the Oklahoma Department of Human Services, who described the Family Representation Contract the Department awarded to Legal Aid Services of Oklahoma;
- Jill Cohen, Director of Programs at the Office of Respondent Parents' Counsel (ORPC) in Colorado, who described the roles of multidisciplinary team members in ORPC's Preventative Legal Services Project;
- Vivek Sankaran, Clinical Professor of Law at the University of Michigan Law School, who shared his expertise on designing pre-petition legal representation programs; and
- Dr. Alicia Summers, Director of Data Savvy Consulting, LLC and data consultant to the Maine Court Improvement Program, who discussed best practices in data collection and analysis for the evaluation of pre-petition legal representation programs.

The commission also solicited and received public comments regarding the pilot program's design both in person and in writing. Based on these presentations and public comments, as well as information on other jurisdictions' programs and on federal funding opportunities gathered by legislative staff at the direction of the commission and the commission's co-chairs, the commission developed a set of recommendations for implementing a pre-petition legal representation pilot program in the State. Each recommendation was supported either unanimously or by a majority of commission members.

	Recommendations
Pilot Program Goals	The pilot program should be designed to achieve the following goals: (a) To deploy legal and other resources to parents or custodians earlier in the child protection system process so that children can remain safe and families can help their children thrive without the need for state intervention. (b) To promote equity in the outcomes of child protection investigations for families of disparate socioeconomic circumstances. (c) To increase parents' and custodians' understanding of the child protection investigation process and how they can engage in the process to achieve positive outcomes.
Target client population	The pilot program should be targeted to serve parents or custodians: (a) Who (i) reside within Office of Child and Family Services (OCFS) Region 3 (Androscoggin, Franklin & Oxford Counties) and (ii) would be eligible for the assignment of counsel completely at state expense under the Maine Commission on Indigent Legal Services' (MCILS's) income-eligibility rules (without applying an asset test); and (b) No earlier than when the parent or custodian has become the subject of a child protection investigation.
Type of services to be provided	The pilot program should provide both direct advocacy with the child welfare agency on behalf of clients and legal advocacy for those clients with respect to ancillary civil legal issues related to the child protection matter.
Service Providers	(a) MCILS, or a successor agency responsible for providing (post-petition) legal counsel to indigent parents or custodians in child protection cases at state expense, should administer the pre-petition pilot program as a discrete program. (b) The pilot program should take an interdisciplinary approach by utilizing service providers that include, but are not limited to, attorneys, case managers and parent allies or advocates.
Referral process	(a) MCILS, or a successor agency responsible for providing (post-petition) legal counsel to indigent parents or custodians in child protection cases at state expense, should: (i) Implement a warmline that provides information and referrals statewide to parents and custodians who are subject to a child protection investigation and which will also serve as the entry point into the pre-petition pilot program for eligible clients; and (ii) Prepare information materials regarding the warmline and a parent's or custodian's ability to make a self-referral to the warmline and pilot program. (b) OCFS should provide the information materials prepared by MCILS or its successor agency regarding the warmline at the Office's first contact with parents and custodians during a child protection investigation.
Cost components: program duration and number of clients to be served	The pilot program should: (a) Operate for two years; and

	(b) Serve up to 30 families at any one time—with each "family" defined as a group of individuals subject to a single child protection investigation.
Data collection and assessment	(a) The pilot program should be subject to a rigorous independent evaluation, utilizing existing resources where available, which should potentially include the types of client and control group demographic and outcome data discussed by the commission and listed under item #7 in the table included as Appendix M. (b) The specific set of data to be collected should be determined in consultation with technical assistance provided by the Court Improvement Program. (c) Data collection should be ongoing and should be reported at the one-year mark and at six-month intervals thereafter until all pilot program cases have concluded.
Options for federal or grant funding	The joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters should consider all available funding sources for the pilot program, including each type of federal funding explored by the commission and described in this report.

The commission believes that a pilot program operated within the proposed framework has the potential to increase the degree to which parents and custodians understand the child protection investigation process, their rights and responsibilities during this process and the actions they can take to demonstrate to OCFS that they can parent their children safely at home. The pilot program also has the potential to reduce the number of children who are removed from their parents and custodians by helping to alleviate many of the conditions of poverty—for example, housing instability, difficulty accessing needed services and benefits, and domestic violence—that can contribute to parents' and custodians' inability to provide safe and stable living situations for their children. Rigorous data collection protocols and analysis will help demonstrate whether, in fact, the pilot program generates positive child safety outcomes, including a reduction in the number of children who enter foster care.

I. Background

A. *Brief Overview of the Child Protection Investigation Process* [1, 2]

In Maine, reports alleging child abuse or neglect are referred to the Office of Child and Family Services (OCFS) within the Department of Health and Human Services. Centralized intake workers first screen each report to determine whether it is appropriate for further action—for example, whether the allegations in the report meet the relevant definitions of abuse or neglect and involve the caregiver of a child in Maine—and, if so, the report is referred to the local OCFS district office for assessment and investigation. During the 35-day investigation timeframe, OCFS caseworkers engage in numerous activities designed to assess whether the child or children were subjected to abuse or neglect and to determine the risk of future maltreatment. Required investigative activities include requesting permission of parents or caregivers to conduct and then conducting and recording an interview of the child (or an observation of a nonverbal child); interviewing all critical case members, including the parents or caregivers suspected of abuse or neglect, other parents and caregivers, other children in the home, and collateral contacts; and conducting a home visit to assess potential safety hazards both where the child primarily resides and where the alleged abuse or neglect occurred. When interviewing parents and caregivers, OCFS caseworkers are required to provide specific written information regarding the child protection system process; explain why OCFS is investigating the family; request information about the family's history, including domestic violence or substance use concerns; and identify and obtain contact information for relatives.

In the course of the investigation, OCFS staff may determine that a child can remain safely in the home if the parent or custodian is willing to commit to a Safety Plan, which is a voluntary agreement outlining interventions designed to ensure the child's safety. If the parent or custodian consents to a Safety Plan, the caseworker must schedule and hold a Family Team Meeting with the parent and relevant service providers within 30 days to ensure that the Safety Plan is being followed and the child remains safe. If OCFS staff determine during the course of the investigation that the child is in immediate risk of serious harm, however, the Department may petition the court for an *ex parte* preliminary protection order for immediate removal of the child from the home. Ultimately, at the conclusion of the investigation, the OCFS caseworker must determine whether it is more likely than not that abuse or neglect occurred and, if so, the severity of that abuse or neglect, who caused the harm and the impact to the child. OCFS staff must also determine the likelihood of future maltreatment and, based on those findings, decide whether to: close the case (with or without referrals to community services); open a case and provide services to the family while the child remains in the home; or pursue removal of the child by filing a child protection petition in court if a preliminary protection order was not previously granted.

B. *Indigent Parents' and Custodians' Right to Counsel*

In Maine, an indigent parent or custodian has the right to be represented by counsel at state expense if the Department has begun court proceedings to remove a child from the parent's or custodian's home based on an allegation of abuse or neglect. By statute, this right to free legal assistance attaches *after* the

---

[1] Maine's Child and Family Services and Child Protection Act, codified in Title 22, chapter 1071 of the Maine Revised Statutes, provides the statutory authority for investigations and subsequent actions taken by the Office of Child and Family Services in response to allegations of abuse or neglect. *See* https://legislature.maine.gov/legis/statutes/22/title22ch1071sec0.html.

[2] This report provides only an abbreviated overview of the child protection investigation process; for more complete information, *see* OCFS, Office of Child and Family Services Policy §IV, sub-§D: Child Protection Investigation Policy (Dec. 17, 2018), available at https://www.maine.gov/dhhs/ocfs/about-us/child-and-family-policy and Office of Program Evaluation & Government Accountability, Child Protection Services Investigations, §IV: Investigation Process (March 2022), available at https://legislature.maine.gov/doc/8493.

Department files a child protection petition in court or, if applicable, *after* the court rules on the Department's *ex parte* request for a preliminary protection order for emergency removal of a child. 22 M.R.S. §4005(2); §4002(3). The State fulfills its obligation to provide free legal counsel to indigent parents and custodians through the Maine Commission on Indigent Legal Services (MCILS), an independent commission established by law to ensure "the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State." 4 M.R.S. §1801. MCILS both establishes the qualifications for and provides oversight, support and training to counsel appointed to represent indigent parents and custodians in child protective proceedings. 4 M.R.S. §1804.

C. *Commission Establishment and Duties*

In the fall of 2021, the Maine Child Welfare Advisory Panel (MCWAP), one of Maine's three federally mandated citizen review panels responsible for assessing the State's child welfare system,[3] surveyed parents involved in the child welfare system to identify opportunities for improving the system. MCWAP identified parents' lack of understanding of the child welfare process as a major, consistent theme in the survey results. These results indicated that parents lack an understanding of their rights, the roles of different stakeholders and how to participate fully in the child protection investigation and court processes. Parents' confusion on these issues may have many causes, MCWAP observed, including the negative impact high levels of stress has on a parent's ability to process information provided by a caseworker who is investigating an allegation of abuse or neglect involving that parent's child. Accordingly, MCWAP recommended in its annual report to the Legislature's Joint Standing Committee on Health and Human Services that Maine "provide adequate funding to the Maine Commission on Indigent Legal Services to create a pilot program in a selected region to provide legal advice and representation to all families as soon as [OCFS] opens an assessment."[4]

After considering this recommendation, the Health and Human Services Committee unanimously supported an amended version of L.D. 1824, which was finally passed by the full Legislature as Resolve 2021, chapter 181. (Appendix A.) The resolve establishes the Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System, to be comprised of 13 voting members, including: two members of the Senate appointed by the President of the Senate; three members of the House of Representatives appointed by the Speaker of the House; a member of the Maine State Bar Association with experience as an attorney for parents, appointed by the President of the Senate; a member of the Maine Child Welfare Advisory Panel recommended by the panel and appointed by the President of the Senate; a member representing the Maine Commission on Indigent legal Services appointed by the President of the Senate; a member of a statewide organization providing services or representation on domestic violence issues appointed by the Speaker of the House; a member representing an organization that provides free civil legal assistance statewide to low-income residents of the State, appointed by the Speaker of the House; a member representing a statewide organization of providers of behavioral health or substance use disorder treatment, appointed by the Speaker of the House; the Commissioner of Health and Human Services or the commissioner's designee; and the Attorney General or the Attorney General's designee. The resolve further directs the Speaker of the House to appoint a member of the Justice for Children Task Force to serve as a nonvoting member of the commission. (A list of commission members is included in Appendix B.)

---

[3] The three federally mandated review panels are the Maine Child Welfare Advisory Panel, the Justice for Children Task Force and the Child Death and Serious Injury Review Panel. *See* https://www.mecitizenreviewpanels.com/.

[4] *See* Maine Child Welfare Advisory Panel, Annual Report 2021 at 7, 11 & 16 (Issued Jan. 2022), *available at* https://www.mecitizenreviewpanels.com/wp-content/uploads/2022/02/MCWAPAnnualReport2021.pdf.

Resolve 2021, chapter 181 directs the commission to study programs in other jurisdictions that provide legal counsel to parents or custodians during an initial investigation of suspected abuse or neglect. The resolve further charges the commission with soliciting public comment and designing "a pilot program to provide legal counsel to parents or custodians as soon as the State opens a safety assessment to determine if a child is at risk of harm," including recommendations regarding:

- The number of clients to be referred to and the appropriate duration of the pilot program;
- The appropriate organization(s) to provide legal counsel to parents enrolled in the pilot program;
- Methods for the Department of Health and Human Services to notify the pilot program of potential clients while maintaining appropriate confidentiality protections;
- Assessment data required to determine whether to expand the pilot program; and
- Options for federal or grant funding to cover the cost of the pilot program.

Finally, the resolve directs the commission to submit its findings and recommendations to the joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters, which may in turn report out legislation to the First Regular Session of the 131st Legislature.

II. Commission Process

The commission held four public meetings at the Maine State House in the summer and fall of 2022. Although commission members primarily attended meetings in person, the meetings were conducted using a hybrid format that allowed presenters and members who were unable to attend in person to participate remotely through the Zoom platform. Members of the public were welcome to attend each meeting in person or to view a live video stream or an asynchronous, archived video recording of each meeting through the Legislature's website. The commission also invited members of the public to provide public comment in writing, in person or remotely through the Zoom platform during the meeting held on October 3rd. Meeting materials and background materials were posted online and archived on the following website: https://legislature.maine.gov/legal-representation-to-families-in-the-child-protection-system-study.

A. First Meeting - August 1, 2022 [5]

1. Introductions and Opening Remarks

The commission held its first meeting on August 1, 2022. The meeting began with member introductions and an opportunity for members to express their preliminary goals for the pilot program to be designed by the commission. During their opening remarks, members highlighted the importance of:

- Providing rural families with the opportunity to benefit from the pilot program;
- Exploring the challenges parents face both in interacting with the child welfare system during an investigation and in obtaining remedies in District Court for issues affecting child safety;
- Ensuring the child welfare system responds to families in a supportive and trauma-informed way;
- Improving the treatment of non-offending parents who are victims of domestic violence;
- Increasing parents' understanding of the child welfare system and investigation process;
- Increasing the legal resources available to parents who are involved in the child welfare system;

[5] All members of the commission were present at the first meeting, with the exception of Representative Javner. A recording of the August 1, 2022 meeting is available at the following link: https://legislature.maine.gov/Audio/#228?event=86308&startDate=2022-08-01T09:00:00-04:00.

- Elevating the voices of parents and youth who are involved in the child welfare system;
- Providing robust data to evaluate the benefits of providing earlier representation to parents;
- Ensuring the pilot program provides strong representation to parents while remaining focused on child safety; and
- Exploring pre-petition representation programs implemented in other jurisdictions and data regarding whether those programs have reduced the number of children who enter foster care.

Legislative staff from the Office of Policy and Legal Analysis and the Office of Fiscal and Program Review then reviewed the commission's authorizing legislation (Resolve 2021, chapter 181, included in Appendix A), highlighting the commissions' duties. Legislative staff also provided a brief overview of the background materials staff had compiled for the commission (a list of these materials is included in Appendix C) as well as the applicability of Maine's Freedom of Access Act to the Commission's communications, activities and meetings.[6]

2. Presentation on Preventive Legal Advocacy by Rob Wyman of Casey Family Programs

The commission next heard from Rob Wyman, an attorney consultant with Casey Family Programs,[7] who introduced the reasoning behind existing preventive legal advocacy programs, which serve families at risk of involvement with the child protection system but who have not yet experienced removal of their children. These programs, which are often comprised of multidisciplinary teams including attorneys, social workers and parent advocates, empower parents to meet the needs of their child and avoid the trauma of removal by educating parents about the child welfare system, connecting parents to resources and services and supporting parents in their interactions with the child welfare agency. Because families involved in the child protection system overwhelmingly struggle with issues related to poverty, preventive legal advocacy programs also frequently provide legal advocacy on ancillary issues related to poverty and child safety including: evictions, access to public benefits and obtaining protection, custody and guardianship orders. At its core, preventive legal advocacy is designed to break down barriers and enable families to obtain the support they need to safely parent their children.

Mr. Wyman emphasized that preventive legal advocacy is an emerging field without firmly established and researched best practices. Accordingly, he recommended that the commission identify the critical population it wants to serve in Maine, provide high-quality multidisciplinary teams to serve that population, and build a structure that enables those teams to succeed. To assist the commission in designing the program, Mr. Wyman described a variety of preventive legal advocacy programs from across the country, including those operated by the Detroit Center for Family Advocacy (Detroit, Michigan); the Children's Law Center of California (Los Angeles County, California); the Family Intervention Response to Stop Trauma (FIRST) Clinic (Everett, Washington); the Legal Services of New Jersey's Family Representation Project (statewide, New Jersey); Great Boston Legal Services' Domestic Violence Family Preservation Project (Boston, Massachusetts), and First Call for Families' Dependency Advocacy Center (Santa Clara County, California). These programs either assist all eligible parents in a specific geographic area or focus on parents experiencing a specific category of child-safety risk (for example, parents of substance-exposed infants or domestic violence victims); employ a variety of different methods for receiving referrals; often utilize a multidisciplinary team of services providers; and frequently support parents with a variety of civil legal issues impacting child safety in addition to providing parents with legal information, advice and advocacy regarding the child protection system.

---

[6] The Freedom of Access Act is codified in Title 1, chapter 13 of the Maine Revised Statutes. *See* https://legislature.maine.gov/legis/statutes/1/title1ch13sec0.html.

[7] Casey Family Programs provides expert consultation services to child protection agencies across the United States. Their website can be found at https://www.casey.org/.

Mr. Wyman next reviewed the variety of funding sources that have been used to support preventive legal advocacy programs. In 2019, he noted, the Children's Bureau of the federal Administration for Children and Families began to allow states to obtain federal reimbursement under Title IV-E of the Social Security Act for parent and child legal representation in child protection court proceedings. Title IV-E reimbursement dollars states receive from the federal government can be used to support preventive legal advocacy programs. In 2021, further policy developments clarified that reimbursement is available not only for attorney services to parents and their children in foster care but also for multidisciplinary teams that work with parents and their children in foster care or with parents and their children who qualify as "candidates" for foster care. In addition to federal Title IV-E reimbursement funding, Mr. Wyman noted that preventive legal advocacy programs across the country have utilized legislative appropriations at the state, county and city level; federal Court Improvement Program (CIP) funding to offer technical assistance and seed funding; and philanthropic funding, including from Casey Family Programs, for operations, technical assistance, evaluation support and program expansion.

At the close of his presentation, Mr. Wyman observed that preliminary program outcome data, including from the Detroit Center for Family Advocacy, the Legal Services of New Jersey's Family Representation Project and the FIRST Clinic have begun to demonstrate the "significant benefits" of preventive legal advocacy in supporting families, preventing or reducing the separation and trauma caused by child removal and avoiding the government expense of court proceedings and foster care. He advised that additional research and evaluation will be necessary both to demonstrate the long-term effectiveness of these programs and to identify the program features that are most effective in preventing the removal of children from their homes. Unfortunately, not all programs have been able to secure sustained funding, and additional outcome data will be necessary to advocate for sustained funding of future programs. In this vein, he emphasized the importance of building a strong relationship between the preventive legal advocacy program and the child protection agency, regardless of whether the program seeks its referrals from the agency or provides legal advocacy in its interactions with the agency or solely with respect to ancillary legal issues. (A written copy of Mr. Wyman's remarks is included as Appendix D.)

3. Discussion of Next Steps

Following Mr. Wyman's presentation, commission members expressed an interest in speaking with professionals who work in pre-petition legal representation[8] programs across the country to learn more about the design, operation and funding of their programs, especially programs housed within civil legal aid organizations. Members also requested that Casey Family Programs and legislative staff investigate whether long-term outcome data has been collected from these programs including, for example, data on subsequent referrals to the child welfare agency, entry into care and permanency outcomes as well as data comparing short- or long-term outcomes of children whose parents were assisted by the pre-petition legal representation program and the outcomes of a control group of comparable children who were not assisted by the program. Additionally, in anticipation of the commission's duty to make recommendations regarding the pilot program's target population, members requested that the Department of Health and Human Services provide recent data, by county, regarding the number of child protection investigations conducted in the State, the duration of these investigations, the number of services cases opened and removal petitions filed and, when children were removed, the reasons for the removal.

[8] In his presentation, Rob Wyman explained that "preventive legal advocacy" is a broad term that encompasses a continuum of strategies for assisting families at risk of involvement with the child protection system. The pilot program envisioned by Resolve 2021, chapter 181—which focuses on legal assistance to parents and custodians facing a child protection investigation—involves the subset of preventive legal advocacy commonly referred to as pre-petition (legal) representation. This latter term has thus been used throughout the remainder of the report.

B. Second Meeting - August 22, 2022 [9]

The second meeting of the commission was held on August 22, 2022 and began with commission member introductions, followed by presentations responding to the requests for information made during the first commission meeting.

1. Maine Child Protection Investigation Data

Dr. Todd Landry, commission member and Director of OCFS, provided statewide and county-level data for calendar years 2019, 2020 and 2021 on the number of investigations of child abuse or neglect conducted; the number of those investigations that resulted in an OCFS case being opened; the number of investigations resulting in at least one child being removed from the home; and the average number of days investigations remained open. (A copy of this data is included in Appendix E.)

In presenting the data, Dr. Landry stressed that, in the most recent calendar year (2021), only 528 of the 9,784 investigations, which is slightly over 5% of investigations, led to the removal of a child or children from the home. Commission members observed that the number of investigations, cases opened and child removals in Penobscot County appeared much higher than the corresponding numbers in other counties, even when considering the relative populations of each county. Dr. Landry explained that, across the country, a higher percentage of removals per investigation occurs in rural areas, where reports of suspected abuse or neglect tend not to be made unless the allegations are comparatively serious in nature. In addition, overall overdose death rates and drug-related offense rates are higher in Penobscot County than in other areas of the state, which may explain the data, given that substance use is a contributing factor in approximately 50% of child protection cases in the State.

2. Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs

Legislative staff next distributed a table of information staff compiled regarding selected pre-petition legal representation programs across the country. The table described, for each program, its name and location; client eligibility requirements; client referral methods; types of services provided to parents—including direct information, advice or advocacy regarding the child protection system, information, advice or advocacy regarding ancillary civil legal issues, or both; the type of service providers, including attorneys, social workers, case managers or parent advocates; program funding sources; data collection protocols; and available outcome data. Most of the information had been gleaned from a review of the literature and relevant program websites. Staff explained that they were in the process of interviewing individuals from each organization to obtain a more complete and current understanding of these pre-petition legal representation programs and that they would provide revised and updated versions of this table at subsequent commission meetings. (The final version of the table, which was presented during the October 17, 2022 commission meeting, is included in Appendix F.)

3. Federal Court Improvement Program funding

Betsy Boardman, Child Protective and Juvenile Process Specialist at the Maine Judicial Branch, then provided commission members with an overview of federal Court Improvement Program (CIP) funding in the State. Maine receives approximately $300,000 annually in CIP funds and is required to provide a 25% state match for those funds. CIP funds must be obligated by September 30 each year and liquidated within the following 90-day timeframe. Current program rules require the State to use at least 30% of the

[9] Commission members Stephanie Leblanc and Deputy Chief Judge Lea-Anne Sutton were unable to attend the second commission meeting. A recording of the August 22, 2022 meeting is available at the following link: https://legislature.maine.gov/audio/#228?event=86379&startDate=2022-10-03T09:00:00-04:00.

current year's CIP funds on data projects. In addition, the State must plan for and implement at least three projects using CIP funds, which must be designed to to improve: the quality of child welfare court hearings and reviews; the quality of legal representation for parents, children and youth or the child welfare agency; and safety, permanency or well-being outcomes through the Child and Family Services Review (CFSR) or Continuous Quality Improvement (CQI) processes.

Ms. Boardman suggested that CIP funds could be used in Maine to "seed" or help establish a pre-petition legal representation pilot project, at the discretion of the Maine Judicial Branch. She cautioned, however, that CIP funding would not be an appropriate method to provide sustained funding for such a project. Because at least 30% of CIP funding must be spent on data-collection projects, Ms. Boardman observed that it might also be possible for CIP funds to offset the cost of data collection for a pre-petition legal representation pilot program. Maine's CIP program currently contracts with Dr. Alicia Summers on a number of data-collection projects, including projects to improve the quality of court hearings and the parent surveys conducted by MCWAP. Ms. Boardman opined that Maine's CIP program could facilitate Dr. Summers' assistance in designing the pilot programs' data collection metrics and procedures and, again at the discretion of the Maine Judicial Branch, could potentially fund a contract with Dr. Summers to provide actual data collection and analysis services for the pilot program.

4. Federal Funding under Title IV-E of the Social Security Act

Legislative staff next provided a general overview of foster care program funding under Title IV-E of the federal Social Security Act[10] and the availability of Title IV-E reimbursement for independent legal representation of children and parents, including pre-petition legal representation. Dr. Landry, commission member and OCFS director, also submitted a memorandum with an overview of federal Title IV-E funding. The following key points were emphasized to commission members:

- Title IV-E is an open-ended entitlement program that guarantees certain benefits to eligible children and does not displace any other funding.
- Under Title IV-E, the federal government reimburses states for a percentage of eligible costs of the state foster care program for Title IV-E "eligible" children (not all children in foster care are eligible). The reimbursement percentage is referred to as the Federal Financial Participation (FFP), or match rate. The state share of costs claimed for the Title IV-E foster care program (the state match) must be sourced from state or local appropriated or donated funds and may not be sourced from other federal program funds.
- In 2019, the Children's Bureau issued revised and new policies[11] allowing states to claim as Title IV-E foster care administrative costs (and thus seek reimbursement for) the expenses of providing independent legal representation to children who are either in Title IV-E foster care or who are candidates for Title IV-E foster care as well as to the parents of children who are either in Title IV-E foster care or who are candidates for Title IV-E foster care.
- A child does not qualify as a "candidate" for foster care, for purposes of Title IV-E administrative cost reimbursement, solely because the child is subject to a child protection investigation in response to a report of abuse or neglect. Instead, a child qualifies as a candidate only if the child

[10] Title IV-E of the Social Security Act is codified in Title 42, Sections 601–679c of the U.S. Code and is available online *at* https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter7/subchapter4/partE&edition=prelim (last visited Nov. 7, 2022).

[11] These policies are compiled in the Children's Bureau's Child Welfare Manual, available online at https://acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/index.jsp (last visited Nov. 7, 2022).

welfare agency has either initiated efforts to remove the child from the child's home or made the decision that the child should be placed in foster care unless preventive services are effective.

- Title IV-E reimbursable administrative costs include the costs for an independent attorney (for a child who is a candidate for Title IV-E foster care or in foster care and the child's parent) to prepare for and participate in all states of foster care legal proceedings.
- In 2021, the Children's Bureau issued an information memorandum clarifying that the costs for paralegals, investigators, peer partners and social workers may also be claimed as Title IV-E administrative costs to the extent they are necessary to support an attorney providing independent legal representation. The Children's Bureau also encouraged States to consider using state, local and tribal funds, including, potentially, Title IV-E reimbursement dollars, to provide independent legal representation to families that addresses civil legal issues—for example, food insecurity, unstable housing, or intimate partner violence—that affect child safety. Although this language is suggestive, it was not clear to legislative staff whether states could seek Title IV-E administrative cost reimbursement for the costs of such civil legal representation.
- Only the state's Title IV-E agency may claim Title IV-E reimbursement for independent legal representation, although it may arrange for these services to be delivered by another entity through a contract, memorandum of understanding or other agreement. Prior to seeking reimbursement, the Title IV-E agency must amend its Public Assistance Cost Allocation Plan (PACAP) with the Children's Bureau to identify the independent legal representation activities the agency intends to claim and the methodology it will use to identify allowable costs. If the state provides legal representation to children or their parents without direct reference to the child's Title IV-E eligibility (or candidacy), the state must employ an allocation method to assure that Title IV-E funds are claimed only for the proportionate share of Title IV-E administrative costs. The state's proportion of children in foster care who are Title IV-E eligible (the "penetration rate" or "participation rate") may be used for this purpose.
- The Title IV-E FFP rate for the administrative costs of the state's foster care program is 50% and the State of Maine's penetration rate was 44% in FY 2021. Thus, for example, if Maine had sought administrative cost reimbursement for independent legal representation in FY 2021, it would be reimbursed at a rate of 22 cents for every dollar spent ($1.00 x 50% x 44% = 22 ¢).

(Copies of the Title IV-E materials from legislative staff and Dr. Landry are included in Appendix G.)

During the ensuing discussion, MCILS Executive Director and commission member Justin Andrus informed commission members that Maine does not currently seek Title IV-E reimbursement for the independent legal representation provided by MCILS to parents in child protection court proceedings. Dr. Landry and Executive Director Andrus explained that the State examined the possibility of pursuing such reimbursement in 2019, but ultimately decided not to initiate the process of seeking reimbursement due to the technical challenges associated with federal match reporting and documentation, service oversight and contract services management; the expense of hiring staff to perform these functions; and the department's responsibility to repay any funds identified during regularly conducted federal audits as erroneously claimed by the State. Certain commission members expressed disappointment that the State has not pursued this funding source, especially given the critical lack of funding currently experienced by MCILS. These commission members acknowledged that the process may be complicated but asked that, regardless of the outcome of the commission's work on the pre-petition pilot program, MCILS and OCFS continue to pursue Title IV-E administrative cost reimbursement for post-petition independent legal representation currently provided by the State to indigent parents.

5. Presentations on Pre-petition Representation Programs in Civil Legal Services Organizations

The commission next received presentations describing two existing pre-petition legal representation programs that are located within civil legal services organizations.

a. *Family Representation Contract (Oklahoma Department of Human Services and Legal Aid Services of Oklahoma)*

Ronald Baze, General Counsel for the Oklahoma Department of Human Services, described the Department's Family Representation Contract, which was designed to eliminate family instability as early in the child welfare process as possible. Beginning in 2014, the Department contracted with Legal Aid Services of Oklahoma (LASO) to provide attorney legal representation in ancillary civil legal matters related to child safety to families actively involved with the child protection system. The program was originally funded using $500,000 of Oklahoma's federal Temporary Assistance for Needy Families (TANF) funds. Child protection caseworkers have been trained to identify open cases—from initial referral through removal—in which a potential civil legal issue is affecting family stability. Caseworkers give these families information on the program, and the families may contact LASO to obtain services. At that point, the Department takes a hands-off approach to the services provided by LASO attorneys. General Counsel Baze observed that the biggest implementation challenge involves teaching caseworkers to recognize the ancillary civil legal issues that can and should be addressed by the program. The Department has separately contracted with LASO to provide the necessary training and education.

While the Department and LASO originally predicted that public benefit and housing issues would predominate, the most prevalent civil legal relief needed by families served under the contract include paternity determinations, child custody and divorce orders, guardianship orders and domestic violence protection orders. Certain types of legal issues are not covered by the contract, including advocacy in the child protection investigation itself, criminal matters and cases on appeal. The program has been in place for approximately eight years and the Department is in the process of consulting with the social work program at the University of Oklahoma to develop a method for collecting the metrics and data necessary to evaluate the contract's effectiveness.

b. *Domestic Violence Family Preservation Project (Greater Boston Legal Services)*

Alyssa Rao, from Greater Boston Legal Services (GBLS), next described the pre-petition legal representation program that she designed and began in September 2021, which is funded through an Equal Justice Works fellowship. Her project serves victims of domestic violence in the GBLS geographic service area who are involved with the Massachusetts Department of Children and Families (DCF) but whose children have not yet been removed. She advocates for her clients in the early stages of child protection investigations, including by explaining the investigation process and both the parent's and DCF's rights and responsibilities during that process to her clients. She also represents her clients in ancillary civil legal matters related to the child protection investigation, including by helping her clients pursue domestic violence protection orders, custody and guardianship orders and public benefits. When necessary, she refers her clients to other GBLS attorneys who have other civil legal expertise, including in health insurance, immigration, housing and tax benefit matters. Attorney Rao, who also has a degree in social work, also spends approximately 10% of her time providing case management services to her clients, for example by connecting her clients to therapists, food banks and other community services.

Attorney Rao employs a wholistic approach to data collection and outcome tracking. She obtains basic demographic information and tracks both the outcome of the DCF investigation and the degree to which the ancillary civil legal services representation has successfully improved the family's safety. In addition, she collects data about many other indicators of poverty to determine whether participation in

the program affects, for example, the family's income, housing stability or access to health insurance and child care.

Attorney Rao connects with her clients through referrals from other GBLS attorneys, community organizations and cultural groups as well as through GBLS's self-referral intake procedures. She has not had the capacity to pursue referrals from DCF caseworkers; however, since her project began, GBLS has obtained funding from the State (derived from federal American Rescue Plan Act of 2021 funds) for a second attorney to provide pre-petition legal representation on a part-time basis. That attorney plans to begin working with DCF to obtain client referrals; this attorney's potential clients need not be victims of domestic violence.

In response to commission member questions, Attorney Rao could not definitively state whether her provision of ancillary legal services (which comprises the majority of her time) was more or less important to preventing the removal of her client's children than her direct advocacy with the child welfare agency. She has had clients for whom obtaining a protection order was the impetus for DCF to close its investigation and other clients for whom direct advocacy with the child protection agency was the impetus for closing the case. Attorney Rao also explained that, with two exceptions, she is not aware that any of her clients whose cases were successfully closed were the subject to subsequent child protection investigations. In those two cases, her clients' abusers later reported her clients to DCF. Attorney Rao was able to explain the history of the situations to the DCF caseworkers and each case was ultimately closed in her client's favor.

6. Discussion of next steps

After Attorney Rao's presentation, commission members expressed interest in learning more about the role of social workers and parent advocates who work with attorneys as part of multidisciplinary pre-petition legal representation programs. Members also expressed interest in additional information regarding the use of federal Title IV-E and federal TANF funding for pre-petition legal advocacy.

At the close of the meeting, co-chair Senator Donna Bailey reminded commission members that they have been charged with designing the parameters of a pre-petition legal representation program in Maine. It will therefore be necessary for the commission to make recommendations regarding the appropriate pilot program timeframe and target client population; the types of legal services to provide; whether to utilize a multidisciplinary team; the sources of funding to be pursued; and the types of data to be collected to evaluate the program's efficacy.[12] To facilitate these discussions, Senator Bailey announced that the commission would accept public comments on these aspects of the pilot program design both orally and in writing during the third commission meeting on October 3, 2022. (A copy of the written solicitation of public comments is included as Appendix H.[13]

[12] Senator Bailey also reported that she spoke to the director of the University of Maine School of Law's clinical programs, who indicated that the law school does not currently have the capacity to undertake this pilot program.

[13] The request for public comments was posted on the commission's website and sent via email to the commission's interested parties email list. The request was also sent via email to the members and interested parties email lists for the Legislature's Joint Standing Committees on Judiciary and Health and Human Services.

C. Third Meeting - October 3, 2022 [14]

The third commission was held on October 3, 2022 and began with commission member introductions.

1. Responses to requests for information

At the outset of the meeting, legislative staff distributed the following in response to commission members' requests for information:

a. *Family risk factors during child welfare investigations.* Staff distributed copies of OCFS's Child Welfare Annual Reports for Calendar Years 2020 and 2021, highlighting the data presented on pages 9-10 of the 2020 report regarding the family risk factors identified by OCFS caseworkers during child protection investigations that ultimately resulted in a finding of child abuse or neglect. This table demonstrates that neglect was the most prevalent risk factor, followed by alcohol or drug use by the child's parent or caretaker and domestic violence. In addition, substance use was identified in the 2021 report as a risk factor in 50% of child removal cases. (Copies of these annual reports are included in Appendix I.)

b. *Update on potential sources of federal funding.* Staff next reviewed a set of materials prepared by legislative staff describing several potential sources of federal funding for the pilot program. In brief, these materials highlighted that:

- Court Improvement Program funding: As described by Betsy Boardman at the second commission meeting, Court Improvement Program funds may be available as seed money and for data-collection components of the pilot program;
- Title IV-E funding: As also described at the second commission meeting, the expenses of parental pre-petition independent legal representation by multidisciplinary teams may be reimbursable (at a rate of approximately 22 cents on the dollar) as administrative costs under Title IV-E of the Social Security Act. Following the second commission meeting, further research and communications with the Children's Bureau revealed that Title IV-E reimbursement is not currently available for representation related to legal issues ancillary to the child protection proceeding, although an amendment to federal regulations that would permit such reimbursement is currently under consideration. Legislative staff were unable to identify any state that currently submits claims for Title IV-E reimbursement for a *pre-petition* legal representation program, however, possibly due to the administrative requirements for submitting claims, audits and potential financial penalties for erroneous claims and the restriction on the types of reimbursable services. Several states have instead utilized Title IV-E reimbursement dollars received for *post-petition* independent legal representation provided to parents in child protection proceedings to fund *pre-petition* legal representation projects. Such uses of Title IV-E reimbursement dollars are allowable and not subject to state match requirements or ancillary legal services restrictions. [15]

---

[14] All commission members, except Julian Richter were present at the third commission meeting. An archived recording of this meeting is available at the following link: https://legislature.maine.gov/pilot-program-to-provide-legal-representation-meeting-1032022.

[15] After the second commission meeting, Justin Andrus and Dr. Landry also asked legislative staff to provide example memoranda of understanding between state child welfare agencies and of independent legal representation providers outlining the duties of each party with respect to seeking Title IV-E reimbursement. They further

- Temporary Assistance for Needy Families (TANF) funding: TANF funding must be used for one of four allowable purposes, including assisting families so that children may be cared for in their own homes or the homes of relatives. TANF is distributed to states in a block grant. The amount of these block grants has remained static since 1996, meaning that the grant has lost 40% of its value as the result of inflation. In addition, states must demonstrate "maintenance of effort" in state dollars historically spent for welfare and related spending to continue receiving that level of funding. Maine currently uses TANF funds for a variety of purposes, including for basic assistance; work, education and training activities; child care; and child welfare services. A decision to use TANF funds for the pilot program would necessitate a decrease in spending in one ore more of these categories and clients receiving services from the program may be required to meet certain state TANF financial eligibility requirements.
- American Rescue Plan Act (ARPA) of 2021 funding: ARPA provided supplemental funding for two grant programs under the Child Abuse Prevention and Treatment Act (CAPTA). Preventing children from entering foster care is one of the priority goals for the expenditure of these supplemental funds and guidance documents issued by the Children's Bureau encourage the use of these funds to expand resources for legal representation that will resolve issues that leave families vulnerable to potential child welfare involvement. The supplemental funds for these two grant programs, for which there is no state match requirement, have a 5-year project expenditure period from October 1, 2020 to September 30, 2025. Funds must be obligated by September 30, 2025 and liquidated by December 30, 2025.
- Potential new funding: The President's FY 2023 budget related to civil legal services proposes to increase funding for the Marylee Allen Promoting Safe and Stable Families Program under Title IV-B of the Social Security Act, including $50 million for a new grant program to provide civil legal services to families in the child welfare system. Whether this funding will actually become available, and the restrictions attendant to its use, depends on the outcome of the FY 2023 federal budget process.

(Copies of these staff handouts on federal funding options are included in Appendix K.[16])

As part of the discussion following this presentation, commission member and MCILS Executive Director Justin Andrus reported that at least a portion of state general fund dollars spent by MCILS to provide post-petition representation to indigent parents has been claimed by the State as MOE dollars for TANF purposes. Commission member and OCFS Director Dr. Landry explained that the funds claimed as MOE dollars may not also form the basis for a state match to obtain other federal funds, including Title IV-E reimbursement dollars.

---

requested copies of the relevant child welfare agency's PACAP plans describing the independent legal representation activities the agency intended to claim for Title IV-E reimbursement and the methodology it would use to identify allowable costs. Memoranda of understanding from Colorado and Iowa, as well as relevant excerpts from those state's PACAPs, were distributed to the commission and are available on the commission's website at the following link https://legislature.maine.gov/pilot-program-to-provide-legal-representation-meeting-1032022. While these materials suggest that Colorado and Iowa currently pursue Title IV-E reimbursement for both post-petition and pre-petition independent legal representation, staff confirmed with relevant professionals in each state that Title IV-E reimbursement claims are currently being submitted only for post-petition independent legal representation.

[16] The Title IV-E handout included in Appendix K was revised slightly after the meeting on October 3, 2022 to incorporate commission member comments and suggestions.

c. *Updates on Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs*. Staff next distributed an updated table that included information obtained since the second commission meeting regarding pre-petition legal representation programs in other states. (The final version of the table, which was presented during the October 17, 2022 commission meeting, is included in Appendix F.)

2. *Presentation by Jill Cohen of Colorado's Office of Respondent Parents' Counsel on Social Work Advocacy in Pre-Petition Legal Representation Programs*

The commission next heard from Jill Cohen, Director of Programs for the Office of Respondent Parents' Counsel (ORPC) in Colorado. She explained that the Colorado Legislature pays ORPC to provide statutorily required post-petition representation to indigent parents in child protection proceedings. The state then seeks Title IV-E administrative cost reimbursement for these expenses, placing all reimbursement dollars in a special fund. ORPC utilizes this special fund for special projects, including a pilot project to provide preventative legal services to families whose unmet legal needs may be affecting the safety of their children and placing them at risk of child welfare involvement. These services are provided by a multidisciplinary team, including an attorney, social worker and parent advocate. The attorney assesses the family's civil legal needs, including issues related to housing, immigration, public benefits or child custody and domestic violence, and advocates for the client, including by filing court proceedings, to resolve those issues. The social worker acts as an agent of the attorney, meeting with child welfare staff to negotiate safety plans as well as helping parents obtain needed community services and take the steps necessary to prevent the agency from pursuing removal of the child. The parent advocate, who has lived experience of having children placed in foster care and then successfully reunifying with those children, also acts as an agent of the attorney. The parent advocate provides support to clients, for example by explaining and demonstrating how to speak to mandated reporters, how to budget their time and priorities and how to apply for and access local services. In an effort to assess the effectiveness of this pilot program, ORPC has worked with the Colorado Evaluation and Action Lab to gather data on child welfare outcomes and other program data including through client interview protocols both at the end of their program involvement and six months later. ORPC also has a data-sharing agreement with the child welfare agency to obtain follow-up child welfare involvement information. Because the program began in 2022, however, evaluation data is not yet available. (A copy of Ms. Cohen's presentation is included in Appendix J.)

During the question and answer period following Ms. Cohen's presentation, she explained that ORPC's program is designed to serve 50 families in Jefferson County, Colorado.[17] ORPC estimates that the total pilot program cost, including payment of contract attorneys, social workers and parent advocates, as well as research costs, will be between $200,000 and $400,000. Commission members expressed some concerns regarding the mandated reporter responsibilities of social workers who are part of a multidisciplinary pre-petition legal representation team. Ms. Cohen explained that although social workers are mandated reporters in Colorado, ORPC considers program social workers to be acting as agents of program attorneys and subject to attorney-client privilege. Colorado has created a legislative task force to examine this issue. In the meantime, ORPC trains its social workers not to place themselves in situations where they may witness circumstances that would give rise to a mandatory report and instead to utilize the parent advocates, who are not mandated reporters, in some of these situations.

[17] After Ms. Cohen had left the meeting, commission members requested that legislative staff inquire how ORPC would select or triage, from among all qualified referrals received, the 50 families to be served by the pilot project. Ms. Cohen clarified through email correspondence with legislative staff that the pilot project would serve qualified families on a first-come, first-served basis. A copy of the email correspondence is available on the commission's website at the following link: https://legislature.maine.gov/doc/9106.

3. *Public Comment*

The commission next turned to the receipt of public comments. The commission heard from and asked questions of the following individuals during the meeting:

- Erika Simonson, Child and Family Programs Coordinator at the Maine Coalition to End Domestic Violence (MCEDV), discussed her written proposal recommending that the pilot project be located in both a rural and an urban area of the State and focus on supporting survivors of domestic abuse and violence and their children. (A copy of Ms. Simonson's comments, which contains a detailed explanation of MCDEV's proposal, is included in Appendix H.)

- Kim (who did not provide her last name) urged the commission to design the pilot program to serve low-income parents by explaining the child protection investigation process and advising parents of their rights while also addressing housing, domestic violence, substance abuse and other civil legal issues. She believes there is a huge need for this program and suggested that the commission focus on Lewiston, Rumford and Skowhegan, towns in which she reported there have been large recent increases in child abuse cases. (A copy of her comments is included in Appendix H.)

- Aurelia Blackstock, who serves as a domestic violence advocate at Through These Doors in Cumberland County, relayed the story of a client who had great difficulty separating from her abuser and establishing her independence while also trying to navigate the child protection system. After OCFS opened up a services case for the children, Through these Doors was able to fund an attorney who successfully advocated for the case to be closed because, although the parent had been referred for domestic violence, she had subsequently left her abuser and was providing a safe and stable home for the child. Ms. Blackstock expressed concern that, without the assistance of this attorney, the parent's involvement with OCFS would not have resolved as quickly. (Ms. Blackstock did not submit a copy of her comments in writing.)

In addition, although they did not speak during the meeting, written comments were submitted by Cushman Anthony, Esq.; Robert Bennett, Esq.; Sean Leonard, Esq.; Matthew Pagnozzi, Esq.; Lauren Wille, Esq. of Disability Rights Maine; and the Family Law Advisory Commission. (Copies of these comments are included in Appendix H.)

4. *Presentation on Designing a Pre-Petition Legal Representation Pilot Project by Vivek Sankaran, Clinical Professor of Law, University of Michigan Law School*

After a short break, Professor Vivek Sankaran, a leading expert on pre-petition legal representation programs and founder of the Detroit Center for Family Advocacy, one of the country's first pre-petition legal representation programs, spoke to the commission. He commended the commission for its work to date and posed a series of questions commission members should seek to answer as they design a pre-petition legal representation program:

- *What are the commission's goals for the program?* Some pre-petition legal representation projects across the country aim to assist clients with collateral legal issues that place a family at risk of child removal while other projects focus on providing information about the family's rights and guiding them through the process of the child protection investigation. Several pre-petition legal representation projects combine these two approaches.
- *How will families learn about the pilot project?* Programs across the country have taken varied approaches. Some programs establish connections with the child welfare agency and that agency

serves as the main source of client referrals. Other approaches, which avoid the need to rely on already overburdened agency caseworkers, include establishing self-referral hotlines or warmlines or on establishing partnerships with mandatory reporters, for example in a medical-legal clinic context. Programs that have not thought critically about their modes of referral and outreach struggle to get referrals.

- *What will be the scope of services?* Professor Sankaran asked the commission to consider: If the program assists with civil legal issues—for example, housing, public benefits, special education, and other issues—will providers also have the expertise to provide advice and advocacy related to the child protection investigation? What about specialized or complex areas of civil law such as immigration? Will providers have expertise in these areas as well or should the program utilize a referral system where different attorneys handle different matters for families?
- *Will the program be multidisciplinary?* A number of programs across the country provide only attorney services while others include social workers and parent mentors on the team.
- *How long will representation last?* In some jurisdictions, the attorney who provides pre-petition legal representation is also available to remain with the case if a child protection petition is filed in court. While this approach can be helpful for families, other jurisdictions do not take this approach because it may be more difficult to negotiate with the child welfare agency if the agency views the attorney as an adversary based on experiences in court.
- *How and when will you evaluate the program*? It is important to develop and evaluation and also important not to rush to initiate the evaluation process until there has been time to work out the kinks in the pilot program model. It makes sense to wait until the model has been developed before beginning to evaluate its efficacy.

Professor Sankaran also complimented the commission on the depth of its research regarding pre-petition legal representation programs in other areas of the country. He cautioned, however, that this type of legal advocacy is new and insufficient research and data exist to identify clear best practices. The commission should instead focus on what will work best for Maine. The commission could recommend that the pilot program focus on particular areas of the State with high rates of poverty-related neglect or it could recommend that the pilot project be designed to take advantage of resources in areas of the State where individuals or organizations who might champion the project and who are excited to take on this work are located.

Commission members asked Professor Sankaran how attorney-client confidentiality applies to members of a multidisciplinary pre-petition legal representation team. He explained that, in some states, attorney-client privilege is considered to apply to all members who are part of the lawyer's team, with a key question surrounding whether such individuals are granted exemptions from otherwise-applicable mandatory reporting requirements. It is therefore important for the commission to examine applicable Maine law. In Michigan, for example, social workers who are part of a legal team nevertheless remain subject to mandatory reporting laws. To address this reality, the Detroit Center for Family Advocacy obtained informed consent from clients to ensure they understand the limits of client confidentiality and the social worker's mandatory reporting obligations. While Professor Sankaran agreed that mandatory reporting is an important issue, in his experience the issue was not triggered as often as one might predict, given that program clients were already subject to a child protection investigation.

In response to further questions, Professor Sankaran offered to continue to assist Maine as it implements a pilot program and explained that he has gathered a national group of approximately 100 professionals in approximately 40 jurisdictions who are either engaged in pre-petition legal advocacy or who are interested in this work. The group meets (remotely) once a month to discuss various aspects of the work, communicates with each other through an email list serve and shares a Google Drive containing useful

resources including job descriptions and referral and program evaluation forms. He also noted that Casey Family Programs funded a Preventive Legal Advocacy Fellow at Emory University School of Law, who could serve as an excellent resource for the commission and for Maine's eventual pilot program staff.

5. Commission Discussion on Pilot Program Design

Throughout the remainder of the third meeting, commission members began to develop recommendations regarding the design of a pilot program to provide legal counsel to parents or custodians involved in the child protection system based on the data, research, presentations and public comments received during the commission process. To aid the commission in its deliberations, legislative staff distributed a document quoting the commission's duties set forth in Resolve 2021, chapter 181 and identifying a nonexclusive list of pilot program design elements for which the commission might wish to make recommendations. Co-chair Senator Bailey emphasized that this document would serve as a helpful outline for the commission's deliberations, but that members should not feel wedded to discussing or making recommendations regarding the items listed in the document. For example, the document did not outline the first question posed by Professor Sankaran—what are the commission's goals for the pilot program?—which she felt the commission should address in its final report. (A revised version of this document, which includes decision points proposed during the third meeting and which also indicates the final recommendations voted by the commission, is included in Appendix M.)

In the lengthy conversation that followed, commission members:

- brainstormed a list of potential pilot program goals;
- engaged in preliminary discussions regarding the pilot program's target client population, including by considering a proposal by commission members Assistant Attorney General Ariel Gannon and OCFS Director Dr. Landry to establish a pilot program consisting of a statewide warmline that parents could choose to call, without relying on caseworker referrals, and through which parents could be connected to legal assistance from attorneys with expertise in civil legal matters as well as with attorneys experienced in child protection matters. Commission member and MCILS Executive Director Justin Andrus shared that MCILS currently operates a similar type of phone assistance line for defendants in criminal matters and has considered using federal ARPA funds that it has received but not yet expended to create a similar assistance phone line for parents regarding child protection proceedings; [18]
- reached preliminary consensuses on two topics: that it would make the most sense for the pilot program to be administered by MCILS and that, while caseworkers and others might inform parents about the pilot program, parents should be required to self-refer to the program; and
- by majority vote, agreed to recommend that the pilot program should serve parents not earlier than when they are subject to a child protection investigation and should provide both direct advocacy with the child welfare agency as well as advocacy with respect to ancillary legal issues related to the child protection matter.

[18] A majority of commission members voted on a motion to recommend their support for the warmline during the third meeting; however, due to a lack of clarity among commission members, commission co-chairs and legislative staff regarding whether the warmline was intended to be part of the pilot program or to operate independently from the pilot program, the commission opted to set that vote aside and re-state and re-vote on a new motion regarding the warmline during the fourth commission meeting.

D. Fourth Meeting - October 17, 2022 [19]

The fourth commission meeting was held on October 17, 2022 and, once again, began with commission member introductions and responses to requests for information arising during the previous meeting.

1. *Mandatory Reporting and Confidentiality in an Interdisciplinary Legal Team in Maine*

Legislative staff opened the meeting by reviewing the provisions of Maine statute and the Maine Rules of Professional Conduct for licensed attorneys relevant to the following question: *In the context of an interdisciplinary legal team that includes a social worker, what are the requirements for mandatory reporting by the social worker, and how are those requirements managed in the event they conflict with a lawyer's duty to maintain client confidentiality?* Staff observed that licensed social workers have a statutory duty to report suspected child abuse or neglect. By contrast, licensed attorneys have a qualified professional duty to ensure the confidentiality of information revealed to that attorney by a client unless disclosure is permitted under the applicable professional rules—for example, an attorney may reveal client confidences "to prevent reasonably certain substantial bodily harm or death." An attorney's duty of confidentiality extends not only to confidences revealed by a client directly to the attorney but also to confidences revealed to non-attorney assistants over whom the attorney has direct supervisory authority or who work in the same law firm structure. Accordingly, it is foreseeable that, in the context of a multidisciplinary legal team comprised of both licensed attorneys and social workers, situations could arise in which a social worker's statutory reporting duty will conflict with an attorney's professional duty of confidentiality. (A copy of the memorandum summarizing this research is included in Appendix L.)

2. *Presentation on Data Collection Protocols and Data Analysis by Dr. Alicia Summers, Director of Data Savvy Consulting, LLC and consultant to Maine's Court Improvement Program*

The commission also heard from Dr. Alicia Summers, a data consultant who was asked to provide the commission with information on best practices for collecting and analyzing data on pre-petition legal representation programs. Dr. Summers began by explaining that the existing programs across the country have not yet gathered and analyzed sufficient data to demonstrate that these programs prevent entry into foster care, although data has demonstrated that these programs can reduce the time that children spend in foster care and the rates at which children re-enter foster care. It is important to design rigorous data collection protocols capable of establishing whether there is a link between the services provided by the pilot program and improved child welfare outcomes.

During her presentation and responses to commission member questions, Dr. Summers emphasized the following best practices for data collection and analysis:

- The most robust research design requires randomly assigning families eligible for pilot program services into two groups, one that will receive those services (treatment) and the other that will not (control), and then comparing outcome data between the two groups. While this methodology would generate the strongest evidence of program effectiveness or ineffectiveness, it is often challenging to implement when, for example, the number of referrals is too small or there is a potential for selection bias because the staff that provides the services is also charged with deciding which clients will be entered into each group. With this decision, it is also important to plan ahead in order to overcome the difficulties in obtaining various types of data from the

[19] Nonvoting commission member Deputy Chief Judge Lea-Anne Sutton was unable to attend the fourth commission meeting and designated Betsy Boardman to attend the meeting on her behalf; all other commission members attended at least a majority of the meeting. An archived recording of the fourth meeting is available at the following link: https://legislature.maine.gov/Audio/#228?event=86380&startDate=2022-10-17T09:00:00-04:00.

control group of families who are not served by and therefore do not have a relationship with the program.

- To avoid client selection bias, the pilot program could be designed to serve all, rather than a selection of, eligible clients in a geographic area and obtain comparison data from families who have similar characteristics to pilot program clients but who live outside of the geographic area. Alternatively, the pilot program could provide services to all eligible families referred to the program and, once the maximum program capacity has been reached, collect comparison outcome data from families who are referred later and would otherwise be eligible for program services.
- As a rule of thumb, reliable and meaningful conclusions about program effectiveness can only be made if the program collects and analyzes outcome data from at least 30 client families (and, if a comparison methodology is utilized, analogous outcome data should also be collected and analyzed from a minimum of 30 comparable families not served by the program).
- Program design, as well as data collection and analysis protocols, should be driven by the pilot program's goals—for example, preventing child protection petition filings; preventing child removals; or successfully resolving the ancillary legal issues—and should be focused on determining whether those goals have been accomplished. For example, if a program's purpose is to prevent the children of domestic violence victims from entering foster care and the program will employ a client selection protocol, the randomly selected treatment and control groups should each contain only parents who are victims of domestic violence. If the purpose of the program is more generally to prevent children who are the subject of child protection investigations from entering foster care, then it will be necessary to decide how to select which parent in each family group will be served as a client and build a comparison group containing the same type of parent—for example, should the treatment and control groups include only custodial parents or only the first parent referred to the program from each eligible family?
- The pilot program's client eligibility requirements, referral processes and types of legal or case management services that will or will not be provided must be clearly defined to ensure the fidelity of program outcome data. Consistency of practice in service delivery can be promoted through the creation of specific forms and checklists governing each step in the process to ensure that the program rigorously adheres to each aspect of the program model.
- Once consistent processes have been established, the program should also ensure consistency in the data collection by developing forms specifying exactly what data and outcomes will be tracked. Care should be taken to define how each type of data will be collected—*i.e.*, which data must be tracked by the referral source (for example, client demographic data), which data must be tracked by the attorney (for example, the percentage of referrals accepted, client demographic data, and the type of services the provided to each client) and which must be obtained from other sources including client surveys and data-sharing agreements with the child welfare agency (for example, information regarding whether a child protection was filed and, if so, whether the child was removed).

3. Commission Discussion and Final Voting on Pilot Program Design

During the balance of the fourth commission meeting, commission members developed, discussed and voted upon a series of final recommendations regarding the design of the pilot program envisioned by Resolve 2021, chapter 181. These recommendations and the underlying votes are described in detail Part III of this report and are summarized in the chart included in Appendix M.

Because several commission members missed portions of the third and fourth commission meetings, commission co-chair Senator Bailey announced that commission members who were absent during any portion of the voting process would be permitted to submit their missing votes to legislative staff via email by 5:00 p.m. on Friday, October 21, 2022.

III. Recommendations

Resolve 2021, chapter 181 directed the commission to study existing programs in other jurisdictions that provide legal representation to parents or custodians before the state petitions a court to remove the child, to solicit public comment on the establishment of a similar program in Maine, and then to "[d]esign a pilot program to provide legal counsel to parents or custodians as soon as the State opens a safety assessment to determine if a child is at risk of harm." (A copy of the Resolve is included in Appendix A.)

Ultimately, the commission voted in favor of recommending that the pilot program be designed with the following features. All recommendations were adopted by either unanimous or majority votes; vote totals and a list of members voting for, against or abstaining from the motion underlying each recommendation are included in the footnote for that recommendation.

	Recommendations
Pilot Program Goals[20]	The pilot program should be designed to achieve the following goals: (a) To deploy legal and other resources to parents or custodians earlier in the child protection system process so that children can remain safe and families can help their children thrive without the need for state intervention. (b) To promote equity in the outcomes of child protection investigations for families of disparate socioeconomic circumstances. (c) To increase parents' and custodians' understanding of the child protection investigation process and how they can engage in the process to achieve positive outcomes.
Target client population[21]	The pilot program should be targeted to serve parents or custodians: (a) Who (i) reside within Office of Child and Family Services (OCFS) Region 3 (Androscoggin, Franklin & Oxford Counties) and (ii) would be eligible for the assignment of counsel completely at state expense under the Maine Commission on Indigent Legal Services' (MCILS's) income-eligibility rules (without applying an asset test); and (b) No earlier than when the parent or custodian has become the subject of a child protection investigation.

[20] Commission members unanimously voted to support each of these recommended pilot program goals.

[21] Commission members unanimously voted to support target client population recommendation (a), except that Dr. Landry and Assistant Attorney General Gannon abstained from voting on recommendation (a)(i) and Dr. Landry abstained from voting on recommendation (a)(ii). The motion regarding target client population recommendation (b) was combined in a motion regarding the type of pilot program services to be provided that is listed in the next row of the table. The commission's vote on that combined motion was divided, with 8 members in favor (Bailey, Stover, Hasenfus, Richter, Dell'Aquilla, Andrus, Mancuso and Hunt), 4 members opposed (Moore, Javner, Leblanc and Landry) and 1 member abstaining (Gannon).

Type of services to be provided[22]	The pilot program should provide both direct advocacy with the child welfare agency on behalf of clients and legal advocacy for those clients with respect to ancillary civil legal issues related to the child protection matter.
Service Providers[23]	(a) MCILS, or a successor agency responsible for providing (post-petition) legal counsel to indigent parents or custodians in child protection cases at state expense, should administer the pre-petition pilot program as a discrete program. (b) The pilot program should take an interdisciplinary approach by utilizing service providers that include, but are not limited to, attorneys, case managers and parent allies or advocates. *

* Although commission members unanimously agreed that the pilot program should take an interdisciplinary approach, by including at least attorneys, case managers and parent allies or advocates in the team of professionals, commission members were concerned about the potential conflict between the statutorily mandated child abuse and neglect reporting obligations of licensed social workers and other professionals and the potential applicability of attorney-client privilege to non-attorney legal team members. Commission members therefore requested that the pilot program carefully consider how to address this conflict, for example: by informing parents of the different reporting and confidentiality obligations for different members of the interdisciplinary team, by employing case managers who are not licensed social workers or by taking steps to minimize the situations in which members with mandatory reporting duties are made aware of potentially confidential information that might trigger those duties.

Referral process[24]	(a) MCILS, or a successor agency responsible for providing (post-petition) legal counsel to indigent parents or custodians in child protection cases at state expense, should:

[22] The motion regarding the type of pilot program services to be provided was combined with the motion regarding target client population recommendation (b), which is described above. The commission's vote on this combined motion was divided, with 8 members in favor (Bailey, Stover, Hasenfus, Richter, Dell'Aquilla, Andrus, Mancuso and Hunt), 4 members opposed (Moore, Javner, Leblanc and Landry) and one member abstaining (Gannon).

[23] Commission members unanimously voted to support the recommendations identifying who should provide pilot program services, except that Justin Andrus abstained from recommendation (a).

[24] The vote on referral process recommendation (a)(i) was divided, with 10 members in favor (Bailey, Stover, Moore, Hasenfus, Javner, Richter, Dell'Aquilla, Mancuso, Hunt and Leblanc), two members opposed (Landry and Gannon) and one member abstaining (Andrus).

Although commission members generally did not request that the reasons for their votes against specific recommendations be recorded in the report, Dr. Landry and Assistant Attorney General Gannon specifically asked that the report reflect that, during the third commission meeting, they initially proposed and advocated for a pilot program that would consist solely of a warmline providing legal advice and referrals to parents and custodians involved in child protection investigations statewide. They opposed referral recommendation (a)(i) to the extent that it described the warmline as *part* of the pilot program and not the *entirety* of the pilot program. Although they voted against referral recommendation (a)(i) for this reason, Dr. Landry and AAG Gannon weighed in on all of the other recommendations—instead of simply voting against all the other aspects of the pilot program's design—because they felt it was important to lend their perspective and to help the commission shape the remainder of the commission's recommendations, should the Legislature choose to pursue the expanded pilot program proposal.

Commission members unanimously supported referral process recommendations (a)(ii) and (b), which were included in a combined motion.

	(i) Implement a warmline that provides information and referrals statewide to parents and custodians who are subject to a child protection investigation and which will also serve as the entry point into the pre-petition pilot program for eligible clients; and (ii) Prepare information materials regarding the warmline and a parent's or custodian's ability to make a self-referral to the warmline and pilot program. (b) OCFS should provide the information materials prepared by MCILS or its successor agency regarding the warmline at the Office's first contact with parents and custodians during a child protection investigation.
Cost components: program duration and number of clients to be served[25]	The pilot program should: (a) Operate for two years; and (b) Serve up to 30 families at any one time—with each "family" defined as a group of individuals subject to a single child protection investigation.
Data collection and assessment[26]	(a) The pilot program should be subject to a rigorous independent evaluation, utilizing existing resources where available, which should potentially include the types of client and control group demographic and outcome data discussed by the commission and listed under item #7 in the table included as Appendix M. (b) The specific set of data to be collected should be determined in consultation with technical assistance provided by the Court Improvement Program. (c) Data collection should be ongoing and should be reported at the one-year mark and at six-month intervals thereafter until all pilot program cases have concluded.
Options for federal or grant funding[27]	The joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters should consider all available funding sources for the pilot program, including each type of federal funding explored by the commission and described in this report.

[25] Although commission members unanimously supported recommendation (b) regarding the number of families to be served, the vote on recommendation (a) regarding the duration of the pilot program was divided, with 9 members in favor (Bailey, Stover, Hasenfus, Richter, Dell'Aquilla, Andrus, Mancuso, Hunt and Leblanc) and 4 members opposed (Moore, Javner, Landry and Gannon).

[26] Commission members unanimously voted to support the two data collection and assessment recommendations, except that MCILS Executive Director Andrus abstained on recommendation (a).

[27] Commission members unanimously supported the recommendation regarding federal or grant funding.

APPENDIX A

Authorizing Legislation: Resolve 2021, chapter 181

LAW WITHOUT GOVERNOR'S SIGNATURE

MAY 8, 2022

CHAPTER 181

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-TWO

H.P. 1357 - L.D. 1824

Resolve, To Establish the Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this resolve establishes the Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System to develop a pilot program to provide legal counsel to parents and custodians as soon as the Department of Health and Human Services has begun a safety assessment to determine if a child is at risk of harm; and

Whereas, low-income parents and custodians are unclear about their rights and the expectations of the child protection system; and

Whereas, legal counsel available at earlier stages in the child protection process has shown clear benefits to families in programs operating in other parts of the country; and

Whereas, the work of the commission must be initiated before the 90-day period expires in order that the development of the pilot program may be completed and a report submitted in time for submission to the next legislative session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Commission established. Resolved: That the Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System, referred to in this resolve as "the commission," is established.

Sec. 2. Commission membership. Resolved: That, notwithstanding Joint Rule 353, the commission consists of 13 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;

2. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature;

3. Three members appointed by the President of the Senate as follows:

A. A member with experience as an attorney for parents who is a member of the Maine State Bar Association;

B. A member of the Maine Child Welfare Advisory Panel, as recommended by the panel; and

C. A member representing the Maine Commission on Indigent Legal Services, established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 25-A;

4. Three members appointed by the Speaker of the House as follows:

A. A member representing a statewide organization providing services or representation on domestic violence issues;

B. A member representing an organization that provides free civil legal assistance statewide to residents of the State with low incomes who need assistance resolving civil legal disputes; and

C. A member representing a statewide organization representing providers of behavioral health or substance use disorder treatment;

5. The Commissioner of Health and Human Services or the commissioner's designee; and

6. The Attorney General or the Attorney General's designee.

A member of the Justice for Children Task Force that reports to the Supreme Judicial Court, as recommended by the task force, is appointed by the Speaker of the House as a nonvoting member.

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission.

Sec. 4. Appointments; convening of commission. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

Sec. 5. Duties. Resolved: That the commission shall:

1. Study programs, policies and contracts for services that provide, in other states, regions or municipalities, legal counsel to parents or custodians as soon as that state opens a safety assessment or similar initial evaluation to determine if a child is at risk of harm, rather than only after that state petitions a court;

2. Design a pilot program to provide legal counsel to parents or custodians as soon as the State opens a safety assessment to determine if a child is at risk of harm. The pilot program design must include the following:

A. The cost of the pilot program, including options for federal or grant funding;

B. An assessment of the number of additional cases to be referred for legal counsel;

C. Identification of an appropriate organization or organizations that could provide legal counsel in the pilot program;

D. A method of providing notice from the Department of Health and Human Services to the organization or organizations providing legal counsel as well as appropriate confidentiality protections; and

E. An appropriate duration of the pilot program and data required for assessment to determine regional or statewide expansion; and

3. Solicit public comment on the establishment of a pilot program.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the commission, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Report. Resolved: That, no later than November 2, 2022, the commission shall submit a report that includes its findings and recommendations pursuant to section 5, including any recommendations for legislation for the pilot program, to the joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters. The joint standing committees are authorized to report out legislation to the First Regular Session of the 131st Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPENDIX B

Membership list, Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Resolve 2021, ch. 181

Membership List

Name	Representation
Senator Donna Bailey – Chair	Member of the Senate
Representative Holly Stover – Chair	Member of the House
Senator Marianne Moore	Member of the Senate
Representative Tavis Hasenfus	Member of the House
Representative Kathy Javner	Member of the House
Julian Richter, Esq.	Member of the Maine State Bar Association with experience as an attorney for parents
Kelly Dell'Aquila	Member of the Maine Child Welfare Advisory Panel
Justin Andrus, Esq.	Member representing the Maine Commission on Indigent Legal Services
Andrea Mancuso, Esq.	Member representing a statewide organization providing services or representation on domestic violence issues
Lucia Hunt, Esq.	Member representing an organization providing free civil legal services to low-income state residents
Stephanie Leblanc, LCSW	Member representing a statewide organization of providers of behavioral health or substance use disorder treatment
Todd A. Landry, Director, Office of Child and Family Services	Commissioner of Health and Human Services or the Commissioner's designee
Assistant Attorney General Ariel Gannon, Esq.	Attorney General or the Attorney General's designee
Nonvoting Member:	
Lea-Anne Sutton, Deputy Chief Judge, Maine District Court	Member of the Justice for Children Task Force

APPENDIX C

List of Background Materials
(compiled by staff for Aug. 1, 2022 meeting)

Legal Representation to CPS Families Background Materials Chart

Background Materials:

State	Citation (or author, description, title, date)	Notes
Maine	Maine Child Welfare Advisory Panel, Annual Report 2021 (Jan. 2022)	See the recommendation for a pre-petition representation pilot project that appears on page 16.
General	Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases (March 2021)	Explains why juvenile and family court judges should support prepetition representation programs and includes information on several programs across the country.
General	Melissa Carter, An Ounce of Prevention is Worth a pound of Cure: Why Children's Lawyers Must Champion Preventative Legal Advocacy., 42 Child. Legal Rts. J. 1 (2021)	Beginning on page 14, this article provides a helpful overview of pre-petition representation projects (as compared to preventive legal advocacy projects).
General	Children's Bureau, U.S. Dept. Health & Hum. Servs., Information Brief, Utilizing Title IV-E Funding to Support High Quality Legal Representation for Children and Youth who are in Foster Care, Candidates for Foster Care and their Parents and to Promote Child and Family Well-being (Jan. 14, 2021)	Section IV(c) of the information brief indicates that federal fund under Title IV-E of the Social Security Act may be used for pre-petition representation while Section V describes the process for claiming Title IV-E funding reimbursement for this type of service.
General	Casey Family Programs, Strategy Brief, How can pre-petition legal representation help strengthen families and keep them together? (Feb. 13, 2020)	Describes common features of and lessons learned from pre-petition legal programs in other jurisdictions.
General	Family Justice Initiative, Guide to Implementing FJI System Attributes: Implementing FJI System Attributes: Attribute 4:	Supports pre-petition legal work by attorneys and describes pilot programs conducted in several other jurisdictions.

General	American Bar Association, Center on Children and the Law, Prepetition Legal Representation (website)	The website of this project area of the ABA's Center on Children and the Law includes links to several relevant materials and contains information on several prepetition projects across the country.
General	Vivek Sankaran, Using Preventive Legal Advocacy to Keep Children from Entering Foster Care, 40 Wm. Mitchell L. Rev. 1036 (2014).	The author of this article, a professor at the University of Michigan, founded the Detroit Center for Family Advocacy, one of the first pre-petition legal representation projects.
California	Jeremy Loudenback, Amid Protest, L.A. County Looks to Early Legal Representation for Parents to Avoid Foster Care Removals, The Imprint: Youth & Family News (May 17, 2022)	Short article describing pre-petition representation initiative in Los Angeles County.
	Children's Law Center of California, Pre-Filing Intervention Referral Form (undated)	Client Referral Form for the Center's Pre-Filing Intervention (PFI) program, which represents parents at risk of custody loss. See also a brief description of the PFI program here.
Colorado	Office of Respondent Parents' Counsel, Preventive Legal Services Implementation Guide (May 11, 2022)	Describes a pilot project in Jefferson County, Colorado, supported by federal and state funding. Explains eligibility for services, referrals, potential for interdisciplinary assistance, types of legal services provided, and follow-up interviews to evaluate program efficacy.
Iowa	Iowa Legal Aid, Pamphlet, Parent Representation Project (undated)	Two-page handout reporting results from 2019 of pre-petition representation project in which a lawyer, case manager and parent advocate support each family.
	Amber Gilson & Michelle Jungers, American Bar Association, Preserving Families Through High-Quality Pre-Petition Representation (March 4, 2021)	Describes a pilot project in four counties conducted by Iowa Legal Aid. Describes the interdisciplinary services model, referral process and funding sources utilized.
	Imprint Staff Reports, Iowa Law to Test the Benefit of Early Legal Help in Child Welfare Cases (July 1, 2020)	Discussing Iowa S.B. 2182, which was signed by the Governor on June 17, 2020.
Michigan (Detroit)	Univ. of Michigan Law School, Detroit Center for Family Advocacy (2014)	Report of the results of a 3-year pre-petition legal assistance pilot project from Child Advocacy Clinic at the University of Michigan Law School.

New Jersey	Gianna Giordano & Jey Rajaraman, American Bar Association, Increasing Pre-Petition Legal Advocacy to Keep Families Together (Dec. 15, 2020)	Summarizes the work of Legal Services of New Jersey's Family Representation Project, which began in 2018. Describes model, outcomes and parent ally program and provides advice for other organizations on starting similar programs.
	Legal Services of New Jersey, Celebrating Reunification Starts with Understanding What Keeps Families Together (undated article on LSNJ website)	Indicates that the Legal Services of New Jersey's Family Representation Project was able, using a multidisciplinary approach, to prevent removals in all of its cases.
	Legal Services of New Jersey, Parent Ally Program Supports Prevention and Prepetition Efforts (undated article on LSNJ website)	Short article describing the work of LSNJ's parent ally.
New York	Bronx Defenders, Family Defense Practice (website)	Webpage describing the Bronx Defenders' Family Defense Practice, a multidisciplinary team that represents parents involved in child welfare investigations in the Bronx.
	Martin Guggenheim, How Family Defender Offices in New York City Are Able to Safely Reduce the Time Children Spend in Foster Care, 54 Fam. L.Q. 1 (2020)	Law Review article describing the efficacy of multidisciplinary legal representation for families at risk of child removal in New York City. Although the article does not focus on pre-petition representation, it discusses the interdisciplinary approach used by Bronx Defenders.
	Lucas A. Gerber, et al., Effects of an interdisciplinary approach to parental representation in child welfare, 102 Child. & Youth Servs. Rev. 42 (2019)	Reporting results of a study on the impact on child welfare outcomes when parents were provided interdisciplinary legal representation instead of standard attorney representation. Does not assess interdisciplinary pre-petition representation projects but encourages further study of such programs.
	Elizabeth Fassler & Wanjiro Gethaiga, Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies, 30 Child L. Practice 17 (2011)	Describes the work of Community Advocacy Teams, which are pre-petition representation teams created by the Center for Family Representation, Inc. in New York City.
Oklahoma	Oklahoma Human Services Waypoint Podcast Episode 5: OKDHS and Legal Aid Services of Oklahoma help families engaged with the child welfare system navigate legal issues (Sept. 21, 2021)	Interview with attorneys from the Legal Aid Services of Oklahoma and the Oklahoma Department of Human Services, discussing the family representation contract through which families are provided legal support with the goal of preventing children from entering state custody.

Washington (King County)	Center for Children & Youth Justice, Our Work: Stabilizing Families (website)	Very short summary of the Center for Children & Youth Justice's pre-petition representation work.
Washington (Snohomish County)	F.I.R.S.T. Clinic, What We Do (undated website)	Website of the F.I.R.S.T. Clinic.
	Tonya Wall & Adam Ballout, American Bar Association, Using Legal Services to Keep Children in Families: the F.I.R.S.T. Clinic, (Oct. 3, 2019)	Summary of the F.I.R.S.T. Clinic a pre-petition representation project that works with mothers who have substance-exposed infants.
	Nina Shapiro, Is Washington state taking too many children from their parents? Movement seeks to overhaul foster care, Seattle Times (March 30, 2021)	Article on use of Family First Prevention Act to decrease removals; includes a description of the F.I.R.S.T. Clinic's work with mothers with substance-exposed infants.

APPENDIX D

Presentation by Rob Wyman, Casey Family Programs
(Aug. 1, 2022 meeting)

casey family programs

safe children | strong families | supportive communities

Rob Wyman
Attorney Consultant, Judicial Engagement Team
Casey Family Programs
Testimony before the Maine Commission to Develop a Pilot Program
to Provide Legal Representation to Families in the Child Protection System
August 1, 2022

Good morning, Senator Bailey, Representative Stover and members of the Commission. My name is Rob Wyman, and I am an Attorney Consultant with the Judicial Engagement Team at Casey Family Programs. Casey Family Programs is the nation's largest operating foundation focused on safely reducing the need for foster care and building communities of hope for children and families across America.

Casey Family Programs was founded in 1966 and has been providing, analyzing, developing and informing best practices in child welfare for 50 years. We work with child welfare agencies in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and with 16 American Indian tribal nations, and with the federal government on child welfare policies and practices. We partner with child welfare systems, policymakers, youth and families, community organizations, national partners, philanthropy, American Indian and Alaska Native tribes, and courts to support practices and policies that increase the safety and success of children and strengthen the resilience of families. Our mission is to improve – and ultimately prevent the need for – foster care.

Casey's Judicial and National Engagement Team (JNE) was created in 2014 to build Casey's three-branch approach to child protection system improvement. The JNE team focuses on several priority strategic areas: judicial and lawyer leadership, high quality legal representation, strengthening the front door of the child protection court, and promoting Indian Child Welfare Act practices as the Gold Standard of child protection. The court is ultimately responsible for the placement of almost every child removed from parental custody, and therefore courts play a critical role in determining the path and outcomes for children and families involved with child protection. At JNE we advance the Foundation's mission by working with child protection courts to safely reduce the need for foster care.

Thank you for inviting me here today. I applaud the Commission for your interest in the development of a pilot program that will provide legal representation to educate, support, and empower families to build safety and avoid trauma and separation.

What is Preventive Legal Advocacy

Preventive legal advocacy for parents and children, especially through a multidisciplinary practice, is at its core an empowerment strategy. Legal teams provide education about the system, strategic thinking about solutions, connection to resources and services, and support

for families' interaction with the agency. The primary goal of preventive legal advocacy is the enhancement of the parent's and family's participation in assessing the safety of their children, connecting resources when needed to build safety, and to empower parents and families to meet the needs of their children and avoid deeper system involvement, trauma, and separation.

Families involved in the child protection system overwhelmingly experience life struggles connected to poverty and financial struggle. Preventive legal advocacy programs deliver legal services to families

Preventive legal advocacy is a broad term that encompasses many strategies that provide legal representation to families. Advocacy can mean policy and legislation, community organizing and building, and other efforts to create default access to social determinants of health. Preventive legal advocacy also can mean working with a family that is currently involved in the child protection court to prevent longer time in care and re-entry into the system. Mostly, preventive legal advocacy programs focus on serving families at risk of child protection involvement but have not experienced removal of their children or court involvement.

Families involved in the child protection system overwhelmingly experience life struggles connected to poverty and financial struggle. Preventive legal advocacy programs deliver knowledge (i.e. "know your rights" programs, and education about resources, systems, and child safety); legal advocacy that focuses on justice for families facing eviction, interruption in benefits like social security and health care, access to courts for protection, custody, and guardianship orders; and representation during acute investigations by child protection agencies. The lines dividing these features of preventive legal advocacy are not rigid, and many programs will engage in multiple aspects of the spectrum of advocacy.

Core values and principles of preventive legal advocacy

Families facing child protection system involvement experience extreme disparity of power in their interaction with the agency. They are often families at or near poverty, have little information about how the child protection system works (or are informed by very negative community perceptions), and often are or feel isolated and alone. Factors such as financial struggle, housing insecurity, heightened medical needs, under-resourced communities, lack of public safety, and poor education systems all contribute to and exacerbate individual struggles like mental illness, substance use disorders, relationship violence, and poor educational performance, which are often reasons families are reported to child protection. Research tells us that parents and children reported to child protection have unusually high incidents of trauma in their past, which is triggered and deepened by their engagement with the system. Families experiencing investigation by the child protection agency are reluctant to engage, share, connect with family and friends, and generally seek "help"; but instead, often further isolate themselves and withhold information in an effort to protect themselves and their children from being separated.

Preventive legal advocacy programs deliver multidisciplinary legal representation in a trauma informed approach to support families experiencing financial struggle and other impediments to safety and health in order to break down barriers to services, benefits, and protection, enabling

families the space and support they need to bring basic order to their lives and safety for their children.

Preventive Legal Advocacy aims to provide reduction of trauma, increase of child safety, and cost savings to jurisdictions.

Note: It appears from the Resolve establishing this Commission that the Maine legislature is focused on preventive legal advocacy that delivers advocacy and service to families facing investigation by CPS (the Red section, second to the right in the image above).

Overview of programs across the country

Preventive legal advocacy in the child protection arena is an emerging practice. As such, there is not a focus on clearly defined models, but instead the establishment of programs that identify and serve the values and principles outlined above. Leaders in the field advise identifying critical populations to be served, high quality, motivated multidisciplinary teams to serve them, and building a structure that enables good practice. Programs with those characteristics will develop their practice within an original scope, often expand their vision as the needs of their clients connect to issues beyond the original scope, and then become leaders in the conversations about how community and governmental systems can work together to fill gaps and enable greater support for families.

Some programs intend to serve a wide and general population of clients at risk of CPS and court involvement, while others target specific issues with a nexus to child protection and serve families experiencing those issues.

Referrals come from a variety of sources. Some programs are closely aligned with the agency and serve only families referred to the program by the agency (see Detroit Center for Family Advocacy, below). Others serve families referred by community agencies, hospitals, housing programs, etc. where there is a nexus between their legal needs and child protection involvement (See FIRST clinic, Boston Legal Services, and First Call for All, below). Almost all programs regardless of referral source conduct outreach to those neighborhoods, organizations, and service providers who serve the population of families the program also serves, to educate them about the legal needs of their common clients and the services the program offers.

Mostly, the attorneys, social workers, and parent mentors have experience in the system, representing parents in child protection cases in court, working for the child protection agency, or having experienced child protection as a parent/respondent. Where programs offer advocacy in legal systems other than child protection, programs will recruit attorneys with specialized experience (i.e. evictions, social security benefit denials, family law or protection orders, etc.), deliver a variety of legal services themselves as general practitioners, or associate with other legal service organizations that provide those services.

Examples:

The Detroit Center for Family Advocacy worked cooperatively with the agency to take referrals of families who, but for civil legal needs, the agency would seriously consider separating the family. The Detroit Center did not provide specific advocacy for the family in the investigation process, but instead solved other legal needs that allowed children to remain out of foster care, sometimes involving changes of custody to relatives. This was a project of the University of Michigan School of Law in partnership with the state child welfare agency.

- The client might be a parent, child, or relative.
- Services were delivered through multidisciplinary team of lawyer, social worker, and family advocate (parent with lived experience).
- Issues addressed were family law matters and protection orders, clearing warrants, housing and eviction advocacy, benefits and health care access, etc.
- The Center would only take a case if the legal issues to be addressed would allow the child to remain out of foster care or return to family.
- The Center represented children at risk of removal or needing help exiting foster care.
- Families were identified and referred by the agency, and referral to the Center was considered a “reasonable effort” to prevent removal or achieve the permanent plan.

The Children’s Law Center of California represents children in the child protection system. They identify the need for representation of their clients (currently involved children and youth) who become pregnant or are parenting to keep their children out of care and break the cycle of child protection involvement. CLC is a public child representation office.

- Referrals to CLC generally come from their ongoing caseload, whether by attorneys or case managers serving the client.

- Services are delivered by a lawyer and case manager team.
- They focus on non-minor Dependents and Parenting CSEC youth
- The team offers legal representation to secure safety for the parent and child as well as case management through social work practice.
- CLC is currently a part of a concentrated effort by Los Angeles County to significantly expand the availability of pre-filing representation to parents.

The Family Intervention Response to Stop Trauma (FIRST) Clinic in Everett, Washington provides representation for parents of substance exposed newborns who are facing a CPS investigation. This is a private family law firm that provides parent representation in dependency court, and the Clinic is a non-profit offshoot from the firm.

- Representation is delivered by a team of lawyers and a parent ally (a parent with lived experience).
- Services focus specifically on creating plans for keeping the parent and child together safely, although some other ancillary legal needs are met (usually family law and protection orders, some guardianships).
- The Clinic has become a leader in the area advocating for systemic changes to fill gaps that families with babies and substance use disorders face while trying to heal and keep their children safe – i.e. access to treatment, housing, concrete supports, etc.

Legal Services of New Jersey (LSNJ) Family Representation Project works with the county-level child welfare agency to help prevent removals due to housing instability to keep families together. This is a statewide legal services organization.

- Referrals come directly from CPS caseworkers and other concerned stakeholders.
- LSNJ helps clients with pending evictions, unpaid child support, domestic violence, immigration status concerns, welfare denials, housing voucher terminations and barriers to accessing medical care and education.
- Services are delivered through a multidisciplinary team of lawyers, social workers, and a parent ally mentor (parent with lived experience).

Greater Boston Legal Services, Domestic Violence Family Preservation Project works with low-income survivors of domestic violence who are referred to CPS due to an incident of domestic violence in the home when children were present.

- Legal representation to help the survivor work with the agency to build safety and maintain custody of their children.
- Also help with DV protection orders and Probate and Family Court cases.
- Referrals come from community partner organizations

First Call for Families, Dependency Advocacy Center in Santa Clara, California provides graduated levels of service for families in Santa Clara County seeking information, support, and advocacy to safely prevent the removal of their children.

- Services provided by multidisciplinary team – lawyer, social worker, mentor parents
- Know Your Rights information for families facing CPS investigation
- Warm Line – toll-free number for families to call for support, basic advice, and referrals within the community
- More involved support from the team prior to case being filed.

Funding strategies:

A variety of funding sources are used to support preventive legal advocacy programs across the country.

In 2018 the Administration for Child and Families, Children's Bureau, changed its policy to allow States to draw federal Title IV-E funding to reimburse for parent and child representation (agency representation was already reimbursable). Again in 2021, Children's Bureau reiterated this move, emphasizing that reimbursement can be provided not just for attorneys, but for the other members of the multidisciplinary legal team. Importantly, this reimbursement is allowed for legal services, including those provided by multidisciplinary teams, for children who are "candidates" for foster care and their parents, as well as for children in foster care. See ACYF-CB-IM-21-06

- The term "candidates" allows for the activities of some preventive legal advocacy programs to be part of a State's submission for IV-E reimbursement.
- Of course, States and counties are free to use the money that comes back from the federal government through IV-E reimbursement to support any preventive legal advocacy programs – and many do.
- As of March 2022, there were 26 States receiving federal Title IV-E reimbursement for parent and child representation, and an additional 11 States "in-process" of doing so.
    - We do not have information regarding Maine drawing down Title IV-E fund for parent and child representation, and this may be a source of new funding to consider.

Many States offer technical assistance and seed funding for preventive legal advocacy programs through their Court Improvement Program (CIP) funding. CIPs are directed to support high quality legal representation, including to support safely preventing the need for removal of children. CIPs are used as a resource for strategic funding, technical assistance, training, and spread opportunities in the State.

Some States are supporting preventive legal advocacy development and operations through legislative appropriations. In 2021, the Washington State legislature responded to data and stories of the FIRST clinic, and provided approximately $500,000 to the State Office of Public Defense (statewide parent representation office) to provide operating funds to the Clinic and to work on development of a pre-petition caseload standard and plans for spread.

County and City funds also have been used for preventive legal advocacy. For instance, in Los Angeles County a multi-agency, multidisciplinary PLA program is under development, and will use a variety of funds, likely including municipal and county funding.

Philanthropy is another source of funding used for operations, technical assistance, evaluation support, and supporting spread of programs. Casey Family Programs has provided technical assistance to several programs in their development.

Outcomes

Many jurisdictions around the country are employing, developing, or considering preventive legal advocacy programs because research and evaluation are showing significant benefits in terms of supporting families, reducing separation and trauma, and avoiding extensive and expensive court processes and foster care.

The Detroit Center for Family Advocacy reported that in 98.2 percent of their cases they achieved their legal objectives. That is, of the 110 children at issue in 55 prevention cases, petitions were filed as to only four children, and they were dismissed quickly. None of the 110 children entered foster care.

Similarly, Legal Counsel of New Jersey Parent Representation Program reports that they have "received more than 300 referrals from across New Jersey and no child in those cases have been removed.

The FIRST clinic is referred to parents by the hospital when the hospital makes a CPS referral due to the birth of a substance exposed newborn. Between July 2019 and November 2021, the clinic served 123 clients and they have been successful supporting the family to avoid removal and court involvement for almost 90% of their clients. From 2018 through 202 case filings (and likely removals) involving babies in Washington State dropped by 17%, but in Snohomish County where the Clinic is located, filings dropped by 37%. They continue to collect data and prepare further advocacy in the legislature to support expansion around Washington State.

Lessons Learned

Preventive legal advocacy is an emerging field of practice in the child protection system, and therefore research and evaluation will continue to develop. New programs are standing up on a regular basis around the country, with preliminary evaluations showing promise that they provide many of the benefits our child and family serving systems seek to accomplish. Additional and ongoing research and evaluation of these programs needs to continue to further clarify what about their features is most effective and to clarify the cost savings and trauma reduction they provide.

Building out research and evaluation will help programs secure funding through mainstream traditional sources that allow for growth and expanded benefits.

Relationships are dynamic and essential to the preventive legal advocacy program. These programs need champions in their communities who can carry the message of hope the programs offer. Relationships with the child protection agency are especially critical, whether the program seeks its referrals from the agency or not, and whether the program serves the family in their interactions with the agency or solely addresses other legal needs. The agency and preventive legal advocacy programs should be allies of one another, but this is only accomplished when each are led by strong and skilled people who can manage complex relationships.

Conclusion

Preventive legal advocacy programs operate under this basic principle: Expanding the provision of legal representation for parents to include multidisciplinary legal representation *prior* to removal and court involvement will reduce trauma, empower families to access resources that help them provide protection and safety for their children, eliminate unnecessary court involvement, and reduce deeper system involvement, trauma and the number of children being removed to foster care. This could be accomplished without an increase in the budget for parent representation, and possibly at a savings, when all the benefits of the representation are balanced against the costs of deeper system involvement. In short, preventive legal advocacy replaces long-term representation episodes (often 1-3 years) associated with a court case and children in care with short-term representation episodes (from hours to weeks) with little or no court involvement and costs, no foster care costs, and none of the costs associated with taking children into care.

There is a variety of sources of supportive funding to help jurisdictions get through the investment phase of starting a preventive legal advocacy program, as well as many non-profit and philanthropic organizations available to provide technical assistance, operational funding, policy advocacy, and community outreach. Casey Family appreciates this opportunity to offer information and experience with preventive legal advocacy programs and we are available to provide further information and assistance.

Thank you very much and I am happy to address any questions you may have.

APPENDIX E

Child protection investigation data for calendar years 2019, 2020 and 2021 from the Maine Office of Child and Family Services (OCFS) (compiled for Aug. 22, 2022 meeting)

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF CHILD AND FAMILY SERVICES

All data in the first three pages is representative of case and investigation-level data. Any one investigation or case can involve multiple children who may or may not share the same parents. There may be several potential parents involved in an investigation or case as genetic testing has not been completed.

INVESTIGATIONS OPENED BY MONTH AND COUNTY CY2019 - 2021

	ANDROSCOGGIN	AROOSTOOK	CUMBERLAND	FRANKLIN	HANCOCK	KENNEBEC	KNOX	LINCOLN	OXFORD	PENOBSCOT	PISCATAQUIS	SAGADAHOC	SOMERSET	WALDO	WASHINGTON	YORK	STATE
2019																	
Jan	107	56	119	20	26	116	38	28	38	129	13	27	64	40	30	169	1020
Feb	81	55	101	23	30	100	37	20	40	124	10	21	38	36	18	129	863
Mar	78	85	133	29	26	118	32	22	50	132	22	29	71	42	24	144	1037
Apr	115	78	120	20	32	106	26	26	39	122	15	15	43	37	15	117	926
May	106	65	150	25	36	111	25	32	65	128	19	27	66	33	20	144	1052
Jun	103	57	107	17	24	109	17	23	52	94	8	18	53	26	14	114	836
Jul	58	67	95	20	23	91	31	15	41	102	10	17	56	22	16	109	773
Aug	74	63	98	12	19	95	16	24	36	96	18	13	50	27	23	113	777
Sep	109	60	104	27	20	120	31	17	52	135	14	21	51	28	22	140	951
Oct	113	60	136	18	29	132	29	19	64	136	18	22	64	45	23	164	1072
Nov	107	51	104	19	30	105	26	27	42	101	12	13	48	36	20	148	889
Dec	80	65	112	25	18	119	28	21	39	117	13	7	47	41	20	121	873
2019 Total	**1131**	**762**	**1379**	**255**	**313**	**1322**	**336**	**274**	**558**	**1416**	**172**	**230**	**651**	**413**	**245**	**1612**	**11069**
2020																	
Jan	104	72	129	15	28	132	40	27	83	152	17	27	60	35	30	155	1106
Feb	88	63	117	26	23	113	34	28	47	103	14	11	43	44	25	134	913
Mar	98	60	125	15	27	92	17	31	48	138	15	21	46	34	19	125	911
Apr	66	46	85	15	21	88	15	10	53	106	14	19	35	25	22	101	721
May	94	49	121	17	19	79	29	15	47	112	10	19	40	22	14	107	794
Jun	93	70	103	15	35	88	15	20	52	135	8	8	50	30	25	102	849
Jul	90	73	93	14	24	117	24	18	46	98	12	16	54	31	20	137	867
Aug	98	69	88	20	37	103	18	18	33	120	21	14	40	32	21	109	841
Sep	62	73	140	20	28	109	31	23	53	127	16	19	55	43	22	115	936
Oct	112	60	133	20	32	119	29	27	59	127	22	17	60	39	18	152	1026
Nov	95	58	120	26	22	91	17	17	51	103	10	17	38	39	16	112	832
Dec	113	54	87	32	19	81	30	17	43	106	9	22	43	31	14	118	819
2020 Total	**1113**	**747**	**1341**	**235**	**315**	**1212**	**299**	**251**	**615**	**1427**	**168**	**210**	**564**	**405**	**246**	**1467**	**10615**
2021																	
Jan	106	78	114	23	22	108	18	16	48	119	13	21	44	35	18	134	917
Feb	117	66	107	24	23	86	35	16	55	120	12	10	47	32	25	120	895
Mar	104	73	128	17	33	112	36	29	52	109	14	19	45	34	19	134	958
Apr	75	60	99	18	25	85	33	19	50	97	15	13	56	41	25	102	813
May	104	54	109	20	40	102	35	22	52	115	15	17	55	32	17	117	906
Jun	85	46	94	24	19	92	25	23	36	105	9	13	39	39	12	116	777
Jul	97	64	92	20	29	94	31	16	37	113	16	13	44	22	18	92	798
Aug	98	45	108	24	30	95	31	11	50	88	6	20	66	24	24	98	818
Sep	89	56	101	11	21	119	26	23	51	109	13	12	51	43	14	127	866
Oct	81	60	117	20	21	114	30	16	45	127	10	19	53	35	17	118	883
Nov	74	50	98	21	21	95	21	15	46	95	10	30	44	17	19	117	773
Dec	45	20	55	7	11	50	10	5	15	49	4	7	21	16	9	56	380
2021 Total	**1075**	**672**	**1222**	**229**	**295**	**1152**	**331**	**211**	**537**	**1246**	**137**	**194**	**565**	**370**	**217**	**1331**	**9784**

COUNTY BASED ON PRIMARY CAREGIVER'S ADDRESS AT THE TIME OF THE INTAKE REPORT

INVESTIGATIONS RESULTING IN A CASE OPENING BY MONTH AND COUNTY CY2019 - 2021

	ANDROSCOGGIN	AROOSTOOK	CUMBERLAND	FRANKLIN	HANCOCK	KENNEBEC	KNOX	LINCOLN	OXFORD	PENOBSCOT	PISCATAQUIS	SAGADAHOC	SOMERSET	WALDO	WASHINGTON	YORK	STATE
2019																	
Jan	14	8	16	4	6	24	3	2	6	30	5	3	26	8	9	51	215
Feb	18	11	8	3	7	13	3	1	5	40	3	1	13	11	4	20	161
Mar	8	13	16	3	6	22	10		8	30	6	4	29	9	5	24	193
Apr	13	17	11	2	10	11	7		9	35	4	3	15	3	2	21	163
May	12	15	19	6	8	12	5	2	11	25	3	7	15	2	3	24	169
Jun	20	9	9	2	6	11	4		15	26	1		18	5	4	20	150
Jul	14	10	7	4	5	15	3	1	9	29	3	1	15	8	3	20	147
Aug	12	10	9	3	2	18	2	2	8	25	4	1	11	4	7	29	147
Sep	16	7	12	2	4	17	9		6	33	5	2	10	4	3	27	157
Oct	16	13	12	2	5	24	4		10	24	3	1	16	12	4	25	171
Nov	19	12	16	3	12	16	2	2	6	20		4	13	10	1	31	167
Dec	6	14	16		4	13	3	3	4	24	5	2	10	6	5	20	135
2019 Total	**168**	**139**	**151**	**34**	**75**	**196**	**55**	**13**	**97**	**341**	**42**	**29**	**191**	**82**	**50**	**312**	**1975**
2020																	
Jan	19	12	23	2	9	27	10	1	17	24	3	6	15	7	2	18	195
Feb	11	16	16	3	3	24	7	5	8	16	2		11	9	7	25	163
Mar	6	11	11	1	4	11	2	4	10	15	3	6	9	7	2	17	119
Apr	8	8	5		3	15	4	2	5	10	2		13	6	5	26	112
May	6	6	7	2	2	18	4	2	4	24	2	3	9	8	1	26	124
Jun	11	11	13	2	10	15	4	2	5	25	1		12	5	6	25	147
Jul	9	14	14	1	4	24	6	3	6	19	2	1	15	8	5	20	151
Aug	13	10	8	3	7	27	5	5	5	20	2	3	8	8	6	17	147
Sep	6	5	15	1	6	22	5	2	12	22	3	1	6	10	11	9	136
Oct	17	6	20	1	4	22	5	1	6	20	1	2	8	6	5	27	151
Nov	6	3	12	1	1	13	1		6	13	1	2	5	6	4	11	85
Dec	17	5	11	2	3	14	7	4	5	10	3		10	6	3	13	113
2020 Total	**129**	**107**	**155**	**19**	**56**	**232**	**60**	**31**	**89**	**218**	**25**	**24**	**121**	**86**	**57**	**234**	**1643**
2021																	
Jan	16	14	16	1	9	15	3	2	7	22	3	1	9	5	6	23	152
Feb	14	11	15	3	6	12	4	6	5	15	4		8	8	5	16	132
Mar	13	11	13		6	20	12	5	4	17	3		9	9	4	13	139
Apr	8	7	18	1	2	16	6	2	5	25	2		11	5	2	9	119
May	7	4	11	3	9	10	2	3	6	17	4	1	9	9	3	16	114
Jun	14	6	13	2	3	18	5	2	3	31		2	11	14	5	14	143
Jul	21	7	19	1	8	22	1	2	8	20	1	2	8	6	8	19	153
Aug	12	8	13	3	8	24	8	1	7	19	1	2	13	3	8	19	149
Sep	14	10	14	1	9	25	3	6	7	15	1		12	11	4	20	152
Oct	14	4	16	2	10	15	4	2	5	25	1	4	17	7	3	16	145
Nov	15	3	7	2	5	15	3	4	8	13	2	4	9	3	7	17	117
Dec	8		8		5	6	1		3	11			4	3	1	10	60
2021 Total	**156**	**85**	**163**	**19**	**80**	**198**	**52**	**35**	**68**	**230**	**22**	**16**	**120**	**83**	**56**	**192**	**1575**

COUNTY BASED ON PRIMARY CAREGIVER'S ADDRESS AT THE TIME OF THE INTAKE REPORT

INVESTIGATIONS RESULTING IN A CHILD REMOVAL FROM HOME WITHIN ONE YEAR OF INVESTIGATION
BY MONTH AND COUNTY CY2019 - 2021
The following are counts of investigations, actual count of individual children removed would be higher due to multiple children involved in each investigation.

	ANDROSCOGGIN	AROOSTOOK	CUMBERLAND	FRANKLIN	HANCOCK	KENNEBEC	KNOX	LINCOLN	OXFORD	PENOBSCOT	PISCATAQUIS	SAGADAHOC	SOMERSET	WALDO	WASHINGTON	YORK	STATE
2019																	
Jan	6	3	6	1	2	9	2			11	1		6	2	3	10	62
Feb	8	5	4	1	3	4	1	1	1	19	3	1	5	1		5	62
Mar	3	7	8	2	2	8	5		4	14	2	2	14	3	1	10	85
Apr	7	6	4		2	4	1		5	15	1	1	4			5	55
May	3	5	11	5	2	8	1	1	7	12	2	2	8	2	2	4	75
Jun	9	4	5	2	2	6	1		10	14			9	1	1	5	69
Jul	8	3	5	2	4	6			4	10	2		6		1	3	54
Aug	4	4	5		1	7		1	3	10	2			1	4	7	49
Sep	1	2	6	1	1	8	1		1	10	2	1	3	1		10	48
Oct	6	6	5	1	2	9			5	10			5	2	1	5	57
Nov	8	6	5	1	7	6			5	10		3	6	3		6	66
Dec	2	12	5		3	4			2	6	2		3			5	44
2019 Total	**65**	**63**	**69**	**16**	**31**	**79**	**12**	**3**	**47**	**141**	**17**	**10**	**69**	**16**	**13**	**75**	**726**
2020																	
Jan	5	6	10		4	5	1		5	8	1	3	4	3	1	4	60
Feb	6	9	6	3	1	7		4	4	12			1	2		8	63
Mar	1	7	4		2	5	1	2	4	8	2	1	4	2		2	45
Apr	5	4	3		2	6	1		1	2	1		6	1	2	10	44
May	2	5	4	1	2	7	1		1	7	1		2	5		7	45
Jun	7	6	6	2	3	6			2	8	1		5	2	1	5	54
Jul	4	8	7	1	2	10	2	1	1	7	1	1	5	2	1	9	62
Aug	6	4	2	3	5	7	1	1	4	8	1	1	1	2	1	2	49
Sep	2	3	5		4	4	1	1	3	8	1	1	2	2	2	4	43
Oct	7	4	10		1	6			1	5	1	2	4	1	1	4	47
Nov	1	1	4		1	4			3	4			2	1		2	23
Dec	5	2	2	2	1	7			1	1	1		4	2			28
2020 Total	**51**	**59**	**63**	**12**	**28**	**74**	**8**	**9**	**30**	**78**	**11**	**9**	**40**	**25**	**9**	**57**	**563**
2021																	
Jan	7	4	7		3	3				8	3		3	1	1	5	45
Feb	6	7	6		5	6			1	5	2		4			5	47
Mar	3	7	5		1	7	4		2	9	1		2	2		3	46
Apr	5	4	3		2	6	3		1	9			4	1	1	2	41
May	5		4	1	2	3		1	5	7	2		3	1		4	38
Jun	8	4	6	2	1	8	1		3	12		1	5	5	1	4	61
Jul	7	3	9	1	3	8	1		2	8	1		2	2	1	7	55
Aug	4	5	7	2	2	14			3	5			3			5	50
Sep	3	5	6		2	11	1	1	3	6	1		3	3		3	48
Oct	5	4	5	1	3	5				5	1	1	3		1	5	39
Nov	4	1	2		2	6	1	2	1	6		1	2		1	3	32
Dec	4		4		4	3			2	3			1	1		4	26
2021 Total	**61**	**44**	**64**	**7**	**30**	**80**	**11**	**4**	**23**	**83**	**11**	**3**	**35**	**16**	**6**	**50**	**528**

COUNTY BASED ON PRIMARY CAREGIVER'S ADDRESS AT THE TIME OF THE INTAKE REPORT

AVERAGE LENGTH OF TIME (DAYS) INVESTIGATIONS WERE OPEN BY MONTH AND COUNTY CY2019 - 2021

	ANDROSCOGGIN	AROOSTOOK	CUMBERLAND	FRANKLIN	HANCOCK	KENNEBEC	KNOX	LINCOLN	OXFORD	PENOBSCOT	PISCATAQUIS	SAGADAHOC	SOMERSET	WALDO	WASHINGTON	YORK	STATE
2019																	
Jan	62	63	38	41	46	46	50	46	55	45	54	38	54	48	44	35	47
Feb	45	59	35	42	45	49	61	39	51	55	54	35	69	91	46	35	49
Mar	50	65	38	34	39	50	73	33	53	56	73	34	57	117	46	35	51
Apr	64	60	41	76	44	47	90	35	64	65	67	52	63	108	35	35	56
May	70	54	43	56	42	49	72	32	86	57	63	46	50	114	38	35	54
Jun	87	61	43	73	33	44	65	37	77	52	41	37	51	98	54	35	55
Jul	65	63	43	67	46	45	98	37	62	63	65	59	38	76	71	34	54
Aug	52	46	37	55	42	40	99	42	57	60	72	33	44	74	57	35	48
Sep	44	38	34	43	33	39	71	33	44	53	54	39	42	71	40	34	43
Oct	43	40	38	42	33	44	50	35	43	41	46	36	35	47	38	34	40
Nov	33	34	35	29	35	34	34	36	33	33	45	35	36	34	33	34	34
Dec	33	40	36	35	37	40	36	33	32	33	44	33	33	37	35	33	35
2019 Total	**54**	**53**	**39**	**48**	**40**	**44**	**65**	**37**	**56**	**51**	**58**	**40**	**47**	**75**	**44**	**34**	**47**
2020																	
Jan	35	54	40	33	37	43	52	40	34	35	41	36	32	50	34	33	38
Feb	31	45	35	30	35	45	51	35	34	37	37	39	32	44	35	34	38
Mar	31	37	35	32	34	43	43	33	27	36	34	36	33	48	38	33	35
Apr	31	40	35	28	32	41	35	34	32	32	33	34	32	39	33	32	34
May	33	34	35	33	34	42	44	34	34	36	43	38	35	45	36	33	36
Jun	35	36	35	35	36	43	44	34	33	37	35	34	33	50	39	32	37
Jul	35	38	35	33	38	40	37	32	33	36	35	41	31	51	39	32	36
Aug	34	35	36	34	34	45	45	34	34	36	35	48	34	46	61	33	38
Sep	33	33	39	34	32	36	57	39	32	34	37	36	31	63	42	33	37
Oct	38	35	38	30	33	38	66	36	34	35	36	36	31	55	37	33	37
Nov	42	35	37	33	38	33	44	38	44	35	35	37	32	48	43	33	37
Dec	36	34	36	35	37	39	60	40	35	35	37	38	35	58	42	33	37
2020 Total	**35**	**38**	**37**	**33**	**35**	**41**	**50**	**36**	**34**	**35**	**36**	**38**	**32**	**50**	**40**	**33**	**37**
2021																	
Jan	35	40	36	31	44	43	36	38	42	35	34	35	33	44	45	34	37
Feb	37	38	34	37	37	43	62	33	40	34	34	35	34	49	38	33	38
Mar	35	40	34	27	47	41	47	36	41	34	31	40	33	47	47	33	37
Apr	37	39	36	34	36	37	41	37	48	33	37	37	31	51	47	33	38
May	37	39	37	37	36	35	40	75	39	37	37	36	32	56	33	33	38
Jun	39	39	38	35	44	37	48	72	37	38	41	36	34	79	50	34	41
Jul	37	48	38	31	43	37	83	48	38	37	39	36	34	67	39	34	40
Aug	39	51	40	38	47	39	68	61	40	36	42	40	38	71	49	34	42
Sep	36	48	38	32	48	38	49	50	42	35	38	38	37	59	32	33	39
Oct	42	40	37	38	41	35	47	43	47	36	38	37	34	47	48	34	38
Nov	37	37	37	38	38	33	36	34	40	37	48	42	34	39	36	33	36
Dec	31	33	33	32	31	32	32	34	32	31	32	33	33	33	36	31	32
2021 Total	**37**	**41**	**37**	**35**	**41**	**38**	**51**	**48**	**41**	**35**	**37**	**38**	**34**	**55**	**42**	**33**	**38**

COUNTY BASED ON PRIMARY CAREGIVER'S ADDRESS AT THE TIME OF THE INTAKE REPORT

APPENDIX F

Staff handout: program design and outcomes of selected pre-petition legal representation programs (final for Oct. 17, 2022 meeting)

Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs

Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Final for Oct. 17, 2022 meeting

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
CA	**Children's Law Center of California**: *Pritzker Pre-Filing Project* (Los Angeles) [A]	Pregnant or parenting youth in foster care	Primarily from other Children's Law center attorneys or case managers.	Advocate for the parenting youth re: child welfare involvement with their children; Protection orders, child custody, landlord-tenant and other ancillary legal issues; Connect client to needed services; Connect clients to MH, immigration and other experts.[B]	Attorney; and Parent-support case manager (social worker with lived experience).	Philanthropic funding sources. * *Note: may be pursuing Title IV-E funding.*	Outcomes tracked: Whether petition for removal is filed; Family reunification status; and Relative placement.	As of 7/2/12: Only 3 of 168 (1.8 %) of clients had their children removed (one was later successfully reunified).[C]
CA	**Dependency Advocacy Center**: 2 pre-petition programs <u>First program:</u> *Santa Clara County Corridor* [D]	Santa Clara county resident; Who is an adult on probation and a parent at risk of involvement with Dept. of Family and Children's Services (DFCS)	Primarily adult probation officers; and Sometimes community partners.	Referrals to community services; Peer and social work support regarding DCFS; Legal advice, help filing court forms, representation or referrals for: guardianships, restraining orders, custody, housing, and caregiver affidavits (custody plan if parent is re-incarcerated)	Attorney; Social worker; Mentor parents.	Operates under contract with county adult probation using county funds	Client satisfaction survey; If individualized support provided, assess client self-sufficiency across 10 domains at program entry, exit, & every 6 months while in program. Criminal justice and child welfare outcomes (*i.e.* recidivism, new referral of abuse or neglect, removal) tracked via self-	Over the past 5 years: Individualized support services were provided to 111 families; DFCS obtained a protective custody warrant to remove a child from a parent receiving individualized support in only

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
							report only during program participation.	5 of those cases.
CA	**Dependency Advocacy Center**: 2 pre-petition programs Second program: *First Call for Families* [E]	Santa Clara county resident; Has interacted with Dept. of Family & Children's Services (DFCS) within past year (ex: unfounded past report of abuse or neglect or who currently have a voluntary services plan) who seek pre-petition advocacy and support	Primarily DFCS caseworkers; also Community partners; and Self-referrals. ** Note: soon opening office co-located in a hospital's high-risk pregnancy clinic to obtain referrals*	(1) *Warm line*: support, legal advice and community referrals; and (2) *Individualized support* (if needed & staff available): Peer and social work support regarding DFCS; Legal advice, help filing court forms, representation or referrals for: guardianships, restraining orders, custody, housing and related issues	Attorney; Social worker; and Mentor parent.	1st year: short-term county funds; On Sept. 1, 2022, expanding staff and will operate under a contract with DFCS using other county funds ** May pursue Title IV-E reimbursement in the future;* ** Note: DAC and other California parents' attorney providers currently receive Title IV-E funding through DFCS when appointed to represent parents in court proceedings post-petition*	(1) *Warm line:* collect data on type of warm line service provided and whether client referred to other services. (2) *Individualized support:* Client satisfaction survey; Was petition filed? If client > 45 days, assess client self-sufficiency across 10 domains; If client > 60 days, obtain data from DCFS whether any reports have been substantiated at 6-months and 12-months after services complete.	Not yet available (program began in 2021) ** Anecdotally, only one client who received individualized support had a court petition filed and the child was returned after only a brief time.*
CO	**Office of Respondent Parents' Counsel**	Indigent parents in Jefferson County with unmet legal	Caseworkers (including from county Dept. of	Pre-filing child welfare advocacy; Housing;	Attorney (contracts with Colorado	Uses Title IV-E reimbursement dollars:	Conduct short interview with	Not yet available

State	Program (cite to sources of info.)	Eligibility Requirements	Referral Sources	Types of services	Service Providers	Funding Sources	Data Collection Protocols	Available Outcome Data
	(ORPC): *Preventative Legal Services* (Jefferson County) [F]	needs that may be affecting the safety of their child	Human Services and TANF programs); Community-based organizations; Self-referrals; Other.	Custody and visitation; Guardianship; Parentage/ paternity; Protection orders; Advice on some criminal matters (outstanding warrants, sealing records and expungement, de-registration); and Immigration (VAWA and U-Visa petitions). ** Note: will not assist with the following: divorce (but may have Colorado Legal Services assist in certain DV cases); criminal defense (but will help connect client to a public defender); employment; civil rights; small claims and private lawsuits.*	Legal Services to help with specific issues—*e.g.*, housing and immigration); Social worker; and Parent advocate.	1st: ORPC provides statewide indigent parent post-petition representation, which is funded by state funds. 2nd: ORPC invoices these post-petition legal services through DHS, which receives Title IV-E reimbursement. 3rd: Title IV-E reimbursement funds finance several ORPC pilot projects, including the Preventative Legal Services project.	parent upon case closure; Follow-up parent interview 6-months after case closure. Outcomes measured include: Whether petition for removal is filed; and If petition is filed, whether children are removed.	(program began in 2022).
IA	**Iowa Legal Aid**: *Parent Representation Project (pre-filing cases)* [G]	Low-income families involved in child welfare system in four project counties	Majority of referrals from Iowa Dept. of Human Services; and	Legal advice and support with child welfare system;	Attorney; Case manager; and	Began in 1 county with a grant from the state's court	(Not known)	In 2018, Iowa Legal Aid: Closed 62 pre-filing cases, helping 118

State	Program (cite to sources of info.)	Eligibility Requirements	Referral Sources	Types of services	Service Providers	Funding Sources	Data Collection Protocols	Available Outcome Data
		(Blackhawk, Dubuque, Jackson and Linn)	Also receive referrals from contracted service providers.	Child custody and child support; Guardianships; Protection orders; Expungements; Housing issues; and Denials of public benefits. Also refer families to community resources (MH or substance abuse counseling, public benefits, affordable housing, etc.) [H]	Parent advocate.	improvement project (CIP); Then obtained private funding. * *Note*: *Iowa Legal Aid currently has the contract to provide legal services in 2 of the State Public Defender's 6 pilot project counties (discussed below)*		children avoid court involvement
IA	**Office of the State Public Defender:** *Project to Preserve Families* [I]	Families in any of the 6 pilot project counties with a civil legal issue that, in the opinion of the State Public Defender, if not addressed will result in removal of the child	Most referrals from Iowa Dept. of Human Services; Some referrals from probation officers. * *Hope to expand to receive school-based referrals* * *Note: by statute, the State Public Defender has sole discretion to*	Legal advice and support with child welfare system; Open to assisting with any civil legal issue affecting child safety, including: Child custody and child support; Guardianships; Protection orders; Housing issues, etc.	Attorney (state public defender in 1 county; Iowa Legal Aid in 2 counties; contracted attorneys in 3 counties); Social worker (state public defender office); Parent advocate.	100% funded with Title IV-E reimbursement dollars obtained based upon post-petition representation of parents by the State Public Defender * *similar to the process described for Colorado above*	Outcomes tracked: whether petition is filed; whether the child is removed; and, if so, the length of removal. 6- and 12-month client surveys; Attorneys questionnaires about success of the pilot project.	Not yet available (program began in Sept. 2021) [J]

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
			determine family eligibility for pilot project services					
MA	**Greater Boston Legal Services**: *Domestic Violence Family Preservation Project* [K]	Low-income survivors of domestic violence involved with Department of Children and Families (DCF) whose children haven't been removed	Community partner organizations; Other GBLS attorneys; and Self-referral through GBLS intake	Advocate during DCF investigation (inform of rights, negotiate required services; appeal substantiations); DV protection orders; Custody, child support, divorce; guardianships; and Tax, housing, welfare, immigration and healthcare issues (via referral to other GBLS staff attorneys).	Attorney	Began with one attorney funded through an Equal Justice Works Fellowship; Second attorney funded (at least in part) with ARPA funds.	Collect client demographic data; Track following outcomes: Avoiding juvenile court involvement; Day DCF case closed and length DCF case open; Income of family at beginning and end of representation; Government benefits obtained; Outcome of Probate & Family case; and Whether safety/restraining order obtained.	Not yet available (program began in Sept. 2021)
MI	**U. Mich. Law School, Child Advocacy Clinic**: *Detroit Center for Family Advocacy* [L] **Program closed; was in**	Parents/custodians (grandparents or other relatives) of children from Wayne County for whom the child welfare agency has substantiated abuse or neglect but has	Michigan Department of Human Services (90% of referrals); Wayne County Juvenile Court;	Assist with child welfare system; Guardianships; Child support, custody, divorce and paternity; Protection orders;	Attorney; Social worker; and Parent advocate.	Private funds were used to leverage state matching funds from Michigan's Child Care Fund	Demographics; Monitor: whether petition filed and whether children removed; length of time served by program (hours by staff and months case open), type of	From 7/2009 to 6/2012: Served 110 children in 55 families: Prevented filing of petition in

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
	effect from 2009 - 2016	not removed the children or filed a court petition	Private agencies; and Self-referrals	Public benefits; and Other ancillary issues. [M]			service received and whether goal was achieved; Stakeholder surveys (child welfare agencies, judges, AAGs, GALs, community organizations); Client satisfaction surveys.	92.7% of cases (petitions filed for 4 children, of those removed, none went to non-kin foster care and all were returned quickly); Achieved legal objective of ancillary services in 98.2% of cases
NJ	**Legal Service of New Jersey**: *Family Stability and Preservation Project* [N]	Indigent parents (up to 300% of the federal poverty level) involved with child welfare agency ** Note: The project provides services both pre- and post-petition. The information in this chart focuses on the project's pre-petition work.*	N.J. Child Protection & Permanency caseworkers; Self-referrals (through LSNJ hotline); Interoffice referrals from other LSNJ attorneys; Community partners. ** Note: project staff conduct extensive outreach activities to*	Advice on how to navigate the child welfare system; Ancillary legal issues—*e.g.*: Appealing public benefit denials (including SSI); Housing issues (landlord tenant, securing housing, §8 vouchers, etc.); Divorce, custody, child support; Domestic violence issues;	Hotline attorneys (legal advice); Project attorneys (provide legal advice, direct representation and/or referrals to other LSNJ attorneys with expertise in a specific issue); Social workers; and Parent allies.	State funding--both legislative appropriations and state grants are used to fund LSNJ's work; CIP funding was used for 1 project attorney in 2021; Parent allies are funded by a private foundation.[O]	Collect demographic information on referrals and clients (race, ethnicity, LGBTQ+, etc.); Track type of issues presented; *Originally (but see column to right)*: Tracked and reported outcomes including: whether petitions were filed and whether children were removed.	From 2018 to 2020: Out of >200 referrals, none of the >300 children were removed. **Recently, have not focused on reporting outcome data, in part to avoid creating an incentive to not serve the clients with the most challenging cases. Instead focus on collecting data on referrals, cases*

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
			increase awareness of the program.	Special education and other school-related issues; Healthcare; and Immigration.				*and types of issues involved, to demonstrate need for the project, and on obtaining feedback from stakeholders.*
NY	**The Bronx Defenders**: *Early Defense Program* (NYC) [P]	Income-eligible parents and caregivers in the Bronx being investigated by Administration for Children's Services; and Current clients who become pregnant and are at risk of losing the newborn.	Hospitals, schools, social services agencies and other community organizations (program does outreach and training at many such organizations); Self-referral (24-hour hotline, email intake and walk-in hours).	Legal and social work advocacy during the investigation; Connecting families to supportive services and material resources; Ancillary legal issues: housing and public benefits.	Attorney; [Q] Social worker; and Parent Advocate.	Discretionary funding from New York City Council for pre-petition advocacy; Private funding for work with pregnant clients to prevent removal of the to-be born child; ** Hope in future to incorporate pre-petition work into the Bronx Defenders' contract to provide post-petition parent representation; the city may also pursue Title IV-E reimbursement.*	Collect data on: Number of parents served; Number of safety conferences attended; Outcomes: whether ACS filed a petition and/or removed the children.	In FY21: Represented 131 low-income parents in Bronx facing investigation; No case was filed in 72% of cases; Of remaining cases where court proceedings were initiated, children remained in the home or with family members in all except 2 cases.
NY	**Center for Family Representation,**	Parent subject to investigation by Administration for	Other legal services agencies and	Social work advocacy and explain parent's	Social workers; and	Discretionary funding from New York City	Collect client demographic	Not yet available (program

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
	Inc.: *Community Advocacy Project* (NYC) [R]	Children's Services in Manhattan or Queens (will soon expand to the Bronx)	community organizations; NYC 311 call line; Self-referrals. ** Note: referrals from ACS are rare*	rights during the investigation **Note: option to consult with an in-house attorney for housing, protection order, immigration and criminal legal advice and/or direct assistance* [S]	Parent advocates.	Council for pre-petition advocacy; Plan to pursue incorporating this work into the Center's contract to provide post-petition parent representation in child protection proceedings.	information at intake and track: Time investigation remains open; Outcome of investigation (court petition? removal? if so, to whom - kinship?); Number of referrals made for other services.	began in 2019)[T]
OK	**Legal Aid Services of Oklahoma (LSAO)**: *Family Representation Contract* [U]	Actively involved with Child Welfare Services in some capacity; also subject to representation qualification requirements of LASO	Oklahoma Dept. of Human Services caseworkers as well as judicial referrals	Legal matters impacting stability of the home with the exception of criminal and appellate cases. Included but is not limited to divorce and custody; paternity; protection orders; guardianships; housing and utility issues, and benefit entitlement appeals.	Attorney	Contract between Dept. of Human Services and LASO	None at this time. Are working to establish a research study to determine efficacy of intervention under the contract.	None at this time (see column to left).

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
VT	**Vermont Parent Representation Center, Inc.**: had 2 pilot pre-petition programs First program: *Family Intervention Team* [v] **2-year project; closed in 2012**	Families* for whom Dept. of Children & Families (DCF) had **completed** an investigation or assessment and had opened a services case ** Only represented 1 parent in each case*	Referral sources: DCF (50%); Community providers (29%); Probate Courts (13%); and Other (8%: via web, 2-1-1 or other clients).	Advocacy with DCF (including also appeals of substantiations, and represent in CHINS case if later opened); Guardianships; Housing (ex: help with §8 vouchers, eviction defense); Protection orders; Public benefits (ex: TANF); Other ancillary issues advocacy.	Attorney; Social worker; and Peer Advocate.	State legislative funding for one year (until budget crisis due to Hurricane Irene); and Later private foundations and donors. ** Note: some staff occasionally provided pro bono services.*	Number referrals, how many became clients; Number of visits to parents in home/community; Parent satisfaction surveys; % children not removed (and if removed, % later reunited); % older children who were already removed who were reunited. ** Note: a request to DCF for information on longer-term outcomes (at 6- and 12- month intervals) was denied*	During 2-year pilot (2010-2012): 78% of families whose children were not in custody of the State or a relative at outset also did not have a child removed while part of pilot project; 50% of other children previously removed were reunified with the parent; 100% of parents found project helpful to achieve desired outcomes
VT	**Vermont Parent Representation Center, Inc.**: Second program: *Rapid Intervention Prenatal Program (RIPP)* [w]	Mothers in medication assisted treatment who were pregnant or parenting infants (under 1 month) regardless of whether there was	Treatment providers; Community partners; and Self-referrals.	Same as above and also: Advocacy with hospital, medical providers, and service providers;	Attorney; and Family advocate (skilled but not licensed as MSW).	Private foundations and donors *Note: some staff occasionally*	Same as above ** Note: did not again request long-term data given denial of data for*	During 2-year pilot (2014-2016): 63% of 27 women served were successful in maintaining

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
	2-year project; closed in 2016	yet DCF involvement ** Note: DCF policy prevented involvement until 30 days before the child's due date*		Providing transportation and other needed services/supports to facilitate visits if child was removed (to help facilitate reunification).		*provided pro bono services.*	*Family Intervention Team pilot project*	custody of children within 12 months of being served by RIPP
WA	**Center for Children & Youth Justice**: *Family Advocacy Center* (King County) [X] **3-year pilot project closed in 2019.**	"But-for" test: families with a civil legal issue that, if resolved, would: Prevent removal; Close Child Protective Services (CPS) investigation; or Close a Family Assessment (FAR) Response case. Clients must be at or below the income self-sufficiency standards for King County.	CPS and FAR caseworkers from Dept. of Children, Youth and Families (FAC attorneys first trained DCYF staff on the program and eligibility criteria).	Legal advice and range of assistance on ancillary civil legal issues: Most frequent: guardianship, paternity, divorce, parenting plans (*i.e.*, parental rights orders); and protection orders. Less frequent: housing; public benefits; criminal records "cleanup." Parent ally also provided advice regarding the child welfare process. [Y]	Legal Aid Attorney (from the Northwest Justice Project); Social worker (from Center for Children & Youth Justice); and Parent ally (from Parents for Parents).	3-year pilot project funded via private philanthropic foundations and individual donors.	Demographic information; Referral source; Duration, type and scope of service provided; Relevant court rulings; and Internet & phone client satisfaction surveys. ** Utilized Northwest Justice Project's data-collection systems for all except client surveys and required release from client to provide information to FAC*	During the 3-year pilot project, the civil legal objectives were met in 95% of preventative cases.
WA	**Family Intervention Response to Stop Trauma (F.I.R.S.T.) Clinic**	Pregnant mothers and parents of substance-exposed infants (recently born, still in the hospital) in the	Medical providers and community partners (attorneys, hospital staff,	Legal advocacy regarding potential or actual DCYF investigation; Assist in obtaining community	Attorney; Social worker; and Parent Ally.	Began as pro bono services; In 2020, state appropriated $500,000 over two years (led	Worked with Casey Family Programs to create Google Sheets data tool: Demographic data (race, ethnicity,	Between July 2019 and Nov. 2021: Petition filed for only 15% of 123 clients;

State	**Program** (cite to sources of info.)	**Eligibility Requirements**	**Referral Sources**	**Types of services**	**Service Providers**	**Funding Sources**	**Data Collection Protocols**	**Available Outcome Data**
	(Snohomish County) [Z]	county who are subject to a child welfare investigation and who receive some sort of state assistance (TANF, WIC, food stamps, state medical insurance, etc.).	and a substance treatment provider); Dept. of Children, Youth & Families (DCYF) caseworkers (including referral of all "screened out" reports/intakes on pregnant mothers whose children are not yet born); and Some self-referrals.	services and supports (*e.g.,* substance-use evaluations and treatment); Ancillary legal issues: protection orders and guardianships or connection to criminal attorney; Provide concrete goods for baby's needs (diapers, clothing, etc.).		to large increase in caseload); Also received funding from Casey Family Programs, the Giddens Foundation (local non-profit), and via state contract (for clients without open DCYF cases). *Future*: *state Dept. of Health and Human Services has contacted F.I.R.S.T. Clinic to discuss potential expansion using opioid settlement funds*	refugee & disability status; marital status; any other children; public assistance); DCYF history of parent(s); Family service needs (housing, DV, drug & alcohol, etc.); Outcomes: whether client agreed to voluntary services or placement; whether petition filed; whether child removed; whether guardianship entered.	10% of clients agreed to voluntary safety plans and kept their children. Between 2018 and 2020, infant removals decreased by 37% in Snohomish County (not just for F.I.R.S.T. clients), compared to a 17% reduction statewide over the same time period.

[A] Email correspondence with Kaveh Landsverk, pre-filing program attorney, Children's Law Center of California. *See* Jody Leibman Green & Kaveh Landsverk, American Bar Association, *Breaking the Foster Care Cycle, One Young Family at a Time* (July 1, 2021) at https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2021/summer2021-breaking-the-foster-care-cycle-one-young-family-at-a-time/; *see also* Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases* (March 2021), at https://www.americanbar.org/content/dam/aba/administrative/child_law/early-legal-advocacy.pdf; Rob Wyman, *Testimony before the Maine Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child protection System* (Aug. 1, 2022) at https://legislature.maine.gov/doc/8716 (hereinafter "Rob Wyman, *Testimony*").

[B] Rob Wyman, at Casey Family Programs, indicated via email correspondence that the Pritzker Pre-Filing Project will not directly represent clients on immigration issues.

[C] The data presented in the chart derives from Green & Landsverk, *Breaking the Foster Care Cycle, One Young Family at a Time*, *supra* note A. In email correspondence, Kaveh Landsverk indicated that, as of July 2022, of 73 child clients he had served, 61 were in the custody of a parent, 3 had been placed with relatives, and 9 were in foster care.

[D] Zoom interview with Hilary Kushins, Chief Program Officer at the Dependency Advocacy Center and email correspondence regarding data-collection protocols and outcomes with Sarah Cook, Corridor Managing Attorney. *See also* Family Justice Initiative, *Guide to Implementing FJI System Attributes: Attribute 4: Timing of Appointment* (2020) at https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute4-1.pdf.

[E] Zoom interview with Hilary Kushins, Chief Program Officer at the Dependency Advocacy Center. *See also* Dependency Advocacy Center: First Call for Families (website) at http://www.sccdac.org/?page_id=501 (last visited Aug. 10, 2022); Rob Wyman, *Testimony*, *supra* note A.

[F] Zoom interview with Jill Cohen, Social Worker and Director of Programs, Office of Respondent Parents' Counsel. *See also* Lauren Gase, et al., *Office of Respondent Parents' Counsel: Preventive Legal Services Implementation Guide* (May 11, 2022), at https://coloradolab.org/wp-content/uploads/2022/05/ORPC-Preventive-Legal-Services-Implementation-Guide_May-2022.pdf; Executive Director Melissa Michaelis Thompson, *Office of Respondent Parents' Counsel: Fiscal Year 2022-23 Budget Reques*t at 28-30 (Nov. 2, 2020), at https://coloradoorpc.org/wp-content/uploads/2021/11/Final-ORPC-FY-2022-23-Budget-Request.pdf (explaining that the ORPC obtains, based on its post-petition legal representation of parents, Title IV-E reimbursement funds and uses those funds for several initiatives, including "Increasing RPC access to an interdisciplinary team, which may include social workers, parent advocates, experts, and other professionals" and "Expanding available legal services to parents and families . . . [including] during investigations . . . to address a family's ancillary civil legal issues that may impact the removal of children and reunification, such as protective orders, housing and eviction issues, and guardianships.").

[G] The summary in the chart of Iowa Legal Aid's Parent Representation Project is based on research current through March 4, 2021. *See* Iowa Legal Aid, *Parent Representation Project*, at https://www.americanbar.org/content/dam/aba/administrative/child_law/ila-parent-rep-project.pdf (undated pamphlet); *see also* Amber Gilson & Michelle Jungers, American Bar Association, *Preserving Families Through High-Quality Pre-Petition Representation* (March 4, 2021) at https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2021/spring2021-preserving-families-through-high-quality-pre-petition-representation/; *See also* Casey Family Programs, *How can pre-petition legal representation help strengthen families and keep them together?* (Feb. 13, 2020) at https://www.casey.org/preventive-legal-support/; Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, *supra* note A; Family Justice Initiative, *Guide to Implementing FJI System Attributes: Attribute 4: Timing of Appointment*, *supra* note D.

[H] Rob Wyman, at Casey Family Programs, indicated via email correspondence that the Iowa Parent Representation Pilot Project does not provide legal representation or assistance regarding immigration, workers compensation or torts issues.

[I] Zoom interview with Jeff Wright, Iowa State Public Defender. *See also* Imprint Staff Reports, Iowa Law to Test the Benefit of Early Legal Help in Child Welfare Cases (July 1, 2020); *see also* 2020 Iowa Acts ch.1040, at https://www.legis.iowa.gov/docs/publications/LGE/88/Attachments/SF2182_GovLetter.pdf.

[J] The Iowa State Public Defender's Office obtained grant funding for data collection and analysis to be conducted by Iowa's Division of Criminal & Juvenile Justice Planning, which is a research and data analytics agency within the state's Department of Human Rights, see https://humanrights.iowa.gov/cjjp.

[K] Zoom Interview and email correspondence with Alyssa Rao, Esq., Equal Justice Works Fellow Attorney, Greater Boston Legal Services, Family Law Unit. *See also* Rob Wyman, *Testimony*, *supra* note A; Lauren Gase, et al., Office of Respondent Parents' Counsel, *Preventive Legal Services Implementation Guide*, *supra* note F, at Appx. B.

[L] Zoom interview with Professor Vivek Sankaran, University of Michigan Law School. *See also* University of Michigan Law School, *Detroit Center for Family Advocacy Pilot Evaluation Report 7/2009 - 6/2012* (Feb. 2013); Detroit Center for Family Advocacy, U. Mich. L. Sch., *Promoting Safe and Stable Families* (2014), at https://artscimedia.case.edu/wp-content/uploads/sites/35/2014/02/14194055/CFAReport.pdf; ; *See* Vivek Sankaran, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, 40 Wm. Mitchell L. Rev. 1036, 1042-1043 (2014) at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=articles; The

Detroit Center for Family Advocacy closed in 2016 due to a lack of funding. *See* Vivek Sankaran, *What We Need to Protect American Families*, The Imprint: Youth & Family News (Oct. 30, 2018) at https://imprintnews.org/opinion/need-protect-american-families/32590. The following sources of funding and technical assistance were cited in center's 2014 report: Casey Family Programs, Community Foundation for Southeast Michigan, Dewitt C. Holbrook Memorial Fund, McGregor Fund, Pillsbury Family Advocacy Fund, Retired Justice Bobbe & Jon Bridge, Skillman Foundation, Quicken Loans Foundation and W.K. Kellogg Foundation. The center also received administrative support from the University of Michigan Law School.

[M] The Detroit Center for Family Advocacy assisted with powers of attorney, parking tickets, central registry expunctions and educational advocacy.

[N] Zoom interview with Mary McManus-Smith, Family Law Chief Counsel, Sylvia Thomas, Chief Counsel of the Family Stability and Preservation Project, and Jonnell Casey and Anne Gowen, project staff attorneys, at Legal Services of New Jersey (LSNJ). LSNJ's program was formerly known as the Family Representation Project. *See also* Gianna Giordano & Jey Rajaraman, American Bar Association, Increasing Pre-Petition Legal Advocacy to Keep Families Together (Dec. 15, 2020), at https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-increasing-pre-petition-legal-advocacy-to-keep-families-together/; *see also* Casey Family Programs, *How can pre-petition legal representation help strengthen families and keep them together?*, *supra* note G; Family Justice Initiative, *Guide to Implementing FJI System Attributes: Attribute 4: Timing of Appointment*, *supra* note D; Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, *supra* note B.

[O] New Jersey law prohibits the Department of Children and Families from employing "a person who is included on the child abuse registry" and prohibits such an individual "from being employed . . . in any facility or program that is licensed, ***contracted***, regulated or ***funded*** by the Department of Children and Families." N.J. Stat. §9:6-8.10f, at 9:6-8.10f Check of abuse registry relative to individuals seeking employment. (state.nj.us) (last visited Oct. 6, 2022).

[P] Email correspondence with Emma Ketteringham, Managing Director, Family Defense Practice, The Bronx Defenders. *See also* The Bronx Defenders: Family Defense Practice (website) at https://www.bronxdefenders.org/our-work/family-defense-practice/ (last visited Aug. 11, 2022); *see also* Lauren Gase, et al., *Office of Respondent Parents' Counsel: Preventive Legal Services Implementation Guide*, *supra* note F, at Appx. B; Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, *supra* note B; Family Justice Initiative, *Guide to Implementing FJI System Attributes: Attribute 4: Timing of Appointment*, *supra* note D.

[Q] Social workers and parent advocates attend safety conferences with their clients at the Administration for Children's Services (ACS); while local policy prohibits attorneys from attending ACS safety conferences, an attorney at The Bronx Defenders who is dedicated to pre-petition legal representation oversees the social workers and parent advocates and provides additional legal assistance to pre-petition clients.

[R] Zoom interview with Malena Arnaud, Social Work Supervisor, Center for Family Representation, Inc., Community Advocacy Project. *See also* Center for Family Representation: Community Advocacy Project (website) at https://cfrny.org/community-advocacy-project/more-about-cap/ (last visited Aug. 10, 2022); *see also* Elizabeth Fassler & Wanjiro Gethaiga, *Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies*, 30 Child L. Practice 17 (2011) at https://cfrny.org/wp-content/uploads/2021/03/Representing-Parents-During-Child-Welfare-Investigations-April-2011.pdf; Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, *supra* note B.

[S] A social work service model was chosen for the Community Advocacy Project because current local policy prevents ACS caseworkers from speaking to parents' attorneys without counsel present. The Center for Family Representation, which houses the Community Advocacy Project, is one of several contracted providers of indigent parent representation in child protection cases in NYC and, in that capacity, has attorneys that specialize in housing, immigration and criminal matters who can, on occasion, assist clients in the Community Advocacy Project. While the Center assists clients in obtaining orders of protection, it does not provide legal representation in custody matters.

[T] The Center for Family Representation earlier operated a Community Advocacy Team program, through which parents who were the subject of an investigation were

provided the assistance an attorney, social worker and parent advocate. Between July 2007 and November 2010, CFR's Community Advocacy Teams successfully prevented court filings in 70% of their cases. In addition, foster care placements were successfully avoided in 90% of the cases where petitions were filed. *See* Elizabeth Fassler & Wanjiro Gethaiga, *Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies*, 30 Child L. Practice 17 (2011) at https://cfrny.org/wp-content/uploads/2021/03/Representing-Parents-During-Child-Welfare-Investigations-April-2011.pdf.

[U] Email correspondence with Ronald Baze, General Counsel, Oklahoma Department of Human Services. *See also* Oklahoma Human Services Waypoint Podcast Episode 5: *OKDHS and Legal Aid Services of Oklahoma help families engaged with the child welfare system navigate legal issues* (Sept. 21, 2021) at https://podcasts.apple.com/us/podcast/waypoint-podcast-episode-5-okdhs-and-legal-aid/id1566960281?i=1000536190430; Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, *supra* note B; Casey Family Programs, *How can pre-petition legal representation help strengthen families and keep them together?*, *supra* note G; Lauren Gase, et al., *Office of Respondent Parents' Counsel: Preventive Legal Services Implementation Guide*, *supra* note F, at Appx. B.

[V] Zoom interview and email correspondence with Trine Bech, founder and former Executive Director, Vermont Parent Representation Center, Inc.; *see* Vermont Parent Representation Center, Inc., *Bending the Curve to Improve Our Child Protection System: A Multiyear Analysis of Vermont's Child Protection System & Recommendations for Improvement* at 40-47 (Nov. 14, 2018), at https://www.vtprc.org/2018/11/14/bending-the-curve-to-improve-our-child-protection-system-report/; *see also* Vivek Sankaran, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, *supra* note L, at 1042-1043.

[W] Zoom interview and email correspondence with Trine Bech, founder and former Executive Director, Vermont Parent Representation Center, Inc.; *see* Vermont Parent Representation Center, Inc., *Rapid Intervention Prenatal Program* (website) at https://www.vtprc.org/rapid-intervention-prenatal-program/ (last visited Aug. 13, 2022); Vermont Parent Representation Center, Inc., *Bending the Curve to Improve Our Child Protection System*, *supra* note V.

[X] Zoom interview and email correspondence with Gina Cumbo, Vice President for Innovation & Impact at the Center for Children & Youth Justice and Matthew Boyle, retired Family Advocacy Center Project Attorney from the Northwest Justice Project. *See also* Casey Family Programs, *How can pre-petition legal representation help strengthen families and keep them together?*, *supra* note G; Lauren Gase, et al., *Office of Respondent Parents' Counsel: Preventive Legal Services Implementation Guide*, *supra* note F, at Appx. B. The Family Advocacy Center project provided ancillary civil legal assistance, social work and parent ally support both to pre-petition clients and to post-petition clients (who were separately represented by a public defender in the child protection proceeding). The chart focuses on pre-petition work.

[Y] The Center for Children & Youth Justice (CCYJ) developed the Family Advocacy Center (FAC) pilot project in conjunction with a group of stakeholders, including the state's Department of Children, Youth and Families. CCYJ also provided funding and oversight for the FAC as well as social work services. CCYJ contracted with the state's largest legal aid provider, the Northwest Justice Project, to provide attorney services and with King County's branch of Parents for Parents to provide parent allies. While stakeholders anticipated that housing and public benefits assistance would be the most commonly required civil legal service, family law issues (restrictive parenting orders, guardianships, protection orders, etc.) were in fact the most common service required. The Northwest Justice Project attorney primarily provided legal advice and drafting assistance, with direct in-court representation rare and dependent on the ability of the client to engage in self-advocacy or, for example, on the severity of domestic violence in the case. Parent allies assisted clients in navigating the court process when direct in-court legal representation was not provided.

In cases where obtaining a guardianship order (these were called "non-parental custody" and not guardianship orders at the time of the pilot project) was identified as the critical civil legal issue, the Northwest Justice Project attorney represented the relative (usually a grandparent) seeking the guardianship and not the child's parents.

[Z] Zoom interview and email correspondence with Talia AyAy, Vice President and Executive Director of the F.I.R.S.T. Clinic. *See also* Adam Ballout & Melinda L. Drewing, American Bar Association, The F.I.R.S.T. Legal Clinic: A New Frontier of Partnerships to Stop Trauma (July 14, 2022) at https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2022/summer2022-the-first-legal-clinic/; *see also* Am. Bar Ass'n & Nat'l Council of Juv. & Fam. Ct. Judges, Judge's Action Alert, *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, *supra* note B; Casey Family Programs, *How can pre-petition legal representation help strengthen families and keep them together?*, *supra* note G; Rob Wyman, *Testimony*, *supra* note A.

APPENDIX G

Materials on funding under Title IV-E of the Social Security Act (for Aug. 22, 2022 meeting)

- **Staff handout: Overview of Title IV-E Funding for Legal Representation & Funding Data**
- **Staff handout: Pre-Petition Legal Representation Reimbursement – Federal & State Guidance**
- **Memo from OCFS: Overview of Title IV-E Funding**

Overview of Title IV-E Funding for Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families
in Child Protective Services - August 22, 2022

Title IV-E Foster Care Program funding

- ***Title IV-E authority and requirements:*** Title IV-E of the Social Security Act authorizes federal funding of foster care, as well as other child welfare programs including adoption assistance, kinship guardianship assistance, and services for older youth who have aged out or emancipated from foster care.

    - ***Open-ended entitlement:*** Title IV-E program is an entitlement program with funding authorized on a permanent and open-ended basis. As an entitlement program, it guarantees certain benefits to eligible children. It does not displace any other funding, and federal authority to appropriate Title IV-E funds remains in place without periodic reauthorization required.

    - ***Title IV-E State Plan:*** The receipt of Federal funds under Title IV-E is contingent upon an approved State Plan to provide foster care, adoption assistance and guardianship assistance. The State Plan describes the "eligible activities" under the state IV-E programs.[1]

    - ***Public Assistance Cost Allocation Plan (PACAP) required:*** Federal funding for administrative costs under Title IV-E is contingent on an approved Public Assistance Cost Allocation Plan (PACAP) that outlines the procedures to identify, measure and allocate costs to all program administered or supervised by the State agency.[2]

- ***Federal Financial Participation for Foster Care:*** Under Title IV-E, the federal government reimburses States for a percentage of IV-E eligible costs of the state foster care program for Title IV-E eligible children (not all children in foster care are eligible). The percentage is referred Federal Financial Participation (FFP) rate, or match rate. Different FFP rates apply to different categories foster care program costs. The FFPs by category are listed below.

- ***Types of Eligible Costs for IV-E Foster Care Funds:*** Under Title IV-E, the federal government reimburse states for foster care program costs in several categories, including:[3]

[1] Attachment D OMB Approval No. 0970-0433 Expiration Date: 11/30/2022; Agency Plan for Title IV-E of the Social Security Act: https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1807_attachment_d.pdf

[2] Code of Federal Regulations, Title 45, section 95.505: https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-95/subpart-E/section-95.505

[3] See 42 U.S. Code section 674. https://law.justia.com/codes/us/2020/title-42/chapter-7/subchapter-iv/part-e/sec-674/

- ✓ ***Foster Care Maintenance Payments (FCMP) Costs:*** Payments made to caregivers to provide shelter, food and clothing for IV-E eligible children in foster care placements. (Match rate=Federal Medical Assistance Percentage (FMAP)[4], currently 70.2%)[5]

- ✓ ***Foster Care Administrative Costs:*** Administrative costs of the program. (Match rate=50%).

  - ***In-Placement***: case planning and management, ***legal representation of child/parent***, and demonstration project operational costs; and
  - ***Pre-Placement****:* case planning and management, ***legal representation of child/parent***, eligibility determination, provider and agency management and demonstration project operational costs.

- ✓ ***Child Welfare Information System Costs*****:** Costs of the planning design, development and operation of statewide mechanized data collection and information retrieval systems. Match rate=50%)

- ✓ ***Training Costs:*** Costs of training that increases the ability of current or prospective foster parents, guardians, agency staff members, court staff, institutions, attorneys (including IV-E agency attorneys and attorneys representing children or parents) and advocates to provide support and assistance to foster children. (Match rate=75%)

- ✓ ***Waiver Demonstration Projects:*** These are projects approved by the U.S. DHHS that involve the waiver of certain provisions of the law to allow states to use federal IV-E funds for foster care more flexibly to implement alternative services and supports and generate knowledge about innovative and effective practice.[6] (Match rate = 50%)

Title IV-E Funds for Legal Representation for Families

- ***Authorization:*** In 2019 the U.S. DHHS/ACF Children's Bureau issued revised and new policies allowing the costs of independent legal representation to children and parents may be claimed as Title IV-E foster care administrative costs, when provided by an attorney to:

  - Children in Title IV-E foster care placements and parents of these children; or

[4] The Federal Medical Assistance Percentage (FMAP) is the federal share of the cost of state Medicaid services. FMAP is computed from a formula that factors in the State's average per capita income relative to the national average: https://www.kff.org/wp-content/uploads/2013/01/8352.pdf

[5]Medicaid and CHIP Payment and Access Commission, Exhibit 6. Federal Medical Assistance Percentages (FMAPs) and Enhanced FMAPs (E-FMAPs) by State: https://www.macpac.gov/wp-content/uploads/2022/08/EXHIBIT-6.-Federal-Medical-Assistance-Percentages-and-Enhanced-FMAPs-by-State-FYs-2020-2023-1.pdf

[6] James Bell Associates. (2021). Title IV-E waiver demonstrations: History, findings, and implications for child welfare policy and practice. Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/sites/default/files/documents/cb/2020-waiver-summary-508.pdf

- Children who are candidates for Title IV-E foster care and parents of these children.

Because Title IV-E funds are an open-ended entitlement, this made additional funds available to states for legal representation, without affecting other IV-E foster care reimbursement.

- ***Expansion to multidisciplinary teams:*** In April 2020, the Children's Bureau issued a new policy clarifying that costs for paralegals, investigators, peer partners, or social workers may also be claimed as Title IV-E foster care administrative costs to the extent they are necessary to support an attorney providing independent legal representation as described above.

- ***Reimbursable Services:*** See separate handout: *"Pre-Petition Legal Representation Reimbursement - Federal and State Guidance",* under section III: *"What types of pre-petition legal services to families of foster care candidates are reimbursable?"*

- ***Note regarding Family First****:* The Title IV-E funds for legal representation of children and parents are separate and distinct from IV-E funds available for prevention services under the Family First Prevention Services Act (FFPSA); Family First funds are specifically focused on mental health, substance use and parenting support services and have separate requirements for authorization.

Requirements to Receive IV-E Funds for Independent Legal Representation

- ***Role of IV-E Agency:*** Only the state Title IV-E agency can claim the federal matching funds for independent legal representation for children and families under the foster care program. However, a Title IV-E agency may arrange for independent legal representation services to be delivered by another entity through a contract or other type of agreement, such as a memorandum of understanding with the IV-E agency.

- ***State matching funds:*** The state share of costs claimed for the Title IV-E foster care program must be sourced from state or local appropriated funds or donated funds.

    - State matching funds may *not* be sourced from funds provided to the state under another federal program.[7] For example, federal Title IV-B Court Improvement Program funds could not be used as a state match for IV-E Foster Care funds.

    - Legal Services Corporation (LSC), which funds civil legal services for low-income citizens, is established in law as a non-profit organization. LSC receives federal funds, however the agency asserts that LSC funds are 'non-federal funds' once received by LSC and remain non-federal funds when provided to grantees.[8]

[7] U.S. DHHS, Administration for Children, Child Welfare Policy Manual Section 8.1F Title IV-E, Administrative Functions/Costs, Match Requirements: https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=35

[8] Legal Services Corporation, Advisory Opinion 2019-004, Dec. 13, 2019, Use of LSC Funds as Non-Federal Matching

- ***Public Assistance Cost Allocation Plan Amendment:*** To receive federal reimbursement for independent legal representation, the Title IV-E agency must amend its Public Assistance Cost Allocation Plan (PACAP) with the Children's Bureau to identify the types of administrative activities the agency intends to claim for legal representation and the methodology it will use to identify allowable costs. (According to the federal Child Welfare Policy Manual, a title IV-E State Plan amendment, is *not* required: ***"Question:*** *Must the title IV-E agency submit a title IV-E plan amendment to claim administrative costs for independent legal representation? Answer: No, a title IV-E plan amendment is not necessary for the title IV-E agency to claim administrative costs for independent legal representation by an attorney for an eligible child and/or his/her parent."*[9]

- ***IV-E Eligibility:*** Title IV-E funds, including those for legal representation, are only available for eligible costs incurred for IV-E eligible children.

    - For children in foster care (in-placement), IV-E eligibility is determined based on a series of requirements in federal law including, but not limited to, requirements relating to the removal of the child from the home, the foster care placement, and income eligibility (based on AFDC eligibility).[10]

    - If a state provides legal representation to children, or their parents, without direct reference to the child's IV-E eligibility, the state must have an allocation method to assure that IV-E funds are claimed for only the proportionate share of costs.[11] The state's proportion of children in foster care who are IV-E eligible (the "penetration rate" or "participation rate") may be used for this allocation. This rate was 48% in FY 2020 and 44% in FY2021. *See separate handout: "Maine IV-E Funding"*

    - For legal representation provided during the pre-placement period, the allocation must be based on a determination that the child is a *candidate* for foster care. Eligibility for IV-E funds is one component of the candidacy determination. *See separate handout: "Pre-Petition Legal Representation Reimbursement - Federal and State Guidance", section II on "Who is an eligible "candidate" for foster care?"*

https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/advisory-opinions/advisory-opinion-2019-004; see also LSC Advisory Opinion 2020-005, November 6, 2020, Non-Federal Status of LSC and LSC Grants and Contracts: https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/advisory-opinions/advisory-opinion-2020-005

[9] U.S. DHHS, Administration on Children and Families, Children's Bureau, July 20, 2020; Technical Bulletin, Frequently Asked Questions: Independent Legal Representation: https://www.acf.hhs.gov/sites/default/files/documents/cb/technical_bulletin_faq_legal_representation.pdf

[10] 42 U.S. Code § 672 - Foster care maintenance payments program.

[11] U.S. DHHS, Administration for Children, Child Welfare Policy Manual Section, 8.1C TITLE IV-E, Administrative Functions/Costs, Calculating Claims: https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=74

Table 1 - Maine Title IV-E Foster Care Funding

Funding Category Description	FY 2020 IV-E Foster Care	FY 2021 IV-E Foster Care
Foster Care Maintenance Payments [Match rate = FMAP]		
Total Title IV-E FCMP Claims - Total Cost	$9,204,141	$7,672,047
Total Net Title IV-E FCMP Claims - Federal Financial Participation (FFP)	$6,048,073	$5,157,375
Foster Care In Placement Administration [Match rate = 50%]		
Total Title IV-E In-Placement Administration Claims - Total Cost	$33,186,186	$30,229,692
In-Placement Total Administration - FFP	$16,593,093	$15,114,846
In-Plac. Case Planning & Management - FFP	$7,596,028	$6,757,336
In-Plac. Eligibility Determinations - FFP	$8,028,334	$7,347,174
In-Plac. Provider & Agency Management - FFP	$968,731	$1,010,336
In-Plac. Legal Representation – Child or Parent - FFP	$0	$0
Foster Care Pre-Placement Administration [Match rate = 50%]		
Total Pre-Placement Activities Claims - Total Cost	$1,486,178	$1,506,062
Total Pre-Placement Activities Claims - FFP	$743,089	$753,031
Pre-Plac. Case Planning and Management - FFP	$743,089	$753,031
Pre-Plac. Legal Representation – Child or Parent - FFP	$0	$0
Pre-Plac. Activities Proj. Operational Costs - FFP	$0	$0
Comprehensive Child Welfare Information System (CCWIS) [Match rate = 50%]		
Total CCWIS & Non-CCWIS Costs - Total Cost	$6,603,398	$15,017,960
Total CCWIS & Non-CCWIS Costs - FFP	$3,301,699	$7,508,980
Training [Match rate = 75%]		
Total Title IV-E Training Claims - Total Cost	$360,587	$304,045
Total Title IV-E Training Claims - FFP	$270,440	$228,034
Total		
Total Costs, All Funding Categories - Total Cost	$50,742,672	$54,705,889
Total Costs, All Funding Categories - FFP	$26,907,491	$28,750,315

Caseload		
In-Placement Title IV-E Caseload	996	925
In-Placement Total Caseload (Title IV-E & Non-IV-E)	2079	2101
In-Placement Title IV-E Participation Rate	*48%*	*44%*
Pre-Placement Title IV-E Case Planning & Management Caseload	2630	2600

Source: U.S. DHHS, Administration for Children and Families, Children's Bureau
https://www.acf.hhs.gov/cb/report/programs-expenditure-caseload-data-2020
https://www.acf.hhs.gov/cb/report/report/programs-expenditure-caseload-data-2021

Note: Participation rate = Calculated percentage of reported title IV-E eligible participants of all children (title IV-E and non-IV-E) in identified foster care category for current quarters in the FY.

Note: "Demonstration Projects" claims are reported by title IV-E agencies in one or more traditional title IV-E Foster Care funding categories, as project interventions and other waiver based costs or as project evaluation costs. The fundable total Demonstration Costs is also shown on Part 1, Line 16a.

Table 2 - Title IV-E Legal Representation - Federal Match (FFP) by State, FY21

States with Legal Representation FPP Claims in FY21 (Sorted by Pre-Placement FFP amount, then In-Placement FFP)		
State	**PRE-Placement FFP**	**IN-Placement FFP**
Colorado	$2,564,351	$3,007,960
Iowa	$927,512	$2,923,211
Minnesota	$906,247	$549,168
Utah	$712,661	$1,383,777
Louisiana	$172,564	$2,533,677
Wisconsin	$34,264	$1,303,742
California	$0	$29,805,626
Washington	$0	$12,303,146
Oregon	$0	$8,805,038
Michigan	$0	$3,288,957
Maryland	$0	$2,459,859
Nevada	$0	$1,089,470
Montana	$0	$1,014,419
Alaska	$0	$756,243
Arkansas	$0	$749,200
Texas	$0	$544,230
Indiana	$0	$201,971
Delaware	$0	$184,906
South Carolina	$0	$104,200
Florida	$0	$56,741
Illinois	$0	$28,977
Ohio	$0	$900
Pennsylvania	$0	$526
Total	**$5,317,599**	**$73,095,944**
# of States with Claims	(6 states)	(23 states)

States NOT Claiming Legal Representation Costs (FY21)
State
Alabama
Arizona
Connecticut
District of Columbia
Georgia
Hawaii
Idaho
Kansas
Kentucky
Maine
Massachusetts
Mississippi
Missouri
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Puerto Rico
Rhode Island
South Dakota
Tennessee
Vermont
Virgin Islands
Virginia
West Virginia
Wyoming

Source: U.S. DHHS, Administration for Children & Families, Children's Bureau
https://www.acf.hhs.gov/cb/report/report/programs-expenditure-caseload-data-2021
Data Reported As of: July 14, 2022

I. Availability of Title IV-E funds for independent legal representation of children and parents, including pre-petition legal representation

Prior to 2019, federal policy prevented child welfare agencies from claiming Title IV-E administrative costs for legal services provided by an attorney for a child or parent, however as a Children's Bureau Information Bulletin recently explained: [1]

> In 2019 CB issued revised and new policies that allow title IV-E agencies to claim federal financial participation (FFP) for administrative costs of independent legal representation provided by attorneys representing children in title IV-E foster care, children who are candidates for title IV-E foster care, and their parents for "preparation for and participation in judicial determinations" in all stages of foster care legal proceedings.
>
> . . .
>
> CB's policy clarification in 2019 made clear that title IV-E funds may be used for children who are candidates for title IV-E foster care and their parents and that court involvement is not required for a title IV-E agency to claim reimbursement. This is intended to provide states, tribes and territories with a tool for preventing unnecessary and traumatic family separation. Accordingly, FFP is now available for an attorney to provide legal representation and advocacy on behalf of title IV-E foster care candidates and his/her parents. This may include allowable activities prior to court involvement, including prior to the filing of a petition to remove a child.

II. Who is an eligible "candidate" for foster care?

Section 472(i)(2) [2] of the federal Social Security Act authorizes states to seek administrative costs reimbursement for a:

> child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—
>
> > (A) reasonable efforts are being made in accordance with section 671(a)(15) of this title to prevent the need for, or if necessary to pursue, removal of the child from the home; and
> >
> > (B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

Section 8.1D of the Children's Bureau *Child Welfare Policy Manual*, provides: [3]

---

[1] U.S. Dept. of Health and Human Servs., Admin. for Children & Families, Children's Bureau, ACYF-CB-IM-21-06 at 3, 10-11 (Jan. 14, 2021), available at: https://www.acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf.

[2] 42 U.S.C. §672(i)(2), available at https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section672&num=0&edition=prelim.

[3] U.S. Dept. of Health and Human Servs., Admin. for Children & Families, Children's Bureau, Child Welfare Policy Manual, §8.1D: Candidates for title IV-E foster care, at questions 2, 5, 6, 9 and 10, available at: https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=79, last visited Aug. 18, 2022.

- ***Purpose of agency's involvement with the child:*** "A candidate for foster care is a child who is at serious risk of removal from the home. . . A child may not be considered a candidate for foster care solely because the title IV-E agency is involved with the child and his/her family. In order for the child to be considered a candidate for foster care, the title IV-E agency's involvement with the child and family must be for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal."

- ***Report of abuse or neglect insufficient*:** "The fact that a child is the subject of a child abuse/neglect report falls far short of establishing that the child is at serious risk of placement in foster care and thus of becoming eligible for IV-E assistance." Instead, a child becomes a candidate for foster care "at a point when the state has initiated efforts to actually remove a child from his or her home or at the point the state has made a decision that the child should be placed in foster care unless preventive services are effective."

- ***Documenting candidacy***: Federal policy requires the Title IV-E agency to make the foster care candidacy determination and stipulates three acceptable methods for documenting a child's candidacy for title IV-E foster maintenance payments:

  1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child.

  The decision to remove a child from home is a significant legal and practice issue that is not entered into lightly. Therefore, a case plan that sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from his/her home because the title IV-E agency believes that a plan of action is needed to prevent that removal.

  2) An eligibility determination form which has been completed to establish the child's eligibility for title IV-E foster care maintenance payments.

  Completing the documentation to establish a child's title IV-E eligibility is an indication that the title IV-E agency is anticipating the child's entry into foster care and that s/he is at serious risk of removal from home. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home. Evidence of AFDC eligibility in and of itself is insufficient to establish a child's candidacy for foster care.

  3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

  Clearly, if the title IV-E agency has initiated court proceedings to effect the child's removal from home, s/he is at serious risk of removal from the home.

- ***Periodic Reviews***: If a child is not removed from the home, the Title IV-E agency must redetermine at least every six months that (1) the child remains at imminent (serious) risk of removal from the home; and (2) either the agency is making reasonable efforts to prevent the child's removal from the home or the agency is pursuing removal of the child through a court action.

- ***Note regarding Family First:*** The federal candidacy definition used to determine whether a Title IV-E agency may claim administrative costs of independent legal representation is separate and distinct from the definition of "candidate for foster care" that Maine has adopted to determine eligibility for prevention services under the Family First prevention Services Act (FFPSA).[4]

III. What types of pre-petition legal services are reimbursable?

- ***Attorney advocacy related to the child welfare case***. Section 8.1B of the *Child Welfare Policy Manual* provides that the Title IV-E agency may "claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home."[5]

  The Children's Bureau's Technical Bulletin, *Frequently Asked Questions Independent Legal Representation*, lists examples of "allowable administrative activities" for independent attorneys preparing for and participating in all stages of foster care legal proceedings, including: independently investigating the facts of the case; meeting with clients; home or school visits; attending case planning meetings; preparing briefs, memos and pleadings; obtaining transcripts; interviewing and preparing clients and witnesses; maintaining files; presenting the case at the hearing; appellate work; and supervising other attorneys, paralegals, investigators, peer partners or social workers who are supporting the independent attorney in preparing for the foster care legal proceedings. [6]

- ***Multidisciplinary team***: Section 8.1B of the *Child Welfare Policy Manual* also authorizes a Title IV-E agency to claim Title IV-E administrative costs of paralegals, investigators, peer partners or social workers to the extent that those professionals' services are "necessary to support an attorney providing independent legal representation" as described above.[7]

- ***Ancillary civil legal advocacy***: A recent Children's Bureau Information Bulletin suggests that the Title IV-E agency may also be able to claim FFP for administrative costs of independent legal

[4] The definition of a "candidate for foster care" that the Office of Child and Family Services within the Maine Department of Health and Human Services has developed for purposes of the Family First Prevention Services Act (FFPSA) is available online here: https://www.maine.gov/dhhs/ocfs/data-reports-initiatives/system-improvements-initiatives/families-first-prevention-act/candidacy.

[5] U.S. Dept. of Health and Human Servs., Admin. for Children & Families, Children's Bureau, Child Welfare Policy Manual, §8.1B: Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program, at question 30, available at https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36, last visited Aug. 18, 2022.

[6] U.S. Dept. of Health and Human Servs., Admin. for Children & Families, Children's Bureau, Technical Bulletin, Frequently Asked Questions: Independent Legal Representation at 3 (July 20, 2020), available at, https://www.acf.hhs.gov/cb/training-technical-assistance/technical-bulletin-faqs-independent-legal-representation.

[7] Child Welfare Policy Manual, §8.1B: Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program, supra note 5, at question 32.

representation for children who are candidates for foster care and their parents regarding civil legal issues that help preserve family integrity: [8]

> Families that make contact with the child welfare system are often in the midst of or recovering from familial, health, or economic challenges or crises. This may include loss of employment, inadequate income, unstable housing or homelessness, food insecurity, mental health and/or substance misuse disorder, and intimate partner violence. Such obstacles and crisis can impede a family's ability to provide a safe and stable environment for their children and may increase the likelihood of contact with the child welfare system. Civil legal representation to address such issues can be preventative and serve as an effective tool to preserve family integrity and promote well-being.
>
> Title IV-E agencies are encouraged to consider using state, local and tribal funds, including title IV-E reimbursement dollars received for independent legal representation to expand representation to include civil legal issues. Investing reimbursement dollars in civil legal advocacy is a strategy to expand the scope of independent legal representation beyond foster care proceedings. The replacement of funds currently sourced 100% from the state or tribe by title IVE FFP for allowable costs related to foster care proceedings could be a source for kick starting such additional legal services.

IV. Non-federal question: May MCILS provide legal services pre-petition?

By statute, the Maine Commission on Indigent Legal Services (MCILS) "shall work to ensure the delivery of ***indigent legal services*** by qualified and competent counsel," 4 M.R.S. §1801 (emphasis added), including in child protection cases, and MCILS's executive director shall "administer and coordinate delivery of ***indigent legal services***," §1805(3) (emphasis added). MCILS's enabling legislation defines "indigent legal services" to include "legal representation provided to . . . [a]n indigent party in a civil case in which the United State Constitution or the Constitution of Maine or federal or state law requires that the State provide representation." §1802(4).

Under Maine's Child and Family Services and Child Protection Act, indigent parents enjoy a limited right to counsel at state expense in child protection proceedings, all of which occur after DHHS files a child protection petition (with or without an *ex parte* request for a preliminary protection order):

> Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.

22 M.R.S. §4005(2); *see also* 22 M.R.S. §4002(3) (defining "child protection proceeding" to include only proceedings subsequent to the filing in court of a child protection petition, petition to terminate a parent's rights or a medical treatment petition).

Accordingly, it would be necessary to "notwithstand" the restrictions in Title 4 in any legislation proposing to implement a pre-petition legal representation program within MCILS.

[8] ACYF-CB-IM-21-06, *supra* note 1, at 12-13.

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner

Maine Department of Health and Human Services
Child and Family Services
11 State House Station
2 Anthony Avenue
Augusta, Maine 04333-0011
Tel.: (207) 624-7900; Toll Free: (877) 680-5866
TTY: Dial 711 (Maine Relay); Fax: (207) 287-5282

MEMORANDUM

TO: Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System

FROM: Todd A. Landry, Ed.D., Director

SUBJECT: Overview of Title IV-E Funding

DATE: August 18, 2022

A. Overview of Title IV-E: We have been asked to provide a high-level description of how Maine currently uses Title IV-E funds. We have located the "initiative" language below from the most recent biennial budget (Luke Lazure supplied this to Lucia), which provides a high-level description. Is this a good description for us to use? Or do you have something different that would be better?

The description previously supplied to Luke Lazure relates more to specific funding accounts utilized within OCFS. OCFS would suggest that instead of the language provided to Luke the following language be used:

The IV-E Foster Care/Adoption Assistance program provides federal funding based on a state match (FMAP rate) to support the maintenance of children in foster care, foster children in independent living, and adoption assistance for children who were in foster care based on their eligibility as determined under title IV-E of the Social Security Act. The program has three primary functions with some secondary functions under each primary function umbrella:

1) *Funding to support the maintenance needs of children in foster care:* Foster care maintenance payments are payments to caregivers of eligible foster children. The federal government pays a percentage of the state payments to such caregivers (Currently 70.2% in Maine). The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

2) Funding to support IV-E administrative activities: "Administrative costs" pay for the administration and operation of the foster care system, encompassing many expenses incurred by the OCFS, such as for agency staff, buildings, administration, and related contracts. Federal financial assistance is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the Title IV-E plan. The State's cost allocation plan identifies which costs are allocated and claimed under this program.

It is important to note that States cannot claim Title IV-E matching funds for Administrative Costs for non-Title IV-E eligible children. The federal government will not pay for half the cost of representation

for all foster children and their parents but will pay for the administrative costs based on a state's proportion of foster children eligible for Title IV-E (Also known as the "Penetration" or "Claimability" rate). To calculate the full amount of federal assistance available to help pay for administrative costs, it is necessary to know the proportion of foster children who are Title IV-E eligible. Maine's penetration rate has averaged 46% in SFY 2022 thus federal participation for each $1 of costs is $0.23 (50% X 46%). Within IV-E, the cost of legal representation is considered an administrative cost.

Also included under administrative activities is training for staff and foster parents. Federal financial assistance is available at the rate of seventy-five percent (75%) for these administrative expenditures. Again, the penetration rate must be used to calculate the total Federal assistance.

3) *Title IV-E Prevention Program*: Provides an opportunity for states and tribes to receive federal funding for specific evidenced-based, trauma-informed, and time-limited mental health, substance use, and in-home parenting support services. These services are to be selected from the Title IV-E Clearinghouse and funded using Title IV-E and State funds as match at a 50% rate. Services are provided to children at *imminent risk of entering foster care* with the goal to prevent the need for removal from the home and are only available to children and families who meet the state's definition of candidacy for prevention services *after an investigation by child welfare is completed*. The Title IV-E Prevention Program was established as a result of the Family First Prevention Services Act (FFPSA), enacted as part of Public Law (P.L.) 115—123.

Title IV-E Funding Questions

1. To date, to what extent has DHHS considered or pursued receiving the IV-E funds for Legal Representation for parents of children and youth who are in foster care (in-placement) and/or children and youth who are candidates for foster care (pre-placement)?

The topic of Legal Representation for parents of children and youth who are in foster care (in-placement) and/or children and youth who are candidates for foster care (pre-placement) had been discussed in the past but was not acted on due to technical challenges associated with federal match reporting, service oversight, contract services management, and funding considerations.

2. What, if any, barriers does DHHS see to Maine receiving/using the IV-E funds for Legal Representation parents of children and youth who are in foster care or who are candidates for foster care?

The most significant barrier to receiving and using IV-E funds for legal representation stems from the fact that OCFS does not pay for these services directly. This creates technical challenges to implementing federal match claiming for this service. OCFS' IV-E program is closely monitored by the federal government and subject to strict audit requirements. Any expenditures found to be out of compliance with IV-E requirements must be repaid by OCFS, even if the error in claiming does not stem from OCFS' work. Thus, OCFS would need to implement significant internal audit procedures to ensure claims are appropriate. This would also increase the administrative burden to the entity overseeing the legal services in order to track and report on costs associated with specific services at a client level for the defined population (keeping in mind that population is children, not adults who are represented by counsel in child protective matters). Audits would be conducted regularly to ensure funds are being claimed only for the specified population and only during the specific time periods of eligibility. OCFS cannot speak to the ability of MCILS to meet these requirements but does believe that were they able to meet these requirements OCFS would require additional staff to prevent errors in claiming and ensure OCFS does not incur any federal audit findings. Ultimately, any errors found on a federal audit would be the responsibility of the Department to repay, even if the issue that resulted in an erroneous claim was on the provider's side.

3. To claim Title IV-E Legal Representation costs, ACYF-CM-IM-21-06 indicates that a state IV-E agency needs to submit an amendment to the state Public Assistance Cost Allocation Plan (PACAP). What is the process for the submission and approval of a PACAP amendment? What is the time frame required for such an amendment? What would be the quickest that could be accomplished?

An amendment to the state's Title IV-E Plan would be required for any changes in claiming of Title IV-E funds. This process would take at least six months to complete and would require:

- Changes to the existing Title IV-E State Plan
- Obtaining approval from the Governor (required by federal authorities)
- Obtaining approval from the Federal Administration for Children and Families (ACF) (OCFS has no control over this part of the process).

Subsequent to ACF's approval of the State Plan amendment, the State would then make a request to amend the PACAP to allow for any changes in claiming. Approval of PACAP amendment can take up to a year. OCFS could begin claiming against this amendment immediately upon submission but would do so at significant risk as the amendment could be denied and the Department would be responsible for repaying all federal funding distributed on claims under the proposed amendment.

4. What Legislative actions and/or statutory changes would be necessary for DHHS to be able to use the IV-E funds for the purposes of the pilot program – i.e., to provide pre-placement legal representation to parents of children and youth who are candidates for foster care?

Before Maine can claim any new Title IV-E expenses, the requirements outlined under question three, above must be met. Beyond the ACF approval of the amended State Plan and PACAP, the infrastructure needed to implement and maintain a program would require funding in the budget. Claims for costs associated with legal representation are considered administrative costs, based on Maine's penetration rate of 46% in SFY 2022 the rate of federal participation for each $1 of costs incurred by the state is $0.23 (50% of 46). OCFS would also require additional staff in order to address the challenges outlined in the response to question two.

OCFS cannot speak to the legislative actions and/or statutory changes that might be necessary in order for MCILS and the Maine Judicial Branch to implement such a pilot program.

5. Can you provide the most recent data DHHS has on the percentage of all children in foster care in Maine who are IV-E eligible (the "coverage rate")?

SFY	Average "Coverage" Rate
2022	48%
2021	46%
2022	46% (YTD)

Note: National average is approximately 50%.

C. "Candidate" for Foster Care Definition Questions

1. What is the definition of "candidate" for foster care that applies when determining eligibility for federal financial participation (FFP) for administrative costs under 445 C.F.R. §1356.60(c)—put differently, what is the definition of "candidate" for foster care that would apply if Maine seeks Title IV-E administrative costs reimbursement for the pre-petition legal representation pilot program the Commission is tasked with designing:

a. Does the Maine definition of "candidate for foster care" for purposes of the Family First Prevention Services Act (FFPSA) apply—*i.e.*, the child must be:

- **A child who is a victim of maltreatment in which safety and risk factors can be mitigated by the provision of in-home services and is able to safely remain at home with a child-specific Prevention Plan.**
- **Pregnant and parenting youth in foster care.**
- **Children who have exited foster care through reunification, guardianship, or adoptions and may be at risk of re-entry.**
  ***See* https://www.maine.gov/dhhs/ocfs/data-reports-initiatives/system-improvements-initiatives/families-first-prevention-act/candidacy**

Or, is that Maine definition of "candidate" specific to Maine's FFPSA services?

b. Alternatively, does the federal definition on a "candidate for foster care" for general Title IV-E funding purposes apply—*i.e.*, the child must be one who is:

- **"at serious risk of removal from the home as evidenced by the Title IV-E agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal."**
  ***See* ACYF-CB-IM-21-06 at p.10 n.40; Children's Bureau, Child Welfare Policy Manual §8.1D, question 2 (same).**

The definition of candidate for foster care as identified in bullet a. above is the definition that Maine developed as required under the Family First Prevention Services Act. This applies to eligibility for those children/families where Maine would be claiming IV-E for specific prevention services (mental health, substance use, and/or in-home skill-based parenting support). Thus, the definition in bullet a. does not apply to the services proposed under this pilot and instead the definition outlined in bullet b. is most appropriate.

If this more general federal definition applies, are you aware of any more specifics to this definition (perhaps from other federal guidance documents) that might restrict the types of families for whom the State could receive Title IV-E administrative costs FFP for providing pre-petition legal representation services?

The Informational Memorandum mentioned above indicates that the child must be *a candidate* for title IV-E foster care or *in Title IV-E foster care*. The candidate for foster care determination is made after an investigation of child abuse and/or neglect is completed by OCFS therefore making the costs associated with legal representation at the onset of an investigation ineligible for IV-E reimbursement.

The Child Welfare Policy Manual is issued by ACF, provides additional specific information about when a child may be considered a candidate for foster care (specifically, see the responses to questions 2, 6, 10, and 11 in Section 8.1.D of the Child Welfare Policy Manual). Furthermore, even if allowable federally, defining any child involved with a child welfare investigation as a candidate for foster care could have a significant impact on OCFS' goal of partnering together with families to ensure child safety and wellbeing. In fact, OCFS strives to prevent removal whenever possible, and has implemented Family First services to aid in those prevention efforts.

APPENDIX H

Public comment solicitation and written public comments received

- **Solicitation of public comment for October 3, 2022 meeting**
- **Comment from Cushman Anthony, Esq.**
- **Comment from Robert A. Bennett, Esq.**
- **Comment from Sean M. Leonard, Esq.**
- **Comment from Matthew Pagnozzi, Esq.**
- **Comment from Erika Simonson of the Maine Coalition to End Domestic Violence**
- **Comment from Lauren Wille, Esq. of Disability Rights Maine**
- **Comment from the Family Law Advisory Commission**
- **Comment from Kim (no last name given)**

Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Solicitation of Public Comment for October 3, 2022 Meeting

The Maine Legislature's *Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System* is seeking public comment. The Commission was established by legislation, known as Resolve 2021, c. 181 (or LD 1824), which you can read online at the following link: http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1357&item=3&snum=130.

Background

In Maine, an indigent parent has a statutory and constitutional right to a state-funded attorney if the Department of Health and Human Services has begun court proceedings to remove a child (or children) from the parent's home based on its investigation of an allegation of abuse or neglect. This Commission was created to design a pilot program to provide free legal assistance to low-income parents or custodians earlier in the process: possibly as soon as when the department opens an investigation or safety assessment in response to a report of suspected abuse or neglect.

When it has finished its work, the Commission will send its recommendations for designing the pilot project to the Legislature. The Legislature will then decide whether to proceed with the pilot project.

Public Comments requested for Meeting on Monday, October 3, 2022:

The Commission is seeking public comments on the following questions:

1. *What type of legal assistance would be most useful to parents when the department is investigating a report of potential abuse or neglect?*
    a. Should the legal assistance focus on helping parents understand their rights during the investigation and in negotiating with the department to try to reach a solution that prevents the need to remove the child?
    b. **And/or**, should the free legal advice focus on other legal issues, such as: housing issues; DV issues; custody/guardianship issues; or other legal problems?
2. *Because this is a pilot project, we have to decide how to focus the assistance: What population would most benefit from this type of legal support?* For example,
    a. Is there a particular type of situation the pilot project should focus on?
        i. For example, pregnant mothers who have a substance use disorder, situations of domestic violence, housing instability, immigration etc.?
    b. Or, do you think it is better for the pilot project to focus on helping all low-income parents who are subject to an investigation in a single geographic area of the State? If so, what area of the State do you suggest, and why?
3. *What other ideas do you have related to this pilot project? How can this project best be designed for success?*

Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

How to provide public comments:

You may submit your comments orally at the Commission meeting scheduled to take place on October 3, 2022 or you may submit written comments or you may choose both to speak during the meeting and to submit written comments.

1. **Public comments during the October 3, 2022 meeting:** If you would like to speak during the meeting, you may attend the meeting in person in Room 228 of the State House (the AFA Committee Room) or you may attend the meeting remotely using Zoom. If you prefer to attend by Zoom, you must register in advance through the following link: https://legislature-maine-gov.zoom.us/webinar/register/WN_owpTDW7OTRmTrA8rYAqrEg.

   Depending on the number of people who want to speak at the meeting, the chairs may limit the time each person has to speak. Please remember that the commission meeting will be publicly livestreamed on the Legislature's website and a recording of the meeting will also be publicly available on the Legislature's website. For that reason, you may wish to avoid discussing any private or sensitive information that you do not want shared with the public.

2. **Written comments:** If you wish to send a written comment to the commission, please email your comment to both samuel.senft@legislature.maine.gov and janet.stocco@legislature.maine.gov **by 5:00 p.m. on Sunday, October 2nd**. Comments received after that date may not be distributed to the commission members until after the meeting.

   Please remember that all comments, documents and information you send to the commission or to commission staff are considered "public records" under Maine's Freedom of Access Act. Materials will be posted online with other materials used by the commission and will be viewable and searchable by the public.

If you have questions or require additional information, please contact the Commission's staff, Janet Stocco and Samuel Senft at janet.stocco@legislature.maine.gov and samuel.senft@legislature.maine.gov or by phone at (207) 287-1670.

Stocco, Janet

From: Cush <cush@maine.rr.com>
Sent: Wednesday, September 14, 2022 3:58 PM
To: Stocco, Janet
Cc: Senft, Samuel
Subject: Pilot program to provide legal representation to families in the Child Protective System

This message originates from outside the Maine Legislature.

Hello,

I am a retired lawyer, and I am also also a former member of the legislature from 1986 to 1992 where I served on the Criminal Justice Committee and also on the Judiciary Committee. The OPLA staff folks who worked with those committees will remember me. I have also come to Augusta to testify on behalf of the Maine Council of Churches from time to time. I am willing to come and testify to the commission that the two of you are staffing, or I could also provide some written testimony to that group. I would also happily speak by phone with either of you or to whoever is chairing that group.

When I was in law practice in Portland I frequently accepted appointments to the parents in Child Protective cases, or more frequently I accepted appointment to serve as guardian ad litem to the child or children whose welfare was the subject of the case.

In my experience, the appointment to represent a parent happens way later than it should in the process, if the attorney is going to do a good job in representing the parent or parents effectively. The case has been going on for a time, and many points have passed where a good attorney should be raising questions or asking for a delay or asking for better explanation of what is going on. Representing the parent or parents happens too late, and the attorney is quite handicapped by this fact. Exactly the same thing is true if an attorney (or a lay person) is appointed as guardian ad litem. Many times better options have come and gone by the time the appointment has been made.

It is also true that it would be well to have the appointment continue after the case is over. Some good lawyers make a point of staying in touch with their client and see how things have progressed since the legal case has closed, but there is no mechanism to make sure that happens. Are the contacts actually made with important community resources? If so, are appropriate services being provided, and are the parents following up on suggestions that the professionals have made to improve things within the family? Should alternative arrangements be better for this situation? Follow-up is really important after a case is closed, and no one outside of the Department of Human Services is doing that. Keep in mind that more likely than not the client is poor, and uneducated, and may have some resentments that interfere with effective follow through.

I have been retired from law practice for about twenty years, so my observations and experiences may have become obsolete by changes in the Department and its procedures. I recognize that, and if my help is not particularly helpful at this point, that is fine with me. Or I can drive to Augusta to share my ideas if that is appropriate, but of my ongoing health issues I am not in a position to get deeply involved.

Please let me know what if anything I might do that would be helpful. The best way to reach me is by email, or by telephone. The best number to reach me at is 847-0632, but I can also be reached by cellphone at 232-1999. Thank you.

Cushman Anthony
19 Blueberry Cove
Yarmouth

Stocco, Janet

From: Robert Bennett <rbennett@andreasen-bennett.com>
Sent: Wednesday, September 7, 2022 3:46 AM
To: Senft, Samuel; Stocco, Janet
Subject: RE: [child.ps-ip] Public comment invitation for the Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System

Follow Up Flag: Follow up
Flag Status: Completed

This message originates from outside the Maine Legislature.

As a parent's attorney I would like to provide feedback to the commission.

#1 – I believe this is a worthwhile program as I cannot even begin to count the number of cases I have had over the past 22 years where either parents have told me "Had I known . . ." or I have said "If only I could have spoken to the parents during the investigation". Too often parents will say "I know that I am not in the best position to parent my children right now, so why can I not just give custody to (a certain relative or friend) – but at that point a court-case has begun and it is too late to institute a guardianship.
#2 – I have been fortunate to having been contacted by either a DHHS caseworker, a DHHS supervisor or an AAG a handful of times asking if I would be willing to speak to a parent in the middle of an investigation. I am glad to report that in everyone of those situations, a court-case was not instituted.
#3 – it is probably not a surprise to the Commission that there is a lot of bad information out there about DHHS and their investigations. Most of the bad info comes from neighbors, friends, parents, etc. – but there is also bad information coming from attorneys who do not do Child Protective work – generally criminal defense attorneys who give the advice "do not engage".
#4 – I believe that the focus of the pilot program should be giving legal advice to custodians and parents who are being investigated by DHHS. As stated previously, I have had very good luck by just speaking to parents to explain their legal rights as well as likely steps that DHHS will take moving forward. I have also had luck "translating" for parents when dealing with DHHS and vice versa. Most parents believe that if DHHS is investigating then DHHS wants to remove custody of their children. While few assessment workers realize this perspective, and approach the parents with an authoritative manner that just feeds into the belief.
#5 – Giving other advice (i.e. DV, Substance abuse, mental health, housing, etc.) is part-and-parcel of Child Protective cases – but I do not believe that it should be the focus of the pilot program.
#6 – I believe that it would be very difficult to limit the pilot program to just one type of situation such as the examples given in this email. It is extremely rare to find a family with just one "issue". I understand that the examples given were not necessarily "real world", but please be aware that DHHS does not and cannot get involved with a pregnant mother until the baby is born – which is obviously very frustrating for particularly the families of women with know substance abuse issues . . .
#7 – I think it likely best to focus on a geographic area of the State for this pilot program – but I am not aware enough of the differences between the different areas of the State to give an opinion on where that should happen. My knee-jerk suggestion would be to provide legal assistance to those families that the assessment workers identify as being most likely to benefit from legal advice (i.e. a court-case can be avoided if only the parents would sign releases to allow the worker to access substance treatment records for the parent) – but of course taking a referral from a DHHS caseworker is fraught with issues from the perspective of the caretaker to the opportunity for abuse by the caseworker.
#8 – I believe that simple engagement with a Child Protective attorney could make a big difference with the number of Child Protective cases filed. A simple telephone conversation or attendance at a Family Team Meeting could pay big dividends – without the need to spend multiple hours with these people under investigation.

Thank you for reading this. Bob Bennett

Law Office of Robert Bennett
P.O. Box 66836
Falmouth, Maine 04105
Telephone: (207) 878-3933
Fax: (207) 878-2226

This E-mail is intended for the exclusive use of the individual or entity identified above. It may contain information, which is privileged and/or confidential under both state and federal law. If you are not the intended recipient or an agent of the recipient, you are notified that any further dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this E-mail in error, please immediately notify me by reply E-mail and delete the original E-mail without forwarding or printing a copy. Your cooperation in protecting confidential information is greatly appreciated.

From: child.ps-ip-request@lists.legislature.maine.gov <child.ps-ip-request@lists.legislature.maine.gov> **On Behalf Of** Senft, Samuel
Sent: Tuesday, September 6, 2022 4:49 PM
To: child.ps-ip@lists.legislature.maine.gov
Subject: [child.ps-ip] Public comment invitation for the Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System

Good afternoon,

The Maine Legislature's *Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System* is seeking public comment. The Commission was established by legislation, known as Resolve 2021, c. 181 (or LD 1824), which you can read online at the following link: http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1357&item=3&snum=130.

Background

In Maine, an indigent parent has a statutory and constitutional right to a state-funded attorney if the Department of Health and Human Services has begun court proceedings to remove a child (or children) from the parent's home based on its investigation of an allegation of abuse or neglect. This Commission was created to design a pilot program to provide free legal assistance to low-income parents or custodians earlier in the process: possibly as soon as when the department opens an investigation or safety assessment in response to a report of suspected abuse or neglect.

When it has finished its work, the Commission will send its recommendations for designing the pilot project to the Legislature. The Legislature will then decide whether to proceed with the pilot project.

Public Comments requested for Meeting on Monday, October 3, 2022:

The Commission is seeking public comments on the following questions:

1. *What type of legal assistance would be most useful to parents when the department is investigating a report of potential abuse or neglect?*

    a. Should the legal assistance focus on helping parents understand their rights during the investigation and in negotiating with the department to try to reach a solution that prevents the need to remove the child?

    b. **And/or**, should the free legal advice focus on other legal issues, such as: housing issues; DV issues; custody/guardianship issues; or other legal problems?

2. *Because this is a pilot project, we have to decide how to focus the assistance: What population would most benefit from this type of legal support?* For example,

    a. Is there a particular type of situation the pilot project should focus on?

        i. For example, pregnant mothers who have a substance use disorder, situations of domestic violence, housing instability, immigration etc.?

    b. Or, do you think it is better for the pilot project to focus on helping all low-income parents who are subject to an investigation in a single geographic area of the State? If so, what area of the State do you suggest, and why?

3. *What other ideas do you have related to this pilot project? How can this project best be designed for success?*

How to provide public comments:

You may submit your comments orally at the Commission meeting scheduled to take place on October 3, 2022 or you may submit written comments or you may choose both to speak during the meeting and to submit written comments.

1. **Public comments during the October 3, 2022 meeting:** If you would like to speak during the meeting, you may attend the meeting in person in Room 228 of the State House (the AFA Committee Room) or you may attend the meeting remotely using Zoom. If you prefer to attend by Zoom, you must register in advance through the following link: https://legislature-maine-gov.zoom.us/webinar/register/WN_owpTDW7OTRmTrA8rYAqrEg.

Depending on the number of people who want to speak at the meeting, the chairs may limit the time each person has to speak. Please remember that the commission meeting will be publicly livestreamed on the Legislature's website and a recording of the meeting will also be publicly available on the Legislature's website. For that reason, you may wish to avoid discussing any private or sensitive information that you do not want shared with the public.

2. **Written comments:** If you wish to send a written comment to the commission, please email your comment to both samuel.senft@legislature.maine.gov and janet.stocco@legislature.maine.gov **by 5:00 p.m. on Sunday, October 2nd**. Comments received after that date may not be distributed to the commission members until after the meeting.

Please remember that all comments, documents and information you send to the commission or to commission staff are considered "public records" under Maine's Freedom of Access Act. Materials will be posted online with other materials used by the commission and will be viewable and searchable by the public.

If you have questions or require additional information, please contact the Commission's staff, Janet Stocco and Samuel Senft at janet.stocco@legislature.maine.gov and samuel.senft@legislature.maine.gov or by phone at (207) 287-1670.

Samuel Senft, Esq., MPH
Legislative Analyst
Office of Policy and Legal Analysis
Maine State Legislature

samuel.senft@legislature.maine.gov
207-287-1670

Stocco, Janet

From: Sean Leonard <sean@aroostooklaw.com>
Sent: Friday, September 9, 2022 10:54 AM
To: Senft, Samuel; Stocco, Janet
Subject: Pilot Program to Provide Legal Representation to Families in the Child Protection System

This message originates from outside the Maine Legislature.

Good morning,

I am an attorney whose practice has many child protection cases, and I wanted to email you two about the pilot program.

1) I think any legal assistance should focus on helping parents understand their legal rights and legal options. Discussing parents' rights first.

1A) Based on my experience, I do not believe parents understand that a DHHS caseworker is a state actor there to investigate them. The parent(s) have every right to deny the caseworker entry into their home and refuse to give a statement. Far too often, parents allow the caseworkers into their homes, which helps the caseworker to see drug paraphernalia, unkempt rooms, etc. Moreover, parents provide statements to the caseworkers and submit to drug tests. By the time any attorney gets involved, the parents have already proved the Department's case for the preliminary protection order *and the jeopardy hearing*. This means parents' attorneys are playing catch up, and the best advice we can give in these situations is to tell the parents to get into services immediately. The Department should not be able to gather evidence to prove jeopardy exists before a parent is advised correctly. At the very least, the Department should have to actually work during the investigative stage before it decides to remove a child from their homes.

1B) The legal advice should focus on other legal issues too. Because I work in Aroostook County, and although we do have housing issues in child protection cases, we don't have the resources up here to adequately address housing problems. The best we can do is tell a client to apply for Section 8 and hope the wait isn't too long. Other legal issues are far more relevant to the practice in Aroostook County. First, a parent in a DV relationship needs to be advised about where they can go, what they can do to protect themselves and the child, and what they need to prove to protect themselves and the children. The Department does a terrible job of explaining that a parent can go to a DV shelter with the children, which would prevent many children from being taken from their parents. Additionally, Aroostook County's DV shelters don't have attorneys on staff or contracted, so parents seeking a PFA will fill the paperwork out. Still, they are doomed to fail at a PFA hearing. Parents aren't advised that they need to subpoena a DHHS caseworker. Parents aren't advised that a child's statement isn't admissible in court. Parents aren't informed on how to serve the abuser properly. Because parents in DV situations aren't given the proper tools to address the Department's concerns, child protection cases open up, and the Department makes an allegation against the victim for failure to protect. Additionally, parents need to be advised about guardianships. There is often a family member who has the means and ability to take care of the children if the parents are in a bad way. The children should go with someone they know while their parents get better than going into the foster care system.

2) There should not be a particular situation to focus on in this pilot program. Across all child protection cases, the most common trait parents share is that they are economically disadvantaged. The second most common trait is that the parents are under-educated. These traits go hand in hand with each other because parents lack the ability to change their unemployment or under-employment. As a result of the parents' inability to change their circumstances, they have unstable housing, will abuse drugs to self-medicate their feelings of insecurity, and resort to violence because they do not have a healthy coping mechanism developed. The pilot program will

fail in its goal if it narrows its focus to a specific demographic instead of recognizing that the biggest issue facing parents is socio-economics.

As much as I'd like Aroostook County to be a part of the pilot program, I recognize that it's impractical because of the wide geographic area parents need to cover, and we have snow six months out of the year. If I ran the project, I'd focus the efforts on Lewiston, Augusta, Bangor, and Portland in that order. This is because of the high rate of economically disadvantaged families and the population being concentrated. Parents can utilize public transportation or walk to speak with an attorney. These cities will also provide a large enough sample size to see if the pilot program shows no increase in parents' rights being protected, correlates in an increase of parents' rights being protected, or corroborates parents' rights being protected.

Best of luck

--

Sean M. Leonard, Esq., LLM
Aroostook Elder & Family Law
830 Main Street
Presque Isle, Maine
04769

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND/OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY ME IMMEDIATELY BY TELEPHONE. THANK YOU.

Stocco, Janet

From: Matthew Pagnozzi <mpaglaw@gmail.com>
Sent: Wednesday, September 28, 2022 4:18 PM
To: Senft, Samuel; Stocco, Janet
Subject: Written comments on CPS Pilot Program

This message originates from outside the Maine Legislature.

These comments are based on my experience as a Court appointed attorney for parents in Child Protection matters.

1. The Department conducts interviews with parents early in the investigative process. Despite having a DHHS handbook that, as I understand it, details policy and is supposed to be given to parents with initial contact, this handbook is not often given and if it is, the parents are not given any time to read it, nor is the section in the handbook on the right to counsel easy to find as this section is located 30+ pages into the handbook.
2. During these initial interviews by the Department, parents appear to often be given a choice of cooperating and accepting Department intervention or the Department will have to open a legal proceeding against the Parent and often parents indicate some discussion of child removal was part of that discussion.
3. Admissions made by parents without legal representation and under duress of the possibility of losing their child(ren) are then used against parents to open legal action anyway. What appears clear in several instances is that the Department had every intention of proceeding with legal action regardless of the information gathered in this interview - but that is not what is presented to parents.
4. These interviews occur with clients who occasionally have limited faculties or known disabilities, yet Department personnel conduct interviews and solicit answers without any showing of real comprehension on the part of the parent as to what is being alleged and/or what rights they actually have to cooperate. An incredibly vulnerable segment of clients. Additionally, the vast, and I mean vast majority of clients I am eventually assigned to represent are of low economic status - often with limited education levels as well. There can be no doubt in my experience that the clients I represent are far less likely to know their rights prior to a court appointed attorney, and even if they are aware they are not financially able to engage representation until the Department formally files a petition.

Recommendations

While I can certainly appreciate that a pilot program might want to focus on pregnant mothers or situations of domestic violence I would just like to point out that there are lots of third party organizations and support groups for such segments of our population to assist. Likewise, housing instability is rampant throughout those I serve and despite grants, programs and waitlists, there is often nothing realistically available in the way of actual assistance other than passing the buck to a case manager who likewise has no ability to assist in actually obtaining housing. A pilot program applicable to all is more likely to give a true assessment of success or failure.

The level of representation at the early stage may well only need to be requiring the Department worker to clearly explain the Parent's right to counsel before any interviews or questioning occurs and at that same time providing parents with a legal hotline number or legal representative contact person that the parent can then reach out and discuss what their rights are pre-petition. There would need to be an appropriate period of wait time (a few days should suffice) from this initial contact by the Department and any attempts at a subsequent Department interview.

Given the stark differences inherent in geographic location I would think that pilot programs should be rolled out in two separate counties - one southern and one northern.

MCEDV.
The Maine Coalition
to End Domestic Violence

101 Western Ave.
P.O. Box 5188
Augusta, ME 04332-5188
207.430.8334

October 3, 2022

Commission to Develop a Pilot Program to Provide Legal Representation
to Families in the Child Protection System (Resolve 2021, c. 181)
Senator Donna Bailey, Chair
Representative Holly Stover, Chair
c/o Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333

VIA EMAIL SUMISSION

Senator Bailey, Representative Stover and members of the Commission:

My name is Erika Simonson, Child and Family Programs Coordinator at the Maine Coalition to End Domestic Violence (MCEDV).[1] Thank you for the opportunity to provide public comment to the Commission to highlight the ways in which pre-petition legal representation for survivors of domestic abuse and violence is not only needed and likely to have significant positive impacts on outcomes for families but is also economical and highly achievable in light of existing supports and resources.

As part of its work to date, the Commission has heard about Greater Boston Legal Aid's pre-petition representation program focused on supporting domestic violence survivors, as well as the positive outcomes for families achieved through that project. Attached, please find MCEDV's recommendation to the Commission for a similar Maine-based pilot project focused on supporting domestic abuse survivors and their children in

[1] MCEDV serves a membership of eight regional domestic violence resource centers as well as the Immigrant Resource Center of Maine. Our member programs provided support and advocacy services to more than 13,000 victims of domestic violence and their children in Maine last year, including more than 1,100 survivors who were concurrently engaged in the child welfare system.

both a rural and urban area of the state. Before turning to the very practical reasons why this proposal should have the Commission's support, I'd like to first share two relevant experiences of survivors who have recently been served by our network.

During early interactions with the Office of Child and Family Services (OCFS), the first survivor-parent found herself consumed by all that is required to build a safe and stable household, independent from her former partner. As is the case for many survivors navigating an early interaction with OCFS, this included: finding a new home for her and her children, enrolling the children in a new school, initiating a divorce, shifting bills and finances into her own name, and navigating the complicated maze of public benefits that might be available to support her and the children in the short-term. All of this was happening while dealing with post-separation abusive tactics by her former partner. This survivor was desperate to prove to OCFS that there was no need to remove her children from her care just because the children's father made the choice to perpetrate abuse and violence. And then OCFS staff requested a psychological evaluation as part of their case plan. This parent had no history of mental illness, and there was no articulable reason for OCFS to conclude a psychological evaluation was a box that needed to be checked. Fortunately, this survivor was able to privately retain legal counsel to advocate with OCFS staff for a reasonable and attainable plan – a plan which did not put the burden or blame for domestic violence on the survivor, and which did not include a psychological evaluation. This survivor's access to legal representation made the difference in her ability to timely meet OCFS' expectations, have her case closed and avoid the removal of her children from her care. Unfortunately, not every parent victim has the same opportunities to access legal counsel.

The second parent-survivor did not have the same access to counsel. The early days of her interaction with OCFS created additional and ultimately, unsurmountable barriers to her efforts to keep her family intact upon leaving her abusive husband. The initial report to OCFS was made against her by her husband's family in retaliation for her separating from him and filing for divorce, a post-separation abuse tactic that is not uncommon. From the moment OCFS became involved, this survivor struggled to understand what was expected of her. Although she tried to comply with OCFS, they were never clear about their desired outcomes. A few weeks later, her children were removed from her care and placed with the very relatives who had made the report against her. Once the children were removed, the survivor started losing many of the public benefits that were critical to her stability, importantly including her housing voucher (which had been for a family apartment). And so now she had decreased means to meet the new, more rigorous expectations of OCFS as she entered the next phase of the process: trying to reunify with her children.

Over the next several months, what she described to me was a chaotic struggle: trying to stay safe from ongoing and unacknowledged abuse from her ex-husband; supporting herself with substantially reduced resources; navigating homelessness; pursuing family court litigation while her ex-husband failed to pay court ordered spousal support; interacting with multiple legal systems with which she had no experience or expertise – while four separate parent-attorneys were assigned throughout her case due to roster

MCEDV.
The Maine Coalition
to End Domestic Violence

101 Western Ave.
P.O. Box 5188
Augusta, ME 04332-5188
207.430.8334

challenges; and all of this while trying to prove to OCFS and now the court that she was a safe and stable parent for her children. This, unfortunately, is a too-common reality for so many survivors who have experienced the child welfare system.

Imagine if this survivor had the benefit of an attorney in those early days – to interpret the expectations of OCFS, to make sure she understood her rights and what she should prioritize, to advocate on her behalf with OCFS staff for support in meeting their expectations, to help retain or regain her housing and other benefits, and to pursue unpaid spousal support through the family courts on her behalf. Perhaps then she wouldn't believe that she had "lost the battle for custody before it even began."

As noted in the attached proposal, a pre-petition pilot project focused on supporting survivors of domestic abuse and violence and their children has several practical benefits. Perhaps most importantly to the project's success is that, due to an already funded statewide program which places a domestic violence advocate in each of the OCFS district offices, case management support for any pilot project attorney would be available without needing to build that cost into the project. Additionally, such a pilot project would come with an already established referral process in place. And project attorneys would have access to in-district office space, again without cost to the project.

Beyond the practicalities, this pilot project aligns with the recommendation in the 2021 Maine Child Welfare Advisory Annual report which calls for "OCFS to update its domestic abuse and violence response policies and practices to prioritize efforts to decrease children from being removed, or threatened to be removed, from non-offending parents for "failure to protect" the child from exposure to domestic violence committed against the non-offending parent by the offending parent."[2] Over the last year, MCEDV has been closely working with a team from OCFS to update OCFS' domestic violence response policy to be responsive to this recommendation and the longstanding need for a practice shift. We understand that policy is likely to be finalized in 2023. A pre-petition pilot project focused on

[2] "Annual Report 2021: Maine Child Welfare Advisory Panel," at page 14, available at: https://www.mecitizenreviewpanels.com/wp-content/uploads/2022/02/MCWAPAnnualReport2021.pdf (January 2022).

supporting domestic violence survivors would help support the effective implementation of this enhanced response – with survivor parents, project attorneys, and OCFS staff working together to help ensure the safety and stability of the survivor parent and their children.

If the survivor parent who lost her children were here today, you would hear from her, as I did, "I should have stayed. If I had known leaving and filing for divorce would result in me losing my children, before I lost everything else, I would have stayed." A parent responding to the Maine Child Welfare Advisory Panel's 2020 parent survey echoed a similar sentiment, "If people are made to feel like asking for help or calling the police is going to result in getting in trouble, then they aren't going to call for help …." Our network of advocates hears a variation of these statements from survivors across the state every day. When the systems in place to help our most vulnerable community members fail to support them in creating a safe path forward, it reinforces the fear, not only for that survivor, but for others in the community who may be experiencing abuse, that separating from the person abusing them causes more unmanageable harm than staying.

MCEDV, our member programs, and the survivors we serve are very hopeful that the Commission will agree that survivors in Maine need, and could substantially benefit from, greater access to legal representation. Such representation would lead to better and safer long-term outcomes for survivors and their children and better direct resources in the child welfare system. To help realize that outcome, our network will commit to putting forward tangible resources to support such a project. Together, we can reduce the frequency that advocates, doctors, teachers, clinicians and service providers hear from survivors, "I should never have said anything; I just should have stayed."

Thank you for the opportunity to present our perspective today. I would be happy to answer any question or provide any additional information that might be helpful to the Commission as this work to develop a pilot project continues.

MCEDV. The Maine Coalition to End Domestic Violence

Proposal for Pre-Petition Legal Representation Pilot Project

The Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System (the Commission) should recommend a geographically limited pilot project focused on providing pre-petition representation to survivors of domestic violence for many reasons, importantly including that several essential components of such a project can be supported with existing resources.

- Full-time case management and support services for child welfare involved survivors of domestic abuse and violence already exists;
- In-district, confidential meeting space for project attorneys could be provided by a local domestic violence resource center (DVRC); and
- The pilot project could utilize the long-standing referral process already in place between the Office of Child and Family Services (OCFS) and the local DVRCs.

The Commission has repeatedly heard about the importance and efficacy of not only providing legal representation to parents involved in the child welfare system prior to a petition for custody of the children being filed, but also pairing that representation with some form of case-management and support services. Member programs of the Maine Coalition to End Domestic Violence (MCEDV) work with more than 1,100 survivors each year who have concurrent involvement with Maine's child welfare system. Given this significant intersection, for more than fifteen years, federal funds have supported a full time, domestic violence child protection services advocate (DV-CPS Advocate) in each of Maine's child welfare districts. These DV-CPS Advocates are employed by the local DVRC and are embedded into the local child welfare district office in order to encourage referrals of child welfare involved families to domestic violence services with the goal of increasing the safety and stability of child welfare involved survivors and their children. The Department of Justice Office on Violence Against women recently renewed the funds for this project for another three-year period, to begin in March 2023.

MCEDV also notes the long-standing practice of OCFS staff referring all cases involving domestic abuse and violence to the local DV-CPS Advocate. Statewide, in any given year, OCFS staff refers more than 1,100 families to the DV-CPS Advocate Program. This practice is an OCFS commitment reflected in their domestic violence response policy. In the pilot-project district(s), the DV-CPS Advocate(s) would therefore be well positioned to refer parents to a project attorney in the early days and weeks of the parent's child welfare involvement and at the same time help project attorneys prioritize these referrals. That the DV-CPS Advocate(s) in the relevant district(s) would serve as both the referral source and

the case management support, without the need for the Commission to re-create process or allocate additional funds for these essential program components, underscores the utility of the Commission supporting the pre-petition legal representation pilot project focusing on survivors of domestic abuse and violence.

In constructing a project designed to serve low-income families, transportation challenges should also be a consideration. In-person meetings between any participating parent and the project attorney would be an important part of building a strong and trauma-informed relationship. To that end, the local DVRC could make confidential office space available for project attorneys. An additional benefit of co-locating a project attorney within the offices of the local DVRC is that survivors could then access services and supports through the DVRC staff at the same time and in the same location.

Project Outline:

- **Two Full Time Attorneys** – one deployed in Androscoggin County (District 3) and one deployed in Knox and Waldo Counties (District 4) (employed by the Maine Commission on Indigent Legal Services (MCILS) or alternative legal organization or law firm identified by the Commission; funded by pilot project);

  Scope of Work: Civil legal needs of the parent (including protection from abuse orders, family matters, housing advocating and litigation, etc.) as well as representation and advocacy throughout the parent's involvement with the Office of Child and Family Services ("agency advocacy");

- **Full Time DV-CPS Advocates** (one per pilot project district) – providing referrals to project attorneys as well as case management and support services to participating parents (employed and supported by the local DVRC through existing funding);

- **In-District, Confidential Office Space** (available to project attorneys by the local DVRC through existing funding);

- **Training** to project attorneys provided by (at a minimum) the Maine Commission on Indigent Legal Services and the Maine Coalition to End Domestic Violence (funded through pilot project funds);

- **Case consultation/mentoring** of project attorneys provided by MCILS (or alternative legal organization or law firm), MCEDV, and/or additional legal services organizations as needed (funded through pilot project funds).

- **Program data collection and evaluation** (to be supported through Court Improvement Project (CIP) funding).

DISABILITY RIGHTS MAINE

September 30, 2022

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System
email to: samuel.senft@legislature.maine.gov & janet.stocco@legislature.maine.gov

Re: Public Comments requested for Meeting on Monday, October 3, 2022

Dear Commission Members:

My name is Lauren Wille and I am a managing attorney at Disability Rights Maine (DRM). DRM is Maine's designated Protection and Advocacy agency for people with disabilities. We represent individuals, both children and adults, with various disabilities whose rights have be violated or who have faced discrimination on the basis of disability. Prior to beginning my work at DRM in 2017, a fair amount of my legal practice was dedicated to representing parents in Child Protection matters. I also have had training as a Guardian ad Litem, although my work in that area was more limited. Parents with disabilities are disproportionately represented in these types of matters. Thank you for the opportunity to provide these comments.

I will focus my comments on each of the questions you presented in order.

1. *What type of legal assistance would be most useful to parents when the department is investigating a report of potential abuse or neglect?*
    a. *Should the legal assistance focus on helping parents understand their rights during the investigation and in negotiating with the department to try to reach a solution that prevents the need to remove the child?*
    b. ***And/or**, should the free legal advice focus on other legal issues, such as: housing issues; DV issues; custody/guardianship issues; or other legal problems?*

Both types of legal assistance mentioned above are crucial, and I believe an attorney representing a parent who is being investigated for abuse or neglect cannot focus legal assistance on the first while ignoring the underlying reasons that are almost always

involved in Child Protection matters. When I have represented parents in the past, they have already had a great deal of interaction with the Department prior to the filing of a petition to remove the child. Not having representation earlier in the process often creates a multitude of issues that may make a child's removal from the home more likely, or, if removal is unavoidable, can make reunification efforts more difficult.

Parents who are being investigated for abuse or neglect are scared, stressed, confused, and defensive. It is difficult not to be when one is facing the prospect of losing one's child(ren). Without an advocate to represent the parent, the process can be more adversarial than it needs to be. There are times when I believe that, had an attorney been involved earlier, court proceedings or removal of the child from the home could have been avoidable. I have worked with clients who did not understand their rights, or the process, or had been outright misinformed by the time I began working with them. By this point, animosity and distrust of the Department has become deep-seated, and that can derail a parent's ability to effectively engage in reunification services. Having an advocate specifically for the parent that can play even a small role at the beginning of the process can make a huge difference in the ultimate outcome.

This is especially important for parents with disabilities. The Department is required to reasonably accommodate parents with disabilities through the investigation and subsequent process. Parents do not often know this is their right, and, more importantly, caseworkers and investigators at the Department are not always aware of this. An attorney can help ensure parents with disabilities are appropriately accommodated from the very beginning of the process. This is important because accommodating parents who need more or different type of help will lead to more successful outcomes for reunification, and that is good for families. Although Disability Rights Maine does not directly represent parents in these matters, we do regularly consult with attorneys who do to help ensure these rights are understood and can connect attorneys with training and resources.

To the second point, more often than not, issues like housing instability, domestic violence, custody/guardianship issues, substance abuse, or other legal problems are a factor in these cases. These are all issues that require long-term solutions, and in Child Protection cases, time is of the essence. The sooner a family can be connected with resources to help address these issues, the better. Earlier invention with an attorney can help connect parents to resources, and to encourage parents to utilize them.

2. *Because this is a pilot project, we have to decide how to focus the assistance: What population would most benefit from this type of legal support? For example,*
    a. *Is there a particular type of situation the pilot project should focus on?*
        i. *For example, pregnant mothers who have a substance use disorder, situations of domestic violence, housing instability, immigration etc.?*
    b. *Or, do you think it is better for the pilot project to focus on helping <u>all</u> low-income parents who are subject to an investigation in a single geographic area of the State? If so, what area of the State do you suggest, and why?*

Ideally, all low-income parents who are subject to an investigation in Maine should have court-appointed counsel as soon as an investigation is opened. Understanding that this is a pilot project, I believe it would be better to focus on a geographical region of the State rather than a particular type of situation. Because the situations underlying most Child Protection matters are complicated, they cannot be neatly grouped into categories. Domestic violence is often associated with housing instability. Substance use disorder often leads to other legal problems. A pilot project in which legal counsel were provided in only one type of situation would be difficult to administer. While I do not have an opinion on which region in particular a pilot project should focus on, it would make sense to consider the frequency of investigations, and to focus on an area of the state where the most help can be given.

3. *What other ideas do you have related to this pilot project? How can this project best be designed for success?*

Another component of the pilot project might focus specifically on parents with disabilities. As mentioned above, the State is required to accommodate parents with disabilities throughout the Child Protection process, and many stakeholders, including parents, attorneys, caseworkers, and AAGs, are often unaware of the rights individuals have under the Americans with Disabilities Act, and how that intersects with Child Protection proceedings. In addition to having attorneys involved earlier in the process, it would be helpful to have an educational component for stakeholders so that they can learn more about ways to assist clients who have disabilities to access reunification services successfully. Focusing on accommodating people with disabilities has the potential to make the process less rigid, more compassionate, and more holistic.

Children are of course harmed by abuse and neglect, and the State should do everything in its power to keep children safe. It is also better for children when they remain with, or be reunified with, their parents safely. In my extensive work with parents who have been involved in Child Protection cases, I have never once worked with a parent who intended to create unsafe circumstances for his or her children. Lack of parenting education, lack of support for parents (particularly parents with disabilities), stress, housing instability, domestic violence, substance use, legal problems, poverty, and a general lack of systemic supports for parents are often significant underlying factors. Both parents and the State have the same goal in keeping children safe, and parents may be more willing to engage in efforts to reach that common goal if they had legal advocates from the start.

Thank you for your time and consideration.

Sincerely,

L. Wille

Lauren Wille, Esq.
Managing Attorney
Disability Rights Maine

MAINE FAMILY LAW ADVISORY COMMISSION

Comments to the Maine Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System

The Maine Family Law Advisory Commission ("FLAC") hereby submits these public comments to the Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System ("Commission"). FLAC was established by the Maine Legislature to "conduct [] a continuing study of the family laws of Maine." FLAC's members "have experience in practicing family law or [are] knowledgeable about family law." Its current membership, listed below, includes State and Probate Court judicial officers, a Maine Judicial Branch employee, a public member with experience providing mental health services to children, the Executive Director of the Kids First program, and representatives of the Maine State Bar Association Family Law Section, the Office of the Attorney General, and a civil legal aid program. FLAC's duties include examining any "aspects of Maine's family law, including substantive, procedural and administrative matters, that the commission considers relevant."

FLAC is pleased that the Maine Legislature established the Commission through Resolve 2021, c. 181. FLAC regards the expansion of free legal assistance to families involved in the child protection system as an important measure that can improve outcomes for children and families. Foremost, access to legal information and advice early in the process can ensure that individuals are apprised of their rights and legal options and therefore can make informed choices when working with the Department of Health and Human Services. These choices can include measures that decrease the likelihood that the child will be removed from their home, a drastic measure that can be traumatizing for the child and often leads to costly and protracted litigation, perhaps resulting in the termination of a parent's rights. The Department has the benefit of legal representation by the Office of the Attorney General throughout every stage of the child protection process; parents and other legally responsible caregivers do not. The right to counsel for parents only attaches once a Petition is filed and often much too late for remedial (and possibly cooperative) steps to be taken to avoid litigation. The introduction of legal assistance earlier in the process will enhance the likelihood of a positive outcome for the child involved. Similarly, FLAC suggests that it is likely this intervention will also help promote systemic reforms of the child protection process.

FLAC notes that involvement in the child protection system can be exceptionally complicated and overwhelming for families, particularly because it can involve multiple statutes, systems, and government or non-profit agencies. FLAC encourages the Commission to develop a pilot project that will ensure that parents and actual or proposed custodians who cannot afford to hire an attorney will have the benefit of qualified counsel as soon as the Department opens a safety assessment or similar initial evaluation. Such counsel should be in a position to advise these individuals, not only about the Maine Child Protection Act but also about other legal measures, including petitioning for protection from abuse and minor guardianship, as well as non-legal measures that can address potential risks to the child while preserving the child's parental and kinship relationships to the extent safely possible. FLAC further notes that the causes of child abuse are complex and varied, though poverty is clearly a contributing factor.

Currently the system requires some of Maine's most vulnerable parents to navigate the complexities of the system by themselves until it is too late to positively impact the outcome for the child.

While FLAC is not taking a position at this time about the specific design of the pilot program, it is glad to serve as a resource for the Commission as it carries out the duties described in Resolve 2021, c. 181. FLAC may provide public comments once the Commission's recommendations are presented in legislature for the First Regular Session of the 131st Legislature.

Dated: October 1, 2022

Respectfully submitted:
Maine Family Law Advisory Commission

Hon. E. Mary Kelly, District Court Judge (Chair)
Hon. Wayne Douglas, Superior Court Justice
Hon. Steven Chandler, Family Law Magistrate
Hon. Libby Mitchell, Probate Court Judge
Franklin L. Brooks, Ph.D., LCSW
Edward S. David, Esq.
Diane E. Kenty, Esq., Maine Judicial Branch, CADRES
Catherine Miller, Esq.
Timothy E. Robbins, Esq., Executive Director, Kids First Center
Linsey Ruhl, Esq., Pine Tree Legal Assistance
Debby Willis, Esq., Office of the Attorney General

TO:
FROM: Kim
DATE: 10/01/2022
RE: PFR LD1824

hello folks,

Yes I agree that there needs to be a strong focus on educating parents on their process & rights, immeidately! Especially if the parent's dont agree with the reasons for the removal. Especially if they have evidence that can prove no harm & no one wants to talk about it! This is the best opportunity for the family to sort things out & avoid things that can harm their case. The children can still be removed, without any evidence at all. NO conviction!

Yes I agree that it should focus on housing, DV, custody, guardianship & other legal problems. Because, there are underlying factors contributing to the family's struggles. Another benefit is that, you could potentially reduce the number of children being harvested from families. Relieving the state's burden. The state loses $. The need for legal support is immediate.

A particular area of need? Yes, people affected by poverty. Which I agree that disadvantaged families who are struggling through chemical addiction, domestic abuse, housing issues for sure, are disadvantaged people who need this. I've reviewed 100's of parent's testimony, reading that they believe that their substantiation worker was not being 100% honest with their substantiation.

Yes, I would like to see the pilot program focus on low-income parents. I believe there are certain areas of need for focus. Lewiston, Rumford & Skowhegan are areas of elevated concern for family preservation activists. When you know your state or your town has a nick name or stereotype of being the "CPS kidnapping capitol of the world." It's a shame that leaders need to understand is a real deterrant to famlies considering moving here, when we have record high parental rights terminations with equally failed parental appeals. In other words, if you live in Maine, you might loose your child if you have an abusive ex, a messy house, child with behavioral or mental health issues, you might be poor & or have minor person issues, or if you have an ex friend or whatever, you could lose your child. And you will not have a trial by peers or due process or have a fair chance at not losing them in for the first place.

Another suggestions on how this pilot program could help?
Yes, too many to list. Because when there are over 3,000 children in custody, with very few foster homes, & around 100 youth treatment center beds, the trend shows that stripping families is more common than repairing or reunifying families. My concern here, is that the children can still be removed, without any evidence at all. Hearsay has taken over our courts, without a chance in hell of EVER getting them back! So, when we have millions of in federal $ being issued to our state every time a child is severed from their family. According to parents, without due process, without efficient representation, without any proof of of abuse. But, since no one is talking to parents or children? I've done research for 4 years that tells me there is serious lack of legal support for families & children in custody. The GAL, guardian at litem is not the child's lawyer, when they are not accurately reporting what the child expressed requests are. Families are prevented from knowing their rights to get legal representation for their child, because the are under-defended from the start, themselves. We need this thing! Please, find a way to talk to families!

I would like to see parents have a chance to get them back. I would like to see them not have to fight so hard, only to fail to get them back, when they've fullfilled all requirements.

Sincerely,

Kim
Lewiston, Maine

APPENDIX I

OCFS Child Welfare Annual Reports from 2020 and 2021
(for Oct. 3, 2022 meeting)

Child Welfare Annual Report

Calendar Year 2020

Produced by:
Office of Child and Family Services
Maine Department of Health and Human Services

INTRODUCTION

The following report provides data from calendar year 2020 related to referrals to Child Protective Services. These data include the number of reports investigated, not assigned for investigation, and various characteristics of the referrals that were assigned to caseworkers for investigation.

A referral, or report, is any written or verbal request for Child Protective Services (CPS) intervention, in a family situation on behalf of a child, in order to assess or resolve problems of suspected child abuse and/or neglect.

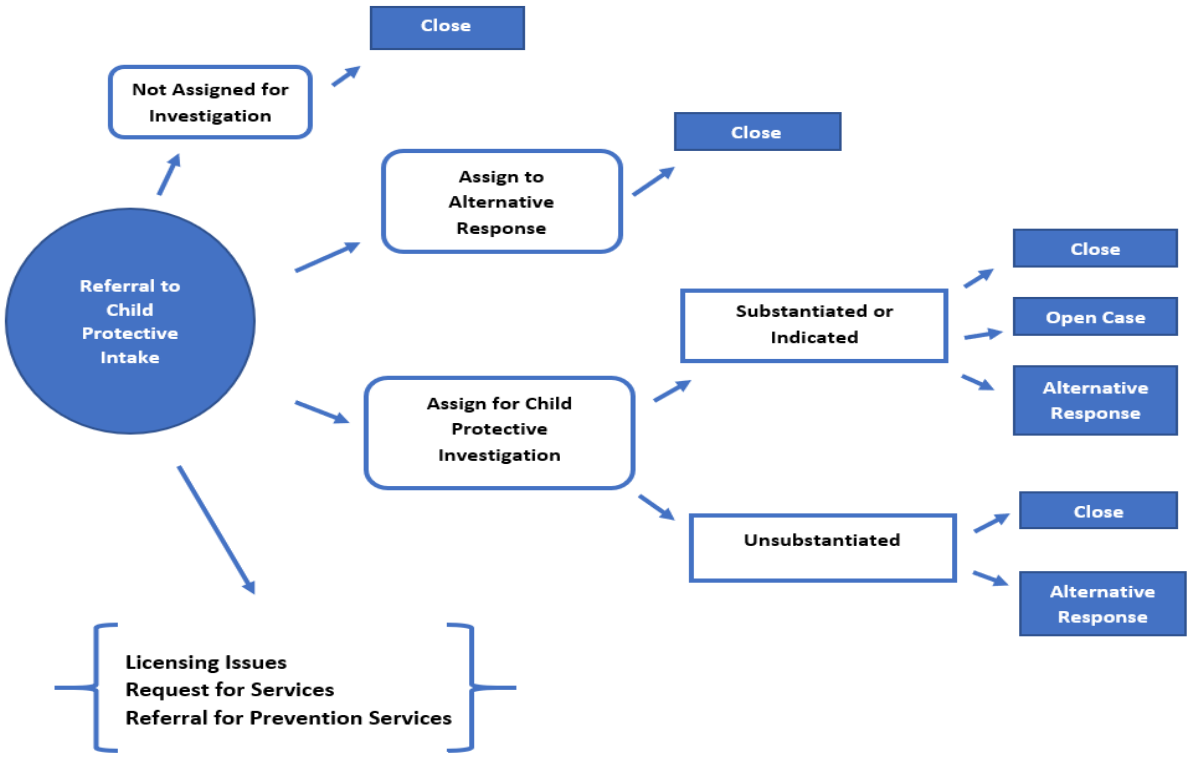
Abuse and Neglect are defined in Title 22 MRSA, Chapter 1071 as "a threat to a child's health or welfare by physical, mental, or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these by a person responsible for the child."

A glossary of child protective terms is available in the appendix of this report and on the Office of Child and Family Services' website.

INTAKE: THE FRONT DOOR OF THE CHILD WELFARE SYSTEM

All referrals to CPS and reports of alleged abuse and neglect are received by Intake where they are screened using a Structured Decision Making (SDM) tool to determine whether the allegations are appropriate for child welfare investigation and possible intervention. OCFS' involvement with nearly every child in the Department's custody began with a report to Intake.

Over the last year, significant effort has gone into conducting quality assurance reviews of the Intake process and working with Evident Change to improve the SDM tool utilized by Intake staff. Staff received training on the updates in November 2020 and they have since been implemented.



CALLS TO CHILD PROTECTIVE SERVICES

During calendar year 2020, the Department of Health and Human Services received **24,243** referrals for Child Protective Services intervention in a family situation. Most referrals are received through Child Protective Intake, though a small amount of reports are received within one of OCFS' eight District Offices. When reports are received, a decision is made regarding whether the report contains allegations of abuse and/or neglect per MRS Title 22, Chapter 1071: Child and Family Services and Child Protection Act. If the report does not contain allegations of abuse or neglect per Maine state law, the report is not assigned for investigation. When reports contain allegations of abuse and/or neglect they may be assigned for a child protective investigation or assigned to the Alternative Response Program (ARP).

Over the last few years, several high-profile cases have increased the collective awareness of Maine people regarding the child welfare system and the need to ensure all Maine children are safe. Due to this, Maine saw an increase in cases in 2018 and 2019; which was not atypical as other jurisdictions have reported a similar trend of increased calls when public awareness of child welfare has increased. However, 2020 data reflect that after the State of Civil Emergency order was issued in mid-March in response to the COVID-19 pandemic, there was a temporary decline in the number of calls to Intake, contributing to a 2% decrease in the number of reports from 2018 to 2020.

The following chart shows the number of reports received by county over the past three years. This includes reports not assigned for investigation, reports assigned for alternative response, and those assigned for a child protective investigation.

NUMBER OF REFERRALS* BY COUNTY AND CALENDAR YEAR			
COUNTY**	**2018**	**2019**	**2020**
Androscoggin	2913	2827	2525
Aroostook	1526	1905	1807
Cumberland	3131	3514	2950
Franklin	607	631	589
Hancock	735	816	809
Kennebec	2545	2837	2445
Knox	725	808	692
Lincoln	542	607	595
Oxford	1168	1471	1345
Penobscot	3458	3762	3398
Piscataquis	276	411	382
Sagadahoc	529	568	474
Somerset	1362	1376	1219
Waldo	901	881	928
Washington	640	633	581
York	3359	3360	3051
Unknown	10	142	133
Out of State	248	357	320
TOTAL	**24,675**	**26,906**	**24,243**

**Excludes reports referred to Licensing, Out of Home Investigation Unit, Service Requests, and reports received where a case was already open and the information was not a new incident.*

***County represents the county where the primary caregiver was residing at the time of the Intake referral.*

REFERRALS NOT ASSIGNED FOR INVESTIGATION

During calendar year 2020, **11,682** reports were not assigned for investigation. Some examples of such reports include:

- **Parent/child conflict:** Children and parents in conflict over family, school, friends, or behaviors, with no allegations of abuse or neglect.
- **Non-specific allegations:** May be poor parenting practice but are not considered abuse or neglect under Maine law.
- **Conflicts over custody/visitation**.
- **Families in crisis:** Due to financial, physical, mental health, or interpersonal problems, but there are no allegations of abuse or neglect.

The Department may also point referents of these reports to other available resources, such as mental health or social services supports.

The Department has published its Mandated Reporter Training on OCFS' website. This training provides guidance to mandated reporters and meets the statutory requirement that requires mandated reporters to be trained every four years.

The following is the breakdown of these reports received by county over the past three years.

NUMBER OF REPORTS NOT ASSIGNED BY COUNTY			
COUNTY*	**2018**	**2019**	**2020**
Androscoggin	1289	1185	1062
Aroostook	699	872	886
Cumberland	1508	1669	1386
Franklin	298	275	293
Hancock	328	388	380
Kennebec	1226	1340	1136
Knox	358	391	341
Lincoln	243	287	281
Oxford	522	664	576
Penobscot	1720	1888	1700
Piscataquis	135	191	199
Sagadahoc	257	267	214
Somerset	660	644	598
Waldo	440	399	444
Washington	302	275	252
York	1597	1533	1483
Unknown	10	142	131
Out of State	239	344	320
TOTAL	**11,831**	**12,754**	**11,682**

**County represents the county where the primary caregiver was residing at the time of the Intake referral.*

ALTERNATIVE RESPONSE

Through 2020, the Department maintained contracts with private agencies to provide an alternative response to reports of child abuse and neglect when the allegations are considered to be of low to moderate severity.

In 2020, **1,256** reports were assigned to a contract agency for alternative response at the time of initial report. Referrals are also made to alternative response programs at the conclusion of a child protective investigation or case with a family when ongoing services and support are deemed necessary. Beginning in 2019 and continuing through 2020, OCFS has been working to implement the Federal Family First Prevention Services Act ("Family First"), which will include the implementation of a federally-approved Maine-specific prevention plan for evidence-based services that are intended to prevent the need for further child welfare involvement with a family.

The following chart shows the number of reports assigned for alternative response at the time of the referral to Intake.

REPORTS ASSIGNED FOR ALTERNATIVE RESPONSE BY COUNTY			
COUNTY*	**2018**	**2019**	**2020**
Androscoggin	369	371	207
Aroostook	178	199	104
Cumberland	343	380	173
Franklin	81	77	51
Hancock	86	85	104
Kennebec	111	74	40
Knox	13	41	24
Lincoln	10	20	40
Oxford	148	187	103
Penobscot	182	305	202
Piscataquis	21	32	11
Sagadahoc	9	51	40
Somerset	41	11	9
Waldo	19	33	55
Washington	38	70	34
York	139	129	59
TOTAL	**1,788**	**2,066**	**1,256**

**County represents the county where the primary caregiver was residing at the time of the Intake referral. One (1) referral listed the primary caregiver's address as out of state.*

The Biennial Budget for State Fiscal Years 2022 and 2023 included funds OCFS requested to replace contracted alternative response program workers with 15 child welfare caseworkers (while the Administration proposed the 15 workers start on July 1, 2022, the Legislature passed ten workers starting on January 1, 2022 and the remainder on July 1, 2022).

REFERRALS FOR CHILD PROTECTIVE SERVICES

There were **10,616** reports involving **13,731** children assigned to a caseworker for a child protective investigation during calendar year 2020.

Although the number of reports declined in 2020, the percentage of those reports sent to the Districts for investigation has generally remained in-line with data from 2018 and 2019. This indicates that although OCFS has, at times, been receiving fewer reports, the allegations contained in those reports are generally as likely to be considered appropriate for investigation by OCFS staff. There was an increase of nearly 500 investigations (a 5% increase) between 2018 and 2020. Each investigation typically involves interviews with the family, gathering information and records, follow-up with service providers, and other collateral contacts. Conducting thorough, high-quality investigations takes time, attention, and dedication of the assigned caseworker.

OCFS uses Structured Decision Making, including a standardized tool, to analyze reports and ensure consistency as Intake staff make decisions about the allegations contained in the report. Decisions about what reports to assign for investigation are not based on the capacity (or lack thereof) of District Office staff; reports deemed appropriate for investigation are always referred to the District.

The following is the breakdown by county of reports assigned for a child protective investigation.

REPORTS ASSIGNED FOR CHILD PROTECTIVE INVESTIGATION BY COUNTY			
COUNTY*	**2018**	**2019**	**2020**
Androscoggin	1103	1131	1115
Aroostook	575	761	746
Cumberland	1195	1376	1340
Franklin	220	254	233
Hancock	295	313	314
Kennebec	1128	1322	1211
Knox	317	336	299
Lincoln	266	275	253
Oxford	434	557	615
Penobscot	1440	1417	1427
Piscataquis	107	172	167
Sagadahoc	244	232	210
Somerset	598	650	563
Waldo	394	413	408
Washington	254	245	247
York	1549	1612	1468
TOTAL	**10,119**	**11,066**	**10,616**

** County represents the county where the primary caregiver was residing at the time of the Intake referral. For families that were out of state residents, the county above is that where the incident occurred while they were in Maine.*

REFERRALS FOR CHILD PROTECTIVE SERVICES

The following is the breakdown by county and age group of the alleged victims associated with the reports assigned for a child protective investigation over the past three years.

NUMBER OF ALLEGED VICTIMS ASSOCIATED WITH REPORTS ASSIGNED FOR CHILD PROTECTIVE INVESTIGATIONS												
	2018 Age Group				2019 Age Group				2020 Age Group			
COUNTY*	***0-4***	***5-9***	***10-14***	***15-17***	***0-4***	***5-9***	***10-14***	***15-17***	***0-4***	***5-9***	***10-14***	***15-17***
Androscoggin	655	592	427	149	653	618	479	168	641	599	470	168
Aroostook	396	309	247	67	477	407	299	109	434	362	333	143
Cumberland	529	583	503	186	605	682	583	232	648	598	602	211
Franklin	126	112	80	25	156	136	127	34	107	139	119	48
Hancock	174	149	102	39	221	150	103	42	176	166	140	41
Kennebec	600	615	430	156	689	665	535	211	660	591	480	202
Knox	169	180	115	37	171	178	140	37	158	159	122	41
Lincoln	137	137	108	47	125	131	126	36	134	130	126	37
Oxford	225	235	196	67	314	282	232	90	347	292	281	116
Penobscot	854	734	532	173	786	716	549	211	794	703	543	219
Piscataquis	62	47	50	11	115	63	86	39	103	87	77	31
Sagadahoc	103	115	107	33	107	117	112	37	82	115	81	45
Somerset	300	292	313	118	325	306	333	120	291	296	241	89
Waldo	184	207	171	64	247	208	140	52	188	233	213	65
Washington	124	131	101	37	145	115	96	37	164	124	103	41
York	814	788	670	235	817	777	653	263	770	759	621	236
TOTAL	**5452**	**5226**	**4152**	**1444**	**5953**	**5551**	**4593**	**1718**	**5697**	**5353**	**4552**	**1733**

Children may be counted multiple times if more than one report was received in the year. There were 13,731 unique children in calendar year 2020.

**County represents the county where the primary caregiver was residing at the time of the Intake referral.*

The majority of children associated with reports assigned for investigation are between 0 and 10 years of age. A primary focus of OCFS and the Children's Cabinet[1] is high-quality early care and education. Accessible and available high-quality child care is considered to be one of the most effective protective factors in preventing child abuse and neglect and strengthening families. Child care is an essential part of Maine's economy, and supporting providers has been a key part of OCFS' response to COVID-19. In 2020, OCFS published regularly updated guidance for providers, and developed and implemented funding initiatives to support providers who have incurred losses or additional costs as a result of the pandemic. In 2020, Maine received nearly $11 million in Federal Child Care Development Block Grant (CCDBG) funding under the Federal CARES Act. Approximately $10 million of this funding was made available directly to child care providers through stipends and grants, while the remaining funds were

[1] The Children's Cabinet brings together the Departments of Health and Human Services, Public Safety, Labor, Education, and Corrections. The Cabinet represents a common and continuous link among different areas of state government that impact children and their families. The Cabinet continues to provide a forum for collaboration toward systemic improvements that benefit Maine's children, including any needed improvements related to mandated reporting.

used to provide qualifying essential workers with child care subsidy. An additional $8.4 million in Coronavirus Relief Funds (CRF) was made available by the Mills' Administration to support the child care industry by providing reimbursement for COVID-19 related business costs not already covered by other initiatives, grants, or programs. Maine has received over $30.5 million in CCDBG funding as a result of Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) of 2021. OCFS has announced and begun implementing its plan to invest these dollars, including over $19 million in direct grants to child care providers.

The State has also released a Child Care Plan for Maine which provides an initial outline for the Department's plans to spend over $127 million in American Rescue Plan Act funding allocated to child care.

REFERRAL SOURCE OF REPORTS

The following is a breakdown of the report source, (i.e. "Referent") for reports received. Mandated reporters are required by law to provide their name and information about their professional relationship with the family, though they can ask that their name be kept confidential from the family. The Department has published its Mandated Reporter Training on OCFS' website, which all mandated reporters are required to complete at least once every four years (see 22 M.R.S.A. §4011-A(9)).

In 2020, law enforcement and school personnel were the two most frequent reporters of suspected abuse or neglect. Over the last few years, school personnel have made up a significant portion of all reports of suspected neglect and/or abuse to OCFS' Intake Unit. Hotline call volume tends to follow a similar pattern each year, including an annual dip in reporting during times when school vacations occur. As part of the emergency order in mid-March schools were temporarily closed in the state, potentially causing a temporary decrease in the number of calls to Intake.

REFERRAL SOURCE – ALL REPORTS			
REFERRAL SOURCE	**2018**	**2019**	**2020**
Anonymous	7%	7%	8%
Child Care Personnel	1%	1%	1%
Law Enforcement Personnel	15%	15%	17%
Medical Personnel	13%	13%	14%
Mental Health Personnel	10%	9%	9%
Neighbor/Friend	4%	4%	5%
Other	0%	0%	0%
Relative	5%	5%	6%
School Personnel	22%	22%	16%
Self/Family	10%	10%	11%
Social Services Personnel	12%	13%	13%

REFERRAL SOURCE REPORTS ASSIGNED FOR CHILD PROTECTIVE INVESTIGATION			
REFERRAL SOURCE	**2018**	**2019**	**2020**
Anonymous	7%	7%	7%
Child Care Personnel	1%	1%	1%
Law Enforcement Personnel	20%	19%	21%
Medical Personnel	11%	12%	13%
Mental Health Personnel	9%	8%	8%
Neighbor/Friend	4%	4%	5%
Other	0%	0%	0%
Relative	6%	5%	5%
School Personnel	22%	22%	17%
Self/Family	8%	8%	9%
Social Services Personnel	13%	13%	13%

HOUSEHOLD TYPE/LIVING ARRANGEMENT OF FAMILIES ASSIGNED FOR CHILD PROTECTIVE INVESTIGATION

When receiving reports of suspected abuse or neglect, OCFS documents information regarding the living arrangement of each family or household. For example, a two parent, unmarried family may include a biological parent and their live-in partner who is also a caretaker to the child(ren). A one parent family is a household with a single parent caring for the children. A relative household type is when grandparents, aunt/uncle, etc. are the caregiver for a child. A non-relative household type is when children are being cared for by a person not related to them.

The following chart shows the living arrangement at the time of the receipt of the Intake report for those reports that were assigned for a child protective investigation.

LIVING ARRANGEMENT OF FAMILIES FOR REPORTS ASSIGNED FOR CHILD PROTECTIVE INVESTIGATION			
Household Type/Living Arrangement	**2018**	**2019**	**2020**
Two Parent Married	20%	19%	17%
Two Parent Unmarried	32%	33%	31%
One Parent Female	31%	31%	33%
One Parent Male	12%	13%	14%
Adoptive Home	1%	1%	1%
Relative	3%	3%	2%
Non Relative	0%	0%	0%
Other	0%	0%	0%

The data above reflect that child protective services becomes involved with families from a variety of life circumstances. There is no “typical” family our staff work with. Each investigation is different based

on the information contained in the report and that which is gathered during the investigation. When these data are considered in conjunction with the data regarding the number of investigations during 2018, 2019, and 2020 it becomes evident why it is critical that district offices have sufficient staff to complete thorough and timely investigations and make recommendations regarding services and/or further child protective involvement for the family.

A significant portion (47%) of the families investigated by child protective services in 2020 were single parent households. This statistic further reinforces the value of accessible high-quality child care to ensure that parents have the support necessary to attend work or school. Key to the accessibility of child care is the Child Care Subsidy Program (CCSP) which provides subsidy payments for child care while parents are employed or pursuing education and/or career training. OCFS, in conjunction with the Children's Cabinet, continues to focus on increasing the accessibility and quality of child care with the goal of increasing protective factors. This increase will improve the lives of Maine's children and may lead to a decrease in the need for child protective services involvement by improving family functioning.

OCFS is also devoting significant resources to implementation of the Family First Prevention Services Act, a federal law which, once implemented, will allow Maine to claim federal reimbursement for evidence-based services meant to ensure children can remain safely with their parents, avoiding the need for more intrusive child welfare involvement into a family's life. OCFS plans to fully implement Family First in October 2021.

FAMILY RISK FACTORS IDENTIFIED DURING INVESTIGATION

The following shows the percentage of substantiated or indicated investigations where one or more of the following risk factors were found during the investigation. Each investigation may have more than one risk factor (totals will exceed 100%).

RISK FACTOR	2020
Parent Caregiver Risk Factors	
Abandonment	1%
Caretaker's alcohol use	18%
Caretaker's drug use	25%
Caretaker's significant impairment - cognitive	2%
Caretaker's significant impairment - physical/emotional	8%
Death of caretaker	1%
Educational neglect	4%
Emotional or Psychological abuse	33%
Failure to return	0%
Incarceration of caregiver	3%
Medical neglect	5%
Neglect	51%
Parental immigration detainment or deportation	0%
Physical abuse	21%
Sexual abuse	6%
Voluntary relinquishment for adoption	0%

Child Risk Factors	
Child requested placement	0%
Child's accidental ingestion	0%
Child's alcohol use	0%
Child's diagnosed condition	8%
Child's drug use	1%
Child's severe behavior problem	4%
Prenatal alcohol exposure	0%
Prenatal drug exposure	4%
Runaway	1%
Sex trafficking	0%
Whereabouts unknown	0%
Family/Environmental/Other Risk Factors	
Domestic Violence	22%
Family conflict re: child's sexual orientation/gender identity or expression	0%
Homelessness	2%
Inadequate access to medical services	1%
Inadequate access to mental health services	2%
Inadequate housing	4%
Public agency title IV-E agreement	0%
Tribal title IV-E agreement	0%

The risk factors with the greatest prevalence are neglect, domestic violence, and drug/alcohol use. Within OCFS, domestic violence liaisons in each district office assist staff in navigating domestic violence-related issues in child welfare matters. OCFS also continues to partner with stakeholders throughout the child welfare system on improving the response to both domestic violence and substance use. In early 2019, the Judicial Branch held a statewide conference focused on the impact of domestic violence and substance use in child welfare cases. This training was attended by OCFS staff, Judicial Branch staff, staff from the Office of the Attorney General, Judges, Justices, Parents' Attorneys, Guardians ad Litem, and Court Appointed Special Advocates.

Issues related to children's mental and behavioral health were also noted in a significant number of investigations in 2020. These are reflected in the chart above as "Child's diagnosed condition." In 2019 the Department developed and implemented a plan to improve the Children's Behavioral Health system of care. The latest report on this work is available on the Department's website. The goals of the initiative are to increase family engagement, empowerment, and well-being; ensure children are receiving the right services at the right time and for the right duration; and allowing children to remain safely with their family. Under this plan, efforts have been undertaken to revise the waitlist process, improve coordination in transitioning services from the children's system to the adult system, and hiring a full-time on-site OCFS medical director (in early 2020, OCFS hired Dr. Adrienne Carmack as medical director).

OCFS partnered with the Children's Cabinet on several of its initiatives geared towards older youth in Maine. Specifically, OCFS has developed and implemented a training program for Maine therapists in the evidence-based Trauma-Focused Cognitive Behavioral Therapy (TFCBT) treatment program. Over 100 Maine clinicians will be trained under this program which will allow for national certification in TFCBT with the goal of increasing the availability of high-quality clinicians delivering evidence-based treatment throughout the state.

OCFS has developed a pilot of crisis aftercare services that was implemented in Aroostook County during 2020. The goal of this pilot is to study the effectiveness of high-quality aftercare services to support youth and their families as the youth transitions back to their home from a crisis stay. OCFS is seeking to determine whether aftercare services increase the percentage of children who are able to remain safely in their home after a period of crisis (versus requiring the utilization of a higher level of care like a residential treatment program or additional crisis stay), as well as providing support to parents and caregivers who are working to meet the child's needs once discharged from crisis.

COMPLETED INVESTIGATIONS

Below are outcomes for investigations completed in calendar year 2019 and 2020, showing the number of completed investigations which resulted in a finding of abuse or neglect (substantiated or indicated), or no findings (unsubstantiated).

Not every investigation that is completed results in a finding of abuse or neglect. Assessment caseworkers work diligently to meet with the family and collateral contacts, conduct interviews, and gather information and records in an effort to investigate the allegation(s) of abuse or neglect. The outcome of the investigation, whether abuse or neglect is found or not, can have a profound impact on the life of a family. Maine benefits from the leadership of a Governor and administration that recognize the impact child welfare involvement can have for a child and their family. 2020 introduced new challenges for OCFS staff; however, the department was able to successfully pivot to a remote working environment and conduct investigations via telecommunication for the first weeks of the pandemic before returning to in-person investigations.

In 2020, OCFS continued the partnership with the Muskie School of Public Service at the University of Southern Maine. The focus of this partnership is on improving OCFS' child welfare policies and trainings. Muskie staff have considerable experience in child welfare in jurisdictions throughout the country. They have been tasked with reviewing and updating policies, as well as streamlining the navigability of OCFS' policies for ease of reference. Muskie staff are also partnering with OCFS' to update the trainings available in order to maximize child welfare staff engagement and learning. This includes improvement to training for new workers, as well as ongoing trainings available for more experienced OCFS staff.

CHILD PROTECTIVE INVESTIGATION FINDINGS						
	2019			2020		
COUNTY*	Assigned	Substantiated/ Indicated	Unsubstantiated	Assigned	Substantiated/ Indicated	Unsubstantiated
Androscoggin	1131	270	861	1115	277	838
Aroostook	761	213	546	746	247	499
Cumberland	1374	258	1115	1340	257	1083
Franklin	254	81	173	233	51	182
Hancock	313	111	202	314	106	208
Kennebec	1319	345	972	1211	424	787
Knox	336	76	260	297	99	198
Lincoln	275	42	232	253	59	194
Oxford	557	155	402	615	152	463
Penobscot	1416	433	981	1427	389	1038
Piscataquis	172	55	116	167	46	121
Sagadahoc	232	48	184	210	51	159
Somerset	648	262	385	563	179	384
Waldo	413	99	312	407	136	271
Washington	245	56	188	247	80	167
York	1611	504	1106	1468	441	1027
State	**11066**	**3008**	**8058**	**10613**	**2994**	**7619**

**County represents the county where the primary caregiver was residing at the time of the Intake referral.*

INVESTIGATIONS FINDINGS RATE

The following shows the percentage of investigations completed where findings of abuse or neglect were substantiated or indicated by county for the past three years.

The findings rate has held relatively steady over the last three years with a slight upward trend, despite the significant increase in the number of investigations in 2019 and 2020. These data are an important metric in evaluating the impact that the increase in the number of investigations has had on our system. These data also indicate that while the number of reports to OCFS has increased, the share of reports deemed appropriate for investigation has appeared to stay relatively consistent.

These data are also helpful in identifying geographic areas where findings are made at a higher than average rate. Using these data, the reasons for these variances can be explored and addressed, including those which are related to geography (e.g., availability of services in a particular area).

INVESTIGATION FINDINGS RATE			
COUNTY*	**2018**	**2019**	**2020**
Androscoggin	24%	24%	25%
Aroostook	29%	28%	33%
Cumberland	21%	19%	19%
Franklin	22%	32%	22%
Hancock	36%	35%	34%
Kennebec	32%	26%	35%
Knox	18%	23%	33%
Lincoln	19%	16%	23%
Oxford	22%	28%	25%
Penobscot	28%	31%	27%
Piscataquis	25%	32%	28%
Sagadahoc	12%	21%	24%
Somerset	31%	41%	32%
Waldo	19%	24%	33%
Washington	29%	23%	32%
York	31%	31%	30%
TOTAL	**26%**	**27%**	**28%**

**County represents the county where the primary caregiver was residing at the time of the Intake referral.*

CHILD ABUSE AND NEGLECT VICTIMS BY ABUSE TYPE

The following report shows the victims by age group and type(s) of abuse found during the child protective investigation for the past three years. Children may be counted multiple times if they were the victim of more than one abuse type in a given investigation, or the victim in separate investigation during the calendar year.

2018				
AGE	**Sexual Abuse**	**Physical Abuse**	**Neglect**	**Emotional Abuse**
0-4	47	568	1180	324
5-9	95	342	772	515
10-14	107	251	567	499
15-17	56	83	132	159
Total	**305**	**1244**	**2651**	**1497**
2019				
AGE	**Sexual Abuse**	**Physical Abuse**	**Neglect**	**Emotional Abuse**
0-4	70	575	1301	357
5-9	107	418	879	566
10-14	145	274	667	563
15-17	47	101	191	164
Total	**369**	**1368**	**3038**	**1650**
2020				
AGE	**Sexual Abuse**	**Physical Abuse**	**Neglect**	**Emotional Abuse**
0-4	76	485	1230	343
5-9	99	326	887	616
10-14	140	249	681	618
15-17	47	95	189	224
Total	**362**	**1155**	**2987**	**1801**

The data reflect an 11% increase in the number of findings made from 2018 to 2020. Some of this is likely due to the significant increase in the number of investigations in 2019 and 2020, but it is also worth noting there was a 13% increase in findings of neglect, a 19% increase in the findings of sexual abuse, and a 20% increase in findings of emotional abuse from 2018 to 2020. Physical abuse decreased by 7% during this time. Of note, the finding categories of neglect and emotional abuse are those most often associated with parental substance use. For example, parents who are under the influence and are unable to provide safe and appropriate supervision of their children, resulting in neglect and/or exposure to unsafe individuals or situations, resulting in an emotional abuse finding.

The Department continues to focus resources and energy on responding to the opioid epidemic, as well as other types of substance use, across the state and ensure resources for recovery are available. Parents

who are able to successfully engage in substance use disorder treatment can eliminate one of the primary risk factors for child protective involvement in their family's life.

The Federal government recognized the impact of parental substance use on children and families and has made evidence-based services related to parental substance use one of the primary focuses of the Family First Prevention Services Act. As OCFS continues the work of implementing Family First in Maine, the agency will continue to use data to drive decision making, focusing state and federal resources on evidence-based programming likely to have the biggest impact on children and families in Maine.

CONCLUSION

The Department's ongoing work to improve the child welfare system includes collaborating with the Legislature to pursue law changes that help keep children and families healthy and safe, as well as advancing the safe and timely transitions of children out of state care, maintaining safety for children while in State care, continuing improvements in child welfare caseworker retention, increasing the number of resource (foster) homes, and advancing policy improvements and training.

Additionally, in response to emerging state and national trends, the Department has intensified its health education campaigns in response to pandemic-related challenges. Despite progress in turning the tide on the pandemic, evidence from Maine and across the country continues to suggest that people are experiencing heightened mental health and substance use issues, including parents and children. The Department has extended and broadened its StrengthenME campaign, which offers free stress management and resiliency resources to anyone in Maine experiencing stress reactions to the pandemic, and bolstered public education about how to store medications safely.

The Department also recently launched the Maine Maternal Opioid Misuse (MaineMOM) initiative, which aims to improve care for pregnant Mainers and new parents who are struggling with opioid use disorder, and implemented the first statewide free texting system to alert Maine residents to any sudden increase in overdoses in their counties and connect them with resources that can save lives, support those struggling with substance use, and promote recovery.

Appendix: Glossary of Child Welfare Terms

- **Alternative Response (ARP)** – Provides community-based intervention services or coordinates these services. ARP is designed to reduce the risk of child abuse and/or neglect by utilizing case management, counseling, substance use disorder treatment, and parenting education. ARP services are provided under contract with the Department.
- **Appropriate Report** – A report where the information alleged regarding abuse and/or neglect rises to the level of child welfare or ARP intervention.
- **Caregiver** – An adult, parent, or guardian in the household who provides care and supervision for the child.
- **Custody Case** – Ongoing Office of Child and Family Services (OCFS) involvement beyond Investigation which involves the Department obtaining custody of the children. A Custody Case is opened when the family circumstances and/or other information obtained during the Investigation indicates a need for ongoing OCFS involvement in order to ensure child safety and the concerns are serious enough to warrant court involvement.
- **District Office** – The local office housing OCFS staff within a given district. A district may have more than one office. Get more information on Districts or office locations.
- **Finding** – A decision, reached by OCFS staff based on the facts and evidence gathered during an Investigation, that a person responsible for a child has, by a preponderance of the evidence, abused or neglected a child. Findings include indicated and substantiated findings.
- **Indicated Emotional Abuse** – (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of indicated emotional abuse when:
    - The individual has been determined to be a person responsible for the child; and
    - That individual has exposed the child to circumstances, behaviors or conditions that resulted in that child demonstrating a noticeable degree of emotional impairment or distress.
- **Indicated Neglect** – (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of indicated neglect when:
    - The individual has been determined to be a person responsible for the child; and
    - That individual failed to provide essential food, clothing, shelter, care, supervision, medical and/or mental health treatment when the failure caused and/or was likely to cause a minor injury, minor illness or minor impairment in the near future that did not or would not require treatment; or
    - That individual failed to protect the child from experiencing low to moderate severity physical, sexual, emotional abuse and/or neglect caused by another person that could have been prevented; or
    - That individual has allowed or deprived a child at least 7 years of age and has not completed grade 6 to have the equivalent of 7 full days of unexcused absences or 5 consecutive days of unexcused absences during the school year when not attending school has had documentable minor impact upon the child.
- **Indicated Physical Abuse** – (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of indicated physical abuse when:
    - The individual has been determined to be a person responsible for the child; and

    - That individual caused or engaged in behavior that was likely to cause a minor physical injury to that child that did not or would not require medical attention.
- **Indication** – A decision, reached by OCFS staff based on the facts and evidence gathered during an Investigation, that a person responsible for a child has, by a preponderance of the evidence, subjected the child to low or moderate severity abuse or neglect.
- **Intake** – The unit of OCFS that receives reports of child abuse and/or neglect and determines whether reports are appropriate for investigation by OCFS, do not require investigation, or meet the requirements for another type of response (such as Alternative Response).
- **Investigation** – The process whereby Reports deemed Appropriate are assessed to ascertain if child abuse and/or neglect has occurred, make findings of child abuse and/or neglect, and determine whether further Department intervention is required to ensure child safety.
- **Maine Automated Child Welfare Information System (MACWIS)** – The system currently used by OCFS to maintain electronic records of child protective activities.
- **Mandated Reporter** – Individuals who pursuant to statute (22 M.R.S.A. §4011-A) are required to report to the Department when they know or have reasonable cause to suspect that a child has been or is likely to be abused or neglected.
- **Not Assigned for Investigation** – A report where the information alleged regarding abuse and/or neglect does not require child welfare or ARP intervention.
- **Person Responsible for a Child** – (Pursuant to OCFS policy IV.D-1 *Child Abuse and Neglect Findings*) Means a person with responsibility for a child's health or welfare, whether in the child's home or another home, or a facility which, as part of its function, provides for care of the child. It includes the child's custodian.
- **Referral** – See Report
- **Report** – A report of suspected child abuse or neglect made to OCFS' Intake unit.
- **Safety Plan** – A voluntary agreement between the child's caregiver(s) and the Department. The plan is developed to address concerns regarding child safety and wellbeing that arise during an Investigation or Case. The plan contains steps that the caregiver(s) are agreeing to take to remediate risk and ensure child safety. Generally, if a safety plan cannot be agreed upon, or if the safety plan is violated, the Department will file in court for custody of the child to ensure his or her safety and wellbeing.
- **Service Case** - Ongoing Office of Child and Family Services (OCFS) involvement beyond Investigation which does not involve the Department obtaining custody of the children. A Service Case is opened when the family circumstances and/or other information obtained during the Investigation indicates a need for ongoing OCFS involvement in order to ensure child safety, but those concerns do not rise to the level of seeking custody of the children. In Service Cases, the Department seeks to ensure that the members of the family receive services to address child safety and wellbeing concerns.
- **Substantiated Emotional Abuse** – (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of substantiated emotional abuse when:
    - The individual has been determined to be a person responsible for the child; and
    - That individual has acted in such a way as to have caused a child to experience "serious harm" (mental or emotional injury or impairment which now or in the very near future islikely to be evidenced by serious mental, behavioral or personality disorder; severe

anxiety, depression or withdrawal; untoward aggressive behavior; seriously delayed development; or other serious dysfunctional behavior); or
That individual has exposed a child to a pattern of or at least one serious incident of domestic violence. Exposure to very serious physical violence equates to high severity impact. However, in a domestic violence case, this finding can only be reached for the adult victim of the abuser when that person is a party to a child protection petition that has been filed that seeks to ensure child safety.

- **Substantiated Neglect** – (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of substantiated neglect when:
    - The individual has been determined to be a person responsible for the child; and
    - That individual failed to provide essential food, clothing shelter, care, supervision, medical and/or mental health treatment when that failure caused or was very likely to cause a serious injury, serious illness or serious impairment in the near future that required or would require treatment; or
    - That individual poses a threat of neglect based on the identification of a sign of danger supported by an analysis of available information and/or a lack of parental protective capacity; or
    - That individual has allowed or deprived a child at least 7 years of age and has not completed grade 6 to have the equivalent of 7 full days of unexcused absences or 5 consecutive days of unexcused absences during the school year and that lack of attendance has had a documentable serious impact upon the child; or
    - That individual failed to protect that child from experiencing high severity physical, sexual, emotional abuse and/or neglect caused by another person that could have been prevented.
- **Substantiated Physical Abuse** - (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of substantiated physical abuse when:
    - The individual has been determined to be a person responsible for the child; and
    - That individual caused a serious physical injury to that child that required medical attention (whether or not medical attention was actually received); or
    - That individual has engaged in confirmed conduct, past or present, that is unlikely to change in a timely manner and that created an immediate risk of serious physical injury to a child, which, if to occur, would require medical attention
- **Substantiated Sexual Abuse** – (Pursuant to OCFS Policy IV.D-1 *Child Abuse and Neglect Findings*) An OCFS Caseworker reaches a finding of substantiated sexual abuse when:
    - The individual has been determined to be a person responsible for the child; and
    - That individual had physical contact with either a child's breasts, genitals, buttocks, or other body parts in a sexualized manner or for sexual gratification; or
    - That individual had the child touch him/herself or anyone else in a sexualized manner; or
    - That individual is a convicted child sexual offender or previously substantiated sexual abuser of child/ren who has unsupervised access and/or contact with a child in contradiction of law or DHHS child safety plan and so poses a threat of sexual abuse to that child imminently; or

    - That individual who is not a convicted sexual offender or substantiated sexual abuser has engaged in confirmed sexual conduct, past or present that is unlikely to change in a timely manner and that has created an imminent threat of sexual abuse to that child; or
    - That individual created or caused to be created, or that permitted or distributed sexualized media content (e.g. photographs, videos, recordings, etc.), involving the child; or
    - That individual intentionally and purposefully subjected that child to suggestive remarks, sexualized behaviors or to a sexualized environment (including prostitution or human trafficking), that caused and/or creates a threat to that child to be sexually abused; or
    - That individual forces or encourages a child to view either adult or child pornography.
- **Substantiation** – A decision, reached by OCFS staff based on the facts and evidence gathered during an Investigation, specifically that a person responsible for a child has, by a preponderance of the evidence, subjected the child to high severity abuse or neglect.
- **Sudden Unexplained Infant Death (SUID)** – Per the U.S. Centers for Disease Control and Prevention, a term used to describe the sudden and unexpected death of a baby less than 1 year old in which the cause was not obvious before investigation. These deaths often happen during sleep or in the baby's sleep area.
- **Unsubstantiated** – A decision, reached by OCFS staff based on the facts and evidence gathered during an Investigation, that there is not enough information to conclude that a person responsible for a child has, by a preponderance of the evidence, abused or neglected a child.

Child Welfare Annual Report

Calendar Year 2021

Submitted January 4, 2022

Maine Department of Health and Human Services

Office of Child and Family Services

Introduction

Since July of 2019, the Office of Child and Family Services (OCFS) has been working to implement system improvement initiatives identified in a comprehensive evaluation of Maine's child welfare system completed in 2019. These system improvement strategies were developed with input from staff, stakeholders, and national experts. Now, over two years into implementation of these strategies, OCFS has completed several initiatives and made significant progress on the remaining items.

This work continued during the COVID-19 pandemic, although the pandemic affected both the systems that care for families as well as the families themselves, contributing to tragic child deaths in 2021. While the strategies from 2019 continue to guide many system improvement efforts, these fatalities prompted OCFS to examine policies and procedures through the lens of these specific cases to determine if additional changes could be made to support child and family safety. This work was a continuation of OCFS' commitment to child safety, permanency, and wellbeing and conducted in conjunction with Casey Family Programs and Collaborative Safety. OCFS is pleased to provide this 2021 update that reflects implementation and system improvement efforts during 2021, as well as data and information on the system as it stands today.

Fully completed items are italicized below:

Safety
- *Address Intake processes and improve staffing*
- *Re-assess the Alternative Response Program (ARP)*
- Enhance Assessment processes

Permanency
- *Develop a Permanency Review Process*
- *Monitor the Family Visit Coaching pilot to develop best practices*
- Improve Structured Decision Making (SDM) tool consistency

Well-being
- Develop family engagement tools and training
- Improve resource parent outreach and support

Staff Training and Support
- *Develop policy and training plan for new processes and tools*
- *Establish workforce wellness teams and education*
- Update caseload size, standards, and ratios
- Procure a replacement for the Maine Automated Child Welfare Information System (MACWIS)

Several of the completed initiatives have been discussed in previous reports, including the 2020 Child Welfare Annual Report, and reference is made to those prior reports. Several initiatives, including re-assessing the Alternative Response Program and policy and training improvement efforts, will be discussed in this report. Efforts to effectuate the remaining strategies are all currently in progress.

Child Fatalities

The death of any child is tragic and has lasting impacts on families, communities, and the child welfare system. OCFS is committed to working to prevent child fatalities whenever possible. Following a number of child fatalities in June 2021, OCFS bolstered its commitment to transparency by expanding its public reporting to include quarterly updates on child fatalities. These updates include new fatalities and updates to previous year data where information has been approved for release by our partners at the Office of the Attorney General (who prosecute crimes related to child fatalities). This information is available on OCFS' website and will be updated quarterly on the following dates in 2022: January 15th, April 15th, July 15th, and October 15th.

It is also important to put Maine's experience in context. Data reflect that in Federal Fiscal Year (FFY) 2019 (the most recent year for which data is available) the national rate of abuse-related child fatalities per 100,000 children was 2.5[1]. During that same period, the rate in Maine was 1.21, less than half of the national average. When the data are expanded to include all fatalities (not just those caused by abuse and/or neglect) Maine continues to fare better than the national average. In 2019, there were a total of 26 child fatalities or 14 deaths per 100,000 children in the state. During that same year there were 9,173 deaths or 16 deaths per 100,000 children nationally[2].

Those who work within this system care deeply about children and families and the recent high-profile cases involving child fatalities have been challenging for our staff and partners, our communities, and our State. OCFS will continue to seek improvements in the system focused on child safety and wellbeing and work collaboratively with staff and other child welfare stakeholders to ensure Maine is doing everything possible to protect all Maine children.

Safety Science

OCFS partnered with Casey Family Programs and Collaborative Safety to conduct a review of five child fatalities that occurred in the month of June 2021, utilizing a model based on safety science principles. Casey Family Programs is a well-respected, independent foundation with a focus on child and family safety, permanency and wellbeing. Collaborative Safety has extensive experience conducting safety science critical incident reviews with child welfare organizations across the country.

Safety science originated in safety-critical industries such as aviation, health care, and nuclear power. It takes a system approach to examine the interactions among both internal components and external structures. The process included a technical review of case information and data related to these children and their families, debriefing interviews with staff to provide insight into how and why decisions were made at critical junctures in any previous involvement with the families, and the compiling of information into a mapping of key factors that looks at all aspects of the system. A multidisciplinary team was convened to work with

Collaborative Safety Findings

- **Pandemic** - Increased workload and reduced contacts with children and families
- **Turnover** - Creates stress on completion and quality of work
- **Timeframes** - Work has expanded while timeframes have not, impacting quality
- **Standby Staffing Patterns** - Complex cases assigned to newer staff and non-investigation team members
- **Communication and Coordination with Providers** - Behavioral health providers may shield parents from child welfare at the expense of child safety
- **Difficulty Engaging Caregivers** - Unless court ordered, family engagement with child welfare is voluntary
- **Family Team Meeting Coordination** - Lack of role clarity and variation by region in practice, training, and expectations
- **Communication Between Partners (Law Enforcement and Hospitals)** - Child welfare staff may rely on child health information from law enforcement which may be limited

[1] U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2021). Child Maltreatment 2019. Available from https://www.acf.hhs.gov/cb/research-data-technology/ statistics-research/child-maltreatment.

[2] The Annie E. Casey Foundation (2021). Kids Count Data Center. Available from https://datacenter.kidscount.org/data/tables/22-child-deaths?loc=1&loct=1#detailed/1/any/false/1729,37,871,870,573,869,36,868,867,133/any/286,287

Collaborative Safety, including OCFS staff, partner agency staff, law enforcement, the Child Welfare Ombudsman, and staff of the Office of Program Evaluation and Government Accountability (OPEGA).

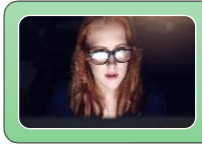
Collaborative Safety Recommendations

Work with a coalition of providers to support effective coordination with child welfare staff (e.g., supporting families, court and Family Team Meeting participation, sharing information, etc.) and address any identified barriers.

Establish joint protocol agreements between Law Enforcement, Hospitals and Child Welfare staff when there is suspected abuse or neglect to support communication and coordination.

Explore ways to support consistent practices, including role clarity and ongoing support for Family Team Meetings.

Explore ways to support engagement between parents and the child welfare system.



Continue to examine national best practices regarding standby and after-hours practices.

Examine national best practices for assessment timeframes and ensure that whatever timeframe is selected, it is compatible with the expected workload.

Conduct an analysis of current work tasks required in an assessment and remove any unnecessary and/or redundant tasks.

The final report included case-specific recommendations for each child fatality. While that information cannot be shared publicly due to confidentiality laws and the ongoing prosecutions related to several deaths, Casey Family Programs and Collaborative Safety issued a public report that outlined eight key findings (overview on p. 2).

Those findings were then used to develop recommendations (left) for tangible actions that OCFS and its partners could take to improve the safety and wellbeing of children and families who interact with the child welfare system.

OCFS has carefully reviewed these action steps and developed plans to implement each recommendation. This work began in November of 2021 when OCFS issued an updated Family Team Meeting Policy to provide clear and consistent practice expectations. This is the culmination of work that was already underway by OCFS in collaboration with the Cutler Institute at the University of Southern Maine. The final policy was reviewed by both OCFS staff and the Maine Child Welfare Advisory Panel (including the Child Welfare Ombudsman), who provided input on the content of the policy.

OCFS also convened two stakeholder groups to address communication and coordination issues among the various components of the statewide child welfare system. One group includes behavioral health professionals, OCFS staff, and legal experts who will be developing guidance for clinicians that serve patients involved in the child welfare system. This guidance is meant to improve information sharing that informs child safety-related decisions.

The second group consists of hospital representatives, law enforcement (Maine Department of Public Safety), OCFS staff, and legal experts. This group will inform the development of template protocol agreements and training to improve communication among law enforcement, medical staff, and the Department in a manner that supports child safety.

OCFS is committed to further increasing the skills of staff with regard to parent engagement. This work includes the addition of parents with lived experience in child welfare policy and training teams to ensure their perspective is understood and informs policy and training development. OCFS is partnering with the Cutler Institute on this effort to ensure programs implemented are rooted in evidence.

Concerns about standby and afterhours coverage for child welfare have been consistently reported as one of the contributing factors to staff who decide to leave OCFS. In 2021, OCFS convened a workgroup of District staff to examine these practices. That resulted in practice changes implemented in October 2021, including increasing staffing on weekends and holidays, building in flexibility in the lengths of shifts, clarifying expectations for ongoing case assignments, and better defining the roles of caseworkers and supervisors who are providing afterhours coverage. Based on the recommendation from Collaborative Safety, OCFS has reconvened this workgroup to identify further improvements. In addition, OCFS is working with Casey Family Programs to learn how other states handle afterhours coverage in the hopes that best practices from around the country may serve to further improve our own system.

OCFS is also working to examine national best practices related to assessment timeframes. This information, along with feedback from staff and stakeholders, will be used to examine the current standards and make any changes necessary to balance the need for a timely response with the ability to complete a comprehensive analysis of available data to make well-supported child safety decisions. This will also include a review of the current assessment process to identify and remove any unnecessary or redundant tasks. This review will be commenced after the implementation of OCFS' new child welfare information system, known as Katahdin.

The reviews completed by Collaborative Safety were invaluable to OCFS in 2021 and OCFS is currently in the process of implementing safety science reviews as an ongoing part of child welfare operations.

Katahdin

As Maine seeks to eliminate inefficiencies and improve processes in the work of caseworkers and supervisors, one of the most important developments in 2021 was the continued development of a new Comprehensive Child Welfare Information System (CCWIS). OCFS staff have named this new system "Katahdin."

Katahdin is scheduled to go live in early 2022. Training for key District personnel who will serve as trainers and support staff for their offices has been completed. During December and early January, child welfare staff (along with some from other areas of OCFS who will use Katahdin) will undergo intensive training to learn how to navigate the system. More specialized trainings will also be provided, including Intake, Assessment/ Investigation, Permanency, and Adoption. OCFS' current information system, the Maine Child Welfare Information System (MACWIS) is planned to go into read-only mode to coincide with the launch of Katahdin. OCFS staff and staff from the contracted CCWIS developer, Deloitte, will convert all MACWIS data into Katahdin.

Katahdin Scope

Business Functions

- CPS Intake
- Investigation and Assessment
- Case Management
- Interstate Compact for the Protection of Children
- Resource Management
- Financial Management
- Title IV-E Eligibility Determination for Foster Care, Adoption, Permanency, Guardianship, Social Security, Federal Reporting

Technical Requirements

- Integration with State's Document System - Docuware
- Federal Reporting, including AFCARS, NYTD, NCANDS, FFPSA, and Social Security
- Interfaces with required Federal and State systems
- Convert and migrate MACWIS data to CCWIS

Administration

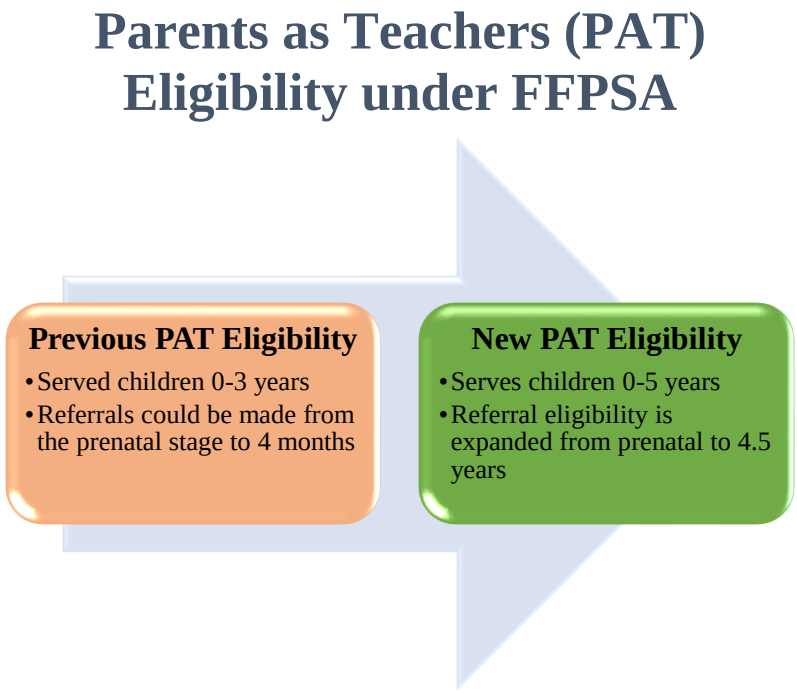
- Staff Management
- Security Management
- Document Generation and Management
- Structured Decision Making Tool Access and Storage
- Reporting and Salesforce Einstein Data Analytics Tools

Once the system goes live the project enters a new phase to further refine and improve the system, as well as add additional functionality that was not included in the initial scope of work. While these new functionalities are not key to the implementation of Katahdin, they further expand the opportunities for efficiency.

Family First

Another important development in 2021 was the approval of Maine's Family First Prevention Services Plan by the federal Administration for Children and Families (ACF). Maine was the first state in New England to have its plan approved by ACF. The plan spans five years and aligns OCFS' child welfare programs with the Federal Family First Prevention Services Act passed in 2018, enabling additional federal funds to be leveraged for Maine children. The intent of Family First is to reduce the number of children entering foster care by providing at-risk parents and families with supportive services such as mental health counseling, substance use treatment, and in-home parenting skill development. OCFS will be able to claim Federal Title IV-E reimbursement (on a 50% match basis) for the cost of providing evidence-based services to eligible families. Family First also requires participating states to improve standards for residential programs for children who require treatment for emotional or behavioral issues.

Approval of the plan and initiation of Family First in Maine, which occurred on October 1, 2021, will allow Maine to receive approximately $2.4 million more annually in federal funds for evidence-based services that have shown effectiveness in keeping children safely in their homes, negating the need for more intrusive child welfare interventions, including removal of a child from their parents' care.



Since implementation began, OCFS has been working to expand the availability of Parents as Teachers (PAT), an evidence-based home-visiting parent education program. PAT has been available in Maine for a number of years through the Maine Families Home Visitors program, but with the implementation of Family First PAT will be expanded to serve more children and families.

OCFS is also in the process of standing up an intensive family preservation and reunification program known as Homebuilders. Homebuilders serves children ages 0-17 and their families. The goal is to provide high-risk families involved with child welfare with services to remove the risk of harm to the child (instead of removing the child) and give families the chance to learn new behaviors and help them better care for their children.

Significant research has been conducted on the trauma of removal of a child from their parents. While there will always be situations in which removal is warranted, OCFS is seeking (through Family First and other initiatives) to prevent the trauma of removal and allow families to safely and effectively care for their children whenever possible. In doing so, OCFS seeks to prevent the long-term harm that removal can cause by preserving families and increasing the level of family functioning to support parenting practices that ensure child safety and wellbeing.

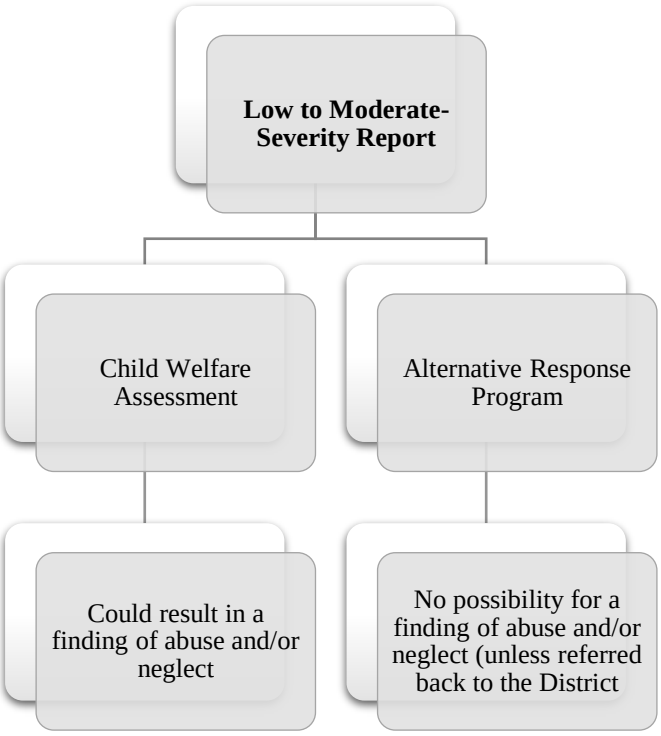
OCFS has dedicated significant time and resources to increasing education and information available to OCFS staff, providers, and families about the supportive services available to Maine families. Staff have attended a training ("Services and Supports for Maine Families"), OCFS has developed a Staff Toolkit regarding Family First, a Family Services Resource Guide is in development, and OCFS has retained Chapin Hall to conduct a small-scale gap analysis of the service array in Maine. In 2022, OCFS plan to provide training to service providers on working with families receiving child welfare services.

OCFS thanks those who have been involved in the planning and implementation efforts for Family First. Numerous providers and other stakeholders have played a critical role in development of Maine's plan and now its implementation. These include the Trauma Informed Care Committee, the Behavioral Health/Supportive Services Workgroup, and the Implementation Workgroup. OCFS was particularly fortunate to benefit from the willingness

of New Mainers, parents with lived experience in child welfare, and the Youth Leadership Advisory Team (YLAT) to participate in meetings and stakeholder groups to inform planning and implementation efforts. Additional information on the implementation of Family First is available on OCFS' website.

Contracted Services

Another development in 2021 was the decision to end the contracts for the Alternative Response Program (ARP). One of the identified strategies from 2019 was to "Re-assess the Alternative Response Program (ARP)." ARP is a longstanding service in Maine that provided a response on some low to moderate-severity reports of alleged abuse and/or neglect. When ARP received such a report, they would act much like a caseworker, meeting with the family, assessing safety, referring family members to services, etc. However, ARP lacked the authority to make findings of abuse and/or neglect.



As OCFS sought to examine and assess ARP, several concerns arose. Statute (22 MRS §4004) outlines the duties of the Department of Health and Human Services with regard to child protection. One of those duties is to, "promptly investigate all abuse and neglect cases and suspicious child deaths coming to its attention." After careful consideration OCFS determined that referring appropriate reports (even low to moderate-severity reports) to ARP was not in keeping with this duty. In addition, there were noted concerns about disparate outcomes for families based on whether their low to moderate severity report was referred to the appropriate district for investigation or ARP. ARP staff do not have the authority to make findings of abuse and/or neglect against caregivers in their work with families.

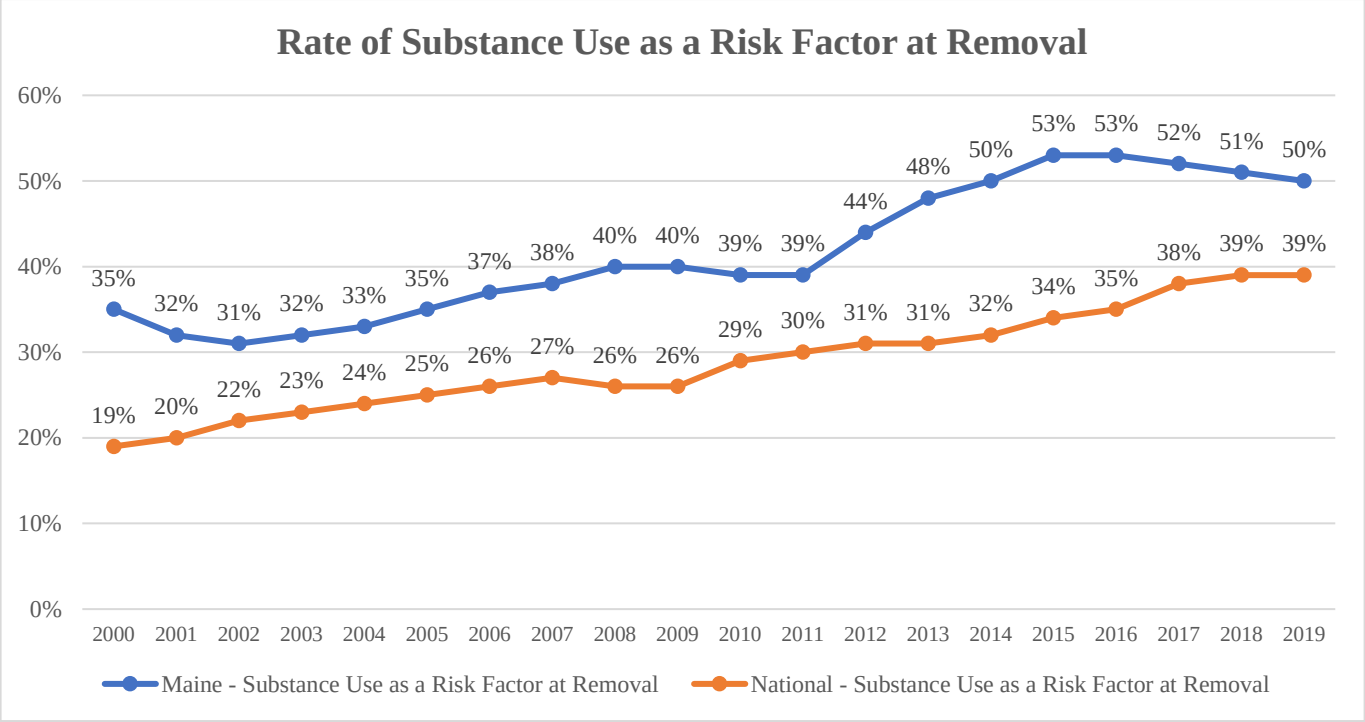
The decision to not renew the ARP contracts was announced in early 2021 with a planned end of the contracts on 12/31/21. Subsequent to that decision, the legislature extended the contracts through 6/30/22 to allow time to transition the caseload from ARP to OCFS staff. As a result of the decision to end the ARP contracts, OCFS sought and was granted 15 new caseworker positions (10 effective 1/1/22 and 5 more effective 7/1/22) in the Budget. This number of staff was based on a careful analysis of current resources. This included examination of the number of staff required to ensure each report of alleged abuse and/or neglect determined to be appropriate for assessment will be assigned to a child welfare caseworker. The first 10 lines will be effective in January of 2022 and OCFS was permitted to begin advertising and working through the hiring process in late 2021. With the announcement of the end of the ARP contracts came some difficulty among ARP providers to staff their programs through the end of the contract term. The most recent information available from the providers indicates their current vacancy rate is approximately 70%.

OCFS is also aware of significant difficulties faced by other contracted service providers as they seek to hire staff in the current job market. Providers of two key services within child welfare, transportation and supervised family visitation, report significant difficulty hiring and retaining staff. OCFS has been utilizing staff (including a significant amount of support staff time) to provide transportation and supervision for visits. OCFS is actively working with providers to address these issues.

Though DHHS and OCFS determined that response to reports of abuse and neglect are core state functions and should be addressed by staff who are part of OCFS, providers who previously supported ARP services remain integral partners in the child welfare system in other ways.

Substance Use

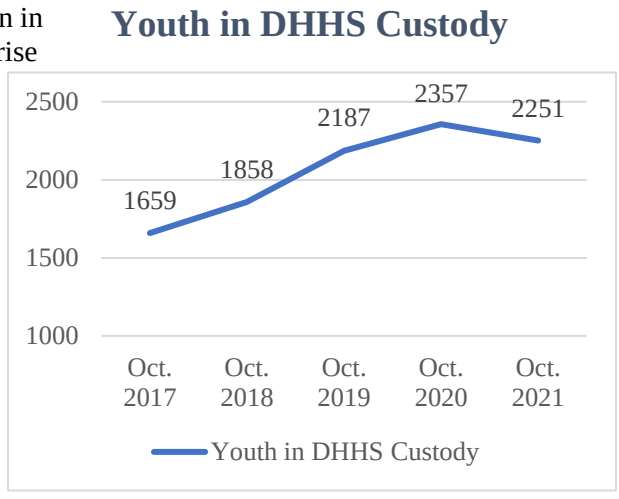
Substance use continues to be a significant factor in the lives of many families involved with child welfare. In calendar year 2020, there were 504 fatal overdoses in Maine. In that same year, substance use was a risk factor in 50% of removals by OCFS. Both the number of overdoses and the percentage of removals with substance use as a risk factor has grown since 2000.



This rise in the percentage of removals with substance use as a risk factor is also reflected in national data (as shown above). The impact of substance use and, in particular, the opioid epidemic on children and families, has been significant. Beyond removal, when substance use is a factor in a case it takes, on average, an additional three months for children to reunify with their parents when compared to those cases that do not involve substance use.

Status of Children in Care

During 2021, there was a marked decline in the number of children in care. The is particularly notable because Maine has seen a steady rise in the number of children in care over the last few years. Children should not spend more time in the custody of the State then is necessary and OCFS has dedicated significant resources in the last two years to safe and timely exits to permanency - whether that be reunification with a parent, permanency guardianship, or adoption.



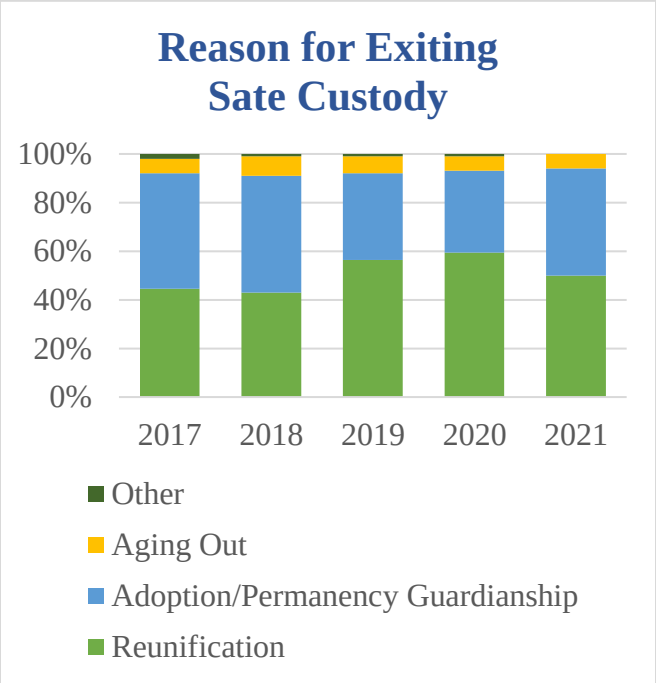
While children are in custody, OCFS has a statutory obligation to place them with family members whenever possible. National data indicates that on average nationwide around 35% of children in state custody are placed with relatives. Maine exceeds this national average with 41% of children in care placed in kinship care.

Maine also leads the nation with the lowest percentage of children in custody residing in congregate care settings. Using data from NCANDS and AFCARS the national average of the percentage of youth in custody who are in congregate care hovers around 10%. Several states exceed 15%. In Maine, only 3% of youth in custody are placed in a congregate care facility. None of these facilities is a group home (which are still used in many states). Instead, this number reflects only youth who are receiving services in residential treatment facilities due to mental health and/or behavioral health needs.

Placement Type - 2021	Percent
Relative/Kinship Care	41%
Traditional Foster Care	34%
Therapeutic Foster Care	6%
Trial Home Placement	6%
Adoption	6%
Residential	3%
Other	3%
Unlicensed-Non Relative	2%

Maine is also performing better than the national average in the area of placement stability. This metric is measured by looking at all children who entered foster care in 2020 and the rate of placement moves per 1,000 days in foster care. Maine's rate is 3.1 compared to the national average which is just over 4.

OCFS tracks the safety of children in state custody using a federal metric that looks at the rate of abuse of children while in the care of the state. The number is calculated by dividing the number of instances of abuse and/or neglect by the total number of days that all children spent in State custody. The ratio of this report is per 100,000 days spent in state custody. While the goal is always no abuse occurring, the most recent data available (October 2021) reflects that Maine's rate was 8.17, which is better than the national standard set by the federal government to monitor States' performance (8.5). In Maine, this data reflects all instances of substantiated or indicated reports of maltreatment regardless of the perpetrator, including findings made against child care providers, behavioral health providers, parents during visits or trial home placements, and resource parents.



When children in custody exit care, the majority are doing so to reunification. In FFY 2021, 50% of all exits from custody were to reunification while 44% were to adoption or permanency guardianship. This is in line with the national average regarding reunification which hovers around 50%. OCFS' goal is to reunify children with their parents whenever safely possible and the current rate of reunification is a significant increase from Federal Fiscal Years 2017 and 2018 when 45% and 43% of exits (respectively) were to reunification.

Another important metric is the time it takes for children in care to reach permanency. This is an additional area where the federal government provides a target it hopes all states will meet in terms of the percentage of youth who achieve permanency within set time frames. Over the last five years Maine has made steady progress on the first measure, Permanency in 12 Months of Removal. While Maine is not yet meeting the federal goal, FFY 2021 represents the highest achievement for Maine in the past 5 years (see table on p. 9).

The second goal reflects those achieving permanency in the second year they are in state custody. Maine has not met the federal goal in this area in the last two years. Given the high rate of removals that involve substance use and the significant amount of time it can take for a parent to successfully engage in substance use treatment and demonstrate sustained recovery, it is not surprising that while Maine's reunification rate remains in line with the national average, it is taking more time for reunification to occur. OCFS is hopeful that processes and improvements put into place in the last year will help to make progress with this metric. In particular, OCFS has implemented a Permanency Review Team (PRT) process which focuses on ensuring that children achieve safe, timely permanency within expected timeframes and that staff identify and address barriers to reunification or termination of parental rights and adoption. In addition, as part of the Program Improvement Plan, OCFS, the

Office of the Attorney General, and the Maine Judicial Branch are implementing a pilot transformational zone focused on effective engagement of parents and caregivers in the legal process.

Federal Permanency Measures	Federal Goal	Maine Metrics FFY 2017	FFY 2018	FFY 2019	FFY 2020	FFY 2021
Permanency in 12 Months of Removal Of all children who enter foster care in a target 12-mo period, percent discharged to permanency within 12 months of entering foster care.	**40.5%**	26.5%	29.0%	30.9%	26.7%	32.5%
Permanency in 12 Months for Children in Foster Care 12 to 23 Months Of all children in foster care on the first day of a 12-mo period who had been in foster care between 12 and 23 months, percent discharged from foster care to permanency within 12 months of the first day of the 12-mo period.	**43.6%**	64.4%	61.6%	50.7%	40.5%	40.6%

Policy

In 2021, OCFS continued work with the Cutler Institute at the University of Southern Maine under a Cooperative Agreement. This has resulted in several policies undergoing thorough review and updating. The OCFS process for policy development and implementation includes allowing staff to provide input and discussing policy updates with OCFS' Citizen Review Panel, known as the Maine Child Welfare Advisory Panel (MCWAP). MCWAP is comprised of a diverse group of individuals with experience in child welfare and child welfare-related disciplines, including the Child Welfare Ombudsman, parents formerly involved with child welfare, OAG staff, provider staff, and members of the Maine Judicial Branch's Family Division.

Policies updated in 2021 include:

- ✓ Interstate Compact on the Placement of Children (ICPC)
- ✓ Safe Haven Policy
- ✓ Staff Safety Policy
- ✓ Immunization Policy
- ✓ Family Team Meeting (FTM) Policy

In addition, OCFS expects to update several more policies that are in the finalization process, including:

- Human Trafficking and Commercial Sexual Exploitation of Children Policy
- Youth Transition Services Policy
- Placement with DHHS Employees Policy

This work will continue in 2022 with the goal of reviewing and updating the entire Child and Family Policy manual.

Staff Development

OCFS publishes an annual workload report in January of each year and data on workload, turnover, and other workforce related topics will be provided in that report. OCFS looks forward to being able to provide a full picture of OCFS' workforce using complete calendar year data.

OCFS has spent significant time in 2021 working to develop sustainable strategies to build and maintain a strong workforce. Chief among these are efforts to revive the Field Instruction Unit (FIU) which provides college students pursuing a degree in social work with the opportunity to work within OCFS to gain college credit, including

attending Foundations Training and undertaking other efforts to prepare them to work for OCFS upon graduation. OCFS previously had an FIU and noted that many of the staff who have stayed with OCFS and become leaders as supervisors, assistant program administrators, program administrations, and regional associate directors had started their time with OCFS in the FIU.

The FIU will provide benefits for both the students and OCFS. Students will receive college credit and a small stipend to compensate them for the work they are doing beyond that of an intern. OCFS will benefit from the assistance of these students and the availability of social work graduates with experience in child welfare. Child welfare is complex and difficult work and the FIU gives students experience to determine if child welfare is a good fit for them. OCFS looks forward to launching the FIU in 2022 with the assistance of the Cutler Institute.

Over the previous year, OCFS has also developed and implemented a system of clinical support services for child welfare staff statewide. OCFS has contracted with Spurwink to provide this service which includes ongoing support and a structured response to critical incidents which have historically had a significant impact on staff. OCFS has received positive feedback on the clinical support services from staff throughout the state.

Conclusion

Child welfare services faced a number of challenges in 2021, particularly given the ongoing impact of the COVID-19 pandemic on all Mainers, but OCFS has also made significant progress toward system improvement over the last year. OCFS continues to seek to learn from tragic child fatalities to improve the child welfare system. With the help of Casey Family Programs and Collaborative Safety, OCFS was able to view these losses through a new lens that aided OCFS in understanding what happened and why and what could be done in the future to prevent similar outcomes. This has resulted in real and actionable recommendations that OCFS is working to implement, along with the 2019 system improvement efforts.

OCFS staff are its greatest asset and supporting them is key to ensuring the safety and wellbeing of Maine children and families. Throughout 2021, child welfare staff have continued to demonstrate professionalism and incredible dedication to their work. In 2022, OCFS will continue to work to update and improve policy, maximize the potential of trainings available to staff, provide opportunities for staff to give input on improvements to the child welfare system, and ensure access to clinical support for all child welfare staff.

In 2022, OCFS is looking toward implementation of the Katahdin system in January and ongoing work to build OCFS' prevention system of care under Maine's Family First Plan. OCFS also plans to fully incorporate Safety Science into its work, allowing the agency to build a structure for critical incident reviews that will continue to inform improvements to the child welfare system in 2022 and beyond. OCFS expects COVID-19 to continue to present new and unique challenges to the work of OCFS, from the day to day work of caseworkers to the ongoing system improvement work. Despite this, OCFS will continue to work to align resources and systems to best support Maine's children and families in leading safe, stable, happy, and healthy lives.

APPENDIX J

Presentation by Jill Cohen, Colorado Office of Respondent Parents' Counsel (Oct. 3, 2022 meeting)

Colorado Office of Respondent Parents' Counsel – Preventive Legal Services Program

Pilot –2022 Jefferson County/1st Judicial District

Jill Cohen, LCSW, Program Director

Colorado Chief Justice Directive 16-02*

- ✓ High quality legal representation in court
- ✓ Practice standards for attorneys
- ✓ Observations
- ✓ Training
- ✓ Consultation
- ✓ Complaints
- ✓ Resources: Experts, Investigators, Interpreters & Social Workers/Advocates
- ✓ Pilot programs

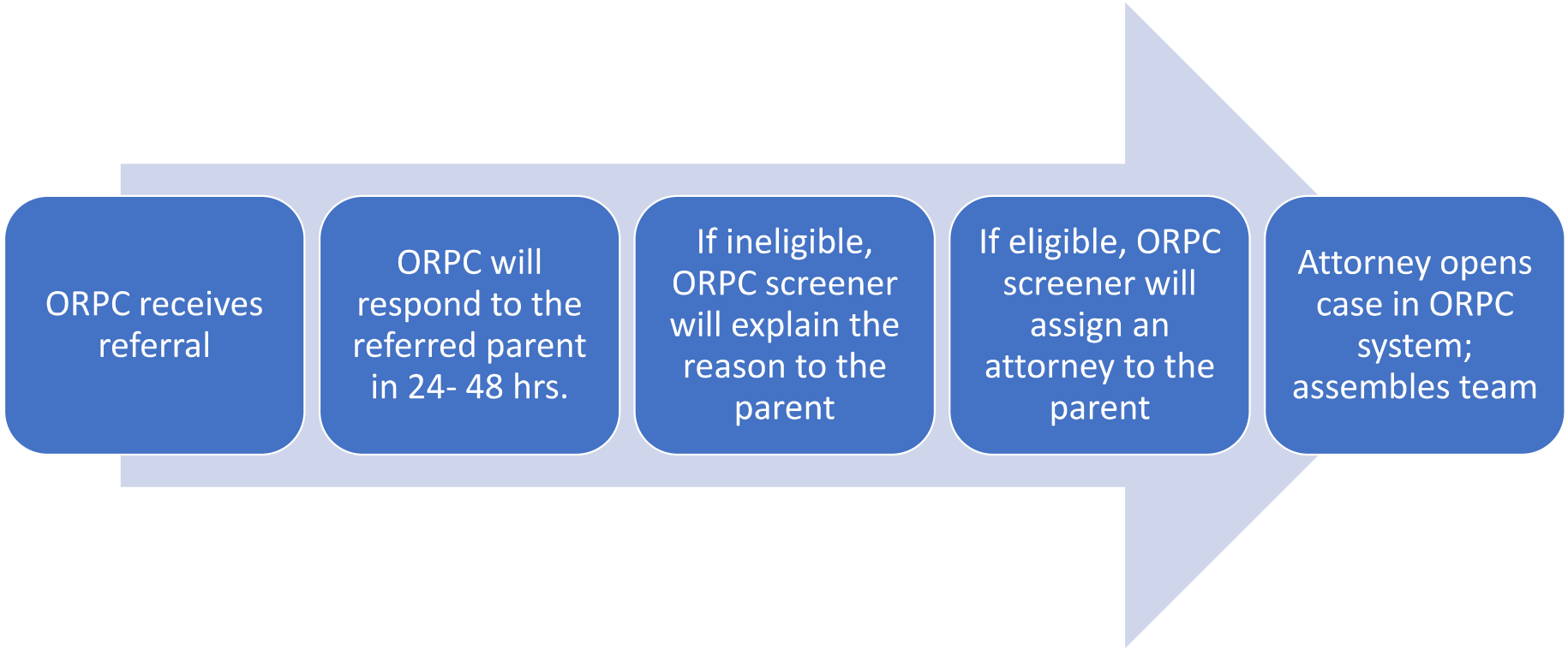
Preventive Legal Services Goals

Identify	Represent	Continuity	Population	Data
Identify families struggling with unmet legal needs impacting safety	Provide legal representation and support to keep children home safely Social work/advocacy outside of court	Continue legal representation if D&N filed	Serve 50 families in 1st year	Track referrals and outcomes Track families six months post case closing

Eligibility requirements

- Parent resides in Jefferson County
- Parent meets the indigency requires for court-appointed counsel
- Family has a current unmet legal need that is causing a child safety concern
- No Dependency & Neglect petition has been filed in court
- Parent does not have legal counsel

Referral Process



Tracking - Data

Billing system tracks how much **time** team members spend on every **in court** and **out of court activity**; ORPC database **closing screen** requires **outcomes** for each intervention.

RPPS Legal Services outcomes: select all that apply

- **Pre D&N Filing child welfare advocacy**
  - No pre D&N filing child welfare advocacy needed
  - Continued child welfare voluntary involvement without need for legal support
  - Status of child welfare involvement is unknown
  - Assisted client with removal from the child abuse registry
  - Other
- **Child welfare involvement ended, no further intervention**
  - Children remained home with parent
  - Children living with non parent
- **D&N filed**
  - **RPC continuing representation in D&N case**
    - Children remain in home
    - Children removed, non-kinship placement
    - Children removed, kinship placement
  - **RPC will not continue representation in D&N case**
    - Children remain in home
    - Children removed, non-kinship placement
    - Children removed, kinship placement

Jill Cohen, LCSW
Director of Programs
Office of Respondent Parents' Counsel
jcohen@coloradoorpc.org
intake@coloradoorpc.org
303-731-8750



OFFICE OF RESPONDENT PARENTS' COUNSEL
Protecting the Fundamental Right to Parent

Preventive Legal Services Available for Jefferson County Residents

The Office of Respondent Parents' Counsel (ORPC) is accepting referrals for indigent parents in Jefferson County whose unmet legal needs may be affecting the safety of their children.

The preventive legal services program connects parents to legal services attorneys. We want to **keep families together** by **addressing their legal problems**.

How can the ORPC help?

We can provide preventive legal services to help with

- Child welfare assessments
- Housing and eviction
- Custody and visitation
- Guardianship
- Parentage/Paternity
- Orders of protection
- Advice on a pending criminal matter
- Immigration

Who is eligible?

- Parents who live in Jefferson County
- Parents who meet low income/indigency requirements
- Parents with an outstanding legal problem that is impacting their family's safety

How can I refer a parent?

- A caseworker can refer a parent, or a parent can self-refer. If the parent is eligible, the ORPC will assign an attorney and other advocates to help.
- To refer a parent:
- Access the application here: **www.coloradoorpc.org**
- Questions about eligibility or services? Call **303.731.8770** or email: **intake@coloradoorpc.org**

APPENDIX K

Staff handouts on potential sources of federal funding (for Oct. 3, 2022 meeting)

- **Potential Sources of Federal Funding – Update**
- **Title IV-E Foster Care Program Federal Reimbursement for Pre-Petition Legal Representation (*revised and redistributed at Oct. 17, 2022 meeting*)**
- **TANF Funding for Pre-Petition Legal Representation**
- **Supplemental Funding for Civil Abuse Prevention – American Rescue Plan Act**

Potential Sources of Federal Funding – Update

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System - October 3, 2022

Funding Review

Pursuant to Resolve 2021, c.124, the Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System is established "to design a pilot program to provide legal counsel to parents or custodians as soon as the State opens a safety assessment to determine if a child is at risk of harm." The resolve provides that the pilot program design must, among other things, include "options for federal or grant funding."

Through our research, staff have explored a number of potential federal funding options, including various federal grant programs. At the August 22, 2022 meeting, the commission received presentations and materials regarding potential funding under the Title IV-E Foster Care Program and the Court Improvement Program. Since the August meeting, staff have conducted additional research regarding Title IV-E Foster Program funding, including how it is implemented in practice for pre-petition legal representation programs, and have gathered information on several additional funding options.

New and Updated Information

For the October 3, 2022 meeting, staff have information to provide the commission regarding the following three potential sources of federal funds:

1. **Title IV-E Foster Care Program** (summary and additional follow-up information),
2. **Temporary Assistance for Needy Families (TANF)** program, and
3. **American Rescue Plan Act of 2021 (ARPA)** grants under the Child Abuse Prevention and Treatment Act (CAPTA).

Please see the attached documents with additional detail on each of these three potential funding sources.

Finally, we wanted to mention a potential new grant funding option that has been proposed in the President's FY2023 budget related to civil legal services. The proposal would increase funding for the MaryLee Allen Promoting Safe and Stable Families (PSSF) program under Title IV-B. Included in the proposal is a $50 million set aside for a new grant program to provide *civil legal services to families involved in the child welfare system.*[1] Whether this funding will actually become available depends on the outcome of the FY2023 federal budget process.

[1] Congressional Research Service, Child Welfare in the President's FY2023 Budget, April 26, 2022. https://crsreports.congress.gov/product/pdf/R/R47080

Title IV-E Foster Care Program Federal Reimbursement for Pre-Petition Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation
to Families in the Child Protection System - October 3, 2022 (revised)

Background

Title IV-E of the Social Security Act authorizes federal funding of foster care, adoption assistance and other child welfare programs. The federal government reimburses States for a percentage of eligible costs of the state foster care program. The reimbursement percentage is referred to as the Federal Financial Participation (FFP) rate, or match rate. Title IV-E reimbursement is available for several categories of foster care program costs (foster care maintenance payments, trainings, etc.), including:

- ***Foster Care Administrative Costs:*** "Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the Title IV-E Plan."[i] FFP for administrative costs under Title IV-E is contingent on an approved ***Public Assistance Cost Allocation Plan (PACAP)*** that outlines the procedures to identify, measure and allocate costs to all programs administered or supervised by the State agency.[ii]

In 2019, the Children's Bureau within the U.S. Department of Health and Human Services, Administration for Children and Families newly allowed Title IV-E agencies to be reimbursed at the 50% rate for administrative costs for independent legal representation provided to parents and children.[iii]

Restrictions applicable to Title IV-E reimbursement for independent legal representation

Client	Title IV-E reimbursement is available only for independent legal representation of: [iv] • *Post-petition:* Children in Title IV-E foster care or their parents: Title IV-E eligibility is determined based on a series of statutory requirements including, but not limited to, requirements relating to the removal of the child from the home (e.g., whether there is a judicial finding that reasonable efforts were made before removal, where required); the type of foster care placement (e.g., licensing requirements), and income eligibility (e.g., child would have been eligible for aid under AFDC requirements in effect in 1996).[v] • *Pre-petition:* Children who are candidates for title IV-E foster care or their parents. A "candidate" for foster care is a child "who is potentially eligible" for Title IV-E foster care (see test above), "who is at serious risk of removal from the home," and for whom the Title IV-E agency's involvement is "for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal." ★ ***Key restriction—investigation insufficient:*** The mere investigation of a report of abuse or neglect is insufficient to satisfy the candidacy test; instead, the Title IV-E agency must have either initiated removal proceedings or "made a decision that the child should be placed in foster care unless preventive services are effective."[vi]
Professional	Reimbursement for independent legal representation is available for the costs of: [vii] • Attorneys; and • Paralegals, investigators, peer partners or social workers to the extent their services are "necessary to support an attorney providing independent legal representation."
Type of service provided	The advocacy must help the qualifying child or parent of the qualifying child "prepare for and participate in all stages of foster care proceedings." • Examples of "allowable administrative activities": independently investigating the facts of the case; meeting with clients; home or school visits; attending case planning meetings; preparing briefs, memos and pleadings; obtaining transcripts; interviewing and preparing clients and witnesses; maintaining files; presenting the case at the hearing; appellate work;

	and supervising other attorneys, paralegals, investigators, peer partners or social workers who are supporting the independent attorney in preparing for the foster care legal proceedings. [viii] ★ ***Key restriction—ancillary civil legal services:*** Although the Children's Bureau encourages[ix] Title IV-E agencies "to consider using state, local and tribal funds, including title IV-E reimbursement dollars" to provide legal advocacy to address ancillary civil legal issues — *e.g.*, housing or domestic violence issues — the administrative cost of civil legal advocacy that is not directly related to preparing for or participating in all stages of foster care legal proceedings does not qualify for Title IV-E administrative cost reimbursement. [x] ***Potential policy change:*** The Children's Bureau is considering proposing an amendment to its federal regulations that would "allow a title IV-E agency to claim Federal financial participation for the administrative cost of" both pre-petition and post-petition independent legal representation in "related civil legal proceedings."[xi]
Required procedural steps	• **Contract or MOU with independent legal provider:** Only the state Title IV-E agency may claim federal reimbursement for Title IV-E administrative costs, including the costs of independent legal representation. The Title IV-E agency may arrange for independent legal representation services to be delivered by another entity through a contract or memorandum of understanding.[xii] • **PACAP amendment**: The Title IV-E agency must amend its PACAP to include independent legal representation, identifying the type of clients for whom legal representation costs will be incurred (*e.g.*, parents of children in foster care or candidates for foster care) and describe the measures that it will employ to identify, measure and allocate those costs. [xiii]
Allocation methods	• **Option 1: Identify eligible clients:** Theoretically, a state could identify and document that every client served is a child or parent of a child eligible for Title IV-E foster care (post-petition) or qualifies as a candidate for Title IV-E foster care (pre-petition). • **Option 2: Allocation:** But, if a state provides independent legal representation without direct reference to the child's Title IV-E foster care eligibility (or candidacy), the state must employ an allocation method to assure that IV-E funds are claimed for only the proportionate share of costs. The state's proportion of children in foster care who are IV-E eligible (known variously as the "coverage," "penetration" or "participation" rate) may be used to allocate the costs of independent legal representation, including pre-petition legal representation.[xiv] In Maine, the penetration rate was 48% in FY'20 and 46% in FY'21.[xv] ★ ***Key restriction—reimbursement calculation***: Cost to state of pre-petition legal representation X 50% (FFP rate) X Approx. 46 - 48 % (Maine' s penetration rate)
Source of state matching funds	The non-federal share of the cost of independent legal representation must derive from state or local appropriated funds or donated funds but may not derive from any federal funds or from third-party in-kind contributions or expenditures. A state may not use attorney *pro bono* services as a source of the state match, but might be able to consider the salary of an attorney funded by a public interest fellowship as a source of the state match.[xvi]

Pathways to Title IV-E funding for pre-petition legal representation

- ***Option 1: Seek Title IV-E administrative cost FFP for the costs of providing pre-petition legal representation***. The federal guidance documents cited in this memorandum suggests a Title IV-E agency may enter into a contract or memorandum of understanding (MOU) with an entity to provide pre-petition independent legal representation to candidates for foster care or their parents, submit a PACAP amendment, and seek Title IV-E administrative cost reimbursement for the expense of the pre-petition legal representation, as long as the independent legal representation meets all of the legal and administrative requirements briefly summarized in this memorandum.
  - ★ **Important restrictions** (from above):
    - It may be inadvisable to design the pilot project to serve families whose children are subject to an investigation of suspected abuse or neglect (rather than limiting the project to children with open services cases) as these children do not qualify as "candidates for foster care."
    - Title IV-E reimbursement is not currently available for ancillary civil legal services.
    - Federal reimbursement for covered services will be approximately 23% to 24% of the cost of those services (based on the 50% match rate and Maine's ~ 46 - 48% penetration rate). The remaining program costs must be funded with state, local or private (not *pro bono*) funds.
  - ★ **Key observation:** Legislative staff have not been able to locate any program that currently claims Title IV-E reimbursement for pre-petition independent legal representation. According to national experts, Title IV-E agencies and pre-petition legal representation programs have not yet pursued this option likely because the process (administrative requirements, including billing and documentation requirements) for submitting such claims is not yet clear. The potential audit and financial penalty risks for submitting inappropriate claims may also have led to caution in this area, especially given the relatively low level of federal reimbursement (match rate X penetration rate) and the fact that reimbursement is not available for the cost of providing ancillary civil legal services, which are a hallmark of many pre-petition legal representation projects.[xvii]

- ***Option 2: Use Title IV-E reimbursement funds from the provision of post-petition legal representation to fund pre-petition legal representation programs***. Approximately 23 states currently receive Title IV-E administrative cost reimbursement for providing post-petition independent legal representation to parents and children in child protection proceedings by entering into contracts or MOUs with post-petition legal services providers, submitting PACAP amendments and adhering to the applicable legal and administrative requirements briefly summarized in this memorandum. [xviii] A state is not restricted in the manner in which it utilizes the federal reimbursement dollars received after submitting these claims. Several states, including Iowa and Colorado, use the Title IV-E reimbursement dollars they obtain from providing post-petition legal representation to fund distinct pre-petition legal representation programs.
  - ★ **Key observations:**
    - If this option is pursued, the pre-petition legal representation program may be 100% federally funded (no state match is required); it is not necessary to design the program to serve "candidates for foster care"; and the program may provide ancillary civil legal services.
    - The amount of Title IV-E federal reimbursement dollars for post-petition legal representation that might be available to fund a pre-petition pilot program depends on multiple factors. In calendar year 2021, the Maine Commission on Indigent Legal Services (MCILS) approved vouchers totaling ~$5 million for post-petition legal representation of indigent parents.[xix] Multiplying this figure by the FFP (50%) rate and Maine's FY2021 penetration rate (46%), yields approximately $1 million in potential federal Title IV-E reimbursement dollars. However, to the extent any of the state funds spent by MCILS on post-petition legal representation are used as a state match or as maintenance of effort dollars for other federal

funds (such as TANF), these expenditures would not be available to use as a basis for Title IV-E reimbursement. In addition, the cost of additional staff resources, either within MCILS or DHHS (or both), required to claim the Title IV-E reimbursement for post-petition legal representation to indigent parents would reduce the amount of Title IV-E reimbursement dollars that would remain available to spend on a pre-petition pilot program.

---

[i] 45 C.F.R. §2356.60(c), *at* https://www.ecfr.gov/current/title-45/subtitle-B/chapter-XIII/subchapter-G/part-1356.

[ii] 45 C.F.R. §1356.60(c), *at* https://www.ecfr.gov/current/title-45/subtitle-B/chapter-XIII/subchapter-G/part-1356, *see also id.* Part 95, Subpart E, *at* https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-95/subpart-E/section-95.505.

[iii] Children's Bureau, ACYF-CB-IM-21-06 at 3, 10-11 (Jan. 14, 2021), *at* https://www.acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf; *see also* Children's Bureau, Child Welfare Policy Manual, §8.1B: Title IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program, questions 30-32 *at* https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36.

[iv] Child Welfare Policy Manual, §8.1B, supra note iii at questions 30-32.

[v] 42 U.S.C. §672, a*t* https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section672&num=0&edition=prelim.

[vi] 42 U.S.C. §672(i)(2), *supra* note v; Children's Bureau, Child Welfare Policy Manual, §8.1D; Title IV-E, Candidates for title IV-E foster care, questions 2, 5, 6, 9 and 10, at https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=79.

[vii] ACYF-CB-IM-21-06, *supra* note iii at 3; Child Welfare Policy Manual, §8.1B, supra note iii at question 32.

[viii] Child Welfare Policy Manual, §8.1B, supra note iii at question 30; Children's Bureau, Technical Bulletin, *Frequently Asked Questions: Independent Legal Representation* at 3 (July 20, 2020), *at*, https://www.acf.hhs.gov/cb/training-technical-assistance/technical-bulletin-faqs-independent-legal-representation; ACYF-CB-IM-21-06, *supra* note iii at 11.

[ix] ACYF-CB-IM-21-06, *supra* note iii at 12-13.

[x] Email correspondence from Bob Cavanaugh, Region 1 Program Manager, Children's Bureau (Sept. 13, 2022).

[xi] *See* U.S. Dept. of Health & Human Servs., Proposed Rule, Foster Care Legal Representation, RIN 0970-AC89 (Spring 2022), at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=0970-AC89. This proposed rule has not yet been formally proposed in the Federal Register, but appears in the federal government's Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions, available here: https://www.reginfo.gov/public/do/eAgendaMain.

[xii] Technical Bulletin, *supra note* viii, at 7.

[xiii] For more detail on the PACAP amendment requirements and the Children's Bureau's suggestions developing the PACAP amendment, *see* Technical Bulletin, *supra note* viii, at 4-5, 8; ACYF-CB-IM-21-06, *supra* note iii at 13-14. According to the Children's Bureau, a title IV-E State Plan amendment, is *not* required, however. *See* Technical Bulletin, *supra note* viii, at 6.

[xiv] Technical Bulletin, *supra note* viii, at 4.

[xv] *See* Todd A. Landry, Director, Maine Dept. of Health & Hum. Servs., Child & Family Servs., *Memorandum: Overview of Title IV-E Funding* (Augusta 18, 2022), *at* https://legislature.maine.gov/doc/8783.

[xvi] Technical Bulletin, *supra note* viii, at 6; Children's Bureau, Child Welfare Policy Manual, §8.1F; Title IV-E, Administrative Functions/Costs, Match Requirements, question 2 at https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=35.

[xvii] Zoom conversation on Sept. 1, 2022 with Vivek Sankaran, Esq., Director, Child Advocacy Law Clinic and Child Welfare Appellate Clinic, University of Michigan Law School and Emilie Taylor Cook, Preventative Legal Advocacy Fellow, Barton Child Law & Policy Center, Emory University School of Law; Zoom conversation on Sept. 22, 2022 with Emilie Taylor Cook and Melissa Carter, Executive Director, Barton Child Law & Policy Center, Emory University School of Law.

[xviii] Children's Bureau, FY 2021 Title IV-E Foster Care Claims and Caseload (Data Reported as of July 14, 2022) (Column AG: In-Plac. Legal Representation - Child or Parent FFP"), available at https://www.acf.hhs.gov/cb/report/report/programs-expenditure-caseload-data-2021.

[xix] *See* Annual Report of the Maine Commission on Indigent Legal Services at p.5 (Jan. 14, 2022), at https://legislature.maine.gov/doc/7944 (this figure was calculated by adding the attorney voucher totals for the following case types: "child protection petition", "petition for termination of parental rights" and "review of child protective order").

TANF Funding for Pre-Petition Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System – October 3, 3022

The TANF Block Grant

Temporary Assistance for Needy Families (TANF) is block grant funding that states receive from the federal government. States have significant decision-making authority over how to best spend these funds. However, states are required to demonstrate "maintenance of effort" (MOE) in state dollars spent. Typically, this means that in order to receive maximum federal funding, states are required to spend at least 80% (75% if the state meets certain requirements) of the amount of money the state spent for welfare and related spending in fiscal year 1994, when TANF was established.[1] Failure of a state to meet MOE requirements will result in reduced federal funds in the following year.[2] Unlike many other federal funds, TANF block grants amounts have remined static. State funding is based on the amount of federal funds the state received prior to the 1996 introduction of TANF, and funds have never increased. As a result, by 2021, the block grant had lost 40% of its value as a result of inflation.[3] Maine's TANF award in federal fiscal year 2020 was $127,485,479.[4]

Purposes

States can spend TANF block grant money on any of the four purposes established in law. The four allowable purposes of TANF funds are to:

> *(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;*
>
> *(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;*
>
> *(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and*
>
> *(4) formation and maintenance of two-parent families* [5]

State Use of Funds

Because of the broadness of the language describing allowable uses of Block Grant and MOE funds, states have used TANF funding for a wide variety of purposes. The U.S. Department of Health and Human Services, Office of Family Assistance reports that in FY 2020, 22.3% of TANF and MOE funds

---

[1] U.S. Government Accountability Office. *Temporary Assistance for Needy Families: State Maintenance of Effort Requirements and Trends* (May 17, 2012), at, https://www.gao.gov/products/gao-12-713t.

[2] *Temporary Assistance for Needy Families: State Maintenance of Effort Requirements and Trends*, supra note 1.

[3] Congressional Research Service. *The Temporary Assistance for Needy Families (TANF) Block Grant. Updated* (March 24, 2022), *at* IF10036 (congress.gov).

[4] United States Department of Health and Human Services, Office of Family Assistance. *TANF and MOE Spending and Transfers by Activity, FY 2020. State Data. at:* https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_tanf_and_moe_state_pie_charts_092221.pdf

[5] 42 U.S.C. 1305 §601(a).

were used for basic assistance, 9.7 % for work, education and training activities and 16.6% for child care. Child welfare services accounted for 8.3% of spending.[6]

The percentage of total individual state TANF funds that were spent on child welfare services ranged from 0% (Alaska, California, Delaware, District of Columbia, Kentucky, Minnesota, Tennessee and Wyoming) to 67.0% in Arizona. Maine spends 7.7% of its TANF and MOE funds on child welfare services.[7] In FY 2020, state uses of TANF funds for child welfare services included foster care services; family support, family presentation and reunification services; and adoption services.[8]

Restrictions

The federal government does place some restrictions as to whom may benefit from TANF funded programs. Beneficiaries of services that fall under the following two purposes of TANF must be deemed financially eligible by the state:[9]

1) provision of assistance to needy families so that children may be cared for in their own homes or in the homes of relatives and

2) ending dependence of needy parents on government benefits by promoting job preparation, work, and marriage

Financial eligibility is not required for beneficiaries of programs that fall under the second two purposes of TANF:[10]

1) prevention and reduction of the incidence of out-of-wedlock pregnancies and

2) formation and maintenance of two-parent families).

However, in determining any restrictions on use of TANF funds for these purposes, a state must examine whether the service meets the definition of "assistance."[11] If it does, increased restrictions apply.

An additional consideration is whether services are provided using MOE or federal funds.[12] Federal guidance provides that MOE funds can only be spent on services provided to individuals demonstrating financial need, regardless of which of the four TANF purposes the intervention serves.[13]

---

[6] United States Department of Health and Human Services, Office of Family Assistance. *TANF and MOE Spending and Transfers by Activity, FY 2020*. (Updated October 31, 2021), *at*, https://www.acf.hhs.gov/ofa/data/tanf-and-moe-spending-and-transfers-activity-fy-2020.

[7] *TANF and MOE Spending and Transfers by Activity, FY 2020. State Data*, supra note 4

[8] *TANF and MOE Spending and Transfers by Activity, FY 2020. State Data,* supra note 4

[9] U.S. Department of Health and Human Services, Administration for Children & Families Office of Family Assistance, Q & A: Use of funds, TANF program policy questions and answers (2010), at, https://www.acf.hhs.gov/ofa/resource/q-a-use-of-funds?page=all

[10] *Q & A: Use of Funds,* supra note 9.

[11] Title 45 § 260.31(a)(1) defines "assistance" as "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)."

[12] *Q & A: Use of Funds,* supra note 9. See question 17.

[13] *Q & A: Use of Funds,* supra note 9. See question 17.

Use of TANF Funds for Legal Representation

Federal guidance does make it clear that TANF funds may be used for legal representation of families, so long as these families are considered "needy" and so long as the legal representation is related to a program purpose.[14] Federal guidance defines a needy family as one experiencing "financial deprivation, i.e., lacking adequate income and resources."[15] States establish their own specific parameters for eligibility.

There appears to be precedent for using TANF funds to pay for pre-petition legal representation for families at risk of involvement with child services. Beginning in 2014, Oklahoma partnered with a civil legal services entity to provide pre-petition services, including divorce, domestic violence, guardianship and housing cases. It appears that the state initially used TANF funds, but no longer do so. Staff were unable to locate evidence that any other state has used TANF funds to pay for pre-petition legal representation services.

[14] *Q & A: Use of Funds,* supra note 9. See question 20.

[15] *Q & A: Use of Funds,* supra note 9, citing FR Vol. 64, No. 69, April 12, 1999, p. 17825. See question 30

Supplemental Funding for Child Abuse Prevention - American Rescue Plan Act

Commission to Develop a Pilot Program to Provide Legal Representation
to Families in the Child Protection System- October 3, 2020

The American Rescue Plan Act (ARPA) of 2021 (Pub. L. No. 117-2) included $350 million in supplemental funding for two grant programs under the Child Abuse Prevention and Treatment Act (CAPTA). These funds were appropriated to states, *in addition* to amounts otherwise available. The $350 million in supplemental funding was divided between two separate grant programs under the CAPTA law as follows:

- **CAPTA State Grants:** $100 million in supplemental funding
  - Supplemental allotment to Maine = **$337,496** to the Department of Health and Human Services
- **Community-Based Child Abuse Prevention (CBCAP) Program Grants**: $250 million in supplemental
  - Supplemental allotment to Maine = **$829,927** to the Maine Children's Trust (non-profit)

In May 2021, the Children's Bureau released a Program Instruction (ACYF-CB-PI-21-07) providing guidance on the allowable uses of the supplemental funding, the requirements to report on planned and actual use of the funds, and the allotments to states for each grant program (see attachments B and D of PI-21-07). On August 26, 2022, the Children's Bureau issued additional guidance to remind states of these funds and "encourage timely and effective use of the supplemental funds within the expenditure period" (ACYF-CB-IM-22-03).

Key aspects of the ARPA 2021 supplemental funding for these two grant programs include:

- **Timeline:** The funding has a 5-year project and expenditure period from October 1, 2020, to September 30, 2025. The funding must be obligated by September 30, 2025, and liquidated by December 30, 2025 (see PI-21-07, p.4,6; IM-22-03, p.1).
- **No Match:** There is no match requirement for the CAPTA State Grant under either the regular or supplemental appropriation, and Section 2205 of the ARPA waives the match requirement applicable to annual CBCAP Program Grants (see PI-21-07, p.4,6).
- **Priorities:** The Children's Bureau outlined four priority goals for the expenditure of these supplemental funds as follows: (1) ***Prevent Children from Coming into Foster Care***; (2) Support Kinship Caregivers; (3) Ensure Youth Leave Care with Strengthened Relationships, Holistic Supports and Opportunities; and (4) Develop and Enhance the Child Welfare Workforce (see IM-22-03, p.2). The Children's Bureau specifically referenced legal representation under priority (1), stating:

  > *"CB is committed to expanding resources for **legal representation** to ensure that families have access to legal services to help them advocate for needed services and resolve issues that leave them vulnerable to potential child welfare involvement or impede permanency for children once in care"* (see IM-22-03, p.2).

- **Allowable uses - CAPTA State Grant:** "to improve the child protective services system of the state in a manner consistent with any of the 14 program purposes of CAPTA State Grants" (see IM-22-03, p.3). These include making improvements to: intake, screening and investigation of reports; use of multidisciplinary teams; ***legal representation and preparation***; case management; risk and safety assessment; technology; training; staff development; services to disabled infants; public education; community-based programs; and collaboration with juvenile justice, public health, domestic violence.
- **Allowable uses - CBCAP Program Grant:** "to enhance community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect in a manner consistent with any of the program purposes of CBCAP" (see IM-22-03, p.3). These purposes are: (1) to support community-based efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination of resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect; and (2) to foster understanding, appreciation, and knowledge of diverse populations in order to effectively prevent and treat child abuse and neglect.

Resources to learn more:

U.S. DHHS, Administration on Children and Families, Children's Bureau, Informational Memorandum 22-03 (August 26, 2022). Re: Supplemental funding under the American Rescue Plan Act of 2021 funding for the CBCAP and CAPTA State Grant programs:
https://www.acf.hhs.gov/sites/default/files/documents/cb/IM-22-03.pdf

U.S. DHHS, Administration on Children and Families, Children's Bureau, Program Instruction 21-07 (May 5, 2021). Re: Supplemental funding under the American Rescue Plan Act of 2021 funding for the CBCAP and CAPTA State Grant programs:
https://www.acf.hhs.gov/sites/default/files/documents/cb/pi2107.pdf

American Rescue Plan Act of 2021:
https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf

U.S. DHHS, Administration on Children and Families, Children's Bureau, The Child Abuse Prevention and Treatment Act with amendments made by Public Law 115-271:
https://www.acf.hhs.gov/sites/default/files/documents/cb/capta.pdf

Casey Family Services, The Child Abuse Prevention and Treatment Act: Keeping children safe and strengthening families in communities (May 2019):
https://www.casey.org/child-abuse-prevention-treatment-act/

APPENDIX L

Staff handout: Mandatory Reporting and Confidentiality in an Interdisciplinary Legal Team

Mandatory Reporting and Confidentiality in an Interdisciplinary Legal Team

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System – October 17, 2022

At the third meeting of the Commission, the following question was posed: *In the context of an interdisciplinary legal team that includes a social worker, what are the requirements for mandatory reporting by the social worker, and how are those requirements managed in the event they conflict with a lawyer's duty to maintain client confidentiality?*

Mandatory Reporting

Maine's mandatory reporting law can be found at Title 22, section 4011-A. The statute requires that certain individuals acting in a professional capacity make a report to the Department of Health and Human Services when that person "knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred." Included in the list of professionals bound by the law are social workers and family or domestic violence victim advocates; attorneys are not included.

Duty of Confidentiality

Attorneys licensed in Maine are bound by the Maine Rules of Professional Conduct, including Rule 1.6, which relates to the confidentiality of information obtained in the course of representation. The rule states:

> *a lawyer shall not reveal a confidence or secret of a client unless, (i) the client gives informed consent; (ii) the lawyer reasonably believes that disclosure is authorized in order to carry out the representation; or (iii) the disclosure is permitted by paragraph (b).*

Paragraph (b) allows disclosure of otherwise confidential information in limited circumstances including "to prevent reasonably certain substantial bodily harm or death."

The duty of confidentiality applies not only to attorneys, but to their non-attorney assistants, a concept established by Rule 5.3 of the Rules of Professional Conduct. The duty is held by the attorney "having direct supervisory authority over the nonlawyer," who is required to "make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer."[1]

Conflict between Duties of the Attorney and the Social Worker

Given that the social worker has a statutorily mandated reporting obligation and the attorney has a duty of confidentiality, it is foreseeable that situations could arise in which the members of an interdisciplinary team comprised of an attorney and a social worker learned information that would appear to trigger the mandated reporting duty of the social worker but did not rise to the level of "reasonably certain substantial bodily harm or death" as required to permit the attorney to breach her duty of confidentiality. Maine statute does not anticipate such a conflict, and no advisory opinions from either the Board of Overseers of the Bar nor the State Board of Social Work Licensure address such a scenario. Therefore, the potential for such a conflict remains absent a change to statute or the Rules of Professional Conduct exempting one of the parties from its professional obligations.

For additional information see:

Alexis Anderson, Lynn Barenberg, and Paul R. Tremblay. "Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting." Clinical Law Review 13, (2007): 659-718, https://core.ac.uk/download/pdf/71467705.pdf#:~:text=Alexis%20Anderson%2C%20Lynn%20Barenberg%2C%20and%20Paul%20R.%20Tremblay.,IN%20INTERDISCIPLINARY%20COLLABORATIVES%3A%20ZEAL%2C%20PATERNALISM%20AND%20MANDATED%20REPORTING

Premela Deck, Ethics – Law and Social Work: Reconciling Conflicting Ethical Obligations Between Two Seemingly Opposing Disciplines to Create a Collaborative Law Practice, 38 W. New Eng. L. Rev. 261 (2016), http://digitalcommons.law.wne.edu/lawreview/vol38/iss2/3.

[1] Rule 5.3 of the Maine Rules of Professional Conduct describes a lawyer's responsibilities regarding nonlawyer assistants. Rule 5.3(a) relates to law firms, while 5.3(b) describes lawyers with direct supervisory authority over a nonlawyer. The latter is cited here, but the former would apply if the social worker and attorney were working in a law firm structure.

APPENDIX M

Designing the Pilot Program
(revised for Oct. 17, 2022 meeting to reflect commission vote tallies)

Designing the Pilot Program

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System - October 17, 2022

Final: after all commission member votes received

Resolve 2021, chapter 181, §5 directs the Commission to complete the following duties:

1. Study programs, policies and contracts for services that provide, in other states, regions or municipalities, legal counsel to parents or custodians as soon as that state opens a safety assessment or similar initial evaluation to determine if a child is at risk of harm, rather than only after that state petitions a court;

2. Design a pilot program to provide legal counsel to parents or custodians as soon as the State opens a safety assessment to determine if a child is at risk of harm. The pilot program design must include the following:
   A. The cost of the pilot program, including options for federal or grant funding;
   B. An assessment of the number of additional cases to be referred for legal counsel;
   C. Identification of an appropriate organization or organizations that could provide legal counsel in the pilot program;
   D. A method of providing notice from the Department of Health and Human Services to the organization or organizations providing legal counsel as well as appropriate confidentiality protections; and
   E. An appropriate duration of the pilot program and data required for assessment to determine regional or statewide expansion; and

3. Solicit public comment on the establishment of a pilot program.

Duty #2: Potential Recommendations for Pilot Program Design

Issue	Potentially helpful resources	Recommendation
1. What are the goals of the pilot program?		
Commission suggestions at 10/3/22 meeting: ➢ Have fewer children enter the foster care system while remaining safely in their homes? • *Related:* Deploy legal resources earlier in the child protection system process so that families can help their children thrive and not need state intervention? ➢ Promote equity in outcomes of child protection investigations for families of disparate economic circumstances? ➢ Increase parents' understanding of the child protection system as well as how they can engage in the process and achieve positive outcomes? • *Related:* Standardize and streamline education materials so families can understand how the child protection system works at their very first point of contact with the system? ➢ Ensure that the systems we have in place, including the family court and child welfare system, intersect in a way that is the most successful and beneficial for families? ➢ Other?		**10/17/22 meeting:** **Motion (a):** To deploy legal and other resources to parents or custodians earlier in the child protection system so that children can remain safe and families can help their children thrive and not need state intervention. **Vote: 10-3** **Motion (b):** To promote equity in outcomes of child protection investigations for families of disparate economic circumstances. **Vote: 13-0** **Motion (c):** To increase parents' and custodians' understanding of the child protection system as well as how they can engage in the process

Issue	Potentially helpful resources	Recommendation
		and achieve positive outcomes. **Vote: 13-0**
2. *Who is the target client population?*		
➢ Clients in a specific **geographic area:** • By county? • By OCFS district/region? ➢ Clients within a **specific demographic or** who have a specific **type of civil legal issue** affecting child safety—for example: • Substance use issues (substance-exposed infants, parent(s) in need of treatment, etc.); • Parent/custodian victim of domestic violence; • Housing issues (homelessness, eviction, etc.); or • Other demographic or specific civil legal issue? ➢ Clients who **both** live in a **specific geographic area and** are within a **specific demographic** or who have a specific **type of civil legal issue** affecting child safety. ➢ Other options for selecting pilot program clients?	Counties in each OCFS district: 1. York: 2. Cumberland, Sagadahoc 3. Androscoggin, Franklin, Oxford 4. Knox, Waldo, Lincoln 5. Kennebec, Somerset 6. Penobscot, Piscataquis 7. Hancock, Washington 8. Aroostook For data on investigations, cases & child removals by county, *see* DHHS data from 8/22/22 meeting. For data on the number of reports vs. number of investigations, *see* Child Welfare Annual Report (2020) pp. 2, 5. For data on risk factors identified during investigations, see Child Welfare Annual Report (2020) pp. 9-10 and Child Welfare Annual Report (2021), p. 8 (substance use). *See for comparison*, Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs	**10/17/22 meeting:** **Motion (a):** The pilot program should serve clients from OCFS Region 3 (Androscoggin, Franklin & Oxford Counties). **Vote: 11-0** (Landry and Gannon abstained) **Motion (b):** Pilot program clients must qualify as fully indigent based on the Maine Commission on Indigent Legal Services' rules regarding income eligibility (without applying an asset test). **Vote: 11-1** (Landry abstained)
3. *At what point should the pilot program accept referrals / engage with potential clients?*		
➢ If OCFS receives a report of abuse or neglect? ➢ If report is referred for investigation (not screened out)? ➢ If a (services?) case is opened but a petition for removal has not yet been filed? ➢ Other?	*See* info. from DHHS data from the 8/22/22 meeting and the OPEGA Report from March 2022: **Calendar year 2021** # reports: 26,584 # investigations: 9,784 # cases opened: 1,575 # cases where child(ren) removed: 528	**10/3/22 meeting:** **Motion on items #3 and #5 (see p. 3):** The pilot program should serve parents not earlier than during the investigation stage and should provide direct advocacy with the child welfare agency and advocacy with respect to ancillary legal issues related to the child protection matter. **Vote: 8-4** (Gannon abstained)

Issue	Potentially helpful resources	Recommendation
4. Who should provide the pilot program services?		
➢ What organization? • Pine Tree Legal Assistance? • Other existing civil legal aid organization? • Contract attorneys? With MCILS oversight? • Other? ➢ What types of service providers? • Attorney(s)? • Social worker(s)? • Case coordinator(s)? Would they be licensed social workers or non-licensed individuals? • Parent ally/advocate(s)? • Other?	*See for comparison*, Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs	**10/17/22 meeting:** **Motion(a):** MCILS or its successor agency responsible for providing legal counsel to indigent parents and custodians in child protection cases should administer a discrete pre-petition pilot program. **Vote: 12-0** (Andrus abstained) **Motion (b):** The pilot program should take an interdisciplinary approach with service providers including, but not limited to, attorneys, case managers and parent allies or advocates.* **Vote: 13-0** **Will mention in the report the potential conflict between mandated reporter obligations and potential applicability of attorney-client privilege to non-attorney team members.*
5. *What type(s) of services should be provided by the pilot program?*		
➢ ***Direct child welfare advocacy:*** • Information about child welfare process, including state obligations and family rights? • Legal advice and advocacy? ➢ ***Ancillary civil legal issues:*** • Provide information, advice, connections to resources and/or legal representation on some or all of the following types of issues? ▪ Housing issues; ▪ Protection orders / domestic violence; ▪ Guardianships; ▪ Family matters: divorce, parental rights & responsibilities, paternity, and/or child support—limited or full representation? ▪ Public benefits issues;	*See* Maine Child Welfare Advisory Panel, Annual Report 2021 (p. 16) pilot project recommendation. For data on risk factors identified during investigations, *see* Child Welfare Annual Report (2020) pp. 9-10 and Child Welfare Annual Report (2021), p. 8 (substance use). *See for comparison*, Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs	**10/3/22 meeting:** **Motion on items #3 (see p.2) and #5:** The pilot program should serve parents not earlier than during the investigation stage and should provide direct advocacy with the child welfare agency as well as advocacy with respect to ancillary legal issues related to the child protection matter. **Vote: 8-4** (Gannon abstained)

Issue	Potentially helpful resources	Recommendation
▪ Substance use issues; ▪ Immigration issues; ▪ Other? • Should any civil legal issues be excluded? ➢ ***Both of the above***? ➢ ***Other?***		
6. How should referrals be made to the pilot program?		
➢ Should referrals only be accepted from OCFS caseworkers and supervisors? • What confidentiality protections and protocols should apply to such referrals? ➢ Should other sources of referrals be accepted? • Community partners? • Self-referrals? • Other?	*See for comparison*, Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs	**10/17/22 meeting:** **Motion (a):** The commission supports implementation of a warmline for parents subject to an investigation by child protective services, to be developed and implemented by MCILS or its successor agency responsible for providing legal counsel to indigent parents and custodians in child protection cases. This warmline will also serve as the entry point into the pre-petition pilot program. **Vote 11-2** **Motion (b):** MCILS or its successor agency responsible for providing legal counsel to indigent parents and custodians in child protection cases should prepare information regarding the warmline and a parent's or custodian's option to make a self-referral; the Department shall provide this information to parents and custodians at their first contact during an investigation. **Vote: 13-0**

Issue	Potentially helpful resources	Recommendation
7. What data should be collected to assess the pilot program and determine regional or statewide expansion?		
➢ What client data should be collected? • Demographic data? • Referral source? • Civil legal services needs (if appropriate)? • Other? ➢ What outcomes should be measured? • Whether services case is opened or time until services case is closed (as appropriate)? • Whether a child protection petition is filed? • If petition filed, whether the children are removed? • Outcome of civil legal advocacy/support provided (ex: protection order obtained, custody order obtained, benefits received) • Parent satisfaction (via surveys)? • Other? ➢ Can and should pilot program outcomes (some or all) be measured against a control group? • What confidentiality protections and protocols should be employed to share this outcome data? ➢ Timing of data collection and reporting: • At what interval(s) should outcome data be measured? • Should outcome data be reported at only the end of the program or should interim reports be prepared? ➢ To whom should outcome data be reported? • HHS, JUD or AFA Committees? • Other?	*See for comparison*, Program Design and Outcomes of Selected Pre-Petition Legal Representation Programs *Note:* Dr. Alicia Summers will be presenting on data collection design and analysis at the 10/17/22 meeting	**10/17/22 meeting:** **Motion (a):** The pilot program should be subject to a rigorous independent evaluation, which should potentially include the client data, outcomes and control group measures listed on this document, utilizing existing resources where available. **Vote: 11-1** (Andrus abstained) **Motion (b):** The data to be collected with respect to the pilot program should be determined in consultation with technical assistance provided by the Court Improvement Program. **Vote: 13-0** **Motion (c):** Data collection should be ongoing and should reported at the one-year mark and at 6-month intervals thereafter until all pilot program cases have concluded. **Vote: 13-0**
8. What is the appropriate duration for the pilot program?		
➢ A definite time period (6 months? 1 year?)? ➢ Until a specified amount of funding has been expended? ➢ Other?		**10/17/22 meeting:** **Motion:** The pilot program should last for 2 years. **Vote: 9-4**

Issue	Potentially helpful resources	Recommendation
9. *How should the potential cost of the program be determined?*		
➢ Serve ***all clients*** who meet eligibility criteria during a specified time period? ➢ Allow the program to serve up to a ***specified maximum number of clients*** who meet eligibility criteria during a specified time period? ➢ ***Establish the number of staff*** to be hired by the program, and allow the program to serve as many clients who meet eligibility criteria as that number of staff can handle during a specified time period? ➢ ***Establish a specific dollar amount*** that can be expended by the pilot program and allow the program to serve as many clients who meet eligibility criteria as possible during a specified time period or until all program funds are expended, whichever is sooner? ➢ ***Other***?		**10/17/22 meeting:** **Motion:** The pilot program should serve up to 30 families at any one time—with each "family" unit defined as a group of individuals subject to a specific OCFS investigation. **Vote: 13-0**
What are the options for federal or grant funding of the pilot program?		
➢ Title IV-E reimbursement options: • Seek Title IV-E reimbursement for the pre-petition pilot program; • Seek Title IV-E reimbursement for MCILS's representation of indigent parents and use funds for pre-petition pilot program ➢ American Rescue Plan Act of 2021 supplemental funds for CAPTA State Grants and CBCAP Program Grants ➢ Temporary Assistance for Needy Families (TANF) ➢ Other federal funding options? • Title IV-B Court Improvement Program (CIP) • Title IV-B grant program for civil legal services (President's proposed FY2023 budget) ➢ Other grant funding options?	*See* Information on potential federal funding sources provided by staff for the 10/3/2022 meeting,	**10/17/22 meeting:** **Motion:** The HHS Committee should consider all available funding sources for the pilot program, including but not limited to those listed in this document. **Vote: 13-0**