STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
11 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0011

ANGUS S. KING, JR.
GOVERNOR

KEVIN W. CONCANNON
COMMISSIONER

April 6, 2001

The Honorable Susan W. Longley, Senate Chair
The Honorable Thomas J. Kane, House Chair
Joint Standing Committee on Health and Human Services
Maine State Legislature
Augusta, Maine 04333

RE: Report to the Joint Standing Committee on Health and Human Services pursuant to L.D. 528

Dear Senator Longley, Representative Kane and Honorable Members of the Health and Human Services Committee:

Pursuant to L.D. 528 the Department of Human Services, Bureau of Child and Family Services was directed to review all policies regarding child protective services for the purpose of determining those portions that might be appropriate for the adoption of rules. The Department is required to report on the results of that review to the Joint Standing Committee on Health and Human Services. In addition, pursuant to L.D. 528 the Department was directed to form a multidisciplinary task force to consider and make recommendations for the improvement in the child protective services and further to report on those findings and recommendations.

Please find attached the above referenced reports.

Sincerely Yours,

Sandra Hodge, Director
Division of Child Welfare

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Attachments

Report on the Department of Human Services, Bureau of Child and Family Services, review of the policies related to child protective services conducted pursuant to L.D. 528 section 1.

Pursuant to L.D. 528 section 1. the Department of Human Services, Bureau of Child and Family Services reviewed all policies governing child protective services for the purpose of determining what areas of the policy might be appropriate for the adoption of rules. The policies encompassed by child protective services include the intake screening and assessment of reports of child abuse and neglect up to but not including court intervention. The policies were reviewed internally for this purpose by Margaret Semple, then Bureau Director for the Bureau of Child and Family Services; Karen Westburg, current Bureau Director for the Bureau of Child and Family Services; Sandra Hodge, Director of the Division of Child Welfare and Jeanette Hagen, Assistant Attorney General. In addition, the Department met with Mary Henderson and Patrick Ende of the Maine Equal Justice Project; Nancy Carlson, Case Management Officer with the Maine District Courts and Senator Lloyd LaFountain. While not specifically within their charge the Department solicited comments from members of the task force convened pursuant to L.D. 528 section 3.

After thoughtful review of the relevant policy and careful consideration given to the comments of those consulted, the Department does not recommend the promulgation of rules in the area of child protective services. The Department notes that of those consulted the response was generally negative with regard to the promulgation of rules in this area with the notable exception of Mary Henderson and Patrick Ende who appear to support the promulgation of rules generally by the Department.

The Department believes that there is a compelling rationale for not promulgating rules in the area of child protective services. As indicated the policy that was the subject of this review includes services from intake up to but not including court intervention. It should be noted that 85% of families involved with the Department at this initial stage are not referred for court intervention. The services to families at this juncture are voluntary in nature. The Department by statute has no authority to remove children from their home or require parents' participation in a service absent a court order. The Department is concerned that the promulgation of rules in this area, which would have the force of law and be subject to judicial review, would seriously and significantly impact the Department's and parents' ability to work cooperatively together to keep children safe and families together. The Department believes that rules in this area would create an unnecessarily adversarial environment, divert the focus of parents from engaging in voluntary family preservation services and invite the pursuit of appeals under Maine's Administrative Procedures Act. There is a real concern that the inclination for parents to engage in a dispute about services rather then engage in the needed services designed to keep children safe and families together will delay action by parents and create a safety risk to children.

The Department believes that it is unnecessary to promulgate rules in the area of child protective services to ensure that the Department is held accountable for their policy and procedures. The Department is held accountable through federal regulation and federal monitoring, state law and the courts of Maine.

The promulgation of rules in the area of child protective services and the subsequent judicial oversight would create significant and additional administrative burdens on the Department both in terms of manpower and financial cost. This is a serious concern that should not be overlooked. Finally, rules in this area would involve the Superior Court in a manner in which it is not presently involved and potentially result in conflicting court action.

Report on Findings and Recommendations of the Task Force convened pursuant to L.D. 528

BACKGROUND

Pursuant to L.D. 528 the Department of Human Services convened a multi-disciplinary Task Force for the purpose of considering and making recommendations for the improvement of the Department's Child Protective Services program. This report outlines the unanimous findings and recommendations of the Task Force in the areas of the Department's Child Protective Services program which includes the intake process up to but not including Court Intervention. The Task Force met five times; September 22, 2000, October 12th, 2000, November 16th, 2000, January 31, 2001 and February 15, 2001. The Department established an agenda for the meetings to ensure that all policy areas requiring review were discussed. Policies to be discussed were made available to task force members prior to the meeting. The Department provided additional material as requested. Minutes of the meeting were maintained, (please find attached).

FINDINGS

Policy

After thoughtful and careful review of the Department's Child Protective written policies, the Task Force finds these policies to be essentially sound and reflecting the best practice standards of the profession nationwide.

The Task Force notes that in some instances sound policies have been or are inconsistently adhered to throughout the State. Maine's automated Child Welfare System (MACWIS) now in place can and should be used to monitor policy compliance. The committee strongly endorsed the new Safety Assessment policy. It further acknowledges the value of the recently created Safety Assessment Handbook used by staff doing assessments. The handbook provides clear guidelines for caseworkers in a very accessible format. The handbook will serve to increase the consistency in the practice of caseworkers; which will increase the rate of compliance.

Minor clarifications and typographical corrections in current policy were noted by the Task Force and will be modified.

Services for Families and Children

The Task Force recognizes and is concerned that appropriate and specialized services for families and children are not consistently available statewide. This situation results in unnecessary delays for children and their parents in need of these services.

The Task Force finds that there is a need for providers, those currently practicing as well as those new to the field, to receive additional specialized ongoing trainings. This will

enable providers to work more effectively with the population of children and families that the Department serves, address their unique needs, and increase the availability of providers.

Supervision and Caseworker Retention

One third of newly hired caseworkers leave in the first year due to a number of reasons including inequities in pay as well as an overwhelming work load.

The Task Force has determined that enhanced clinical supervision is required for caseworkers, supervisors and Program Administrators to ensure good practice standards. This will provide ongoing opportunities for personal and professional growth, practice enhancement and increased effectiveness. All of these opportunities enhance staff's sense of personal and professional competence and ultimately their ability to commit to their jobs.

The Task Force believes that the Department is accountable for their policies and procedures. The Department is made accountable through Federal Regulation and monitoring, State Law and the Courts of Maine.

Child Protective Services refers to services from intake up to but not including court intervention. The task force notes that 85 % of families involved with the Department at this initial stage are not referred for Court intervention. The services to the families at this juncture are voluntary in nature. The Department by statute has no authority to remove children from the home or require parents participation in a service absent a Court Order.

RECOMMENDATIONS

1. The Task Force strongly recommends that the position of Ombudsman be established with adequate support staff. The Task Force recommends that this position (1) be located outside of the Department of Human Services; (2) that the jurisdiction of the position be limited to Child Welfare Services; (3) that the charge of the position include providing information, answering questions, resolving complaints, and providing advocacy for members of the public who are involved with child protective services. In addition the charge should include providing information and recommendations on systemic issues related to child protective services to State Departments, the Governor, the Legislature and the Judiciary and (4) that there should be legislative oversight as to the choice of Ombudsman and a system established for the periodic legislative review of how the office is functioning.

2. The Task Force recommends that the issue of caseworker retention be addressed in the following manner, reduce case loads for new caseworkers by adding staff; provide meaningful and regular ongoing clinical and administrative supervision, provide ongoing professional growth and development opportunities, and increase pay.

3. The Task Force recommends that the unit supervisors' capacity for providing clinical supervision be enhanced by: the expansion of the use of outside clinical consultants who can provide supervisory training as well as the reduction of the caseloads of supervisors.

4. The Task Force recommends that providers be offered additional and ongoing training to enable them to work effectively with children and families in need of appropriate services. The Task Force recommends that the Maine Institutions of Higher Education work in conjunction with the Departments of Human Services, Mental Health and Corrections to train new professionals as well as to provide motivation for them to remain in Maine. The Task Force further recommends that the Department work with other relevant agencies within the state to identify underserved areas and to facilitate recruitment of qualified professionals into those areas.

5. The Task Force recommends that the Department's policies be updated relative to statutory changes and to reflect up-to-date research and national best practice standards.

6. The Task Force recommends that the Department continue its' efforts to increase compliance with policy within the Department. Specifically, MACWIS should be utilized to monitor compliance. Supports and sanctions should be developed to hold caseworkers, supervisors and Program Administrators accountable for compliance with policy.

7. The Task Force recommends that intake policy be amended to include guidelines for situations where a child is making the referral.

8. The Task Force recommends that the Department adequately staff the process whereby substantiation decisions are reviewed in order to ensure a timely response, oversight of policy compliance and good practice.

9. The Task Force supports the ongoing work of the Child Death and Serious Injuries panel whose findings provide useful information regarding the effect of compliance or non-compliance with policies and procedures.

10. The Task Force recommends that the Department work to improve communications about it's policies and procedures with attorneys who practice in the field of child welfare.

Recommendation	Action	Status
1. Establish office of a child welfare Ombudsman.	1. The Department wrote and delivered testimony for the establishment of a Child Welfare Ombudsman.	1. Legislation pending creating an Ombudsman for Children's Services.
2. Retention of Casework Staff a. Increase staff b. Decrease workload c. Support of supervisors d. Professional growth and development. e. Increase Pay	2. a. None. b. None. c. Increased and more diversified training for supervisor. d. Multiple in-state and out-of-state training for all levels of staff in Social Work program; tuition payment. e. Commissioner authorized a three step increase for caseworkers.	2. a. Not Implemented. b. Not Implemented. c. Ongoing; expanding. d. On-going. e. Partially implemented; requires changes in merit pay system and legislative action.
3. Outside clinical Supervision	3. Five out of eight Districts have an outside consultant. Two are recruiting having lost their consultant, funding available.	3. Ongoing
4. Support and training for provider community.	a. Jointly sponsored training (DHS, DMHMR&SAS, and Corrections) planned on Juvenile Sex Offenders. b. Public/Private year-long mental health provider training on working with child victims of abuse and neglect and their parents to begin in November 2001 to enhance and expand provider pool. c. Joint training with OSA and DHS planned for 2001 and 2002.	a. Expected date of completion 7/30/01. b. Expected date of implementation 11/15/01 – complete 11/02. c. On-going.
5. Up-to-date, research based policies	a. Safety Assessment implemented. b. Child and Family Policies completed -- MACWIS program under contract for deployment on 10/01. c. Multiple policies under revision.	a. Implemented. b. Implementation pending. c. On-going.
6. Policy Compliance	a. Training for supervisors and Program Managers on use of MACWIS for monitoring policy compliance and good practice. b. Development and implementation of tracking systems, both automated and manual to track core policy expectations and timeframes.	a. Delivered to 80% of staff. More sessions scheduled. b. Some in place now expected dates for implementation of others 5/1/01; 8/1/01; 10/01.

7. Specific guidelines for responding to child's allegations of abuse and neglect.	a. Intake policy be revised. b. Policy on what constitutes a new incident (includes disclosure by child) re-distributed. c. Incorporated into new Safety and Well-Being Review proposed policy.	a. Expected date of completion 6/1/01. b. Completed 3/15/01. c. Expected date of completion 4/30/01.
8. Adequate staffing for review of substantiation decision process.	a. Four Quality Review staff assigned part-time to conduct review. b. Current vacancy in Quality Assurance unit will be assigned full-time to this task.	a. Completed 2/15/01. b. Expected date of completion 4/1/01.
9. Support of Child Death Committee	a, Funding and staffing continue. b. Recommendations followed where resources were available.	a. Ongoing.
10. Communication with Attorneys Working in Child Welfare Matters.	a. Scheduled meeting with guardians ad litem cancelled due to weather – to be rescheduled. b. Department staff participate in training guardians ad litem and CASAS. c. Judicial Symposium to include 16 guardians ad litem; 21 Assistant Attorney Generals and 25 Defense Attorneys from all areas of the State.	a. Expected date of completion 7/15/01. b. On-going. c. May 9, 10, 11, 2001.

Participants in Task Force – L.D. 528

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Draft of Agendas for Meetings of the
Multi-Disciplinary Taskforce
Review of Child Protective Services: L.D. 528

Meetings to be held at: The Child Welfare Training Institute
295 Water Street - Augusta

Meeting One – September 22, 2000
2:00 – 5:00 PM

- Welcome and Introductions
- Review of the Charge
- Review of Process
- Policies and Procedures for discussion:
  - Provisions for the receipt of reports of Child Abuse and Neglect
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations
  - In take screening and assessment
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations
  - After hour services
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations

Meeting Two – October 12, 2000
10:00 – 1:00 PM

- Policies and Procedures for discussion:
  - Safety Assessment
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations
  - Risk Assessment
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations
  - Appeal and Review of Substantiation Decisions
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations

Meeting Three – November 9, 2000
10:00-1:00 PM

- Policies and Procedures for discussion:
  - Reducing Abuse and Neglect
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations
  - Petitioning for a Protection Order
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations
  - Short Term Emergency Services
    - Overview of current practice– Sandi Hodge
    - Discussion
    - Recommendations

Meeting Four – December 14, 2000
10:00 – 1:00 PM

- General discussion of outstanding issues
- Wrap Up

Task Force convened pursuant to L.D.528
Meeting Minutes
September 22, 2000

A meeting of the Task Force was held on September 22, 2000 at the Child Welfare Training Institute.

Task Force Members present: Wendy Betts, Edward Dugay, Judy Fenlason, Jeanette Hagen, Mary Henderson, Sandi Hodge, Karen Mosher, Hannah Osborne, William Schneider and Marilyn Staples.

Sandi Hodge chaired the meeting.

Welcome and Introductions
The members of the Task Force introduced themselves and indicated briefly their relevant backgrounds and employment history.

Review of the Charge
Sandi Hodge reviewed the charge as outlined in L.D.528. She noted that there were three sections to L.D. 528.
Section One directs the Department to review the policies governing child protective services to determine what portions might be appropriate for the adoption of rules. She noted that the Department had completed an internal review of the policies. In addition the Department had consulted with interested parties including Mary Henderson from the Maine Equal Justice Project.
Section Two of the L.D. directs the Department to develop and publish a pamphlet for parents describing the child protective process. Sandi reported that a draft pamphlet has been developed. The draft pamphlet was circulated to the task force for their review and comment. Sandi noted that there is currently a pamphlet, which is being distributed to parents but which will be replaced when the new one becomes available. A copy of the existing pamphlet will be provided. Sandi and Wendy Betts agreed to look for examples from other states.
Section Three of the L.D. directs the Department to convene a multi-disciplinary task force to review and make recommendations for the improvement of the child protect services program. Sandi noted that the recommendations and findings of the task force would be reported to the standing committees of both the judiciary and health and human services. She noted that this was the business before the task force today.

Review of the Process
Four meetings have been scheduled to undertake the task as outlined in Section Three. Sandi proposed that the first three meetings of the task force focus on the areas of child protective services as outlined in the proposed agenda and that the forth meeting be devoted to developing final recommendations. A concern was raised regarding tracking

the recommendations and discussion of the group. Jeanette Hagen agreed to keep minutes. Representative Schneider raised the question of whether it would be helpful to have individuals directly involved in the child protective services program speak to the group directly. This question led to a more in depth introduction from members of the task force. There appeared to be general agreement with the process as outlined. A number of issues were raised and discussed prior to moving forward with the agenda.

General Discussion

Representative Dugay raised the issue of rules. He reported that he would advocate that any rules proposed for adoption be Major Substantive rules. Representative Dugay raised a specific concern regarding the Department's procedures in Washington County relating to extended family members. Sandi clarified the Department's policy in that area. There followed a discussion regarding whether the Department's policies were being uniformly applied throughout the state.

Representative Dugay reported that Washington County has a reunification rate of 12% and that it was his objective to improve that percentage, although not at the cost of putting children at risk. This led to a discussion of the services available statewide. It was noted and raised as a concern that there is a disparity of services available in the various counties. It was noted with concern that in the more rural areas of the state child protective services may be the only service available. The question of how to ensure adequate resources throughout the state to support meaningful and timely services to parents was discussed. There was also a discussion as to how to widen the pool of service providers generally, how to ensure independent evaluations (involve the courts – Hannah Osborne reported that the courts are looking at this issue) and how the Department's rates for services which are tied to the Medicare rates impacts the situation. Mary Henderson asked for a list of service providers by county.

A question was raised regarding the need for an Ombudsman for the Department of Human Services. It was the sense of those present and familiar with the role and responsibility of an Ombudsman that this was an idea worth pursuing. Sandi agreed to make available the Ombudsman language from the last legislative session for the group to review.

Marilyn Staples reviewed the roles of the Child Abuse and Neglect Counsels.

Mary Henderson raised a concern that parents, prior to court intervention, who have been found by the Department to have abused or neglected a child may feel overwhelmed by the Department and coerised into agreeing to services. There followed a discussion about the voluntary nature of parent's participation with the Department at this juncture. Judy Fenlason reported that all new caseworkers receive specific training on this topic. Karen Mosher reported that she was aware of a number of instances where parents declined services at this juncture.

There followed a discussion regarding the ten-day hearing on preliminary protection orders. There is no provision for continuance by agreement of the parties. Mary

Henderson and Representative Dugay raised concerns about the ability of the parent's attorney's to provide adequate representation in this time frame. It was noted that the court bears the responsibility of appointing attorneys for parents upon the filing of the petition.

Sandi Hodge agreed to provide the task force with a summary of the Federal review findings as well as the child death report information.

Policy and Procedures

The Task force reviewed the child protective services regarding intake including, the receipt of reports of child abuse and neglect, intake screening and assessment and after hour services. Sandi reported that the Department maintains intake services 24 hours a day - seven days a week. Marilyn Staples noted that when calling intake the caller may get an answering machine. Sandi noted that this was true as staffing was thin at 12 daytime intake personnel and 9 after hours personnel. Sandi reported that there is in place a provision for emergency situations. Sandi reviewed the process briefly. She indicated that the intake worker must make an initial determination as to whether the report is appropriate or inappropriate. She noted that there was a specific criteria for making this determination that was inadvertently left out of the packet. Sandi agreed to provide the task force with a copy. Sandi reported that appropriate referrals of moderate to low severity may be assigned to a community intervention service provider. All community intervention service providers operate under a contract with the Department. In those moderate to severe cases where a further assessment is warranted a caseworker from the district office where the family resides will be assigned.

It was noted that there is a section relating to a self-report. The question was raised about developing criteria when a child makes the report.

Sandi agreed to provide a flow chart for the intake procedures.

There was a brief discussion of section 4 subsection C 2. f. regarding opinions of reporters as to the safety and level of risk. There was a concern raised that the ability to call one professional found in section 4 subsections C. 2. c. should include a confidentiality requirement.

Sandi noted that intake receives @ 22 thousand calls a year and of that number 8,000 are appropriate reports.

Karen Mosher raised the concern that professionals' opinions in this area are not given enough weight. She noted that on the occasions when she was not satisfied with the response of intake she calls a supervisor or central office.

Sandi noted that families and children in crisis now have mental health crisis workers available. This provides a valuable resource and lessens the demand on child protective services after care workers.

It was noted that the Department has not been letting reporters know whether their report of abuse and neglect has been accepted for investigation. This had been done in writing in the past and it was the sense of those present that the practice should be reinstated.

Other Business

Representative Dugay indicated that he believed that legislators should be able to access Department records created or obtained in connection with the Department's child protective activities. This is currently prohibited under 22 M.R S.A.4008. In addition Representative Dugay indicated that child protection court proceedings should open to members of the legislature if the parents consent. Questions were raised about the very personal and sensitive nature of these matters and the need to protect the privacy those involved including the children by only opening the proceedings to those critical to the process. There were questions generally about the role that the individual legislator in the courtroom.

It was agreed that the following information would be available before the next meeting.

The BCFS criteria for accepting a child abuse and neglect reports for assessment
Flow Chart of the intake process
Ombudsman language from last legislative session
Summary of the recommendations from the Federal review
Child Death report

The meeting was adjourned at 5:10PM.

Respectfully Submitted,

Jeanette Hagen

Task Force convened pursuant to L.D.528
Meeting Minutes
October 12th, 2000

A meeting of the Task Force was held on October 12th, 2000 at the Child Welfare Training Institute.

Task Force Members present: Wendy Betts, Judy Fenlason, Jeanette Hagen, Sandi Hodge, Karen Mosher, Hannah Osborne and Marilyn Staples.

Sandi Hodge chaired the meeting.

Minutes
The minutes of the meeting of September 22nd, 2000 were approved as distributed.

Task Force members discussed and agreed to change the dates for the upcoming meetings in order to accommodate the schedules of the members. **The next meeting of the Task Force will be held on November 16 from 1-3:30 PM. The following meeting will be held on December 13th at 10-12:30. The meetings will be held in the federal room on the first floor of the Child Welfare Training Institute.**

At the outset there was a brief review and discussion of the prior meeting. Judy Fenlason requested a clarification of the charge of the Task Force. Judy stated that it was her understanding that the charge was to review and make recommendations regarding the policies of the Department's Child Protective Services which include intake up to but not including court intervention. Sandi confirmed Judy's understanding and indicated that the Commissioner, who was present during the legislative session, affirmed this interpretation. Finally, Judy noted while the policy after review may be found by the Task Force to be essentially sound there may be compliance issues. Sandi noted that the Task Force might consider recommending compliance procedures and safeguards

Review of the material that was recently distributed
At the conclusion of the initial meeting of the Task Force the Department agreed to mail to the members additional material. The Task Force discussed the material provided.

The members reviewed the draft brochure for parents. It was the sense of those present that the brochure generally needed to be simplified and formatted in a way that would make it easier to read. Specific comments were recorded. The next draft will reflect the suggestions from the Task Force. The Task Force will review those changes at the next meeting and make final suggestions.

The Task Force reviewed the summary of recommendations from the federal review. There was a brief discussion of the concerns raised in the letter regarding repeated reports

of maltreatment within the family and extended pre-placement services prior to removal when removal may have been warranted sooner. Sandi noted that the new safety assessment policy and procedures are intended in part to address these concerns. In addition, Sandi reported that the Department is exploring additional ways to enhance and support casework supervision.

The Task Force reviewed the proposed but not adopted Ombudsman language from the last legislative session. There were some general comments regarding the scope of the charge and the authorizations. There was general agreement that this position had in the past and could in the future serve a very useful purpose. In as much as this position did exist the Task Force thought it would be helpful to review the old enabling legislation as well as information from other states. Sandi agreed to make this information available prior to the next meeting. It was agreed that this would be an agenda item for the next meeting. It was the further sense of the group that there may be consensus as to a recommendation in this area.

The Task Force then reviewed the Department's policy and procedures for the review of substantiation decisions of abuse and neglect. Sandi noted that CAPTA (Child Abuse Prevention and Treatment Act) requires that states have an appeal/review process in place in order to draw down federal dollars. Sandi noted that the appeal and review policy must, among other federal requirements, afford individuals with due process. Sandi noted that the federal auditors have approved the review process that Maine has adopted. Sandi noted that reviews are ongoing. Sandi reported that she and one other person are handling all reviews. She reported that the Department has received approximately two hundred requests for review since February 2000. Approximately 15.5% have been overturned after review. It was noted that the review process, in addition to giving individuals a forum to challenge the initial findings of abuse and neglect, provides the Department's caseworkers feedback and acts as quality assurance for substantiation decisions. Concerns were raised about the ability to respond to the requests for review in a timely manner given the number of requests and the apparent limitation of resources. There followed a discussion of the need for additional reviewers. It was noted that there were no additional funds set aside for this purpose. There was a concern raised regarding a parent's ability to put their concerns in writing. Sandi indicated that she has had no indication that this has been a problem.

The Task Force reviewed the Child Death Report. It was noted that this diverse panel enables the Department to further utilize resources in the community and in part functions as a quality assurance check for the Department.

Policy and Procedures

The Task Force reviewed the Safety Assessment policy. Sandi shared with the group the new safety assessment handbook that has recently been developed for caseworkers and their supervisors. Sandi noted that the caseworkers have found this very helpful. To further focus and make assessments specific and purposeful caseworkers must now complete a safety assessment assignment sheet. This must be reviewed by their supervisors. There followed a general discussion of the safety assessment process. It

was noted that while the safety assessment policy and procedures appeared very sound the policies in the past were not followed consistently throughout the regions. Concrete steps are underway to insure greater consistency in conducting safety assessments. These steps include case staffing at all levels and follow up training. A discussion followed regarding the ongoing need to provide clinical supervision to supervisors and program administrators. There is a need for supervisory skill training as well. Sandi noted that every year 1/3 of the Department's caseworkers are new to the job. The Task Force agreed that there was a continuing need for training, clarity of expectations and both administrative and clinical supervision.

There was a question regarding the provision in the policy that "interviews should be conducted in a legally sound manner". Sandi and Judy noted that caseworkers are receiving training in this critical area. Sandi noted that a national expert would be speaking on this topic in August. There was general agreement that ongoing trainings in this area are needed and some regions need additional work around this.

Sandi clarified that parents may choose not to sign a safety plan. She noted that a parent's unwillingness to sign did not create adverse consequences for the parents. Wendy Betts noted that she was impressed with the Department's efforts to balance the goal of supporting families – keeping children safe – and using their authority judiciously.

The Task Force next reviewed the risk assessment policy. Sandi noted that this policy, now named the Child and Family assessment, is in the process of being reworked in an effort to compliment the safety assessment policy. Sandi noted that the working group developing the policy is striving for simplicity and clarity. Sandi further noted that this assessment has different objectives from the safety assessment. While the purpose of the safely assessment is to manage the abuse and neglect if found and develop a plan to keep the child safe, the purpose of the Child and Family assessment is to determine the underlying causes of the abuse and neglect and identify what needs to change and what services might be appropriate to bring about the changes required. In response to a question Sandi noted that the services provided must be related to changing behaviors around the abuse and neglect. Sandi noted that there are no specific guidelines as to where parents may be interviewed efforts are made to respect their privacy and the confidential nature of the process.

The meeting was adjourned at 12:45 PM.

Respectfully Submitted,

Jeanette Hagen

Task Force convened pursuant to L.D. 528
Meeting Minutes
November 16th, 2000

A meeting of the Task Force was held on November 16th, 2000 at the Child Welfare Training Institute.

Task Force Members present: Judy Fenlason, Jeanette Hagen, Sandi Hodge, Karen Mosher, Hannah Osborne and Marilyn Staples.

Sandi Hodge chaired the meeting.

Minutes
The minutes of the meeting of October 12th, 2000 were approved as distributed.

Parent's Brochure
The Task Force reviewed Draft Two of the Parent's Brochure. Judy Fenlason made a suggestion under services available to parents. With the incorporation of that suggestion the members present endorsed the brochure as presented. Sandi indicated that the brochure would be formatted, printed and circulated for distribution.

Policy and Procedures
The Task Force reviewed the Department's policy and procedures regarding Reducing Abuse and Neglect. Sandi noted that this policy comes into play after the Child and Family Assessment has been completed and the Department is providing services but where there is no Court intervention pursuant to Title 22. It was noted that when the new Child and Family Assessment policy is finalized it is contemplated that the policy regarding Reducing Abuse and Neglect will be essentially incorporated in that new policy and therefore will be reassessed to avoid duplication. It was the sense of those present that while this policy area dates back to the 1980s it is conceptually sound and the concept should be retained in the incorporation.

The Task Force next reviewed the policy entitled Petitioning for a Protection Order. It was noted that this area reflects the provisions found in Title 22. It was agreed that this policy should be reviewed to be certain that it is in accord with the provisions of ASFA. In addition it was noted that the Department's Relative Placement and Kinship Care policy should be referenced in this area.

The Task Force then reviewed the area relating to Short Term Emergency Placement. Sandi noted that this is not widely used by the Department but is useful as a "bridge" while a plan for a child is being developed.

The Task Force then reviewed the policy surrounding six-month voluntary placements. Sandi noted that this was originally designed to assist families with children who need intensive mental health services. This policy provides a mechanism for the Department to provide services to this population of children without their coming into the custody of the Department.

Recommendations of the Task Force

The Task Force reviewed the topics covered during the meetings and discussed preliminary recommendations. Among the topics discussed was the appropriateness of APA rules for this area of Child Protective Services. There followed a thoughtful discussion as to recommendations. It was agreed that the Department would prepare a draft report of the recommendations of the Task Force, which would be circulated to the members prior to the next meeting.

The draft recommendations will be discussed and finalized at the next meeting.

There being no further business the meeting was adjourned at 3:30 PM.

Respectfully Submitted,

Jeanette Hagen

DRAFT

Report on Findings and Recommendations of the Task Force convened pursuant to L.D. 528

BACKGROUND

Pursuant to L.D. 528 the Department of Human Services convened a multi-disciplinary Task Force for the purpose of considering and making recommendations for the improvement of the Department's Child Protective Services program. Four meetings were held by the task force; September 22, 2000, October 12th, 2000, November 16th, 2000 and December 12th, 2000. The Department established an agenda for the meetings to ensure that all policy areas requiring review were discussed. Policies to be discussed were made available to task force members prior to the meeting. The Department provided additional material as requested. Minutes of the meeting were maintained. (Please find attached)

FINDINGS

Policy

After thoughtful and careful review of the Department's policies in this area the Task Force found the policies to be essentially sound and reflecting best practice standards. Further, the Task Force found that the policies compared favorably to the national standards in this area.

The Task Force noted that in some instances sound policies were inconsistently adhered to throughout the State. The committee strongly endorsed the new Safety Assessment policy. It further acknowledged the value of the Safety Assessment Handbook used by staff in the field. The handbook provides clear guidelines for caseworkers in a very accessible format. The handbook will serve to increase the consistency of the caseworkers approach in this important area and positively impact compliance concerns.

Minor clarifications and typographical errors in the policy were noted by the Task Force and will be incorporated in the policies.

Services for Families and Children

The Task Force recognized and is concerned that appropriate and specialized services for families and children and are not consistently available statewide.

The Task Force found that there was a need for existing providers to receive additional and ongoing trainings to enable them to work effectively with the population of children and families that the Department serves.

Supervision and Caseworker Retention

The Task Force found that one third of the new hires leave in the first year.

The Task Force found that enhanced clinicaP supervision is required for caseworkers, supervisors and Program Administrators to ensure compliance with policy and procedures.

RECOMMENDATIONS

- The Task Force recommends that APA rules in the area of Child Protective Services not be promulgated. The Task Force noted that parent involvement in the process at this juncture is voluntary in nature. Further, the addition of rules and the subsequent judicial review requirements would create significant administrative burdens on the Department both in terms of manpower and financial costs with little or no incremental benefit for parents or children. (The later whose interest it was noted would not be represented at the APA proceedings.) It was noted that rules in this area would most likely result in the delay of services to families, had the potential of creating a safety risk for children and could result in conflicting court action should the Department subsequently seek Court involvement.

- The Task Force strongly recommends that the position of Ombudsman, as developed in the previously adopted legislation entitled Child Welfare Services Ombudsman, be reinstated. In addition, it is the recommendation of the Task Force that there be created two additional supporting positions; one of assistant to the Ombudsman and one to provide clerical support. The Task Force noted that the position of Ombudsman provides an objective voice and critical eye for Child Welfare Services and was in the past an important safeguard in the efforts to best serve children and families.

- The Task Force believes that the issue of caseworker retention must be addressed and recommends the following steps be taken to that end: reduce case loads for new caseworkers, provide meaningful and regular ongoing clinical and administrative supervision and provide ongoing professional growth and development opportunities.

- The Task Force recommends that unit supervisor's capacity for providing clinical supervision be enhanced. The Task Force recommends that the following steps

be taken to that end; expand the use of outside clinical consultants who can provide supervisory training, reduce the caseload for supervisors.

- The Task Force recognizes and is concerned that appropriate and specialized services for children and families are not available consistently throughout the State. The Task Force recommends that existing providers be given additional and ongoing training to enable them to work effectively with this population. Further, the Task Force recommends that the institutes for higher learning work in conjunction with the Departments' of Human Services, Mental Health and Corrections to train new professionals and thereafter encourage them to remain in the State.

- The Task Force endorsed the revised Parent Brochure.

- The Task Force found the policies as written were conceptually sound and recommend that any revision or incorporation of these policies reflect those basic concepts.

  The Task Force recommends that the Department's policies be updated relative to statutory changes.

  The Task Force recommends that the Department continue in its efforts to increase compliance to policy within the Department. Specifically, the Task Force recommends that the Department work with the Child Welfare Training Institute to increase adherence to policy through training, quality assurance practices and supervision.

  It is recommended that the policy around Intake be amended to include guidelines that address the situation of a child making a referral.

- The Task Force recommends that the Department adequately staff the review process for substantiation decisions to ensure a timely response.

- The Task Force supports the continuing work of the Child Death and Serious Injuries panel in as much as the work and the reports generated by the panel provides insight for the improvement of the Department's efforts on behalf of children and families.

MEETING MINUTES

Task Force Convened Pursuant to L.D. 528
February 15, 2001

A meeting of the Task Force was held on February 15, 2001 at the Child Welfare Training Institute.

Task Force Members Present: Wendy Betts, Edward DuGay, Judy Fenlason, Jeanette Hagen, Mary Henderson, Sandi Hodge, Hannah Osborne, Karen Mosher and William Schneider.

Sandi Hodge chaired the meeting.

Minutes:

The minutes of November 16, 2000 and January 31, 2001 were approved as distributed.

The Task Force reviewed their legislative charge.

Mary Henderson noted that the charge of the committee did not include making a recommendation as to the promulgation of rules in the area of Child Protective Services nor did it include the creation of a parent's brochure. The members agreed.

The Task Force reviewed DRAFT II of the proposed Findings and Recommendations. Significant changes were made with the unanimous approval of the Task Force members.

Jeanette Hagen to incorporate those changes and prepare the final unanimous recommendation for the Committee.

There being no further business the meeting was adjourned.

Respectfully submitted,

Jeanette Hagen

MEETING MINUTES

Task Force Convened Pursuant to L.D. 528
1:00 p.m. January 31, 2001

A meeting of the Task Force was held on January 31, 2001 at the Child Welfare Training Institute.

Task Force Members Present: Edward DuGay, Judy Fenlason, Jeanette Hagen, Mary Henderson, Sandi Hodge and Hannah Osborne. Karen Mosher joined the meeting at 2:30.

Sandi Hodge called the meeting to order.

At the outset those present agreed to delay the finalization of recommendations because of the significant number of members of the Task Force absent. It was agreed that an additional meeting would be scheduled and that this meeting would be an informal discussion of issues raised by Mary Henderson in her memo dated January 17, 2001.

There followed a discussion of the Parent's Brochure. Sandi indicated that it is the policy of the Department that caseworkers make the Brochure available to parents at their initial meeting with parents. Hannah Osborne shared the Brochure developed by the Court for Parents in Child Protective Proceedings. Sandi agreed to include in the Department's policy the requirement that the Court Brochure be distributed by caseworkers to those parents who are going to Court. It was noted that 85% of parents who work with the Department do so on a voluntary basis and do not go to Court.

There followed a number of recommended changes to the Brochure. Sandi noted the changes and indicated that she would make the agreed upon changes and have the Brochure reprinted.

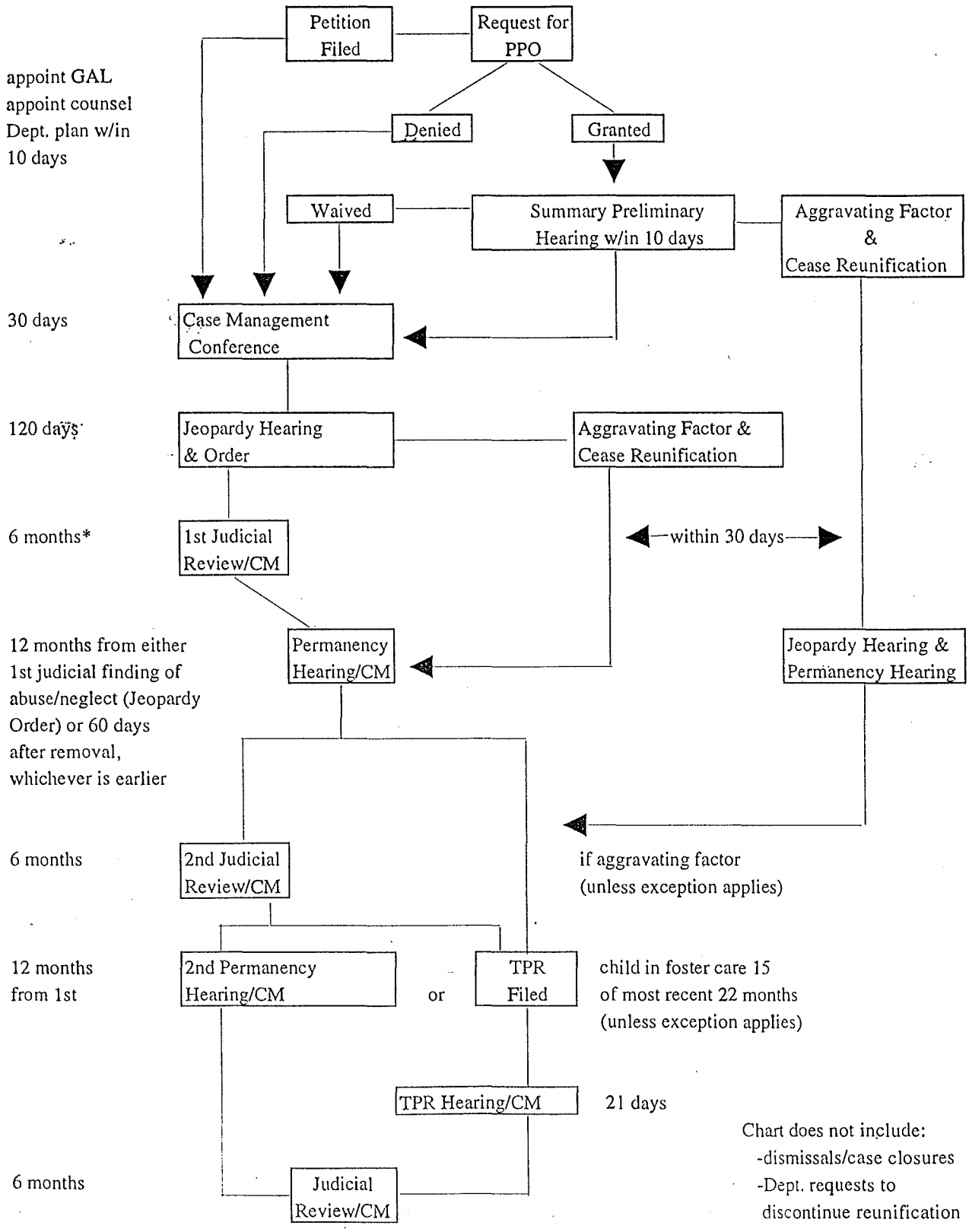
There followed a brief discussion regarding the Promulgation of Rules in the Child Protective Services area.

The Task Force scheduled a meeting for February 15, 2001 from 2:00 p.m. to 4:00 p.m. at the Child Welfare Training Institute.

Respectfully submitted,

Jeanette Hagen

District Court Child Protection Flowchart



YEAR 2000 STATISTICS

Total Number of Children Removed in Year 2000 with a PPO	***917***
Total Number of Children Removed in Year 2000 with Straight C2	***212***
Total Number of Children in Year 2000 Who Were TPR'D	***347***
Children Who Had Custody Dismissed to a Parent	***301***
Children Who Had Custody Dismissed to a Relative	***53 ****
Total Number of Adoptions for Year 2000	***416***

This number (53) reflects only a fraction of children placed with relatives by the Department. Many relatives providing care to their relative's children prefer to have the Department retain custody so that the children can receive a variety of services paid for by the Department, have medicaid coverage and the relatives can receive board and care payments.

It would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

James C. LaBrecque
The Willows Unit #14
323 Stillwater Avenue
Bangor Maine, 04401
Phone (207) 262-9682
E-mail (jameslab@adelphia.net)

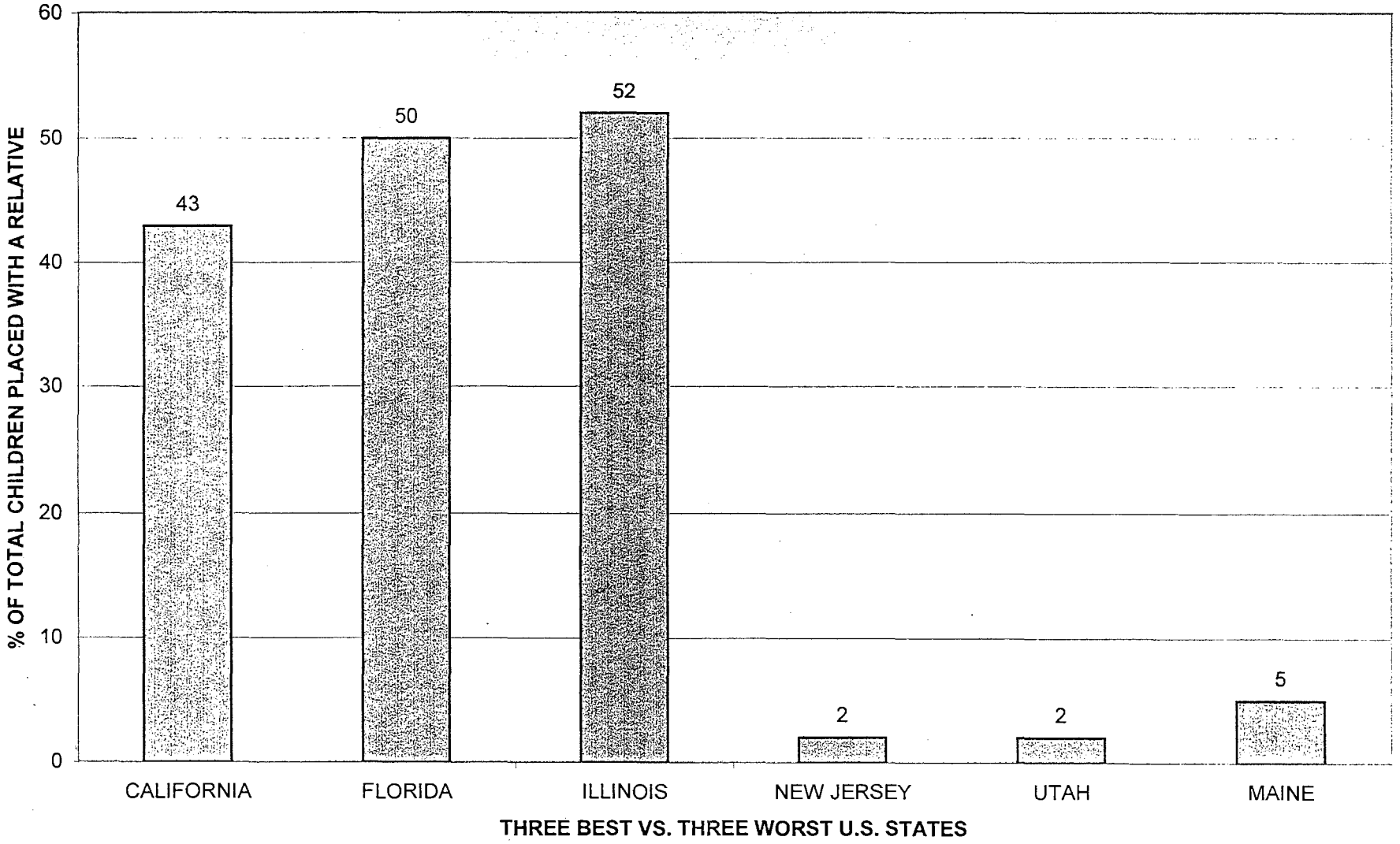
Attached are the following documents.

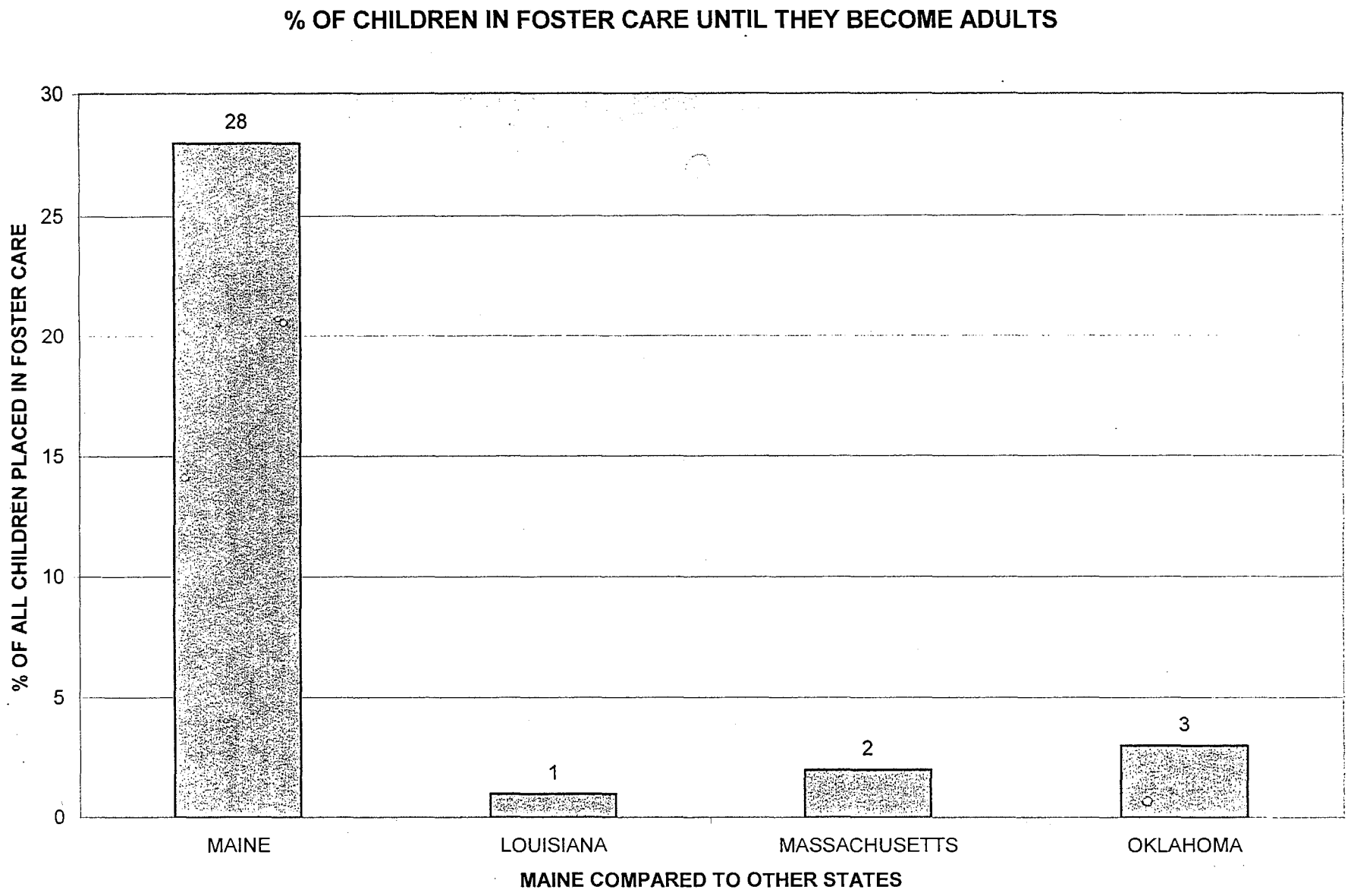
A) February 22, 2001 letter to Maine's HHS, Judiciary and Appropriations Committees regarding US Inspector General report Title IV-E violations in foster homes.
B) March 6, 2001 formal complaint to the US Office of Inspector General for Maine's violations of their Title IV-E State Plan and harm caused to Maine children and parents for civil rights violations of due process.
C) February 9, 2001 letter to HHS and Judiciary Committees regarding Attorney General's conflict of interest when representing DHS and not the public.
D) April 8, 2000 letter to Margaret H. Semple Esq. Director Bureau of Children & Family Services Department of Human Services regarding Federal and State violations of the Kinship Care laws.
E) January 22, 2001 letter to Assistant Attorney General Debra E. Gotlib regarding civil rights violations under education law, and the abuse of the Office Attorney General.
F) Reply to AAG's Memorandum of December 28, 2000 to the Livermore Falls School District opposing the AAG's opinions.
G) May 20, 1999 letter to House Chair on Judiciary Richard Thompson regarding Maine judges not complying with reasonable efforts, and accounting request for Maine's Chief Justice expenditures under 42 USC 670 specifically air marked to train our district court Judges.

Sincerely,

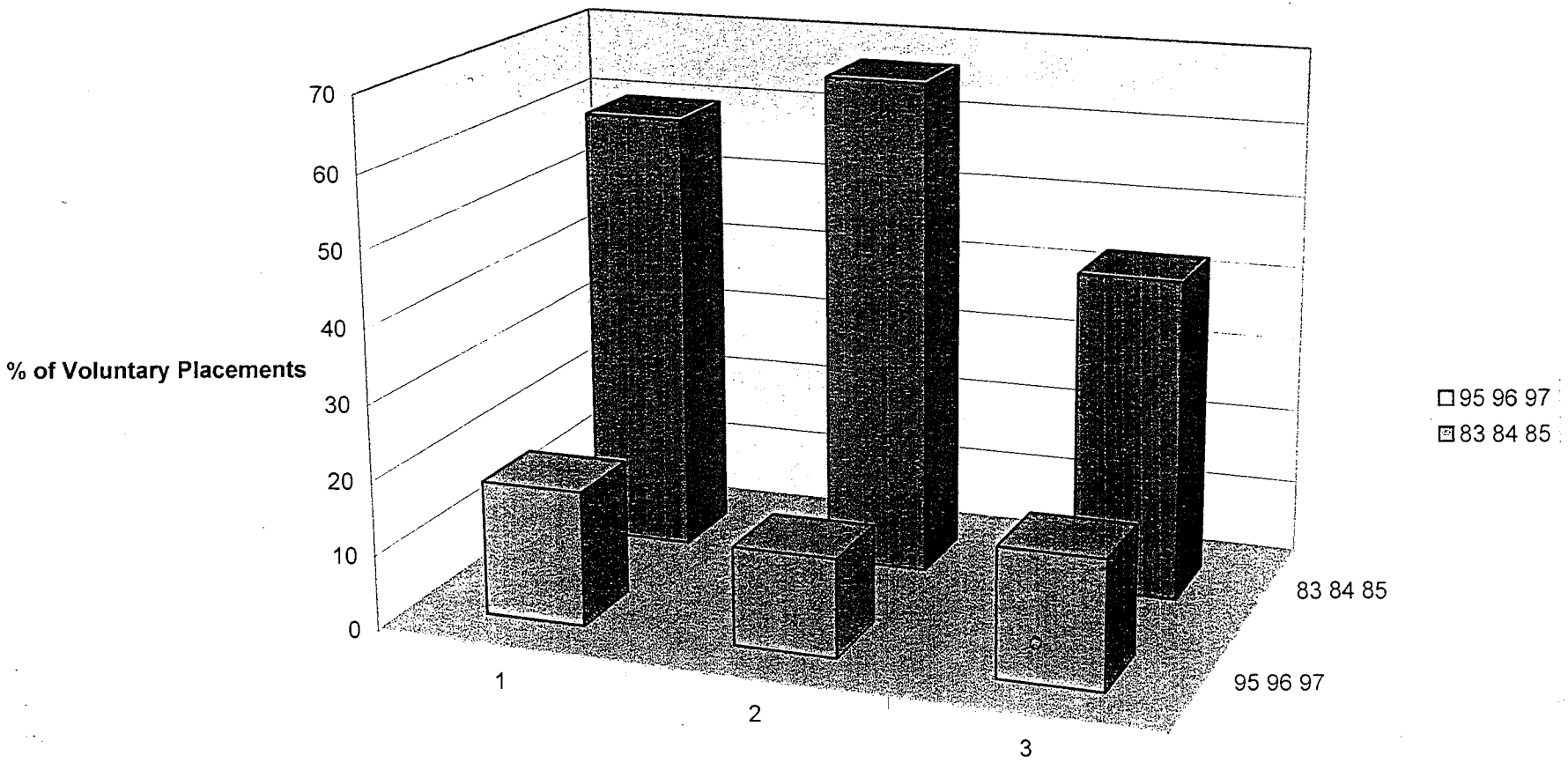
James C. LaBrecque

AFCARS DATA SEPT 30,1997 RELATIVE PLACEMENT

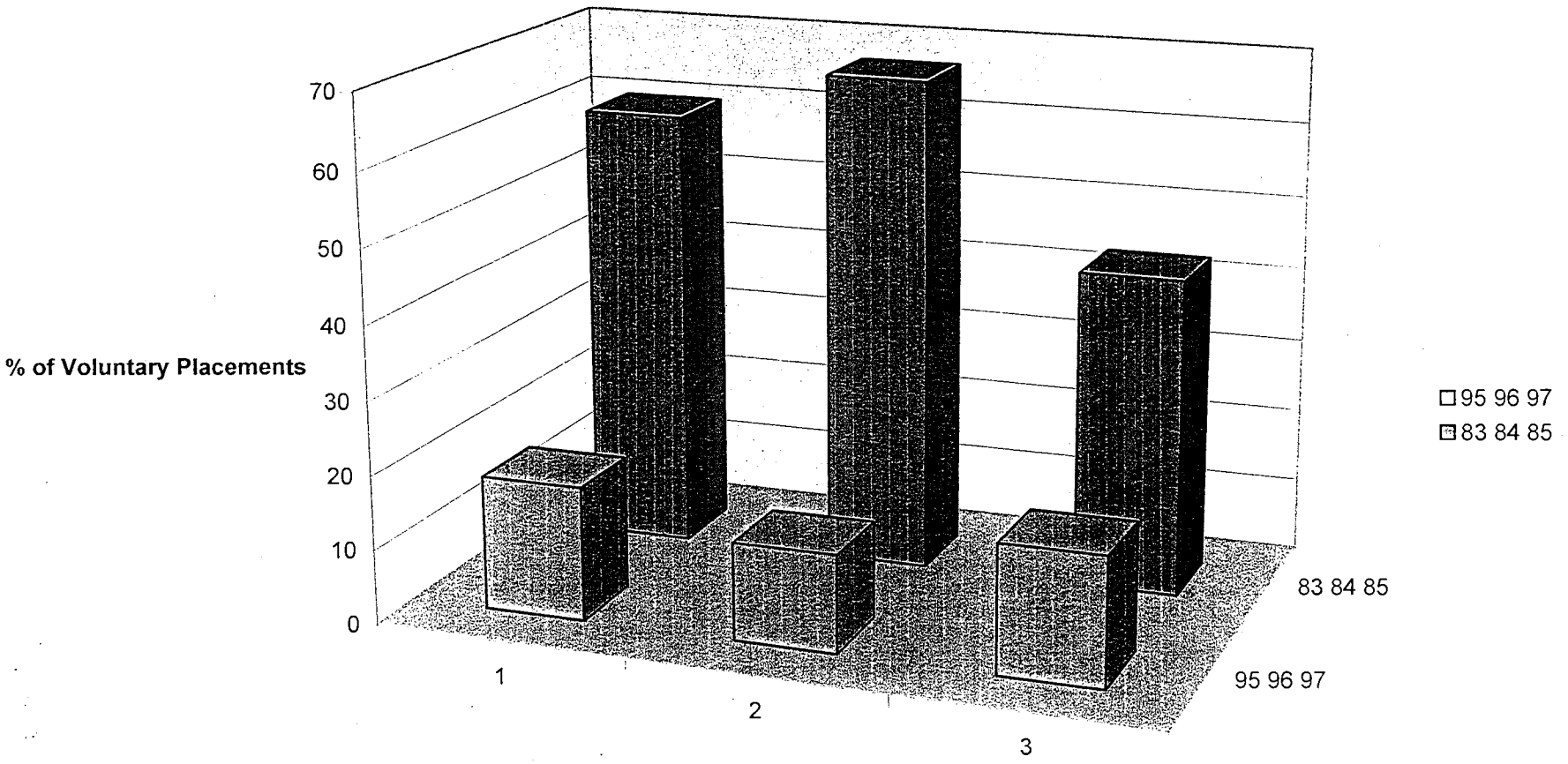



% OF CHILDREN IN FOSTER CARE UNTIL THEY BECOME ADULTS
% OF ALL CHILDREN PLACED IN FOSTER CARE
30
25
20
15
10
5
0
28
1
2
3
MAINE
LOUISIANA
MASSACHUSETTS
OKLAHOMA
MAINE COMPARED TO OTHER STATES

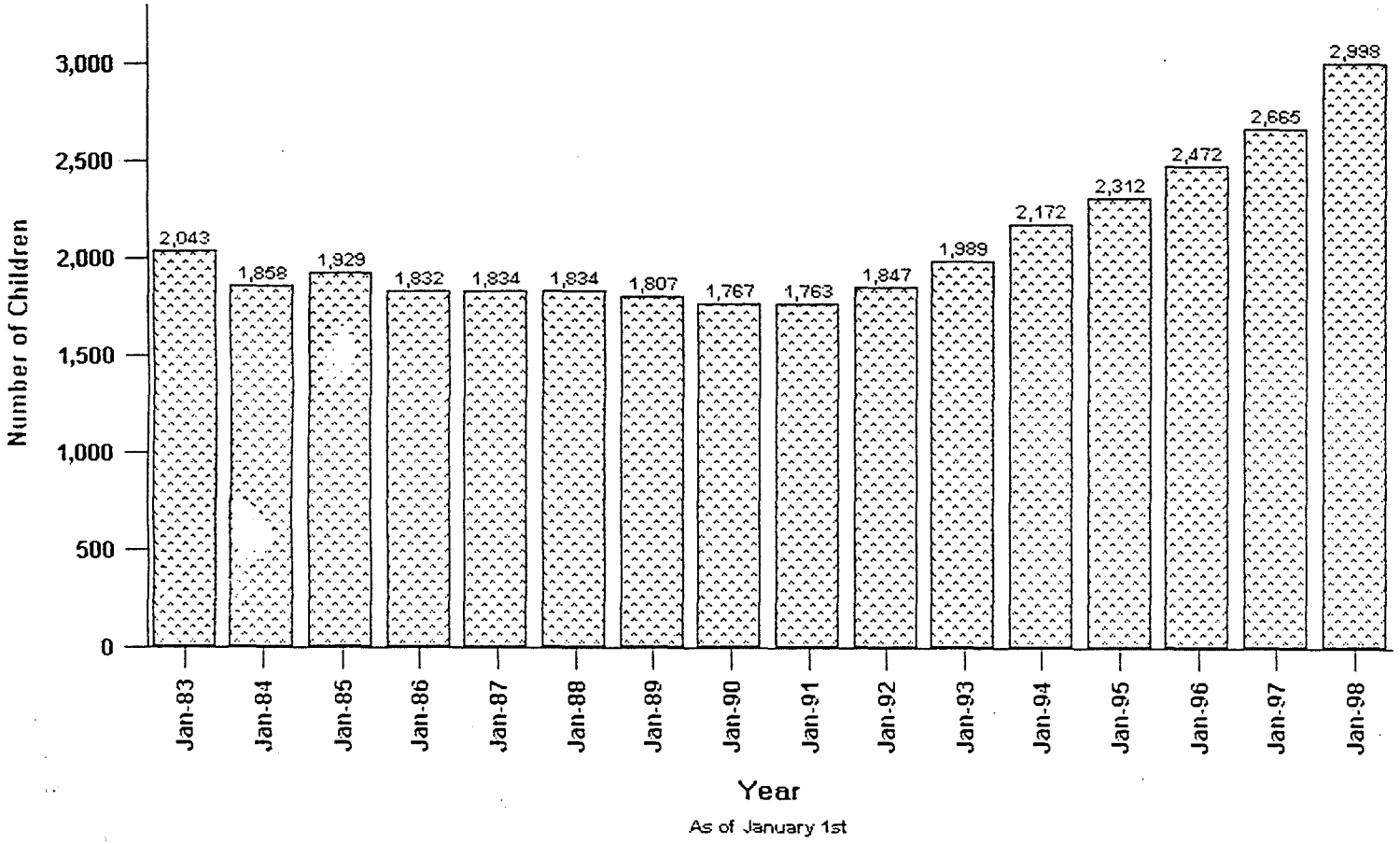
Comparing % of Voluntarily Placed Children in DHS Custody to Court ordered placement



Comparing % of Voluntarily Placed Children in DHS Custody to Court ordered placement



Bureau of Child and Family Services
Number of Children in DHS Care As of January 1st
(Snapshot Picture)



STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-NINE

H.P. 297 - L.D. 405

An Act to Require that the State of Maine Comply with Federal Law Requiring Reasonable Efforts

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Compliance and report. The Department of Human Services shall comply with 42 United States Code, Chapter 7, Subchapter IV, Part E, as amended. The department shall report the details of the State's compliance status, giving particular attention to the requirements concerning reasonable efforts on the State's part to keep families intact, to the Joint Standing Committee on Judiciary by December 15, 1999.

Laws, private and special: Laws that are enacted to address particular persons or institutions and that, due to their limited scope, are not codified in the *Maine Revised Statutes Annotated* (MRSA). An example of a private and special law is the creation of or change in a water district charter.

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

Lands Reserve Trust	$100,000
Tuition - Travel	200,000
Miscellaneous	1,500
Special - Retirement	150,000
TAL	$451,500
TAL DEDUCTIONS	($2,351,708)
X ASSESSMENT	$11,683,347

Sec. 2. Use of funds. Of the county reimsements for services for Hancock County provided his Act, $5,000 is for the Eagle Island ferry service.

Sec. 3. Limitation of authority. The county missioners of Somerset County may not commit e than $100,000 from amounts made available by Act for the acquisition of a fire truck for Rockd.

Emergency clause. In view of the emergency d in the preamble, this Act takes effect when roved.

Effective May 21, 1999.

CHAPTER 26

H.P. 297 - L.D. 405

An Act to Require that the State of Maine Comply with Federal Law Requiring Reasonable Efforts

it enacted by the People of the State of ne as follows:

Sec. 1. Compliance and report. The Denent of Human Services shall comply with 42 ed States Code, Chapter 7, Subchapter IV, Part E, nended. The department shall report the details of State's compliance status, giving particular tion to the requirements concerning reasonable ts on the State's part to keep families intact, to the Standing Committee on Judiciary by December 999.

See title page for effective date.

CHAPTER 27

H.P. 993 - L.D. 1391

An Act to Amend the Charter of the Dover-Foxcroft Water District

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

Whereas, in order to ensure a smooth transfer of the fire prevention systems from the Dover-Foxcroft Water District to the Town of Dover-Foxcroft this legislation must go into effect immediately; 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 enacted by the People of the State of Maine as follows:

Sec. 1. P&SL 1985, c. 107, Pt. B, §2 is repealed.

Sec. 2. P&SL 1985, c. 107, Pt. B, §§4 and 5 are repealed.

Sec. 3. P&SL 1985, c. 107, Pt. B, §6, first ¶ is amended to read:

Sec. 6. Officers and powers. The officers of the corporation ~~shall~~ consist of a supervisor, clerk, treasurer~~, collector, 3 assessors, 4 or more fire wardens~~ and a board of trustees of 3 members, one of whom ~~shall be~~ is designated as ~~chairman~~ chair and such other officers as may be provided for in the bylaws of the district.

Sec. 4. P&SL 1985, c. 107, Pt. B, §6, 2nd ¶ is repealed.

Sec. 5. P&SL 1985, c. 107, Pt. B, §7, last ¶ is amended to read:

The district, at any legal meeting ~~thereof~~ of the district, may make and alter bylaws and ordinances for its government for the efficient management of its water system and properties ~~and of its fire department, including the erection and maintenance of chimneys, regulation of all fires, stoves, pipes and flues in use for the purpose of heating contained in any building, the keeping of ashes, and for the regulation of all such other matters as shall endanger property to destruction by fire or tend to spread fire rapidly; provided that~~ as long as the same are not repugnant to the law of the State~~; and may enforce the same by suitable penalties equal to the penalties provided in the Maine Revised Statutes, Title 35, chapter 313, to be recovered by action of debt in the name and to the use of the district. No justice in Dover-Foxcroft may be disqualified from trying such actions by reason of his being a member of the district.~~

[DOCID: f:publ193.104][[Page 110 STAT. 2105]] ' ***Public Law 104-193*** 104th Congress An Act To provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997. <<NOTE: Aug. 22, 1996 - [H.R. 3734]>> Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Personal Responsibility and Work Opportunity Reconciliation Act of 1996.>> assembled,SECTION 1. <<NOTE: 42 USC 1305 note.>> SHORT TITLE. This Act may be cited as the ``Personal Responsibility and Work Opportunity Reconciliation Act of 1996".SEC. 2. TABLE OF CONTENTS. The table of contents for this Act is as follows: TITLE I--BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

TITLE V--CHILD PROTECTION

SEC. 505. KINSHIP CARE.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended-- (1) by striking ``and" at the end of paragraph (16); (2) by striking the period at the end of paragraph (17) and inserting ``; and"; and (3) by adding at the end the following: ``(18) ***provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."***.

APPROVED

JUN 02 '99

BY GOVERNOR

CHAPTER

382

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-NINE

H.P. 886 - L.D. 1243

An Act to Strengthen the Kinship Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §4062, sub-§4 is enacted to read:

4. Kinship preference. In the residential placement of a child, the department shall consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards.

4034

STATE OF MAINE
PENOBSCOT, ss

DISTRICT COURT
District: Third
Location of: Southern Penobscot
Civil Docket No.: 00-A-

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES

IN RE:

RANDY J
ANDY J

ORDER OF PRELIMINARY CHILD PROTECTION AND NOTICE TO PARENTS AND CUSTODIANS

In the matter of protection in the above-named child(ren), this court finds by a preponderance of the evidence that reasonable efforts were made to prevent the need for removal of the child(ren) from the home, and that the child(ren) is/are in immediate risk of serious harm.

1. IT IS ORDERED, pursuant to 22 M.R.S.A.§4034 and §4036 that the above named child(ren) be given the following protection:

1. Custody of Roxanne, Randy and Andy Hiles to the their mother Sarah Hiles
2. Randy Hasenbank will have no ~~unsupervised~~ contact with the children ~~. All contact will be arranged through DHS.~~ until after hearing 8/7/00 at 11:30. BB.

pending entry of a jeopardy order under 22 M.R.S.A.§4035 and §4036.

2. IT IS FURTHER ORDERED that a copy of this Order and Notice of hearing be served forthwith on the parents and custodians of the above-named child(ren) by:

Name of Party	Method of Service
RANDY J	In accordance with rule 4 M.R.Civ.P. or by an agent of the Department of Human Services
SARAH L	

3. IT IS FURTHER ORDERED pursuant to 22 M.R.S.A.§ 4036(1-G) that:
   a. Child support be paid by each parent to the State of Maine Department of Human Services as follows: In accordance to Child Support Enforcement Guidelines.
   b. No support by a specific parent has been ordered for the following reasons:

The Clerk shall enter the following on the docket: The Preliminary Protection Order dated August 3, 2000 is incorporated in the docket by reference. This entry is made in accordance with M.R.Civ.P.79(a) at the specific direction of the Court.

Dated 8/3/00 at Bangor, Maine

Judge of the Third District Court

A TRUE COPY
ATTEST: Holly Farrin D
Administrative Deputy Clerk

OMB APPROVAL NO. 0980-01141
Expiration Date: 08/31/99

STATE PLAN FOR TITLE IV-E OF THE SOCIAL SECURITY ACT

FOSTER CARE AND ADOPTION ASSISTANCE

STATE Maine

U.S DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES
ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES
CHILDREN'S BUREAU
1997

ATTACHMENT A

IV-E STATE PLAN - STATE OF MAINE

GOVERNOR'S CERTIFICATION

TITLE IV-E
SOCIAL SECURITY ACT

I certify that the Bureau of Child and Family Services, Department of Human Services
(Name of Agency)

(a) has the authority to submit the State plan under title IV-E of the Social Security Act for Foster Care and Adoption Assistance; and

(b) Is the single State agency responsible for administering the plan or supervising the administration of the plan by local political subdivisions. It has the authority to make rules and regulations governing the administration of the plan that are binding on such subdivisions. The title IV-E plan is mandatory upon the subdivisions and is in effect throughout the State.

10/27/97
Date

Signature
Governor, State of Maine

IV-E STATE PLAN - STATE OF Maine

CERTIFICATION

I hereby certify that I am authorized to submit amended pages for the State Plan on behalf of

Maine Department of Human Services
(Designated State Agency)

Date 10/22/97

Kevin W Concannon
(Signature)

Kevin Concannon, Commissioner
(Title)

APPROVAL DATE: _____

EFFECTIVE DATE: _____

IV-E STATE PLAN - STATE OF Maine

ASSURANCE

I hereby certify that the State agency administering the title IV-E program obtained the relevant sections of the title IV-A State plan (as in effect in this State on June 1, 1995) and use them as the basis for making title IV-E eligibility determinations. I certify that I am authorized to submit, as an appendix to this State's title IV-E State plan, those relevant sections of the Title IV-A State plan.

on behalf of Maine Department of Human Services
(Designated State Agency)

Date 10/22/97

Kevin W Concannon
(Signature)

Kevin W. Concannon, Commissioner
(Title)

APPROVAL DATE: _____

EFFECTIVE DATE: _____

(Signature ACF Regional Representative)
sh/dawn/title iv-e plan

Federal Statutory/ Regulatory References		State Statutory/Regulatory/Policy References and Citation(s) for Each
472 (c) (1) & (2)	3. Foster care payments are made for the care of children in foster family homes, private child care institutions, or public child care institutions accommodating no more than 25 children, which are licensed by the State in which they are situated or have been approved by the agency in such State having responsibility for licensing or approving foster family homes or child care institutions. Federal reimbursement is not available for children who are in detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of delinquent children.	C&FS Manual Section V, Subsection D-6, pp. 3-6 and Subsection G-1, pp. 1-12. 22 M.R.S.A. Section 7
	D. CASE REVIEW SYSTEM	
45 CFR 1356. 21 (d)	1. Case Plan	
	To meet the case plan requirement of 471 (a) (16), 475 (1) and 475 (5) (A) of the Act, the State Agency has promulgated policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must,	C&FS Manual Section VI, Subsection B, pp. 1-23.
471 (a) (16) 45 CFR 1356. 21 (d) (1)	a. Be a written document which is a discrete part of the case record, in a format determined by the State, which is available to the parent(s) or guardian(s) of the foster child; and	C&FS Manual Section XIII, Subsection A, pp. 26-37.

Federal Statutory/ Regulatory References		State Statutory/Regulatory/Policy References and Citation(s) for Each
45 CFR 1356. 21 (d) (2)	b. Be developed within a reasonable period, but no later than 60 days from the time the State Agency assumes responsibility for providing services, including placing the child, and	C&FS Manual, Section XIII, Subsection A, p. 24. 22 M.R.S.A. Sections 4035, 4036 and 4038
45 CFR 1356. 2221 (d) (4)	c. After October 1, 1983, include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family; and	C&FS Manual Section XIII, Subsection A, p. 27. BCFSSC-015 R0195
475 (1) (A)	d. Include a description of the type of home or institution in which the child is placed; and	C&FS Manual, Section XIII, Subsection A., p. 28.
	e. Include discussion of the appropriateness of the placement and how the responsible agency plans to carry out the judicial determination made with respect to the child in accordance with 472 (a) (1) of Act; and	C&FS Manual, Section XIII, Subsection A, pp. 28-30.
475 (1) (B)	f. Include a plan for assuring that the child receives proper care and that services are provided to the parent(s) in order to improve the conditions in the parent's (parents') home to facilitate the child's return to his own home or the permanent placement of the child; and	C&FS Manual, Section XIII, Subsection A, pp. 32b-33.

_____CW Number_____Social Security Number_____

CW Status and Dates: Initial _____ Current_____ Date of Birth_____

Region_____

CASE ASSESSMENT AND CASE PLAN

I. SERVICES TO PREVENT REMOVAL

Prevention of Removal

/ / This child entered the custody of the Department prior to October 1, 1983. Therefore, a description of services to prevent removal is not required in this document.

OR

/ / This child entered custody after September 30, 1983 and

/ / The date of the case plan which describes services to prevent removal of the child from his home was _____.

OR

/ / This is the first case plan since entry into voluntary care or custody. The following is a description of the services which were offered or provided to the child and his parents to prevent removal from the parents' home.

		Offered but Refused (give date)		Provided		
	Service	Mother	Father	Mother	Father	Child
/ /	Individual Counseling					
/ /	Group Counseling					
/ /	Family Counseling					
/ /	Psychological or Psychiatric Evaluation and/or Treatment					
/ /	Day Care					
/ /	Homemaker					
/ /	Transportation					
/ /	Emergency Shelter					
/ /	Parent Aides					
/ /	Self-Help Group (ex. P.A., AA)					
/ /	Court Ordered Study					
/ /	Respite Care					
/ /	Advocacy					
/ /	Case Study					
/ /	Case Supervision					
/ /	(Other - please specify)____					

_____Child Protective Caseworker Date_____

_____Supervisor Date_____

_____ CW Number_____ Social Security Number_____

CW Status and Dates: Initial _____ Current_____ Date of Birth_____

Region_____

CASE ASSESSMENT AND CASE PLAN

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OR

/ / This is the first case plan since entry into voluntary care or custody. The following is a description of the services which were offered or provided to the child and his parents to prevent removal from the parents' home.

	Service	Offered but Refused (give date) Mother	Father	Provided Mother	Father	Child
/ /	Individual Counseling					
/ /	Group Counseling					
/ /	Family Counseling					
/ /	Psychological or Psychiatric Evaluation and/or Treatment					
/ /	Day Care					
/ /	Homemaker					
/ /	Transportation					
/ /	Emergency Shelter					
/ /	Parent Aides					
/ /	Self-Help Group (ex. P.A., AA)					
/ /	Court Ordered Study					
/ /	Respite Care					
/ /	Advocacy					
/ /	Case Study					
/ /	Case Supervision					
/ /	(Other - please specify)____					

_____ Child Protective Caseworker Date_____

_____ Supervisor Date_____

Federal Statutory/ Regulatory References		State Statutory/Regulatory/Policy References and Citation(s) for Each
471(a)(18)*	G. KINSHIP CARE The State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards. *A technical amendment to the PRWORA has been submitted to change section 471(a)(18) to 471(a)(19) because P.L. 104-188 also contained an amendment to section 471(a) of the Act which added paragraph 18 with different content.	

Maine lags in efforts to place foster kids with rela

l for reliance re for kids

announced plans to take her 5-month-old grandchild away from his parents, Wright stepped up to the plate and asked if she could take the baby rather than have him put in a foster home.

"I saw that baby nearly every day of his life," Wright said. "He is my life. I would do anything, including keeping him away from his parents, if that's what they told me I had to do."

Wright said DHS would not consider it.

It's cases like Wright's that

See DHS, A2, Col. 1

DHS, from A1

result in too many Maine children being placed in foster care rather than with capable relatives, according to state Rep. Deborah Plowman, R-Hampden, who helped push a bill through the Legislature this year to force DHS to comply with federal regulations that seek to decrease the number of children in foster care.

"They called me hostile," Wright said, recalling her plea to DHS. "I guess that was because I disagreed with them and I told them so. I think I said they were dirty, rotten rats for taking my grandson away."

Wright said DHS later told her that she could not see the baby at all. That lasted until she went on a radio talk show and explained her plight to the public. The response was overwhelming, and not long after that, DHS changed its mind and agreed to allow her a one-hour supervised visit.

"I raised six children and have 12 grandchildren. I drive children in DHS custody. I've never abused a child in my life, and I certainly have never had a DHS complaint lodged against me. I just tried to stand up to them, that was all, and they didn't like it," she said.

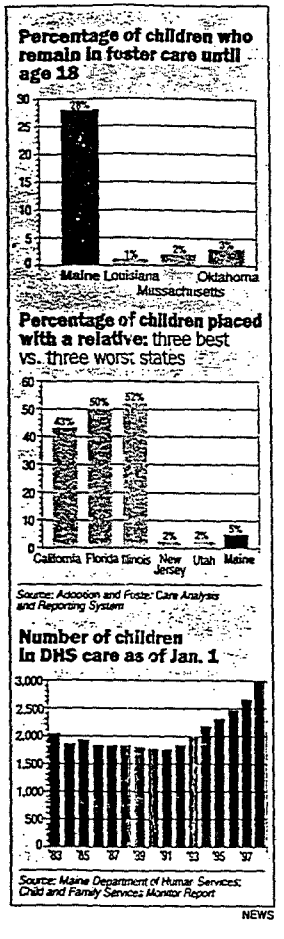
So while she transported foster children around the area, DHS continued its stance that she was not suited to care for her own grandson. The child, now 1½, remained in foster care until two weeks ago when he was returned to his natural parents.

Relying on foster care

Reducing the number of children in foster care is a problem the federal government tried to solve when Congress passed the Adoption Assistance and Child Welfare Act in 1984. Among other things, the law set standards that states were required to establish and maintain in order to receive federal funds.

The purpose of the law, in part, was to encourage states to reduce the number of children in foster care by offering services and alternatives to the parents while the children were still in the home, and to offer incentives for states to seek out capable relatives for children to live with until problems could be resolved. In addition, the federal act sought to find permanent homes more quickly for children, whether with the parents or in adoptive homes.

But while Maine officials regularly sign contracts with the Department of Health and Human Services promising to comply with the federal legislation, Maine continues — 15 years later — to rank among the highest nationally in the percentage of children placed in foster care each year.



NEWS

Statistics from the Federal Adoption and Foster Care Analysis and Reporting System indicate that Maine places only 5 percent of the children it takes into custody with relatives of the child. Only two other states — New Jersey and Utah — place fewer children with relatives. Illinois and Florida place 50 percent of children in state custody with relatives rather than in foster care.

Maine also keeps its children in foster care for longer periods of time. The same AFSCARS figures indicate that 28 percent of children placed in foster care in Maine stay there until age 18. In Louisiana, only 1 percent of children stay in foster care until age 18 and in Massachusetts only 2 percent stay that long.

Despite the efforts of Congress and the $30 million a year Maine gets from the federal government for its efforts to reduce the foster care population, the number of children in foster homes in Maine has risen steadily, from 2,043 in 1983 to 2,998 in 1998, according to figures provided by DHS.

Plowman and James LaBrecque of Bangor are convinced that at least part of the reason for the rising figures is Maine's failure to comply with the Adoption Assistance and Child Welfare Act. LaBrecque advocates for families having problems with DHS.

Because of the efforts of Plowman and LaBrecque, the Legislature voted this spring to codify two portions of the state's plan for Title IV-E of the Social Security Act that contains the mandates that states must adhere to in order to receive federal funds.

The bill, LD 405, essentially requires the state to comply with the federal Adoption Assistance and Child Welfare Act, something Margaret Semple, director of children and family services at DHS, says her department already does.

But arguments from LaBrecque and Plowman convinced the Legislature's Judiciary Committee to unanimously approve the bill, and it passed easily through the Legislature.

Specifically, the bill includes in state statutes the definition of "reasonable efforts" that federal law says states must make before removing the child from the home.

Judges questioned

LaBrecque and Plowman say "reasonable efforts" are specifically defined in the federal legislation and that judges in Maine have failed to require evidence of those efforts in the courtroom during hearings to remove children from their homes.

"DHS is supposed to literally go through a checklist to ensure that things such as counseling, respite care and other things that could help the family stay together have been offered, and the judges should be making sure such things have occurred, and what we've found is that judges don't even know what reasonable efforts are," said Plowman.

Plowman said judges' ignorance of the federal legislation requirements became clear this year during judiciary appointment hearings. During those hearings, at least three judges admitted that they had no idea that "reasonable efforts" were actually defined, she said.

"The [judges] are supposed to ask for more than the state attorney standing up and saying the state has made reasonable efforts to keep the family together. They should have specifics. That's what the federal law says. The judges didn't even know they needed to ask for more than that," Plowman said.

Chief Justice Daniel Wathen said he is comfortable that judges in Maine knew what was required before ordering a child to be removed from a home. He said during judicial reappointment hearings, judges were asked if they were familiar with Title IV-E, to which some replied no.

"They know what's expected and what's necessary, but that doesn't mean they can simply tell you off the cuff what's contained in a certain piece of legislation. We can't all just recite titles like that," he said.

Wathen further said that any parent who felt a judge had failed to require the necessary evidence before ordering the removal of a child had a right to appeal that order.

"That judge's decision would then be subject to a complete review by the law court. If the proper steps had not been taken the court would nullify the order," he said.

'Kinship law'

The other portion of Plowman's bill, called the "the kinship law," deals with the mandate that the state attempt to first place a child taken from a home into the home of a relative before considering a foster home placement.

Again, the federal law the state is supposed to follow requires that states receiving federal funds for foster care programs make real attempts to place the child with a relative before placing the child in foster care.

Plowman charged that DHS was hesitant to comply with that part of the legislation because it does not receive federal funds for children placed with relatives.

"The way the federal law is written, states that supposedly comply with its legislation basically get money for each child that does go into foster care. So the fewer children the state has in foster care, the less money the state gets. ... This is budget-driven," she said. "DHS is literally punishing children. ...The goal should be keeping the family together, but you don't get money if you keep the family together. You get money if you're breaking them up and putting kids into foster care."

To support her theory, Plowman points to what she calls pitiful statistics that show Maine places only 5 percent of children in state custody with relatives.

"I understand that in many cases a relative placement may not be a feasible alternative, but you can't tell me that out of every 100 families, only five have relatives who could care for the child and the other 95 are scumbags. I have more faith in Maine people than that," said Plowman.

DHS defended

Margaret Semple, director of Child and Family Services for DHS, cringes upon hearing Plowman's allegations that foster care in Maine is budget-driven. She acknowledges the state could do better at working to place children with relatives, but said plans for improvements in that area have been under way since last fall.

"We could do better. There are areas we could improve, but these allegations are wrong," she said.

She scoffs at the idea that judges "rubber stamp" DHS requests to remove children from their homes and claims that hearings to remove those children are lengthy and involved.

"We may not have a checklist that we hand a judge, but trust me, the judges hear from many people and ask many questions to ensure that we have made every attempt possible before we petition for removal of that child," she said.

She also ticked off the dozens of services for parents that DHS offers while attempting to keep the child in the home.

Semple said her office did not object to Plowman's bill, but said she is confident that her department was already in compliance with federal law. She was unable to say whether the bill would at all affect the way DHS does business when it comes to removing at-risk children from their homes.

"We do consider placing children with relatives, but you have to understand that it is not always feasible. We will do what's in the best interest of the child and placing them with a relative may not always be best," she said.

High stand

Semple also has very high before a child

"We have t a judge, who to interview chologists, pa bers and phys has been serio risk of serious

"[Plowman are stuck on t sonable effort efforts' depend lem is," she s

Semple ac ever, that DH job at trying with relatives.

"We can do are now tryin wider range said.

A new conce department is seling in which seling to the extended family fied as "at-risk

"We sit dow whole family, g and uncles to can solve this smallest amoun the child. But you have to re first and forem that child safe,"

The adoptive

While federal states offer an a attempt to keep those same la that states wo permanent pla dren who have their parents.

In Maine, th in protective c must have a D ing every six m cases reviewed. must work h reunify the ch families or find more quickly.

"I'm all for some permanen other," said Pl this federal leg that children adopted faster level the playin these parents, child is out of t is there that th forever."

It would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

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March 6, 2001

Donald L. Dille
Assistant Inspector General for
Administration of
Children, Family, and Aging Audits
Office of Inspector General
Washington DC

Re: Noncompliance with Reasonable Effort, TITLE IV-E eligibility/compliance regulations and statutes

Dear Mr. Dille,

Maine is wrongfully applying for and receiving large sums of federal money by not complying with their Title IV-E State Plan. The receipt of these wrongful funds has resulted in extensive family destruction and serious harm with no end in sight.

Consider this document as part of a six piece series of complaints and request for immediate investigation. Hopefully this and the other five documents I recently e-mailed you will be adequate to prompt a serious investigation into my allegations. Exhibits are available if needed. Let me know which ones you want and I will send them out to you.

It is my understanding that *eligibility* and *compliance* are two fundamental components required to receive federal TITLE IV-E funds, and are therefore essential in meeting the provisions of Maine's own legislation L.D. 405 passed in Maine's private and special law Chapter 26.

First, *eligibility* requires Maine to have a completed Title IV-E State plan meeting the intent of congress and second, the State must substantially comply with the plan signed by the Governor and the Commissioner as submitted to the federal government.

I bring this to your attention in appreciation that Maine passed L.D. 405[1] in 1999. This legislation requires that the *"Department of Human Services **shall** comply with 42 United States Code, Chapter 7, Subchapter IV, Part E, as amended. The department **shall** report the details of the State's compliance status, giving particular attention to the requirement concerning **reasonable efforts** on the state's part to keep families intact, to the Joint Standing Committee on Judiciary by December 15, 1999."*

In spite of great legislative effort to force DHS to comply with our Title IV-E State Plan, this commission continues to ignore both the compliance and reporting requirements of L.D.405, as well as Federal law from which they continue to draw (FFP) funds. For instance, the Federal Region I office in Boston has not enforced Maine's eligibility requirements to file Kinship Care regulations (Section 4 page 4 part G of the State Plan). To date, regulations have never been filed, even though our Governor and Commissioner signed the State Plan Amendment for Kinship Care in October of 1997.

As we approach our fourth year since our Governor and Commissioner have promised to comply with the Federal Kinship Care Amendment, the facts reveal that Kinship Care has continued to be ignored. Meanwhile the number of Maine foster homes has grown from 1,190 to 2,094, an increase of 76%.

With the addition of 904 new Maine foster homes, 744 (or 80%) have failed to meet safety and licensing standards, while Kinship Care continues to be ignored.

[1] (Exhibit –A-) L.D. 405

The latest AFCARS data disclose that Maine places only 5% of children with relatives. In other words, Maine state government ignores relatives in 95% of foster care placements.

As long as the Federal Government continues to fund preference given to non-relative foster care, Maine will continue to work toward excluding relative placements.

Claims

1) Reasonable Efforts findings at Preliminary Protection hearings are executed without statutory or legislative authority.

2) Preliminary Protection Orders are most commonly made contrary to defendants right to due process under Maine law.

3) Preliminary Protection Order/Reasonable Efforts findings by a "preponderance" are made contrary to the definition and fundamental intent of the preponderance standard.

4) Reasonable Efforts findings on Preliminary Protection Orders are made contrary to the intent of congress.

5) Reasonable Efforts findings on Preliminary Protection Orders are fashioned in a manner that sanction DHS' wrongful application of federal funds.

6) Reasonable Efforts are rarely made prior to removing children from their home, and lack proper and official support documentation.

As to the claim that Reasonable Effort findings at Preliminary Protection hearings are executed without statutory or legislative authority;

With few exceptions, all Preliminary Protection Orders signed by our District Court judges include the following boilerplate paragraph at the top of the order.[2]

> *"In the matter of protection in the above-named child(ren), this court finds by a* ***preponderance*** *of the evidence that* ***reasonable efforts were made to prevent the need for removal of the child (ren) from the home,*** *and that the child(ren) is/are in immediate risk of serious harm."*

The reasonable effort portion of this paragraph, unlike other paragraphs in the preliminary protection orders, makes no authorized reference to Maine State statute or court rules. Absent defined authority, reasonable effort findings within the form of the Preliminary Protection Order are made without a statutory basis, obviously, and as a result, do not meet congressional intent for its funding requirements.

Currently there is no Maine statute authorizing the court to make reasonable efforts findings at preliminary protection hearings.

Preliminary Protection Order authorizations fall under Title 22 M.R.S.A. Sections 4033 **Service and notice,**[3] and 4034 **Request for a Preliminary Protection Order.**[4] No such statutory authority exists that allows a court to make a finding of reasonable efforts at these hearings, especially "Ex-Parte." There is no authority allowing a finding by a "preponderance," particularly when judges knowingly disallow the presence of opposing parties or anything that might yield evidentiary weight in favor of a defendant/parent. This stage is where Rubber Stamping[5] of court orders lock in Federal funds which fuel DHS behaviors in such a way that they hold children, contrary to law and their best interest, for longer periods of time than the State would otherwise be able to afford.

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[2] (Exhibit – B-) Actual front page of a Preliminary Protection Order.
[3] (Exhibit – C -) Statute
[4] (Exhibit – D -) Statue
[5] Legislative History P.L. 96-272 Adoption Assistance and Child Welfare Act Of 1980. [page 16] "***The committee is aware of the allegations that the judicial determination requirement can become a mere pro-forma exercise in paper shuffling to obtain Federal funding.***

As to the claim that Preliminary Protection Order/Reasonable Effort findings are most commonly made contrary to defendants right to due process under Maine Statutes;

Hearings on Preliminary Protection Orders are signed by our judges to immediately separate children from their homes. These "concurrently" conclude, in "Ex Parte", a finding by preponderance, that reasonable efforts were made, and are brought about outside the framework of our due process system and the very definition affirming the "preponderance" standard.

Furthermore notice and service required by section 4033 is habitually ineffective or insufficient. Most frequently, sufficient service is purposely ignored by DHS and generally made only after the hearing. This routine behavior goes unchecked by the courts[6]. Courts are neglectful and careless about adequately scrutinizing DHS' conduct on this issue or any other in "Ex Parte" hearings. It appears that our judges have a habit of blindly Rubber Stamping anything DHS brings before them.[7]

[6] I have in hand a June 4, 2000 DHS PPO signed by Judge Ann Murray of Bangor, which clearly demonstrates the absence of service and notice. Caseworker Voteur of the Bangor DHS office was specifically told by me that mother wanted her attorney present at the PPO, I put caseworker Voteur on phone with mother's attorney who agreed to wait in DHS parking lot for service. I had the father wait that Sunday afternoon at the courthouse for the judge and caseworker to show up. Caseworker Voter deliberately eluded child's father and mother's attorney from their rights to due process and to be present before the judge. Caseworker Voteur **"clearly and intentionally"** circumvented the legal process and parents rights to sufficient notice and service. Most notably the required notice and service verification part of the court order was not checked off, meaning parents were not notified. Judge Murray was negligent and apparently did not care if DHS or her own court complied with law or court rules. This is just a small example of how DHS and our district courts work together to trample over the civil rights of Maine families, even when parents take these kind of extreme measures to get DHS and the court to comply with law.

[7] I have in hand a Sept. 5, 2000 DHS affidavit that was attached to a PPO signed by Judge Russell of Bangor. The affidavit "being **duly sworn** by a Ellsworth caseworker supervisor, Marie Kelly Harding, had a notarized signature by a different caseworker named Brenda Catterson. A superficial examination of the PPO by Judge Russell would have revealed this obvious faux pas and should have caused him to raise questions and concerns. Judge Russell had no problem signing a court order to sever the precious civil rights of a parent/child relationship on the basis of a falsely sworn affidavit. Subsequently according to the mother, Judge Russell became angry when her attorney raised the issue in court.

Notwithstanding this fact, courts nevertheless proceed by signing court orders asserting a finding by a "preponderance" of evidence that reasonable efforts were made and remove child/ren from the home. This is done without reference to the traumatic harm to our children whom Congress intended that reasonable efforts would prevent. Maine courts leave parents and children thoroughly defenseless from harm due to discretional abuse by the State.

Courts continue processing DHS applications for preliminary protection orders in the same manner without regard for service/notice issues, or allowing these issues to be raised at a later date.[8]

Maine courts knowingly and intentionally exclude defendant/parents from the opportunity to provide any opposition to the state petition, including their own sworn summary, by locking them out of the courtroom[9]. A defendant/parent's effort to protect the rights and integrity of their family from serious traumatic harm, caused by the unnecessary separation of children from their home, is utterly disregarded. Any opportunity to dispute DHS' reasonable efforts claim is totally ignored by the courts and, at that time, misrepresented by a signed court order claiming that a finding by a preponderance was made.

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[8] September 13, 2000 hearing on the case referenced in footnote #8 on previous page. Judge Russell takes the position that these are not issues before his court and refuse to hear them. He also stated in numerous other cases that federal law doesn't apply in his court. Mother reveals how Judge Russell becomes angry when her attorney raised these issues of law. Judge Russell clearly demonstrates a bias and anger that is used to intimidate and redirect (in a threatening tone) the defendant attorney's behavior. I must point out that the Senate Judiciary Chair Susan W. Longley took Judge Russell to task on his courtroom behavior at his reappointment hearing, but judge Russell has obviously taken the position to ignore her recommendations. Unfortunately this browbeating behavior is widely used by judges around the state in DHS matters. See (Exhibit –E- Transcript of Judge Clapp brow beating father and his attorney in a Skowhegan District Court case).

[9] On August 3, 2000 I assisted a mother to the Bangor District court requesting her entry into a PPO hearing she was a party to. We demanded that Judge Gunther be notified that she was present. At the insistence of DHS caseworker Jean L. Sinclair, court bailiff Dosen refused to let mother in to see the judge or tell the judge that mother was present. After a second plea to the bailiff, bailiff Dosen replied "no N-O no." Caseworker Sinclair refused to serve mother a copy of the PPO stating that she was "not allowed to see it until after the judge signs it." Court clerk also refused to let the judge know that mother was present, clerk further stated to the mother in my presents that "you're not allowed to see the judge, it just doesn't work that way." Records will reveal that all parents are locked out of their own child protective court hearings State wide. Understand this is the court hearing in which they initially order the removal of children from their parents and make their finding that reasonable efforts were made.
This is a very serious civil rights violation; it is also in violation of the state plan.

Maine court records never reveal judges questioning whether caseworkers have weighed the seriousness of absolute harm from separation, that Congress was trying to avoid through P.L. 96-272 and P.L. 104-193, against their allegations of "risk of serious harm" their petition professes to avert.

Maine court records never reveal judges questioning whether the "Behaviors/Emotional Difficulties" from separation, as depicted in DHS' own documentation,[10] will outweigh the risk of developing an "Iatrogenic Disorder" of a more serious nature if the child/ren are left home with sufficient oversight.

Unfortunately lack of unbiased[11] specialized training for our judges has not allowed them the opportunity to skillfully raise such important questions.

Historical records will clearly reveal this fact; few parents if any are ever given the opportunity to offer any countervailing provisions at these hearings to try and prevent the unnecessary removal of their children in such ways as informing the judge that no reasonable efforts were made. Courts

[10] (Exhibit –F-) DHS Behaviors/Emotional, Difficulties documentation list for foster parents.

[11] I question how much training for judges is prepared and controlled in some way by DHS and their legal counsel (Attorney Generals Office). I question the influence that joint training sessions among the courts, Attorney General's office, and DHS has on a judges perception that they are all in a sense, " one and the same side". Allowing one set of litigants (DHS/AAG) to join judges in training programs while deliberately excluding opposing litigants (parents attorneys) equal opportunities and treatment I believe is extremely biased and has clearly set an industry image that reflects this disparity. I question the ethical bias of this cozy association as the basis to why judges were never made aware of federal laws and contracts in place to protect children and parents rights. I also wonder if this association/relationship is the basis for the bias behavior exhibited in courtrooms, which attorneys and parents frequently bring to my attention. Common complaint I hear from attorneys is that judges don't treat DHS and the Assistant Attorney Generals as litigants, their treatment is obviously more akin to that of an arm of the court. A review of tapes of court proceedings would expose a bias demeanor against the parents exhibited by many judges while clearly demonstrating a more affable deportment towards any state paid personal including Guardian Ad Litem's.

carelessly sign these court orders in "Ex Parte" hearings apparently without scrutinizing the petition or the petitioner as a convenient service for DHS.[12]

As to the claim that Reasonable Effort findings by a "preponderance" (standard) in Preliminary Protection Orders are typically made contrary to the definition and fundamental intent of that Standard;

Court records reveal that defendant/parents are excluded from participating in giving countervailing sworn summary in preliminary protection hearings, which are held to remove children from their homes. Maine courts knowingly and intentionally exclude the weight of evidence from defendant/parents such as their own sworn summary. Defendant's evidence and/or sworn summary are needed to meet the preponderance standard.

[12] I have in hand a Preliminary Protection Order signed on October 24, 2000 by Judge Gunther of Bangor with an attached supporting affidavit from caseworker Susan Leary. Caseworker Leary's affidavit was not notarized according to state statute and court rules. Judge Gunther takes it upon herself to notarize the same DHS document she signed into order. Why do we have court rules and state statue's regarding Notary Publics? Does Judge Gunther carry out this service for everyone or just DHS? Is Judge Gunther exhibiting bias? On a special note caseworker Leary checked off the exception rule for notice stating that *"notice has not been attempted because of the Petitioner's belief that: the child(ren) would suffer serious harm during the time needed to notify the parent(s) and/or prior notice to the parent(s) would increase risk of serious harm to the child(ren) or Petition."* Caseworker Leary's affidavit makes no mention of fact supporting her reason to exclude notice/service to parents. Direct evidence will unveil that child custody was in the secure hands of the Bangor Police under a six-hour hold, where no danger to the child could have existed if sufficient notice of court time and place had been made according to law and parents rights. Judge Gunther obviously ignores these facts and signs the order in a routine manner. The caseworker never justified any reason or good cause to substantiate checking off this option at subsequent hearings. **Caseworker Leary deliberately and intentionally checked off the exception rule, while knowingly and willingly violating the family's civil rights in order to gain an upper hand in the matter, with Judge Gunther's full support.**

This is not an exception but the rule, for example the parents referenced in my footnotes 8 and 9 on pages 4 and 5 had their child wrongfully put in a six-hour hold by Bangor PD at the request of DHS. Both parents had court appointed attorneys but none of the parents or their attorney's were given notice or service of the time or place a hearing would take place. Judge Gunther held a hearing knowing that NO attempt was made to have opposing parties or their counsel present, than signed a Preliminary Protection Order to remove the child from the parents. Why do we bother to have courts, judges, laws and court rules when this conduct is the "cardinal rule" for DHS matters?

Excluding defendant's due process clearly gives the state an unjust advantage in the preliminary protection hearing and an upper hand in subsequent hearings.[13] Court records across the state will reflect an omission of defendant/parents' presence from these findings made in Maine courts as a customary matter, therefore no opposing evidence can ever be given fair consideration as to the weight it may carry in a preponderance finding.

Blacks Law Dictionary Fourth Edition defines <u>PREPONDERANCE</u> as:

> ***<u>Greater weight of evidence</u>**, or evidence which is more credible and convincing to the mind. The word preponderance means something more than weight; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a **<u>weight of evidence on each side</u>** in the case of contested facts. But juries cannot properly act upon the weight of evidence in favor of the one having the <u>onus</u>, unless it overbears, in some degree, the weight upon the other side.*
>
> ***<u>It rest with that evidence which, when fairly considered, produces the stronger impression, and has the greater weight</u>**, and is more convincing as to its truth when weighted against the evidence in the opposition thereto.*
>
> *Preponderance of evidence may not be determined by the number of witnesses, but **<u>by a greater weight of all evidence</u>**, which does not necessarily mean the greater number of witnesses, but manner of testifying determines the weight of testimony.*

As to the claim that Reasonable Efforts findings on Preliminary Protection Orders are made contrary to the intent of congress;

<u>Abbreviated Legislative History</u>[14]

In the seventies, Congress learned that the removal of children from their home caused traumatic effects with irreparable consequences. Our own Maine State DHS, realizing this fact over the years has made a list of 32

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[13] DHS understands that it is always harder for a court to reverse itself and order the child to return home than it is to make a case to remove the child in a hearing held on a more level playing field when all parties are present. Other similar strategic moves include filing the majority of their PPO's late Friday afternoon. This gives DHS the weekend and many times a long weekend strategic advantage knowing that parents cannot respond before law firms and courts close for the weekend. .

[14] My emphasis short version! (See appendix –B- for more extensive history)

emotional/traumatic symptoms they require foster homes to identify and document after a child who has been removed from home is placed with them.[15] As a result, Congress passed the Adoption Assistance and Child Welfare Act of 1980, mandating that reasonable efforts be made to prevent the unnecessary removal of children from their homes.

To assure that states comply with the act requiring that reasonable efforts be made to prevent the unnecessary removal of children from their home, congress provided, by law, an economic incentive and authorized the Office for Children and Families of the U.S. Department of Health and Human Services to develop *eligibility* and *compliance* regulations to assure that states made reasonable efforts.

The Office for Children and Families determined that court orders making a reasonable efforts finding could simplify the federal compliance review process to a mere examination of randomly accessed court records.[16]

The Office for Children and Families determined that a court's finding on the issue of reasonable efforts, in a contested matter before an impartial judge, with opposing counsel representing both sides, would bestow with great confidence that which Congress intended the act to carry out.

I believe Maine DHS's awareness that a reasonable effort finding in the form of a court order, being paramount to receiving federal funds, enticed the Attorney General's Office[17] to add the reasonable efforts finding to the form[18] of the Preliminary Protection Order used to date. From that day forward, judges have routinely Rubber-Stamped these orders,[19] and attorneys representing parents have left this issue unchallenged.

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[15] (See Exhibit –F- Behaviors/Emotional Difficulties taken from Maine DHS documentation)

[16] In other words the Office for Children and Families would not have to engage in a lengthy or timely fact finding mission of their own in the compliance reviews process, but would rely solely on the integrity of the state justice system. They believed that all parties would be present and/or represented by specially trained attorneys before a knowledgeable, impartial and specially trained judge seeking to make real findings of facts on the issue of reasonable efforts. In no way did congress or the U.S. DHHS ever intend for courts to obstruct reasonable effort findings by intentionally conducting exclusively, state wide Ex-Parte hearings to prevent any potential challenges on the issue by defendants?

[17] Attorney Generals Office represents DHS; it does not represent the people! Who represents the people when DHS or the attorney General's office or both break the law and harm families? In other words who protects the chickens when the guard becomes a fox?

[18] (See Exhibit –B- for boilerplate statement on DHS proposed form)

[19] Representative Plowman questioned Judges at reappointment hearings demonstrating how unaware judges were on the paramount issue of the reasonable effort findings they routinely sign into order.

DHS in accord with their counsel[20] changed the form of the Preliminary Protection Orders to include a boilerplate statement that reasonable efforts were made in each specific case.

DHS and the Attorney General's office, who conjoin with our district court judges at their training programs, evidently convinced the courts that the reasonable efforts statement in the form of a Preliminary Protection Order was a legal mandate that warranted the boilerplate modifications presently in the Preliminary Protection Orders.

Attorneys for defendant/parents may have perceived the collectively of Judges, DHS and the Attorney General's office as vanguards following authoritative changes to the Preliminary Protection Orders from the echelon of bona-fide lawful officials carrying out their duties. Recognizing this, attorneys for defendant/parents may have felt inferior in challenging the reasonable effort boilerplate changes on the form of the Preliminary Protection Order, which became the status quo.

As a result of the overwhelming coherence by the Attorney General's Office, Judges and DHS, lawyers of defendant/parents, who lacked specialized training, in-depth knowledge and had limited resources to challenge big State Government were unable to adequately defend parents against the State's unauthorized proceedings I now address.

Section 427[21], federal compliance review officials in the past were only required to verify if court orders stated that a "reasonable efforts" finding did indeed exist. Inspection policy did not provide for examiners to research or verify the validity or veracity of the court orders being examined or whether the intent of congress was carried out in the courtroom.

I believe the absence of adequate specialized training for lawyers has led them to believe that DHS, the AG's office and the courts have "apparent powers" that they do not in fact possess. As a result, thousands of individual

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[20] (The Attorney General's office)

[21] Child and Family Services Reviews

HHS child and family services reviews are an important tool for ensuring compliance with Federal child welfare requirements. The new reviews represent a significant departure from the former review process. In the past, reviews focused almost entirely on the accuracy and completeness of case files and other records, without regard to the outcomes for children and families. The prior reviews did not provide opportunities for improvement before significant penalties were imposed.

children and adults have been wrongfully separated and seriously harmed for life due to civil rights violations exacerbated by our State and, I must add, at a tremendous cost to the taxpayers.

Under the old Section 427[22] review process there was no way for our federal authorities to establish if courts were engaged in Rubber Stamping false court orders. Rubber Stamping[23] by the courts has undermined the intent of congress, worked contrary to the best interests of Maine children and their families, and has seriously damaged the *full faith and public trust* of our judicial system.

As to the issue that Reasonable Effort findings on Preliminary Protection Orders are fashioned in a manner that sanction DHS to wrongfully apply for federal funds;

The intent of Federal funding for states by Congress was to provide an economic incentive, to insure that Human Service Agencies would do a thorough job of carrying out reasonable efforts. Federal funding further assured that adequate and sufficient state services, mandated by the federal reasonable effort law, would be sufficiently carried out.

It is an incontrovertible fact that wrongfully taking a child into state custody, deliberately[24] or not, ***is*** being rewarded with federal Title IV-E funds.

The process of "Rubber Stamping" Preliminary Protection Orders engaged in by Maine courts, has undermined and achieved results contrary

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[22] (Federal Register Friday September 18, 1998)"*Through the Social Security Amendments of 1994, Congress repealed section 427 of the act and amended section 422 of the act to include, as State plan assurances, the protections formerly required in section 427. As a result, ACF is no longer conducting "427" reviews to confirm whether a State is eligible to receive additional Title IV-B, subpart 1 funds."* Maine's regional ACF office out of Boston that DHS keeps claiming has been auditing them every year has not been allowed to do a single review since 1994. A new pilot review was conducted for the first time last summer. From 1980 to 1994 I believe Maine has only had one audit.

[23] (Exhibit –G-) Excerpt from publication. Making Reasonable Efforts: Steps for Keeping Families Together. Published by among others, The National Council of Juvenile and Family Court Judges.) States as follows: *"Many juvenile and family court judges remain unaware of their obligation to determine if reasonable efforts to preserve families were made. Other judges routinely* ***"rubber stamp"*** *assertions by social service agencies that reasonable efforts to preserve families were provided."*

[24] Legislative History P.L. 96-272 Adoption Assistance and Child Welfare Act Of 1980. [page 16] *"While some have expressed concerns that the AFDC-Foster Care Program* ***could become a runaway program,*** *we believe nothing could be further from the truth. We too share a deep concern for the budgetary impact of programs which appear to* ***lack fiscal control."***

to congress' underlying intent. As a result, the product of Rubber-Stamping has manifested itself into an independent, economically driven agency segment.

This economic segment relies heavily on the outcome associated with the wrongful and/or unnecessary removal of children, which unequivocally increases Maine DHS' federal appropriations. In other words, if the wrongful duty of Rubber-Stamping court orders was penalized rather than rewarded, the number of unnecessary removals would be relatively small in comparison.

It is important for Maine families who have been wronged to know that the Office of Inspector General understands what is really taking place and realizes that funds must be tied to strict compliance standards as Congress intended. Limiting funds will limit the number of children unnecessarily being removed from their home. Limiting funds will force DHS to be more selective in their decisions to file Preliminary Protection Orders, once they understand that it may ultimately penalize rather than reward their agency.

Limiting funds will also force DHS to concentrate more on serious cases of abuse and neglect rather than drifting into the arena of becoming the "De Facto straighteners of our society."[25]

In over 50,000 cases in the last 17 years, records may indicate that not one Maine judge has ever written a decision making a "lack of reasonable

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[25] I have notice over the years that DHS has been slowly moving away from serious abuse and neglect cases and into the arena of forcing their best interest decisions on parents based on their own belief system. For instance, DHS questions and/or second guest parent's medical decisions in many cases.
1) The Corbin case presently in the Augusta area news where the subject child was found by the court to have been abuse and neglected for non-organic failure to thrive because the child was not gaining adequate weight. Subsequently to the court wrongfully removing the child from the care of the mother and grandmother, medical experts and 22 months of state custody confirm family's belief that the child's incurable cystic fibrosis disease was the real indisputable reason. DHS is now trying to terminate parental rights because they just don't like the grandmother and the desperate fight she put up to prove that DHS and the court were wrong;
2) The HIV baby in Newport recently in the news where the state tried to force a treatment on the child different then what the mother wanted;
3) The Zezima news story in Bangor where the parents wanted their badly burnt baby to go to the Shriners burn unit in Boston instead of a General hospital in Portland, DHS fought to block them from doing so;
4) The Freeman case in South Paris where a young boy had a problem with matches and starting fires, DHS use the courts to take the child away because the parents wanted to workout the problem a different way than DHS saw fit. DHS nearly destroyed the child before finely returning him home to his parents.

These distinctive cases reach far outside the framework of serious abuse and neglect issues and decisions and into "unconstitutional state invasion" of parental rights and privacy.

efforts" finding on a Preliminary Protection Order. This fact should reflect the stupendous bias of our courts, and not a perception that DHS and our district courts are faultless partners. This fact should also impress the lack of training in our District Court Judges. The Office of Inspector General should press hard on the State to have our Chief Justice account for the $109,000.00/year of federal funding he receives to train our District Court Judges on the issue of reasonable efforts.

Ironically, the real world results are that the more children wrongfully taken into custody by the state of Maine, the more federal dollars DHS receives for its efforts. Hence these excessive funds allow for the hiring of additional caseworkers that in turn wrongfully petition for more children. This successive propagation trend has exponentially spiraled out of control.[26]

As to the issue that Reasonable Efforts are rarely made prior to removing children from their home and lack proper support documentation;

Courts in their Preliminary Protection Order findings, stating that reasonable efforts were made, are absent essential evidence and legal documentation by DHS to support such findings.

For example Section 2 Page 8 part c[27] of the Title IV-E State plan[28] signed by Governor Angus S. King[29] and Commissioner Kevin W. Concannon[30] rely on 45CFR 1356.21 (d) (4). In particular it states;

> *"After October 1, 1983, include a description of the services* ***offered*** *and the services provided to prevent removal of the child from the home and to reunify the family."*

[26] (Exhibit –H- Bangor Daily News June 19-20, 1999). Graft depicting number of children in DHS care. Note: In 1991 approximately seventeen hundred children in state custody. Seven years later in 1998 that number has almost doubled to three thousand. Governor King and Commissioner Concannon have led this campaign of foster care growth. It is the federal funding that enables DHS to afford to take a position.

[27] (Exhibit –I-) State Plan note (c)

[28] (Exhibit –J-) Front page of Maine's State plan.

[29] (Exhibit –K-) Maine's State Plan Certification signed by Governor Angus S. King Jr. on 10/27/97

[30] (Exhibit –L-) Maine's State Plan Certification signed by Commissioner Kevin W. Concannon on 10/22/97.

(Exhibit –M-) Maine's State Plan Assurances signed by Commissioner Kevin W. Concannon on 10/22/97

This federal regulation makes a specific reference in the State Plan to the DHS Child and Family Service manual (C&FS) Section XIII, Subsection A, p. 27. [31]

This case assessment and case plan "offers" services to prevent removal of a child from their home. This document is never submitted to the court holding a Preliminary Protection hearing as evidence to support its findings.

This document is required by Section 2 Page 7 Part D (1) (a) of the State Plan.[32] Note under federal statute 471 (a) (16) and regulation 45 CFR 1356.21 (d) (1) exhibit –N- meets the law that requires the following:

> *"Be a written document which is a discrete part of the case record, in a format determined by the State, which is available to the parent(s) or guardian(s) of the foster child;"*

Because of the lack of specialized training provided to our judges[33] and lawyers in this State, the legal utility of the mandated documents under Title IV-E has never been put into practice in Maine's child protection proceedings. I make particular note to the C&FS Case assessment/Case plan,[34] required in making an offer of services to prevent removal of a child from their home. The actual pink colored document[35] called out in Maine's State Plan was marked with a defendant's exhibit sticker in a child protection hearing in 1998 but was disallowed as evidence. An attorney from Hancock County failed to get this document entered as evidence in an Ellsworth courtroom child protection matter because the caseworker and her supervisor could not identify the document. Assistant Attorney General John Hawkes representing DHS argued that his client, DHS caseworker Kimberly Day, could not identify the document because it was an old document that "used to be used back in the old days." Little did Mr. Hawkes realize that, according to the actual document, identified under the plan signed by the Governor and the Commissioner, this document became

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[31] (Exhibit –N-) Case assessment and case plan.

[32] (Exhibit –O-) State Plan note D (1)(a)

[33] (Exhibit –P-) May 20, 1999 letter to Representative Richard H. Thompson requesting accounting from the chief justice on the federal funds he received for training. Funds the Chief Justice received were never used to train district court judges on reasonable efforts.

[34] (Exhibit –N-) Case assessment/Case plan from C&FS manual section XIII subsection A Page 27 that is mandated under Title IV-E.

[35] (Exhibit –Q-) Black and white copy of the caseworkers pink form with court exhibit sticker on mid left side.

effective in December of 1994. This was the legally binding document, which should have been used in most every case since December of 1994. Evidence will show that this document has never been used anywhere in the state of Maine as promised and required in the State Plan.

This is the exact document, required by law under Maine's Title IV-E State Plan. To date, DHS and the courts are still unaware of what documents are required of them. There is not one shred of evidence of our Chief Justice promulgating these requirements to his district court judges, as required by Federal law and for which he receives $109,000.00/year. There is not one shred of evidence that our Commissioner has promulgated these requirements to his agency. Since the passage of L.D. 405, DHS and the courts have continued to maintain a position contrary to the intent of L.D. 405. Apparently DHS has no plan to carry out the wishes of the Legislators, Maine's families or Congress.

Unfortunately attorneys for parents are no more successful in getting courts to comply with the terms of L.D. 405 than the Judiciary committee has been in getting the commission to report back to their committee by December 15th of 1999 as required by L.D. 405.

The courts have been no more cooperative with parent's attorneys under L.D. 405 than the Chief Justice has been with the Judiciary committee, in producing an accounting of what he did with all the federal training money he has received over the years.

Even after L.D. 405[36] passed unanimously as a Private and Special Law[37] Chapter 26 more than a year and a half ago, this legislation is still not followed in our courtrooms. I have reason to believe that Judges have been wrongfully coached and directed to counteract any inference made in their courtroom to the issues of L.D. 405.

[36] (Exhibit –A-) L.D. 405
[37] (Exhibit –R-) Chapter 26 Maine's Private and Special Law.

Presumption

Because of the unwillingness of our Commissioner, Governor, and Chief Justice to admit their shortcomings and take responsibility for their actions, innocent children and families across this State will continue to be harmed and abused on a mass scale by the same system heavily financed and empowered to protect them.

In the last three years I have reviewed hundreds of cases, many whose family members have written to the DHS Commissioner and Governor's office. To date I have not come across ***one single person*** that experienced a positive, honest or good faith response from these high officials.

I am very disappointed to say our Governor and Commissioner have processed hundreds of "Boiler-plate reply letters" to complaints they have no intention of addressing truthfully. As the years pass, the Commissioner continues to publicly defended DHS. Not once has he ever publicly admitted a mistake.

It is this amazingly unerring record that should concern the general public, that the abuse of power may be more probable than the fortune of having an infallible Commissioner.

The Office of Inspector General should review and investigate the Commissioner's complaint file, render second opinions to the Commissioner's findings, and determine to what standard his infallible record adheres. An independent review by the Office of Inspector General should conclude many findings contrary to the Commissioner's own determinations.

It is paramount that the Office of Inspector General conduct its own independent investigation, as child protection issues are too complex and politically sensitive to be done locally. Even our Washington delegation has been ineffective over the years in realistically addressing numerous DHS complaints received from their constituents, leaving the public vulnerable to civil rights abuses by the State. For instance, after newspaper stories reflecting how L.D. 405 echoed the Federal laws and Maine's Title IV-E State plan, Representative Baldacci continued to send out the same

boilerplate letters[38] to his constituents denying that foster care and child protection had anything to do with federal law. Mr. Baldacci claims he is unable to assist his Maine constituents for that reason, in spite of the explanations and factual documentation I have given his staff.

Many DHS problems are derived from the lack of policing by our Federal Regional I Administration Office for Children and Families out of Boston. This office has not taken seriously their obligations, duties and authorities under federal law to police or sanction wrong doing by Maine's DHS. A good example is how the Regional office worked hand and hand with Maine's DHS to double the number of unlicensed foster homes while overlooking their duties to compel DHS to file regulations required in the Title IV-E state plan. To date, not one regulation has been filed under Title IV-E section 4 page 4 part G Kinship Care preference.

This inconspicuous office was in the forefront of a congressional crossfire resulting in a 1994 **repeal** of the laws under Section 427 of the Social Security Act authorizing them eligibility and compliance oversight for Maine among other States, Title IV-E State Plans.

Congress had mandated a new pilot review program to be developed as a result of the Administration for Children and Families flagrant failure to prevent states like Maine from ignoring their responsibilities under Title IV-E. Their lack of policing Maine's DHS properly has resulted in a unnecessary 50% increase in the number of children in foster care while placing only 5% in relative care. This is also contrary to Congressional mandates to decrease the number of children in foster care by 10%/annum. Maine has codified that requirement in state law,[39] but has failed to live up to the letter and sprit of the law.

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[38] See (Exhibit –S-) October 30, 1998 boilerplate reply letter to Brenda Thurston. And (Exhibit –T-) November 27, 1998 letter from Ms. Thurston to Mr. Baldacci laying out all the federal laws and acts he denies exist.

[39] States performance under Title 22 MRSA (updated 9/3/97) section **4003 Purpose**, which states the following:

> ***"It is the intent of the Legislature that the department reduce the number of children receiving assistance under Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983".***

Failure to properly police the eligibility and compliance mandates, as well as failing to assure proper training for our Judges[40] must be placed squarely on the shoulders of the Chief Administrator responsible for the Region I office. It is the Inspector General's Office that found 744 unlicensed foster homes with fire, health and abuse hazards, not the Region I Boston review office. My experience with the Boston office shows that they work hard to cover up Maine's violations.

An independent investigation of Maine's DHS should uncover the bureaucratic failures and violations of law that has led up to the large volume of complaints by Maine families. For example, caseworkers break laws, rules and regulations because their supervisors wrongfully guide their actions. Program Administrators take orders from the Director of child protection services, who in turn answers to a Commissioner appointed by our Governor. Untrained Judges grant almost anything a state paid employee may request in his court. This unfortunately all takes place under the color of law.

This bureaucracy is forever in a high state of flux. Caseworkers, Assistant Attorney Generals, Commissioners, Governors and all employees in between, are forever flowing through the system faster than they can adequately move up an effective learning curve. This learning curve, which has proven to be longer than the average turnover time of most positions, results in incompetence that leads to violations of well founded law. The organizational culture takes on a course of its own, contrary to the intent of our Federal and State lawmakers. The majority of human and financial resources are eaten up with actives that have nothing to do with reasonable efforts or building and strengthening families, but more to do with the daily task of managing chaos and cover-ups within a highly dysfunctional organization.

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[40] ***The highest courts responsibilities under Federal Law (42 USC 670) that oversee and assure that the lower court hearing child protection cases comply with part E of Title IV of the Social Security Act.***
As you can see by the federal statue that the Chief Justice has entitlement funding for the purpose of **enabling the highest State court--**

> ***To conduct assessments, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the state courts) --***
> **That: implement parts B and E of Title IV of the Act; determine the advisability or appropriateness of foster care placement; determine whether to terminate parental rights; determine whether to approve the adoption or other permanent placement of a child; and to implement changes deemed necessary as a result of the assessments.**

High employment turnovers of all positions from caseworkers up through to our Governors have contributed to this chaotic and dangerous system.[41] A high turnover rate of personnel, at a time when complexity has never been greater, leaves a major operational gap in a system filled with abuse of powers and wrongdoing conducted in a covert manner. Congress authorized the Boston office to police the abuse and wrongdoing against federal taxpayers and citizens of our State. The Boston office has turned a blind eye to abuse and wrongdoing over the years, and instead has personally assisted in protecting our DHS system from any consequences of its wrongful acts.

Records will reveal that the Boston office has not exercised their authority to sanction Maine's DHS for serious non-compliance[42] matters over the last 17 years.

It has become clear to me over the last three years that the people in the Boston office have put their own needs and interest, ahead of the best interests of the children and families of our State.

Power is the ability to lead, authority is the ability to sanction. Both the Region I office in Boston and Maine's Governor must share the greatest weight of responsibility for the failure to lead and sanction Maine's DHS to comply with their Title IV-E State Plan and the serious harm the lack of compliance has caused Maine families.

Conclusion

Prompt investigative work by the Office of Inspector General is needed to determine if the Boston Region I office was:

A) allowing Maine courts to make false claims that reasonable efforts were made when in fact, direct evidence supports contrary conclusions;

B) not checking to assure that Maine statute allow courts to make a reasonable efforts findings as required by federal regulations in Preliminary Protection Orders;

[41] (See excerpts attached)
[42] (See Exhibit A) Graphs in Bangor Daily News article.)

C) not checking whether Maine Courts, making findings by a preponderance of evidence that reasonable efforts were made, are done so in compliance with Maine state statute and court rules and that Maine is not deliberately holding Ex-Parte hearings in order to intentionally exclude opposition or countervailing arguments that may interfere or obstruct a rubber-stamp finding, needed by the state for DHS to collect federal funding;

D) not checking to assure that Maine has adequately promulgated the Title IV-E State Plan and reasonable effort requirements to Maine judges and lawyers. (Note: There is not one shred of evidence to show any effective promulgation efforts on this issue over the last 17 years);

E) allowing the State of Maine to draw federal funds by wrongfully keeping 28% of all foster children in their custody until they are emancipated.[43]

F) allowing the State of Maine to draw federal funds for preventing 95% of children from enjoying the preference of relative foster care mandated by the Kinship Care Law instead of non-relative foster care.[44]

G) allowing the State of Maine to operate for more than three years without developing a single regulation to meet the federal Kinship Care law. Title IV-E requires Kinship Care regulations be filed in Section 4, page 4, part G. of the State Plan amendment signed in October of 1997 by the Honorable Governor Angus S. King Jr. and the Commissioner of Maine's Department of Health and Human Services, Kevin Concannon. Records clearly reveal that Maine does not have a policy filed with the Boston office for the Kinship Care law; therefore Maine DHS does not meet the purpose or intent of this amendment. (On a side note, this fact also goes directly to DHS' not complying with Maine legislation L.D. 1243 Kinship Preference);

H) allowing the State of Maine to draw federal funds to wrongfully increase the number of children in foster care by approximately

[43] See (Exhibit X) Emancipation Graph
[44] See (Exhibit Y) Relative placement Graph

50% in the first five years of the King administration when federal law, congressional intent and federal funding was meant to reduce the number of children in foster care;

I) allowing the State of Maine's Chief Justice to receive $109,000.00 per year for the specific and specialized training of judges about reasonable efforts that has never taken place;

The U.S. Inspector General of Health and Human services must investigate the wrongful application of federal funds for the above mentioned misconduct.

I will be available to support the Inspector General with material, information and facts.

Thank you for your attention in this matter.

Sincerely,

James C. LaBrecque

PS If I had to make a one sentence executive summary of this report I would want to say that ***"the reason DHS breaks the law is simply because the courts and federal officials allow them to."***

Maine Washington Delegation
Maine Press
Maine State Governors Office
Maine State DHS Commissioners Office
Maine ACLU
Maine U.S. Attorney General
E-mail List

Excerpts

Report by:

(Anita M. St. Onge of the Muskie School of Public Service Institute of Child and Family Policy PO Box 15010 Portland Maine 04112 (207) 780-5851.)

Ms. St. Onge was hired in February of 1997

> *"to conduct an investigation into allegations"* as to *"the serious decline in the quality of services being delivered to the Department of Human Services, Division of Child and Family Services in Bangor."*

The investigation focused on the departure of

> *"experienced caseworkers and supervisors and of the system that facilitated such a mass exodus of experienced workers."*

(Summer of 1996 *"mass exodus"* Bangor DHS office suffered a 20% reduction of caseworkers and supervises according to the report.)

The report goes on to say

> *"several people interviewed said that they loved their work but couldn't handle the office atmosphere any longer."*

The report continues by stating that

> *"former employees felt that workers or supervisors who don't follow the "party line" are targeted for discipline. "Negativity" is punished by being "written up" for things that are generally accepted practice and by having supervisors look for problems with those "targeted employees."*

As to the reported section on OFFICE CULTURE, investigator St. Onge goes on to write

> *"Other concerns centered around the behavior of others that is tolerated by management. These range from supervisors demeaning caseworkers and clerical staff to derogatory remarks made about certain people or groups. Although many of the new workers have said that they see more communications between units, there is a perception among former and more experienced workers that units are not encouraged to communicate, especially CPS and CS units. This is described as a " divide and conquer" mentality, keeping everyone alert and suspicious."*

Of particular interest to me is what appeared as a high level of mistrust among all workers in the DHS office. Ms. St.Onge report points out several other comments such as,

> *"A more difficult issue to address is the office atmosphere of mistrust."*

In another paragraph Ms. St. Onge infers by stating

> *"...it should be noted that many of the overarching problems within the office, including a level of mistrust and concerns for what is being said and to whom, have existed in this office for a long period of time."*

What I find to be most profound is investigator St. Onge statement that

> ***"From the outset it was clear that there were individuals who were concerned about being identified. They feared that there would be consequences to themselves or to their agencies or clients if information that was provided to me was identified specifically as coming from them."***

I find it amazing that Commissioner Concannon would think for a moment that such a dysfunctional organizational culture could realistically help build and strengthen families no matter how much federal and state taxpayers money granted to him.

There is little doubt in many people's minds as to what is really going on under the veil of secrecy.

Appendix –B-
Legislative History

Title IV-E has been in place since the early 1980s. It was authorized by the Adoption Assistance and Child Welfare Act (Pub. L. 96-272), passed by Congress in 1980, which amended sections of title IV-B and provided for mandatory Federal reviews of State foster care services under section 427 of the Act. The statute also established Part E of title IV of the Social Security Act, ``Federal Payments for Foster Care and Adoption Assistance.'' The foster care component of the Aid to Families with Dependent Children (AFDC) program, which had been an integral part of the AFDC program under title IV-A of the Act, was transferred to the new title IV-E, effective October 1, 1982.

The creation of title IV-E and amendments to title IV-B reflected the perception of Congress and most State child welfare administrators that the public child welfare agencies responsible for dependent and neglected children had become holding systems for children living away from their parents. Congress intended that Pub. L. 96-272 would mitigate the need for the placement of children into foster care and encourage greater efforts by State agencies to find permanent homes for children--either by making it possible for them to return to their own families or by placing them in adoptive homes. The goals of P. L. 96-272 have not yet been fully realized, however, as evidenced by continued increases in the numbers of children entering foster care, increasing lengths of stay in care, and growing concerns about the safety, permanency and well-being of children served by public agencies.

In August 1993, under the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66), Congress again amended title IV-B, creating two Subparts and extending the range of child and family services funded under title IV-B to include specific family preservation and family support services designed to strengthen and support families and children in their own homes, as well as children in out-of-home care. Later, through the Social Security Amendments of 1994, Congress repealed section 427 of the Act and amended section 422 of the Act to include, as State plan assurances, the protections formerly required in section 427. As a result, ACF is no longer conducting ``427'' reviews to confirm whether (or not) a State is eligible to receive additional title IV-B, subpart 1 funds. In addition to mandating the secretary, DHHS, to promulgate regulations for reviews of State child and family service programs, the amendments to the Act also required the

Department to make technical assistance available to the States, and afforded States the opportunity to develop and implement corrective action plans designed to ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

On November 19,1997, President Clinton signed the first child welfare reform legislation since Pub. L. 96-272 in 1980. The Adoption and Safe Families Act (ASFA) seeks to provide States the necessary tools and incentives to achieve the original goals of Pub. L. 96-272: safety; permanency; and child and family well being. The impetus for the ASFA was a general dissatisfaction with the performance of the child welfare system in achieving these goals for children and families.

B. Interrelationship of Titles IV-B and IV-E

Titles IV-B and IV-E are closely related parts of the Act. Each title provides funds to States to serve large numbers of children and families who are among the most vulnerable to harm and separation in our society. The two programs help finance services to the almost 3,000,000 children who are reported annually as alleged victims of maltreatment (data from 1994 NCANDS), and the approximately 469,000 children who are in foster care placements on a given day (estimates from 1994 Voluntary Cooperative Information System (VCIS)/AFCARS).

Title IV-B, subpart 1 makes funds available to States for services directed toward protecting children, strengthening families, preventing unnecessary separation of parents and children, providing care and services to children and families when separation occurs, and working with parents and children to reunify families or achieve an alternate permanent plan for the child. Subpart 2 initially provided funding for family preservation and family support services. Under the ASFA, subpart 2 funds must now also be used to provide time-limited reunification services and services to promote and support adoption. Title IV-E foster care funds enable States to provide foster care for children who were or would have been eligible for assistance (Aid to Families With Dependent Children) under a State's approved title V-A plan (as in effect on July 16, 1996) but for their removal from home.

Titles IV-E and IV-B are linked not only by common goals but by numerous cross-references to detailed protections or safeguards for children in foster care, e.g., a case review system that includes periodic case reviews and permanency hearings. Further, while title IV-E requires that reasonable efforts be made to prevent removal of children from their homes when it is

safe to do so, to safely reunify children in foster care with their families, and to make and finalize permanent placements for children who cannot return home, the services needed to provide reasonable efforts are not funded by title IV-E, but are made available in many circumstances through title IV-B and other sources of State and Federal funds. While title IV-B requires States to deliver child welfare services in order to be eligible for Federal funds, title IV-E tests both the eligibility of each child on whose behalf a payment is made and the eligibility of the foster home or child-care institution in which the child is placed.

Preliminary Protection Orders

22 M.R.S.A Section 4033. Service and notice.

1. Petition service. A child protection petition shall be served as follows:

A. The petition and a notice of hearing shall be served on the parents and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service shall be made in accordance with the District Court Civil Rules.

B. If the department is not the petitioner; the petitioner shall serve a copy of the petition and notice of hearing on the State.

2. Notice of preliminary protection order.

If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request that order and of the time and place at which he will make the request. This notice is not required if the petitioner includes in the petition a sworn statement of his belief that:

A. The child would suffer serious harm during the time needed to notify the parents or custodians; or

B. Prior notice to the parents or custodians would increase the risk of serious harm to the child or petitioner.

3. Service of preliminary protection order.

If the court makes a preliminary protection order, a copy of the order shall be served on the parents and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is made;

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure, the court may waive service by publication of a preliminary protection order for a party whose whereabouts

are unknown if the department shows by affidavit that diligent efforts have been made to locate the party

C. Another manner ordered by the court.

3-A. Information provided to parents.

When the court makes a preliminary protection order on a child who is physically removed from his parents or custodians, the following information shall be provided to the parents or custodians in written form by the petitioner at the time of removal of the child:

A. The assigned caseworker's name and work telephone number;

B. The location where the child will be taken; and

C. A copy of the complete preliminary protection order. This information is not required if the petitioner includes in the petition a sworn statement of his belief that providing the information would cause the threat of serious harm to the child, the substitute care giver, the petitioner or any other person.

4. Service of final protection order.

The court shall deliver in- hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's or custodian's counsel or, if no counsel, to the parents or custodians. The copy of the order shall include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

22 M.R.S.A. Section 4034. Request for a preliminary protection order.

1. *Request. A petitioner may add to a child protection petition a request for a preliminary protection order, which shall include a sworn summary of the facts to support the request.*
2. *Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order shall automatically expire at the time of the issuing of a final protection order under section 4035.*
3. *Custodial consent. If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, or the custodian does not appear after proper notice has been given, then the hearing on the preliminary protection order need not be held, except as provided in subsection 4.*
4. *Summary preliminary hearing. If the custodial parent appears and does not consent, or if a noncustodial parent requests a hearing, then the court shall hold a summary preliminary hearing on that order within 10 days of its issuance or request. If a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian may request a subsequent preliminary hearing within 10 days after receipt of the petition. The petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case a permanency planning*

hearing must commence within 30 days of entry of the preliminary order.

5. *Contents of order. The order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsections 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition.*

It would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

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February 22, 2001

Health and Human Services
Judiciary and
Appropriations Committees
State House
Augusta Maine

Re: **U.S. Office of Inspector General Report of DHS Title IV-E Violations:**

Dear Committee Members,

I have been working very hard to research and assemble reports with voluminous facts and information and yes some of my own opinions that I know you will always be too busy to gather on your own.

DHS is a massively complex organization. As so many of you have mentioned to me in the past that the majority of your constituent complaints are related to DHS.

Although my reports may seem a little long at times I hope you will find the time to read them on behalf of your constituents with complaints about DHS. You may want to keep these reports in a special file for reference because there is a lot of valuable information in them.

This report covers the safety violations found by the U.S. Office of inspector General for non-relative foster homes.

Facts

- On January 23, 2001 the Office of Inspector General released a report finding the following facts.

1. Maine Department of Human Services was in violation of their State Plan under Title IV-E of the Social Security Act. Section 470 (42 U.S.C. 670)
2. From 1996 to 2000 Maine increased the number of foster homes from 1,190 to 2,094. An increase of 76% or (904 homes).
3. On November 3, 1999 the Inspector General found 744 foster homes operating without a license for at least 13 months or more.
4. Of the 744 unlicensed homes the Inspector General review records from 60 randomly selected samples. Of the 60 samples 31 did not pass safety inspection requirements.
5. The reasons why 31 sample homes did not meet one or more safety requirements was:
    - 14 had fire code violations
    - 4 had bacteria in the drinking water
    - 13 had allegations of abuse or neglect during the time the Inspector General was conducting his review.
6. Of the 29 remaining homes the Inspector General stated, *"And there is no guarantee that the remaining 29 homes had no safety violations since the average time lapsed for renewals was 4.1 years."*
7. The Inspector General determined the licensing rules under Maine's Title IV-E State Plan are limited to one year, including the following:
    a) No license to operate a foster home can be issued until it passes a satisfactory inspection for fire safety and protection.
    b) Fire inspections are done annually for homes with 3 or more children, and every 3 years with less than 3 children.
    c) Water from sources other than municipal water systems will be tested every year.

d) In no instance shall a child be subject to verbal abuse, psychological abuse, or physical, severe, cruel, humiliating or unnecessary punishment.
e) Foster homes should be monitored for continued compliance with applicable laws and rules on at least an annual basis.

8. The Inspector General found one foster home waiting since 1987 for a license (13 years). The home operated 6 years before a drinking water test was taken and failed because of unsafe levels of bacteria. The Inspector General stated in his report *"It could not be determined for how long this condition existed."*
9. *The* Inspector General stated *"We believe that a lengthy interval between on-site inspections diminishes Maine's ability to detect safety issues at an early stage and take action to ensure they are corrected. Without the required annual monitoring, unsafe conditions may persist for long periods of time."*
10. From the 31 sample homes that failed a safety inspection the Inspector General established that 13 or (39%) were for allegations of abuse or neglect.
11. The Inspector General found and further stated that *"nine of the 13 homes with allegations of abuse or neglect were investigated by the state and sanctioned with a licensing violation. Once a license violation is identified, the State notifies the foster parents of the violation. The foster parent must agree to follow the appropriate provision(s) or the licensing worker will recommend to Children Services that the child be removed from the home. This agreement is generally in the form of a letter identifying the non-compliance with an attached corrective action plan that the foster parent agrees to implement. Further, the State usually requires the parent to take a child management course such as EFFECTIVE CHILD MANAGEMENT.*
12. The Inspector General reports that, *"During May of 1996, DHS investigated an allegation of abuse for one of its foster homes. The licensee for the home had a pending renewal application in February 1995. Apparently, the foster parent placed the child in a dark and locked bedroom as a method of discipline, despite the child's fear of the dark. Maine's licensing procedures for Child Management states that "Separation when used as discipline shall be brief...in a...lighted, well ventilated,*

unlocked room." Maine's licensing law also requires a licensing worker to review disciplinary and other child care requirements as part of the annual inspection. We believe that had the license been renewed as required, the disciplinary action used by the foster parent could have been prevented or identified sooner since the reported incident occurred 13 months after the license renewal process began, and 25 months since the home was last licensed."

13. The Inspector General stated in his report that *"Maine claimed $1.6 million in Federal financial participation (FFP) for these 60 homes, including those that did not meet safety standards or monitoring requirements... the Social Security Act defines a foster family home as one that:*
    a) *is licensed by the State or;*
    b) *meets the standards established for such licensing (section 472(c));*
    c) *Each Title IV-E State Plan ensures that standards "shall be applied" to foster family homes (section 471(a)(10)).*
14. Maine argued that the $1.6 million should not be questioned because Maine's Attorney General's Office claimed that Maine Administrative Law states, "*that an existing license shall not expire as long as the application for renewal is timely." The* Inspector General points out that this Administrative Law *"does not include time limits for processing renewal applications...and does not relieve Maine of its obligations to ensure that children are placed in foster homes that meet the State standards."*
15. The Inspector General's executive summary established its routes under Title IV-E with the following background. *"The Foster Care program was authorized in 1980 under Title IV-E of the Social Security Act, Section 470 (42 U.S.C. 670). Its purpose is to help States provide proper care for children who need placement outside their homes, in a foster family home or an institution. The program provides funds to States to assist them with the costs of providing services to eligible children and administering the program. At the federal level, the Administration for Children and Families (ACF) works with State and local agencies to develop and improve foster care operations. Maine's Department of Human Services (DHS) is*

responsible for administering its IV-E programs. This includes licensing foster homes and monitoring them for safety standards."

16. Michael J. Armstrong Regional inspector General for Audit Services in a separate January, 2000 letter advised Commissioner Concannon that *"In accordance with the principles of the Freedom of Information Act (Public Law 90-23), OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5... To facilitate identification, please refer to Common Identification Number* ***A-01-00-02500.***
17. The Inspector General claimed that *"We conducted our fieldwork at the DHS central office in Augusta, Maine between November 1999 and January 2000."*
18. On December 4, 2000 Commissioner Concannon returned a written reply to the Office of Inspector General's report, concurring with the report and belief that the facts presented are valid.

- On June 19, 1999 the Bangor Daily News headline, **Maine lags in efforts to place foster kids with relatives.** The newspaper article included 3 graphs depicting the following facts among other things. (See attached)

1) The numbers of children entering foster care during the first 5 years of the King administration with Kevin Concannon as Commissioner rose from Approximately 2,200 to 3,200. (A 50% increase in a very short time period.)
2) Only 5% of Maine's foster children are placed with a relative, whereas other states place upwards of 50% of their foster children with relatives.
3) 28% of Maine children who entered DHS custody remain in the system indefinitely (until age 18, emancipation or runaways, compared to other states that retain one to three percent. The second worst state in the nation retain13%, less than half of what Maine has. Maine statistics are way off the normal scale of deviation.

4) The Kinship Preference Law (L.D. 1243) was passed and signed by Governor King on June 2, 1999 (22 MRSA Sec.4062, Sub. Sec. 4) requiring: "*In the residential placement of a child, the department shall consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards.*"
5) Federal Public Law 104-193 requires states like Maine to *"provide that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."*
6) *Maine's Title IV-E State Plan signed in October 1997 requires that Maine under section 4, page 4, part G, will comply with the federal kinship care law as codified in the Social Security Act (471(a)(18).*
7) (L.D. 405) **An Act to Require that the State of Maine Comply with Federal Law Requiring Reasonable Efforts,** passed and signed by Governor King on May 24,1999 which is now set forth in private and special law chapter 26 1999. This law states among other things: *"The Department of Human Services shall comply with 42 United States Code, Chapter 7, Subchapter IV Part E as amended."* The Title IV-E foster home violations the Office of Inspector General identified in his report are also direct in direct violation of (L.D.405)
8) The intent of the Judiciary Committee was to ensure that the Department of Human Services comply with all their obligations under Title IV-E including the Title IV-E violations pointed out in the Office of Inspector Generals Report.
9) The Judiciary Committee was especially concern with the States failure under Title IV-E to comply with <u>reasonable efforts</u> to keep families intact. As a result the Judicatory Committee recommended and the full House and Senate unanimously passed the Bill as amended to include: *"The department shall report the details of the State's compliance status, giving particular attention to the requirements concerning <u>reasonable efforts</u> on the State's part to keep families intact, to the Joint Standing Committee on Judiciary by December 15, 1999."*

10) Opponents of DHS believe that reasonable efforts to prevent the removal of children from their biological home are not carried out in accordance with law. As a result children are unnecessarily being removed from their home and put in non-relative foster care homes.

Conclusions

- Commissioner Concannon was grossly negligent to abruptly increase the intake of foster children by 50% (2,200 to 3,200) in such a short duration (1995 to 2000) and placing many of them in 744 unlicensed foster homes.
- Commissioner Concannon was grossly negligent to drastically increase foster care intake by 50% without insuring an adequate organizational infrastructure capable of properly managing the children's best interest and safety.
- Commissioner Concannon is grossly negligent by placing children in illegal, unlicensed and unsafe foster homes without comprehension of how many homes were unsafe and were engaged in abusive and neglectful behaviors.
- Commissioner Concannon exhibits an institutional bias by ignoring all legally mandated Kinship Care requirements while wrongfully giving preference to illegal unlicensed non-relative foster homes.
- Commissioner Concannon exhibits an institutional bias by offering abusive foster parents reasonable efforts prior to removing the children thereby allowing the children to stay in their home, but refusing biological parents the same reasonable efforts. (Abusive foster parents receive written notice of abuse violations and must agree to follow the appropriate provisions or the child will be removed. Whereas allegations of abusive against a biological parent results in an immediate *Ex parte* court action (PPO) to remove all children from the home and in many cases the children are placed under a 6 hour hold while DHS seeks a PPO.)
- Commissioner Concannon exhibits an institutional bias by placing children in non-relative foster care placement that typically qualifies for (FFP) Federal financial participation, instead of a relative foster care placement that may not qualify for (FFP).

- Commissioner Concannon wrongfully applied and received $1.6 Million from (FFP) for the 60 sample homes as pointed out in the Inspector General's report. DHS typically cannot apply for or receive FFP if the children are placed with relatives (this does not consider the federal funds wrongfully received, and subject to recoupement, may be substantially higher if all 744 foster homes are not properly licensed).
- Commissioner Concannon put his economic interest in FFP income above the best interest of Maine children causing serious harm to whole family units by the unnecessary and traumatic family separation they experienced.
- Commissioner Concannon by withholding from the Judiciary Committee the Inspector General's findings of violations under Title IV-E that 744 homes had licensing, safety and abuse issues was in direct violation of the reporting requirements of L.D. 405. This clearly demonstrates the lack of veracity and integrity of Mr. Concannon's office.
- Commissioner Concannon's violations of the reporting requirements of L.D. 405 were deliberately brought about to thwart the intent of the Judiciary Committee members. Obviously the Judiciary Committee included language compelling that DHS *"shall report the details of the State's compliance status ...to the Joint Standing Committee on Judiciary by December 15, 1999."* Obviously the Committee members were not convinced that the commissioner would comply with the law on his own.
- The Commissioner's blatant violations under Title IV-E, including:
    - the inadequate licensing of safe foster homes;
    - the betrayal of parents rights by means of not pursuing the laws required to make reasonable efforts prior to removing the children which tries to keep families intact;
    - the complete disregard for the federal and state kinship care laws, and;
    - a complete disregard for L.D. 405 specifically set forth to compel the Department to comply with all relevant laws and to report their progress to the Judiciary Committee on their level of compliance,

totally demonstrates a level of contempt towards the legislature, Maine families and taxpayers that is unmatched by any State paid employee.

- According to appropriation records Commissioner Concannon receives more than twice the amount of money received from state taxpayers than the whole higher educational system ($1 Billion biannually). DHS also receives benefits from indirect funds appropriated for building and grounds throughout every county in the State, retirement funds, the court system and all its associated cost, plus direct receipts collocated from parents, donations and most importantly the huge financial input from our federal government. It is likely the sum of DHS expenditures surpassed 1 billion dollars annually, placing DHS as the overall largest tax burden in our State.
- Unlike the educational systems where the control of money is distributed State wide among many responsible parties who work under the microscope of their communities peers, the Commissioner holds the strings to a huge purse of money covered with a veil of confidentially that would be the envy of any dictator.
- Legislating this much money to <u>one</u> individual then cloaking his department in a veil of confidentially is dangerous business, provides no accountability and is contrary to the values of our democracy.
- A billion dollar man in a small state like Maine wields an undue influence on all aspects of Maine's society from courts, legislators and the Attorney Generals office to lawyers, guardian ad litem's, psychologists, hospital's and other institutions that all depend on DHS for a large part of their income. The billion dollar influence permeates throughout every aspect of our society from an individual paid to shovel the sidewalks of a DHS office in Aroostook County to our constitutionally protected news media that, for instance, collect advertising revenues either directly or through DHS contractors.

Recommendations

- Setup a legislative oversight committee chartered to:
  - Hold public hearings on abuses complaints by DHS, the Courts and the Attorney General's office
  - Select a team that would be uninfluenced by DHS and the Attorney General's office to investigate allegations of abuse concerning children in State custody such as the death of Logan Marr who on January 21, 2001 died in a Chelsea foster home
  - Safely return 1000 children back to their families over the next 6 months, that were wrongfully taken in Commissioner Concannon's over zealous assault that lead up to the abrupt increase in the placement of foster children since he was appointed as Commissioner.(3,200 - 2,200) =1000 Children
  - Move 50% of children in foster care out of non-relative care and into relative care (2,200/2) = 1,100 Children
  - Assure that Maine complies and performs its duties under Title 22 MRSA (updated 9/3/97) section 4003 which states the following: "***It is the intent of the Legislature that the department reduce the number of children receiving assistance under Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983"***
  - Assure that a confidential communication path to the committee is opened for any person who may feel threatened for reporting information (See attached excerpts of investigative report)

Sincerely,

James C. LaBrecque

Maine Washington Delegation
Maine Press
Maine State Governors Office
Maine State DHS Commissioners Office
Maine ACLU
Maine U.S. Attorney General
E-mail List

Excerpts by James C. LaBrecque of the following report

Report by:

(Anita M. St. Onge of the Muskie School of Public Service Institute of Child and Family Policy PO Box 15010 Portland Maine 04112 (207) 780-5851.)

Ms. St. Onge was hired in February of 1997

> *"to conduct an investigation into allegations"* as to *"the serious decline in the quality of services being delivered to the Department of Human Services, Division of Child and Family Services in Bangor."*

The investigation focused on the departure of

> *"experienced caseworkers and supervisors and of the system that facilitated such a mass exodus of experienced workers."*
>
> (Summer of 1996 *"mass exodus"* Bangor DHS office suffered a 20% reduction of caseworkers and supervises according to the report.)

The report goes on to say

> *"several people interviewed said that they loved their work but couldn't handle the office atmosphere any longer."*

The report continues by stating that

> *"former employees felt that workers or supervisors who don't follow the "party line" are targeted for discipline. "Negativity" is punished by being "written up" for things that are generally accepted practice and by having supervisors look for problems with those "targeted employees."*

As to the reported section on OFFICE CULTURE, investigator Onge goes on to write

> *"Other concerns centered around the behavior of others that is tolerated by management. These range from supervisors demeaning caseworkers and clerical staff to derogatory remarks made about certain people or groups. Although many of the new workers have said that they see more communications between units, there is a perception among former and more experienced workers that units are not encouraged to communicate, especially CPS and CS units. This is described as a " divide and conquer" mentality, keeping everyone alert and suspicious."*

Of particular interest to me is what appeared as a high level of mistrust among all workers in the DHS office. Ms. Onge report points out several other comments such as,

> "*A more difficult issue to address is the office atmosphere of mistrust.*"

In another paragraph Ms. Onge infers by stating

> "*...it should be noted that many of the overarching problems within the office, including a level of mistrust and concerns for what is being said and to whom, have existed in this office for a long period of time.*"

What I find to be most profound is investigator Onge statement that

> ***"From the outset it was clear that there were individuals who were concerned about being identified. They feared that there would be consequences to themselves or to their agencies or clients if information that was provided to me was identified specifically as coming from them."***

I find it amazing that Commissioner Concannon would think for a moment that such a dysfunctional organizational culture could realistically help build and strengthen families no matter how much federal and state taxpayers money granted to him.

There is little doubt in many people's minds as to what is really going on under the veil of secrecy.

It would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

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February 9, 2001

Health and Human Services
And Judiciary Committees
State House
Augusta Maine

Re: Attorney General / DHS Conflict of interest.

Dear Committee Members,

The Attorney General's office is the legal representative of the Department of Human Services. As they're legal counsel, certain ethical duties as well as obligations to protect their client's interest bind them in ways that are in direct conflict with the rights and protections of the public at large.

DHS also enjoys an attorney client privilege that our AG's office is bound to uphold at a tremendous expense and burden to the general public welfare and best interest of our State.

I bring this to your attention because I have heard, but not verified that the Attorney General's office may lead an investigation on the death of Logan Marr, a 5-year old child who until last week lived in a Chelsea foster home under the authority of the Department of Human Services.

This would be a serious conflict of interest. Your committees would be remiss to allow such a conflict to occur. The public could become outraged! Can you imagine how the people of California would have reacted if the O.J. Simpson legal team were allowed to lead the Nicole Simpson murder investigation? Why would our AG's office not be in a similarly conflicting bind were they to lead the Chelsea foster child's death investigation? Why bother to have any investigation if you are going to allow a potential defendant to lead and control the outcome.

For three years I have observed numerous Assistant Attorney General's working with DHS. I have had first hand conflicting experiences of my own with the Attorney General's office placing themselves between DHS and the public at large. Let my examples open your eyes and raise questions as to whom our Attorney General really represents. Hopefully you will understand why that office cannot carry out the investigation of Little Logan Marr or any type of investigation involving the Department of Human Services.

Please understand that my concerns are aimed at the office and assistance's of the Attorney General and not the incumbent. I will reserve my comments on the incumbent for a latter date in fairness, to give him sufficient time to take corrective steps on the issues I've raised.

On November 2, 1999 a threat by a DHS Program Administrator was leveled at the citizens of Maine in general as well as myself. On November 19, I filed a notice/complaint of the threat with Commissioner Concannon. The Commissioner, through his Director Ms. Semple, notified me by mail that the matter had been turned over to the Attorney General's Office for an investigation.

Shortly thereafter, I received a call from Mr. Chris Leighton, an Assistant Attorney General claiming he investigated my complaint and determined it to be "unfounded". During that same call, Mr. Leighton conversed with me at some length expressing his personal relationship and involvement with that Program Administrator over a period of years. It was obvious that Mr. Leighton had a bias agenda. He tried to persuade me to believe that the Program Administrator was not the type of person to make such a threat. After a short argument on the issue, I turned on a tape recorder that was Qued to the threatening statement of the Program Administrator. Although Mr. Leighton had denied the statement was made

earlier in the conversation, I blasted the volume up high enough for him to hear otherwise. Mr. Leighton verified the person's voice than quickly attempted to defend him with ridiculous excuses and hypothesis. In other words he was grasping for straws. This was not the expected behavior of an impartial investigator. To date I have never received anything in writing or ever heard from the AG's office again. The Attorney General's Office once again got away with wrongdoing to protect DHS' unlawful behavior.

1) The Attorney General's office engaged in *"A Priori"* investigating for the purpose of protecting their client DHS.
2) Good Investigative work typically starts by interviewing and gathering facts from the complainant. Mr. Leighton never talked to me before interviewing the accused party. *(On its face Mr. Leighton's behavior reveals "A Priori intent".)*
3) Mr. Leighton never followed up with me after his interview with the accused party. Instead he hastily came to his "A Priori" conclusion than acted in a way to protect the accused DHS Program Manager. *(This verifies the "A Priori intent".)*
4) Assistant Attorney General Leighton misrepresented the office of the Attorney General by implying or portraying himself to be an independent impartial investigator working in the best interest of the general public (me), when in fact he was special counsel for the commission solely working to protect DHS.
5) Assistant Attorney General Leighton's unscrupulous effort to gain a tactical advantage by misrepresenting himself and the AG's office to an opposing party in a legal matter is clearly an ethics violation. *(This confirms Mr. Leighton's intent and level of aggression carried out to conclude "A Priori" findings.)*

My experience with this Assistant Attorney General has revealed, verified and confirmed how unchecked government powers can run amuck and loose public respect by their abusive and illegal behaviors. The behavior carried out by Mr. Leighton at the AG's office is typical of what length they will go to in order to protect their client DHS. Fortunately I was savvy enough to tape the Program Administrators threat along with Mr. Leighton's conversations and misrepresentations.

Should this AG's office be in charge of a murder investigation of the innocent 5-year-old child that was in the protective custody of their client DHS? If in fact DHS was the responsible party for the causation of the Chelsea foster babies death how would we ever know? Do you think the AG would violate their client's rights and let the public know what really happen? Do you think the AG would violate DHS' attorney/client privilege and switch sides to represent the people? Who is representing the people while the Attorney General Office is representing DHS?

In 1999 Representative Plowman and I met with Governor King and Commissioner Concannon in the Governor's office. At that meeting I brought to Governor King's attention the abusive conduct leveled against family "M" by DHS and the Attorney General's office. The Governor and Commissioner immediately denied any wrongdoing or risk of harm to family "M" by the State. They had no intention of even making a cursory investigation or a simple phone call into the allegations. Their sole position was to stand fast and deny deny deny, with absolutely no intention of taking any responsibility for the problem. A couple weeks later, a 14 year-old foster child sexually assaulted 5 year-old Michael M. Records reveal Michael M. was forced to give the older foster boy oral sex.

In this case the Governor failed to protect Michael M. The Governor failed to appreciate the risk of harm Michael M. faced. The Governor chose to protect his personal friend Kevin Concannon and put his interest above little Michael M.'s interest. Governor King failed to take appropriate action to protect Michael M. when given the opportunity to do so. Can you imagine how Michael M's mother felt when she watched Governor King give his State of the State address and publicly proclaimed his 0 tolerance for sexual abuse? Can you imagine how this mother and so many others around the state felt when they heard the Governors rhetoric praising his Commissioner?

Records reveal DHS and the foster home waiting 4-days before calling the Sheriff's Department with the complaint. This may have been in part a result of the political sensitivity associated with the Governor's failure to take appropriate steps to protect Michael M. when given the opportunity.

Michael M's father believes that the 4-day delay was deliberately made to allow time to manipulate the outcome of the police investigation. I concur with the father's contention and further emphasize that there is a

strong likelihood that the AAG on the case abused the power of his office to protect DHS.

This abuse usually takes form in a way that intimidates influences, interferes and manipulates the outcome of the work product of various professional people in an effort to protect the interest of their client DHS, and in this case the political interest of the Governor. What would the Governor have said if the parents of Michael M. had waited 4 days before calling police if the sexual abuse would have occurred in their home?

On April 28, 1999 the attorney for Michael M's mother filed a motion in court on the matter, which turned out to be a futile effort as would be expected for a single proprietorship attorney working out of her kitchen on a $500.00 state appointed budget. The attorney's efforts had no more effect on the system than a splattered fly on the windshield of a big Mack truck barreling down I-95. Appointed attorneys for parents are relatively ineffective because of the extraordinary unleveled playing field.

I believe it is the responsibility of your committees to keep DHS and the Attorney General's Office in check from the abuse of power. You must assure that these agencies **"tread lightly and interfere reluctantly precisely because they are inherently clumsy and carry oversize sticks".**

The wrongful use of the Attorney General's office has consequences besides those of the behavior coercively brought about. Nowhere is this truer then in the intensely private realm of the parent-child relationship. Any attempt by a State agency to destroy this precious relationship between a parent and their child is revolting.

Any committee member in the position to protect innocent people from undue harm by the office of the Attorney General or DHS and does not, is an accomplice.

I do not apologize for such a harsh statement. During the last three years of my investigation on the "system", I have witness first hand, unwarranted crushing blows to innocent children and wrongfully accused parents like the Campbell family in Canaan, wronged with impunity and total disrespect for the families and community that supported them. I take great exception to the disrespectful and unprofessional behavior I've

observed by the AG's office and DHS to which I hold your committees responsible.

I am not alone;. legeslators, attorney's, and Journalists have confronted me with the same concerns. For example, one journalist following the Corbin case in our Capitol City toll me she choose to remain at the courthouse for a full day during the hearing because she was amazed at the smug pompous behavior of the AAG and DHS caseworkers. She said every time the State thought they landed a devastating blow to either the mother or grandmother they would snicker, laugh and giggle like immature children.

What this journalist observed is what I have seen to be routine disrespectful behavior by the AG's office and DHS throughout the State. Do the members of your committee understand the mentality of the people you give so much power to? Do you understand how devastating this immature behavior is to an innocent family like the Corbin's trying to fight for the life of the child they love so deeply? Where are the checks and balances to protect the public? The way the Corbin case was treated is not the exception but the rule. It is your committees that control the rules.

I have interviewed a number of young adults that were foster children in custody of the State of Maine. It is apparent from listening to them that the State Attorney General's office is the ultimate bottleneck preventing these children's in the system from protection of abuse. For example, Dawn H. was put into foster care at age 11. After her first placement was shut down because of sexual abuse, Dawn H. was transferred to another home where the foster mother's 30-year-old son lived next door. When Dawn ran to the foster mother crying that her son was sexually abusing her, the foster mother took steps to protect her own son's interest instead of Dawn's. The 30-year-old abuser took advantage of the situation and made matters worst after he realized that Dawn's complain gained him full support and protection from his mother. He continued to threaten Dawn by telling her that if she didn't do everything he wanted he would makeup stories to get her in trouble. When Dawn cried out to her caseworker she found the caseworker closing ranks to protect the foster mother instead.

Dawn learned while in the system that when a child makes an allegation of sexual abuse while living at home the child's creditability is unquestioned and the State immediately responds in the most unyielding way. She further learned that a child is immediately tagged as a liar and

troublemaker by the State if the same allegations are made in a way that could tarnish DHS's reputation.

I have also found that DHS will blackball a foster parent from the system when they think the foster parent may expose abuse or wrongdoing by the State. I have had many foster parents tell me they would love to share allegations and horror stories against DHS but fear retaliation. "There is no Ombudsman" one foster father shouted to me at a McDonald's on Broadway in Bangor one morning.

If we were fortunate enough to uncover and prosecute allegations of wrongdoing by DHS, whom do you think would represent DHS in court? What parent or foster parent do you know is able to take on the system in court? Who has a bigger better-financed law office than the Attorney General in this State? What parent and law firm can match the unlimited public funds the AG's office enjoys in protecting their client, DHS? How is a parent or child going to afford a legal team realistically able to contend with these unlimited state resources on behalf of their client? **WHO PROTECTS THE PEOPLE?**

In Dawn's case, she found the foster mother protecting her 30-year-old son, the caseworker protecting the foster mother and the Attorney General protecting DHS. Dawn, an 11-year-old child, was condemned to 7 years of sexual slavery due to the Attorney General's conflict of interest and its obligation to be loyal to its client DHS, rather than the general public. If you were Dawn at age 11 what would you have done?

Attorneys for parents in DHS matters justifiably feel inferior and grossly inadequate to attack the State for serious wrongs. One attorney told me this week that she once made an attack on the State and immediately the Assistant Attorney General threatened to blackball her from DHS cases and said he would see to it that she lost her law license. I have had a number of attorneys tell me similar stories over the last few years. In fact, one attorney told me that his crusade to pass legislation resulted in threats to him as well as to specific legislators who were tag as champions of his cause.

As legislators, I'm sure you are aware that Commissioner Concannon's office responds to hundreds of complaints by legislators, parents, grandparents and other family members. I challenge you to produce ONE letter that shows fault or admits that DHS has ever made a mistake.

It is this amazingly unerring record that should concern the general public. <u>The abuse of power is more probable then the fortune of having an infallible Commissioner.</u>

Because of the vast complexity of the system and the lack of an OMBUDSMAN, I have taken the liberty to pull together several reports. I will soon release some of these reports in hopes of getting the interest of the US Attorney General and other federal officials as well as the President of the United States. Your failure to recognize and correct these problems in a timely manner has left the people of Maine with little choice but to seek help in federal court either from the U.S. Attorney General or a federal class action lawsuit. When DHS or the Attorney General's office breaks the law, who protects the public welfare from their wrongdoing?

My report will reflect facts of serious wrongdoing and violations of law by DHS, the Attorney General's office and the Maine Court system.

The report will expose systematic harm caused to hundreds of families by Maine State agency's abuse of power and blatant disregard for law.

Laws were put in place to protect children, whenever a law dealing with a child is violated the child is harmed regardless if the lawbreaker was a family member or a state employee for DHS the AG's office or the court.

An outside independent investigation into the death of 5-year-old Logan Marr may reveal that the State of Maine's blatant and systematic disregard for voluminous laws and regulations may be centered around her death. I cannot believe for a minute that any legislator would think for a moment that the Attorney General's Office and DHS would implicate themselves with such a finding if they were to lead the investigation.

As legislators, you may be aware of the fact that more than half of the State child protection agencies across the country have been sued in federal court and are now operating under a consent decree of some type. In my view this demonstrates how enormous a state agency can become, to "in effect" hold their legislators blind and ineffective to protect it own citizens.

With the lack of proper attention by our legislative body to the deaths and abuse of children within the system and your avoidance to properly

address the chronic complaints by your constituency on DHS matters, I believe Maine will soon find themselves in federal court as well. Remember Maine already had the Pineland consent decree they were forced to operate under. Consider that matter small in comparison to what could happen to the State while on your watch.

The whole state system is in the hands of just a few of you. Please prepare yourselves to be asked what you did to correct the problems.

The system is out of control, possibility causing more harm at this time then averting. Consider many of the complaints from your constituents to be valid. Consider these people as seeing no hope on the horizon for adequate resolution from your committees. Help me prove them wrong.

I am asking for the committee leaders to put together an emergency bill to fund the OMBUDSMAN program in some form to get it going now. I believe the reduction in cost to the state by the presents of an ombudsman will result in a net reduction in the State's overall budget.

I say this with complete confidence. For example Joshua S. has some special needs. The state wrongfully removed him from his mother and three siblings instead of offering in-home services. The trauma from removing this sensitive 7-year-old special needs child was too great for him to bear. This resulted in Joshua being institutionalized. Joshua is now 9-years old and is being warehoused in a New Hemisphere institution while waiting for DHS to determine if his mother is able to handle Joshua in addition to her other three children living in the home. According to court records Maine is paying three hundred forty thousand dollars ($340,000.00) a year to warehouse Joshua. Joshua's mother is frustrated with DHS. The court is waiting for a caseworker to make a final decision. Joshua's mother talks about how they keep changing from one young inexperienced caseworker to another. An Ombudsman would have saved more than $300,000.00/year by compelling DHS to comply with law.

The system is loaded with cases like Joshua. It is costing our state tens of millions of dollars needlessly each year. This cost is levied against our Medicaid budget. I notice the Commissioner has fooled the taxpayers in Maine by stating that the big Medicaid deficit was the result of the increase cost of drugs for the elderly, I have evidence that would suggest otherwise.

If lack of funds is the issue I will volunteer my time for free, after all my last three years of devotion to your problems were free. I feel adequate to be the most competent person for the job. The only other alternative may be the federal court system like so many other states whose legislators failed them have now faced.

Sincerely,

James C. LaBrecque

Maine Washington Delegation
Maine Press
Maine State Governors Office
Maine State DHS Commissioners Office
Maine ACLU
Maine U.S. Attorney General
E-mail List

It would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

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April 8, 2000

Margaret H. Semple, Esq.
Director
Bureau of Children & Family Services
Department of Human Services
11 State House Station
Augusta, Maine 04333-0011

Re: Tracy Kinship Issue

Dear Ms. Semple,

Mr. Paul Tracy has asked me to assist him in responding to your enclosed March 28, 2000 letter.

1) Congress in 1996 passed P.L.104-193 at Section 505 Kinship Care. To date Maine has not implemented a single policy as a result of Congress passing this Public Law.

2) Section 4, page 4, part G. of the Title IV-E State Plan amendment signed in October of 1997 by the Honorable Governor Angus S. King JR. and the Commissioner of Maine's Department of Health and Human Services Kevin Concannon, reveals that Maine does not have a policy for the Kinship Care law therefore DHS does not meet the purpose or intent of this amendment.

3) Section 4, page 4, part G. of the Title IV-E State Plan amendment signed and certified by Commissioner Kevin Concannon on December 1, 1998 documents the fact that Maine does not have a policy to address the Kinship Care law and the State has not met the purpose or intent of the October 1997 State Plan amendment nor have they met their obligations under P.L.104-193.

4) The fact that Maine does not have a policy is reflected in the AFCARS data showing Maine as the third worst State in the Nation for placing children with Kinship.

My extensive research indicates that Maine does not have policies and has not conformed to the letter or spirit of the Kinship Care Law.

My findings support AFCARS data showing that the State of Maine opposes kinship placements 95 percent of the time.

5) At confirmation hearings before the Legislative Joint Committee on Judiciary, judges responsible for hearing child protection cases proved to be unaware of what "reasonable effort" was. They had not heard of Title IV-E, therefore could not have known the specifics of section 4 page 4 part G. addressing Kinship Care.
They were unaware of the Adoption Assistance and Child Welfare Act of 1980. Such knowledge is fundamental and critical to good judgment in deciding Kinship Care practice in placing our children.

6) Evidence from my research and inquires reveal that:

A- The Governor of Maine has not promulgated the Kinship Care Law to the public.

B- The DHS Commissioner has not promulgated the Kinship Care Law to employees of his agency.

C- The Chief Justice of the State of Maine has not met his obligations and funding requirements under 42 USC 671 to, *"...conduct assessments of the role, responsibilities and effectiveness of the State courts in carrying out State laws requiring proceedings ...that implement parts B and E of Title IV of the Act".*

D- The Attorney General of the State of Maine has not protected the general public from harm caused by DHS through violations of Public Law or contract law covered under the terms of the Title IV-E State Plan.

E- The State of Maine has not codified the Kinship Care Law or any requirements of Title IV-E into State law in a timely fashion.

F- Required elements of P.L.104-193 and the Title IV-E State plan are not routinely practiced in Maine District Courts hearing child protection matters.

G- The Maine State Bar association, or organizations that train, educate or promulgate policies for professionals and attorneys responsible for carrying out Kinship Care or laws under Title IV-E have not executed adequate training programs in a timely manner in Maine.

In conclusion, the State of Maine has failed to substantially comply with provisions under various Public Laws. It has failed to substantially comply with Section 471 of the Social Security Act. It has failed to effectively promulgate law to the public, its agencies and professionals. The State has failed to codify public law into State statute in a timely fashion. It has failed to set forth, working policies as mandated by their Title IV-E State Plan. The State has failed to promote adequate training for the professionals required in carrying out the States obligations to protect the rights of children and their families in Maine under the aforementioned laws.

It is a matter of record that the State of Maine was aware of its entire obligation under law as evidenced by receipt of Thirty Million Dollars of federal funding last year and an equal (in terms of real dollars) or substantial amount over the last 18 years under Title IV-E.

The State of Maine has knowingly, intentionally or recklessly neglected its obligations under the aforementioned laws while **wrongfully applying for federal funds.**

Unfortunately the State preferred to ignore for 18 years its obligations under law to protect children and families of Maine. It is a sad sight to see the destructive impact on families like the Tracy's caused by the State's non-compliance with laws. It should certainly raise serious concerns to all our public officials in charge.

AFCARS Kinship Care Data clearly indicate systematic bias against Kinship placement.

The Tracy's, like many Maine Kinship families dealing with DHS, were never contacted to determine their level of interest. This is an obligation under **MRSA 22 §4041, Subsec. 1 (C1)** which states, *(..."In the presentation to the court, the department shall include information about other parents or relatives with whom the child could be placed.")*

Your March 28 letter stating that your ("*response has been delayed because, as you stated in your letter, the children you wrote about were the subject of a Child Protective court case and corresponding about them while it was underway would have been inappropriate.")* This statement clearly defies the letter and spirit of the law, and the best interest of the Tracy children. As you know this matter is still before the court. Please explain what law prevented you from writing this letter last year instead of last week? What laws are you relying on that allow you the freedom to write a letter at this time? One thing that I see as being "inappropriate" is your excessive delays and these bogus excuses. I make this strong statement in light of the GAL's testimony expressing at least one of the children's wishes to be placed with his Uncle Paul Tracy.

Paul Tracy is an uncle and is a professional security agent for the federal government. In his security profession, Paul has been trained and charged with the duty of protecting people. In his capacity the federal Government has maintained a background check and clearance on him. Additionally Paul claimed to your worker that there were no records or history of any kind in the Paul Tracy family. This included OUI's, domestic violence or disturbance complaints, drug or alcohol problems or any involvement with DHS. At least two of the children could have been immediately placed with them which would have avoided the serious harm from the trauma of separation and the foster care drift they experienced by being moved around to different foster houses with complete strangers. You have no excuse to act in the manner you have.

You further stated in your March 28th letter that *("as I'm sure you understand, I have no right to discuss that action with you because of the confidentiality that your brother and his family deserves in this difficult circumstance.")* You are clearly defying and thwarting the Federal and State Kinship Care laws. Your standard "confidentiality" excuse has been used as a cover for your own ill intentions, manipulation and excessive control for too long and I will personally see that you no longer wrongfully use it in inappropriate ways as such. For you to think that Congress and our State Legislature is so senseless that they would pass the kinship care law without provisions for your agency to effectively communicate the child's needs and best interest to a family member is ludicrous.

I challenge you to produce the confidentiality law you referenced that prevents you from effectively communicating and carrying out your obligations under the kinship care laws.

I also challenge you to produce the confidentiality law that allows you to communicate with non-relative potential caregivers and not relative potential caregivers.

For you to insinuate that your agency's lack or unwillingness to communicate with the Tracy family members as necessary to carry out the kinship care laws is because of the *("confidentiality that your brother and his family deserves")* as you stated in your letter is a misdeed. The father of the Tracy children has and continues to communicate with any potential family members willing and able to care for and prevent his children from being placed in the harmful setting they are presently in. Your Manipulation in these matters is nothing more than aggressive tactics to bully families into comply with your own agenda. I am preparing to fight your ill aggressive behaviors with every ounce of my being and will not stop until you are clearly exposed and terminated from any position involving children.

Your statement *("Specifically regarding your brother's children living with you, it is my understanding, from speaking with Kari Myrick that you are no longer interested in placement of any of your brother's children with your family.")*

As you and Keri Myrick well understand the lost of interest was due to:

A) The passive aggressive behavior of your agency;

B) The manipulation and lack of trust in you and your people;
C) The anti kinship bias against the family;
D) The statistical odds showing that 95% of families do not prevail against the State in Maine courts regarding kinship care matters;
E) An unleveled playing field based on the States unlimited financial and professional resources grossly outweighing the family resources;
F) The historical trends and dangerous reputation of your agency and it's personnel;
G) The quality time it will take away from their own children in order to fight the States lack of compliance with the law;
H) The legal cost required for intervenor status.
I) The excessive and unethical invasion of privacy as depicted in your AUTOBIOGRAPHY;
J) Realizing that the best fight against the State only gave them a 5% chance of getting custody of the children;
K) Most importantly, the risk to their own children by having such ruthless and ill intentioned people coming into the privacy of their home.
L) For all these reasons the Paul Tracy family decided their odds were better than 5% to evoke changing the system through the legislative process, than to fight for the custody of their brothers children.

For you and your agency to engage in five months of manipulation and inappropriate actions and than copying your letter to our Governor trying to portray the matter as, [nothing more than the family simply loosing interest in the children] is disgraceful.

The Kinship Care Law, requires that DHS, *("...shall consider giving **preference** to an adult relative over a non-related caregiver when determining placement for a child . . .")* In most Maine cases relatives are very seldom considered, therefore are infrequently given the "preference" mandated by law.

The DHS process in the Tracy matter is illustrative of the lack of current DHS policy to ask for names of the children's relatives when considering an out of home placement. Various members of the Tracy family called DHS and were ignored, as most families are. Statewide records should reveal that courts condoned this blatant disregard for the law by the lack of reprimand to DHS for its routine violations. Simply put, your agency breaks the law because the courts allow you to.

I say this with great confidence knowing that the probability that I'm right far exceeds the probability that 95% of children in this State should not be placed with relatives, as depicted in the AFCARS database.

It was only after members of the Tracy family contacted myself along with their State representatives that DHS had to respond. At the resulting meeting with the Tracy family I observed first hand DHS' ongoing anti-kin bias.

I would also mention in the Tracy Kinship Care matter that apparently an old 37 page document identified only as an AUTOBIOGRAPHY was left with the family to fill out. The instructions were for "adoptive/foster parents" to each complete. This document did not differentiate between relatives and/or "adoptive/foster parents". It further demonstrated the lack of any qualified Kinship Care policy used in Maine as required by your TITLE IV-E State Plan.

Without State policy and a good working process documenting and differentiating between relatives and "adoptive/foster parents" in determining placement for a child, the State effectively disregards the "preference" given to a relative by Congress.

It is obvious that the two key words in (P.L.104-193 Kinship Care Law) that must be underscored in the process are **preference** and **relevant**.

> The Kinship Care language is as follows ("...the State shall *consider giving **preference** to an adult relative over a non-related caregiver when determining a placement for a child")* The word **preference** implies a "given" or "automatic weight" in favor of placing a child with a relative. A foster house is excluded from this preference or weight granted by Congress and therefore must only be considered as a subordinate choice.
>
> The language further states *("provided that the relative caregiver meets all **relevant** "State Child protection standards").* The word **relevant** as set forth implies, a narrowing of the scope or a limitation. This limitation or narrow scope is purposefully targeted only to the issue of "child protection standards", which is a prerequisite significantly different than that required for foster parents.

Child protection standards in Maine deal primarily with child abuse and neglect matters. Abuse basically deals with issues of safety whereas neglect deals with issues of adequate provisions of needs. Therefore, unless the State is able to show good cause as to why a specific relative can not safely and adequately provide for the needs of their Kin, then preference must go to placing the child with a relative who meets the relevant requirements as set forth by law.

As to the issue of weight in the child placement decisions process.

Lacking a sound Kinship Care process, Maine ignores the weight that should be given to relatives as intended by Congress. Good Kinship Care policy should give the State a real opportunity to weight other important factors in the process such as the avoidance of trauma caused by the unnecessary separation of a child from their biological family.

Recently caseworker Keri Myrick handed Mr. and Mrs. Paul Tracy a 37-page document called an AUTOBIOGRAPHY. A section of this autobiography starting on page 30 is called (Behaviors/Emotional Difficulties). It explains to the adoptive/foster parent the 32 behaviors exhibited from the trauma of a child being separated from their parents. (See following page for listing of the 32 behaviors taken from pages 30, 31, and 32 of the DHS AUTOBIOGRAPHY document.)

Keri Myrick inadvertently stated to Mr. and Mrs. Paul Tracy in my presence that the two nephews they were seeking to care for were traumatized by their separation. She further stated that the boys were engaged in deep psychological therapy as a result of the additional trauma caused from the subsequent moves to various foster homes since placement.

The Tracy family tried everything they could to avoid this unnecessary trauma but the Bureau of Children & Family Services lead by you prevented this unnecessary harm from taking place.

AFCARS data showing that your agency behaves in the same irresponsible manner 95% of the time indicates that a tremendous amount of harm to children is caused by your own wrongdoing.

I believe that a study to determine the actual level of iatrogenic[1] harm by your Bureau would show a disproportionate share of trauma, mental health cost and delays in reunification is caused by your own behavior and manipulation. As in many cases the unnecessary removal of children from their home or violations of children's right to be place in a familiar setting with kinship is the cause of serious child abuse derived from your leadership.

[1] Disorder; caused by treatment or diagnostic procedures:

Behaviors/Emotional Difficulties

Children traumatized by separation from their families may exhibit some or many of the following behaviors. When considering these behaviors, keep in mind the age range of the child you wish to care for.

1. Use of foul language
2. Lies or fabricates stories about you and tells others
3. Tattles
4. Talks a lot about death, his/her losses
5. Talks about suicide and/or has attempted suicide
6. Does not like himself/herself and behaves in a way to make others dislike him/her
7. Has sibling problems, intimidates other children in the home, steals from them, shows them indifference
8. Is a bully
9. A child who in unresponsive to your efforts, can't give affection, gives you nothing in return
10. Creates neighborhood problems and causes people to call you with complaints
11. Creates school problems, causing teacher to call with complaints
12. Has temper tantrums (hits you, hits other children, destroys things, bangs head, etc.)
13. Hurts himself/herself physically (biting, banging head until bruised, cutting, etc.)
14. Is destructive of things (picks at clothing until it is ripped, breaks toys, furnishing etc.)
15. Is hyperactive, in constant motion, must be supervised constantly
16. Has a sleeping problem (nightmares night walks, cries in sleep, does not sleep)
17. Is clinging, crying, never happy
18. Is afraid of everything, will not try anything
19. Does not practice personal hygiene
20. Is a bedwetter
21. Soils/smearing
22. Has eating problems, refuses to eat with you, eats secretively, doesn't like anything, gorges food
23. Steals or hoards things
24. Manipulates others, "plays on people's weaknesses", needs, etc.
25. Involves other children in sex play
26. Is seductive toward adults and children
27. Is sexually active with peers
28. Masturbates
29. A chronic runaway
30. Abuses alcohol
31. Abuses drugs
32. Appears complacent (too good)

THE AUTOBIOGRAPHY

The 37-page AUTOBIOGRAPHY document obviously developed for adoptive/foster parents and not relatives was broken down into 17 categories. At my request a forensic psychologist quickly reviewed the document and determined:

-It was a non-standardized instrument
-It is a non-standardized technique
-It risks a high degree of subjective interpretation
-The results of that particular questionnaire are vulnerable to the bias of the interpreters

After carefully examining this document from the perspective of a lay person acting on behalf of the child's Kin, I have many concerns. For instance:

1) **In exchange for the opportunity to care for a grandchild or loved relative, DHS demands that you answer incriminating questions to a State agency that could lead to criminal charges.** For example: One question asks whether you have ever used marijuana or cocaine? Both of these actions may be criminal matters in this State and could result in criminal consequences. Although the State agency has a legitimate concern to know if current drug use is an issue in a matter, due consideration must be given to Fifth Amendment rights. Forcing a child's grandparent or relative to abrogate their Fifth Amendment right or face forfeiture of a relationship with their Kin could be actionable in a civil rights claim. I will look to the Maine ACLU for their opinion on the issue. I am certain the agency could form the question in other ways such as, "Have you ever been convicted for the illegal use, possession, or sale of marijuana or cocaine"?
2) **DHS demands answers to many questions that are irrelevant to the issue of a grandparent or relative's ability to protect and properly care for a grandchild or a loved relative.** For example: The questions about how *"your parents handled their finances"?* It should be apparent to the agency that a revolution changing how home finances are handled has arrived. In today's technologically evolving world this type of question is not only irrelevant to the issue but also laughable. For example, a parent of just a few years ago could not do there banking over a computer modem or through a touch tone telephone. They did not have ATM cards or a host of other credit options.

They did not have home computer accounting programs or the ability to trade or track stocks over the Internet. Financial service agencies and bank services were very limited. Taxes were never filed from your home computer. In conclusion, I must say this line of questioning especially to a child's grandparents in there sixties looking to care for their grandchild, whose parents (the child's great grandparents) lived in the late nineteenth century is not only irrelevant but patently ridiculous.

3) **DHS demands answers to many questions that are unnecessarily <u>intrusive to your personal privacy,</u> which are irrelevant to the issue of a grandparent or relatives ability to protect and properly care for the grandchild or a loved relative For example:**

(Note: These questions are taken from the DHS "AUTBIOGRAPHY" mentioned earlier.)

- How did you learn about the facts of life?
- When did you begin dating?
- How much dating did you do before you became seriously involved with someone?
- How did you meet your partner?
- What attracted you to your partner?
- How did your relationship develop?
- What adjustments did you have to make at the beginning of your relationship?
- List three things you dislike about your partner?
- What would you like to change about your partner? Have you tried?
- What does your relationship need to make it better?
- How are your finances handled?
- What are the main areas of conflict between you and your partner?
- What would make you separate from your partner?
- Are there some feelings you are not comfortable sharing with your partner?
- Was there anything or anyone that you were afraid of as a child? Please explain.
- Do you feel any of your siblings were favored over you?
- In what way would you hope to be different than your parents?
- What made you feel insecure while growing up?
- What personal hardship or problem have you faced?
- Are their some things about your present life you would like to change?
- What do you see as weaknesses and would like to change? Please explain.

These questions are irrelevant, intrusive, and highly personal. They are overly broad and carelessly written and offer no insight into a relative's suitability as a caregiver.

DHS demands answers to many questions that are unnecessarily intrusive to the privacy of non-participating extended family members that are irrelevant to the issue of one's ability to protect and properly care for their Kin. For example:

- What are your parents' occupations?
- As you were growing up, did your parents experience any serious health problems? If yes please explain.
- Describe your parents' personalities?
- Describe your parents as a couple.
- Please describe your parents' marriage.
- What did your parents agree and disagree about?
- Was there anything in the family/household you couldn't talk about? (i.e. financial problems, religion, drinking, drug abuse, sex) If yes explain.
- What are some of your most important memories (good and bad) while growing up in your home?
- What problems/hardships did your family experience? (I.e. serious illness, death, unemployment, divorce, etc.)
- How were chores divided when you were a child?

Again, these questions are irrelevant, intrusive, and highly personal. They are overly broad and carelessly written and offer no insight into a relative's suitability as a caregiver for a child.

For DHS to carry out their own hidden policies such as this AUTOBIOGRAPHY while claiming for three years to the federal government under their Title IV-E State plan that no policy exist, must be stopped. The present AUTOBIOGRAPHY as handed to the Paul Tracy family does not meet the intent of the public Kinship Care law.

The only thing a document as such can be used for is to score a 95% record in avoiding families from rightfully participating in the kinship care process. If that is not the intent then the process of using it has accomplished the same results. I believe the judiciary committee should be furious to know that their kinship care law recently passed has been circumvented by such a document along with your inappropriate behavior and ill intentions.

This practice and behavior by your agency suggest a systematic Anti Kinship Bias. My claims are fully reflected in the AFCARS database. The Tracy family is just one of hundreds of families that have been wronged by this type of manipulation and strong-arm tactics by your agency which is personally lead by you.

I believe the catalyst that sustains your atrocious practice is the thirty million dollars a year of federal funding. Ironically the more children you wrongfully gain custody of the more your federal funding increases.

Note in the June 19, 1999 Bangor Daily News, the State of Maine has increased its foster care population by 50% in just the first five years that the present administration was in charge. A good hypothesis can be made that this drastic increase is associated with the "wrongful actions" of the administration and not coincident with a "sudden rise" in child abuse by the people of the State of Maine.

Dereliction of your duties is evident by the facts as stated in this document as well as the facts that I will reveal at a later date. If the Governor chooses to position himself to defend your behavior at this time then I will suggest to him that there is much more to come.

Sincerely,

James C. LaBrecque

Paul Tracy

C.c. Maine Washington Delegation
Maine State Judiciary Committee
Maine State Appropriations Committee
Maine State Health and Human Services Committee
Maine Press
Maine State Governors Office
Maine State DHS Commissioners Office
Maine ACLU
Maine U.S. Attorney General
Maine State Bar Association
U.S. DHS Inspector General Office
U.S. Commissioner Patricia Montoya
Farmington DHS office Keri Myrick
E-mail List

it would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

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Debra E. Gotlib
Assistant Attorney General
State of Maine
Department of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

January 22, 2001

Re: Parental Rights to Educational Records

Dear Ms. Gotlib,

I was asked by Ms. Lisa Bridges to assist her with problems caused by DHS and your office that she encountered earlier last year with the Jewett School in Bucksport Maine.

My busy schedule has not allowed me to address her concerns in a timelier manner.

Because of the numerous calls and complaints I've received all over the state in the last few months and a letter that was faxed to me today from a client in the Livermore school district that I am advocating for, I feel compelled to address the issue today.

The letters that was faxed to me today was a January 17, 2001 letter from DHS' Raymond F. Duchette Region 2 District 3, to Mr. Crook, the Livermore Falls Superintendent of schools with a December 28, 2000 attached Memorandum from Deanna White, of the AAG's office. I find Ms. White's Memorandum to the school quite disturbing in light of the position I take in addressing some of the same issues in Ms. Bridges case.

Although I am mostly addressing specific issues to Ms. Bridges case in this letter, I will strongly note that Ms. Bridges is not the exception but the rule to how DHS and your office go to any length to trample over the parental rights of Maine families.

Regarding Ms. Bridges. I am in receipt of voluminous letters and correspondence from Ms. Bridges, including your February 11, 2000 letter to attorney Ferdinand A. Slater. My review encountered violations of Ms. Bridges rights by you and DHS to be most disturbing.

As a result of your illicit acts as delineated in this report, I am forwarding a copy of this letter directly to the Governor, who stated to me in a Hancock County press conference that he would *"never allow a state agency to trample over the rights of a parent under his administration."* [1]

DHS through your unlawful assistance under the auspices of the Maine Attorney General's office have clearly violated Ms. Bridges and her child's Federal Civil Rights. Among the rights you violated are, **(FERPA) F**amily **E**ducational **R**ights and **P**rivacy **A**ct. (34 CFR PART 99) (Authority 20 U.S.C. 1232g)

You have illegally advocated DHS' position, which I feel was an antithetic act upon the letter and intent of Federal civil rights laws which I believe the Maine Attorney General's office is mandated to uphold.

Such a conflict will definitely be brought to the attention of the proper legislative parties overseeing the Attorney General's office.

It is for reasons like this that people in Maine have lost trust in our DHS system as well as your office.

After reviewing Ms. Bridges information and material I found the following:

A) Your letter of February 11 consists of serious errors, misinterpretations and conclusively demonstrates wrongful intent;
B) Your position expressed by your letter fails to specifically differentiate between parental rights and custodial rights;
C) Your fundamental position to act as thought a parent whose child is in temporary state custody has lost all of their fundamental parental rights before a termination hearing takes place is clearly stepping over the line of numerous parental civil rights violations;
D) The position and behavior exhibited by you and your client DHS is certainly contrary to the intent and purpose of the Adoption Assistance and Child Welfare act of 1980 PL 96-272. It is also contrary to the DHS mission statement and specific requirements under Title IV-E of the social security act, and DHS' own Child & Family Service Manual Policies.
E) The position and behavior exhibited by you and your client is contrary to the intent of L.D. 405 passed as private and special law.
F) As a result of your position to wrongfully interfere with the educational rights of Ms. Bridges, the Bucksport Jewett School has caused harm to this family by violating the Family Educational Rights and Privacy Act, PL 93-380 and PL 93-568 as well as many of its inclusive regulations.

[1] Ellsworth American October 19,1998.

The Family Educational Rights and Privacy Act: **(FERPA)**

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order relating to such a matter as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

You're apparent presumption as you inferred in Ms. Bridges case have wrongfully implied that parental rights and custodial rights are synonymous and inseparable. Your position has excluded the fact that unlike custodial rights the U.S. Supreme Court regards the term "parental rights"[2] as fundamental. As a result, such a status should subject any involvement by you, which directly or substantively intends to interfere with any parental rights to be treated with great respect, which you've clearly eschewed.

I believe such important rights should not be interfered with by a reckless, ill intention agency like DHS. Neither should it be defended or assisted by the unwarranted heavy hand and force of the Maine Attorney General's Office.

As you are well aware, Maine State Law recognizes "parental rights" as a fundamental right. As a result the state is required to meet a "clear and convincing" evidentiary standard in parental rights[3] matters. Your use of the official status of the Attorney General's office to intimidate schools to transgress parent's rights by circumventing the "clear and convincing" standards will soon be under review. For you to think that you can simply "slice away" at one or more parental rights at will; as you have arbitrarily done to Ms. Bridges and other Maine citizens is deplorable.

Court order giving DHS temporary care and custody of a child in no way bears the same weight and effect as that carried out in a termination of parental rights order.

22 MRSA §4056. (1) Effects of termination order

Parent and child divested of rights. An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and his parent. [1979, c. 733, § 18 (new).]

I believe parental rights are neither absolute nor unlimited. They are non-absolute in the sense that they may, in certain cases, be overridden by other considerations. For example, a "parents" right to discipline their child by physical torture is overridden by the child's right to be protected from physical harm and to the enjoyment of a safe environment. I know of no exhaustive listing or set of parental rights we typically

[2] Santosky v. Kramer, 102 S Ct. 1388 (1982)

[3] Title 22 MRSA §4055(1) B (2) a The court finds, based on clear and convincing evidence, That...

associate with our children, but the following rights, which are relevant and commonly assumed to be included in the set are:

- The right to physical possession of the child;
- The right to inculcate in the child one's moral and ethical standard, including the right to discipline the child;
- The right to control and manage a minor child's earnings and property;
- The right to have the child bear the parent's name;

- The right to prevent adoption[4] of the child without the parents' consent;[5]
- The right to make decisions concerning the medical treatment, education, religious training and other activities of the minor child; and,
- The right to information necessary to exercise the above rights responsibly.

The state's position on the issue of material importance of parental rights is further evident from other well established Maine law such as, (Title 19-A Domestic Relations) to which you made reference in your letter. Particularly §1653(o). This section supports the issue that courts presumably hold parental rights as fundamental by their requirement for meeting a, "clear and convincing" evidentiary standard.

§1653(o) Parental rights and responsibilities
A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary dismissal of a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the protection from abuse process. [1997, c. 187, §3 (new); §5 (aff).]

In your February 11th letter you stated that if Ms. Bridges son:

> *"[W]as classified as a child with a 'disability' as defined in the IDEA,"* she *"would not be entitled to school records concerning the child. Nothing in the IDEA or any of its subsequent amendments suggests this. While, certainly the Act*

[4] Title 22MRSA §4037 Authority of custodian... "Custody does not include the right to initiate adoption proceedings without parental consent,"
[5] The rights enumerated to this point are cited in Blacks Law Dictionary, (5th ed. 1979)

provides certain rights and protections to children with disabilities and their families, those rights run only to the legal guardian of the child, in this particular instance, the Department of Human Services. Under the Act, the term parent includes a legal guardian. See Title 20 U.S.C. §602 (19)(A)."

Regarding this statements of yours I must point out the following:

1) With respect to your reference to *Title 20 U.S.C. §602 (19)(A)*
   This statute is irrelevant and in error. *20 U.S.C. §602* was omitted many years ago.
2) Your use of the words and terms parental rights, families, custody and legal guardian as though they were all interchangeable terms is wrong. The use of these very specific terms as though they were synonymous, inseparable or interchangeable is obviously an attempt by you to try and redefine words to "make them fit your needs." Each of these terms has very specific meanings within the definitions of specific sections of federal and state law.
3) Your letter states *even if Ms. Bridge's son was classified under the IDEA she*: *"...[w]ould not be entitled to school records concerning the child."*
   As stated above in section 99.4 of the Act, ***"an educational agency or institution shall give full rights under the act to either parent unless a court order specifically revokes these rights."***

In the matter of Ms. Bridges the court has never "specifically revoked" these rights. DHS under your direction has conducted themselves in ways contrary to law, because they obviously felt they could not obtain what they wanted through proper legal channels.

I would also like to point out that the **F**amily **E**ducational **R**ights and **P**rivacy **A**ct **(FERPA)** applies to "**all students**" including, and most importantly, student's with classified disabilities. These students and their parents enjoy numerous rights and protections not enjoyed by their normal peers, including:

- The **(IDEA) I**ndividuals with **D**isabilities **E**ducation **A**ct;
- Section 504 of the Rehabilitation Act of 1973; and,
- The **(ADA) A**mericans with **D**isabilities **A**ct of 1990.

These laws were put in place to give disable students and their parent's additional rights and protections under special civil rights law. In no way was a simple change in temporary custody or guardianship intended by the framers of these laws to automatically revoked or abrogated parental educational rights as you have wrongfully inferred and acted upon against Ms. Bridges and others. **These laws were specifically put in place to protect students and their parents from the very abuse and harm you've cause Ms. Bridges as well as many other Maine families.**

4) Referring to the IDEA your letter states:

"...[t]he act provides certain rights and protections to children with disabilities and their families."

The fact is that nowhere in the IDEA is their such a reference as to rights of families. In fact all the references to "rights" are in the form of the disable "child" and "parent(s)".

5) Your letter further states that:

"...[T]hose rights run only to the legal guardian of the child, in this particular instance, the Department of Human Services."

This statement is wrong and contrary to federal law as well as the Maine Special Education Regulations Chapter 101 particularly *(section 12.6A)* which specifically states:

"The term 'guardian' does not include the State if the student is a state ward."

This is further reinforced by (Section 2.14) which also states:

"The term "parent" does not include the State or employees of a state department responsible for the education or care of a student."

In fact the Section that gives any rights to DHS involvement at all is (Section 12.6 B) which states:

"The representative from the Maine Department of Human Services for a state ward may have access to records and participate in the P.E.T. meeting but may not exercise the procedural safeguards under this rule"

6) In your letter you further state that:

"Under the Act, the term ***parent*** *includes a legal guardian."*

Your skillful attempt to pull this definition out of context from its very narrow and specific definition of law in essence has backfired. Your own terms and claims are ineffectual when considered under section 2.14 below.

For clarification please consider your statement within the full context of the law and the construction of its associated regulations as it applies to the relevant sections of law under our own Maine Special Education Regulations Chapter 101.

(Section 2.14) the term "parent" means:

A natural or adoptive parent, a guardian, a person acting as a parent of a child (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child's welfare) or a surrogate parent (see Sec. 2.29) of a child who has been appointed in accordance with these rules. The term "parent" does not include the State or employees of a state department responsible for the education or care of a student.

A foster parent may qualify as a parent under this section if:

A) The natural parent's authority to make educational decisions on the student's behalf has been terminated under State law:
B) The foster parent has an ongoing, long-term parental relationship with the student;
C) The foster parent is willing to participate in making educational decisions on the student's behalf; and
D) The foster parent has no interest that would conflict with the interests of the student.

Under Maine Special Education Regulations Chapter 101 (September 30, 1999) (Section 12.6) the term "Surrogate Parent" means:

A. Appointment of surrogate parents- Whenever the natural parents or guardian of a student with a disability cannot be identified or located after reasonable efforts, the superintendent of the responsible administrative unit shall notify the Special Services Team, Maine Department of Education and request the appointment of a surrogate parent. The term "guardian" does not include the State if the student is a state ward.

C. Criteria for a surrogate parent selection – A surrogate parent shall meet the following criteria:

1. ***Has no interest that conflict with the interest of the student being represented;***
2. ***Has sufficient knowledge and skill to ensure adequate representation of the student; and***
3. ***Is not an employee of a public agency involved in the education or care of the student.***

The term "public agency" includes, but not limited to the Department of Education, the Department of Human Services, the Department of Corrections, the Department of Mental Health, Mental Retardation, and Substance Abuse Services, the school administrative unit responsible for providing education to the student, an agency operated foster or group home and the school unit of residence of the student's parents. A person who otherwise qualifies to be a surrogate parent under these rules is not an employee of the agency solely because he or she is paid by the agency to serve as a foster parent.

There can be more than one form of a "representative parent" involved with the child's education rights under law, **but in no way does court orders adding an additional parent or guardian to the family dynamics automatically revoke the biological parents educational**

rights. This can only be done by a court order terminating parental rights or one that "***specifically revokes*** the educational rights as required under FERPA

Referring to your instructions to inform the school not to permit the release of school records to the parent *(Ms. Bridges)* you stated:

> *"The legal basis for the Department's 'instructing' the school to forward records concerning (child's name) to the Department is that the Department is the legal guardian of the child. When the Department becomes the legal custodian of a child pursuant to a preliminary or final protection order the custodian (DHS) has* ***full custody*** *of the child to the terms of the protection order. See Title 22 M.R.S.A. §4037.*

I find it interesting to see how you intentionally left out the most relevant elements of the statute construction associated with the term **"full custody,"** which should properly include "full custody" subject to the terms of the order and other applicable law." See §4037.

> ***§4037 Authority of custodian***
>
> ***"When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law."***

Other applicable law that MUST be adhered to include the federal **F**amily **E**ducational **R**ights and **P**rivacy **A**ct **(FERPA)** as well as the special education laws mentioned above.

Nothing in the terms of the custody order to Ms. Bridges child includes anything that "specifically revokes" her rights as a parent under the Act. In fact contrary to your letter the "other applicable laws" go to the fact that the school has an explicit legal duty under FERPA to give the educational records to Ms. Bridges at her request[6]. FERPA also implies that the rights of DHS are not unlimited, as you perceived in your letter.

Regarding your reference to Title 19-A of the Maine Revised Statute as example's you rely on to define "parents" and "parental rights". I find this reference to be far reaching, needless and out of line when considering the fact that the specific educational laws at issue unambiguously denote clear, specific definitions of their own. The issues defined and intended under Title 19-A differ from Title 22 as well as the aforementioned educational laws and do not cross-apply, especially the issue of "other applicable laws," as I have obviously pointed out in this letter.

Below is a listing of some of the hoops you needlessly made Ms. Bridges jump through as you harassed and bullied her with groundless attacks you've wrongfully used your office to level against her.

Keep in mind this is not an extensive daily log of all the meetings, court hearings and phone calls you forced Ms. Bridges to go through, but simply a list substantiating an atmosphere of uncontrolled aggression by the State Attorney General's office against this

[6] (See FERPA 34 CFR Part 99 Subpart B Section 99.10) ***What rights exist for a parent or eligible student to inspect and review educational records?***

mother. I must point out that Ms. Bridges is in no way alone when it comes to Maine governmental agencies assaulting families with intent to harm or destroy.

Partial Historical Summary of Ms. Lisa Bridges Efforts to Access Her Son's School Records

1) Lisa Bridges met with Mr. Lacroix Principal of the Jewett School Bucksport Maine.
2) January 19, 2000 follow up Phone call to Principle Lacroix.
3) February 1, 2000 letter from Lisa Bridges to Principle Lacroux.
4) February 2, 2000 letter from Sharon Brady Special Education Director of the Jewett School to Ms. Bridges.
5) February 2, 2000 letter from Ms. Brady to Anne Boyer L.S.W. DHS case Manager.
6) February 3, 2000 letter from Ms. Boyer to Ms. Brady.
7) February 3, 2000 letter from Ms. Brady to Bucksport school attorney Mr. Richard Violet.
8) February 4, 2000 letter from Lisa Bridges attorney Mr. Ferdinand A. Slater to Ms. Boyer.
9) February 11, 2000 Letter from DHS attorney Ms. Debra Gotlib Assistant Attorney General to Attorney Slater.
10) February 18, 2000 letter from attorney Violette to Ms. Brady.
11) March 1, 2000 letter from Ms. Bridges to Principal Lacroix.
12) March 1, 2000 letter from Ms. Bridges and John S. to Governor King.
13) March 6, 2000 letter from Attorney Harry R. Pringle to Ms. Gotlib. (Mr. Pringle is apparently a private law firm hired at taxpayers expense to assist Ms. Gotlib)
14) March 7, 2000 letter from Ms. Brady to Ms. Bridges.
15) March 9, 2000 letter from Ms. Bridges to Principal Lacroix.
16) March 13, 2000 letter from Ms. Brady to Ms. Bridges.
17) March 14, 2000 letter from attorney Slater to attorney Pringle.
18) March 14, 2000 letter from attorney Pringle to assistant attorney general Gotlib.
19) Letter (No date) from John Haystead on Ms. Bridges behalf to Sean (apparently Governor King's aid.)

My in-depth concerns about these issues are as follows:

A) The above list clearly demonstrates a pattern of behavior regularly practiced by DHS and your office to violate parents and children's educational rights throughout the state of Maine as a routine matter;
B) These enormous efforts and violations by DHS and the Attorney General's office permeate across all aspects of child and family rights, and not only to the issue of educational rights;
C) The "slicing away" of child and parental rights as demonstrated in Ms. Bridges educational matter is typical of how DHS and the Attorney General's office incorporate their efforts to wage war on families in order to win cases at any cost;
D) The high number of termination of parental rights in this State is directly associated with these ardent civil rights behaviors by DHS and your office;
E) The Attorney General's office is not complying with the laws and rights of parents they are chartered to protect as citizens of our State. Instead they are joining DHS in efforts to knowingly and aggressively wage attacks against parents and their children as a routine course of business;
F) The authority to investigate and keep "in check" the abuse of powers by the Attorney General's office is within the hands of the legislature. I will copy this letter to our legislators asking them for an investigation into claims that you're office regularly engage in unethical and abusive activities against citizens throughout Maine as a general matter of practice;
G) The ability to abuse and engage in unchecked spending in order to carry out such organizationally motivated, ruthless behavior must also face an immediate investigation. Who is answering to the TAXPAYERS for funding to support such an operation? What safeguards are in place to prevent such conduct from occurring?

Your capricious behavior exhibited above has echoed a hue and cry by Ms. Bridges as well as many other families across the State. Your fallacious treatment to Ms. Bridges as well as other innocent families you've dealt with is inexcusable for the real emotional and finical devastation it causes families.

Your track record and fingerprints in these matters will demonstrate and verify how DHS uses other State agencies like your office as a social utility to carry out their ill organizational intention.

Alternatively, the limitation on the rights and authority of natural parents under your contemporary interpretation if allowed to continue could be held as so restrictive that the state begins to look more like the holder of parental rights then a temporary custodian with a narrowly defined goal of reunification.

Parental rights protect the interest of parents and children in a relationship that is natural and independent of the existence of a state; and one of the things it protects these interest from is undue state interference in this relationship as you have erroneously done. Critically for doctrinal purposes, this is the interpretation the Supreme Court appears to accept in holding that,

> *"[i]t is cardinal with us the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."*

Let me illustrate this with a well-know example---one drawn from the philosophical literature of liberty. John Stuart Mill's defense of his famous principle of liberty finally turns on what I shall call "the best policy argument' akin to DHS' "best interest" argument:

> *[T}he strongest of all the arguments against the interference of the public with purely personal conduct is that when it does interfere, the odds are that it interferes wrongly and in the wrong place.*[7]

While parents may often make decisions that are not in the best interest of their children, it certainly doesn't follow that it is in the best interest of children for the parents' decision to be coercively interfered with.

The state must tread lightly and interfere reluctantly precisely because it is inherently clumsy and it carries a big stick; the wrongful use of the Attorney General's office has consequences besides those of the behavior coercively brought about. Nowhere is this truer then in the intensely private realm of the parent-child relationship. Your attempt to destroy any portion of this precious relationship between a parent and their child is revolting.

Your behavior in the Bridges matter further demonstrates that there are some clear problems that need to be analyzed between our State Department of Human Services and the Attorney General's office.

There should be some immediate oversight to assure that the rights of parents and children are not overrun by unchecked and out of control power of these State agencies.

The time consuming and expensive tactics practiced by you and others in your office against parents to "win" cases against families at all cost, has unfortunately left Maine with the poorest aggregate AFCAR statistics in the nation as well as a high number of unnecessary Termination of Parental Rights. I will assure you that taxpayers will find out just how you are squandering their hard earned tax dollars.

[7] See Mill (1968) p.198

Another law DHS in conjunction with your office routinely force schools districts across Maine to violate is:

Title 22 M.R.S.A. §4021(3). (Interviewing a child on school property during school hours.)

I bring this to your attention for two reasons.

A) I have direct evidence that the Bucksport school system *(Who is at issue in this letter)* regularly violates this section of law in their attempt to either assist or appease DHS. Numerous civil rights violations by the Bucksport school district were undertaken against innocent families like Ms. Bridges. These violations have become a "routine matter" of business for Bucksport as well as other school system throughout the State of Maine. The evolution of how school districts have become participants in these violations can be traced back to the collusive efforts between DHS and the Attorney General's office to intimidate and overbear in a coercive way, school districts to conform to their wishes. (School officials in several districts have told me they will do anything DHS ask because they fear their enormous powers, and just can't afford to take a chance of having trouble with them.)

B) You and your colleagues at the AG's office have not only allowed your clients to violate laws and civil rights but you have taken an active role and position to assist them.

It is clear to me that DHS under the direct leadership of the AG's office has intimidated our school districts into becoming another "social utility" to assist them in breaking laws to violate parent's rights for DHS.

Section 4021(3) makes it clear that prior notification is not required when, ***"prior notice would increase the threat of serious harm to the child or another person."***

> ***22 M.R.S.A. §4021(3)***
>
> ***Interviewing the child without prior notification. The department may interview a child without prior notification under the following provisions.***
>
> ***A. The department may interview a child without prior notification to the parent or custodian when the department has reasonable grounds to believe that prior notice would increase the threat of serious harm to the child or another person. The department may conduct one initial interview with a child without prior notification to the parent or custodian of the child when the child contacts the department or a Person-providing services puts the child into contact with the department.***
>
> ***[1989, c.270, §7 (amd).]***
>
> ***B. The interview may take place at a school, hospital, police station or other place where the child is present. [1981, c. 369, §10 (new).]***
>
> ***C. School officials shall permit the department to meet with and interview the child during school hours, if the interview is necessary to carry out the Department's duties under this chapter.***
>
> ***[1981, c. 369, §10 (new).]***

School districts have proven not to be "diligent protectors' or "effective guards" with their responsibility to preserve the confidentially of its students. They have a special duty under law to "protect" students and their parent's rights by assuring that all-educational law are complied with. One of the purposes or intent of these educational laws is to safeguard parents and students from undue State intervention. School districts in Maine have seriously failed the grade when it comes to protecting parents and students educational rights.

Schools districts like Bucksport have lacked in their efforts and obligations to diligently scrutinize DHS when they raise the issue of Section 4021(3). If DHS makes a claim to a school that ***"prior notice would increase the threat of serious harm to the child or another person,"*** the school must solicit reasonable assurances that their claim has merit before agreeing to breach the same rights they are obligated under a higher [Federal] law to protect. It is not enough to simply accept a caseworker's word on the issue. The caseworkers must be able to convince the school with sufficient weight that the reason for not notifying parents as required by law is warranted.

My claim that schools are not adequately diligent in protecting students rights is well demonstrated by caseworker Jennifer K. Mosca's August 31, 1999 handwritten[8] request for the Miles Lane School in Bucksport to allow interviewing a students without parental notice.

A superficial investigation on this Bucksport/Mosca matter would reveal nothing more than a pure disregard for the rights of the student and parent at issue. The Bucksport School official that allowed these blatant violations to occur must be reprimanded for their action by the school board before they cause harm to more families. Failure to do so may put the school district at jeopardy of future lawsuit if the problem reoccurs.

I must point out again that this problem is not unique to Bucksport school district as I have mentioned. For instance on October 31, 2000 I assisted a mother whose child was temporarily place in DHS custody and attending the Holbrook school in Holden.

The principle Mr. Russell was told by DHS not to give the parents any school information. After I encountered a contentious battle over the issue with the principle, the mother and I received a subsequent phone call from him apologizing for the offense. The principle stated that,

> *"after research on FERPA 99.4 I really feel that I been misled by them"*
> (Meaning AAG Patrick Downey).
>
> *"I feel that the assistant Attorney Generals for the State of Maine should know what that law is and advise correctly."*

I explained to Mr. Russell that the Attorney General's office does know the law. Principal Russell responded,

> *"They didn't advise me correctly I feel."*

[8] Exhibit –A- (A Hand written form by Ellsworth county caseworker Jennifer K. Mosca. This unprofessional document complies with no Federal of State law. I happen to know the facts in this case raised no concern that would require DHS to exercise Section 4021(3). Ms. Mosca and the Bucksport school district clearly and intentionally violated the student and parents rights.

I explained to Mr. Russell that I see the Attorney General's office intentionally misleading school districts routinely.

I feel the parent in this matter was lucky that Principal Russell was prompt with his research to quickly and adequately resolve this matter despite the AAG's best efforts to deter him. The parent was pleased with his diligence steps to correct the problem and protect her rights.

Please be aware of Section 12.8 of Maine regulations under Chapter 101, which I now intend to use regularly. I hope advance notice of this section will allow your office to avoid unnecessary problems in the future regarding this issue.

(Section 12.8 Assistance to Parents).

> ***"Each school unit shall allow the parent of a student to be represented or assisted by an individual or individuals of their choosing."***

Finally I want to make sure that your office and all school districts in Maine that read this letter understand the consequences and liabilities they expose themselves to for violating parents and pupils rights under the IDEA. Under section 604 of the IDEA amendment of 1997:

§604 Abrogation of State Sovereign Immunity (Note: 20 USC 1403)

> ***(a) In General.—A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.***
>
> ***(b) Remedies.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation in to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.***

§615 Procedural Safegards (Note: 20 USC 1415)

> ***(A) In general.—The district court of the United States shall have jurisdiction of the actions brought under this section without regards to the amount in controversy.***
>
> ***(B) Award of attorneys' fees.—I n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the cost to the parent of a child with a disability who is the prevailing party.***

Sincerely,

James C. LaBrecque

Stavros Mendros
Attorney Clifford fuller
AAG Deanna White
U.S. Family Policy Compliance Office
Bucksport School Committee
Maine Washington Delegation
Maine State Judiciary Committee
Maine State Appropriations Committee
Maine State Health and Human Services Committee
Maine Press
Maine State Governors Office
Maine State DHS Commissioners Office
Maine ACLU
Maine U.S. Attorney General
Maine State Bar Association
U.S. DHS Inspector General Office
U.S. Commissioner Patricia Montoya
Wendy Rau Maine Family Court
Mr. Gary Crook Superintendent of S.A.D. 36
E-mail List

It would be equally wrong to believe that all children in DHS custody belong there, as it would to believe that no children in DHS custody belong there. (JCL)

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Gary Crook
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Re: Reply to AAG's Memorandum of December 28, 2000

Dear Mr. Crook,

I am offering you my own personal opinion contrary to the opinion of the AAG Ms. White in her December 28, 2000 memorandum.

You must understand that the AAG's office is not looking out for the schools, parents or child's legal or best interest. The AAG's office represents their client "DHS" and has an ethical duty as their legal counsel to protect and represent their legal interest only. For example if a caseworker breaks the law or harms a child the AAG must diligently advocate a legal defense for their client (caseworker) no differently than any attorney is mandated to carry out for their client under rules of ethics.

I bring this to your attention because most people believe that the AAG's office represents the general welfare of the public when in fact that would represent a serious conflict of interest. If DHS breaks the law the AAG's office cannot protect the innocent Maine citizen, but must protect DHS. With that in mind I can assure you that I have never seen the AAG's

office offer opinions that were not biased in favor of their client DHS. I think you would be negligent to trust the DHS' counsel's opinion without the opinion of your own legal counsel specifically representing your (school district) legal interest.

With that in mind I will raise some arguments that you might want to address with the school districts legal representative.

1) Ms. White's memorandum lacks the proper foundation, which does not rely on the fact that parental rights are at the core of the right to confidentially or disclosure and not DHS.
2) Until there is a court order specifically revoking the parent's educational rights, parents are the controlling authority and DHS must seek permission from the parent unless, " the department has reasonable grounds to believe that prior notice would increase the threat of serious harm to the child or another person." The school has a duty to protect the rights of the parent and child and could be held liable if they just give up those rights at a drop the of a caseworkers hat.
3) The restriction in the confidentially statue's DHS refers to is strictly aimed at DHS and not the parent. No one statue that Ms. White quotes restrict the parents from their parental rights or right to disclose whatever information they want, to whom they want, whenever they want. In other words if the parent wanted to tell the world anything they wanted about their child these statues cannot prevent them from doing so.
4) If DHS is unable to make a case to the school that prior notice to the parent would cause harm to others, than the parent is the controlling authority. DHS must seek permission from the parent and the parent has the authority to allow the school officials to interview the child absent DHS or be present while DHS carries out their interview.
5) The only other exception that acceptably abrogates the parents authority is **Sec. 4021 (3)(A)** *"The department may conduct **one** interview with the child without prior notification to the parent or the custodian of the child when the child contacts the department, or a person providing services puts the child into contact with the department."*
6) To minimize liability for a school district while diligently trying to carry out your duties under FERPA, I would recommend that school officials question DHS' grounds to believe if notice to the parent would cause harm to someone. If school officials are not

satisfied or feel that DHS is simply trying to use the statue as a loophole to break the law, than the school officials should ask DHS to leave and come back with a court order. Let them give sworn testimony to a judge and face cross-examination by the parent's attorney. This will minimize the schools liability and help protect the parent's rights.

7) Consider DHS and their attorney's as someone you cannot trust. After all, most of the general public does not trust them why should you?

Sincerely,

James C. LaBrecque

James C. LaBrecque
The Willows Unit #14
323 Stillwater Ave.
Bangor Maine 04401

The Honorable Representative
Richard H. Thompson
House Chair, Judiciary Committee
Route 11, PO Box 711
Naples, Maine 04055

May 20, 1999

Dear Representative Thompson,

At the confirmation hearings held on May 13th 1999 you stated to me that you were going to make an appointment with our Chief Justice to broach the issue of the lower courts lack of knowledge with "Reasonable Efforts, Title IV-E and the codification of these laws into State statue.

I have enclosed a copy of the highest courts responsibilities under Federal Law (42 USC 670) that oversee and assure that the lower court hearing child protection cases comply with part E of Title IV of the Social Security Act.

As you can see by the federal statue that the Chief Justice has entitlement funding for the purpose of enabling (the highest State court)--

> *To conduct assessments, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the state courts) --*
>
> *That:*
>
> *implement parts B and E of Title IV of the Act;*

determine the advisability or appropriateness of foster care placement;

determine whether to terminate parental rights;

determine whether to approve the adoption or other permanent placement of a child; and

to implement changes deemed necessary as a result of the assessments.

As you are no doubt aware the district court Judges who hear child protection cases do not have a clue about the very powerful federal laws to protect and preserve children and family rights in this State.

As you are now aware that these federal laws and contracts (the Adoption Assistance and Child Welfare Act of 1980, Title IV-E of the Social Security Act) that protect children have never been promulgated or codified into Maine State law.

I believe this may be the result of our Chief Justice lacking in his responsibility and obligations under (42 USC 670).

I believe that the public has a right to know if the Chief Justice has documentation and/or evidence as to whether he has met his obligations under section 670.

Could you please send me any evidence of what the Chief Justice has done to meet his obligations under section 670 and the reason why his efforts have never made their way down to the district court judges.

I am also asking, at this time, for any evidence pertaining to the States performance under Title 22 MRSA (updated 9/3/97) section **4003 Purpose**, which states the following

"It is the intent of the Legislature that the department reduce the number of children receiving assistance under ***Title IV-E,*** *who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983".*

As I have stated before, I am a firm believer that any time a law to protect children has been violated, a child is abused regardless of who the abuser is.

It is also my belief that the "best interest of the children" lies within the Laws that Congress has enacted. Any action or behaviors by State courts contrary to the fine laws of our nation are contrary to the "best interest of the children".

I hope you realize how brave and important your efforts to meet with the Chief Justice on these issues are.

Remember with 5000 children being removed from their families each year in Maine (all without consideration of their rights under federal law) by DHS, and 3000 of them remaining in State care at any given time, it is most important that our Justice system comply with all the rights of the children and families immediately.

Because of the enormous importance of this issue I am copying many of the news media who have been following and writing on this matter.

In closing I would like to thank you and all the committee members for listening and passing the bills that Representative Plowman has brought before you this year regarding the codification of these laws to protect children and their families into State statue.

Sincerely

James C. LaBrecque

cc: Rep. Plowman
cc: The Press