

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

## STUDY CONCERNING PARENTAL RIGHTS AND RESPONSIBILITIES IN CASES OF DOMESTIC ABUSE

On July 7, 1994 in Pittsfield, six year old Georgeanne O'Palenick died from a single gunshot wound to the head fired by her father, John O'Palenick, who then shot himself. Divorced on May 29, 1992, O'Palenick had joint custody and picked her up on July 4th for a scheduled one month of visitation. The shooting occurred in a vehicle parked outside of the house where his ex-wife was living and the bodies were discovered by the child's mother. Portland Press Herald, July 9, 1994 p. 11. Neighbors and police report that Mrs. O'Palenick feared for her safety and her daughter's. She sought and obtained a restraining order against her ex-husband. When asked about the incident, Mr. O'Palenick's divorce lawyer "expressed surprise, and said that he had made out 'quite well' with visitation. Lewiston Sunday Sun Journal, August 7, 1994, p. 1B

Three weeks later, on July 27, 1994, in Lagrange, Raymond Glidden shot his two sons, ten year old Raymond and seven year old John before shooting himself. Glidden had been separated a week earlier from his wife. Portland Press Herald, July 28, 1994, p. 19.

The problem of violence in our homes and the effects of that violence on children is one that has reached epidemic proportions. On March 11, 1994, Health and Human Services Secretary Donna Shalala, speaking at a conference on family violence organized by the American Medical Association described domestic violence as "terrorism in the home". She called upon Americans to wake up to the problem. Although much has been accomplished in the field of domestic violence, there has been little research and response to the specific problems of children who have experienced violence both as victims of violence or as victims of the emotional abuse of living in a violent home.

Violence in families has a ripple effect much like a pebble thrown into the water. Beyond the obvious impact on the direct victim of the violence, witnesses to the violence or "silent victims" are also affected. These victims, often children, frequently are ignored both in research and in clinical work. Children may bear no obvious scars or bruises and may not have the skill or the opportunity to voice their feelings, yet these children are in danger.

The First Report of the Governor's Task Force on Domestic Violence, (Florida, January 31, 1994), p. 5

According to David Adams, Ph. D., a co-founder and President of Emerge: A Men's Counseling Service on Domestic Violence established in 1976 "abusive husbands commonly misuse child visitations as a way of gaining access to their

wives. Abuse of child visitations not only compromises the battered woman's safety but also has an adverse emotional impact on the children." Identifying the Assaultive Husband in Court: You Be the Judge, *Boston Bar Journal*, July/August 1989. Often, visitation is ordered by the court even in cases where there has been a long-standing history of violence.

"Even when courts order supervised visitation, battered women often do not have the resources to pay for a professional supervisor, and family members assigned to the task are often vulnerable to the batterer's demands and threats, and thereby rendered ineffective." Report on Domestic Violence: A Commitment to Action, Harshbarger & Winsten (Eds.), (Massachusetts, June, 1993), p. 24.

## SUMMARY OF THE STUDY GROUP

During the Second Regular Session of the 114th Legislature, Rep. Mary Cathcart submitted L.D. 1407 which created the "Post-Separation Family Relief Act", a law designed to address the needs of children in cases of domestic abuse. Due to time constraints of the Session, the Judiciary committee established a "Study Concerning Parental Rights and Responsibilities in Cases of Domestic Abuse". The resolve gave the Coalition for Family Crisis Services the mandate to coordinate the study group which was made up of members of various legal and advocacy groups who had expertise and an interest in family law and domestic abuse.

The mission of the study group was to invite participation by a broad cross-section of individuals and organizations to examine and develop recommendations regarding:

1. Supervised visitations, including development of services and facilities to make supervised visitations possible;
2. Cost of providing supervised visitations, including responsibility for payment;
3. Batterers' treatment programs;
4. Effect on the judicial system; and
5. Any other issues the study group determined appropriate.

Present study group membership:

Sandra Hodge  
Maine DHS  
Augusta, Maine

Michael Ross, Esq.  
Family Law Section, MSBA  
Ellsworth, Maine

Ken Altshuler, Esq.  
Chair, Family Law Section  
Portland, Maine

Susan Lawler  
Family Violence Project  
Augusta, Maine

Francine Stark  
Spruce Run Assn.  
Bangor, Maine

Leyton Sewell  
Community Health and Counseling Services  
Maine Association for Mental Health Services  
Bangor, Maine

Polly Campbell  
Family Crisis Shelter  
Portland, Maine

Cynthia Langevin, PhD.  
Tri-County Mental Health,  
Me. Commission on Domestic Abuse

David Abromson, Esq.  
Saco, Maine  
Family Law Section, MSBA

Bob McLaughlin  
Skowhegan, Maine  
Me. Commission on Domestic Abuse

Elinor Goldberg  
Maine Children's Alliance  
Augusta, Maine

Joyce Wheeler  
Associate Judge, Administrative Court  
Director, Family Court Project

Melody Fitch  
Family Violence Project  
Augusta, Maine

Chris Fenno  
Abused Women's Advocacy Project  
Auburn, Maine

Laura Fortman  
Maine Women's Lobby  
Augusta, Maine

Louise Klaila  
Pine Tree Legal Assistance  
Portland, Maine

Sheri Pelton  
Holy Innocents  
Portland, Maine

Tracy Cooley  
Maine Coalition for Family Crisis Services  
Bangor, Maine

Andrea Itkin  
New Hope for Women  
Rockland, Maine

A survey was distributed to potential study group members prior to the group's first meeting. The study group has been meeting since May 10, 1994 and has concentrated on three areas regarding children and domestic abuse: supervised visitation; batterers' intervention; and guardians ad litem.

We discussed the overview of our mission including a short history of the original bill and why this group was established. Specifically, there were concerns that L.D.1407 in its original form was not workable and that the issues, particularly issues of supervised visitation and batterers' treatment (education/intervention) needed to be studied before legislation is introduced to deal with these complicated areas.

One of the initial questions was whether we would deal with these issues in the context of divorce/post-divorce and protection from abuse only or whether we would also be discussing child protective matters. Although we initially ruled out recommending changes to Maine's child protection laws, we later agreed that we would look at all areas of concern to children who are affected by domestic abuse and made specific recommendations relative to Guardians ad litem in child protection cases. We agreed that we would like to add one additional issue, how guardians ad litem are selected, trained and monitored.

The groups initial task was to educate itself about the current programs and procedures in each of these areas. The group then divided into subcommittees to review information gathered and to begin making recommendations to present to the Judiciary committee by January 15, 1995. The work of each subcommittee has been to examine the issues and to make recommendations regarding proposed legislation to begin to resolve the current problems. Discussions and concerns in each of the areas is as follows:

#### 1. Supervised Visitation.

Our discussion included concerns that judicial decisions need to be made on a case by case basis and that the court needs resources (not just financial) to make appropriate visitation decisions. Often, the legal system, including the parties, their attorneys and the courts are unable to fashion an appropriate plan for visitation. Some barriers include an inability to locate appropriate supervisors, lack of funds to pay for supervision, lack of transportation to and from visitation and fear of the effects of any visitation on the children and on the custodial parent who has experienced abuse by the non-custodial parent.

The group has drafted proposed language to establish standards to assist the court in making decisions regarding supervised visitation including a process to begin to examine the issues of establishing supervised visitation centers. The group agreed that we need to educate ourselves and then educate others in the system, including the courts and the legislature, as to how we should deal with the issue of supervised visitation in Maine.

Some issues that the study group examined include:

1. What is the impact of visitation on children?
2. How can we create legislation that will assure that the courts will create individual visitation plans that will be safe for children and custodial parents?
3. What resources are available especially for parents who have no money?
4. Can we create a continuum of services available to children and families?

**The Visitation Center, A Program of the Domestic Violence Action Center at Brockton Family and Community Resources, Inc.**

The group invited Pat Kelleher, Director, Domestic Violence Action Center to speak to us about her visitation center which is housed in a mental health center that provides a range of services for battered women and operates batterers' intervention groups. The courts in Brockton are very supportive of the program and rely on the center's recommendations. Massachusetts courts have family service workers who work closely with the center.

Supervision is done on a continuum including one-on-one supervision, group supervision, on-site unsupervised visitation, and neutral pick-up and drop off for unsupervised visitation. Pat identified critical start-up issues as 1. establishing a center that assured no contact between victims and abusers, 2. creating a comprehensive record keeping system that separates files for custodial and non-custodial parents, and 3. having sufficient security.

A detailed description of The Visitation Center is attached to this report.

**Efforts in Greater Portland to create a supervised visitation center**

Sheri Pelton and Polly Campbell discussed efforts going on in the Portland area to create a supervised visitation center. In November, 1993, in response to growing concerns, Resources for Divorcing Families, a collaborative of professionals working to provide support for divorcing families brought a number of representatives from the community together to discuss the feasibility of establishing a supervised visitation center in the Greater Portland area. These people represented the legal community, judges, battered women's advocates, school officials, Department of Human Services, and mental health professionals.

In February, 1994, a planning committee was established and met with the Executive Director of Catholic Charities Maine (CCM) to explore the possibility of CCM's sponsoring the center. In June, 1994 CCM developed a supervised visitation center needs assessment which was distributed to 50 District and Superior Court judges. Twenty eight judges responded using a scale of high, average, moderate or low. The responses to the survey were as follows:

	High	Average	Moderate	Low
Need for a supervised neutral drop-off/ pick-up site.	15	10	4	1
Need for supervised on-site visitation	17	6	2	1
Need for a center to teach parenting skills	16	7	1	1
Need for an information and referral service.	11	10	4	0

When asked whether they had heard cases in the past year in which parents would have benefited from a supervised visitation center, all but 3 responded positively,

with most indicating that they were familiar with several (one judge said "dozens", another, 50) cases. Twenty-seven judges stated that they would order supervised visitation at a visitation center if such a service was available. Some additional comments included: "hurry", "fills a need", "strong support" and "need for trained staff".

### **Other information**

The study group also heard from a woman who is currently dealing with the judicial system who discussed her concerns and frustrations and from attorneys who are currently practicing family law and the obstacles they encounter in their practice.

The study group also heard from advocates for battered women who said that one key area of concern was the geographic diversity in the state. While we can discuss setting up supervised visitation centers in the urban areas of the state, many people simply could not access these services and we need to examine how to improve the safety of all children.

Using the Model Code on Domestic and Family Violence developed by the national Council of Juvenile and Family Court Judges, the supervised visitation subcommittee drafted proposed legislation which addressed the study group's concerns.

### **2. Batterers' Intervention.**

Our initial discussions focused on the term batterers' treatment. Although this is the term used in the legislation, most people felt it was more appropriate to use the terms batterers' education or intervention rather than treatment. The group decided that we need to understand the public policy implications of our work in this area. Again, the study group decided to educate itself as to what research and experience are telling us about the effectiveness of batterers' intervention programs. It is important to note that the response of the courts and of probation and parole are critical in determining how the state should proceed in this area.

Pat Kelleher, Director of the Director, Domestic Violence Action Center discussed some of her concerns/ideas about batterers' intervention programs. She feels that there should not be third party billing for such a program and that there should be no state funding. If an abuser cannot pay, then he should be doing community service in lieu of payment (in Brockton, 6 hours per week). She further believes that batterers' intervention programs should be certified and that court's/probation officers should only be referring to certified programs. Massachusetts has established guidelines for both batterers' intervention programs and supervised visitation centers. They are also working on legislation to restrict

visitation in certain cases. She believes that positive aspects of batterers' intervention programs are that partners receive information about domestic abuse programs, that there is partner contact by group facilitators and that there is monitoring, at least during the time the abuser is in the program. She believes that batterers' intervention programs should be a minimum of 80 hours long and that there should be a clear separation between batterers' intervention and substance abuse programs.

In addition to the discussion of batterers' intervention with Pat Kelleher discussed above, the study group invited people who are currently running batterers' intervention programs in Maine to respond to a survey and to share their ideas and concerns with the group.

Survey results and discussion with current groups in Maine revealed agreement as to some basic principles relative to batterers' intervention. 1) There is no real understanding/belief that these programs are successful in eliminating or reducing abuse. It is generally believed that there is a reduction of violence while a person is participating in a group but it is unclear whether this can or will result in long-term changes in behavior; 2) batterers' intervention programs must focus on accountability and responsibility to acts of abuse and must place the safety for victims as their primary concern. People generally agree that Barbara Hart's *Manual, Accountability: Program Standards for Batterer Intervention Services* provides an excellent discussion of philosophy, standards and components of intervention services; 3) The cornerstone of a successful batterer intervention program must be an ongoing working relationship with the local battered women's program. Groups must have community support to be successful. This is especially true for probation officers, prosecutors and judges. If the program sanctions someone for failure to abide by the rules of the program, the rest of the system must follow through or the group will be ineffective; 4) Group work designed on a confrontational and educational model (Emerge or Duluth Abuse Intervention Program) is the most effective method of dealing with an abuser. Individual sessions are not as effective and couples counseling is very dangerous for victims.

The subcommittee looked into drafting standards for batterers' intervention programs, but determined that it would be more useful to set up a process for developing the standards rather than actually legislating standards. The group did recommend that the Commission on Domestic Abuse would be the most appropriate organization to take on this task. Representatives from the study group met with the Commission who agreed that creating standards for both the batterer intervention programs and supervised visitation centers would be appropriate tasks for the Commission but that currently the Commission has no staff or funding and would not be able to accomplish either of these in addition to other priorities for action identified by the Commission. Maine is one of the few state's in the country that does not have an office or bureau or other state agency whose purpose is to deal with issues of domestic violence. It is the recommendation of the study group that

the Legislature authorize the Commission to have a more substantial role in state government and consider appropriate funding to undertake this role.

### 3. Guardians Ad Litem.

The study group received information about how children are represented in child protective and private family matters. A survey was sent out but there was a very small response. A subcommittee of members of the study group and others with a specific interest in this area met to discuss their concerns and to recommend changes. It was the general view that there are four areas of concern:

1) Access - some people cannot afford to hire a GAL to represent the child's interest in court. Also, it is getting harder to find professionals (both mental health professionals and attorneys) who are willing to accept GAL cases. This is in part due to recent complaints/litigation filed against GALs and because of the general hostility that seems to be more and more prevalent in the context of hotly contested family matters.

2) Selection/training - there is currently no uniformity of training/standards for people who are representing children. Even though there is a short training program for court Appointed Special Advocates (CASA) volunteers, it is the general belief of the study group that the training is inadequate because it is too short and does not contain information in critical areas including dynamics of domestic abuse. In addition, there is currently no ongoing training for CASA volunteers.

3) Standards - it is often unclear, in family matters, whether the GAL is a party or a witness. If a child disagrees with the GAL does s/he have the right to hire an attorney to represent him or her. In child protective matters, some GALs are unclear as to their authority and some CASA volunteers end up aligning themselves either with the caseworker or with parent's attorneys and therefore do not present an independent view of child's best interests. One survey respondent felt that CASA volunteers were often too involved in their cases and lawyers as GALs were often not involved enough. There were also complaints about GALs not having any face-to-face contact with the child or briefly meeting with the child at the last minute.

4) Supervision/ quality assurance - there is currently no mechanism for quality assurance other than the individual judge's belief that a particular GAL is competent. All CASA volunteers are currently supervised by only one person, the director of the program, who is also responsible for many other aspects of the program.

The GAL subcommittee felt that it was important to establish a consistent, affordable, effective mechanism to represent children in child protective and other family matters. This program would ideally be attached to the court and would have adequate training and supervision. Due to the complexity of these matters, it was determined that our proposed legislation should set up interim requirements with a mechanism for addressing long-term solutions.

## GENERAL FINDINGS AND RECOMMENDATIONS

In fulfilling its mission, the study group discussed many aspects of the lives of children who are affected by domestic abuse. Some overall principles emerged in all of these discussions. As always, the issue of resources becomes a barrier to achieving the identified goals of the group. Even in these hard economic times, however, certain areas must be addressed.

Our courts must be adequately funded and judges and other court personnel must be adequately trained in order to handle these difficult and complex cases properly. Judges must have the time, information and resources to properly address cases where children's lives are affected by domestic abuse. More than that, our society and our laws must examine the effects of domestic violence on children, even when they are the indirect victims of abuse. Research belies the often quoted phrase "just because he beats his wife, doesn't mean he's a bad father".

Victims of domestic abuse must have access to legal services, evaluations and experts to present evidence and to develop appropriate plans for supervised or otherwise restricted visitation. Too often, the Department of Human Services is not available to help a victim of abuse who is acting to protect the children from unsupervised visitation. It is only when the victim (most often the mother) fails to get the protection order she seeks that the Department then becomes involved, often holding her accountable for protecting the children from the abuser.

Finally, and perhaps most importantly, we must recognize that children are more than "property" to be divided equally during a divorce. Visitation orders must be fashioned with the children in mind, without placing parents' "rights" first. The study group has addressed legislation in three specific areas: supervised visitation, batterers' intervention programs, and guardians ad litem. In addition, it is important to consider how other funding decisions, including adequate funding for the courts, legal services, domestic violence programs, and the Commission on Domestic Abuse will impact on children who are affected by domestic abuse.

**STUDY GROUP'S PROPOSED LEGISLATION  
SUPERVISED VISITATION**

19 M.R.S.A. § 752 (1). **Legislative findings and purpose.** The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

The Legislature further finds that domestic abuse is a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development.

19 M.R.S.A. § 752 (5) Best interest of the child. The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In making decisions regarding primary residence and parent/child contact, the court shall consider as primary the safety and well-being of the child and of the parent who is a victim of domestic abuse as defined by 19 M.R.S.A. § 762.

\*\*\*

(K-1). ~~The existence of a history of domestic abuse between the parents.~~ The perpetrator's history of causing physical harm, bodily injury, assault or causing reasonable fear of physical harm, bodily injury, or assault, to another person. The Court shall consider the emotional impact of domestic abuse on the child.

19 M.R.S.A. § 752 (5-A). Conditions of parent/child contact in cases involving domestic abuse.

- A. A court may award primary residence or parent-child contact with a minor child by a parent who has committed domestic abuse as defined by 19 M.R.S.A. §762 only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child and the parent who is a victim of domestic abuse can be made.
- B. In an order of parental rights and responsibilities, a court may:
- (1) Order an exchange of a child to occur in a protected setting;
  - (2) Order contact be supervised by another person or agency;
  - (3) Order the perpetrator of domestic abuse to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the

contact;

(4) Order the perpetrator of domestic abuse to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the contact;

(5) Order the perpetrator of domestic abuse to pay a fee to defray the costs of supervised contact;

(6) Prohibit overnight parent-child contact; or

(7) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic abuse, or other family or household member.

C. The Court may require a bond from the perpetrator of domestic abuse for the return and safety of the child.

D. Whether or not parent-child contact is allowed, the court may order the address of the child and the victim to be kept confidential.

E. The court shall not order a victim of domestic abuse to attend counseling with the perpetrator of domestic abuse.

F. If a court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during such contact. Conditions shall include but are not limited to:

(1) minimizing circumstances when the perpetrator's family would be supervising visits;

(2) ensuring that contact does not damage the relationship with the parent who has primary physical residence;

(3) ensuring the safety and well being of the child; and

(4) requiring that supervision is provided by someone who is physically and mentally capable of supervising the visit and who does not have a criminal history or history of abuse or neglect.

G. Fees incurred by the perpetrator of domestic abuse shall not be considered as a mitigating factor reducing a parent's child support obligation.

19 M.R.S.A. § 752 (5- B). Specialized visitation centers for children.

A. An ad hoc working group of the Commission on Domestic Abuse shall be established to create standards for visitation centers by January 1, 1996. The working group shall include but is not limited to representatives from:

(1) the Commission on Domestic Abuse

(2) the Maine Coalition for Family Crisis Services

(3) the Department of Human Services Bureau of Child and Family Services;

(4) law enforcement ;

(5) the judiciary;

(6) legislators;

(7) child advocates;

- (8) two attorneys, one with specific experience handling domestic abuse cases and one who represents the family law section of the bar association;
- (9) a mental health professional with experience in child a families issues;  
and
- (10) consumers.

B. In establishing standards for supervised visitation centers, the standards shall provide for:

- (1) the neutral exchange of children for visitation purposes and on-site visits, both supervised and unsupervised;
- (2) specific procedures for screening and intake;
- (3) guidelines regarding fees for service;
- (4) specific staffing requirements including but not limited to staff and volunteer qualifications and training;
- (5) security;
- (6) confidentiality;
- (7) specific site requirements;
- (8) any other program/ services that assures that visitation is conducted in a manner consistent with the best interest of the child;
- (9) what types of programs should be regulated by the standards; and
- (10) any other issues the working group deems appropriate.

19 M.R.S.A. § 752 (12). **Modification of orders; compulsory process.** . . .

The relocation, or intended relocation, of a child resident in this State to another state by a parent, when the other parent is a resident in this State and there exists an award of shared or allocated parental rights and responsibilities concerning the child, is a substantial change in circumstances. The finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

**BATTERERS' INTERVENTION SUBCOMMITTEE  
DRAFT LEGISLATION**

17-A M.R.S.A. §1204 (D) . . . The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

19 M.R. S.A. §214 (6)

...

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.19 M.R. S.A. §214 (6)

...

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

19 M.R. S.A. §581 (6)

...

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

19 M.R. S.A. §693 (6)

...

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

19 M.R. S.A. §752 (6)

...

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

19 M.R.S.A. §766(F) Requiring the defendant to receive counseling from a social worker, family service agency, mental health center, psychiatrist or any other guidance service that the court considers appropriate. The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

19 M.R.S.A. §770(B) 3. **Powers and duties.** The commission shall advise and assist the executive, legislative and judicial branches of State Government on issues related to domestic abuse. The Commission shall establish standards and procedures for certification of batterers' intervention programs and supervised visitation centers. As an interim measure, batterers' intervention programs shall submit to the commission evidence of the following:

- (1) the program has established a relationship with the Maine Coalition for Family Crisis Services member agency in their area;
- (2) the program is a minimum of 26 weeks in length;
- (3) the program includes only members of the same sex ;
- (4) a statement that the primary purpose of the intervention program is safety of victims; and
- (5) the training received by facilitators and the curriculum used are

based upon models developed by the Duluth Abuse Intervention Program, Emerge or similar nationally recognized program.

The commission may make recommendations on legislative and policy actions, including training of the various law enforcement officers, prosecutors and judicial officers responsible for enforcing and carrying out the provisions of this chapter- and may undertake research, development and program initiatives consistent with this section. The entire commission shall meet at least 2 times a year. Subcommittees of the commission may meet as necessary. The Commission may accept funds from the Federal Government, from any political subdivision of the State or from any individual, foundation or corporation and may expend these funds for purposes which are consistent with this section.

22 M.R.S.A. § 4036 (J) The Court shall not order and the state shall not pay for the defendant to attend a batterers' intervention program unless the program is certified by the Maine Commission on Domestic Abuse.

GUARDIAN AD LITEM SUBCOMMITTEE  
DRAFT LEGISLATION

19 M.R.S.A. § 752-A. Contested proceedings.

1. **Guardian ad litem; appointment.** In contested proceedings under sections 214, 581, 693 and 752 in which a minor child is involved, the court may appoint a guardian ad litem for the child. The appointment ~~must~~ should be made as soon as possible after the commencement of the proceeding; but may be made at any time. The court shall appoint a guardian ad litem when the court has reason for special concern as to the welfare of a minor child. In determining whether an appointment must be made, the court shall consider:

...

F. The family has experienced a history of domestic abuse as defined by 19 M.R.S.A. § 762;

G. Abuse of a child by one of the parties; and

H. Other factors the court determines relevant.

At the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties, and fee arrangements.

**2. Qualifications.**

A. The guardian ad litem shall be an attorney, mental health professional, court appointed special advocate or other professional who is certified by the court to be a guardian ad litem.

B. The Supreme Judicial Court shall establish a program for certification, assignment, training, and supervision for guardians ad litem and shall certify only those individuals who have completed the mandatory training program. The training program shall consist of a minimum of 16 hours of training and shall include, but not be limited to, training in the following areas:

1. Dynamics of domestic abuse and its effect on children;

2. Child development;

3. The effects of trauma on children;

4. Substance abuse;

5. Legal issues/process; and

6. Interviewing techniques.

~~2-3. Duties and responsibilities. The court shall specify the duties of the guardian ad litem.~~ If, in order to perform the assigned duties, the guardian needs information concerning the child or parents the court may order the parent to sign an authorization form allowing the release of the necessary information. A guardian ad litem shall:

- A. Be allowed access to the child by caretakers of the child whether caretakers are individuals, authorized agencies, or health care providers;
- B. Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child that are relevant to the proceedings filed under this chapter without the consent of the child or individuals and authorized agencies who have custody of or responsibility for the child; and
- C. Be given notice of all hearings and proceedings, civil or criminal, including, but not limited to, grand juries, involving the child and shall protect the best interests of the child therein, unless otherwise ordered by the court.
- D. A guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment and at least once every three months. The guardian ad litem shall report to the court and all parties in writing at six month intervals, or as is otherwise ordered by the court, regarding such guardian ad litem's activities on the behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. A guardian ad litem shall make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem. If the child and the child's guardian at litem are not in agreement, the court shall evaluate the necessity for appointing special counsel for the child to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interest of the child and shall appoint a legal advocate if the court determines that such appointment is necessary.

~~6. Payment for services. Payment for the services of the guardian ad litem is the responsibility of the parties, as ordered by the court.~~ A guardian ad litem or counsel appointed pursuant to this section for the child may be paid for by the court, unless the the court determines that the parties are able to pay such costs. The court may order the appropriate parties to pay or reimburse the costs and fees of the guardian ad litem and other counsel appointed for the child. In determining the responsibility for payment or reimbursement , the court shall consider:

...

22 M.R.S.A. § 4005. Parties' rights to representation; legal counsel

1. Child; guardian ad litem.

A. . . .

The Supreme Judicial Court shall establish a program for certification, assignment, training, and supervision for guardians ad litem and shall certify only those individuals who have completed the mandatory training program. The training program shall consist of a minimum of 16 hours of training and shall include, but not be limited to, training in the following areas:

1. Dynamics of domestic abuse and its effect on children;
2. Child development;
3. The effects of trauma on children;
4. Substance abuse;
5. Legal issues / process; and
6. Interviewing techniques.

B. The guardian ad litem shall act in pursuit of the best interests of the child. He shall be given access to all reports and records relevant to the case. He shall investigate to ascertain the facts. His investigation shall include, where possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

A guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment and at least once every three months. The guardian ad litem shall report to the court and all parties in writing at six month intervals, or as is otherwise ordered by the court, regarding such guardian ad litem's activities on the behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child.

...

F. The guardian ad litem or the child may request the court to appoint legal counsel for him. The District Court shall pay reasonable costs and expenses of his legal counsel.