



MCEDV.

The Maine Coalition
to End Domestic Violence

LEGISLATIVE REVIEW

130th Maine Legislature
Second Regular Session
2022



Table of Contents

INTRODUCTION	2
LEGISLATION	2
RECODIFICATION OF MAINE’S PROTECTION FROM ABUSE STATUTE	2
A PATHWAY FOR SEALING CERTAIN MISDEMEANOR CRIMINAL CONVICTION RECORDS	3
IMPROVEMENTS TO THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM	4
UPDATED THE CRIMINAL CODE TO RESPOND TO GAPS IDENTIFIED BY THE LAW COURT.....	6
EXPANDED ELIGIBILITY FOR MAINE’S ADDRESS CONFIDENTIALITY PROGRAM.....	6
REMOVING PUBLICATION REQUIREMENTS FOR ADULT NAME CHANGES.....	7
IMPROVEMENTS TO FAMILY COURT PROCESS	7
RESOLVES.....	9
SUPPORTING CHILDREN AND FAMILIES INVOLVED WITH MAINE’S CHILD WELFARE SYSTEM	9
A COMMISSION TO EXAMINE RE-ESTABLISHING PAROLE IN MAINE	10
SUMMARY.....	11

INTRODUCTION

The second regular session of the 130th Maine Legislature adjourned as of May 9, 2022. Over the course of this short session, the Maine Coalition to End Domestic Violence (MCEDV) provided testimony and consulted with legislators on a number of initiatives with the goal of supporting Maine lawmakers' understanding of the likely impact of pending legislation on domestic abuse and violence.

This session was the second regular session affected by the by the COVID-19 pandemic. Legislative committees continued to conduct the entirety of their work remotely, which brings both benefits and challenges to our legislative advocacy. Despite the challenges, this short session saw several noteworthy new laws and resolves. What follows is a summary of those that MCEDV views as likely to have the most impact on survivors and their children as well as on those who have chosen to use abuse and violence. Some of these are efforts on which MCEDV took a leadership role or collaborated extensively with community partners. Others are those for which we must thank our innumerable community partners for their continued leadership around advancing good public policy in Maine.

MCEDV would like to extend our thanks to the Maine Legislature as well as to Governor Janet Mills and her administration for the continuing care and attention given to the needs of survivors.

Unless otherwise noted, new laws referenced herein will take effect on Monday, August 8th, 2022. To find the text of any new laws, visit the Maine Legislature's [website](#).

LEGISLATION

Recodification of Maine's Protection from Abuse Statute

[Public Law 2022, Chapter 647](#) (effective January 1, 2023)

LD 1696: An Act to Clarify and Recodify Maine's Protection from Abuse Statutes

Sponsored by Senator Donna Bailey

On January 1, 2023, a new, recodified protection from abuse statute will go into effect in Maine. This effort was MCEDV's priority legislation for the second regular session, and we are grateful for the collaboration and assistance from our community partners in this work and for the unwavering support of Maine's elected leaders.

In the more than 25 years that have passed since the current PFA statute was enacted, it has been amended 48 times – appropriately evolving as lawmakers gain understanding about

domestic abuse and violence and what survivors need to properly attend to their safety. With so many amendments, this important statute had become hard to navigate for litigants and Maine’s legal community, causing unnecessary confusion and litigation. More than 5,000 survivors of domestic abuse and violence in Maine each year seek a protection order as part of their plan to become and stay safe, and most people navigate the process without the benefit of legal representation. It’s important that this process be accessible. Public Law 2022, Chapter 647 represents a two-year effort led by MCEDV and Pine Tree Legal Assistance, in partnership with Senator Donna Bailey, to update the statute, making it more user-friendly, without any substantive changes to the law, setting survivors up to successfully access these protections for the next 25 years.

The recodified statute improves current law by reorganizing existing language to increase readability, creating a new eligibility section, pulling all of the statutory language about post-judgment motions into one section, and incorporating settled case law, including the body of case law that clarifies the process and criteria for Motions to Extend. MCEDV will continue to work with our community partners to support awareness within our network of advocacy programs and Maine’s larger legal community around the new statute.

A Pathway for Sealing Certain Misdemeanor Criminal Conviction Records

[Public Law 2022, Chapter 674](#)

LD 1310 - An Act Regarding a Post-judgment Motion To Seal the Criminal History Record Information for Certain Criminal Convictions

Sponsored by Representative Rachel Talbot Ross

Public Law 2022, Chapter 674 is a result of thoughtful, multi-disciplinary discussions over the last several legislative sessions. It creates a process for a person convicted of any Class E crime before the age of 28 to petition the court to have all records of that crime sealed from most aspects of public access if certain conditions are met. These conditions include: that four years have passed since all of the sentencing alternatives have been satisfied, to include full payment of any restitution owed to the victim(s) of the crime; no new convictions have happened during that four-year period; and that there are no criminal charges currently pending. All Class E crimes except for certain sexual assault crimes are eligible for sealing. Importantly, criminal justice agencies, including law enforcement and the courts, will always retain access to these records, even if sealed from the public. Any victim of the crime will also retain access. Subsequent convictions would result in the unsealing of any records sealed under this process.

Criminal records can be an important component of community accountability – particularly where they inform decisions made in our criminal and civil legal systems that will have an impact on the long-term safety and wellbeing of survivors and their children. Yet criminal

records can frequently create barriers to housing and gainful employment – key components of economic stability. Unnecessary barriers to achieving economic stability will only exacerbate violence in communities across Maine, including for those experiencing domestic abuse and violence. MCEDV’s testimony in support of this pathway for sealing misdemeanor criminal records can be found [here](#).

There are several important issues concerning the sealing of criminal history records that were left unanswered by the 130th Legislature, including what relief might look like for survivors of human trafficking whose criminal records are a direct result of having been trafficked or for those convicted of conduct that Maine has since decriminalized. [LD 1818](#), a Resolve to Reestablish and Continue the Work of the Criminal Records Review Committee, was a proposal to reconvene a multi-disciplinary committee to continue to examine ways that Maine might thoughtfully and appropriately address these and other issues involving inequitable and overly burdensome collateral consequences of public access to criminal convictions. Unfortunately, that initiative did not secure the funding necessary for a legislative study. MCEDV continues to believe that these are important issues and remains committed to working with our community partners to continue to advance good public policy on these issues.

Improvements to the Temporary Assistance to Needy Families Program

[Public Law 2022, Chapter 648](#)

LD 1748 – An Act To Improve the Temporary Assistance for Needy Families Program and To Improve the So-called Leveraging Investments so Families Can Thrive Report

Sponsored by Senator Ned Claxton

The Maine Legislature and community partners continue to explore how to make the Temporary Assistance to Needy Families (TANF) program more effective and responsive to the needs of those who receive the benefit. Our colleagues at Maine Equal Justice have been unwavering champions around the need for reform to create better access for Maine residents to benefit programs and ensure these programs are structured to create real pathways to economic stability for families.

This bill responds to the [Leveraging Investments so Families Can Thrive \(LIFT\) Report](#), presented to the Legislature in February 2020, and imposes several new obligations on the Department of Health and Human Services (DHHS) as it relates to the TANF program. Importantly, beginning in 2024, DHHS must survey program participants and report this feedback to the Legislature every other year. It also requires DHHS to screen each TANF participant to identify any need for culturally or linguistically appropriate or trauma-informed services. If needs are identified, DHHS must work with the participant to create an

individualized plan that reflects the preferences of the participant to the greatest extent possible.

The bill provides additional supports to participants in the Parents as Scholars and Higher Opportunity for Pathways to Employment Programs that will hopefully make these programs more accessible and success in the programs more achievable.

MCEDV valued the ability to participate in the work to produce the LIFT Report to underscore the lived experiences of survivors of domestic abuse and violence who have participated in or tried to participate in these important programs. With an understanding of how vital financial independence and economic stability is to helping survivors of domestic abuse and violence achieve and maintain safety for themselves and their children, MCEDV looks forward to continuing to partner with those leading this reform work.

Codifying a State Response to Interpersonal Violence on College Campuses

[Public Law 2022, Chapter 733](#)

LD 1723 - An Act Concerning Interpersonal Violence on College Campuses

Sponsored by Senator Troy Jackson

Public Law 2022, Chapter 733 requires post-secondary institutions in Maine to create a minimum standard response to interpersonal violence on campuses. Under the new law, each institution is required to:

- Implement certain response policies, intended to be trauma informed and victim-centered;
- Facilitate students' access to the services available at local domestic violence resource centers and sexual assault centers;
- Comply with new awareness programming requirements;
- Meet minimum training standards for certain staff; and
- Make available a confidential resource advisor to students.

Maine's domestic violence resource centers, with a history of positive collaboration with their local institutions of higher education, will continue to be critical partners in the efforts of our colleges and universities to enhance their responses to students and staff who have experienced abuse and violence.

The legislation also creates a statewide Higher Education Interpersonal Violence Advisory Commission, which will design and oversee the implementation of a survey on each institution's response to interpersonal violence on campus, to be administered every two years. This survey requirement will align with the requirement that was recently enacted

through the Violence Against Women Act Reauthorization Act of 2022. Among many others, the Commission will include a member representing a statewide coalition of domestic violence resource centers. MCEDV looks forward to continuing to participate in this important work.

Updated the Criminal Code to Respond to Gaps Identified by the Law Court

[Public Law 2022, Chapter 608](#)

LD 1903 - An Act To Update Criminal and Related Statutes and Respond to Decisions of the Law Court

Sponsored by Representative Charlotte Warren

The State Must Prove a Defendant is Criminally Negligent for Certain Sexual Assault Crimes

Public Law 2022, Chapter 608 sets the culpable mental state for gross sexual assault, unlawful sexual contact and unlawful sexual touching at “criminally negligent.”¹ Criminal negligence is the lowest possible culpable mental state. This means that the State can now prosecute a defendant for these crimes showing that the defendant acted with *any* culpable mental state (from knowing or intentionally, or recklessness or even criminal negligence). Importantly, with culpable mental states lower than knowing or intentionally, a defendant’s self-induced intoxication would not be relevant to their failure to be aware that the other person did not consent to the sexual conduct.

DV Misdemeanor Convictions in Tribal Courts Qualify for State Firearm Prohibitions

This bill also clarified that a conviction for a domestic violence misdemeanor crime in tribal court will act to disqualify the convicted person from possession of a firearm under Maine Law just as if that conviction were out of State court. This represents a particularly important clarification given the recently recognized jurisdiction of tribal courts to respond to domestic violence crimes committed on tribal lands by people who are not tribal members.

Expanded Eligibility for Maine’s Address Confidentiality Program

[Public Law 2022, Chapter 649](#)

(effective April 21, 2022)

LD 1943 - An Act To Expand the Address Confidentiality Program to Victims of Certain Human Trafficking Crimes

¹ Pursuant to 17-A M.R.S. § 35(4), a person is criminally negligent with respect to a sexual assault crime when they fail to be aware of the risk that the other person does not consent, such that their conduct involves a gross deviation from what the conduct of a reasonable and prudent person would be in that same situation.

Sponsored by Senator Bill Diamond

This bill creates access to the Address Confidentiality Program for victims of human trafficking and minor victims of kidnapping and similarly expands the definition of application assistant to include a state or local agency or non-profit program that provides counseling, referral, shelter or other specialized services to victims of human trafficking or minor victims of kidnapping, provided they are trained, accepted, and registered by the Maine Secretary of State to assist individuals with completing applications.

Removing Publication Requirements for Adult Name Changes

[Public Law 2022, Chapter 559](#)

LD 1900 - An Act To Amend the Laws Governing Name Changes

Sponsored by Representative Erin Sheehan

Currently, adults seeking a legal name change must publish a public notice. Maine law provides an ability for the Court to waive the requirement that a person publish a public notice if that person can establish that the person is in reasonable fear for their safety. For survivors of domestic abuse and violence, meeting this standard often involves a survivor needing to re-tell some of their most traumatic moments. This standard also creates unnecessary barriers and safety risks for transgender people seeking a legal name change.

Through an effort by our colleagues at MaineTransNet, the Maine Legislature removed the ability of a Court to require an adult seeking a name-change to publish a public notice of their name-change petition.

Improvements to Family Court Process

[Public Law 2022, Chapter 723](#)

LD 1831 – An Act To Improve the Child and Family Court Process

Sponsored by Senator Joseph Baldacci

Maine law will now require that leadership within the Maine Judicial Branch ensure that all judicial officers receive annual training and education on domestic violence and child abuse, neglect, and maltreatment issues. Reflective of what we hear from survivors and Maine's legal community, studies conducted by the National Center for State Courts, looking solely at court records, found documented evidence of domestic violence in 20-55% of contested

custody cases.² And even still, that number is likely not capturing the totality of domestic abuse actually present in contested family court cases.³ Maine's judges are responding so frequently to these cases and the increasingly complicated issues they involve. It is imperative that judicial officers receive frequent education and training on domestic violence, and this bill marks a great step toward creating a family court culture that responds more effectively to survivors and their children.

This bill also vests Family Law Magistrates in the District Courts with the authority to hold hearings on contested interim parental rights and responsibilities motions regardless of whether one or both of the parties would rather have the contested interim motion heard by a District Court Judge.

[PL 2022, Ch. 577](#)

LD 1888 - An Act To Amend Laws Affecting Sex Offenders and Petitions for the Determination of Parental Rights and Responsibilities

Sponsored by Representative Lori Gramlich

For protective parents navigating a family court proceeding who are concerned about the other parent's risk of sexually assaulting the child,⁴ the Maine Legislature clarified the ability for the Court to order a forensic risk assessment of a parent who is alleged to have committed child sexual assault. The family court has always had flexible discretion to order any type of assessment deemed appropriate. However, with so many survivor-parents navigating Maine's family court without the benefit of legal representation, the modification of Maine's family law statutes to explicitly highlight the ability to order a forensic risk assessment and putting forth factors to consider will flag this as an appropriate step in the litigation for both judicial officers and guardians *ad litem* in cases involving child sexual assault allegations.

² Susan Keilitz et al, Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers, prepared for the National Center for State Courts; State Justice Institute," NCSC Publication Number R- 202, p. 5. (1997).

³ See Kernic et al., "Children in the Crossfire: Child Custody Determinations Among Couples With a History of Intimate Partner Violence," *Violence Against Women*, Vol. 11, No. 8, August 2005, 991-1021 (reported a study which found no mention of the domestic violence in more than 47% of cases where the family had a documented history of domestic violence).

⁴ See Goddard, C. & Hillard, P. (1993) *Child Sexual Abuse: Assault in a Violent Context*. *Australian Journal of Social Issues*. Volume 28, No. 1. (an examination found domestic violence present in 40% of 206 child sexual assault cases); See also Mullender, A. and Morley, R. (eds) 1994 *Children Living with Domestic Violence: Putting Men's Abuse of Children on the Child Care Agenda*, Whiting & Birch. London (an examination of the experiences of 20 women whose children had been sexually assaulted by their partner found that domestic violence existed in all 20 cases).

RESOLVES

Supporting Children and Families Involved with Maine’s Child Welfare System

For many survivors of domestic abuse and violence in Maine, the child welfare system will become involved with their family at some point. In any given year, more than 2,000 survivors work with Maine’s specialized Domestic Violence-Child Protective Services Liaisons – advocates employed by Maine’s Domestic Violence Resource Centers. MCEDV and our member programs are engaged in many public policy spaces that are particularly focused on the child welfare system response, including all three of [Maine’s Child Welfare Citizen Review Panels](#), which together are charged with determining whether state and local agencies are effectively meeting the safety, permanency, and well-being needs of children and families throughout the state.

Throughout the 129th and 130th Legislatures, leaders from across Maine’s three branches of government have been engaged in intensive conversations about how best to address the needs of Maine families to ensure every child in Maine has what they need to be safe and thrive – including survivors of domestic abuse and violence and their children. From our work with survivors, we know that Maine needs to do better at connecting protective parents to supportive and tangible resources, such as childcare, rental assistance, job training and transportation to help them support their own safety and wellbeing and that of their children and mitigate any concerns early before circumstances get to such a critical point that children are at serious risk of harm. And the child welfare system must do better at holding perpetrators of abuse and violence accountable for their own behavior without placing blame for the abuse on survivors.

Several legislative initiatives from the 130th Legislature may support the child welfare system’s progress towards those ends, including:

[Resolve 2022, Chapter 181](#)

(effective May 8, 2022)

LD 1824 - Resolve, To Establish the Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System

Sponsored by Representative Holly Stover

Under current law and process in Maine, parents who are involved in the child welfare system are not entitled to legal representation until the Department of Health and Human Services files a child welfare petition in the courts, which often results in the removal of their child from their care. In other parts of the country, providing legal counsel to parents at earlier stages in the child welfare process has shown clear benefits to families. Resolve 2022, Chapter 181 creates a Commission to examine what earlier representation might look like in

Maine and to recommend a pilot project. MCEDV will serve on the Commission as the statewide organization providing services or representation on domestic violence issues.

[Resolve 2022, Chapter 142](#)

LD 1853 - Resolve, To Increase Oversight of the Child Welfare System

Sponsored by Senator Ned Claxton

Every three months for the next two years, the Office of Child and Family Services must report to the Maine Legislature's Joint Standing Committee on Health and Human Services on the progress made with implementing recommendations from several recent statewide reports, including the following:

- Efforts to further coordinate and advance child welfare services in primary, secondary, and tertiary prevention, as those prevention services are described by the Office of Child and Family Services;
- Efforts to expand the use and value of family team meetings;
- Efforts to expand the use of participation of people with lived experience in the development of policy regarding and operation of the child welfare system;
- A review of the department's policies and practices regarding domestic violence and the ability of the nonoffending parent to assume custody of the children;
- Efforts to work with the Guardian Ad Litem Review Board under the Board of Overseers of the Bar, the judicial branch and other interested parties to improve the training and support of guardians ad litem; and
- Any recommendations on how to further protect the State's children, through department policy, rulemaking, and legislation.

MCEDV applauds Maine leaders for their commitment to monitoring the extent to which recommendations that have already been made around how to improve the response of the Office of Child and Family Services to children and families have been achieved. And we continue to note that the child welfare system is broader than the OCFS response. The need for significant investment in prevention and intervention efforts outside of the OCFS response – such as increased community availability of mental health and substance use treatment services and fewer bureaucratic barriers to tangible economic resources, have been resoundingly recommended by statewide reports and those with lived experience. Only the legislature can ultimately prioritize sufficient funds toward these goals. We look forward to continuing to join our advocacy efforts with those of our community partners to underscore the need for such investments.

A Commission to Examine Re-Establishing Parole in Maine

[Resolve 2022, Chapter 126](#)

LD 842 - Resolve, To Create the Commission To Examine Reestablishing Parole

Sponsored by Representative Jeffrey Evangelos

Resolve 2022, Chapter 126 creates a commission tasked with examining parole as it currently operates in Maine and in other states, with a specific focus on the parole law in Colorado, the benefits and drawbacks of parole, different models of parole, how parole fits in with the overall framework of the Maine Criminal Code, the effect of parole on parolees, the costs and savings of instituting parole and the elements of a plan to implement parole. The Commission is required to submit a report to the Maine' Legislature's Joint Standing Committee on Judiciary by December 1, 2022.

Any re-establishment of parole in Maine would need to tend carefully to several important issues for crime victims – including what rights victims have to be heard in such a process and the cost to the State of providing adequate staffing that would support victims' engagement. And careful attention should be paid to whether Maine has sufficiently funded and established rehabilitative services within the correctional institutions, such that residents of correctional facilities have the best chance at successfully re-integrating within their communities.

Unfortunately for crime victims in Maine, there is no representation on this established Commission for any crime victim or victim services provider and no requirement or yet established mechanism for victims or service providers to be heard by the Commission. MCEDV agrees with criminal justice reform proponents that there are important questions to be asked and answered around whether, and the extent to which, our current system of incarceration actually advances public safety. However, those incarcerated for crimes involving domestic abuse and violence are among the most serious offenders within our communities, and any newly established parole system in Maine must acknowledge and carefully address that reality. MCEDV is committed to working with our community partners as this conversation continues. Our legislative testimony on this issue can be found [here](#).

SUMMARY

MCEDV exists to advocate for a world that acknowledges the pervasive existence of domestic abuse and violence in our communities, works to prevent these crimes, holds those who engage in domestic abuse and violence accountable for their actions and beliefs, makes healing and safety possible for survivors, and renders transformative justice achievable. We are committed to ensuring our public policy work aligns with these ends, and

we are grateful for the leadership and partnerships throughout our statewide and local communities that worked together to advance our collective vision.

There is no question that the last few years have been extraordinarily challenging for survivors. Not only have survivors individually experienced decreased ability to obtain needed tangible resources, access needed services, and/or have timely court resolution, but more broadly, the systems and community services survivors engage with have experienced more than two years of crisis and continue to struggle with backlogs, staffing, capacity, and compassion fatigue. The last two years of disconnect have in some ways weakened various coordinated community response structures that are in place to help support survivors of domestic abuse across the state. However, we are encouraged that so many new laws and resolves demonstrate that Maine's elected leaders have continued to move in the right direction on issues that impact Maine's response to domestic abuse and violence.

There are exciting public policy initiatives ahead with great potential, including those that would continue to improve the family court's response and creating better pathways to economic stability and security. MCEDV looks forward to working with Maine's 131st Legislature to persist in moving the ball forward for survivors of domestic abuse and violence and their children.

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