

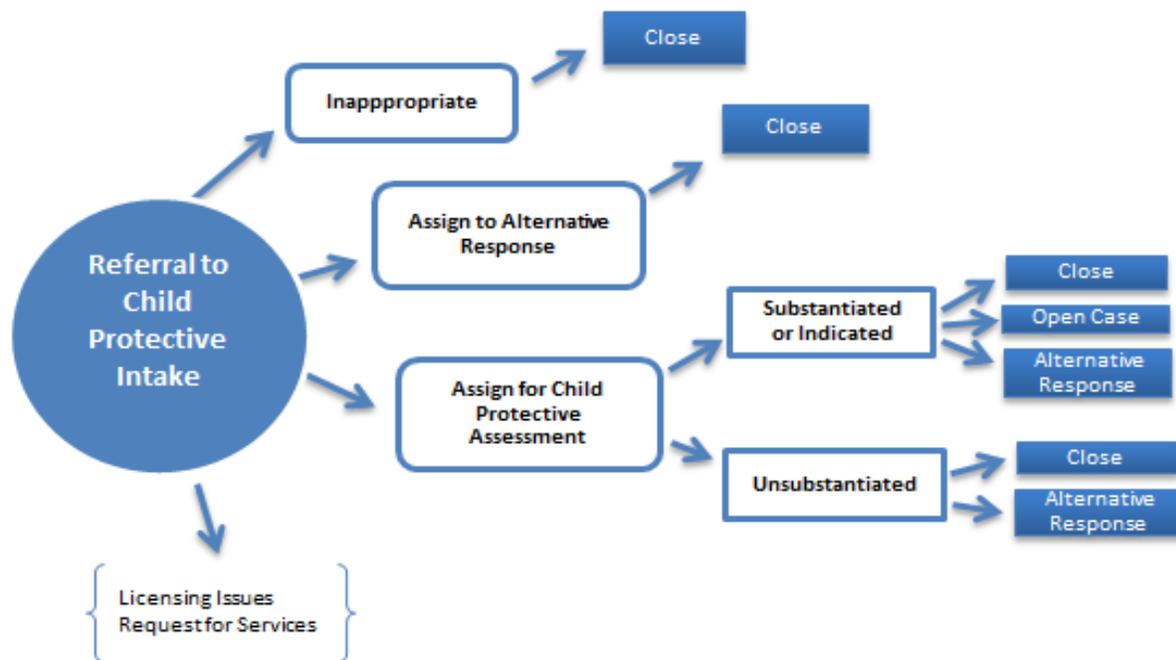
Additional Information for Government Oversight Committee Work Session

OPEGA Information Brief on Maine’s Child Protection System: A Study of How the System Functioned in Two Cases of Child Death by Abuse in the Home

June 28, 2018

Office of Child and Family Services (OCFS) Response to Reports of Child Abuse/Neglect

Process Description as Taken from OCFS 2017 Child Protective Services Annual Report



A referral is any written or verbal request for Child Protective Services intervention, in a family situation on behalf of a child, in order to assess or resolve problems being presented. When reports are received, a decision is made regarding whether or not the report contains allegations of abuse or neglect per Title 22. If the report does not contain allegations of abuse or neglect per Maine state law, the report is not assigned (“inappropriate”) for intervention. When reports contain allegations of abuse or neglect and are “appropriate” for intervention, the report may be assigned for an OCFS child protective assessment, or assigned to an Alternative Response Program (ARP).

Some examples of reports that would be deemed inappropriate include:

- **Parent/child conflict:** Children and parents in conflict over family, school, friends, or behaviors, with no allegations of abuse or neglect. Includes adolescents who are runaways or who are exhibiting acting out behaviors that parents have been unable to control.
- **Non-specific allegations** or allegations of marginal physical or emotional care, which may be poor parenting practice, but is not considered abuse or neglect under Maine Law.

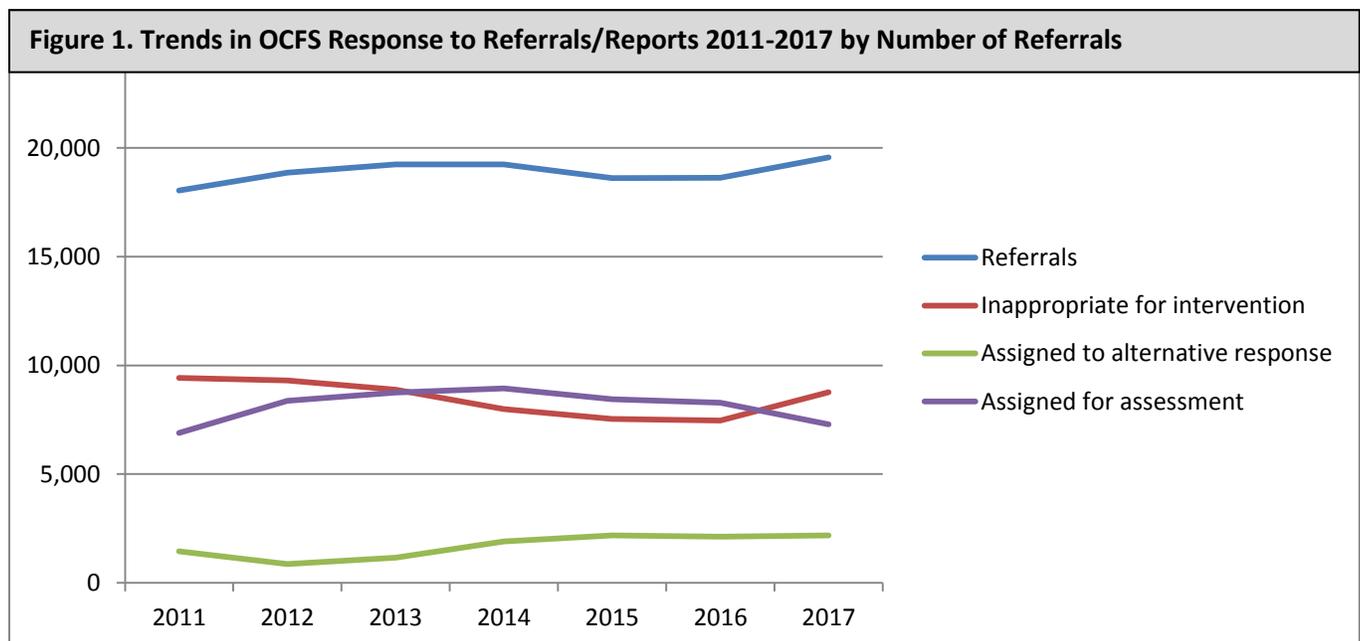
- **Conflicts over custody** and/or visitation of children which may include allegations of marginal/poor care.
- **Families in crisis** due to financial, physical, mental health, or interpersonal problems, but there are no allegations of abuse or neglect.

The Department of Health and Human Services has contracts with private agencies to provide an alternative response to reports of child abuse and neglect when the allegations are considered to be of low to moderate severity at the time of the initial Intake report. Referrals are also made to ARP at the conclusion of a child protective assessment or case with a family, when ongoing services and support are deemed necessary.

Child protective assessments conducted by OCFS result in a finding of abuse or neglect (substantiated or indicated), or no findings of abuse/neglect (unsubstantiated). Substantiated findings are high severity, whereas indicated findings are of low/moderate severity.

Trends in OCFS Response to Referrals/Reports

Table 1. Number of Referrals/Reports by Type of Response 2011-2017							
	2011	2012	2013	2014	2015	2016	2017
Total Referrals Received by Intake	18,037	18,867	19,236	19,239	18,615	18,630	19,567
Determined inappropriate for intervention	9,425	9,315	8,889	7,997	7,535	7,463	8,768
Assigned to alternative response	1,458	865	1,159	1,908	2,177	2,127	2,185
Assigned for child protective assessment	6,890	8,369	8,757	8,945	8,446	8,279	7,288



Source: Compiled by OPEGA based on figures taken from OCFS Child Protective Services Annual Reports for 2013, 2014 and 2017.

OCFS Resources

Budgeted and Actual Expenditures

OPEGA requested that DHHS provide total annual budgeted and actual expenditures, inclusive of all funding sources, for the period FY08 through FY18 (as of 5-31-18) broken down by Personal Services and All Other for OCFS in total and with a breakdown by Central Intake and District Office. DHHS provided the following information.

OCFS Budget Details			
Year	Intake Budget	District Offices Budget	Total Cost
2008	\$ 1,639,473.56	\$ 112,217,737.55	\$ 113,834,738.96
2009	\$ 1,728,183.63	\$ 108,348,318.78	\$ 110,107,565.22
2010	\$ 1,660,385.60	\$ 105,116,961.27	\$ 106,907,541.68
2011	\$ 1,491,820.27	\$ 105,799,230.35	\$ 107,429,429.12
2012	\$ 1,801,863.96	\$ 104,484,173.58	\$ 106,931,398.74
2013	\$ 1,763,187.96	\$ 100,935,046.09	\$ 102,800,594.32
2014	\$ 1,934,610.67	\$ 108,244,316.91	\$ 111,285,339.20
2015	\$ 1,964,638.83	\$ 110,179,383.67	\$ 112,977,829.43
2016	\$ 2,367,474.34	\$ 118,767,674.33	\$ 122,784,227.88
2017	\$ 2,637,518.64	\$ 115,806,994.57	\$ 121,266,233.80
2018 (Thru 5/31)	\$ 1,411,491.51	\$ 114,835,069.61	\$ 119,951,080.74
Prevention Contract Budget Details*			
Year	Community Partnerships for Protecting Children	Maine Children's Trust	Total Cost
2008	**	**	**
2009	**	**	**
2010	**	\$ 130,949.00	\$ 130,949.00
2011	**	\$ 140,000.00	\$ 140,000.00
2012	\$ 575,399.00	\$ 70,000.00	\$ 645,399.00
2013	\$ 575,399.00	\$ 206,430.00	\$ 781,829.00
2014	\$ 823,969.00	\$ 236,770.00	\$ 1,060,739.00
2015	\$ 625,399.00	\$ 185,121.43	\$ 810,520.43
2016	\$ 625,399.00	\$ 1,123,448.57	\$ 1,748,847.57
2017	\$ 1,493,686.27	\$ 1,358,500.00	\$ 2,852,186.27
2018 (Thru 5/31)	\$ 1,945,469.16	\$ 1,905,500.00	\$ 3,850,969.16
*Prevention was based on the budgeted amount for that specific SFY.			
**This information is still being researched and can be provided at a later date.			

Staffing

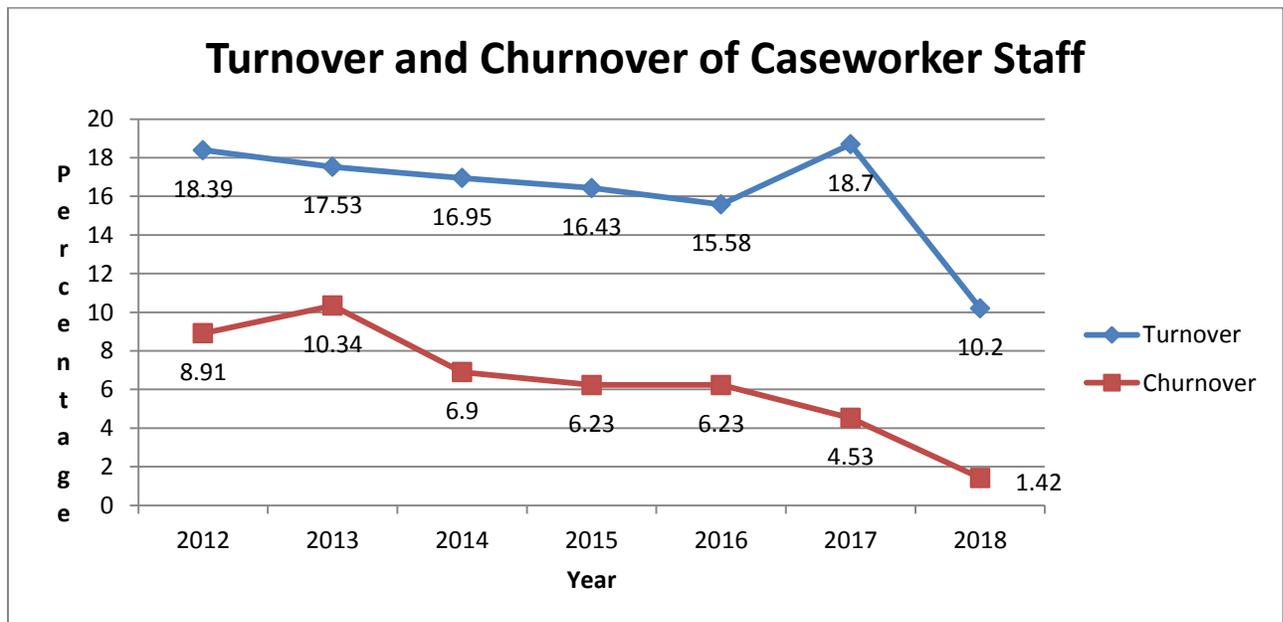
On May 30, 2018, DHHS provided some information on OCFS staffing levels and turnover/churnover rates as follows:

Number of filled positions, as of the end of each state fiscal year:

Year	Number of Filled Caseworker Positions (all units)	Number of Filled Supervisor Positions (all units)
2011	308	58
2012	321	58
2013	316	64
2014	320	65
2015	321	65
2016	332	65
2017	323	66
2018*	326	66

*Current as of 5-30-18.

The statistics in the Turnover and Churnover of Caseworker Staff graph represent the turnover and churnover rates for all caseworkers over each calendar year. The 2018 percentages are as of 5-29-18 which is not quite half a year. The rates for 2018 will continue to increase as the year progresses.



DHHS explained that it has a continuous job posting for human services caseworker positions. This allows the District office to immediately obtain a list of qualified candidates as soon as a position becomes vacant. Currently OCFS has 21.5 vacant human services caseworker positions as of 6-22-18. The average vacancy time of these positions is 39 days from when they become vacant. No human services caseworker positions are intentionally held vacant. OCFS manages the vacancies within the human services caseworker positions by filling the position with the longest vacancy time first. Thus, the average number of vacant days provides

meaningful insight when considered in conjunction with the vacancy, turnover, and churnover rates. It is necessary to view this data collectively to obtain an accurate understanding.

According to DHHS, the Director of the Office of Child and Family Services receives monthly reports on vacancies and turnover/churnover rates. The Department explained that vacancies are primarily a function of the turnover/churnover rate as while some positions are in process of being filled, others become vacant. It is easier to fill vacancies in the offices that are in the more populated areas like Portland and Bangor while there is more difficulty in areas like Rockland where DHHS is competing for workforce. As a result, OCFS may shift open caseworker positions to the offices that are easier to recruit for and also adjust the geographic territory covered by those offices to better meet demand.

Caseloads/Workload

OCFS Caseloads

On May 30, 2018, DHHS provided information on OCFS caseloads. According to DHHS, on average across types of workers, Assessment workers have carried six cases per month and Permanency workers have carried 12 cases per month. DHHS noted that this is a mathematical average and therefore includes a variance of highs and lows across staff. OPEGA requested that DHHS provide additional detail on the period of time the caseload averages are for and how they were calculated.

DHHS later explained that the caseload information provided by DHHS on May 30, 2018, represents the management goals for caseload averages for staff in these positions over the past ten years. Previously, OCFS had reports monitoring caseloads by the worker but stopped producing this report in March 2017 and allowed the District management staff to manage workload and case assignments in the local offices as the District offices have flexibility to move caseworkers between units (Assessment, Permanency and Adoption) as needed to meet changing workloads. As of last week, OCFS had reinstated this report in order to monitor caseloads within and between District offices.

Since March 2018, there has been an increase in the number of reports of alleged child abuse and/or neglect and resulting assessments. This increase has impacted the number of assessment cases assigned to child protective staff. In order to manage this increased workload, OCFS is assigning assessment cases to all types of caseworkers. Attachment F includes information DHHS provided on current number of filled and vacant assessment positions and average caseloads by District as of 6-27-18.

OCFS explained that some of the increase in Intake reports and OCFS child protective assessment activity since December 2017 is in part due to several of the recent practice changes described in OPEGA's Information Brief. These include: conducting a child protective assessment upon receiving a third report deemed inappropriate within a 6-month timeframe; creating a New Report through Intake for reports received while cases are open; and doing assessments on cases previously assigned to ARP where ARP is closing the case as unsuccessful. DHHS provided an Overview of the recent Child Protective Workload including the impact and results of additional assessments occurring due to the practice changes. See Attachment E.

OCFS says that it has been meeting the increased assessment activity in District Offices by assigning permanency and adoption unit staff to assist with assessments. The increased activity also means that, at present, OCFS is continuing to outsource assessments of low/moderate severity allegations to the ARP agencies though there are plans to stop using ARP to perform assessments in the future. Taking on the assessment workload that has been getting referred to ARP will require additional caseworkers and supervisors in the District Offices.

OPEGA Research on Caseload Standards

OPEGA briefly researched what nationally recognized caseload standards are available for comparison to Maine’s OCFS workload. OPEGA located caseload standards from the Child Welfare League of America (CWLA). We also located a table compiled by Montana comparing standards from a number of sources, including CWLA, at <https://dphhs.mt.gov/Portals/85/Documents/ProtectMontanaKids/DOC091.pdf>. The table is in Attachment A.

CWLA is coalition of private and public agencies founded in 1920 that works to develop policies, programs, and practices related to child welfare. The Maine Department of Health and Human Services, Office of Child and Family Services, is a coalition member. In addition to the caseload standards, CWLA developed a National Blueprint for Excellence in Child Welfare outlining a guiding philosophy and standards for child welfare practice. CWLA also has for sale best practice standards in a number of related areas including, but not limited to, adoption services, family foster care services, kinship care services, services for abused or neglected children and their families, and services to strengthen and preserve families with children.

The CWLA caseload standards appear to have been last revised in 1999 and are shown in Table 2. OPEGA notes that the CWLA standards provide some context around factors that may impact the intensity of workload beyond the number of reports, families, or children. These factors include the intensity of services provided and the varying needs of children and family. OPEGA observes that, in Maine, low/moderate risk assessments are being referred to the contracted ARP agencies which means OCFS caseworkers are dealing with higher severity allegations. A caseload of 12 assessments with a mix of low, moderate, and high severity allegations seems like a different workload than a caseload primarily consisting of high severity allegation assessments. OPEGA also observes that the geographic dispersion of cases, and the resulting travel time required, is also a potential influencing factor of a manageable workload in Maine.

Table 2. CWLA Caseload Standards	
Worker Type	Caseload Standard
Workers making initial CPS assessments	No more than 12 active reports per month
Workers providing ongoing CPS support	No more than 17 active families, assuming the rate of new families assigned is no more than one for every six open families
Worker both making initial CPS assessments and providing ongoing CPS support	No more than 10 active ongoing families and no more than 4 active initial assessments
Worker providing Intensive Family-Centered Services	No more than 12 families
Worker counseling with birth families, preparing and assessing adoptive applicants for infant placements and supporting these families following placement	20-25 families
Worker preparing children for adoption who are older or who have special needs	10-12 children
Worker assessing and preparing adoptive applicants for the placement of children who are older or have special needs and providing support to these families following placement	12-15 families
Worker assessing and preparing adoptive applicants for inter-county adoption	30-35 families
Family foster care social worker	12-15 children, depending on level of services required to meet assessed needs of each child
Source: Child Welfare League of America, “CWLA Direct Service Workers’ Recommendations for Child Welfare Financing and System Reform” (2012). https://www.cwla.org/wp-content/uploads/2014/05/DirectServiceWEB.pdf	

Calls to Intake

According to OCFS, statistics on calls to Intake are generated and are used for managing the Intake unit. OCFS acknowledges Intake is currently challenged in meeting the increased call volumes over recent months. OCFS has begun exploring other avenues for certain mandated reporters, i.e. schools, law enforcement, to make reports other than by calling to both decrease call volume and be more responsive to these reporters.

Alternative Response Program Contracts

OPEGA reviewed the contracts for two ARP providers for payment terms and requirements relevant to staffing and notifications to DHHS. Both were two year contracts established in July 2016 and the basic terms were the same.

Scope of Services

The ARP provides community-based intervention services to reach the target population of eligible families. ARP supports OCFS' practice model, which focuses on the family's strengths and needs. ARP provider shall partner with Eligible families to provide case management services and to plan for the safety, permanency and well-being of their child(ren).

Payment Terms

DHHS pays the Provider monthly upon receipt of approved invoices. Payments are based on actual services delivered at the DHHS approved rate per "Unit" specific to each District covered by the contract. A maximum number of "Units" per year for each district is also set. The rate includes both targeted case management service and non-targeted case management client expenses up to total of the contract.

The two contracts OPEGA reviewed covered six DHHS Districts. The approved rate per unit ranged from \$403.78 to \$435 and the maximum annual number of units ranged from 732 to 2,458. A unit represents on family served within one month.

ARP Staffing

Under the requirements of the original July 2016 contract, the ARP provider was required to maintain an ARP supervisor that has:

- A degree in the human service's area (a master's degree in social work preferred); and
- One of the following professional licenses:
 - Licensed Clinical Professional Counselor (LCPC)
 - Licensed Clinical Professional Counselor-Conditional (LCPC-C)
 - Licensed Clinical Social Worker (LCSW)
 - Certified Social Worker-Independent Practice (CSW-IP)
 - Licensed Master Social Worker-Conditional Clinical (LMSW-CC)
 - Licensed Marriage and Family Therapist (LMFT)
 - Licensed Marriage and Family Therapist-Conditional (LMFT-C)
 - Advanced Practice Registered Nurse-PMH-Clinical Nurse Specialist (ARNP-PMH-CNS)

- Advanced Practice Registered Nurse-PMH-Nurse Practitioner (ARNP-PMH-NP)
- [Psychiatrist] Medical Doctor, or
- Psychologist;
- Field experience working with multi-problem families; and
- Demonstrated experience in, or potential for, providing supervision to workers who provide in-home services as well as knowledge of child welfare policies and programs, family therapy theories, treatment philosophies and strategies of home-based services and knowledge and availability of local resources.

Additionally, the ARP provider was required to maintain ARP Case Managers that have:

- A bachelor degree in the human services area (BSW preferred), and
- One of the following licenses:
 - Licensed Social Worker (LSW), or
 - Licensed Social Worker-conditional (LSW-C).

A November 2016 amendment to the contracts changed the staffing requirements. The reason for this change is noted in the amendment as: “OCFS has determined the supervisor and case manager minimum requirements found in the current agreement are not appropriate for the level of service found in the agreement. This amendment will change the requirements to better fit the service requirements of the service.” The current requirements are:

Employ and/or maintain staff, in an amount sufficient to meet the requirements of this Agreement and that meet the following standards:

- ARP Supervisors are preferred but not required to be a Licensed Social Worker (LSW) or Licensed Social Worker-Conditional (LSW-C). Required to have 1 year of supervisory experience as well as meet the qualifications of ARP Case Managers.

ARP case managers shall:

- Have previous documented experience working with children and families;
- Have no conflict of interest (such as personal knowledge or involvement with the client, other information which could place a bias, or present a safety concern), as determined by the Provider. If there is a questionable conflict of interest, the Provider shall consult with the Department regarding the circumstances and collaborate to develop an alternative plan if necessary. The Provider shall document any potential or realized conflicts of interest regarding ARP staff, to include how the conflict was recognized and resolved;
- Preferred but not required to be a Licensed Social Worker (LSW) or Licensed Social Worker-Conditional (LSW-C). Case Managers are required to have a Bachelor’s degree.

OCFS Caseworker and Supervisor Training

DHHS explained that training for caseworkers and supervisors in the OCFS units related to child protection activities includes both mandatory and recommended programs.

All newly hired, child-welfare caseworkers must undergo training designed to give them a foundation of knowledge in order to conduct child protective activities. The newly hired, child-welfare caseworkers must

successfully demonstrate (through direct observation of their work) expected casework practice before being assigned independent cases. The new-worker training consists of a four-week Foundations Training that covers the following topics:

Week 1	Week 2	Week 3	Week 4
Introduction to the OCFS, Laws, Policy, Practice and Dynamics of Child Abuse and Neglect	Introduction to Intake Process; Introduction to Child Protective Assessment Process	Introduction to Family Team Meetings and Facilitated Family Team Meetings	Introduction to the Court Process and What's Involved During a Permanency Case When Children are in Foster Care
Introduction to Domestic Violence; Introduction to Substance Abuse	Introduction to MACWIS Assessment Screens; Introduction to Fact Finding Interviewing Process and Making Decisions on Child Abuse and Neglect Findings	Service Cases; Removing Youth from their Homes and What They Need in Care	Introduction to Working with Resource parents, Resource Panel; Reasonable and Prudent Parenting Standards; Child Case Plan
Medical Indicators of Child Abuse/Neglect; Parents as partners; and debrief of Week	Introduction to Fact Finding Interviewing Process and Making Decisions on Child Abuse and Neglect Findings-continued from	MECASA Human Trafficking Presentation; Youth in Care Panel Discussion	Introduction to Being a Guardian To A Youth In Care; School Stability; Youth In Care Bill of Rights; Reasonable and Prudent Parenting

During the first year of hire, new caseworkers are to complete the New Worker Checklist. This list includes specific trainings that are to be completed within the first year. These trainings are as follows:

- Working within OCFS – Orientation
- Staff Safety
- Legal Training
- MACWIS/Technology Training
- Indian Child Welfare Act (ICWA); Working with Native American Tribal Child Welfare
- Social Work Ethics
- Psychosocial Assessment
- Child Welfare Trauma Training Toolkit
- Children's Behavioral Health in Maine training

Ongoing trainings that are offered to child welfare protective workers:

- Advanced Medical Indicators
- Child Plan Youth Voice
- Child Passenger Safety
- Drug Identification, Impairment Recognition and Caseworker Safety
- Facilitated Family Team Meeting Training
- Failure to Thrive: Diagnosis, Treatment & Family Support
- FFTM Facilitator Training
- OCFS Documentation Training
- Online Period of Purple Crying
- Permanency Two- Understanding Permanency Options for Children

- Rights of Recipients of Mental Health Services Who Are Children in Need of Service
- Special Topics for the 0-4 Population: Abusive Head Trauma and Safe Sleep
- Transition to Independence process (TIP)
- Human Trafficking & Commercial Sexual Exploitation of Children
- Advanced Forensic Interviewing
- Infant Mental Health
- Brain Development, Trauma and Parenting
- Social Work Ethics
- Beyond Mandated Reporter Training
- Ethical Decision Making
- Others that are deemed necessary to increase caseworker skill level

The Supervisory Academy was created in 2013 to ensure supervisory staff were participating in trainings to increase their skills around managing, supporting, coaching, and mentoring caseworker staff. The academy consists of the following trainings:

- Managing in State Government
- Putting the Pieces Together – a three-part, three-day training encompassing the three themes of supervision, Administrative, Educational and Supportive Supervision
- Leadership Academy for Supervisors
- Other trainings deemed necessary to increase supervisor skills

Training for Mandated Reporters

DHHS has developed a training curriculum for mandated reporters that it delivers through a webinar available on the internet and through in-person trainings conducted by DHHS staff upon request. There are also 10 Child Abuse and Neglect Councils in Maine that are local resources for parenting information, education and support. According to DHHS, the CANs also provide Department-approved mandated reporter training. OCFS explained that mandated reporters must take the initiative to get training every four years and only Department-approved training counts toward meeting the statutory training mandate. OCFS stated that it keeps records of individuals trained through one of these avenues, but does not monitor whether all mandated reporters have been trained.

Relevant Recent Legislation Impacting Child Protection

OPEGA conducted limited research to identify legislation recently enacted or currently pending relevant to child protection topics discussed in recent GOC meetings. We identified the following legislation enacted in the 126th, 127th or 128th Legislatures or currently still pending in the 128th Legislature.

Legislation Relevant to Mandated Reporting

The 126th Legislature enacted LD 1523 An Act To Strengthen the Laws Governing Mandatory Reporting of Child Abuse or Neglect as P.L. 2013, ch. 268. The law requires mandated reporters to make a report in cases where children who are under 6 months of age or otherwise nonambulatory have specified types of injuries. The original bill also included provisions making failure to report by a mandated reporter a Class E crime and requiring mandated reporters to complete training on mandatory reporting as a condition of obtaining a professional license or certification. Both provisions were removed via the Judiciary Committee amendment that became the enacted bill. There was not much testimony against making failure to report a Class E crime

except from the medical community who said that The Board of Licensure in Medicine has adequate authority in its disciplinary statute to take action against a licensee if the circumstances warrant. Testimony also pointed out that statute already has a \$500 civil penalty provision for violations of the chapter. The testimony of the Commissioner of the Department of Professional and Financial Regulation expressed concerns regarding implementation and compliance issues associated with requiring training as a condition of licensure or certification.

The 127th Legislature enacted LD 199 An Act To Improve the Reporting of Child Abuse as P.L. 2015, ch. 117. This law clarifies the responsibility of individuals who are mandated reporters in their capacity as professionals employed by institutions, facilities or agencies. It requires that a mandated reporter, described as the "notifying person," who makes a report of child abuse/neglect to its employer must acknowledge in writing that he/she has received confirmation that the institution, facility or agency made a report to DHHS. If the mandated reporter does not receive that confirmation within 24 hours of notifying the institution, facility or agency, the mandated reporter is required to report directly to the department. The law also prohibits an employer from taking any action to prevent or discourage an employee from making a report. Lastly the law adds similar requirements for reports that must be made to the appropriate district attorney's office.

The 127th Legislature also enacted LD 622 An Act To Require Training of Mandated Reporters under the Child Abuse Laws as P.L. 2015, ch. 407. This law requires all mandated reporters of suspected child abuse or neglect to complete mandated reporter training approved by the department at least once every 4 years. The original bill also included a provision requiring mandated reporters to complete training on mandatory reporting as a condition of obtaining a professional license or certification. The Commissioner of the Department of Professional and Financial Regulation again testified with concerns regarding implementation and compliance issues. The provision was not included in the enacted version of the bill.

Legislation Relevant to Child Placements and Best Interest of Child

The 128th Legislature enacted LD 1187 An Act To Amend the Child Protective Services Statutes as P.L. 2017, ch. 411. The language in the enacted bill was based in part upon recommendations made in a December 29, 2017 report from Deirdre Smith, Professor of Law at the University of Maine School of Law and Director of the Cumberland Legal Aid Clinic. The report resulted from a broad review Professor Smith and Assistant Attorney General Nora Sosnoff conducted of the provisions of the Maine Child and Family Service Act regarding kinship and sibling placement. The Attorney General's Office offered to conduct the review amid concerns that were raised to the Judiciary Committee on the original language in LD 1187. Professor Smith's report and the AG's transmittal letter to the Judiciary Committee is in Attachment C.

The enacted law specifies that the standard of the best interest of the child set forth in Title 19-A § 1653 sub-§ 3 (Family Law) applies to child protection proceedings as well by establishing a definition of "best interest of the child" in Title 22 § 4002 that references the Title 19-A provision. This law also emphasizes kinship placement and placement with siblings, amends the definitions of "relative" and "grandparents", and includes changes intended to effectuate the kinship preference. The Revisor's Office is still in the process of updating the web version of the Child Protection statutes to reflect the changes in this Public Law.

Also in the 128th, the Health and Human Services Committee (HHS) considered LD 270 that dealt with the Administration of Kinship Care and Relative Placement Issues. At present, LD 270 An Act To Support Kinship Families by Creating a Kinship Care Navigator Program as amended by HHS is on the Special Appropriations Table with a funding requirement of \$80,000 annually. The bill establishes a kinship care navigator program to be contracted by DHHS to provide educational information, referrals and support to persons providing kinship care to children. It provides that funding will be drawn from federal funds, if available, and through the General Fund.

Legislation Relevant to Maine’s Child Welfare Information System (MACWIS)

LD 1909 Resolve, To Fund a New Comprehensive Child Welfare Information System is also still under consideration in the 128th Legislature’s Special Session. This resolve directs the Department of Health and Human Services to conduct a needs analysis for its comprehensive child welfare information system, review possible solutions to meet those needs and purchase or develop a new system. It also provides funding for the development of a new comprehensive child welfare information system. The proposed appropriation for this initiative is \$8 million. As of June 25, 2018, the Senate had voted to Indefinitely Postpone the bill and sent it to the House for Concurrence where it remained pending as Unfinished Business.

DHHS Current Strategic Initiatives for Child Welfare

OPEGA reviewed DHHS’ Summary of Strategic Initiatives which were developed following an internal review of the Office of Child and Family Services in early 2018. These Initiatives were described in the Child Welfare Overview report the Governor provided in conjunction with his testimony at the May 31, 2018 Public Comment period on OPEGA’s Information Brief. The section of that report describing the initiatives is in Attachment D.

OPEGA attempted to determine the extent to which DHHS’ initiatives may address the areas that OPEGA identified as potential areas for concern or improvement in the May 2018 Child Protection System Information Brief. We note that the summary of the initiatives provided by DHHS contains limited information which makes it difficult to fully assess the degree to which the potential areas for concern may be addressed by the initiatives.

Table 3 specifies the OPEGA-identified potential areas for concern or improvement that appear to be addressed to some degree by DHHS Initiatives. OPEGA also notes that DHHS has ongoing initiatives that extend to areas beyond those identified by OPEGA in the Information Brief. These include initiatives related to family intervention practices, permanency timeframes, increased focus on the “Child’s Best Interest,” changing the mandated reporting statute, creating a team to review OCFS Child Welfare Practices and Procedures, and reviewing practice for cases involving self-injury and medical neglect.

Table 3. DHHS Initiatives That May Address Potential Areas for Concern or Improvement Identified by OPEGA	
OPEGA Potential Area for Concern or Improvement	DHHS Initiative
Consistency and appropriateness of decisions by ARP caseworkers and supervisors	Initiative 1: Improve Service of Contracted Alternative Service Providers (ARP)
Compliance with contractual obligations by ARP caseworkers and supervisors	
Consistency and appropriateness of decisions by caseworkers and supervisors	Initiative 2: Ensure Consistent, High-Quality Casework Practice for Child Welfare Services (Quality Improvement Objectives)
Consistency and appropriateness of decisions by caseworkers and supervisors	Initiative 2: Ensure Consistent, High-Quality Casework Practice for Child Welfare Services (Personnel, Management and Training Objectives)
Timeliness of OCFS and ARP assessments	Initiative 2: Ensure Consistent, High-Quality Casework Practice for Child Welfare Services (Statutory, Regulatory, and Policy Objectives)
Timeliness of Intake answering phone calls	Initiative 3: Strengthen the Intake Process Related to Reports of Abuse
Extent and manner of communication and information exchange among the various key entities that are part of the child protection system	Initiative 4: Improve Child Safety Decision-Making Through Improved Access to and Management of Information Available to Caseworkers
Appropriateness of caseloads for OCFS and ARP	Initiative 5: Increase Efficiency and Effectiveness of Casework Practice

The following OPEGA-identified areas do not appear to be addressed by the reported DHHS Initiatives and DHHS provided some additional information related to these:

- Guidance and training for mandated reporters, including expectations for “reasonable cause to suspect.”
 - OCFS already provides examples of this in the mandated reporter trainings. OCFS will also be updating the guidance and training materials.
- Junctures at which a comprehensive reassessment of risk could/should be done.
 - This is part of the Structured Decision Making tools and will be added in both OCFS policy and practice with the implementation of SDM Assessment and Permanency tools.
- Compliance with policy and procedures by caseworkers and supervisors.
 - OCFS has currently implemented the Quality Improvement Team and the Supervisory Toolkit. Both of these tools focus on caseworker and supervisor practice which includes adherence to policy and procedures.
- Factors that impact OCFS or ARP decision-making on appropriate action.
 - OCFS has implemented multiple strategies to address increasing high-quality practice of child protective work which will address this potential area for concern.
- Extent to which OCFS and ARP monitor whether families are participating in voluntary services.
 - OCFS has implemented a process for all ARP cases to be rereferred to the OCFS child protective intake hotline if the case is not successfully served by ARP.

- Extent to which mandated reporters, OCFS and ARP seeks to verify, and can verify, information reported by a child's parents.
 - OCFS has currently implemented the Quality Improvement Team and the Supervisory Toolkit. Both of these tools focus on caseworker and supervisor practice, which includes adherence to policy and procedures while simultaneously promoting high quality child welfare practice. Additionally, OCFS has a training planned for caseworkers and supervisors to receive additional training in investigative techniques over the next several months.
- Effectiveness of the child protection system in identifying and responding to child abuse/neglect risks that are not considered to be imminent physical safety risk.
 - OCFS has currently implemented the Quality Improvement Team and the Supervisory Toolkit. Both of these tools focus on caseworker and supervisor practice which includes adherence to policy and procedures while simultaneously promoting high quality child welfare practice. Additionally, OCFS has a training planned for caseworkers and supervisors to receive additional training in investigative techniques over the next several months.

Child Welfare Caseload Standards

Service Categories:	Child Welfare League of America (CWLA) ¹	Council on Accreditation (COA) ²	Colorado (2014) ³	Minnesota (2009) ⁴	Washington (2007) ⁵
	Recommended Caseload Standards	Standards and guidelines for accreditation	Caseload to Achieve Objectives and Meet Requirements ⁶	Case Practice Standards ⁷	Constructed standards ⁸
Intake/ Screening			32.82	70.47	76.77
CPS Investigation/ Assessment	12 active cases per month	Generally, caseloads do not exceed 15 investigations or 15-30 open cases.	13.05	6.14 (Investigation) 8.31 (Family Assessment)	11.62
Case Management— Voluntary/ In-Home Services	17 active families and no more than 1 new case assigned for every six open cases (On-going cases)	Generally, caseloads do not exceed: (1) 12-18 families in programs providing family preservation and stabilization services and (2) 2-6 families in programs providing intensive family preservation and stabilization services.	13.37	31.90	14.34
Case Management —Out-of-Home Placement	12-15 children (Foster Family Care)	Nationally recognized caseload guidelines recommend no more than 15 children in foster care or kinship care, and no more than 8 children in treatment foster care.	7.57	10.91 (Non-Relative Family Foster Care)	11.78
Adoptions		Generally, caseloads do not exceed 12-25 families.	8.60	13.93 (Non-relative Pre-adoptive Home)	19.19

¹ For more information on CWLA standards, see: <http://66.227.70.18/newsevents/news030304cwlacaseload.htm>

² For more information on COA standards, see: <https://www.childwelfare.gov/topics/management/workforce/compendium/aboutcomp/coa/#two>

³ ICF International Incorporated, LLC (2014). *Colorado Department of Human Services: Colorado Child Welfare County Workload Study*. Fairfax, VA: ICF International Incorporated. Available at: [http://www.leg.state.co.us/OSA/coauditor1.nsf/All/E5214710B77C878487257D320050F29A/\\$FILE/1354S%20-%20Colorado%20Childrens%27%20Welfare%20Workload%20Study%20Report%20August%202014.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/E5214710B77C878487257D320050F29A/$FILE/1354S%20-%20Colorado%20Childrens%27%20Welfare%20Workload%20Study%20Report%20August%202014.pdf)

⁴ Hornby Zeller Associates, Inc. (2009). *CHILD WELFARE WORKLOAD STUDY and ANALYSIS: Final Report*. Troy, NY: Hornby Zeller Associates, Inc. Available at: http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_151042.pdf

⁵ Walter R. McDonald & Associates, Inc. (2007). *Washington State Children's Administration Workload Study: SUMMARY REPORT*. Sacramento, CA: Walter R. McDonald & Associates, Inc. Available at: <https://www.dshs.wa.gov/sites/default/files/CA/pub/documents/WLS%20Summary%20Report%202011-2007.pdf>

⁶ Based upon 108.3 hours available for casework/ month, as determined in CO.

⁷ Based upon 104.3 hours available for casework/ month, as determined in MN.

⁸ Based upon 119 hours available for casework/ month, as determined in WA.

Definition of “Best interest of Child” in Maine Statute

Title 19-A § 1653.3:

3. Best interest of child. The court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interest of the child. In making decisions regarding the child's residence and parent-child contact, the court shall consider as primary the safety and well-being of the child. In applying this standard, the court shall consider the following factors:

- A. The age of the child;
- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;
- C. The preference of the child, if old enough to express a meaningful preference;
- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- E. The stability of any proposed living arrangements for the child;
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
- G. The child's adjustment to the child's present home, school and community;
- H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;
- I. The capacity of each parent to cooperate or to learn to cooperate in child care;
- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;
- K. The effect on the child if one parent has sole authority over the child's upbringing;
- L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:
 - (1) The child emotionally;
 - (2) The safety of the child; and
 - (3) The other factors listed in this subsection, which must be considered in light of the presence of past or current domestic abuse;
- M. The existence of any history of child abuse by a parent;
- N. All other factors having a reasonable bearing on the physical and psychological well-being of the child;
- O. 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;

P. If the child is under one year of age, whether the child is being breast-fed;

Q. The existence of a parent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203;

R. If there is a person residing with a parent, whether that person:

(1) Has been convicted of a crime under Title 17-A, chapter 11 or 12 or a comparable crime in another jurisdiction;

(2) Has been adjudicated of a juvenile offense that, if the person had been an adult at the time of the offense, would have been a violation of Title 17-A, chapter 11 or 12; or

(3) Has been adjudicated in a proceeding, in which the person was a party, under Title 22, chapter 1071 as having committed a sexual offense; and

S. Whether allocation of some or all parental rights and responsibilities would best support the child's safety and well-being.

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January 3, 2018

The Honorable Lisa Keim, Senate Co-Chair
The Honorable Matthew Moonen, House Co-Chair
Joint Standing Committee on Judiciary
Maine State House, Room 438
Augusta, ME 04333

Re: Kinship and Sibling Placement in Maine Child Protection Statutes

Dear Senator Keim and Representative Moonen:

I am pleased to submit this response to your May 23, 2017 letter on behalf of the Joint Committee on Judiciary. As requested, we have conducted a review and have prepared a report with Professor Deirdre M. Smith to the Committee, setting forth recommendations regarding kinship and sibling placement. The context for this request was testimony presented regarding two bills introduced in the 128th Legislature: LD 1187, "An Act To Amend the Child Protective Services Statutes," and LD 270, "An Act To Consolidate Administration of Kinship Care and Relative Placement Issues within the Department of Health and Human Services." The Committee carried over both bills.

The review was conducted by Assistant Attorney General Nora Sosnoff, Chief of the Attorney General's Child Protection Division, and Professor Deirdre M. Smith of the University of Maine School of Law. They interviewed Maine Department of Health and Human Services Office of Child and Family Services (OCFS) employees, district court judges, attorneys involved in child protection matters, members of the Legislature, a representative of Adoptive and Foster Families of Maine, and the Child Welfare Ombudsperson. They also researched applicable state and federal law and national child welfare law trends.

Professor Smith's report, attached, sets forth the findings of the review and recommendations for the Legislature's consideration. I offer a few general observations:

Thousands of Mainers are giving an enormous amount of their time, love and resources to ensuring the safety and security of children in their homes. The stakeholders consulted for this review noted that relatives have been taking an increasingly important role in child protection.

It was the consensus of stakeholders that there has been marked change in recent years in the Department's engagement of relatives early in the child welfare process. The stakeholders agreed that the opioid epidemic is imposing additional burdens on the child welfare system which already suffers from a lack of resources.

The total number of children who have spent some period of time in state protective custody during 2017 is over 2,700; the number of children currently in State custody is over 1,600; OCFS has received 952 reports of substance exposed newborns; and the OCFS Intake lines fielded well over 40,000 calls in 2017 for suspected child abuse or neglect.

This result identified a few provisions in Maine's Child and Family Services and Child Protection Act ("the Child Protection Act"), 22 M.R.S. §§ 4001-4099-H, that could be clarified to ensure that broader policy goals are met. Professor Smith has developed specific recommendations for legislation to be considered during the 128th Legislature's Second Session, as set forth in the attached report. I briefly summarize those:

- Broaden the definition of "relative;"
- Enact a sibling placement preference;
- Provide a statutory standard, consistent with other Maine laws, for assessing the best interest of children in child protection cases; and
- Establish a statutory framework clarifying the respective responsibilities of the Department and relatives seeking placement.

Thank you for the opportunity to conduct this review and to share our findings. AAG Sosnoff and Professor Smith are happy to meet with the Committee to answer questions and to discuss potential legislation.

Very truly yours,



Janet T. Mills
Attorney General

JTM/mao

December 29, 2017

Hon. Janet Mills, Attorney General of Maine
Office of the Attorney General
6 State House Station
Augusta, ME 04330

RE: Review of Maine Statutes Regarding Relative and Sibling Placement
in Child Protection Matters

Dear Attorney General Mills:

This letter describes the results of the review that Assistant Attorney General Nora Sosnoff, Chief of the Attorney General's Child Protection Division, and I recently conducted of Maine's Child and Family Services and Child Protection Act ("the Child Protection Act"), 22 M.R.S. §§ 4001-4099-H, provisions regarding kinship and sibling placement.

In this report, I will first provide an overview of the federal laws that play an important role in relative and sibling placement in child protection cases. Next, I describe the many provisions that the Maine Legislature has already enacted to address the involvement of relatives and siblings in such cases. A summary of the applicable policies of the Maine Department of Health and Human Services Office of Child and Family Services (OCFS) follows. Based on the review and analysis of these statutes and policies, as well as information gathered through stakeholder interviews, this report then discusses the extent to which the current provisions of the Child Protection Act are effective in facilitating relative and sibling placement. Finally, I outline some potential amendments to the Child Protection Act that may provide clarification and further advance Maine's policy goals regarding sibling and relative placement. These revisions, combined with some non-statutory measures, would ensure that, where possible, children in the child welfare system can maintain beneficial ties with relatives even if they are not living with their parents.

Federal Law Framework

Much of Maine's child welfare law and policy is directed by federal law because the U.S. Department of Health and Human Services (DHHS) provides a substantial amount of funding for the work addressing abuse and neglect of children. Congress has, through a series of enactments, imposed extensive conditions for the use of such funds. Some of those requirements pertain specifically to relative and sibling placement. As a result, federal law influences states' child welfare law to a great degree.

Most relevant for this review is Part IV-E of the Social Security Act, which provides "Federal Payments for Foster Care and Adoption Assistance." The Adoption Assistance and Child Welfare

Act of 1980, Public Law 96–272 (1980), enacted as 42 U.S.C. § 671(a), sets forth the features to be included in a state’s foster care and adoption assistance plan if it is to be eligible for approval for payments by the U.S. DHHS. This law makes clear that, in implementing the various plan components, “the child’s health and safety shall be the paramount concern.” 42 U.S.C. § 671(a)(15)(A).

In 1996, Congress added a “kinship preference” to the list of features for state plans. Specifically, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (1996), enacted § 671(a)(19), which provides:

[T]he 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;...

The following year, Congress passed another important child welfare law: The Adoption and Safe Families Act of 1997, Public Law 105-89 (1997) (ASFA). The ASFA enacted several significant requirements regarding permanency planning for children in state custody, and it recognized the critical role that relative caregivers can serve in helping children achieve permanency. Among other measures, it included guardianship in the hierarchy of outcomes in permanency plans in § 675(5)(C), authorized state demonstration projects regarding “kinship care,” created a “kinship care” advisory panel to review report from DHHS regarding “the extent to which children in foster care are placed in the care of a relative,” and required states to seek termination of parental rights for a child in foster care for 15 of the 22 recent months unless, *inter alia*, the child is being cared for by a relative, § 675(5)(E).

Congress added in 2008 the condition that “child welfare agencies [] make reasonable efforts to place siblings together.” 42 U.S.C. § 671(a)(31)). Specifically, the federal law now demands that state plans

(31) provide[] that reasonable efforts shall be made—

(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

(B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;...

That change was included in the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351 (2008). That act also added new plan components for identification and notification of relatives, including siblings, when children enter foster care, 42 U.S.C. § 671(a)(29), and requires child welfare agencies to make reasonable efforts to place siblings together, whether in foster care, kinship guardianship, or adoptive placements. *Id.* § 671(a)(31). Perhaps most

significantly, the 2008 act gave states the option to use Title IV-E funds to finance guardianship assistance programs for grandparents and other relatives who have cared for a child as foster parents, § 671(a)(28)), and authorized "Family Connection" Grants to establish kinship navigator programs that help link relative caregivers to a broad range of services and supports for them and the children they raise, § 627(a)(1).

The most recent major child welfare law enacted by Congress is the 2014 Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, and it includes kinship and sibling provisions as well. It requires state agencies to notify parents of a child's siblings when the child is removed from a parent's care, § 671(29), and it adds a definition of "sibling" at section 675(12).

Another important consideration is that the placement of Native American children must comply with the Indian Child Welfare Act, Public Law 95-608 (1978), which creates a preference, absent "good cause to the contrary," for foster care, pre-adoptive, and adoptive placements with any member of the child's extended family. 25 U.S.C. §§ 1915(a),(b).

More generally, the federal law governing foster care and adoption assistance payments calls on states to adopt licensing criteria for those who receive such payments. The federal statute specifies some of the standards, including criminal and child protection background checks. 42 U.S.C. § 671(a)(20). Being able to satisfy licensing criteria is important for any family whose financial health will depend on foster care and adoption assistance payments.

Maine Laws Addressing Relatives and Siblings in Child Protection Matters

The Maine Legislature has enacted several important provisions during the past twenty-five years addressing the role of a child's relatives and siblings in child protection cases. There is little question but that the policy of Maine's child welfare law recognizes and values the involvement of relatives and siblings.

Statutes Regarding Participation of Grandparents and Other Relatives in Child Protection Cases

The Maine Legislature's first significant enactment with respect to kinship placement in the child protection context was "An Act Regarding the Rights of Grandparents in Child Protection Proceedings" in 1993. It created a new provision, located at 22 M.R.S.A. § 4005-B in the Child Protection Act, that permitted grandparents to petition the court for standing and intervenor status and, if successful, to request placement of the child in their home. P.L. 1993, ch. 627.

In 2001, the 120th Maine Legislature made several changes to the Child Protection Act based on the recommendations of the Committee to Review the Child Protection System, including some that concerned the role of the child's relatives. Specifically, it replaced the 1993 law regarding grandparents with a new provision permitting a grandparent or other relative to seek status in the proceeding as an "interested person." P.L. 2001, ch. 696 § 16 (enacting 22 M.R.S.A. § 4005-D). An interested person may "attend and observe all court proceedings ..." and has a right to be heard in

court. 22 M.R.S. § 4005-D(4). The 2001 law also addressed “intervenor,” who are allowed to present and challenge evidence. 22 M.R.S.A. § 4005-D(5).

As part of the 2001 amendments, the Legislature also created a new section that sets forth how grandparents may pursue “reasonable rights of visitation or access” or ask the court to place a child with them. P.L. 2001, ch. 696 § 16 (enacting 22 M.R.S.A. § 4005-E). The 2001 law also included several other provisions pertaining to kinship placement, including requiring the Department to specify “[t]he names of relatives who may be able to provide care for the child” in the initial child protection petition that starts the case in court. That provision is now at section 4032(2)(J).

The Legislature made several significant revisions in 2007 to the placement provision in section 4005-E(2) to expand eligibility to seek placement beyond grandparents.¹ The current language states that “the court shall make placement with a relative a priority for consideration for placement if that placement is in the best interests of the child and consistent with section 4003.” The definition of “relative” was revised in the same bill to include “the biological or adoptive parent of the child’s biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child,” regardless of whether the person “had taken responsibility” for the child. P.L. 2007, ch. 371, § 1 (amending § 4002(9-B)).

The Maine Supreme Judicial Court sitting as the Law Court (“Law Court”) has explained the significance of section 4005-E(2) as follows:

[I]f a court concludes that a child’s best interest can be achieved by placement with a [relative] and also through some other custodial arrangement, the statute directs that, as between the two alternatives, placement with the [relative] be given priority. The statute does not, however, require placement with a [relative] absent a best interest finding in favor of the [relative].

In re Zoe M., 2004 ME 94, ¶ 12; *see also In re Annie A.*, 2001 ME 105, ¶ 25 (“[T]he Legislature has directed that a favorable ‘best interest’ determination is a prerequisite to giving grandparents priority consideration for placement.”). Further, on appeal, a relative challenging an order denying placement must demonstrate that “the evidence compels a finding that placement with the grandparent is in the child’s best interest.” *Id.* at ¶ 8 (citing *Annie A.* at ¶ 30). Thus, where placement with a relative would create “serious emotional harm” for a child as a result of the change in custody from her foster parents, a court’s denial of placement with the relative was consistent with the statute. *Id.* at ¶¶ 10-11.

The Law Court has held that grandparents do not have a fundamental constitutional right to such placements. *In re Richard G.*, 2001 ME 78. In that case, the grandmother challenged the language now in section 4005-E permitting a court to base a denial of placement on a child’s best interests, rather than a finding of jeopardy. *Id.* at ¶¶ 3, 12. The Court explained: “A grandparent possesses no constitutional right to access the child. Furthermore, her interests do not align with the state’s

¹ The visitation and access provision in § 4005-E(1) remains limited to grandparents.

interest... that the needs and well-being of the child must be paramount. The grandmother lacks a constitutionally protected interest in [the child's] placement." *Id.* (citing *Rideout v. Riendeau*, 2000 ME 198, ¶ 26).

In addition to section 4005-D, which permits certain blood or marital relatives of the child (as well as foster parents) to request status as an "interested person" or to intervene in the case, there are several provisions scattered throughout the Child Protection Act that require notice to certain non-parent relatives of the child of specific events during the proceedings. These events include: initial petition (§ 4033(5)); removal of the child from home (§ 4036-B; notice extends to siblings as well); judicial reviews (§ 4038); and petition to terminate parental rights (§ 4053).

Statutes Regarding Preference for Placement with Relatives

In 1999 the Legislature enacted "An Act to Strengthen the Kinship Laws" adding a new provision to Subchapter 7 of the Child Protection Act, which specifies certain obligations of the Department regarding children in its custody. The new provision is located in section 4062, which addresses payments by the Department to those providing care for children in state custody, and states:

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.

P.L. 1999, c. 382, § 1, enacting 22 M.R.S.A. § 4062(4). This language mirrors the federal law at 42 U.S.C. § 671(19), discussed above. The reference to "relevant" standards makes clear that the preference operates within existing requirements that a relative caregiver meets foster care licensing standards to receive financial assistance. The Law Court has had only limited occasions to consider the implications of this provision. *See, e.g., In re David H.*, 2009 ME 131 ¶ 20, ¶ 43 (holding that failure to raise kinship placement issue during termination of parental rights proceeding constituted waiver of the issue).

In 2005, the 122nd Maine Legislature enacted additional changes to the Child Protection Act to reflect Maine's policy favoring kinship placement. Most significantly, it amended 22 M.R.S.A. § 4003, which sets forth the "Purposes" of Child Protection Act, to add "**Kinship placement.** Place children who are taken from the custody of their parents with an adult relative when possible," 2005 P.L. ch. 374, § 1, as an "intent of the Legislature" for the Act. As noted above, the Legislature enacted § 4002(9-B) in 2007 to define "Relative."

The Law Court has had a few occasions to consider the implications of § 4003(3-A). In *In re N.W.*, 2013 ME 64, a child's great aunt, who had been a placement for the child, appealed the District Court's denial of her motion to intervene. One of her arguments on appeal was that the court was wrong to find that her intervention would have been inconsistent with the purposes language in § 4003 and that her intervention would have served the purpose in (3-A). The Law Court rejected this argument because, as the child's great aunt, she did not meet the definition of "relative" in § 4002(9-B). *Id.* ¶ 15. *See also In re Kenneth S.*, 2017 ME 45 ¶ 5 n.3 (affirming district court's

rejection of mother's request to place child with her former foster mother and noting that the "statutory preference for a child to be placed with family members" did not extend to persons who do not meet the definition of "relative" in § 4002(9-B)).

In *In re I.R.*, 2015 ME 93, the child's mother appealed from the District Court's order terminating her parental rights. Among her arguments on appeal, she challenged "the court's alleged failure to consider a kinship placement for the child," citing § 4003(3-A). The Law Court noted:

The placement she suggested—her own mother—was carefully considered by the Department, the guardian ad litem, and the court early in these proceedings, and was found to be completely inappropriate. This argument is not persuasive and we do not discuss it further.

Id. ¶ 10 n.2.

Statutes Addressing the Role of Relative Caregivers in Permanency Planning

The Legislature also enacted in 2005 several provisions—many of which implemented and expanded on ASFA requirements—concerning permanency plans. Some of the language added that year expressly addresses the role of relatives. Section 4038-B(4) specifies that "whether and when, if applicable" the child will be placed "with a fit and willing relative" is a determination that must be included in the contents of a permanency plan. The Legislature also enacted 22 M.R.S.A. § 4038-C which created the permanency guardianship as another option for a permanency plan. 2005 Ch. 372, enacting 22 M.R.S.A. § 4038-B(4)(A)(3). The bill originated from recommendations of the Subsidized Guardianship Workgroup based on its work with the Cornerstone Consulting Group, an organization that helped several states establish these kinds of guardianships. Among the goals identified for adding this potential permanency option, as explained by the Department's testimony in support of the legislation: "This alternative is expected to promote and increase the use of relatives as a guardianship resource who are committed to keeping siblings and family groups together. This has the potential to increase the number of children who remain in their communities through placement with relatives or other individuals who have existing relationships with the child."

The permanency guardianship statute also allows the child's parent, grandparent, or sibling to petition the court for contact with the child during the period of the permanency guardianship. 22 M.R.S. § 4038-E(3).

Statutes Addressing Sibling Placement

As compared with the numerous provisions addressing the role of adult relatives, Maine's Child Protection Act says little regarding a child's minor siblings. The only statute that expressly addresses siblings in child protection matters (other than notice provisions) is the 2006 Sibling Visitation Act, P.L. 2005 ch. 526, which enacted 22 M.R.S. § 4068. The statute does not address placement, only visitation for siblings in state custody or separated by adoption. It provides:

If the court determines that it is reasonable, practicable and in the best interests of the children involved, the court shall order the custodian of the child who is the subject of the child protection proceeding and any party who is the custodian of a sibling of the child to make the children available for visitation with each other.

22 M.R.S. § 4068(1). The term “sibling” is not defined in that provision or elsewhere in the child protection statute. However, in 2015 the Legislature amended § 4036-B(3-A), which requires the Department to notify certain relatives when a child has been removed from care, including “all parents of a sibling of a child who have legal custody of the sibling.” P.L. 2015 ch. 381, § 4. The statute implements requirements of the Preventing Sex Trafficking and Strengthening Families Act of 2014 noted above, including the definition of “sibling”: “‘sibling’ includes an individual who would have been considered a sibling of the child but for a termination or other disruption of parental rights, such as the death of a parent.” See 42 U.S.C. § 675(12).

Maine Laws as Compared with Those of Other States Regarding Relative and Sibling Placement

As part of our research, we also reviewed relative and sibling placement laws in other states. There is a significant variety of approaches among states. Federal child welfare law permits individual states to define who is a child’s “relative” in child welfare matters. As noted above, Maine defines relative as “the biological or adoptive parent of the child’s biological or adoptive parent, or the biological adoptive sister, brother, aunt, uncle, or cousin of the child.” 22 M.R.S.A. § 4002(9-B). Compared to the vast majority of other states, this is a fairly restrictive definition. A number of states do not define “relative” in the statute, while others have enacted definitions ranging from relatives through blood, marriage, and adoption from the first to fifth degrees. Some states define “relative” by outlining every individual that qualifies. Others simply specify to the degree. More recently, a few states have also taken legislative measures to define “kin” or “fictive kin” to include individuals who are typically not related to the child by blood but are individuals with whom the child has resided or had substantial contact and with whom the child shares a healthy bond. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s Tribe or, in the absence of law or custom, as provided in the Indian Child Welfare Act of 1978.

Most states, including Maine, give preference or priority to relative placements by statute, and the remaining do so through agency regulation. The language of these laws varies considerably. As noted earlier, the Maine Legislature essentially codified the federal statutory language which states that “the State shall consider giving preference” to a relative placement. Maine appears to be the only state to do so. Common phrasings among the states require that “preferential consideration shall be given” or that children “shall be placed” with relatives unless doing so is contrary to the best interest of the child. Alternatively, some states indicate that children “may be placed” or that the child welfare agency “shall attempt to place” with relatives or kin. In addition to giving relative placements a preferential consideration, some state laws outline a specific list of most to least preferred placements.

LD 1187 proposes language to amend 22 M.R.S.A. § 3-A “Purposes” language regarding “Kinship placement” and in § 4005-E(2) regarding relatives’ ability to request placement to create a

“rebuttable presumption” that “placement with a relative is in the best interests of the child.” No other state has enacted such a presumption regarding relative placement in its child welfare law, and, as discussed below, I did not find much support for this approach from my discussions with stakeholders.

Several states have enacted language creating preferences regarding keeping siblings together, whereas Maine’s law has no such provision. For example, some state statutes have language that requires state child welfare officials to make “reasonable efforts” to keep siblings together (Arizona Rev. Stat. § 8-513(D)) or that such placements should be made whenever “practical and appropriate,” (California Welf. & Inst. Code §§ 306.5; 358.1). Some of these provisions specify that siblings should be placed together unless such placement would be “contrary to the safety or well-being of any of the siblings” (Nebraska Ann. Stat. § 43-1311.02) or similar language regarding the children’s interests. A few states have enacted stronger requirements. For example, Colorado’s law provides:

[I]f the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

Colorado Rev. Stat. §19-3-605(2) (see also Washington Rev. Code § 13.34.130). Some state laws require that, if siblings cannot be placed together, arrangements are made for visitation and other continuing contact (e.g. Missouri Ann. Stat. § 210.565).

OCFS Policies

Maine’s OCFS has adopted several policies that make clear that the Department’s objective is to engage relatives early and extensively. The primary policy is “V. D-7. Relative Placement and Kinship Care Including Fictive Kin,” the current language of which has been in effect since February 28, 2007. The policy defines “Kinship Care” as “any relationship that involves the full time care of a child or children by the following people: an individual who is related to the child by blood, marriage or adoption through close family relationships that are acknowledged by the parents, tribe, or child.” It designates as “formal kinship care” “living arrangements [] made through the child welfare system and the court process.” It also defines “Fictive Kin,” and notes that they “may also be referred to as ‘alternate caregiver’” in the policy.

In its description of the OCFS philosophy, the policy states: “The Department firmly believes that whenever possible children need to be placed with relatives or with someone with whom they have a significant bond or connection.” It notes that “Determining who constitutes family is a critical component of our work” and that it is a “fluid process” that begins from the first interactions with the family. It observes that strong family connections can be an important part of preventing removal as well as post-removal placement.

The policy describes the benefits of kinship placement as well as the “special considerations” to take into account when assessing a potential placement. Specifically, placement with relatives may not be appropriate in families with significant problems “related to child abuse, substance abuse, and domestic violence” or where there are “impaired relationships between the potential caregivers and their own children.” For all of these reasons: “The Department will depend on an up-to-date assessment to determine the relatives’ or other fictive kin’s ability to provide for the safety and well-being of the child.”

The policy next describes its purpose as: “to clarify the importance of relative placements, as well as to emphasize the importance of the preservation of family relationship and familial bonds.” It goes on to state: “our preferred practice is to minimize the impact of separation of family and the familiar environment. This includes community, church and schools, as well as family.” It provides further description of the potential benefits to a child from relative placement.

Although, as noted above, the Maine Legislature has not enacted any provisions specifically addressing sibling placement, OCFS has had a sibling placement policy in place since 2002. Policy “V. E-1. Sibling Placement and Visitation” notes at the outset the importance of recognizing and respecting sibling relationships, which are unique. Its purpose is stated as: “Placement of siblings together should be made a priority in case planning and implementation of the case plan. Valid reasons must be identified and documented for not placing siblings together. Placement of siblings together can serve many purposes.” It then lists several “primary purposes” for such placement including “Preservation of the sibling relationship and bond,” minimizing or mitigating “the impact of separation from family and familiar environment,” and minimizing trauma, among others.

The policy notes that sibling placement is not always possible and outlines some reasons why it would be inappropriate, such as abuse between the siblings, special needs of one sibling, or the limited resources of a placement. The policy lists guidelines for sibling placement decisions, including considering the children’s views and keeping siblings in close geographic proximity even if they cannot be in the same placement. Where siblings cannot be placed together, the policy requires OCFS to facilitate contact between siblings through visitation, phone contact, letter writing and e-mail. In addition to this policy, OCFS has adopted other measures to maintain sibling connections, such as supporting the work of Maine’s Youth Leadership Advisory Team, including the development of the Sibling Bill of Rights.

Finally, with respect to adoption placements, the policy states that siblings should be placed together “unless there is there clear evidence that separation is necessary.” And if there is separation, OCFS “will encourage pre-placement and adoptive homes to have sibling visits.”

The Effectiveness of the Child Protection Act in Facilitating Relative and Sibling Placement

Our review of the applicable statutes and policies—in terms of both their language and implementation—revealed few significant gaps in or problems with the Child Protection Act’s provisions regarding relative placement. As described above, Maine law reflects a strong policy goal of ensuring that children involved in child protection matters can, to the extent consistent with their safety and well-being, maintain strong connections with their siblings, grandparents, and other

relatives. There is a consensus among judges, GALs, caseworkers, and advocates that, when a child cannot live in their parents' home, they should, whenever possible, live with another close relative.² All agree that the laws, policies, and actions of state government should also support those relative caregivers to the greatest extent possible so that they can continue to have these children in their case, as long as may be necessary.

Stakeholders reported that Maine's child welfare laws themselves are well-written, reflect appropriate policy choices, and provide a good balance of direction and discretion for the District Court. In addition, they confirmed that current OCFS policy appropriately reflects laudable goals and that, in recent years, there has been a significant improvement in the degree to which those policies are used in practice. Specifically, the Department has done a far better job of identifying and engaging relatives early in the child protection process, placing children with relatives whenever possible, assisting relative caregivers throughout the licensing, reunification, and permanency planning process, and using best efforts to ensure that siblings can live together or at least maintain regular contact. Some of the stakeholders we consulted reported that, based on their experiences with specific cases, not all OCFS front-line representatives consistently follow this approach to kinship and sibling placement. However, where there have been problems, they do not stem from a deficiency of any law or policy; rather, they reflect an over-burdened and under-resourced child welfare system. Many stakeholders observed that the opioid epidemic has severely exacerbated existing problems in recent years.

Although Maine's Child Protection Act already receives high marks for addressing relative involvement and placement, I have identified some statutory changes that could be helpful in furthering the policy goals and practices regarding relative and sibling placement in child protection matters. The Child Protection Act must enable OCFS to identify and to engage relatives as early as possible, as described in its policies. In some cases, relatives who are not prepared to serve as a placement during initial removal could do so later if equipped and supported. It is most important to determine as soon as possible what kind of role they hope to play during reunification and, if necessary, permanency. Long-term placement with non-relative foster parents can complicate relative and sibling placement later, due to children's need for stability. It is important that foster parents understand that their role is temporary, especially if there are relatives who are actively working towards becoming the caregivers. Some relatives who serve as or seek to become placements and who are initially identified as potential placements, cannot be approved for a foster care license. In some instances, the relatives may be able to proceed and become an unsubsidized placement. On other occasions, the reasons that ruled out licensure are also the reasons they are not deemed suitable for temporary or permanent placement of the child.

The current statutory provisions regarding notification to and participation of relatives seems to be working appropriately and effectively overall. However, the statute currently lacks a clear pathway for participation at the various levels permitted by the law. Accordingly, I offer a suggestion below regarding how the statute can lay out such a pathway.

² Indeed, this approach is reflected in recent data. One national study (Generations United, *The State of Grandfamilies in America* (2016)) found that 31% of children in foster care in Maine were placed with relatives, as compared with a 29% national average.

The statute provides a role for the District Court in reviewing OCFS placement decisions, and it is a role that courts take seriously. It is not advisable to include too many restrictions and requirements for the court's decision-making. Each situation must be evaluated individually, with particular attention to the needs of each child and the capacity of the parents and other proposed caregivers. The situation can be dynamic and must be adaptable, with regular oversight by the court.

For these reasons, it is critical to ensure that courts continue to have the ability to make child-specific decisions. Maine District Court judges have a clear understanding of the policy goals of relative and sibling placement and the need to balance these with the paramount goal of ensuring children's health and safety while minimizing uncertainty and instability for children. *See* § 4003. When there are disputes regarding placements, either between a relative and a foster home or among relatives, determining the child's best interests does not usually require judges to make a close call. If a relative was not selected for placement, it is usually well documented in the case history and court record, even if the relative does not accept the reasons.

Several stakeholders noted that the Child Protection Act does not have a set of "best interest" standards, unlike the parental rights and responsibilities statute (19-A M.R.S. § 1653(3)) and the minor guardianship statute (18-A M.R.S.A. § 5-101(1-A)). There are standards in the Child Protection Act addressing jeopardy and termination of parental rights, but there is far less guidance in the statute for courts or OCFS when placement or permanency decisions must be made between relatives. District Court judges' practice is to follow the best interest standard in 19-A M.R.S. § 1653(3), to the extent the factors apply to a specific case. While the factors listed there are not a perfect fit because they are intended for use in cases where a court must determine the rights and responsibilities of competing parents, the questions are similar in child protection matters when there is a dispute about what should be the child's placement.

The District Court judges we consulted (who sit all over the state and have varying levels of experience in child protection matters) universally thought that a "rebuttable presumption" in the statute would be at best unnecessary and at worst a source of confusion. They expressed that the effect of existing kinship preference language is to make it a given that the child should be placed with relatives, unless the child's best interest compels a different outcome. Their observation is that OCFS supervisors and social workers operate consistent with such a policy as well, and therefore if a child has not been placed with a relative by the time the court is reviewing the matter, there is invariably a reason why that is the case.

In terms of sibling placement, the impression by nearly all stakeholders is that OCFS does its best to keep siblings together, consistent with the OCFS policy described above. However, the inclusion of a relative placement preference without reference to siblings fails to capture current practice and the broader policy goals of the Child Protection Act.

Proposals for Statutory Reform

Broaden Definition of "Relative"

OCFS policy and practice is to engage caregivers with an existing relationship with the child, drawn from a pool of people that may include family members who do not fit the statutory definition of "relative." In addition, the Maine Parentage Act reflects the fact that one may become a parent

through a route that is not necessarily “biological or adoptive.”³ For these reasons, the Legislature should consider amending the somewhat restrictive definition of relative under section 4002(9-B) to include all family members to the third degree, expanding the pool to great aunts and uncles, great grandparents, adjudicated parents, and persons who adopt a child’s siblings. For example, the definition of “relative” could be revised as follows:

§4002. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings...

9-B. Relative. “Relative” means the biological or adoptive parent of the child’s biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child, or any other family member of the child to the [third] degree through blood, adoption, or parentage established under Title 19-A, chapter 61, any adoptive relative of equal propinquity to the foregoing, or a spouse of any such persons. For an Indian child, relative also includes members of the extended family as defined by the law or custom of the Indian child’s Tribe or, in the absence of law or custom, as provided in the Indian Child Welfare Act of 1978.

The Legislature should also amend the definition of “grandparent” in section 4005-D to be consistent with the Maine Parentage Act and 22 M.R.S.A. § 4002(7) (defining “parent”):

§4005-D. Access to and participating in proceedings

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings....

B. "Grandparent" means the biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes the parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption.

Sibling Placement Preference

Although OCFS has adopted a policy that articulates a strong preference for sibling placement, Maine’s Child Protection Act is silent on such placements (as compared with the preference for relative placement). Accordingly, it may be appropriate to include language that reflects Maine’s strong preference for such placements.

A simple solution would be to amend 22 M.R.S. § 4003(3), to clarify that sibling placement is among the “Purposes” of Child Protection Act. Thus, that section could read:

“Kinship and sibling placement. Place children who are taken from the custody of their parents with an adult relative and with their siblings when possible,”

³ The Legislature has already revised the definition of “parent” in the Child Protection Act to reflect the Maine Parentage Act. 22 M.R.S. § 4002(7).

And 22 M.R.S.A. § 4062(4) could be amended as follows (using language similar to Minnesota's law):

Kinship and sibling preference. In the residential placement of a child, the department shall ~~consider giving~~ give 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. The department shall use reasonable efforts to place siblings in the department's custody together at the earliest possible time, unless such placement would be contrary to the safety or well-being of any of the siblings or if there is no placement that is appropriate for all siblings.

Statutory Standard for Assessing Children's Best Interests

Although Maine's Child Protection Act does not set forth a specific definition or set of factors to be used to determine a child's best interest, those involved in these proceedings understand that a child's needs in terms of their emotional and physical health, safety, stability, and well-being must be the foremost consideration for determining placement and permanency. Accordingly, I recommend that 22 M.R.S.A. § 4002, which sets forth the definitions applicable to the Child Protection Act, be amended to include the following:

1-B. Best interest. "Best interest" means the best interest of the child as determined under 19-A, section 1653, subsection 3.

Alternatively, the Legislature could adopt a variation on the definition used in the guardian ad litem statute in 4 M.R.S. § 1551(1):

1-B. Best interest. "Best interest" means an outcome that serves or otherwise furthers the health, safety, well-being, education and growth of the child. In applying the standard of best interests of the child, the relevant factors set forth in Title 19-A, section 1653, subsection 3 must be considered.

Engagement and Participation by Relatives in Placement Determinations

As noted above, while most stakeholders had few or no suggestions for substantive changes to Maine's child protection statutes, I do note that the provisions regarding the role of a child's relative are scattered throughout the Child Protection Act and could be clearer in terms of how and when a relative should become involved in the matter, particularly as a potential resource for placement. Moreover, stakeholders shared with us that the greatest potential for conflict can arise when one or more relatives seeks a role late in the process in competition with a different relative or a non-relative foster parent. This can be disruptive and destabilizing, and it diverts resources away from both reunification and permanency planning. Accordingly, I suggest that the Legislature enact a pathway, perhaps located in 22 M.R.S.A. § 4005-E, clarifying the responsibilities of the Department and relatives seeking placement, along these lines:

Responsibilities of the Department and Relatives Seeking Placement. To effectuate the kinship preference set forth in section 4062(4):

A. At the earliest opportunity, the department shall ask each identified and responsive parent to provide the names and contact information for:

(1) relatives who have provided care for the child on a temporary basis;

(2) relatives who, in the parent's opinion, would be safe caregivers during reunification; and

(3) relatives who, in the parent's opinion, would be safe visit supervisors or would support reunification in other respects.

B. Within 14 days, the department shall conduct a child protection background check on each individual named by the parent pursuant to subsection (A). For any individual with a child welfare substantiation history or the equivalent from another jurisdiction, the department need not pursue the person further as a resource, except if circumstances warrant an override, approved by a department supervisor.

C. Within 14 days, the department shall conduct a criminal background check on each individual named by a parent pursuant to subsection (A). For any individual with a criminal record relevant to their ability to provide safe care for the child, the department need not pursue the person further as a resource, except if circumstances warrant an override, approved by a department supervisor.

D. Relatives must engage in the foster home licensing process if they wish to be considered for permanent placement, including attending training, cooperating with a home study, and promptly addressing any licensing deficiencies. The department need not pursue any relative as a resource if the person fails to engage in the licensing process at the earliest opportunity, except if circumstances warrant an override, approved by a department supervisor.

E. The department is required to consider placing children with only those relatives who have asserted their interest in serving as caregivers during reunification and have engaged in the licensing process at the earliest opportunity. Other relatives seeking placement may ask the District Court for placement when the court determines the child's permanency plan pursuant to section 4038-B.

F. Prior to the permanency planning hearing pursuant to section 4038-B, if there is a placement dispute between relatives or a dispute between a relative and a non-relative foster parent, the District Court may require those individuals to attend mediation with a court-designated mediator. The goal of such mediation would be to reach an agreement on permanency that preserves the child's important relationships with all the individuals. The guardian ad litem shall attend. The Department's representative may attend. Any agreement resulting from that mediation shall be shared with the court and be considered by the presiding judge.

G. At the permanency planning hearing pursuant to section 4038-B, if there is an unresolved dispute about placement of the child, the District Court shall determine which placement among competing applicants is in the child's best interest. The judicial decision on placement resulting from the permanency planning hearing shall be the preferred placement in future proceedings concerning the same child, unless at the time of such proceeding the evidence concerning the child's emotional and physical health, safety, stability, and well-being compels changing the child's placement.

The adoption of such provision would require amendments to other provisions in sections 4005-D and 4005-E to ensure consistency.

Non-Statutory Measures to Support Relative Placement Policy Goals

In addition to the above-proposed amendments to Maine's Child Protection Act, there are some additional measures that the state could take that would advance the policy goals of engaging a child's relatives early in a child protection case and supporting relative caregivers. I note that the following suggestions are similar to some already under consideration by the OCFS Kinship Advisory Board, which has been meeting regularly throughout the fall.

Federal Funding to Launch Kinship Navigator Program

A recurring theme among relative caregivers and those who serve them is the acute need for access to information and advice about their role in the child protection process and resources that are available to relative caregivers. In some instances, relatives seek the help of an attorney, but an opportunity to meet with a trained professional who knows the full range of options, pathways, and resources may be more valuable. The non-profit organization Adoptive and Foster Families of Maine has a contract with the Department to provide information, training, and guidance to foster and kinship care providers. In addition, the Child Welfare Ombudsperson can also be a source of information, and, if needed, advocacy with the Department. Although the work of these resources is lauded and respected, there is a perception that there remains an unmet need for individualized information and counseling for these families.

In 2008, Congress enacted the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351 (2008), with the purpose of amending federal child welfare law "to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes." Among other things, the new law authorizes "Family Connection" Grants to states to establish kinship navigator programs that help link relative caregivers to a broad range of services and supports for them and the children they raise. §627(a)(1).

Specifically, it allows the U.S. DHHS to provide matching grants (75% for the first two years, and 50% for the third year) to state child welfare agencies:

"... for the purpose of helping children who are in, or at risk of entering, foster care reconnect with family members through the implementation of—

(1) a kinship navigator program to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are served,..."

The federal law sets forth several specific requirements for the navigator programs, and it also permits states to: "establish and support a kinship care ombudsman with authority to intervene and

help kinship caregivers access services... [and] support any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving.” §§ 427(a)(1)(F),(G). Congress extended funding for the Family Connection Grants in 2014, pursuant to the Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183 (2014).

OCFS reports that it does not receive funding through this program at present, and the Department may want to explore this potential funding source to launch a kinship navigator program.

Develop Resource Materials for Relative Caregivers

OCFS can also develop resource materials for relative caregivers that provide information about the child protection process and their role in it. For example, the Vermont Department for Children and Families has a helpful website, “Resources for Kinship Caregivers in Vermont” (<http://dcf.vermont.gov/resources/kin>), which includes two guides: “Vermont Kinship Caregiver Guide” and “Guide for Kinship and Foster Families in Vermont.” The “pathway” model described above would provide a sound framework for providing guidance to relatives.

I appreciated the opportunity to work with your Office and to participate in this review. Please let me know if I can be of further assistance.

Sincerely,



Deirdre M. Smith
Professor of Law and
Director of the Cumberland Legal Aid Clinic

SUMMARY OF STRATEGIC INITIATIVES

The Office of Child and Family Services completed an extensive review of the internal Child Welfare System during the late winter and early spring of 2018. This review entailed a detailed look at specific cases as well as the resulting evaluation of overall Child Welfare practice and policy decisions. As a result of this internal review, the Office of Child and Family Services has initiated several strategic initiatives as detailed below.

Initiative 1: Improve Service of Contracted Alternative Response Providers (ARP)

Objective: Ensure all ARP cases in a certain district are appropriately served and increase monitoring and oversight of ARP service providers and referrals in all districts to ensure high quality work. This effort included monitoring reassignment practices to ensure that no “Appropriate” reports are closed by the ARP provider before an assessment of child safety is completed.

Status: This objective was initiated in March 2018 and has been completed.

Initiative 2: Ensure Consistent, High-Quality Casework Practice for Child Welfare Services

Quality Improvement Objectives

- *Objective:* Increase quality review of casework practice statewide through implementation of the Quality Improvement Program. This program increases oversight of casework practice through continuous, real-time review of Child Welfare caseworker documentation.

Status: This objective was initiated in July 2017 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Obtain consistent statewide practice through implementation of the Structured Decision Making tool to strengthen consistent, research and evidence-based decision making across Child Welfare practice. This tool provides a structured guideline against which caseworkers can benchmark their decision-making and determine next steps.

Status: This objective was initiated in the spring of 2016 and will continue to be an ongoing focus of OCFS work.

Intervention Objectives

- *Objective:* Increase high quality statewide practice through continued implementation of the Family Teaming Practice. Family Teaming Practice increases engagement of caregivers and their informal supports—which are such non-paid supports as relatives and neighbors. This “teaming” works to create a plan to meet the safety needs of children involved with Child Welfare interventions.

Status: This objective was initiated in June 2016 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Increase child safety-focused interventions by transitioning from the use of contracted providers (ARP) for assessments of Reports of Abuse. This action increases safety of children involved with child welfare interventions by having only Child Welfare caseworkers conduct assessments related to reports of abuse.

Status: This objective was initiated in the summer of 2017 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Strengthen consistent statewide practice and reduce permanency timeframes by discontinuing Out of Home Safety Plans. This action mitigates risk related to the practice of agreeing to place a child outside of their parents' home(s) with another caretaker, without a court directive and court oversight.

Status: This objective was initiated in February 2018 and will continue to be an ongoing focus of OCFS work.

Personnel, Management and Training Objectives

- *Objective:* Complete personnel investigation of two recent cases to review and make recommendations for improvement in Child Welfare practice.

Status: This objective was implemented in December 2017 and expanded in February 2018. This has been completed.

- *Objective:* Implement the supervision "case review toolkit." Caseworker supervisors will use the toolkit to strengthen high quality, consistent casework practice across all districts. This toolkit also increases oversight and improves caseworker supervision.

Status: This objective was initiated in January 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Create two additional Child Welfare Regional Director Positions and implement the Chief Operating Officer model to increase oversight of the work in each of the eight districts, including intake practice and statewide operations.

Status: This objective was initiated in May 2018 and is still in the process of being completed.

- *Objective:* Re-class Intake and Assessment Child Welfare Human Services caseworker lines. This action increases the training requirements and expectations related to these positions, with a focus on investigation of child abuse and neglect.

Status: This objective was initiated in April 2018 and is still in the process of being completed.

- *Objective:* Increase training requirements for all Child Welfare caseworkers and supervisors. This action improves practice within Child Welfare and therefore creates increased child safety.

Status: This objective was initiated in April 2018 and is still in the process of being completed.

- *Objective:* Increase Child Welfare oversight and case review at the District level through adding clinical supervision by a clinical psychologist, which increases high quality casework practice. This objective was initiated in April 2018 and has been partially implemented.

Status: This will continue to be an ongoing focus of OCFS work.

- *Objective:* Increase caseworker retention and performance by implementation of trauma debriefing and a semi-annual psychological evaluation of staff. A similar system is employed by the Department of Public Safety to ensure the psychological wellbeing of workers.

Status: This objective was initiated in April 2018 and is still in the process of being completed.

- *Objective:* Review, plan and implement a Field Instruction Unit (an internship and training program created in partnership with University and College systems) for recruitment of high quality Child Welfare staff.

Status: This objective was initiated in April 2018 and is still in the process of being completed.

Statutory, Regulatory, and Policy Objectives

- *Objective:* Increase focus on the “Child’s Best Interest” through a full review of relevant statutes and policies and the implementation of the resulting recommended changes. This action strengthens the statewide approach to Child Welfare intervention by prioritizing the best interests of the children.

Status: This objective was initiated in April 2018 and will require statutory changes to complete.

- *Objective:* Change Mandated Reporting Statute to create a penalty for failure to report. This action ensures that the professionals required to make mandated reports do so.

Status: This objective was initiated in April 2018 and will take legislative action to complete.

- *Objective:* Review current Child Welfare policies of a 35-day timeframe for assessments and a 72-hour response timeframe for suggested changes in practice. This action increases child safety focused practice to increase the information available to Child Welfare caseworkers as they make decisions regarding child safety.

Status: This objective was initiated in April 2018 and is still in the process of being completed.

Initiative 3: Strengthen the Intake Process Related to Reports of Abuse

- *Objective:* Increase ability to holistically review Reports of Abuse by updating the Intake process to make all Reports of Abuse separate reports. This action increases high quality practice in the review of Reports of Abuse and ensures that the gravity of repeat reports is easily noticed and assessed within decision making for dispositions of incoming reports of abuse.

Status: This objective was initiated in March 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Increase the ability to recognize risk as demonstrated through multiple Reports of Abuse by implementation of an automatic Child Welfare Assessment. Circumstances where three “Inappropriate” reports have been filed within six months—in other words, when there are three alleged abuse reports that did not meet the threshold for Child Welfare intervention—a Child Welfare Assessment will automatically be triggered. The Child Welfare Assessment will be conducted in addition to the review of any Report of Abuse for appropriateness of Child Welfare Intervention.

The triggering of an automatic Child Welfare Assessment increases high quality practice in the review of reports of abuse – ensuring that patterns revealed via repeated reports will be assessed within the decision-making protocols for dispositions of reports of abuse.

Status: This objective was implemented in March 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Decrease the wait time for calls related to Reports of Abuse received by the Child Welfare Intake staff. This action increases high quality practice in the receipt and review of reports of abuse.

Status: This objective was initiated in March 2018 and will continue to be an ongoing focus of OCFS work.

Initiative 4: Improve Child Safety Decision-Making Through Improved Access to and Management of Information Available to Caseworkers

- *Objective:* Increase efficiency of caseworker access to state and federal background checks. This action increases the information available to Child Welfare caseworkers as they make decisions regarding child safety.

Status: This objective was initiated in April 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Change statutes to provide authority to Child Welfare staff to access education records. This action increases the information available to Child Welfare caseworkers as they make decisions regarding child safety.

Status: This objective was initiated in April 2018 and will take statutory changes to complete.

- *Objective:* Implement a tracking system for cases identified within the Child Death Serious Injury Policy to inform trends and develop a trend report. This report will guide review of cases and make recommendations for improvement in Child Welfare practice.

Status: This objective was implemented in March 2018 and is still in the process of being completed.

- *Objective:* Change Expungement Practice to increase robustness of Child Welfare records. This action increases the information available to Child Welfare caseworkers as they make decisions regarding child safety.

Status: This objective was initiated in March 2018 and is in the process of being completed.

Initiative 5: Increase Efficiency and Effectiveness of Casework Practice

- *Objective:* Increase efficiency and effectiveness of the Electronic Data System by implementing a Comprehensive Child Welfare Information System (CCWIS). This action increases the efficiency of documentation and increases thorough oversight and supervision, as well as improves the quality reports and data.

Status: This objective was initiated in fall 2017 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Implement efficiencies for casework practice by instituting Court Workers for Child Welfare caseworkers. These individuals will be DHHS staff assigned to assist in the preparation of child welfare court cases to increase the efficiency of Child Welfare casework related to court activities.

Status: This objective was initiated in March 2018 and will continue to be an ongoing focus of OCFS work.

Initiative 6: Strengthen Overall System of Child Welfare Practice

Implementation of New Practices Objectives

- *Objective:* Create and implement a SWOT Team for review of OCFS Child Welfare Practices and Procedures to identify System Strengths and Areas of Need. The SWOT Team will be charged with making recommendations for additional improvements in Child Welfare practice.

Status: This initiative was implemented in March 2018 and is still in the process of being completed.

- *Objective:* Implement the Community Intervention Program (CIP) to increase services available for families at-risk of child abuse by providing these families assistance in identifying risks and successfully obtaining informal and formal supports aimed at reducing those factors.

Status: This objective was initiated in summer 2017 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Complete review of Children's Behavioral Health System to improve Child Welfare practice and the availability of Children's Behavioral Health services to meet the needs of children involved with Child Welfare interventions.

Status: This objective was initiated in March 2018 and will continue to be an ongoing focus of OCFS work.

Implementation of Practices for Populations with Specific Risk Factors

- *Objective:* Implement Plan of Safe Care procedures and policy to ensure that the needs of children who are exposed to substances are addressed appropriately.

Status: This objective was initiated in April 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Complete review of Child Welfare practice and implement practice changes for cases involving self-injury and medical neglect.

Status: This objective was initiated in May 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Complete review of Child Welfare practice and implement practice changes for cases involving unexplained injury to children under the age of five. Review of cases by a Child Abuse Physician Expert improves Child Welfare practice.

Status: This objective was initiated in May 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Complete review of Child Welfare practice and implement practice changes for cases involving children with disabilities.

Status: This objective was initiated in May 2018 and will continue to be an ongoing focus of OCFS work.

- *Objective:* Complete review of Child Welfare practice and implement practice changes for cases involving parents with disabilities.

Status: This objective was initiated in May 2018 and will continue to be an ongoing focus of OCFS work.

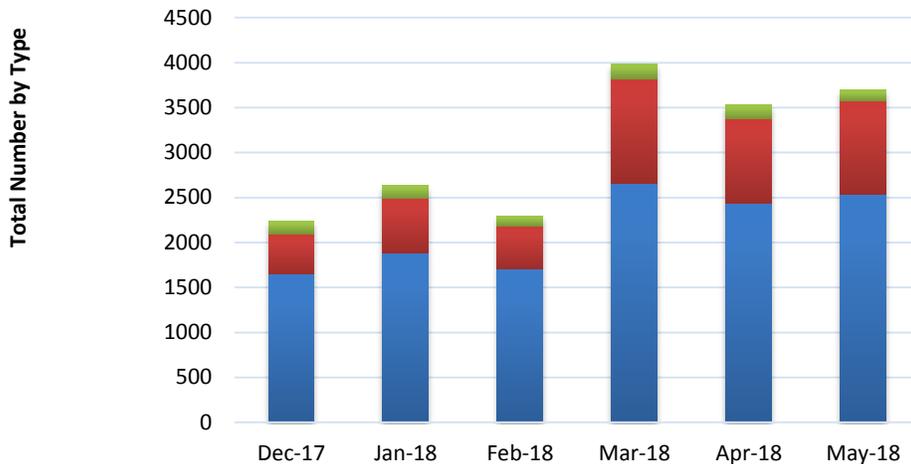
Conclusion

The Department has undertaken a significant review of the internal child welfare process. Although many of the reforms mentioned herein are in response to recent incidents, several were previously initiated and have been in the process of development and implementation. The Department has been in contact with corresponding agencies in other states to identify best practices for implementation in Maine.

This list of reforms is not exhaustive of all reforms that may be undertaken. Further reforms may be recommended or implemented upon the completion of additional, upcoming reviews. However, the Department can assure the public that these reforms have resulted in a more responsive and protective system. The public should have confidence that the Child Protective Service system can and will take action where appropriate to protect a child in a potentially abusive situation.

Child Protective Workload Overview, 6-18-18

Intake Reports and Assessment Assignments by Month



	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
# Assigned to Contract Agency	135	140	109	165	150	117
# Assessments	453	607	484	1158	937	1037
# Intake Reports	1645	1882	1701	2657	2438	2536

The total number of intake reports and assigned assessments has risen significantly and remained steady since March 2018.

This table shows the cumulative increase in intake reports and resulting assessment activities as well as the specific monthly count of each activity type.

The number of assessments assigned to the District offices have increased by 115% since January 2018. This table shows the number of assessments assigned by District at three points in time: January 2016, January 2017, and 6/14/18.

ASSESSMENTS

115% INCREASE FROM THE NUMBER OF ASSESSMENTS ASSIGNED IN JANUARY 2017

DISTRICT	TOTAL OPEN ASSESSMENTS AS OF POINT IN TIME JANUARY 2016	TOTAL OPEN ASSESSMENTS AS OF POINT IN TIME JANUARY 2017	TOTAL ASSESSMENTS OPEN AS OF 6/14/18
1	105	79	201
2	103	95	186
3	172	167	392
4	58	60	194
5	200	145	235
6	104	106	241
7	57	48	83
8	54	63	112
STATE	853	763	1644

CRITICAL CASE MEMBERS* ASSESSMENTS
 *Number of Children and Adults in the Household

DISTRICT	TOTAL OPEN ASSESSMENTS AS OF POINT IN TIME JANUARY 2016	TOTAL OPEN ASSESSMENTS AS OF POINT IN TIME JANUARY 2017	TOTAL ASSESSMENTS OPEN AS OF 6/14/18
1	397	295	769
2	402	363	698
3	685	670	1495
4	231	241	710
5	795	588	922
6	392	413	850
7	219	177	297
8	207	238	418
STATE	3328	2985	6159

This table further explains the workload impact of current assessment activities. As of 6-14-18, there are 1,644 open assessments which include 6,159 individuals requiring assessment activities, which are known as critical case members.

Recent Practice Change and Resulting Assessment Impact

Increase the ability to holistically review Reports of Abuse by updating the intake process to make all Reports of Abuse separate reports. This action increases high quality practice in the review of Reports of Abuse and ensures that the gravity of repeat reports is easily noticed and assessed within decision making for dispositions of Reports of Abuse.

Additional Assessments March - May, 2018					Assessment Dispositions		
Initiative	Month		Total New Assessments	% of Total Monthly Assessment Count	Substantiated/ Indicated	Unsubstantiated	Not Yet Finalized
Third inappropriate report in 6 months (effective 3/26/18)	March		28	2%	1	22	5
	April		105	11%	17	59	29
	May		109	11%	0	0	109
Open Reports with New Reports Added to Case	March	24-hour response	10	1%			
	March	72-hour response	27	2%	13	11	13
	April	24-hour response	54	6%			
	April	72-hour response	193	21%	64	115	68
	May	72-hour response	205	20%	0	0	205
Assessments from cases previously assigned to ARP	March		303	26%	28	236	39
	April		42	5%	10	19	13
	May		46	4%	0	0	46
Month	Total Monthly Assessments		Total New Type of Assessments		% of Total Monthly Assessment Count		
March	1158		368		32%		
April	937		394		42%		
May	1037		418		40%		

Planned Practice Change and Projected Impact – End Use of ARP for Assessment and Intake Activities

Increase child safety-focused interventions by discontinuing the use of contracted providers (ARP) for assessments of Reports of Abuse. This action increases safety of children involved with child welfare interventions by having only Child Welfare caseworkers conducted assessments related to reports of abuse.

ARP REFERRALS

Includes referrals at Intake, Post Assessment and Post Case Closure

DISTRICT	TOTAL REFERRALS ASSIGNED TO ARP CY 2016	TOTAL REFERRALS ASSIGNED TO ARP CY 2017	TOTAL REFERRALS ASSIGNED TO ARP YTD 2018	Projected ARP Referrals CY 2018
1	376	355	118	256
2	280	318	135	293
3	700	675	295	639
4	340	331	57	124
5	473	432	118	256
6	367	307	86	186
7	152	148	66	143
8	151	205	80	173
STATE	2839	2771	955	2069

This table shows the number of additional cases that OCFS Child Protective Services (CPS) workers will receive with the end of the use of ARP services for assessment activities. There will be approximately 2,069 additional cases completed by OCFS CPS workers across the Districts with the implementation of this goal.

Planned Practice Change and Projected Impact – End the Practice of Out of Home Safety Plans

Strengthen consistent statewide practice and reduce permanency timeframes by discontinuing Out of Home Safety Plans. This action mitigates risk related to the practice of agreeing to place a child outside of their parents’ home(s) with another caretaker, without a court directive and court oversight.

Open Services Cases that require court oversight are more time-consuming work for caseworkers. However, this court directives and court oversight increase quality practice and decrease the length of time a case takes to reach permanency.

The District staff have already been notified of this practice change and have been implementing the change in practice.

SERVICE CASES		
DISTRICT	TOTAL OPEN SERVICE CASES with Out of Home Safety Plans AS OF POINT IN TIME MARCH 2017	TOTAL OPEN SERVICE CASES with Out of Home Safety Plan AS OF 6/14/18
1	56	19
2	37	0
3	42	19
4	18	6
5	80	33
6	60	10
7	30	6
8	6	2
STATE	329	95

**Assessment Positions and Caseloads by District
as of 6-15-18**

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	3
Assessment Caseworkers	13
District Caseworker Vacancies	1
Total Assessment Cases District 1	169
Caseload Average District 1*	12.5

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	4
Assessment Caseworkers	17
District Caseworker Vacancies	3
Total Assessment Cases District 2	162
Caseload Average District 2*	10.6

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	5
Assessment Caseworkers	14
District Caseworker Vacancies	4
Total Assessment Cases District 3	341
Caseload Average District 3*	23.9

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	2
Assessment Caseworkers	8
District Caseworker Vacancies	4
Total Assessment Cases District 4	148
Caseload Average District 4*	25.4

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	4
Assessment Caseworkers	20
District Caseworker Vacancies	1
Total Assessment Cases District 5	220
Caseload Average District 5*	11.7

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	3
Assessment Caseworkers	18
District Caseworker Vacancies	0
Total Assessment Cases District 6	217
Caseload Average District 6*	12

**Assessment Positions and Caseloads by District
as of 6-15-18 (cont.)**

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	2
Assessment Caseworkers	8
District Caseworker Vacancies	4
Total Assessment Cases District 7	76
Caseload Average District 7*	11

Unit Supervisor and Team	# of Assigned Positions
Assessment Supervisors	1
Assessment Caseworkers	5
District Caseworker Vacancies	0
Total Assessment Cases District 8	84
Caseload Average District 8*	19.3

Statewide Totals	Current Totals
Total Assessment Supervisors	24
Total Assessment Caseworkers	103
Statewide Total Assessment Cases	1417
Statewide Caseload Average	15.8

*Caseload averages are based on assessment caseworkers carrying a full caseload. Workers who are out on FML or on vacation were removed from the average in order to more accurately represent the actual workload of assessment staff. This information represents a current snapshot of assessment caseloads. Caseload is subject to variation. Assessment caseload has dramatically increased, starting in March of 2018. Please see Child Protective Workload Overview 6-18-18.