

Molly Owens, Esq.
Chief | Parents' Counsel Division
9 Free St.
Machias, ME 04654
(207) 446-3186
Molly.owens@maine.gov

RE: L.D. 592 – OPPOSITION to "An Act to Amend the Laws Governing the Crime of Endangering the Welfare of a Child"

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Senator Beebe-Center, Representative Hasenfus, members of the Criminal Justice and Public Safety Committee, my name is Molly Owens and I am offering written testimony as Chief of the Parents' Counsel Division of the Maine Commission on Public Defense Services in opposition to L.D. 592, "An Act to Amend the Laws Governing the Crime of Endangering the Welfare of the Child".

On behalf of the Parents' Counsel Division, whose mission is to protect parents' rights and support family integrity, our position is that passage of this bill would not increase child safety or protect children but rather would criminalize a broad and vague class of parental actions that "recklessly violate a duty of care". "Duty of care" is not defined in statute and a parent's duty, arguably, changes with changing times. This vagueness exposes parents who do not have any criminal intent to injure their child, to felony criminal charges, incarceration, family separation, and possible termination of parental rights. And while it may not be the bill's intent to capture, for example, a parent who lets her 10 year old child play on the playground and the child falls from the jungle gym and gets seriously injured; a parent who lets his child walk down to the corner store but the child gets struck by a car; a parent who leaves their 12 year old child home alone while the parent goes to an appointment and the child gets injured; a parent who chooses not to vaccinate his child but the child gets Covid, measles, or HPV; or a parent who is in a domestically violent relationship and the child gets injured – those are all situations, under this proposed bill, that could lead to felony criminal charges, incarceration, and family separation.

If the legislature's intent is protection of children, this bill is not targeted to do that. LD 592 is not forward looking such that it aims to protect children from foreseeable harms. If that was the case, we would be discussing funding of agencies and resources to help families experiencing poverty, domestic violence,

addiction, homelessness, and untreated or undertreated mental health issues. Rather this bill is entirely retrospective and as such, is only about punishment of conduct.

Already, when there is a child injury, and certainly if there is a child death, there is rapid law enforcement and Department of Health and Human Services (DHHS) involvement. DHHS will investigate the injury, the child, and the family. It will gather medical, school and other relevant records. It will interview parents, family members, neighbors, and other people involved with the family. If the circumstances warrant, DHHS can file an emergency petition in court to have the child immediately removed from a parent's custody if they believe the child has been exposed to abuse or neglect – and this is before and regardless of whether a parent is ever criminally charged. In DHHS cases, the parents will be afforded representation, the child will have a guardian ad litem, and there will be significant DHHS and court oversight. Parents will be offered services to help alleviate whatever circumstances brought the family to the department's attention, with a focus on treating the behaviors and keeping the family intact and children safe. If DHHS determines that the parents cannot keep the child safe, it can file a petition to terminate parents' rights. And while as a parent's attorney, I am always advocating for the parent and for family reunification and often have a very different perspective about family integrity than the department, we have an opportunity to air those differences in front of the court and let the court decide how and whether the parent/s have alleviated jeopardy to the children. Criminalizing the conduct of "recklessly violating a duty of care" will not further this process, will not protect children and will not help families reunify, access services and treatment, or change underlying conduct.

Not only are the proposed changes in LD 592 not protective of children, but they are also already crimes in other parts of the criminal code, Title 17-A. For example, the bill proposes adding to Title 17-A §554 (endangering the welfare of a child), a new subsection 1(E), which would make it felony endangering if a person, "endangers the health, safety or welfare of a child by recklessly violating a duty of care or protection, resulting in death of the child." The legislature doesn't need to create a new crime for this conduct, it is already the crime of manslaughter, which as defined in Title 17-A §203, is conduct by a person who, "recklessly or with criminal negligence causes the death of another human being". The felony crime of manslaughter includes the lesser, "negligence" in its definition, and makes this conduct a Class A crime.

Similarly, the bill proposes adding to Title 17-A §554, a new subsection 1(D), which would make it felony endangering if a person, "endangers the health, safety or welfare of a child by recklessly violating a duty of

care or protection, resulting in serious bodily injury to the child.” Conduct resulting in serious bodily injury to a child is already criminalized in at least four places in the criminal code:

- 1) Title 17-A §207 (1A), Assault, in which a person is guilty of assault if he “intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person”- a Class D crime;
- 2) Title 17-A §207 (1B), Assault, in which an adult who “intentionally, knowingly or recklessly causes bodily injury to another person who is less than 6 years of age” is guilty of a class C felony;
- 3) Title 17-A §207-A, Domestic violence assault, which criminalizes an assault on a family or household member – a Class D crime; and
- 4) Title 17-A §208, Aggravated assault, in which a person who intentionally, knowingly or recklessly causes bodily injury to another “that creates substantial risk of death or extended convalescence...; serious, permanent disfigurement or loss of substantial impairment of the function of any bodily member or organ; or...bodily injury to another under circumstances manifesting extreme indifference to the value of human life”, are Class A or B felonies.

Creating additional felony charges for the same or similar conduct will not add anything new to the criminal code and will not protect children but it will ensnare parents in the criminal system who’s conduct may not have been the intended conduct of this proposed bill.

LD 592 ignores the realities and complexities of families. With the broadest of strokes, this bill felonizes a range of conduct while doing nothing to protect or strengthen families struggling with the most common problems such as poverty, addiction, access to services, safe housing, domestic violence, and mental health support for parents and children. This bill isn’t aimed at protection, it’s aimed at punishment. Passage would lead to family separation, financial hardship and emotional trauma for children, parents and families. On behalf of the Parents’ Counsel Division, we ask you to vote ought not to pass. I am happy to answer questions or join the work session, if requested.

Respectfully,

Molly Owens, Esq.
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