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RE: L.D. 891 – SUPPORTING TESTIMONY for "An Act to Exclude Poverty as a Factor When Determining Instances of Willful Neglect or Abuse of a Child"

RE: L.D. 1406 – NEITHER FOR NOR AGAINST "An Act to Amend Certain Definitions in the Child and Family Services and Child Protection Act"

Chair Ingwersen, Chair Meyer, members of the Health and Human Services Committee, my name is Molly Owens, Chief of the Parents' Counsel Division of the Maine Commission on Public Defense Services, and I am offering combined testimony on L.D. 891, "An Act Exclude Poverty as a Factor When Determining Instances of Willful Neglect or Abuse of a Child" and L.D. 1406, "An Act to Amend Certain Definitions in the Child and Family Services and Child Protection Act". My testimony is in support of L.D. 891 and neither for nor against L.D. 1406 for the reasons set forth below.

I address these bills together because both offer a starting point for decoupling poverty and neglect by modifying various definitions in Title 22, including definitions of abuse and neglect, jeopardy, and serious harm to make it clear that poverty, or lack of financial resources, is not a basis to remove children from their families or find parents present jeopardy to their children. Both bills recognize and try to remedy what low-income parents, families, and parent attorneys recognize and experience on a regular basis – that under our current system, poverty is conflated with neglect and families are separated due to their financial situation. L.D. 891 goes further in that it calls on the court to analyze whether the department, prior to petitioning to remove children from their families, made specific efforts to prevent removal and tasks the department with articulating what those efforts were, how long they were attempted, and the outcomes.

As a practitioner who defends parents and family integrity, it is unnervingly common, certainly in Washington County where I practice and which is typically the lowest or second lowest income county in

Maine, that a family's financial resources are at the heart of many child removals. Parents at or below the poverty line struggle with transportation, adequate food, clothing, heat, water and stable housing. A parent is neglectful if the child doesn't have "adequate" food, clothing, shelter, supervision or care. But adequate based on what calculus? Compared to whose life? Through what or whose lens? Parents who lack transportation, for example, are reliant on transportation provided through Maine Care to get their children to medical appointments. These rides are often unreliable, cancel due to weather, or fail to show up. Missed appointments, even if rescheduled, are recorded in the child's file and can, in part, be a basis to support the department's petition for removal. A basis for a neglect report might be that a child got off the bus and the parent wasn't home yet because their car broke down or the next shift worker didn't get to work in time to relieve the parent. Some children in poverty come to school in the same clothing, perhaps dirty clothing or clothing that doesn't fit well. They may not have a substantial lunch or they may come to school "hungry". In these and similar situations, children and their families are flagged by teachers, nurses, bus drivers, etc. and are often reported to DHHS for concerns of neglect. What practitioners find is that in these circumstances the department and other community members mistake poverty for neglect.

Neglect, as currently written in the statute, has no intentionality to it. It is entirely subjective. What might be found neglectful in one region or county may not be neglect in another. These are cases where there is no physical or sexual abuse and children aren't being mistreated or willfully neglected. Rather the family is struggling to reliably provide necessities. That struggle is not neglect and it is not abuse. It is not intentional deprivation of basic necessities. That struggle is poverty.

Children in low-income families can be and are removed because our society has decided that poor families can't care for their children in the way that we want them to be cared for or in a way that we're comfortable with. Our current law places little value on a loving, yet low-income parent. If however, we move in a different direction – identifying a family's needs and using money that would otherwise go into a removal case: paying attorneys for parents, paying a GAL, paying a caseworker, court time, payments to foster families – to help the family pay for a used car, replace a washing machine, fix their well, get bus passes, buy clothing, find housing – we could avoid removals and help families start to change their situation.

However, if we continue to punish poverty, we will continue to have an overburdened system, with overburdened case workers, supervisors, attorneys and courts. In that model, we will miss the cases that should be the highest priority while traumatizing families that simply need support. If we want to be

protective of families and children, we should be discussing funding agencies and resources to help families experiencing poverty, domestic violence, addiction, homelessness, and untreated or undertreated mental health issues.

In a civilized society, we have a moral imperative, and it is in our collective best interest to protect and strengthen families, including, or especially, those struggling with common problems associated with poverty. With these bills, we have an opportunity to separate poverty from neglect, and task the department with having to exhaust their efforts to keep families together and articulate at the time of filing a petition what services the family was offered, for how long, and to what end.

On behalf of the Parents' Counsel Division, I support strong language that decouples poverty and neglect and takes the best of both parts of these bills. I offer support for L.D. 891 for the strength of the language, the significant strides it makes toward eliminating poverty as a justification for removal, jeopardy, or neglect, and because as a family defense attorney, I have an ethical duty to support the strongest language possible to disentangle poverty and neglect. I am neither for nor against L.D. 1406 because I think the language could be stronger and clearer, offering more direction to practitioners and the courts about what is and isn't neglect and making sure the department conducts a thorough assessment about the root of the so-called neglect.

I encourage you to pass L.D. 891 or combine a work session for both bills in an effort to come up with the strongest language to protect families. I am happy to answer questions and would be grateful for the chance to join the work session to bring parents' perspectives forward as the committee considers the next steps.

Respectfully,

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