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RE: L.D. 1544 – SUPPORTING TESTIMONY for "An Act to Support Families by Improving the Court Process for Child Protection Cases"

Senator Carney, Representative Kuhn, members of the Judiciary Committee. My name is Molly Owens, Chief of the Parents' Counsel Division of the Maine Commission on Public Defense Services. I am offering testimony in support of L.D. 1544, "An Act to Support Families by Improving the Court Process for Child Protection Cases". This legislation offers important, overdue reforms to and accountability of our child welfare system while maintaining appropriate safeguards. L.D. 1544 proposes significant changes to Title 22, all of which take a child-centered approach to child protection cases.

This bill does three things: 1) it stops the practice of punishing parents for exercising their right to a termination hearing; 2) it requires the department to do a careful analysis of the harm to the child of removal from the child's home; and 3) it requires the department and the court make explicit attempts and findings about what efforts were made to keep families together and whether those efforts were reasonable. The proposed changes are consistent with current literature about the harm of removal of children from their family homes and the necessity of providing meaningful, individualized services to support family reunification. The changes are also supported by the Maine Child Welfare Advisory Panel – a federally mandated multidisciplinary task force comprised of a panel of private citizens and professionals across disciplines involved or working in the child protection system.

The bill's proposed changes should not be controversial. They should not be shocking. They are not asking for too much. These are common sense changes which take into account the amount of trauma that children and families experience when they are separated. This legislation calls on the department and the courts to weigh that harm and to look carefully at the family before removing children. Keeping in mind that the majority of child removals in Maine stem from "neglect", a somewhat nebulous term often conflated with poverty, these changes outline how the department and the courts perform a more thorough

analysis of the family's needs. For the reasons set forth below, the Parents' Counsel Division offers strong support for this bill.

1) Removing Prior Involuntary Termination from the Definition of Aggravating Factor

Right now, parents who exercise their right to a termination of parental rights hearing and lose that hearing, face nearly insurmountable barriers to reunification in later cases regardless of how their circumstances may have changed or how much time has passed since the involuntary termination. This is because as currently defined in Title 22 §4002(1-B)(C), a prior involuntary termination is an "aggravating factor". Once an aggravating factor attaches, the department is statutorily permitted to, and often does, cease reunification efforts in the new case.

Retaining prior termination of parental rights in the definition of "aggravating factor" is both out of step with the other aggravating factors listed in the definition, and creates perpetual punishment for a parent who simply exercises their right to and loses at a contested hearing.[1] It closes the door to parents demonstrating their current fitness and fails to recognize that, for example, many parents have successfully addressed the issues that led to previous terminations, may have overcome addiction, completed mental health treatment, or escaped domestic violence, or life circumstances such as poverty, housing instability, employment, and support networks may have changed dramatically.

L.D. 1544's proposal to remove a parent's prior involuntary termination of parental rights from the definition of "aggravating factor" represents a significant step toward a more rehabilitative and family-centered approach to child welfare and acknowledges that parents can grow and change over time.

I suspect the Department, if opposed to this proposed change, will testify that it rarely uses a prior involuntary termination as an aggravating factor, and then, only in the most extreme situations. However, based on my experience and the experience of many parent attorneys across the state, that's not the reality. The reality is, during negotiations throughout the life of a case, the department often takes the position that it will allege an aggravating factor if a parent wants to have a contested hearing. For example, if a parent wants a Jeopardy hearing and that parent had their rights to a previous child involuntarily terminated, the department will often seek an aggravating factor based on that previous termination, and in so doing, seek

[1] Other aggravating factors include subjecting the child to: rape, sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, prostitution, sexual exploitation, sex trafficking abandonment, torture, chronic abuse; refusal to comply with treatment required in a reunification plan for 6 months; and a parent convicted of crimes of murder, felony murder, manslaughter, aiding, conspiring or soliciting murder or manslaughter, felony assault resulting in serious bodily injury bodily, where the victim was a child for whom the parent was responsible, or a child who was a member of a household lived in or frequented by the parent. See 22 MRS §4002(1-B).

to cease all reunification efforts. This coercive approach puts the parent in a most difficult position – either exercise her *right* to a hearing and risk the court finding against her and finding the department can cease reunification, which typically paves the way for the department to file for termination, or waive the hearing and give up her right to fight for her children. The department uses this same coercive approach leading up to termination proceedings. Often in these negotiations, the department will "remind" the parent (through the parent's attorney) that if the parent exercises her right to a hearing and loses, and if she ever has another case with the department, it will seek an immediate cease reunification order at the start of the case simply based on the involuntary termination aggravating factor.

This draconian approach punishes parents who may believe and have evidence that they are ready and able to regain custody of their child and want to exercise their right to a hearing before an impartial tribunal. The imbalance in these situations is palpable – the department, which already holds tremendous power in these cases, can use a previous involuntary termination to coerce parents into agreed upon orders by threatening to forever freeze that parent in time when they were at their lowest. The current language totally ignores a parent's ability to change and is analogous to a criminal statute allowing prosecutors to allege, and the court to find, that a defendant who previously exercised his right to a trial and lost, is presumptively guilty of an entirely new and unrelated charge simply because he exercised that right.

Repealing prior involuntary termination of parental rights from the aggravating factor definition does not prevent courts from *considering* a parent's history, if relevant, but rather removes the presumption against reunification and demands an individualized assessment of each family's circumstances in the moment.

2) <u>Requiring Consideration of the Trauma of Removal to the Child</u>

The proposed language in L.D. 1544 also requires a new analysis regarding trauma to children: the department must *specifically articulate* how it weighed the trauma to the child of removal against the alleged risk of harm to the child if that child remained in the home. If the department files a removal petition with the court, the court must consider whether the department has *actually and appropriately* balanced the competing harms, and whether it exhausted its options to mitigate the risk of harm to the child and avoid removal before signing an order removing a child from his or her home. This final check reinforces the importance of intentionality - that before it separates a child from his or her family, the department must clearly articulate how the risk to the child of staying in her home is greater than the trauma of removal, and the court, assessing that balancing test, must consider those competing harms before ordering removal.

This individualized model aligns with trauma-informed approaches to child welfare that consider the whole child's wellbeing, not just immediate safety concerns, and attempts to put a process in place whereby both the department and the court thoroughly and individually weigh the full range of risks and benefits when making removal decisions. This analysis does not ask too much of the department, rather it recognizes how traumatic family separation is, and tasks the department with conducting a thorough child-centered approach, focused on ensuring protection of children and families while acknowledging that removal is not a harm-neutral intervention.

A robust body of research and literature analyzing how separation from parents causes significant and sometimes irreparable harm to children, supports why Maine should be heading in this direction of a more individualized and trauma-informed approach.[2] Without heightened trauma consideration before child removals, children and families will continue to suffer detrimental effects from separation long after reunification or other permanency placements are in effect.[3]

3) Requiring Explicit Findings on Reasonable Efforts

The third significant change proposed by L.D. 1544 is the requirement for the court to hold the department to its obligation to make reasonable efforts to both prevent removal of children from their homes and to reunify families before petitioning to terminate parental rights. The proposed bill requires the court make explicit findings about whether and how the department met or failed to meet its statutory obligation to provide reasonable reunification efforts. While reasonable efforts should be uniquely tailored to each family, they may include, for example, an analysis, of whether parents received appropriate, accessible services addressing the specific issues that led to department involvement; whether barriers to services such as transportation, visitation, mental health and substance treatment, or housing were

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[2] See Shanta Trivedi, The Harm of Child Removal, 43 New York University Review of Law & Social Change 523 (2019). Available at: https://scholarworks.law.ubalt.edu/all_fac/1085; and
Administrative Office of the Courts of Washington, Family and Youth Justice Programs, https://www.wacita.org/harm-of-removal-2/guidance-for-courts-harm-of-removal-across-ages-stages-of-child-development/infants-birth-1/; https://www.wacita.org/harm-of-removal-2/guidance-for-courts-harm-of-removal-across-ages-stages-of-child-development/toddlers-1-2/; https://www.wacita.org/harm-of-removal-2/guidance-for-courts-harm-of-removal-across-ages-stages-of-child-development/toddlers-2-3/; https://www.wacita.org/harm-of-removal-2/guidance-for-courts-harm-of-removal-across-ages-stages-of-child-development/preschoolers/; and
Casey Family Programs, Issue Brief Safe Children: How Does Investigation, Removal, and Placement Cause Trauma for Children, SC_Investigation-removal-placement-causes-trauma.pdf (casey.org); and
Casey Family Programs, Strategy Brief: How Can Investigation, Removal, and Placement Processes Be More Trauma-Informed?, 25.07-QFF-SC-Trauma-informed-investigation-removal-placement.pdf (casey.org); and
American Bar Association, 2018, Trauma Caused by Separation of Children From Parents: A Tool to Help Lawyers

[3] See Shanta Trivedi, The Harm of Child Removal, 43 New York University Review of Law & Social Change 523 (2019). Available at: https://scholarworks.law.ubalt.edu/all_fac/1085.

addressed; whether services were culturally appropriate and responsive to each family's unique needs; and whether families were provided multiple and meaningful opportunities for engagement and reunification before concluding efforts were unsuccessful.

Clarifying the department's obligations ensures a more individualized family-centered approach and provides a level of accountability which the system currently lacks. Under the proposed legislation, before removing children and before terminating a parent's rights, courts *must* find that the department has met its obligations and that families and children have been assessed individually. This approach seeks to guard against unnecessary and traumatic family separations based on administrative shortfalls, poverty, lack of resources, or the passage of time, and that removal and termination only occur after genuine, demonstrable efforts to keep families together have been tried and have failed.

Conclusion

L.D. 1544 represents a significant step forward in creating a child protection system that is focused on family preservation. It is an opportunity for our child welfare system to pivot away from punishment and toward family-centered integrity. L.D. 1544 is not about creating more work for the department – these are analyses we should universally want and demand of our system: not punishing parents who have exercised their right to a termination hearing; acknowledging the trauma of separation; and ensuring accountability for reasonable efforts. With these changes, the system will be better suited to view child protection cases through an individualized and trauma-focused lens while preserving family integrity and offer family support services. The reforms in this bill strengthen Maine's commitment to child safety by ensuring that interventions are necessary, proportionate, and truly in children's best interests. I strongly urge you to vote OUGHT TO PASS this important legislation.

Respectfully,

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