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SPEAKER OF THE HOUSE

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*Testimony of Speaker Rachel Talbot Ross presenting
**LD 1516, An Act to Establish Alternative Sentencing
for Primary Caregivers**
Before the Joint Standing Committee on the Judiciary*

Senator Carney, Representative Moonen and esteemed members of the Joint Standing Committee on Judiciary, I am Rachel Talbot Ross I represent House District 118 which is the Portland peninsula I also have the distinct honor of serving as the Maine Speaker of the House I am here today to present **LD 1516, An Act to Establish Alternative Sentencing for Primary Caregivers.**

This bill requires a court when sentencing a defendant convicted of an offense that may result in a term of imprisonment to consider an alternative sentence other than imprisonment in limited circumstances It allows a defendant to file a motion with the court, supported by an affidavit that establishes that the defendant is a primary caregiver of a minor, elderly dependent or a person with a mental or physical disability A primary caregiver is defined as a person who has the greatest responsibility for the care of a minor, an elderly dependent or an individual with a physical or mental disability

LD 1516 provides clear guidance to judges considering alternative sentences about the factors to weigh in reaching a decision The court shall consider

- 1) The nature and circumstances of the offense committed,
- 2) The history and character of the defendant,
- 3) The defendant's family circumstances and relationships, and
- 4) The impact of any sentence considered on every individual for whom the defendant is a primary caregiver

The court is then required to make written findings of its decision before issuing the sentence

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

This bill advances sound public policy. Separating a caregiver from a child or vulnerable adult is not in the best interest of families. In some cases, it is literally punishing the child for the sins of a parent. As a result, requiring judges to consider of the ripple effects of incarcerating a parent or caregiver in some instances is in the best interest of Maine's communities and families. The impacts of incarceration of a parent or caregiver on children, elderly dependents, and vulnerable people with a physical or mental disability are daunting. LD 1516 can reduce or eliminate these negative experiences without jeopardizing public safety. Community-based sentencing alternatives help children and caregivers. When a court chooses not to incarcerate a defendant, but rather issues an alternative sentence, it allows a primary caregiver to be a stable, uninterrupted presence in a child's life or in the lives of others who depend on the defendant's care.

In February of this year, the Prison Policy Initiative issued a report on this subject area. It found that over 5 million children have been separated from their parents due to incarceration. The incarceration of a parent has profound negative impacts on a child's well-being. The same is true for elderly dependents and persons with physical or mental disabilities who lose their primary caregiver to incarceration.

At least a dozen states have enacted legislation to mitigate the impacts of family separation and disruption due to incarceration. Illinois and Massachusetts require judges to consider a person's status as a caregiver before imposing a sentence. That is the approach taken by LD 1516. California, Louisiana, Oregon, Tennessee, Washington, and Missouri have enacted caregiver diversion laws. These laws have established specialty programs for parents or give parents priority access to diversion or alternative-to-incarceration programs such as drug treatment programs, electronic monitoring, or other community-based alternatives. All of these laws are designed to reduce the adverse effects on children and others who had been cared for by the person facing sentencing.

LD 1516 does not mandate alternative sentencing. It simply requires a court to consider the status of a defendant as a primary caregiver before imposing a sentence. The sentencing court is still bound to consider the nature and circumstances of the offense and the history and character of the defendant. If the court determines that public safety could be jeopardized if an alternative sentence was imposed, incarceration remains an option. The court still retains all of its existing discretion regarding sentencing persons convicted of violating Maine's criminal code. LD 1516 also does not apply to offenses that require a sentence of imprisonment.

You may hear or receive testimony today in opposition to LD 1516 claiming that it is not needed because alternative sentences are discussed and set out in 17-A M R S A §1502 (2)-(6) While alternatives to incarceration are discussed, that section does not include any reference to primary caregivers LD 1516 places the issue of primary caregivers and the impacts on those they care for front and center for the court's consideration when it exercises its discretion in applying §1502 It also places a minimal burden on the sentencing court to make written findings explaining its sentencing decision once the defendant raises the issue in a motion along with an affidavit regarding caregiver status It does so to make certain that a sentencing court consider the real consequences that a missing caregiver who is incarcerated has on those left behind

This bill provides and illuminates another path for courts to consider when fashioning sentences in very limited circumstances It will help mitigate the harm caused to children and others who might otherwise lose a parent or a needed caregiver to incarceration I ask you to please consider all of the harms that could be avoided for Maine's children and other vulnerable populations by acting favorably on LD 1516

Thank you very much for your time and attention this afternoon I am happy to answer any questions you might have