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**Testimony in Support of LD 966, "An Act Allowing Access by State Agencies and Hospitals to Certain Confidential Probate Court Records If the Access Is in the Public Interest"**

Senator Carney, Representative Kuhn, and honorable members of the Joint Standing Committee on Judiciary, I am Assistant Attorney General Cody Hopkins, and I am here on behalf of the Office of the Attorney General to testify in support of LD 966, "*An Act Allowing Access by State Agencies and Hospitals to Certain Confidential Probate Court Records If the Access Is in the Public Interest.*" This bill would permit employees and legal counsel of the Department of Health and Human Services, the Office of the Attorney General, agencies designated by the Governor to provide protection and advocacy for persons with disabilities pursuant to Title 5, section 19502, and hospitals licensed under Title 22, chapter 404 or 405 access to otherwise-confidential probate court records related to adult guardianships, conservatorships or protective arrangements. Such access will allow these individuals to carry out their official functions, duties, and responsibilities involving the protection of some of our most vulnerable residents. Privacy interests are protected because individuals obtaining access to these records will be required to maintain confidentiality of the records in accordance with existing laws, rules and regulations.

The OAG and the Department of Health and Human Services frequently must quickly access probate court records in order to engage in active adult guardianship, conservatorship, and protective arrangement cases in which the State is a party (such as public guardianship cases involving an adult individual who lacks cognitive capacity and may be at risk of abuse, neglect or exploitation), conduct Adult Protective Services investigations, identify the nature of the State's interest in a private probate matter upon receiving notice from a court, and confirm whether a vulnerable adult already has a court-appointed decision maker in place (and whether such decision maker is acting within the scope of their authority pursuant to any court order). Quick access to probate court records is vital when Adult Protective Services or the OAG have received a report that a vulnerable adult in Maine is subject to abuse, neglect or exploitation or when such an individual is hospitalized in a state psychiatric hospital.

Historically, Assistant Attorneys General, Adult Protective Services caseworkers, public guardian representatives, physicians and social workers at the state's psychiatric hospitals, as well as organizations routinely interacting with and serving vulnerable adults who may lack cognitive capacity (such as Disability Rights Maine and Maine hospitals) have accessed records on [www.maineprobate.net](http://www.maineprobate.net) (the site hosting the electronic court records for Maine's probate

courts). This access was possible because the records were publicly available. On September 1, 2019, Maine's new Probate Code (Title 18-C) went into effect, and the new Code included three new confidentiality provisions limiting the extent of the public's access to probate court records: 18-C M.R.S. §§ 5-308 (guardianship), 5-409 (conservatorship) & 5-511 (other protective arrangements). These provisions had a delayed effective date of January 1, 2021, in order to allow the Maine Supreme Judicial Court the opportunity to promulgate Rules to clarify exactly which information and records should not be available for public view. However, when such Rules had not been promulgated as of January 1, 2021, 18-C M.R.S. §§ 5-308, 5-409 & 5-511 went into effect and most of the information and records related to adult guardianships, conservatorships, and protective arrangements were removed from [www.maineprobate.net](http://www.maineprobate.net). The lack of access to probate court records significantly hindered both the OAG's and DHHS's ability to carry out their duties, removed a significant tool to provide oversight over court-appointed private guardians and conservators, and limited the state psychiatric hospitals' ability to appropriately and effectively treat patients.

In response, the Legislature twice delayed the effective date of 18-C M.R.S. §§ 5-308, 5-409 & 5-511 in order to give the Maine Supreme Judicial Court, in conjunction with the Advisory Committee on the Maine Rules of Probate Procedure, time to create and implement rules regarding access to probate court records. Draft amendments to the Maine Rules of Probate Procedure intended to address implementation of 18-C M.R.S. §§ 5-308, 5-409 & 5-511 were recently presented for public comment on January 28, 2025; unfortunately, these draft amendments to the Rules do not allow nonparties (including crucial stakeholders such as hospitals and Adult Protective Services) any functional access to information about adult guardianship and conservatorship cases in the probate courts. It is our understanding that the Advisory Committee on the Maine Rules of Probate Procedure believes that absent further legislative action it does not have the authority to allow access to nonparties for public interest purposes in the Rules, despite such access being crucial to the protection and oversight of vulnerable adults who are respondents in these guardianship and conservatorship cases and necessary to ensure compliance with public guardianship and conservatorship laws.

As discussed above, it is critical that entities statutorily required to serve, protect and prevent abuse, neglect, or exploitation of vulnerable incapacitated adults in Maine be able to promptly access probate court records related to such adults. We thus support this bill, which would allow access to only those entities which have a "need to know," while still safeguarding confidentiality. Moreover, because access to records will be cut off on April 1, 2025 if 18-C M.R.S. §§ 5-308, 5-409 & 5-511 are not amended, we support enactment of LD 966 on an emergency basis. This will ensure that any impediments to important adult protective activities will be as brief as possible.

We urge the Committee to vote Ought to Pass on LD 966.