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Testimony in Opposition to LD 1544, *An Act to Support Families by Improving the Court Process for Child Protection Cases*

Senator Carney, Representative Kuhn and distinguished members of the Joint Standing Committee on Judiciary, my name is Ariel Piers-Gamble. I am an Assistant Attorney General and Chief of the Child Protection Division at the Office of the Maine Attorney General. I am here to offer my Office's perspectives on LD 1544, "*An Act to Support Families by Improving the Court Process for Child Protection Cases.*" While there is a provision that we support, we are concerned that other provisions will detrimentally impact child protective services within Maine.

We support the provision requiring summary preliminary hearings to be held within fourteen days, and not merely scheduled within that timeframe. The inability to appoint counsel for parents, however, is the chief factor delaying summary preliminary hearings. According to the Maine Commission on Public Defense Services, as of April 9, 2025 at least 43 parents await the appointment of counsel. Without counsel, the court cannot hold a statutorily compliant summary preliminary hearing.

We are concerned about the requirement that each request for a preliminary protection order (PPO) include "[a] detailed summary of how the department weighed the trauma to the child of removal from the child's home against the alleged immediate risk of serious harm to the child and the specific factors the department considered." The bill also requires that the court, in considering whether to grant a PPO, must consider the trauma of removal and whether the department has "exhausted the options to mitigate the immediate risk of serious harm to the child and avoid removal of the child from the child's home." The impacts of removal are not usually immediately clear. It can take days to months to understand fully the impact of trauma on children, particularly those who cannot readily communicate their experiences. It can also be difficult to attribute a child's response to any particular source of trauma. Without a specific legal standard by which to weigh the competing harms of removal versus remaining in an abusive or neglectful environment, we would face the impossible task of securing an expert on an emergent basis who can both speak to the trauma of removal generally and each child's emotional and physical needs specifically, which may not be immediately apparent. The department is often intervening in crisis situations where there are multiple children with varied needs, emotions and behaviors that would need to be analyzed.

It is also unclear what "exhaust[ing] the options to mitigate the immediate risk of serious harm to the child to avoid removal" means. "Exhaust[ing] the options" appears to be much stricter than the current legal standard, which is that the department engage in reasonable efforts to prevent removal.

What would the bounds of these heightened efforts be? If the issue is unsanitary, unsafe and unstable housing, does the department have to locate, pay for and physically move the family somewhere else? Must it maintain that housing for the family? If so, how long? If the parents use substances to the point it imperils their children, must the department provide a sober, full-time, in-home caregiver?

Another provision would prevent consideration of prior involuntary terminations as an aggravating factor. In practice, it is uncommon to plead a prior involuntary termination of parental rights (TPR) as an aggravating factor and even less common to request a cease reunification order on those grounds. However, it can be an important tool to protect children from a parent who demonstrates behavior akin to chronic unfitness. While the definition of "aggravating factor" includes "chronic abuse" it does not include "chronic neglect." Therefore, if this part of the bill were to be enacted, we would be foreclosed from pursuing a cease reunification order for a parent who has demonstrated time and again that they cannot adequately meet their children's needs despite previous interventions.

Making the department's fulfillment of its reasonable efforts a prerequisite for terminating a parent's rights is a departure from well-settled law. This of course does not preclude the Legislature from changing the standard, but the current statutory structure strikes the appropriate balance between the interests at play in a child protection case: The fundamental right to parent one's children; the right of children to be free from abuse and neglect and to pursue safety, and, importantly, to achieve permanency in a time reasonably calculated to their needs; and the parens patriae interests of the state.

Under the current statutory structure, courts are not prevented from evaluating the efforts that all parties have engaged in throughout the duration of a child protection case. Judicial Reviews are the appropriate venue to explore "reasonable efforts." In the TPR appeals that have challenged the department's efforts, the Law Court has repeatedly found that reasonable efforts findings were made by the trial courts throughout the judicial review period. While the failure to engage in reasonable efforts is not currently a discrete element in determining whether a TPR should be granted, the court may consider the department and parents' respective efforts during the reunification period in reaching its final conclusions. To the extent that parents feel that the department is not meeting the reasonable effort standard, they have the opportunity to address that during judicial reviews at regular intervals. To leave the matter to adjudication at the TPR stage leaves a substantial, potentially course-changing, issue untouched until it is often too far into the case and children are in desperate need of permanency.

A better approach to this issue would be to focus on increasing service availability, addressing the indigent legal counsel crisis, and improving trial scheduling so that if a parent does wish to substantively challenge the department's efforts, a hearing can be held when there is still time to change the trajectory of a case.

Thank you for your consideration of the impact of this bill on child protective services. I would be happy to answer any questions.