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Written Testimony of Taylor Kilgore, Esq.
In Support of LD 1544, "An Act to Support Families by Improving the Court Process for Child Protection Cases"
Before the Judiciary Committee
April 14, 2025

Senator Carney, Representative Kuhn, and Distinguished Members of the Judiciary Committee:

My name is Taylor Kilgore, and I submit this testimony in strong support of LD 1544, "An Act to Support Families by Improving the Court Process for Child Protection Cases." I am an attorney in a small firm in Turner. Our firm focuses solely on the child protective process, as our attorneys serve as both Guardians ad litem for children and represent parents in the child protective system. I commend the committee for its ongoing attention to Maine's child welfare system and the critically important decisions made daily on behalf of children and families.

I write today to highlight the three key provisions of LD 1544 that closely align with the recommendations set forth in the 2024 Maine Child Welfare Advisory Panel (MCWAP) annual report, a body charged with independent oversight and guidance on Maine's child welfare policies and practices. I serve on this Panel as a professional lifting up the voices of Guardians ad litem in Maine.

1. Repeal of the Prior Termination of Parental Rights (TPR) as an Aggravating Factor

Under current law (22 M.R.S. § 4002(1-B)(C)), a parent's prior involuntary termination of parental rights automatically constitutes an "aggravating factor" in any future child protection proceeding. This statutory provision has significant and problematic consequences.

As noted in the MCWAP annual report, this provision is not consistent with contemporary best practices in child welfare and has the potential to unjustly penalize parents for prior circumstances that may no longer reflect their current capacity to safely parent. It further discourages parents from exercising their constitutional right to a contested trial in termination proceedings, for fear of permanent

consequences in future cases.

Best practices in child welfare emphasize individualized, current assessments of parental fitness and the provision of meaningful supports to address safety concerns. The repeal of this provision would remove an outdated and harmful barrier to fair case-by-case consideration of families' present circumstances.

The Office of Child and Family Services will tell you that this provision is rarely used in practice. If that is the case, then there should be no issue with simply removing the provision from statute. Our Law Court has been clear in case law that "past is prologue" and a parent's history of abuse or neglect can and will be used against them as a pattern of behavior evidencing parental fitness. Removing this as an aggravating factor won't impact that analysis as Courts need to be able to consider what, if any, changes a family has made since prior involvement. What removing this provision will do is remove a penalty to parents for asserting their right to a hearing on the petition presented by the Office of Child and Family Services. It will allow parents to make thoughtful, reasonable, and uncoerced decisions about what is best for their families as far as permanency for children.

As an attorney who has represented parents in child protection cases for over a decade, I want to speak to how current practices around termination of parental rights can sometimes coerce parents into impossible decisions — decisions that sever family connections unnecessarily and can cause lifelong trauma for children.

As an example of how this provision is often used, I want to tell you about "Monica" — a client of mine from just last year. Monica has long battled both mental health and substance use disorders. She is the mother of three children. Over the years, she experienced setbacks and successes, including long-term recovery, and when stable, she was a caring, consistent presence in her children's lives.

After the birth of her third child, Monica faced housing instability which triggered a mental health crisis and then a relapse. Her second and third children entered DHHS custody because both parents had returned to use. Monica worked incredibly hard to regain her sobriety, stabilize her mental health, and was successfully reunifying with her youngest child while her middle child was primarily and successfully reunifying with that child's father.

Then, a traumatic event triggered a brief mental health crisis and return to use for Monica. Within four months, Monica was again stable, sober, and ready to safely parent. But by then, the Department had filed a termination petition for her parental rights to her youngest child.

Monica proposed a guardianship — allowing her child to live safely with a relative while preserving family connections and giving Monica time to maintain stability. The Department refused, citing a policy that the child was "too young" for guardianship to provide permanence. The court consolidated Monica's request to argue for guardianship with the termination hearing, leaving her with an impossible choice: fight for reunification or guardianship and risk an involuntary termination if unsuccessful — which would forever prevent her from reunifying with her older children if they ever re-entered custody in the future.

Knowing relapse can be part of recovery, Monica couldn't take that risk. I sat beside her as she tearfully consented to termination, not because she wanted to abandon her child, but because our current law left her no real choice but to give up her fight for one child to preserve her ability to keep fighting for her other children. No parent should ever have to chose any of their children over the others. No child's future should be determined by a parent being put in this impossible position.

LD 1544 would help families like Monica's by reducing the coercion built into our current system and promote fairness and preservation of fundamental rights.

2. Requirement for Reasonable Efforts Prior to Termination of Parental Rights

Maine law currently lacks an explicit requirement that a court find the Department made reasonable efforts to prevent removal or achieve reunification prior to terminating parental rights. This omission undermines both the integrity of the process and families' ability to meaningfully engage with services intended to address the challenges leading to child protection involvement.

As the MCWAP report highlights, without this requirement, parents in Maine risk losing their rights without a clear record that the Department fulfilled its obligation to provide appropriate, accessible services aimed at family preservation. LD 1544 addresses this critical gap by requiring courts to make specific findings on reasonable efforts in termination cases.

This change would align Maine with at least 27 other states and better uphold the principles of fairness and due process in these life-altering proceedings. In a time when the Office of Child and Family Services (OCFS) is understaffed, facing an influx of children entering the system, and caseworkers are overwhelmed, families are not receiving the attention they need before the irreversible decision to sever parental rights is made.

While Section 4041 clearly mandates that OCFS provide reunification services to families, this is currently a mandate without the necessary enforcement mechanisms. Time and again, the Law Court has ruled that courts can—and do—terminate the parental rights of parents even when the Department has failed to provide appropriate services and supports for families to become safe.

There is substantial research and data showing that children are overwhelmingly safer when they remain with their families of origin, and that removal from these families often causes lasting harm.[1] Yet, children are repeatedly harmed because of the Department's failure to perform its responsibilities adequately. As a state, we continue to search for better ways to hold OCFS accountable for its essential duties. This proposed change is a critical step in achieving that accountability, ensuring that parental rights are only terminated when parents have truly been given a fair chance to improve their circumstances and make safer decisions for their children.

We cannot continue to remove children from their homes and refuse to return them simply because parents cannot navigate the current system—especially in a climate where resources are scarce, services are often inaccessible, and families are left to manage these overwhelming challenges alone. DHHS must be pushed to provide services that are not only realistic and accessible but also designed to improve safety for children across the state. This is the "reasonable" efforts that are required by Section 4041 but are not always happening on the ground.

Children are safest when they remain with their families of origin. Before we sever these fundamental ties for children—from parents, siblings, grandparents, cousins—we must be certain that every *reasonable* avenue has been exhausted to help families stay together. These life-altering decisions have devastating consequences for children, and it is imperative that we do more and do better to protect their well-being and future.

[1] Shanta Trivedi, *The Harm of Child Removal*, 43 New York University Review of Law & Social Change 523 (2019).

3. Trauma-Informed Consideration in Removal Decisions

The MCWAP annual report underscores the urgent need for child protection practices and policies to fully recognize the profound trauma that removal from a parent inflicts on a child. LD 1544 directly responds to this recommendation by requiring caseworkers to thoughtfully consider, document, and articulate in their affidavits the trauma a child would experience as a result of removal—and to weigh that harm against the risk the child faces if left in the home.

Additionally, the bill requires courts to make explicit findings that the risk of harm to the child outweighs the trauma of removal when issuing a Preliminary Protection Order (PPO). This standard reflects best practices already implemented in several other states and ensures that decisions to remove children from their families are both trauma-informed and appropriately restrained, happening only when necessary to prevent imminent, serious harm.

At a time when OCFS is critically understaffed and overwhelmed by the sheer number of children entering the system, we must be strategic and intentional with our limited resources. Too often, children are being removed from homes that could be made safe with targeted, meaningful supports. Instead, we place those children in DHHS custody, further burdening a system without enough foster homes, caseworkers, attorneys, or court capacity to manage these cases responsibly.

If we approach these situations with critical, individualized analysis—acknowledging that even marginal homes can sometimes be made safe with the right interventions—we will ultimately reduce unnecessary removals and improve safety outcomes for Maine's children. Fewer removals mean more intact families, less trauma for children, and a system better able to focus on those cases where intervention is truly essential.

Having worked in this field for more than a decade, I can tell you firsthand that the trauma inflicted by removal does not easily fade. The importance of this bill cannot be overstated. We must hold ourselves accountable for making thoughtful, evidence-based decisions about when to inflict this life-altering trauma on a child. As we have all seen in the news, the children who most desperately need OCFS's protection are too often not being served because the system is stretched too thin by cases that could have been handled differently. We must ensure that we are serving the *right* families at the *right* time in the *right* ways. This bill helps ensure just that.

LD 1544 is a necessary step toward restoring balance, increasing critical thinking in decision-making, and ensuring that removals happen only when absolutely necessary. Maine's children—and their families—deserve nothing less.

Conclusion

LD 1544 represents a careful, balanced, and research-informed effort to improve Maine's child protective custody statutes. It advances the goals of family preservation, due process, and trauma-informed care, while providing clear statutory guidance for courts and caseworkers alike.

I respectfully urge the committee to vote **Ought to Pass** on LD 1544 and to move these important reforms forward on behalf of Maine's children and families.

Thank you for your consideration.

Sincerely,

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Owner, Kilgore Law, PLLC