

## Support HB 944

Family Law - Children in Need of Assistance and Termination of Parental Rights

Testimony of the Sayra & Neil Meyerhoff Center for Families, Children & the Courts, University of Baltimore School of Law

Thursday, February 20, 2025

House Judiciary Committee

Delegate Clippinger, Vice-Chair Bartlett and Members of the Committee:

Shanta Trivedi serves as the Faculty Director and Aubrey Edwards-Luce is the Executive Director of the Sayra and Neil Meyerhoff Center for Families, Children, and the Courts (CFCC) at the University of Baltimore School of Law. CFCC envisions communities where children and families thrive without unnecessary involvement in the legal system. We engage communities as we work tirelessly to transform systems that create barriers to family well-being. Additionally, Professor Trivedi teaches courses on Family Law and the Child Welfare System and writes about the child welfare system, particularly as it affects low-income and minority families. Professor Trivedi has also represented hundreds of parents who have been separated from their children or who were at risk of being separated while Director Edwards-Luce has represented hundreds of children in these proceedings. **We urge you to issue a favorable report on HB944.**

HB944 would remove a prior termination of parental rights (TPR) as an “aggravated circumstance” that excuses DSS from making “reasonable efforts” in a child welfare case. Reasonable efforts are the government’s responsibility to help families to stay together or to reunify once they have been separated. For example, the reasonable efforts requirement obligates DSS to provide services and supports to a family who may be struggling with food insecurity, substance use disorder, trauma or mental health concerns. The child welfare system is supposed to be rehabilitative and aims to prioritize reunification yet under current law, if a parent has had their rights to a child terminated in the past, DSS has no obligation to provide these important supports.

It is crucial therefore to understand how a TPR can occur and what the effects of the current law are. TPR is a permanent, irreversible severing of the parent-child relationship. For this reason, it is often referred to as the “civil death penalty.” As one mother described it:

[t]he parents’ names are removed from the birth certificate, erasing any record of the relationship, no matter how long the family was together prior, or how bonded they are. For many, that means the sudden and total cessation of contact. Sometimes, the agency arranges a final meeting, where the parent must try to explain to their child that this is the last time they will see each other, and why. Sometimes, they don’t get even that.<sup>1</sup>

TPR is deeply traumatizing for children, especially those who already have a relationship with their families. A legal proceeding that ends their familial relationship does not undo their biological and emotional connection and cannot erase their memories. In fact, many children continue to have contact with their biological families after TPR and may even return to the very families they were taken from if an adoption fails or once they are old enough.<sup>2</sup>

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<sup>1</sup> Elizabeth Brico, “The Civil Death Penalty”—My Motherhood Is Legally Terminated, FILTER MAGAZINE, (Jul. 13, 2020), <https://filtermag.org/motherhood-legally-terminated/>

<sup>2</sup> Piaadora Footman, *Two Steps Back- Many Adopted Teens are Ending Up Back in Foster Care. What Does That Mean for Children—and Their Parents?*, RISE MAGAZINE, (Jan. 8, 2013) <https://www.risemagazine.org/2013/01/two-steps-back/>

Under Maryland law, unlike in other states, there is no opportunity for a parent to petition for post-TPR contact, or to have their TPR reconsidered after a change of circumstances. Based on a directive from federal law, DSS is required to file a TPR if a child has been in foster care for 15 out of the prior 22 months – a completely arbitrary timeline. Those 15 months do not have to be consecutive. If the child is with kin or a court determines that it is otherwise not in their best interests to have their relationship with their parents terminated, TPR is not required but too often we fail to rely on these exceptions.

For a parent to reunify with their child, they must engage in certain services to address the initial allegations that brought the case to court. Many parents are required to do parenting classes, substance use treatment, anger management, therapy or mental health services. They are also often required to secure employment and have stable housing – difficult things to achieve for low-income families. If a parent is incarcerated or in immigration detention, most of these services are unavailable to them, making TPR an inevitability. If a parent is struggling with substance use disorder, relapse is a normal part of recovery but can lead to a child going back to foster care and a parent having to start from scratch. Mental health concerns, even with treatment do not always resolve in a neat timeline like the one prescribed. Thus, even when parents are doing their best, they may not always be able to meet the requirements in the necessary timeframe.

In comparison, the other aggravated circumstances include engaging in, facilitating or failing to protect a child, a sibling of the child or another child in the household from chronic or severe physical abuse, chronic and life-threatening neglect, sexual abuse, torture or death. Additionally, reasonable efforts are excused where a parent has been convicted of a crime of violence against the child or the other parent of the child or aiding or abetting, conspiring or soliciting to commit a crime of violence or abandoning the child. Being convicted of killing a child is very different to failing to secure appropriate housing or employment in the requisite timeline and having your rights terminated as a result.<sup>3</sup> Further, aggravated circumstances as a whole are arguably unconstitutional. TPR completely severs the fundamental right to parent under the 14<sup>th</sup> Amendment substantive Due Process Clause. If a state fails to make reasonable efforts, even assuming a compelling state interest, this is not the least restrictive means through which the state could meet its goal.

In many situations, parents have drastically changed their life circumstances between a prior TPR and their current child welfare case yet will not receive the benefit of supports to keep them with their current child because of this draconian and punitive law. As such, current law leads to absurd results. Many parents have struggled with substance use disorder in the past and have been in recovery for years, others have left the abusive relationships that caused them to have child welfare involvement, others have been released from incarceration and are trying to rebuild their lives. In some cases, parents have had rights to their children terminated as teenagers when they were themselves in the foster system and were not in a position to properly care for a child. 20 years later, that same parent could be in a stable familial relationship, be employed and housed and the state would not have to make reasonable efforts to keep them with their child if they had contact with the system.

**HB944** would correct the law to better meet the goals of the child welfare system – protecting children from unnecessary harm and trauma and ensuring parents have a chance to rehabilitate. We therefore urge a favorable report.

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<sup>3</sup>[Md. Code Ann., Cts. & Jud. Proc. § 3-812 \(West\)](#)