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## **POSITION ON PROPOSED LEGISLATION**

**BILL: House Bill 944**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: February 20, 2025**

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The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue a **favorable report for House Bill 944**, which seeks to repeal Courts and Judicial Proceedings § 3-812(b)(3) and Family Law Article §5-323(d)(3)(V). This bill **would remove the provision of the statute that requires the court to waive the reasonable efforts of the local department to provide services to a parent to reunify with a child in foster care, if in a previous case for a different child the parent's rights were involuntarily terminated. And it would eliminate undue consideration of a prior involuntary Termination of Parental Rights (TPR) in determining a present-day TPR.** The current law unfairly forces parents into an impossible situation: choosing between their constitutional right to due process in fighting allegations of unfitness OR their right to receive assistance in reuniting with other children currently in foster care or future children who may enter the foster system, including children who may not even be born yet.

This testimony is provided by OPD's Parental Defense Division (PDD) which represents parents and legal guardians from all 24 counties in Maryland who have experienced, or are at risk of, having their children removed by the State. Our multidisciplinary legal team—including dedicated attorneys, licensed social workers, and parent advocates with lived-experience in the DSS system—ensures that families receive high quality legal representation during their Child in Need of Assistance and Termination of Parental Rights Cases.

### **Maryland's Current Law Harms Families and Communities**

The right to raise one's child is one of the most sacred and protected rights under the U.S. Constitution. Our laws recognize that parents should have every opportunity to prove they can provide a safe, stable home for their children. However, the current Maryland statute contradicts this principle by punishing parents who exercise their right to contest the termination of their parental rights. Once parental rights are terminated, the state has the authority to have the child

adopted by any person of the state's choosing, and the termination of parental rights is permanent and irreversible.

Decades of research consistently demonstrates that children are best served by remaining with their families and communities.<sup>1</sup> When the State has a concern that a child is not safe in their home, the Department of Social Services (DSS) can petition the court to place the child in the foster system. DSS is required to make reasonable efforts to assist the parent in obtaining reunification with their child in almost every case. Only after reunification efforts have failed and the court determines it is in the child's best interest, can the court place a child for adoption and permanently sever the parent's rights and the child's right to their biological relatives. There are a few exceptions to this rule in which the court is required to skip the step of providing help with reunification and go straight to termination of parental rights.

Under Courts and Judicial Proceedings 3-812(b), the exceptions are as follows:

1. The parent had subjected the child to severe abuse, chronic neglect, or other extreme conditions that endanger the child's well-being;
2. The parent has been convicted of severe crimes such as:
  - Murder or voluntary manslaughter of the child's sibling
  - Attempted murder or conspiracy to commit such an offense
  - Felony assault resulting in serious bodily harm to the child or a sibling
3. The parent *involuntarily* had their rights terminated to a child previously.

Involuntary TPR means that the parent did not agree to terminate their parental rights to their child. If a parent decides to fight a TPR and argue against their child's adoption, that parent faces the potential of never being permitted to work toward reunification with any subsequent child. *If under the exact same circumstances, the parent agrees to the prior TPR, versus contesting it, then DSS cannot make a request to waive reasonable efforts.* **This distinction serves no purpose other than to coerce parents into agreeing to a TPR to avoid this potential penalty in the future and punish them if they don't.**

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<sup>1</sup> Studies have shown that children placed in foster care are at increased risk for negative outcomes, including emotional, behavioral, neurobiological, and social challenges. Additionally, placement stability positively impacts safety, permanency, and well-being, with each move increasing safety risks and delaying permanency. [https://www.casey.org/placement-stability-impacts/?utm\\_source=chatgpt.com](https://www.casey.org/placement-stability-impacts/?utm_source=chatgpt.com). Furthermore, the largest studies comparing the impact on children of foster care versus keeping comparably maltreated children with their own families suggest that children fare better when kept with their families. [https://nccpr.org/the-evidence-is-in-foster-care-vs-keeping-families-together-the-definitive-studies/?utm\\_source=chatgpt.com](https://nccpr.org/the-evidence-is-in-foster-care-vs-keeping-families-together-the-definitive-studies/?utm_source=chatgpt.com). These findings underscore the importance of prioritizing family preservation and community-based interventions in child welfare practices.

The supposed goal of the waiver statute is to avoid wasting time working toward frivolous attempts at reunification. As such, the law allows DSS to go straight toward adoption efforts in particularly heinous cases such as violent crimes and murder. Bizarrely though, the law equates prior involuntary TPR with these aggravated circumstances.

Additionally, the current law does not give the court any ability for the court to exercise its sound discretion to deny DSS's request. Specifically CJP 3-812(d) states that "(d) If the court finds by clear and convincing evidence that any of the circumstances specified in subsection (b) of this section exists, *the court **shall** waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian.*"

This provision is fundamentally unfair. It punishes parents simply for using their legal right to challenge allegations against them. In essence, it forces parents to choose: either give up their fight to keep their current child or risk losing the right to be considered for reunification with any future children. **House Bill 944 is simple: remove the provision that punishes parents for exercising their fundamental right to parent.**

## Real-Life Impact

To illustrate the devastating consequences of this law, consider a 16-year-old mother in foster care whose parental rights to her baby are being challenged. If she decides to fight to keep her child and loses, she will face permanent consequences, even if years later she matures, builds a stable life, and finds herself in a situation where her future child is removed due to circumstances beyond her control.

For example, if this mother, now an adult with a steady job and a stable home, experiences a domestic violence incident that leads to her new child being temporarily placed in foster care, the law would deny her the opportunity to receive the same reunification services available to other parents. This is unjust and undermines the intent of child welfare laws which favor keeping families together whenever possible.<sup>2</sup>

## Why Repealing This Provision Matters

Repealing §5-323(d)(3)(V) does not mean that unfit parents will automatically regain custody of their children. It simply ensures that every case is evaluated fairly based on the parent's current

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<sup>2</sup> A key objective of the CINA statute is to "conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare." [Maryland Courts and Judicial Proceedings 3-802](#).

circumstances, rather than being prejudged based on the parent asserting her constitutional right to a trial.

Other states have recognized similar laws as unconstitutional. In *Alsager v. District Court of Polk County*, 518 F.2d 1160 (1975), the court found that a statute depriving parents of their fundamental rights in this way violated the Fourteenth Amendment. Maryland should follow suit and eliminate this provision, ensuring that due process protections are upheld.

## **Conclusion**

Maryland's child welfare system should focus on what is ***best for each child in the present***, not penalize parents for past legal fights. Every parent deserves a fair chance to demonstrate they can provide a safe and loving home. Repealing FLA § 5-323(d)(3)(V) and CJP § 3-812(b)(3) is a necessary step toward a more just system that supports family reunification when appropriate.

**For these reasons we urge the Committee to issue a favorable report for House Bill 944** and remove this unconstitutional and unjust barrier to family preservation.

**Submitted by:** Maryland Office of the Public Defender, Government Relations Division.

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