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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 0048 - Termination of Parental Rights – “The Right to Fight”

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 1/29/2026

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue a **favorable report for House Bill 0048, the Right to Fight Bill**. House Bill 0048 removes the automatic rule that lets DSS bypass reunification services based solely on a parent’s prior involuntary termination of parental rights. It restores judicial discretion and ensures parents are judged on their current ability to safely care for their children, not on past legal battles.

This testimony is provided by OPD’s Parental Defense Division (PDD) which represents parents from all 24 counties in Maryland who are facing a Termination of Parental Rights case. 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.

The Current Law

A Termination of Parental Rights (TPR) is the permanent and irreversible severance of the legal relationship between a parent and child, forever eliminating not only the parent’s rights and responsibilities but also the child’s legal ties to all biological relatives, including siblings and grandparents.

Decades of research consistently demonstrates that children are best served by remaining with their families and communities of origin.¹ When the State has a concern and wants to intervene

¹ Studies have shown that children placed in the foster system 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/>. Furthermore, the largest studies comparing the impact on children in the foster system versus keeping comparably maltreated children with their own families suggest that children fare better when kept with their families.

<https://nccpr.org/wp-content/uploads/2025/04/2017-updated-evidence-for-print.pdf>. These findings underscore the importance of prioritizing family preservation and community-based interventions in child welfare practices.

to take custody of a child, they will file a Child in Need of Assistance (CINA) case. If a Court determines that the child should be placed in the foster system, DSS is then required to make what are called “reasonable efforts” to achieve reunification for the family. “Reasonable efforts” include, but are not limited to, arranging family visitation, providing referrals to a drug treatment program, referring parents to a parenting class, and assisting parents in finding psychotherapists. In nearly all cases, a TPR can move forward only after the court finds that attempts to reunify the family have not succeeded.

There are limited exceptions in the law that allow DSS to forgo reunification services and proceed directly to TPR. Under Courts and Judicial Proceedings 3-812(b) and Family Law Article § 5-323(e)(2)(v),² the exceptions are as follows:

1. **Severe Abuse or Neglect:** Subjecting a child to chronic neglect or life-threatening conditions;
2. **Violent Criminality:** Convictions for murder, manslaughter, or felony assault of a child or their sibling; or
3. **Prior Involuntary Termination:** Instances where a parent previously chose to hold the State to its burden of proof in a contested trial rather than consenting to the termination.

The purported goal of this provision is to avoid "frivolous" reunification attempts in cases of heinous violence. However, the law as currently written **wrongly equates a parent’s exercise of their constitutional right to a trial with the commission of a violent crime.**

House Bill 48 addresses this third category. Under current law, an “involuntary” termination of parental rights is defined solely by a parent’s refusal to consent. If a parent argues that termination is not in the child’s best interest, goes to trial, and the court ultimately disagrees, that single outcome can permanently bar the parent from receiving reunification services for any future children and eliminate the time ordinarily provided to attempt reunification. By treating the exercise of a legal defense as an “aggravated circumstance” on par with murder or severe abuse, the law creates an unjust barrier to family preservation—one that HB 48 is designed to remove.

² House Bill 48 also amends Family Law Article § 5-323(e)(2)(v) to eliminate DSS’s ability in a TPR case to seek a waiver of its duty to have made reasonable reunification efforts in the underlying CINA matter based solely on a prior involuntary TPR. In practice, this means DSS must continue working with families toward reunification regardless of a past involuntary termination. The bill does not remove the court’s ability to consider a prior TPR as a factor in its decision; it simply prevents a prior involuntary TPR from automatically excusing DSS from providing reasonable efforts.

Maryland's Current Law Harms Families and Communities

Current law forces parents into an impossible choice: Either fight in court to keep their child, OR preserve their chance to receive reunification services for other children who are in the foster system now or may be in the future.

Maryland law currently distinguishes between voluntary and involuntary terminations in a way that is both arbitrary and punitive. A parent who exercises their right to a trial risks losing the right to DSS assistance in all future cases, a penalty not faced by those who consent to the TPR. **This framework functions as a coercive tool, threatening parents with the permanent loss of future family preservation services as a “cost” for fighting for their children to not be permanently separated from them and their entire biological family.³ HB 48 removes this unjust barrier, ensuring that exercising the right to hold the State to its burden of proof does not come at the price of a parent's other children.**

Additionally, current law **prohibits the court from exercising any 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 means that even if the court believes that the parent could reunify with his or her child with some assistance from DSS but DSS has requested waiver on the basis of a prior involuntary TPR, the **court** has no discretion in the matter and **has no choice** but to waive the requirement that DSS make reasonable efforts to assist the parent. Again, this is what HB 48 seeks to fix.

This provision is fundamentally unfair. It punishes parents simply for using their legal right to challenge the 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 0048 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

³ When a TPR is granted it severs the legal relationship between the child and all biological relatives including siblings, grandparents, aunts, uncles, and cousins.

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, is the victim of a domestic violence incident that leads to her new child being temporarily placed in foster care, DSS could file a motion to waive reasonable efforts based on her prior involuntary TPR, and the court would have no choice but to grant that motion, denying the mother the opportunity to receive the same reunification services available to other parents. The Department can then file a TPR petition immediately. This is unjust and undermines the intent of child welfare laws which favor keeping families together whenever possible.⁴

The automatic waiver of reasonable efforts also harms children by denying them any meaningful opportunity to maintain legal and emotional ties to their families. **When reunification services are waived, children lose the chance to work toward maintaining a connection not only with a parent, but with their other biological family members, including siblings, grandparents, and extended relatives, even if maintaining those family ties and bonds would be in the child's best interest.** Opponents of this bill may argue that this concern is ameliorated because children can be placed with relatives or kin. This does not resolve the issue though, because that ignores the fact that often siblings, due to being too young, and grandparents, due to being elderly, often are unable to immediately assume care of a child.⁵ This bill would allow the Court to consider the child's individual circumstances before deciding whether immediately moving towards adoption is what's best for the child.

Passing HB 48 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 and children's current circumstances, rather than being prejudged based on the parent asserting their constitutional right to a trial in the past for another child.

Conclusion

Maryland's child welfare system should focus on what is ***currently best for each child***, not penalize parents for exercising a legal right in the past. Every parent deserves a fair chance to demonstrate they can provide a safe and loving home, and all children deserve for their parents to be able to fight to keep them. Repealing FL § 5-323(e)(2) and CJP § 3-812(b)(3) is a

⁴ 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.

⁵ For example, if a baby is born and has a biological 14 year old sibling, the 14 year old is not old enough to care for the child, but often will still want to be legally related to the baby.

necessary step toward a more just system that advances due process for parents and acknowledges the fundamental right to maintain the parent-child relationship when appropriate.

For these reasons we urge the Committee to issue a favorable report for House Bill 0048 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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