

My name is Robert Conlin. I live in Wiscasset and I'm here this morning to speak out in opposition to LD 19 as it pertains to making three violations of a protection order a Class C felony. My remarks pertain only to the PFA violation portion of the bill.

I stand before you today as a Navy veteran, a college graduate, a business owner, a Stage IV cancer survivor, and most importantly of all, as a divorced father of six great kids, ages 7-20.

And finally, I stand before you today as a man who has been issued a protection order - a PFA - for 3 1/2 years, with another 1 1/2 years to go. I have also been charged with a violation of that order, which gives me strike one in this three strikes and you're in jail proposal..

I would bow my head in shame if any of this was warranted. Instead, I'm standing here, before you all, to say that this bill as it relates to protection orders is incredibly short-sighted and harshly punitive. I'd like to tell you why through my own experience.

The protection order system in this state and across this country is broken. It's an open secret in the legal profession. Talk to any divorce lawyer or court personnel in any courtroom in this state and they'll privately tell you that many of the PFAs issued in Maine - 4,438 last year<sup>1</sup> - are obtained as leverage in divorce and custody cases by the accuser and are completely unwarranted.

But don't take my word for it. Here's what some lawyers familiar with the process have to say about it:

**Elaine Epstein, former Massachusetts Bar Association President -**

"The frenzy surrounding domestic violence has paralyzed good judgement. The facts have become irrelevant. Everyone knows that restraining orders are granted to virtually all who apply, lest anyone be blamed for an unfortunate result. In many divorce cases, allegations of abuse are used for tactical advantage."<sup>2</sup>

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<sup>1</sup> *Maine State Judiciary statistics*

<sup>2</sup> *Massachusetts Bar Association newsletter*

**Attorney Sarah Gilbert, Camden Law, Camden, Maine**

“I hate to say that judges give out protection orders like candy, but we have had a couple of incidents of murder/suicide in Maine and the Legislature has mandated that the Protection From Abuse statute be liberally construed.”..... “It’s common for the same judge to hear both the protection order complaint and preside over the divorce trial. So winning at the protection order stage tends to set the stage for trial. The judge is only human and will remember the heinous things that the plaintiff testified the defendant did to abuse the plaintiff.”<sup>3</sup>

It’s a virtual guarantee that a PFA order requested is a PFA granted. Once you have one, you’ve been labelled an abuser and any action you take, any word you speak, is viewed and distorted through that lens. My first PFA was extended by a Lincoln County District Judge in 2016 for two years because I wrote the following poem in response to an email from my accuser about our children:

“The barred owl in the big pine tree looked at me and said, don’t opine like a Philistine, so I say that’s fine.”

The judge determined that this poem was manipulative, demonstrated unrestrained anger, and made me an obvious threat to my accuser. The PFA was extended for two years.

During that time, I was charged with a violation of the PFA for making an inadvertent and innocuous reference to my accuser in a text to a third party. Nothing about it was the least bit abusive, insulting or coercive, It was a technical infraction that puts me on the road to a felony if this bill is passed.

When my accuser filed for another two-year extension in 2018, it was granted again, despite the fact that I didn’t exhibit any behavior that was in the least bit threatening towards my accuser in the three years prior. The definition of abuse in Maine statute requires, at minimum, acts of intimidation, threats or harassing behavior against the

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<sup>3</sup> *Real World Divorce, Maine*

plaintiff.<sup>4</sup> Despite not having any evidence of that, the court extended the order another two years until 2020.

So far, my PFA order has been issued for a total of five years. I suspect it will be extended again, no matter what I do. I've been given no reason to think otherwise. At this point I equate it to living with cancer. Except there's a possibility of remission with cancer. This feels like a terminal disease.

Why am I so pessimistic? Well, I could be charged with a violation if I butt dial my accuser's home phone. It's entirely possible, given that my children call me from that phone. Or I could accidentally encounter my accuser at the supermarket and be charged with a violation for not leaving quickly enough. Remember, the police can make a warrantless arrest for a PFA violation, based solely on the accuser's description of an event, with no corroborating evidence required.

So far my accuser has called the Lincoln County Sheriff's Office nearly 30 times to have me violated. I live in constant fear of arrest. Here are just a few of the police report accounts:

1. It was reported that I signed the letter E on an envelope too aggressively and my accuser believes I was sending a message I would do the same to her face.<sup>5</sup>
2. It was reported that I wrote a letter to the editor of a newspaper touting gun ownership and was believed to be in possession of a firearm. I've never owned a firearm. The letter in question was signed by the real writer.<sup>6</sup>
3. It was reported I asked my accuser to conduct a fire drill at my children's home. I am entitled under the terms of my PFA to discuss issues involving our children. In my accuser's eyes, advocating for our children's safety is a PFA violation.<sup>7</sup>
4. It was reported I sent a certified letter - as REQUIRED by law when representing yourself pro se - notifying my accuser of a pending court motion. The ADA determined this WAS a violation because it wasn't a text or email as stipulated by the PFA, but even she recognized how ludicrous that is. I could have just as easily ended up with an ADA who didn't see it that way.. Under this proposed bill, that's strike two and I'd be one technical infraction away from a felony charge.<sup>8</sup>

There were 797 Class D PFA violations last year.<sup>9</sup> Maine Criminal Code dictates that a Class D conviction can result in a 364-day sentence. That's a very strong deterrence. To suggest otherwise is ridiculous. There were a total of 7 Class C felony violations,<sup>10</sup> which is punishable by up to five years in prison.

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<sup>4</sup> *Maine Revised Statutes, Title 19-A, Chapter 101, S4002*

<sup>5</sup> *Lincoln County Sheriff's Office report, 3/6/16*

<sup>6</sup> *Lincoln County Sheriff's Office report, 7/6/16*

<sup>7</sup> *Lincoln County Sheriff's Office report, 11/3/17*

<sup>8</sup> *Lincoln County Sheriff's Office report, 10/11/17*

<sup>9</sup> *Maine State Judiciary statistics*

<sup>10</sup> *Maine State Judiciary statistics*

We already have a Class C felony designation in place to recognize a serious violation of a PFA. If the argument is that repeated violations are not penalized enough, make judges accountable for not applying existing sentencing guidelines, rather than creating such incredibly harsh new ones.

Why would we create another law that would make no distinction - NONE - between repeated blatant and willful violations and inadvertent or technical ones? How does that make any sense? How is that even constitutional? Any accuser who harbors ill will towards the accused could have him locked up for five years with completely fabricated allegations. If this bill passes as written, I guarantee that will happen.

We haven't even discussed the emotional impact on children. It's been hard enough for my kids to be caught in the middle of this nightmare as it currently exists. The pain this has caused them is heartbreaking. I could spend a full hour on this subject alone, but I'll summarize by saying that it's criminal to propose further alienating children from their fathers in such a cavalier way.

Finally, there's the financial impact of this legislation. The sponsors are requesting \$14,952 for this year for the Maine Commission on Indigent Legal Services for the added costs for increasing the class of crime.

I see no mention of the financial impact that this bill could have on families and the state's social services budget as it pertains to PFA violations. With the father in jail for an extended period, who will support the family for the duration of that time? Where will the child support come from? It won't come from the father. It will more than likely be DHHS and Maine taxpayers who foot the bill. That financial impact cannot be ignored.

Nor can the average cost to taxpayers of \$42,500 per inmate per year in the state of Maine.<sup>11</sup> If approved, this bill will undoubtedly add to the state's prison population. Remember, there are nearly 800 PFA violations annually. How many of those are 3rd violations? That cost isn't accounted for in the financial impact projections either. The \$15,000 requested would be a drop in the bucket of the actual cost. In addition to being short-sighted and harshly punitive, this legislation is fiscally irresponsible.

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<sup>11</sup> 2012 [Maine.gov/OPEGA](http://Maine.gov/OPEGA)

I'll conclude by saying I believe the Protection From Abuse statute is a necessary instrument in some cases. There are, unfortunately, people in our society who do intend to inflict harm on others. For them, the PFA is an appropriate instrument, as are the laws already in place for enforcing violations. Their victims deserve all the support and intervention we as a society can provide.

However, if we want to call our society just and our laws fair and equitable, we need to recognize that a bill like the one proposed has no place in our system of law. I respectfully request that you reject the PFA section of this bill.

Thank you for the opportunity to speak.