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**Testimony of Attorney General Janet T. Mills in favor of L.D. 1605, An Act To Extend the Time for
Commencing an Action Relating to Death Caused by Homicide**

March 9, 2016

Senator Burns, Representative Hobbins, distinguished members of the Joint Standing Committee on Judiciary. I am Attorney General Janet T. Mills and I am testifying in favor of L.D. 1605, An Act To Extend the Time for Commencing an Action Relating to Death Caused by Homicide.

I want to thank Senator Valentino and others, including Senator Burns, Senator Johnson and Representative Hobbins of this Committee, for bringing forward this important after deadline bill.

Maine's statutes of limitation are "statutes of repose," that is, a blanket restriction on a person's ability to bring a civil law suit to obtain a remedy for a wrong committed by another. The statutes of limitation vary in length depending on the type of action contemplated. They are all strictly construed. Most of them are found in chapter 205 of Title 14, Maine Revised Statutes.

For regular civil actions an aggrieved individual must bring a civil action within 6 years after the "cause of action accrues and not afterwards...." 14 MRS 752. The statutes allow for an extension of the general statute of limitations for some civil cases. For example, when the person aggrieved is a minor or under some other legal disability, the statute does not begin to run until the person is of the age of majority or no longer under the disability. 14 MRS 853.

Likewise, if the person who might be liable "fraudulently conceals the cause thereof from the person entitled thereto..." then the injured party may bring a civil action within 6 years after that person discovers the cause of action. 14 MRS 859.

There are separate statutes of limitations for criminal offenses, although there is no statute of limitations for the crime of murder. That charge may be brought at any time, even decades after the offense was committed. 17-A MRS 8.

The civil statute of limitations for homicide, however, falls under the two-year limit of the "Wrongful Death" statute which is found in the Probate Code. 18-A MRS 2-804. So, a law suit for Wrongful Death must be brought within two years of the person's death.

In the common law there was no action for wrongful death; rather, the right of a person to sue someone else for their death actually died with the death of the person. So the Legislature created a cause of

action for Wrongful Death more than a hundred years ago, but it has imposed strict limits on the time within which the action could be brought and on the monetary damages that a jury could award in compensation.

A few years ago, because of a heightened awareness of sexual abuse, this Committee and the Maine Legislature extended both the criminal and the civil statutes of limitations for certain sexual offenses, particularly for sexual assault on a minor. See 17-A MRS 8(2-A); 14 MRS 752-C.

We are asking that you do something similar for the families of homicide victims. While this bill may not give the families present a specific right to bring suit because their right may already have lapsed, and it's still often a long shot to get money damages from a murderer who may be judgment proof, still it will be significant that the Legislature has listened to these families, that you acknowledge their concerns that a killer may stay in hiding from the law for many many years, that it takes sometimes decades – and certainly more than 2 years – to solve a difficult murder case, and that families who suffer such unimaginable losses should not lose their right to bring suit because the facts have been hidden from them in good part due to the actions of the guilty party.

LD 1605 is an attempt to give some of Maine's families a glimmer of hope. It borrows language from the fraud statute cited above and incorporates the "discovery" element and the 6 year extension from that statute.

It includes hope for the folks sitting before you today. There is not a day that goes by when these good people do not wait for a door to open. They look out the window. They gasp, they hold their breath at every creak of the threshold. They hope and pray beyond hope that their loved one will come home. For some, the death is verified, the body is buried. For others, they know nothing about what happened to their missing child, their missing brother or sister, father or mother. And they may not know for a long time to come, if ever.

If a family in the future suffers such a loss, and if it comes to pass that the crime is solved, and the murderer is identified more than two years after the victim's death, that victim's family should not be arbitrarily prohibited from bringing suit against the perpetrator when they could not have known the facts or the identity of the perpetrator within the two year time period.

Thank you for your consideration of this measure. I do hope you vote unanimously Ought to Pass. And I am happy to answer any questions I am capable of answering.