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Judicial Branch testimony neither for nor against LD 580, An Act to Improve Family Court Procedure:

Senator Carney, Representative Moonen, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide some brief testimony regarding this bill.

LD 580 creates a process to allow a party to a family matter involving a child to file a motion to ask the court to issue an emergency order of parental rights on an ex parte basis if the party shows that there is "immediate and present risk of substantial harm to the health or safety of the child(ren)." If the court enters an ex parte temporary order, the proposed bill requires the court to hold a hearing within 21 days of the issuance of the temporary order. The bill also allows the respondent to file a motion to dissolve or modify the ex parte temporary order before the scheduled hearing. If a motion to dissolve or modify is filed, the court must schedule a separate hearing on the motion "as expeditiously as the ends of justice require."

The proposed ex parte petitioning process would create a new and distinct process in the District Court. It is different from the protection from abuse statutory process, which is mostly a reactive statute that provides protection when abuse has already occurred, rather than a preventive statute that protects based on the existence of risk. Furthermore, it is distinct from the process for an ex parte temporary restraining order under Rule 65 of the Maine Rules of Civil Procedure, which requires the filing party to have an attorney to seek that relief and uses a different standard (i.e., the filing party must show that "immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition"). Finally, although a party to a family matter can request an expedited interim hearing in a family matter under Rule 107(c) of the Maine Rules of Civil procedure, that process does not authorize the court to issue an emergency ex parte order pending the interim hearing.

The Judicial Branch anticipates that additional resources will be needed to support this process if this bill passes. The creation of a process for an immediate ex parte order of parental rights will likely result in a high volume of filings, particularly because family matters involve mostly self-represented litigants who are experiencing enormous stress as they navigate the process of family separation. Furthermore, to comply with the required hearing within 21 days of the issuance of the ex parte temporary order, the courts will need to create and staff a dedicated docket. The courts will also need the resources to expeditiously hold hearings on motions to dissolve or modify an ex parte temporary order. The Judicial Branch is in the process of analyzing data to educate its fiscal analysis for this bill and will submit a fiscal note for the Committee's consideration.

Thank you for your time.