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Judicial Branch testimony neither for nor against LD 809, An Act to Allow a Motion to Extend a PFA Order After Expiration of the Original Order:

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide the following testimony neither for nor against this bill.

Under Maine law, a plaintiff may ask the court to extend a final protection from abuse order (PFA order) by filing a motion to extend the PFA order *before* the order expires. If such a motion is filed, the court “may continue the final protection order in effect” until a hearing may be held. 19-A M.R.S. § 4111(1). The proposed bill changes this by allowing the plaintiff to ask for an extension *after* the PFA order has expired if the court finds “that the filing under this subsection is within a reasonable amount of time based upon the underlying circumstances; or that the filing under this subsection was not timely filed due to a dismissal of a prior motion to extend because of the inability to serve the defendant.”

The proposed amendment is ambiguous and raises issues of fairness. As drafted, the statute does not require the plaintiff to show any cause as to why the motion to extend was not filed before the expiration of the underlying PFA order. There also is no limit to the time frame in which a motion can be filed after the protection order has expired. Protection orders are important to provide additional safety to people, but they also can significantly limit a defendant’s rights.

We suggest the ability to reinstate an expired protection order should be circumscribed to at least require a showing of good cause as to why the plaintiff did not file the motion before the expiration date, and further to require that it be filed in a reasonable time regardless of the cause. In other words, we suggest the court would have to find (A) good cause for the plaintiff’s failure to file a motion to extend the final protection order before its expiration, which may include that the filing was not timely due to a dismissal of a prior motion to extend because of inability to serve the defendant, and (B) that the filing is within a reasonable amount of time based upon the underlying circumstances.

Additionally, the proposed language does not clearly set forth the process when a motion for an extension after expiration pursuant to the new proposed subsection is granted. The bill states, “If the court makes a finding for the plaintiff under paragraph A or B, the court shall follow subsection 1 to determine whether an extension of the final PFA order is necessary to protect the plaintiff or minor child from abuse or conduct specified in section 4103.” Subsection

1, in turn, states, "The court may continue the final protection order in effect until a hearing under section 4109, subsection 1 on the motion to extend." A court cannot "continue the final protection order in effect" if there is no protection order in effect. Is it contemplated that the court would re-issue the final protection order that expired? Or issue some other order? If the intent is that the court be permitted to reinstate the underlying PFA order to continue it ex parte, without hearing, until the final hearing on the motion to extend, the bill's language should be clarified to so state.

And in that event, a further amendment to section 4110(5)(A) should be made as well, to provide: "A. A final protection order issued under this chapter must be for a fixed period not to exceed 2 years, unless extended *or reinstated* by the court pursuant to section 4111."

Thank you for your time. I would be happy to answer any questions.