

MAINE STATE LEGISLATURE

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STATE OF MAINE
JUDICIAL COUNCIL
ANNUAL REPORT

1960

To the Honorable John H. Reed, Governor of Maine:

The Judicial Council herewith submits its annual report for 1960. For purposes of general information this is a combined statement covering both 1959 and 1960. The separate report for 1959 was transmitted to you earlier.

Respectfully submitted

Ex officio Chairman

Secretary

January, 1961

THE JUDICIAL COUNCIL OF MAINE

1959-1960

		Term Expires
Robert B. Williamson Chief Justice, Supreme Judicial Court	Augusta	(ex-officio chairman but not a member of the Council)
Frank E. Hancock Attorney General	Ogunquit	(ex officio member)
Armand A. Dufresne, Jr.	Lewiston	July 31, 1961
Harold C. Marden Justices of the Superior Court	Waterville	April 7, 1962
Frank E. Southard, Jr.	Augusta	April 7, 1962
Sidney W. Wernick	Portland	*1
Christy C. Adams Judges of Municipal Courts	Rockland	Sept. 7, 1964
Louis C. Stearns, III Judge, Probate Court	Bangor	July 31, 1961
George A. Cowan Clerk of Courts	Damariscotta	April 7, 1962
Leonard A. Pierce	Portland	*2
George B. Barnes Members of the Bar	Houlton	April 7, 1962
Mrs. Doris P. White	Bangor	*3
Mrs. Alyce M. Connor	Bangor	Sept. 16, 1963
Miss Edith L. Hary	Hallowell	March 25, 1963
Orren C. Hormell	Brunswick	April 7, 1962

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- *1 Resigned June 20, 1960; ineligible to continue due to expiration of term as municipal judge; succeeded by Mr. Adams.
 *2 Died September 1, 1960.
 *3 Resigned June 9, 1959; succeeded by Mrs. Connor.

REPORT OF THE JUDICIAL COUNCIL

PREFACE

In 1932 the Association of Municipal Judges suggested to Governor William Tudor Gardiner the appointment of a Judicial Council "to consider and recommend improvements in judicial procedure in the interests of increasing efficiency of the various courts." Acting informally such a Committee was appointed and within six months presented a substantial list of proposals, including legislation to give the Judicial Council legal standing. Other major suggestions concerned waiver of jury trial by a person accused of crime (enacted in 1955, Public Law Chapter 187) and re-organization of the municipal courts in a district system, one of the principal matters to be considered by the 1961 Legislature.

The Judicial Council, as finally established by chapter 52 of the Public Laws of 1935 (1954 R.S. Ch. 113 § 195-197) is charged with the following duties:

"To make a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, the work accomplished and the results produced by that system and its various parts;

"To report annually...to the governor;

"(To) submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."

Under the original act the Council was composed of the chief justice and one other supreme ^{judicial} court justice; two superior court justices; two municipal court judges; one judge of probate; two members of the bar and three laymen, all to be appointed by

the governor with the advice and consent of the executive council. The chief justice was designated as ex officio chairman. In 1937 (Public Law Chapter 151) the attorney general and one clerk of courts were added as members and representation of the supreme judicial court was deleted, the chief justice, however, continuing as ex officio chairman.

For nearly twenty years there is no record of activity on the part of the Council. Then, in 1954, to enlist the interest of all possible agencies in a situation focusing public attention on judicial procedures, Governor Cross reactivated the group and suggested it study the indictment process. A variety of other matters have received consideration since then. Appended to this Report is a summary of the activities of the Council from 1954 - 1960.

1959 - 1960

Legislation re the support of dependents and a comprehensive revision of the statutes re juvenile offenders were presented to the 1959 Legislature. Each received favorable consideration. Reference is made to 1959 Public Law Chapter 75, "An Act Clarifying the Laws Relating to Support of Dependents," and to 1959 Public Law Chapter 342, "An Act Relating to Juvenile Offenders."

Committees of the Council are now carrying forward studies in several other fields.

I. MISSION AND ORGANIZATION: to examine the statutory authority of this Council and of other similar bodies to determine if provisions re membership are adequate and the scope of its duties sufficiently expressed.

II. DIVORCE: With relation to divorce procedures and service of process it is felt that the advent of the new rules of civil procedure may well remedy the cause for present criticism and further suggestion should await a trial of the new rules. Relative to the suggestion advanced for a waiting period required before hearing and after hearing and before a final decree the committee is not convinced that the Maine situation calls for such a waiting period and at this time makes no recommendation.

With relation to domestic litigation in general and particularly with relation to problems of custody of children and supervision of the same, the report of a similar sub-committee to the Council for the year 1956 is reprinted in the Appendix. This report advocated the transfer of the civil phases of domestic controversies to the Probate Court system and a measure was presented to the Legislature to bring that about. The measure was not adopted. The pros and cons of the proposition remain unchanged and the matter remains under consideration by the entire Council for current re-evaluation.

III. COURT BUSINESS AND STATISTICS: to analyze the reporting requirements now made of the various courts with a view to simplifying forms and reports and securing useful statistical data on the business of the courts. Some analysis has been made of the statutory provisions re reports and forms in use have been collected. The Chief Justice has worked with the Cumberland County Clerk of Courts to develop a new form for reporting the work of the superior courts.

IV. CRIMINAL PROCEDURES AND PENALTIES:

A. Apparent inconsistencies of some penalties imposed

by our criminal statutes are currently being investigated by one of Dr. Sheldon Glueck's students at Harvard Law School.

B. Clarification of the last sentence of section 11 of Chapter 149, R.S. 1954, having to do with the record pertaining to cases involving sentence to the state prison, is recommended by the Council. It now reads:

The justice, before or at the time of pronouncing such sentences, shall ascertain by examination of the prisoner, and by such other evidence as can be obtained, any facts tending to indicate briefly the causes of the criminal character or conduct of such prisoner, which facts, and such other facts as shall appear to be pertinent to the case, shall be caused by said justice to be entered upon the minutes of the court.

From the standpoint of the Court this is of questionable value and intent. This provision, after being a part of that statute for many years, was stricken by the legislature in 1951. In 1959 it was restored, not for the purpose expressed within its terms, but for the purpose of having as part of the case a record of the reasons for which the sentencing court penalized as it did and as an aid in post conviction review of the sentence by the Governor's Council upon petition for commutation of sentence or pardon. To comply with the present statute involves time of the court reporter and expense to the county for transcription of a record which does not meet specifically the needs of the Governor and Council. Legislation embodying the following restatement of this language has been prepared for presentation to the 1961 Legislature.

"For the purpose of aiding in post conviction review of the sentence imposed, the justice presiding shall record as part of the case the facts that impelled him to impose the sentence."

C. The Council has considered the desirability of providing immunity from prosecution to a complainant in sex offenses and concludes that a limited grant of immunity for this type of case, appropriately delegated to the State's chief legal officer, will serve a useful purpose. The 1961 Legislature has received a bill covering this proposal in the following terms:

"Whoever participating in the offense of incest, crime against nature, indecent liberties, statutory rape or carnal knowledge, gives information under oath against another participant and duly prosecutes him, may in the discretion of the Attorney General on recommendation of the county attorney be exempt from prosecution for such offense."

V. ADMINISTRATIVE PROCEDURE: to discuss the problem of representation of the collective public interest before state administrative tribunals. No recommendations are offered at this time. The Council notes with interest the preparation of an Administrative Procedure Act by the office of the Attorney General for current legislative consideration.

Two other pieces of legislation have the support and interest of this Council. One would require of the Council a biennial rather than an annual report to the Governor, a change which has already received the informal approval of the parties concerned.

The second bill would authorize the Chief Justice to call conferences of municipal court personnel and trial justices. In the past year two such meetings were called on motion of the Chief Justice and were found extremely helpful by the conferees. Authority and funds to make this a regular practice are most desirable. The 1932 Report of the Judicial Council noted that these courts "are an integral part of the judicial machinery" and

that the Chief Justice should have "power to call the judges together from time to time for an exchange of ideas" and to encourage a uniformity of procedure.

Two meetings of the Council were held in 1959 and three in 1960 with sub-committees meeting at other times. We note with appreciation the services of Mrs. Doris P. White which were concluded by resignation on June 9, 1959 due to full time responsibilities as President General of the D. A. R.; the services of Sidney W. Wernick, Esq. who resigned on June 20, 1960 due to the expiration of his term as a municipal court judge; and the services of Leonard A. Pierce, Esq. who died September 1, 1960. Each made measurable contributions to the work of the Judicial Council and his missed in its deliberations.