

# MAINE STATE LEGISLATURE

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STATE OF MAINE

JUDICIAL COUNCIL

REPORT

1961 - 1962

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

The Judicial Council submits herewith its  
report for the years 1961 and 1962.

Very respectfully

/s/Robert B. Williamson  
Ex officio Chairman

/s/Edith L. Hary  
Secretary

January, 1963

THE JUDICIAL COUNCIL OF MAINE

1961-1962

		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. Harold C. Marden Justices of the Superior Court	Lewiston Waterville	Sept. 6, 1965 (a)
Christy C. Adams Frank E. Southard, Jr. Albert P. Putnam Judges of Municipal Courts	Rockland Augusta Houlton	Sept. 7, 1964 April 7, 1962 (b)
Louis C. Stearns, III Judge, Probate Court	Bangor	(c)
George A. Cowan Clerk of Courts	Wiscasset	April 18, 1966
George B. Barnes Ralph I. Lancaster, Jr. Members of the Bar	Houlton Portland	April 18, 1966 Jan. 25, 1965
Mrs. Alyce M. Connor Miss Edith L. Hary Orren C. Hormell Lay Members	Bangor Hallowell Brunswick	Sept. 16, 1963 March 25, 1963 April 18, 1966

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- (a) Completed service Dec. 10, 1962; ineligible to continue due to elevation to membership on the Supreme Judicial Court
  - (b) Succeeded Mr. Southard, serving from June 6, 1962 to November 28, 1962; ineligible to continue due to replacement of Houlton Municipal Court by the Second District Court
  - (c) Completed service on Dec. 31, 1962 on expiration of term as Judge of Probate

## 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.

As finally established by Chapter 52 of the Public Laws of 1935 (now 1954 R.S. Ch. 113 s.195-197, as amended) the Judicial Council 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 biennially 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.

Many other suggestions of that initial group have engaged the interest and support of various bodies through the years, the most notable culminating in enactment in 1961 of the "Act creating a District Court" after extensive study by the Legislative Research Committee and with the support of the Maine State Bar Association.

1961 - 1962

During this biennium the first stirrings of another major undertaking have occupied nearly the full attention of the Council. In the fall of 1959 the sub-committee on Criminal Procedures and Penalties was asked to study criminal penalties in Maine as compared to the same offenses in other states and current penological thinking. Looking for the research assistance necessary in so large a task, the sub-committee was fortunate to have the study accepted in the fall of 1960 as the basis for a seminar thesis by Donald W. Perkins, third year student in the Harvard Law School and a participant in Dr. Sheldon Glueck's seminar on "The Administration of Criminal Justice."

By March 1961 Mr. Perkins submitted to the Committee "A Proposal for Revision of the Revised Statutes of Maine along the Lines of the Model Penal Code." It includes one hundred eleven pages of tabular comparison of the penalties imposed by Maine law, the Model Penal Code and recently adopted codes in New Hampshire, Vermont and Wisconsin with recommended categorizations of criminal penalties and comment to aid in the drafting of appropriate legislation.

The Council studied the report with welcome assistance in its discussions from Mr. Perkins, Mr. Perry Hayden, late commissioner of Mental Health and Corrections, Warden Allan L. Robbins of the Maine State Prison and Judge James P. Archibald. It was finally voted to affirm our interest in a redrafting of Maine's substantive criminal provisions and categorization of penalties according to the Model Penal Code.

We would make it quite clear that we are not conscious of any urgent difficulties in our present system but rather are aware of the possibilities for improvement and the availability of such new tools to guide us as the Model Penal Code.

Mr. Perkins attended the May 1962 meeting of the American Law Institute in Washington at which the final draft of the new Model Code was presented for approval to aid him in his further work for the Council. In August he transmitted to the Council a study organized to facilitate evaluation of the Model Penal Code with citations to comparable Maine statutes. The Council then determined to ask the Maine State Bar Association to approve a study of the revision of the penal laws of Maine to conform, as far as seems wise, with the Model Penal Code, including a study of criminal procedures in general. It is gratifying to report the prompt response of the State Bar Association and the appointment of its committee consisting of Donald W. Perkins, Esq. of Portland, Municipal Court Judge Benjamin Butler of Farmington, and Kennebec County Attorney Jon Lund.

To Dr. Sheldon Glueck of the Harvard Law School faculty we express our most sincere appreciation for his efforts in securing so able a student to undertake this study. To Mr. Perkins our lasting thanks for services "above and beyond the call of duty" rendered freely and with distinction.

In other areas a sub-committee of the Council has prepared a preliminary report on the "Maine Dead Man's Statute," also known as the administrator's rule, with a view to modification or repeal.

At the 1961 session of the Legislature the Council proposed legislation re the "Record of Facts Used to Impose Sentence on Persons Convicted" (P.L.1961 Ch.90) and to change our reporting period from annual to biennial (P.L.1961 Ch.64). "An Act Providing for Municipal Court Conferences" was substantially covered by provision for regular annual conferences in the new District Court Act. A bill "Relating to Immunity for Information under Oath in Sex Crimes" failed of passage. At the special session the Council added its endorsement to the proposal to create an additional judgeship for the Superior Court, which was enacted.

We note with appreciation the services of Judge H. C. Marden which were concluded on his elevation to the Supreme Judicial Court on December 10, 1962. Judge Marden has served on the Council since its reactivation in 1954. During the biennium his active leadership has guided the work of the sub-committee on Criminal Procedures and Penalties. Albert P. Putnam, Esq., Frank E. Southard, Jr., Esq. and Louis C. Stearns, III, Esq. have also completed terms in public offices which terminate their services on the Council. Each made measurable contributions to its work.