

MAINE STATE LEGISLATURE

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THE BUDGET PROCESS & JUDICIARY

The process for submitting the Judicial Department budget request to the Legislature denies the Judicial Department control over its finances. Current law (4 MRSA §24) requires the Judicial Department to submit its budget request to the State Budget Office, and requires the governor to "include in the budget submission the judicial budget without revision but with such recommendations as he may deem proper." In practice, although the judicial department's request appears in budget documents, it is the governor's "recommendation" in the form of the budget bill that receives primary attention in the appropriations process. This is an inappropriate method of presenting the budget of the Judicial Department. The Maine Constitution creates the Judicial Department as a branch of government equal in authority and importance to the Legislative and Executive Departments. Giving the Executive Department authority to reject portions of the Judicial Department budget request before it is presented to the Legislature denies the Judicial Department the opportunity to have its true budget needs presented directly to the Legislature.

According to testimony of Judicial Department representatives, the budget submission statute was intended to protect the interests of the Judicial Department by requiring the governor to pass the budget request intact to the Legislature. Implementation of the statute is not consistent with that intent.

Finding: We find that the process by which the governor submits the Judicial Department budget to the Legislature violates the spirit if not the terms of the separation of powers doctrine of the Maine Constitution.

Recommendation: We recommend that the statute governing the submission of the judicial budget to the Legislature be amended to require the governor to include the Judicial Department budget without change in the budget bill presented to the Legislature.

Fragmentation and Duplication of Services in the Judiciary

Maine's three-tiered court system has developed over the years in response to the growing needs of the state, without an overall management plan. This piece-meal growth has resulted in duplication and fragmentation of court administration and management. Adding to the duplication is a law requiring the Judicial Department to participate in the administrative processes of Executive Department central service agencies as well as their own. Chief Justice McKusick recently appointed a committee to review and recommend improvements in administration and management of the court system. That committee, the Volunteer Business Committee, made numerous recommendations, some of which we endorse and adopt below.

Each court in the State has staff to collect fees and fines, and to process bail and escrow accounts; each court has bank accounts to handle these multiple small transactions. We believe that the collection of fees and fines, and the processing of bail and escrow accounts should be centralized. This would allow staff in the courts to use their time more productively performing other duties. Merging several bank accounts into fewer larger accounts may also enable the court system to maximize interest earnings and minimize bank processing fees.

Administrative authority over the court system should be centralized in a newly-created Chief Operating Officer. Currently, each court system in the state (the District Courts, the Superior Courts, and the Supreme Judicial Court) has an administrative officer, and the Administrative Office of the Courts has an administrative officer with limited authority over all the court systems. Consolidation of authority in the Chief Operating Officer would permit coordination of management and better long-range planning capabilities for the system.

Finally, the Judicial Department is required by law (4 MRSA §26) to use the services of and be included in systems established by the Department of Finance and Administration, including systems for processing budget expenditures. This results in inconsistent and duplicative processes, since the Judicial Department has processing systems and management systems specifically designed for the needs of the Judicial Department. To avoid duplication, and to give the Judicial Department the authority it should have to manage its own expenditures, we recommend repeal of the statute requiring the Judicial Department to use Executive branch administrative services.

Finding:

- Decentralized financial processing systems and fragmented administration result in inefficiencies in the court system.

Recommendations:

- The Judicial Department should centralize the collection of fees and fines, and the receipt and disbursement of bail and escrow deposits.

- The statute creating the office of State Court Administrator (4 MRSA §§15-17) should be amended to create the position of Chief Operating Officer of the Court, with expanded authority over management of the courts.
- The statute requiring the Judicial Department to use the services of the Departments of Finance and Administration (4 MRSA §26) should be repealed.

Prison Industry

The goal of the corrections system is not only to protect the public from criminal offenders during their prison sentence, it is also to provide long-term public protection by rehabilitating offenders. Giving offenders skills to enable them to successfully reenter society reduces the chances that they will repeat their crimes. To achieve this goal of long-term public protection, the corrections system must, among other things, increase opportunities for prisoners to engage in meaningful work while they are incarcerated. Prison industry gives prisoners job skills that will increase their chances of successful reentry to society, while decreasing the risk of prison disturbances. Prison employment also enables offenders to repay some of the costs of their crime, including paying the state for the cost of imprisonment and providing restitution to their victims.

The potential for prison industry has not been fully developed in Maine. The concerns of labor and businesses who view prison industry as competition, problems with attaining up-front capital funding, and lack of assistance by agencies with expertise in business development and labor have lead to the underdevelopment of prison industry. The Departments of Labor and Economic and Community Development have expertise in developing labor skills and finding business opportunities that would be of use to the Corrections system, but those Departments are not now required to assist prisoners or the corrections system. Those Departments should assist in developing prison industry by providing technical assistance and information. The Departments may, for example, assist the Department of Corrections in determining whether start-up capital would be available through the Small Business Administration, the Finance Authority of Maine, or other venture capital sources.

In addition to using the resources of other agencies of state government, the Corrections Department should take advantage of the expertise and interests of private businesses. Specifically, the Department should solicit interest from business people who may be willing to form joint ventures with the prisons. We believe that there are companies that are considering moving their enterprises overseas that would instead be willing to set up operations within the prisons. Although federal law requires that prisoners be paid prevailing wages for products to be sold in interstate commerce, there is no comparable law for goods sold only within Maine. There is thus some flexibility to form viable industries that would not succeed outside the prison.

Finding:

- We find that the potential for prison industry in Maine has not been fully developed. Greater development will result from sharing of expertise by private businesses, and state agencies that work with labor and industry.

Recommendations:

- We recommend that the Departments of Labor and Economic and Community Development assist the Department of Corrections to develop prison industry, and to determine eligibility of prisoners and prisons for federal and state assistance programs.
- We recommend that the Department of Corrections work to develop public/private partnerships to develop prison industry, either by soliciting businesses to set up operations within the prison, or using the expertise of business people as advisors in locating suitable business opportunities for the prisons.

Coordination and collaboration in the Corrections System

Several departments provide services to persons incarcerated in Maine prisons, including the Departments of Mental Health and Mental Retardation, the Department of Human Services (Vocational Rehabilitation, Children and Family Services), and the Department of Education. Those services are essential to the safety, health and rehabilitation of incarcerated persons. Although we recognize that lack of resources is perhaps the greatest problem in adequately providing services to prisoners, we believe that greater coordination of services from those Departments to the prisoners would result in more effective use of the service dollars now provided. For example, coordination between the Bureau of Vocational Rehabilitation and the Department of Corrections would allow qualified prisoners to take advantage of federal funds for vocational rehabilitation training. The Bureau of Vocational Rehabilitation currently considers prisoners unavailable for training because training providers do not have access to the prisoners. With the cooperation of the Corrections Department, that access may be provided. Coordination with other departments may likewise enable the Department of Corrections to take advantage of additional services.

Finding:

- Greater coordination is necessary between the Department of Corrections and agencies that provide treatment and training services to prisoners.

Recommendation:

- We recommend that the Department of Corrections forge closer ties with the Departments of Human Services, Mental Health and Mental Retardation, and Education to determine whether they are taking full advantage of services offered by those departments, and for those departments to determine whether services are being most effectively used and delivered.

Criminal Justice Commission

If we are to make more efficient use of criminal justice resources, we must coordinate the actions of the many agencies, organizations and individuals interested in criminal justice. Criminal justice resources -- the corrections system, law enforcement agencies, the courts -- are affected by the actions and interests of the Legislature, prosecutors, law enforcement officials, crime victims, the courts, social service providers, the public and others. There is no single forum for these parties to discuss the interplay of their actions on an ongoing basis.

The Criminal Justice Commission, created by the Legislature in 1991, would provide that forum. Unfortunately, no funds were appropriated to operate the Commission. We believe that the work of the Commission is critical to more effective use of criminal justice resources, and we urge the Legislature to fund the Commission.

Perhaps the greatest improvement in the use of criminal justice resources would come from coordination of corrections resources and the making and implementation of sentencing policy. When laws are passed to criminalize actions or to increase sentences for certain crimes, the primary concern of policymakers is for crime victims. The ability of the corrections system to implement the sentence, and the willingness of the public to commit additional resources to the corrections system to enable it to implement the sentence are not taken into consideration. Sentencing laws and policies must be developed only after full consideration of the effects of the policies and full consideration of the sentencing options available. We believe the Criminal Justice Commission would promote the making of more effective and efficient sentencing policy. We also believe that the Criminal Justice Commission is capable of performing the tasks currently performed by the Criminal Law Advisory Commission. We therefore recommend that the duties of that commission be transferred to the Criminal Justice Commission and that the Criminal Law Advisory Commission be abolished.

We think the Criminal Justice Commission can also provide coordination of municipal, county and state law enforcement. We considered the question of whether law enforcement services in the state should be consolidated or regionalized. We found that there are reasons to continue the current three-tiered system. Preventive law enforcement programs work best on the local level, where program providers know the people, the problems and the resources. Regionalization would diminish the benefits of local knowledge. Further, some of the benefits of regionalization such as economies of scale and specialization, have been achieved by centralization of crime laboratories and other resources and creation of specialized police units. Although regionalization is not advisable, we believe greater communication among the three levels of law enforcement would be beneficial in assuring efficient use of resources and sharing of information. We believe that the structure of the Criminal Justice Commission can provide the forum for that communication.

Findings:

- We find that there is a critical need to coordinate criminal justice policy and planning, and that the Criminal Justice Commission would provide that coordination. We further find that regionalization or consolidation of law enforcement agencies would not provide significant benefits, and would diminish the effectiveness of law enforcement.

Recommendations:

- We recommend that the Legislature fund the Criminal Justice Commission and that the following duties be added to those of the Commission:
 - + Review mandatory sentencing under current law, its relationship to the Criminal Code, and recommend methods of reducing the use of mandatory sentencing
 - + Review the current law regarding eligibility for intensive supervision, determine the barriers to greater use of intensive supervision as an alternative to incarceration, and recommend ways to remove those barriers to expand the use of intensive supervision where appropriate.
 - + Develop a spectrum of sentencing alternatives for more efficient and effective use of correctional resources.
 - + Develop a method of educating the public and the participants in the criminal justice system of the needs and interrelated nature of the system.

District & Superior Court Efficiencies

There is a great disparity in the level of use and cost efficiency of the 32 District Courts across the state. Case loads vary, with some courts heavily overburdened, and others underutilized. The cost of disposing of a case in 1991 ranged from \$13.71 in Presque Isle District Court to \$84.29 in Van Buren. (FOOTNOTE: Volunteer Business Committee to Review the Administrative and Financial Operations of the Judicial Department, Report of Findings to the Honorable Vincent L. McKusick, Chief Justice, Supreme Judicial Court, March 26, 1991.) Although there may have been reason at one time to operate each of the courts in its current location, it is time to examine the location of the courts. We must maximize the efficiency of the District Court system as a whole, while keeping in mind the need to assure access to courts throughout the State. We do not believe that we have the time or knowledge to determine where District Courts should be located, but we do believe that a more efficient court system can be created through a review by a body of qualified people who understand the need for court access and the need to use scarce court resources more efficiently.

Use of the 16 Superior Courts throughout the state also varies widely from county to county. A qualified body should also review whether venue requirements or other filing rules in the Superior Courts create barriers to efficient use of the courts by prohibiting or discouraging the use of underutilized courts.

If court regions are changed, it would be beneficial to review how the District Attorney service areas correlate with the court districts, and whether the jurisdiction of the District Attorneys should be changed to coordinate with the court districts.

Finding:

- We find that the great disparity in efficiency of District Courts throughout the state necessitates a thorough examination of the placement of District Courts throughout the state. Wide disparity in utilization of the Superior Courts also necessitates a review of the current venue and other case-filing rules for those courts.

Recommendation:

- We recommend that the Legislature's Judiciary Committee review the location of District Courts throughout the State and recommend to the Legislature's Appropriations Committee any changes in location it deems necessary to improve the efficiency of the court system.
- We recommend that the Legislature's Judiciary Committee review the venue and other case-filing rules for Superior Court to determine whether liberalization of the rules would more evenly spread the case load among the courts.

Privatization of Corrections Programs & Services

The Department of Corrections has in the past successfully contracted with private organizations for the provision of goods and services, including operation of community correction centers and provision of medical services to prisoners. We believe that the Department should continue to provide services by private contract, where appropriate, especially when provision of those services by private contract allows for third-party reimbursement of costs.

NOTE: CHARLENE KINNELLY AND LARRY WILLEY SUPPORT THE FOLLOWING PARAGRAPH, THE FINDING AND RECOMMENDATION. ROGER HARE AGREES ONLY WITH THE PARAGRAPH ABOVE.

The issue of contracting for the construction and operation of prisons raises concerns apart from those generally raised by private contracting. The state has a Constitutional duty to safeguard prisoners, and it is unclear how performance of that duty would be assured through a private contract or what the consequences would be of failure to perform that duty. Contracts for private operation of facilities should not be undertaken until those issues are resolved. However, we do believe that the Department should consider proposals for private prison construction and operation, if those proposals appear to offer services or facilities of better quality or lower cost than state-provided services and facilities.

Finding:

- The Department of Corrections should examine private contracting for prison services and facilities.

Recommendation:

- The Department of Corrections should be specifically authorized by statute to enter into private contracts for the development, construction and operation of prison facilities, and for the provision of services, with appropriate limits and safeguards.

Coordinated Use of Space and Facilities in Corrections

In its effort to expand the number of prison facilities in the state, the Department of Corrections should consider converting existing facilities to prisons as an alternative to building new prisons. For minimum and medium security prisons in particular, conversion of existing buildings may be less costly than construction of a new facility. We believe that a comprehensive review of the use of all state buildings should be performed to determine which buildings are not being used in a cost-effective manner. Buildings that are not efficiently used may be more efficiently used as prisons. Among the facilities that the Department might consider are state higher education facilities, such as University campuses. Using higher education facilities as prisons in particular might improve the ability of the prisons to offer educational programs, since the educational facilities would be available without additional cost. In addition to considering the use of existing state facilities, the Department should consider Loring Air Force Base, when that base is turned over to the state by the federal government.

Finding:

- Using existing facilities as prisons may be more cost-effective than building new facilities, especially if those existing facilities are now being inefficiently used.

Recommendation:

- We recommend that, before undertaking construction of new prison facilities, the Department of Corrections consider the cost-efficiency of using existing facilities, such as Loring Air Force Base, and state facilities that are inefficiently used.

Other Findings and Recommendations

Executive
Public Safety and Health #1

As more options emerge for treatment and punishment of offenders, it becomes more important for policymakers and the public to be able to measure the long-term effects of the various options. We need to determine which sanctions punish the offender to the appropriate degree but also reduce the likelihood that the person will recidivate, or return to criminal behavior following punishment. We need to know what treatment effectively reduces recidivism. The Department of Corrections does not currently have the capability to track offenders after they leave prison or probation in order to determine recidivism rates.

Finding:

- Insufficient data exists to determine the effects of various treatment and sentencing policies, which inhibits the making of wise policy in criminal justice.

Recommendation:

- We recommend that the Department of Corrections establish a system of collecting data that will permit tracking of individuals, to assist in studies of recidivism rates and the effect on recidivism of various alternative treatments and punishments.

Executive
Public Safety and Health #2

Prisons in Maine are seriously overcrowded, endangering prisoners and the public. On average, the Maine prison population is 136% of prison capacity. (See Table and Chart, page ???) Alleviating overcrowding involves not only building new prisons, but finding ways to reduce the need for prisons by reducing recidivism rates and using correctional resources more efficiently.

In 1991, the state spent an average of \$22,765 to incarcerate an adult in a Maine prison for one year, and an average of \$38,098 to incarcerate a juvenile. By contrast, the state spent from \$530-600 per adult on probation, and from \$1,400 to \$1,500 per juvenile. FOOTNOTE: Cost figures supplied by the Department of Corrections) Although probation and other non-incarceration punishments are not appropriate for all offenders, we believe that the wise use of scarce correctional resources requires that alternative sentences such as intensive supervision and probation be given greater consideration by policymakers, judges and the public. We believe that alternative punishment is not only less expensive, but also less likely to create recidivism, or a return to criminal activity following punishment. Increasing the use of alternative sentencing will come from increasing public awareness of alternatives and providing a forum for policymakers, judges and corrections officials to communicate about the need for alternative sentencing. We have recommended elsewhere in this report that the Criminal Justice Commission be funded to provide that forum.

Reducing recidivism rates requires an immediate investment in treatment and education for offenders, but promises long-term economic and social benefits. More efficient use of the services we do fund, a larger investment in services, and better screening to determine the needs of offenders are all critical to rehabilitating offenders and reducing recidivism.

Finally, we realize that alternative sentencing and reduced recidivism will not eliminate the need for prisons. There are some offenders who must be incarcerated if the public is to be protected and the wishes of the public to punish the offender are to be fulfilled. Maine needs additional prison space to house the current population and to house those sentenced in the future. Lack of public support for prison bonds over the last few years has caused the Corrections Department to fall behind in providing adequate space for the prison population. Although the public has not supported bond issues, the public has apparently supported law changes that increase the burden on the corrections system -- mandatory sentencing, the abolition of parole, and increased sentences for certain crimes. The public must understand that if it supports these laws, it must also support the resources to implement the sentences. If the public supports sanctions, it must understand the range of sentencing options -- from incarceration to intensive supervision, to probation. Public understanding of the needs and the resources of the corrections system would increase the ability of the corrections system to meet its obligations.

Finding:

- Maine prisons are overcrowded. Alleviating the overcrowding requires gaining public support for prison expansion, choosing less restrictive and less costly punishment where appropriate, and increasing rehabilitation efforts to reduce recidivism.

Recommendations:

- The public must be better educated about the current needs of the corrections system and about the wisdom of investing in rehabilitation and less restrictive punishment.
- Parents, schools and other organizations in contact with children on a regular basis must increase their efforts to detect and seek treatment for social problems suffered by those children, to reduce the likelihood of the child's coming into contact with the criminal justice system.
- The Corrections Department must improve its screening and intake process to assure that it detects needs for rehabilitation services, and places offenders where they will receive those services, with the goal of reducing recidivism rates.
- Policymakers, the public and judges must be encouraged to punish offenders in some manner other than incarceration, whenever appropriate.

Discussions without Recommendations

Department of Justice

The Committee on Public Safety and Health considered Governor McKernan's proposal to consolidate several law enforcement agencies into a Department of Justice, modeled after the United States Department of Justice. The Committee did not receive sufficient information to make a recommendation on the proposal, but we would like to describe the proposal and its advantages and disadvantages as they were presented to us for the benefit of those who may consider the proposal in the future.

The Maine Department of Justice would be headed by the Attorney General, appointed by the governor subject to confirmation by the Senate. Under the proposal initially put forth by the governor, the Attorney General would head a department consisting of the current Departments of Corrections and Public Safety, the National Guard, and the Office of the Attorney General. The governor subsequently decided that the Department of Corrections should not be included in the merger of departments.

The purpose of the proposal is to permit comprehensive criminal justice planning by consolidating agencies that affect criminal justice and law enforcement into one department. This allows a single department head, the Attorney General, to balance the interests, concerns and goals of the agencies and to make policy taking into account those diverse interests and concerns. It also allows the governor to have more direct contact with the Attorney General, who makes policy decisions of equal importance to those made by other members of the governor's Cabinet. Administration of the departments would be merged, which could lead to some cost savings, although the amount and likelihood of savings was not clear.

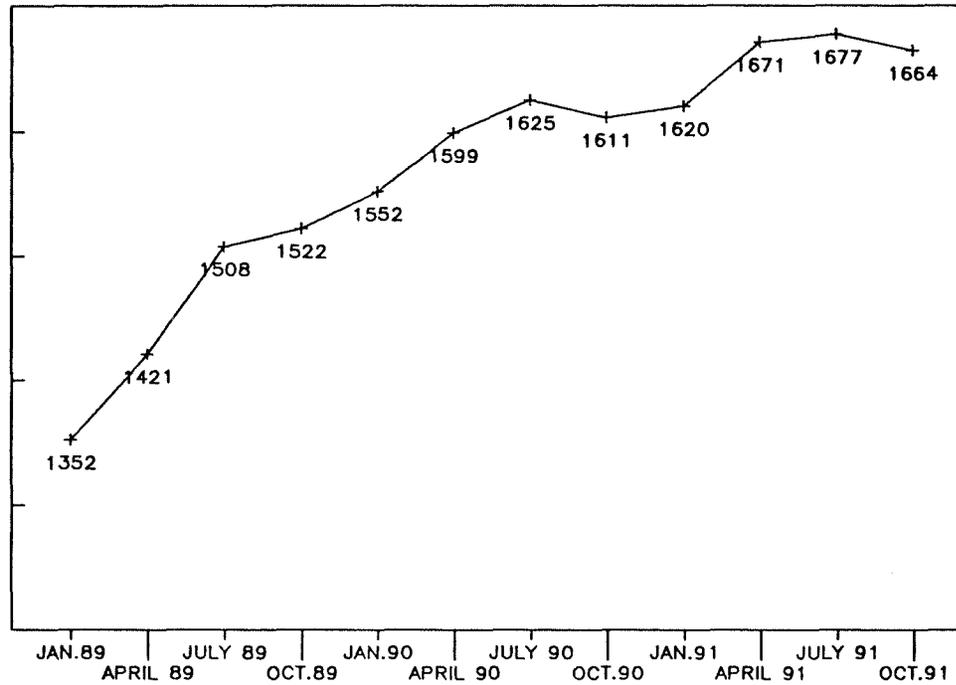
The major concern with the proposal is that it compromises the independence of the Attorney General. Appointment by the governor would make it difficult for the Attorney General to render a legal opinion or perform an investigation that may be adverse to the interests of the governor. The committee was skeptical that cost savings would result from the merger, since all the departments involved have very little administrative staff. Finally, if the Attorney General were a member of the Governor's Cabinet, the Legislature would have to obtain independent legal advice to advise it on conflicts with the Governor.

Department of Children and Families

The Committee on the Protection of Public Safety and Health was asked to review whether juvenile corrections should be included in any newly formed Department of Children or Department of Children and Families. The committee did not receive sufficient information to form a recommendation on this issue, although the advantages and disadvantages of various positions were discussed. There is a concern that the goals of corrections and social welfare may not mesh well, that resources of the Corrections Department would be less available to juvenile corrections if it was in a different department and that juvenile

corrections would be last on the list for funding and attention in a department dealing with a wide range of children's issues. On the other hand, placing juvenile corrections in a social service agency may result in better social service to juveniles, with greater likelihood of early intervention and rehabilitation.

MAINE DEPARTMENT OF CORRECTIONS
POPULATION COUNT



* Indicates persons incarcerated in Maine state prisons and others for whom the Department is responsible, but who have been placed in county jails, federal and out-of-state prisons, hospitals and nursing homes.

* Population counts are taken on the first week of the quarter.

MAINE DEPARTMENT OF CORRECTIONS
1991 Facility Capacity and Population

<u>FACILITY</u>	<u>TOTAL CAPACITY</u>	<u>POPULATION (on 10/8/91)</u>	<u>POP. AS % OF CAPACITY</u>
MAINE STATE PRISON (Medium and Minimum Security)	399	459	115%
BOLDUC UNIT (Minimum Security)	56	79	141%
MAINE CORRECTIONAL CENTER (Medium, Minimum Security, Community, and Receiving)	391	606	155%
CHARLESTON CORRECTIONAL FACILITY (Minimum Security)	146	180	123%
DOWNEAST CORRECTIONAL FACILITY (Medium and Minimum Security)	96	135	141%
SOUTHERN MAINE PRE-RELEASE CENTER (Community)	30	48	160%
BANGOR PRE-RELEASE CENTER (Community)	35	51	146%
CENTRAL MAINE PRE-RELEASE CENTER (Community)	40	61	153%
TOTALS	1193	1619	136%

Note:

Facility capacity is based on American Correctional Association Standards for square feet of cell space, access to day-room space, and out-of-cell time per prisoner.

Classification of facility is based on American Correctional Association facility design standards.