

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1604

H. P. 1155

House of Representatives, March 17, 1971

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Kelley of Caribou.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Improve Procedures in Post-conviction Cases.

Be it enacted by the People of the State of Maine, as follows :

Sec. 1. R. S., T. 14, § 5505, amended. The first sentence of section 5505 of Title 14 of the Revised Statutes is repealed and the following enacted in place thereof :

When the petitioner has counsel by appointment or retention and the justice has been advised that no amendment to the petition will be filed or one has been filed, he shall order the Attorney General to respond to the petition and any amendments thereto within 10 days of the date the order is received, by answer, motion or notice the State does not contest the petition.

Sec. 2. R. S., T. 14, § 5508, amended. The first paragraph of section 5508 of Title 14 of the Revised Statutes is repealed and the following enacted in place thereof :

A final judgment entered under section 5505 may be reviewed by the Supreme Judicial Court sitting as a law court. An appeal by the petitioner may not proceed unless the law court issues a certificate of probable cause. The filing of the notice of appeal shall be deemed to constitute a request for such a certificate. The clerk of the Superior Court, upon receipt of a notice of appeal, shall forward to the law court the file of the proceedings in the Superior Court. The file so forwarded shall be returned to the Superior Court with the order of the court. Denial of the certificate constitutes finality of the proceedings. An appeal after the issuance of a certificate of probable cause to the petitioner shall be in the same mode and scope of review as any civil appeal.

If an appeal is taken by the State, a certificate of probable cause is not required but shall be in accordance with the civil rules.

STATEMENT OF FACT

The purpose of this Act is twofold: First, improve the post-conviction pleading procedure to allow a petitioner to file his initial petition and any amendments before the respondent is required to file a pleading. The change will alleviate the situation of plural pleadings often encumbering the records of post-conviction cases. Too, the time for filing the responsive pleading is shortened from 20 days to 10 days. Secondly, improve the procedure in post-conviction appeals through use of a certificate of probable cause present in federal post-conviction habeas corpus cases involving state prisoners. This change would allow the law court to refuse time-consuming, frivolous appeals which now go directly to that court at material public expense. Denial of frivolous appeals would constitute finality of the state action by a petitioner, allowing him to proceed more quickly to the Federal District Court, if desired; and would permit the law court to adopt the Superior Court decision as the correct result in the case without the necessity of receiving written and oral argument on the matter.