

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1569

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S. P. 474

In Senate, March 20, 1973

Referred to the Committee on State Government. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Brennan of Cumberland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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**AN ACT to Provide Elected District Attorneys.**

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

**Sec. 1. R. S., T. 5, § 199, amended.** The first and 4th sentences of section 199 of Title 5 of the Revised Statutes are amended to read as follows:

The Attorney General shall consult with and advise the ~~county~~ district attorneys in matters relating to their duties.

He may, in his discretion, act in place of or with the ~~county~~ district attorneys, or any of them, in instituting and conducting prosecutions for crime, and is invested, for that purpose, with all the rights, powers and privileges of each and all of them.

**Sec. 2. R. S., T. 5, § 202, amended.** Section 202 of Title 5 of the Revised Statutes is amended to read as follows:

**§ 202. Employment of detectives**

The Attorney General may, by himself or through the several ~~county~~ district attorneys or other officers of the State, employ such detectives or other persons, offer rewards or use other means that he may deem advisable for the detection, arrest and apprehension of persons who commit crime in this State.

**Sec. 3. R. S., T. 30, § 2, amended.** The first paragraph of section 2 of Title 30 of the Revised Statutes is amended to read as follows:

The county commissioners, clerks of the judicial courts and their deputies, county treasurers and their deputies, sheriffs, registers of deeds, judges of probate and registers of probate in the several counties shall receive annual

salaries from the county treasury in weekly or monthly payments as follows, except that the ~~county~~ district attorneys and their assistants shall receive annual salaries from the State Treasury in monthly payments on the last day of each month in a sum which will, in the year's aggregate, most nearly equal the annual salary, as follows, and no other fees, costs or emoluments shall be allowed them :

**Sec. 4. R. S., T. 30, § 2, amended.** That part of the 2nd to the 17th paragraphs of section 2 of Title 30 of the Revised Statutes which relate to county attorneys, as amended, are repealed.

**Sec. 5. R. S., T. 30, § 2, amended.** Section 2 of Title 30 of the Revised Statutes, as amended, is further amended by adding before the 18th paragraph the following new paragraphs :

The district attorneys for each of the prosecutorial districts, as described in section 553-A, shall receive annual salaries of \$23,500 each.

First assistant district attorneys shall receive an annual salary of \$17,000.

Second assistant district attorneys shall receive an annual salary of \$15,000.

Third assistant district attorneys shall receive an annual salary of \$13,000.

**Sec. 6. R. S., T. 30, § 2, amended.** The last sentence of the 18th paragraph of section 2 of Title 30 of the Revised Statutes is amended to read as follows :

County commissioners shall allow to said officers all office expense, clerk hire and travel which are necessary, just and proper to the performance of their official duties, except that in the case of district attorneys, the said commissioners shall be required only to allow suitable facilities, light, heat and maintenance, without rent or other charge.

**Sec. 7. R. S., T. 30, § 451, repealed and replaced.** Section 451 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof :

**§ 451. Election; vacancies**

District attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold office for 4 years.

The district attorneys shall be elected on the Tuesday following the first Monday of November in every 4th year, by the written votes of electors qualified to vote for Representatives. The vote shall be received, sorted, counted and declared as votes for Representatives are. The names of the persons voted for, the number of votes for each and the whole number of ballots received shall be recorded by the clerk of each town within the prosecutorial district, and true copies thereof, sealed and attested as returns of votes for Senators, shall be transmitted to the Secretary of State.

When the office of district attorney becomes vacant, as defined in section 552, before the first day of October in the 2nd year after the election of a

district attorney, there shall be a new election held to fill the vacancy in accordance with the other provisions of this section.

Only attorneys-at-law admitted to the general practice of law in this State and resident in the prosecutorial district shall be elected or appointed district attorney, and removal therefrom vacates the office. Whenever the Governor and Council, upon complaint and due notice and hearing, shall find that a district attorney has violated any statute or is not performing his duties faithfully and efficiently, they may remove him from office and appoint another attorney in his place to serve until the first day in January of the year following the next scheduled election for Representative, at which time a special election shall be held to fill such vacancies as there may be in the office of district attorney.

**Sec. 8. R. S., T. 30, § 452, amended.** Section 452 of Title 30 of the Revised Statutes is amended to read as follows:

**§ 452. Military or naval service; substitutes**

Whenever a ~~county~~ district attorney during his term of office shall, in time of war, contemplated war, emergency or limited emergency, enlist, enroll, be called or ordered or be drafted into the military or naval service of the United States or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office; nor shall he be removable therefrom during the period of his said military or naval service except that his term of office shall not be held to have been lengthened by reason of this section. From the time of his induction into such service he shall be regarded as on leave of absence without pay from his said office, and the Governor with the advice and consent of the Council shall appoint a competent attorney, a resident of the ~~county~~ prosecutorial district so affected, to fill said office while said ~~county~~ district attorney is in the federal service but not for a longer period than the remaining portion of the term of said ~~county~~ district attorney. During the period of said military or naval service, the Treasurer of State shall pay to said substitute attorney a salary at the same rate as the rate of pay of the ~~county~~ district attorney and amounts so paid shall be deducted from the salary of said ~~county~~ district attorney. The attorney so appointed to fill the temporary vacancy shall have the title of "substitute ~~county~~ district attorney" and shall possess all the rights and powers and be subject to all the duties and obligations of the ~~county~~ district attorney for whom he is substituting.

**Sec. 9. R. S., T. 30, § 453, amended.** Section 453 of Title 30 of the Revised Statutes is amended to read as follows:

**§ 453. Salaries**

~~County~~ The district attorneys of the several counties and the assistant district attorneys for each of the several prosecutorial districts shall receive annual salaries as set forth in section 2.

**Sec. 10. R. S., T. 30, § 454, additional.** Title 30 of the Revised Statutes is amended by adding a new section 454 to read as follows:

#### § 454. Full-time district attorneys

The district attorneys and their assistants shall be full-time officers of the State. They shall not appear as counsel in any civil or criminal case or controversy before any of the courts of the State of Maine or any other state or United States court or at any administrative hearing held by any state or United States agency, other than in their capacity as district attorney or assistant district attorney, during their terms of office, nor shall they during such term be a partner or associate of any person in the private practice of law.

Sec. 11. R. S., T. 30, § 501, amended. Section 501 of Title 30 of the Revised Statutes is amended to read as follows:

#### § 501. Civil proceedings; compensation

The ~~county~~ district attorney ~~in each county~~ for each prosecutorial district shall appear for ~~the each county within the district for which he was elected,~~ under the direction of the county commissioners for each county within such district, in all actions and other civil proceedings in which ~~the any county within such district~~ is a party or interested, or in which the official acts and doings of said county commissioners are called in question, in all the courts of the State, and in such actions and proceedings before any other tribunal when requested by said commissioners. All such actions and proceedings shall be prosecuted by him or under his direction. He shall prosecute to final judgment and execution all civil cases in which the State is a party in ~~his any county within his prosecutorial district~~ and shall institute proceedings against sureties on any recognizance upon which the principal and sureties have been defaulted, before the term next succeeding that at which such default was entered upon the docket of the court, unless by order in open court the presiding justice shall grant a delay in proceedings against such sureties.

Writs, summonses or other processes served upon ~~the any county~~ or said commissioners within his prosecutorial district shall forthwith be transmitted by them to him. The county commissioners may employ other counsel if in their judgment the public interest so requires. For the services mentioned, the ~~county~~ district attorney shall receive no compensation other than the salary from the State, except actual expenses when performing said services, the same to be audited by the county commissioners and paid from the county treasury. This section shall in no way relate to or give the ~~county~~ district attorney control of litigation in which ~~the any county within his prosecutorial district~~ is not financially interested although the official acts and doings of the county commissioners may be called in question.

Sec. 12. R. S., T. 30, § 502, amended. Section 502 of Title 30 of the Revised Statutes is amended to read as follows:

#### § 502. Criminal proceedings

The ~~county~~ district attorney shall attend all criminal terms held in ~~his county~~ the counties within the prosecutorial district for which he was elected and act for the State in all cases in which the State or county is a party or

interested, and unless he makes an order of dismissal as provided, shall diligently and without delay prosecute to final judgment and sentence all criminal cases before the Superior Court of ~~his county~~ any of the counties within his district, and in the absence of the Attorney General from a term in ~~the county~~ any of the said counties, shall perform his duties in state cases, under directions from him, in ~~the county~~ any of the said counties, and he shall appear and act for the State with the Attorney General in the law court in all state cases coming into said court from ~~his county~~ any of the said counties. No additional compensation shall accrue to the ~~county~~ district attorney by the discharge of such duties.

Sec. 13. R. S., T. 30, § 503, amended. Section 503 of Title 30 of the Revised Statutes, as amended by section 68 of chapter 356 of the public laws of 1965, is further amended to read as follows:

§ 503. Dismissal of civil cases

In order to dismiss civil cases, the ~~county~~ district attorney shall endorse upon the back of the writ or complaint in such cases a written order of dismissal, together with a statement of reasons for dismissal, and said order of dismissal shall not take effect unless approved in writing by the justice presiding at the term when the said dismissal is made.

The ~~county~~ district attorney may dismiss criminal cases in such manner and under such circumstances as the Supreme Judicial Court may by rule provide.

Sec. 14. R. S., T. 30, § 504, amended. Section 504 of Title 30 of the Revised Statutes is amended to read as follows:

§ 504. Collection of fines and costs; examination of sheriff's bond

The ~~county~~ district attorney shall enforce the collection and payment to the county ~~treasurer~~ treasurers for each of the counties within the prosecutorial district for which he was elected of all fines, forfeitures and costs accruing to the State and the faithful performance of their duties by sheriffs and constables and give information to the court of their defaults in this respect; and shall annually move the county commissioners of each of the counties within his said prosecutorial district, at their ~~meeting~~ respective meetings next following the 3rd Tuesday of June, to examine and consider the sufficiency of the ~~sheriff's~~ bond of the sheriff for the county the said commissioners represent. If he neglects either of said duties, he forfeits to the State not more than \$100, to be recovered in a civil action in the name of the Treasurer of State.

Sec. 15. R. S., T. 30, §§ 505 and 506, amended. Sections 505 and 506 of Title 30 of the Revised Statutes are amended to read as follows:

§ 505. Annual report to Attorney General

The ~~county~~ district attorney shall, annually, by the 20th day of November, make such a report to the Attorney General of the business done in his office during the year ending on the first day of said November as is required by Title 5, section 204, and failing to do so, he forfeits  $\frac{1}{2}$  of his salary for the

current quarter, to be deducted by the Attorney General, unless he is satisfied that there was reasonable cause therefor.

**§ 506. Restrictions and obligations**

The ~~county~~ district attorney is under the same restrictions as to fees and the same obligations as to witnesses as are imposed on the Attorney General by Title 5, sections 201 and 205.

**Sec. 16. R. S., T. 30, § 551, amended.** Section 551 of Title 30 of the Revised Statutes is amended to read as follows:

**§ 551. Appointment of temporary substitutes**

When the ~~county~~ district attorney does not attend a criminal session or the office is vacant, the court may appoint an attorney to perform his duties during the session and allow him a reasonable compensation to be paid from the ~~county~~ district treasury, and the justice shall notify the Attorney General who shall deduct the same from the salary of such ~~county~~ district attorney and forward the same to such ~~county~~ district treasurer.

**Sec. 17. R. S., T. 30, § 552, repealed and replaced.** Section 552 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

**§ 552. Appointment of substitute on death or removal**

Whenever the office of district attorney becomes vacant by reason of the death, permanent incapacity or removal from the prosecutorial district of the incumbent of the office, except as provided for in section 452, the Governor with the advice and consent of the Council shall appoint a competent attorney, a resident of the prosecutorial district affected, to serve as a substitute district attorney until the first day of January in the year next following an election for Representative.

**Sec. 18. R. S., T. 30, §§ 553-562, repealed.** Sections 553 to 557, as amended, section 558, as repealed and replaced by section 14 of chapter 573 of the public laws of 1969, sections 559 and 560, as enacted by section 2 of chapter 530 of the public laws of 1967 and sections 561 and 562, as enacted by sections 3 and 4 of chapter 484 of the public laws of 1969, of Title 30 of the Revised Statutes, are repealed.

**Sec. 19. R. S., T. 30, §§ 553-A, 554-A and 555-A, additional.** Title 30 of the Revised Statutes is amended by adding 3 new sections 553-A, 554-A and 555-A, to read as follows:

**§ 553-A. Prosecutorial districts**

1. There shall be one district attorney for York County, which shall be known as "Prosecutorial District Number 1." He shall be elected by the electors of York County in the manner set forth in section 451.

2. There shall be one district attorney for Cumberland County, which shall be known as "Prosecutorial District Number 2."

3. There shall be one district attorney for Oxford, Franklin and Androscoggin Counties, which shall be known as "Prosecutorial District Number 3."

4. There shall be one district attorney for Kennebec, Sagadahoc, Lincoln, Knox and Somerset Counties, which shall be known as "Prosecutorial District Number 4."

5. There shall be one district attorney for Penobscot, Piscataquis, Waldo, Hancock and Washington Counties, which shall be known as "Prosecutorial District Number 5."

6. There shall be one district attorney for Aroostook County, which shall be known as "Prosecutorial District Number 6."

#### § 554-A. Deputy and assistant district attorneys

1. Each district attorney shall appoint assistant district attorneys to serve at his pleasure and the said assistants shall take the oath prescribed for district attorneys and assist the district attorneys in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand juries and in the preparation and trial of criminal causes. They shall, when directed by the district attorney, act as counsel for the State in the trial of complaints before Judges of the District Court and Justices of the Superior Court and in the prosecution of appeals before the Supreme Judicial Court.

2. Each district attorney shall appoint one first assistant district attorney and one second assistant district attorney.

3. The district attorneys for prosecutorial districts 2, 3 and 4 shall appoint one third assistant district attorney each and the district attorney for district 5 shall appoint 2 third assistant district attorneys.

#### § 555-A. Expenses

The district attorneys and their assistants shall be allowed office expense, clerk hire and travel and actual expenses while on official business.

**Sec. 20. Amending clause.** Wherever in the Revised Statutes and the public laws the words "county attorney" appear they shall mean "district attorney."

**Sec. 21. Transitional provisions.** The present terms of office of all county attorneys shall continue and shall not expire until successors have been elected and qualified. In any event, the terms of county attorneys and assistant county attorneys shall expire on December 31, 1974. The first election for the office of district attorney shall be held in accordance with Title 30, section 451 as herein amended, on the first Tuesday following the first Monday of November in 1974.

Upon termination of an office of county attorney or assistant county attorney or upon the office otherwise becoming vacant after such establishment and appointment, all cases pending before the county attorney, whether civil or criminal, together with his records shall be transferred to the district attorney.

**Sec. 22. Appropriation.** There is appropriated from the General Fund to the Department of the Attorney General the sum of \$578,000 to carry out the purposes of this Act. The breakdown shall be as follows:



	1973-74	1974-75
ATTORNEY GENERAL, DEPARTMENT OF		
District Attorneys and Assistant District Attorneys—salaries.		
Personal Services	\$150,000	\$398,000
All Other		
District #1	—	5,000
District #2	—	5,000
District #3	—	5,000
District #4	—	5,000
District #5	—	5,000
District #6	—	5,000
	\$150,000	\$428,000

**Sec. 23. Effective date.** The effective date of this Act is January 1, 1974, except that this Act shall determine the term of office of the district attorneys to be elected at the general election in November, 1974, as well as the terms of the district attorneys to be elected thereafter.

#### STATEMENT OF FACT

The purpose of this Act is to provide for a modern democratic system for the effective prosecution of criminal cases. Through merger of existing county attorneys' offices, a 4-year, full-time position with adequate salaries and staffs will be established. There will be no sacrifice of the integrity of the counties or the electoral process for selecting such officers.

Prompt and effective prosecutions will be promoted by adequate staffs for consultation and for case preparation. Uniformity of case loads and compensation will also be enhanced.

This important sector of the Maine criminal justice system will become more effective, and remain a democratic institution.