

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 421

7 S.P. 154

In Senate, February 5, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Carpenter of Aroostook.

Cosponsored by Representative Kane of So. Portland.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Amend Certain Aspects of  
18 Post-conviction Review.  
19

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

22 Sec. 1. 15 MRSA §2121, sub-§1-A is enacted to  
23 read:

24 1-A. Assigned justice. "Assigned justice" means  
25 the Justice or Active Retired Justice of the Supreme  
26 Judicial Court or the Justice or Active Retired Jus-  
27 tice of the Superior Court assigned the post-  
28 conviction review proceeding when a special assign-  
29 ment has been made. It means any Justice or Active  
30 Retired Justice attending to the regular criminal  
31 calendar when the post-conviction review proceeding  
32 is assigned to the regular criminal calendar.

33 Sec. 2. 15 MRSA §2123, sub-§1-A is enacted to  
34 read:

1        1-A. Supreme court justice. A single Justice of  
2 the Supreme Judicial Court or an Active Retired Jus-  
3 tice of the Supreme Judicial Court shall have and ex-  
4 ercise jurisdiction and have and exercise all of the  
5 powers, duties and authority necessary for exercising  
6 the same jurisdiction as the Superior Court relative  
7 to a post-conviction review proceeding.

8        Sec. 3. 15 MRSA §2129, sub-§2, as amended by PL  
9 1983, c. 688, §9, is repealed and the following en-  
10 acted in its place:

11        2. Assignment of case. The procedure for the  
12 assignment of a post-conviction review case shall be  
13 as the Chief Justice of the Supreme Judicial Court  
14 shall provide by administrative rule.

STATEMENT OF FACT

The key change proposed is that found in section 3 of this bill. Present Maine Revised Statutes, Title 15, section 2129, subsection 2, is inadequate both because it fails to recognize that the assignment of cases at the Superior Court level now rests in the newly created position of Chief Justice of the Superior Court, Public Law 1983, chapter 269, section 7, and because it does not permit the assignment of post-conviction review cases to the regular criminal calendar when a special assignment is undesirable. Although the subsection could be modified solely to correct these 2 specific inadequacies, a better solution is to amend the provision so as to leave the procedural details of case assignment to administrative rule by the Chief Justice of the Supreme Judicial Court.

With the Maine Revised Statutes, Title 15, section 2129, subsection 2, altered, as proposed in section 3 of this bill, 2 nonsubstantive modifications must follow. First, the phrase "assigned justice" utilized throughout the Maine Revised Statutes, Title 15, chapter 305-A, and incidentally also utilized throughout Maine Rules of Criminal Procedures, Part XI, must be expressly defined so as to accommodate the possibility of an assignment to the regular criminal calendar in lieu of a special assignment, as proposed in section 1 of this bill. Second, jurisdiction over post-conviction review proceedings by single Justices of the Supreme Judicial Court no longer appearing in the Maine Revised Statutes, Title 15, section 2129, subsection 2, necessitates a new provision, as proposed in section 2 of this bill.

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