

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION

2
3 ONE HUNDRED AND TWELFTH LEGISLATURE

4
5 Legislative Document

No. 481

6
7 H.P. 361

House of Representatives, February 8, 1985

8 On motion of Representative Kane of S. Portland, referred to the
9 Committee on Judiciary. Sent up for concurrence and ordered printed.
Ordered sent forthwith.

10 EDWIN H. PERT, Clerk

Presented by Representative Paradis of Augusta.

11 Cosponsored by Representative Boutilier of Lewiston.

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 §2124, sub-§3, ¶A, as enacted by
9 PL 1979, c. 701, §15, is amended to read:

10 A. Incarceration imposed in this State, in an-
11 other state or in a Federal Court pursuant to a
12 sentence for a subsequent criminal judgment for a
13 crime punishable by incarceration for a year or
14 more, the length of the incarceration being
15 greater than it would otherwise have been in the
16 absence of the challenged criminal judgment of
17 this State. The criminal judgment which is chal-
18 langed must be for a crime punishable by incar-
19 ceration for a year or more. This requirement is
20 not satisfied by a showing only that the court
21 imposing the present sentence was aware of the
22 challenged criminal judgment or if it appears
23 from the length or seriousness of the person's
24 total criminal record that the challenged crimi-
25 nal judgment, taking into account its seriousness
26 and date, could have little or no effect on the
27 length of incarceration under the subsequent sen-
28 tence;

29 Sec. 4. 15 MRSA §2129, sub-§2, as amended by PL
30 1983, c. 688, §9, is repealed and the following en-
31 acted in its place:

32 2. Assignment of case. The procedure for the as-
33 ignment of a post-conviction review case shall be as
34 the Chief Justice of the Supreme Judicial Court shall
35 provide by administrative order.

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STATEMENT OF FACT

2 The key change proposed is that found in section
3 4 of this bill. Presently, the Maine Revised Stat-
4 utes, Title 15, section 2129, subsection 2, is inade-
5 quate both because it fails to recognize that the as-
6 ignment of cases at the Superior Court level now
7 rests in the newly created position of Chief Justice
8 of the Superior Court and because it does not permit
9 the assignment of post-conviction review cases to the
10 regular criminal calendar when a special assignment
11 is undesirable. Although the subsection could be mod-
12 ified solely to correct these 2 specific
13 inadequacies, a better solution is to amend the pro-
14 vision so as to leave the procedural details of case
15 assignment to administrative order by the Chief Jus-
16 tice of the Supreme Judicial Court.

17 With the Revised Statutes, Title 15, section
18 2129, subsection 2, altered as proposed in this bill,
19 2 nonsubstantive modifications must follow. First,
20 the phrase "assigned justice" utilized throughout the
21 Revised Statutes, Title 15, chapter 305-A, and also
22 utilized throughout the Maine Criminal Procedures,
23 Part XI, must be expressly defined so as to accommo-
24 date the possibility of an assignment to the regular
25 criminal calendar in lieu of a special assignment.
26 Second, jurisdiction over post-conviction review pro-
27 ceedings by single Justices of the Supreme Judicial
28 Court no longer appearing in the Revised Statutes,
29 Title 15, section 2129, subsection 2, necessitates a
30 new provision.

31 Section 3 of this bill is a housekeeping detail,
32 inserting the omitted phrase "incarceration for" be-
33 tween the word "by" and the phrase "a year or more"
34 in Title 15, section 2124, subsection 3, paragraph A.

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