

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1364

7
8 S.P. 504

In Senate, April 19, 1985

9 Referred to the Committee on Judiciary. Sent down for concurrence and
10 ordered printed.

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

Presented by Senator Chalmers of Knox.

12 Cosponsored by Senator Carpenter of Aroostook, Representative Kane of
So. Portland and Representative Foster of Ellsworth.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT Establishing a Commission to Study
19 Family Matters in Court and the
20 Establishment of a Family Division of
21 Court.
22

23 **Emergency preamble.** Whereas, Acts of the Legis-
24 lature do not become effective until 90 days after
25 adjournment unless enacted as emergencies; and

26 Whereas, the Judicial Department, pursuant to the
27 final report of a study of the Probate Court system,
28 is recommending the abolition of Probate Courts and
29 the division of probate matters between the District
30 Court and Superior Court; and

31 Whereas, the same final report considered and
32 suggested further study of family matters in court;
33 and

34 Whereas, the handling of family matters is one of
35 the most important and sensitive functions of our
36 courts; and

1 Whereas, the possible abolition of the Probate
2 Courts provides an opportunity to create a family di-
3 vision of court; and

4 Whereas, in the judgment of the Legislature,
5 these facts create an emergency within the meaning of
6 the Constitution of Maine and require the following
7 legislation as immediately necessary for the preser-
8 vation of the public peace, health and safety; now,
9 therefore,

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

12 **Sec. 1. Study commission created.** There is es-
13 tablished a commission to study family matters in the
14 courts and the possible establishment of a family di-
15 vision of court.

16 **Sec. 2. Appointment.** The commission shall con-
17 sist of 13 members, as follows: Two Senators ap-
18 pointed by the President of the Senate; 2 Representa-
19 tives appointed by the Speaker of the House of Repre-
20 sentatives; 2 attorneys, one a member of the Maine
21 Bar Association and one a member of the Maine Trial
22 Lawyers Association, with extensive experience in
23 family law matters, appointed by the Governor; the
24 Commissioner of Human Services or his designee; the
25 Commissioner of Corrections or his designee; a member
26 of the Court Mediation Service, appointed by the Di-
27 rector of the Court Mediation Service; a District
28 Court Clerk, appointed by the Chief Judge of the Dis-
29 trict Court; a register of probate, appointed by the
30 Chief Justice of the Supreme Judicial Court; an at-
31 torney in the Human Services Division of the Attorney
32 General's Office, appointed by the Attorney General;
33 and a mental health professional with extensive expe-
34 rience in family relations, appointed by the Gover-
35 nor. The commission shall request the Chief Justice
36 of the Supreme Judicial Court to appoint a Superior
37 Court Justice and a District Court Judge to serve as
38 advisors to the commission. The commission shall se-
39 lect a chairman from among its members.

40 **Sec. 3. Duties.** The commission shall undertake
41 a complete study of the issue of family matters in

1 the courts and the establishment of a family division
2 of court. The commission shall consider:

3 1. The relationship among all types of child
4 custody proceedings, child protective proceedings,
5 divorce proceedings, adoption proceedings, juvenile
6 proceedings, probate proceedings and any other pro-
7 ceedings concerning children, domestic relations or
8 family matters;

9 2. The types of court procedures and services
10 best suited to family matters;

11 3. Whether family courts or family divisions of
12 court offer advantages in administration, services
13 and expertise available to families and expeditious,
14 flexible and sensitive handling of family matters;

15 4. Whether the jurisdiction of the Probate Court
16 should be transferred to the Superior Court and Dis-
17 trict Court;

18 5. Whether the jurisdiction of the Probate
19 Court, Superior Court and District Court should be
20 rearranged to create a family division of court with-
21 in the District Court;

22 6. Whether any additional judges are needed to
23 handle family matters or establish a family division
24 of court; and

25 7. Whether any other institutional or personnel
26 changes are needed to handle family matters or estab-
27 lish a family division of court.

28 **Sec. 4. Report.** The commission shall present
29 its findings, together with any recommended legisla-
30 tion, to the Second Regular Session of the 112th Leg-
31 islature by March 1, 1986.

32 **Sec. 5. Assistance.** The Office of Legislative
33 Assistants shall provide assistance to the commission
34 in carrying out its duties.

35 **Sec. 6. Compensation.** The members of the com-
36 mission who are Legislators shall receive the legis-
37 lative per diem, as defined in the Maine Revised

1 Statutes, Title 5, section 12002, for days of attend-
2 ance at commission meetings. All members of the com-
3 mission shall receive expenses, as defined in the
4 Maine Revised Statutes, Title 5, section 12002, upon
5 application to the Legislative Administrative Direc-
6 tor for those expenses.

7 **Sec. 7. Appropriation.** There is appropriated
8 from the General Fund for the fiscal year ending June
9 30, 1986, the following funds to provide for a study
10 of family matters in the courts and the possible es-
11 tablishment of a family division of court.

12 1985-86

13 LEGISLATURE

14 Commission to study fami-
15 ly matters in court and
16 the establishment of a
17 family division of court

18 Personal services \$1,000

19 All Other 6,400

20 Total \$7,400

21 **Emergency clause.** In view of the emergency cited
22 in the preamble, this Act shall take effect when ap-
23 proved.

24 STATEMENT OF FACT

25 The purpose of this bill is to create a commis-
26 sion to study family matters in the courts and the
27 possible establishment of a family division of
28 court.

29 In January of 1985, the Court Structure Commit-
30 tee, appointed by the Judicial Council, reported to
31 the council various proposals to revise the Probate
32 Court system in the State. The council adopted one
33 of these proposals: to transfer Probate Court juris-
34 diction to the Superior Court and District Court.

1 The council is submitting legislation to implement
2 this proposal.

3 In the January 1985 report, the Court Structure
4 Committee also addressed the issue of establishing a
5 Family Court. That section of the committee's report
6 states:

7 "The main concerns about the present system seem
8 to be: (a) the need for more judicial time to deal
9 with cases on a more personal and informal basis,
10 which seems to translate into a need for more judges;
11 (b) the need to develop less adversarial ways of han-
12 dling family disputes where possible and appropriate;
13 (c) a need for training to develop more skill and
14 sensitivity in the handling of particular family re-
15 lated problems by judges, district attorneys, lawyers
16 and other state agency and court personnel; (d) the
17 need for greater assurance of continuity in the han-
18 dling of individual cases; and (e) the need to pro-
19 vide more effective physical insulation of family
20 cases from the rest of the District Court docket, es-
21 pecially criminal matters although juvenile offenses
22 are traditionally considered to be "family cases" in
23 most family court systems." (at 6.)

24 The report concludes: "While further study of
25 ways for improving the effectiveness of courts in
26 dealing with the important and sensitive family cases
27 might be desirable, the committee feels that an ef-
28 fective study of these issues is beyond its own com-
29 petence and would leave that task to others more
30 qualified." (at 8).

31 With the pending proposal to reassign Probate
32 Court jurisdiction, with clear evidence of current
33 concern over the handling of family matters in the
34 courts and with a proposal for a study of a Family
35 Court for the State having been a recommendation of
36 the 1980 Blaine House Conference on Families, the
37 time to undertake this study is now.

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