

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2317

H.P. 1675

House of Representatives, February 14, 1990

Reported by Representative JOSEPH from the Joint Standing Committee on State and Local Government.

Reference to the Joint Standing Committee on State and Local Government suggested and printing ordered under Joint Rule 19.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Transfer All Functions and Personnel of the Offices of
District Attorneys from the Counties to the State.**



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

2 Sec. 1. 5 MRSA Pt. 24 is enacted to read:

4 **PART 24**

6 **DISTRICT ATTORNEYS**

8 **CHAPTER 505**

10 **DISTRICT ATTORNEYS**

12 **SUBCHAPTER I**

14 **ELECTION AND TENURE**

16 **§19501. Election; qualifications**

18 District attorneys must be elected as provided in this
20 section. They shall enter office on the first day of January
22 following their election.

24 1. Election. The district attorneys must be elected on the
26 Tuesday following the first Monday of November in every 4th year,
28 by the voters of the respective prosecutorial districts. The
30 votes must be received, sorted, counted and declared in the same
32 manner as votes for members of the House of Representatives of
34 this State. The names of the persons voted for, the number of
votes for each and the whole number of ballots received must be
recorded by the clerk of each municipality within the
prosecutorial district. The clerk must send true copies of these
names and totals, sealed and attested as returns of votes for
Senators of this State, to the Secretary of State.

36 2. Qualifications. Only an attorney admitted to the
38 general practice of law in this State and who resides in the
40 prosecutorial district may be elected or appointed district
attorney. Removal from the prosecutorial district vacates the
office.

42 3. Term of office. The term of office for a district
44 attorney is 4 years, except when one is elected to complete an
unexpired term, in which case the term is for the remainder of
the unexpired term.

46 **§19502. Vacancies in office**

48 A vacancy in the office of district attorney, because of
50 expiration of the term of office, death, permanent incapacity,
removal from office under section 19507, removal from the
52 prosecutorial district, or otherwise, must be filled under this
section, except as provided in section 19503.

2 1. Vacancies caused by expiration of term. Vacancies
3 occurring by expiration of the term of office must be filled by
4 election in that year as provided in section 19501.

6 2. Vacancies caused by other reasons. When no person is
7 elected or a vacancy occurs in the office of district attorney,
8 other than as provided in subsection 1, the Governor shall
9 appoint a competent attorney, a resident of the prosecutorial
10 district affected, to serve as a substitute district attorney
11 until the first day of January following the next biennial
12 election. At that election, the voters shall elect a person to
13 the office of district attorney to serve for the remainder of the
14 unexpired term. When the office of district attorney becomes
15 vacant after the first day of October in the 2nd year after the
16 election of a district attorney under section 19501, a new
17 election may not be held to fill the vacancy, but the substitute
18 district attorney shall serve for the remainder of the unexpired
19 term.

20 In the case of a vacancy in the term of a district attorney who
21 was nominated by primary election before the general election,
22 the district attorney appointed by the Governor must be enrolled
23 in the same political party as the district attorney whose term
24 was vacant.

26 **§19503. Military or naval service; substitutes**

28 Whenever a district attorney, in time of war, contemplated
29 war or emergency, enlists, enrolls, is called or drafted into the
30 military or naval service of the United States, that district
31 attorney is not deemed to have thereby resigned from or abandoned
32 the office; nor is the district attorney removable from that
33 office during military or naval service except that the term of
34 office may not be held to have been lengthened because of this
35 section. From the time of induction into service, the district
36 attorney is regarded as on leave of absence without pay from the
37 office and the Governor shall appoint a competent attorney, a
38 resident of the same prosecutorial district, to fill the office
39 while the district attorney is in the federal service, but not
40 for a longer period than the remaining portion of the district
41 attorney's term. During the period of military or naval service,
42 the Treasurer of State shall pay to the substitute attorney a
43 salary at the same rate as the rate of pay of the district
44 attorney and amounts paid shall be deducted from the salary of
45 the district attorney. The attorney appointed to fill the
46 temporary vacancy has the title of "substitute district attorney"
47 and possesses all the rights and powers and is subject to all the
48 duties and obligations of the district attorney.

50 **§19504. Prosecutorial districts**

2 1. Prosecutorial District Number 1. There is one district
attorney for York County, which district is known as
4 "Prosecutorial District Number 1." The district attorney must be
elected by the voters of York County in the manner set forth in
6 section 19501.

8 2. Prosecutorial District Number 2. There is one district
attorney for Cumberland County, which district is known as
10 "Prosecutorial District Number 2." The district attorney must be
elected by the voters of Cumberland County in the manner set
12 forth in section 19501.

14 3. Prosecutorial District Number 3. There is one district
attorney for Oxford, Franklin and Androscoggin counties, which
16 district is known as "Prosecutorial District Number 3." The
district attorney must be elected by the voters of Oxford,
18 Franklin and Androscoggin counties in the manner set forth in
section 19501.

20 4. Prosecutorial District Number 4. There is one district
attorney for Kennebec and Somerset counties, which district is
22 known as "Prosecutorial District Number 4." The district
attorney must be elected by the voters of Kennebec and Somerset
24 counties in the manner set forth in section 19501.

26 5. Prosecutorial District Number 5. There is one district
attorney for Penobscot and Piscataquis counties, which district
28 is known as "Prosecutorial District Number 5." The district
attorney must be elected by the voters of Penobscot and
30 Piscataquis counties in the manner set forth in section 19501.

32 6. Prosecutorial District Number 6. There is one district
attorney for Sagadahoc, Lincoln, Knox and Waldo counties, which
34 district is known as "Prosecutorial District Number 6." The
district attorney must be elected by the voters of Sagadahoc,
36 Lincoln, Knox and Waldo counties in the manner set forth in
section 19501.

38 7. Prosecutorial District Number 7. There is one district
attorney for Hancock and Washington counties, which district is
40 known as "Prosecutorial District Number 7." The district
attorney must be elected by the voters of Hancock and Washington
42 counties in the manner set forth in section 19501.

44 8. Prosecutorial District Number 8. There is one district
attorney for Aroostook County, which district is known as
46 "Prosecutorial District Number 8." The district attorney must be
elected by the voters of Aroostook County in the manner set forth
48 in section 19501.

50 §19505. District attorney salaries

52

2 1. Annual salary. The salary for each district attorney is
4 within salary range 90 with the step within that salary range to
be determined by the Attorney General, subject to the approval of
the Governor.

6 2. Biweekly payments. The district attorneys and assistant
8 district attorneys are entitled to receive their annual salaries
from the State Treasury in biweekly payments on a date to be
10 determined by the State Controller and in a sum which, in a year
aggregate, will most nearly equal the annual salary.

12 3. Limitation. The salary of any district attorney may not
14 exceed that of a Justice of the Superior Court.

16 **§19506. Full-time district attorneys**

18 All district attorneys, and assistant district attorneys
designated as full-time assistants, are full-time officers of the
20 State. During their terms of office, they may not:

22 1. Appear as counsel. Appear as counsel in any civil or
24 criminal case or controversy before the Supreme Judicial Court,
Superior Courts or District Courts of the State or comparable
26 courts in any other state or before the United States District
Court or at any administrative hearing held by any state or
28 federal agency other than in their capacity as district attorney;
or

30 2. Private practice of law. Engage in the private practice
32 of law, be a partner or associate of any person engaged in the
private practice of law or be a member or employee of a
professional association engaged in the private practice of law.

34 **§19507. Removal from office**

36 The Justices of the Supreme Judicial Court have jurisdiction
38 to remove any district attorney from office, by majority vote of
the justices sitting, upon complaint filed with the court by the
40 Attorney General, and after notice and hearing, as provided in
this section.

42 1. Expedited proceeding. Proceedings under this section
44 must be expedited insofar as practicable and take precedence over
all other matters except requests for opinions of the justices
46 and petitions for writs of habeas corpus.

48 2. Complaint; application of court rules. The complaint in
50 a proceeding under this section must contain a short and plain
statement of facts showing that grounds for removal exist. The
52 proceedings must be conducted in accordance with the Maine Rules
of Civil Procedure and the Maine Rules of Evidence, except that:

2 A. Discovery procedures may be used only by order of the
3 court on motion for cause shown; and

4 B. The court may modify any rule or restrict its
5 application as is necessary or appropriate to expedite the
6 proceeding and ensure that the court is as fully informed of
7 the relevant and material facts as practicable.

8
9 3. Removal. If a majority of the justices sitting finds,
10 by clear and convincing evidence, that the respondent district
11 attorney has violated a statute or is not performing the duties
12 of office faithfully and efficiently, and finds in consequence
13 that removal from office is necessary in the public interest,
14 judgment to that effect must be entered and the respondent
15 thereby removed from office as district attorney.

16
17 SUBCHAPTER II

18 ASSISTANTS AND SUBSTITUTES

19
20 §19521. Appointment of temporary substitutes

21
22 When the district attorney does not attend a criminal
23 session or the office is vacant, the court may appoint an
24 attorney to perform duties during the session and allow a
25 reasonable compensation to be paid by the Attorney General. The
26 Attorney General shall deduct that amount from the district
27 attorney's salary.

28
29 §19522. Assistant district attorneys

30
31 1. Appointment. Each district attorney shall appoint
32 assistant district attorneys, one or more of whom may be
33 full-time, to serve at the district attorney's will. The district
34 attorney shall designate whether each assistant district attorney
35 will serve full time or part time when appointed.

36
37 2. Duties. The assistants shall take the oath prescribed
38 for district attorneys and assist the district attorney in the
39 ordinary duties of that office, in the drawing of indictments, in
40 the hearing of complaints before the grand juries and in the
41 preparation and trial of criminal proceedings. They, when
42 directed by the district attorney, shall act as counsel for the
43 State in the trial of complaints before Judges of the District
44 Court and Justices of the Superior Court and in the prosecution
45 of appeals before the Supreme Judicial Court.

46
47 3. Compensation. The compensation of deputy and assistant
48 district attorneys must be fixed by the district attorney,
49 subject to the approval of the Attorney General and the
50 Governor. For purposes of compensation and benefits, deputy and

2 assistant district attorneys must be treated comparably to
3 assistant attorneys general.

4 4. Deputy district attorney. Each district attorney may
5 designate one full-time assistant district attorney or, if there
6 is no full-time assistant district attorney, one part-time
7 assistant district attorney to be the deputy district attorney.
8 In the absence of the district attorney, the deputy shall act in
9 the district attorney's place and shall have the authority,
10 duties and responsibilities of the district attorney.
11 Notwithstanding any other provision of law, any full-time
12 assistant district attorney designated as a deputy district
13 attorney may receive a salary up to 90% of the salary designated
14 for the district attorney.

15 5. Staff. Each district attorney must be allowed
16 sufficient sums to ensure an adequate staff of assistants to
17 screen, process and investigate complaints, to assist law
18 enforcement agencies, to conduct trials in the District Courts
19 and Superior Courts, to prosecute appeals in the Supreme Judicial
20 Court and to carry out all other duties and responsibilities.

21 6. Allowance for compensation. For the compensation of
22 assistant district attorneys, the district attorneys are allowed
23 annually sums up to the limit of \$40,000, plus 69¢ for each
24 resident of the prosecutorial district according to the estimates
25 of the Department of Human Services, Office of Vital Statistics.
26 In addition to the sums allowed in this section, funds must be
27 provided for fringe benefits for which other state employees,
28 including confidential employees, are eligible.

31 SUBCHAPTER III

33 DUTIES

35 §19531. District attorney operations

37 1. Expenses allowed. Each district attorney is entitled to
38 sufficient funds for all office expense, clerk hire and travel,
39 including, but not limited to, funds for:

41 A. Consultation and services of experts;

43 B. Rendition of prisoners;

45 C. Training and reference books and treatises which may aid
46 the district attorney and staff in the prosecution of
47 criminal matters; and

49 D. Office space suitable for the performance of the duties
50 of the office, including sufficient private area for
51 research, conferences and meetings with officers, witnesses,
52

2 complainants and citizens, at locations convenient to
3 courthouses within the county or counties of that district
4 attorney's prosecutorial district.

5 2. Fringe benefits. In addition to the sums allowed in
6 subsection 1, funds must be provided for fringe benefits for
7 which other comparable state employees are eligible.

8 **§19532. Civil proceedings**

9 1. Traffic infractions. The district attorney, or someone
10 acting under the district attorney's direction, shall prosecute
11 all traffic infraction cases and shall be present at the trial of
12 any such case.

13 2. Civil actions; State as party. The district attorney
14 shall prosecute to final judgment and execution all civil cases
15 in which the State is a party in any county within the district
16 attorney's prosecutorial district and shall institute proceedings
17 against sureties on any recognizance upon which the principal and
18 sureties have been defaulted, before the term next succeeding
19 that at which the default was entered upon the docket of the
20 court, unless by order in open court the presiding justice grants
21 a delay in proceedings against the sureties.

22 3. Compensation. For the services provided under this
23 section, the district attorney receives no compensation other
24 than the salary from the State and actual expenses.

25 **§19533. Criminal proceedings**

26 The district attorney shall attend all criminal terms held
27 in the prosecutorial district for which the district attorney was
28 elected and act for the State in all cases in which the State or
29 county is an interested party. Unless the district attorney
30 makes an order of dismissal under section 19534, the district
31 attorney or someone acting under the district attorney's
32 direction shall prosecute all criminal cases and shall be present
33 at the trial of any such case before the District Court of any of
34 the counties within the district. If the Attorney General is
35 absent from a term in any of the counties, the district attorney
36 shall perform the Attorney General's duties in state cases,
37 within the district attorney's prosecutorial district, under
38 directions from the Attorney General. The district attorney
39 shall appear and act for the State with the Attorney General in
40 the Law Court in all state cases coming into that court from that
41 district attorney's prosecutorial district. No additional
42 compensation accrues to the district attorney for performing
43 these duties.

44 **§19534. Dismissal of cases**

2 1. Civil cases. In order to dismiss civil cases, the
4 district attorney must sign a written order of dismissal together
6 with a statement of the reasons for dismissal on the back of the
writ or complaint in those cases. This order of dismissal does
not take effect unless approved in writing by the justice
presiding at the term when the dismissal is made.

8 2. Criminal cases. The district attorney may dismiss
10 criminal cases in such manner and under such circumstances as the
Supreme Judicial Court may provide by rule.

12 **§19535. Collection of fines and costs; examination of sheriff's**
14 **bond**

16 1. Enforce collection of fines; move examination of
18 sheriff's bond. For counties within the district attorney's
prosecutorial district, the district attorney shall:

20 A. Enforce the collection and payment to the county
22 treasurers of all fines, forfeitures and costs accruing to
24 the State and the faithful performance of their duties by
sheriffs and constables and inform the court of their
defaults in this respect; and

26 B. Annually move the county commissioners of each of the
28 counties within the prosecutorial district, at their
respective meetings immediately following the 3rd Tuesday of
June, to examine and consider the sufficiency of the bond of
the sheriff for their county.

30 2. Civil violation. If the district attorney neglects
32 either of the duties set out in subsection 1, the district
34 attorney commits a civil violation for which a forfeiture of not
more than \$100 may be adjudged. This forfeiture is to be
recovered in a civil action in the name of the Treasurer of State.

36 **§19536. Restrictions and obligations**

38 The district attorney is under the same restrictions
40 regarding fees and the same obligations regarding witnesses as
imposed on the Attorney General by sections 201 and 205.

42 **§19537. Physical examination of crime victims**

44 1. Payment of expenses by district attorney. In all cases
46 of alleged rape, gross sexual misconduct, sexual abuse of minors
48 and assault when serious bodily injury has been inflicted, which
are reported to a law enforcement officer, the office of the
50 district attorney of the county in which the alleged crime
occurred shall pay all expenses for a physical examination of a
52 victim of the alleged crime conducted for the purpose of
obtaining evidence for the prosecution.

2 2. Limitation. The office of the district attorney is not
3 liable for the payment of any charges, costs or fees for an
4 examination under subsection 1 until the district attorney has
5 received copies of all reports and records pertaining to the
6 examination, if the copies have been requested.

8 3. Medical personnel not liable for furnishing reports,
9 records or testimony. No physician, nurse, hospital, clinic or
10 any other person, firm or corporation attending a victim under
11 subsection 1 may be liable in damages or otherwise for providing
12 reports or records, copies of reports or records or for their
13 testimony relating to any examination performed under this
14 section when those reports, records or testimony is provided to a
15 district attorney, a law enforcement officer or a court for the
16 purpose of prosecuting the alleged crime, whether or not the
17 reports, records or testimony is provided with the written
18 authorization of the victim examined under this section.

20 **§19538. Disclosure of minor victims of sexual offenses**

22 The Legislature finds that publicity given to the identity
23 of minor victims of sexual offenses causes intense shame and
24 humiliation for which abused children are particularly
25 ill-prepared and may cause severe and permanent emotional harm to
26 the victim of such an offense.

28 District attorneys, their assistants and employees and other
29 law enforcement officials shall refrain from any unnecessary
30 pretrial public disclosure of information that may identify a
31 minor victim of an offense under Title 17, chapter 93-B, Title
32 17-A, chapter 11 or Title 17-A, section 556.

34 **§19539. Investigation of child abuse cases**

36 Unless a written agreement exists between a law enforcement
37 agency and a district attorney concerning primary responsibility
38 for investigating any of the following offenses, the district
39 attorney may direct the investigation of any offense under Title
40 17, chapter 93-B, and Title 17-A, chapter 11, or Title 17-A,
41 sections 207, 208 and 556, when a victim may not have reached the
42 age of 18 years, and may designate, by geographical boundaries or
43 otherwise, a particular law enforcement agency to have primary
44 responsibility for that investigation.

46 Any case involving the sexual or physical abuse of children
47 that is discovered by or reported to any law enforcement
48 department or officer must be immediately reported by that
49 department or officer to the appropriate district attorney or
50 assistant district attorney or, in their absence, to the Attorney
51 General or one of the Attorney General's assistants.

2 Committee on State and Local Government authorized by the
Legislative Council.

4 This bill transfers the functions and personnel of the
6 offices of the district attorneys, including the associated
costs, from the counties to the State, effective July 1, 1991.
8 It also incorporates the recommendations of the unanimous report
of the subcommittee authorizing separate counsel for all the
legal business of the counties.

10 All county district attorney personnel transferred to state
12 service shall have their rights and benefits preserved.