

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 340

H.P. 269

House of Representatives, January 28, 2003

An Act To Amend Certain Aspects of Post-conviction Review Procedure

Reported by Representative NORBERT of Portland for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §2121, sub-§1-A,** as enacted by PL 1985, c.
5 209, §1, is amended to read:

6 **1-A. Assigned justice.** "Assigned justice" means the Justice
7 or Active Retired Justice of the Supreme Judicial Court ~~or~~ the
8 Justice or Active Retired Justice of the Superior Court or the
9 judge authorized to sit in the Superior Court on post-conviction
10 review cases who is assigned the post-conviction review
11 proceeding when a special assignment has been made. It means any
12 ~~Justice-or-Active-Retired-Justice~~ justice, active retired justice
13 or authorized judge attending to the regular criminal calendar
14 when the post-conviction review proceeding is assigned to the
15 regular criminal calendar.

16 **Sec. 2. 15 MRSA §2123, sub-§1-A,** as enacted by PL 1985, c.
17 209, §2, is amended to read:

18 **1-A. Supreme Court Justice or authorized Judge of the**
19 **District Court.** A single Justice of the Supreme Judicial Court
20 ~~or~~ an Active Retired Justice of the Supreme Judicial Court ~~shall~~
21 have or a judge authorized to sit in the Superior Court on
22 post-conviction review cases and shall exercise jurisdiction, and
23 have has and shall exercise all of the powers, duties and
24 authority necessary for exercising the same jurisdiction as the
25 Superior Court relative to a post-conviction review proceeding.

26 **Sec. 3. 15 MRSA §2129, sub-§1, ¶C,** as amended by PL 1985, c.
27 556, §3, is further amended to read:

28 C. Once the petition has been filed, the clerk shall
29 forward a copy of the petition and any separate documents
30 filed with it to the Chief Justice of the Superior Court and
31 to the ~~Attorney-General~~ prosecutorial office that earlier
32 represented the State in the underlying criminal or juvenile
33 proceeding.

34 **Sec. 4. 15 MRSA §2129, sub-§2,** as repealed and replaced by PL
35 1985, c. 209, §4, is repealed.

36 **Sec. 5. 15 MRSA §2129, sub-§5.** as repealed and replaced by PL
37 1981, c. 238, §5, is amended to read:

38 **5. Procedure in proceedings pursuant to this chapter.** In
39 all respects not covered by statute, the procedure in proceedings
40 under this chapter ~~shall--be~~ is as the Supreme Judicial Court
41 ~~shall-by-rule-provide~~ provides by rule.

SUMMARY

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This bill:

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6 1. Broadens the definition of "assigned justice" in the
Maine Revised Statutes, section 2121, subsection 1-A to include
8 a judge of the District Court who has been given authorization to
sit in the Superior Court on post-conviction review cases;

10

12 2. Amends section 2123, subsection 1-A to allow a judge of
the District Court who has been given authorization to sit in the
Superior Court on post-conviction review cases to exercise the
14 same jurisdiction as the Superior Court Justice relative to
post-conviction review proceedings;

16

18 3. Corrects a current inconsistency between section 2129,
subsection 3 and section 2129, subsection 1, paragraph C created
by the 1991 amendment to subsection 3, Public Law 1991, chapter
20 622, Part D. Specifically, it replaces the reference in
paragraph C to the Attorney General with a reference to the
22 prosecutorial office that earlier represented the State in the
underlying criminal or juvenile proceeding. Subsection 3
provides that representation of the respondent can be either the
24 office of the Attorney General or the office of a district
attorney;

26

28 4. Repeals section 2129, subsection 2 that requires that
the procedure for the assignment of a post-conviction review case
be addressed pursuant to an administrative order by the Chief
30 Justice of the Supreme Judicial Court. With its repeal, the
assignment of petitions for post-conviction review becomes a
32 matter to be addressed by the Supreme Judicial Court by rule as
provided for in section 2129, subsection 5; and

34

36 5. Makes technical drafting changes to section 2129,
subsection 5.