

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

AS PUBLIC LAWS AND CONSTITUTIONAL RESOLUTIONS

at the

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

AND

AS PRIVATE AND SPECIAL LAWS AND RESOLVES

at the

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1989

STATE OF THE JUDICIARY ADDRESS

January 28, 1987

by

CHIEF JUSTICE VINCENT L. McKUSICK

A Report to the Joint Convention

of the

One Hundred and Thirteenth Legislature

It is with particular pleasure this year that I appear before this Joint Convention to report on the State of our Judiciary. You legislators and we judges both have a special reason to celebrate in this year 1987. We are privileged to serve during the biennium when Maine, as part of one of the original 13 states, is joining the rest of the Nation in commemorating the 200th Anniversary of the framing and the ratification of the Constitution of our United States.

This Constitutional Bicentennial turns our minds back to first principles and to the grand plan designed at Philadelphia during that hot summer of 1787. That plan not only divided powers between the federal government and the states; it also divided the federal powers between the three branches of that government and thereby served as the model to us in our State Constitution and its division of powers between our own three branches. Our coming together on these occasions symbolizes our mutual recognition that, while we have a constitutional responsibility to retain our independence *from* each other, we also have a constitutional responsibility *to* each other. You legislators carry the responsibility for funding the courts and for legislating their jurisdiction and structure; we in the judiciary have a corresponding responsibility to you to manage those courts efficiently and to keep you fully informed of their operations. As you have heard me say in the past, in discharging their interrelated responsibilities the three separate branches need to practice toward each other a policy of the 3 C's — communication, cooperation and comity. I report to you today in that spirit.

You have received the final report of the Appropriations Committee on its study during the last 6 to 8 months of the relationship between the judicial branch and the other two branches on financial and administrative matters. Our work on that study with the Appropriations Subcommittee headed by House Chair, Representative Carter, has made us in the Judicial Department better informed of the legislative process and more sensitive to your constant need for information about our operations. The Committee's report makes uniformly valuable recommendations. We are immediately implementing all within our power to implement administratively; the others requiring legislation we fully support, and we commend them to your favorable consideration. To carry out one of the Committee's recommendations, I have appointed a legislative liaison for the Judicial Department. His job also includes liaison with the executive branch and service as our public information officer. He will function as a facilitator of communication. With his help, we are determined to be more accessible, not less, to you — and to the public.

I am proud to announce that our computerized budget control system is now in final testing. That system is designed to produce, immediately after the end of each month, a detailed accounting of expenditures at each of our nearly 60 court locations and functional units. It will enable each of our responsible managers to address immediately any out-of-line costs that appear. It is appropriate here to note that some of our costs are driven by factors over which we exercise little control. A major example is the cost of court-appointed counsel for indigent criminal defendants. Because of the size and the special nature of that item, we fully support the proposal, made by the State Bar Association, that the legislative appropriation for that constitutionally required State function be identified as a separate line item, rather than being lumped with the appropriation for "All Other" expenses of the courts.

The entire cost of operating our state-funded court system ran to about \$20 million in the last fiscal year; and, as compared to that gross cost, the courts collected revenues in fines and fees of almost \$14 million. The courts thus impose a very small net burden on the \$2 *billion* budget of the State. That fact must not, however, reduce one bit the rigor of our financial stewardship. Our computerized budget control system is a valuable tool that should help us do even better in managing our financial resources.

In the past year with your help we have further improved our methods for collecting fines. At this session you have before you further legislation that will help the courts to reach scofflaws, principally from out of state, who fail to appear when summoned to court for traffic infractions and civil violations. That legislation is desirable for its financial consequences. Even more, it is needed to assure the integrity of the court process.

My report this morning on the operation of our trial courts during 1986 just closed will sound to some of you like a rerun of my report a year ago for 1985. The litigation explosion that pushed the case filings in our trial courts to record levels in 1985 continued in '86 to produce still new record highs. New cases in the District Court totaled nearly 267,000, a staggering number even to contemplate. In the Superior Court over 11,000 new criminal prosecutions were initiated, producing a total record case load of over 17,500 filings. I can suggest some of the reasons for this continued growth in the work of Maine courts: an increasing population and greater highway traffic; enhanced law enforcement, in, for example, the areas of child abuse and drug violations; stepped-up development and economic activity and the added zoning and other governmental regulation that responds to it; a steadily growing body of statutes to protect consumers, to vindicate individual rights, and otherwise to meet perceived needs in an increasingly complex society; and undoubtedly there are other reasons.

While the total number of civil cases is not increasing at the same rate as criminal and traffic cases, our civil trials are becoming qualitatively more complex and they take more court time. The run-of-the-mill auto negligence case, once common in the Superior Court, is replaced by lengthy product liability trials, such as the asbestos cases, and by complex cases of administrative review, under statutes such as the recent hospital cost containment law.

The District Court is experiencing the same increase in the length and the complexity of its civil trials. That court is the closest we come to having a family court. For example, it handles almost all divorces, with at times hotly contested issues of marital property and child custody. It handles most protective custody proceedings involving abused or neglected children, as well as the termination of parental rights in appropriate cases. The District Court also is now hearing many other substantial civil cases that would formerly have routinely gone to the Superior Court, such as mortgage foreclosures and money suits up to \$30,000. Opinion writing and the recording of the evidence for purposes of appeal is becoming almost as regular a practice in the District Court as in the Superior Court. Except in certain special proceedings unique to one court, there is no longer any reason to have different procedures in civil cases in the District and the Superior Courts. The Supreme Judicial Court will soon promulgate a single, merged set of civil rules for both of those trial courts.

To meet the growing work load of the trial courts, we are doing many things, most of which are possible only with your support. First, computerization of the criminal and traffic infractions dockets in the District Court is well along toward completion, and the introduction of computers into the Superior Court is starting in March. This process has taken longer than we originally estimated. Nonetheless, as compared with many other states, the Maine courts are making the transition to the high tech world with fewer personnel and at a faster pace. We are also proud of the high quality of the technical work by our computer director. The trial court computers will make needed information available much more readily than the present manual system and will help the already hard-pressed staffs of our clerks' offices to cope with the ballooning case load.

Second, in the last biennium you at our request added one judge to each of the trial courts. Our previous projection had indicated that we would also need an additional judge in each trial court at the first regular session of this Legislature. We do much need that one additional judge in the District Court. At this time, however, we are deferring our request for the additional Superior Court judge until the critical shortage of jury courtrooms in Cumberland County is relieved. Even with one more District Court judge, the Maine judiciary is remarkably small. Other than the part-time county probate judges, 48 men and women comprise our entire active judiciary. In good part, credit for our small judiciary's being able to cope with their increasing work load goes to the help we get from our active retired judges. After retirement those experienced judges continue to perform judicial service as assigned by the chiefs of their respective courts, and they do so at only a minimal cost to the State. We are much indebted to them.

Third, we are making steady progress in improving court facilities statewide. In Bath, Belfast, Farmington, Millinocket, Fort Kent, and Madawaska, new or improved court facilities are open or are in preparation. At those and other locations around the state, we have made courtrooms accessible to the handicapped. In Cumberland County, with excellent cooperation between the County Commissioners and the courts, planning is under way for the major addition to the courthouse approved by the county voters a year ago November. This addition is much needed. That Cumberland County Courthouse does about 20% of all the business statewide of both the District Court and the Superior Court. We responsible for the courts are working hard in the planning process to assure that we get the maximum possible in additional courtrooms and support facilities for the rent dollars that we will pay to the County.

Fourth, the trial courts constantly work to improve their methods of operation and the quality of the justice they dispense. By the end of this week the Superior Court's expedited case flow program for civil cases will have been in operation statewide for a full year and in four test counties for more than two years. The indications continue that the civil cases that are put on the fast track (and that is about three quarters of all of them) are settled or are disposed of through trial faster than would otherwise be true. The public directly benefits from reduced delay and cost.

By statutes you enacted in the last biennium, our court mediation service and our CASA program, both nationally acclaimed, have become regular features of the Judicial Department. Our mediation service continues to produce in many cases what I am confident is a better brand of justice than is possible with the black-and-white of an adjudicated outcome. Despite the suspension of mediation for 2½ months for budgetary reasons, our mediators handled 3,322 cases in 1986, over 70% being marital relations cases. CASA (the acronym for court appointed special advocates) is now fully operational at six District Court locations from Biddeford to Lewiston to Rockland. In the CASA program a carefully selected and trained citizen volunteer is appointed by the court to act as guardian ad litem for the child involved in a child protection proceeding. Throughout the pendency of that proceeding, the CASA volunteer works closely with the child, in and out of court. Extension of the CASA program to other court locations will proceed as fast as the CASA director is able to carry out recruitment, training, and supervision of the needed volunteers. The CASA volunteers are performing a great public service in helping the courts to protect children in jeopardy.

In his Inaugural Address Governor McKernan said, "We must rekindle a volunteer spirit of citizen helping citizen." I fully agree. We in the courts already are the beneficiaries of much citizen participation, but we can use more. In the CASA program, over 100 volunteer guardians ad litem are now working under court appointments in over 125 child protection cases. Our active mediators, now numbering about 60 and including, I am pleased to note, Barbara McKernan of Bangor, bring to their mediation efforts a variety and depth of life experience that money alone could never buy. Citizens also participate in the courts' work in other ways: Last year 7,700 Maine men and women served on the grand and traverse juries of the Superior Court. Many citizens serve on committees and boards advising the Supreme Judicial Court. In fact, lay persons now preside over both the Board of Overseers of the Bar, the body responsible for superintending the legal profession, and the Committee on Judicial Responsibility and Disability, the body responsible for investigating complaints against judges. To refashion an old adage, the courts are too important to leave to us judges and lawyers alone.

Turning to the Supreme Judicial Court, last year produced another record high in the number of appeals to the Law Court — 520. I am proud to report again that my hard-working colleagues have kept well abreast of this heavy appellate case load. This the Court has accomplished, while at the same time discharging the court's "board of directors" responsibilities in setting administrative policy for the Judicial Department and in making procedural rules for all courts. During the past year Justice Elmer H. Violette has taken active retired status, and former Chief Justice Robert W. Clifford of the Superior Court has succeeded him. Both are here with us today.

As part of the Law Court's commemoration of the Constitutional Bicentennial, it is going "on the road" outside Portland for all four weeks of its regular May and June terms. For one of those weeks the Court will sit to hear oral argument in Alfred and for another week it will sit in Houlton. And I am personally pleased to announce that the Law Court will sit for one day of oral argument at the courthouse in my native County of Piscataquis. The State and County Bar Associations are to help in arranging visits by school students to the Law Court sessions around the State.

Two weeks ago you received the final report of the Supreme Judicial Court Relocation Commission, a study commission created by you in 1985. In considering their recommendations, you will be addressing two basic questions: First, should Maine bring its Supreme Court together into its own central home, thus doing what all other States of the Union have done? Second, should Maine headquarter its Supreme Court in its capital city, thus doing what all the other States of the Union, except Louisiana, have done? Yours is a "Once in a Statehood" decision, as Commission member Eugene Mawhinney of Orono calls it. In broad historical perspective, you will decide whether to finish the job, started by the Maine Legislature in the late 1820's, of moving the seat of all state government from Portland to Augusta.

Before closing, I want to return to the subject of the Constitutional Bicentennial. Last year you authorized and funded a Maine Commission for the commemoration of the Bicentennial. That Commission, under the dynamic leadership of Dr. Arthur M. Johnson, former President of the University of Maine at Orono, is encouraging and coordinating the efforts of great numbers of Maine communities and other organizations, public and private, in sponsoring appropriate celebratory events. During the next several months we can all enjoy a refresher course in civics and history occasioned by the Bicentennial.

From my reading about the historic events of 200 years ago, I draw several lessons, of which I now mention two. First is the importance placed by the Founding Fathers upon an independent judiciary. At Philadelphia the delegates accepted without debate the proposition that the Constitution's division of powers, its guarantee of individual rights, and its intricate set of checks and balances would be monitored by a judicial system independent of, and as much as possible insulated from, the other two branches, the political branches. The only debate was over how to assure an independent judiciary. The delegates gave federal judges life tenure and in the "compensation clause" prohibited the reduction of a judge's salary during his tenure. The principal debate, such as there was, concerned a parallel proposal to prevent the temptation of salary increases. Promoted by James Madison himself, the proposal lost largely on the practical ground that the cost of living might rise. In 1787 the Massachusetts Constitution already had provided for judges with life tenure, and Maine followed that example in its Constitution in 1820. Although in the flush of Jacksonian democracy Maine in 1839 substituted 7-year terms for its judges, judicial independence remains a cornerstone principle of Maine government. Judges must be free to make unpopular decisions when either constitution or statute requires. No citizen wants his rights to liberty or property ruled upon by a judge who is influenced by any consideration other than the requirements of the law, determined as wisely and as dispassionately as is humanly possible.

A second lesson that I get from my Bicentennial reading is a renewed respect for the political process, a renewed respect for you in the political branches of government, the legislative and executive branches. That remarkable document that 39 delegates signed on September 17, '87, came about through political debate and political compromise. The drafters resolved conflicting interests, particularly between the large and the small states, through political compromise, and they kept a constant political eye out for what would sell or not sell in ratification conventions back home. The ratification process during the next year was a real political squeaker. In February '88, Massachusetts, including the District of Maine, ratified by a convention vote of less than 53%, and then only when that convention vote was joined with a recommendation of amendments that would make a more clear and extensive cataloguing of individual and state rights. In the following months, that political formula succeeded in turning the tide in favor of ratification in other critical states. As a direct consequence of the political debate in the ratification

conventions, the first Congress within 6 months of being organized approved the Bill of Rights for submission to the States for ratification. Thus, the framing of the Constitution, its ratification by the States, and the adoption of the Bill of Rights were all the product of the political process at its best.

The high standard of political debate and compromise set by our politician founding fathers stands as a challenging model for you citizen politicians in going about your legislative duties in this bicentennial biennium. I wish you all possible success in doing what is best for the State of Maine. I know that is the goal of every one of you.

Thank you for your time and attention.