

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 electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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

J.S. McCarthy Company
Augusta, Maine
2002

**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
FEBRUARY 19, 2002**

Introduction

Governor King, President Bennett, Speaker Saxl, President Pro Tem Michaud, members of the 120th Legislature, judicial colleagues, and fellow Mainers: It is my honor and privilege to stand before you today to describe to you the State of Maine's judiciary.

The events of the past six months have occurred so quickly that I have barely had the opportunity for reflection. The devastating events of September 11 were still weighing heavily on all of us when, on October 3rd, Chief Justice Daniel Wathen submitted his resignation to the Governor.

Immediately following Chief Justice Wathen's resignation, Senior Justice Robert Clifford took over as the guiding hand of the court. He did so without notice or an opportunity to prepare and did a wonderful job keeping the Judicial Branch on an even keel. His calm leadership and willingness to dig right in during preparations for the legislative session were invaluable.

Two months later, on December 6th, I raised my right hand, and the Governor swore me in as Chief Justice. And I cannot help but repeat to you today the sense of pride in Maine government and Maine people that I experienced on the day that I was sworn in. That day, in the Senate, a peaceful, solemn, and respectful transfer of power between political parties was accomplished with dignity and grace. In the weeks following that event, the sad death of one of our beloved colleagues, Joel Abromson, caused members of the public to wonder aloud whether the transfer of power arranged over a year ago, at a time of total numeric balance in the Senate, would hold. Again, we saw the strength and resolve of Maine character. In your actions you have assured that the legislative branch of Maine's government stands as a beacon to other governments both within and outside of this great country of ours as "The Way Life Should Be."

And speaking of the way life should be, I cannot address you today without acknowledging an interesting point of history. The very first address by a Chief Justice to a joint session of the Maine Legislature occurred only 25 years ago, in 1977. In that year, I entered law school. And in that year, no woman had ever sat on the Supreme Court in the State of Maine or at the national level. That situation remained the same as I graduated from Law School in 1980, and, in fact, in that year only two women ever

held office as judges anywhere in the Maine's state courts.

But the last twenty years have brought many changes, with women now comprising 21% of the judges on the state bench. Today is then an historic occasion, reflecting the gender diversity that now exists on the Maine bench.

I cannot ignore the fact that I am the first woman to have the opportunity to address you as Chief Justice. But I hasten to add that the Governor assures me he did not nominate me for this position because I am a woman. I absolutely take him at his word.

However, and this is crucial, what is most important is that the Governor was not prevented from nominating me because I am a woman. We must not as a society undervalue that point. We have but to look across the ocean to see societies and civilizations where women are not only unwelcomed in the halls of power but also prevented from such basic enjoyment of life as obtaining an education. As you know, my family is here today. And my daughter, Jenny, has been invited by President Bennett to spend a day with him observing our Legislature, while in other countries, there are mothers who must plead for a rudimentary education for their daughters.

In Maine, it is no longer unusual for women to participate actively and fully in our government. Thus, my presence before you today is most remarkable for the fact that it is really unremarkable.

But it would be unseemly for me to go on extolling the virtues of our government in Maine. It is important, however, for you to understand what this pride means to me and to my expectation of the future of Maine courts.

Our three branches of government are, and must always be, separate and fiercely independent. That said, we must never forget that we are, from our citizens' perspective THE government. It has been the great tradition of this government to work together to address the needs of our citizens. The thoughtfulness and creativity with which we undertake collaboration must continue if we are to address the very pressing needs of Maine today.

Some Basics

To understand the nature of the challenges facing the court system today, it is important to have a grasp

of its vital statistics. The Judicial Branch comprises 452 people. That includes fifty-six judges, seven of whom are Supreme Court Justices, and forty-nine of whom are trial judges with sixteen designated to the Superior Court and thirty-three to the District Court. All tolled we handle over a quarter of a million cases each year.

The Judicial Branch is present in forty-six buildings throughout this state. Many of those buildings are, to put it simply, falling apart or stretched beyond any reasonable capacity. Your attention and assistance has resulted in improvements in several of our facilities, and we will be working with delegations from Piscataquis, Penobscot, and Washington counties in the near future to address their needs. In addition, we are working on an accessibility evaluation and are about mid-way through an assessment of every building for compliance with the American with Disabilities Act to assure that our courts are accessible to every member of the public.

Our budget, which currently runs at approximately fifty million dollars a year, consumes less than two percent of the state's total budget. If you net out the actual income from fines and assessments, almost all of which is returned to the general fund or other dedicated, nonjudicial branch pockets, the net cost to state government of the Judicial Branch is approximately eighteen million dollars, or less than one percent of the state's budget.

Judicial Resource Allocation

Because of the intensity of use of the courts today, our judges are stretched very thin. We cannot afford duplicative or wasteful scheduling practices. In recent years, and through two separate studies of the courts, the Future of Maine's Courts and the Court Unification Task Force, it has become clear that it is not always efficient to run two separate and occasionally overlapping trial courts. Therefore, responding to the suggestions of those committees, and legislation from this Legislature, many aspects of the Maine courts are undergoing an evolution. The result of these changes will be, we hope, faster more focused access to justice. I expect to be reporting more on these changes next year.

In addition, I have undertaken several initiatives to assure that our judges are being used where they are most needed. With the assistance of Chief Justice Mills of the Superior Court and Chief Judge Levy of the District Court, we are taking a new look at the case loads of all of our trial courts. We are no longer looking at simple filing statistics. As you know, a small claims case, which requires one trial, does not require nearly the amount of judicial time as a child protective case, which requires multiple hearings, case management conferences and expedited scheduling.

Yet each of those types of cases have appeared to be identical in our previous statistics - one complaint is filed in each case. Similarly, a manslaughter case, with its attendant need for priority scheduling and motion hearings has been treated the same as a shoplifting case for statistical purposes. As a result, our judicial resources have not always been allocated where they are most needed. We hope to change this with a more thorough approach to evaluating case loads.

Elimination of Unnecessary Committees

Another of our efforts to increase efficiency relates to judicial committees. Over the years, the judicial branch, like all businesses and governments, has established a number of committees to respond to problems. We have had, however, no central point for authorizing the creation or use of time for committee work. Unfortunately, we have noticed that the number of hours that members of the Judicial Branch, including judges, were spending in committee meetings seemed out of proportion to the benefits from those committees. Now you may be asking how this relates to time pressures in the court system. And there's a simple answer. For every committee meeting that a clerk, a judge, another staff member must attend, the needs of the litigants must wait.

Therefore I asked Justice Alexander to gather in one place a list of all current committees existing within the Judicial Branch so that we could determine whether there were economies of time that could be accomplished with elimination of duplicate or obsolete committees.

Big mistake. We were all shocked when we learned that there are currently 81 committees existing in the Judicial Branch. Now some of these are dormant and others may have come to the end of their work, but clearly something needs to be done when the number of committees exceeds the total number of judges throughout the State. We are hopeful that we will free up quite a bit of judge and staff time by addressing this problem.

Ongoing and New Projects

I want to give you a brief update on some of the most exciting court initiatives currently being undertaken in the court today and then I will talk to you about two very urgent but very different matters: domestic violence and technology.

As I review some of the most exciting initiatives in the court system today, I must stress, and you have heard this before, that the Maine court system does more with less than almost any other court in the country. While we struggle to make the courts accessible to an ever increasing number of self-represented litigants, our case per clerk and case per

judge ratios are off the charts when compared to most court systems. To the our west, our neighbors New Hampshire and Vermont have resources far beyond those available to our judges and clerks. We have, and I must be blunt here, too few clerks and judges, too few security resources, and too little time to do the important work you have given us.

I am well aware that in this economic climate additional resources may not be available, but I would be shirking my responsibilities if I did not tell you clearly that, even with efficiencies and reallocation of judicial resources, our total resources are insufficient to the task at hand. Therefore, if the Governor is correct and the economy rebounds, expect to see me instantly.

Now let me update you on some of our ongoing and new initiatives.

Family Division

I begin with the Family Division. Last year, you heard Chief Justice Wathen report on the success of the Family Division, and the addition of CMOs to the court system. These changes have been quite successful. The District Courts now have responsibility for all family matters including child protective proceedings, protection from abuse proceedings, juvenile proceedings, divorce proceedings, paternity proceedings, support proceedings, as well as all of its traditional dockets, and each of these matters is far more complex and time consuming than just a few years ago.

Matters involving families in turmoil are and should be extremely time intensive. But they are straining our system to its limits. Therefore, we are working toward a clear set of priorities for the trial courts so that the family cases get the time that they deserve.

Drug Treatment Courts

Next, Drug Treatment Courts are beginning to revolutionize our approaches to many criminal matters. With their focus on demonstrated sobriety, individual responsibility and real rehabilitation, drug courts are the most exciting innovations ever to be attempted in the criminal courts.

Our Juvenile and Adult Drug Treatment Courts may, when combined with emerging concepts of restorative justice, fundamentally change our response to crime in a way that recognizes the humanity of those struggling with substance abuse and at the same time protects the public from the actions of those who have not changed. The potential for making real and lasting changes through Drug Courts is enormous. And the need for focused courts has never been greater. If we are to stem the tide of increasing

tragedies related to abuse of Oxycontin, heroin, and other debilitating drugs, we must continue our efforts.

But the Drug Courts must be run carefully. They cannot be allowed to become a substitute for responsible sentencing. And they must require absolute accountability from defendants in the program. We still have a way to go to assure that our drug courts are have the authority and the resources to assure sufficient supervision and the availability of frequent, random, reliable drug and alcohol testing. But the beginnings are very promising, and we are doing everything we can in the Judicial Branch to strengthen these efforts and carefully expand the concept throughout the state.

Single Justice Assignments

Next, the Superior Court has expanded its Single Justice Assignments so that five of the largest Superior Courts now assign each civil case to one judge. This process helps keep cases such as business, contract, zoning, and personal injury matters moving quickly and on track. Added to this process is a new program mandating alternative dispute resolution as well as an effort at judicially assisted settlements. We are all well aware that business and economic development may become mired in litigation if the courts cannot respond promptly to disputes. These programs are designed to directly address those concerns.

First Collaborative Effort with Child Protective Attorneys

And finally, I want to tell you about some basic changes in the way the court interacts with attorneys representing parents in child protective proceedings. As you know, judges have, in the past, received judicial education on child protective matters through the Department of Human Services. This spring, for the first time, the courts will undertake a collaborative educational effort with those representing a different perspective - attorneys representing parents in child protective proceedings. To accommodate this self-initiated educational conference, we have assisted with funding from our federal grant monies, and the District Court judges will join the attorneys for parts of the conference. Following the conference, we hope to be setting up regional meetings between judges and all attorneys involved in child protective proceedings to air the problems and concerns of all participants and to develop plans to address those concerns directly at the local level.

Pressing Issues

Now, let me turn to two major issues facing the courts today: Technology and Domestic Violence.

Technology

I know this will come as a surprise to you, but, we in the Judicial Branch have a bit of a problem with our technology. Recently, it has become an increasing struggle to make technology work for us, not against us. And many of you are well aware that there have been serious questions raised about our current approach to our information system.

Therefore, one of my first acts as Chief was to seek the assistance of the National Center for State Courts. Given the urgency of our situation, they were able to provide us, without charge, one of their foremost experts on court technology on very short notice. He spent three days in Maine in the first week of February, learning our system, talking to clerks, judges, and others affected by the system, and reviewing all of the resources at our disposal.

We have his preliminary report, not the final report, and not surprisingly, there is very good news and very bad news. The very good news is that the foundation of our system, a data base called Oracle, is as good as it gets. It is powerful, expandable, and supported into the future. There is no off-the-shelf program that could do what we need better than our current program. The folks who have been working in the backroom at the Judicial Center on a shoestring have done an extraordinary job. Therefore, and here's more good news, I'm not going to be asking for new money to change the MEJIS foundation.

But here's the bad news: our infrastructure of wiring, lines, network, and hardware is so outdated as it now exists that it cannot support the Oracle based system, and it cannot do the work that we need done. This explains much of our current delays and frustrations. No amount of patches will cure the problem. This issue is stark. We must substantially rebuild our network with concurrent changes to our entire hardware system.

Now I understand that many of us go into a coma when the word technology comes up. I often have to take no-doze when my 16-year-old son begins explaining his latest web page design. And so you may be wondering why I would use this very special occasion to discuss something as mundane as technology.

Here's why. We simply will not be able to do our job without a dramatic improvement in our network. And I don't just mean it is harder for our clerks to type in the work. I mean, we will have increasing difficulty in assuring that protection from abuse orders get to the switch for use by law enforcement; that bail conditions will find their way reliably into the public safety system; that warrant information will get to the repositories. If we are to

protect our citizens from violence, we cannot leave law enforcement, jails, and other courts with inadequate information.

So here's the good news/bad news again. We have only begun to assess the full scope of our needs, and therefore, I am not this session asking for additional resources. We need a thoughtful and thorough plan of attack. And the preliminary information indicates that we will need capital, but we may not need many new positions, to fix the system. However, I do expect to be here before the 121st Legislature with very specific requests.

Domestic Violence

And now I want to address an issue that permeates much of what we do and has demanded much of your attention this year - Domestic Violence. Violence within families and violence directed at partners takes an extraordinary human toll in Maine. Domestic violence murders are the only growing area of crime. It effects children as well as adults, tears families apart, brings fear into the workplace, and begets new generations of violence if unchecked.

Now do not mistake my concern for pre-judgment. All parties are entitled to have a full and fair trial on allegations of violence. But I know that I do not have to tell you the serious nature of this very real problem in Maine. And I do not pretend to have an answer. But there are several areas where we can effect a positive change.

Advocates for Children

The first area where we could make an immediate difference is in providing advocates for children. Indeed, children should have well-trained, experienced advocates whenever they are one of the focuses of a judge's decision. As you know, in child protective cases, every child has an advocate, paid for by the court. Unfortunately, in protection from abuse cases, and in divorce matters and other family matters, unlike child protection cases, there is no legal entitlement to advocates for children and there are no funds for the court to pay for advocates.

Yet the benefits of involving children's advocates is becoming clearer all the time. A recent study undertaken by the Muskie Fellowship for Legal Services has confirmed this understanding. In a report entitled "A Voice for Low Income Children" the evaluators found that the presence of highly skilled children's advocates helped to reduce parental conflict, assisted the judges in a broader understanding of the child's needs, and connected families with much needed community resources. We need to follow up on these findings.

I recently had the pleasure of working with Commissioner Albanese on a very promising project related to adolescent ethics. And I know that you and the Governor have worked hard this session to prevent cuts to Maine's education budget. But we have to remember that children whose lives are in turmoil at home have a very hard time taking advantage of the educational opportunities offered them. Properly trained advocates may help resolve that turmoil faster and with better results for families and children.

I will, therefore, be asking the Bar Association, the Justice Action Group, and involved advocacy groups to work creatively and collaboratively over the next year to consider ways to implement a statewide system for providing advocates for children. And - once again good news - I am asking for your moral support, but no financial assistance at this time.

Security

The second domestic violence related matter, however, may not be the same. Let me be blunt: Our courthouses are flatly unsafe. We are all well aware of our vulnerability to random acts of terrorism, but our problem goes beyond that.

By definition, courthouses bring together people who are often angry, emotionally distraught, and occasionally out of control. We require litigants to stand together in packed hallways where we are unable to provide consistent security. More fundamentally, we do not have the resources to assure that weapons are not brought into the courthouse.

Think of it this way. During other parts of their lives, people who are threatened by others can make efforts never to be where that dangerous person may get near them. But on their court date, they have no choice. They must come to court, and they must do so at a time that has been announced in advance to the very person who has threatened them.

Right now, the message to the vulnerable is this: you must come to this courthouse in order to keep that protection order in place. But we haven't taken the very basic steps to assure that you won't be hurt while you're here. And if you decide that it is safest not to be at court at a time when that dangerous person knows you're required to, then the order keeping him or her away from you will be dismissed.

Try to imagine the terror you would feel when the person who has hurt and threatened you appears in the hallway of the courthouse on the day you are required to be there to continue to keep that person away from you. When you look around for help, the only officer is in the courtroom dealing with many other cases, and no one stopped your stalker from bringing a weapon into the building.

We can do better than this.

Let's be clear, all of your work in strengthening the laws regarding protection from abuse orders, and in clarifying bail conditions and probation restrictions, will be for naught if the true victims of domestic violence are too afraid to come into the courthouse.

We cannot let this continue. Therefore, with Ted Glessner and John Deeds' assistance, we are making every effort to find nongeneral fund resources to acquire metal detectors and x-ray machines for courthouse entries. But even if we can beg, or borrow, the necessary machines, we need manpower to run that equipment. So make no mistake about it. I will continue to implore you to find the limited resources necessary to provide entry screening in our courthouses.

The "Stop" Grant

But the news is not all grim. We have several projects underway aimed at providing a more cohesive response to problems of domestic violence. In three courthouses we have gained the capacity for the judges to hold a video hearing for the initial petition, thus precluding the need for the petitioner to come personally to the courthouse during the first, emergency request for protection. In addition, the Judicial Branch has received a federal grant, through the Violence Against Women grant program, which will allow us to undertake pilot projects in two different Maine District Court locations to develop new protocols for coordinating the judicial and community responses to violence. The projects will focus on coordinating information from civil and criminal proceedings, coordinating law enforcement involvement, and creating a post-adjudicatory role for judges to assure that offenders have fulfilled the requirements of the courts' orders and are held accountable. We are very excited about these pilot projects.

Conclusion

And so in conclusion, Maine's courts are actively involved in responding to the needs of our citizens. The innovations at work in the courts today will have profound effects upon the people of this great state. Efforts to increase efficiency and access to justice are in full swing.

But if we are going to do our work in the increasingly intense and interactive fashion that you have asked us to and expect us to, we must have the resources to do the job right. Our courts must be safe and accessible and they must provide meaningful justice.

I pledge to continue our efforts to find efficiencies and to eliminate waste and duplication, and to work toward full accessibility to justice.

At the same time, I ask three things from you:

First, I ask for your patience and support as we undergo the changes that are necessary to respond to public need, and I ask that you not increase the responsibilities of an already strained court system without providing the necessary resources to do the job.

Second, as the final economic figures come in this session, I ask again that you help us find the money to make our courthouses safe.

And finally, I invite you to come and see the courts in action. You have extended many courtesies to me in my few short weeks in this role, and I invite each one of you to come see how Judicial Branch does its job. We would welcome your presence in the courts as you have welcomed us here.

I thank you for your warm welcome, I thank you for providing the exemplary government that this state deserves, and I thank you for your time this morning.