

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

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**Augusta, Maine**  
**2010**

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**STATE OF THE JUDICIARY ADDRESS  
OF  
CHIEF JUSTICE LEIGH INGALLS SAUFLEY  
JANUARY 26, 2010**

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**Building for the Future in Precarious Times**

Governor Baldacci, President Mitchell, Speaker Pingree, members of the 124th Maine Legislature; members of the Court; colleagues from Tribal, Probate, and Federal Courts; friends and family, it is an honor to present this report on the State of Maine's Judiciary.

This has been a challenging year. Last year, I told you that the state of the Judiciary was **Precarious**, and that, if Justice fails, Democracy fails.

We are not alone in this concern. Recently, the President of the National Conference of Chief Justices, Margaret Marshall, said: "Our state courts are in crisis. A perfect storm of circumstances threatens much that we know, or think we know, about our American system of justice." As you know, the Maine judiciary has struggled more than most states, and has made national headlines because of the lack of court security.

But we have something in Maine that many states do not: a willingness to collaborate across branches of government, and a Maine work ethic that carries us through the toughest of times.

Today, the state of the Maine Judiciary remains Precarious, but with your support, with the support of Governor Baldacci, and with the incredible talent and hard work of our dedicated court employees and judges, there is hope. Today, I will give you some bad news, some encouraging news, and some very good news.

**I. Bad News**

First, the bad news. Like the other two branches of government, we face a serious shortfall. The Judicial Branch is made up of buildings and people to resolve society's disputes. There are no programs to cut. You have worked with us to avert the closing of courthouses, and we have already worked extensively to cut expenses to the bone—in fact this year, we have not even brought you paper copies of this speech. In the future, it will be on-line if you want to pore through it.

Because of these hard facts, when there is a shortfall in the budget, we have no option but to maintain vacancies. The current shortfall requires us to maintain 30 to 40 positions vacant, out of a total, including judges, of just over 500 positions. In a system that was understaffed at the start of this recession, these vacancies have a direct impact on our ability to get the job done.

- Security equipment goes unstaffed.
- Courthouses have regularly suffered reduced public hours.
- The Business and Consumer Docket remains at half strength.
- Requests for information or documents meet extended delays.
- With civil cases on the rise, small claims and landlord/tenant cases may wait months for judicial attention.

That is the bad news, plain and simple. We do not have sufficient people to keep up with all of the work that justice demands. Daily, we feel public frustration mounting.

**II. Encouraging News**

But there is encouraging news: through innovation and consolidation, we are endeavoring to do more with less. We are acutely aware of the challenges you face, and we are well aware that a fiscal solution to the problems in the court system is not on the immediate horizon. We have therefore focused on two overarching goals:

- First, we must preserve limited resources for the core mission of the Judicial Branch: providing safe, accessible, efficient, and impartial dispute resolution. That core mission guides us as we make tough choices regarding what we should do and what we cannot do.
- Second, we must streamline and consolidate resources to allow us to provide those core func-

tions within funding limitations. This often requires changes to systems that have existed for decades. I will talk to you about some of those important changes today.

#### A. Courthouse Safety

But first, as always, I report to you on courthouse safety. Despite budget cuts, we have not lost our focus on preventing guns from reaching our courtrooms. A good example of the critical importance of entry screening occurred recently in Nevada when an unhappy litigant sought to kill those involved in his adjudication. The incident ended tragically with the death of a security officer. But the tragedy would have been immensely worse had the litigant not been met at the courthouse door by the brave entry screening team who stopped his rampage.

At the same time, the number of dangerous events in Maine's courthouses is on the rise. The professional work of our Marshals and Sheriffs in defusing tense situations has been effective in preventing tragedies, but we have been lucky. We must improve our capacity to stop weapons at the doors of Maine's courthouses.

The vacancies we must carry present a serious barrier to improving security. We have, therefore, wherever possible, taken dollars saved from vacancies in other positions and applied them to security staffing. We have made the conscious decision to leave other vacancies in place, while we slowly fill the security positions. By shifting resources and maintaining vacancies, we have restored some marshal positions.

We anticipate that the court's entry screening capacity will soon rebound from a low of less than 5% to almost 25% of all court days. It should be 100%, but 25% will mark a significant improvement. Unless there are further cuts in the Judicial Branch budget, the shifting of critical resources will allow us to improve courthouse safety.

There is, of course, a trade-off from the loss of other important staff. These vacant positions have a very real effect on our ability to get the work done: they will reduce the effectiveness of Bail Commissioner services, limit our ability to work with the jails and prisons to improve video conferencing capacities, and reduce the ability to respond quickly to public needs and to your requests for information. We ask for your

patience while we prioritize safety in our courthouses, and wait for economic recovery.

#### B. Case Processing

I have just a bit more difficult news before we move to more hopeful topics. During Fiscal Year 2009, more than 292,000 new cases were filed. That represents more filings than the courts have seen in recent memory, and the new filings had to be processed by a clerk staff that is suffering substantial vacancies.

The increases are primarily in civil cases: mental health commitments, foreclosures, small claims, and traffic infractions. We cannot reach all of the cases in a timely manner. Backlogs are increasing, and we are straining good staff to the brink.

Notwithstanding the increasing caseloads and decreasing staff, our trial courts and Violation Bureau resolved 288,000 cases last year. Every one of those cases was important to the people involved, and many have profound effects on your communities.

- Attorney General Mills reports there were 31 homicides in Maine in 2008, the highest in 30 years, 60% of which were related to domestic violence, and that, of the 26 new Homicide cases that were filed in 2009, ten are alleged to have involved domestic violence. A growing number of homicides are related to the violence that accompanies illegal drug use.
- Fully one thousand new mental health commitment petitions were filed last year. That number is up 36% over the last 5 years.
- Criminal cases have become more complex, as our citizens struggle with drug addiction, sexual assault, and domestic violence.
- 6,130 people sought protection from abuse.
- Despite the improvements brought about by the Adult Drug Treatment Courts and the Co-occurring Disorders Courts, the Attorney General reports that 464 drug-affected babies were born in Maine last year.
- At the same time, businesses and individuals are struggling just to stay afloat. Small claims, col-

lections, and foreclosure cases reached an all-time high.

If our citizens are going to find the courthouse doors open when they need justice the most, we must continue to work together to avoid further reductions.

### C. Consolidations

Moving then to the more encouraging news. There are two areas of consolidation that have been highly successful and help us make the very best use of the dollars available.

#### 1. Merger of Clerks' Offices

As of today, we have consolidated 26 separate clerks offices into 13 streamlined, efficient offices. Our clerks are the backbone of the court system. They constitute more than half of the total 500 people who make up the court system. Clerks' office consolidations have been critical to our ability to run a system that has so many clerk vacancies. It does not solve the shortage completely, but it allows a more flexible use of human resources, and it has improved our capacity to provide public service.

#### 2. Unified Criminal Dockets

The second type of consolidation has occurred in the Criminal Dockets. The historic design of the District and Superior Courts has resulted in a substantial overlap of work, complete with frequent re-keying, transfers of paper and delays in scheduling. It has created an unproductive duplication of work. By 2007, fully half of the criminal cases in the Superior Courts had originated in the District Courts and were forced through this duplicative, and time-consuming process. I will not detail all of the problems, but it is hard to imagine a less efficient and less public service oriented system.

Enter the incredibly creative judicial team of Justices Roland Cole and Robert Crowley. I asked them to bring together the necessary stakeholders, and to create a unified process for criminal cases. Portland was chosen because District Attorney Stephanie Anderson was supportive of the concept, despite the enormous changes it would bring.

In January 2009, the first Unified Criminal Docket in Maine was launched as a pilot project in Cumberland

County. All of the clerks in both the District and Superior criminal courts were combined into a single unit. Duplicative work was eliminated. Defendants know from the first day they appear in court when their trials will occur. Victims have the same information. Law enforcement appearances have been substantially reduced. Strained resources in the District Attorney's office can be diverted to the most serious crimes. Defense attorneys are involved early with immediate access to information. And best of all, the resolution of the combined criminal cases in the Portland Unified Criminal Docket is accomplished more promptly than in any other Region in the State.

The Unified Criminal Docket represents a major change for all involved, requiring a constant balancing of constitutional rights and the public's interests. It was done without new dollars, but it is one of the most significant improvements in the court system in decades. As the concepts expand to other areas of the State, we have launched a Unified Criminal Docket in Penobscot County this month.

The Team that came together to create the new process had to redesign the plane while it was in the air. I'd like the members of the Team who were able to join us today to stand and be recognized. (Please hold your applause until they have all been identified.)

- Justice Ellen Gorman from the Supreme Judicial Court,
- Justice Roland Cole from the Superior Court,
- Judge Paul Eggert from the District Court,
- Sally Bourget, Clerk of the newly consolidated Portland Courts,
- District Attorney Stephanie Anderson, who had to completely reorganize her own staff, and
- Attorney Sarah Churchill representing the wonderful group of defense attorneys in Portland—Thank you for your efforts.

### D. Indigent Legal Services Commission

Another area of encouraging progress assists Maine's low-income people. Last year at this time, the provision of legal services for criminal defense and child protection for our poorest citizens was under the con-

trol of judges who selected the lawyers and approved their bills. The appearance of a conflict of interest was intolerable. Justice Clifford and I spoke to you about the importance of creating an independent system.

Despite all of the pressing issues competing for your attention, you responded wisely by creating the Maine Commission on Indigent Legal Services. By July 1, the transition will be complete. The Maine Legislature's approach to ending this conflict of interest and creating independent oversight will be one of the lasting achievements of the 124th Legislature.

#### E. Access to Justice

Finding attorneys to assist the poor in critical civil cases requires a very different approach. When our citizens are faced with losing their homes, losing medical care, or losing their children to someone other than the State, they are not entitled to government funds for legal help. The mortgage foreclosure crisis is an excellent example of the desperate need for that help.

This is where the work of Maine's legal community is critical. The Justice Action Group is designing a multitude of ways to help litigants who cannot afford an attorney. And Maine lawyers and legal services providers continue to help those in need. Despite the terrible economy, Maine lawyers gave more than \$350,000 last year to the fund that helps low-income Mainers with legal services. They gave even more of their time, donating more than 13,000 hours of free legal services, and those are just the hours that are recorded. In January, Bangor attorneys opened a free Saturday legal clinic, staffed by lawyers volunteering their weekend time, and in Portland attorneys stepped up to provide help to low-income litigants caught up in the complexities of appeals. And we should not forget that the work of Maine's trial attorneys on behalf of injured people returns millions of dollars to Maine's Medicaid accounts each year.

Don't believe what you see on T.V. Maine lawyers are a key part of their communities, and I am personally grateful for their tireless support for people in need.

#### F. Facilities

Last session also brought lasting achievements for Maine's courthouses. The Tri-Branch Courthouse Advisory Committee helped us create an effective plan

for addressing critical facilities needs while making the best use of scarce dollars. Legislators, members of the Governor's office, county officials, law enforcement, and attorneys all came together to design long-term, state-wide solutions. And last year, you provided bipartisan support for their recommendations.

- You passed a budget that supported rural courthouses.
- You created a small but important capital account for critical repairs.
- You helped us plan for consolidating courthouses that are down the street from each other, or even across a parking lot, into single efficient buildings.

The newly renovated Houlton Courthouse provides an excellent example of the benefits of this planning process. In Bangor, the consolidated, energy efficient, safer courthouse will serve the citizens of Penobscot County for centuries. Soon Piscataquis, Kennebec, and Washington Counties will have greatly improved facilities.

All of it was accomplished in fiscally responsible ways, and none of it could have been accomplished without the support of Legislative leadership—President Mitchell, Senator Raye, Speaker Pingree, and Representative Tardy, and so many of you who work on the committees that oversee the Branch and our budget. Thank you.

### III. Other Encouraging News

Also in the category of encouraging news, the Chief Justices of Maine, New Hampshire, and Vermont are working together to determine whether the resources and talents of the three states can be shared. One example is the effort to leverage the purchasing power of the three states regarding essential court services, such as interpreters and electronic research.

At the national level, responding to our request, Congresswoman Chellie Pingree has co-sponsored a bill to allow a federal tax offset for unpaid state fines. Revenues from fines are down for the first time in many years. We have had success with the tax offset program in state government, and we hope to achieve similar success with a federal tax offset.

Here in Maine, Foreclosure Mediation is now available statewide. The willingness of Maine attorneys and community service providers to offer their time at no cost was invaluable to the efforts to get started. Implementing the judicial aspects of your innovative legislation statewide has required a tremendous effort to develop materials for judges and clerks, educate parties and attorneys about the process, and to recruit, select, and train foreclosure mediators. Again, judges, particularly Judge Andre Janelle, and our terrific staff have risen to the challenge. Sixty-seven mediators have been trained. We will be back to you next year with information on the accomplishments of Foreclosure Mediation in Maine.

#### IV. Very Good News

I now turn to two areas of truly exciting opportunities: A pending dramatic upgrade in technology, and transformative changes in Juvenile Justice.

##### A. Juvenile Justice

During the last year, First Lady Karen Baldacci, representing all of the Executive Branch agencies that work with children and families, and Dean Peter Pitegoff of the University of Maine School of Law, joined me in leading a unique coalition of many stakeholders to consider how to better serve Maine's youth in and out of the juvenile justice system.

The problem? Although Longcreek and Mountainview had improved dramatically through the last decade, the community, educational, and judicial responses to our youth were in desperate need of a similar overhaul.

- Too many of Maine's young people are leaving school, and losing their way.
- Too many resources have been spent in ways that were not effective.
- Too many of our kids are consigned to lives of hopelessness, homelessness, violence and despair.

The Task Force set out to create the blueprint to substantially improve our response to juvenile problems, without new dollars. This extraordinary collaborative, including many legislators, has generated 10 primary recommendations.

- Some of the recommendations require legislation, and Representative Haskell and Senator Alfond have taken the lead;
- Some require a focus on improved coordination of resources, and communication. The Courts and the Children's Cabinet have taken the lead; and
- Others require real human commitment and the sharing of resources at the community level.

If we follow through, many more of our youth will graduate from high school, fewer will spend the days of their adolescence behind bars, and local leaders and volunteers will strengthen the very foundation of our communities.

##### B. Technology

The second area of exciting news affects technology. In the last several years, I have talked to you about the need to bring the Maine courts into the 21st century. General fund dollars have simply not become available. In the last year, with the support of the Department of Public Safety and Commissioner Jordan, the Judicial Branch has sought and received almost 2 million dollars in various grant funds, all aimed at dramatically improving the State's technology in criminal matters.

As the new system develops, the technology that supports law enforcement officers, prosecutors, defense attorneys, clerks and judges will be one seamless electronic flow of information. Judgments will automatically reach the jails without retyping, eliminating human errors and confusion. Arrest warrants will be centralized and immediately available in the field. The public will have prompt access to information. Public safety will be substantially improved. I am incredibly proud of the accomplishments of our technology staff and judges. With the grant funds in hand, we hope to change the world of criminal justice information.

#### V. Conclusion

In the end, although serious understaffing continues to hurt the public, working with all of you, we have taken several significant steps forward. Please help us meet our goals by supporting the Governor's budget proposal and avoiding further cuts in the justice budget.