

MAINE STATE LEGISLATURE

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**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
MARCH 9, 2016**

Rising to the Challenge

Thank you, President Thibodeau. Good Morning, Speaker Eves, Honorable Members of the 127th Maine Legislature.

It is always an honor to address the Joint Convention, and I very much appreciate your invitation to report to you on the State of Maine's Judiciary.

With me today is my wonderful husband Bill, and I am accompanied as always by my colleagues from the Supreme Judicial Court and Trial Court Chiefs.

It is such a pleasure to work every day with this dedicated group of judicial leaders as well as the extraordinary Maine trial judges, creative administrators, and ever-patient clerks and court security who make up Maine's Judicial Branch.

Also with us today in the gallery are representatives of Maine's other court systems including the Tribal and Probate Courts. Thank you for being here.

My plan today is to give you a summary update on infrastructure and case processing improvements. I hasten to add that I have not attempted to provide details on all of the many projects and innovations underway in our system of justice. I will, instead, concentrate most of my remarks on the criminal docket, including an issue that worries all of us—the horrific increase of heroin, oxycodone, and opiate addiction in Maine.

Update

I begin with an update on the Supreme Judicial Court's plans to hold appellate arguments in schools around the State. First, with many thanks to Senator David Burns, the Court will be at Washington Academy in East Machias this spring, and we will follow those arguments with the official ribbon cutting for the newly renovated Washington County Courthouse.

This fall we will be back in the St. John Valley in Fort Kent where multiple high schools will have an oppor-

tunity to observe the Court's appellate arguments—Thank you, Representative John Martin.

And in October, we will sit in South Berwick, with thanks to the persistent Representative Bobbie Beavers, who has waited for six years for appellate arguments at a high school in her district.

INFRASTRUCTURE

In follow-up to my report to you last year regarding the court's infrastructure, we are, indeed, turning the corner.

Some of you remember the days less than a decade ago when budget cuts were so severe the public had to endure rolling court closings.

It was bad—closed courts and unsafe courthouses resulting in limited public access.

With the Legislature's consistent help over several sessions, and the support of Governor Paul LePage, I am pleased to report that the Maine courts are returning to solid ground after some very tough years.

Although the Judicial Branch consumes only 2% of the General Fund budget, that 2% is put to very efficient use supporting the people and buildings that provide justice in Maine.

Safety. As always, we put safety first. We now have entry screening for weapons nearly 70% of the court days, and there is greatly improved safety for everyone in our courts.

Modernized Facilities. We are in the midst of a long-term facilities plan that has resulted in the consolidation and updating of many of Maine's aging courthouses.

We have reduced the number of court facilities from 48 to 38, and through those consolidations, we have eliminated the consequent need for heat, plowing, and security in ten buildings.

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Courthouses have been consolidated and updated in seven counties, most recently in Washington, Piscataquis, and Kennebec Counties.

Three more counties, Waldo, Oxford, and York, that badly need updated courthouses are slated for consolidation and modernization over the next four years. LD 1528 addresses the plan for all three counties.

The Waldo County Courthouse was built in 1853. Think of that—it was built before the Civil War, before women had the vote! It must be replaced.

The Oxford County Courthouse was built in 1895; although antiquated, it has the capacity to be updated and expanded.

And the York County Courthouse, which was rebuilt after a fire in 1934, is no longer capable of expansion or updating and is truly unworkable.

LD 1528 will provide authorization for dignified, efficient, and accessible court facilities in those counties. It requires no funding in this biennium, and it will result in substantially improved public service in all three counties. When those projects are complete, we will have reduced the current 38 court buildings to 33.

I ask for your support for this legislation, which has received the unanimous support of the Judiciary Committee.

And for those of you waiting for needed court improvements in your own counties, in several years, we will be evaluating the aging courthouses in three counties: Somerset, built in 1874; Franklin, built in 1885; and Hancock, built in 1931.

Technology. Next, again with your support and the backing of the Governor, we have a plan for digitizing court documents. We anticipate that a contract will be signed this summer, and the real work will begin to create electronic filing and a modernized data management system that will increase public access, create efficiencies, and help all three Branches obtain much needed information to assist in policy and resource decisions.

Court Hours. There is a remaining gap in public service that the Legislature can help us correct. Years ago, as a cost savings measure, Judicial Branch staff hours were cut from 40 to 37.5 hours a week. Over

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time, we have attempted to return staff to a 40-hour work week, but most of the court clerks, the Judicial Branch's front line for public service, have been left at the shorter days, requiring the 4:00 pm closure of all courthouses.

Even an extra half hour each day could improve public service, allowing expanded access to the court clerks and representing the difference between completing a case and having to put part of the case over to another day, maybe weeks later. If you have ever been involved in a court case, you know how stressful that can be.

There is a bill on the Appropriations Table right now, LD 1597, that will allow the clerks' office staff to return to the 40-hour week that most of government employs. LD 1597 will provide a real benefit for your constituents, and we ask for your support.

PROCESS IMPROVEMENTS

In addition to the infrastructure improvements and efficiencies I have described, we are constantly working toward improvements in case processing.

Civil & Family Dockets. Regarding the civil and family dockets, access to justice efforts continue.

For language and hearing challenges, over the last several years:

- Telephonic language lines at the clerks' offices and in the courtrooms made 127 different languages and dialects available for interpretation; and
- Live interpreters were provided for more than 35 languages.

For challenges with lack of legal representation, last year:

- Lawyers across the State volunteered almost 15,000 hours of legal services—donating the equivalent of more than \$2 million in free legal help;
- Lawyers and judges also contributed over \$500,000 in cash to augment legal services for the poor;
- The Civil Legal Services Fund established by the Legislature provided over a million dollars for legal services to Maine's poor;

- The Maine Justice Foundation contributed to the provision of legal services; and
- Portland law firms donated enough money to continue the tradition of hiring two full-time attorneys to provide low-income families with legal assistance.

All of these efforts will be topics for future reports to the Maine Legislature, as well as:

- Exploration of improved ways to provide dispute resolution for families; and
- Developments in the battle against domestic violence, human trafficking, and elder abuse.

Criminal Case Resolution. I turn now to the criminal caseload, where some of Maine's most challenging problems coalesce.

First, let's do the numbers.

The criminal docket constitutes nearly one-half of the entire nontraffic docket in Maine's courts. Just short of 54,000 new criminal cases were filed last year.

The District Attorneys and the defense bar report that the complexity of the cases is increasing, particularly regarding the involvement of addiction and mental health challenges.

According to Attorney General Mills, last year there were 25 homicides, of which ten were classified as related to domestic violence, and at least three have been identified by the AG as directly drug related.

The relentless influx of new criminal cases could overwhelm the system, but we have a plan. As they say, timing is everything.

As you know, over the past four years, the trial courts have implemented a more streamlined and efficient process in the criminal cases, which we refer to as the Unified Criminal Docket. The implementation is just about complete.

In the same time frame, this Legislature and the Governor, working together, have allocated additional resources for the processing of criminal cases.

Two new judicial positions were created, and the new judges were confirmed in February this year, augmented by additional resources for clerks and security,

and the legislative authorization for the transfer of funds to support more jury trials.

Backlogs and Drug Court. With all of that support, we hope—for the first time in decades—to eliminate backlogs in the courts' criminal cases by the end of this summer of 2016. At the same time, we expect to be able to reinvigorate the existing Drug Courts and expand the Drug Courts into Penobscot County in the next couple of months.

None of this would have been possible without legislative support. We greatly appreciate the increase in the number of judges and supporting resources. Nor would streamlining the process and reducing the backlogs have been possible without creative and energetic judges, patient clerks, responsive prosecutors, and defense attorneys who are willing to shift their schedules constantly. We have asked all of these groups to change the way they do business, and they have responded admirably.

Pretrial Justice Reform. Also in this last year, the Intergovernmental Task Force, led by Justice Robert Mullen, generated its recommendations for next steps in addressing Pretrial Justice Reform. I want to thank everyone from all three Branches of Government, along with all of the other stakeholders, who participated in this complex effort.

The Task Force has recommended several statutory changes that can be found in LD 1639, just printed in the last few days.

The Task Force also made recommendations for issues that could not be addressed in this session.

Bail. One of those items is Bail Reform.

There is no question that Maine has an antiquated bail system that needs to be completely revamped. Two separate Committees have now recommended serious changes. Each time, the anticipated costs have been a barrier to reforms.

But I have an idea—perhaps not a no-cost idea, but one with a reduced demand for additional resources. I intend to put a follow-up Working Group together to look at the state of our understanding regarding risk assessment, and to explore alternatives to our current bail system. We will

need to be creative, but careful. Balancing liberty interests and community safety will be key.

I welcome legislative participation in the bail reform effort.

Fine Collection. Also in follow up to the work of the Task Force, the Judicial Branch has established a working group to create a new set of expectations for fine collection that will be consistent, transparent, predictable, and fair.

Justice William Anderson of Bangor is leading that group.

Sentencing Alternatives. The Task Force also recommended a further legislative discussion of sentencing options.

It is my hope that the Maine Legislature will soon have the opportunity to consider alternative forms of sentencing that are neither incarceration nor fines. Restorative justice, real restitution programs, community service that is actually a service to the community—each of these may hold promise in the right cases, and I hope the Legislature will have an opportunity to evaluate these ideas in the upcoming sessions.

Heroin and Other Addictions. So let's move to one of the most pressing issues facing all of us:

Heroin, oxycodone, and opiate addictions.

The evidence is overwhelming that the addiction problem is growing:

- Just this past Monday, the Attorney General reported that 272 people died of a drug overdose in 2015—an increase of 31% in overdose deaths from the previous year. As AG Mills noted, that is, on average, more than five overdose deaths per week!

Think of that—during a Joint Convention, this room holds 186 legislators. Imagine, a group of human beings nearly 100 people larger than this gathering, all lost to drug overdoses—in ONE year! The loss of life represents staggering misery for so many Maine families.

- And tragically, the number of drug-affected babies is rising consistently. Again, from the Attorney General's Office we know that the number in 2011, which was far too high—668 drug-affected babies—has risen dramatically, to 1,013 babies in 2015 who were drug affected at birth. Eight percent (8%) of all live births in 2015 involved drug-affected babies. This is sad beyond words.
- In addition, rough numbers from our imperfect database tell us that the convictions just for the Schedule W drugs (including opiates and heroin) have gone from just over 1,300 in 2013, to 1,500 in 2014, and up to almost 1,800 in 2015.
- In other words, even with our blunt measuring capacity, the horror of heroin and opiate addiction in our youth, our middle-aged citizens, and even our mature Mainers is growing.

This wave of drug addictions is eating at the heart of our beautiful State.

I know that you have almost certainly been asked the same question I have—What can we do to stop this affliction?

And I know that, entirely separate from the court system, you are addressing some of the big-picture and long-term answers.

In the Courts. So I will focus on a few of the resources that could make a difference right now when judges are faced with people struggling with addictions.

We have seen the human costs of addiction in every docket: criminal, child protection, family, and even foreclosures.

What is all too clear is that, because the causes and cures for addiction are as varied as they are for any disease, no cookie cutter solution will work.

And, although we must expect that the individual will take personal responsibility for his or her recovery, the first steps on the road to health require intense interventions and oversight.

The Drug Courts, with their focused and intense oversight, hold real promise for specific individuals, but we should be clear-eyed about this.

Drug Courts cannot do it all. Even if all of the Drug Courts, including Bangor, were up and running at full capacity, only about 350 people, optimistically, would have the opportunity to find a sober life through the Drug Courts.

But you heard the numbers: There were 54,000 new criminal cases filed in 2015.

There were 1,800 Schedule W drug-related convictions in just one year, and that does not include any of the other crimes, like theft, assault, and burglaries, alleged to be perpetrated by people desperate to pay for their next fix.

We must take our solutions to scale.

How do we bring this all together in the courts?

First, as I mentioned earlier, eliminating the criminal backlogs will allow the courts to reach the cases much earlier. This has substantial benefits in both the alleged drug trafficking cases, and the cases where addiction is the root of the charges.

Next, I suggest that we must create expanded options for each stage of the criminal justice process, including pre-charge diversion, post-charge diversion, and sentencing, and we must be ready with dual-diagnosis treatment when mental health issues play a role.

There are many new and innovative treatment options that are being tested throughout the country, and I will not try to address all the good ideas that are emerging.

But I will suggest a few basic resources that could go a very long way.

Housing. First, every judge in Maine will tell you that residential resources are a missing component in the system, for both adults and youth.

Maine needs options for graduated treatment housing that will allow people seeking recovery to be diverted from incarceration, and in other cases to be transitioned from incarceration into treatment housing, including residential treatment, treatment-based step-down housing, and sober houses.

Some will need a longer time in treatment housing, and others can graduate quickly to sober

houses. The increased availability of ankle bracelets could allow great flexibility while sentenced defendants are still in recovery housing. So—housing first.

Testing. Next, the oversight providers need resources for constant testing.

New evidence-based practices are emerging that indicate that consistent testing actually works wonders in encouraging sobriety.

Case Management. Finally, because treatment providers and families cannot do it all, well-trained case managers to guide those in recovery are critical to this process.

Individuals attempting to rise from the fog of addiction do not always exercise good judgment, and navigating the intertwined criminal justice and treatment systems can be difficult for even the healthiest of us.

Case managers can be a bridge to treatment providers, can eliminate the wasted resources of missed appointments, and can coordinate with treatment providers to make the necessary adjustments that assure that the plan for that individual is actually working.

We must understand and anticipate that the path to sobriety is not always a straight path. Case managers and skilled treatment providers can be ready to adjust treatment options while reinforcing personal accountability.

The very successful Veterans Court, with its extraordinary case manager, TJ Wheeler, is a wonderful example of that model.

Finally, there is one thing we cannot do regarding this challenge.

We cannot allow ourselves to be discouraged.

This is Maine; we always find a way to collaborate when Maine people need solutions.

We will need to be creative and to stay on top of the latest research.

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Working together, we have successfully addressed so many challenges. In recent years, those efforts resulted in an increase in high school graduation rates, and the collaborative work with juvenile justice has been so successful that one entire facility is no longer needed for detaining youth.

So—do not lose hope.

We can and we will find our way to similar success in turning back the horror of addictions.

A Note of Gratitude

Finally, I take a moment for a personal note of gratitude.

This year, my seven-year term as Chief Justice came to an end. As with all other Maine state court judges, reappointment happens only if the Governor, the Judiciary Committee, and the Senate decide that the work of the Chief Justice should continue.

The opportunity for the other Branches of Government to change the direction of Justice and to reconsider previous judicial appointments is critical to Maine's constitutional structure.

I strongly support this method of selecting judges, and I often speak publicly about the stark contrast with other States or the federal system, where judges are either appointed for life, or the converse, where judges must run for office in partisan elections, and therefore must raise money from the very people who will appear before them.

Maine's system is, I believe, the best in the country.

But, after all of my public support for this system, I confess to you today that when it comes time for my own reappointment to be considered

—it becomes clear that I talk a big game.

I realize that all of you go through a similar process every two years, as you wait for voters to decide who will return to the State House, and I *may* have been insufficiently sympathetic to your worries and efforts!

I want to take a moment to thank every one of you who went out of your way to say something kind and supportive to me in these last weeks.

To all of the Judiciary Committee members who are keenly interested in the future of justice,

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To the Maine Senate for your extraordinary and eloquent support,

To all of you, every one of you, for your respect through the years, and

To Governor LePage,

I thank you all for supporting our vision of an effective, efficient, and most of all fair system of justice.

Thank you for everything you do for the people of Maine.