

MAINE STATE LEGISLATURE

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**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
FEBRUARY 16, 2017**

**MAINE JUDICIAL BRANCH
THE STATE OF THE JUDICIARY
A Report to the Joint Convention of the First
Regular Session
128th Maine Legislature**

MANAGING IN A TIME OF CHANGE

**Presented by Chief Justice Leigh I. Saufley
February 16, 2017**

President Thibodeau, Speaker Pro Tem Herbig, and Honorable Members of the 128th Maine Legislature, good afternoon, and thank you so much for finding a way to fit this presentation into your very challenging schedule. It has been a hard winter, and I so much appreciate your efforts.

It is an honor, as always, to be invited to address this joint convention of the Maine Legislature.

I am accompanied today by my amazing husband of 36 years, Bill Saufley, who consistently accommodates my scheduling changes with great humor. My parents, Jan and Dick Ingalls, would have been here, but I convinced them not to travel, so they are watching at home in South Portland, thanks to your terrific technology.

I am also accompanied by my wonderful colleagues from the Supreme Judicial Court and the new Chief Judge of the District Court who you will hear a bit more about in a minute.

The extraordinary people in the Maine Judicial Branch are working very hard to meet shifting public needs, and my presentation today will focus on those CHANGES.

But as we talk about changes, it is important to anchor our discussions in the bedrock principles of good government. This Joint Convention, where the Chief Justice is invited by Legislative leadership to present a report on the State of the Judiciary, represents a tradition of good government that we all value highly.

And this year is an important milestone in this great tradition.

Forty years ago, in 1977, Chief Justice Armand Dufresne, Maine's first Franco-American Chief Justice, delivered the very first State of the Judiciary. So, for four decades, broken only by two years in the early '80s, Chief Justice Dufresne, Chief Justice McKusick, Chief Justice Wathen, and I have had the honor of an annual invitation to address the joint houses of the Maine Legislature.

I emphasize this history because we do not take this tradition for granted. It does not happen in every State, and the benefits of formal communication between the separate, but equal, branches of government cannot be overstated.

So very much has been accomplished in the last decade because of the work that we have all done together for the people of Maine.

With great traditions anchoring our work, my focus today is

CHANGE in the pursuit of improved public service.

To be clear, there has been no change in the mission of the Judicial Branch.

To administer justice by providing a safe, accessible, efficient and impartial system of dispute resolution that serves the public interest, protects individual rights, and instills respect for the law.

But changes in society, changes in technology, and changes in the public's expectations of government require us to evolve consistently in the way we fulfill that mission.

Today I will update you on:

- Changes in the leadership of the Trial Courts;
- Changes in the Infrastructure of the Courts;
- Changes in the delivery of justice to families in Maine;
- Changes in the processing of Criminal Cases, including
 - o Fines and Bail,
 - o The Addiction Crisis, and
 - o Domestic Violence.

And finally, I will have two requests for you.

CHANGES IN TRIAL COURT MANAGEMENT

The first of the changes is in the leadership of the Trial Courts.

The Chief Justice of the Superior Court and the Chief Judge of the District Court are positions created by statute. We have now established that they will serve three year terms, renewable once.

The Chiefs are responsible for the operations of the trial courts, and they must assure that the trial courts are responsive to the needs of the public.

These judicial leaders must have the respect of their colleagues and the legal profession. They work very long hours, filling both roles of judges and managers.

Chief Justice Roland Cole is the new Superior Court Chief. He has an extraordinary history as a Maine Trial Judge, but, unfortunately, he had a family emergency, and I will introduce him to you at another time.

Chief Judge Mary Kelly has taken over as the Chief of the District Court. As Judy Harrison of the Bangor Daily News wrote, Judge Kelly grew up just 12 miles east of Bangor: Bangor Erris, in County Mayo, Ireland, that is.

Chief Judge Kelly came to Maine from Ireland as an exchange law professor in 1987. She found Maine to be such a wonderful place that she stayed on, becoming an American citizen in 1990.

Chief Judge Kelly has worked in the Legislature's Revisor's Office, in the Attorney General's Office handling child support and child protection cases, and in the District Court as a Family Law Magistrate. In 2010, she was appointed to the District Court. She is well respected by her colleagues and is already beginning to make her mark in improved public service.

CHANGES IN JUDICIAL BRANCH INFRASTRUCTURE**CMS eFiling**

Next, I am very pleased to provide an update on a monumental change made possible by the three branches of government working together to make the courts more efficient, responsible, and accessible.

The digital world is coming to the Maine Courts.

Working with Tyler Technologies, a company with a significant Maine presence, we expect to implement the new Case Management System first in the Violations Bureau, which handles between 85,000 and 100,000 traffic cases statewide each year. Penobscot and Piscataquis Counties will be the first courts where the full digital system will be implemented in 2019.

Moving from a paper-based court system to an electronic one will revolutionize the way we do business.

- The new system will allow 24/7 access by litigants from anywhere in the world that is connected to the Internet.
- Members of the public will not need special programs to access their cases.
- Interactive court forms will assist unrepresented litigants to initiate and process their cases.
- The system will greatly improve access, efficiency, and transparency for all involved with the court system.

Recognizing that broadband access is not yet equally available in all areas of the state, our plans include public kiosks in the courthouses, to make sure that all members of the public benefit from this improvement.

We have much work ahead of us to implement a system that, while transparent and accessible, must also protect personal privacy and guard against identity theft. To address this challenge, we are about to launch the new Task Force on Transparency and Privacy that will include a broad array of stakeholders.

I am grateful for the bipartisan support that is making all of this possible. Governor LePage steadfastly supported funding for the new technology, as did the Legislature, including Leadership in both parties, especially the Judiciary and Appropriations Committees, and Representative Fredette, who first got the ball rolling six years ago as a freshman member of the Appropriations Committee.

Safer, Modern Courthouses

The state's aging courthouses are also benefitting from much-needed changes.

Those of you who are veteran Legislators have heard me bemoan the physical facilities of the Maine courts. But with the bipartisan support of both the Governor and the Legislature, we continue to make steady improvements to Maine's courthouses. Without sacrific-

ing rural access to justice, we have reduced the number of separate court buildings from 47 to 36, and in the process, we have improved safety and access in many counties.

In 2016, after legislation was approved by the 127th Legislature, we began work toward improved facilities in York, Oxford, and Waldo counties.

We will improve or replace eight inadequate buildings with three efficient, handicapped accessible, and vastly safer courthouses that will improve the delivery of justice for generations to come. I want to thank the Governor, President Thibodeau, and former Speaker Eves for their support.

And I especially want to thank the four members of the 127th Maine Legislature who gave so much time to the legislatively created Site Selection Commission for the York County Courthouse:

Senator Ron Collins,
Former Senator Linda Valentino,
Representative Bob Foley, and
Representative Ann Marie Mastraccio.

Thank you all for your time and energy.

Improvements in Access to Justice

So, with improvements to buildings and technology, access to justice is getting better every year, except for one critical aspect:

litigants too often cannot afford lawyers to help them with their legal problems.

We still have a way to go to ensure that everyone in court is assisted by capable counsel. There is a constitutional right to a lawyer in criminal proceedings, but too many Maine people are not able to afford a lawyer for the civil proceedings that may affect their families, their livelihoods, housing, and healthcare.

But the good news is that Maine lawyers continue to give generously of their time and money to assist their fellow-Mainers in need.

- The Campaign for Justice raised over \$600,000 from Maine lawyers and judges to make free legal services available to the poor.
- In addition to donating money, Maine lawyers participating in the Katahdin Program donated over 11,000 hours of free legal work, with a market value of approximately \$1.7 million.

- In 2016, with the assistance of the New Lawyers Section of the Maine State Bar Association, 22 local libraries participated in the Lawyers in Libraries Program, where people could find legal help right in their own communities.
- The Civil Legal Services Fund, which you—the Maine Legislature—established, provided over \$1.4 million to legal service providers to assist the elderly, low income parents, the disabled, and victims of domestic violence, along with many others in need.

We absolutely must do more, but I am grateful to you and to the many lawyers who have voluntarily stepped up to help those in need.

FAMILY DIVISION CHANGES

1. Home Court

Turning now to the changes in the actual case processing, I want to thank both the Legislative Branch—the 127th Legislature, and the Executive Branch for passage of L.D. 890, *An Act To Ensure a Continuing Home Court For Cases Involving Children*.

Prior to passage of this bill, many cases involving the same children were split between the State District Courts and the County Probate Courts. A child protection case would proceed in the District Court, but any adoption, guardianship, or name change involving the same child would have to be handled by the County Probate Courts.

Imagine having to navigate two separate court systems, separate clerks, separate judges, separate rules of procedure, often even in different buildings, all regarding issues affecting the *same* child, the *same* family? It was difficult; it was more complicated than it should be; and it did not serve children and families well.

Working diligently over two sessions of the 127th, the Judiciary Committee found a way to address the challenges, and the Executive Branch found a way to fund the proposal. The new law, allowing families to proceed in one court—the District Court—went into effect in July 2016.

Today, I am pleased to report wonderful progress in the seven months since the bill went into effect. As of last Friday, 173 adoptions, 50 guardianships, and 5 name changes, all involving families and children in

District Court cases that would have required *separate* case filings in the Probate Courts, were completed expeditiously, and exclusively, in the District Courts.

These improvements would not have happened without the commitment of:

- The sponsor, Rep. Kim Monaghan,
- Co-sponsor Speaker Gideon,
- The Judiciary and Appropriations Committees, and
- The Executive Branch.

I am also grateful to:

- Justice Ellen Gorman,
- Chief Judge Kelly,
- The Probate Judges, especially Judge Carol Emery, and
- A host of lawyers and District Court Judges who assisted in rapidly creating new rules to assure the expedited processing of the cases.
- Professor Deirdre Smith, who heads the Cumberland Legal Aid Clinic, deserves special mention for her advocacy for this legislation.

Those 173 adoptions represent a concrete example of how, when we work together, we can find solutions that make government work better for Maine people.

2. Guardian ad Litem Changes

In another area of change, bringing improvements for Maine families, Chief Judge Mary Kelly has this week delivered a report to the Judiciary Committee regarding changes and improvements in the delivery of guardian ad litem services.

The GAL report describes several years of work in the Legislature and then in the Judicial Branch, which resulted in many substantial changes, including:

- the adoption of clearer standards of conduct for GALs;
- improved training;
- precise billing limits that must be set before any work is done;
- creation of the 12-member Guardian ad Litem Review Board, which is a complaint process independent of the Judicial Branch; and
- an evaluation process for consumers of GAL services upon completion of their cases that will provide feedback on how well the improved system is working for families.

We have also updated the Judicial Branch website to include more information about GAL services. Although my summary here today is relatively brief, these changes were the culmination of a four-year effort to improve the delivery of GAL services, and you can read the complete report on line at the Judicial Branch website.

And finally, regarding family and civil cases, we have several new process improvement projects in the works. I am very proud to announce that we recently received news of a grant funding award from the State Justice Institute to help us undertake a significant new effort to improve the way we process civil and business cases. Grants were awarded to only three states across the country. More on that in the months to come.

CHANGES IN CRIMINAL CASE PROCESSING

I turn now to some of the most pressing problems in our State—affecting several different aspects of our Criminal Justice system.

And in keeping with my theme, I am pleased to tell you that some of the changes that have been accomplished or are in the works have been encouraging. But we are far from finding the answers to too many of the challenges.

So let's begin with some good news.

Reduced Criminal Case Backlogs

Last year, having completed the redesign of the criminal dockets into a single unified process, we moved to the next step—reducing the backlog in the criminal dockets. And, with your help, the results have been excellent.

You all know the saying, “Justice delayed is justice denied.” Witnesses become unavailable and even die, memories fade. Crime victims, the public, and mistakenly or wrongfully charged defendants are not well served when cases are delayed.

In 2016, you approved funding to allow the trial judges to increase the availability of jury trials and to provide overtime so that our clerks and marshals could work the necessary additional hours to address that backlog.

I am pleased to report that that effort was successful.

- In Fiscal Year 2016, the intense focus on criminal cases resulted in a 61% decrease in active pending cases over one year old, and
- a 49% decrease in active pending cases over nine months old.
- That is statistical jargon for this result:
 - Cases are being reached much more quickly.
 - New criminal charges can be resolved without delay.

This took a great deal of focused effort on the part of everyone involved.

I want to take this opportunity to recognize the great work that was done, not just by the Judges and court employees, but also by the defense lawyers and the District Attorneys, all of whom stepped up to make this a priority.

And many of the real heroes in this story are the hundreds of Maine citizens who respond to the call for jury duty. They often give up a day's or a week's pay, leave their homes and families, struggle with parking, and then are called on to make some of the most important decisions in the court system. We all owe them a debt of gratitude for their service. We could not have been successful without them.

Changes in Fines and Bail

Another area where positive changes have begun is in the collection of fines and the analysis of our current bail system.

A group of judges and staff, led by Justice William Anderson, has undertaken a complete review of Maine fine collection procedures. In order to assure that we do not have impoverished Mainers placed in difficult situations, clarified procedures and new forms will be promulgated that will assure that everyone who is convicted of a crime and ordered to pay a fine understands clearly:

- The amount due,
- When the fine must be paid,
- What to do if they cannot meet the deadline, and
- Who to talk to if that happens.

While these clarified procedures will help, I continue to suggest that a meaningful, well-supervised, substantive public service program, particularly when

combined with a restorative justice component, could provide an excellent option for accountability in place of mandatory fines.

Bail Reform

Next, with regard to Bail Reform, I am here with a mea culpa. Last session I told you that I hoped to present a proposal this year for updating our antiquated bail system. In recent years, we had received a proposal for a new bail system that would cost the General Fund an estimated additional \$4 to 5 million a year. I told you that I thought it could be done for much less—that we could find a way to reduce the costs and still provide a much-needed update for the system.

We do not yet have a proposal that I believe is sufficiently fiscally prudent to present to you. I hope to return next session with an improved plan.

And now I turn to the two areas of criminal justice where change is desperately needed, but the answers are not yet clear.

Opiate Addictions

I begin with the Opiate/Heroin epidemic. I will echo much of what you heard from the Governor last week, but I believe it is worth repeating.

Attorney General Mills has provided us some horrifying statistics.

- The drug overdose deaths in 2016 were up again—**378 human beings lost their lives to a drug overdose last year in Maine.**
 - In a minute, I am going to talk with you about homicides in Maine, and one of the statistics you'll hear is that there were 258 homicides in Maine *over a ten-year period.*
 - Compare that number with 378 overdose deaths in just one year.
 - There were **more overdose deaths in one year than there were homicides in a decade.**
- Even more frightening, in 2016 there were **2,380** administrations of Narcan—up from 1,565 in 2015.
- And—the saddest number of all—there were **1,024 drug affected babies** born in 2016, up from 1,013 in 2015. As the Governor described it, that

is just about three babies a day who start their lives in such a horrible way.

We see the effects of heroin, fentanyl, and now car-fentanyl in every case type. Not just criminal cases. These addictions affect families, businesses, and schools.

People often ask me the same question they are asking you:

What can we do to stem this tide?

And I only have one answer. You've heard it before.

We have to do EVERYTHING.

- We must stop the drugs from coming into Maine.
- We must provide robust prevention programs.
- We must have real and meaningful treatment quickly available.
- We must have housing for people who have lost everything.
- We must understand treatment in terms of months and years, not days and weeks.

You and the Governor are already hard at work addressing many of these issues. You addressed the prescription medicine gateway last session, and discussions regarding treatment resources are well underway.

In the Judicial Branch, we are rethinking drug courts. Last year, we reestablished the Bangor Adult Drug Treatment Court, and with that addition, there are now six Adult Drug Treatment Courts along with a Co-Occurring Disorders Court and a Veterans Court.

Sadly, drug courts can reach only a small percentage of people plagued with drug addiction.

- There were 52 graduations in 2016—52 people who successfully stayed clean and sober and were released from active judicial supervision.
- Statewide, approximately 247 people are currently in adult drug courts.
- In a State where 358 people died of overdoses in one year, we cannot delude ourselves that drug courts alone will make a difference.

I have therefore asked Justice Nancy Mills, whose vision and relentless hard work helped create the extremely successful Veterans Court here in Augusta, to step up and take over the Drug Court Steering Committee.

I am grateful that Justice Mills said yes, and already her presence is felt. In March, just weeks away, she has arranged for national experts to come to Maine to meet with all of Maine's Drug Court Judges and Teams and the Trial Court Chiefs for an intensive two-day session, to bring them up to date on what actually *works* with these pernicious addictions.

We know that we must consider updated models for the Drug Courts and for the criminal and family dockets much more broadly.

- Re-entry programs for people leaving incarceration are beginning to show real promise.
- Diversion programs, which can help people avoid lengthy incarceration, must be consistent in providing up-to-date treatment options, and simultaneously requiring personal accountability.
- Wrap-around programs that involve families, housing, and jobs may provide another answer.

None of this is cheap, but nothing is more expensive than allowing our State to sink further into the horror and sadness of an addiction crisis.

Changes in the Way We Address Domestic Violence

Moving now to another difficult topic, this year, I requested two separate reviews of the ways our system of justice addresses domestic violence.

The first review took a deep look at a single recent case in which one victim died and one was badly wounded.

The second review was designed to give us a much broader analysis. For this review, I am grateful to the Attorney General's Office for its assistance and data. Our researcher looked at every murder in Maine over a ten-year period, searching for patterns and places where we could all have done a better job in protecting vulnerable Maine people from domestic violence.

Here are just a few important points:

- From 2006 through 2016, 258 people were victims of homicide in Maine.
- From the records provided, the researchers identified 126 of the deaths as related to domestic violence. In other words, almost one-half of the homicides result from domestic violence.

In the 126 domestic violence related homicides:

- Most of the perpetrators, 88%, were male.
- The victims were more evenly divided: 43% male, and 57% female.
- About half of the 126 homicides took the lives of a spouse or intimate partner.
- 20% of the victims were children.
 - 26 children died as a result of domestic violence in that ten-year period.
 - 14 of those children were only a year old or younger.
- And, this is what led me to ask for the analysis, far too many of the victims never sought help from the courts.
 - As far as we can tell, 75 of the 126 victims, just about 60%, did not have any meaningful contact with the Maine courts before they were killed.
- In the specific case review, we also learned that, in important bail review and sentencing proceedings, no criminal records checks in Maine or nationally were requested by law enforcement. This practice left judges, attorneys, and advocates with serious gaps in critical information.
- In many instances, the applicable ODARA risk analysis, which you mandated by law to be completed in particular crimes, was never provided to the judge.

I understand that you have legislation before you this session intended to provide more thorough information to judges, and to close some of these gaps. I encourage your thoughtful consideration of these proposals.

In the Judicial Branch, the Trial Chiefs, working with a Team of experienced trial judges, have determined that several changes should be implemented quickly.

Some of the most important changes are these:

At sentencing and bail hearings on serious charges, the presiding judge will require the prosecutor to provide the following information if it exists:

- Maine and national criminal history records;
- The victim's statement or presentation; and
- The ODARA or other risk assessment score.

In addition, now that we understand how few of the victims sought timely help, there is something else we all have to do.

We must stop assuming that the victim will always ask for help.

As neighbors, family members, employers, and service providers, we must all be alert for the signs of isolation, control, and impending violence that are harbingers of real lethality.

And we must not look away and assume that someone else will take care of it.

I am pleased to report that, this summer, in collaboration with the Maine State Bar Association, we will gather all of Maine's state court judges and many lawyers from all different practices to come together for this broader conversation about a more comprehensive approach to reducing and eliminating domestic violence.

I am also pleased that the Governor has agreed to come and help us kick off the conference and share some of his very personal history.

AND NOW I HAVE TWO REQUESTS.

Clerks and Marshals

First, as you may have heard me mention before, Maine's trial judges are among the lowest paid judges in the nation.

But even more distressing is the fact that the pay scales of marshals, clerks, and others in the Judicial Branch have not remained competitive either with other law enforcement agencies or with what the staff can make working other public sector jobs or the private sector. We no sooner train new clerks and marshals than we lose them to other employers.

Yet the clerks and the marshals are the unsung heroes of the Maine Courts.

You may have noticed that I did not begin today's presentation with my usual request for more marshal positions to help us reach 100% entry screening. That is because the compensation situation is so bad that we struggle just to fill the existing marshal positions.

We must adjust the compensation of court staff. Our recently completed salary study confirmed that we have fallen significantly below market averages. Ted Glessner will shortly be discussing this problem with

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the Appropriations Committee. This is important. We need to act quickly to make Judicial Branch wages more competitive in order to attract and retain good employees.

Supreme Court Visits to Maine Schools

My second request has no money involved. I am inviting *you* to invite the Supreme Judicial Court to come to a High School in your District to preside over real appellate arguments at the school.

Since 2005, at the request of Maine Legislators, the Maine SJC has traveled to 35 High Schools across the State to help Maine students get a close-up view of how an appellate court works. Last year, the Court traveled to and heard cases in Fort Kent, South Berwick, and East Machias, thanks to invitations from Representatives John Martin and Bobbie Beavers, and Senator David Burns.

SELECTED ADDRESSES TO THE LEGISLATURE

We have not yet created the schedule for the 2017 High School events. If you are interested, please find Mary Ann Lynch in the next week.

Thank you

In closing, it has been a long day for many of you, and you have been very patient with me.

I want to thank every one of you in this chamber today, who will spend hundreds of hours in this state-house at great personal and financial sacrifice, before the work of the 128th Legislature is done.

Your work does make a difference.

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