

MAINE STATE LEGISLATURE

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Augusta, Maine
2018

**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
FEBRUARY 27, 2018**

Good morning, President Thibodeau, Speaker Gideon, Members of the 128th Maine Legislature, and guests.

Thank you for the honor of this invitation to address you today on the State of the Judiciary.

I know that you face a tremendous amount of work to complete in this short session, and I greatly appreciate your courtesy in sharing your time in order to receive input from the Judicial Branch.

INTRODUCTIONS

Before I begin, I would like to recognize a few people in the gallery, and I will ask that you hold your applause until they are all standing.

First, you will see my handsome husband Bill Saufley and my parents Jan & Dick Ingalls, three of the most amazing people on the planet.

Next, Ted Glessner, our extraordinary State Court Administrator, Chief Judge Eric Mehnert from the Penobscot Tribal Courts, and Judge William Blaisdell, President of the Probate Judges' Assembly. Thank you all for being here today.

Next, I will introduce my colleagues.

As always, I am going to ask them to stand, and remain standing.

Again, I'll ask you to hold your applause until the end,

From the Supreme Court—Justices:

Don Alexander, Andrew Mead, Ellen Gorman,
Joe Jabar, Jeff Hjelm, and Tom Humphrey

And the Trial Court Chiefs:

Chief Justice Roland Cole,
Deputy Chief Justice Bob Mullen,

Chief Judge Susan Oram, and
Deputy Chief Judge Susan Sparaco

I am grateful for the personal commitment and wisdom of these judicial leaders, as well as the Judges and Magistrates throughout the State who work so hard

every day to help Maine people resolve disputes, seek redress for injuries, find safety in chaos, and most importantly—find justice.

I am pleased to tell you that the foundation of Maine's Judiciary is solid, but we are facing several serious challenges.

I will focus on three key areas:

1. The Infrastructure of the Judicial Branch

First, regarding the infrastructure of the Judicial Branch, there is much good news.

2. The Upcoming Transition to Digital Records

Second, I will update you on the court's exciting transition to digital records. Along with this really good news come several challenges, and I will give you an update on one of the most critical challenges.

3. The Opioid Addiction Crisis

And third, the opioid addiction crisis is not going away. We must improve our response to this crisis, and I will give you a proposal for doing just that in the courts.

INFRASTRUCTURE

Let's talk first about the Infrastructure of the Judicial Branch.

For going on two decades, we have been working with Legislators and Governors to address 3 serious problems with the court's infrastructure.

Safety First. Improvement in courthouse safety has been substantial, although it is not yet complete. Every courthouse has entry screening equipment, and the Judicial Marshals, well-trained and very good at diffusing difficult situations, are able to provide entry screening on approximately 70% of the court days.

During routine entry screening, Marshals intercept many potential weapons. Still, it is alarming that, on 6 separate occasions in 2017 alone, the Marshals prevented **firearms** from getting into Maine's courtrooms.

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We need to reach 100% entry screening, and we will provide the 129th Legislature with the plan to get there.

Aging Facilities. Maine's courthouses have been badly in need of renovations and updating, and we are well on our way. Over the last 17 years, with your support, and with the support of every Maine Governor, many of our centuries-old buildings have been renovated or replaced.

If you get a chance, take a tour of one of those courthouses. The newly renovated courthouse in Machias is a terrific example of melding beautiful old architecture with modernized access and capacity.

Another example is the new courthouse that is right now being built for the people of Waldo County. Just a year from now, the public there will find access to justice in a single, consolidated court building that has enough courtrooms, is thoroughly handicap accessible, has ample on-site parking, and is located right in downtown Belfast.

Over the next several years, projects in Oxford and York Counties will provide those communities with much improved access to justice.

Improved Recruitment & Retention of Judicial Branch Staff. We have also improved the retention and recruitment of excellent court staff. As you have heard me say regularly, the Judicial Branch is made up of buildings and people. Those people—518 hard-working folks who cover the entire State—comprise only 4% of the total number of State employees.

71 of the 518 court employees are judicial officers—judges and magistrates.

But the vast majority of Judicial Branch employees are clerks and marshals. They are the people who greet and help members of the public on some of the worst days of their lives, and for too many years we did not compensate those employees in a way that respected the detailed, challenging, and patient work that they must do, day in and day out.

During the recession that affected everyone ten years ago, state employee salaries were frozen at 2008 levels for several years. As the recession ended, we struggled to retain good employees, and we experienced difficulty recruiting, due to those uncompetitive salaries.

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I want to publicly thank you, the 128th Maine Legislature, and recognize, especially, the Judiciary and Appropriations Committees for responding last session to our request for support for those employees, and for addressing that critical need.

With your support, for the first time in many years the Judicial Branch is fully staffed thanks to competitive salaries that help us retain and attract the best employees—often unsung heroes—who serve the justice needs of Maine people.

Process Improvement. With the infrastructure of the court system improving all the time, we have been able to turn our energies and attention to some of the more complex justice needs.

Criminal Process Improvement. The criminal process changes that the Trial Court Chiefs and the trial judges across the State have worked so hard to implement have resulted in substantial improvements.

- Most criminal charges in Maine are now resolved in less than 9 months.
- Recently, Maine Sheriffs have responded helpfully to the changes you enacted, requiring that they provide the courts with bi-monthly updates identifying their jail populations. This improvement represents a simple but very effective method of assisting the judges as they work to address priority cases first. (30-A M.R.S. § 1662(3))
- Regional meetings are underway between the Bench and Bar to create further efficiencies that will help the Maine Commission on Indigent Legal Services better serve the public.
- An improved process for notification and review of unpaid fines has helped people follow through on their responsibilities, while avoiding the disruption of arrest warrants.

Civil Process Improvement. In civil cases, Maine has taken the lead in New England on improving civil process to allow individuals and businesses to obtain meaningful remedies less expensively and in a shorter time frame.

- Many improvements will be rolled out over the next year.
- At the same time, the very successful Business and Consumer Docket continues to resolve, in an average of 10 months, complex,

multi-party business cases that would formerly have taken years to complete

Family Law Improvements. In the areas of Family and Probate Law, we must all be grateful to the Probate and Trust Law Advisory Commission, which has drafted a comprehensive update to Title 18-A, the Probate Code.

Even more impressive has been the consistent and detailed work of the Joint Standing Committee on the Judiciary on this project. That Committee, led by Senator Lisa Keim and Representative Matt Moonen, has undertaken a careful, section-by-section review of the entire Probate Code revision. The people of this State can be very proud of the attention to detail and commitment to excellence that these legislators have demonstrated.

I also want thank the Family Law Advisory Commission, led by Justice Wayne Douglas, as well as Professor Deirdre Smith of the University of Maine School of Law for their important work integrating family law improvements into the Probate Code, reducing the confusing patchwork of laws that has made resolution of family disputes difficult for the public.

And a very heartfelt THANKS is in order for your own Legislative Analyst—Peggy Reinsch, whose clarity of reporting and organizational talent has been a great assistance with this complex project. Peggy is another of the unsung heroes in State Government, and I will ask her to **stand and accept our thanks**.

High Schools. Moving to appellate law, as you know, the Supreme Judicial Court travels every year to high schools around the state to hold oral arguments in real cases. As of last spring, we have traveled to 38 high schools throughout the State.

Last year, at the invitation of Senator Mason and Speaker Gideon, and Senator Keim, we traveled to Freeport High and then to Mountain Valley High Schools. Our scheduled trip to Westbrook at the invitation of Representative Gattine sadly had to be cancelled as a result of a tragedy. We hope to get to Westbrook this fall and then Wells at the invitation of Representative Foley and Senator Collins, with a trip to Sanford in the spring with Representative Mastraccio, where, I understand, we will be breaking in their brand-new auditorium!

These high school oral arguments provide a wonderful opportunity for us to get out of the courthouses; meet students, teachers, and education leaders across the State; and see the results of your effective advocacy in your own communities.

UPDATES

Just a couple of quick updates regarding the Legal Profession:

Rural Access to Justice

I am grateful to the Joint Standing Committee on Taxation, which has given its approval to a bill sponsored by Representative Bailey that will provide tax incentives for lawyers who move to underserved areas of Maine to help expand access to justice. The cost is very small, and I hope you will all give it your support.

Sexual Harassment in the Legal Profession

This year, the legal profession in Maine—lawyers and judges—will be undertaking a searching analysis of the potential that sexual harassment exists within the profession. In a profession that is founded upon concepts of justice and fairness, there is no room for harassment, bullying, or bias, and we will all be working together on these concerns.

TECHNOLOGY, ACCESS, AND PRIVACY

I turn now to the exciting progress in the development of digital court records.

As you know, working with Tyler Technologies, we are in the process of deploying a modern digital case management system.

I am very pleased to report that, this fall, the first component of the new system will “go-live” in the Violations Bureau, the court’s statewide system for processing traffic infractions.

Every year, nearly 100,000 new traffic tickets are filed in the Violations Bureau. In years past, members of the public have had to wait for the antiquated system to catch up before they could pay their fines or correct their records. That can take days and sometimes weeks.

The new system will be much more efficient and accessible for the public. In the following year, eTicketing and the connection to the Secretary of State’s Office will augment the system so that information will

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be smoothly available across the systems to anyone with a traffic ticket problem and licenses can be quickly reinstated.

In the fall of 2019, we will go-live with all case types in Penobscot and Piscataquis Counties—which seems fitting—because the initial proponent of the electronic case management system way back in 2010 was a freshman lawyer-legislator from Newport, in Penobscot County. Now I am not naming any names this year, because it seems like half of you are running for Governor!

Privacy and Transparency

But implementing the new case management system brings us to one of the significant challenges we must address:

how to balance the public's right to governmental transparency with the personal privacy concerns raised by the advancements in technology.

- In recent years, we have all seen news reports about identity theft and other cyber security concerns.
- For obvious reasons, domestic violence advocates have recommended strong privacy protection for digital court records.
- Nationally, privacy experts are raising concerns about access to personal, private information through internet-based searches of newly digitized court records.

This is no less a challenge for the Maine courts.

- Social Security numbers and detailed information describing financial assets are required to be disclosed in many court matters, especially those involving families, divorce, and child support.
- Extremely personal medical and mental health information is required to be filed in medical malpractice cases, family matters, and personal injury cases.
- Dates of birth are a critical part of correctly identifying a defendant in a criminal case, especially when the defendant's last name is a common last name like Smith, Jones, or . . . Martin.

As we shift from paper records to digital records, the ease of public access to court records, including internet access and data broker access, raises concerns

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about identity theft, safety, and protection of personal privacy.

Make no mistake, however, most court records have historically been publicly available, and must remain accessible. Public confidence in the justice system is at stake.

The public's right to know what its government is doing must be respected.

But we must be careful not to confuse the public's right to know what its government is doing with an unlimited right to obtain private information about individuals, simply because those individuals must interact with the government.

This challenge requires a very careful response.

So last year, the Supreme Judicial Court formed a Task Force made up of representatives of many groups who use the court: juvenile justice, low income, and family representatives; domestic and sexual violence victims' advocates; privacy experts; the ACLU; and the media, among others.

The Task Force studied the practices and experiences of other courts, reviewed Maine statutes and rules of law, analyzed developing jurisprudence, and considered the opinions of experts on these issues.

It presented its report to the Court in the fall of 2017. I am personally grateful to the Task Force members who spent so many hours studying these important issues and making recommendations, and we send them our gratitude.

Once the report was received, we sought written comments and recommendations from the public. We have received a great deal of written input.

The report and all of the comments are available on the Court's public website.

We are reviewing the comments, and we will hold a public hearing for further input later this spring.

Many decisions are yet to be made, and there will be multiple opportunities for input and discussion.

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In the meantime, however, I want to be clear about several items that seem to have generated confusion.

First and foremost, the new system will provide litigants with internet access to their own files. It will not be necessary for a party to have an attorney in order to have digital on-line access. Indeed, parties will be able to log in and access their court files 24/7 from anywhere in the world where the internet is available.

And a huge amount of information will be newly available to the public in nonconfidential cases, including judicial decisions and actions, docket entries, schedules, and calendars.

Currently, none of that information is available on line. This new system will dramatically expand litigant and public access to court records.

But there are challenging decisions ahead.

Ultimately, the Task Force recommended that new rules and statutes be developed very carefully and reviewed regularly.

There is much wisdom in that recommendation. The consequences of these decisions will affect the public in ways we may not yet anticipate.

I will be seeking your input next year, and I look forward to a robust conversation with all of the stakeholders.

OPIOID CRISIS

I move now to a topic that cannot wait—the Opioid Addiction Crisis.

My focus is necessarily on the ways that the courts can address the challenges, but the crisis is affecting every aspect of life in Maine and across the country.

The statistics gathered by the Attorney General's Office, the Department of Public Safety, the Department of Health and Human Services, and national organizations tell a heartbreaking story.

This crisis affects our families:

- For context, in 2011, 522 child protection petitions were filed by the Department of Health and Human Services in Maine courts.

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- By 2015 that number had almost doubled, rising to 1002 petitions, and in 2017 there were 937 new petitions filed.
- In Federal Fiscal Year 2016, Maine ranked **sixth** in the nation for cases in which drug or alcohol use was indicated as a contributing factor for the removal of children from their parents—55% of the cases, and that rose to 60% last year.
- In 2017, 14,000 Mainers between the ages of 16 and 24 were neither in school nor working.

It affects our criminal justice system:

- The Department of Public Safety and the DEA in Maine report that they intercepted literally *millions* of doses of heroin and fentanyl in 2017.
- Notwithstanding those interceptions, and even though criminal case filings continue to drop slightly each year, judges, prosecutors, and the defense bar all report that the amount of substance abuse and mental illness involved in criminal charges is expanding every year.
- Drug Courts are helping, but the numbers are small.
 - In 2017, 254 people participated in Adult Drug Courts.
 - 51 people in 2017 successfully graduated from a Drug Court.
 - And the most recent evaluation of the Adult Drug Courts, from a Report in 2016, indicated a recidivism rate of 16%. That's a very hopeful statistic.
 - But the Drug Courts do not currently reach enough people, and the success rates remain challenging.
 - Of the 254 people participating in Drug Courts last year, 45 defendants, almost 20%, had to be terminated from the program before the year was over, and
 - By the end of 2017, there were only 142 active Drug Court participants. There were 19 defendants in the Co-Occurring Disorders Court, and 12 in the Veterans Court.

But the crisis is affecting our communities in much larger numbers:

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- The Attorney General reports that, in 2017, there were 418 drug-induced deaths in Maine. That is an 11% increase over 2016.
- Although 12% of the deaths were understood to be suicides, 87% were accidental overdose deaths.
- The same report indicates that 85% of the 418 deaths were caused by at least one opioid, with fentanyl causing 58% of the deaths from overdose.
- On average, one person dies every 21 hours from a drug overdose in Maine.
- Overdose fatalities have now far outstripped traffic fatalities.
- In 2017, 2,503 doses of Narcan were administered by EMTs in Maine.
- And 952 drug-affected babies were born in Maine.

OK, enough of the numbers.
They can become mind-numbing and depersonalizing.

The stark reality is:
People are dying; families are hurting; communities feel helpless.

We know that we are not alone—this is happening in many other states.

But we should not sugar-coat it. What we—in government—are doing

IS NOT ENOUGH.

We have to try harder.

We need to match our own sense of urgency with rapid access to treatment and seriously comprehensive follow-up.

Today, for court-based responses, I recommend a two-fold approach:

First, we must expand the number of communities where fully resourced Drug Court and Veterans Programs are available.

And second, we should create an alternative to traditional Drug Courts to determine whether an expanded, comprehensive approach will be more successful.

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I am therefore recommending a pilot project for a full Wrap-Around Drug Court.

This would be a first-of-its-kind in Maine project. It would include immediate and extensive access to addiction treatment, mental health treatment, comprehensive case management, testing, sober housing, job training, employment assistance, transportation, family-related services, and long-term follow-up.

If we are able to fund this project, it must include thorough evaluations and rigorous application of nationally recognized best practices.

Fairly quickly, we will learn whether a more comprehensive approach to addiction recovery yields better outcomes.

It will not be inexpensive, but the long-term consequences of failing to find an answer to this crisis are beyond measuring.

Governor LePage has given his preliminary support for the Wrap-Around Drug Court pilot project, and I hope that you will all work together to find the funding to move us in the right direction.

To be clear, no statutory changes are needed to accomplish either of these goals, and the Judicial Branch does not need additional funding to expand Drug Courts or manage a new wrap-around pilot project.

As long as all of the trial court judicial positions are filled, the Judicial Branch has sufficient resources. And Justice Nancy Mills, the Chair of the Drug Court Steering Committee, stands ready to provide oversight and management for any expansions or innovations in the Drug Courts.

However, significant resources *are* needed in the communities for treatment, case management, testing, and all of the needed services.

That is where your focus and funding efforts should go.

Please—help us expand our response to this heart-breaking crisis.

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Preventive Medicine

Finally, I ask you to bear with me as I make a public service announcement.

I think many of you are aware that last summer I was diagnosed with breast cancer.

It was a complete shock: I am a sturdy Scottish lass, and I don't get sick.

The good news was that we had caught it early, in an annual test, with the new 3-D technology. Without that test, I would not have known it was there.

Within several months, I had completed the surgeries and radiation, and I was out the other side. Fortunately, I was able to work through most of the treatment. All of that was because we caught it early.

So why am I telling you about my adventures in medicine? For two reasons.

One, to say thank you to every one of you, as well as Governor LePage.

So many of you reached out in support and encouragement. I learned that many of you, or your family members, have been through much worse, and the courage and grace in this State are amazing.

My colleagues were absolutely wonderful.

And I want to say a public thank you to my incredible husband who kept me laughing through the whole process, and to my parents who were constantly at my side when I needed them.

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But the major reason I raise this issue today is this—

I want to encourage every woman over 40 to get your annual mammogram done. If you haven't already done so, schedule it today.

The insurance for Maine State employees completely covers the cost, and for those who do not have that coverage, there are many programs that will help or substantially defray those costs.

Schedule it now. Your family will thank you, and you will be able to continue to be an important part of this wonderful world.

Get your mammograms done—really, I mean it.

Don't make me enter an Order. Just do it.

Finally, I want to thank all of you for being part of Government.

These are tough times for governing. But really wonderful people continue to put in the work to be a meaningful part of our self-governing society.

And without your persistence, patience, and willingness to do the hard work, democracy could not survive.

Thank you for your dedication to our shared mission to improve access to justice and, with it, the strength of our democracy.