

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST SPECIAL SESSION

August 26, 2019

SECOND REGULAR SESSION

January 8, 2020 to March 17, 2020

**THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION**

NON-EMERGENCY LAWS IS

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**THE GENERAL EFFECTIVE DATE FOR
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**Augusta, Maine
2020**

**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
JANUARY 28, 2020**

**MAINE JUDICIAL BRANCH
THE STATE OF THE JUDICIARY
A Report to the Joint Convention of the Second
Regular Session
129th Maine Legislature**

**Presented by Chief Justice Leigh I. Saufley
January 28, 2020**

Good morning, Governor Mills, President Jackson, Speaker Gideon, Members of the 129th Maine Legislature, and guests.

Thank you for the honor of this invitation to address you today on the State of the Judiciary. I know how busy you are, and I very much appreciate your willingness to take this time to hear from the Judicial Branch.

This morning, I will address three key issues affecting the delivery of justice in Maine:

- First, in recognition of this historic year, I will review the substantial improvements in the delivery of justice that have been accomplished with your help in this century;
- Second, I will address the need for funding within the Judicial Branch in two urgent areas to help continue that progress;
- Finally, I will address the need for continued cross-branch collaboration and persistence in our responses to the addiction and mental health crises that are affecting youth and adults throughout Maine.

Despite all of the challenges, my message today is that there is great progress afoot, and I hope to leave you with the firm conviction that working together, we have accomplished much, and the prospects for even greater improvements in Maine are very real.

INTRODUCTIONS

I begin by sending a long-distance hello to my parents, Jan and Dick Ingalls, who are at home in Cumberland County watching through the miracle of modern technology.

In the Gallery

Next, in the Gallery, you will see my handsome husband Bill Saufley — married 39 years this month!

Ted Glessner, Maine's State Court Administrator; Amy Quinlan, the Judicial Branch Communications Director; Julie Finn, Legislative Liaison; representing the tribal courts, Chief Judge Eric M. Mehnert from the Penobscot Nation Tribal Court; and representing the probate courts, Judge Robert M. Washburn, President of the Probate Judges' Assembly.

Maine's Supreme Judicial Court

Next, I will introduce my colleagues. Again, I'll ask you to hold your applause.

From the Supreme Judicial Court: Justices Don Alexander, Andrew Mead, Joe Jabar, and Tom Humphrey.

Justice Alexander will retire from the Maine bench at the end of this week. On the date he retires, he will have served for 41 years, 1 month, and 4 days, or 15,010 days! He is the longest sitting active judge in the State of Maine, ever.

During his tenure on the bench, Justice Alexander was nominated and re-nominated by six different Governors, including Governors Longley, Brennan, McKernan, King, Baldacci, and LePage.

He published innumerable books on the practice of law, he sat with the Law Court on 6,591 cases, and he continued to sit in the trial courts whenever he was needed. Justice Alexander has done more work in 41 years than most people could accomplish in a century!

And in classic style, Justice Alexander will spend his last day on the bench, this Friday, doing exactly what he did on his first day on the bench: Handling a criminal docket in Kennebec County. Please join me in celebrating his extraordinary career.

Maine's Trial Court Chiefs

Superior Court Chief Justice Bob Mullen, District Court Chief Judge Susan Sparaco, and Deputy Chief Judge Jed French.

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Chief Judge Sparaco will retire in just two months. She was first appointed to the District Court in February of 2008, and she has served as the Deputy and then Chief of the District Court during the last two years. Her direct and effective leadership style has been a boon to the Court, and she will be missed.

Today, I am delighted to announce that Judge Jed French has agreed to step into the demanding role of Chief Judge as CJ Sparaco retires.

Judge French is a proud graduate of the University of Maine School of Law. During his 21 years in private practice, he served on many committees and received numerous awards. He was elected to the Yarmouth Town Council and served as its Chair.

Judge French served on active duty with the United States Army and later as an Air Force officer with the Air National Guard/Air Force Reserve. In support of the United States Mission to Strengthen the Rule of Law, he deployed to Iraq and Afghanistan and was awarded the Bronze Star. He was instrumental in the creation of the first-ever Juvenile Court in Afghanistan. He attained the rank of Brigadier General, and he currently serves in the Air National Guard.

But what Judge French really wants you to know is that, approximately 20 years ago, he appeared twice on the show “Who Wants to be a Millionaire.”

And yet, he is not a millionaire.

The Judicial Branch

I also want to thank all of the people who serve the public in the Maine Judicial Branch who are not judicial officers — approximately 450 state employees who cover the entire State — from the clerks who form the backbone of the courts, to the marshals who keep the public safe, to the administrators on whom we rely for constant improvements. We could not provide access to justice in Maine without their commitment and dedication to public service.

Maine Lawyers

And as always, a great deal of gratitude goes to Maine Lawyers, who, in 2019, reported providing nearly 8,000 hours of free legal services throughout the State. Separately, lawyers and judges contributed more than \$600,000 to the Campaign for Justice, which distrib-

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utes those dollars to the providers to help them serve more people in need of legal help with housing, domestic violence, child-related problems, and medical treatment advocacy.

Maine’s Executive and Legislative Branches

Today, I also want to take a minute to thank the members of the Legislative and Executive Branches. No matter how difficult the challenges of governing become, I am always proud of the collegiality in Maine government. Legislators, Governors, and Judges — and all of the people who work in public service — always find ways to work collaboratively to solve problems.

Recently, at the recommendation of Governor Mills, we held a brief but energetic “Tri-Branch Criminal Sentencing Workshop” where the Governor, along with 24 members of the Maine Legislature, including almost every member of the Criminal Justice and Judiciary Committees, and several judges participated throughout a morning in hypothetical criminal sentencing exercises. Members of the prosecutors’ offices and the defense bar played themselves, quite brilliantly, presenting impassioned arguments in support of their positions in these hypothetical cases.

The exercise helped all of us think in a much more detailed manner about the way that addictions, mental health challenges, and the gaps in available community resources for adults and youth affect crime and punishment in Maine.

And I was struck, once again, at the alchemy of smart, caring people coming together to think about the best ways to serve the people of Maine. Many thanks to everyone who participated.

THE STATE OF THE JUDICIARY

As I update you today on the State of the Judiciary, I am mindful that we are entering the year 2020, in which we will celebrate:

- One hundred years of women having the vote;
- Two hundred years of Maine’s Constitution; and
- Many hundreds of years in which strong, independent, and hardy people have lived, loved, and worked to make this the wonderful State what it is today.

So, it seems appropriate to frame this presentation by reflecting on the planning and collaborative work that brought us to where we are today.

Looking back to my presentation to the 121st Maine Legislature in February of 2003, I had been Chief Justice for just over a year, and the world was changing fast.

- Beverly Daggett was serving as the first woman Senate President; and
- Governor Baldacci had recently taken office only to find that the State's General Fund budget was facing a substantial shortfall.

In the courts:

- We were beginning to sound the alarm regarding drug and alcohol addictions. I told you that in 2002, 161 people had died from drug or alcohol overdoses, and 85% of the people incarcerated in Maine reported using some type of drug or alcohol in the commission of the crime;
- The lack of community treatment options for those suffering from mental illness was sending far too many people into our jails and prisons; and
- Domestic Violence cases were growing each year, and children's voices were not being sufficiently heard.

At the same time, the court's infrastructure was seriously challenged.

- Many of the State's venerable old Superior Court facilities were more than a century old and were falling apart around us;
- In many towns, the placement of the District Courts in smaller, separate buildings, detached from the Superior Courts, was straining staffing, confusing the public and adding unnecessary duplication of costs;
- Budget-necessitated vacancies made it hard just to keep the doors open;
- There was NO entry screening in any courthouse or the State House;
- No business court existed;
- Victims in criminal cases often waited months for transfers between the courts; and
- It regularly took several years to resolve relatively straightforward disputes.

In that presentation to the 121st Maine Legislature, recognizing the budget restrictions and the concurrent need for improvements in so many areas, I referred to the old adage,

When all is said and done, there is often much more said than done.

And I promised you that working together, with planning and persistence, the three independent but collaborative branches of Maine government *would* get things done.

The Judicial Branch

You helped me keep that promise. Here is where we are, eight Maine Legislatures later.

Most aspects of Judicial Branch infrastructure are on solid footing:

- 45 separate court facilities have now been consolidated into 35 facilities.
- Clerks' offices for the Superior and District Courts have been consolidated in most courts, reducing public confusion, and allowing efficiencies, cross-training, and substantially improved public service.
- From Houlton, Machias, and Dover-Foxcroft to Bangor, Belfast, and Augusta, courthouse improvement projects have benefited the public.
- Last week the newly renovated Oxford County courthouse in South Paris opened for business, improving accessibility, consolidating the clerks' offices, opening two new courtrooms, and providing the public with much more respectful space for dispute resolution. A second phase of construction will renovate the beautiful old jury courtroom to be ADA compliant, with updated technology, and a bonus — a ceiling that doesn't fall on the litigants!
- Two years from this fall, the brand-new Justice Center of York County will open for business, and we are designing it to be the first net-zero energy courthouse in the State.

Regarding courthouse safety:

- Entry screening equipment exists in every courthouse; and
- Staffing for entry screening is present on approximately 65% of the State's court days.

The court's transition to the digital world is underway:

- The Violations Bureau, which processes more than 75,000 traffic tickets a year, was converted from an unwieldy paper system to a more efficient online system last year.
- And approximately a year from now, the other case types — criminal, civil, and family cases — will go digital in Penobscot and Piscataquis Counties.
- When the system goes live there, parties in all proceedings, and their lawyers when they have them, will have no-cost access to their digital files from anywhere that has an internet connection. Governor, that broadband expansion will be a big help!
- To prepare for that launch, an enormous amount of work has gone into the creation of the rules that will determine when and how the public at-large obtains access to digital court records. We will be holding another public hearing on those rules in the upcoming months.
- One of the most promising aspects of the new system is the potential incorporation of a text notification system that will remind people of their upcoming court dates in criminal matters. If that project is funded, we would expect to see a substantial reduction in the number of bench warrants and arrests that occur when people fail to appear in court. That system would improve public services and reduce the strains on Maine's jails, all at a very modest additional cost, and we hope you will support it.

Case processing has improved substantially:

- On average, the Business Docket takes less than a year to resolve the complex cases that often took 3 to 4 years;
- Criminal charges, with the exception of homicides, are now resolved, on average, within 6 to 7 months of filing;
- The resources of the Court's Alternative Dispute Resolution Services helped the parties in more 4,300 cases last year, in family, small claims, and housing matters; and
- Interpreters are available through Language Line, through certified, in-person interpreters, and in some cases, through video interpreting.

Family matters, and particularly cases involving children, are also receiving improved attention throughout the system:

- We recently instituted a new one-judge/one-family process that will help families who are struggling with their own turmoil to find consistency and continuity in the courts;
- Separately, the dramatic increase in child protective filings has created a great need for more guardians ad litem to provide the children's voices in court. The Judicial Branch has partnered with the University of Maine School of Law to create a class that will allow well-trained new lawyers to incorporate GAL work into their practices immediately upon graduation and licensing; and
- We are also very fortunate that so many Mainers have *volunteered* to help children. Court Appointed Special Advocate volunteers — CASAs — gave a voice to 279 children caught up in child protection proceedings during fiscal year 2019. Those volunteers, who help children during some of the most heartbreaking and disruptive times of their lives, also saved the taxpayers more than \$566,000 last year.
- If you or someone you know would like to consider being a CASA volunteer, the Judicial Branch website can connect you.

All of these improvements have been rolled out carefully, and always with a close eye on the budget. Even with debt service remaining in the JB budget, the Judicial Branch consumed just 2.2% of the General Fund in 2019.

Reflecting on all of the improvements that have been accomplished in the twenty-first century, you can be very proud of the way that you and the Governors have responded to the justice needs of Maine's people.

Funding

Last year I asked you to focus available funding not on the Judicial Branch, but on community-based services for adults and youth struggling with mental health challenges and addictions.

In this second regular session, I make a similar request — please continue your focus on community-based resources. But within the Judicial Branch, there are two areas of funding that can no longer be put off:

Safety First

First, it is time to complete 100% staffing for entry screening in every courthouse.

Recently, it was reported that the marshals at an entry screening station discovered an individual carrying two undisclosed, loaded handguns: a .380 Colt semi-automatic in a cocked position, ready to fire six rounds, along with six additional rounds, and a loaded .357 Smith & Wesson revolver holding five rounds, with two additional five-round speed loaders.

Because of the presence and quick action of the marshals at the entry screening station, the individual was disarmed. No one was injured.

I ask you to think about those allegations for a moment. If an individual carrying similar weapons had gone into one of the 35% of Maine's courthouses that did not have entry screening that day, we could be having a very different conversation today.

We estimate that 19 more marshal positions will be needed to achieve 100% entry screening, and that the total staffing costs — which have been reduced by the consolidation of separate courthouses — are just over \$1.5 million.

It is time to finish the work we started.

Second, Respectful Pay for Judges

My second request for funding relates to the recommendations of the State's Compensation Commission. I ask you to increase the pay of Maine's trial judges.

We are very fortunate in Maine to have a non-partisan, merit-based judicial selection system. Maine Governors have, with very few exceptions, maintained that non-partisan system of judicial selection, nominating judges on the basis of their skills and humanity. And the Legislature has carefully vetted those candidates.

When people come to court they expect and receive fair, impartial, and patient attention from Maine judges.

Those judges have to make some of the most difficult decisions that any professional is called upon to make. And they do so day after day, in more than a hundred thousand new cases every year, mindful of the need

for prompt resolution and fair treatment of all involved.

For examples of the amazing people that serve as trial judges in Maine, you need go no further than the two trial judges who retired on December 31. Justice Roland Cole and Justice Nancy Mills served, between them, more than 66 years on the bench.

Justice Cole helped launch the very first Drug Court in Maine. Justice Mills created the first Veterans Court, as well as the Co-Occurring Disorders Court.

They both served as Chief of the Superior Court at various times, and they both served as role models in declining — ever — to accept the status quo when it did not work for the public.

Just recently, Justice Mills established the “Languishing Docket” intended to assure that people struggling with mental illness do not spend weeks and months in our jails waiting for the next proceeding.

All of those efforts have changed lives. They have saved lives. It takes judges with courage and persistence to undertake these efforts, and their work is reflective of the work done throughout this State by Maine judges.

Yet Maine's trial judges are compensated for their work at the lowest rate in the entire country, and far lower than their colleagues close to home in New England.

Now, I am not going to tell you that Maine judges will work harder if you compensate them more fairly. They already work as hard as anyone I know. But by making that compensation more commensurate with their colleagues in every other State, you will acknowledge the importance and the value of their excellent work.

Even more important, your decision will tell the public that you recognize the value to this democracy of an independent system of justice.

I ask you to find the funding to address this long-term deficit in judicial compensation.

And now, I am going to step out of my lane. But I love this State, and I know how much you want my advice on something that is none of my business.

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Please effectuate the Compensation Commission's recommendation to raise the salaries of Maine Legislators and the Governor. The incredible commitment to public service required of people in Maine's government should be recognized, and the value of the willingness to take on these critically important jobs should be reflected in the compensation.

Maine Legislators work year-round, not just during the session, to find solutions to Maine's gravest problems. That work should be recognized. I fully understand that raising the salary of the jobs in which you now sit feels odd, but please do this for the Legislators to come.

And regarding the Governor's salary, I want to suggest a slightly different scenario than the Governor recently predicted for 20 years from now.

Yes, John Martin will be back in the Senate, and Sawin Millet will be running DAFS again.

But the Governor of this great State, whoever she is, will be paid in BitCoin, and she *will* be making more than \$70,000 a year!

THE CONTINUING NEED FOR COMMUNITY-BASED RESOURCES

I turn now to my final topic — addressing the sadness and despair related to drug and alcohol addiction and mental health crisis in Maine.

Just a year ago at this time, we all pledged to focus on expanding the network of resources available to help divert people from a life of despair, crime, and incarceration.

During the intervening year, government has responded:

- The Governor appointed Gordon Smith as the new Director of Opioid Response and created the Governor's Prevention and Recovery Cabinet;
- Many Legislators served in bi-partisan efforts throughout the year on multiple Committees and Task Forces focused on improving the criminal justice system, the juvenile justice system, and the State's overarching response to the addiction epidemic; and

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- The Judicial Branch participated in the groups searching for improved process and resources and led the Pretrial Justice Reform Task Force.

And people from all walks of life gathered to find new solutions to this crisis. Those of us in government were joined by people in recovery, treatment providers, advocates, and grieving family members. The groups met constantly throughout the year to brainstorm new ideas, find funding sources, and most important, move quickly.

As these groups have reported back, their message has been loud and clear. We must immediately move forward from all three directions:

- Prevention, including family support, early childhood education, and engaged youth;
- Interdiction, including efforts to prevent and deter the sale of poison in Maine; and
- Help Now — immediate, meaningful just-in-time, resources for addiction recovery.

A Set-Back?

With so much work underway, it was admittedly disheartening to all of us to learn recently that:

- The number of overdose deaths appears to have increased in 2019;
- The AG's Office reported 21 homicides in 2019, up slightly from 18 homicides in 2018;
- Half of the children removed from their parents' care in 2019 were removed at least in part because of allegations of substance abuse;
- 20% of the children entering State custody were infants and babies who were alleged to have been drug-affected or substance-exposed at birth; and
- Recently, five overdose deaths rocked the City of Portland in just 11 days.

Optimism is Required

But we must not lose faith. There is so much progress that has recently been accomplished, and there *are* glimmers of hope throughout the system. Let me tell you about some of the good news:

- First and foremost, the number of drug-affected and substance-exposed babies has continued its

downward trend, from an all-time high of 1,024 in 2016, to 858 last year.

- Over 300 Recovery Coaches have been recruited and trained.
- \$2 million in federal assistance will, among other things, support Recovery Residences that are certified by the National Alliance of Recovery Residences and accept residents who have been prescribed Medically Assisted Treatment.
- There are now 10 Recovery Community Centers in the State with openings in Millinocket and Lincoln anticipated in the coming months.
- Medically Assisted Treatment is available in more hospitals and in a growing number of jails, which will allow treatment and safer transition back into the community.
- As you heard from the Governor, a new cross-branch effort led by Gordon Smith will help us review each overdose death to learn from those tragedies and continue to make improvements in our responses.
- Additional resources are newly available to help the Drug Courts serve more people.
- Through a new grant, the Judicial Branch will be able to expand several more Adult Drug Treatment Courts to include Veterans Tracks. This spring, Justice for Vets, a division of the National Association of Drug Court Professionals, will be providing a Veterans Treatment Court Implementation Training for all six Adult Drug Courts.
- DHHS has allocated nearly a million dollars for additional Drug Treatment Court resources, including funding for a thorough evaluation of the Adult Drug Treatment Courts, which is long overdue.
- The number of pending referrals to the Drug Courts increased 97.2% last year, a clear indicator of the need for these courts. Drug Courts saw an increase of 30 participants, or an 11.3% enrollment increase in 2019, with a corresponding 7.6% increase in the numbers graduating and a 12.2% decrease in the numbers of persons terminated from the program as compared to 2018.
- The Family Recovery Courts, for those cases involving an open child protective matter, served 68 persons last year, a 23.6% increase. And the referrals are up 136%.

I could go on, and I see that you hope I will not. What is clear is that there is so much happening that we cannot lose hope.

But there is a basic need that we must not lose sight of in all of these efforts.

People in recovery need — **housing**.

While it is challenging to plan for and fund the bricks and mortar necessary to address this need, we should all understand that, without the fundamentals of housing and food, recovery is simply impossible.

I heard this recently, and it resonated with me:

No roof? No recovery!

A continuum of housing types is desperately needed, and I hope you will support those desperately needed resources.

Resources for Maine's Youth

Briefly, now, I return to a topic near and dear to my heart, resources for Maine's youth.

Similar to the housing needs for adults, Maine must create a continuum of community-based residential and home-like facilities for our youth. It is the only way that we will continue to move forward.

I know that we can do this. We have already accomplished so much.

In the decade that followed the last Juvenile Justice Task Force Report in 2010, significant improvements were achieved, including a dramatic 68% reduction in the annual number of youth committed to Long Creek and a similar 56% reduction in the annual number of detained youth.

I don't want to get ahead of the Juvenile Justice System Assessment and Reinvestment Task Force, which will report to you and the Governor shortly, but I have received Representative Brennan's authorization to provide you with an advanced look at this one stark statistic.

The Assessment will report that, in the sample studied, *half* of the youth detained at Long Creek were there:

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- Not to protect others from harm or harassment; and
- Not to assure the juvenile's presence in court.

Instead, it is reported that in that sample, half of the individual adolescents that were detained at Long Creek were there to provide care or prevent harm to *that youth!*

That presents this question:

Are we incarcerating our youth because we have nothing else for them?

It's time to take the next step and create the community-based options that we all know are needed.

Moving Forward

For adults and youth, we admittedly still have much to do, but we are beginning to see the results of this focused effort. And we cannot allow ourselves to be discouraged.

One final thought on this topic.

Maine incarcerates fewer of its people, adults and youth, than most other states in the nation, and Maine is one of the safest places to live. We must not take that for granted.

As we make the changes that we believe will bring improvements in criminal justice and juvenile justice, we must — first do no harm.

And we must assure meaningful racial equity in our laws, our procedures, and our actions; we must work to assure that people in our LGBTQ community feel safe; and we must provide critical resources to support our youth.

If we do this thoughtfully and collaboratively, we will see the improvements we all hope for, and we will welcome and benefit from increasing health and diversity in all of our communities.

CONCLUSION

In conclusion:

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We ask you to find the funding to make Maine's courthouses safe, and to compensate the trial judges who provide independent, fair, and accessible justice.

We invite you to visit a courthouse near you this summer.

Also, we still have two slots open for the Law Court to bring Oral Arguments to a high school in your community this fall.

Please talk with Julie Finn if you are interested in bringing appellate law to a high school near you or in visiting a courthouse.

And I will take the personal privilege of reminding you as I now do each year, to get your annual check-ups, and complete the tests your doctors order.

- Ladies, get those mammograms scheduled;
- Gentlemen, get your PSAs done; and
- Everyone over 50, get that test that no one wants to discuss!

I am here today because they caught my cancer early. Just do it.

Many, many thanks to all of you for caring about this amazing State and working every year to make it a better place for all of us.

Thank you.