

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Thirteenth Legislature
OF THE
State Of Maine

VOLUME III

FIRST CONFIRMATION SESSION

August 21, 1987
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FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987
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SECOND REGULAR SESSION

January 6, 1988 to March 24, 1988

ONE HUNDRED AND THIRTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
20th Legislative Day
Tuesday, February 9, 1988

The House met according to adjournment and was called to order by the Speaker.

Prayer by Sister Joyce Mahany, St. Joseph's College, Windham.

The Journal of Monday, February 8, 1988, was read and approved.

Quorum call was held.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Establish a Detention and Rehabilitation System for Chronic Operating-Under-the-Influence Offenders" (H.P. 1597) (L.D. 2183) which was referred to the Committee on Legal Affairs in the House on February 2, 1988.

Came from the Senate referred to the Joint Select Committee on Corrections in non-concurrence.

On motion of Representative Priest of Brunswick, the House voted to recede and concur.

Non-Concurrent Matter
Tabled and Assigned

Bill "An Act Allowing the Town of Island Falls to Annex Township 4, Range 3 WELS in Aroostook County" (H.P. 1017) (L.D. 1370) on which the Majority "Ought to Pass" as amended by Committee Amendment "A" (H-437) Report of the Committee on State and Local Government was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-437) in the House on February 4, 1988.

Came from the Senate with the Minority "Ought Not to Pass" Report of the Committee on State and Local Government read and accepted in non-concurrence.

On motion of Representative Carroll of Gray, tabled pending further consideration and specially assigned for Wednesday, February 10, 1988.

PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE

The following Bills and Resolves were received and, upon the recommendation of the Committee on Reference of Bills, were referred to the following Committees, Ordered Printed and Sent up for Concurrence:

Agriculture

Bill "An Act to Improve the Potato Marketing Improvement Fund" (H.P. 1618) (L.D. 2211) (Presented by Representative MAHANY of Easton) (Cosponsors: Representatives TARDY of Palmyra, PARADIS of Frenchville and Senator THERIAULT of Aroostook) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Ordered Printed.

Sent up for Concurrence.

Appropriations and Financial Affairs

Bill "An Act to Improve the Standard of Living for Maine's Low-Income Children" (Emergency) (H.P. 1619) (L.D. 2212) (Presented by Speaker MARTIN of Eagle Lake) (Cosponsors: Senator GAUVREAU of Androscoggin, Representatives OLIVER of Portland and LISNIK of Presque Isle) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Bill "An Act to Enhance the Provisions of Head Start Services in Maine" (H.P. 1620) (L.D. 2213)

(Presented by Representative KILKELLY of Wiscasset) (Cosponsors: Representatives CHONKO of Topsham, MARSANO of Belfast and Senator PERKINS of Hancock) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Ordered Printed.

Sent up for Concurrence.

Aging, Retirement and Veterans

Bill "An Act to Establish the Agent Orange Information Commission" (H.P. 1621) (L.D. 2214) (Presented by Representative HOLT of Bath) (Cosponsors: Representatives DELLERT of Gardiner, LISNIK of Presque Isle and President PRAY of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

(The Committee on Reference of Bills had suggested reference to the Committee on Appropriations and Financial Affairs.)

On motion of Representative Carter of Winslow, was referred to the Committee on Aging, Retirement and Veterans, ordered printed and sent up for concurrence.

Appropriations and Financial Affairs

RESOLVE, Authorizing Philip Wolley of Searsport to Collect Compensation from the State of Maine (H.P. 1615) (L.D. 2208) (Presented by Representative CROWLEY of Stockton Springs) (Cosponsor: Senator GOULD of Waldo) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Ordered Printed.

Sent up for Concurrence.

Banking and Insurance

Bill "An Act to Assure Savings to the Public From the Maine Health Care Finance Commission" (H.P. 1617) (L.D. 2210) (Presented by Representative ROLDE of York) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Ordered Printed.

Sent up for Concurrence.

Legal Affairs

Bill "An Act Relating to the Direct Initiative Process" (H.P. 1616) (L.D. 2209) (Presented by Representative RAND of Portland) (Cosponsors: Senator MATTHEWS of Kennebec and Representative CONLEY of Portland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

(The Committee on Reference of Bills had suggested reference to the Committee on State and Local Government.)

On motion of Representative Carroll of Gray, was referred to the Committee on Legal Affairs, ordered printed and sent up for concurrence.

Study Report - Committee on Economic Development

Representative MAHANY from the Committee on Economic Development to which was referred by the Legislative Council the Study Relative to Regional Economic Development Strategies and Policies and the Implementation of these Strategies have had the same under consideration and ask leave to submit its findings and to report that the accompanying Bill "An Act to Incorporate Economic Growth and Development and Growth Management in Transportation Planning" (H.P. 1614) (L.D. 2207) be referred to this Committee

for public hearing and printed pursuant to Joint Rule 19.

Report was read and accepted, and the bill referred to the Committee on Economic Development, ordered printed and sent up for concurrence.

Study Report - Committee on Economic Development

Representative CARROLL from the Committee on Economic Development to which was referred by the Legislative Council the Study Relative to Regional Economic Development Strategies and Policies and the Implementation of these Strategies have had the same under consideration and ask leave to submit its findings and to report that the accompanying Bill "An Act to Facilitate the Collection and Organization of Data for Effective Use in State Government" (H.P. 1622) (L.D. 2217) be referred to this Committee for public hearing and printed pursuant to Joint Rule 19.

Report was read and accepted, and the bill referred to the Committee on Economic Development, ordered printed and sent up for concurrence.

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(H.P. 384) (L.D. 506) Bill "An Act to Clarify the Home Rule Authority of Municipalities" (Emergency) Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "B" (H-441)

There being no objections, the above item was ordered to appear on the Consent Calendar of Wednesday, February 10, 1988, under the listing of Second Day.

(H.P. 35) (L.D. 36) Bill "An Act to Make Substantive Corrections in the County and Municipal Laws" (Emergency) Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "B" (H-442)

On objection of Representative Carroll of Gray, was removed from the Consent Calendar, First Day.

Subsequently, the Committee Report was read and accepted, the Bill read once.

Committee Amendment "B" (H-442) was read by the Clerk and adopted and the Bill assigned for second reading, Wednesday, February 10, 1988.

CONSENT CALENDAR

Second Day

In accordance with House Rule 49, the following item appeared on the Consent Calendar for the Second Day:

(S.P. 714) (L.D. 1944) Bill "An Act Clarifying the Authority of Superior Court Justices to Sit in District Court"

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was Passed to be Engrossed in concurrence.

(Off Record Remarks)

(At Ease)

The House was called to order by the Speaker.

At this point, a message came from the Senate borne by the Majority Floor Leader, Senator Clark of Cumberland, proposing a Convention of both branches of the Legislature to be held at 11:00 a.m. in the Hall of the House for the purpose of extending to Chief Justice Vincent L. McKusick an invitation to attend the Convention and to make such communication as he may be pleased to make.

The House voted to concur in the proposal for a Joint Convention to be held at 11:00 a.m. and the Speaker appointed Representative Diamond of Bangor to convey this message to the Senate.

Subsequently, Representative Diamond of Bangor reported that he had delivered the message with which he was charged.

(At Ease to Gong)

The House was called to order by the Speaker.

At this point, the Senate entered the Hall of the House and a Joint Convention was formed.

IN CONVENTION

The President of the Senate, Charles P. Pray, in the Chair.

On motion of Senator Clark of Cumberland, it was ORDERED, that a Committee be appointed to wait upon the Honorable Vincent L. McKusick, Chief Justice of the Supreme Judicial Court and the Associate Justices of the Supreme Judicial Court to inform them that the two branches of the Legislature were in Convention assembled ready to receive such communication as they may be pleased to make.

The Chairman appointed:

- | | |
|------------------|---------------------------|
| Senators: | BRANNIGAN of Cumberland |
| | GAUVREAU of Androscoggin |
| | BLACK of Cumberland |
| Representatives: | PARADIS of Augusta |
| | WARREN of Scarborough |
| | VOSE of Eastport |
| | COTE of Auburn |
| | CONLEY of Portland |
| | THISTLE of Dover-Foxcroft |
| | MACBRIDE of Presque Isle |
| | BEGLEY of Waldoboro |
| | HANLEY of Paris |
| | MARSANO of Belfast |

Senator Brannigan of Cumberland, for the Committee, subsequently reported that the Committee had delivered the message with which it was charged and that the Honorable Chief Justice and Associate Justices of the Supreme Judicial Court were pleased to say that they would attend the Convention forthwith.

At this point, the Honorable Chief Justice, Vincent L. McKusick, and Associate Chief Justices of the Supreme Judicial Court entered the Convention Hall amid the applause of the Convention, the audience rising.

The Chairman then welcomed the Associate Justices of the Supreme Judicial Court, the Honorable David A. Nichols, the Honorable David G. Roberts, the Honorable Robert W. Clifford, the Honorable Daniel E.

Wathen, the Honorable Caroline D. Glassman, the Honorable Louis Scolnik, the Honorable Elmer Violette, active retired Supreme Court Justice, and Chief Justice of the Superior Court, the Honorable Morton Brody and Chief Justice of the District Court, the Honorable Bernard M. Devine. (applause)

The Honorable Chief Justice of the Supreme Judicial Court, Vincent L. McKusick, then addressed the Convention as follows:

Mr. President, Mr. Speaker, Ladies and Gentlemen of the 113th Legislature and friends:

I am pleased to appear again before this Joint Convention of the 113th Legislature. It is always a special honor to stand at the Speaker's rostrum in this beautiful House Chamber. Last Saturday, I stood at the Speaker's rostrum of the House of Representatives at the State House in Boston. The occasion was the reenactment by 355 high school students from Maine and Massachusetts of the convention in Boston that exactly 200 years before had voted by a narrow margin to ratify the United States Constitution. Forty-six outstanding students with their teachers from some 20 high schools across Maine represented the 46 delegates from the District of Maine who voted on ratification on February 6, 1788. I joined Chief Justice Edward F. Hennessey of Massachusetts in opening that commemorative mock convention.

That splendid occasion last Saturday came after a year and a half of commemorative activities here in Maine under the leadership and inspiration of our own Maine Bicentennial Commission, chaired by Dr. Arthur M. Johnson. Thank you again for creating and funding that Commission. It has led all of us in a valuable history lesson.

It was ten years ago this month that I first reported to the Legislature. I report to you in this way at regular intervals so that you may be in a better position to discharge your responsibilities for funding the courts, for defining court jurisdiction, and for otherwise promoting effective court operations. In this endeavor, there is a necessary partnership between you, the legislature, and us who manage the courts, a partnership in which we court managers must work with you in the spirit of the Three C's -- communication, cooperation, and comity.

In the next few minutes, let's talk about some of the things that partnership has accomplished in these 10 years. In 1978, the Administrative Court, with jurisdiction over the suspension or revocation of liquor and most professional and vocational licenses, was integrated in the Judicial Department.

In 1980, the Probate Code eliminated trial *de novo* of appeals from the Probate Courts to the Superior Court, making those probate appeals go directly to the Law Court on questions of law only.

In 1981, the county law libraries and their state funding came under the direction of a State Court Library Committee, staffed by a professional supervisor.

In January 1982, the Single Trial Law eliminated trial *de novo* in the Superior Court on appeals of criminal cases already tried to judgment in the District Court.

In 1984, the Legislature rescued Maine's judges from being the lowest paid in the country. Your designation of the state driver's license list is the primary source of jurors and has permitted computerized random selection of jurors for the Superior Court.

In 1984, collective bargaining for court employees came into being by the coordinated action of this Legislature and the Supreme Judicial Court. You know have before you our most recently bargained contract covering the current biennium. I strongly recommend funding of the salary increases bargained for our employees.

You have, by statute, made our highly successful mediation project an established part of court operations. You have mandated mediation of all issues in a contest divorce between a couple with minor children.

Last year, you created the Court Facilities Authority, which, with funds raised through tax-free revenue bonds, can be expected to provide the courts with a lower cost alternative to leasing facilities from private developers.

With your funding, the computerization of our trial courts is proceeding in good order. All 33 District Court locations will be processing their criminal and traffic cases on computer before the end of next month. We also now have fully in operation a computerized fiscal management system.

I could go on, but these examples show the steps taken at each legislative session to improve court operations. At the same time, new added duties have been placed upon the courts. In these 10 years, statutes have created new court proceedings in order to achieve legislatively defined goals of our society -- court proceedings to determine the propriety of institutionalizing particular mentally ill or mentally retarded persons; court proceedings to protect children in jeopardy, followed in many cases by proceedings to terminate parental rights in order to permit "permanency planning" for the children; court proceedings brought by the Department of Human Services to determine paternity; streamlined court proceedings to enforce land use ordinances and statutes, with prosecution by code enforcement officers and other non-lawyers; court proceedings to protect family and household members against abuse and by enactment of law last year -- protection of victims harassed by anyone.

What has been the impact of these new court proceedings, along with other economic and social forces, upon the workloads of the courts in these 10 years?

First, the District Court, which 10 years ago, had about 200,000 cases filed annually, received nearly 300,000 cases in 1987. Its annual filings have increased by 50,000 cases in just the past two years. An increase in the jurisdictional limit of small claims from \$800 to \$1,400 has produced over 11,000 small claims court cases, an increase that translates directly into much greater work for the District Court clerks offices, as well as for judges and mediators. Increase in limits from \$20,000 to \$30,000 on ordinary civil actions and other additions to the District Court's jurisdiction account for part of the explosion in District Court filings, but most of the explanation lies simply in the fact that increased economic and other activity in Maine has produced more civil violations and more traffic infractions. These 10 years have also seen a radical change in the nature of many District Court proceedings, with protracted hearings that are routinely recorded for the purpose of making a record for appeal. With increased frequency, substantial cases are tried in the District Court, followed by appeal to the Law Court, either directly or through the Superior Court.

In the Superior Court, the number of criminal cases filed annually has gone up 50 percent in the 10 years, to a record high in 1987 of nearly 12,000

criminal cases. Of course, only in the Superior Court is a jury available and only in the Superior Court can a felony be tried. On the civil side, the Superior Court filings have actually dropped in the 10 years by 18 percent. This drop came in the same period that the civil cases in the District Court increased very substantially. The increased jurisdictional limits of the District Court, as well perhaps as the much higher filing fee in the Superior Court, may explain the apparent shift of civil cases from Superior Court to the District Court.

Qualitatively, in the Superior Court, the average civil case is now more complex than 10 years ago and requires more judge time for hearings and for opinion writing. One example -- I will cite the well-known recent Wells Beach litigation for that fact of greater complexity of the Superior Court litigation.

Turning to the Law Court, we find that in the 10 years, its caseload has gone up by almost 75 percent to a record of 565 new appeals filed last year. After a five year plateau at about 500 cases, filings spurred upward by about 10 percent in 1987. Much of the latest increase comes from appeals in child protection proceedings, criminal sex abuse cases, zoning and other litigations generated by development and other economic activity. My Law Court colleagues and I are determined to continue to dispose of this heavy caseload in a timely fashion.

Ten years ago, the Judicial Department had 43 judges. With the recent appointment of District Court Judge Robert Crowley of York County, the total number has been brought to 49, the District Court having been progressively increased from 20 to 24 judges and the Superior Court from 14 to 16 judges. Maine has a remarkably small judiciary. Handling the greatly increased caseloads of all the courts has been possible, I believe, through two factors. First, because of the functional integration of our court system it is truly in function administratively with one court system and secondly, by the help we get from our active retired judges. But the mammoth increases in the workloads of our courts could not be coped with by the judges alone. I am proud of the clerks, the court administrators, and all the other employees of the courts and our Administrative Office. They are hardworking professionals, indispensable to our success in carrying out the mission of the Maine courts. The increased workload that those professionals are carrying is provided by the fact that, in the past 10 years, the annual revenues generated by the Judicial Department in fines and fees have more than tripled to almost \$18 million in 1987.

Since 1977, we have steadily worked at meeting our needs for more courtrooms and other court facilities. The program for making all courts accessible to the handicapped is well along toward completion. The District Court has new or improved facilities at many locations around the state -- Farmington, Belfast, Lincoln, and Millinocket, to mention some recent examples. The counties have also made improvements in some of the Superior Court facilities. The Sagadahoc County Courthouse is a fine recent example. Right now, we are working closely with the Cumberland County Commissioners to meet the critical space needs of the courts in that courthouse, where about 20 percent of all court business statewide is conducted. But we have much more to do. We hope to meet the urgent needs of the District Court in Bath-Brunswick and the Kittery-Wells areas in the very near future. Some of the county courthouses need additional jury courtrooms and associated facilities for the Superior

Court. We will work with the counties to identify and address those needs.

Let me report on several of our special programs.

Our in-court mediation program, now a lusty 10-year-old, continues to receive well-deserved plaudits. In 1987, about 3,700 cases went to mediation, more than two-thirds being domestic relations cases. Mediation still succeeds in resolving a majority or more of all cases.

Our volunteer guardian ad litem program (known as CASA), started in 1985, has expanded from southern and central Maine to Bangor, Ellsworth, Machias, and Houlton. More than 125 volunteers have been appointed guardians ad litem for more than 300 children in child protection proceedings. The CASA volunteers by their commitment of large amounts of time and compassion are performing a great public service in helping the courts to protect children in jeopardy. District Court Judge John Beliveau of Lewiston acts as judicial liaison to the CASA program.

In the Superior Court, Chief Justice Brody has fully implemented the program of medical malpractice screening panels required by the 1986 Statute as a precondition to the prosecution of medical malpractice suits. As of last month, 98 medical malpractice cases had been filed under that law and more than one-third had been disposed of by the panels.

You have before you a proposal, coming unanimously from the Tort Reform Commission chaired by former Senator Richard Trafton, for an experimental Alternative Dispute Resolution program in the Superior Court. The Judicial Council, with modest funding, will design and evaluate that experiment for 18 months. The pilot ADR program will be mandatory for a substantial segment of civil cases in two test counties. Both the bar, represented by the Maine State Bar Association, (which designed the program and its basic details) and the Superior Court are supportive of the experiment. This is an auspicious time to proceed with this promising program.

Our trial courts have implemented the statutes passed last year for the improved collection of court fines and for the imposition of the so-called jail surcharge of 10 percent on all fines. I am proud of the way in which our already heavily burdened clerks offices have taken on these new tasks.

The Governor, in his budget submission, has recommended that the Judicial Department appropriation for indigent defense be broken out from our "All Other" appropriation items and that, for fiscal year '89, additional funds be provided for that separate line item. I endorse the Governor's recommendation wholeheartedly. Under the Federal and State Constitutions, the State is obligated to provide attorneys at State expense to defend indigent persons in criminal cases, as well as in civil cases where the indigent persons may lose custody of their children or even lose all their parental rights. I am convinced that our appointed counsel system is basically sound and is the right "fit" for Maine. We have, however, a serious problem in several counties of finding enough lawyers to take court appointments at the rates established a number of years ago. The fee level is now one of the lowest in the country and it will not cover the costs of overhead of most Maine law offices. The Governor's proposal addresses a very real problem. The indigency screening program that you authorized last year is getting under way in two test counties. That program can make sure that only persons truly in need receive lawyers at state expense.

You also have before you, carried over from your last session, a proposed resolve, L.D. 159, which is recommended unanimously by the legislatively created Commission to Study the Relocation of the Supreme Judicial Court. That Commission, consisting of both legislators and citizens-at-large, after extensive study, recommended that funds be appropriated for site exploration here in Augusta and for preliminary architectural and financial planning. Out of respect for your Study Commission, I urge you to authorize the assembling of that further data so that you can render a fully informed judgment on the question whether your State Supreme Court should have a headquarters here in this city. I remind you that Article IX, section 16 of the Maine Constitution reads: "Augusta is hereby declared to be the seat of government of the State."

Every session considers numerous L.D.s relating to court operations, many suggested by us responsible for managing the courts and a good many initiated by others. As to all that proposed legislation, I commit the Judicial Department to working with you to analyze its impact upon the administration of justice in Maine and in providing information from the courts. Our Legislation Committee chaired by Justice Robert Clifford, and our Public Information Officer, Edward Kelleher, are available to help you in your very important task.

During the first week of this coming August, Maine will have the honor of hosting the National Conference of Chief Justices, meeting for five days at the Samoset in Rockport. Comparable to the National Governors Association that met in Portland in 1983, the Conference of Chief Justices will bring to Maine the chief judicial officers of the 50 states, as well as 5 other jurisdictions such as the District of Columbia and Puerto Rico. The National Conference of State Court Administrators, hosted by our State Court Administrator Dana Baggett, is meeting at the Samoset at the same time. Perhaps the best news to Chairmen Pearson and Carter of your Joint Appropriations Committee is that the conferences are financed by the National Center for State Courts, with a generous contribution from the Maine State Bar Association, and will require no legislative appropriation from the State of Maine.

Alexander Hamilton in the 17th of the Federalist Papers addresses the fear of many anti-federalists that the new central government would swallow up the state governments. In answer to that fear, Hamilton said: "There is one transcendent advantage belonging to ... the State governments ... I mean the ordinary administration of criminal and civil justice." Hamilton goes on to call the "ordinary administration of criminal and civil justice" "[t]his great cement of society." Note that he spoke of the "Ordinary," that is, the day-in and day-out, operation of the State courts. To Hamilton, the State courts, "being the immediate and visible guardian[s] of life and property," "contribute, more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence toward the [State] government." That probably is today an unrealistically high expectation for any court to meet. But I assure you that all of us involved in the "ordinary" administration of the Maine courts will strive to merit your continued respect and the respect of the public we serve.

Thank you very much for your time and attention.
(Prolonged applause)

The Chief Justice and Associate Justices of the Supreme Judicial Court withdrew amid the applause of the Convention, the audience rising.

The purpose for which the Convention was assembled having been accomplished, the Chairman declared the same dissolved.

The Senate then retired to its Chamber, amid applause of the House, the members rising.

IN THE HOUSE

The House was called to order by the Speaker.

On motion of Representative Lisnik of Presque Isle,
Adjourned until Wednesday, February 10, 1988, at ten o'clock in the morning.
