

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
114TH LEGISLATURE  
FIRST REGULAR SESSION

*Final Report  
of the*  
**COURT JURISDICTION STUDY**

*to the  
Joint Standing Committee on  
Judiciary*

January 1990

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"I am not an advocate for frequent changes in laws and Constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times.

Inscribed on the southeast quadrant of the  
Jefferson Memorial, Washington, D.C.

THOMAS JEFFERSON, letter to Samuel Kercheval, July 12, 1816.  
From The Writings of Thomas Jefferson, ed. Paul L. Ford,  
vol. 10, pp. 42-43(1899).



## EXECUTIVE SUMMARY

This study originated around the issues raised during the First Regular Session of the 114th Legislature in the Judiciary Committee's discussion of LD 232, AN ACT to Grant the Power of Equitable Jurisdiction to the Maine District Court. The bill was enacted, as amended, to extend, to a limited degree, the District Court's equitable jurisdiction. In addition, the Committee sought and received approval from the Legislative Council for a subcommittee to conduct a comprehensive review of the interrelationship of the jurisdiction of the courts in Maine. The purpose of the study was to ensure that the courts truly serve the people of the State of Maine to the fullest extent possible. As the study progressed, it became apparent that a much broader scope of review was needed to address the current status of the court system's ability to meet the judicial needs of the state.

The study addresses some immediate needs of the court system to better the administration of justice in the state and recommends a more detailed analysis to address the issues facing the court system in the 21st century. This analysis would be performed by a multidisciplinary Commission to Study the Future of Maine's Courts. The charge of the commission will be to study the future of the court system in Maine and make recommendations as to what is necessary to ensure that the judicial needs of Maine citizens will be met in the 21st century. The Commission will examine, but not limit its examination to, a unified trial court system in Maine, alternative dispute resolution mechanisms, parity among judicial salaries, evolution of the Probate Court system, an expansion of mediation services, and the pilot project, recommended in this report, establishing the Family and Administrative Law Division of the District Court in the Ninth District.

In addition, this study proposes some immediate changes to affect communication between the Judicial Department and the Legislature, automation of the courts, the increasing caseload in the courts, the lack of social service resources and information for the courts, and the courts of limited jurisdiction.

Not all of the recommendations received the unanimous approval of the subcommittee.



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## PART I. INTRODUCTION

### A. BACKGROUND

LD 232, An Act to Grant the Power of Equitable Jurisdiction to the Maine District Court, was introduced to the 114th Legislature and referred to the Joint Standing Committee on the Judiciary. As written, the bill would have granted the District Court equitable jurisdiction concurrent with that of the Superior Court. This proposal represented a significant change in the District Court's equitable jurisdiction.

The Committee originally requested authorization to carry over the bill to the next regular session in order to allow sufficient time to study the issue thoroughly and develop recommendations appropriate to the needs of the judicial system in Maine.

Subsequently, the committee reviewed the original legislation in order to address the immediate issues concerning equitable jurisdiction in the District Court. The committee reported out the bill to the full Legislature with an amendment that expanded the District Court's equitable jurisdiction to a lesser degree than was proposed by the original bill. The committee's amended version was enacted as Public Law 1989, Chapter 392. The committee also sought and received approval to conduct a comprehensive review of the interrelationship of the jurisdiction of the courts in Maine to ensure that the courts truly serve the people of the State of Maine to the fullest extent possible.

### B. SCOPE OF THIS STUDY

A subcommittee of the Joint Standing Committee on the Judiciary was appointed to address the issues raised in the study. It soon became apparent to the subcommittee that a much broader scope of review was necessary to examine the current status of the court system's ability to meet the judicial needs of the state. Rather than focusing only on court jurisdictional issues, it became necessary for the subcommittee to broaden the scope of the review to look at the current status of the Judiciary in Maine, the ability of the courts to meet the judicial needs of the people of the state, and the pressing issues facing Maine's court system today.

This study addressed some immediate needs of the court system and recommends action to set in motion a more detailed review and analysis of pressing issues facing the court system as it approaches the 21st century.

The subcommittee hopes that the long-term recommendations in this report will place Maine in a position to respond to the evolving needs of Maine's judicial system as we approach the

21st century. Although there will always be the need to address unforeseen issues, the subcommittee desires to place in motion a systematic review and analysis of Maine's court structure to anticipate better the state's judicial needs as they develop, and to propose a mechanism to address those issues before they reach the crisis stage.

#### C. PROCEDURE

The subcommittee met 5 times during the course of the study. It held a series of meetings to identify and discuss the resources and needs of the court system in Maine as it exists today. To further their analysis, the subcommittee surveyed the Justices of the Superior Court and the Judges of the District Court. In addition, the committee met with:

1. Members of the Judicial Council,
2. Members of the Administrative Office of the Court,
3. Members of the Administrative Court,
4. Members of the Probate Court and Registers of Probate,
5. The Director of the Court Mediation Service,
6. Members of the District Court Liaison Committee, established to advise the Judiciary Committee on this study,
7. Members of the Maine State Bar Association,
8. A representative from the Division of Child Protective Services, Department of Human Services, and
9. The Dean of the University of Maine School of Law.

The subcommittee also reviewed extensive materials from the National Center for State Courts and the Federal Magistrate's Office.

#### D. RECOMMENDATIONS

All of the recommendations in this report did not receive the unanimous approval of the subcommittee. The subcommittee encourages further discussion of these recommendations at future legislative hearings which may be held on the legislation resulting from these recommendations.

## PART II. CHARACTERISTICS OF THE MAINE JUDICIAL SYSTEM

### A. STRUCTURE

The Judicial Department is composed of 3 levels of courts. Maine's highest court is the Supreme Judicial Court. It has general administrative and supervisory authority over the Judicial Department. The Chief Justice of the Supreme Judicial Court is the head of the Judicial Department. 4 MRSA §1.

1. The court of final appeal: The Supreme Judicial Court. The Supreme Judicial Court is established by the Constitution of Maine. It has 7 members. The justices are appointed by the Governor for 7-year terms. Their appointment requires legislative confirmation. The court sits in Portland and Bangor. Constitution of Maine, Art. VI; 4 MRSA, chapter 1.

2. The court of general jurisdiction: The Superior Court. The Superior Court was created in 1929 to relieve the overburdened Supreme Judicial Court. It is a legislatively created court. There are 16 justices of the Superior Court. The justices are appointed by the governor for 7-year terms. Their appointment requires legislative confirmation. Sessions of the Superior Court are held in each of the 16 counties. 4 MRSA, chapter 3.

3. The courts of limited jurisdiction:

a. District Court. The District Court was created by legislation in 1961 when the municipal courts and the trial justices system were abolished. There are 24 District Court judges: 15 resident judges, who sit principally within the districts where they live, and 9 judges-at-large who serve throughout the state. The judges are appointed by the governor for 7-year terms. Their appointment requires legislative confirmation. 4 MRSA, chapter 5.

b. Probate Courts. The Probate Courts are constitutionally created courts. There are 16 Probate Courts and 16 Probate Court judges, one in each county. Probate Court judges are elected for a 4-year term. They serve in a part-time capacity. Constitution of Maine, Art. VI, section 6; 4 MRSA, chapter 7.

c. Administrative Court. The Administrative Court was created by statute in 1973 and became a part of the Judicial Department in 1978. There are 2 Administrative Court judges, appointed by the Governor and confirmed by the Legislature. They serve a 7-year term. The Administrative Court is located in Portland. 4 MRSA, chapter 25.

## B. JURISDICTION

1. Supreme Judicial Court. In its appellate capacity the Supreme Judicial Court is known as the Law Court and hears "appeals of civil and criminal cases from the Superior Court; appeals from final judgments, orders and decrees of the Probate Court; appeals of decisions of the Public Utilities Commission and the Workers Compensation Commission's Appellate Division; appeals from the District Court in parental rights termination and foreclosure cases; interlocutory criminal appeals from the District and Superior Courts; and appeals of decisions of a single justice of the Supreme Judicial Court. A justice of the Supreme Judicial Court has jurisdiction to hear, with his consent, non-jury civil actions, except divorce or annulment of marriage, and can be assigned by the chief justice to sit in the Superior Court to hear cases of any type, including post-conviction matters and jury trials... Three members of the Supreme Judicial Court, appointed by the chief justice, serve as the Appellate Division for the review of criminal sentences of one year or more." (1987 Annual Report, State of Maine Judicial Department, p. 17)

2. Superior Court. The Superior Court is "Maine's trial court of general jurisdiction. The court has original jurisdiction over all matters (either exclusively or concurrently with other courts) that are not within the exclusive jurisdiction of the District Court." (1987 Annual Report, State of Maine Judicial Department, p. 18) This is Maine's only court for jury trials, therefore all murder, Class A, B, and C criminal trials, as well as those Class D and E cases which involve a jury trial, are held in Superior Court. The Superior Court also hears appeals from the District Court, the Administrative Court, and state and local administrative agencies. 4 MRSA §105.

3. District Court. The District Court has "original jurisdiction in non-felony cases and conducts probable cause hearings in felony cases." (1987 Annual Report, State of Maine Judicial Department, p. 18) The court has concurrent jurisdiction with the Superior Court in divorce, non-equitable civil cases involving not more than \$30,000, and also may grant equitable relief in cases of unfair trade practices, local land use violations, real estate foreclosures and redemptions, specific contractual actions, fraud, duress, unjust enrichment, trust, accident or mistake, nuisance and waste, and other miscellaneous matters. "In practice, the District Court hears virtually all child abuse and neglect cases, termination of parental rights cases, protection from abuse cases and cases involving local land use violations." (Id.) Small claims court (for cases involving not more than \$1400) is a special session of the District Court held in each

district. The District Court also serves as the juvenile court and hears mental health, forcible entry and detainer, quiet title and foreclosure cases. It is the only court available for the enforcement of money judgments. The District Court may also hear guilty pleas for Class A, B and C offenses. 4 MRSA §152, §165.

4. Probate Court. The Probate Court has jurisdiction over estates and trusts, adoptions and name changes, guardianship and protective proceedings. Probate Courts sit without a jury. Their decisions may be appealed to the Supreme Judicial Court on matters of law. 4 MRSA, chapter 7, subchapter II.

5. Administrative Court. The Administrative Court has jurisdiction over the suspension and revocation of licenses issued by executive agencies. Other than in emergency situations, the Administrative Court has "exclusive jurisdiction upon complaint of an agency (or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General), to revoke or suspend licenses issued by the agency, and original jurisdiction upon complaint of a licensing agency to determine whether the renewal or issuance of a license of that agency may be refused." (1987 Annual Report, State of Maine Judicial Department, p. 19) The court also has exclusive jurisdiction to hear appeals from disciplinary decisions of the Real Estate Commission. 4 MRSA, chapter 25.

C. RECENT ACTIVITY OF THE MAINE COURTS, as identified by Chief Justice Vincent L. McKusick in "The State of the Judiciary" address to the Legislature on February 7, 1989

Several new programs have been instituted in the court systems to aid the administration of justice, such as the Court Mediation Service, the Court Appointed Special Advocates Program, and the Medical Malpractice Screening Panels. In 1988, the following programs were instituted in the trial courts: the Indigency Screening Program (a pilot project), the Alternative Dispute Resolution Program (a pilot project), and a Juror Orientation Video. In addition, in 1988, funds to pay court-appointed counsel for indigent criminal defendants were increased, upgrading and replacing court facilities was continued, the Maine Court Facilities Authority became operational, and the Supreme Judicial Court Plan and Design Commission was created. Progress continues to be made on computerization of trial courts. (District Court criminal cases and traffic infractions are now on computer.)

D. ISSUES FACING THE MAINE COURTS, as identified by Chief Justice Vincent L. McKusick in "The State of the Judiciary" address to the Legislature on February 7, 1989

The most pressing need in the court system today is for more personnel in the clerks' offices. A dramatic increase in the number of cases makes this the court system's number one priority. Trial court caseload has increased dramatically from 240,000 cases annually in 1984 to 340,000 cases in 1988. This increase in caseload can be attributed to accelerated economic activity, increased criminal law enforcement, heightened concern for children and others needing protection against neglect or sexual or other abuse, increased land use regulation in the face of an expanded rate of real estate development, growing highway traffic, and the creation of innovative programs.

A second priority, according to Chief Justice McKusick, is the need for 2 additional District Court judges and 2 additional Superior Court justices. Along with the increase in caseload, the cases are becoming more complex and the length of the trials is increasing.

The third priority identified by the Chief Justice is the continuing commitment to upgrading the courtroom facilities.

### PART III. JUDICIAL DEPARTMENT ISSUES

#### A. COMMUNICATION BETWEEN THE LEGISLATIVE AND JUDICIAL DEPARTMENTS

##### 1. Current status

At the present time there is no formal, systematic communication between the Judicial and Legislative Departments of government. The two customary means of communication are designed to react to specific situations: proposed legislation and on-going studies. In cases of specific legislation, one or more members of the Judiciary or designees of the Judiciary will appear before the appropriate legislative committee at the hearing and present testimony about the specific legislation. For judicial input on legislative studies, a member of the Judiciary will, upon request, be appointed by the Chief Justice of the Supreme Judicial Court to act in an advisory role to a particular study commission.

##### 2. Judicial Council

The Judicial Council was established by legislation to "make a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the State, the work accomplished and the results produced by that system and its various parts." 4 MRSA §451. It is composed of the following 17 members:

Ex officio members: the Chief Justice of the Supreme Judicial Court, the Chief Justice of the Superior Court, the Chief Judge of the District Court, the Attorney General, and the Dean of the University of Maine System School of Law.

Gubernatorial appointees: one Active or Retired Justice of the Supreme Judicial Court, one Justice of the Superior Court, one Judge of the District Court, one Judge of the Probate Court, one clerk of the judicial courts, 2 members of the bar, and 6 laymen.

In addition, the Judicial Council receives reports from the Court Mediation Service and the Administrative Office of the Courts.

**FINDING:** There is inadequate communication between the Maine Legislature and the Maine Judiciary and specifically the Joint Standing Committee on Judiciary and the Maine Judiciary.

**RECOMMENDATIONS:** Add the Chairs of the Joint Standing Committee on the Judiciary to the Judicial Council as ex



officio members. In their absence, they may designate another member of the Joint Standing Committee on the Judiciary to serve in their place.

Recommend to the Chief Justice of the Supreme Judicial Court the permanent establishment of liaison committees in the Superior and District Courts. Recommend that the Probate Court Association appoint a liaison committee. The liaison committees would meet with the Judiciary Committee annually to discuss the status of their respective courts, including the resources and needs of that court, and to act in an advisory capacity to the Judiciary Committee on matters of concern to the courts or on relevant legislation.

DISCUSSION: These recommendations will enhance communication and provide a systematic link between the judicial and legislative departments in order to keep the Legislature abreast of the resources and needs of the Judiciary, keep the Judiciary abreast of judicial issues raised in the legislative context, and provide regular, periodic contact between the Legislature and the Judiciary to prevent "issues" from becoming "crises".

#### B. AUTOMATION OF THE COURTS

Testimony received by the subcommittee from the Administrative Office of the Courts identified several goals sought to be achieved by automation of the courts. The court system hopes to:

1. maximize use of clerical personnel by relieving them of the ever-increasing paperwork;
2. maximize use of other agency personnel (e.g. the Department of Motor Vehicles and State Bureau of Identification) by the electronic transfer of information to reduce duplicative data entry;
3. utilize computer analysis of case data to better manage the resources (for planning purposes) and to respond to legislative needs for information; and
4. resolve current problems in the law enforcement community concerning arrest warrant administration, enforcement of court orders, and bail commissioner problems.

To date the District Court criminal case processing system, which includes all fee and fine accounting functions for traffic criminal cases, traffic infractions, civil violations, and criminal cases, has been completed. The Superior Court criminal case processing system is now almost 90% complete.

The remaining projects currently identified as necessary to complete the initial automation of the court system include:

1. modification and improvement of the existing system to meet legislative and judicial needs. It should be noted that maintaining a computer system is an ongoing process of modification and improvements;
2. continued support for the existing system;
3. completion of the Superior Court criminal case processing system;
4. completion of the communication links between courts and between the courts and other agencies; and
5. development of the following systems:
  - a. the juror processing system,
  - b. the Superior Court civil case processing system,
  - c. the District Court civil case processing system (which includes divorce, small claims, civil, and money-judgement sub-systems),
  - d. the District Court juvenile system, and
  - e. the statistical reporting system.

At the present time, the computer personnel in the Administrative Office of the Courts are unable to proceed as quickly as they would like to proceed in completing the computerization projects. As more projects are complete, more of their time is consumed in maintaining and supporting the existing system and less time is available for the necessary expansion.

The faster automation can be completed the sooner the benefits and savings can be realized. Although it is difficult to determine accurately the extent of the financial savings, the increased access to the court system and the benefits from an increased data flow are significant. In a small, but familiar setting, a unified state-wide automated District Court will one day allow a person who gets a traffic ticket in Augusta, but who lives in York County, to be able to pay the fine in York County. Currently, that individual must communicate directly with Augusta to resolve the outstanding traffic ticket.

One area yet to be fully explored concerns the recording and storage of court records. What will constitute an "official" court record, the electronically stored material or a hard copy of all court records? Will back up copies of all electronically stored data be necessary? Will space be available to store this data?

OBSERVATION: Courtroom space is inadequate at the present time. As the caseload increases, the need for storage space will increase. This is an area which should be explored more fully in the future.

FINDINGS: Automation of the courts is going well at the present time; however, lack of adequate computer personnel is burdening the present staff and will delay automation of the courts creating unnecessary clerical burdens throughout the system.

RECOMMENDATION: Increase the number of computer specialists assigned to the Judicial Department to at least 6, to help relieve understaffing problems and accelerate the anticipated completion date for installation of computerization into all clerk's offices.

### C. JUDICIAL DEPARTMENT OPERATING BUDGET

The following statutory procedures govern the submission of the Judicial Department operating budget to the Legislature (4 MRSA §24).

1. The State Court Administrator, in consultation with the Chief Justice of the Superior Court and the Chief Judge of the District Court, prepares a biennial consolidated operating budget for all the courts in the state. The State Budget Officer prescribes the procedures for preparing the consolidated court budget.
2. The Chief Justice of the Supreme Judicial Court approves the budget and transmits it to the State Budget Officer on or before September 1st of the even numbered years.
3. The Governor submits his budget and the judicial budget to the Legislature. The Governor may not revise the judicial budget, but may make whatever recommendations about that budget that he or she feels proper.

In most states, the judicial budget is submitted directly to the Legislature. In Maine, the budget is submitted to the Governor and the Governor transmits that budget to the Legislature. Although the Governor may not revise the judicial budget, as the Governor tries to balance the overall state-wide budget and take into account the estimated state revenues, reductions are recommended in the judicial budget. Although not intended, these statutory procedures treat the budget of the Judicial Department in a similar manner as the budgets that are submitted to the Governor by the executive agencies.

The Constitution of Maine creates 3 separate and distinct departments of government: Executive, Legislative, and Judicial. Under the present statutory scheme for submitting the Judicial Department budget, that department is required to submit its budget for comments by the Governor prior to submitting its budget to the Legislature. This concern over the procedures for the submission of the judicial budget is not meant as a reflection on the care and respect which the Office of the Governor has always given to the Judicial Department.

**FINDINGS:** The 3 departments of government are established by the Constitution as 3 equal branches of government. The statutory procedures for submission of the state budget provide that the Legislature present its own budget and that the Executive Department present its own budget, but that the Judicial Department must present its budget through the Executive Department. The subcommittee recognizes that the Executive Department is responsible for collecting the revenues to pay for the cost of state government and proposing the necessary projections for the amount of revenues available for the operation of state government. It also recognizes that the Legislature is responsible for providing methods to raise additional revenues to meet the final state-wide budget it submits to the Governor, as necessary. Current law provides for submission of the Judicial Department budget through the Executive Department and not in consultation with the Executive Department.

**RECOMMENDATIONS:** Refer to the Joint Standing Committee on Judiciary, for further discussion in conjunction with the other legislation recommended by this report, the advisability of submitting the Judicial Department budget directly to the Legislature as a separate legislative document, in order to maintain the independence of and the appropriate role for each department of government. If this is done, the Judicial Department should continue to be required to submit a copy of its budget to the Governor on or before September 1st of the even numbered years, in order to provide the Governor with sufficient information about the budget requested by the Judicial Department.

#### D. ADDITIONAL JUDICIAL STAFF

Chief Justice Vincent L. McKusick has identified the need for additional personnel in the clerk's office as the most pressing need in the court system today. The dramatic increase in the number of cases coming before the courts is the primary reason for this need. Along with the increase in caseload, the cases are becoming more complex and requiring more court time. The Chief Justice has identified the need for additional judges

as the second priority of the court system. (A more complete discussion of the Chief Justice's remarks and the basis for the increased and more complex caseload is contained in Part II of this report.)

Testimony heard by the subcommittee corroborated the Chief Justice's comments. Superior Court Chief Justice Brody indicated that the clerks are "terribly overworked". Dana Baggett, the State Court Administrator, indicated that the clerks are "drowning in paper." In addition, Justice Brody indicated that all judges wanted to improve the efficiency of the courts, but they needed additional support services in order to accomplish that.

Based on 1987 statistics from the Administrative Office of the Courts, Maine ranks 47th in the nation for the number of justices of general jurisdiction courts, i.e. 46 states have more judges per 100,000 population than Maine has. For judges of the courts of limited jurisdiction, Maine ranks 48th for number of judges per 100,000 population.

**FINDING:** There is a chronic understaffing of the clerical support services for the Judicial Department.

**RECOMMENDATIONS:** Recommend to the Joint Standing Committee on Appropriations and Financial Affairs that the staff assigned to the Judicial Department to assist District and Superior Court clerks be increased.

Increase the number of District Court judges. There is a potential need for 3 new District Court judges. These judges should be added over a period of 3 years so that an evaluation may occur each year to determine if implementation of the other recommendations of this report will alleviate the need for all 3 new judges.

Recommend to the Judiciary that Superior Court Justices be directed to hear District Court matters in situations where to do so would allow reassignment of a District Court judge to a busier court in another part of the state, in order to ensure the equitable distribution of judicial caseload. Reassignments would be made by the Chief Justice of the Supreme Judicial Court after consultation with the Chief Justice of the Superior Court and the Chief Judge of the District Court.

#### **E. SOCIAL SERVICES ISSUES IN THE COURTS**

Justices and judges, mediators, and social services personnel all indicated a need for some type of social services resources to be made available to the courts. Custody study evaluations, counseling evaluations, and independent evaluations of children were identified as types of social service resources which would better equip the courts to resolve family cases.

Testimony from the Division of Child Protective Services in the Department of Human Services graphically illustrated the needs of the court for social service resources. Historically, the Department of Human Services, Division of Child Protective Services was asked by the court to prepare custody studies. At one time, the resources were available to provide that service. In recent years, funding for several positions in the division was terminated. At the same time, the number of child abuse cases rose dramatically. In Child Protective Services, abuse cases will always be designated a higher priority than custody studies because the needs of and danger to the child are greater.

The Division of Child Protective Services is only able to complete about 50 custody studies a year at the present time. During the last decade, the number of divorces has risen dramatically. Many of those divorces involve children. The division estimates that 950 cases of unresolved divorce conflict involving children in 1988 were referred to them. There have been about 100 a month in 1989. Many of these cases involve parents in a dispute over parental rights and responsibilities. Often the problem is not a legal problem, but a failure to deal with the emotional aspects of the divorce and a need on the part of one parent or both for vengeance. This child becomes the ammunition in the weapons of each parent. In order to place these cases in a posture where the courts can exercise their jurisdiction properly, more information is needed than is currently available.

These types of situations arise in initial divorce cases, modifications of divorce decrees, and cases involving children.

**FINDING:** There is a significant number of cases of unresolved divorce conflict involving children in Maine. Justices and judges handling these and other domestic relations cases often do not receive all the appropriate information or other resources needed for the best possible disposition of family cases.

**RECOMMENDATION:** Request the Court Mediation Service, in consultation with the Department of Human Services, to study the feasibility of expanding the Court Mediation Service to provide additional services in divorce cases to deal with child custody matters, including custody studies, appointment of guardian ad litem, supervision of visitation, and expanded mediation with the parties to a divorce in those cases involving child custody or parent contact where there is extreme stress between the parents which is harming the child. The report should develop a plan and methodology for implementing its recommendations. It should be submitted to the commission to study the future of the Maine courts, proposed by this report, on or before January 15, 1991.

F. PROCEDURAL CHANGES TO LESSEN THE USE OF JUDGE-TIME  
IN RESOLVING DISPUTES

Mediation is required in all separations and divorces involving children. (19 MRSA §214, §581 and 19 MRSA, chapter 13.) In addition to divorce mediation, the Court Mediation Service is receiving requests for mediation services from various state agencies such as the Department of Environmental Protection, the Department of Human Services, and the Department of Educational and Cultural Services. State agency mediation, either by expansion of the present Court Mediation Service or by a specially created mediation service, can be used to reduce the number of conflicts which would eventually appear as cases in court. In addition, the current Court Mediation Service could be expanded to include additional family disputes (see section E of this part), non-domestic civil suits (e.g. contractor disputes), pre-trial conferences, and as administrative support for referees.

Under Rule 53 of the Maine Rules of Civil Procedure, referees are currently used to ease the caseload burden on judges. The Alternative Dispute Resolution Project in York and Knox Counties is another way to seek better utilization of judicial time.

The subcommittee also reviewed the Judicial Adjunct Program. Judicial adjuncts are lawyers who serve in the courts in a variety of capacities, with or without compensation. The position is not intended to be a permanent alternative to needed full-time judicial positions.

OBSERVATION: The subcommittee decided that the time was not appropriate to consider judicial adjuncts in Maine at this time.

FINDINGS: The court system is seeking alternative procedures for resolving disputes in order better to utilize judicial time. These efforts will need to be encouraged, expanded, and increased if the courts of the future are to meet the needs of tomorrow.

RECOMMENDATION: Study ways to expand alternative dispute resolution mechanisms. (See Part V concerning the establishment of a commission to study the future of the Maine courts. See also section E in this Part for a related discussion of expanded alternative dispute resolution by mediation.)

## PART IV. COURTS OF LIMITED JURISDICTION

### A. DISTRICT COURT

The District Court judges and clerks have felt the burden of an increasing caseload. The problems created by the increase in the number of cases are compounded by the increasing complexity of these cases. District Court Chief Judge Devine testified before the subcommittee that the change in the nature of the court cases was one reason for the increased complexity of District Court cases. Cases involving children, especially termination of parental rights cases and other cases involving the Department of Human Services, require more time than ever before. A typical termination of parental rights case will take 2 initial court days plus additional time, subsequent to the initial hearing, for rehearings. Juvenile cases are more complex than ever before. Small claims cases are requiring more time, particularly clerk time.

Both Chief Judge Devine and Supreme Judicial Court Justice Clifford, who also spoke with the subcommittee, concur that the new equitable jurisdiction added to the District Court will require more court time for hearings, particularly for custody and visitation issues in domestic cases. Justice Clifford indicated that the District Court was established as a high volume court. The expansion of the equitable jurisdiction of the District Court should be monitored carefully. It may be inefficient for the District Court to spend the time on lengthy equity cases. Some labor cases, for example, tend to be involved and utilize extensive court time.

Discussions with members of the Judiciary, particularly with the District Court liaison committee established by Chief Judge Devine, identified many issues of concern. Some of those issues involved matters which could be easily addressed and would provide some relief in the workload of the District Court. These issues included:

#### 1. Motor vehicle legislation.

a. The law currently allows a clerk in each District Court to accept "written appearance, waiver of trial, plea of guilty or payment of fine and costs" from persons accused of a traffic offense. (4 MRSA §164) However, if this is the second offense in a 12-month period, the alleged offender must appear before a judge, unless that appearance is waived by court order. This requirement unnecessarily requires judicial time.

b. If a person's vehicle operator's license has been suspended, the offender must meet certain requirements



before the suspension may be terminated by the Secretary of State. When those requirements are met, the Secretary of State sends a written notice to the individual that the suspension will be terminated. The individual is also informed that a \$25 reinstatement fee is required. Unfortunately, many people fail to notice the language in the letter requiring a reinstatement fee and consequently end up in court for failing to pay that fee. These individuals would readily have paid the fee had they noticed the requirement for its payment. If the letter to the individual emphasized the \$25 reinstatement fee more prominently, the District Court caseload could be significantly reduced.

2. Penalties. Although many criminal violations are contained in Title 17-A of the Maine Revised Statutes (known as the Maine Criminal Code), there are still numerous other criminal violations throughout the statutes which relate to activities administered or regulated by various state agencies. These violations and their respective penalties are not always consistent with the penalty scheme of the Maine Criminal Code. The District Court judges have noted a wide variation in the severity of the penalties for violations of Title 17-A as compared with penalties for violations outside Title 17-A. This creates a disparity of justice that was probably not intended. It is time to review all the penalty provisions of the Maine Revised Statutes for consistency with the Maine Criminal Code.

**FINDINGS:** The subcommittee concurs with the conclusions of the District Court Liaison Committee and believes that addressing the issues identified will create a more efficient administration of justice in the court system.

**RECOMMENDATIONS:** Amend the statutory provisions prohibiting a waiver of court appearance for a second traffic citation in any 12-month period to allow waivers within a 12-month period.

Request the Bureau of Motor Vehicles to reword their reinstatement letter to ensure that recipients of that letter would be aware of the \$25 license reinstatement fee.

Require a review of all the criminal penalties in the Maine Revised Statutes to determine if the penalties are appropriate in severity for the offense, particularly in relation to other criminal offenses. The Legislative Council would appoint a special legislative committee to perform this review.

## B. ADMINISTRATIVE COURT

The subcommittee heard testimony from the Administrative Court judges and from other justices and judges regarding the current operation of the Administrative Court. Twenty-five per cent of the Administrative Court caseload involves agency administrative matters. The Administrative Court judges heard about 400 administrative agency cases in 1989, mostly liquor enforcement matters. Agencies are now handling most administrative suspensions. Most of the administrative matters handled by the court involve appellate review of revocation and suspension hearings.

Seventy-five per cent of the judges' time is spent assisting the District and Superior Courts, helping relieve the appellate and trial court caseload of those courts, mostly in cases involving family matters.

Much of the current Administrative Court caseload has involved resolution of family disputes requiring judicial intervention. The Administrative Court has provided a family court atmosphere, acting, in those situations, similarly to a family court.

**FINDING:** The agency administrative caseload of the Administrative Court is too small to justify a separate entity. However, that Court's ability to provide additional assistance to the District and Superior Courts has been invaluable in the Portland area. The family court environment which it has provided has been a model of a family court and should not be lost. It provides a space which creates a positive setting for resolving sensitive and emotional family matters.

**RECOMMENDATIONS:** Integrate the Administrative Court into the District Court system by transferring the jurisdiction and authority of the Administrative Court to the District Court. The licensing jurisdiction of the Administrative Court, as set forth in 4 MRSA §1152, subsection 2, and §1153, should be transferred to the District Court. The appellate jurisdiction of the Administrative Court, as set forth in 4 MRSA §1151, subsection 2-A should be transferred to the Superior Court with the venue for these appeals in Kennebec County. Liquor enforcement jurisdiction would reside with the District Court. Centralized filing of liquor enforcement matters would be maintained by the Family and Administrative Law Division of the District Court.

Create a 2-year pilot project establishing a Family and Administrative Law Division of the District Court to operate in the Southern Division of the Ninth District until August 1, 1992. The subcommittee strongly recommends that the family court environment created by the current Administrative Court be used as a model in this pilot project.

The Family and Administrative Law Division will maintain the jurisdiction and authority of the former Administrative Court, including authority and responsibility to hear District and Superior Court cases concerning family matters and authority to manage its administrative caseload. Assignment of cases shall be jointly by the Chief Justice of the Superior Court and Chief Judge of the District Court, in consultation with the Chief Justice of the Supreme Court.

Under these recommendations, the current Administrative Court judges would be assigned to the District Court and 2 District Court judges would be assigned to the Family and Administrative Law Division. The other Administrative Court personnel would be reassigned to the District Courts. The facilities of the Administrative Court will remain in the Judicial Department.

The pilot project should be evaluated for recommendations of termination, modification, or expansion. (See Part V of this report.)

#### C. PROBATE COURT

The Probate Court is a unique court in the state. It is less formal than any other court and is more closely linked with the community than the other courts in Maine. It has also been the subject of many studies over the last 40 years. Many changes to the Probate Court have been proposed, but few have been implemented. The most significant change involved a Constitutional Resolution which authorized appointment, rather than the current election, of Probate Court judges if the Legislature enacts the necessary procedural legislation. Resolves 1967, ch. 77.

The most recent study of the Probate Court discussed the conflict-of-interest concerns of part-time Probate judges who also practice law part-time, appointment of judges, funding, and family law matters. ("Report to the Judicial Council by the Committee for the Study on Court Structure in Relation to Probate and Family Law Matters," established by the Judicial Council, January 1985.)

Testimony was presented to the subcommittee that some Probate Court judges are receptive to modification of the Probate Court system in the area of part-time vs. full-time judges and appointment vs. election of judges. The part-time status of judges creates a conflict-of-interest situation when other lawyers must oppose the part-time judge, in that person's capacity as a private attorney, in a non-probate case and later plead a case before the same person, now in a judicial capacity, in a probate matter.

The subcommittee discussed several specific issues concerning the Probate Court system, including providing them additional jurisdiction such as non-contested divorces, emancipation hearings or small claims court cases; full-time judgeships; and the potential for conflict-of-interest situations arising because of the structure of the system at the present time.

**FINDING:** A major immediate concern with the Probate Court system appears to be the conflict-of-interest issue concerning part-time Probate Court judges. This issue and the broader topic of further evolution of the Probate Court system is most appropriately addressed in the context of a review of the entire court system.

**RECOMMENDATION:** The further evolution of the Probate Court system should be addressed by the Commission established by Part V of this report. The Commission should particularly address the conflict-of-interest issue for part-time Probate Court judges and consideration should be given to establishing full-time judges of Probate who travel a circuit as a method of resolving this issue.

**PART V. A COMMISSION TO STUDY THE FUTURE  
OF MAINE'S COURTS**

During the course of this study, many issues concerning the judicial system were discussed. Many of these issues do not require immediate attention; but, rather, would benefit from a careful and detailed analysis in the context of a full-scale review of the court system and the environment within which it will be expected to operate in the future.

Much progress has been made in modernizing and replacing our court facilities. As our society changes, the facilities used to deliver judicial services should adapt and change. Court efficiency, such as centralized court locations, may have to be balanced with court access. Storefront court service offices may become feasible and desirable. The court jurisdictional boundaries, which appear adequate now, may need periodic finetuning. The disparity among judicial salaries will require consideration. Integration of the jurisdictions of the various court systems, including the feasibility, cost, and method of creating a unified trial court system in Maine, should be reviewed.

**FINDING:** There are many court-related issues which require a unified, detailed analysis in a systematic way to ensure the efficient and just operation of our courts as our society evolves from one era to another.

**RECOMMENDATION:** Establish a broad-based Commission to Study the Future of Maine's Courts. The Commission should report to the Legislature on or before November 15, 1991. The Commission should be comprised of 25 or 26 members as follows:

1. **JUSTICES AND JUDGES:** Four advisory members appointed by the Chief Justice -- 3 active justices and judges to represent the Superior, Supreme, and District courts and one active retired justice or judge.
2. **COURT CLERKS:** Three members appointed by the president of the respective court clerks associations to represent the Supreme, Superior, and District courts.
3. **PROBATE COURT JUDGE:** The president of the Probate Court Judges Association or a designee to serve as an advisory member.
4. **REGISTER OF PROBATE:** The president of the Registers of Probate Association or a designee.
5. **LEGISLATORS:** Five legislators. Two Senators, at least one of whom must be a member of the Judiciary Committee, appointed by the President of the Senate. Three members of the House of Representatives, at least 2 of whom must be members of the Judiciary Committee, appointed by the Speaker of the House of Representatives.

6. **GOVERNOR:** A representative of the Governor's office appointed by the Governor.
7. **MEMBERS OF THE PUBLIC:** Four members of the public appointed by the Governor.
8. **BAR ASSOCIATION:** The president of the Maine State Bar Association or a designee.
9. **PINE TREE LEGAL ASSISTANCE:** The executive director of Pine Tree Legal Assistance or a designee.
10. **MAINE TRIAL LAWYERS ASSOCIATION:** The president of the Maine Trial Lawyers Association or a designee.
11. **MAINE PROSECUTORS ASSOCIATION:** The president of the Maine Prosecutors Association or a designee.
12. **ATTORNEY GENERAL:** The Attorney General or a designee.
13. **UNIVERSITY OF MAINE LAW SCHOOL:** The Dean of the Law School or a designee.

The chair of the Commission shall be appointed jointly by the Governor, the Chief Justice of the Supreme Judicial Court, the President of the Senate and the Speaker of the House of Representatives. The chair may be appointed from among the members or may be appointed from outside the membership. Legislative members should receive the legislative per diem. All other members, except state employees, should be reimbursed for reasonable expenses as provided in 5 MRSA §12002-A, sub§ 1.

The commission shall be authorized to receive funds from any source, governmental or private.

The Administrative Office of the Courts may furnish clerical and other support services to the Commission.

The Commission should study the future of the court system in Maine and make recommendations as to what is necessary to ensure that the judicial needs of Maine citizens will be met in the 21st century. The Commission should examine, but not limit its examination to, the following issues:

1. Integration of the jurisdictions of the various court systems, including the feasibility, cost, and method of creating a unified trial court system in Maine.
2. Expansion of the availability and use of alternative dispute resolution mechanisms. This should include the consideration of ways to increase the use of referees under Rule 53, including, but not limited to, rule changes, the education of lawyers and judges, mandatory use of referees, the development of guidelines for the use of referees, and other ways to encourage the use of referees.
3. Further evolution of the Probate Court System, particularly the conflict-of-interest issue concerning part-time Probate Court judges, considering, as a possibility, establishing full-time judges of probate who travel a circuit.

4. The recommendations of the Court Mediation Service study on expanding mediation services. (See Part III, section E.)
5. An evaluation of the pilot project establishing the Family and Administrative Law Division of the District Court in the Ninth District. (See Part IV, section B.)
6. Parity among judicial salaries within the court system.

## PART VI. SUMMARY OF THE RECOMMENDATIONS

### A. RECOMMENDATIONS TO BE IMPLEMENTED IMMEDIATELY

1. Add chairs of Judiciary Committee, or their designees, to the Judicial Council. (See Appendix for proposed legislation.)
2. Recommend to the Chief Justice of the Supreme Judicial Court the permanent establishment of liaison committees in the Superior and District Courts. Recommend that the Probate Court Association appoint a liaison committee. The liaison committees would meet with the Judiciary Committee annually to discuss the status of their respective courts, including the resources and needs of that court, and to act in an advisory capacity to the Judiciary Committee on matters of concern to the courts or on relevant legislation.
3. Increase the number of computer specialists assigned to the Judicial Department to at least 6, to help relieve understaffing problems and accelerate the anticipated completion date for installation of computerization into all clerk's offices. (See Appendix for proposed legislation.)
4. Recommend to the Joint Standing Committee on Appropriations and Financial Affairs that the staff assigned to the Judicial Department to assist District and Superior Court clerks be increased.
5. Increase the number of District Court Judges. There is a potential need for 3 new District Court Judges. These judges should be added over a period of 3 years so that an evaluation may occur each year to determine if implementation of the other recommendations of this report will alleviate the need for all 3 new judges. (See Appendix for proposed legislation.)
6. Recommend to the Judiciary that Superior Court Justices be directed to hear District Court matters in situations where to do so would allow reassignment of a District Court Judge to a busier court in another part of the state, in order to ensure the equitable distribution of caseload per judge. Reassignments would be made by the Chief Justice of the Supreme Judicial Court after consultation with the Chief Justice of the Superior Court and the Chief Judge of the District Court.
7. Request the Court Mediation Service, in consultation with the Department of Human Services, to study the feasibility of expanding the court mediation service to provide additional services in divorce cases to deal with child custody matters, including custody studies, appointment of guardian ad litem, supervision of



visitation, and expanded mediation with the parties to a divorce in those cases involving child custody or parent contact where there is extreme stress between the parents which is harming the child. The report should develop a plan and methodology for implementing its recommendations. It should be submitted to the commission to study the future of Maine courts on or before January 15, 1991.

8. Amend the statutory provisions prohibiting a waiver of court appearance for a second traffic citation in any 12-month period to allow 2 waivers within a 12-month period. (See Appendix for proposed legislation.)

9. Request the Bureau of Motor Vehicles to reword their reinstatement letter to ensure that recipients of that letter would be aware of the \$25 license reinstatement fee.

10. Require a review of all the criminal penalties in the Maine Revised Statutes to determine if the penalties are appropriate in severity for the offense, particularly in relation to other criminal offenses. The Legislative Council would appoint a special legislative committee to perform this review. (See Appendix for proposed legislation.)

11. Integrate the Administrative Court into the District Court system by transferring the jurisdiction and authority of the Administrative Court to the District Court. Create a 2-year pilot project establishing a Family and Administrative Law Division of the District Court to operate in the Southern Division of the Ninth District until August 1, 1992.

The Family and Administrative Law Division will maintain the jurisdiction and authority of the former Administrative Court, including authority and responsibility to hear District and Superior Court cases concerning family matters and authority to manage its administrative caseload. Assignment of cases shall be jointly by the Chief Justice of the Superior Court and Chief Judge of the District Court, in consultation with the Chief Justice of the Supreme Court.

The current Administrative Court judges would be assigned to the District Court and 2 District Court judges would be assigned to the Family and Administrative Law Division.

(See Appendix for proposed legislation.)

B. RECOMMENDATIONS TO BE REFERRED TO THE FULL JUDICIARY COMMITTEE FOR FURTHER DISCUSSION IN CONJUNCTION WITH THE STUDY LEGISLATION

12. Submission of the Judicial budget directly to the Legislature as a separate legislative document, in order to maintain the independence and appropriate role for each department of government. In order to provide the Governor with sufficient information about the budget which the Judicial Department is requesting, the Judicial Department should be required to submit a copy of its budget to the Governor on or before September 1st of the even numbered years.

C. ESTABLISHMENT OF A SPECIAL COMMISSION TO STUDY THE FUTURE OF MAINE'S COURTS

13. Establish a broad-based Commission to Study the Future of Maine's Courts. The Commission should report to the Legislature on or before November 15, 1991. The Commission should be comprised of 25 or 26 members to include justices and judges, court clerks, a judge and a register of probate, legislators, a representative of the Governor's office, members of the public, and representatives from the Maine State Bar Association, Pine Tree Legal Assistance, Maine Trial Lawyers Association, Maine Prosecutors Association, the Office of the Attorney General, and the University of Maine Law School.

The Commission should study the future of the court system in Maine and make recommendations as to what is necessary to ensure that the judicial needs of Maine citizens will be met in the 21st century. The Commission should examine, but not limit its examinations to, the following issues:

- a. Integration of the jurisdictions of the various court systems, including the feasibility, cost, and method of creating a unified trial court system in Maine.
- b. Expansion of the availability and use of alternative dispute resolution mechanisms. This should include the consideration of ways to increase the use of referees under Rule 53, including, but not limited to, rule changes, the education of lawyers and judges, mandatory use of referees, the development of guidelines for the use of referees, and other ways to encourage the use of referees.

c. Parity among judicial salaries within the court system.

d. Further evolution of the Probate Court system, particularly the conflict-of-interest issue concerning part-time Probate Court judges, considering, as a possibility, establishing full-time judges of probate who travel a circuit.

e. The recommendations of the Court Mediation Service study on expanding mediation services.

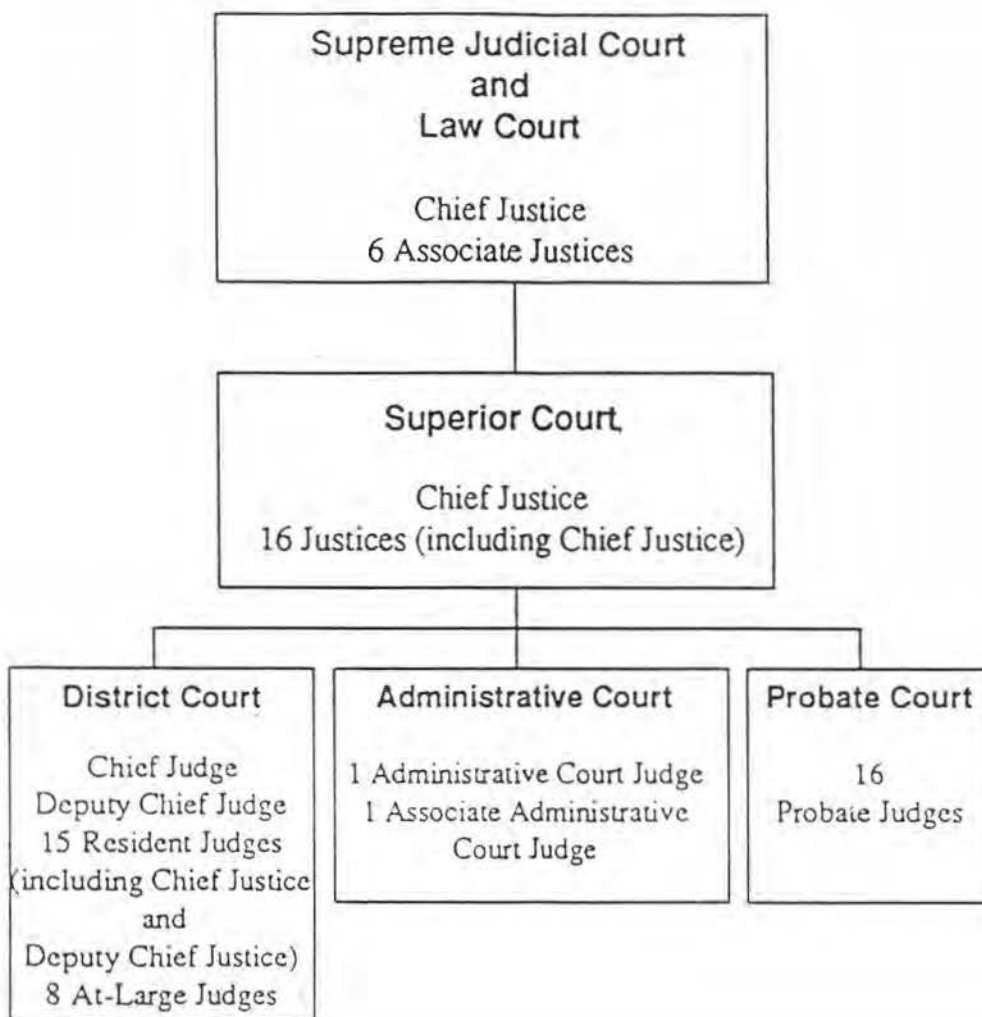
f. The pilot project which established the Family and Administrative Law Division of the District Court in the Ninth District.

(See Appendix for proposed legislation.)

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## The Maine Court System

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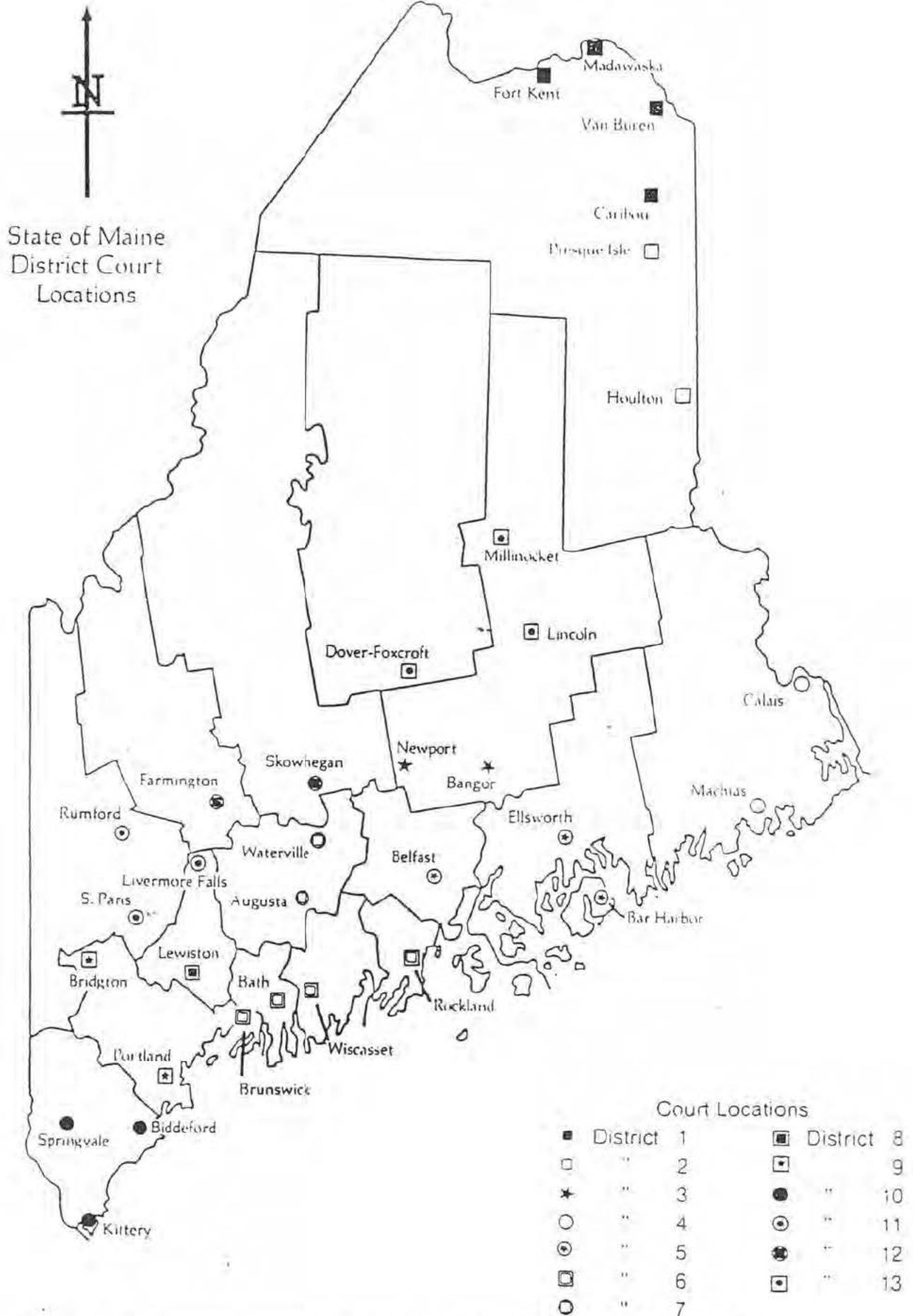
APPENDIX B



Source: "1987 Annual Report: State of Maine Judicial Department",  
Administrative Office of the Courts, 1988



APPENDIX C



Source: "1987 Annual Report: State of Maine Judicial Department",  
Administrative Office of the Courts, 1988





SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

AN ACT to Implement the Recommendations of the Court  
Jurisdiction Study

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 4 MRSA §105-A is enacted to read:

§105-A. Appellate jurisdiction of decisions of  
occupational licensing boards and commissions.

The Superior Court shall have exclusive jurisdiction to review disciplinary decisions of occupational licensing boards and commissions taken pursuant to Title 10, section 8003. The Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII, shall govern this procedure as far as applicable.

Sec. A-2. 4 MRSA § 164, sub§12, ¶ D is amended to read:

D. Any person who has been found guilty of or who has signed a plea of guilty to, or who has been found to have committed or who has signed a plea admitting or admitting with an explanation, ~~one~~ two or more previous traffic offenses subject to this subsection within a 12 month's period shall not be permitted to appear before the violations clerk unless the court shall, by order, permit such appearance. Each waiver of hearing filed under this subsection shall recite on the oath or affirmation of the offender whether or not he has been previously found guilty or to have committed or has previously signed a plea of guilty to, admitting, or admitting with an explanation ~~one~~ two or more traffic offenses within a 12 month's period.

Swearing falsely to any such statement shall be a civil violation for which a forfeiture not to exceed \$50 may be adjudged.

Sec. A-3. 4 MRS §183 is enacted to read:

**§183. Jurisdiction; administrative law**

1. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 10, section 8003, subsection 5; Title 29; Title 32, chapter 113; and Title 35-A, section 3132, the District Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and shall have original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The District Court shall have original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

Notwithstanding any other provisions of law, no licensing agency may reinstate or otherwise affect a license suspended, revoked or modified by the District Court pursuant to a complaint filed by the Attorney General, without the approval of the Attorney General.

2. Procedure. The following procedure applies to administrative law cases under this section.

A. On receipt of a written complaint from an agency or the Attorney General, a Judge of the District Court shall conduct a hearing on the applicable facts and law.

B. At the request of a party in a contested case, a judge of the District Court shall issue subpoenas for the attendance of witnesses or for the production of documents. Subpoenas may also be issued on the judge's own motion.

3. Emergency proceedings. The District Court shall have jurisdiction to revoke temporarily or suspend a license without notice or hearing upon the verified complaint of an agency or the Attorney General. Such complaint shall be accompanied by affidavits demonstrating that summary action is necessary to prevent an immediate threat to the public health, safety or welfare. Upon issuance of an order revoking or suspending a license under this subsection, the District Court shall promptly schedule a hearing on the agency's complaint, which hearing shall take precedence over all other matters except older matters of the same character on the docket of the court. Any order temporarily suspending or revoking a license shall expire within 30 days of issuance, unless renewed by the court after such hearing as it may deem necessary.

Nothing in this section shall be deemed to abridge or affect the jurisdiction of the Superior Court to issue injunctive relief or to exercise such other powers as may be authorized by law or rule of the court.

4. Decisions. After hearing, on default, or by agreement of the parties, a judge of the District Court may suspend, revoke or modify the license of any party properly served with process, or if the applicable law so provides the judge may order issuance of a license to an applicant according to the terms of the applicable law. The judge may take any other action with relation to the party which could have been taken before the enactment of former section 1155 by the agency involved in the hearing.

Every final decision of the District Court shall be in writing or stated in the record, and shall include findings of fact and conclusions of law sufficient to apprise the parties and any interested member of the public of the basis for the decision. A copy of the decisions shall be delivered or promptly mailed to each party to the proceeding or the party's representative of record. Written notice of the party's rights to review of the decision and of the action required, and the time within which such action shall be taken in order to exercise the right of review, shall be given to each party together with the decision.

5. Fines. Notwithstanding any other provisions of this chapter, a judge of the District Court, in that judge's discretion, may impose a fine of a specific sum, which shall not be less than \$50 nor more than \$1,500 for any one offense, or such other limits as the statutes relating to the licensing question may provide. Such a fine may be imposed instead of or in addition to any suspension, revocation or modification of a license by the court. Section 1057 applies to any fine imposed by this subsection.

Sec. A-4. 4 MRS §451 is amended to read:

#### **§451. Establishment**

A Judicial Council, as established by Title 5, section 12004-I, subsection 51, shall make a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the State, the work accomplished and the results produced by that system and its various parts. The council shall be composed of the Chief Justice of the Supreme Judicial Court, who shall also serve as chair, the Attorney General, the Chief Justice of the Superior Court, the Chief Judge of the District Court, the chairs of the joint standing committee of the Legislature having jurisdiction over judiciary matters or their designees, and the Dean of the University of Maine System School of Law, each to serve ex officio, and an Active or Retired Justice of the Supreme Judicial Court, one

Justice of the Superior Court, one Judge of the District Court, one Judge of a Probate Court, one clerk of the judicial courts, 2 members of the bar and 6 laymen, to be appointed by the Governor. The appointments by the Governor shall be for such periods, not exceeding 4 years, as he shall determine.

**Sec. A-5. 4 MRSA §453 is amended to read:**

**§453. Expenses**

Each member shall be compensated as provided in Title 5, chapter 379, out of any appropriation made for the purpose and approved by the Chief Justice. Legislative members shall be compensated from the legislative budget. The council may appoint one of its members or some other suitable person to act as secretary for the council.

**Sec. A-6. 4 MRSA chapter 25 is repealed.**

**Sec. A-7. Appropriation.** There is appropriated from the General Fund the following sums:

1990-91

**JUDICIAL DEPARTMENT**

Courts - Supreme, Superior  
District and Administrative

Positions	(2)
Personal Services	\$78,041

Provides funds for 2  
additional computer  
specialists.

Courts - Supreme, Superior  
District and Administrative

Positions	(1)
Personal Services	\$102,484

Provides funds for 1  
additional District  
Court Judge.

**Sec. A-8. Transition Provisions.** On the effective date of this Act:

1. **Administrative Court Judge or Associate Administrative Court Judge.** Any Administrative Court Judge or Associate Administrative Court Judge whose term has not expired shall be a District Court Judge until the expiration of that term, unless sooner removed. The compensation of any judge of the Administrative Court converted to a District Court judge by reason of this Act shall not be reduced;

2. **Active Retired Judge.** Any Active Retired Judge of the Administrative Court whose term has not expired shall be an Active Retired District Court Judge until the expiration of that term, unless sooner removed; and

3. **Other Administrative Court personnel.** Any other Administrative Court personnel in service shall be transferred to the District Court staff and shall receive compensation at a rate not less than the last pay range they received while employed with the Administrative Court.

DRAFTING NOTE: ADDITIONAL LANGUAGE AMENDING ALL REFERENCES IN THE MAINE REVISED STATUTES TO THE ADMINISTRATIVE COURT WILL BE NECESSARY PRIOR TO ENACTMENT OF THIS LEGISLATION.

## PART B

**Sec. B-1. Commission established.** There is established a commission to review all the criminal penalties in the Maine Revised Statutes to determine the consistency of the penalties outside the Maine Criminal Code with the penalties within the Maine Criminal Code.

**Sec. B-2. Commission membership.** The commission shall consist of 8 members to be appointed as follows: 2 members of the Joint Standing Committee on Judiciary, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate; 2 members of the Joint Standing Committee on Transportation, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate; 2 members of the Joint Standing Committee on Fish and Wildlife, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate; and 2 members of the Joint Standing Committee on Marine Resources, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate.

All appointments shall be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the

Legislative Council upon making their appointments. When appointment of all members of the commission is completed, the chair of the Legislative Council shall call the commission together for its first meeting no later than August 1, 1990. The commission shall select a chair from among its members.

**Sec. B-3. Duties.** The commission shall compare the criminal penalties for offenses established within the Maine Criminal Code with the criminal penalties for offenses established in other titles of the Maine Revised Statutes. The commission shall determine if the penalties for offenses established outside of the Criminal Code are commensurate with the penalties for similar Criminal Code offenses..

**Sec. B-4. Staff.** The commission shall request staffing assistance from the Legislative Council.

**Sec. B-5. Compensation; budget.** The members of the commission who are legislators shall receive the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at the commission meetings. The Executive Director of the Legislative Council shall administer the commission budget.

**Sec. B-6. Report; Reporting date.** The commission may produce a written report and shall present its findings, together with any recommended legislation, to the First Regular Session of the 115th Legislature no later than December 1, 1990.

**Sec. B-7. Appropriation:** The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1990-91

LEGISLATURE

Commission on the Criminal  
Penalties in the Maine  
Revised Statutes

Personal Services	\$ 2,640
All other	<u>4,850</u>
Total	\$ 7,490

Provides funds for  
per diem, travel  
and related expenses  
of the Commission on  
Criminal Penalties in  
the Maine Revised  
Statutes.

PART C

**Sec. C-1. Commission established.** There is established a commission to study the future of Maine's courts.

**Sec. C-2. Commission membership.** The commission shall consist of 25 or 26 members as follow:

1. Four advisory members appointed by the Chief Justice -- 3 active justices and judges to represent the Superior, Supreme, and District Courts and one active retired justice or judge;
2. Three members appointed by the president of the respective court clerks associations to represent the Supreme, Superior, and District Courts;
3. The president of the Probate Court Judges Association or a designee;
4. The president of the Registers of Probate Association or a designee;
5. Five legislators; including 2 Senators, at least one of whom must be a member of the Joint Standing Committee on the Judiciary, appointed by the President of the Senate; and 3 members of the House of Representatives, at least 2 of whom must be members of the Joint Standing Committee on the Judiciary, appointed by the Speaker of the House of Representatives;
6. A representative of the Governor's office appointed by the Governor;
7. Four members of the public appointed by the Governor;
8. The president of the Maine State Bar Association or a designee;
9. The executive director of Pine Tree Legal Assistance or a designee;
10. The president of the Maine Trial Lawyers Association or a designee;
11. The president of the Maine Prosecutors Association or a designee;
12. The Attorney General or a designee; and
13. The Dean of the University of Maine School of Law or a designee.

All appointments shall be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council and the State Court Administrator when the appointments have been made. The chair of the commission shall be appointed jointly by the Governor, the Chief Justice of the Supreme Judicial Court, the President of the Senate, and the Speaker of the House of Representatives no later than July 1, 1990. The chair may be appointed from among the members or may be appointed from outside the membership. The chair shall call the first meeting no later than August 15, 1990.



**Sec. C-3. Compensation.** Legislative members shall receive the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at the commission meetings. All other members, except state employees, shall receive no compensation, but may be reimbursed for reasonable expenses as provided in 5 MRSA §12002-A, sub-§ 1.

**Sec. C-4. Staff support.** The Administrative Office of the Courts may furnish clerical and other support services to the Commission.

**Sec. C-5. Duties.** The Commission shall study the future of the court system in Maine and make recommendations as to what is necessary to ensure that the judicial needs of Maine citizens will be met in the 21st Century. The Commission shall examine, but not limit its examination to, the following issues:

1. Integration of the jurisdictions of the various court systems, including the feasibility, cost, and method of creating a unified trial court system in Maine;
2. Expansion of the availability and use of alternative dispute resolution mechanisms. This should include the consideration of ways to increase the use of referees under Rule 53 of the Maine Rules of Civil Procedure, including, but not limited to, rule changes, the education of lawyers and judges, mandatory use of referees, the development of guidelines for the use of referees, and other ways to encourage the use of referees;
3. Parity among judicial salaries within the court system;
4. Further evolution of the Probate Court system, particularly the conflict-of-interest issue concerning part-time Probate Court Judges, considering, as a possibility, establishing full-time judges of probate who travel a circuit;
5. Any recommendations of the Court Mediation Service on expanding mediation services; and
6. An evaluation of any pilot project establishing the Family and Administrative Law Division of the District Court in the Ninth District.

**Sec. C-6. Report to Legislature.** The Commission, by November 15, 1991, shall report to the joint standing committee of the Legislature having jurisdiction of the judiciary the results of its findings and recommendations together with any proposed legislation necessary to implement those recommendations.

**Sec. C-7. Funding.** The commission is authorized to receive funds from any source, governmental or private.

**Sec. C-8. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1990-91

JUDICIAL DEPARTMENT

Commission to Study the  
Future of Maine's Courts

Personal Services	\$ 3,300
All other	<u>12,950</u>
Total	\$ 16,250

Provides funds for per diem, travel and related expenses of the Commission to Study the Future of Maine's Courts. These funds shall not lapse, but shall carry forward to June 30, 1992.

**STATEMENT OF FACT**

This bill contains the legislation necessary to implement the recommendations of the Court Jurisdiction study conducted by a subcommittee of the Joint Standing Committee on the Judiciary, as authorized by the Legislative Council. Not all of the recommendations received the unanimous approval of the subcommittee.

Part A of this bill:

1. adds the chairs of the Judiciary Committee, or their designees, to the Judicial Council;
2. Amends the statutory provisions prohibiting a waiver of court appearance for a second traffic citation in any 12-month period to allow 2 waivers within a 12-month period;
3. Adds 2 computer specialists and a District Court Judge to the Judicial Department; and
4. Integrates the Administrative Court into the District Court system by transferring the jurisdiction, authority, and personnel of the Administrative Court to the District Court. This bill should be amended to delete all Administrative Court references throughout the statutes.

Part B of this bill establishes a commission to review all the criminal penalties in the Maine Revised Statutes to determine if the penalties are appropriate in severity for the offense, particularly in relation to other criminal offenses.

Part C of this bill establishes a broad-based Commission to Study the Future of Maine's Courts.

## APPENDIX E

## SENATE

BARRY J. HOBBS, DISTRICT 11, CHAIR  
 N. PAUL GAUVREAU, DISTRICT 22  
 MURIEL D. HOLLOWAY, DISTRICT 20

PEGGY REINSCH, LEGISLATIVE ANALYST  
 TODD BURROWES, LEGISLATIVE ANALYST  
 PAULA ASHTON, COMMITTEE CLERK



## HOUSE

PATRICK E. PARADIS, AUGUSTA, CHAIR  
 CONSTANCE D. COTE, ALBURN  
 GERARD P. CONLEY, JR., PORTLAND  
 PATRICIA M. STEVENS, BANGOR  
 CUSHMAN D. ANTHONY, SOUTH PORTLAND  
 SUSAN FARNSWORTH, HALLOWELL  
 MARY H. MACBRIDE, DEERING  
 DANA C. HANLEY, PARIS  
 PETER G. HASTINGS, FRYEBURG  
 JOHN H. RICHARDS, HAMPODEN

STATE OF MAINE  
 ONE HUNDRED AND FOURTEENTH LEGISLATURE  
 COMMITTEE ON JUDICIARY

June 30, 1989

Honorable Charles P. Pray, President of the Senate  
 Honorable John L. Martin, Speaker of the House  
 114th Legislature  
 Maine State Legislature

Re: Judiciary Committee Study Request: Court jurisdiction

Dear President Pray and Speaker Martin:

The Joint Standing Committee on Judiciary is submitting the attached study request for Legislative Council approval.

The Judiciary Committee originally voted to carry over LD 232, An Act to Grant the Power of Equitable Jurisdiction to the District Court in order to comprehensively review the jurisdiction of the District Court and the Administrative Court, and their relationship to the Superior Court. Subsequently, the Committee, in deference to the sponsor, agreed to a revision of the bill to be passed this session with the understanding a review of this issue of court jurisdiction would still be conducted. This will give us an opportunity to make additional revisions or fine tune the changes we have already made. The Committee inadvertently did not include this study request in its letter to the Council last week.

A comprehensive review of the interrelationship of jurisdiction of the courts in Maine has not, to our knowledge, been undertaken in the past. The Committee believes that such a review is necessary to ensure that our courts truly serve the people of the State of Maine to the fullest extent possible.

Please contact us if the attached study request does not provide all the information you need.

Thank you for your consideration.



Sen. Barry J. Hobbins  
Senate Chair

Sincerely,



Rep. Patrick E. Paradis  
House Chair

attachment

3871\*

COMMITTEE: JUDICIARY

STUDY REQUEST: Jurisdiction of the District Court and the Administrative Court, and the relationship to the jurisdiction of the Superior Court.

SOURCE: The Judiciary Committee, in recommending passage of LD 232, An Act to Grant the Power of Equitable Jurisdiction to the Maine District Court, sponsored by Rep. Marsano, agreed to review the jurisdiction of both the District Court and the Administrative Court and their relationship with the Superior Court.

STUDY GROUP: 7-member subcommittee of the Judiciary Committee.

FIRST MEETING: To be held no later than 9/1/89.

STUDY SUBJECT: The Subcommittee will review the jurisdiction, and the structure as necessary, of the District Court and the Administrative Court. The Subcommittee will also review how the jurisdiction of these courts relates to the Superior Court's jurisdiction. The Subcommittee will make findings and recommendations for revisions, if necessary.

SPECIFIC QUESTIONS TO BE EXAMINED:

1. How has the District Court evolved over time? Have the changes been appropriate? Are additional changes necessary?
2. Is a separate Administrative Court necessary, or can the functions of that court be taken over by the District Court or Superior Court without causing injustice?
3. Is the distribution of jurisdiction among the courts of Maine appropriate in terms of efficiency, fairness and accessibility? Are there other factors to be considered?

4. How do other states distribute jurisdiction among their courts? Is there a trend which states are beginning to follow in the revision of court jurisdiction?

5. Are there recommendations which those most affected by a change in court jurisdiction (attorneys, judges, court clerks, etc.) would make?

**SPECIAL TASKS TO BE UNDERTAKEN:** The Subcommittee may:

1. Review past history and current status of jurisdiction in the District, Administrative and Superior Courts;

2. Review recent studies and recommendations concerning court jurisdiction and structure;

3. Hold 5 meetings in Augusta to collect information and discuss current status and potential alternatives; and

4. Conduct, summarize and analyze the results of a literature search on court jurisdiction and structure.

**STAFFING:**

The Subcommittee shall request staffing assistance from the Legislative Council.

**COMPENSATION:**

The Subcommittee members shall receive reimbursement for travel and other necessary expenses and the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at the Subcommittee meetings.

**REPORT:**

The Subcommittee may produce a written report of findings and recommendations, including any suggested legislation, to be submitted to the full Judiciary Committee no later than December 1, 1989.



REP JOHN L MARTIN  
CHAIR

SEN DENNIS L DUTREMBLE  
VICE-CHAIR

STATE OF MAINE

114th LEGISLATURE

LEGISLATIVE COUNCIL

SEN CHARLES P PRAY  
SEN NANCY RANDALL CLARK  
SEN CHARLES M WEBSTER  
SEN PAMELA L CAHILL  
REP DAN A GWADOSKY  
REP JOSEPH W MAYO  
REP MARY CLARK WEBSTER  
REP FRANCIS C MARSANO

SARAH C DIAMOND  
EXECUTIVE DIRECTOR

July 6, 1989

Honorable Barry J. Hobbins, Senate Chair  
Honorable Patrick E. Paradis, House Chair  
Joint Standing Committee on Judiciary  
114th Maine Legislature

Dear Senator Hobbins and Representative Paradis:

The Legislative Council met last Saturday to establish budgets for the approved interim study requests. The Council has taken the following actions on requests from your Committee:

Termination of Medical Treatment Hydration & Nutrition APPROVED

5 member subcommittee

4 subcommittee meetings  
1 full committee meeting

Jurisdiction of the District Court and the Administrative Court, and the Relationship to the Jurisdiction of the Superior Court APPROVED

5 member subcommittee

4 subcommittee meetings  
1 full committee meeting

The Council's action on all study requests is based on the understanding that the subcommittee will have completed its work by December 1, 1989. This means that the report and any accompanying legislation must be ready to transmit to the Legislative Council on that date.



Honorable Barry J. Hobbins, Senate Chair  
Honorable Patrick E. Paradis, House Chair  
July 6, 1989  
Page Two

I would ask that you send information regarding those members who will be serving on the subcommittee as soon as it is available to Sally Diamond.

We appreciate your cooperation in moving quickly to organize the study and look forward to receiving your findings and recommendations. Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Martin", is written over a circular stamp or seal.

John L. Martin, Chair  
Legislative Council

cc: Martha Freeman, Director, Office of Policy & Legal Analysis

SENATE

BARRY J. HOBBS, DISTRICT CHAIR  
N. PAUL GAUVREAU, DISTRICT 21  
MURIEL D. HOLLOWAY, DISTRICT 20

PEGGY REINSCH, LEGISLATIVE ASSISTANT  
TODD BURROWES, LEGISLATIVE ASSISTANT  
PAULA ASHTON, COMMERCIAL CLERK



HOUSE

PATRICK E. PARADIS, AUGUSTA CHAIR  
CONSTANCE D. COTE, AUBURN  
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MARY H. MACBRIDE, PRESQUE ISLE  
DANA C. HANLEY, PARIS  
PETER G. HASTINGS, FRYEBURG  
JOHN H. RICHARDS, HANNOIS

STATE OF MAINE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
COMMITTEE ON JUDICIARY

19 December 1989

The Honorable John L. Martin, Chair  
Legislative Council  
Maine Legislature  
State House Station 115  
Augusta, ME 04333

Dear Chair Martin:

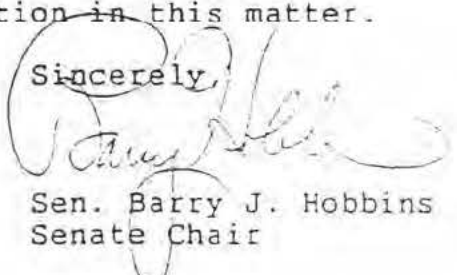
The subcommittee of the Joint Standing Committee on the Judiciary which has been studying the jurisdiction of the court system and the ability of the courts to meet the judicial needs of the people of Maine requests an extension until Friday, December 29, 1989. At that time, we will be ready to send the final report to printing.

The study has focused on the current status of the judiciary in Maine, the ability of the courts to meet the judicial needs of the people of Maine and the pressing issues facing Maine's court system today. The broad and complex nature of this study touches the lives and livelihood of many diverse interests in this state. We have worked vigorously to create a consensus on each issue in order to present the strongest report possible to the Legislature.

The majority of the report is complete. We believe the additional time will allow us to forge a consensus on the few remaining unresolved issues. No additional meetings of the subcommittee will be necessary during this extension.

Thank you for your consideration in this matter.

Sincerely,



Sen. Barry J. Hobbs  
Senate Chair

298NRG