

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

**Presented by Chief Justice Leigh I. Saufley
February 26, 2019**

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

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

HISTORY IN THE MAKING

Before I begin, I have to mention this historic occasion.

As of today, I have had the great honor of being accompanied into this chamber by four different Governors.

But this is the first time that the Governor — came from Franklin County.

Seriously, it will now be evident to all of our daughters and sons that anyone can be a part of this great experiment in a representative democracy.

For our youth, anything is possible, and for demonstrating that fact, we are grateful to Governor Mills.

INTRODUCTIONS

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

First, you will see my handsome husband Bill Saufley and my parents Jan & Dick Ingalls, and with them today is my extraordinary niece, Alison Ingalls.

Next, Ted Glessner, the State Court Administrator, Judge Robert M. Washburn, President of the Probate Judges' Assembly, and Chief Judge Rebecca Irving, from the Passamaquoddy Tribal Court.

Next, I will introduce my colleagues.

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

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

From the Supreme Judicial Court—Justices:

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

And the Trial Court Chiefs:

Superior Court Chief Justice Roland Cole,
The Designated Deputy - Justice Bob Mullen,
District Court Chief Judge Susan Oram, and
Deputy Chief Judge Susan Sparaco

You can be very proud of the Judges and Magistrates throughout this State who work so hard every day to help Maine people find justice.

And have I mentioned that those wonderful JUDGES, Maine's trial judges, are right at the bottom of the country when it comes to compensation?

I may have mentioned that before. The budget proposed by Governor Mills will provide a modest increase in that compensation. I hope you will support the Governor's budget as it addresses all aspects of the Judicial Branch. It is a thoughtful budget, aimed at safe courts and excellent public service. Thank you, Governor Mills.

I also want to thank all of the other people who serve the public in the Judicial Branch—455 state employees who cover the entire State—from the clerks who form the backbone of the courts, to the marshals who have kept the public safe, to the administrators on whom we rely for constant improvements. We could not provide access to justice in Maine without their commitment and dedication to public service.

So—to the STATE of the JUDICIARY;

I often look for one word to describe to you the State of Maine's Judiciary, but today, I have to ask for your indulgence—it will take me two words.

The Judicial Branch in Maine is: **In Transition**

I will focus on three key areas of transition:

1. **The World Around Us—in Transition.**
2. **Digital Case Management and eFiling**
3. **Transitions in the Criminal and Juvenile Justice**

1. THE WORLD IN TRANSITION

Nearly every aspect of our world is changing, and many of those changes are driven by developments in technology.

Some of you remember how we all used to respond to temporary power outages—we had to wait for our children to come home from school to reset all of our clocks, especially on the VCR and the coffee maker.

How I long for those simpler days.

Technological changes and innovations are already having a significant impact on the delivery of justice, and here are just a few of the changes that require our careful attention:

- The practice of law and the delivery of legal services are changing. The use of artificial intelligence for screening legal problems, creating legal documents, and even mediating disputes is expanding every day, and the increase in mobile applications will change the way that lawyers do their jobs.
- Technology to support the appearance of parties, witnesses, and interpreters from remote locations is becoming a necessity.
- Evidence in the form of cell phone videos, Facebook messages, video from body cams and dash cams, and digital document troves must all be captured and preserved somehow, and available in a format that juries and judges can review.
- Digital legal research has all but eliminated our old system of Law Libraries—remember books?
- The methods by which the members of the public seek out information about their legal rights is changing.
 - I pause here to thank the Maine Legislature for its accessible and helpful web site—a web site, by the way, that has no paywall.

The Maine Response:

These and many other kinds of transition require that the Maine Judicial Branch work constantly just to keep up. Here are just a few of the recent successes.

- Video equipment is being updated in many courthouses to improve high-quality real-time video conferencing.
- Distance mediation, which we have seen successfully deployed in other states, is now an option in Aroostook and Penobscot Counties, and is expanding into other counties.
- Interpreters from across the country are becoming more available through video to provide much-needed spoken language and ASL services in Maine courthouses.
- Courthouses are being rewired to improve service and provide critically important wireless internet access by the public. Improved access to broadband service will be a big help to the public.
- Schedules are being shifted throughout the State to assure that complex family matters are coordinated so that families will have a single team—a judge, a magistrate, and a clerk, consistently assigned to that family to assure expedited attention and continuity.
- The Judicial Branch website is undergoing a complete accessibility revision that will include forms and instructional booklets in multiple languages, helpful videos for use by unrepresented litigants as well as lawyers and the public, and quick access to information and to other sites that may be helpful.

The Future in Transition

And the transitions continue. We are looking ahead to future improvements in technology and in our facilities.

As always, Safety First:

With your support, and with the benefits from the consolidation of court facilities, the Judicial Branch is now able to provide marshals and entry screening equipment on 77% of all court days throughout the State. That's progress. However, the volatility of high conflict litigation and the very real worry about the potential of an active shooter is serious, and we must reach the 100% mark soon. Last year, the presence of those Judicial Branch marshals added immeasurably to

the safety of the public, and their presence even stopped 7 firearms that were actually brought into court houses.

Building Technology

We are planning that the new consolidated courthouse in York County will be the Judicial Branch's very first Zero Net Energy building. A combination of geothermal heating and cooling, and solar panels will provide a more comfortable and less expensive internal environment long into the future.

Digital Communications:

We are also hoping that improvements in digital communication will allow us to create a system of text message alerts to remind defendants of upcoming criminal court dates. A few states have tried this and have found it to be very helpful in avoiding inadvertent failures to appear. Imagine the ripple effect, fewer arrest warrants, less stress on the county jails, and most important—reduced disruption of people's lives, jobs, families.

Also, in the future, we hope to establish a digital system for search warrants.

One note of caution is in order, however. None of these projects is as simple as it sounds, and each of the projects must be constantly reviewed for quality and accuracy.

Our goal must be to provide *better* public service, not just more *annoying* public service.

In other words, we have to be careful, and we have to do it right.

I look forward to working with you to assure that we are all focusing on the kinds of technology that will best serve the public.

2. TRANSITION TO DIGITAL RECORDS AND eFILING

I move now to our next topic on transition—the design and roll-out of Maine's new digital case management and eFiling system.

Last year I updated the 128th Legislature on the Judicial Branch's comprehensive contract with Tyler Technologies.

Over the last year much has been accomplished.

The first iteration of the digital traffic ticket system has rolled out in the Violations Bureau. We are learning every day about ways to improve the public's access, and we

do have continued challenges with the new system, including challenges in getting reports out to law enforcement, and the critically important connections to the Secretary of State's Office. But so far, the individual members of the public report primarily very positive experiences with the new system.

As we resolve those challenges and complete the work on the traffic ticket system, we will turn to the design and roll-out of the very first region to go live with all case types—in Penobscot and Piscataquis Counties.

This project requires the attention of everyone in the court system: not just the technology experts.

- It requires a design that can be used by unrepresented litigants as well as lawyers.
- It will require that courthouses provide public access to terminals for those users who do not have computers, smart phones, or access to local libraries.
- It must be built to gather better data accurately and effectively, to improve the information necessary for court management, future legislative decisions, and budget considerations.
 - As you hear me say every year, “we manage what we measure,” and better access to reliable and relevant data will help all of us in responding to public needs.
- And it is critically important that we assure the stability and security of all digital court records. The very words “Cyber Security” are keeping me up nights.

This is one of the most complex projects I have ever been involved with in Government.

And one of the most important questions to be answered before the first Region goes live is this:

Which digital case records will be available to the public through the internet?

Transparency and Privacy

This question requires us to balance the tradition and laws regarding open courts against the very real challenge that instant and seemingly permanent access to the private details of litigants' lives may create.

As I reported last year on this complicated question, we are obtaining as much input and review as we can.

We began with the first widely representative stakeholders group, the Transparency and Privacy Task Force which presented a report to the Court in the fall of 2017.

We published the report, sought written comments, and held a public hearing for further input in the spring of 2018.

You will be shocked to learn that there is some disagreement about where the balance between government transparency and personal privacy falls.

The Supreme Judicial Court made the first major decision regarding access to digital case records last spring.

We determined that digital case records that are public records will, in most instances, be available on the internet.

We concluded that creating a digital case records system that could only be accessed at a courthouse terminal, as had initially been proposed, simply would not work for the great majority of the public's needs.

Then began the very important work of clarifying public and nonpublic records. With input from a variety of sources, relying on existing legislation and the work of the Right to Know Advisory Committee, we created a very rough, first draft of proposed legislation, and we sought comments on that preliminary proposal.

Following those comments, many of which were very helpful, we drafted a more focused piece of legislation. I am pleased to report that the proposal, which has not been printed yet, will be sponsored by the Chairs of the Judiciary Committee, Senator Carpenter and Representative Bailey.

The proposed legislation acknowledges the important public policy decisions that have already been made by Maine's Legislature to make certain limited proceedings closed to the public. It also recognizes that it is ultimately the responsibility of the Judicial Branch to promulgate rules addressing the details of access to case records.

We are in the process of creating a comprehensive set of Court Rules that will address those details, and here are the basics:

- The parties and their representatives will have digital access to their own records through a platform-neutral internet-based portal. In other words, you will not need special programs to reach your own court records, and you will not pay to see your digital files.
- The following digital case records, with a few, narrowly tailored exceptions will be publicly available on the internet:

- Criminal cases
 - Traffic Infractions
 - Most Civil Cases
- We estimate that those cases comprise more than 85% of the court's annual case filings.
 - Some kinds of information will not be available to the public in any digital files, such as social security numbers, bank account numbers, or personal medical records.
 - Other case types will, again with a few exceptions, not be publicly available, for example:
 - Adoption records
 - Child Protection records
 - Most Juvenile records
 - Mental Health Civil Commitment records

There are two case types that we are still addressing:

Domestic Violence and Family cases.

In Domestic Violence cases, we must all comply with the federal law that shields any information identifying a petitioner from any internet availability. We will have more on this soon.

In family cases, we are designing a hybrid rule that will allow public access to the nature of the proceedings and summaries of the resulting judicial actions but will not provide public access to the very personal filings between and among the parties, many of which relate to the struggles that children experience during periods of family instability.

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

As Justice Ann Murray has noted in her work on this system, the last thing we want is for the public to have internet access to a filing that says: because of the increasing animosity between the parents, the parties' 13-year-old son is wetting his bed again. Imagine the bullying and the possible lifetime of humiliation for that child.

We are continuing to seek input on the best balance of transparency and privacy. The consequences of these decisions will affect the public in ways we may not yet anticipate, and we must be ready to make changes in response to new information.

The next steps include meetings of the Rules Advisory Committees here in Augusta at the Capital Judicial Center next week. Those meetings will be open to the public. We will then receive further written input from all interested parties, and we hope to have a full set of draft Court Rules to complement the statute we have proposed, to be available by the time of the public hearing on the bill.

There are, however, a few substantive areas that may require your further attention.

One of the thorniest knots is found in criminal law and in aspects of the Criminal History Records Information Act.

- What should happen to the records when a person has been acquitted or the charges have been fully dismissed? Should those files remain publicly available on the internet or should part or all of the file be closed?
- You may find this issue tangled up with questions regarding the closure—sometimes called expungement—of conviction records following the long-term successful rehabilitation of the convicted person.
- I understand that the Criminal Law Advisory Committee, assisted by Jane Orbeton, is looking at these and several related issues, and we hope that they will have a proposal for you later this spring.

We look forward to your solutions!

3. OPIOID CRISIS and CRIMINAL-JUVENILE PROCESS IMPROVEMENT

I move now to the third topic of transitions, far removed from technology, although certainly not removed from science—the changing governmental responses to addiction and mental health challenges, in criminal and juvenile justice.

Rather than begin with the usual grim statistics, I start with updates on several positive developments in cross-governmental efforts.

- First, with thanks to the Maine Sheriffs' Association and its current president, Sheriff Kevin Joyce, a large group of stakeholders including judges, sheriffs, county government, attorneys, and involved providers convened in November to address concerns about the pre-conviction populations in Maine's county jails. A

shared commitment to data gathering and problem solving is already yielding results.

- Second, we have re-established the Task Force on Pretrial Justice Reform to address continuing innovations in bail proceedings, and several of you have agreed to serve on that Task Force, for which I am grateful.
- Next, because addiction and drug trafficking do not respect state boundaries, the New England Chief Justices are collaborating on a regional initiative that will help us all receive data on what works, what's not working, and what we can do to step up the New England efforts to eliminate the scourge of drug trafficking and drug addiction from our states.

Moving briefly to those grim statistics, they tell such a heartbreaking story.

- In 2018, approximately 350 drug-induced deaths took mothers, fathers, sons, and daughters away from their families.
- Although that is still nearly one person a day dying from these poisons, it does represent a 16% decrease from 2017 (417).
- Still, more than twice as many people died from drug overdoses as died in car accidents.
- 31 of the 350 deaths were understood to be suicides; the remainder were classified as accidental overdose deaths.
- In 2018, 1,143 doses of Narcan were administered by EMTs in Maine.
- And 904 drug-affected babies were born in Maine.

This epidemic of addiction and mental health crises requires urgent responses.

And responses are needed from the very first days of life, for the babies born to parents who cannot provide a safe environment or the stimulation children need in their first 3 years. Unless the problems are identified quickly, those tiny brains may be forever changed by the presence of violence or by days, weeks, or even months of inattention. All of your work on early life experiences will change lives, and I thank you in advance for those efforts.

Turning to the adults caught up in addictions or grappling with mental health problems—and these problems are not mutually exclusive—we need to expand the options for diverting more people from a life-time of incarceration on the installment plan.

I know that many of you are hard at work on these challenges, and Governor Mills has made her support for tackling the challenges quite clear.

So, to be clear about the ability of the Judicial Branch to respond to the crisis through focused intervention courts, as long as the two current judicial vacancies are filled (and I know that the Governor is working on nominations), the Judicial Branch *does not need funding or legislation* to expand the Family Recovery Court, the Mental Health and Drug Courts, or the Veterans Courts.

All of the funding necessary to respond to the addiction and mental health needs of the public should be focused on the wide range of necessary community-based services that are not within the Judicial Branch budget. Without funding for those services however, provided through DHHS, veterans' organizations, other State agencies, as well as community-based programs, and local housing programs, the trial judges simply cannot expand the specialty courts.

You have heard this list of needed services before:

- Immediate access to mental health, addiction recovery, medical and dental care;
- Safe and sober housing;
- Data collection and analysis. On this point, we should not spend taxpayer dollars without the ability to determine whether what we are doing is working.
- Case managers, coaches, mentors;
- Testing equipment and laboratories that are not backlogged;
- Job training and education opportunities;
- In short—what is needed to expand those dockets is a comprehensive community plan.

The bottom line is this: The Judicial Branch has a protocol in place that allows the creation of new addiction and mental health dockets as soon as the key components are in place in your communities, and you need not focus that Funding on the Judicial Branch.

We are ready when you are.

Finally, I focus briefly on a topic near and dear to my heart: **Juvenile Justice**

And I will get straight to it.

Our children and youth in crisis need more mental health services and recovery facilities designed for youth. They need:

- Safe housing and youth-focused facilities, where they can receive treatment and be protected from predators;
- resources to extract them from human trafficking and keep them from harm;
- well-trained advocates to help them navigate our complex social services and legal systems; and
- a broader range of mental health services and addiction recovery services designed to address the many challenges of growing up in a world in transition.

In this world, cyber-bullies can hurt you from afar. Being different can mean devastating isolation, and it can portend violence just around the corner. And the escape to drugs can look very attractive.

Here is another tragic statistic. From data gathered over a 3 year span, from 2014 through 16, we have learned that 88 of Maine's young people from age 10 to 24 committed suicide in that 3 year period.

Suicide is the second leading cause of death among Mainers between 15 and 24.

So much is needed to help our youth find their way to healthy adulthood.

Maine trial judges will tell you that the single greatest gap in services they see in Maine's juvenile justice courts right now is the absence of options for placement of young people who cannot go home. The need for a continuum of caring and effective placement options for these youth has never been greater.

We all understand that, if the only option for placement in Maine is Long Creek, which is designed for very specific circumstances, we are not doing justice for our children.

This is not a criticism of Long Creek, but Long Creek is not designed to address every child in the juvenile justice system.

Just as there are huge benefits from providing services to new parents and their infants and babies, the benefits of providing improved resources for our youth who are struggling right now cannot be overstated. The ripple effect could be an extraordinary force multiplier.

These children are the future. Let's help them find healthy and engaged lives.

CONCLUSION

In conclusion, I have the usual additional requests:

First, come visit a courthouse near you. Julie Finn will be happy to arrange for you to see any of the public proceedings that interest you.

Second, consider connecting with your local High School to have the Supreme Judicial Court bring appellate arguments to the school in the fall of 2020.

This year, with the help of Representative Mastraccio, we will be at the brand new Sanford High School facility this spring.

In the fall, at the request of Senator Carpenter, we'll be at Houlton High School, then in Old Town, as arranged by Senator Dill, and then in Gorham, with the connections made by Senator Linda Sanborn.

Finally, I take this point of privilege, once again, to urge women over 40 to have their 3-D mammograms. I am healthy and able to be here today because that updated screening tool caught the cancer early. Get it done!

Thank you for the invitation to address this joint convention.