

# THE STATE OF THE JUDICIARY

A REPORT TO THE JOINT CONVENTION OF THE SECOND REGULAR  
SESSION OF THE 126<sup>th</sup> LEGISLATURE

February 25, 2014

## The Future Begins Today

*Presented by*

CHIEF JUSTICE LEIGH INGALLS SAUFLEY

Maine Supreme Judicial Court



*The future depends on what you do today.*

Mahatma Gandhi

**MAINE JUDICIAL BRANCH  
THE STATE OF THE JUDICIARY**

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***The Future Begins Today***

Thank you, President Alfond. Good Morning, Speaker Eves, Honorable Members of the 126<sup>th</sup> Maine Legislature, and citizens of the great State of Maine. I am pleased to be joined here today by my colleagues from the Supreme Judicial Court and the Chiefs of the Trial Courts.

In the gallery are judges from Maine's Tribal and Probate Courts. It is, as always, an honor to have them with us as we make this presentation.

We are missing the Governor this morning, and I want you to know that he graciously offered to cancel his conflicting engagement, but I understand how difficult schedules are at this time of year, and I promised him an autographed copy of this presentation.

I am also joined by my parents, Jan and Dick Ingalls, who have always been stalwart supporters, along with my husband, Bill Saufley, who many of you know as my much better half. I am so fortunate to have had a lifetime of support from my family.

I am also aware of my good fortune to have this extraordinary job, and the opportunity to work with all of you and the Governor in a respectful and nonpartisan way to improve the delivery of justice in the State of Maine.

With your support, we have accomplished a great deal, including substantially improving public safety in our courts. Today, we face major challenges regarding technology, and I seek your support to address this pressing need.

## Overview

My presentation today is in three parts:

1. First, an update on case filings, initiatives, and improvements;
2. Second, a roadmap for harnessing technology to create a fully functioning court management and eFiling system for Maine's people; and
3. Third, I will address the concerns that you and the Governor have raised regarding drug and alcohol addictions that are harming so many people in our beautiful State.

## Updates

To put this update in context, here are the recent statistics regarding the Maine court system.

- **Budget.** The Judicial Branch General Fund budget for fiscal year 2013 totaled 56.6 million dollars, less than 2% of the General Fund budget. Total revenue collected by the Judicial Branch was just over 39 million dollars.
- **Filings.** Almost a quarter of a million new cases (238,198) were filed in 2013, including traffic infractions.
- **Criminal Filings.** Criminal filings, which had fallen slightly in recent years, held steady in Fiscal Year 2013 at 57,331 new criminal filings.
- **Foreclosures.** Mortgage Foreclosure filings, which have been slowing down across the country, did not slow down in Maine. New Foreclosure cases were almost identical in FY 2012 and FY 2013, at just short of 4,500 cases each year. (4,451 - '12, 4,447 - '13)
- **Domestic Violence.** Sadly, the number of Protection from Abuse cases did not decline substantially in 2013, nearly 6,000 new cases (6,251 - '12; 5,866 - '13) were filed.

- Of the 24 new Murder charges that were filed in FY 2013, the Attorney General's Office reports that a third, that is, 8 of the charges were domestic violence related.
- Even sadder, the Attorney General's Office reports that several additional Murders will not be prosecuted because those deaths were part of a murder/suicide. In all, 12 Murders are reported to have been Domestic Violence related.
- There is a bit of good news: this year with the support of the Department of Public Safety, we were able to harness technology to make a critical improvement. Orders for Protection from Abuse are now transmitted electronically to law enforcement officers in their cars and can be served quickly by officers locally or when the abuser is stopped for other reasons, anywhere in the State.
- **Courthouse Safety.** Courthouse safety has improved greatly throughout the State. With your assistance and the support of Governor LePage, we are now able to provide entry screening in our courthouses more than 60% of the time. This is up from 20% just a few years ago—a dramatic improvement, providing much safer courthouses in which Maine people seek justice. **Thank you.** We hope to reach our goal of 100% screening in the next biennium.
- **Generous Lawyers.** Maine lawyers continued to give generously of their time and dollars. In 2013, lawyers provided more than 2 million dollars worth of free legal services to low income Mainers, and Maine judges and lawyers contributed *more than \$500,000* to the Campaign for Justice, which provides legal services to elderly and impoverished Maine people who need help for family, housing, and health related legal problems.
- **Family Law.** In the area of Family Law, we have worked to improve Guardians ad Litem process, and we launched the Family Division Task Force, to undertake a thorough review of the way we provide justice in family matters. Eight public hearings have been held across the State, and we look forward to the recommendations of the Task Force later this summer.

- **Improved Criminal Case Processing.** The time to resolution of criminal cases has been substantially reduced in regions that have the Unified Criminal Dockets, which began in Cumberland and Penobscot Counties, with the help of the defense lawyers and the support of District Attorneys Stephanie Anderson and Chris Almy.
  - Unified Criminal Dockets are now in place in 7 of the 16 counties. The entire time from the filing of the charges to the final resolution of a criminal case averages less than 4 months in those counties.
  - This improved process provides a prompt response for victims of crime, eliminates unnecessary costs for local jails, reduces the length of jail stays for individuals awaiting trial, and benefits public safety by eliminating the delays that make prosecution difficult.
  
- **The Supreme Judicial Court.**
  - The Supreme Judicial Court sat in 3 High Schools in October: Nokomis, at the invitation of Representative Fredette; Orono, at the invitation of Senator Cain; and Cape Elizabeth, at the invitation of Representative Monaghan-Derrig. This fall we will be in the towns of Lincoln, Yarmouth, and Presque Isle.
  - In order to be more accessible to the entire state, we now sit for Oral Arguments twice a year in Bangor. We audio-stream all Arguments, and we maintain those Arguments on our website for several weeks.
  - Last fall, to assist the trial courts, which are always short-handed, all 7 of us on the Supreme Judicial Court sat in the District Courts throughout the State, providing more than a month's equivalent of judge time. It provided us with a stark reminder of the immediacy of the public's justice needs.
  - And this year, with your support, we held the first ever Law School for Legislators, where my colleagues, Justices Gorman and Mead, led a lively discussion about the way courts interpret the words you write in statutes. And you learned that, if you think that we have interpreted your words incorrectly, don't get mad—just get out the legislative drafting pen!

## **eFiling**

That brings me to my second topic—the biggest resource need we face today—the need for improving public service and public safety through new technology—in short “eFiling.”

I am grateful to Governor LePage for introducing LD 1789, *An Act to Modernize and Improve the Efficiency of Maine’s Courts*, and I am grateful to so many of you, who, in a bipartisan fashion, have co-sponsored it. Representative Fredette and Senator Haskell, and all of the co-sponsors, we so much appreciate your support. Thank you.

Let me tell you why this is the most critical Judicial Branch proposal you will consider this year.

- The court’s current database is almost 2 decades old.
- It does not store documents, nor was it designed for the electronic exchange of information. Most of it is programmed in COBOL.
- It has served us well, much longer than we ever expected, but it was never designed for, and it cannot support eFiling.
- We currently handle court files the same way we did 100 years ago. We estimate that more than five million new pieces of paper are filed in Maine’s courts each year; that is not an exaggeration. Five million *new* pieces of paper flow into the clerks’ offices, files, filing cabinets, boxes, and storage.
- The sorting and storage of paper files has filled our courthouses and the State’s Archives to capacity and beyond. Storage challenges create safety hazards and cost an increasing amount of taxpayers’ dollars. There is no end in sight unless we move to digital files.
- But more important than the cost and inconvenience of these paper files is the loss in public access, the difficulty in obtaining reliable data, and the challenge to public safety that follows from an antiquated case management system.

- A new system will first and foremost improve public safety, allowing the necessary information exchange among courts, law enforcement, prosecutors, defense attorneys, state and federal agencies, and Corrections.

I know that I don't have to tell you, the Maine Legislature, that the public deserves electronic access to its government. I can go on-line from anywhere and find the pending bills, the sponsors and committee assignments, the status of those bills, both in the committee and on the floor, the language of proposed amendments, committee hearing dates, and all written testimony.

We seek nothing less for Maine people's access to justice. Case information, schedules, and public documents should be easily accessible. And the system must be carefully designed to assure that certain private information, such as social security numbers or victims' addresses, are well protected.

In the aggregate, reliable data should be available to assist in managing judicial resources. But today, when you ask us for court data to assist you in making public policy decisions, we have a very limited capacity to respond.

One example relates to Domestic Violence. You and the media have asked us to tell you how many Domestic Violence criminal assault charges actually result in convictions. It is a straightforward question. Unfortunately, it is one that we simply cannot answer without a squadron of volunteers to look at every paper file related to assault charges. And some case types, such as mental health proceedings, are not even in the database at all.

I am a firm believer in the adage that you manage what you measure. If we cannot measure some of the most important aspects of our justice system, our capacity to manage is substantially reduced.

Even more frustrating for the public is the lack of easily available information regarding individual cases. If you have a case pending in the Maine courts, you cannot get the schedule on-line, you cannot see the filings from a website, you cannot get electronic access to the judge's rulings.

If the judge has entered an order in your case, you or your lawyer must drive to the courthouse or wait for it to arrive in the mail. This antiquated system makes retaining legal assistance more expensive.

The public deserves better.

In the last Legislature, you asked us to create a plan to address this shortcoming. We have done so, with the help and support of the National Center for State Courts. We have learned from the courts that are ahead of us in this endeavor, and we are now designing the RFP for the new Case Management and eFiling System.

LD 1789 will authorize the funding to purchase that system. It requires no funding in this biennium, and it allows bonding of up to \$15 million, which we will need to issue in the spring of 2015 to keep this project moving.

Without the Legislature's approval, *this year*, we cannot move forward with these plans. Without your approval this session, we will be another year or more behind in the progress toward dramatically improved public service and public safety.

And one final point on technology. Some of you have asked why we need public funding. Why can't we just ask the public to pay for this service?

My answer is this: for the very same reasons that people can access the Legislative Branch without financial barriers, they should be able to access the courts. Approximately 75% of the litigants in family related cases are self-represented. Many are poor or of very modest means. Many don't have credit cards.

Imagine logging in to the court's website to file for divorce or seek an order of protection from abuse and finding that you have to input your credit card number—the credit card you've never had, or you've lost because of overwhelming debt, or that your abusive partner has taken from you.

Access to justice should not depend on your financial capacity.

That doesn't mean that there will not be appropriate opportunities to defray the costs. But the initial investment requires public funding.

We need your support this session to make this happen.

## **Addiction**

Finally, I want to take a moment to address the challenges Maine faces regarding the illegal drugs that have flooded into our State, causing serious human misery.

As you heard from Governor LePage in his State of the State Address, Maine, similar to many other States, is suffering the horrible effects of drug and alcohol addictions. Let me add to the numbers you have already heard:

- Children are suffering as their parents struggle with addictions. New child protection cases, which had dropped to an all-time low in fiscal year 2011 at 555, rose to 938 cases in Fiscal Year 2013. That's almost 1,000 families alleged in one year to need the intervention of the State in order to protect the children.
- In fiscal year 2013, among the 57,000 new criminal charges filed, over 1,700 were new drug trafficking related charges.
- The Attorney General's Office, which handles the most serious of the drug trafficking cases, reports that cases involving the trafficking of heroin rose sharply from 7.7% of the cases in 2012 to 20.41% in 2013.

As we address this challenge, we must remember that addictions are complex human problems, and they will require multi-faceted responses from government, treatment providers, and families.

Prevention must go hand in hand with intervention.

Taking the problem to its roots, the best inoculation against addiction is a healthy childhood, a solid education, and the opportunity for meaningful employment.

### **The Need for Judicial Resources**

At the same time, we must take the necessary steps to stop the flood of heroin and other illegal poisons into Maine.

The criminal justice system is a critical aspect of the intervention efforts, and the courts are a key part of that system.

Maine does not have enough judges. Just a quick review of New England courts is instructive. Using the information provided by the National Center for State Courts, and the courts' own websites, by any measure, Maine has many fewer judges than its New England counterparts, whether we compare judges per population or judges per square mile.

If we are to address the many challenges facing us, the new trial judges proposed by the Governor are sorely needed.

But simply throwing resources at the problem will not be effective.

We must focus on the practices that have been demonstrated to be effective in reducing drug trafficking and addressing addictions.

Today, I suggest a 3-part plan in the courts:

### **1. Improved Criminal Process.**

First, the State must be ready to act promptly when individuals engage in a cold and calculated effort to profit from the sale of illegal drugs in Maine. That requires courts, prosecutors, and defense attorneys to reach and resolve the cases promptly. An expansion of the Unified Criminal Docket into the remaining counties would speed resolution of criminal cases, and could be accomplished much more quickly with the additional judicial resources proposed.

### **2. Drug Courts**

Second, we must be alert for opportunities to help those whose addictions or mental health challenges have led them into lives of chaos and criminal charges.

To do this, we must reinvigorate our Problem-Solving Courts, that is, the Adult Drug Treatment Courts, Co-Occurring Disorder Courts, Family Drug Treatment Courts, and Veterans Court.

Although the Drug Courts can provide only a small part of the solution, they can be quite effective when they are run with rigorous attention to personal responsibility and support for sobriety, including the certainty of consequences for new criminal behavior.

But the numbers of people helped by drug courts has been quite small. In Maine, thousands of new criminal complaints are filed every year in which it is alleged that addictions or mental health problems have played a part in the crime. National statistics tells us that 68% of the jail population, and 53% of the prison population have Substance Abuse Disorders. And last year, more than a thousand Maine families required government intervention to protect their children, many because of addictions.

In the context of those thousands of cases, all of the Drug Courts together involved only 225 people in 2013, of whom only 49 people graduated.

In recent years, the number of people in the drug courts has been declining, even though the numbers of Mainers struggling with addictions appears to be increasing. There are many reasons for this decline, and if we are going to continue to use the resources that are allocated through the Department of Health and Human Services to the treatment and case management programs of the Drug Courts, we must improve the focus on a structured and rigorous program, and re-energize the collaboration among prosecutors, probation officers, defense attorneys, judges, and treatment providers.

With the support of the Trial Court Chiefs, I have charged Justice Roland Cole, the Chair of the Statewide Drug Court Steering Committee, with gathering all of the stakeholders together to re-energize our efforts to provide appropriate diversion sentencing and case management efforts that will offer the hope of health, reduced crime, and safer communities.

### **3. Early Risk Assessment**

Third, national research is showing great promise for effective criminal justice intervention that begins with early, objective Risk Assessments.

- That research indicates that, without effective pre-trial risk assessments, high-risk offenders are too often released, while low-risk offenders wait in jail and become more dangerous.
- Early and reliable risk assessment can improve victim safety, reduce recidivism, and reduce costs to the system.
- Pre-trial risk assessments can assist in diverting low-risk offenders to other services, and provide improved access to treatment, case management, and hope for those who are willing to take responsibility for their sobriety.
- Initial research in jurisdictions that have adopted the consistent use of pre-trial assessment tools indicates that the State spends less on pre-trial incarceration, and at the same time, public safety has been improved.

- The Legislature has already identified objective risk assessment tools as needed in areas of sexual assault and domestic violence. We should expand those efforts to pre-trial detention assessments.

The additional judges proposed by the Governor will make a big difference in our ability to carry out these goals.

We all know that a life filled with hope, dignity, and meaning is the real anti-drug vaccine.

If we work together, the criminal justice system can be a critical part of the solution. I promise that we will work with you, the Legislature, and with the Governor, to do what we can to make Maine a healthier place.

## **Conclusion**

In conclusion, I ask for your continued support in improving our system of justice.

- First, support LD 1789, *An Act to Modernize and Improve the Efficiency of Maine's Courts*. Help us create an eFiling system.
- Second, support the proposals to add more judges to the Maine courts. Public safety, families, and businesses will all benefit.
- Third, support LD 1639, which will provide very modest improvements in merit and longevity pay for our hard-working, committed State employees.
- And finally, I encourage you to spend a day in a courthouse, and I thank those of you who have already done so. Come learn what your constituents will experience when domestic violence, a divorce, a car accident, or a family member charged with a crime brings them into our system of justice.

I thank you for your service to the great State of Maine, and for your time and attention today. I look forward to working with you to continue the improvements in the delivery of justice in the State of Maine.