

The State of the Judiciary  
Chief Justice Valerie Stanfill, Maine Supreme Judicial Court  
Message to the Legislature  
March 23, 2023

Governor Mills, President Jackson, Speaker Talbot Ross, distinguished Members and guests of the 131<sup>st</sup> Maine Legislature, and people of the State of Maine:

I am honored to be here and bring you some updates on the state of the Judiciary, Maine's third branch of government. Now that we have all learned to protect against some of the dangers of COVID transmission, I am particularly delighted to be able to address you in person this year, for the first time, as I tell you about how the Judicial Branch has weathered the pandemic and how we are moving forward.

Before I begin, however, I would like to take this opportunity to introduce and thank members of the Judicial Branch who have accompanied me here today:

Foremost, Senior Associate Justice Andrew Mead, who has appeared in front of you in my stead as recently as last week, as well as in his role as Acting Chief Justice before my appointment to this position. We owe him our deepest gratitude for steering us in the darkest days of COVID.

My colleagues and members of the Maine Supreme Judicial Court: Associate Justices Andrew Mark Horton, Catherine Connors, and Rick Lawrence. And our newest member, Justice Wayne Douglas, appearing for the first time in his new role. Justice Joseph Jabar was unable to be here today as he is in Vienna on a trip that was cancelled and rescheduled more than once due to COVID. And I confess, Rene Jabar has more pull with him than I do.

I would also like to introduce the Chiefs of the Trial Courts: Chief Justice Robert Mullen of the Superior Court, and Chief Judge Brent Davis and Deputy Chief Judge Lea-Anne Sutton of the District Court.

Key members of our administrative team are here as well. First and foremost, our State Court Administrator, Amy Quinlan. With her are two people many of you know: Barbara Cardone, our Director of Legal Affairs and Public Relations, and Julie Finn, our Legislative Analyst. Judges are often the public face of the Judicial Branch, but we cannot function without the talented and critical members of our administrative office.

I specifically want to recognize a few people who are not here:

- Dave Packard, our Chief Information Officer, and the whole information technology team. They have had to respond to an ever-changing explosion of technology needs and have kept us all working.
- Sue Bement, the Clerk of Lewison District Court, and Michele Lumbert, the Clerk of the combined Augusta District and Kennebec Superior Courts. Both helped to navigate

their teams through the unprecedented changes in the last few years, as did all of our clerks, and both are retiring in the next few weeks after more than 4 decades of service to the people of Maine. They will be missed.

- Ted Ross, our Judicial Marshal, and his team of Deputy Marshals. They have kept all of us safe while the pandemic tasked them with the need to screen for COVID symptoms and figure out Zoom while appropriately responding to an increasingly agitated and frustrated public.

And finally, I want to recognize and thank all of the women and men who comprise the Judicial Branch – far too numerous to name – for their hard work, dedication and willingness to serve the interests of justice. I am truly blessed to be surrounded by extraordinary people every day working to serve the people of this State.

In this address, I would like to discuss with you the following topics:

- First, case backlogs, staffing, and other resource pressures on the courts as we emerge from the pandemic;
- Next, what we are asking you to do;
- Third, the status of implementation of Maine eCourts and Odyssey, our new case management system; and
- Finally, I would like to end on a high note and discuss successes we have had despite the pandemic hardships and shortage of resources.

### **Backlogs and Shortage of Resources**

I have been a judge for 16 years. And during my years in particular on the District Court, before COVID and coronavirus were part of our lexicon, it certainly felt like I was working harder and longer, that there was less breathing room, that it was increasingly difficult to get to cases in a timely fashion. We seemed to be running faster all the time and yet struggling to keep up. And I knew that the numbers of cases filed were flat or even down, which seemed inconsistent with my perception. But I also knew that many others, judges and clerks, felt the same way. And indeed, as Chief Justice, I am digging into the data, and it backs up my experience.

The state court system never closed during the pandemic, but there were about 15 months where some dockets, especially jury trials, were significantly curtailed to comply with emergency orders and CDC recommendations concerning distancing and capacity. This led to a buildup of cases that we are still trying to address.

When we talk about backlogs, there really are two issues: an increase in the numbers of cases pending as well as the length of time a case takes. Both of those measures increased dramatically since the beginning of the pandemic, but it turns out that the increases in the number of cases pending as well as the time they take actually started before that, despite overall decreases in filings.

I would like to dive in a little deeper in some areas with you.

## **Criminal dockets**

- We have about 65% more cases pending now than before the pandemic primarily because of our inability to hold any jury trials for a significant period of time. Even though most cases resolve without actually having a trial, it generally does not happen until the trial is scheduled. Without trials being scheduled, far fewer cases are resolved.
- That increase in pending cases fluctuates a little but has held steady for about 2 years now.
- Significantly, the caseload is not evenly distributed across the types of cases. Although the caseload is up 65% overall,
  - o Civil violations are actually down about 35%;
  - o Misdemeanors are up about 60%;
  - o Most importantly, the most serious cases – felonies – are up about 87%.

Obviously more serious felonies tend to take longer both to prepare for trial and to try. They may have more court events. They contribute more heavily to the backlog.

But, again, this trend started before the pandemic: despite modest decreases in overall criminal filings, felonies were an increasing portion of the cases filed before the pandemic. Failures to appear and continuance rates were increasing before the pandemic, again especially in felonies. Judges, prosecutors, and defense attorneys have been working hard to come up with fair and creative ways to dispose of cases, but additional conferences and appearances take additional judge and clerk time.

And it is not just felonies that have become more time consuming. Think of a typical OUI prosecution. When I started as a lawyer, the evidence consisted of a one-page report together with the results of a breath test. Now the reports are many pages, and with the use of body and cruiser cameras by law enforcement it takes far longer for prosecutors and defense counsel to review the evidence. It also takes longer to present the evidence in pretrial motions, with the judge now reviewing all the video. The trial takes longer because hours of video may be played for the jury – what used to be a half-day trial now takes one or one and a half days. Multiply that out by every case filed!

Other factors in complexity and delay include high rates of mental health and substance use disorders. The opioid epidemic and substance use disorders drive not only drug crimes but also crimes involving property and violence. Unless a full range of treatment resources are available both in the community and during incarceration, the cycle simply continues to repeat itself.

Significant mental health disorders are also adding to the complexity of the cases. Judges ordered three times as many mental health examinations in 2022 as we did in 2014. This means a longer pretrial wait while the evaluation is being done, and then additional proceedings once we have the result. Findings that defendants are incompetent to stand trial have more than tripled, even for misdemeanors.

### A couple of other docket trends

The number of child protective cases brought by the Department of Health and Human Services was fairly flat between 2010 and 2017. Then, in 2018-2019 – before the pandemic – protective custody filings nearly doubled. The increased volume of protective custody cases has led to a 50% increase in the number of pending cases, and the amount of court time devoted to child protective cases, which has always been significant, is now about 75% higher than in 2010.

The average time to disposition in family cases was modestly increasing before the pandemic but has significantly increased since the pandemic. This leads to increasing numbers of cases pending, and families with children being left to wait longer periods of time for resolution of their living situations.

Numerous other changes have affected the time devoted to cases. Just a few examples: as a result of the foreclosure crisis, foreclosure cases typically now require trials, which may be short but must occur. Changed statutory procedures for debt-buyer cases require a judge to review every case upon filing. Electronic processes and remote proceedings are efficient for court users but not necessarily for the courts: it takes court clerks about 5 times as long to schedule mediation to be held remotely as for an in-person mediation.

Finally, one of our most pressing struggles is with the scarcity of constitutionally required counsel. All of us care deeply that the constitutional rights of the people who come before us are protected as they face criminal charges or the loss of their children. I know that you recognize the problem. It also affects Maine's court operations in many ways. Our clerks are spending hours and hours trying to find lawyers in cases rather than making a single phone call. Our trial courts shift operations on a regular basis to accommodate the needs of attorneys strained by their case load and spread out through many counties. This means increased use of Zoom, even when it is not otherwise effective. It means cases are continued, whether formally through motions or informally, because there is just too much for the attorneys to handle.

While this crisis is not directly “the court’s problem,” we are all interconnected in this justice system. The problem is multi-factorial, including an aging bar, shrinking rural practices, and not enough new attorneys entering the practice of law. And the lack of lawyers is felt not only in cases where attorneys are constitutionally required, but also in civil cases as well. Our civil legal services providers do what they can, but many people struggle to represent themselves in cases involving their families, housing, protection orders, and other critical needs. Indeed, in most family cases at least one of the parties is self-represented.

### Budget Requests

I have gone into some detail to try to explain how the increased number of cases and the lengthier times to disposition were not created solely by the pandemic. Rather, the pandemic was the tipping point that unmasked the reality that even before 2020, the courts and judicial system were straining to keep up with the demand of cases. We are still struggling to provide appropriate security leading to courthouse closures. We continue to wrestle with the pandemic backlog. Courts are facing progressively complicated cases, new technology demands, overburdened and decreasing numbers of counsel to handle the caseload, and an increasingly frustrated public who also continue to struggle with the fallout from the pandemic.

Together with Amy Quinlan, our State Court Administrator, I have traveled around the state, from Fort Kent to York and Calais to South Paris, visiting our courthouses and the people who work there. I have talked with the judge so discouraged because she cannot make headway regardless of how many cases she jams into dockets or how late she works. I have seen that our clerks are working nights and weekends to try to catch up. I have listened to judges tell me how the light has gone out of the job for them, leading to some early retirements. Our technology folks are working day and night to respond to demand. I witness the marshals calmly responding to increasing agitation and mental health issues at entry screening. Judicial Branch employees are feeling the weightiness of a realization that no matter what we do, we cannot address the backlog. Frankly, it hurts my heart. For folks whose goal is public service and helping others, that is a crisis of confidence.

So what are we asking from you, the 131st Legislature? Our budget requests have focused on resources to address long-term staffing needs.

The Governor's budget includes a substantial number of new positions for the Judicial Branch, as well as general funding for some other existing positions. I should tell you that we actually proposed more new positions to try to stabilize operations. Specifically, our budget request is focused on operations: judges, clerks, marshals, electronic filing specialists, court technology assistants and the like. It also includes funding for increased facility operations, technology, and licensing costs.

With the support of the Governor, I am proposing to add four new judges, three in the District Court and one in the Superior Court, to allow us to handle more cases in a timely manner. Along with each judicial position, we must also add one clerk and one judicial marshal, because we can't move cases along in a courtroom without a clerk and a marshal working with the judge.

These requests were carefully thought out; they were not plucked from thin air. In addition to working hard internally to identify our greatest needs, last fall we asked the National Center for State Courts to collect data and analyze the work loads of our clerks and judges. They have reported that we are significantly under-resourced. We do not have the final written report, but their preliminary data shows that we actually need substantially more judges and clerks than we requested to staff our court system adequately. And that is just to continue at the pace we are going, without regard to the extra work we need to do to clear the backlog.

One other important point to mention about resources. Maine judges are among the lowest paid judges in the nation and have been for years. Maine ranks 51st in judicial salaries, when corrected for the cost of living – 48th in raw numbers. The 3% cost of living adjustment currently in statute is not enough to change that or even keep pace with inflation. I am asking for a modest salary increase for Maine judges to lift them from the bottom. Even with such an increase, Maine's judicial salaries will remain well below our peers in New England. This is a matter of equity for Maine's judges, but it is also necessary because of the salary compression we are experiencing across all positions. Our employees at every level are paid too little for their hard work, and this has led to significant problems with hiring and retaining qualified people, which puts additional strain on the system.

There are many important issues, and we can't do everything at once. Our requests go a long way toward addressing our most pressing needs. I am immeasurably grateful that the Governor has recognized the position the Judicial Branch has been in and has supported these requests, and I hope you will as well.

### Odyssey

I would next like to update you on the status of Maine eCourts, the system known as Odyssey. Odyssey is a fully integrated electronic system for filing, docketing, and case management. Users can file electronically, be notified of court orders, and access documents remotely. In addition, it will be integrated with law enforcement systems, as our current system is, for bail, protection orders and the like.

Odyssey is an "off the shelf" product but one that, critically, can be configured to our needs and processes. Toward the end of 2020, we began accepting electronic filings for all civil and family matters cases except for protection order and civil violation cases in the Bangor District and Superior Courts and in the statewide Business and Consumer Docket. We had previously gone live in the Violations Bureau for all traffic cases statewide.

Unfortunately, the Bangor and Business Court implementation happened during the pandemic, which created even more obstacles to the already complex implementation process. Our IT Department was nothing short of heroic, trying to implement Maine eCourts while also trying to implement new technologies to equip us for remote hearings during the pandemic. Frankly, there were more hitches and issues than expected, and it was much harder on the clerks and judges than anyone anticipated. I cannot thank them enough for how hard they have been working on this project.

In any event, when I became Chief Justice, I became concerned about the number of problems we were encountering, and I wanted to make sure the implementation of Maine eCourts would succeed. At my urging we hired BerryDunn's justice systems consulting group to conduct a Point in Time Assessment of the Maine eCourts project. While work continued behind the scenes on programming, troubleshooting, integrations and the like, we paused any further roll-out or extension of the project in 2022 while we conducted the assessment. That has led to a governance reorganization, and we also hired BerryDunn to continue to work with the Judicial Branch as consultants on the project. In other words, we are setting the stage to maximize success in the next phases of the advancement of Odyssey.

As an aside, I can't help but note that we sometimes underestimate obstacles that aren't obvious. An example: Maine is the only court system in the country working on an Apple system – I work on a Mac laptop. The switch to Odyssey also means switching out all the hardware to PCs, and many of our courthouses simply don't have the wiring or physical space to support running 2 systems while we transition.

I promise you no other state faced that problem in implementing electronic filing and case management systems!

So, where are we going? We have been working with the Department of Public Safety to ensure a smooth integration of Odyssey with the Metro switch, the system that moves protection orders, bail, warrants and the like out to law enforcement. Public Safety has expressed concern that they cannot be ready with their end of the integrated software, so we are focusing on implementing Odyssey for civil and family cases in additional courts. Our intent is to bring the family and civil case type package to Lewiston/Auburn later this year and then move to other implementations. We will keep the public informed of the changes to the system and provide information to help system users to navigate the system.

### Successes

And now I want to highlight some successes, because it is far from being all gloom and doom. Some accomplishments to celebrate:

- For too long people who have walked into our courtrooms have felt excluded because they look different than the portraits on the walls. We are working hard at increasing diversity and inclusion and decreasing implicit bias in the Judicial Branch through educational programming and outreach. For example, we have a new initiative which started in Lewiston to hire court interns born in Somalia. **(Our first intern, Amran Osman, is with us today and I ask that she stand and be recognized.)** There is now a standing court committee to address these issues; we expect to engage more broadly with our justice partners to expand efforts out into the communities we serve and to try to become a much more diverse and inclusive organization.
- We have increased training for our judges in the use of problem-solving courts, such as treatment courts and veterans' courts, to help address the root of the problems that have resulted in the criminal activity.
- We have expanded the use of mental health dockets, to try to better address the significant mental health challenges in our criminal dockets.
- We have improved public court access using Zoom and hybrid appearances, language access, physical access, accommodations for those with hearing loss or other disabilities, and improvement of forms that make document preparation easier.
- We are now using the ShareFile platform for email transmission of filings in criminal cases and are prepared to use it to provide remote access to jury questionnaires.
- We developed a system of email processes for protection orders so that people in need of protection need not make their way to the courthouse.
- Our Violations Bureau is now on a 100% Zoom platform, with the presiding judges based in Lewiston, so that those wishing to challenge a civil traffic violation can do so remotely without having to travel to court.
- We partnered with The Opportunity Alliance to develop and offer information sessions for parents involved in the child welfare system; sessions led by a parent with experience in the child welfare system.
- We continued through the pandemic to offer an annual educational conference to professionals who work in the child welfare system. The 2022 conference focused on trauma-informed practices. Next week will be the first in-person conference since 2020; the focus is on fostering a deeper understanding of the communities the child welfare system aims to serve.
- We are developing resources, practices, and policies to better support self-represented litigants

and court users and facilitate their engagement in their court proceedings. New materials include videos about the court process and handouts that explain how to start certain common case types.

- In August 2022, in partnership with Home to Home and the Maine Coalition to End Domestic Violence, we were awarded a Justice for Families federal grant of \$550,000 to expand the availability of affordable supervised visitation services in Maine and to provide domestic violence training to court-based and court-related personnel who work with families with a history of domestic and sexual violence.

- And, last but far from least: the new York Judicial Center in Biddeford brings the District Courts in Springvale, York, and Biddeford as well as the Superior Court in Alfred all together to one location. It is a modern, fully accessible, and energy efficient facility that will help us realize operational efficiency by not having to duplicate clerk's offices, facility operations, and security screening. We expect to open the building for court business during the month of May, and to have a grand opening for the public in the beginning of June. I hope to see many of you there. And, most importantly, words not often said: the project is on time and on budget.

### Conclusion

I could go on, but from what I have said I hope it is apparent that we are working hard to stabilize Maine's court system and increase transparency, communication, and collaboration with our justice partners. And that is perhaps the most hopeful message of all: working together, we can improve the essential services we offer to our citizens. We can stop the erosion of public trust in our institutions. Together, we can ensure that everyone has confidence that our justice system will serve the public interest, protect individual rights, and provide meaningful access to justice for all of Maine's people.

Thank you.