

**OFFICE OF POLICY AND LEGAL ANALYSIS**  
**Bill Analysis**

**To:** Joint Standing Committee on Judiciary

**From:** Peggy Reinsch, Legislative Analyst

**LD 272 An Act To Establish Separate Prosecutorial Districts in Downeast Maine**

**Public Hearing Date:** February 18, 2021

**SUMMARY**

This bill reduces Prosecutorial District Number 7 to Hancock County and creates Prosecutorial District Number 9 for Washington County.

**TESTIMONY**

**Proponents**

- Representative Tuell, sponsor (written testimony)
  - Senator Moore, cosponsor (written testimony)
  - Representative Perry, cosponsor (written testimony)
  - Christopher Gardner, Commissioner Washington County (written testimony)
  - Jeffrey Davidson (written testimony)
  - Forrest Dale (written testimony)
  - Chief Matthew Dana, Indian Township Police Department (written testimony)
  - Sheriff Barry Curtis, Washington County (written testimony only)
  - Betsy Fitzgerald, Manager, Washington County (written testimony only)
  - Paul Thibeault (written testimony only)
- In presenting this proposal, great care has been taken to bring you multiple perspectives from law enforcement, county government, the bar and others on why it is critical that Washington County have a chance to elect its own district attorney (DA) in 2022.
  - Nearly half a century ago, the Legislature voted to form prosecutorial districts. While doing so may have made sense at the time, and there are parts of the state where it may still work, there are serious flaws to the law which can only be addressed legislatively.
  - The first of these flaws is simple demographics. Hancock County has roughly 60,000 people and Washington County roughly 30,000.
  - In practical terms, during the half century since prosecutorial districts were formed, District 7 has had three DAs. Each lived and worked in Hancock County.
  - To be clear, I am not suggesting we redistrict every prosecutorial district. Instead of taking a one-size fits all approach, we should look to the north and see what our neighbors in a similarly spread out, highly rural county such as Aroostook have done by forming their own prosecutorial district.
  - Like Aroostook County, Washington County is spread out.
  - People have a reasonable expectation that their elected officials are accessible – even, and especially, during the time of Zoom. To be accessible, you have to be there, and you cannot be in two places at once.

- As you will hear, this is not simply an academic debate as to what districts ought to look like. It has real world implications for our law enforcement, substance abuse and recovery services – access to justice as a whole – and the management of our county government.
- Some will argue that separating is going to cost too much. We can address in work session any cost concerns raised by opponents of this measure, and would encourage you to invite them to offer additional information and solutions.
- Some may likewise argue that we have a scarcity of lawyers in Washington County. That does not mean that we always will, and it also does not account for the fact that lawyers with family or professional ties to Washington County may be interested in coming home to serve their community.
- Before I close, I want to touch on the history of this bill. I originally submitted it in September 2019 with the intention of having a two-county referendum in November 2020. Legislative Council agreed that the bill could proceed during the emergency session, and this committee heard arguments. At the time, all of us were on board with a referendum. At the time, we felt it important that the voters decide. At the time, COVID-19 was not a part of the equation. Unfortunately, COVID made a referendum impossible before the 2022 election cycle.
- That is why I am here today asking for a straight up split. In less than a year, residents of Hancock and Washington counties will begin evaluating candidates for district attorney.
- Those candidates, their supporters, and the prosecutorial districts they represent, deserve as much lead time as possible to make a successful transition. They deserve the best chance for success, and those demanding justice in both counties deserve that as well.
- Washington County covers 3,258 square miles with a population during the 2010 census of 32,856 and is currently part of District 7 with Hancock County.
- In comparison, Hancock County is 2,345 square miles with a population of 54,418 (2010).
- Washington County’s footprint is spread out similar to Aroostook County. Travel from one end of Washington County to the other could take 5 hours, let alone travelling from Calais or Danforth to the Courthouse in Ellsworth especially in bad weather.
- Creating Prosecutorial District #9 for Washington County will give the public, counsel and those involved in court proceedings greater access to justice without delays and with the full support of all law enforcement personnel in their communities.
- Cost wise, each county currently pays for buildings and support staff. This would not change under this bill, nor would it stop each county from collaborating with others, or even sharing resources with one another.
- Would not increase personnel – have one Washington County ADA position become DA
- I first discovered the extent of Washington County's opiate problem in 2000 because of the significant jump in cases of Hepatitis C.
- Through further research, I also found the same level of increase in drug-related arrests. Washington County was the “canary in the coalmine” of the opiate problem in Maine.
- The opiate crisis is a problem which needs immediate response and the ability for its victims to make it through the courts in a timely manner. They need to quickly get into the appropriate program such as drug court or another form of rehabilitation or mental health service.
- LD 272 would help residents with substance abuse and legal woes to both resolve their cases and get the help they need more quickly.
- We need a District Attorney who knows the particular culture and make up of Washington County so that the criminal justice system may work more efficiently and with a greater level of cultural sensitivity.

- The issues facing our county are much like that of the statewide drug epidemic, but the economics of rural Maine, our unique cultural composition and simply our size complicate the issues greatly.
- It has hit us all very hard and very fast and in ways that are not just common criminal activity, something this committee understand better than most. As such we need to change how we respond as the situation is forever evolving.
- The court system sadly ends up playing a central role in this issue. The Court system and prosecutors have seen an explosion in workload. A workload that has seen fewer diversionary opportunities as changes in probation rules over a decade ago has made jail one of the only options.
- Yet our jails are overcrowded, underfunded and not equipped to handle many who are oftentimes people with addictions more than they are simply criminals.
- More than ever the law enforcement and the court system are being asked to do more than they ever have in ways that perhaps they ever could have imagined that they would need to do.
- As such caseloads increase, and prosecutors simply don't have the time to devote to meaningful prosecution, diversion and/or disposition.
- Perhaps at no fault of his own DA Foster has found his office on the end of criticism at the law enforcement and the public due to the manner in which his office is forced to deal with these complex issues.
- Adding to all of this, Washington and Hancock County has dealt many times with being understaffed at the ADA level over the past few years as there has been a series of departures and short-term appointments.
- We know "funding" is always a problem but we also know that "funding" isn't always the only solution.
- Knowing we could always use more prosecutorial and court personnel, we also need to look at how we can do better utilizing the resources we have now.
- We feel this bill is a step in that direction. Currently there are three positions effectively allocated to Washington County through District 7, understanding there is at times sharing if need be.
- As funding is scarce, perhaps instead of adding positions, what if we simply changed them: Under this bill we see a scenario where the three ADA positions turn into 2 and the salary of the third be augmented to make a full DA.
- Again, if we can't fund adding "more bodies" the much smaller differential cost is much more palatable and probable, especially in these times.
- We do not make light of the needed investment in this change at both the State and County level and we have to get creative and be committed.
- We stand ready be a partner in this regard and offer you our commitment that whatever increases in the County budget occur as a result of these changes we stand ready to fund.
- We understand Hancock County legislators have signed on as co-sponsors and Hancock County Sheriff Scott Kane stands in support and Hancock County Commissioners have voiced no major objections understanding that we are proposing to simply repurpose Washington County staff.
- The matter was also discussed at the Maine County Commissioners Association meeting in recent days and the MCCA Board of Directors were also not opposed to the bill, taking a position of neither for or against simply due to the fact that they saw the issue as more of a regional one between the two counties rather than one with statewide implications.
- The people of Washington and Hancock Counties would be served well if each had its own dedicated prosecutorial office to uniquely set a plan for dealing with the issues the counties face.
- Each having their own District Attorney would allow for better focus and accountability to the public for the issues society faces in these two counties.

- I'm the only criminal defense attorney who lives in Washington County who is qualified through MCILS to accept homicide cases and sexual offenses
- Deputy District Attorney ran the Washington County office
- Washington County has had numerous Assistant District Attorneys serving here.
- Most of them had very little to no experience when hired and they did not stay in the office long enough to form the bonds with the local police departments that are required to effectively prosecute crimes in Washington County.
- The reason for this is simple. Young professionals simply do not want to move to Washington County and settle down, because the County offers very little by way of lifestyle for a young professional.
- We now have two full time attorneys and one half time attorney, however one of the full-time attorneys splits his time between the two counties.
- The effect of this is that when there was attrition in the district, it was Washington County that lost out. We now have the equivalent of two full time attorneys and it is not sufficient, particularly in light of the exploding dockets due to the covid pandemic.
- For the past year, this County has been functioning with less than its normal allotment of Assistant District Attorneys. While they are doing an admirable job, it is clearly not sufficient.
- There are more than 1,000 cases, both criminal and civil, prosecuted in Washington County in both Calais and Machias courts each year. With the current functional equivalent of 2 attorneys, that is a case load of 500 cases per year, simply because it is so difficult to recruit attorneys to work and live in Washington County. That is a ridiculous number of cases and well above the case load recommended by responsible bar associations.
- Considering that the drug crimes in Washington County are perhaps the biggest concern we have in the criminal system due to the associated violence, overdoses and other crimes which it brings, it is clear that Washington County needs its own District Attorney.
- We need someone who is answerable to us in an election.
- We need someone who is present every day to work with the police, set consistent policies, gain institutional knowledge of our County, knows the cases that are pending and be available to work with the courts and defense counsel.
- We need someone who can train and oversee the office on a daily basis, not one or two days a week.
- The current system is failing far too many people
- Having a Washington County Prosecutorial District separate from Hancock County, not only benefits the Passamaquoddy Tribe, it would greatly benefit Washington County as a whole.
- The complexity of the Maine Indian Land Claims Settlement Act and the Maine Implementing Act, in regards to the jurisdiction within the Indian Territory, can be hard to grasp if you don't live it every day. This is why I feel it is very important for Washington County to have its own Prosecutorial District. To have Assistant District Attorneys and the District Attorney who deal with these types of cases on a frequent basis would greatly benefit Washington County and the Passamaquoddy Tribe.
- The types of crimes have changed, the frequency of crime changed and the demands of law enforcement has changed.
- Since law enforcement officer's caseloads become the caseloads of the District Attorney's Office, these changes have also greatly impacted them.
- Over the last five years, in my position as Sheriff, I have seen a decline in the number of cases being prosecuted. It seems more and more cases are plea down or just dismissed. I feel this is a direct correlation to the caseload and lack of personnel in Washington County.

- I understand the difficulties in running and managing offices so far away from one another, while still working on caseloads, and running the office in Hancock County and working so shorthanded.
- I want to be clear, when I say, this is not about our current District Attorney, this is about the position of District Attorney.
- I have practiced in prosecutorial districts where the state prosecutors are familiar with tribal communities and their cultures, as well as jurisdictions where state prosecutors have very little knowledge about Native Americans.
- I believe that a separate prosecutorial district for Washington County will enhance criminal justice for Native people.

### **Opponents**

- Zach Heiden, ACLU Maine (written testimony only)
  - A culture of punishment, combined with race- and class-based discrimination, has led the United States to rely on incarceration more heavily than any other country in the world does.
  - The politicization of criminal justice policy and a lack of evidence-based assessment result in a one-way ratchet in which law and policy grow ever more punitive.
  - The human and financial costs of mass incarceration are staggering, and the burden falls disproportionately on the poor and people of color.
  - We understand that having a separate elected District Attorney in Washington County could potentially lead to better decisions concerning the criminal justice system. Such a District Attorney, because they are selected from among the people of Washington County, might be more aware of the devastating effect that the criminalization of poverty and addiction have had for the people of Washington County, and they could be a powerful voice for ending those practices.
  - But, we worry that the establishment of a new prosecutorial district constitutes an expansion of the criminal justice system, and we believe that a wiser course of action would be to look for ways to shrink that system.
  - In addition, we would note that Maine already has eight District Attorney's offices, as well as an Attorney General's office, as compared to zero public defender offices. While addressing this imbalance in resources is beyond the scope of this legislation, we felt compelled to remind the committee of it in connection with its deliberation.

### **Neither for nor against**

- None

#### **FISCAL IMPACT:**

Not determined as of February 28, 2021

#### **BACKGROUND**

The existing prosecutorial districts were established in 1973 when the Legislature eliminated the county attorney system and established full-time district attorneys compensated by the State. The districts have not been amended. (The recodification of Title 30 in 1987 repealed Title 30, section 553-A and created new Title 30-A, §254.)

In the 129th Legislature, Representative Tuell introduced legislation that the Judiciary Committee supported to provide for an advisory referendum of both Hancock and Washington County voters.

**CURRENT LAW****30-A §254. Prosecutorial districts**

**1. Prosecutorial District Number 1.** There shall be one district attorney for York County, which shall be known as "Prosecutorial District Number 1." The district attorney shall be elected by the voters of York County in the manner set forth in section 251.

**2. Prosecutorial District Number 2.** There shall be one district attorney for Cumberland County, which shall be known as "Prosecutorial District Number 2." The district attorney shall be elected by the voters of Cumberland County in the manner set forth in section 251.

**3. Prosecutorial District Number 3.** There shall be one district attorney for Oxford, Franklin and Androscoggin Counties, which shall be known as "Prosecutorial District Number 3." The district attorney shall be elected by the voters of Oxford, Franklin and Androscoggin Counties in the manner set forth in section 251.

**4. Prosecutorial District Number 4.** There shall be one district attorney for Kennebec and Somerset Counties, which shall be known as "Prosecutorial District Number 4." The district attorney shall be elected by the voters of Kennebec and Somerset Counties in the manner set forth in section 251.

**5. Prosecutorial District Number 5.** There shall be one district attorney for Penobscot and Piscataquis Counties, which shall be known as "Prosecutorial District Number 5." The district attorney shall be elected by the voters of Penobscot and Piscataquis Counties in the manner set forth in section 251.

**6. Prosecutorial District Number 6.** There shall be one district attorney for Sagadahoc, Lincoln, Knox and Waldo Counties, which shall be known as "Prosecutorial District Number 6." The district attorney shall be elected by the voters of Sagadahoc, Lincoln, Knox and Waldo Counties in the manner set forth in section 251.

**7. Prosecutorial District Number 7.** There shall be one district attorney for Hancock and Washington Counties, which shall be known as "Prosecutorial District Number 7." The district attorney shall be elected by the voters of Hancock and Washington Counties in the manner set forth in section 251.

**8. Prosecutorial District Number 8.** There shall be one district attorney for Aroostook County, which shall be known as "Prosecutorial District Number 8." The district attorney shall be elected by the voters of Aroostook County in the manner set forth in section 251.