

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

**To:** Joint Standing Committee on Judiciary

**From:** Peggy Reinsch, Legislative Analyst

**LD 310 An Act To Establish Education Requirements for Judges**

**Public Hearing Date:** February 24, 2021

**SUMMARY**

This bill is a concept draft pursuant to Joint Rule 208.

This bill would establish equitable and equivalent continuing legal education requirements for probate judges and judges and justices of the district courts and superior courts.

Probate Court Judge Jarrod Crockett submitted a proposed committee amendment.

**TESTIMONY**

**Proponents**

- Senator Bailey, sponsor
- Jarrod Crockett, Judge of Probate, Oxford County, Probate Judges Assembly (written testimony, PROPOSED COMMITTEE AMENDMENT)
- Leo Delicata, Legal Services for the Elderly
  - Original purpose is to make the continuing legal education requirements for District Court judges and Superior Court justices apply to Probate Court judges, rather than attorney CLE requirements
  - The goal of LD 310 is to treat probate judges similarly to district and superior court judges with regard to continuing legal education (CLE) requirements.
  - Currently under Maine statute, probate judges are not required to fulfill the same continuing education requirements as district and superior court judges. This is a result of the probate courts being county courts, which were created in Article VI of the Maine Constitution.
  - The probate courts are courts with equitable power exercising jurisdiction over only certain types of cases and funded by county government, as opposed to the state.
  - This last portion also means the probate courts do not operate under the supervision of the Judicial Branch.
  - That being said, the decisions of probate courts are appealable to the Law Court, the same as any other courts in the state.
  - The sixteen probate judges are subject to the Judicial Canons, as well as oversight by the Judicial Responsibility and Disability Committee, the County Commissioners of their respective counties and ultimately the voters of their county.
  - These layers of oversight provide a number of protections from a potential rogue probate court judge.
  - Currently probate court judges need to satisfy the continuing legal education requirements of all other attorneys in the State in accordance with Maine Bar Rule 5.
  - This differs from the state court judges who are exempt from the requirements under Maine Bar Rule 5 (d) (1) (A), because the judicial branch requires participation in other

- forms of continuing education. (Judicial law clerks and legislators who are attorneys are also exempt under Maine Bar Rule 5.)
- Ironically, probate judges are able to satisfy these CLE requirements through any number of presentations. For example, a probate judge could take a CLE in maritime law or immigration to satisfy the requirement despite the fact these topics have little bearing on the probate court or its area of jurisdiction.
  - LD 310 would result in probate court judges being exempted from the Maine Bar Rule 5 and instead being required to focus their continuing education on matters relevant to the operations of courts, similar to the state court judges under the direction of the Judicial Branch.
  - This bill may seem like a small step, but it is actually a large leap.
  - First, it is a step towards uniformity between the probate and state courts, a goal this committee has been working towards for decades.
  - The concept of uniformity is also vital to any future effort to unify the probate courts with the state judicial branch, as it will make transition easier.
  - LD 310 is novel in the fact it gives the Judicial Branch some authority over a portion of the training received by probate judges. This has never been the case in the past and is a significant shift.
  - During past legislative sessions, spanning decades, this committee has been asked to alter the manner in which probate courts have operated or are comprised.
  - This bill represents a step the majority of the probate judges assembly agreed was appropriate.
  - While we initially sought to accomplish this bill's objective by amending the Maine Bar Rule through the assembly's liaison with the Judicial Branch, further research revealed this was not permissible. Although exempting county court judges from CLE's in the same manner as superior and district court judges is possible, the Supreme Judicial Court could not require probate judges to meet the same judicial educational requirements as district or superior court judges.
  - For this reason, this new requirement, if it is to be imposed on the probate court, must be done in statute passed by the legislature.
  - In summary, this bill, as amended, is a step in the direction sought by previous Judiciary Committees, and likely bears very small expense.
  - The result would be more uniformity, standardization and a degree of input from the Judicial Branch, which does not currently exist.
  - The probate courts are receptive to the imposition of this new requirement in hopes of making all the courts of Maine better for the good people who live here.
  - PROPOSED COMMITTEE AMENDMENT
  - Strongly support – very forward-thinking step on behalf of the Probate Courts
  - Judge Crockett is good at trying to implement the recommendations of the Futures Commission chaired by Judge Harriett Henry

### **Opponents**

- None

### **Neither for nor against**

- Julia Finn, Judicial Branch (written testimony)
  - The Judicial Branch has not discussed the proposed committee amendment and has not yet taken a position

**FISCAL IMPACT:**

Not yet determined

**BACKGROUND**

Currently, each county has its own Probate Court with an elected Probate Judge and an elected Register of Probate. The counties determine the compensation and fund the courts, although the courts and registers charge fees that are paid to the respective counties. The State provides little unifying structure for the Probate Courts. The judges are part-time and can practice law when not presiding in court. The judges have formed the Probate Judges Assembly, and the registers have formed the Maine Association of Registers of Probate.

Title 4, chapter 7 provides for the jurisdiction of the probate courts as well as terms of office and alternatives for when the judge is unavailable or has a conflict of interest.

The Maine Constitution, Article VI, Section 6 provides for the election of judges and registers:

**Section 6. Judges and registers of probate, election and tenure; vacancies.** Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the Tuesday following the first Monday of November, and shall hold their offices for 4 years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the November election, next after their occurrence; and in the meantime, the Governor may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid.

Note: Section 6 of Article VI has been repealed by Amendment which by virtue of Chapter 77 of the Resolves of the One Hundred and Third Legislature, 1967 "shall become effective at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges."

Several court structure and jurisdiction studies have recommended incorporating the Probate Courts into the Judicial Branch with full-time judges appointed by the Governor and confirmed by the Legislature. One such study was the Commission to Study the Future of Maine's Courts ("the Futures Commission"), chaired by Judge Harriett Henry in 1993. The Probate Court recommendation:

**4. Probate Court**

- a. **Full-time Probate Judges.** The structure and function of the Probate Court should remain essentially unchanged at the present time. However, as the current part-time probate judges finish their terms, the positions should be filled through appointment of 4 full-time probate judges. Although their work would largely be within the Probate Court, these judges should be part of the Judicial Branch, receive the same pay as other trial judges, and be available for cross-assignment in the District and Superior Courts. Administratively, the Judicial Branch should establish regions to be served by the various Probate Court Judges which reflect groupings of counties that are geographically contiguous.
- b. **Registries and the Courts.** The Probate Courts and Registries should become part of the Judicial Branch when other changes in the court system have increased the accessibility, affordability, and efficiency of the system to the level of the present Probate Courts. Paralleling the clerks of courts, the registers should be appointed. The transition from county to state courts should be done with the cooperation of county government.