

132nd Legislature
Senate of
Maine
Senate District 29

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*Testimony of Senator Anne Carney introducing
LD 1766, An Act to Incorporate Probate Judges into the Maine Judicial Branch
before the Joint Standing Committee on Judiciary*
January 7, 2026

Representative Kuhn and esteemed members of the Judiciary Committee, I am Anne Carney, proudly representing Senate District 29, which includes South Portland, Cape Elizabeth and part of Scarborough. It is a pleasure to introduce LD 1766, “An Act to Incorporate Probate Judges into the Maine Judicial Branch” to you this morning.

This legislation gives us the opportunity to implement a constitutional amendment approved by the Maine voters in 1967. In 1967, Maine’s voters approved the repeal of the provision in Article VI of the Maine Constitution that forced the Probate Courts to remain outside the state court system. The language of the amendment provides that it would become effective “at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges.”

Why did this reform matter to the voters in 1967, and why does it matter today?

The answer is the same. Individual county-based part-time judges do not have the resources necessary to meet the needs of Maine people in court matters that involve personal liberty – as guardianship matters do; complex financial issues related to managing an individual’s or a family’s life savings – as trust and estates do; and preventing the exploitation of children, Mainers with disabilities and older Mainers.

Necessary resources include:

- The professional development and training provided to Judges and Justices within the judicial branch.
- A unified system that ensures Mainers in Fort Kent, Eliot and everywhere between receive fair and consistent outcomes under Maine’s Probate laws.
- Efficient and cost-effective training and administration of Maine’s Probate Courts.
- Increased access to guardians ad litem and attorneys for indigent individuals disputing a petition for appointment of a guardian or conservator.
- And for those who will be appointed to serve as full-time probate judges serving within the Judicial Branch, freedom from apparent and sometimes actual conflicts of interests that arise from having judicial authority over an attorney in a probate case who is opposing counsel in a private practice case.

Is this the right time to incorporate the Probate Courts into the Judicial Branch?

Through our work as a committee, we have acquired significant and detailed knowledge of the modernization of the judicial branch that is occurring, from implementation of Maine eCourts, the Judicial Branch's new eFiling, online payment, electronic court records, and electronic case management system to replacing or renovating courthouses so that they provide a safe, accessible place for Mainers who seek justice. Some projects, like the Capitol and York Justice Centers, have been completed. Others are nearing completion, like the eCourts system.

We have also strengthened our state's ability to provide for the 6th amendment rights of criminal defendants, parents in child protection cases and to appoint guardians ad litem.

Perhaps most importantly, we now have a plan and broad support from the Judicial Branch and stakeholders for incorporating the probate courts into the Judicial Branch. During the 130th Legislature, a resolve established the Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch. Testimony in support of the plan in 2022 noted:

The 15 members who comprised the Commission, ably supported by two experienced members of the Office of Policy and Legal Analysis, had precisely the right knowledge, experience, and perspectives to design a different probate court system. The Commission's detailed and comprehensive Report reflects its careful, thoughtful, and hard work. The Report's proposed plan would finally implement the will of Maine's voters in 1967 in a way that reflects Maine's current needs.

Testimony of Deirdre M. Smith, Esq. in support of LD 1950, submitted to the Joint Standing Committee on Judiciary, February 9, 2022.

The amendment I am presenting today, a summary of which is attached to my testimony, changes the legislation introduced in 2022 in a few important ways. First it updates the implementation timeline and plan to be consistent with the election cycles and terms of the current probate judges, who serve four-year terms of office.

Second, although not reflected in the text of the bill, the amended version of the bill authorizes the judicial branch to hire a Project Manager as soon as possible, and General Fund appropriations will be added to the bill for that purpose, to help the judicial branch prepare for the establishment of the state Probate Court on January 1, 2029. The State Court Administrator suggested this position as a way of ensuring the efficient and effective implementation of the plan. Incorporating the probate courts into the judicial branch involves consideration of facilities, technology and other administrative matters not within the scope of the Commission and the plan it developed. Bringing on a project manager early in the implementation will make the transition smooth and ensure that the incorporation is methodical and cost-effective.

I am happy to answer your questions now or at the work session. Thank you for your consideration.

Senator Carney's Proposed Amendment to LD 1766
For Public Hearing – January 7, 2026

Senator Carney Proposes to amend the implementation timeline set forth in the bill as follows:

- **On the general effective date of the legislation** — *i.e.*, 90 days after adjournment of the legislative session — the Maine Judicial Branch will be authorized to hire a project manager to begin the process of planning the incorporation of new state probate court judges into the Maine Judicial Branch.
- **On January 1, 2029**, the first cohort of 4 full-time state Probate Court Judges appointed by the Governor and confirmed by the Legislature will begin presiding over probate proceedings in York, Kennebec, Somerset, and Aroostook Counties — *i.e.*, court regions 1, 4 and 8. One of these judges will also be designated by the Chief Justice of the Supreme Judicial Court to serve as the Chief Judge of the state Probate Court.
- **On January 1, 2031**, the state Probate Court will operate statewide, presided over by 9 full-time state Probate Court Judges appointed by the Governor and confirmed by the Legislature, one of whom will be assigned to serve as the primary judge in each court region of the state. The Chief Justice of the Supreme Judicial Court will designate one judge to serve as the Chief Judge of the state Probate Court.

If the bill summary for LD 1766 were rewritten to summarize the bill as it would be amended by Senator Carney's proposed amendment, it would read as follows (highlighted text indicates a change from the original bill):

This bill, as amended, generally implements the recommendations of the Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch, referred to in this summary as "the commission." The report is available online at <https://legislature.maine.gov/doc/7703>.

Maine's county Probate Courts occupy a unique position in Maine's justice system. Unlike Maine's other trial courts, Probate Courts are not part of the state judicial branch and Probate Court Judges are not appointed by the Governor and confirmed by the Legislature. Instead, pursuant to the former Constitution of Maine, Article VI, Section 6, Probate Court Judges and Registers of Probate are elected to 4-year terms in each county. Although the caseload varies from county to county, it is generally understood that Maine's county Probate Court Judges serve on a part-time basis and, accordingly, they are authorized to engage in the practice of law.

In 1967, the Legislature passed Resolve 1967, chapter 77, which proposed an amendment to the Constitution of Maine that would repeal Article VI, Section 6 and would "become effective at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges." This constitutional amendment was approved by a majority of the voters of Maine on November 7, 1967. In its report, the commission recommended that the Legislature implement this constitutional amendment by establishing a new state Probate Court with full-time, appointed state Probate Court Judges. Part A of the bill sets out that it is the intent of the Legislature that the enactment of this legislation, which implements the commission's recommended new Probate Court system with full-time judges, will trigger the repeal of the Constitution of Maine, Article VI, Section 6 pursuant to Resolve 1967, chapter 77 on the date that this legislation is approved.

Although this bill is intended to trigger the repeal of the Constitution of Maine, Article VI, Section 6, which provides for the election of probate judges, the commission did not recommend and the bill does not provide for the removal from office of any county Probate Court Judge prior to the expiration of the term to which the judge was previously elected under the Constitution. To avoid that result, the commission recommended a multiyear, multistep process for establishing a new state Probate Court with

full-time judges. Part B of the bill, which is effective immediately, Part C of the bill, which is effective January 1, ~~2027 2029~~, and Part D of the bill, which is effective January 1, ~~2029 2031~~, implement this multiyear, multistep process as follows.

1. Parts B and D of the bill establish a state Probate Court within the judicial branch that is distinct from the District Court and Superior Court. By January 1, ~~2029 2031~~, the state Probate Court will be staffed by 9 full-time judges appointed by the Governor and confirmed by the Legislature, including one judge assigned to serve as the primary judge in each of 8 new Probate Court regions that will be aligned with the State's 8 prosecutorial districts.

A. When the terms of the incumbent probate judges in ~~Androscoggin, Franklin, Knox and Penobscot Oxford, Sagadahoc, Lincoln and Waldo~~ counties expire on December 31, ~~2026 2028~~, they will be replaced by county Probate Court Judges elected to 2-year terms that will expire on December 31, ~~2028 2030~~.

B. When the terms of the incumbent probate judges in ~~Cumberland, Hancock and Washington York, Kennebec, Somerset and Aroostook~~ counties expire on December 31, ~~2026 2028~~, they will be replaced by 4 new state Probate Court Judges appointed by the Governor and confirmed by the Legislature in the same manner that District Court Judges and Superior Court Justices are appointed and confirmed for terms that commence January 1, ~~2027 2029~~. Although not reflected in the text of the bill, the commission also recommended that these judges be supported by one new law clerk, one new judicial administrative assistant and 4 new court marshals.

C. Beginning January 1, ~~2027 2029~~, the 4 new state Probate Court Judges will preside over probate proceedings in ~~Cumberland, Hancock and Washington York, Kennebec, Somerset and Aroostook~~ counties while the remainder of the State's 16 counties will continue to be served by an elected county Probate Court Judge. If a judicial vacancy occurs in a county Probate Court after January 1, ~~2027 2029~~ due to the death, resignation or retirement of the elected county Probate Court Judge, the vacant position will not be filled and jurisdiction over that county's probate matters will be transferred to the new state Probate Court. If the Chief Justice of the Supreme Judicial Court determines that the number of state Probate Court Judges is insufficient to provide for the efficient administration of justice in all of the counties served by the new state Probate Court, the Chief Justice may request that the Governor appoint an additional state Probate Court Judge. Although not reflected in the text of the bill, to ensure that funding is available for all of the new potential state judgeships as they arise, the commission also recommended that all 9 new state Probate Court Judge positions be funded through General Fund appropriations commencing on January 1, ~~2027 2029~~.

D. When the terms of all remaining county Probate Court Judges expire on December 31, ~~2028 2030~~, they will be replaced by the number of new state Probate Court Judges necessary to achieve a full complement of 9 state Probate Court Judges. Although not reflected in the text of the bill, the commission also recommended that these new judges be supported by a 2nd law clerk and judicial administrative assistant and by 5 additional court marshals.

E. Although not reflected in the text of the bill, the ~~commission also recommended that the judicial branch be authorized to hire an information technology specialist and a facilities manager~~ amended version of the bill authorizes the judicial branch to hire a project manager as soon as possible, and ~~that~~ General Fund appropriations will be added to the bill ~~provided~~ for that purpose, to help the judicial branch prepare for the establishment of the state Probate Court on January 1, ~~2027 2029~~.

2. Parts B, C and D of the bill direct the Chief Justice of the Supreme Judicial Court to designate one appointed state Probate Court Judge to serve as the Chief Judge of the Probate Court, who is charged with

fulfilling administrative duties similar to the administrative duties of the Chief Justice of the Superior Court and Chief Judge of the District Court. These duties include facilitating the transition from the county Probate Court system to the state Probate Court system; creating the statewide Probate Court schedule; ensuring uniformity of court processes and procedures and that emergency matters are prioritized and addressed expediently; securing and ensuring the accessibility and safety of Probate Court facilities; and preparing annual reports on the business of the state Probate Court.

3. Parts C and D of the bill direct that state Probate Court proceedings be held in existing county Probate Court facilities if possible and require the Chief Judge of the Probate Court to negotiate leases, contracts or other arrangements between the counties and the judicial branch regarding the use of those facilities. When necessary, state District Court and Superior Court facilities may also be used for Probate Court proceedings.

4. Parts B, C and D of the bill preserve the county registries of probate.

A. Part B of the bill provides, by statute, for the election of county Registers of Probate under the same terms and conditions applicable to county register of probate elections under the Constitution of Maine, Article VI, Section 6, which will be repealed on the date that this legislation is approved.

B. Parts B, C and D of the bill further provide that, as each county transitions to the state Probate Court, that county should continue to retain all fees filed in state Probate Court proceedings in that county to offset the costs of maintaining its county registry of probate and of paying registry staff. These costs include, for example, the cost to maintain the current electronic management system for probate court records that the commission recommended retaining during the multiyear transition to the new state Probate Court system.

5. Part C of the bill provides that, beginning January 1, ~~2027~~ 2029, the Maine Commission on Public Defense Services is responsible for paying and for establishing the minimum experience, training and additional qualifications for attorneys appointed to represent indigent individuals at public expense in all state and county Probate Court proceedings. Although not reflected in the text of the bill, the commission further recommended that the Legislature provide new General Fund appropriations to the Maine Commission on Public Defense Services to cover the cost of these appointments.

6. Parts C and D of the bill require the judicial branch to establish the minimum experience, training and additional qualifications for court-appointed visitors in state Probate Court proceedings and to pay the expenses of both court-appointed visitors and court-appointed guardians ad litem in state Probate Court proceedings when the parties are indigent or the court is allowed or directed by law to pay these expenses. Although not reflected in the text of the bill, the commission recommended that the Legislature provide new General Fund appropriations to the judicial branch to cover the expenses associated with the new requirements. Part C of the bill clarifies that, if a guardian ad litem or visitor is appointed at public expense in a county Probate Court proceeding, the county remains responsible for paying the court-appointed professional's fees.

7. Finally, Part D of the bill establishes the Commission to Evaluate the Incorporation of the Probate Court into the Judicial Branch, a 15-member study group composed of the same categories of members appointed to the Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch. Part D of the bill directs the new commission to conduct a thorough review of the new state Probate Court system in ~~2031~~ 2033, which must include, but is not limited to, evaluating whether the number of supported state Probate Court Judge positions proposed is appropriate or should be adjusted; whether the jurisdiction of the state Probate Court, District Court and Superior Court should be adjusted to increase judicial efficiency and access to justice; whether to authorize assignment of state Probate

Court Judges to preside over District Court or Superior Court dockets to the same extent that the judges in the District Court and justices in the Superior Court are available for cross assignments; whether additional investments should be made to enhance the compatibility of the Probate Court and judicial branch electronic case management systems; and whether additional opportunities exist to advance toward the ultimate goal of fully incorporating the Probate Court system into the judicial branch. No later than December 31, ~~2031~~ ~~2033~~, the commission is required to submit a report that includes its findings and recommendations, which may include suggested legislation, for presentation to the joint standing committee of the Legislature having jurisdiction over judiciary matters. The joint standing committee may report out legislation related to the report to the ~~125th~~ ~~137th~~ Legislature.

The table below summarizes the schedule for phasing out part-time elected county Probate Judges and phasing in full-time appointed state Probate Judges under LD 1766, as amended by Senator Carney's proposed amendment:

State Court Region	County	Elected county Probate Judge term end date	Proposed date an appointed state Probate Judge will begin overseeing probate proceedings in the county
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2	Cumberland	Dec. 31, 2030	Become State 1/1/31
3	Androscoggin	Dec. 31, 2030	Become State 1/1/31
	Franklin	Dec. 31, 2030	Become State 1/1/31
	Oxford	Dec. 31, 2028	New election for 2-year term → become State 1/1/31
4	Kennebec	Dec. 31, 2028	Become State 1/1/29
	Somerset	Dec. 31, 2028	Become State 1/1/29
5	Penobscot	Dec. 31, 2030	Become State 1/1/31
	Piscataquis	Dec. 31, 2028	New election for 2-year term → become State 1/1/31
6	Sagadahoc	Dec. 31, 2028	New election for 2-year term → become State 1/1/31
	Lincoln	Dec. 31, 2028	New election for 2-year term → become State 1/1/31
	Knox	Dec. 31, 2030	Become State 1/1/31
	Waldo	Dec. 31, 2028	New election for 2-year term → become State 1/1/31
7	Hancock	Dec. 31, 2030	Become State 1/1/31
	Washington	Dec. 31, 2030	Become State 1/1/31
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