

**STATE OF MAINE
125th LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the
COMMISSION TO STUDY PRIORITIES AND
TIMING OF JUDICIAL PROCEEDINGS IN
STATE COURTS**

December 2011

Staff:

**Marion Hylan Barr, Director
Susan Z. Johannesman, Legislative Analyst
Office of Policy & Legal Analysis
13 State House Station
Room 215 Cross Building
Augusta, ME 04333-0013
(207) 287-1670
www.maine.gov/legis/opla**

Members:

**Sen. David R. Hastings, III, Chair
Sen. Cynthia A. Dill
Rep. G. Paul Waterhouse, Chair
Rep. Ralph W. Sarty
Rep. Maeghan Maloney
Thomas Knowlton
Judge Robert Mullen
Justice John Nivison
Richard Thompson**

Table of Contents

	Page
Executive Summary	i
I. Introduction.....	1
II. Commission Process.....	1
A. Categories of Priorities	1
1. Judicial Branch presentation	1
2. Commission discussion	3
B. Joint Rule 318.....	4
C. Protection from harassment statute	4
III. Commission Recommendations.....	6

Appendices

- A. Resolve 2011, Chapter 104
- B. Membership list, Commission to Study Priorities and Timing of Judicial Proceedings in State Courts
- C. Chart of Commission's Final Recommendations for Revisions to Certain Statutory Judicial Priorities
- D. Proposed Legislation

Executive Summary

The Commission to Study Priorities and Timing of Judicial Proceedings in State Courts (herein referred to as "the Commission") was established by Resolve 2011, chapter 104. In Resolve 2011, chapter 104, the Commission was directed to study the priority and timing of judicial proceedings in state courts including, but not limited to, judicial proceedings that require priority treatment pursuant to statute.

Members of the Commission met three times in the fall of 2011 to conduct a review. The following recommendations were made unanimously by members of the Commission except where it is stated otherwise.

- 1. Incorporate uniform language in statutory priorities.** The Commission reviewed examples of statutory language requiring the court to hold an expedited hearing. The Commission recommends that the following uniform language be applied to the priorities reviewed by the Commission, unless the priority is eliminated or there is a reason for retaining the non-uniform language: "The action may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require."
- 2. Amend statutory priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions.** The Commission reviewed 45 statutory priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. The Commission recommendations are classified into the following categories:
 - Modify the priority with the Commission's selected uniform language;
 - Eliminate the priority; or
 - Retain the current statutory language.

The majority of recommendations were unanimous; two were divided. The two judicial branch members of the Commission abstained from voting. The Commission recommends the Joint Standing Committee on Judiciary report out a bill to implement the Commission's recommendations.

- 3. Eliminate a statutory priority regarding a traffic infraction.** The Commission recommends the statutory priority in Title 29-A MRSA §2603, sub-§1, a traffic infraction, be eliminated because it is duplicative.
- 4. Considerations for Joint Rule 318 reviews.** The Commission recommends the following factors be considered by the Joint Standing Committee on Judiciary in Joint Rule 318 reviews.
 1. Does a constitutional or federal law require priority?
 2. Has a full hearing already been provided?
 3. Does the proposed statute affect any of the following:
 - Mental health laws affecting personal liberty and medical emergencies?
 - Public health emergencies?

- Elections?
- Interstate uniform laws?
- Domestic violence (protection from abuse)?
- Medical necessity?
- Family matters relating to child custody?
- Evictions?
- Government functioning and enforcement of statutes?
- Actions taken on an ex parte basis?

5. Amend protection from harassment statute. The Commission recommends that the following amendments be made to the protection from harassment statutes:

- Add the Commission’s proposed uniform language to the provision regarding dissolution or modification of protection from harassment orders in Title 5, §4654, sub-§6;
- Amend the definition of harassment in Title 5, §4651, sub-§2 by limiting damage to property to only “business” property and by repealing the version of harassment described as 3 or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privilege secured by the Constitution of Maine or the United States;
- Repeal Title 5 §4654, sub-§2, ¶B as unnecessary; and
- Amend the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, §4651, sub-§2, ¶C, the plaintiff must seek and file a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, §506-A or a statement of good cause why such notice was not sought or obtained.

One member opposed recommending this amendment.

I. INTRODUCTION

The Commission to Study Priorities and Timing of Judicial Proceedings in State Courts was established by Resolve 2011, chapter 104. A copy of the resolve is included as Appendix A.

The Commission consists of 9 members: 2 members of the Senate, 3 members of the House of Representatives, 2 members of the Judicial Branch, one representative of the Office of the Attorney General and one representative of the Maine Trial Lawyers Association. Senator David Hastings was named Senate chair and Representative Paul Waterhouse was named House chair. The complete membership of the Commission is included as Appendix B. The Office of Policy and Legal Analysis provided staffing support to the Commission.

Pursuant to Resolve 2011, chapter 104, the Commission was directed to study the priority and timing of judicial proceedings in state courts including, but not limited to, judicial proceedings that require priority treatment pursuant to statute.

This report fulfills the requirement in chapter 104 that the Commission submit a report to the Joint Standing Committee on Judiciary. The Joint Standing Committee on Judiciary is authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 125th Legislature.

II. COMMISSION PROCESS

The Commission met three times: October 12th, November 15th and December 13th. All of the meetings were held in the State House and were open to the public. Live audio of each meeting was made available through the Legislature's webpage. The Commission also established a website which can be found at <http://www.maine.gov/legis/opla/judicialpriorities.htm>. Agendas and other meeting materials are posted on the website.

In accordance with Resolve 2011, chapter 104, the Commission asked several members of the Maine Bar to share their impressions regarding the existing judicial priorities. Summaries of the comments of the following participants can be found on the Commission's website in the October 12th meeting summary: Bill Robitzek representing the Maine State Bar Association, Evert Fowle representing the Maine Prosecutors Association, Tom Kelley representing Pine Tree Legal Assistance, John Pelletier representing the Maine Commission on Indigent Legal Services and Sarah Churchill representing the Maine Association of Criminal Defense Lawyers.

In addition, the Commission received an in-depth presentation from the Judicial Branch, which included an overview of the 111 statutory court priority references. The focus of the Commission's review was based on the outline of priorities as presented by the Judicial Branch.

A. Categories of priorities

1. Judicial Branch presentation. As noted by Justice Nivison in his presentation to the Commission, the demands upon the Judicial Branch made the need for a priority assessment very important. For purposes of Commission discussion, the Judicial Branch placed statutory judicial priorities into the following 4 major categories: Category I – No changes recommended;

Category II – Duplicative, elimination recommended; Category III – Protection from harassment; Category IV – No recommendation.

The breakdown within the Judicial Branch's four categories is as follows.

Category #	Judicial Branch Recommendation
I	<p><u>No Changes Recommended for these Priorities</u> (63 cites)</p> <p>A. Constitutional Rights of Persons Charged With Crime:</p> <ol style="list-style-type: none"> 1. Bail (3 cites) 2. Juvenile (7 cites) 3. Adult (4 cites) <p>B. Mental Health/Personal Liberty, Medical Emergency (12 cites)</p> <p>C. Federal Requirements:</p> <ol style="list-style-type: none"> 1. Child Protective (9 cites) 2. Other (2 cites) <p>D. Public Health Emergencies: (7 cites)</p> <p>E. Elections: (6 cites)</p> <p>F. Miscellaneous/Priority:</p> <ol style="list-style-type: none"> 1. Interstate Uniform Laws: (4 cites) 2. Domestic Violence, Protection from Abuse: (3 cites) 3. Medical Necessity: (2 cites) 4. Family Matters/Child Custody: (3 cites) 5. Evictions: (1 cite)
II	<p><u>Duplicative, Elimination Recommended</u> (1 cite)</p> <p>Traffic Criminal (1 cite)</p>
III	<p><u>Protection From Harassment</u> (2 cites)</p>
IV	<p><u>No Recommendation</u> (45 cites)</p> <p>A. Civil Appeal To Superior Court (8 cites)</p> <p>B. Animals (4 cites)</p> <p>C. Labor Relations Board (5 cites)</p>

	D. Administrative Licenses (3 cites) E. Miscellaneous Civil (25 cites)
--	---

In summary, the Judicial Branch recommended to the Commission that:

- The priorities that fall into the 1st category remain unchanged as they currently are in statute, because there are compelling reasons, including constitutional and personal liberty reasons, for the expedited process in these cases;
- The priority in the 2nd category (a traffic infraction) be eliminated because it appears to be duplicative; and
- There be further discussion about the 3rd category regarding protection from harassment statutes, including the potential for carving out those cases that involve personal safety and distinguishing them from other cases with a property focus, such as boundary disputes.

The Judicial Branch did not make recommendations in regard to the 4th and final category, which includes priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. This 4th category involves priorities based on previous policy decisions, which require legislative (Commission) review. Of the 45 statutes in the 4th category, Justice Nivison could not identify one statute or group of statutes as currently bogging the courts down more than any other. He also noted that it was important to look for consistency in how priorities are described in statute, if they are maintained.

The Judicial Branch noted that the protection from harassment (PFH) priorities in the 3rd category have the biggest impact on the caseload in the District Court. The PFH docket is frustrating for everyone. Sometimes the lengthy cases are justified, and sometimes they might be handled more appropriately and effectively as a family matter or by some other type of mediation process. Mary Ann Lynch, Director of Court Information described the PFH cases as “docket busters,” which delay cases involving landlord-tenant claims, creditor claims and other small claims that are assigned no statutory priorities.

2. Commission discussion. The Commission members determined that they would not recommend changes to the priorities listed in the 1st category contained in the Judicial Branch's presentation (constitutional rights and personal liberties). After discussion among John Pelletier, Sarah Churchill and Evert Fowle, the Commission was reassured that repeal of the priority in the 2nd category contained in the Judicial Branch's presentation (traffic) is appropriate, as warrantless arrests are permissible now (see Title 17-A §15) and law enforcement officers can already take personal recognizance bail for Class D and E crimes. Regarding the 3rd category contained in the Judicial Branch's presentation (PFH), the Commission asked Judge Mullen to convene a subcommittee to review possible recommendations.

The Commission discussed the process for reviewing the priorities in the 4th category contained in the Judicial Branch's presentation. Commission members quickly rejected the suggestion to eliminate all 45 priorities in the 4th category and instead decided to look at the statutes for ways to position the courts so that they are justified in assigning cases in a reasonable manner. In reviewing the 45 statutes, it was suggested that Commission members keep in mind common

operative language; determine if there is a policy reason for keeping or not keeping a priority; and determine what impact the 45 (or a smaller group) have on the courts.

The Commission noted that recommending removal of an expedited provision does not mean that the matter is not important, but it gives courts the authority to determine where a case should be placed on the docket. The Commission determined that it would look at each of the 45 statutes, and if the language includes a specific timeframe it would not suggest changing the statute. If the statute does not have specific time language but an expedited hearing is appropriate, the Commission will recommend some general uniform language.

The Commission's recommendations regarding amendments to statutory priorities are included in Recommendations #1, #2 and #3 below.

B. Joint Rule 318

Joint Rule 318: "Review of Judicial Proceedings and Priorities" was adopted by the Legislature during the First Regular Session of the 125th Legislature. Rule 318 provides that whenever a legislative measure is proposed that contains a provision to expedite, establish or adjust the priority of judicial proceedings, the legislative committee of jurisdiction shall hold a public meeting on the proposal and determine the level of support for the proposal among members of the committee. If a majority of the committee supports the proposal, the committee shall request the Joint Standing Committee on Judiciary to review and evaluate the proposal as it pertains to the appropriate priority and timing of judicial proceedings in all state courts. The Judiciary Committee shall conduct the review and report back to the committee of jurisdiction.

This review process is similar to the Judiciary Committee's review of proposed legislation dealing with public record exceptions pursuant to Title 1, Chapter 13, Subchapter 1-A; however, Joint Rule 318 does not set criteria on which to evaluate judicial priorities as the public records exception statute does. The Commission discussed the need to develop criteria or guidelines for use by the Judiciary Committee as it reviews proposals under Joint Rule 318.

The Commission's recommendation regarding review under Joint Rule 318 is included in Recommendation #4 below.

C. Protection from harassment statute

At the request of the Commission, a subcommittee was formed to look at the issue of court resources devoted to protection from harassment cases. The subcommittee met on November 1, 2011, with commission members Deputy Chief Judge Mullen and Representative Maeghan Maloney in attendance. Also in attendance and participating were: Janet Stocco, Law Clerk, Office of the Chief Judge; Margo Batsie representing the Maine Coalition to End Domestic Violence; Elizabeth Ward Saxl representing the Maine Coalition Against Sexual Assault; Susan Bixby representing the Maine State Bar Association; Lucia Hunt representing Pine Tree Legal Assistance; and Sherry Wilkins and Mary Ann Lynch representing the Administrative Office of the Courts. Deputy Chief Judge Mullen reminded the group that the court system handles 4,000+ PFH cases a year, and that feedback from other judges supports his observations: the effectiveness of the protection from harassment statute is not certain, and the

large number of cases requires an inordinate amount of judicial resources and time. Past pilot programs have used mediation to handle some cases, but trying to expand on this would be challenging, as mediation is costly and it is difficult for mediators to attend all hearings.

Because of the challenges posed by trying to implement mediation, Chief Judge Mullen suggested repealing part of the protection from harassment statute. At the first subcommittee meeting, there was a great deal of discussion about potential amendments to the statute, but there was consensus on only a few changes, which included: repealing Title 5 §4651, sub-§2, ¶B, which is a provision in the definition of harassment that is not utilized; repealing Title 5 §4654, sub-§2, ¶B as unnecessary; and using the Commission's uniform language to replace "expeditiously" in Title 5 §4654, sub-§6 dealing with dissolution or modification of a protection order. Some members of the subcommittee also supported a proposal to amend the PFH statute to require, as a prerequisite to filing a PFH action, that a plaintiff first have law enforcement issue an order to the defendant to cease harassing the plaintiff pursuant to Title 17-A §506-A or that the plaintiff show "good cause" why such an order was not sought or obtained. Concerns about this approach involve the question of whether such a process would negatively impact access to the process for the most vulnerable victims. The subcommittee discussed whether defining "good cause" would address that access concern, and some members of the Commission and other interested parties who participated in the subcommittee meeting believed that crafting a definition might adequately address the concern. However, there was at least one member of the Commission who expressed that such a change would not alleviate his concerns about limiting the scope of accessibility for obtaining PFH orders. The Commission decided to defer further discussion of this issue until its final meeting on December 13, 2011, allowing subcommittee members and other interested parties time to again attempt to collaborate and refine a proposal for the full Commission's consideration.

A second subcommittee meeting was not held, but members and the interested parties corresponded by email about a potential compromise amendment drafted by Deputy Chief Judge Mullen. The subcommittee report to the final meeting of the Commission was not one of total agreement. Upon receiving the report, all Commission members and interested parties agreed with the subcommittee's finding that the current PFH statute results in a large number of cases that take up a great deal of court time and resources, including the time of both clerks and judges. They also agreed that although some of these cases warrant prompt attention, many of them (i.e., boundary disputes) do not deserve priority treatment over other important civil issues, such as landlord-tenant, family law and small claims cases.

Although all acknowledged that a problem exists, members supported different solutions. Rep. Waterhouse proposed repealing the entire civil protection from harassment process in Title 5, Chapter 337-A. No other members supported that proposal. A second proposal, the proposed amendment from Chief Deputy Judge Mullen, was put forward to amend the protection from harassment statute; the amendment had many of the same elements as the first amendment discussed in the subcommittee and included changing only part of the definition section for "harassment", adding uniform language to a provision requiring an "expedited" hearing and amending the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, §4651, sub-§2, ¶C, the plaintiff must seek and file a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, §506-A or a statement of good cause why such notice was not sought or obtained.

The Commission thoroughly discussed the pros and cons of the proposed amendment, and the majority determined that one way to ensure that the issues are thoroughly discussed by stakeholders is to formalize them in writing in the form of proposed legislation. Although advocates, defense attorneys, prosecutors and judges were at the table for these discussions, those representing law enforcement were not, and the Commission noted that law enforcement input is important since the notice change would impact them directly. The Commission hopes that the public hearing held by the Judiciary Committee will provide the best forum to ensure that all interested parties have the opportunity to weigh in on this specific proposal. Some Commission members who supported including these changes in the proposed legislation expressed continued reservations, including whether the changes would take some cases out of the process altogether (i.e., by repealing Title 5, §4651, sub-§2, ¶B) and whether the changes may cause confusion and frustration for some harassment victims who may bounce back and forth between court and law enforcement to meet the notice requirement. Ultimately, all but one Commission member voted to go forward with including the proposed amendment in the Commission's suggested bill. Tom Knowlton, the representative for the Office of the Attorney General, opposed the motion. In addition to the above-mentioned concerns, he also felt that it would be more appropriate to have a full discussion with law enforcement and all the other interested parties at the table before drafting legislation for consideration. Rep. Maloney was unable to attend the last meeting to vote but previously supported the proposed changes to the protection from harassment statute, which were discussed in the subcommittee meeting and the second Commission meeting.

The Commission's recommendation regarding changes to the protection from harassment statute is included in Recommendation #5 below.

III. COMMISSION RECOMMENDATIONS

Recommendation #1: Uniform language.

The Commission reviewed examples of statutory language requiring the court to hold an expedited hearing. After thorough discussion, the Commission recommends the following uniform language be applied to the priorities reviewed by the Commission, unless the priority is eliminated or there is a reason for retaining the non-uniform language: "The action may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require."

Recommendation #2: Statutory priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions (Judicial Branch's Category IV).

The Commission reviewed the 45 statutory priorities contained in the Judicial Branch's category IV related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. The Commission's recommendations are contained in the chart of revised recommendations dated 12/14/11 included as Appendix C and in Part A of the draft bill included as Appendix D. The Commission recommends the Joint Standing Committee on Judiciary report out a bill to implement the Commission's recommendations.

The recommendations can be classified into the following categories:

- Modify the priority with the Commission's selected uniform language;
- Eliminate the priority; or
- Retain the current statutory language.

The majority of recommendations were unanimous; two were divided. The two judicial branch members of the Commission abstained from voting. The Commission decided to note in its final report which votes were not unanimous, as well as the following issues for consideration by the Joint Standing Committee on Judiciary.

- Title 28-A, §805, sub-§3 (regarding appeal of revocation or suspension of liquor license decision, chart line 9) – The Commission's vote was divided with 4 members supporting eliminating the priority and 2 opposed. Commission member Tom Knowlton reported that attorneys in the Attorney General's Office who handle liquor license issues indicated that changing this provision may implicate public safety.
- Title 28-A, §803, sub-§2-A (regarding liquor license suspension or revocation, chart line 21) – The Commission's vote was divided with 5 members in support of eliminating the priority and 1 opposed.

In addition to the divided votes, concerns or issues were raised concerning these sections:

- Title 10, §1020-A, sub-§7, ¶D (regarding waste motor oil disposal site eligibility, chart line 5) – Although the Commission voted to eliminate the priority, Commission member Tom Knowlton reported that the Finance Authority of Maine (FAME) indicated that there are outstanding bonds related to this program, and FAME is concerned that any change to the statute may concern the underwriters.
- Title 26, §1289, sub-§7; Title 26, §979-H, sub-§7; Title 26, §1029, sub-§7, Title 26, §968, sub-§5, ¶F; and Title 26, §1329, sub-§6 (regarding the Maine Labor Relations Board, chart lines 14 through 18) – Although the Commission voted to modify these sections with uniform language, members noted that someone with more knowledge of these issues may have information as to why the language should not be changed, and if that is the case, such information would likely be provided at a public hearing.

The Commission decided not to review and consider applying the uniform language to the expedited language in the priorities for which the Judicial Branch recommended no change in Category I.

Recommendation #3: Statutory priority regarding traffic infraction (Judicial Branch's Category II).

The Judicial Branch recommended that the statutory priority in Title 29-A MRSA §2603, sub-§1, a traffic infraction, be eliminated because it is duplicative. The Commission recommends that the priority be eliminated. Statutory language eliminating this priority is in Part B of the draft bill included as Appendix D.

Recommendation #4: Joint Rule 318.

The Commission considered the need to develop criteria or guidelines for use by the Joint Standing Committee on Judiciary as that committee reviews proposals under Joint Rule 318. The Commission reviewed an outline provided by Representative Maloney which was based on the Judicial Branch's breakdown of categories and agreed that it would be a useful guide for the Joint Standing Committee on Judiciary to use in its review of proposed priorities under Joint Rule 318.

The Commission recommends that the following factors be considered by the Joint Standing Committee on Judiciary in Joint Rule 318 reviews.

1. Does a constitutional or federal law require priority?
2. Has a full hearing already been provided?
3. Does the proposed statute affect any of the following:
 - Mental health laws affecting personal liberty and medical emergencies?
 - Public health emergencies?
 - Elections?
 - Interstate uniform laws?
 - Domestic violence (protection from abuse)?
 - Medical necessity?
 - Family matters relating to child custody?
 - Evictions?
 - Government functioning and enforcement of statutes?
 - Actions taken on an ex parte basis?

Recommendation #5: Protection from harassment statute (Judicial Branch's Category III).

The Commission finds that the current PFH statute results in a large number of cases that take up a great deal of court time and resources, including the time of both clerks and judges. Commission members further find that, although some of these cases warrant prompt attention, many of them (i.e., boundary disputes) do not deserve priority treatment over other important civil issues, such as landlord-tenant, family law and small claims cases. All but one Commission member recommend that the following amendments be made to the PFH statutes:

- Add the Commission's proposed uniform language to the provision regarding dissolution or modification of protection from harassment orders in Title 5, §4654, sub-§6;
- Amend the definition of harassment in Title 5, §4651, sub-§2 by limiting damage to property to only "business" property and by repealing the version of harassment described as 3 or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privilege secured by the Constitution of Maine or the United States;
- Repeal Title 5 §4654, sub-§2, ¶B as unnecessary; and
- Amend the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, §4651, sub-§2, ¶C, the plaintiff must seek and file a copy of a notice to stop

harassing the plaintiff issued to the defendant pursuant to Title 17-A, §506-A or a statement of good cause why such notice was not sought or obtained.

Statutory language amending the protection from harassment statute is in Part C of the draft bill included as Appendix D.

APPENDIX A

Resolve 2011, Chapter 104

APPENDIX B

**Membership list, Commission to Study Priorities and
Timing of Judicial Proceedings in State Courts**

APPENDIX C

**Chart of Commission's Final Recommendations for
Revisions to Certain Statutory Judicial Priorities**

APPENDIX D
Proposed Legislation