

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
COURT UNIFICATION TASK FORCE

To Make Recommendations to Unify
the Superior and District Courts

Final Report Transmitted to the
Honorable Daniel E. Wathen, Chief Justice,
Supreme Judicial Court

December 8, 1999



STATE OF MAINE
SUPREME JUDICIAL COURT
AUGUSTA, MAINE 04330

DANIEL E. WATHEN
CHIEF JUSTICE

MAILING ADDRESS:
Judicial Center
65 Stone Street
Augusta, Maine 04330
Tel: (207) 287-6950
Fax: (207) 287-4641

December 17, 1999

Senator Susan W. Longley, Chair
Judiciary Committee
3 State House Station
Augusta, ME 04333

Representative Richard H. Thompson, Chair
Judiciary Committee
2 State House Station
Augusta, ME 04333

Re: Final Report of the Court Unification Task Force

Dear Senator Longley and Representative Thompson:

It is my pleasure to submit to you and the members of the Judiciary Committee the Final Report of the Court Unification Task Force pursuant to Resolve 1997, ch. 1907. The Report includes eight recommendations, as well as proposed statutory language to implement the recommendations. The Task Force has done a commendable job in identifying measures to improve the effectiveness and efficiency of Maine's courts. I strongly support the Report of the Task Force and offer the following observations concerning the resources that will be required to implement the recommendations:

- * Recommendations I and II may result in as many as three to four hundred additional appeals to the Supreme Judicial Court. The Supreme Court has for several years operated at or beyond maximum capacity and a potential case load increase of fifty percent requires careful attention. With the exception of the one staff attorney added in 1993 when all appeals in workers' compensation cases were shifted from the Workers' Compensation Commission to the Court, the number of court staff has not changed in nearly thirty years. Thus, as noted by the Task Force, these two recommendations require that additional staff be provided. At a minimum, three additional law clerks, bringing the total number per judge to two, and one additional professional staff member in the Clerk of Courts Office will be required. I enclose with this letter a proposed fiscal note to fund and authorize the positions made necessary by the recommendations. This note should be attached to the recommended legislation should you agree to entertain these proposals of the Task Force.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Without the addition of staff support, any improvement in the service resulting from changes in the trial courts will be more than offset by increased delay and expense for litigants at the appellate level.

- * Recommendations III through VI provide a simplified and improved allocation of court jurisdiction and streamlined procedures for civil litigation and criminal misdemeanors. These recommendations require a renewed and increased commitment to the flexible use and cross-assignment of judges from one trial court to another. By utilizing the full capacity of the entire trial bench to address the combined workload of both courts, increased demands will be made upon the judges and staff of the District Court. At present, the Superior Court has a small contingent of judicial secretaries and law clerks. The District Court, however, is completely without secretarial and law clerk assistance. These recommendations necessitate the creation of a pool of three judicial secretaries and two law clerks to assist the Judges of the District Court in dealing with the increased volume of cases, the lengthier orders, and the more complex litigation they will handle as a result of greater trial court unification. I enclose a proposed fiscal note to authorize and fund the positions that are necessary to successfully implement Recommendations III through VI. In the future, it may also be necessary to consider additional staff in the clerks' offices.
- * Recommendations VII and VIII call upon the Supreme Judicial Court to continue to seek greater unification and greater effectiveness and efficiency in providing judicial services to the people of Maine. I can assure you that if the first six recommendations are enacted, along with the modest requests for additional resources, the Court will fully carry out the remaining recommendations.

The Report of the members of the Task Force is truly a remarkable document. Maine is fortunate to have people of such caliber and intellect who are willing to volunteer their efforts and their expertise to modernize and streamline Maine's court system. The Report provides the Legislature with an unparalleled opportunity to take the next logical and responsible step in ensuring that, as we enter the next century, Maine's court system provides justice that is both prompt and affordable to all.

Sincerely yours,



Daniel E. Wathen
Chief Justice

DEW/lm
Enclosures

**Costs Associated with Recommendations of the
Court Unification Task Force**

Supreme Judicial Court Positions:

3 Law Clerks

General Fund-Positions-Legislative Count	(3)
Personal Services	\$107,621
All Other	<u>17,250</u>
Total	\$124,871

1 Staff Attorney

General Fund-Positions-Legislative Count	(1)
Personal Services	\$ 32,694
All Other	<u>5,750</u>
Total	\$ 38,444

District Court Positions:

3 Judicial Secretaries

General Fund-Positions-Legislative Count	(3)
Personal Services	\$ 77,813
All Other	<u>17,250</u>
Total	\$ 95,063

2 Law Clerks

General Fund-Positions-Legislative Count	(2)
Personal Services	\$ 71,748
All Other	<u>11,500</u>
Total	\$ 83,248

341,676

Costs associated with these positions assume starting on October 1, 2000.

**STATE OF MAINE
COURT UNIFICATION TASK FORCE
DRAFT REPORT**

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	2
INTRODUCTION.....	2
History of the Superior and District Courts	4
Establishment of the Superior Court.....	4
Creation and Growth of the District Court.....	5
Previous Steps toward Court Unification in Maine	6
The Task Force's Approach	9

RECOMMENDATIONS

RECOMMENDATION I: Exclusive Divorce Jurisdiction in the District Court	12
RECOMMENDATION II: Direct Appeal to the Law Court for Most District Court Judgments.....	17
RECOMMENDATION III: Maximum Equal Treatment in Both Courts of Civil Nonjury Actions	22
RECOMMENDATION IV: Removal from District Court to Superior Court Only for Jury Trial	26
RECOMMENDATION V: Unified Docket for Scheduling and Management of Misdemeanor Cases Transferred to the Superior Court for Jury Trial	29
RECOMMENDATION VI: District Court Jurisdiction to Partition Real Property by Sale.....	34
RECOMMENDATION VII: On-Going Goals for Further Unification of the District and Superior Courts.....	36
RECOMMENDATION VIII: Oversight Group to Monitor Implementation of Unification Recommendations and to Identify Further On-Going Goals	38

Appendix A: Chapter 107 - Resolve, Directing the Judicial Department to Develop
Recommendations to Implement Court Unification

Appendix B: List of Court Unification Task Force Members

Appendix C: Statutory Changes to Implement Recommendations I, II, III and VI

Appendix D: Rules Changes to Implement Recommendation III

Appendix E: Rules Changes to Implement Recommendation IV

Appendix F: Map of Court Locations

PIERCE
ATWOOD

ATTORNEYS

December 8, 1999

VINCENT L.
MCKUSICK

OF COUNSEL

DIRECT
207.791.1209

E-MAIL
VMcKusick@
PierceAtwood.com

Honorable Daniel E. Wathen
Chief Justice, Supreme Judicial Court
Maine Judicial Center
65 Stone Street
Augusta, Maine 04330

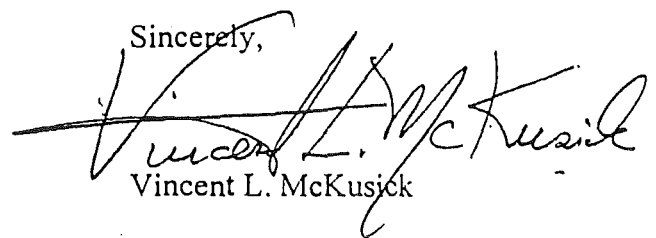
Dear Mr. Chief Justice:

It is my pleasure to submit to you the Final Report of the Task Force appointed by you by Order dated July 9, 1998 to make recommendations for implementing the unification of the Superior and District Courts of our State.

It has been a distinct personal pleasure for me to work with the outstanding group of men and women you selected for the Task Force. We stand ready to be of any further help that we can in the implementation of the Task Force recommendations.

With all best wishes,

Sincerely,



Vincent L. McKusick

VLM:s

Enclosures

One Monument
Square
Portland, Maine
04101-1110

VOICE
207.791.1100

FAX
207.791.1350

E-MAIL
info@PierceAtwood.com

EXECUTIVE SUMMARY

The Court Unification Task Force, which was established pursuant to a Legislative Resolve in 1998, was directed to make recommendations to the Chief Justice of the Supreme Judicial Court on how to unify the District and Superior Courts. Recognizing that the overriding mission of the judicial system of Maine is the effective and efficient provision of judicial services to the public, the Task Force has adopted as its goal the recommendation of unification measures that will result in a net improvement of court services for Maine citizens. To this end, the Task Force is making eight Recommendations:

RECOMMENDATION I: EXCLUSIVE JURISDICTION OVER DIVORCE AND RELATED MATTERS SHOULD BE VESTED IN THE DISTRICT COURT, WITH DIRECT APPEAL TO THE LAW COURT.

RECOMMENDATION II: APPELLATE REVIEW BY THE SUPERIOR COURT OF DISTRICT COURT JUDGMENTS AND ORDERS SHOULD BE SUBSTANTIALLY ELIMINATED.

RECOMMENDATION III: CIVIL NONJURY ACTIONS SHOULD BE TREATED, TO THE FULLEST EXTENT POSSIBLE, EQUALLY IN THE DISTRICT AND SUPERIOR COURTS, AND THEREFORE THE DAMAGES LIMITATION OF \$30,000 SHOULD BE REMOVED FROM DISTRICT COURT ACTIONS, THE FILING FEES SHOULD BE UNIFORM, AND THE LONGER CIVIL NONJURY TRIALS (THREE HOURS OR MORE) SHOULD BE SUBJECT TO AN UNIFIED RULE 16 PROCESS AND TRIAL IN EITHER THE DISTRICT OR SUPERIOR COURT ON A UNIFIED TRAILING LIST.

RECOMMENDATION IV: REMOVAL OF A CIVIL CASE FROM THE DISTRICT COURT TO THE SUPERIOR COURT SHOULD BE PERMITTED ONLY FOR THE DEMONSTRATED PURPOSE OF EXERCISING THE RIGHT TO A JURY TRIAL.

RECOMMENDATION V: A PILOT PROJECT SHOULD BE UNDERTAKEN AS SOON AS POSSIBLE TO CREATE A UNIFIED CASE SCHEDULING AND CASE MANAGEMENT SYSTEM FOR MISDEMEANOR CASES TRANSFERRED FROM THE DISTRICT COURT TO THE SUPERIOR COURT FOR JURY TRIAL.

RECOMMENDATION VI: THE DISTRICT COURT SHOULD BE VESTED WITH JURISDICTION, CONCURRENT WITH THE SUPERIOR COURT, TO PARTITION REAL PROPERTY BY SALE.

RECOMMENDATION VII: THE SUPREME JUDICIAL COURT SHOULD ESTABLISH "ON-GOING GOALS" FOR THE JUDICIAL DEPARTMENT TO TAKE FURTHER STEPS TOWARD UNIFICATION OF THE SUPERIOR AND DISTRICT COURTS FOR THE PURPOSE OF IMPROVING SERVICE TO THE PUBLIC.

RECOMMENDATION VIII: THE SUPREME JUDICIAL COURT SHOULD CREATE AN OVERSIGHT GROUP TO SUPERVISE AND MONITOR THE IMPLEMENTATION OF THE PRECEDING SEVEN RECOMMENDATIONS, TO IDENTIFY FROM TIME TO TIME ADDITIONAL ON-GOING GOALS FOR UNIFYING THE DISTRICT AND SUPERIOR COURTS, AND TO REPORT TO THE COURT AT LEAST ANNUALLY ON THOSE ASSIGNMENTS.

Each of these Recommendations is described more fully below.

INTRODUCTION

Pursuant to Chapter 107 of the Resolves of the 118th Legislature, Chief Justice Daniel E. Wathen of the Supreme Judicial Court, by his Order of July 9, 1998, appointed a Task Force charged with making recommendations for implementing the unification of the Superior and District Courts of the State of Maine. The Legislative Resolve under which the Task Force was appointed speaks only of the Superior and District Courts. (See Appendix A) Unmentioned in the Resolve are Maine's other trial courts: the Administrative Court¹, which is already a part of the State Judicial Department, and the 16 county probate courts², which are not a part of the Judicial Department. In view of the limitation of the Resolve, the Task Force has centered its attention on steps to unify the Superior and District Courts.

The Task Force has concluded that the unification of the Superior and District Courts must not be viewed as an end in itself. An effort simply to create a single trial court with a single class of judges solely for the sake of "unification" would not necessarily improve the efficiency or

¹ The Administrative Court is an appropriate candidate for consolidation with the District Court because the two Administrative Court judges already devote an overwhelming proportion of their time to sitting in the District Court and the subject matter of the Administrative Court's jurisdiction is not unlike regulatory matters now handled by the District Court. The Maine Futures Commission in 1993 recommended such a consolidation, with a single centralized Administrative docket in the District Court for the Administrative Court's small, but distinct, caseload. See Report of the Commission to Study the Future of Maine's Courts, *New Dimensions for Justice*, 71 (1993) ("Futures Commission Report").

² The Maine Futures Commission recommended a program for bringing the probate courts into the State Judicial Department with four full-time probate judges. See Futures Commission Report, 72, *supra* at note 1.

effectiveness of the judicial system for the people of Maine. The central issue before the Task Force is thus whether we can *improve* court services for Maine citizens by redesigning the trial courts. The Task Force has the obligation to recommend unification measures that will provide a net benefit to the users of the court system and thus the Task Force is required to make a focused assessment of the cost/benefit balance of each recommendation. If we are to maintain and improve the confidence of Maine people in their judicial system, we can ill-afford any failed experiment with court unification. With the overriding goal of the public good in mind, therefore, the Task Force has proceeded cautiously with respect to its recommendations, mindful of current constraints on the judicial system and the need to implement measures that will succeed.

To identify these recommendations and to evaluate their costs and benefits, the members of the Court Unification Task Force or CUTAF (see Appendix B for membership list) met five times between September 25, 1998 and December 3, 1999 under the leadership of its Chairman, former Chief Justice of the Supreme Judicial Court, Vincent L. McKusick. The Chairman designated a Working Group from the membership of the Task Force and assigned it the task of developing unification proposals for consideration by the full Task Force. The Working Group met six times between October 23, 1998 and the date of this Report.

CUTAF, as a whole and through the efforts of the Working Group, reviewed the valuable work of the Maine Futures Commission on the subject of trial court unification³, as well as the

³ See Futures Commission Report, particularly Ch. V, "Structure and Jurisdiction of the Court System," pp. 66-75. Although the Maine Futures Commission did not propose the creation of a single trial court, it did recommend a number of steps for further unification of the District and Superior Courts. The Legislature has already adopted several of these recommendations—most notably the creation of a separate Family Division, the equalization of judges' salaries, and the elimination of the resident judge system—and others, such as increased judicial cross-assignment and the combining of clerks' offices, are in the present CUTAF report urged as "on-going goals" for the Judicial Department (See Recommendation VII). CUTAF is indebted to the Futures Commission both for its thoughtful and comprehensive report and for its assembly of extensive background material on court unification.

extensive literature of unification efforts in other states. From that review, CUTAF concluded that very few states have achieved true unification in a single trial court. The status of court unification in the 50 states can be found on a continuum from complete autonomy to complete integration. Indeed, it was clear to the Task Force that to make any strides in improving the design of Maine's trial courts, it first had to unravel the historical reasons for the existence of separate trial courts and understand earlier efforts to improve and consolidate its courts.

HISTORY OF THE SUPERIOR AND DISTRICT COURTS

The history of both the Superior and District Courts begins with the 1820 Maine Constitution. The Constitution vested judicial power "in a Supreme Judicial Court and such other courts as the legislature shall from time to time establish." As a result, no amendments to the Constitution were or are required to make structural changes in the courts.

Establishment of the Superior Court

Our present Superior Court was created in 1930. Prior to that time, the Supreme Judicial Court, through its single justices, served as the trial court of general jurisdiction and, sitting en banc as the Law Court, served as the highest appellate court. Prior to 1930, four county Superior Court judges in Cumberland, Androscoggin, Kennebec and Penobscot assisted the single justices of the Supreme Judicial Court in their trial court functions.

In 1930, that system was superceded by a statewide Superior Court, then with seven justices. The justices of the new Superior Court were paid by the State but the counties provided courtrooms and paid all expenses of the elected clerks of courts and all the support personnel, jurors and so on. The single justices of the Supreme Judicial Court continued to have jurisdiction concurrent with the new Superior Court over equity or non-jury cases exclusive of divorce, and they could also be assigned to hold a term of court in the Superior Court. In fact, for the next 40

years the single justices of the highest court did most of the equity work. Justice Sullivan, who was one of the Supreme Judicial Court justices resident in Cumberland County between 1955 and 1965, once jokingly said, "It's lucky I have the equity work to do or I might be arrested for loitering around the courthouse!"

Progressively between 1930 and about 1970, the Superior Court took over most of the equity work. The seven Superior Court judges of 1930 had by 1970 increased to 11 in number. By 1986 that number had increased to 16, where it now stands.

Creation and Growth of the District Court

The statewide District Court dates from 1962, when it was created to replace 115 municipal court judges and trial justices. It was given broader jurisdiction than those minor courts, including, in particular, jurisdiction over divorce cases concurrent with the Superior Court. The Chief Judge and Deputy Chief Judge appointed by the Chief Justice of the Supreme Judicial Court were granted administrative and budgetary authority over this new statewide court, including the hiring of all court personnel and the construction or leasing of court facilities. Initially, the District Court had 33 locations around the State. The new District Court was financed principally through court collections⁴.

Since its creation in 1962, the District Court has seen a steady expansion of its jurisdiction and workload. In District Court actions for money damages, the general damages limit has increased from \$1,200 to \$30,000 and small claims limits have gone from \$100 to \$4,500. The District Court now can hear quiet title actions, mortgage foreclosures, enforcement of environmental laws and local ordinances, specific performance actions, and so on. There also has

⁴ The first 25 years of the District Court are fully chronicled by Judge Harriet P. Henry in The Maine District Court: A Quarter Century of Progress (1987).

been an increased use of the District Court in areas where from the beginning its jurisdiction has been concurrent with that of the Superior Court. One example is divorce. In 1965, the District Court handled just under 600 divorces; in 1997, it handled about 11 times as many.

At the same time, the number of District Court judges increased. Originally, the District Court had 14 resident judges and two judges-at-large, for a total of 16. By the date of this Report, it has 31 judges, all without any designation of "resident" or "at large."

The District Court has instituted a number of noteworthy innovations in the last couple of decades. In 1977, it introduced mediation in small claims, and extended mediation to divorce cases in 1984. In 1990, the District Court created the Traffic Infractions and Violations Bureau and in 1998 established the Family Division.

PREVIOUS STEPS TOWARD COURT UNIFICATION IN MAINE

Maine has a long and impressive history of efforts to unify the expanding operations of the District and Superior Courts. An important part of that history involves the adoption of rules of procedure and evidence promulgated by the Supreme Judicial Court under enabling acts. Rules of procedure are not merely the rules that lawyers have to follow to present their cases; they are, from the courts' point of view, the operating manual. Until 1959, the courts ran by almost unadorned common law pleading. A judge or a lawyer of the 1850s would have felt quite comfortable in the Maine courts of the 1950s. In 1959, the Superior Court received the "new rules" of civil procedure; the District Court got them upon its establishment in 1962. In 1965 there were new Rules of Criminal Procedure for both courts, and in 1976 Rules of Evidence for all courts. Those sets of rules were all modeled upon the Federal Rules.

Another important development in the unification of these courts came with the merger in 1987 of the Superior Court and District Court Civil Rules into one set of rules and the same for

the Criminal Rules in 1989. These mergers of rules occurred because it was found that the essential differences between the District Court and the Superior Court Rules—that is, those differences required by the differing jurisdictions of the courts—were few. In merging the two sets of rules, the few necessary differences were highlighted, thus eliminating what had been traps for the unwary.

Through comity between the Legislature and the Supreme Judicial Court, the Court, in adopting rules of procedure under enabling acts, has saved the Legislature from the cumbersome business of legislating how courts operate. Also the Supreme Judicial Court has, by administrative action, implemented numerous other unification measures, which are discussed below. The Task Force has drawn a lesson from this approach and has made a number of recommendations requiring no legislative action.

The District and Superior Courts are now under a unified administration by the Supreme Judicial Court and its Chief Justice; both are served by the Administrative Office of the Courts and the same regional court administrators; and both operate under a unified state budgeting and financial system and a unified support staff personnel system. Between 1975 and 1977 the Administrative Office of the Courts was created with centralized state budgeting for all Maine courts except the 16 county probate courts.

At the same time, elected clerks of court were replaced by appointed clerks in a court personnel system. The Superior Court was organized by regions with regional presiding justices and regional court administrators. In 1983, the Legislature created the office of Chief Justice of the Superior Court. In 1977, the District Court was brought into the administrative system. The District Court chief judge and other administrators joined their Superior Court counterparts in

administrative meetings with the Supreme Judicial Court Chief Justice, thus further unifying administration of the court system.

Continuing the tradition of unification through administrative measures, a simple rule change in 1982 eliminated the wasteful practice of a second full trial in the Superior Court of criminal cases already tried fully in the District Court. A District Court defendant who did not make a timely demand for a jury trial was treated as waiving the right to a jury trial in the Superior Court and the case remained in the District Court for its only trial.

In addition, the Legislature has authorized judicial cross-assignment between the District and Superior Courts. Since 1979, the District Court judges have had authority to sit in the Superior Court by assignment; since 1989, the Superior Court justices have had the counterpart authority to sit in the District Court. More recently, in 1998, the salaries of judges of the two Courts have been equalized.

To summarize, the existing unification features of the Superior and District Courts include the following:

- Substantial equality of the judiciaries;
- Authority to cross-assign judges in both directions;
- Equal pay for District Court judges and Superior Court justices;
- Joint participation by judges in judicial education and judicial conferences in such groups as the Maine Trial Judges Association;
- Substantially unified court administration through the Administrative Office of the Courts and Regional Court Administrators;
- Supervisory responsibility and rule-making authority of the Supreme Judicial Court and the Chief Justice for both Courts;

- Chiefs of both Courts named by the Chief Justice of the Supreme Judicial Court;
- Unified State budgeting and financial system for the two Courts;
- Single personnel system for the court support personnel of the two Courts;
- A single judicial discipline system;
- Unified Rules of Civil and Criminal Procedure and of Evidence;
- Ongoing efforts to create a unified computer system for the two Courts.

In addition, the Maine Judicial Department has engaged in a number of efforts to consolidate the Superior and District Court clerk's offices, including cross-training and assignment of these clerks, and efforts to launch an integrated state-wide court information management system that can be accessed by the Department of Human Services and the Department of Public Safety.

Aiding in this unification process, many of Maine's judges have served on both the District and Superior Courts and are, therefore, in an excellent position to emphasize the common mission and similarities of the two Courts, rather than their differences. At the present time, ten out of the 16 Superior Court Justices have previously served on the District Court, and one of the District Court Judges, Judge Jessie Briggs Gunther, is unique in having served first on the District Court and then on the Superior Court, and, after a period of retirement to start her family, on the District Court once again. In addition, at present three of the seven members of the Supreme Judicial Court have previously served on both the District Court and Superior Court. In all, starting with Judge Ian MacInnis in 1971, 19 members of the District Court have gone on to serve on the Superior Court.

THE TASK FORCE'S APPROACH

There are several lessons to be learned from this history of the District and Superior Courts and of the past efforts at unification. One clearly is that if we were to start from scratch to create a court system for Maine for the year 2000 and thereafter, we would probably design it quite differently. It is most unlikely that we would create two separate trial courts with overlapping jurisdictions and with many instances of unshared court facilities, among other things. But we also learn the importance of building upon the valuable experience of the current judges, clerks, and other personnel of the two Courts and of recognizing the advantages for citizen access of the many locations of the District Court. We also learn of the complexity and challenge of consolidating courts and of the substantial commitment over several decades to doing so in Maine. Thus, the Task Force's task is to recognize that complexity, to build on the strengths of the existing courts, and to continue the incremental but enormously significant efforts of the past to improve the trial court system for the people of Maine. In that context the approach of CUTAF has been to identify existing "gaps" between current practices and a model of full unification of the Superior and District Courts and to set about filling as many of these gaps as may be both practicable and in the interest of the public.

As an initial matter, there are significant jurisdictional differences. Certain areas of jurisdiction are exclusive to the Superior Court, such as jury trials and appeals from administrative agencies. Other areas of jurisdiction are exclusive to the District Court, such as child protection proceedings, juvenile cases and enforcement of money judgments and disclosure.

In addition, there are areas of concurrent or overlapping jurisdiction of both courts. The prime example is divorce. In those cases lawyers can currently "forum shop." In other areas, the courts exercise consecutive jurisdiction in the same cases. One example is the civil or criminal

case that is started in the District Court and then removed or transferred to the Superior Court. Another example is the criminal case of Class C and higher (the former "felony") in which the District Court has responsibilities for the pretrial phases. Then, finally, the Superior Court has the unique function of acting as an intermediate appellate court for appeals of most civil and criminal cases from the District Court.

Another existing gap between current practice and full unification is the existence of separate facilities for the two courts. The locations of District and Superior Court facilities are shown on the map in Appendix F. As a result of history, each court has its whole range of facilities and only infrequently is there an occasion for sharing facilities. The Superior Court operates in the county courthouses; the District Court owns or rents its own facilities, some in the county courthouses. As noted above, however, complete unification of these facilities is not necessarily in the best interest of the users of the court system, particularly those in rural areas whose only easy access is to the local District Court.

The separate clerical and other support staff that the Courts have is another gap. It should be noted that in Farmington and Dover-Foxcroft the two Courts now share combined clerks' offices. A wholesale and immediate conversion to combined clerks' offices, however, would not necessarily result in a net benefit to the public. Accordingly, CUTAF recommends that this "hole" be addressed gradually as the opportunity presents itself.

CUTAF has gone about its job by identifying those unification gaps that can be plugged with a net positive contribution to improving the administration of justice. CUTAF's use of an incremental approach to its mission permits a focused cost-benefit assessment of each proposed recommendation, with the overriding criterion being the improvement of the judicial system to the benefit of the public users of the system. Using that test, the Task Force has recommended

steps toward unification, which are explained in detail in the attached Recommendations I through VIII⁵.

RECOMMENDATIONS

RECOMMENDATION I: EXCLUSIVE JURISDICTION OVER DIVORCE AND RELATED MATTERS SHOULD BE VESTED IN THE DISTRICT COURT, WITH DIRECT APPEAL TO THE LAW COURT.

The Task Force recommends that the Superior Court's jurisdiction over divorce and related matters be eliminated, leaving exclusive jurisdiction in the District Court, and that appeals from District Court judgments in those cases go directly to the Law Court.

ANALYSIS:

Starting in May 1998, the Family Division has successfully brought additional judicial resources and specialized procedure to the handling of divorce cases filed in the District Court. The new Division has already established its capability in improving court service to the public in these important and sensitive cases. For example, the Division has assembled judicial resources with specialized training and experience in family matters; it has better met the needs of children by prompt attention to preliminary issues of custody and support; and it has "leveled the playing field" for litigants with unequal resources. Although at present only about 5% of Maine divorces are filed in the Superior Court, there is no good reason for denying the families involved in those cases the benefits of the resources and expertise of the Family Division. Accordingly, the Task

⁵ Statutory changes to implement Recommendations I, II, III and VI are set forth as a single proposed legislative bill displayed in the left hand column of Appendix C. The right hand column of Appendix C displays the corresponding current law and the middle column offers an explanation of the changes.

Rules changes to implement Recommendations III and IV are set forth in Appendices D and E. On the drafting of rules amendments appropriate to implement the other proposed statutory changes the Task Force defers to the Supreme Judicial Court's Advisory Committee on Civil and Criminal Rules. The methods for implementing Recommendations V, VII and VIII are discussed in the text of those recommendations.

Force recommends that the District Court, that is, its Family Division, be granted exclusive jurisdiction over divorce and related matters.

One desirable consequence of this recommendation is that no longer will the plaintiff in a divorce case be able to "forum shop" between the District and Superior Courts. The Task Force recommends that District Court judgments be appealable directly to the Law Court, without going through the present intermediate appeal to the Superior Court. Independently of its Recommendation II that the Superior Court's appellate jurisdiction over the District Court be eliminated in almost all types of cases, the Task Force believes that direct appeal in these sensitive family matters is highly desirable to avoid harmful delay and cost. Direct appeal from the District Court is already available in other family matters, such as child protection and termination of parental rights cases, and, of course, divorce judgments in cases filed in the Superior Court already go direct to the Law Court.

The Task Force considered the objections sometimes made to giving exclusive jurisdiction over divorce and related matters to the District Court. The first of these is that the District Court finds it difficult to accommodate long divorce trials, which sometimes are necessary in cases involving complex financial and custodial issues. For such cases, the ability of the Superior Court to allocate blocks of time for lengthy trials makes the Superior Court an attractive forum choice. This objection highlights a problem that needs attention more broadly than the relatively limited number of divorce cases that would be shifted from the Superior Court to the District Court by Recommendation I. The District Court already has divorce cases involving lengthy trials and many other types of cases involving long trials, as, for example, child protection proceedings. But this problem should be addressed systemically, without addressing merely the extra workload caused by the shift of some 300 cases from the Superior Court to the District Court. The Task

Force suggests that this problem could be addressed by additional cross-assignment of Superior Court justices to a special docket of lengthy trials or by use of the unified trailing docket recommended by Recommendation III.

A second objection is raised by some divorce lawyers who like to have the opportunity to forum shop because of their fear of parochialism on the part of the District Court judge, even though no District Court judges are any longer designated as "resident judges." The Task Force does not consider this to be a legitimate consideration. The opportunity to forum shop is not available in many types of cases, including other family matters. In any event, any problem of parochialism or appearance of parochialism in the District Court must be combated generically and comprehensively and not just in regard to divorce cases. The increased use of cross-assignments and the practice of assigning District Court judges from time to time to locations away from their home base as well as into the Superior Court are steps in that direction.

As a third objection, it is sometimes suggested that the Superior Court has "better" judges, ones that are more qualified by experience to handle the complex financial issues involved in some divorce cases. The point is made that some divorce cases involve more money and more difficult issues, such as tracing separate and marital property, than do even the largest personal injury cases tried in the Superior Court. The Task Force does not accept the presumption of "better judges" in the Superior Court, and believes that the judicial system can ill afford to permit forum shopping on the basis of such a perception. The goal of the Judicial Department leadership must be to make judicial resources available on an even-handed basis. Cross-assignment of District Court judges to the Superior Court will also help to cut down the unwarranted perception that they have experience only in handling the large volume of "little" cases.

A fourth objection is that elimination of Superior Court jurisdiction in divorce and related matters produces the loss of the direct, one-step appeal from the Superior Court to the Law Court. In other words, a divorce judgment of the District Court at present can be reviewed by the Law Court only after going through the intermediate appellate step at the Superior Court level. The appellate stage in the Superior Court often involves appreciable delay and cost, a fact that sometimes leads the divorce lawyer to choose the Superior Court forum. It is estimated that some 70 divorce cases are annually appealed to the Superior Court from the District Court. Even without implementation of the Task Force's Recommendation II to eliminate Superior Court appellate jurisdiction generally over District Court judgments, direct appeal of divorce cases to the Law Court commends itself. There is no reason to handle District Court divorce appeals differently than the way Superior Court divorce appeals are now handled. Although the Law Court's caseload is already heavy, the additional divorce appeals would appear to be manageable in number. Other family related matters, such as child protection cases, already go directly to the Law Court from the District Court. *See* 22 M.R.S.A. § 4006.

IMPLEMENTATION:

The legislative implementation of this recommendation is easy. In FY 1998, it would have simply added 303 divorce cases to the nearly 6,470 already in the District Court. Moving those cases to the District Court will make the Case Management Officers available to help on child support and various preliminary and uncontested matters. Implementation will require added attention to the handling of long divorce hearings, which presumably now occur in a larger proportion of divorce cases in the Superior Court than in the District Court. In implementing exclusive divorce jurisdiction in the District Court, attention must also be given to providing the extra resources needed to handle the added caseload. More time of Superior Court justices on

cross-assignment may well be needed to help to give all long divorce hearings timely scheduling. The unified trailing docket that is the subject of Recommendation III can also be of help to the District Court to manage hearings longer than three hours. Also, additional funding may well be required for the Family Division.

As a general matter, the Task Force defines "divorce-related matters" to include separation, annulment, child support, and proceedings to void marriage. On the assumption that the Legislature will take appropriate action to provide, in compliance with the funding requirements of federal law, that the parties to a paternity action have no right to a jury trial, the Task Force recommends that the District Court be granted exclusive jurisdiction over those cases as well. Also the Task Force defines "divorce-related matters" to include actions under the Uniform Interstate Family Support Act (UIFSA), 19-A M.R.S.A. § 2801, et seq. (West 1997), with exclusive jurisdiction over those cases going also to the District Court.

The Task Force also believes that family matters concerning child support pursuant to 19-A M.R.S.A. § 1556(1) and grandparents' visitation rights pursuant to 19-A M.R.S.A. § 1805 should be resolved by the Family Division of the District Court.

The Task Force does not suggest altering the membership of the Family Law Advisory Commission, which includes Superior Court representation, nor does it suggest amending Section 652 of Title 19-A, authorizing the Superior Court (as well as the District Court) to issue a certificate ("marriage waiver") granting the right to solemnize a marriage before the end of the mandatory waiting period.

This Recommendation will undoubtedly increase the workload of the Family Division of the District Court. In order to realize the substantial advantages of this Recommendation within the context of existing court resources, there needs to be coordinated scheduling and cross-

assignment of judicial and clerical personnel between the Superior and District Courts. Also, in monitoring the implementation of this Recommendation, the Oversight Group (see Recommendation VIII) should from time to time review and make recommendations as to the adequacy of the Family Division's funding to carry out the important work exclusively committed to it.

Draft legislative amendments to implement Recommendation I are encompassed in Appendix C. Complementary rules amendments can most appropriately be drafted by the Supreme Judicial Court's Advisory Committee on Civil Rules after the statutory enactments.

RECOMMENDATION II: APPELLATE REVIEW BY THE SUPERIOR COURT OF DISTRICT COURT JUDGMENTS AND ORDERS SHOULD BE SUBSTANTIALLY ELIMINATED

The Task Force recommends that the appellate jurisdiction of the Superior Court over the District Court be substantially eliminated. Appeals from the District Court, with certain limited exceptions, should be taken directly to the Law Court. Logic dictates that appeals from the Administrative Court should be handled in the same way. To achieve the substantial benefits of this Recommendation, the Task Force recognizes that the Legislature must provide the Law Court with the financial resources to enable it to handle the additional caseload resulting from direct appeals from the District and Administrative Courts.

ANALYSIS:

The Recommendation closes another "gap" in the unification of our two trial courts by eliminating the anomaly of having one trial court serve as the appellate tribunal of the other. Direct appeals from the District Court to the Law Court are already authorized in a number of cases such as actions for child protection, actions for termination of parental rights (22 M.R.S.A. § 4006), actions for foreclosure and sale (14 M.R.S.A. § 1901), pretrial appeals by the State, and,

to the extent permitted by the Double Jeopardy Clause, post-trial appeals by the State in criminal and juvenile cases (15 M.R.S.A. § 2115-A; § 3407). (By way of comparison, all appeals from the 16 probate courts already go directly to the Law Court -- and have since the effective date of the Probate Code on January 1, 1981. 18-A M.R.S.A. § 1308.)

The recommendation also eliminates the anomaly by which, at present, cases in which the two trial courts have concurrent jurisdiction (*e.g.*, divorce, money claims not exceeding \$30,000, quiet title actions, mortgage foreclosure, partition of real estate, enforcement of environmental laws, contract specific performance, nuisance actions, actions between partners, Class D and E crimes, etc.) have one level of appeal if tried in the Superior Court and two levels if tried in the District Court.

To whatever extent the recommendation relieves the Superior Court of caseload, the Superior Court Justices could devote more time to uniform trailing dockets as outlined in Recommendation III and to other cross-assignment. At the same time, the Law Court as a specialized appellate tribunal can handle the District Court appeals more efficiently and uniformly as part of its exclusive appellate review function.

Finally, the recommendation avoids significant delay and cost on those District Court appeals that end up in the Law Court following an appeal to the Superior Court.

By whatever extent the Superior Court now performs a screening function -- by disposing finally of District Court appeals -- the recommendation would increase the workload of the Law Court. The Superior Court received 350, 348 and 318 civil appeals and 91, 69 and 73 criminal appeals from the District and Administrative Courts in FY '96, FY '97, and FY '98, respectively.

The Superior Court also received 7, 10, and 14 juvenile appeals (with 8,⁶ 7, and 8 dispositions) in FY'96, FY'97, and FY'98, respectively. In 1997 and 1998⁷, the Law Court decided 51 and 59 cases originating in the District and Administrative Courts that had already been reviewed on appeal to the Superior Court. Nevertheless, the aggregate judicial effort by the Law Court and the Superior Court should be significantly reduced as to all those appeals now heard and decided by both courts. Furthermore, the Law Court should be able to handle the appeals that now go only as far as the Superior Court in a more routine, efficient and uniform manner than can 16 different Superior Court Justices traveling about the State and picking up the District Court appeals in the course of their trial work. The Law Court is also more accustomed to applying the standards of appellate review of findings and discretionary decisions.

The Task Force recognizes that this recommendation inevitably will increase the Law Court's workload in some as yet undetermined amount. The Law Court can best assess the appropriate way to handle that increased workload. The Task Force strongly urges the Legislature to provide the Law Court with the necessary financial resources for any required additional staff. The Task Force is confident that this Recommendation II will bring substantial improvement in the service of the courts to the public, but at the same time the Task Force recognizes that funding of necessary additional staff for the Law Court is a necessary precondition to implementing the recommendation.

⁶ The Superior Court disposed of one juvenile appeal in FY '96 that had been brought the previous year, which explains why the Court disposed of 8 cases while only 7 were filed in FY '96.

⁷ These figures derive from both fiscal year and calendar year statistics. In FY '97 and FY'98, there were 32 and 35 opinions in cases appealed to the Law Court that originated in the District Court and were next appealed to the Superior Court. In calendar years 1997 and 1998, there were 19 and 24 memoranda of decision (MemDecs) in such cases.

Administrative "appeals" brought pursuant to M.R. Civ. P. 80B (Review of Governmental Action) and M.R. Civ. P. 80C (Review of Final Agency Action) would continue to be filed in the Superior Court. These do not involve in any way Superior Court review of District Court action. Although these cases involve judicial review or "appeal" of actions of local and state administrative agencies, 80B or 80C filings are a first entry into the court system, and provisions are made in the rules for the taking of additional evidence in the Superior Court. It is desirable for a trial court to handle the administrative appeals before they go to the Law Court. There is no reason for disturbing the existing situation by which these cases originally go to the Superior Court.

IMPLEMENTATION:

Implementation of this recommendation will require numerous statutory and rule changes, and likely some changes in the procedures used by the Law Court to handle its appellate workload. Suggested statutory changes are encompassed in Appendix C. On the drafting of rules amendments to follow those statutory changes, the Task Force defers to the Supreme Judicial Court's Advisory Committees on Civil and Criminal Rules.

Special characteristics of certain types of cases lead the Task Force to recommend against the elimination of all Superior Court appellate jurisdiction over the District Court. The Task Force recommends no change in the following cases:

1. Appeals from the District Court in forcible entry and detainer cases pursuant to 14 M.R.S.A. § 6008 and M.R. Civ. P. 80D(f). These appeals implicate the appellant's right to a jury trial. Certain of such appeals require a trial *de novo*.
2. Appeals in small claims cases, pursuant to M.R. Civ. P. 80L. These appeals implicate the defendant's right to a jury trial, and certain of such appeals require a trial *de novo*. The

difficulties of creating a separate track of appeal are thought to justify leaving the appeal process as it is.

3. Bail appeals pursuant to 15 M.R.S.A. §§ 1028 and 1029. The need for prompt disposition by the judge hearing the appeal makes impractical appeals to single justices of the Supreme Judicial Court, only seven in number residing in a few locations. *See* 15 M.R.S.A. § 3402 *et seq.*

4. Appeals in juvenile cases. On juvenile appeals to the Superior Court, the Superior Court can enter a new order of disposition and that new order is not appealable to the Law Court. The State may appeal to the Superior Court for the failure of the juvenile court to order a juvenile to be bound over as an adult. *See* 15 M.R.S.A. §§ 3402, 3407. There are very few juvenile appeals, there is a need for a speedy review, and the fact that the Superior Court has dispositional powers makes this area of the law unique and the recommendation is that appeal procedure is best left as it is.

5. Appeals from a District Court order revoking probation pursuant to 17-A M.R.S.A. § 1207(l) and M.R. Crim. P. 37F. The underlying sentence imposed in the District Court is most frequently less than one year, and there is a need to provide for a prompt resolution of an appeal of a revocation of probation. The Task Force recommends that there be no further appeal from the Superior Court's decision on the appeal from a District Court order.

6. Appeals from an adverse order of the District Court on a motion to correct or reduce a sentence pursuant to M.R. Crim. P. 35(f). Because sentences imposed in the District Court are generally of short duration, a prompt disposition of those appeals at the Superior Court, as is the current practice, is recommended. Similar to an appeal from a District

Court order revoking probation, the Task Force recommends that an adverse Rule 35 order of the District Court not be appealable beyond the Superior Court.

RECOMMENDATION III: CIVIL NONJURY ACTIONS SHOULD BE TREATED, TO THE FULLEST EXTENT POSSIBLE, EQUALLY IN THE DISTRICT AND SUPERIOR COURTS, AND THEREFORE THE DAMAGES LIMITATION OF \$30,000 SHOULD BE REMOVED FROM DISTRICT COURT ACTIONS, THE FILING FEES SHOULD BE UNIFORM, AND THE LONGER CIVIL NONJURY TRIALS (THREE HOURS OR MORE) SHOULD BE SUBJECT TO AN UNIFIED RULE 16 PROCESS AND TRIAL IN EITHER THE DISTRICT OR SUPERIOR COURT ON A UNIFIED TRAILING LIST.

The Task Force recommends that the Courts create a unified trailing docket for longer hearings in nonjury cases, coupled with uniform filing fees for general civil cases and elimination of the \$30,000 jurisdictional limit on civil damage actions in District Court.

ANALYSIS:

The current civil jurisdictional framework for the District and Superior Courts consists of the original jurisdictional grant to each court, coupled with relatively recent legislative changes. Those legislative changes have resulted in a structure wherein jurisdictional damage limits are illogical and disparate filing fees are inappropriate. The Superior Court is currently granted "general jurisdictional" powers pursuant to 4 M.R.S.A. § 105, of "any and all matters either original or appellate, which were prior to January 1, 1930, within the jurisdiction of the Supreme Judicial Court or any of the Superior Courts, whether cognizable at law or in equity, except as concurrent or exclusive jurisdiction is vested in the District Court" The District Court has "the civil jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961" and "original jurisdiction, concurrent with that of the Superior Court, of all civil actions when no equitable relief is demanded and the damages claimed do not exceed \$30,000." 4 M.R.S.A. §§ 152(1) & (2).

In addition to these general grants of jurisdiction, the Legislature has greatly expanded the District Court's general civil jurisdiction to include numerous actions wherein the District Court does possess equitable powers concurrent with those of the Superior Court. Leaving aside domestic relations cases,⁸ which are the subject of other court unification recommendations, the District Court's equitable jurisdiction now includes: (1) actions to quiet title to real estate; (2) actions for breach of implied warranty and covenant of habitability; (3) actions to foreclose mortgages; (4) actions for restitution; (5) actions for illegal evictions; (6) actions to compel specific performance of contracts; (7) actions for relief in cases of fraud, duress, unjust enrichment, etc.; (8) actions concerning nuisance and waste; (9) actions concerning partnership; (10) various other civil and equitable actions; and (11) actions to grant equitable relief and impose penalties under state and local environmental laws. *See generally* 4 M.R. S.A. §§ 1525 (A. -R.) & (6-A) (A. -P.) None of these actions set any jurisdictional limit as to amount. Actions to quiet title and/or foreclose mortgages will most commonly involve real estate worth far in excess of \$30,000. Furthermore, many of the enumerated equitable actions have the potential of becoming complex civil litigation. Thus the \$30,000 figure as a jurisdictional limit for other types of general civil litigation, such as personal injury actions, is arbitrary and inconsistent.

Furthermore, a litigant can currently file a foreclosure action or any of these other equitable actions for "half price" in the District Court even though the complexity of the case and the clerical and judicial hours devoted to its processing will be identical in both courts. The filing

⁸ Recommendation I addresses vesting exclusive jurisdiction over all divorce related matters in the District Court. To the extent that recommendation might cause longer divorce hearings with lengthy financial disputes to need trial time in the District Court, Recommendation III could provide a release mechanism to allow those longer hearings to be scheduled on a unified civil nonjury trailing list to be heard either in the District or Superior Court. The clerks, regional administrators, and presiding judges could monitor the dockets in a given locale to determine if lengthy family matters cases should be placed on the unified trailing list in order to get a hearing date.

fee for civil litigation should be identical in both courts as to those matters where they have concurrent jurisdiction. Appropriately, the filing fee in matters over which the District Court has exclusive jurisdiction, such as forcible entry and detainer actions, should remain at the present level. Many matters filed in the District Court have filing fees set by administrative order and the court should continue to delineate those matters. The changes in fee structure should apply only to those matters that can be brought in either the District or Superior Court.

Pursuant to this recommendation, the District and Superior Courts would have concurrent jurisdiction of all general civil damage actions, regardless of the amount in controversy. The only exceptions would be for those specific actions wherein the Legislature has determined that one court or the other will have exclusive jurisdiction. Two such examples are 22 M.R.S.A. § 1597-A, which gives the District Court and the probate courts exclusive jurisdiction to grant equitable relief to a minor seeking to obtain an abortion, and 24 M.R.S.A. § 2853, the Health Security Act, which grants the Superior Court jurisdiction over medical malpractice actions. There are other statutes that require specific actions to be filed in the Superior Court. Those actions range from complaints for unlawful discrimination filed pursuant to 5 M.R.S.A. § 4621 to actions to enforce penalties imposed by the Workers' Compensation Board under 39-A M.R.S.A. § 360. This recommendation does not envision changing any of those specific provisions, but would simply expand the District Court's jurisdiction over general civil damage actions regardless of the amount in controversy provided that the parties did not seek a jury trial. Statutes that specifically indicated that the statutory cause of action was to be brought in one court or the other would remain unchanged.

This recommendation would give plaintiffs the option of filing nonjury cases in either the District or Superior Court, the rationale being that "fast track" cases could be quickly heard and

disposed of at the District Court level. If the plaintiff filed an action in the District Court and another party sought and was entitled to a jury trial, removal would be available. If the action was filed by the plaintiff as a "fast track" action in the District Court and subsequent events turned the case into a longer and more complex matter, a unified scheduling model would provide for the trial of the matter on a combined trial list while still retaining the case on the original District Court docket. The authorization of this procedure by rule would give the Court more control over its own dockets in certain locations. (See recommended amendment of M.R. Civ.P. 16A in Appendix B hereto.) In some locales there might not be any cases sent to the Superior Court calendar for hearing, but in other locations it might be used extensively.

Pursuant to this recommendation, civil litigation would be processed in a uniform fashion in both the District and Superior Courts, subject to the caveat that the parties could still opt for a "fast track" resolution without long discovery periods or burdensome pretrial orders once the case was actually ready for trial. The current Maine Rule of Civil Procedure 16, which requires the issuance of a Scheduling Order as soon as the answer has been filed and issuance of a Pretrial Order once the case has been placed on a trial calendar, would apply in both District and Superior Court. Under current practice, the District Court does not manage its civil caseload in any significant way. If the parties do not request a trial date, the case can remain indefinitely on the docket with no action being taken. Under this recommendation, every case would be scheduled for trial following the conclusion of the eight-month discovery period, and the parties would be under a court order regarding compliance with pretrial procedural matters.

A primary concern with this recommendation is that District Court cases would have unnecessarily long discovery periods or be subject to unnecessary procedural requirements involving trial preparation. However, the recommended Rule 16A provides a mechanism for the

"simple" cases that require little or no discovery and a brief hearing. Those cases can be handled in essentially the same fashion as is the current practice. In other words, relief from the scheduling order and/or the pretrial order is easily obtained, but if the case is to be a lengthy hearing those orders will ensure that the matter is processed in the same fashion as civil litigation in the Superior Court.

IMPLEMENTATION:

In order to implement this recommendation in its entirety, changes would have to be made to 4 M.R.S.A. § 152, M.R. Civ. P. 16A (Pretrial Procedure in the District Court), the Fee and Document Management Policy of the Judicial Branch, and general scheduling practices of the District and Superior Court clerks. Furthermore, this recommendation presupposes that the intermediate appeal to the Superior Court is eliminated and that removal is limited to those matters wherein a jury trial is sought. Appendix C encompasses the statutory change, and Appendix D sets forth the rule changes necessary to implement this recommendation.

RECOMMENDATION IV: REMOVAL OF A CIVIL CASE FROM THE DISTRICT COURT TO THE SUPERIOR COURT SHOULD BE PERMITTED ONLY FOR THE DEMONSTRATED PURPOSE OF EXERCISING THE RIGHT TO A JURY TRIAL.

The Task Force recommends that any right to remove a civil case from the District Court to the Superior Court be eliminated except in instances where the defendant both has a right to jury trial and also takes steps to exercise that right by filing a demand for jury trial and paying the jury fee, simultaneously with filing the notice of removal.

ANALYSIS:

The major feature distinguishing the District and Superior Court is the fact that the Superior Court is our only jury court. In the absence of a jury trial, any case brought in the District Court ought on principle to stay there because transfer imposes unnecessary costs on the parties and on the courts. This principle is violated by the present M.R.Civ.P. 76C(a), which permits any civil action in the District Court, without limit, to be removed to the Superior Court simply by filing notice of removal within the time required for filing the answer or reply. Thus, those cases that can be brought in either Court can be removed to the Superior Court even if the removing party has no right to a jury trial and even if, though it has a right to a jury, it never intends to demand a jury or later decides to waive the jury. This recommendation would eliminate that absolute choice of forum that the defendant now has in a case commenced in the District Court. The proposal would limit removal to cases where the removing parties have a right to a jury trial (most commonly suits for money damages) and also carry through in exercising that right.

By Recommendation IV the plaintiff will get the right to choose the forum as between the District and Superior Courts if both have jurisdiction. The defendant, on the other hand, will be bound by that choice except when the defendant carries through in asserting an available jury right. Because the District Court and the Superior Court are equally competent to try non-jury or jury-waived cases where there is concurrent jurisdiction, the plaintiff will under the recommendation be merely exercising a plaintiff's usual prerogative of choosing the court in which the suit will be initiated - as, for example, a New Hampshire plaintiff opting to bring a diversity case against a Maine defendant in the New Hampshire federal court rather than the Maine federal court.

It may be that attorneys for defendants in non-jury cases in the District Court may object to losing their existing option of removing to the Superior Court, out of a feeling that the Superior Court is "better" or more accessible for lengthy trials or better known to the lawyer, or for any other reason. To the extent that such an objection has any merit, the solution must be to correct any imbalance between the Courts, for the good of all litigants, rather than leave the defendant with the absolute right to change the forum for any reason or no reason at all.

The requirement of payment of the jury fee upon removal provides some protection against subversion of the purpose of the recommendation to keep any non-jury or jury-waived trials in cases commenced in the District Court in that Court. The Task Force considered, and rejected, a proposal for automatic remand to the District Court if the removing party later waived the demanded jury trial; the automatic remand would exact too high a price in delay and cost.

IMPLEMENTATION:

Implementation of this recommendation will require only rules changes. These are detailed in Appendix E. The Task Force does not recommend repeal or amendment of M.R.Civ.P. 13(a)(2) ("Removal of Claims Not Within the Subject-Matter Jurisdiction of the District Court"). That rule provides that a party in the District Court who pleads a compulsory counterclaim that does not fall within the Court's subject matter jurisdiction "shall" remove the "action" to the Superior Court. For example, under the present \$30,000 limitation on District Court jurisdiction of money damages actions, if A sues B in the District Court for \$25,000 and B counterclaims against A for \$31,000 on a claim arising out of the same transaction or occurrence, the whole action must be removed to the Superior Court. The reason for mandatory removal arises solely from limitations on the District Court's jurisdiction. With the removal of the \$30,000 jurisdictional limit pursuant to Recommendation III, the occasion for requiring removal under

Rule 13(a)(2) will be very substantially reduced. Nonetheless, the mandatory removal will continue to apply to those cases over which the Superior Court continues to have exclusive jurisdiction. Medical malpractice cases, which by 24 M.R.S.A. § 2853 must be brought in the Superior Court, are one example. A medical malpractice counterclaim by a patient in a physician's suit for a professional fee would be subject to mandatory removal. Rule 13(a)(2) needs to be preserved for that and similar limited applications.

RECOMMENDATION V: A PILOT PROJECT SHOULD BE UNDERTAKEN AS SOON AS POSSIBLE TO CREATE A UNIFIED CASE SCHEDULING AND CASE MANAGEMENT SYSTEM FOR MISDEMEANOR CASES TRANSFERRED FROM THE DISTRICT COURT TO THE SUPERIOR COURT FOR JURY TRIAL

The Task force recommends that a pilot project be undertaken in Farmington and Dover-Foxcroft for the use of a consolidated docket in the District Court for misdemeanor (Class D and E) cases transferred to the Superior Court for jury trial. The purpose would be to create a unified scheduling and case management system for those cases statewide, when practicable.

ANALYSIS

When reviewing the framework of processing misdemeanor cases in our criminal system, the Task Force identified two areas of concern: delay in the final disposition of the case and duplicative work in the District Court and Superior Court clerks' offices. The ABA Standards recommend that 90% of all misdemeanors, infractions, and civil violations should be adjudicated or otherwise concluded within 30 days of arrest or citation, and 100% within 90 days. In Maine in fiscal year 1998, criminal cases transferred to the Superior Court, on average, took 135 days from filing to disposition. Current practice measured against ABA benchmarks suggests that the Maine court system could do a better job. The criminal case process framework includes the arrest, arraignment, pretrial motions in District Court, transfer to Superior Court, docket call,

pretrial motions in Superior Court such as motions *in limine*, and trial. It is also important to note that only 4% of those cases asking for jury trial go to jury trial.

Delay for cases transferred to the Superior Court was identified in the following processes: pretrial motions filed in District Court, docket call in the Superior Court, and trial in the Superior Court. At present, motions to suppress are handled in the District Court. Frequently, such motions are filed automatically, are continued, and on the day when the motion is set for hearing, are withdrawn and the cases finally transferred to Superior Court. The common practice of filing these motions results in the District Court often over-scheduling trials and motions, causing the Court to continue the hearing when it becomes apparent the motion will not be reached. Once the case is finally transferred to Superior Court, no action will be taken on the case until the docket call, which occurs when there is a jury available. In rural counties, this can be months later. Once the docket call is made, the case can then be scheduled for trial. As noted, the vast majority of those cases end up in pleas of guilty and a much small number become jury waived trials in the Superior Court.

Transfer of criminal cases from District to Superior Court causes considerable duplication of effort by the Courts. When the District Court transfers a case, all the original documents in the case must be sent to the Superior Court, along with a form entitled, "Superior Court Acknowledgment." Bail is also transferred. The Superior Court then returns the signed form "Superior Court Acknowledgment" to the District Court. Once the Superior Court receives the transfer case, the clerk assigns that case a new criminal docket number. In addition, the Superior Court clerk has to fill out a docket sheet containing the following information: (a) date the transfer case was received in Superior Court; (b) the procedural nature of the case, i.e., "transfer"; (c) the District Court where the case originated; (d) docket number assigned in District

Court; (e) defendant's name and address; (f) defendant's attorneys' name and address; (g) the offense (including title and section of statute and class of crime); (h) Superior Court docket number; and (I) bail provisions. Included in this paperwork will be orders approving appointment of counsel, which sometimes are reviewed and acted upon again at the Superior Court level.

To address these concerns, the Task Force makes the following recommendation in misdemeanor cases in which the defendant has made a timely request to transfer the case from District to Superior Court for a jury trial.

1. Provide that the District Court maintain the docket and files. This ensures that there is but one file, docket number and custodian for all Class D and E criminal cases. This measure would eliminate the current practice in which the Superior Court clerks must open a new file, assign a new docket number, and take physical custody of the case.
2. Encourage the flexible use of existing facilities and staff of both courts. The purpose of this measure is to foster cooperation between the courts, to give them the ability to plan jointly, and to provide the District Court with the additional needed help to deal with the processing of the consolidated criminal docket.
3. Increase the use of cross-assignment of justices and judges and coordinate their scheduling to make overall best use of judicial resources. This would permit the consolidation of criminal dockets, the increased use of motion days, consecutive hearing days, and availability of two judges to handle a docket. Cross-assignment should be made liberally by the Chief Justice.
4. Call the docket of the cases transferred for jury trial, when practicable, in the District Court. This would prevent the needless carrying of the files from one court to another.

5. Separate the functions of the court locations so that bench trials, when practicable, occur in the District Court locations and jury trials in the Superior Court. Again, this keeps the file in the District Court, as well as provides the opportunity for a coordinated management system of the transfer cases.
6. Develop a centralized system with the District Court having responsibility for all postjudgment proceedings involving an individual defendant, including collection of attorney fees, fines, restitution and probation violations. Under our current system a defendant might have two or three cases in different District Court locations as well as a Superior Court case in all of which he is responsible for making payments and is facing probation violations. Often the courts make competing demands for payment and it is impossible to coordinate a reasonable payment schedule among the different courts. Furthermore, in "part-time" counties a motion for probation revocation may sometimes take a number of months to process if no judge is assigned to that county. If a defendant accumulates multiple convictions within a single county (or ultimately on a statewide basis) the court should have the flexibility of sending all of those matters to a single locations for processing, presumably the location nearest to where the defendant now resides and/or the location most convenient for the system, whether that may be a District or Superior Court location.

IMPLEMENTATION

These recommendations for a pilot project should be implemented administratively by an Implementation Team described below and completed in a timely manner in Farmington and Dover-Foxcroft. The Task Force recognizes that it would be easiest to institute these changes in those areas in which the District Court and Superior Court clerks' offices are combined or,

although separate, are in the same building. The Task Force also recognizes that this concept is more complex when applied to those Superior Courts that have more than one District Court sending cases to the Superior Court for jury trial.

Planning for when, where, and how to implement Recommendation V should be committed to an Implementation Team that should include all the key players needed to design an efficient case scheduling and management system. The Implementation Team should be in place not later than January 1, 2001. The Team appropriately could include the Chief of the District Court or designee, a District Court clerk, the Superior Court Chief or designee, a Superior Court clerk, a district attorney, a defense attorney, a Department of Corrections designee, including representation from the division that handles probation revocations, a regional court administrator, and an Office Technology designee. The Team should be charged with the responsibility of making specific recommendations, including any necessary statutory and rule changes, on how to implement its proposed case scheduling and management system to the Chief Justice of the Supreme Judicial Court. The Implementation Team should be further charged with making recommendations for a unified case scheduling and case management system statewide, when practicable. The initial recommendations, which should be developed with some urgency, should be implemented as soon as possible as a pilot project in those counties where the Superior and District Court Clerks' offices are already combined, namely, in Franklin (Farmington) and Piscataquis (Dover-Foxcroft) counties. As more Clerks' offices of the Superior and District Courts are combined, they should undertake to create this unified case scheduling and case management system. Extension to other counties of a unified case scheduling and case management system should build upon the experience of the pilot project.

RECOMMENDATION VI: THE DISTRICT COURT SHOULD BE VESTED WITH JURISDICTION, CONCURRENT WITH THE SUPERIOR COURT, TO PARTITION REAL PROPERTY BY SALE.

The Task Force recommends that the District Court be given concurrent jurisdiction with the Superior Court over actions to partition real property by sale, with the power to grant equitable relief.

ANALYSIS:

The recent Law Court decision in Boyer v. Boyer, 736 A.2d 273 (Me. 1999), highlights a deficiency in the jurisdictional statutes of the District Court. The Boyer case held that, under the existing statutes, the District Court does not have equity jurisdiction to partition real estate by sale on the petition of the life tenant, even though both the Superior Court and the county probate courts are given that equitable power specifically under 33 M.R.S.A. § 153 ("Sale or mortgage of estates subject to contingent remainders"). At the same time, the District Court does already have jurisdiction under 14 M.R.S.A. §§ 6501-6502 to partition real property by physical division and also does already have jurisdiction, under 4 M.R.S.A. § 152(5)(O), to grant equitable relief in "[a]ctions in which the pleading demands a judgment . . . [o]therwise affecting title to any real property." These confusing statutory provisions constitute traps for the unwary and impose added burdens upon the courts in navigating among them. Also the District Court under its plenary powers in divorce cases presumably may divide or "partition" marital real estate by ordering its sale and the division of the proceeds. In light of all these circumstances, there appears to be no reason for denying the District Court the same power as the Superior Court has to partition real estate by sale.

IMPLEMENTATION:

In order to implement this recommendation, 33 M.R.S.A. § 153 should be amended to give the same power to the District Court as the Superior Court and the probate courts already have to order the sale of real estate that is subject to a contingent remainder, executory devise or power of appointment. More generally, 4 M.R.S.A. § 152(5) should be amended to vest the District Court specifically with jurisdiction to grant equitable relief in actions brought for the partition of real estate by sale.

RECOMMENDATION VII: THE SUPREME JUDICIAL COURT SHOULD ESTABLISH "ON-GOING GOALS" FOR THE JUDICIAL DEPARTMENT TO TAKE FURTHER STEPS TOWARD UNIFICATION OF THE SUPERIOR AND DISTRICT COURTS FOR THE PURPOSE OF IMPROVING SERVICE TO THE PUBLIC.

The Task Force recommends that the Supreme Judicial Court establish for the Judicial Department on-going goals for further unification consistent with the larger goal of improving court services for the public:

ANALYSIS:

The test applied by the Task Force in making the foregoing Recommendations has been whether the recommended changes will improve the service of the Courts to the public. The public will be better served to the extent that the changes reduce the cost and delay of litigation and improve access to and understanding of the courts.

The Task Force believes that there are other measures that would be similarly beneficial but that are of a nature that makes them desirable to be applied from time to time in connection with the ongoing operation of the Judicial Department. Specifically, the Task Force recommends that the Supreme Judicial Court adopt the following "On-Going Goals:"

1. Clerks' offices of the Superior and District Courts should be combined where and when practicable;

2. There should be flexible, joint use of existing facilities by both Courts as advantageous;
3. New facilities should be planned for flexible, joint use by both Courts or at some later time by a single Maine Trial Court;
4. The Judicial Department should institute coordinated scheduling and cross-assignment of judicial and clerical resources between the two Courts;
5. In order to promote ready intercommunication between the Courts and to be consistent with cross-assignment of personnel and with the possibility at some later time of a single Maine Trial Court, the court administrative structure, court information system, internal court procedures, and court forms should be modified so that they are uniform for the two Courts, unless there is good reason for differences to remain;
6. Continued attention should be given to assuring that the judges of both Courts have equal access to judicial education and training opportunities and to the satisfactions of a varied judicial career through available assignments and cross-assignments; and
7. Further measures should be devised and implemented on a sustained basis to dispel any public perception that the District Court is an “inferior” or “lower” court compared to the Superior Court.

These On-Going Goals should be considered to be open-ended with the full expectation that additional Goals can and should be advantageously identified from time to time for further steps toward unifying the Superior and District Courts. The historical process that has already achieved a substantial degree of unification of the two Courts should be consciously continued. The Supreme Judicial Court can advantageously involve trial judges and clerks and other members of the court family in identifying further On-Going Goals. At all times further

unification steps should be examined before adoption and implementation for their capacity to promote better service to the public.

IMPLEMENTATION:

The On-Going Goals here recommended can be established and implemented administratively by the Chief Justice and the Supreme Judicial Court in the exercise of their supervisory responsibilities for the court system. At most only incidental legislative changes may be found to be necessary. In identifying further On-Going Goals, the fact that legislative action may be required for implementation should be considered no impediment to their establishment.

RECOMMENDATION VIII: THE SUPREME JUDICIAL COURT SHOULD CREATE AN OVERSIGHT GROUP TO SUPERVISE AND MONITOR THE IMPLEMENTATION OF THE PRECEDING SEVEN RECOMMENDATIONS, TO IDENTIFY FROM TIME TO TIME ADDITIONAL ON-GOING GOALS FOR UNIFYING THE DISTRICT AND SUPERIOR COURTS, AND TO REPORT TO THE COURT AT LEAST ANNUALLY ON THOSE ASSIGNMENTS.

To aid in and to evaluate the implementation of the Task Force's recommendations and to identify further unification goals as appropriate, the Supreme Judicial Court should establish an Oversight Group.

ANALYSIS:

Implementation of the seven preceding recommendations submitted by the Task Force involves a large number of discrete legislative and administrative actions. It is desirable that a single entity ("Oversight Group") be created to supervise and monitor all the several parts of the unification program recommended in this Report. The Oversight Group also should be assigned the responsibility of identifying from time to time additional On-Going Goals for unifying the District and Superior Court.

The Oversight Group should report at least annually to the Supreme Judicial Court on the implementation of the seven preceding recommendations and on the identification and implementation of additional On-Going goals for Court Unification. In reporting the Oversight Group should assess the degree to which the implementation of each of the Task Force's recommendations has achieved its intended purpose of better service to the public.

IMPLEMENTATION:

This recommendation can be implemented administratively, without the need for statutory or rule changes. The Oversight Group should include trial court judges, clerks and attorneys as well as members of the public. Also in the interest of continuity, it may be desirable for both this Task Force and the Futures Commission to have representation on the Oversight Group.

**APPENDIX A: CHAPTER 107 - RESOLVE, DIRECTING THE JUDICIAL
DEPARTMENT TO DEVELOP RECOMMENDATIONS TO
IMPLEMENT COURT UNIFICATION**

**LAWS OF MAINE
Second Regular Session of the 118th
Resolves
CHAPTER 107
H.P. 992 - L.D. 1372**

**Resolve, Directing the Judicial Department to Develop Recommendations to Implement
Court Unification**

Sec. 1. Convene task force. Resolved: That the Chief Justice of the Supreme Judicial Court shall convene a task force to develop recommendations to implement the unification of the Superior and District Courts. The Chief Justice shall select the task force membership, which may include:

1. District Court judges;
2. Superior Court justices;
3. Supreme Judicial Court justices;
4. Court clerks;
5. District attorneys;
6. Legal services representatives;
7. Maine State Bar Association members;
8. Maine Trial Lawyers Association members;
9. Public members; and
10. Any other interested parties; and be it further

Sec. 2. Reports. Resolved: That the task force submit periodic reports to the Chief Justice of the Supreme Judicial Court. The Chief Justice shall submit to the joint standing committee of the Legislature having jurisdiction over judiciary matters an interim report by March 15, 1999 and a final report by December 15, 1999, including any necessary legislation; and be it further

Sec. 3. Drafting assistance. Resolved: That, upon request, the Legislative Council shall provide staff to assist in drafting legislation; and be it further

Sec. 4. Compensation. Resolved: That the members of the task force shall serve without per diem or expenses.

Effective June 30, 1998, unless otherwise indicated.

APPENDIX B: LIST OF COURT UNIFICATION TASK FORCE MEMBERS

Hon. Vincent L. McKusick, Chair
Chief Justice (Ret.)
Supreme Judicial Court

Margaret Minister O'Keefe, Esq., Secretary
Pierce Atwood

Meris J. Bickford, Esq.
Maine State Bar Association

Bonnie Blythe
Family Crisis Services

Sally Bourget
Superior Court Clerk
Cumberland County

Hon. Robert W. Clifford
Associate Justice
Maine Supreme Judicial Court

David Crook, Esq.
District Attorney - District 4

John DiMatteo
Businessman

Hon. Paul Fritzsche
Justice, Maine Superior Court

James T. Glessner
State Court Administrator

Vicki Hardy
Clerk, Maine Superior and District Courts
Franklin County

Nan Heald, Esq.
Pine Tree Legal Assistance

John A. Hobson, Esq.
Maine Trial Lawyers Association

Hon. Joseph M. Jabar
State Representative

Hon. Andrew Ketterer.
Attorney General

Hon. Margaret J. Kravchuk
Justice, Maine Superior Court

Ronald W. Lupton, Esq.
Maine Trial Lawyers Association

Dean Craig A. Mc Ewen
Bowdoin College

Hon. Robert E. Mullen
Judge, Maine District Court

M. Michaela Murphy, Esq.
Criminal Defense Lawyers Assoc.

Erik M. Stumpf, Esq.
Maine Municipal Association

Peter Walsh
Dept. of Human Services

Hon. Michael N. Westcott
Chief Judge, Maine District Court

Sherry A. Wilkins
Administrative Office of the Courts

**APPENDIX C: STATUTORY CHANGES TO IMPLEMENT RECOMMENDATIONS
I, II, III AND NEW VI**

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 1. 4 MRSA §57 is amended to read:</p> <p>4 § 57. Jurisdiction; disposition of cases; technical errors in pleading and procedure</p> <p>The following cases only come before the court as a court of law: Cases on appeal from the <u>District Court</u>, the Superior Court or a single Justice of the Supreme Judicial Court or from the probate courts; questions of law arising on reports of cases, including interlocutory orders or rulings of such importance as to require, in the opinion of the justice, review by the law court <u>Law Court</u> before any further proceedings in the action; agreed statement of facts; cases presenting a question of law; all questions arising in cases in which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on habeas corpus, mandamus and certiorari and questions of state law certified by the federal courts. They shall be marked "law" on the docket of the county <u>or district</u> where they are pending, and there continued until their determination is certified by the clerk of the law court <u>Law Court</u> to the clerk of courts of the county and the court shall immediately after the decision of the question submitted to it make such order, direction, judgment or decree as is fit and</p>	<p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This section provides for appeals from the District Court directly to the Supreme Judicial Court sitting as the Law Court. Several technical corrections are made to update language and make references to the Law Court consistent.</p>	<p>4 § 57. Jurisdiction; disposition of cases; technical errors in pleading and procedure</p> <p>The following cases only come before the court as a court of law: Cases on appeal from the Superior Court or a single Justice of the Supreme Judicial Court or from the probate courts; questions of law arising on reports of cases, including interlocutory orders or rulings of such importance as to require, in the opinion of the justice, review by the law court before any further proceedings in the action; agreed statement of facts; cases presenting a question of law; all questions arising in cases in which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on habeas corpus, mandamus and certiorari and questions of state law certified by the federal courts. They shall be marked "law" on the docket of the county where they are pending, and there continued until their determination is certified by the clerk of the law court to the clerk of courts of the county and the court shall immediately after the decision of the question submitted to it make such order, direction, judgment or decree as is fit and proper for the disposal of the case,</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>proper for the disposal of the case, and cause a rescript in all civil actions, briefly stating the points therein decided, to be filed therein, which rescript shall be certified by the clerk of the law court <u>Law Court</u> to the clerk of courts of the county or <u>district</u> where the action is pending and to the Reporter of Decisions. If no further opinion is written out, the reporter shall publish in the next volume of reports thereafter issued the case, together with such rescript, if the reporter deems the same of sufficient importance for publicaiton <u>publication</u>.</p> <p>When the issues of law presented in any case before the law court <u>Law Court</u> can be clearly understood, they shall be decided, and no case shall be dismissed by the law court <u>Law Court</u> for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties. Whenever, in the opinion of the law court <u>Law Court</u>, the ends of justice require, it may remand any case to the court below or to any justice or <u>judge</u> thereof for the correction of any errors in pleading or procedure. In remanding said case, the law court <u>Law Court</u> may set the time within which said correction shall be made and said case reentered in the law court <u>Law Court</u>.</p> <p>When it shall appear to the Supreme Court of the United States, or to any court of appeals or district</p>		<p>and cause a rescript in all civil actions, briefly stating the points therein decided, to be filed therein, which rescript shall be certified by the clerk of the law court to the clerk of courts of the county where the action is pending and to the Reporter of Decisions. If no further opinion is written out, the reporter shall publish in the next volume of reports thereafter issued the case, together with such rescript, if the reporter deems the same of sufficient importance for publicaiton.</p> <p>When the issues of law presented in any case before the law court can be clearly understood, they shall be decided, and no case shall be dismissed by the law court for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties. Whenever, in the opinion of the law court, the ends of justice require, it may remand any case to the court below or to any justice thereof for the correction of any errors in pleading or procedure. In remanding said case, the law court may set the time within which said correction shall be made and said case reentered in the law court.</p> <p>When it shall appear to the Supreme Court of the United States, or to any court of appeals or district</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>court of the United States, that there are involved in any proceeding before it one or more questions of law of this State, which may be determinative of the cause, and there are no clear controlling precedents in the decisions of the Supreme Judicial Court, such federal court may certify any such questions of law of this State to the Supreme Judicial Court for instructions concerning such questions of state law, which certificate the Supreme Judicial Court sitting as a law court <u>the Law Court</u> may, by written opinion, answer.</p> <p>Sec. 2. 4 MRSA §105 is repealed and the following enacted in its place:</p> <p><u>4 § 105. Superior Court; civil jurisdiction</u></p> <p><u>1. Jurisdiction.</u> <u>Except as provided in subsection 2, the Superior Court has and shall exercise exclusive jurisdiction and has and shall exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters which were, prior to January 1, 1930, within the jurisdiction of the Supreme Judicial Court or any of the Superior Courts, whether cognizable at law or in equity.</u></p>	<p>Title 4, section 105 currently sets out much of the Superior Court's jurisdiction (some criminal jurisdiction is currently spelled out in Title 15, section 1). This section rewrites §105 to provide the Superior Court with exclusive civil jurisdiction over all matters that were within the jurisdiction of the Supreme Judicial Court or the Superior Court before January 1, 1930,</p>	<p>court of the United States, that there are involved in any proceeding before it one or more questions of law of this State, which may be determinative of the cause, and there are no clear controlling precedents in the decisions of the Supreme Judicial Court, such federal court may certify any such questions of law of this State to the Supreme Judicial Court. for instructions concerning such questions of state law, which certificate the Supreme Judicial Court sitting as a law court may, by written opinion, answer.</p> <p>4 § 105. Jurisdiction; powers</p> <p>The Superior Court, exclusive of the Supreme Judicial Court, shall have and exercise jurisdiction and have and exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters either original or appellate, which were, prior to January 1, 1930, within the jurisdiction of the Supreme Judicial Court or any of the Superior Courts, whether cognizable at law or in equity,</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>2. Exceptions to Superior Court's exclusive jurisdiction. The Superior Court does not have exclusive jurisdiction over matters for which:</u></p> <p><u>A. Concurrent or exclusive jurisdiction is vested in the District Court; or</u></p> <p><u>B. Concurrent jurisdiction is vested in the Supreme Judicial Court as provided in Title 14, section 5301.,</u></p>	<p><u>except</u> subject matter that is, by statute, either</p> <p>exclusively or concurrently within the jurisdiction of the District Court,</p> <p>or the Supreme Judicial Court. (Title 14, section 5301 is common law habeas corpus. Any other Supreme Judicial Court jurisdiction that should be listed here?)</p> <p>Criminal jurisdiction language is moved to Title 15, section 1.</p>	<p>except as concurrent or exclusive jurisdiction is vested in the District Court,</p> <p>and except as provided in Title 14, section 5301,</p>
<p><u>3. Appellate jurisdiction.</u> <u>The Superior Court shall hear appeals as follows:</u></p> <p><u>A. Administrative appeals brought pursuant to Title 5, chapter 375, subchapter VII and the Maine Rules of Civil Procedure, Rules 80B and 80C; and</u></p> <p><u>B. Appeals from the District Court:</u></p>	<p>Recommendation II eliminates most of the Superior Court's appellate jurisdiction. This section specifically states the Superior Court's appellate jurisdiction.</p>	

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>(1) Brought pursuant to Title 14, section 6008;</u></p> <p><u>(2) Brought pursuant to Title 14, chapter 738; and</u></p> <p><u>(3) As provided in Title 15, section 1.</u></p> <p><u>4. No jurisdiction, powers, duties or authority of the Law Court. The Superior Court does not have and may not exercise the jurisdiction, powers, duties and authority of the Supreme Judicial Court sitting as the Law Court.</u></p>	<p>forcible entry and detainer</p> <p>small claims</p> <p>criminal appeals and petitions</p>	<p></p> <p>provided that it shall have and exercise none of the jurisdiction, powers, duties and authority of the Supreme Judicial Court sitting as a law court.</p>
<p>Sec. 3. 4 MRSA §152 is amended to read:</p> <p><u>4 § 152. District Court; civil jurisdiction</u></p> <p><u>The District Court shall have jurisdiction in the following civil</u></p>	<p>deleted: Title 4, section 101 authorizes the Chief Justice of the Supreme Judicial Court to designate a Justice of the Supreme Judicial Court or an ARJ of the Supreme Judicial Court to hold a term or session of Superior Court.</p> <p>This section is rewritten to specifically list the</p>	<p>A single Justice of the Supreme Judicial Court shall have and exercise jurisdiction, and have and exercise all of the powers, duties and authority necessary for exercising the same jurisdiction as the Superior Court, to hear and determine, with his consent, any issue in a civil action in the Superior Court as to which the parties have no right to trial by jury or in which the right to trial by jury has been waived, except actions for divorce, annulment or separation.</p> <p>4 § 152. Jurisdiction</p> <p>The District Court shall have jurisdiction in the following matters:</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>matters:</p> <p>1. Jurisdiction exercised by trial justices and municipal courts. The civil jurisdiction <u>formerly</u> exercised by all trial justices and municipal courts in the State on September 16, 1961;</p> <p>2. Civil actions with damages claimed which do not exceed \$30,000 for money damages. Original jurisdiction, concurrent with that of the Superior Court, of all civil actions when no equitable relief is demanded and the damages claimed do not exceed \$30,000, except as to those actions for which exclusive jurisdiction is vested in the Superior Court by statute;</p> <p>3. Civil actions to enforce liens. Original jurisdiction, concurrent with the Superior Court, of all civil actions to enforce liens under Title 10, chapter 603 and under Title 35, section 316, and the court shall determine the amount pursuant to Title 10, section 3258;</p> <p>4. Exclusive jurisdiction. Original jurisdiction, not concurrent with that of the Superior Court, of mental health commitment hearings under Title 34, chapter 229, mental retardation certification hearings</p>	<p>civil jurisdiction of the District Court. Criminal provisions are moved to Title 4, section 165.</p> <p>Recommendation III removes the District Court's jurisdictional ceiling for civil actions seeking money damages. This section recognizes that there may be specific provisions elsewhere in the statutes that specifically give the Superior Court exclusive jurisdiction over certain actions.</p>	<p>1. Jurisdiction exercised by trial justices and municipal courts. The civil jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961;</p> <p>2. Civil actions with damages claimed which do not exceed \$30,000. Original jurisdiction concurrent with that of the Superior Court, of all civil actions when no equitable relief is demanded and the damages claimed do not exceed \$30,000;</p> <p>3. Civil actions to enforce liens. Original jurisdiction, concurrent with the Superior Court, of all civil actions to enforce liens under Title 10, chapter 603 and under Title 35, section 316, and the court shall determine the amount pursuant to Title 10, section 3258;</p> <p>4. Exclusive jurisdiction. Original jurisdiction, not concurrent with that of the Superior Court, of mental health commitment hearings under Title 34, chapter 229, mental retardation certification hearings</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>under Title 34, chapter 229, habitual truancy actions under Title 20-A, chapters 119 and 211 under which equitable relief may be granted and small claims actions under Title 14, chapter 738; and</p> <p>5. Other actions. Original jurisdiction, concurrent with that of the Superior Court, of the following types of actions, and in these actions the District Court may grant equitable relief:</p> <p>A. Actions for divorce, annulment of marriage or judicial separation and proceedings under Title 19-A;</p> <p>B. Actions to quiet title to real estate under Title 14, sections 6651 to 6658;</p> <p>C. Actions to quiet title to real estate under Title 36, section 946;</p> <p>D. Actions for breach of implied warranty and</p>	<p>This subsection lists the subject matter over which the Superior Court and the District Court share concurrent original jurisdiction.</p> <p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section removes divorce, annulment, separation and Title 19-A proceedings from concurrent jurisdiction. The subject matter is within the District Court's exclusive jurisdiction under new subsection 9.</p>	<p>under Title 34, chapter 229, habitual truancy actions under Title 20-A, chapters 119 and 211 under which equitable relief may be granted and small claims actions under Title 14, chapter 738; and</p> <p>5. Other actions. Original jurisdiction, concurrent with that of the Superior Court, of the following types of actions, and in these actions the District Court may grant equitable relief:</p> <p>A. Actions for divorce, annulment of marriage or judicial separation and proceedings under Title 19-A;</p> <p>B. Actions to quiet title to real estate under Title 14, sections 6651 to 6658;</p> <p>C. Actions to quiet title to real estate under Title 36, section 946;</p> <p>D. Actions for breach of implied warranty and</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>covenant of habitability under Title 14, section 6021;</p> <p>E. Actions to foreclose mortgages under Title 14, chapter 713, subchapter VI;</p> <p>F. Actions for restitution under Title 5, section 213;</p> <p>G. Actions for illegal evictions under Title 14, section 6014;</p> <p>H. Actions for the foreclosure of mortgages of real and personal property and for redemption of estates mortgaged;</p> <p>I. Actions to compel the specific performance of written contracts and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party;</p> <p>J. Actions for relief in cases of fraud, duress, unjust enrichment, trust, accident or mistake;</p> <p>K. Actions concerning nuisance and waste;</p> <p>L. Actions concerning partnership, and between partners or part owners of vessels and of other real and</p>		<p>covenant of habitability under Title 14, section 6021;</p> <p>E. Actions to foreclose mortgages under Title 14, chapter 713, subchapter VI;</p> <p>F. Actions for restitution under Title 5, section 213;</p> <p>G. Actions for illegal evictions under Title 14, section 6014;</p> <p>H. Actions for the foreclosure of mortgages of real and personal property and for redemption of estates mortgaged;</p> <p>I. Actions to compel the specific performance of written contracts and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party;</p> <p>J. Actions for relief in cases of fraud, duress, unjust enrichment, trust, accident or mistake;</p> <p>K. Actions concerning nuisance and waste;</p> <p>L. Actions concerning partnership, and between partners or part owners of vessels and of other real and</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>personal property to adjust all matters of the partnership and between the part owners, compel contribution, make final decrees and enforce their decrees by proper process in cases where all interested persons within the jurisdiction of the court are made parties;</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section removes property matters between spouses under Title 19-A from concurrent jurisdiction. The subject matter is within the District Court's exclusive jurisdiction under new subsection 10.</p>	<p>personal property to adjust all matters of the partnership and between the part owners, compel contribution, make final decrees and enforce their decrees by proper process in cases where all interested persons within the jurisdiction of the court are made parties;</p>
<p>M. Actions to hear and determine property matters between spouses as provided in Title 19-A, section 806 and to make all necessary orders and decrees relating to these matters, to issue all necessary process to enforce the orders and decrees and to cause all the orders and decrees to be enforced;</p>		<p>M. Actions to hear and determine property matters between spouses as provided in Title 19-A, section 806 and to make all necessary orders and decrees relating to these matters, to issue all necessary process to enforce the orders and decrees and to cause all the orders and decrees to be enforced;</p>
<p>N. Civil actions for redelivery of goods or chattels taken or detained from the owner and secreted or withheld so that the goods or chattels cannot be replevied, and in civil actions by creditors to reach and apply in payment of a debt any property, right, title or interest, legal or equitable, of a debtor or debtors, which cannot be attached on writ or taken on execution in a civil action, and any property or</p>		<p>N. Civil actions for redelivery of goods or chattels taken or detained from the owner and secreted or withheld so that the goods or chattels cannot be replevied, and in civil actions by creditors to reach and apply in payment of a debt any property, right, title or interest, legal or equitable, of a debtor or debtors, which cannot be attached on writ or taken on execution in a civil action, and any property or</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>interest conveyed in fraud of creditors;</p> <p>O. Actions in which the pleading demands a judgment:</p> <p>(1) To exclude a person from a vested or contingent interest in or lien upon specific property within the State;</p> <p>(2) That a vested or contingent interest in or lien upon specific property within the State be enforced; or</p> <p><u>(3) That real property be partitioned by sale; or</u></p> <p>(3) <u>(4)</u> Otherwise affecting title to any real property;</p> <p>P. Actions to compel the compliance with court orders including the right to appoint persons to sign instruments as provided for in the Maine Rules of Civil Procedure;</p> <p>Q. Actions in which the equitable relief is sought through an equitable defense, a counterclaim, a cross-claim</p>	<p>Recommendation VI gives the District Court the equitable jurisdiction to order the partition of property by sale. See Title 33, section 153, below.</p>	<p>interest conveyed in fraud of creditors;</p> <p>O. Actions in which the pleading demands a judgment:</p> <p>(1) To exclude a person from a vested or contingent interest in or lien upon specific property within the State;</p> <p>(2) That a vested or contingent interest in or lien upon specific property within the State be enforced; or</p> <p>(3) Otherwise affecting title to any real property;</p> <p>P. Actions to compel the compliance with court orders including the right to appoint persons to sign instruments as provided for in the Maine Rules of Civil Procedure;</p> <p>Q. Actions in which the equitable relief is sought through an equitable defense, a counterclaim, a cross-claim</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>or other responsive pleading or reply permitted by the Maine Rules of Civil Procedure; and</p> <p>R. Actions to enforce access to health care under Title 22, section 1715.</p> <p>Nothing in this subsection may be construed to affect the right of any party to remove an action to the Superior Court in accordance with the Maine Rules of Civil Procedure.</p> <p>6-A. Environmental laws. Original jurisdiction, concurrent with that of the Superior Court, to grant equitable relief and impose penalties in proceedings involving alleged violations of a local environmental ordinance or regulation or a state environmental law or rule, including, but not limited to, the following:</p> <p>A. The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A;</p> <p>B. The minimum lot size law, Title 12, sections 4807 to 4807-G;</p> <p>C. Shoreland zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 38, sections 435 to 446 and section 449;</p> <p>D. The plumbing and</p>	<p>comma</p>	<p>or other responsive pleading or reply permitted by the Maine Rules of Civil Procedure; and</p> <p>R. Actions to enforce access to health care under Title 22, section 1715.</p> <p>Nothing in this subsection may be construed to affect the right of any party to remove an action to the Superior Court in accordance with the Maine Rules of Civil Procedure.</p> <p>6-A. Environmental laws. Original jurisdiction, concurrent with that of the Superior Court to grant equitable relief and impose penalties in proceedings involving alleged violations of a local environmental ordinance or regulation or a state environmental law or rule, including, but not limited to, the following:</p> <p>A. The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A;</p> <p>B. The minimum lot size law, Title 12, sections 4807 to 4807-G;</p> <p>C. Shoreland zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 38, sections 435 to 446 and section 449;</p> <p>D. The plumbing and</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>subsurface waste water disposal rules adopted by the Department of Human Services under Title 22, section 42;</p> <p>E. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;</p> <p>F. Local ordinances enacted under Title 22, section 2642, and in accordance with Title 30-A, section 3001;</p> <p>G. Local land use ordinances enacted under Title 30-A, section 3001;</p> <p>H. Local building codes adopted pursuant to Title 30-A, section 3001, and in accordance with Title 30-A, chapter 185, subchapter I;</p> <p>I. Automobile junkyards, Title 30-A, chapter 183, subchapter I;</p> <p>J. Regulation and inspection of plumbing, Title 30-A, chapter 185, subchapter III;</p> <p>K. Malfunctioning domestic waste water disposal units, Title 30-A, section 3428;</p> <p>L. The subdivision law, Title 30-A, chapter 187, subchapter IV; local subdivision ordinances enacted under Title 30-A, section 3001; and</p>		<p>subsurface waste water disposal rules adopted by the Department of Human Services under Title 22, section 42;</p> <p>E. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;</p> <p>F. Local ordinances enacted under Title 22, section 2642, and in accordance with Title 30-A, section 3001;</p> <p>G. Local land use ordinances enacted under Title 30-A, section 3001;</p> <p>H. Local building codes adopted pursuant to Title 30-A, section 3001, and in accordance with Title 30-A, chapter 185, subchapter I;</p> <p>I. Automobile junkyards, Title 30-A, chapter 183, subchapter I;</p> <p>J. Regulation and inspection of plumbing, Title 30-A, chapter 185, subchapter III;</p> <p>K. Malfunctioning domestic waste water disposal units, Title 30-A, section 3428;</p> <p>L. The subdivision law, Title 30-A, chapter 187, subchapter IV; local subdivision ordinances enacted under Title 30-A, section 3001; and</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>subdivision regulations adopted under Title 30-A, section 4403;</p> <p>M. Local zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 30-A, section 4352;</p> <p>N. All laws administered by the Department of Environmental Protection, Title 38, chapters 2 to 16;</p> <p>O. Local ordinances regarding air pollution control enacted pursuant to Title 38, section 597; and</p> <p>P. The laws pertaining to harbors in Title 38, chapter 1, subchapter I; local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2.</p> <p>8. Consent to minor's abortion. Original jurisdiction, concurrent with that of the Probate Court, to grant equitable relief in proceedings brought under Title 22, section 1597-A.</p> <p>Actions for divorce, annulment or separation may be remanded, upon agreement of the parties, from the Superior Court to the District Court in accordance with rules promulgated by the Supreme</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other</p>	<p>subdivision regulations adopted under Title 30-A, section 4403;</p> <p>M. Local zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 30-A, section 4352;</p> <p>N. All laws administered by the Department of Environmental Protection, Title 38, chapters 2 to 16;</p> <p>O. Local ordinances regarding air pollution control enacted pursuant to Title 38, section 597; and</p> <p>P. The laws pertaining to harbors in Title 38, chapter 1, subchapter I; local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2.</p> <p>8. Consent to minor's abortion. Original jurisdiction, concurrent with that of the Probate Court, to grant equitable relief in proceedings brought under Title 22, section 1597-A.</p> <p>Actions for divorce, annulment or separation may be remanded, upon agreement of the parties, from the Superior Court to the District Court in accordance with rules promulgated by the Supreme</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Judicial Court. An action so remanded shall remain in the District Court, which shall have exclusive jurisdiction thereafter, subject to the rights of appeal to the Superior Court as to matters of law.</p> <p>The District Court possesses the criminal jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, except as provided in Title 29-A, section 2602.</p> <p>The District Court shall also possess, concurrent with the Superior Court, original jurisdiction to receive pleas of guilty in criminal cases in which the maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is one year or more in which the defendant has in writing waived the defendant's right to indictment by grand jury and the defendant's right to appearance and trial in the Superior Court and has indicated the defendant's intention to enter a plea of guilty to the charges pending against the defendant. When exercising such jurisdiction, the District Court shall possess all of the powers of the Superior Court. That jurisdiction shall be exercised in the manner which the Supreme Judicial Court shall by rule provide. Any person sentenced under this section</p>	<p>family law matters. This section removes provisions concerning the remand of actions from the Superior Court to the District Court. It also deletes the reference to appeals to the Superior Court. See transitional language in Sec. 29.</p> <p>The District Court's criminal jurisdiction statutes are consolidated in Title 4, section 165.</p> <p>The District Court's criminal jurisdiction statutes are consolidated in Title 4, section 165.</p>	<p>Judicial Court. An action so remanded shall remain in the District Court, which shall have exclusive jurisdiction thereafter, subject to the rights of appeal to the Superior Court as to matters of law.</p> <p>The District Court possesses the criminal jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, except as provided in Title 29-A, section 2602.</p> <p>The District Court shall also possess, concurrent with the Superior Court, original jurisdiction to receive pleas of guilty in criminal cases in which the maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is one year or more in which the defendant has in writing waived the defendant's right to indictment by grand jury and the defendant's right to appearance and trial in the Superior Court and has indicated the defendant's intention to enter a plea of guilty to the charges pending against the defendant. When exercising such jurisdiction, the District Court shall possess all of the powers of the Superior Court. That jurisdiction shall be exercised in the manner which the Supreme Judicial Court shall by rule provide. Any person sentenced under this section</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>shall be entitled to the rights provided by Title 15, chapter 306.</p> <p><u>9. Actions for divorce, separation or annulment.</u> <u>Original jurisdiction, not concurrent with the Superior Court, of actions for divorce, annulment of marriage or judicial separation and proceedings under Title 19-A, except as otherwise specifically provided.</u></p> <p><u>Actions for divorce, annulment or separation pending in the Superior Court may be transferred, upon agreement of the parties, from the Superior Court to the District Court in accordance with rules promulgated by the Supreme Judicial Court. An action so transferred remains in the District Court, which has exclusive jurisdiction thereafter, subject to the rights of appeal to the Law Court as to matters of law.</u></p> <p><u>10. Property matters between spouses.</u> <u>Original jurisdiction, not concurrent with the Superior Court, of actions to hear and determine property matters between spouses as provided in Title 19-A, section 806 and to make all necessary orders and decrees relating to these</u></p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section moves the jurisdiction from subsection 5 (concurrent with Superior Court jurisdiction) to its own exclusive jurisdiction subsection.</p> <p>This is transitional language that allows cases pending in Superior Court at the time this legislation is effective to be transferred to the District Court. Appeals are to the Supreme Judicial Court sitting as the Law Court. This basically copies current Title 4, section 152, 2nd to last paragraph (above).</p> <p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section moves the</p>	<p>shall be entitled to the rights provided by Title 15, chapter 306.</p> <p><i>from current subsection 5, paragraph A (concurrent Superior Court and District Court jurisdiction):</i></p> <p><i>A. Actions for divorce, annulment of marriage or judicial separation and proceedings under Title 19-A;</i></p> <p><i>from current subsection 5, paragraph M (concurrent Superior Court and District Court jurisdiction):</i></p> <p><i>M. Actions to hear and determine property matters between spouses as provided in Title 19-A, section 806 and</i></p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>matters, to issue all necessary process to enforce the orders and decrees and to cause all the orders and decrees to be enforced. This subsection does not apply to or affect actions initiated in the Superior Court before the effective date of this subsection.</u></p> <p>11. Desertion and nonsupport. <u>The District Court has jurisdiction over complaints for desertion and nonsupport or nonsupport of dependents where either the spouse, dependent or the respondent resides.</u></p> <p>12. Civil violations. <u>The District Court has jurisdiction over all civil violations as defined by Title 17-A, section 9, and traffic infractions.</u></p>	<p>jurisdiction from subsection 5 (concurrent with Superior Court jurisdiction) to its own exclusive jurisdiction subsection.</p> <p>Other than in the Criminal Code, there appears to be no specific statement of the District Court's jurisdiction over civil violations. Because jurisdiction over civil violations is civil and not criminal jurisdiction, it is listed here.</p>	<p><i>to make all necessary orders and decrees relating to these matters, to issue all necessary process to enforce the orders and decrees and to cause all the orders and decrees to be enforced;</i></p> <p><i>(4 §165)</i> and over complaints for desertion and nonsupport or nonsupport of dependents where either the spouse, dependent or the respondent resides</p> <p><i>from 17-A §9, subsection 3:</i></p> <p>17A § 9. Indictment and jurisdiction</p> <p>3. The District Courts shall have jurisdiction to try civil violations, Class D and E crimes, to impose sentence in Class A, B and C crimes in which the District Court has accepted a plea of guilty and to bind over for the grand jury all other crimes.</p> <p>4 § 155. Venue</p> <p>1. Juvenile proceeding or criminal prosecution. A juvenile proceeding or criminal prosecution, including traffic, shall be brought in the division in which the offense charged took place, but if the proceeding involves 2 or more offenses committed in different divisions, it may be brought in any one of them.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 4. 4 MRSA §155, sub-§3 is amended to read:</p> <p>3. Divorce, separation, annulment, support. An action or proceeding for divorce, separation, annulment of marriage or for support may be brought in the division where either the plaintiff or the defendant resides. Such action or proceeding may be removed to the Superior Court by the defendant. The rules of municipal courts now in effect for removal of actions to the Superior Court shall apply.</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section deletes the reference to removing those actions to the Superior Court. This section also deletes an obsolete reference to rules of municipal courts.</p>	<p>2. Forcible entry and detainer; replevin; trustee process; attachment. An action for forcible entry and detainer or replevin shall be brought in the division in which the property involved is located. Any action commenced by trustee process shall be brought in accordance with Title 14, chapter 501. Any action involving attachment shall be brought in the division where the plaintiff resides or where the defendant resides or where the property involved is located.</p> <p>3. Divorce, separation, annulment, support. An action or proceeding for divorce, separation, annulment of marriage or for support may be brought in the division where either the plaintiff or the defendant resides. Such action or proceeding may be removed to the Superior Court by the defendant. The rules of municipal courts now in effect for removal of actions to the Superior Court shall apply.</p> <p>4. Other civil actions. Any other civil action or proceeding shall be brought in the division where any plaintiff or defendant resides, but if all defendants are nonresidents of the State, it may be brought in any division of the plaintiff's choice.</p> <p>5. Corporation. A corporation shall be deemed a</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 5. 4 MRSA §165 is repealed and the following enacted in its place:</p> <p><u>4 § 165. District Court; jurisdiction over crimes and juvenile offenses</u></p>	<p>This section is rewritten to explicitly state the criminal jurisdiction of the District Court. Juvenile offenses are</p>	<p>resident of any district in which it maintains a place of business.</p> <p>6. Brought in any division with consent. Notwithstanding subsections 1 to 5, all parties, with the approval of any district judge, may consent to any action, proceeding or prosecution being brought and determined in any division.</p> <p>7. Improper venue. If any action or proceeding, civil or criminal, is brought in the wrong division, the court, upon motion or on its own initiative, may transfer it to a proper division. Any objection to improper venue is waived unless asserted by motion to transfer the case made before the commencement of trial or, in the event of default in appearance or answer, before the entry of judgment.</p> <p>8. Transfer of any case. The court may, upon motion or its own initiative, transfer any case to another division for the convenience of parties or witnesses or in the interest of justice.</p> <p>4 § 165. Criminal jurisdiction; fines, penalties and costs paid over</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>1. Crimes; under one year imprisonment.</u> The District Court has jurisdiction, and, except as provided in Title 29-A, section 2602, concurrent jurisdiction with the Superior Court, of all crimes including violations of any statute or bylaw of a town, village corporation or local health officer, or breaches of the peace in which the maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is less than one year.</p> <p><u>2. Juvenile Court.</u> The District Court has jurisdiction over juvenile offenses pursuant to Title 15, Part 6.</p> <p><u>3. Crimes; one year or more imprisonment</u> The District Court has, concurrent with the Superior Court, original jurisdiction to receive</p>	<p>technically non-criminal, so they are listed separately but within this section.</p> <p>This subsection gives the District Court concurrent jurisdiction with the Superior Court over all crimes for which the maximum possible punishment is less than one year. The exception is traffic infractions (civil) under Title 29-A, section 2602, over which the District Court has exclusive jurisdiction. The current language referring to violations of any statute or bylaw etc. is retained to ensure that no current crimes are eliminated from the District Court's jurisdiction inadvertently.</p> <p>The District Court's jurisdiction is stated in the Juvenile Code, but nowhere else in Title 4. This subsection adds it to the comprehensive list of criminal-type jurisdiction.</p> <p>This subsection is a combination of current language from the end of Title 4, section 152</p>	<p>The District Court has jurisdiction, and, except as provided in Title 29-A, section 2602, concurrent jurisdiction with the Superior Court, of all crimes and offenses including violations of any statute or bylaw of a town, village corporation or local health officer, or breaches of the peace, not punishable by imprisonment in the State Prison,</p> <p><i>from 4 §152, next to last paragraph:</i> <i>The District Court possesses the criminal jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, except as provided in Title 29-A, section 2602.</i></p> <p><i>from 4 §152, last paragraph:</i> <i>The District Court shall also possess, concurrent with the Superior Court, original jurisdiction to receive</i></p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>pleas of guilty in criminal cases, other than murder, in which:</u></p> <p>A. <u>The maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is one year or more;</u></p> <p>B. <u>The defendant has in writing waived the defendant's right to indictment by grand jury and the defendant's right to a jury trial; and</u></p> <p>C. <u>The defendant has indicated the defendant's intention to enter a plea of guilty to the charges pending against the defendant.</u></p> <p><u>When exercising such jurisdiction, the District Court shall possess all of the powers of the Superior Court. The District Court shall exercise that jurisdiction in the manner which the Supreme Judicial Court shall by rule provide. Any person sentenced under this subsection is entitled to the rights provided by Title 15, chapter 306-A.</u></p> <p><u>The District Court has jurisdiction to bind over for the grand jury all other crimes.</u></p>	<p>and Title 17-A, section 9.</p>	<p><i>pleas of guilty in criminal cases in which</i></p> <p><i>the maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is one year or more</i></p> <p><i>in which the defendant has in writing waived the defendant's right to indictment by grand jury and</i></p> <p><i>the defendant's right to appearance and trial in the Superior Court and has indicated the defendant's intention to enter a plea of guilty to the charges pending against the defendant.</i></p> <p><i>When exercising such jurisdiction, the District Court shall possess all of the powers of the Superior Court. That jurisdiction shall be exercised in the manner which the Supreme Judicial Court shall by rule provide. Any person sentenced under this section shall be entitled to the rights provided by Title 15, chapter 306.</i></p> <p><i>from 17-A §9, subsection 3:</i></p> <p>17A § 9. Indictment and jurisdiction</p> <p>3. The District Courts shall have jurisdiction to try civil violations, Class D and E crimes, to impose sentence in Class A, B and C crimes in which the District Court has accepted a plea of guilty and to bind</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>3. Issue process. The District Court has jurisdiction to issue process with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section 6209-A or 6209-B.</u></p> <p><u>4. Power to sentence. The District Court may impose any authorized sentencing alternative.</u></p> <p>Sec. 6. 4 MRSA §1157 is amended to read:</p> <p>4 § 1157. Judicial review</p> <p>Judicial review of an Administrative Court decision may be had in the Superior <u>Supreme Judicial Court sitting as the Law Court</u> in the manner provided by rules adopted for this purpose by the Supreme Judicial Court. The resulting Superior Court Decision may be appealed by any party thereto, in the same manner as in other civil cases, to the Supreme</p>	<p>moved to Title 4, section 152, subsection 11</p> <p>This language is updated to be consistent with the sentencing authority in the Criminal Code.</p> <p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This section provides that appeals from the Administrative Court go directly to the Supreme Judicial Court sitting as the Law Court. The</p>	<p>over for the grand jury all other crimes.</p> <p>(4 §165) to issue process with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section 6209-A or 6209-B</p> <p>(4 §165) and over complaints for desertion and nonsupport or nonsupport of dependents where either the spouse, dependent or the respondent resides</p> <p>(4 §165) and may for those crimes and offenses impose any of the fines or sentences provided by law to be imposed for those crimes and offenses. All fines, penalties and costs imposed by the courts paid to the jailer after commitment of a respondent must be paid over by the respondent monthly.</p> <p>4 § 1157. Judicial review</p> <p>Judicial review of an Administrative Court decision may be had in the Superior Court in the manner provided by rules adopted for this purpose by the Supreme Judicial Court. The resulting Superior Court Decision may be appealed by any party thereto, in the same manner as in other civil cases, to the Supreme Judicial Court sitting as the law court.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Judicial Court sitting as the law court.</p> <p>Sec. 7. 14 MRSA §1901 is amended to read:</p> <p>14 § 1901. <u>Supreme Judicial Court; exceptions</u></p> <p>1. Appeals from District Court to Superior Court. Except as provided in subsection 2 2-A or by court rule, an appeal may be taken from the District Court to the <u>Superior Supreme Judicial Court sitting as the Law Court</u> for the county embracing the division in which the judgment was rendered within 30 days after judgment. Within those 30 days, the appellant must pay to the court the required fees for the appeal and in that case no execution issues and the clerk may enter the appeal in the <u>Superior Law Court</u> as a new entry.</p> <p>2. Exceptions. The following requirements apply to appeals from the District Court.</p> <p>A. A party must appeal from a District Court judgment in an action of foreclosure and sale directly to the Supreme Judicial Court within 30 days of the judgment.</p> <p>B. If all parties agree, a final appeal from civil matters, including family matters,</p>	<p>intermediate appeal to Superior Court is eliminated.</p> <p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court.</p>	<p>14 § 1901. Superior Court; exceptions</p> <p>1. Appeals from District Court to Superior Court. Except as provided in subsection 2 or by court rule, an appeal may be taken from the District Court to the Superior Court for the county embracing the division in which the judgment was rendered within 30 days after judgment. Within those 30 days, the appellant must pay to the court the required fees for the appeal and in that case no execution issues and the clerk may enter the appeal in the Superior Court as a new entry.</p> <p>2. Exceptions. The following requirements apply to appeals from the District Court.</p> <p>A. A party must appeal from a District Court judgment in an action of foreclosure and sale directly to the Supreme Judicial Court within 30 days of the judgment.</p> <p>B. If all parties agree, a final appeal from civil matters, including family matters,</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>3. Specific performance of written contracts. To compel the specific performance of written contracts and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party.</p> <p>4. Fraud, trust, accident or mistake. For relief in cases of fraud, trust, accident or mistake.</p> <p>5. Nuisance and waste. In cases of nuisance and waste.</p> <p>6. Trustees of railroads applying receipts. In cases arising out of the law providing for the application of receipts and expenditures of railroads by trustees in possession under mortgage.</p> <p>7. Partnerships. In cases of partnership, and between partners or part owners of vessels and of other real and personal property to adjust all matters of the partnership and between such part owners, compel contribution, make final decrees and enforce their decrees by proper process in cases where all interested persons within the jurisdiction of the court are made parties.</p> <p>8. Actions of interpleader. Of actions of interpleader notwithstanding the plaintiff is a common carrier and as such has a lien for carriage or storage upon the</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 8. 14 MRSA §6051, sub-§9 is repealed.</p> <p>9. Property matters between husband and wife. To hear and determine property matters between wife and husband or husband and wife as provided in Title 19-A, section 806 and to make all necessary orders and decrees relating to such matters, to issue all necessary process to enforce such orders and decrees and to cause all such orders and decrees to be enforced;</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section eliminates the Superior Court's jurisdiction over these matters.</p>	<p>property which is described in the complaint. No plaintiff in interpleader shall be denied relief by reason of any interest in the fund or other subject matter in dispute.</p> <p>9. Property matters between husband and wife. To hear and determine property matters between wife and husband or husband and wife as provided in Title 19-A, section 806 and to make all necessary orders and decrees relating to such matters, to issue all necessary process to enforce such orders and decrees and to cause all such orders and decrees to be enforced;</p> <p>10. Wills. To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust and the expediency of making changes and investments of property held in trust.</p> <p>11. Redelivery of goods or chattels. In civil actions for redelivery of goods or chattels taken or detained from the owner and secreted or withheld so that the same cannot be replevied, and in civil actions, by creditors, to reach and apply in payment of a debt any property, right, title or interest, legal or equitable, of a debtor or debtors, which cannot be come at to be attached on writ or taken on</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 9. 15 MRSA §1 is repealed and the following enacted in its place:</p> <p><u>15 § 1. Superior Court; criminal jurisdiction</u></p> <p><u>1. Jurisdiction.</u> The Superior Court has original jurisdiction, exclusive or concurrent,</p>	<p>This section is rewritten to list the Superior Court's criminal jurisdiction.</p> <p>The term "crime" is used instead of "offense," consistent</p>	<p>execution in a civil action, and any property or interest conveyed in fraud of creditors.</p> <p>12. Pledging credit of public corporation for purpose not authorized by law. When counties, cities, towns, school districts, School Administrative Districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have jurisdiction on complaint filed by not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint.</p> <p>13. Equity jurisdiction. And have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.</p> <p>15 § 1. Superior Court</p> <p>The Superior Court shall have original jurisdiction, exclusive or concurrent, of all offenses except</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>E. Appeals pursuant to section 2111 and Maine Rules of Criminal Procedure, Rule 35(f); and</u></p> <p><u>F. Appeals pursuant to Title 17-A, section 1207 and Maine Rules of Criminal Procedure, Rule 37F.</u></p> <p><u>3. Location of post-arraignment proceedings.</u> <u>The Supreme Judicial Court may by rule provide that, with the consent of the defendant, post-arraignment proceedings in criminal cases may be conducted at locations other than those provided by statute. The Supreme Judicial Court may by rule provide that, without the consent of the defendant, post-arraignment proceedings in criminal cases may be conducted at locations other than those provided by statute, provided that the location is in an adjoining county and that it is in the vicinity of where the offense was committed.</u></p> <p><u>4. No jurisdiction, powers, duties or authority of the Law Court.</u> <u>The Superior Court does not have and may not exercise the jurisdiction, powers, duties and authority of the Supreme Judicial Court sitting as the Law Court.</u></p>	<p>appeal of judgment of District Court where specifically provided</p> <p>appeal of revocation of probation</p> <p>This subsection is added to be consistent with the authority granted in Title 4, section 105 to the Superior Court.</p>	<p>offenses of which the original exclusive jurisdiction is conferred upon the District Court acting as a juvenile court shall be as provided in Part 6.</p> <p>The Supreme Judicial Court may by rule provide that, with the consent of the defendant, post-arraignment proceedings in criminal cases may be conducted at locations other than those provided by statute. The Supreme Judicial Court may by rule provide that, without the consent of the defendant, post-arraignment proceedings in criminal cases may be conducted at locations other than those provided by statute, provided that the location is in an adjoining county and that it is in the vicinity of where the offense was committed.</p> <p><i>from 4 §105:</i></p> <p><i>provided that it shall have and exercise none of the jurisdiction, powers, duties and authority of the Supreme Judicial Court sitting as a law court.</i></p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>15 § 1028. De novo determination of bail under section 1026</p> <p>1. By defendant in custody. Any defendant aggrieved by the refusal of a Judge of the District Court or a bail commissioner acting under section 1026 to authorize the defendant's release on personal recognizance or on the execution of an unsecured appearance bond and who is in custody for that crime may petition the Superior Court for a de novo determination of that refusal. The District Court Judge or bail commissioner making the decision shall advise the defendant of the right to obtain a de novo determination in the Superior Court.</p> <p>A. If the defendant chooses to have a de novo determination of bail, the defendant must be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the Superior Court.</p> <p>If no Justice of the Superior Court will be available within 48 hours, excluding Saturdays, Sundays and holidays, arrangements must be made for a de novo</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>determination of bail in the nearest county in which a Justice of the Superior Court is then sitting. The defendant's custodian shall provide transportation to the Superior Court as required by this chapter without the issuance of any writ or other process.</p> <p>If there is no Justice of the Superior Court available, the defendant must be retained in custody until the petition can be considered.</p> <p>B. The petition and such other papers as may accompany it shall be delivered to the clerk of the Superior Court to which the defendant is transported and upon receipt the clerk shall notify the attorney for the State. The petition shall have priority over any other matter before the Justice of the Superior Court. The Superior Court Justice considering the petition shall issue an order in accordance with section 1026.</p> <p>C. Upon receipt of a pro se petition or upon oral or written request of the attorney for the defendant, the clerk shall set a time for hearing and provide oral or written notice to the attorney for the State. The hearing must be scheduled for a time not less</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 10. 15 MRSA §1028, sub-§3 is enacted to read:</p> <p><u>3. No further relief. The determination by the Superior Court is final and no further relief is available.</u></p>	<p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. The Superior Court's authority to conduct a de novo determination of bail is retained, but its determination cannot be appealed to the Supreme Judicial Court.</p>	<p>than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State.</p> <p>2. By defendant not in custody. Any defendant aggrieved by the refusal of a Judge of the District Court or a bail commissioner to authorize the defendant's release on personal recognizance or on the execution of an unsecured bond, and who is not in custody as a result of that refusal, may petition the Superior Court for a de novo determination of bail. The petition shall be considered as scheduled by the clerk.</p> <p>15 § 1029. Review of bail under section 1027</p> <p>1. Petition for review. Any defendant in custody following a Harnish bail proceeding under section 1027 may petition for review as provided in this subsection.</p> <p>A. If the Harnish bail proceeding was conducted in</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 11. 15 MRSA §1029, sub-§4 is enacted to read:</p> <p><u>4. No further relief. The review under this section is final and no further relief is available.</u></p>	<p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. The</p>	<p>the District Court, the defendant may petition a Justice of the Superior Court for review under this section.</p> <p>B. If the Harnish bail proceeding was conducted in the Superior Court, the defendant may petition a single Justice of the Supreme Judicial Court for review under this section.</p> <p>2. Standard of review. With respect to the finding of probable cause to believe that the defendant committed a formerly capital offense, the finding of the lower court shall be upheld, unless it is clearly erroneous provided there is an adequate record for purposes of review. With respect to all other issues or with respect to the issue of probable cause when the record is inadequate for review, the review shall be de novo. The parties shall cooperate to expeditiously assemble a record for review.</p> <p>3. Evidence. The evidence shall consist of the information of record submitted in the Harnish bail proceeding under section 1027 and any additional information the parties may chose to present.</p>

Recommended Language	Source Recommendation and Comments	Current Law
	<p>Superior Court's authority to review the District Court's bail determination for formerly capital offenses is retained, but the Superior Court's determination cannot be appealed to the Law Court.</p>	<p>15 § 1051. Post-conviction bail</p> <p>1. Application to presiding judge or justice. After post-conviction, except as provided in this section, a defendant may apply to the judge or justice who presided at the trial for bail pending imposition or execution of sentence or entry of judgment or appeal. If the trial judge or justice is not available, the defendant may apply for bail under this section to another judge or justice of the court in which the defendant was convicted. Post-conviction bail is not available to a defendant convicted of:</p> <ul style="list-style-type: none"> A. Murder; B. Any other formerly capital offense for which preconviction bail was denied under section 1027; or C. Any crime when the defendant's preconviction bail was revoked and denied under sections 1096 and 1097. <p>The judge or justice shall hold a</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>hearing on the record on the bail application and shall state in writing or on the record the reasons for denying or granting bail. If bail is granted, the judge or justice shall also state, in writing or on the record, the reasons for the kind and amount of bail set, for any condition of release imposed and for the omission of any condition of release sought by the State.</p> <p>The judge or justice may enter an order for bail pending appeal before a notice of appeal is filed, but conditioned upon its timely filing.</p> <p>Every order for post-conviction release of a defendant must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from new criminal conduct and not violate any pending protection from abuse order pursuant to Title 19, section 769, or Title 19-A, section 4011.</p> <p>2. Standards. Except as provided in subsection 4, a defendant may not be admitted to bail under this section unless the judge or justice has probable cause to believe that:</p> <p>A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process;</p> <p>B. There is no substantial risk that the defendant will pose a</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p data-bbox="1149 348 1490 415">danger to another or to the community; and</p> <p data-bbox="1149 457 1544 562">C. There is no substantial risk that the defendant will commit new criminal conduct.</p> <p data-bbox="1052 604 1544 1192">In determining whether to admit a defendant to bail, the judge or justice shall consider the factors relevant to preconviction bail listed in section 1026, as well as the facts proved at trial, the length of the term of imprisonment imposed, any history of dangerousness and any previous unexcused failure to appear as required before any court or the defendant's prior failure to obey an order or judgment of any court, including, but not limited to, violating a protection from abuse order pursuant to Title 19, section 769 or Title 19-A, section 4011.</p> <p data-bbox="1052 1234 1523 1413">If the judge or justice decides to set post-conviction bail for a defendant, the judge or justice shall apply the same factors in setting the kind and amount of that bail.</p> <p data-bbox="1149 1455 1490 1486">3. Conditions of release.</p> <p data-bbox="1052 1497 1544 1883">Except as provided in subsection 4, the judge or justice may impose, in lieu of or in addition to an appearance or bail bond, any condition considered reasonably necessary to minimize the risk that the defendant may fail to appear as required, may compromise the integrity of the judicial process, may commit new criminal conduct, may fail to comply with conditions of release or may</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 12. 15 MRSA §1051, sub-§§5 and 6 are amended to read:</p> <p>5. Appeal by defendant. A defendant may appeal to a single Justice of the Supreme Judicial Court a denial of bail, the kind or amount of bail set or the conditions of release imposed by which the defendant is aggrieved. The single justice shall not conduct a hearing de novo respecting bail, but shall review the lower court's order. The defendant has the burden of showing that there is no rational basis in the record for the lower court's denial of bail, the kind or amount of bail set or the conditions of release imposed of which the defendant complains. <u>The determination by the single justice is final and no further relief is available.</u></p> <p>6. Appeal by State. The State may appeal to a single Justice of the Supreme Judicial Court the granting of bail, the kind or amount of bail set or the lower court's failure to impose a condition of release. The single justice shall not conduct a</p>	<p>This subsection provides that the review of post-conviction bail by a single justice is not appealable.</p>	<p>constitute a danger to another person or the community.</p> <p>4. Standards applicable to bail arising out of State's appeal under section 2115-A, subsection 2. If the State initiates an appeal under section 2115-A, subsection 2, the judge or justice shall apply subchapter II to a defendant's application for bail pending that appeal.</p> <p>5. Appeal by defendant. A defendant may appeal to a single Justice of the Supreme Judicial Court a denial of bail, the kind or amount of bail set or the conditions of release imposed by which the defendant is aggrieved. The single justice shall not conduct a hearing de novo respecting bail, but shall review the lower court's order. The defendant has the burden of showing that there is no rational basis in the record for the lower court's denial of bail, the kind or amount of bail set or the conditions of release imposed of which the defendant complains.</p> <p>6. Appeal by State. The State may appeal to a single Justice of the Supreme Judicial Court the granting of bail, the kind or amount of bail set or the lower court's failure to impose a condition of release. The single justice shall not conduct a</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>hearing de novo respecting bail, but shall review the lower court's order. The State has the burden of showing that there is no rational basis in the record for the lower court's granting of bail, the kind or amount of bail set or the omission of the conditions of which the State complains. <u>The determination by the single justice is final and no further relief is available.</u></p> <p>Sec. 13. 15 MRSA §1097, sub-§3 is amended to read:</p>	<p>This subsection provides that the review of post-conviction bail by a single justice is not appealable.</p>	<p>hearing de novo respecting bail, but shall review the lower court's order. The State has the burden of showing that there is no rational basis in the record for the lower court's granting of bail, the kind or amount of bail set or the omission of the conditions of which the State complains.</p> <p>15 § 1097. Disposition after revocation of preconviction bail</p> <p>1. New criminal conduct. If the judge or justice finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail, the judge or justice shall issue an order under section 1026. If the judicial finding is otherwise, the judge or justice shall issue an order denying bail.</p> <p>2. Appearance of the defendant; ensuring the integrity of the judicial process. If the judge or justice finds that there are conditions of release that will reasonably ensure the defendant's appearance when required and will otherwise ensure the integrity of the judicial process, the judge or justice shall issue an order under section 1026. If the judicial finding is otherwise, the judge or justice shall issue an order denying bail.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>3. Appeal. A defendant in custody as a result of an order issued under this section by the District Court may appeal to the Superior Court and a defendant in custody as a result of an order issued under this section by the Superior Court may appeal to a single Justice of the Supreme Judicial Court. The appeal must be in accordance with the procedures set forth in section 1028, as far as applicable, except that the review is limited to a review of the record to determine whether the order was rationally supported by the evidence. <u>The determination by the court is final and no further relief is available.</u></p>	<p>This subsection provides that the review of revocation of pre-conviction bail by a single justice is not appealable.</p>	<p>3. Appeal. A defendant in custody as a result of an order issued under this section by the District Court may appeal to the Superior Court and a defendant in custody as a result of an order issued under this section by the Superior Court may appeal to a single Justice of the Supreme Judicial Court. The appeal must be in accordance with the procedures set forth in section 1028, as far as applicable, except that the review is limited to a review of the record to determine whether the order was rationally supported by the evidence.</p> <p>4. No new bail consideration when bail has been revoked and denied in District Court. When a District Court judge has, after revocation, ordered the defendant held without bail, the defendant is not entitled to have bail set when charges are brought by indictment for the same underlying conduct. If the defendant has not previously appealed the District Court bail revocation, the Superior Court may, upon request of the defendant, entertain the appeal at the defendant's arraignment.</p> <p>15 § 1099-A. Disposition after revocation of post-conviction bail</p> <p>1. Held without bail. The judge or justice shall order the defendant held without bail unless the judge or justice finds that under the facts of the case it would be unreasonable to do so, in which event</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 14. 15 MRSA §1099-A, sub-§2 is amended to read:</p> <p>2. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court who shall review the revocation pursuant to the procedures set forth in section 1051, subsection 5. <u>The determination by the single justice is final and no further relief is available.</u></p> <p>Sec. 15. 15 MRSA §2111 is repealed and the following enacted in its place:</p> <p><u>15 § 2111. Appeals from the District Court</u></p> <p><u>1. Appeal of judgment of conviction or order to the Law Court.</u> Except as otherwise specifically provided, in any criminal proceeding in the District Court, a defendant aggrieved by a judgment of conviction or order may appeal to the Supreme Judicial Court sitting as the Law Court.</p> <p><u>2. Appeal to the Superior Court.</u> If an appeal from the District Court must be taken to the Superior Court, the appeal must be to the Superior Court in the county where</p>	<p>This subsection provides that the review of revocation of post-conviction bail by a single justice is not appealable.</p> <p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This section provides for appeals from the District Court to the Supreme Judicial Court in criminal matters. Not sure what the exceptions are and where they are found.</p>	<p>the judge or justice shall issue an order under section 1051.</p> <p>2. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court who shall review the revocation pursuant to the procedures set forth in section 1051, subsection 5.</p> <p>15 § 2111. Time to appeal</p> <p>In any criminal proceeding in the District Court, any defendant aggrieved by a judgment of conviction or order may appeal to the Superior Court in the county where</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>the offense on which the judgment of conviction or order was rendered, is alleged to have been committed. Venue may be transferred at the discretion of the Chief Justice of the Superior Court.</u></p> <p><u>3. Time for taking of appeal.</u> <u>The Supreme Judicial Court shall provide by rule the time for taking the appeal and the manner and any conditions for the taking of the appeal.</u></p> <p>Sec. 16. 15 MRSA §2114 is amended to read:</p> <p>15 § 2114. Defendant shall make election of jury trial</p> <p>In all Class D and E criminal proceedings, the defendant may waive his right to jury trial and elect to be tried in the District Court, as provided by rule of the Supreme Judicial Court. An appeal to the Superior Court following trial and conviction in the District Court shall be only on questions of law.</p> <p>Sec. 17. 15 MRSA §2115 is amended to read:</p> <p>15 § 2115. Appeals from the Superior Court</p> <p>In any criminal proceeding in the Superior Court, any defendant aggrieved by a judgment of conviction, ruling or order may</p>	<p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This section deletes a reference to the scope of the review on appeal from the District Court to the Superior Court.</p> <p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court.</p>	<p>the offense, on which the judgment of conviction or order was rendered, is alleged to have been committed. Venue may be transferred by the Chief Justice of the Superior Court at his discretion.</p> <p>The time for taking the appeal and the manner and any conditions for the taking of the appeal shall be as the Supreme Judicial Court provides by rule.</p> <p>15 § 2115. Appeals from the Superior Court</p> <p>In any criminal proceeding in the Superior Court, any defendant aggrieved by a judgment of conviction, ruling or order may</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>appeal to the Supreme Judicial Court, sitting as the Law Court. The time for taking the appeal and the manner and any conditions for the taking of the appeal shall be as the Supreme Judicial Court provides by rule. <u>The Supreme Judicial Court shall provide by rule the time for taking the appeal and the manner and any conditions for the taking of the appeal.</u></p> <p>In an appeal from a judgment imposing a sentence of imprisonment for life, if 3 justices concur, the judgment shall be reversed and may be remanded for a new trial. In all other criminal cases, the judgment shall be affirmed, unless a majority of the justices sitting and qualified to act in the case concur in its reversal.</p> <p>Sec. 18. 15 MRSA §2115-A is amended to read:</p> <p>15 § 2115-A. Appeals by the State</p> <p>1. Appeals prior to trial. An appeal may be taken by the State in criminal cases on questions of law from the District Court and from the Superior Court to the law court <u>Supreme Judicial Court sitting as the Law Court</u>: From an order of the court prior to trial which suppresses any evidence, including, but not limited to, physical or identification evidence or evidence of a confession or admission; from an order which prevents the prosecution from obtaining evidence; from a pretrial dismissal of an indictment,</p>	<p>This section updates the language concerning the rules for appeals.</p> <p>This subsection makes references to the Supreme Judicial Court sitting as the Law Court consistent.</p>	<p>appeal to the Supreme Judicial Court, sitting as the Law Court.</p> <p>In an appeal from a judgment imposing a sentence of imprisonment for life, if 3 justices concur, the judgment shall be reversed and may be remanded for a new trial. In all other criminal cases, the judgment shall be affirmed, unless a majority of the justices sitting and qualified to act in the case concur in its reversal.</p> <p>15 § 2115-A. Appeals by the State</p> <p>1. Appeals prior to trial. An appeal may be taken by the State in criminal cases on questions of law from the District Court and from the Superior Court to the law court: From an order of the court prior to trial which suppresses any evidence, including, but not limited to, physical or identification evidence or evidence of a confession or admission; from an order which prevents the prosecution from obtaining evidence; from a pretrial dismissal of an indictment, information or complaint; or from any other order of the court prior to</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>information or complaint; or from any other order of the court prior to trial which, either under the particular circumstances of the case or generally for the type of order in question, has a reasonable likelihood of causing either serious impairment to or termination of the prosecution.</p> <p>2. Appeals after trial. An appeal may be taken by the State from the Superior Court or the District Court to the law court <u>Supreme Judicial Court sitting as the Law Court</u> after trial and after a finding of guilty by a jury or the court from the granting of a motion for a new trial, from arrest of judgment, from dismissal or from other orders requiring a new trial or resulting in termination of the prosecution in favor of the accused, when an appeal of the order would be permitted by the double jeopardy provisions of the Constitution of the United States and the Constitution of Maine.</p> <p>2-A. Appeals from an adverse decision of the Superior Court sitting as an appellate court relative to District Court criminal cases. If an appeal to the Superior Court by an aggrieved defendant from a judgment of the District Court results in the vacating of the underlying criminal judgment in whole or in part, an appeal may be taken by the State from the adverse decision of the Superior Court to the Law Court.</p> <p>2-B. Appeal from the denial</p>	<p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This subsection is repealed because the Superior Court will not hear appeals of District Court criminal judgments.</p>	<p>trial which, either under the particular circumstances of the case or generally for the type of order in question, has a reasonable likelihood of causing either serious impairment to or termination of the prosecution.</p> <p>2. Appeals after trial. An appeal may be taken by the State from the Superior Court or the District Court to the law court after trial and after a finding of guilty by a jury or the court from the granting of a motion for a new trial, from arrest of judgment, from dismissal or from other orders requiring a new trial or resulting in termination of the prosecution in favor of the accused, when an appeal of the order would be permitted by the double jeopardy provisions of the Constitution of the United States and the Constitution of Maine.</p> <p>2-A. Appeals from an adverse decision of the Superior Court sitting as an appellate court relative to District Court criminal cases. If an appeal to the Superior Court by an aggrieved defendant from a judgment of the District Court results in the vacating of the underlying criminal judgment in whole or in part, an appeal may be taken by the State from the adverse decision of the Superior Court to the Law Court.</p> <p>2-B. Appeal from the denial</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>of a Rule 35 motion. If a motion for correction or reduction of a sentence brought by the attorney for the State under Rule 35 of the Maine Rules of Criminal Procedure is denied in whole or in part, an appeal may be taken by the State from the adverse order of the trial court to the <u>Supreme Judicial Court sitting as the Law Court</u>.</p> <p>3. When defendant appeals. When the defendant appeals from a judgment of conviction, it is not necessary for the State to appeal. It may argue that error in the proceedings at trial in fact supports the judgment. The State may also establish that error harmful to it was committed prior to trial or in the trial resulting in the conviction from which the defendant has appealed, which error should be corrected in the event that the law court <u>Law Court</u> reverses on a claim of error by the defendant and remands the case for a new trial. If the case is so reversed and remanded, the law court <u>Law Court</u> shall also order correction of the error established by the State.</p> <p>4. Time. An appeal taken pursuant to subsection 1, 2, 2-A or 2-B must be taken within 20 days after the entry of the order or such further time as may be granted by the court pursuant to a rule of court, and an appeal taken pursuant to subsection 1 must also be taken before the defendant has been placed in jeopardy. An appeal taken pursuant to this subsection must be diligently</p>		<p>of a Rule 35 motion. If a motion for correction or reduction of a sentence brought by the attorney for the State under Rule 35 of the Maine Rules of Criminal Procedure is denied in whole or in part, an appeal may be taken by the State from the adverse order of the trial court to the Law Court.</p> <p>3. When defendant appeals. When the defendant appeals from a judgment of conviction, it is not necessary for the State to appeal. It may argue that error in the proceedings at trial in fact supports the judgment. The State may also establish that error harmful to it was committed prior to trial or in the trial resulting in the conviction from which the defendant has appealed, which error should be corrected in the event that the law court reverses on a claim of error by the defendant and remands the case for a new trial. If the case is so reversed and remanded, the law court shall also order correction of the error established by the State.</p> <p>4. Time. An appeal taken pursuant to subsection 1, 2, 2-A or 2-B must be taken within 20 days after the entry of the order or such further time as may be granted by the court pursuant to a rule of court, and an appeal taken pursuant to subsection 1 must also be taken before the defendant has been placed in jeopardy. An appeal taken pursuant to this subsection must be diligently</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>prosecuted.</p> <p>5. Approval of Attorney General. In any appeal taken pursuant to subsection 1, 2, 2-A or 2-B, the written approval of the Attorney General is required; provided that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted, the written approval may be filed at a later date.</p> <p>6. Liberal construction. The provisions of this section shall be liberally construed to effectuate its purposes.</p> <p>7. Rules. The Supreme Judicial Court may provide for implementation of this section by rule.</p> <p>8. Fees and costs. The Law Court shall allow reasonable counsel fees and costs for the defense of appeals under this section.</p> <p>9. Appeals to Federal Court; fees and costs. The Law Court shall allow reasonable attorneys fees for court appointed counsel when the State appeals a judgment to any Federal Court or to the United States Supreme Court on certiorari. Any fees allowed pursuant to this subsection shall be paid out of the accounts of the Judicial Department.</p>		<p>prosecuted.</p> <p>5. Approval of Attorney General. In any appeal taken pursuant to subsection 1, 2, 2-A or 2-B, the written approval of the Attorney General is required; provided that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted, the written approval may be filed at a later date.</p> <p>6. Liberal construction. The provisions of this section shall be liberally construed to effectuate its purposes.</p> <p>7. Rules. The Supreme Judicial Court may provide for implementation of this section by rule.</p> <p>8. Fees and costs. The Law Court shall allow reasonable counsel fees and costs for the defense of appeals under this section.</p> <p>9. Appeals to Federal Court; fees and costs. The Law Court shall allow reasonable attorneys fees for court appointed counsel when the State appeals a judgment to any Federal Court or to the United States Supreme Court on certiorari. Any fees allowed pursuant to this subsection shall be paid out of the accounts of the Judicial Department.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 19. 15 MRSA §2115-B is amended to read:</p> <p>15 § 2115-B. Appeal by aggrieved contemnor</p> <p>1. Summary contempt proceedings involving punitive sanctions. In a summary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Judge of the District Court, Probate Court or Administrative Court or a Justice of the Superior Court or the Supreme Judicial Court, a contemnor who is aggrieved by an order and imposition of a punitive sanction may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court and, if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2111 or 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Justice of the Superior Court or a Justice of the Supreme Judicial Court, any contemnor aggrieved by an order and imposition of a punitive sanction may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of</p>	<p>Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This section provides for an appeal by a contemnor directly to the Supreme Judicial Court sitting as the Law Court.</p>	<p>15 § 2115-B. Appeal by aggrieved contemnor</p> <p>1. Summary contempt proceedings involving punitive sanctions. In a summary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Judge of the District Court, Probate Court or Administrative Court, a contemnor who is aggrieved by an order and imposition of a punitive sanction may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court and, if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Justice of the Superior Court or a Justice of the Supreme Judicial Court, any contemnor aggrieved by an order and imposition of a punitive sanction may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Criminal Procedure.</p> <p>2. Plenary contempt proceedings involving punitive sanctions. In a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried other than in the Superior Court or Supreme Judicial Court may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court, and if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2111 or 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried in the Superior Court or Supreme Judicial Court, may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure.</p> <p>Sec. 20. 15 MRSA §2151 is amended to read</p> <p>15 § 2151. Application to the</p>		<p>2. Plenary contempt proceedings involving punitive sanctions. In a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried other than in the Superior Court or Supreme Judicial Court may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court, and if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried in the Superior Court or Supreme Judicial Court, may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure.</p> <p>15 § 2151. Application to the</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Supreme Judicial Court by defendant for review of certain sentences</p> <p>In cases arising in the District Court or the Superior Court in which a defendant has been convicted of a criminal offense and sentenced to a term of imprisonment of one year or more, the defendant may apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence, except:</p> <p>1. Different term could not be imposed. In any case in which a different term of imprisonment could not have been imposed; or</p> <p>2. Plea agreements. In any case in which the particular disposition involving imprisonment was imposed as a result of a court accepting a recommendation of the type specified in the Maine Rules of Criminal Procedure, Rule 11A, subsection (a)(2) or (a)(4); <u>or</u></p> <p>3. Restitution. As limited by <u>Title 17-A, section 1330-A.</u></p>	<p>This new subsection adds to the list of situations in which a criminal defendant cannot appeal to the Law Court for review of the sentence.</p>	<p>Supreme Judicial Court by defendant for review of certain sentences</p> <p>In cases arising in the District Court or the Superior Court in which a defendant has been convicted of a criminal offense and sentenced to a term of imprisonment of one year or more, the defendant may apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence, except:</p> <p>1. Different term could not be imposed. In any case in which a different term of imprisonment could not have been imposed; or</p> <p>2. Plea agreements. In any case in which the particular disposition involving imprisonment was imposed as a result of a court accepting a recommendation of the type specified in the Maine Rules of Criminal Procedure, Rule 11A, subsection (a)(2) or (a)(4); <u>or</u></p> <p>17A § 1330-A. Waiver of issue of excessiveness</p> <p><i>If a defendant at the time of sentencing has consented to the imposition by the sentencing court of a specific amount of restitution, the defendant is thereafter precluded from seeking to attack the legality or propriety of the amount of restitution ordered if that amount does not exceed the specific amount consented to by the defendant.</i></p>

Recommended Language	Source Recommendation and Comments	Current Law
<p data-bbox="164 363 643 430">Sec. 21. 17-A MRSA §1207 is amended to read:</p> <p data-bbox="164 470 433 506">17A § 1207. Review</p> <p data-bbox="164 546 617 655">Review of a revocation of probation pursuant to section 1206 must be by appeal.</p> <p data-bbox="164 695 656 1423"> 1. District Court proceeding. In a probation revocation proceeding in the District Court, a person whose probation is revoked may appeal to the Superior Court under Title 15, section 2111 and the applicable Maine Rules of Criminal Procedure. <u>The determination by the Superior Court is final and no further relief is available. An appeal to the Law Court, from an adverse decision of the Superior Court sitting as an intermediate appellate court, is not an appeal of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure.</u> </p> <p data-bbox="164 1465 656 1833"> 2. Superior Court proceeding. In a probation revocation proceeding in the Superior Court, a person whose probation is revoked may not appeal as of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure. </p>	<p data-bbox="686 695 1000 1167">Recommendation II eliminates most of the appellate jurisdiction of the Superior Court. This section retains the Superior Court's jurisdiction to hear appeals on the revocation of probation, but makes that determination final with no further appeal to the Law Court.</p>	<p data-bbox="1031 470 1308 506">17A § 1207. Review</p> <p data-bbox="1031 546 1487 655">Review of a revocation of probation pursuant to section 1206 must be by appeal.</p> <p data-bbox="1031 695 1528 1314"> 1. District Court proceeding. In a probation revocation proceeding in the District Court, a person whose probation is revoked may appeal to the Superior Court under Title 15, section 2111 and the applicable Maine Rules of Criminal Procedure. An appeal to the Law Court, from an adverse decision of the Superior Court sitting as an intermediate appellate court, is not an appeal of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure. </p> <p data-bbox="1031 1465 1528 1833"> 2. Superior Court proceeding. In a probation revocation proceeding in the Superior Court, a person whose probation is revoked may not appeal as of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure. </p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>3. Assignment and withdrawal of counsel. Assignment and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.</p>		<p>3. Assignment and withdrawal of counsel. Assignment and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.</p>
<p>Sec. 22. 19-A MRSA §103 is amended to read:</p>		
<p>19A § 103. Jurisdiction</p> <p>Except as otherwise expressly provided, the District Court has original jurisdiction, concurrent with the Superior Court, of all actions under this Title.</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section repeals the Superior Court jurisdiction.</p>	<p>19A § 103. Jurisdiction</p> <p>Except as otherwise expressly provided, the District Court has original jurisdiction, concurrent with the Superior Court, of all actions under this Title.</p>
<p>Sec. 23. 19-A MRSA §851, sub-§1-A, first ¶, is amended to read:</p> <p>1-A. Jurisdiction. The District Court and the Superior Court have has jurisdiction to enter a separation decree:</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section repeals the Superior Court jurisdiction over judicial separation.</p>	<p>19A § 851. Judicial separation</p> <p>1-A. Jurisdiction. The District Court and the Superior Court have jurisdiction to enter a separation decree:</p> <p>A. Upon the petition of a married person who lives apart or who desires to live apart from that person's spouse for a period in excess of 60 continuous days; or</p> <p>B. Upon joint petition of a married couple who live apart or who desire to live apart for</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 24. 19A §852, sub-§1, first ¶ is amended to read:</p>		<p>a period in excess of 60 continuous days.</p> <p>19A § 852. Preliminary injunction, effect; attachment or trustee process</p>
<p>1. Issue of preliminary injunction. In all actions for judicial separation the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.</p>	<p>Recommendation I</p> <p>gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over judicial separation.</p>	<p>1. Issue of preliminary injunction. In all actions for judicial separation the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.</p> <p>A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.</p> <p>B. The preliminary injunction must be directed to each party to the action and must contain the following orders:</p> <p>(1) That each party is enjoined from</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;</p> <p>(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and</p> <p>(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties.</p> <p>C. The preliminary injunction must include the following statement:</p> <p>"Warning This is an official court order. If you disobey this order the court may find</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>you in contempt of court.</p> <p>This court order is effective until the earliest of the following:</p> <p>(1) The court revokes or modifies it;</p> <p>(2) A final divorce judgment or decree of judicial separation is entered; or</p> <p>(3) The action is dismissed."</p> <p>D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.</p> <p>E. The preliminary injunction has the force and effect of an order of a Judge of the Probate</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 25. 19-A MRSA §901, sub-§1, first ¶ is amended to read:</p> <p>1. Filing of complaint; grounds. A person seeking a divorce may file a complaint for divorce in the Superior Court or the District Court if:</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over divorce.</p>	<p>Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.</p> <p>19A § 901. Action for divorce; procedures</p> <p>1. Filing of complaint; grounds. A person seeking a divorce may file a complaint for divorce in the Superior Court or the District Court if:</p> <p>A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action;</p> <p>B. The plaintiff is a resident of this State and the parties were married in this State;</p> <p>C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or</p> <p>D. The defendant is a resident of this State.</p> <p>The complaint must state one or more grounds listed in section 902, subsection 1.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. 26. 19-A §903, sub-§1, first ¶ is amended to read:</p> <p>1. Issue of preliminary injunction. In all actions for divorce or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over divorce.</p>	<p>19A § 903. Preliminary injunction, effect; attachment or trustee process</p> <p>1. Issue of preliminary injunction. In all actions for divorce or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.</p> <p>A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.</p> <p>B. The preliminary injunction must be directed to each party to the action and must contain the following orders:</p> <p>(1) That each party is</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;</p> <p>(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and</p> <p>(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties.</p> <p>C. The preliminary injunction must include the following statement:</p> <p>"Warning This is an official</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>court order. If you disobey this order the court may find you in contempt of court.</p> <p>This court order is effective until the earliest of the following:</p>
		<p>(1) The court revokes or modifies it;</p> <p>(2) A final divorce judgment or decree of judicial separation is entered; or</p> <p>(3) The action is dismissed."</p> <p>D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.</p> <p>E. The preliminary injunction</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. XX. 19-A MRSA §1510 is amended to read:</p> <p>19A § 1510. Statewide jurisdiction</p> <p>In child support and paternity cases, the jurisdiction of the District Court, the Superior Court and the department extends to all parts of the State. Once an action has been commenced, a case may be transferred between local jurisdictions in the State without need for an additional filing by the petitioner or service of process on the respondent to retain jurisdiction over the parties.</p> <p>Sec. XX. 19-A MRSA §1556 is amended to read:</p> <p>19A § 1556. Remedies</p> <p>The Superior Court or District Court has jurisdiction over an action</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over child support actions and paternity actions.</p> <p>Recommendation I gives the District Court</p>	<p>has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.</p> <p>19A § 1510. Statewide jurisdiction</p> <p>In child support and paternity cases, the jurisdiction of the District Court, the Superior Court and the department extends to all parts of the State. Once an action has been commenced, a case may be transferred between local jurisdictions in the State without need for an additional filing by the petitioner or service of process on the respondent to retain jurisdiction over the parties.</p> <p>19A § 1556. Remedies</p> <p>The Superior Court or District Court has jurisdiction over an action</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>under this subchapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, support or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and support. All remedies under the Uniform Interstate Family Support Act are available for enforcement of duties of support under this subchapter.</p> <p>Sec. XX. 19-A MRSA §1652, sub-§1 is amended to read:</p> <p>1. Petition. If a parent, spouse or child resides in this State, a parent, a spouse, a guardian or a municipality providing maintenance may petition the Superior Court, District Court or Probate Court to order a nonsupporting parent or spouse to contribute to the support of the nonsupporting person's spouse or child. The petition may be brought in the court in the county or district or <u>county</u> where the parent, spouse or child resides or in the county or <u>district or county</u> in which the nonsupporting person may be found.</p>	<p>exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over paternity actions.</p> <p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over child support actions. Probate Court jurisdiction is retained.</p>	<p>under this subchapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, support or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and support. All remedies under the Uniform Interstate Family Support Act are available for enforcement of duties of support under this subchapter.</p> <p>19A § 1652. Spouse's or parent's obligation to support</p> <p>1. Petition. If a parent, spouse or child resides in this State, a parent, a spouse, a guardian or a municipality providing maintenance may petition the Superior Court, District Court or Probate Court to order a nonsupporting parent or spouse to contribute to the support of the nonsupporting person's spouse or child. The petition may be brought in the court in the county or district where the parent, spouse or child resides or in the county or district in which the nonsupporting person may be found.</p> <p>2. Court action. If the court finds that the nonsupporting person is of sufficient ability or is able to labor</p>

Recommended Language	Source Recommendation and Comments	Current Law
		<p>and provide for that person's children or spouse, and that the person has willfully and without reasonable cause refused or neglected to so provide, then the court may order the person to contribute to the support of that person's children or spouse in regular amounts that it determines reasonable and just. Child support must be determined or modified in accordance with chapter 63.</p> <p>3. Order pending petition. Pending petition, and after notice and an opportunity for a hearing, the court may order a nonsupporting person to pay to the court for the nonsupporting person's spouse or child sufficient money for the prosecution of the petition.</p> <p>4. Enforcement. The court may enforce an order as provided in chapter 65.</p> <p>5. Appeals. A party aggrieved by an order may appeal in the same manner as provided for appeals from that court in other causes. Continuance of an appeal may not be allowed without consent of the appellant or a showing of legal cause for the continuance to the court to which the order has been appealed.</p> <p>6. Order during pending appeal. Pending the determination of an appeal, the order appealed from remains in force and obedience to it may be enforced as if no appeal had been taken.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. XX. 19-A MRSA §1654 is amended to read:</p> <p>19A § 1654. Parenting and support when parents live apart</p> <p>If the father and mother of a minor child are living apart, the Probate Court, Superior Court or District Court in the county or division where either resides, upon complaint of either and after notice to the other as the court may order, may make an order awarding parental rights and responsibilities with respect to the child in accordance with this chapter.</p> <p>The jurisdiction granted by this section is limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state may have jurisdiction as provided in that Act.</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over child support actions. Probate Court jurisdiction is retained.</p>	<p>19A § 1654. Parenting and support when parents live apart</p> <p>If the father and mother of a minor child are living apart, the Probate Court, Superior Court or District Court in the county or division where either resides, upon complaint of either and after notice to the other as the court may order, may make an order awarding parental rights and responsibilities with respect to the child in accordance with this chapter.</p> <p>The jurisdiction granted by this section is limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state may have jurisdiction as provided in that Act.</p>
<p>Sec. XX. 19-A MRSA §1805 is amended to read:</p> <p>19A § 1805. Jurisdiction</p> <p>An action may be commenced in the Superior Court or the District Court <u>for the district</u> in which the minor child resides. If a child protective proceeding pursuant to Title 22, chapter 1071 <u>that involves</u></p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other</p>	<p>19A § 1805. Jurisdiction</p> <p>An action may be commenced in the Superior Court or the District Court in which the minor child resides. If a child protective proceeding pursuant to Title 22, chapter 1071 is under the jurisdiction</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>the minor child is under the jurisdiction of the District Court pending, an action filed under this chapter must be brought in the District Court and the court may consolidate the proceedings action filed under this chapter with that child protection proceeding.</p>	<p>family law matters. . This section repeals the Superior Court jurisdiction over grandparents' visitation actions.</p>	<p>of the District Court, an action filed under this chapter must be brought in the District Court and the court may consolidate the proceedings.</p>
<p>Sec. XX. 19-A MRSA §2802, sub-§24, is amended to read:</p> <p>24. Tribunal of this State. A "tribunal of this State" means the District Court, the Superior Court or the Department of Human Services.</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. . This section repeals the Superior Court jurisdiction over UIFSA</p>	<p>An action must be commenced in accordance with the Maine Rules of Civil Procedure. Proceedings under this chapter are governed by the Maine Rules of Civil Procedure.</p> <p>19A § 2802. Definitions</p> <p>As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>24. Tribunal of this State. A "tribunal of this State" means the District Court, the Superior Court or the Department of Human Services.</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Sec. XX. 19-A MRSA §3502 is amended to read:</p>	<p>actions.</p>	
<p>19A § 3502. Jurisdiction</p> <p>The Superior Court and the District Court have has jurisdiction over all proceedings brought under this chapter.</p> <p><i>Sec. 29. Application. The Superior Court continues to have jurisdiction over actions properly filed in the Superior Court prior to the effective date of this Act.</i></p> <p>Sec. 27. 29-A MRSA §2602 is amended to read:</p> <p>29A § 2602. Jurisdiction</p> <p>1. Traffic infractions. The</p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section specifically retains the Superior Court jurisdiction over cases pending in the Superior Court when this legislation takes effect. This applies to family law cases, but may also affect criminal appeals properly filed before the effective date.</p>	<p>19A § 3502. Jurisdiction</p> <p>The Superior Court and the District Court have jurisdiction over all proceedings brought under this chapter.</p> <p>29A § 2602. Jurisdiction</p> <p>1. Traffic infractions. The</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>District Court has original and exclusive jurisdiction over prosecutions for traffic infractions.</p> <p>2. Other violations. The District Court has original and concurrent jurisdiction with the Superior Court over prosecutions for other violations of this Title.</p> <p>3. Class C or greater. For Class C or greater crimes, the District Court jurisdiction is subject to Title 4, section 152 165 and Title 17-A, <u>section 9</u>.</p> <p>4. Fines. Except as otherwise provided in this Title, fines and forfeitures collected under this Title accrue to the General Fund, except that:</p> <p>A. Six percent of fines and forfeitures collected for all traffic infractions, including fines and forfeitures collected for traffic infractions under section 561, accrues to the Law Enforcement Agency Reimbursement Fund established in Title 4, section 173, subsection 4-B. This paragraph does not apply to sections 525, 1767 and 2363;</p> <p>B. Of the fines and forfeitures collected for traffic infractions under sections 511, 2356, 2360, 2380, 2387 and 2388, 7% accrues to the General Fund, 6% accrues to the Law</p>	<p>updates cross references to District Court criminal jurisdiction, and adds cross reference to Criminal Code jurisdiction section</p>	<p>District Court has original and exclusive jurisdiction over prosecutions for traffic infractions.</p> <p>2. Other violations. The District Court has original and concurrent jurisdiction with the Superior Court over prosecutions for other violations of this Title.</p> <p>3. Class C or greater. For Class C or greater crimes, the District Court jurisdiction is subject to Title 4, section 152.</p> <p>4. Fines. Except as otherwise provided in this Title, fines and forfeitures collected under this Title accrue to the General Fund, except that:</p> <p>A. Six percent of fines and forfeitures collected for all traffic infractions, including fines and forfeitures collected for traffic infractions under section 561, accrues to the Law Enforcement Agency Reimbursement Fund established in Title 4, section 173, subsection 4-B. This paragraph does not apply to sections 525, 1767 and 2363;</p> <p>B. Of the fines and forfeitures collected for traffic infractions under sections 511, 2356, 2360, 2380, 2387 and 2388, 7% accrues to the General Fund, 6% accrues to the Law</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p>Enforcement Agency Reimbursement Fund and the balance accrues to the General Highway Fund; and</p> <p>C. Of the fines and forfeitures collected for violations other than traffic infractions under sections 511, 2356, 2360, 2380, 2387 and 2388, only \$5 or 13%, whichever is greater, accrues to the General Fund and the balance accrues to the Highway Fund.</p> <p>Sec. 28. 33 MRSA 153 is repealed and the following enacted in its place:</p> <p>33 § 153. Sale or mortgage of estates subject to contingent remainders</p> <p>1. Sale or mortgage. <u>When real estate is subject to a contingent remainder, executory devise or power of appointment, the Superior Court, the District Court or the probate court, for the county or district in which the real estate is situated, may, upon the petition of any person who has an estate in possession in the real estate, and after notice and other proceedings as required, appoint one or more trustees, and authorize the trustee or trustees:</u></p>	<p>Recommendation VI gives the District Court the equitable jurisdiction to order the partition of property by sale. Both the Superior Court and the probate courts currently have this equity jurisdiction in the situation where a life tenant is followed by a contingent remainder. <u>Boyer v. Boyer</u>, 1999 ME 128 (August 5, 1999).</p>	<p>Enforcement Agency Reimbursement Fund and the balance accrues to the General Highway Fund; and</p> <p>C. Of the fines and forfeitures collected for violations other than traffic infractions under sections 511, 2356, 2360, 2380, 2387 and 2388, only \$5 or 13%, whichever is greater, accrues to the General Fund and the balance accrues to the Highway Fund.</p> <p>33 § 153. Sale or mortgage of estates subject to contingent remainders</p> <p>When real estate is subject to a contingent remainder, executory devise or power of appointment, the Superior Court or the probate court, for the county in which such real estate is situated, may, upon the petition of any person who has an estate in possession in such real estate, which petition shall set forth the nature of the petitioner's title to said real estate, the source from which the title was derived, the names and addresses of all persons known to be interested in said real estate and such other facts as may be necessary for a full understanding of the matter, and after notice and other</p>

Recommended Language	Source Recommendation and Comments	Current Law
<p><u>A. To sell and convey the estate or any part of the estate in fee simple, if such sale and conveyance appears to the court to be necessary or expedient;</u></p> <p><u>B. To mortgage the estate, either with or without power of sale, for such an amount, on such terms and for such purposes as may seem to the court judicious or expedient.</u></p> <p><u>The conveyance or mortgage is valid and binding upon all parties.</u></p> <p><u>2. Petition. The petition must set forth the nature of the petitioner's title to the real estate, the source from which the title was derived, the names and addresses of all persons known to be interested in the real estate and any other facts as may be necessary for a full understanding of the matter.</u></p> <p><i>Sec. 29. Application. The Superior Court continues to have jurisdiction over actions properly filed in the Superior Court prior to the effective date of this Act.</i></p>	<p>Recommendation I gives the District Court exclusive jurisdiction over divorce, annulment, judicial separation and other family law matters. This section specifically retains the Superior Court jurisdiction over</p>	<p>proceedings as required, appoint one or more trustees, and authorize him or them</p> <p>to sell and convey such estate or any part thereof in fee simple, if such sale and conveyance appears to the court to be necessary or expedient; to mortgage the same, either with or without power of sale, for such an amount, on such terms and for such purposes as may seem to the court judicious or expedient. Such conveyance or mortgage shall be valid and binding upon all parties.</p> <p><i>which petition shall set forth the nature of the petitioner's title to said real estate, the source from which the title was derived, the names and addresses of all persons known to be interested in said real estate and such other facts as may be necessary for a full understanding of the matter,</i></p>

Recommended Language	Source Recommendation and Comments	Current Law
	cases pending in the Superior Court when this legislation takes effect. This applies to family law cases, but may also affect criminal appeals properly filed before the effective date.	

APPENDIX D: RULES CHANGES TO IMPLEMENT RECOMMENDATION III

1. **16A, Pretrial Procedure in the District Court** should be amended to read as follows:

- (a) **Scheduling Order.** Every action filed in the District Court shall be made subject to a scheduling order in the same form as the scheduling order issued pursuant to Rule 16. The scheduling order shall recite that the plaintiff has waived the right to jury trial by filing the action in District Court and that the defendant has waived that right by failing to pay the jury fee and request removal within the time period to file the answer or reply. (See ¶14 of the Scheduling Order now issued pursuant to M.R.Civ.P. 16(a))
- (b) **Optional Discontinuance of the Scheduling order.** At any time after the issuance of the scheduling order and prior to the discovery deadline set forth in that order, the parties may by agreement file with the District Court a statement indicating that all discovery is complete, that the time needed for trial is three hours or less and that the parties request a hearing date. The District Court clerk shall then schedule the matter for hearing.
- (c) **Court Ordered Relief from the Scheduling Order.** In the event that one party is satisfied that discovery is complete and that the time needed for trial is three hours or less but the other party does not agree, the aggrieved party may file a motion for relief from the scheduling order and the District Court may conduct a conference to determine if the matter is in order for hearing. At that conference the court may consider: (1) the simplification of the issues; (2) the

necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof; (4) the limitations of the number of expert witnesses; and (5) such other matters as may aid in the disposition of the action. If at the conclusion of the conference the District Court determines that the matter is not in order for hearing or that the time needed for trial is greater than three hours, the terms of the scheduling order will remain in effect. If the District Court is satisfied that the matter is in order for hearing, it may grant relief from the terms of the original scheduling order and set the matter for hearing.

(d) Placement on the Trial List Pursuant to the Scheduling Order.

Following receipt of the parties' estimate of time required for trial pursuant to the requirements of the scheduling order, the District Court clerk may schedule the matter for hearing in the District Court or refer the matter to the appropriate Superior Court for scheduling purposes. If the matter is referred to Superior Court for scheduling it shall be scheduled in the same order as any other case in that court having the same discovery deadline. In any event, either the District or the Superior Court shall issue a pretrial order in accordance with Rule 16, when the action is placed on the trial calendar. If the matter is referred to the Superior Court for scheduling purposes, it shall retain its District Court docket number, but any motions filed prior to the actual trial will be heard and disposed of in the Superior Court. If the matter is heard by a Superior Court justice he or she will be sitting by designation in the District Court for the purpose of hearing

the case. Upon the entry of judgment, the matter will be returned to the appropriate District Court for all further purposes.

2. **Fee and Document Management Policy, eff. Oct. 15, 1997**, should be amended as follows (changes are indicated by double underlining):

**STATE OF MAINE
JUDICIAL BRANCH**

Fee and Document Management Policy
Effective October 15, 1997

Docket No. SJC-

Supersedes and replaces the policy that became effective January 1, 1997. Fee changes are indicated by underlining.

In order to promote uniformity of practice, costs and procedures the following fee policy is adopted for all courts in the State, and the following procedures for copying, attestation and document management are adopted for all courts in the State. As used in this policy, "Clerk" means the Clerk of the Law Court, a Clerk of the Supreme Judicial and Superior Courts, a District Court, or the Administrative Court, the Manager of the Maine Judicial Branch Violations Bureau, or a member of such a person's staff who has been delegated the authority to sign documents on behalf of that person.

I. Fees (All applicable to both Civil and Criminal cases, except where noted.)

A. Filing and Similar Fees

(including all Civil and Real Estate actions)

Entry of a general Civil Action, or Filing Third-Party Complaint⁹

Supreme Judicial Court:

\$120.00

Superior Court:

120.00

⁹ Includes a grandparents' visitation petition under 19 MRSA §1003 or 19-A MRSA §1801-1805 if filed as a new action; there is no fee if filed within a pending action; also applies to post-divorce termination of parental rights action brought under 22 MRSA § 4055(1)(A)(1)(b) and other actions not otherwise listed in this policy initiated under specific statutory authority where no filing fee is set by statute.

Administrative Court:	110.00	
District Court:	60.00	120.00
<u>Filing a Divorce or other Family Matter¹ in District Court</u>	<u>60.00</u>	

Filing of a Motion for Post-judgment Relief pursuant to M.R.Civ.P. 80(j) in an action under Title 19 or 19-A, except for a motion to modify or enforce a child support order¹⁰

Superior Court	50.00
District Court	25.00
Jury Trial fee in Superior Court	300.00
Pre-judgment or post-judgment mediation pursuant to CADRES rules with the exception of Land Use matters	120.00
Discretionary civil referrals to CADRES	20.00
Mediation in Land Use matters in Superior Court	175.00
Medical Malpractice Notice of Claim (per party)	200.00
Entry of a Small Claims Action ¹¹	40.00
Entry of a Small Claims Disclosure	15.00
Service of a Small Claims Action or disclosure, per party (optional)	10.00
Entry of a Money Judgment Disclosure	50.00
Entry of a Protection from Harassment Action	15.00
Entry of Marriage Waiver Action	10.00
Violations Bureau Late Fee	25.00
Violations Bureau Re-opening Fee	25.00
Entry of a Protection from Abuse Action	No fee
Filing of a Criminal Action, Traffic Infraction or Civil Violation	No fee
Entry of Petition for Forfeiture filed by AG or DA in criminal drug cases	No fee
<u>Entry of a Forcible Entry and Detainer or other civil action within the exclusive jurisdiction of the District Court</u>	<u>60.00</u>

B. Appeal and Removal Fees

¹⁰ A motion to modify or enforce a child support order may include a request for attorney fees and still be exempt from the post-judgment filing fee. A fee will be charged for a post-judgment motion that raises additional issues. For example, a motion seeking both a change in visitation and modification of child support requires payment of the fee.

Amended motions that would require a fee if filed originally will also require the appropriate filing fee.

¹¹ Includes a \$5.00 mediation fee.

Civil Removal to Superior Court or Transfer to District Court (Includes removal of Civil Violations for Jury Trial)	<u>120.00</u>
Civil Appeal to Superior Court or to Law Court	<u>120.00</u>
Entry of Workers' Compensation Appeal	<u>100.00</u>
Entry of Appeal from Unemployment Compensation	No fee
Criminal Appeals	No fee

APPENDIX E: RULES CHANGES TO IMPLEMENT RECOMMENDATION IV

To implement Recommendation IV the following changes should be made in the Rules of Civil Procedure:

1. M.R.Civ.P. 76C ("Removal to the Superior Court") should be amended as follows:

a. Subdivision (a) should read:

"(a) Notice of Removal. Except as otherwise provided in these rules, the defendant or any other party to a civil action or proceeding in the District Court who has a right to a jury trial on any issue may remove that action to the Superior Court for the county in which the division of the District Court is located by filing notice of removal and demand for jury trial, serving a copy of the notice and demand upon all other parties, and paying to the clerk of the District Court the removal and entry fee required by Rule 54B as well as the Superior Court jury fee and the cost of forwarding to the Superior Court the record specified in Rule 76F for appeals. Parties joined as defendants may file jointly or separately for removal. The notice shall be filed within the time for filing the answer or reply." (New matter underlined)

b. Subdivision (b)'s language that reads "and [the District Court] may determine any motions for support or custody" pending when notice of removal is filed should be deleted. That language is rendered obsolete by both Recommendation IV's limitation of removal to cases where the defendant exercises a right to a jury trial and by Recommendation I's vesting of jurisdiction over divorce and related matters exclusively in the District Court.

c. Subdivision (d) ("Title to Real Estate") should be repealed as inappropriate in a system of trial courts that are co-equal except for the special jury function of the Superior Court. The original reason for the provision no longer pertains. See 2 Field, McKusick & Wroth, Maine Civil Practice 493 (2d ed. 1970) (Maine's "longstanding tradition of permitting the removal of actions involving title to realty from inferior courts").

2. **M.R.Civ.P. 80H(g)** (“Civil Violations: Removal”) applies only where the possible sanction for each violation is \$1,000 or less. See M.R.Civ.P. 80H(a). Otherwise the general provisions of the Civil Rules apply to civil violation proceedings. In any event it is desirable to delete the special removal procedure of Rule 80H(g) and let the general provision of Rule 76C govern removal of civil violation proceedings to the Superior Court if the defendant has a right to a jury trial. In the smaller civil violations the “answer” of the defendant (which is the time-trigger for the notice of removal and jury demand) is by Rule 80H(d)(1) made orally on the defendant’s appearance.

Appendix F

Map of Court Locations

State of Maine Court Locations

