

MAINE STATE LEGISLATURE

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(Emergency)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1302

S.P. 422

In Senate, April 21, 1987

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative PARADIS of Augusta, Senator BLACK of Cumberland, Representative COTE of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

**AN ACT to Modify the State's Appeal Law to
Permit Appeals of Adverse Intermediate
Appellate Court Rulings by the State.**

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Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

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Whereas, the Maine Revised Statutes, Title 15, section 2115-A, does not presently allow the State to take an appeal to the Supreme Judicial Court, sitting as the Law Court, from the vacation of an underlying criminal judgment in whole or in part by the Superior Court sitting as an appellate court relative to District Court criminal cases appealed by an aggrieved defendant pursuant to Title 15, sections 2111 and 2114; and

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1 Whereas, this disability exists because, by over-
2 sight, the Maine Revised Statutes, Title 15, section
3 2115-A, was not adjusted to accommodate the single
4 trial procedure instituted in 1981 for Class D and
5 Class E criminal proceedings, a procedure replacing
6 the de novo trial; and

7 Whereas, this disability has and will continue to
8 result in serious prejudice to the State; and

9 Whereas, in the judgment of the Legislature,
10 these facts create an emergency within the meaning of
11 the Constitution of Maine and require the following
12 legislation as immediately necessary for the preser-
13 vation of the public peace, health and safety; now,
14 therefore,

15 Be it enacted by the People of the State of Maine as
16 follows:

17 Sec. 1. 15 MRSA §2115-A, sub-§2-A is enacted to
18 read:

19 2-A. Appeals from an adverse decision of the Su-
20 perior Court sitting as an appellate court relative
21 to District Court criminal cases. If an appeal to
22 the Superior Court by an aggrieved defendant from a
23 judgment of the District Court results in the vacat-
24 ing of the underlying criminal judgment in whole or
25 in part, an appeal may be taken by the State from the
26 adverse decision of the Superior Court to the Law
27 Court.

28 Sec. 2. 15 MRSA §2115-A, sub-§4, as amended by
29 PL 1983, c. 105, is further amended to read:

30 4. Time. An appeal taken pursuant to subsection
31 1 or, 2 or 2-A shall be taken within 20 days after
32 the entry of the order or such further time as may be
33 granted by the court pursuant to a rule of court, and
34 an appeal taken pursuant to subsection 1 shall also
35 be taken before the defendant has been placed in
36 jeopardy. An appeal taken pursuant to this subsection
37 shall be diligently prosecuted.

38 Sec. 3. 15 MRSA §2115-A, sub-§5, as enacted by
39 PL 1979, c. 343, §2, is amended to read:

1 5. Approval of Attorney General. In any appeal
2 taken pursuant to subsections subsection 1 or, 2 or
3 2-A, the written approval of the Attorney General
4 shall be required; provided that if the attorney for
5 the State filing the notice of appeal states in the
6 notice that the Attorney General has orally stated
7 that the approval will be granted, the written ap-
8 proval may be filed at a later date.

9 Emergency clause. In view of the emergency cited
10 in the preamble, this Act shall take effect when ap-
11 proved.

12 STATEMENT OF FACT

13 When the Superior Court is utilized as an inter-
14 mediate appellate court for appeals initiated by ag-
15 grievied defendants pursuant to the Maine Revised
16 Statutes, Title 15, sections 2111 and 2114 (Supp.
17 1986-87), Maine District Court Criminal Rules 37(a),
18 (c) and (d) and Maine Rules of Criminal Procedure 93,
19 the State is presently without access to the Supreme
20 Judicial Court, sitting as the Law Court, if that in-
21 termediate appellate court vacates the underlying
22 criminal judgment in whole or in part. This disabili-
23 ty exists because, at the time the de novo trial
24 procedure for Class D and Class E criminal proceed-
25 ings was abandoned in favor of the present single
26 trial procedure, the necessity to amend section
27 2115-A was overlooked.

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