

Report on the Criminal Justice Process in Region I  
(York County)  
of the Maine Judicial Branch

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## I. INTRODUCTION

In response to a letter dated March 20, 2010, from the Chairs of the Maine Legislature's Committee on the Judiciary, addressed to Chief Justice Leigh I. Saufley, the Supreme Judicial Court sought to undertake a thorough evaluation of criminal case management in Region I, York County.<sup>1</sup> The Supreme Judicial Court, in consultation with the leadership of the Superior and District Courts, designated the Hon. Jon D. Levy, Associate Justice of the Supreme Judicial Court, and Wendy F. Rau, Esq., Director of Court Operations, to study the Region's criminal process and to issue findings and preliminary recommendations.

Beginning in the summer of 2010, the authors undertook a study that sought to assess the Region's existing criminal process, examine whether some form of a unified criminal docket would improve the criminal process, and develop preliminary recommendations. The study consisted of two parts. First, an

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<sup>1</sup> The letter states in relevant part:

We write to invite the Judicial Branch to report to the Joint Standing Committee on Judiciary in the First Regular Session of the 125th Legislature regarding the Court's pilot projects designed to streamline and unify the Court's criminal process.

In the presentation on the State of the Judiciary the Chief Justice indicated that initial reviews demonstrated both increased efficiencies and improved public service in the unified criminal docket. We would be very interested next January in having an update of the court's experience and data.

We note that in a recent report on the processing of domestic violence cases in a non-unified docket region, York County, concerns were raised about disparate treatment of the cases in the District and the Superior Court and difficulties in unnecessary repeat appearances of the victims caused by the transfer of cases between the courts, or other scheduling problems. Could a unified criminal docket in that region improve public service?

The Committee is particularly interested in learning whether there are statutory impediments, such as venue or jurisdictional considerations, to further improvement and innovation. We are interested in learning what has worked well and what has not worked.

Finally, we would be pleased to receive any additional information on clerk office consolidations, cross assignment of judges in the trial courts, the potential for further consolidations and other innovations designed to improve public service and create greater budget and time-related efficiencies.

empirical evaluation of randomly selected cases from the four courts in Region I—the York County Superior Court in Alfred, and the Biddeford, Springvale, and York District Courts. Second, interviews with numerous judges, clerks, prosecuting attorneys, defense attorneys, and court administrators.

#### A. EMPIRICAL STUDY

The empirical study consisted of the review of a random sample of criminal cases filed during calendar year 2009. Because the size of the criminal caseload is different in each court, the number of cases studied varied by location. The random sample from each court consisted of the following number of cases: Biddeford—78; Springvale—30; York—43; Alfred—52; total number of cases reviewed—203. Cases from 2009 were selected for two reasons: (1) they were recent cases, and (2) there was a high probability that most of the cases would be disposed of by the fall of 2010. To understand the current criminal process, it was important to review cases from start to finish. The docket sheet from each case was printed and reviewed for the type and number of court events scheduled and held.

The study also included a review of criminal lists during July and August 2010. The term “criminal list” refers to a group of criminal cases scheduled by a clerk’s office for a particular day and session. Criminal lists from each court were printed and reviewed to determine the types of criminal events held and the number of cases scheduled per session. In addition, available statistics including caseloads, disposition timeframes, and transfer statistics were reviewed.

#### B. INTERVIEWS AND OTHER SOURCES

The interviews were conducted in an unstructured manner. They sought to develop information from each interviewee regarding the existing criminal process; the strengths and weakness of the existing process; areas for improvement; the interviewee’s assessment of the need for a unified criminal docket in Region I; and the interviewee’s preliminary thoughts as to what form a unified criminal docket might take in Region I if one were to be adopted.

The Quarterly Report on Trial Court Efficiency for the period ending September 30, 2010, was also a source of valuable data, as were various statistical reports prepared by Sherry A. Wilkins, Court Management Analyst.

A preliminary draft of this report was shared with the Justices and Judges in Region I, as well as the Chiefs of the trial courts for comment.

## II. CURRENT CRIMINAL PROCESS

### A. OVERVIEW

The current criminal process employed in the York County Superior Court located in Alfred, and the three District Courts located in Biddeford, Springvale and York, is largely the same process that has been in place for more than forty years. Misdemeanor prosecutions originate in the District Court and remain in the District Court unless the defendant files a written “demand” for a jury trial with the Clerk of the District Court within 21 days. *See* M.R. Crim. P. 22(a). If a demand is filed, the case is transferred to the Superior Court for all further proceedings. If a demand is not filed, the defendant is “deemed to have waived the right to trial by jury,” *id.*, and the next court event is a “trial date.” For the most part, felony prosecutions originate in the Superior Court and remain there until conclusion.

The transfer procedure was modified in 2001 with the amendment of M.R. Crim. P. 22(c). Previously, all pretrial motions, including motions to suppress, were required to be filed in, heard, and decided by the District Court before a case was transferred to Superior Court. As revised, any pretrial motion not yet heard in the District Court at the time a defendant files a written demand for a jury trial is heard and decided in the Superior Court following the transfer.

The criminal docket in Region I is one of the busiest of the State’s eight judicial regions, approaching 20% of the Judicial Branch’s entire criminal caseload. As of the third quarter of 2010:

- Criminal filings in Region I represented 17.71% of the statewide total.<sup>2</sup>
- Criminal dispositions in Region I represented 18.39% of the statewide total.
- Pending active criminal cases in Region I represented 21.44% of the statewide total.

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<sup>2</sup> This figure is consistent with the FY ’10 figures, which indicate that the Region had 17.75% of the State’s criminal filings.

- Total pending criminal cases<sup>3</sup> in Region I represented 22.68% of the statewide total.
- The average length of time it took to complete criminal cases in Region I was the longest in the State, with an average case age at disposition of 177 days compared with a statewide average of 133.8 days.

The third quarter statistics also demonstrate that the judges and clerks of Region I are highly productive. The Region disposed of (completed) 18.39% of the cases statewide. The region's clearance rate (the ratio of cases opened to cases closed) was 108.1%, the best in the State. These results were achieved, however, with only 13.2% of the total number of authorized trial judges (Superior and District) in the State.<sup>4</sup> There is no doubt that the Region's judges and clerks are working assiduously.

Perhaps what most distinguishes Region I's criminal process is the high rate at which cases are transferred from the District Court to the Superior Court. In FY 2010, Region I had a transfer rate of 61%. This means that 61% of the Superior Court's criminal docket comprised Class D and E cases that originated in the District Court. The Region's 61% transfer rate compares with an average 38% transfer rate in the remainder of the State, and a median transfer rate of 36.3%.<sup>5</sup> This data is confirmed by the number of the Region's District Court criminal filings transferred to the Superior Court as a percentage of all filings. In FY 2010 22.8% of Region I's District Court criminal filings were transferred to the Superior Court, a rate that was more than double the average rate of 10.5% for the remaining regions without UCDs. As will be explained, the reasons for and consequences of the high transfer rate in Region I are key considerations in the evaluations undertaken in this report.

Due to the large number of cases that originate in or are transferred to the Superior Court in Alfred, that court manages the criminal docket by scheduling

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<sup>3</sup> Total pending criminal cases includes all active cases and cases involving deferred dispositions, drug court referrals, and outstanding warrants and suspensions.

<sup>4</sup> There are two Superior Court Justices and five District Court Judges assigned to Region I. There are 17 Superior Court Justices and 36 District Court Judges authorized in Maine. We have not sought to account for judicial vacancies or the assignment of Active Retired judges in this analysis.

<sup>5</sup> This excludes, therefore, the courts in the two regions, Regions II and V, that have adopted UCDs.



criminal events on or about every day the court is in session. For the 37 days in which the Court was in session during the period July 12<sup>th</sup> through August 31, there were one or more criminal lists scheduled on every day. As a result, during this period there were 15 days in which two of the Region's four courts had criminal events occurring at the same time, and there were five days in which three of the four courts had criminal events occurring at the same time.

The frequency with which courts in close proximity to one another schedule criminal events on the same day is significant. Simultaneous scheduling results in scheduling conflicts for criminal defense lawyers, thus resulting in motions to continue and scheduling uncertainty.

## B. PRE-ARRAIGNMENT PROCESS

Currently, the District Courts are largely not involved in the process that precedes an arraignment. Because the study indicates that they should be, we address the current pre-arraignment process to identify opportunities for process improvement.

A criminal charge generally originates with an arrest or the issuance of a summons to the defendant. For those defendants who are arrested and are brought to court for arraignment before being released on bail, the pre-arraignment period is no more than a few days. For the vast majority of defendants who are either released on bail soon after their arrest or who are summonsed to court, the pre-arraignment process begins with their receipt of a summons issued by the arresting officer or a bail document issued by a bail commissioner. The summons and bail document include an arraignment date, chosen by the law enforcement officer issuing the summons or the bail commissioner.

Although the law enforcement officers and bail commissioners choose their arraignment dates from a schedule of dates provided by the three District Courts for their use, the courts are not involved in the actual assignment of cases to the scheduled arraignment dates. This is significant because, without such coordination, there is great variability in the number of defendants who will appear for an arraignment on any given day.

During the study period, there were a total of 26 scheduled arraignment sessions in the three District Courts at which 1080 defendants were arraigned, resulting in an average of 41.60 defendants scheduled to appear per session. The fewest number of defendants scheduled for a single session was three, and the

largest number of defendants scheduled for a single session was 91. An arraignment session consists of a three-hour block of time.

If there were coordination between the courts and the law enforcement agencies as to minimum and maximum numbers of defendants to be scheduled for arraignment at a single session, there would be substantially fewer arraignment sessions needed, and sessions with excessive numbers of defendants would be avoided.<sup>6</sup> Pursuant to case volume ranges adopted by the Chief Judge of the District Court in 2005, there should be a minimum of 50 and a maximum of 100 arraignments scheduled at a single arraignment session.<sup>7</sup> If the Region's scheduling process had achieved these case volume ranges, the 26 arraignment sessions scheduled during the study period would have been reduced to approximately 15 sessions, representing a 57% reduction in the number of scheduled court sessions.

In addition, because the Region's arraignment schedule does not account for seasonal differences in York County's population, and law enforcement activity increases during the warmer months, there are arraignment sessions in the fall and winter with more than 200 defendants in attendance.<sup>8</sup> Such events are contrary to the administration of justice and undermine public safety. If the Region's schedule

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<sup>6</sup> This might be accomplished in two ways. First, the court should examine each agency's historical pattern and determine the number of arraignment sessions that each agency requires within the framework of the applicable case volume range. Secondly, each agency could keep a running total of its summonses and when the total exceeds the applicable range, its officers would be instructed to begin using the next available session. This insubstantial administrative burden for the agencies will be offset by a reduction in the number of arraignment sessions the agency's employees may have to attend.

<sup>7</sup> The purpose of the "Case Volume Range" was explained as follows:

The standards would set forth the acceptable range of the number of cases that may be assigned to any single docket for each case type. Scheduling an inappropriate number of cases per session results in inefficiencies. Under-scheduling results in unproductive use of judicial resources. Over-scheduling results in inconvenience, expense and delay, both in terms of the length of time parties, counsel and witnesses must wait for their cases to be reached and for the clerks when cases must be re-scheduled because they cannot be reached. Each court event must be a meaningful one and scheduled with event certainty, that is, with a reasonable expectation that the case scheduled will be heard at the time scheduled. The public's confidence in our system is influenced by our ability to efficiently schedule cases.

<sup>8</sup> The arraignment courtrooms in the three District Courts have the following maximum seating capacities: Biddeford—91; Springvale—88; York—131.

were modified to account for predictable, seasonal variations in the volume of arraignments, sessions with excessive numbers of defendants would be avoided.

Another consequence of the court not directly managing the pre-arraignment process is that the public is not able to obtain information from the court regarding scheduled cases prior to the arraignment date. Currently, the District Courts do not receive the summonses from the District Attorney's office until about a week or less prior to the arraignment date.<sup>9</sup> Thus, the clerk's office will have no record of a case and frequently cannot respond to the phone inquiries from defendants whose arraignment date is approaching.

In addition, a clerk has no way of knowing any sooner than about one week before an arraignment date if there will be an unusually large number of arraignments which may result from a law enforcement agency engaging in a special detail such as a weekend sweep for bail violations or a road block interdiction program several months earlier. In short, the court lacks the information required to respond to public inquiries about scheduled matters, and to make adjustments to the assignment of judges, clerks, and judicial marshals in order to address irregular, but reoccurring circumstances.

### C. ARRAIGNMENT

Under the current process, there is no opportunity for a defense attorney or defendant to discuss a case with an assistant district attorney (ADA) to determine whether the charge could be resolved prior to the arraignment. Discovery, that is, the information used by prosecutors in determining whether to bring a criminal case, is not made available to defendants prior to arraignment, although it is provided to defendants at some, but not all arraignments. These practices reduce the number of cases that can be resolved at arraignment.

A defendant who pleads not guilty at the time of arraignment receives a written notice containing a trial date, a jury trial request form, and, if applicable, an affidavit requesting the financial information necessary for determining whether the defendant is eligible for appointment of counsel.

A defense "lawyer for the day" is available at all arraignment sessions, but the opportunity for cases to be resolved at arraignment is hampered by: (1)

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<sup>9</sup> Upon its receipt of summonses from law enforcement agencies, the District Attorney's office must conduct its own data entry regarding offenders and charges before it turns the summonses over to the Clerk of Court. This contributes to the delay in the court's receipt of the summonses.

unavailability of discovery; (2) inability of the assistant district attorney to review the case prior to arraignment; (3) an excessive number of scheduled arraignments; (4) the ever-increasing collateral consequences associated with a conviction that makes it more difficult for a lawyer for the day to advise a defendant to enter into a plea agreement at the arraignment.

It also appears that, at times, assistant district attorneys have insufficient office time in which to screen cases prior to arraignment. This results in a greater likelihood that, at arraignment, the State will indicate that there is a risk of jail if the defendant is convicted in order to err on the side of caution. This makes a plea agreement less likely at arraignment, and the need for appointment of counsel greater. Reducing the number of scheduled court sessions would afford the assistant district attorneys more time to screen cases prior to arraignment.

On those days when more than 100 arraignments are scheduled, the experience for the public and the attorneys in the courthouse hallways is, in the words of one experienced practitioner, “brutal.” Crowds get so big that some members of the public must stand in the hallway, or even outside the courthouse, because there is insufficient seating in the courtroom.

#### D. APPOINTMENT OF COUNSEL

Every defendant who faces a risk of jail is provided an affidavit for appointment of counsel at arraignment. It is estimated, however, that roughly half of the defendants who were provided affidavits actually complete and submit the required paperwork on the day of arraignment. A defendant’s failure to submit the paperwork on the day of arraignment increases the number of contacts that defendant, an assistant clerk, and a judge will have regarding the case, and contributes delay to the case.

Many defendants submit their affidavits by mail and when, upon review by an assistant clerk or judge, it is found that the affidavit is not complete or not properly signed, the clerk’s office must track down the defendant in order to obtain a completed form. Any process improvements that maximize the number of defendants who complete and file the required paperwork the day of arraignment will improve the efficiency of the process.

Additional delay to the processing of cases resulting from the method by which counsel is appointed is reflected in the study. The average number of days from the arraignment date to the date the appointment of counsel was made were

16 days in Biddeford, 30 days in Springvale, and 9 days in York. In addition there are instances where the appointment of counsel is not completed before the case is transferred to Alfred, resulting in additional contacts regarding the issue by an assistant clerk and judge of the Superior Court.

Region I's process for appointment of counsel stands in contrast with that employed by the UCD in Region II (Cumberland). Defendants whose cases do not resolve at arraignment must complete the required affidavit while at the court so that a judge can review the affidavit and act on the request that day. This assures that most appointments are finalized on the day of arraignment.

#### E. DISTRICT COURT PROCESS FOLLOWING ARRAIGNMENT

For the cases that originate in the Region's district courts that are not transferred to Alfred, the first scheduled event following the arraignment is a trial date.

During the two-month period studied, there were 22 trial sessions held in the three District Courts for 535 cases, resulting in an average of 24.3 cases per trial session. The smallest list was 4 cases and the largest list was 55 cases. The "Case Volume Ranges" issued by the Chief Judge of the District Court call for no fewer than 35 cases and no greater than 60 cases to be scheduled in a single session. If this range had been applied during the study period, the 22 trial sessions would have been reduced to roughly 12 trial sessions, a reduction of 54.5%.<sup>10</sup>

Of the 535 cases scheduled for trial in the District Court during the two-month study period, there was one trial held. This nominal rate of actual trials is consistent with the assessment of the clerks of the Region's District Courts, who provided estimates indicating that there are a total of 20 to 35 bench trials per year in the Region. Because of the high transfer rate, there are virtually no motions to suppress heard and decided in the Region's district courts. One judge noted that in the previous eight years, he had conducted two suppression hearings.

Because cases go directly from arraignment to a trial list, rather than to a case management event such as a dispositional conference, both the State and those defendants who have pleaded not guilty must, at least in theory, have their

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<sup>10</sup> It is observed, however, that because the District Court judges do not have the assistance of a clerk in the courtroom during arraignments, there is no one to keep track of how many cases have either (1) already been assigned to a particular trial date prior to the arraignment, or (2) have already been assigned to that date during the arraignment session.

witnesses on call and be ready to try the case on the assigned trial date. However, cases that are not resolved on their trial day are continued to another trial day. The rescheduling of cases from trial list to trial list must lead the defendants, victims, and witnesses, who are not familiar with the court's operations, to believe that criminal trials are routinely delayed.

#### F. SCHEDULED EVENTS PER CASE IN DISTRICT COURT

The study examined a total of 109 cases completed in the three District Courts. For these cases there were a total of 256 scheduled court events (consisting of arraignments and trial dates), and a total of 169 court events actually held. This means that there were, on average, 2.34 scheduled court events per case. If, for example, the Region resolved 50% of its misdemeanor cases at arraignment, and 35% of its cases with one additional court event and the remainder with two additional court events (percentages that approximate the UCD in Region II), it would result in an average of 1.69% scheduled court events per case, a reduction of 27.8% in scheduled court events.

#### G. EVENT CERTAINTY IN DISTRICT COURT

The event certainty measure for the Region's Courts is derived from the number of events scheduled in relation to the number of events held. Event certainty "evaluates the extent to which cases are heard when scheduled." *A New Model For Scheduling Courts and Allocating Judicial Resources* at 11 (2003). Although the continuance and cancellation of court events is an unavoidable aspect of case management, keeping the continuance and cancellation of scheduled events to a minimum increases the predictability and timeliness of the judicial process and reduces the workload for clerks.<sup>11</sup> It is estimated that the docketing and notices associated with the cancellation and rescheduling of a single court event requires approximately 15 minutes of an individual clerk's time.

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<sup>11</sup> An event certainty measure of 1 indicates that every scheduled event was held when scheduled. If a court continues or cancels:

- 10% of its scheduled events, the resulting event certainty measure is 1.11
- 20% of its scheduled events, the resulting event certainty measure is 1.25
- 30% of its scheduled events, the resulting event certainty measure is 1.42
- 40% of its scheduled events, the resulting event certainty measure is 1.66

In the District Court cases studied, the total number of scheduled events was 256 and the total number of events held was 169. The resulting event certainty measure is 1.5, indicating that 34% of scheduled case events were continued or canceled.

#### H. TRANSFERS—PROCESS

As previously mentioned, there is a very high transfer rate in Region I. In FY '10, 1756 cases were transferred to the Superior Court, representing 61% of that court's incoming criminal caseload. To transfer a case, a defendant files a jury trial request (JTR) in the District Court within 21 days after arraignment. The filing of a JTR necessitates multiple steps in both the District and Superior Court Clerks' offices to effectuate the transfer.

Upon the filing of a JTR in the District Court, a clerk checks to see if the request is timely and if it includes all of the cases then pending against the defendant. If the JTR does not include all pending cases, the clerk will often call the attorney of record to determine whether this was an oversight. In addition, the clerk checks to be sure an arraignment was held and that everything that needs to be docketed has been docketed. For example, the JTR must be docketed along with any motions that have been filed. The clerk also checks on bail. If cash bail has been submitted, the clerk must cut a check to the Superior Court. Once the preceding steps have been taken, the clerk docketed the transfer. MEJIS then sends an electronic notice to the Superior Court, and the case is closed in the District Court. The clerk sends all original documents and a check, if there was cash bail, to the Superior Court by mail, unless someone is traveling to Alfred in which case the documents can be hand delivered. All cases involving domestic violence (DV) charges are stamped with a red stamp to alert the Superior Court clerk that it is a DV case.

The District Court Clerks report that it takes an experienced clerk approximately 10-15 minutes to perform the functions necessary to transfer a case. For an inexperienced clerk, the amount of time is estimated at 20-25 minutes per case. In addition, the Clerk of Court must reconcile all cancelled checks and balance the bail account. The Biddeford Clerk estimates that of the 200 checks she issues per month, approximately 70 are bail checks to the Superior Court. The Springvale and York Clerks each estimate approximately 30 checks per month to the Superior Court. Together, the three District Courts issue roughly 130 checks to the Clerk of the Superior Court each month.

The Superior Court clerk's office prints from MEJIS the electronic list of the cases it will be receiving from the District Courts. This is done daily. MEJIS automatically assigns a new docket number to each transferred case; thus the list provides the Superior Court with the assigned docket number of the incoming transfer cases. When the office receives a group of case files from one of the District Courts, a clerk compares them to the list. Although there is some variation in frequency, on average, the Superior Court receives cases in the mail two or three times per week. An assistant clerk is responsible for receiving any cash bail checks and preparing the deposit. There are daily deposits. The judicial secretary handles much of the preparatory work on transfer cases. She goes through each District Court file and checks it against the District Court docket sheet. She also organizes the file and places the documents in a new file folder. She prints out and puts in the file the likely required forms, such as the judgment and commitment and conditions of probation.

The Superior Court Clerk estimates it takes approximately 15 minutes per case to undertake the above tasks.

It is evident that a significant amount of clerk time is devoted to transferring cases from one court to another. In the District Court a clerk spends at least 15 minutes preparing a case for transfer, and in the Superior Court another 15 minutes is spent receiving and opening a case. Between the two offices, approximately 30 minutes is spent completing the tasks associated with a case transfer. In FY '10, 1756 cases were transferred. At 30 minutes per case, this means that 878 hours were devoted to this work. Translating this to the 37.5-hour workweek, nearly three months of a District Court employee's time and three months of a Superior Court employee's time is spent preparing cases for transfer or opening transferred cases.

In addition, the transfer process produces delays in case resolution.<sup>12</sup> Of necessity there will be a period of time in the District Court when clerks are closing a case and preparing to send it to Superior Court. On the receiving end, there is an additional period of time needed to receive and open the case. The

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<sup>12</sup> The transfer process can also lead to simultaneous proceedings involving the same defendant in both the Superior and District Courts. If, for example, a defendant is stopped by the police and charged with operating under the influence, a criminal charge, and possession of a small quantity of marijuana, a civil violation, and the defendant files a JTR, the civil violation will remain pending in the District Court and the criminal charge will be transferred to the Superior Court. The defendant will therefore have to attend different court dates in different locations to resolve the two charges arising out of a single incident. The clerks report that it is not unusual for defendants to be confused by this process and miss court dates as a result.



random sample of 2009 District Court criminal cases included a number of cases that were transferred. A review of these cases revealed that, on average, it took 22 days from the filing of the JTR in Biddeford District Court to the docketing of the case in Superior Court. The average time for cases originating in Springvale and York was 12 days. This means there is a time period varying from approximately two weeks (for cases originating in Springvale and York) to approximately three weeks (for cases originating in Biddeford) when no court events can be scheduled or held because the case is in transit from one location to another.

## I. TRANSFERS—REASONS FOR THE HIGH RATE OF TRANSFERS IN REGION I

There was largely universal agreement among the individuals interviewed as to the reasons for the Region's exceptionally high transfer rate:

- The District Attorney's four offices in the Region have been operating autonomously, and the plea offers made in the District Court tend to be less favorable to defendants than the plea offers made in the Superior Court. Related to this, a defendant has little incentive to accept a plea offer made in the District Court knowing that he or she will have a second opportunity to negotiate in the Superior Court.
- It is advantageous for defense attorneys who accept court appointments to have all of their assigned cases heard in a single court location, that being Alfred.
- Although there are seven judges in the Region, there are only two judges sitting in Alfred. Directing the cases to a smaller pool of judges makes it easier for the defense bar to anticipate the process that will be employed and approaches taken.
- It is generally advantageous for defendants to postpone the completion of a case because witnesses may become unavailable or complaining witnesses may change their positions. This dynamic is particularly true for cases in which the defendant and the victim are or were domestic partners.
- Prior to the amendment of M.R. Crim. P. 22 in 2001, a defendant would obtain a ruling on a motion to suppress or other pretrial motion

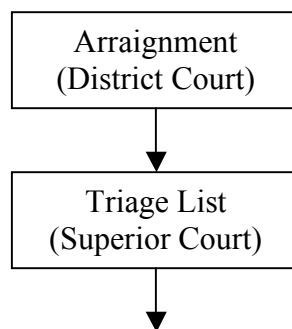
before the case was transferred, increasing the opportunity for the case to be resolved in the District Court by a District Court judge.

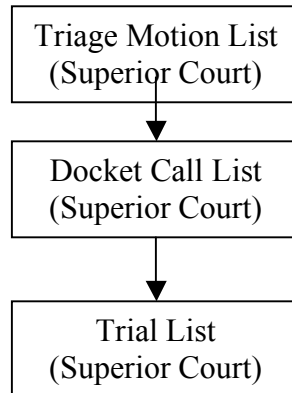
## J. SUPERIOR COURT PROCESS

The Superior Court has a very heavy criminal caseload comprising both transferred misdemeanor cases and the felony cases that originate through the Grand Jury process. There is one justice assigned to handle criminal matters year round. The court uses a variety of lists to manage its high volume caseload and move cases to resolution. Frequently there is an “early morning” criminal list followed by the main list for the day. The 8:30 list allows the court to address a few miscellaneous matters each morning. For example, there might be a status conference, a dispositional hearing or a sentencing included on this list. The court has a docket call each Thursday. Other days during the month are set aside for various motion lists. There are miscellaneous criminal lists on Fridays; adult drug court also occurs on Friday. Jury time is in short supply; usually there are five to eight days per month for jury trials. For almost all scheduled events, the clerk’s office mails notices. The Clerk explained this works better than relying on notices given to people in the courtroom, which may be lost or the date forgotten.

The first Wednesday of each month is a criminal triage day for transfer cases with pending motions. Although it may occur months after the event giving rise to the criminal charge, triage day is a defense attorney’s first opportunity to talk with an ADA. At triage day, most motions are withdrawn but, if a motion requires a hearing, it is then assigned to a triage motion day. Triage motion days are held once a month, usually with 12 to 15 cases on the list. After a motion is heard or withdrawn, or if the transfer case is not accompanied by a motion, the case is scheduled for a docket call two to three months down the road.

Thus, the process for a transferred case in which a pretrial motion has been filed is as follows:





For felonies originating by complaint in Superior Court, the first court event is generally an initial appearance. The matter is then scheduled for a status conference two to three months later. It is anticipated the case will be presented to a Grand Jury prior to the date of the status conference. Thus, the status conference date is really a “place holder.” If the defendant is indicted, the status conference is converted to an arraignment date. Twelve of the felony cases reviewed for this study had status conferences set; none were held. In most instances the defendant was arraigned instead. If the defendant files a motion after arraignment, the case will be set for a criminal motion day. After the motions have been resolved, the case is scheduled for a docket call.

The weekly docket call includes a mixture of misdemeanor and felony cases. The Clerk reported that each docket call list has 50 to 100 cases on it. At a docket call there are really four possibilities: a plea, a dismissal, assignment to a trial list, or a postponement to another docket call list. The docket call is essentially a case management tool or mechanism for moving cases to resolution. It is not unusual for a case that is not resolved at a docket call to be rescheduled for another docket call.

Docket calls are held each Thursday to avoid conflict with docket calls in Cumberland County, which used to occur on Fridays.<sup>13</sup> When a case is scheduled for a docket call list, the clerk will mail a written notice that provides notification of the time, date, and location for the docket call. The notice is captioned “NOTICE OF TRIAL.” It states, “This is to notify you that a trial has been set for docket call on [date].” If the expectation on a docket call day is that no trials will occur, the practice of using a NOTICE OF TRIAL to provide notice of a docket

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<sup>13</sup> The adoption of the UCD in Region II in January 2009 ended the practice of docket calls in Cumberland County.

call may lead the public and others not familiar with the court's practices to conclude that scheduled trials are routinely continued in the Superior Court.

Because trials are not held during the first week of the month and because there are, at most, three trial days during each of the other weeks, longer trials or trials involving special circumstances, such as out-of-state witnesses, require a special assignment. The number of specially assigned cases is increasing and the Region is in need of more jury trial time.

Two clerks are usually assigned to the courtroom on docket call days because there is too much paperwork for one clerk to handle it all. Because there are no computers available in the courtroom, all paperwork is completed by hand. With fewer court reporters available, the clerks are also called upon to operate the electronic recording equipment more frequently. This is an added burden for the office.

A review of the court's schedule during the summer revealed the large number of lists used to manage the caseload. Over a 32-day period in July and August 2010, there were 82 different criminal lists. These ranged from short lists with a few cases to large docket call lists.

There were seven trial lists that had a total of 51 cases on them. Two trial lists were researched as part of the study. Of the 30 cases on the two lists, there were 13 pleas, eight dismissals, four filings, and four deferred dispositions; one jury trial was held.

Few cases actually make it to a trial list. Of the 52 randomly selected cases included in the study, only three (6%) were assigned to a trial list, and none had a trial. Two cases resulted in a plea, and the third was dismissed.

#### K. SCHEDULED EVENTS PER CASE IN THE SUPERIOR COURT

The study examined 51 cases<sup>14</sup> that had a total of 88 court events held and a total of 163 court events scheduled. On average, there were 3.20 court events scheduled for each case.

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<sup>14</sup> The study examined 52 cases. One case, however, had no events and was, therefore, excluded from this analysis.

## L. EVENT CERTAINTY IN THE SUPERIOR COURT

As indicated, for the 51 Superior Court cases studied, the total number of scheduled events was 163 and the total number of events held was 88. The resulting event certainty measure is 1.85 indicating that 46% of scheduled events were continued or canceled.

## M. DOMESTIC VIOLENCE CASE MANAGEMENT

The Biddeford District Court instituted a case management pilot project for domestic violence cases in February 2010. The purpose of the project is to improve the quality and timeliness of dispositions in cases involving DV charges. Cases are randomly selected to participate in a case management process that occurs twice a month. There are apparently 10 to 15 cases scheduled per session. Thus, the process addresses roughly 240 to 360 cases per year.

After arraignment, the court notifies each “chosen” defendant of his obligation to attend the case management session, and explains that, because the charge could lead to a jail sentence, the defendant is entitled to have an attorney.

At the beginning of the case management session, the presiding judge explains to the assembled defendants<sup>15</sup> that the case management session affords them the opportunity to discuss their cases with the ADA. The court further explains that a Lawyer of the Day (LOD) can negotiate with the ADA on behalf of a defendant who is not represented by counsel. Defendants without counsel are advised that if they do not resolve the matter and wish to ask the court to assign counsel, they should complete the appropriate paperwork, and the court will review it that afternoon. Thereafter the judge leaves the courtroom, and the various defendants meet with the ADA, along with their attorney or the LOD. After the parties have actually conferred, they report to the court on the outcome of their discussions. The possible outcomes include: the case is resolved by plea or dismissal; defendant elects to proceed to trial; or, the parties need additional time.

During this session the judge may be called back into the courtroom at various times to process agreements or to identify the next step in the case if no agreement is reached. The judge does not participate in the discussions about individual cases. The case management session is similar to a criminal trial day at

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<sup>15</sup> If a defendant fails to appear, the judge will order a warrant to be issued.

which the judge calls the list and then gives the parties an opportunity to negotiate and resolve matters.

## N. DOMESTIC VIOLENCE CASE OUTCOMES

The letter from the Judiciary Committee's Chairmen noted, "in a recent report on the processing of domestic violence cases in a non-unified docket region, York County, concerns were raised about disparate treatment of the cases in the District and the Superior Court."

In the cases studied, there were twenty-five domestic violence cases that were disposed of, 8 in the District Court, and 17 in the Superior Court. In the 8 cases resolved in the District Court, 5 included a jail sentence, 1 included a fine, 1 included a deferred disposition, and 1 was dismissed. Of the 17 dispositions in the Superior Court, 3 included a jail sentence, 2 included a fine, 4 resulted in deferred disposition, 4 resulted in dismissals, 2 resulted in filings, and 2 resulted in unconditional discharges.

Although this information may be interpreted as suggesting that there is a disparity in dispositions between the two courts, the authors believe the small pool of cases studied is an insufficient sample from which to draw conclusions. Nonetheless, the disparity in the results in the sample is consistent with the assessments provided by judges, clerks, and lawyers. These assessments indicate that the dispositions are generally more favorable for defendants in Superior Court because:

- The District Attorney's office has not instituted a uniform approach to plea negotiation in the District and Superior Courts. The direct involvement of the arresting officer or a representative of that officer's department in the plea negotiation leads to plea offers in the District Court that are considered to be less favorable to defendants than the offers made in the Superior Court.
- Dispositions in the Superior Court more frequently involve cases in which the defendants are represented by counsel. District Court cases more frequently involve defendants who are without counsel or only represented by the lawyer for the day. Of the 25 cases studied, two involved self-represented litigants, both were in the District Court, and both resulted in 48-hour, unsuspended jail sentences. In the remaining cases, the defendants were represented by retained or appointed counsel.

- The passage of time usually weakens the State's case. Defendants in the Superior Court plead or face trial long after they would have done the same in the District Court.

### III. CLERK RESOURCES

There are 39 clerk positions allocated among the four court locations. One of these positions is a regional floating clerk.

The York County Superior Court Clerk's Office consists of eleven (11) full-time clerks. It also receives the assistance of the regional floater one week per month for a total of 11.25 positions. Currently there is one vacant position. The office does have a full-time temporary employee to assist with the workload. Most of the employees, including the floater and the temp, are assigned to criminal case processing. The judicial secretary also devotes some of her time to assisting the clerk's office with transfer cases. Only three employees work full-time on the civil caseload.

Rick Record, the Director of the Office of Clerks of Court, has developed a weighted case filing system designed to reflect the level of effort required for different caseloads processed by court clerks' offices. When compared to other Superior Court clerks' offices, the York County Superior Court clerk's office has one of the highest per person weighted case filings in the system. Based on current data, the office processes the equivalent of 1,701 filings per person per year. The statewide average for the Superior Court is 1,442 filings per person.

Both the data and Rick Record's personal experience lead him to conclude that the office is not adequately staffed to handle its present workload. It is his opinion that the office should be authorized one additional full-time position.

The Biddeford District Court Clerk's Office consists of 12 clerks. The office also receives the assistance of the regional floating clerk one week per month for a total of 12.25 FTE staff. At present the office has no vacancies; it is fully staffed. The Clerk reports that 4.5 employees process the criminal and traffic infraction caseloads.

The office is very busy and processes the work of multiple courtrooms each day. In terms of the number of cases filed, Biddeford is the fourth largest District Court in the State.

Based on current per person weighted case filing data, the office processes a level of effort equal to 1,986 filings per person, which is almost identical to the statewide average of 2,018 filings per person.

Both the data and Rick Record's personal experience lead him to the conclusion that the office is adequately staffed to handle its present workload.

The Springvale District Court Clerk's Office consists of nine clerks. It receives assistance from the regional floating clerk two weeks per month for a total of 9.5 FTE positions. Included in the nine positions is a full-time foreclosure clerk who processes cases participating in the Foreclosure Diversion Program for all of Region I. That position is paid for by dedicated funds from the Foreclosure Diversion Program. The Clerk reports that two employees process the criminal and traffic infraction caseloads. At present the office has a net vacancy of half a position.

Even with the part-time vacancy, the office processes a level of effort equal to 1,915 filings per person. This is slightly below the District Court's statewide average of 2,018 filings per person. However, it does not reflect the time spent managing the region's FM trailing docket for the three District Courts in Region I. The Clerk estimates it takes more than one FTE employee to schedule settlement conferences and trials, prepare trial lists, docket paperwork, respond to inquiries from the parties, and record FM hearings.

The York District Court Clerk's Office has six positions authorized with a net vacancy of 0.5 positions at the present time. This office does not receive help from the regional floating clerk. The Clerk reports that 1.75 employees process the criminal and traffic infraction caseloads.

Total filings for this court have fallen in recent years, and criminal filings dropped significantly in FY '10. Part of this decrease may be related to fewer truck related details being conducted by the State Police.

Based on current per person weighted filing data, the office processes a level of effort equal to 1,807 filings per person with the current part-time vacancy. The statewide average for the District Court is 2,018 filings per person.

Both the data and personal experience lead Rick Record to conclude that the office is adequately staffed to handle its present workload.



There is no question that all four clerks' offices work very hard to keep up with their demanding workloads. It is difficult to conclude, however, that the Region is understaffed in comparison to the rest of the State. Region I has 39 clerk positions; two positions are vacant at the present time. This results in a 5% vacancy rate.

Currently, approximately 16.5 clerk positions in Region I are dedicated to processing criminal cases and traffic infractions.

#### IV. JUDICIAL RESOURCES

There are 5 District Court Judges and 2 Superior Court Justices permanently assigned to Region I. As previously noted, these 7 judges, who represent 13.2% of the total number of authorized trial judges (Superior and District) in the State, are responsible for approximately 20% of the criminal cases in the State. There is also one family law magistrate assigned to Region I on a full-time basis.

It is particularly notable that the 2 Superior Court Justices represent 11.7% of the 17 active Superior Court Justices in the State. In FY' 2008, the last reporting period for which statewide case filing statistics were available for all 8 judicial regions (before the implementation of the UCD in Cumberland County), a total of 14,813 criminal cases were filed in Maine's Superior Courts. Of these, a total of 3,297 (22.2%) were filed in York County. Accordingly, the 2 Superior Court Justices in Alfred, representing 11.7% active justices of that court, were responsible for 22.2% of the total case filings.

There was universal agreement among the persons interviewed that the Superior Court in Alfred is in need of more judge time and that the barrier to more judge time is the Alfred courthouse; it cannot accommodate more than 2 judges. There was also universal agreement that the 2 Superior Court justices who preside in York County have been tireless in managing a virtually unmanageable docket and, as will be addressed below, have done so in a court facility that is far from adequate to meet the needs of the public.

#### V. FACILITIES

The four courthouses in Region I are all within a 28-mile driving radius of each other.

## A. YORK COUNTY COURTHOUSE (ALFRED)

The current York County Courthouse was constructed in 1922. There are two courtrooms, three judicial chambers (one of which is on the building's first floor and is not currently used), and one judicial secretarial office for the two justices permanently assigned to the court. There is one conference room downstairs for use by attorneys and clients or for mediation. There is also a county law library upstairs. The library is also currently used as a meeting space for drug court sessions, and settlement conferences. There is also a third room in the basement (grand jury room) that can be used for meetings but many people are not aware of it. There is also a room that is used as a dedicated holding area for prisoners.

The courthouse is notable for its lack of security. A stairway, accessible to the general public, leads directly upstairs to the Justices' chambers; a Justice using the smaller first-floor courtroom must pass through the central downstairs hallway in order to get to the courtroom; the downstairs courtroom is small (it is 24' wide) and ill-suited for court events involving jurors or large numbers of people; the public hallway leading to the second-floor courtroom takes the public by offices used by the District Attorneys and victim-witness advocates, and causes defendants, lawyers, victims, witnesses, etc., to all pass through a confined area; if there is a jury trial in progress, the smaller first floor courtroom is used for docket calls, which frequently results in having many members of the public stand in the hallway as cases are called; currently, victim advocates have to share offices with victims, which causes problems when phone calls have to be made. DAs are double-bunked in offices designed for one person. Overall, the traffic patterns within the courthouse result in an unsafe blending of circulation zones for the judges, clerks, public, lawyers, prisoners, and others.

A feasibility study was undertaken in 2009 to examine the possibility of adding a third courtroom and additional chambers to the Alfred courthouse. The study concluded that a renovation should not be undertaken because of the significant costs that would be incurred to address fire code issues.

## B. BIDDEFORD DISTRICT COURT

The current Biddeford District Courthouse was completed in 1997. There are three courtrooms, three judicial chambers, one judicial secretarial office/file room, and a large library/conference room. There are five conference rooms for attorneys and clients or for mediations. The large library/conference room is part

of the internal court area for judges and clerks, so is not accessible to the public. Because it is a new building, the building is compliant with the requirements of the Americans With Disabilities Act.

There is no room for expansion of courtrooms or meeting space on the main floor of the courthouse. However, in the courthouse's lower level, there is room to finish approximately 800 square feet of space in an area adjacent to the District Attorney's office.

The courthouse has a dedicated prisoner holding facility.

Biddeford is currently the host court for the Department of Human Services PC trailing docket and the one-day civil trailing docket list.

#### C. SPRINGVALE DISTRICT COURT

The current Springvale District Courthouse was completed in 2002. There are three courtrooms, four judicial chambers, and a small judicial conference room. There are eleven conference rooms for attorneys and clients or for mediations. Because it is a new building, the building is compliant with the requirements of the Americans With Disabilities Act.

The Probation Department currently occupies office space on the lower level, consisting of seven individual offices and a central secretarial area.

The courthouse has a dedicated prisoner holding area.

Of the four courthouses in York County, Springvale is the only one that has the capacity to add additional courtrooms and judicial chambers. There is sufficient space on the second floor to construct two small courtrooms or one large jury trial courtroom with a jury deliberation room and a second floor satellite clerk's office.

Springvale is currently the host site for the family trailing docket and foreclosure mediation cases.

#### D. YORK DISTRICT COURT

The current York District Courthouse was completed in 1989. There are three courtrooms, three judicial chambers, and no judicial secretarial office. There

are six conference rooms for attorneys and clients or for mediations, as well as a large conference room immediately adjacent to the main hallway that could be accessed by the public. The District Attorney occupies an office suite in the building.

York is currently the host site for the Region's juvenile trailing docket.

Additional office and conference space could be added to York in the area of the existing middle (small) courtroom. Currently, that courtroom is rarely used. It will otherwise be difficult to add to the York structure, or finish the unfinished space in the building's second floor, because of limitations associated with the septic system and parking spaces.

The York District Court does not have a holding cell.

## VI. UNIFIED CRIMINAL DOCKET—PURPOSE, ELEMENTS, AND OUTCOMES

The letter from the Chairs of the Judiciary Committee specifically asked whether a unified criminal docket in Region I would improve the service provided by the courts to the public. Because this question was made in response to the Judicial Branch's experience in implementing a unified criminal docket in Region II, a brief overview of the purpose, elements, and outcomes of that region's unified criminal docket is in order.

### A. PURPOSE

In recent years the Supreme Judicial Court identified several problems associated with criminal case processing in the District and Superior Courts. These included:

- Duplication of efforts by Judicial Branch staff;
- Lack of certainty in scheduling;
- Repetitive court appearances;
- Unnecessary delay; and,
- A process by which an individual's right to a jury trial could be forfeited by default.

To address these problems, Chief Justice Leigh I. Saufley appointed Associate Justice Ellen A. Gorman to convene a planning group to design a new

model for processing criminal cases in Region II (Cumberland County). The planning group recommended the creation and implementation of a Unified Criminal Docket (UCD). The UCD commenced operation in January 2009.<sup>16</sup>

The Region II UCD was designed to protect the rights of criminal defendants by providing: a jury trial in every case unless a defendant waives that right, immediate appointment of counsel to those who qualify, and early access to the State's investigatory materials. It was also designed to reduce the workload for clerks' offices by eliminating duplicative tasks associated with transferring cases between courts, eliminating unnecessary filings, and reducing the number of times a clerk must handle a file over the course of a case. Finally, it was designed to reduce the number of court appearances required in a case by establishing four core events, utilizing date-certain scheduling and creating firm expectations as to what will be accomplished at each court event.

## B. ESSENTIAL ELEMENTS OF REGION II's UCD

The Region II UCD model is built on four specific events: the initial appearance, a dispositional conference, a motion hearing, and a trial. Each event has been created to maximize opportunities for resolution of disputes while reducing unnecessary court appearances.

A Region II UCD arraignment session is similar to an arraignment session in any court in Maine. The UCD model, however, includes several changes that encourage parties to dispose of cases that would benefit from an early resolution. First, defendants have access to all of the State's discovery before or at the arraignment session. Second, the UCD incorporates a vertical prosecution model, meaning that the prosecutor who handles the case at arraignment will be responsible for the case at trial. Third, the schedule is designed to ensure the presiding judge has time to take any pleas that may result from a defendant's wish to resolve a case on the day of arraignment. Finally, a defendant receives the dates for all future court events at the time of his/her arraignment.

The next event, the dispositional conference, is a core element of the Region II UCD. The UCD rules require the prosecutor and the defendant, along with his/her attorney, to attend a dispositional conference and participate in meaningful discussions about the case. The role of the court is to assist the parties in

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<sup>16</sup> This discussion regarding the Region II UCD is largely based on a report issued by Wendy F. Rau, Director of Court Operations. The authors have not examined and, therefore, have not addressed, the UCD currently being developed in Region V.

evaluating the strengths and weaknesses of their cases, organize the case for trial, address potential motions and, where possible and appropriate, assist the parties in reaching a fair and acceptable agreement. The judge presiding at the conference does not preside at any later adjudicatory events without the parties' express agreement. The UCD rules provide that substantive motions be served on the opposing party at least ten days before the conference but specifically directs that such motions not be filed with the court at that time. This allows for issues to be discussed at the conference but saves a significant piece of work for the clerks, because such motions are filed with the court only if the issues identified in them are not resolved at the conference.

If a case does not resolve at arraignment or dispositional conference, it proceeds expeditiously to final resolution. Unresolved motions are promptly filed with the court and heard within two weeks on the date assigned at the time of arraignment. The matter then proceeds to jury selection or bench trial within four weeks of the conference, again on a date assigned at the time of arraignment. For the most part, motion hearings, jury selection, and trial do not differ from similar events held in courts around the State.

### C. REGION II UCD OUTCOMES

During its first 18 months of operation, the Region II UCD showed great promise.

- Most cases resolved quickly and with fewer court appearances.
  - More than half of the cases resolved at initial appearance.
  - Nearly 70% of the cases that were scheduled for a second court event (the dispositional conference) resolved at that time.
  - The average age of the UCD's pending caseload was lower than the statewide average for both the Superior and District Courts.
  - The average age of a UCD case at disposition was 4.5 days.
- The demands on the clerk's office were reduced, enabling the clerks to operate effectively and efficiently with fewer employees assigned to the criminal caseload.
- Defendants' access to counsel and to the information they needed to make informed decisions about their cases was improved, while maintaining the absolute right to a jury trial.

- All parties benefited from knowing the important dates in advance, as did victims of crimes and potential witnesses.

## VII. CONCLUSION

### A. SUMMARY OF KEY EMPIRICAL FINDINGS REGARDING REGION I

- The criminal docket in Region I is among the busiest of the State's eight judicial regions, approaching 20% of the Judicial Branch's entire criminal caseload.
- The average length of time it took to complete criminal cases in Region I was the longest in the State, with an average case age at disposition of 177 days compared with a statewide average of 133.8 days. The average length in Region II's UCD is 74.5 days.
- The Region's judges are highly productive. The clearance rate (the ratio of cases opened to cases closed) was 108.1%, the best in the State during the period studied. The Region's five District Court judges and two Superior Court justices represent 13.2% of the total number of authorized trial judges in the State, but are responsible for approximately 20% of the criminal cases in the State.
- The Region has an extremely high transfer rate. The Region's 61% transfer rate compares with a 38% average transfer rate in the remainder of the State, and a median transfer rate of 36.3%. The corresponding very low rate of trials indicates that transfers (which are provided in order to obtain a trial by jury) are requiring duplication and overlap of clerical work and judge time, but do not meet the intended goal of providing jury trials.
- Scheduled events are postponed at a high rate. In the three District Courts, 34% of the scheduled events in the cases studied were continued or canceled. In the Superior Court, 46% of the scheduled events in the cases studied were continued or canceled.

## B. CONCLUSIONS

We conclude that UCD criminal process improvements should be adopted in Region I because the current process is highly inefficient. Specifically,

- For the public, the existing criminal court process is marked by unnecessary delay and confusion; it channels far too many members of the public into a courthouse (Alfred) that was not designed to handle high-volume dockets; and it produces inconsistent results. The transfer process inefficiently consumes clerk resources and does not allow for the resolution of cases in a timely and cost effective fashion.
- For the clerks, the existing criminal process negatively affects the level of service they are able to afford the public. The transfer process and the high degree of event uncertainty generate far too many duplicative tasks including docket entries, scheduling events, and case lists.<sup>17</sup> In addition, the operation of separate criminal dockets in all four court locations prevents any one location from creating economies of scale and levels of expertise that would make best use of limited clerk resources. The current opportunities for innovation are severely limited because the administrative staffs of all four court locations are stretched thin.
- For the judges, the existing criminal process and high transfer rate place too much of the responsibility for case management and processing in the hands of too few of the judges. The high transfer rate has resulted in the District Court judges having little opportunity to hear and decide motions to suppress and to conduct trials. The existing process therefore prevents five of the Region's seven judicial officers from maintaining and improving their skills in the administration of criminal justice. In addition, fewer arraignment sessions per month and fewer events per case would free judges to engage in differentiated case management, conduct dispositional conferences, and hear and decide contested motions and trials.

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<sup>17</sup> The Region's current overall event certainty measure of 1.63, indicating that 39% of scheduled court events are continued or canceled, suggests that a new approach to case processing and scheduling is needed. If this figure were reduced to 20%, for example, through a unified criminal docket management process, the amount of clerk resources dedicated to entering docket information, issuing notices, and preparing lists for the rescheduled cases would be reduced by half. In addition, a unified criminal docket might also reduce the number of scheduled court sessions by adhering to case volume ranges. These improvements would produce a more streamlined and less time-consuming process for the public.



- For criminal defendants and the private bar, the existing criminal process is marked by scheduling uncertainty and insufficient opportunities for bench and jury trials. For those lawyers who concentrate their practice in criminal defense, the existing process does have the benefit of permitting them to consolidate all of their cases following arraignment in a single court location.
- For the District Attorney’s office, the existing criminal process has given rise to a lack of uniformity in approach. The large volume of cases concentrated in the Superior Court prevents prosecutors from engaging in differentiated case management. The current approach also fosters duplication of effort. For every transferred case, two prosecutors, not one, must become familiar with the witnesses and case, and engage in negotiations on behalf of the State. In addition, the high number of court events used to manage the existing docket deprives prosecutorial staff of sufficient “office time” with which to adequately screen and prepare cases, and it fosters the need for frequent continuances as a case management tool.
- For victims, witnesses, and law enforcement agencies, the existing criminal process results in too much scheduling uncertainty and delay.

### C. PRELIMINARY RECOMMENDATIONS

It is the objective of this study to assess the existing criminal process in Region I and to preliminarily assess whether process changes, including some form of UCD, would improve public service. This study was not intended to result in a detailed blueprint for a UCD in Region I. Nonetheless, it was not possible to explore the need for a UCD without also considering what form or forms a UCD might take based on the Region’s unique characteristics.

The people interviewed volunteered various suggestions, including:

- Leave the current process in place, but have all domestic violence cases originate and stay in Alfred.
- Leave the current process in place, but change the rules so that no District Court case is actually transferred to Alfred until the eve of jury selection.

- Reduce the number of District Courts to the two in Biddeford and Springvale, and have the Superior Court use the York courthouse to allow for a third Superior Court justice to process criminal cases in the region.
- Combine the Region’s Superior Court civil docket with Region II’s docket (Cumberland County) in Portland, and have the Alfred courthouse serve as the sole criminal courthouse for the Region.
- Have the York Courthouse serve as the exclusive courthouse for District Court criminal matters, and have the remaining two courthouses handle all remaining dockets.
- Have the Biddeford Courthouse serve as the Region’s exclusive courthouse for District Court criminal matters, the Springvale Courthouse serve as the Region’s exclusive courthouse for family and child-related matters, and the York Courthouse serve as the Region’s exclusive courthouse for all other District Court matters.
- Construct a jury trial courtroom on the second floor of the Springvale District Court and transfer all District Court cases to Springvale for jury trial.

In considering these suggestions and the more general question of whether some form of UCD should be adopted in Region I, it bears emphasis that the UCD model adopted in Region II has been tailored to the circumstances in that region; most notably, that both the Superior and District Courts are located in a single courthouse in Portland.<sup>18</sup> Region I’s four court facilities do not lend themselves to the adoption of Region II’s UCD model. However, several of the core elements of Region II’s UCD model could and should inform the development of an improved criminal process in Region I. Specifically, as has been the case with Region II’s UCD, Region I’s criminal process should be re-designed so as to:

- Presume that each criminal defendant will retain their right to a jury trial unless the defendant affirmatively waives that right.

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<sup>18</sup> Region II’s UCD also processes cases from the Bridgton and West Bath District Courts that are not resolved at arraignment.

- Immediately appoint counsel to those who qualify, and provide early access to the State’s investigatory materials.
- Reduce the workload for clerk’s offices by eliminating duplicative tasks associated with transferring cases between courts, eliminating unnecessary filings, and reducing the number of times a clerk must handle a file over the course of a case.<sup>19</sup>
- Increase event certainty and uniformity in process and outcomes by reducing the number of court appearances required in a case.
- Decrease the frequency with which courts in close proximity schedule criminal events at the same time.
- Establish uniform core events, utilize date-certain scheduling, and create firm expectations as to what will be accomplished at each court event.<sup>20</sup>

In addition, this study’s findings regarding Region I’s existing criminal process establish the need for greater consolidation of judicial and clerk resources within the Region, and greater collaboration and coordination of effort among its judges.<sup>21</sup>

The number of facilities at which criminal cases are heard should be reduced from four to two, at least one of which should be the Alfred Courthouse because of its jury trial capacity. Consolidation will generate economies of scale in the processing of criminal cases and will permit greater specialization by the clerks of

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<sup>19</sup> Reducing the number of scheduled court sessions, events per case, and types of case management lists will reduce the associated docketing, mailing of notices, preparation and deposit of bail checks, and other clerk tasks. This would free clerks to provide direct assistance to the public and the Bar, and to provide more frequent courtroom assistance to the judges.

<sup>20</sup> All parties benefit from knowing the important events in advance. In addition, increasing event certainty and establishing uniform core events will improve public service by reducing unnecessary repeat appearances by defendants, law enforcement, witnesses, and victims.

<sup>21</sup> See A NEW MODEL FOR SCHEDULING COURTS AND ALLOCATING JUDICIAL RESOURCES *Introduction* (2003) (“Shared responsibilities between the trial courts and among the courts within a region should be consolidated to increase efficiency. The unnecessary duplication of judicial and clerical effort should be eliminated to increase efficiency.”). See also *Id.* §§ I(A), (C) and (D), IV(A), and V(A) and (K).

court. Consolidation will also promote greater uniformity in the processes employed and the outcomes achieved.

In addition, and regardless of whether the number of courts processing criminal cases within the Region is reduced from four to two through consolidation,

- A single, unified criminal docketing and bail account system should be established for the Region.
- The number of criminal cases processed in the Alfred courthouse should be reduced.
- Cases in the District Court in which the defendant desires a jury trial should generally be sent to the Alfred courthouse only after all pretrial motions have been acted upon and dispositional efforts have been exhausted, and the case is ready for jury selection. Cases transferred should either be disposed of by jury verdict or an open plea.
- The process should facilitate vertical prosecution by the District Attorney's office to make better use of the Region's prosecutorial resources and promote greater uniformity in the disposition of cases.
- A determination should be made as to whether additional Superior Court and/or District Court judge-time is needed in the Region.

#### D. FINAL RECOMMENDATION

Based on the foregoing, it is finally recommended that the Chief Justice designate individuals or a team to develop and implement a comprehensive plan to improve Region I's criminal process. Because the criminal process cannot be redesigned divorced from the Region's non-criminal dockets, the needs and requirements of the non-criminal dockets must also be evaluated.

Dated: January 28, 2011

Respectfully submitted,

/s/ JDL

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Jon D. Levy, Associate Justice  
Maine Supreme Judicial Court

/s/ WFR

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Wendy F. Rau, Esq.  
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