SYSTEM OVERVIEW

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SYSTEM OVERVIEW

OBJECTIVES

Upon conclusion of this module the participant will be able to:

- Describe the overall structure, case flow process, and roles of professionals in the adult and juvenile justice processes including the dual system of state and federal courts.
- Discuss the roles and responsibilities of professionals (law enforcement, prosecution, courts, corrections, and juvenile system) along the criminal justice system continuum.
- Discuss the interactions among individuals and agencies involved in the criminal justice system, challenges and opportunities for collaboration, and the extent to which they support victim participation during each phase of the justice system.
- Identify the origins of the rule of law in the United States.
- Discuss the special needs of child victims and witnesses in the criminal justice process.
The Criminal Justice System: An Overview

Presented by:
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Topics

- Court Systems
- Civil or Criminal (and What’s the Difference?)
- Key Players in the System
- What Happens after the Police Arrive?
- Barriers to Prosecution
- Civil Legal Needs

I. State Court Systems

- Each state has its own variation
- District Court
- Superior Court (jury trials)
- Supreme Judicial Court
- Probate Court
- Pilot Projects & Specialized
  - Consolidated…, Drug Court
Federal System (Separate)

- United States District Courts
- Circuit Courts
- United States Supreme Court
- Fewer criminal cases

II. Civil or Criminal?

Yes, same incident can sometimes be both

A Civil Case Looks Like:

- Plaintiff v. Defendant
- Seeking $, specific performance, declaration of rights or duties
- Standard of proof: preponderance of evidence
- Judge, Jury, or FCMO
- District or Superior Court
Examples of Civil Stuff

- Divorce, Custody
- Protection from Abuse/Harassment
- Child Protective
- Guardianships (Probate Court)
- Everything that’s not a crime (traffic, boundary disputes, contracts, wills, L-T, PI, MM)

A Criminal Case Looks Like:

- State (or U.S.) v. Defendant
- Sanctions: jail, fine, restitution, probation, com. service
- Standard of proof: beyond a reasonable doubt; who has it?
- Judge or Jury
- District or Superior Court

Examples of “Minor” Crimes (Class D, E or Misdemeanor)

- assault
- criminal threatening
- terrorizing
- stalking
- reckless conduct
- threatening display
- unlawful sexual contact
- criminal restraint
Minor Crimes (cont.)
- criminal mischief
- driving to endanger
- disorderly conduct
- harassment by telephone
- criminal trespass
- violation of protection order
- violation of bail condition

Serious Crimes (Felony or Class A, B, C)
- murder
- manslaughter
- kidnapping
- burglary
- reckless conduct w/dw
- criminal threatening w/firearm (ag person/; 1yr mm)
- terrorizing w/firearm
- tampering

More Felonies (Class A, B, C)
- gross sexual assault
- Some misdemeanors w/priors, e.g., assault, stalking, theft
- aggravated assault
- elevated aggravated assault
- elevated agg. assault on pregnant person
- unlawful sexual contact
- violation of bail condition, protective order
III. People in the CJ System

- Law Enforcement; First Responders
- Advocates (Project/Community and Prosecution-Based)
- Prosecutor
- Grand Jury
- Traverse Jury
- Judge
- Corrections/Probation (Adult and Juvenile)
- Defense Counsel, Private Investigators

IV. What Happens after the Police Arrive?

- Arrest (not always)
- Evidence Collection (statements, photos, things)
- Bail Conditions (if arrest, or after arr.)
- State files complaint with court and/or presents to GJ
- State could refuse to file complaint (insuf evid)
- GJ could return indictment or no bill

IV. (cont.) If complaint is approved or GJ indicts:

- Arraignment and entry of plea (ng; g; nolo; ncr)
  - Bail conditions might first appear here
- Trial
- District Court, or transfer to Superior for jury
- Superior Court if murder, A, B, C or “felony”
- Motions
- Verdict (ng; g; ncr)
- Sentencing
- Appeals
- Revocation of probation
Sentencing

- VWA, DA and Judge will ask for input from victim
- The victim has a great deal of influence
- Past conduct of defendant may count, even if no conviction

Sentencing Options

- Incarceration
- Fine
- Restitution
- Probation w/conditions (no contact, counseling)
  - BIP must be state certified
- Community service
- “Split sentence”
- Administrative Release
- Deferred Disposition

Collateral Consequences of Conviction

- DNA Registry
- Sex Offender Registry
- Possession of Firearms
- Professional Licenses and Employment
- Immigration Consequences
- Child Support/Custody
V. Barriers to Prosecution

- Lack of corroborative or sufficient evidence
- No written statement from victim
- Key witness unable or unwilling to cooperate
- Inadequate investigation or prosecution
- Overflowing dockets

Overcoming the Barriers

- Educate the victim
- Support-emotional and logistical
- Corroboration: photos, letters, tapes, broken objects, torn clothes, witnesses, medical records and medical professionals
- Educate the providers outside the CJ system (Trickle-down Effect)
- Train everyone in the system
- More judicial resources

VI. Civil Legal Needs

- Protection from Abuse
- Divorce, Parental Rights
- Asset Protection
- Establishing Credit
- Name Change
- Child Protective
- Real Estate Transactions
SYSTEM OVERVIEW

An understanding of the role and functions of the various court systems in the United States provides victim service providers with a solid foundation for understanding the dynamics of the law.

The U.S. judicial system can be confusing and frustrating to victims when they are first exposed to it. Knowing some of the rationale for its present day composition may help victims and their advocates understand the foundations of our judicial system and the manner in which laws operate and interact.

“...Offender focus...”
Victims of crime have historically been treated less than adequately within the criminal justice system. The vestiges of a victim-oriented or victim-driven system, with private prosecution or so-called "vigilante" justice, have given way over the last decades to an offender-based criminal justice system. Much progress has been made in recent years to begin balancing the system to provide victims with rights and services (Carrington 1975; Shapland 1985).

Historically each of the thirteen original states had their own unique court structure. This independence continued after the American Revolution and resulted in widespread differences among the various states, some of which still exist today.

While state courts had their origin in historical custom, federal courts were created by the U.S. Constitution. Section 1 of Article III established the federal court system with the words providing for "one Supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish."

From this beginning, Congress has engaged in a series of acts that has resulted in today's federal court system.

The first Congress established a federal court system, and the individual states were permitted to continue their own judicial structure.

There was general agreement among our nation’s founders that individual states needed to retain significant autonomy from federal control.

Under this concept of federalism, the United States developed as a loose confederation of semi-independent states having their own courts, with the federal court system acting in a very limited manner.

In the early history of our nation, most cases were tried in state courts. It was only later that the federal government and the federal judiciary began to exercise jurisdiction over crimes and civil matters. Jurisdiction in this context simply means the ability of the court to enforce laws and punish individuals who violate those laws.
A dual system of state and federal courts. As a result of this historical evolution, a dual system of state and federal courts exists today. Therefore, federal and state courts may have concurrent jurisdiction over specific crimes. For example, a person who robs a bank may be tried and convicted in state court for robbery, then tried and convicted in federal court for the federal offense of robbery of a federally-chartered savings institution.

Court system performs its duties with little or no supervision. Another characteristic of the American court system is that it performs its duties with little or no supervision. A Supreme Court Justice does not exercise supervision over lower court judges in the same way that a government supervisor or manager exercises control over his or her employees. The U.S. Supreme Court and the various state supreme courts exercise supervision only in the sense that they hear appellate cases from lower courts and establish certain procedures for these courts.

A third feature of the U.S. court system is one of specialization that occurs primarily at the state and local level. Many state courts can be divided into three levels:

- Trial courts
- Appellate courts
- Supreme courts

TRIAL COURTS

Trial courts are where criminal cases start and finish.

The trial court conducts the entire series of acts that culminate in either the defendant's release or sentencing.

State trial courts can be further divided into courts of:

- Limited or special jurisdiction.
- Courts of general jurisdiction.

The nature and type of case determines which court will have jurisdiction.

Limited jurisdiction. Courts that only hear and decide certain limited legal issues are courts of limited jurisdiction:

- Courts of limited jurisdiction hear and decide issues such as traffic tickets or set bail for criminal defendants.
- Typically, these courts hear certain types of minor civil or criminal cases.
- There are approximately 13,000 local courts in the United States.
- They are called county, magistrate, justice or municipal courts.
- Judges in these courts may be either appointed or elected.
In many jurisdictions, these are part-time positions, and the incumbent may have another job or position in addition to serving as a judge.

However, simply because they handle minor civil and criminal matters does not mean these courts do not perform important duties.

Often, the only contact the average citizen will have with the judicial system occurs at this level. In addition, courts of limited jurisdiction may hear certain types of specialized matters such as:

- Probate of wills and estates.
- Divorces.
- Child custody matters.
- Landlord-tenant disputes.
- Juvenile proceedings.

These types of courts may be local courts or, depending on the state, may be courts of general jurisdiction that are designated by statute to hear and decide specific types of cases.

For example, in California, a superior court is considered a court of general jurisdiction; however, certain superior courts are designated to hear only juvenile matters, thereby becoming a court of limited jurisdiction when sitting as a juvenile court.

**General jurisdiction.** Courts of general jurisdiction are granted authority to hear and decide all issues that are brought before them. These are courts that normally hear all major civil or criminal cases. These courts are known by a variety of names, such as:

- Superior Courts.
- Circuit Courts.
- District Courts.
- Courts of Common Pleas.

Since they are courts of general jurisdiction, they have authority over all types of cases and controversies and, unless otherwise geographically limited, may decide issues that occur anywhere within the state. Some larger jurisdictions such as Los Angeles or New York may have hundreds of courts of general jurisdiction within the city limits.

It is important to be certain about the correct terminology for courts in each jurisdiction. For example, the New York Supreme Court is the state's trial court and its highest court is called the Superior Court. Just the reverse is true in many jurisdictions.

Typically, these courts hear civil cases involving the same types of issues that courts of limited jurisdiction hear, although the amount of damages will be higher and may reach millions.

- These courts also hear the most serious forms of criminal matters including death penalty cases.
• Courts of general jurisdiction traditionally have the power to order individuals to do or refrain from doing certain acts.
• These courts may issue injunctions that prohibit performing certain acts or require individuals to perform certain functions or duties.
• This authority is derived from the equity power that resides in courts of general jurisdiction.

Equity is the concept that justice is administrated according to fairness as contrasted with the strict rules of law.

In early English Common Law, such separate courts of equity were known as Courts of Chancery. These early courts were not concerned with technical legal issues; rather they focused on rendering decisions or orders that were fair or equitable.

In modern times, the power of these courts has been merged with courts of general jurisdiction, allowing them to rule on matters that require fairness as well as the strict application of the law.

• The power to issue temporary restraining orders (TROs) in spousal abuse cases comes from the equitable powers of the court.

APPELLATE JURISDICTION
Appellate jurisdiction is reserved for courts that hear appeals from both limited and general jurisdiction courts.

• These courts do not hold trials or hear evidence.
• They decide matters of law and issue formal written decisions or "opinions."

There are two classes of appellate courts:

• Intermediate, or Courts of Appeals.
• Final, or Supreme Courts.

Courts of appeals. The intermediate appellate courts are known as courts of appeals. Approximately half the states have designated intermediate appellate courts.

• These courts may be divided into judicial districts that hear all appeals within their district.
• They will hear and decide all issues of law that are raised on appeal in both civil and criminal cases.
• Since these courts deal strictly with legal or equitable issues, there is no jury to decide factual disputes.
• These courts accept the facts as determined by the trial courts.
• Intermediate appellate courts have the authority to reverse the decision of the lower courts, and to send the matter back with instructions to retry the case in accordance with their opinion.
• They also may uphold the decision of the lower court.

In either situation, the party who loses the appeal at this level may file an appeal with the next higher appellate court.

**SUPREME COURTS**

Final appellate courts are the highest state appellate courts. They may be known as *supreme courts* or *courts of last resort*. There may be five, seven, or nine justices sitting on this court depending on the state. This court has jurisdiction to hear and decide issues dealing with all matters decided by lower courts, including ruling on state constitutional or statutory issues. This decision is binding on all other courts within the state. Once this court has decided an issue, the only potential appeal left is to file in the federal court system, but only if grounds for federal appellate jurisdiction exists.

In many states, courts of limited jurisdiction hear misdemeanor cases. Other state courts of general jurisdiction try felonies. Still other courts may be designated as juvenile courts and hear only matters involving juveniles. This process also occurs in certain civil courts that hear only family law matters, probate matters, housing matters, or civil cases involving damages. At the federal level, there are courts such as bankruptcy that hear only cases dealing with specific matters.

*Geographic organization of the American court system.* The fourth characteristic of the American court system is its geographic organization.

State and federal courts are organized into geographic areas.

In many jurisdictions, these are called judicial districts and contain various levels of courts. For example, on the federal level, the 9th Circuit Court of Appeals has district (trial) courts that hear matters within certain specific boundaries, and an appellate court that hears all appeals from cases within that area.

Several studies have been conducted regarding the difference in sentences for the same type of crime in geographically distinct courts. For example, in Iowa the average sentence for motor vehicle theft was forty-seven months while the average sentence for the same offense in New York was fourteen months. (Pursley 1994). This should not be taken as a criticism; rather it may reflect different social values and attitudes within specific geographic areas.

**FEDERAL DISTRICT COURTS**

Federal District Courts are the lowest level of the federal court system. These courts have original jurisdiction over all cases involving a violation of federal statutes or other instances of statutorily-defined federal jurisdiction. These district courts handle thousands of cases per year.

**FEDERAL CIRCUIT COURTS**

Federal Circuit Courts of Appeals are the intermediate appellate level courts within the federal system. These courts are called circuit courts because the federal system is divided into 11
circuits. A Twelfth Circuit Court of Appeals serves the District of Columbia area. These courts hear all appeals from U.S. District Courts and habeas corpus appeals from state court convictions. These appeals are usually heard by panels of three of the appellate court judges rather than by all the judges of each circuit.

**U.S. SUPREME COURTS**
The United States Supreme Court is the highest court in the land. It has the capacity for judicial review of all lower court decisions, as well as state and federal statutes.

By exercising this power, the Supreme Court determines which laws and lower court decisions conform to the mandates set forth in the U.S. Constitution. The concept of *judicial review* was first referred to by Alexander Hamilton in the Federalist Papers, where he described the function of the Supreme Court as ensuring that the will of the people will be supreme over the will of the legislature (*The Supreme Court of the United States*, no date). This concept was firmly and finally established in the U.S. judicial system when the Supreme Court asserted its power of judicial review in the case of *Marbury v. Madison* (1803).

Although it is primarily an appellate court, the Supreme Court has original jurisdiction in the following cases:

- Cases between the United States and a state.
- Cases between states, and cases involving foreign ambassadors, ministers, and consuls.
- Cases between a state and a citizen of another state or country.

The court hears appeals from lower courts including the various state supreme courts. If four justices of the U.S. Supreme Court vote to hear a case, the court will issue a Writ of Certiorari. This is an order to a lower court to send the records of the case to the Supreme Court for review. The court meets on the first Monday of October and usually remains in session until June. The court may review any case it deems worthy but it actually hears very few of the cases filed. Of approximately 5,000 appeals each year, the court agrees to review about 200, but may not issue an opinion on each case.

**Law Enforcement/Investigation** = Source of input for cases in Court

- Receive complaint/"call for service"
- Investigate, collect evidence
- Arrest

**Prosecution/Court** = Source of input for cases in Corrections

- Determine guilt/innocence through evidence
- Determine sentence for convicted offender

**Corrections**

- Probation
- Incarceration
Law Enforcement

- State
- County
- Municipal

Evolving from the earlier vestiges of sheriffs or constables, modern police forces are highly structured organizations that are accorded considerable authority, particularly the power of arrest that is provided each sworn law enforcement officer (Pacific Law Journal 1992).

Law enforcement agencies have traditionally addressed issues involving the general welfare of the public at large.

As the "first responders" to most crimes, police departments serve a critical and primary role in providing immediate intervention and assistance to victims of crime.

Unlike most social service agencies, police departments are typically open every day of the year, twenty-four hours a day. As such, there is tremendous responsibility on the part of law enforcement officers and civilian personnel to provide sensitive and supportive victim services.

It is important to keep in mind that the three primary functions of law enforcement are to do the following:

- Protect life and property.
- Prevent crime.
- Apprehend offenders (Barlow 1990).

Police role in victim services

Although police departments today tend to provide more and better victim services, these services were not always part of traditional policing.

The positive change on behalf of providing quality victim services has been very encouraging; however, some police officials have perceived their victim assistance responsibilities as a secondary responsibility, at best.

Victim sensitivity training for police officers comprises an important improvement. In the past, police academies have not provided adequate training for law enforcement personnel regarding victimization and the effect that crime has on crime victims.

This means that when under trained law enforcement personnel come into contact with an emotionally distraught victim, a victim's confidence and willingness to participate in the criminal justice system may be undermined.
Officers, who initially respond to a crime scene, as well as investigating officers, are responsible for gathering evidence that can lead to arrest and prosecution of alleged perpetrators.

Police officials who interview victims must clearly establish that their role is to obtain relevant facts and evidence. While their line of questioning may appear to be judgmental or blaming, that is not their intent. This simple clarification can help officials obtain pertinent information without contributing to further victim trauma.

When effective victim service programs are provided through a police department, law enforcement officers are able to devote their time to the primary law enforcement responsibilities of investigating crimes and arresting suspects. Victims are well served because basic services are provided by law enforcement.

This is extremely important because in a large majority of crimes, no perpetrator is ever apprehended. This means that court-based programs will never come into contact with large numbers of victims. Victims' only hope for assistance from the criminal justice system is at the police-based level.

The move toward community policing in many jurisdictions has important implications for victims and those who serve them.

Community policing involves partnerships with people who reside in neighborhoods that officers regularly patrol to increase opportunities for crime prevention, early intervention for people at risk of offending or victimization (especially juveniles), and services to individuals and neighborhoods that have been hurt by crime.

At its best, community policing creates a network of involved individuals who are available and willing to provide important witness information, as well as support for their neighbors who have been affected by crime.

Police-based services provide essential assistance to victims of crime, including on-site crisis intervention and securing emergency medical assistance. Additionally, law enforcement programs may provide information and referrals to services and resources that can aid in a victim’s short- and long-term reconstruction. Essential services should include the following:

- Provision of contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Orientation to the law enforcement and investigatory process.
- Provision of or referral and accompaniment to crisis intervention and psychological first aid.
- Accompaniment to emergency medical services in cases involving injury.
- Contacting a victim service professional to provide on-site assistance and support, upon request from the victim.
• Providing information to crime victims about their constitutional and statutory rights, victim compensation availability, and referrals for assistance to complete compensation forms.
• Securing the victim's property if personal safety has been compromised as a result of crime, or if it is to be used for evidentiary purposes.
• Personally contacting the victim by telephone or in person twenty-four to forty-eight hours following the initial response to see if assistance has been sought and/or received.
• Providing immediate referrals (verbally and in writing) to community agencies that offer emergency services and information about financial assistance to all victims. For example, brochures that include information about emergency and long-term services and victim compensation should be developed in different languages and given to victims. Similarly, TTY telephone services should also be made available.
• Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

Law enforcement agencies should also establish and enforce strict property return protocol and procedures. Essentially, police-based services, when adequately staffed and funded, can provide critical assistance and information to victims as they progress through the criminal justice system.

Perhaps most important, every law enforcement agency at the federal, state, and local levels should assign a staff member to serve as a liaison to crime victims and victim services. This designation will enhance all roles and responsibilities described above and will coordinate and streamline victims' rights and the delivery of victim services.

Prosecutor
• State
• County
• Municipal

When law enforcement has investigated a crime and a suspect has been arrested, the case is then referred to a prosecutor.

Although each state's laws and procedures provide for different ways to initiate a criminal action, this is usually handled through either an initial court appearance or some process leading to charging and arraignment.

At this point, information regarding the investigation and facts of the crime is presented by law enforcement to the court with the assistance of prosecutors, and appropriate charges are levied against the defendant. When appropriate, he or she is "bound over for trial" on the charges levied.

Again, victim advocates should be mindful that the prosecutor's primary role is the successful prosecution of criminal cases.
This is accomplished within specific budgetary and human resources limitations. The typically limited resources made available to prosecutors to dispose of each case in the most just, yet efficient manner possible is a tremendous motivation to dispense cases, in light of the often overwhelming workload handled by most prosecutors' offices.

This motivation/pressure often conflicts with the needs and desires of individual victims, who want their particular perpetrator prosecuted to the full extent of the law.

Consequently, victims' expectations are often not fulfilled, and the case is disposed of early on, most often through the use of a non-trial settlement, usually referred to as plea bargaining.

Plea bargaining
Plea bargaining allows the defendant to avoid a trial and the possibility of a verdict that may result in a more severe sentence by agreeing to plead guilty to a lesser offense.

Victims are often most distressed at the perceived ability of the defendant to "get off easy" by bargaining with the prosecutor to reduce the severity of the offense of which they may actually be guilty. Many victims and advocates rightfully consider victim participation in the plea negotiation process as essential to providing victims with a voice in the system. Any plea negotiation should include an opportunity to present the impact of the crime on the victim--a victim impact statement--as well as the opportunity for the victim to consult with the prosecutor prior to any plea agreement.

Diversion
In non-violent and/or first-time offenses, prosecutors can recommend diversion of the case. Essentially, in diverted cases, the offender will be required to complete certain conditions--such as paying restitution, community service, victim/offender programming (with the victim's consent), and/or educational or treatment programs--in order to avoid having a criminal record.

Diversion agreements should be confirmed only with the consent and agreement of any victim(s) involved in the case. Diversion agreements can be revoked at any time if an offender fails to comply with the conditions of the diversion agreement.

Trial
Assuming a case goes beyond the plea negotiation stage to trial, the defendant continues to receive basic protections found in the United States Constitution, state constitutions, and pertinent statutory law and case law.

Volumes of materials are available about defendants' rights. These include, for example, the right to obtain all exculpatory evidence from the prosecution, which would tend to prove the innocence of the defendant.
Also, the defendant has the right to confront and cross-examine his or her accusers. Often, this is very difficult for the victim, who must be well prepared to withstand the onslaught of cross-examination by an often aggressive defense counsel.

Defense counsel typically uses methods that involve the strategy of "defense by distraction." This approach is based on the notion that in order to place any possible "reasonable doubt" within the minds of the jury, a defense lawyer will attempt to focus attention on any other possible factor than the defendant's own actions.

If the defendant is not released on various technical violations of his or her rights that may arise (for example, from search and seizure issues), attempts will be made to blame others for the situation.

The police will be accused of other violations, society may be implicated as the true cause of the problem, and especially victims are often blamed for their "contribution" to their own victimization. This can be a very difficult process for victims, and they need to be well prepared and supported. Prosecutors should also be knowledgeable about victim trauma, specifically as it relates to a victim's role as a witness.

At the scene of the crime and shortly thereafter, victims may be unable to recall critical facts related to their victimization as a result of their trauma. Their knowledge of the details of the crime can increase significantly with appropriate crisis intervention and trauma response. However, any changes in their original witness statements may be challenged by defense counsel.

As a result, prosecutors need to be able to explain the relationship of crisis reactions to victims' original statements, and how consistent ventilation about the crime and appropriate validation from supportive individuals can actually help victims better remember and articulate vital details as witnesses.

A number of services can and should be provided by prosecutor-based victim assistance programs. The most important of these are appropriate notification programs regarding the status of the case and the delays that often occur in the progress of a criminal prosecution.

Victims are most often distressed by a perceived or real lack of progress in their cases and the need to repeatedly rearrange their personal and work lives to attend court hearings that are often delayed.

Also, victims may require assistance in attending and participating in court proceedings, protection from intimidation and harm, basic orientation to the criminal justice system and their appropriate role within it, and other services and interventions such as obtaining restraining orders and filing victim impact statements. Of course, referrals to appropriate victim assistance and victim compensation programs should be made by the prosecutor's office.
The American Bar Association has provided numerous guidelines for prosecutors and others within the criminal justice system regarding the incorporation of victims' rights and needs in daily practice (see National curriculum chapter References).

Regarding prosecutorial roles, issues such as protection from intimidation and harm are recognized as well as the effect of continuances and case delays, notification services, and prosecutors' involvement in assisting victims in obtaining restitution. The ABA guidelines provide a useful compilation of victims' issues within the criminal justice system, and they are commended to the reader for further review (ABA Guidelines; Kelly 1991).

While the prosecutor's role is to present the government's case to the court, and see that justice is achieved in every case forwarded to his or her office, many important activities rely upon the involvement of victims.

Although they are not the "victim's attorney," prosecutors have opportunities to keep victims informed and involved, to provide appropriate accommodations in the pre-trial and court settings, and to follow up with information and referral, as needed. These opportunities should include the following:

- Providing contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Providing orientation to the criminal justice process.
- Providing information about the criminal justice system and proceedings in simple, layperson's terms to help victims understand the maze of the criminal justice system. Victim information should be available in multi-lingual formats.
- Providing notification of case status at key stages of the criminal justice system.
- Sponsoring witness alert programs to place witnesses on "stand-by" to come to court appearances, thus saving victims' time and money.
- Coordinating witness appearances, i.e., scheduling witnesses; providing witness fees, per diem fees and accommodations for out-of-town witnesses; and providing assistance with transportation.
- Sponsoring victim/witness information telephone lines (including TTY services) to provide up-to-date information after hours to subpoenaed witnesses.
- Providing educational and accompaniment programs to familiarize victims with the courtroom and court processes.
- Providing a waiting area for victims and witnesses and their families in the courthouse that is separate by sight and sound from the defendant. These areas should be "child-friendly," safe, and secure.
- Offering assistance to victims in completing victim compensation applications.
- Coordinating the inclusion of victim impact information, such as written statements, allocution, and audio or video statements, into court proceedings (including diversion agreements, plea bargains, pre-sentence reports, and sentencing) with probation and the judiciary and incorporating victim input into conditions of sentencing such as financial/legal obligations, community service, and offender treatment programs.
- Offering employer, landlord, and/or creditor intervention services.
• Expediting the prompt return of property, and closely coordinating such efforts with law enforcement.
• Providing intervention, protection, and recourse to victims and witnesses who are being intimidated or harassed by perpetrators or their colleagues.
• Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

A significant prosecutorial development is the establishment of "vertical prosecution units," especially for domestic violence and sexual assault cases, where specially trained prosecutors maintain caseloads of one type of victimization.

Vertical prosecutors work on cases from the initial filing of charges through final disposition, streamlining this stage of the criminal justice system for the victim. Instead of several prosecutors working on the case at various stages in the prosecution, one prosecutor is assigned the case from the point of charging through trial.

**Defense Counsel**

Defense attorneys are an integral part of the continuum of criminal justice.

In the eyes of the crime victim, defense counsels are often seen as second only to the perpetrator in their contribution to secondary victimization.

However, the role of defense counsel has longstanding significance in our justice systems and must be understood. Indeed, in certain innovative victim-offender programming, defense counsel can even play an important role in assisting victims.

The Sixth Amendment to the Constitution, a part of the Bill of Rights, provides the basis for the right to criminal defense in the United States. In part, this Amendment reads that "*In all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense."* Indeed, this provision of the U.S. Constitution has been expanded to require, or at least strongly favor, defense attorney involvement even before criminal prosecution commences (i.e., while the accused is being questioned after arrest when a lawyer is requested). Regrettably, victims of crime enjoy no such protections under federal constitutional law.

Significant components of the role of defense counsel include the following:

• Defending their client's constitutional rights and, therefore, defending the integrity of the constitution itself.
• Conducting an independent investigation of the case to reveal facts not known to, or revealed by, the prosecution, such as violations of their client's rights by law enforcement or inconsistencies in witness statements, forensic or other evidence.
• Preparing for trial by preparing the defendant to best aid in his or her defense, preparing witnesses that may be called by the defense, and/or preparing to cross-examine prosecution witnesses.
• Objecting to the introduction of evidence by the prosecution through witness testimony or otherwise.
• Introducing evidence that casts reasonable doubt on the prosecution's case.

Since it is, indeed, the duty and obligation of defense counsel to defend their client's constitutional and other legal rights in the most competent manner possible, it is, unfortunately, not atypical that defense counsel's actions will re-victimize the victim.

Victims must be prepared for this possibility.

The obvious position that defense counsel assume, as juxtaposed with the victim's or survivor's perspective, is a natural outcome of the adversarial system of justice practiced in the United States.

Ideally, two opposing sides equally equipped with resources and legal rights come before a neutral decision-maker, the court, to have issues settled according to the prevailing law.

Of course, even a casual observer is aware of the significant failing of this system vis-à-vis the crime victim. However, the roles and responsibilities of defense counsel are deeply rooted in our system of justice.

Despite the adversarial nature of our legal system, there are ways in which defense counsel have and may continue to be of assistance to victims. Among these are the following:

• Defending victims of crime who are prosecuted for their own actions (e.g., battered women who kill or harm their batterers, or adult survivors of abuse or parents of abuse victims who take the law into their own hands.)
• Respecting victims' legal and constitutional rights and not unreasonably challenging them merely to harass the victim.
• Adopting and adhering to voluntary codes of ethics or practice that respect victims' rights and accommodations in criminal proceedings.
• Becoming full participants in restorative justice programs that attempt to bring victims and offenders together voluntarily in ways that may benefit both parties and even contribute to larger issues such as crime reduction. (Of course, the focus of these efforts must remain first and foremost on addressing victims' needs.)

Whether defense counsel are viewed as necessary evils or potential participants in programs that may even assist victims (and even though some individual defense counsel may not be ethical in their criminal defense tactics) the role of defense counsel in our system of justice is firmly secured and must be acknowledged for the principle it represents.

Judge
• District
• Family
• Superior
• Supreme

The judiciary is a neutral entity that oversees the progress of a criminal action.

Judges should strive to equally weigh and protect the rights of all parties involved in a criminal prosecution. Of course, a judge can typically take only those actions that are specified by law and procedural rules, or are otherwise within the discretion mandated by law.

Judges can provide essential protections to victims. For example, when cases involve children, certain accommodations such as allowing the victim to testify through closed circuit television or granting orders requiring defense counsel to lower themselves to the child's eye level and not raise his or her voice, as well as other methods of making the courtroom less intimidating to a child, can be ordered.

Judges can also expedite trials so as not to further victimize the crime victim due to additional delays during an already difficult process.

Judges can deny motions by defenses that are clearly aimed at offending or intimidating victims.

One common technique is for defense counsel to subpoena the victims' family members as potential witnesses, request that the court order witnesses be excluded from the courtroom (sequester), and then never call the victim's family to testify, thereby preventing their attendance in the courtroom.

Meanwhile, the defendant's family is allowed to sit in the courtroom, showing support for their family member who is on trial, while the victim's family may appear to be uninterested in supporting the victim or the prosecution's case because they are sequestered.

Such motions, when made for such manipulative purposes, can and should be denied.

Judges are empowered to sentence convicted criminals for their crimes.

It is important that judges include information regarding the full impact of the crime on the victim in their assessment of appropriate sentences. Often this information is provided through the prosecutor-based victim assistance program, a probation office, or another official source, and is typically referred to as a victim impact statement (VIS).

VIS information and pre-sentence investigation reports (PSIs) are often the only comprehensive assessment of the actual injuries and losses caused by the offender available to the judge; it is crucial that this information be conveyed in a timely fashion to the sentencing court.

Judges are also involved in various post disposition decisions, such as reconsideration of sentences and appeals.
Judges can help assure that victims are provided their legal rights as well as adequate court-based services, which should include the following:

- Providing contact information for assistance and protection from the court that victims can access twenty-four hours a day, seven days a week.
- Providing courtroom orientation for victims.
- Providing victims with physical waiting accommodations that are safe, secure, and separate by sight and sound from the defendant, his/her family and friends, or the news media.
- Considering victim impact information in all cases prior to sentencing (including change of plea hearings if they do not coincide with the sentencing).
- Asking prosecutors if they have consulted with the victim prior to agreeing to sentencing recommendations.
- Including any reasonable measures requested by the victim to ensure his or her safety and security, such as protection or "no contact" orders.
- Ordering restitution that reflects the full amount of loss, including payment schedules that are realistic and making sure that restitution receives priority above fines and other legal/financial obligations.
- Ensuring that restitution orders do not "fall through the cracks" by developing a system of collection, disbursement, enforcement, and victim recourse (that involves probation, the clerk of court, corrections, and parole).
- In inter-familial criminal cases, ordering convicted offenders to pay financial obligations such as child support, costs of counseling, legal fees, or mortgage/rent payments that help the victim gain independence from the perpetrator.
- Ensuring that all relevant victim information be included in convicted offenders' files--with victim confidentiality and the security of this information guaranteed to the degree possible--that are sent to probation, parole, or institutional corrections.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.
- Ensuring that victims have appropriate input into any conditions of supervision if probation is ordered.

Finally, judges can steer their courts toward processes that are not only "offender directed," but "victim centered" as well.

While conflicts can arise between the rights of the accused/convicted offender and crime victims, more often there is no disagreement about the importance of making participation the status quo for all participants in the criminal justice system.

**Court Clerk/Bailiff**

**Corrections**

- State
- County
Probation may be a condition of a plea bargain, or the actual sentence handed down by a court following a trial.

The probation officer will interview victims as part of the pre-sentence investigation (PSI) to determine the physical, financial, and emotional impact the crime has had on them. Pre-sentence Investigations in Maine are done primarily in cases of severe and violent crimes such as homicide and sexual offenses.

When offenders are sentenced to probation, they submit to community supervision by a probation officer. The probationer may be required to fulfill certain requirements called conditions of probation that might include no contact with the victim; payment of monetary obligations to the victim such as restitution, child support, etc.; payment of fines (that often support law enforcement and victim services); no use of alcohol or other drugs (with an agreement to submit to random testing); specific treatment that addresses the probationer's criminal activities (such as sex offender treatment, alcohol or other drug counseling, anger management, etc.); and/or community service.

Restitution payments are collected by probation officers.

When an offender is sentenced to probation, victims are notified of the status and location of the offender when released from incarceration.

An important condition of probation is that probationers commit no new crimes during their period of community supervision.

If probationers violate any condition of their sentence, the probation agency can rescind or "revoke" probation, which may result in incarceration in jail or prison.

Probation officials' roles and responsibilities to victims include:

- Providing contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Contacting victims as part of the pre-sentence investigation (PSI) to sensitively assess the psychological, financial, and physical impact the crime had on them and their family.
- Incorporating any victim impact statement (allocution, written, audio, or visual) into the official PSI report to the court.
- Determining any specific conditions of probation that will ensure the victim's safety and security.
- Soliciting victims' opinions relevant to appropriate community service sanctions for the probationer, including direct service to the victim (if requested), or service to a victim assistance or community service/assistance organization.
- Determining the amount of appropriate restitution payments and developing a realistic schedule for the collection and disbursement of restitution to the victim. In Maine,
probation officers are charged with physically collecting restitution payments and forwarding them to victims.
- Supervising the probationer's involvement in any victim/offender programming such as victim offender dialogue.
- Monitoring probationers to ensure full compliance with all conditions of probation that affect the victim's rights, safety, and security, as well as the general orders of probation.
- Providing information and referrals to victims who require assistance.

When convicted offenders are sentenced to a term of imprisonment, the State Department of Corrections or Federal Bureau of Prisons assumes responsibility for their supervision.

The offenders' files, which contain details from the crime, court case and sentence, pre-sentence investigation reports, and victim impact statement (when applicable), recommendations for treatment and services during the period of incarceration, and personal information, are utilized as a basis for offender classification.

The purpose of classification is to place the offender in the most appropriate incarceration setting (minimum, medium, maximum, or super-maximum facility).

The State Department of Corrections (or Federal Bureau of Prisons) houses offenders for their period of incarceration; implements and monitors work; makes educational and treatment activities available to inmates; and coordinates any release into the community with probation authorities.

Maine and New Hampshire state corrections departments and the federal system now have victim service programs. All the roles and responsibilities enumerated below are generally sponsored and/or implemented by such programs.

Corrections officials' roles and responsibilities to victims should include:
- Providing contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Obtaining relevant victim information, including victim impact statements and protection orders, from court documentation for inclusion in the offender's file.
- Protecting the confidentiality of victim information through protected automated databases or "flags" on paper files that delineate that this information is not available to inmates or their counsel.
- Providing victims and witnesses with information and recourse relevant to inmates who attempt to intimidate, harass, or harm the victim during their period of incarceration.
- Upon request, notifying victims of an offender's status, including current location, classification, potential release date, escape, or death.
- Implementing and monitoring victim/offender programming such as victim impact panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" programs.
• In some departments monitoring, collecting, and disbursing restitution payments to victims and/or fines to state victim compensation programs.
• Coordinating the physical location and logistics of parole release hearings with paroling authorities, victims, and victim service providers.
• Providing information and referrals to victims who require assistance.

When inmates are released from prison, their reintegration back into the community is accomplished through supervised community confinement or the parole process.

Parole is the supervised release of prisoners to the community, with conditions attached to that release that are designed to protect the safety of both the victim and the public.

Parole and supervised community confinement is considered part of the prison sentence but is served in the community.

Violations of any conditions of parole or supervised community confinement can result in revocation, which means the offender will be returned to an institutional corrections setting. It is important to note that some states provide for sentences of "life without possibility of parole," which equates to incarceration until an inmate's death. Also, the Comprehensive Crime Control Act of 1984 abolished parole in the federal system; parole is currently available only to inmates who committed a crime or act of juvenile delinquency prior to November 1, 1987.

There are two main functions of paroling authorities: parole boards and parole agencies.

**Parole boards**
The American Correctional Association identifies four primary functions of a state parole board, which are to:

• Grant parole to prisoners.
• Supervise control of parolees.
• Discharge individuals from parole.
• Make parole revocation decisions.

In many states, paroling authorities are separate from the Department of Corrections. Parole board members in most states are appointed by and serve at the pleasure of the Governor. In some states, including California, Ohio, South Carolina, and Virginia, victims of violent crime serve as parole board members (including some through designation of a victim parole board member as a statutory provision). Each state varies in its number of board members.

Parole decisions can be made before a meeting of the full board, at hearings that have panels of three or more members present, and/or through a meeting with an individual parole board member (Wisconsin) who reports back to the full board. It is important to note that, in most states, decisions by which an inmate is considered for parole are guided by statutory requirements (state law) or by judicial decisions related to prison overcrowding.
Similar to probation, successful candidates for parole must agree to abide by certain rules, which include not committing any crimes during the period of parole; no possession of weapons; honoring protective or "stay away" orders that prevent contact with the victim; submitting to random testing for alcohol or other drugs; finding and maintaining employment and housing; paying restitution and other financial obligations, including child support, fines, and costs associated with their parole supervision; and/or limited driving privileges.

In most states, victims have the statutory and/or constitutional right to provide parole boards with victim impact information about how the crime affected them.

Since many offenders are sentenced for the crimes to which they pled in plea negotiations, it is imperative that parole boards know the facts of the crime that was actually committed.

This important input also provides victims with an opportunity to request certain conditions of parole that make them feel safer, such as protective orders or requests that the offender be paroled to a geographic location that is a certain number of miles away from where the victim resides.

In most states, victim impact statements are not confidential; offenders can access the statements (with protections sometimes afforded to the victim's contact information).

Approximately half of states have victim service programs located in state parole agencies. These programs serve many important purposes, including providing victims with information and notification about a parolee's status, as well as overviews of how the parole process works (and victims' rights that are inherent in this process). Such programs serve to make a system that has traditionally been "offender directed" also "victim centered."

**Parole agents**
Parole agents (also called "parole officers") are responsible for monitoring the supervision of parolees.

In most states, parole caseloads are astronomically high, resulting in limited supervision due to the lack of human and financial resources. The parole agent is responsible for ensuring that offenders on his or her caseload comply with all requirements of parole. When any requirement is violated, the parolee can be subject to "parole revocation."

When parole revocation is recommended by a parole agent, the parolee must submit to a hearing by the parole board (or other independent and neutral entity) to determine his or her status.

Crime victims of either the original crime for which the parolee was incarcerated or the crime for which the revocation is being processed should be notified of parole revocation hearings or outcomes.
Parole agents, in many states however, do have frequent contact with victims, especially in interfamilial crimes. It is essential that victims know who their offender's parole agent is and how the agent can be reached twenty-four hours a day.

Parole officials' roles and responsibilities to victims should include the following:

- Provision of contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Providing victims with an overview of the parole process, including parole board hearings, community supervision, parole revocation, and all related victims' rights and services.
- Providing victims with the opportunity to submit victim impact statements to the parole board, including allocation, written, audio or video statements.
- Asking victims about any specific concerns they have related to their personal safety and security if an inmate is released to parole, and incorporating any reasonable concerns into parole conditions.
- When possible under state law, providing victims with the opportunity to personally present victim impact information to the board without the inmate present and without providing access to such information by the inmate and/or his or her counsel.
- Continuing restitution orders emanating from judges or, in states where parole has authority, ordering restitution payments (and ensuring that such payments are collected and disbursed to the victim).
- Ordering important legal/financial obligations that help victims in interfamilial cases seek financial independence, such as child support, money for legal counsel or mental health counseling, mortgage or rent payments, insurance premiums, etc.
- Providing information and referrals to victims who require assistance.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

In addition to the core criminal justice system professionals discussed above, various allied professionals have a significant impact on the criminal justice system response to involving victims.

These include the following:

- Medical personnel.
- Mental health service providers.
- Child protection professionals.

**Doctors, nurses, and other hospital personnel** provide tremendous assistance to victims of crime.

In addition to police officers, medical personnel, who also are often available twenty-four hours a day, seven days a week, are commonly the first ones to come into contact with crime victims who have experienced some form of injury.
In their roles, they are uniquely suited to carefully document the condition of the victim and objectively report these findings (much of which can be utilized as evidence in criminal cases).

Of course, the immediate and appropriate treatment of the victim is paramount, but in the course of treatment, appropriate documentation provides useful information for prosecutors and victims in forwarding various criminal and other legal actions against the perpetrator. Of particular importance is the use of appropriate evidentiary collection kits to gather information in sexual assault and sexual abuse cases for later evidentiary use at trial. This needs to be done sensitively, but competently, so that the trauma of the rape examination is minimized and evidence is accurately collected.

Mental health professionals are often involved in providing testimony at trial regarding the impact of crime on victims. In addition to treating victims, mental health professionals who are expert in the evaluation of the effect of trauma on victims are often used.

It is important to note that these allied professionals and experts are heavily relied upon by the courts to make determinations regarding the damage and injuries incurred by the victims. These have important ramifications for the investigation and referral by law enforcement, by the handling of cases in prosecutor's offices, and in sentences handed down by judges.

Child protection officials have a significant role in cases involving child abuse and neglect. Depending on the jurisdiction and the nature of the victimization, these cases may be handled in a criminal court, juvenile court, or family court system.

In each of these systems, it is important that the child protection official cooperate in developing the best investigation report possible for presentation at trial. Increasing use of Court Appointed Special Advocates (CASAs) and Guardians Ad Litem (GALs), whose roles are to advocate to the court on a child's behalf, provides an important voice to the needs and concerns of child victims.

As almost all victims of crime may require some medical, mental health, or other social services intervention, the coordination of these efforts within and complementary to the criminal justice system is crucial to providing the most victim-centered, victim-oriented criminal justice system response possible.

**Victim Services**
- Crisis Center
- Police
- Prosecutor
- Victim Compensation
- Corrections

**History of the Juvenile Justice System**
- 16th and 17th Century Europe
- 18th Century US
• 19th Century US
• Parens Patriae/Inception of Probation
• 20th Century US
• Recent History

Goals of the Juvenile Justice System
• Maine-to secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile’s own home, as will best serve the juvenile’s welfare and interests of society.
• New Hampshire:

Procedures
Maine:
• Arrest & Detention
• Preliminary Investigation, Informal Adjustment
• Petition, Adjudication, Disposition
• Bind over
A CITIZEN’S GUIDE TO THE MAINE COURTS

The Judicial Branch Citizen's Guide to the Maine Courts describes the types of cases heard in court, what the judicial process is and how it works, how a trial proceeds, and the way in which the Maine courts are organized. The Guide is intended to be helpful to citizens generally, and in particular to students, to the media, and to those of you who may appear in a courtroom, whether as a juror, or as a party or a witness in a trial.

Revised and reformatted for Internet publication in 1997 and again in 2002
Additional Acknowledgements

Introduction

Part I: What the Courts Do
   The Citizen's Role in the Judicial Process
   Types of Law
   Types of Cases
   The Litigation Process

Part II: Court Organization
   Courts of Limited Jurisdiction
   The District Court
   The Probate Court
   Court of General Jurisdiction -The Superior Court
   The Supreme Judicial Court
   The Administrative Office of the Courts
   Other Judicial Branch programs

Part III: Visiting the Courts
Additional publications are available on this site, at the various clerks' offices, or at the Administrative Office of the Courts and include the following:
   A Guide to the Small Claims Proceedings of the Maine District Court. This booklet describes the types of cases the small claims court hears, how to file a claim, and the procedure the court follows.
   The Traverse Juror Handbook. This handbook describes the jury system as it is used in Superior Court, the rights and duties of jurors, and the jury selection process. See Mainejuror.com
   Judicial Department Annual Report. This report, published annually, describes the activities of the Judicial Department and provides caseload statistical information.
Citizen's Guide to the Courts

Introduction
This Guide has been revised for Internet publication by the Administrative Office of the Courts to help promote greater understanding of the way the courts operate. It describes the types of cases heard in court, what the judicial process is and how it works, how a trial proceeds, and the way in which the Maine courts are organized. We hope that the Guide will be helpful to citizens generally, and in particular to students, to the media, and to those of you who may appear in the courtroom, whether as a juror, or as a party or a witness in a trial.

This Guide is not intended to be a comprehensive description of criminal or civil procedure. Court procedure has developed over the centuries and is very complicated. The Guide, however, does present a general outline of what goes on in a trial. Your lawyer, the judge, or the court clerk's office may be able to help when more specific information is required, although court clerks are prohibited by law from giving legal advice.

Words in this Internet version that are underlined and shown in blue or other contrasting color are hyperlinks. Clicking on them will take you to other sections of this guide, or other web legal resources relating to the topic.

Citizen's Guide to the Courts -
Part I: What the Courts Do

In This Section
The Citizen's Role in the Judicial Process
Types of Law
Types of Cases
Litigation Process

Courts are institutions designed to resolve disputes by determining civil liability or criminal guilt. They also provide official approval of certain matters, such as the distribution of property after death, adoptions, and name changes, that are not in dispute.

Maine's state courts play an important role in your life. For example, they are available and may be used to protect your rights and to enforce your responsibilities if:

• you buy or sell property,
• if you get divorced,
• if you have problems at work,
• if you have a dispute with someone who provides you with a service,
• or if you are involved in an automobile accident or a fistfight.
The courts are even used after your death to determine what happens to your assets and debts. If you sue or are sued, if you are accused of committing a crime, if you are a witness to an event, if you are a victim of a crime, or if you are called to jury duty, you may be required to appear in a Maine court.

When your dispute is with a citizen of another state or is governed by federal law, you may find yourself not in a Maine state court, but in a federal court located in Maine, at Portland or Bangor. Just as some of the laws we live under are passed by the Maine State Legislature and others are passed by the United States Congress; just as the laws are enforced by the Governor of Maine, as well as the President of the United States; so disputes may be resolved by either the Maine state courts or the federal courts, depending on the law involved or the citizenship of the parties. This Guide describes the procedure and organization of the Maine state courts, although many of the basic ideas discussed apply to the federal courts as well.

Maine’s state principal courts are the District Court, where lesser criminal offenses and civil actions may be tried; the Superior Court, where almost all civil and criminal matters may be tried; and the Supreme Judicial Court, which hears appeals from all lower courts. Maine also has Probate Courts for questions involving estates and similar matters. The court system is discussed in detail in Part III of this Guide.

The Citizen’s Role in the Judicial Process
Citizens come to court in several different roles.

1. As a Party to a Case:
A party is a person who is suing or being sued. In a civil action, where one person sues another, the one bringing the suit is called the plaintiff. The person being sued is referred to as the defendant. In a criminal case, the State, which starts the proceedings, is called the prosecution. The person who is accused is called the defendant. Each party in a case is ordinarily represented by a lawyer whose job it is to prepare and present that party’s case. An individual may, however, choose not to be represented by a lawyer in either a civil or criminal case. In that instance, the individual should be prepared to present evidence (witnesses and exhibits) that will present facts showing why he or she should prevail.

2. As a Witness:
A witness is a person who has firsthand knowledge about the issue in dispute. The duty of a witness is to appear in court and testify truthfully. Witnesses are summoned to court by a document called a subpoena, a court order directing the person to appear on a specified date. Willful failure to comply with a subpoena may be punished as contempt of court, which could result in your arrest.

3. As a Juror:
In the Superior Court, many kinds of cases are decided by a jury, whose members are citizens chosen at random. The job of a juror is to listen attentively to the case as it is presented, and
then to decide the outcome fairly and impartially. The presiding judge (formally addressed as a Justice in the Superior Court) will instruct the jury on matters of law, but determination of the factual matters in dispute, including the innocence or guilt of a criminal defendant, is solely up to the jury.

More information about serving as a juror in Maine is available online at www.mainejuror.com.

4. As a Visitor:
The proceedings of the courts are open to the public unless the judge orders them closed in an unusual case to prevent harm to a party or witness, or unless they are closed by statute. Thus, any citizen may attend most proceedings in any of Maine’s courts. For further information, see "Visiting the Courts" in Part IV of this Guide.

Citizen's Guide to the Courts -
Part I: What the Courts Do

Types of Law

The resolution of disputes in the courts is governed by constitutional, statutory, and common law.

1. Constitutional Law:
Constitutional law is found in the constitutions of the State of Maine and the United States. The United States Constitution is the supreme law of the land, and its provisions must be followed at every level of government in America. The U.S. Constitution sets up the structure of the federal government and guarantees the citizens of each state a representative form of government. The Maine Constitution sets up the structure of our state government, with its bicameral (two-Chambered) legislature, its governor, and its judiciary.

The federal and Maine constitutions are important sources of rights as well. They guarantee freedom of religion, speech, press, and assembly. Each constitution prohibits unreasonable searches and seizures, involuntary self-incrimination, and cruel and unusual punishments.

Each constitution guarantees due process of law, as well as equal protection of the laws. Daniel Webster described due process as the result of a judicial system that "hears before it condemns, proceeds upon inquiry, and renders judgment only after a trial". In modern times the rights to due process and equal protection have become extremely important. They protect citizens against the passage of laws that are arbitrary, unreasonable, unreasonably discriminatory, or beyond the reach of government. The due process clause also ensures that citizens receive timely notice when they are subject to any kind of judicial proceeding and guarantees them a fair opportunity to be heard in cases which affect their personal or property interests.

2. Statutory Law:
Statutory law is passed by a legislative body. Congress passes federal statutes; the Maine Legislature passes state statutes, which are published in bound form as the Maine Revised
Statutes Annotated (M.R.S.A.). Statutory law covers many subjects, including the regulation of business and industry and the definition of crimes. It must be consistent with the Constitution.

3. Common Law:
Common law is developed by courts to cover situations where statutory law does not apply or exist. The common law, which also must be consistent with the Constitution, consists of principles and rules developed, sometimes over centuries, in prior court decisions called precedents. Courts ordinarily follow the precedents established in earlier cases involving similar facts and are very reluctant to overturn them. Maine's town and city offices and most public libraries have sets of the Maine statutes. An uncertified version of the Maine Revised Statutes is maintained on the Internet by the Maine Legislature. In addition, the Judicial Branch maintains a law library for the use of judges, attorneys and the general public in each county courthouse. These libraries contain basic Maine legal materials, including statutes and the opinions of the Maine Supreme Judicial Court, as well as certain federal legal materials. The Law and Legislative Reference Library in Augusta and the Donald L. Garbrecht Law Library of the University of Maine School of Law and the Nathan B. And Henry Cleaves Law Library, both in Portland, may also be used by the public.

Citizen's Guide to the Courts -
Part I: What the Courts Do

Types of Cases

All legal matters brought before the courts are classified as either criminal or civil.

1. Criminal Cases:
Criminal cases are brought by the State against persons accused of committing a crime, civil violation, or other offense. The State brings the charge because a crime is considered an offense against society. Normally, the local District Attorney's office represents the State and prosecutes the case against a defendant. If the defendant is found guilty, the penalty may be imprisonment, a fine, probation, or a combination of these. If a fine is assessed, it is paid to the State, not to the victim of the crime. In some cases, however, the judge may also order the defendant to make restitution to the victim for any losses caused by the crime. Regardless of whether restitution is or is not ordered, the victim may recover compensation for the losses by bringing a civil action against the offender.

Criminal offenses are divided by the Maine Criminal Code into classes according to the seriousness of the offense and the penalty. Classes A, B and C are the more serious offenses; Classes D and E, the least. Murder, the most serious crime, has separate sentencing provisions. The principal offenses in each class are summarized in Table I.
Table 1 -- Criminal Offenses

<table>
<thead>
<tr>
<th>Class</th>
<th>Examples of Offenses</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>Murder</td>
<td>25 years’ to life incarceration with no possibility of release.</td>
</tr>
<tr>
<td>A</td>
<td>Kidnapping, rape, arson</td>
<td>Up to 40 years incarceration and a $50,000 fine.</td>
</tr>
<tr>
<td>B</td>
<td>Aggravated assault, theft of property, the value of which is more than $10,000</td>
<td>Up to ten years incarceration and a $20,000 fine.</td>
</tr>
<tr>
<td>C</td>
<td>Perjury, burglary, theft of property, the value of which is $1,000 - $10,000</td>
<td>Up to 5 years incarceration and a $5,000 fine.</td>
</tr>
<tr>
<td>D</td>
<td>Assault, operating under the influence, theft of property, the value of which is between $500-$1000</td>
<td>Up to 364 days incarceration and a $2,000 fine.</td>
</tr>
<tr>
<td>E</td>
<td>Disorderly conduct, operating after suspension, theft of property, the value of which is less than $500</td>
<td>Up to six months incarceration and a $1,000 fine.</td>
</tr>
</tbody>
</table>

**Note:** For any of these offenses except murder the judge may also impose a period of probation (with a variety of special conditions) order restitution, order the defendant to perform community service, or a combination of these.

The purpose of a **criminal trial** is to determine whether the defendant is guilty or not guilty of the charge. Since the penalty for a crime may be very serious, such as the deprivation of liberty, the State is held to a high standard of proof. The court presumes that the defendant is innocent, and the State must prove his or her guilt beyond a **reasonable doubt**. Because the defendant does not have to prove innocence, the finding is not guilty, rather than innocent, if the State fails to meet its **burden of proof**.

Except for most motor vehicle criminal violations, and some hunting and fishing offenses, persons under the age of 18 who are charged with criminal conduct are considered to be juveniles. Procedure in a juvenile case is somewhat different from that in an adult case. An intake worker advises the District Attorney whether to prosecute. The trial is heard in District Court by a judge alone. Trials of Class D and E offenses are closed to the public. A juvenile murder trial and trials of Class A, B and C offenses are open to the public. A juvenile who is charged with murder or a Class A, B or C offense may be tried as an adult, when certain legal conditions are met.

**2. Civil Actions:**

Civil actions are normally cases between private persons or corporations to resolve disputes involving the breach of a legal duty owed by one party to another and to fix damages for loss caused by the breach, or to fashion a remedy to prevent future loss.

The most common civil actions deal with:
- breaches of contract,
- negligently caused personal injury and property damage,
- debt collection,
- divorce,
- and landlord-tenant disputes.

The State (or any other governmental body) may also be a party to a civil action, if its interests have been injured, or if the case is one in which the Legislature has provided that the body may be sued by a citizen for causing injury.

If you are bringing a civil action, you must prove your case against the party you are suing by a preponderance of the evidence— a lesser standard of proof than that which the State must meet in a criminal case. You must have good grounds to bring a suit. If you file a suit frivolously or harass a person, the court may assess a monetary penalty against you or your attorney.

In the past decade the Legislature has created a special class of civil actions that includes offenses no longer regarded as serious enough to be dealt with as crimes. These less serious offenses are called civil violations. They include minor traffic infractions, possession of a small amount of marijuana, and violations of town and city laws (called ordinances), such as leash laws. You may be fined, but not imprisoned, for a civil violation. A law enforcement officer who believes that you have committed a civil violation will issue you a ticket or citation instructing you to appear in District Court on a certain date. At the trial, the District Attorney must prove that it is more likely than not that you acted as charged. If you do not appear in court, or pay your fine, on the day specified, the offense becomes more serious. In the case of a traffic violation, you may lose your driver's license.

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**Citizen's Guide to the Courts -**
**Part I: What the Courts Do**

**The Litigation Process**

**Legal Representation**

If you become involved in legal proceedings as a plaintiff bringing suit against another party, as a defendant being sued, or as a defendant in a criminal case you may choose to represent yourself in court (pro se representation), or you may retain the services of an attorney to represent you.

**Finding Legal Assistance**

If you do not know a lawyer who can assist you, you may want to consult friends, relatives, or business associates, the Yellow Pages of your telephone directory, the county bar association, or the Maine State Bar Association Lawyer Referral Service. If your income falls within certain guidelines and your case is a civil one, you may be eligible for free or low cost legal assistance from any office of Pine Tree Legal Assistance, Inc., from the Volunteer Lawyers Project of the Maine Bar Foundation, or the Cumberland Legal Aid Clinic (207-780-4370) at the University of
Maine School of Law in Portland. If you are 60 or over, you may be eligible for legal assistance from any office of Legal Services for the Elderly, Inc. If your case is a criminal one where conviction could result in imprisonment, you have a constitutional right to be represented by an attorney. If the court finds that you cannot afford a private attorney, the court must appoint an attorney to defend you at the State’s expense.

If you are the victim of a crime, you do not need to retain an attorney. The District Attorney will bring criminal charges against the accused on behalf of the State. However, if you wish to bring a civil suit against the individual who committed the crime to recover any damages you may have suffered, you may wish to seek legal advice or representation by a private attorney. See also Representing Yourself, on this site.

**Pretrial Procedure - Civil Cases**

To bring a civil action as a plaintiff in either the Superior Court or the District Court, you or your lawyer must prepare a written statement, called a **complaint**, describing the nature of your claim. The party you are suing (the defendant) is served with a **summons** (formal notification that a suit has been commenced), as well as a copy of the complaint. The defendant must file a written response to the complaint within a period of time specified in the summons, normally 20 days. The response is called the **answer**.

Once the complaint and answer have been filed, each party may obtain information about the other's case through a process called **discovery**. During the period prior to trial, you or your lawyer should be attempting to reach settlement of the case with the opposing party. Discovery allows each party to approach settlement discussions with a more realistic view of the chances of winning. A **settlement** saves both the parties and the public the substantial costs of a full trial.

In the Superior Court, simpler cases are heard on a fast track, requiring that discovery be completed by a specified date. A final stage in Superior Court is the pretrial conference, a session between the judge and the attorneys at which, if the case is not settled, the scope of the trial will be determined. Most civil cases are settled before trial; but, if yours is not, the court will set a date for the trial to begin.

**Mediation - Civil Cases:**

The court system provides procedures under which both parties may attempt to settle certain types of civil cases with the help of a third person. The procedures are called **alternative dispute resolution and mediation** and are often less time consuming, less expensive, and less acrimonious than a trial. Alternative dispute resolution and mediation take place in an informal setting with the parties (and sometimes their lawyers) working with a court appointed mediator or neutral toward an agreement. If a mutually satisfactory agreement can be reached, it is signed and submitted to the judge for approval. If the parties cannot agree, the case is scheduled for trial. In most civil cases and in alternative dispute resolution or contested divorce cases, mediation is required. Mediators and neutrals are selected from a pool of trained
persons who have been placed on a roster by the Court Alternative Dispute Resolution Service (CADRES).

Pretrial Procedure - Criminal Cases:
Most criminal cases begin with the service of a citation or summons, or the arrest of an individual by a law enforcement officer. The Constitution provides that the arrest can be made only if the officer has probable cause to arrest or has a warrant issued by a magistrate who has found probable cause.

Probable cause is a reasonable belief, based on reliable information, that a crime has been committed and that the individual being apprehended committed the crime. If the arrest is made without probable cause, no evidence obtained as a result of the arrest may be used in the trial. An individual can be arrested for certain minor offenses only if they were committed in the officer’s presence.

Once an individual has been arrested, he or she is brought to a police station or county jail and booked. At that time, the law enforcement agency takes the person's photograph and fingerprints and checks for the existence of any other outstanding arrest warrants. After booking, the individual must be admitted to bail or be taken before a judge within 48 hours. At that time, the person will be informed of the charge or charges filed and the right to legal assistance. Additionally, the court will set bail at a reasonable amount (unless the person is arrested for murder). Bail is a sum of money or property deposited by a person to assure that person's appearance at trial. It is not a fine, but it will be forfeited if the person does not appear at court.

When a person is arrested for murder or a Class A, B, or C offense, any trial must be in the Superior Court. A preliminary hearing may be held in the District Court to determine whether there is sufficient evidence to warrant going ahead with the case. If the judge believes that there is sufficient evidence, or if the defendant waives the hearing, the case is presented to a grand jury, a group of citizens whose task is to review the prosecution's evidence and decide whether it is sufficient to justify a trial. In many cases, evidence of wrongdoing is presented directly to the grand jury without a preliminary hearing. If the evidence appears sufficient, the grand jury will return an indictment, a formal charge of a crime. If the defendant in a Class A, B, or C offense waives the grand jury, or if the court in a Class D or E offense gives permission, proceedings are begun directly by the prosecuting attorney, who files an "information" setting forth the charge.
Following indictment or information in the Superior Court an arraignment is held. At this point the individual pleads guilty, not guilty, not criminally responsible by reason of insanity or nolo contendere (a latin phrase meaning "I will not contest the charges").

- If a person pleads guilty or nolo contendere, the judge imposes sentence, either immediately or after a pre-sentence investigation.
- If the plea is not guilty, the case is scheduled for trial. There is a process of discovery similar to that in civil cases, through which the defendant has access to any information the prosecuting attorney has.
Class D and E offenses may be brought under a simplified procedure by complaint in the District Court. The defendant pleads to the complaint at the first appearance before the court. Trial then follows on a separate date before the judge alone unless the defendant requests a jury trial in Superior Court by filing a “Jury Trial Request Form” within 21 days of the arraignment in District Court.

Criminal cases are frequently settled without trial because many defendants negotiate with the prosecuting attorney in a process known as plea bargaining. A plea bargain is an agreement between the prosecutor and the defendant that in return for a guilty or no plea to a certain charge or charges, the prosecutor will drop other charges or recommend a specific sentence to a judge. If the judge wishes to impose a greater sentence than recommended, the defendant may withdraw the guilty plea and go to trial.

**Trial by Jury:**
In all criminal cases and in those civil cases where monetary compensation is sought, the parties have a constitutional right to a jury trial. (In certain cases, such as divorces and actions for injunctions, there is no jury right). A **trial jury** (also called a “traverse jury”) is a group of citizens who determine whether the defendant is guilty in a criminal case, and decide who wins and the amount of damages in a civil action. Serving on a jury is hard work, but it is an important service that preserves our fundamental rights to liberty and property.

Jury trials are held only in the Superior Court. A defendant in a civil action in the District Court may remove the case to the Superior Court in order to have a jury. Even in the Superior Court, a civil action brought originally there will be tried by a judge unless one party demands a jury. A$300 jury fee is required in civil cases.

Criminal cases are tried in the District Court only if the defendant fails to demand a jury trial in a timely manner. If the defendant demands a jury, the case is transferred to the Superior Court for trial.

Jurors are selected in a two step procedure.

1. First, citizens' names are drawn at random from a list of people who hold Maine drivers' licenses, or who have been issued an identification card by the Secretary of State, or who voluntarily register with the Superior Court. When an individual is chosen, he or she reports for jury duty and becomes a member of a panel. A justice of the Superior Court will speak to jurors about the nature of the service they are about to give. Then the justice may excuse those for whom jury service would cause a serious hardship.

2. The second step in the selection process is called the **voir dire examination**. The purpose of voir dire is to determine whether there are any reasons why a particular juror might have difficulty making a fair decision in the case. The judge asks questions of the whole panel and then may speak to each juror individually. (In special circumstances, the attorneys may be permitted to question the jurors).
Each attorney may challenge any juror for cause, and is allowed to exercise a limited number of peremptory challenges for which no cause need be shown to excuse a juror. A successfully challenged juror is excused from that trial. After the twelve jurors required in a criminal case (or the eight used in a civil case) are selected, they are administered the juror's oath and are impaneled.

**The Trial Process:**

The trial process is much the same in civil and criminal cases. Each party may present evidence and oral argument on the meaning of the evidence and the law. Then the trier of fact (the jury or, if there is no jury, the judge) must reach a decision based solely on the evidence presented in the courtroom.

**Start of Proceedings**

At the beginning of the trial all interested parties should be in the courtroom before the proceedings start. When the judge enters the courtroom, everyone stands and remains standing until the judge is seated.

**Opening Statement**

Beginning with the plaintiff's attorney, or the District Attorney in a criminal case, each attorney normally makes an opening statement outlining the facts he or she expects to establish during the trial.

**Witnesses**

The plaintiff's attorney or District Attorney then calls witnesses and asks questions. These questions are known as direct examination. The defendant's attorney may ask questions of each witness called by the other side. These questions are called cross examination. The plaintiff's attorney may also offer in evidence documents or objects, called exhibits.

After the plaintiff or the State has presented witnesses and exhibits, the defense has an opportunity to present its own witnesses and exhibits. A similar sequence of direct and cross examination takes place.

**Closing Arguments**

After each party has presented its case, the attorneys make their closing arguments summarizing the testimony and the law governing the case.

**Judge's Instructions to Jury**

In a jury trial, the judge instructs the jury on the law that governs the case, defines the issues the jury must decide, and charges the jurors to reach a fair verdict, applying the law to the facts as they find them from the evidence presented.
Jury Deliberations
The jury then adjourns to the jury room to deliberate and reach a verdict. The verdict must be that of at least three quarters of the jurors in a civil trial. The jury verdict in a criminal case must be unanimous. If there is no jury, the judge considers the evidence and arguments and states his or her findings and conclusions.

The Verdict
The verdict of the jury (or the finding of the judge in a non-jury trial) decides not only which party will prevail, but also the amount of damages to be awarded. In a criminal case a jury's verdict, or the judge's finding, establishes the defendant's guilt, but it is up to the judge to impose a sentence on a guilty defendant.

Admission and exclusion of evidence:
Not all evidence which the parties offer in a trial is admitted to be considered by the judge or jury. The rules of evidence, codified in Maine since 1976 but fully developed at common law before that, govern the admission of particular statements of witnesses or exhibits.

The rules of evidence treat a large number of questions, including who has the right to be a witness, the limits on the subject matter of a witness's testimony, and the methods by which exhibits can be determined to be authentic. The basic issue is whether the evidence is reliable and relevant to the case at hand. While many of the rules are highly technical, the purpose is ordinarily the same to assist the judge or jury in ascertaining truth and reaching a just determination of a dispute by excluding evidence that may mislead, confuse, or prejudice the trial, or waste time.

If you are a participant in a trial, you will notice that the lawyers will from time to time object to a question being asked by the other side or to the admission of a particular exhibit. Such objections are used to bring into play the rules of evidence, forcing the judge to decide whether the objection is valid or not.

If the objection is valid, the judge will say, "Sustained". If the objection is not well taken, the response will be, "Overruled". If there is a jury hearing the case, the judge may ask the lawyers to step to the side of the bench and present their arguments on the objection out of the hearing of the jury. This is done to prevent the jury from hearing evidence that may not turn out to be admissible.

The most common objections at trial are:

- that a particular question is leading (that the question suggests its own answer),
- that the testimony of the witness is hearsay (words that the witness heard someone say outside the courtroom),
- or that a particular piece of the testimony or an exhibit is irrelevant (has little or nothing to do with the legal issues of the case).
Appeals:
In most civil and criminal cases each party has the right to appeal the decision to the next highest court. The issues heard on appeal, however, are limited to questions of law considered in the trial court. A trial judge's decision about what the law is or whether to admit testimony is generally reviewable, but a jury's (or judge's) decision to believe or disbelieve properly admitted evidence is reviewable only for abuse of discretion or insufficiency of evidence.

Citizen's Guide to the Courts -
Part II: Court Organization

In This Section
- Courts of Limited Jurisdiction
- Court of General Jurisdiction
- Supreme Judicial Court
- Administrative Office of the Courts
- Other Judicial Branch Agencies

Maine's state government consists of three branches. The Legislature makes the laws. The Executive Branch, which includes the governor and the various administrative agencies, carries out the laws. The Judicial Branch decides disputes about the laws and their application.

The Judicial Branch consists of three levels of courts, as well as the Administrative Office of the Courts. Judges are nominated by the Governor to serve seven year terms and confirmed by the legislature. (Probate judges are an exception. They are elected to four year terms by the voters of each county).

Maine's highest court, the Supreme Judicial Court, has general administrative and supervisory authority over the Judicial Branch. Its head, the Chief Justice, designates a Superior Court Chief Justice and District Court Chief Judge to oversee the day-to-day administrative operations of those courts, and also appoints the State Court Administrator, who runs the Administrative Office of the Courts. In addition, the Chief Justice takes an active hand in designing and administering procedures aimed at the speedy and just resolution of cases in the lower courts. There are three classes of courts in Maine:

1. Courts of Limited Jurisdiction
2. Court of General Jurisdiction - The Superior Court
3. The Supreme Judicial Court

Citizen's Guide to the Courts -
Part II: Court Organization

Courts of Limited Jurisdiction
At the first level of the Maine court system are the courts of limited jurisdiction. These are the District Court and the Probate Courts. Each of these courts has power to hear and decide different types of cases.

**District Court**

The District Court system was created by the legislature in 1961. The District Court has 33 judges who hold court in 13 districts at 31 locations throughout Maine. This court hears both civil and criminal matters and always sits without a jury. Civil suits claiming monetary damages, domestic relations cases (divorces, separations, custody and property disputes), and involuntary commitments are examples of civil cases. There is also established within the District Court a Family Division that has jurisdiction over family matters in the District Court. There are 8 case management officers who work in the Family Division.

A plaintiff who has a right to trial by jury in a civil action waives the right by bringing the action in District Court; a defendant with a right to a civil jury may remove the action to a Superior Court for jury trial.

The court also tries cases involving civil violations and Class D and E criminal offenses when the defendant waives the right to a jury trial. In addition, the court hears all juvenile matters and traffic infraction cases. Most decisions of the District Court may be appealed directly to the Supreme Judicial Court. Appeals are limited to questions of law except in small claims and forcible entry and detainer cases.

In Maine, the small claims court is a special session of the District Court held in each district on certain days determined by the Chief Judge of the District Court. In small claims court, the procedure is simplified, hearings are informal, and parties generally appear without attorneys. Small claims proceedings are appropriate only when the amount in controversy, not including interest and costs, is not more than $4,500. Appeals from small claims judgments may be taken to the Superior Court. A defendant who appeals, and who has a right to a jury trial, may have a trial de novo (a complete retrial) before a Superior Court jury. See also Adult Drug Court and Juvenile Drug Court.

**Probate Courts**

Probate Courts, established in the Maine Constitution in 1820, are courts with jurisdiction over specialized subject matter, such as estates and trusts, adoptions and name changes, guardianship and protective proceedings. These courts also sit without a jury. There are 16 Probate Courts and judges for each county. The judges, who are part-time, are elected. Probate Court decisions may be appealed to the Supreme Judicial Court on matters of law. Probate Court is not under the state court system but under county jurisdiction.

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**Citizen's Guide to the Courts**

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Part II: Court Organization

Court of General Jurisdiction - The Superior Court

The Superior Court forms the second tier of the Maine court system. Created by the Legislature in 1929, the Superior Court is Maine's trial court of general jurisdiction. The Court consists of 16 justices who travel on circuit to hold court at regular intervals in each of Maine's 16 counties. The Superior Court may hear almost any kind of civil or criminal case that may be brought to trial. Since the Superior Court is the only court that uses juries, it hears all murder and Class A, B, and C criminal cases, as well as those Class D and E cases in which the defendant asks for a jury trial. In civil actions both the Superior Court and the District Court have jurisdiction in cases seeking money damages. This means that, in such cases, the plaintiff can choose between District and Superior Court. If the plaintiff wishes to exercise a right to jury trial or prefers the location or some other feature of the Superior Court, the case may be brought in that court. There are also some actions where the plaintiff seeks something other than a simple money judgment, for example, an injunction. Many of these actions may only be brought in Superior Court. The Superior Court also hears appeals from state and local administrative agencies. Appeals from the Superior Court may be taken to the Supreme Judicial Court.

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Supreme Judicial Court

The Supreme Judicial Court, established in 1820 when Maine separated from Massachusetts, is the state's highest court and the court of final appeal. It has seven members, presided over by the Chief Justice, the head of the Judicial Branch. The Court's major job is to decide appeals on questions of law that arise in civil actions and criminal trials. Questions of law are presented to the Court when a case is appealed from a lower court. Lawyers for the parties present written briefs and oral arguments outlining their respective positions. The justices reflect on the questions presented and issue a written opinion deciding the issues in accordance with the Court's view of the law and reversing or affirming the lower court's decision. These opinions are published and become binding on all the Maine courts when they adjudicate similar disputes. Published opinions are available on this web site or may be found in bound form in the Maine Reporter. In its appellate capacity (as interpreter of the laws), the Court is called the Law Court.

The Court has several other jobs. An appellate division of the Court hears appeals from criminal sentences when the penalty is one year or more of incarceration. The justices may issue advisory opinions to the Governor or Legislature on legal issues of high public importance. The Court is also responsible for overseeing admission to the bar and the conduct and discipline of lawyers and judges. Finally, the Court is the procedural rulemaking authority for all of the state's courts.
Administrative Office of the Courts
The Administrative Office of the Courts administers all of Maine's courts except for the Probate Courts, which are administered at the county level. The head of the office, the State Court Administrator, manages the business affairs of the courts. The Court Administrator reports to the Chief Justice and is responsible for collecting statistical information, investigating complaints, overseeing financial affairs, maintaining the physical facilities of the court, running educational and training programs for court personnel, preparing an annual report on the operation of the Judicial Department, and a broad range of other duties.

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Other Judicial Agencies
A number of other agencies have been created by statute or court order to advise or assist the Supreme Judicial Court in carrying out its supervisory and administrative responsibilities over the court system and the bar. These include:

- Board of Bar Examiners, charged with supervising admission to the bar
- Board of Overseers of the Bar, charged with supervising attorney conduct and discipline
- Committee on Judicial Responsibility and Disability, charged with supervising the conduct and discipline of judges
- Court Appointed Special Advocate Program (CASA), which utilizes trained volunteers to act as guardians-ad-litem in child protective cases
- Court Alternative Dispute Resolution Service (CADRES)
- Numerous operating and advisory committees dealing with matters ranging from judicial education to the rules of court

Citizen's Guide to the Courts -
Part III: Visiting the Courts
You are welcome to visit any of Maine's courts (see directory).
Schedules of cases to be heard and the times that the court will be in session are available from the clerk's office at each court.

The Maine District Court sits at thirty-one locations throughout the state, and the Superior Court sits in each of Maine's sixteen county seats. Although the clerks' offices usually open at 8:00 a.m., the proceedings in the courts generally take place from 8:30 a.m. to 4:00 p.m. Visitors are always welcome, but large groups should notify the clerk of the court prior to arrival. The clerk, bailiff, or court officer is usually available to explain the type of proceeding being heard.

In some courts, the clerk can arrange tours of the building. Occasionally, a judge may be available to speak to groups. Visitors are also welcome to observe the deliberations of the Supreme Judicial Court, which holds regular sessions in Portland and also sits in Bangor and other locations from time to time.

For More Information
Use the Find a Court feature on this website to locate addresses and other contact information for individual courts.

Citizen's Guide to the Courts

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**Definition of Terms**

**System Response**

Adjudication – determination that allegations of juvenile petition are supported by evidence beyond a reasonable doubt

Adversarial - involving opposition or disagreement

Appeal - ask higher court to reverse decision of trial court

Bail - obtaining release of defendant after pledging cash or property

Bind over Hearing – juvenile court determines whether or not to allow State to proceed against juvenile as if he were an adult

Burden of Proof – evidence sufficient to prove beyond a reasonable doubt

Case Flow - the flow of case processing in the Judicial System

Case Law – decisions of courts which interpret the law

Civil Rights – guaranteed by Bill of Rights 13th and 14th amendment, right to due process, equal treatment under the law

Commitment – transfer legal custody

Community Justice – bringing together the community and the criminal justice system to solve community problems

Compensation – amount received to make one “whole”

Constitution - document which establishes the government of a nation

Criminal Law – statutes dealing with offenses against the public

Defense Counsel – attorney representing offender

Detention – holding of a person in a facility intended to prevent a person from departing

District Court – jurisdiction of criminal misdemeanor and juvenile offenses, as well as family matters and protection from abuse/harassment orders

Due process – fundamental issue of fairness in all legal matters

Evidence – proof legally presented at trial

Family Division Court – consolidating multiple cases involving the same family

Felony – a crime carrying a sentence of more than 1 year in prison

GAL/Guardian Ad Litem – person appointed by the court to take legal action on behalf of a child

Grand Jury – hears evidence in criminal matters and decides upon indicting

Hearsay – secondhand evidence, witness not telling what he knows personally but what others have said

Initial Appearance – the first appearance of the suspect in court where he/she is informed of allegations/advised of the right to an attorney and conditions of release

Jail – a place of confinement of persons in lawful custody awaiting trial or those convicted of minor crimes

Juvenile – means any person who has not attained the age of 18 years

Misdemeanor – lesser crime punishable by fine of jail up to 1 year

Parole – release of criminal prior to completion of sentence, still under supervision by parole officer

Parties – one of the people or sides involved in a formal agreement or argument, esp. a legal one

Petit Jury – jury which hears evidence at trial
Plea – response by defendant to the criminal charge
Plea Negotiation – the negotiation of an agreement between prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge
PR/Personal Recognizance - the pretrial release of a defendant without bail upon his or her promise to return to court.
Prison – an institution for confinement of persons convicted of serious crimes
Probable Cause – sufficient cause to believe a crime has been committed.
Probation – convicted person remains in community under supervision and must abide by specific conditions
Prosecutor – state’s attorney in a criminal case
Reentry – the return to the community from incarceration
Restorative Justice - a systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders and communities caused or revealed by the criminal behavior
Sentence – the punishment given to a person convicted of a crime
Small Claims – court process which makes decisions regarding small amounts of money
Standing – right to bring a lawsuit
Statute – law enacted by the legislature
Superior Court – trial court
Supreme Court – appeals court
Tort – a civil wrong or wrongful act from which injury occurs to another
Trial De Novo – appeals court holds trial as if no prior trial had been held
Unjust Enrichment – a benefit by mistake which must be returned
Violation - act or instance of violating or the condition of being violated.
Voir Dire – questioning to determine possible bias of jurors or to determine competency of witnesses
Warrant – an order of the court which directs law enforcement to arrest and bring a person before the judge
Writ – a written order of a judge requiring specific action by the person or entity to whom the writ is directed