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STATE OF MAINE
OFFICE OF THE DISTRICT ATTORNEY
PROSECUTORIAL DISTRICT IV

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Senator Carney, Representative Harnett, and Honorable members of the Judiciary Committee, my name is Maeghan Maloney, I am the District Attorney for Kennebec and Somerset Counties and the President of the Maine Prosecutors Association ("MPA"). I am joined today by Jonathan Sahrbeck, the District Attorney for Cumberland County and the Vice-President of the MPA. We are here today to give you an overview of the work that we do for the State of Maine.

Criminal Justice Overview:

District Attorneys – The vast majority of all criminal cases prosecuted in Maine are prosecuted by the District Attorneys, who are popularly elected every four years. The State is divided into 8 prosecutorial districts. The District Attorneys are responsible for prosecuting all criminal and civil actions which arise in their respective districts. District Attorneys hire assistant district attorneys and together they are commonly referred to as prosecutors. The counties that comprise those districts and the District Attorneys for each are as follows:

District I – York County – Katherine Slattery
District II – Cumberland – Jonathan Sahrbeck
District III – Androscoggin, Oxford, and Franklin – Andrew Robinson
District IV – Kennebec and Somerset – Maeghan Maloney
District V – Penobscot and Piscataquis – Marianne Lynch
District VI – Waldo, Lincoln, Knox, and Sagadahoc – Natasha Irving
District VII – Hancock and Washington – Matthew Foster
District VIII – Aroostook – Todd Collins

What is the job of a prosecutor?

First and foremost, a prosecutor spends two to three days a week in court. During days in the office, traditionally, a prosecutor must read the police reports on every new case; watch all body camera videos and booking room videos; listen carefully to victims and witnesses; prepare each file for the next court appearance; return 20 to 30 phone calls a day; perform confidently in front of a jury; research and draft legal papers on motions and briefs for the Law Court; argue before the Law

Court; and represent defense attorneys when post-conviction review motions are filed.

Today, all of the above remains true but there are many new additions: the prosecutor is also asked to serve on boards, committees[1], community multi-disciplinary teams, comply with voluminous new discovery requirements and prosecute new criminal statutes relating to elder abuse both financial and physical, domestic violence, violations of protection from abuse orders, child sexual assault, human trafficking and child pornography. For example, our OUI caseload is down and our domestic violence caseload is up. Think about the difference in the amount of work it takes to prosecute domestic violence cases versus an OUI. For domestic violence cases we have monthly domestic violence task force meetings in Somerset and Kennebec counties to hear from community partners. We discuss the most serious cases and draft multidisciplinary plans for how to keep the victim safe. We apply for grants and attend fund raisers for money for new technology like electronic monitoring. We learn new risk assessment tools like ODARA and Campbell and apply them to every case. And we keep the victims in our prayers.

A new law requires the District Attorneys to be integral partners in the formation of child advocacy centers ("CAC") where sexually abused children are interviewed. Prosecutors in my office attend monthly meetings as members of the board of the Sexual Assault Crisis and Support Center; the child advocacy advisory committee; and the case review team where all the community partners discuss their involvement on each case. At our CAC, 20 to 30 children a week are interviewed and they want a prosecutor to attend each interview. This is impossible. We have to pick and choose which interviews to attend even though attending the interview provides invaluable information when deciding whether or not to prosecute the case.

What happens when prosecutors have too many cases?

It may seem paradoxical, but it is far easier to issue a complaint than it is to decline a case. A busy prosecutor does not have the time to read the full police report, watch the body camera and booking room videos, and read all the witness statements and meet with the victims before deciding whether or not to issue the complaint. A declined case necessitates a meeting with law enforcement to explain the problems in the investigation. It is faster to issue the complaint and make a low offer to settle quickly.

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[1] The prosecutors in my office serve on the following boards and committees: Justice Assistance Council; Board of Bar Overseers Grievance Commission; Elder Abuse Task Force; Domestic Violence Committee in Kennebec and Somerset; High Risk Response Team in Kennebec and Somerset; Human Trafficking Committee; Child Advocacy Center Case Review; Pre-Trial Justice Reform Task Force; Media and the Judiciary Committee; Homicide Review Panel; Criminal Law Advisory Panel; Parole and Commutations Board; Know Violence Task Force; Alfond Youth Center; Child Advocacy Center Advisory Team; Capitol Clubhouse; Sexual Assault Crisis and Support Center board; Family Violence Project board; Restorative Justice; Firestarter's Committee… The Child Death and Serious Bodily Injury Panel does not currently have a representative from the DA's Office because no one can spare the time.

What takes the most time? Giving people a chance. Programs like the Veterans' Court, Co-Occurring Disorders Court, Drug Courts, Alternative Substance Abuse Program, deferred dispositions, teen courts, and Restorative Justice take far more time than a guilty plea with a prison sentence. And, thus, our prisons continue to expand.

A prosecutor should not maintain a workload that is inconsistent with the duty to ensure that justice is done in each case. In the year 2018, 54,130 cases were logged into our computer system. That means that DA's offices reviewed 54,130 criminal cases. In addition, the Judicial Branch recoded 6,695 civil cases filed in the Uniform Criminal Dockets. That's a total of 60,825 cases. Currently, there are 8 District Attorneys and 94 Assistant District Attorneys. That's an average caseload of 530 cases a year and we handle our own Law Court appeals and post-conviction cases which are not a part of this number. There are 52 weeks in a year, and a potential of 5 work days in every week. Assuming a prosecutor never gets sick, or goes on vacation, that gives a prosecutor 260 days to work every year. In other words, no more than one day should ever be spent on a case, but there are jury trials that last several days.

The State Never Rests – How Excessive Prosecutor Caseloads Harm Criminal Defendants, by Adam Gershowitz and Laura Killinger, writing for the Northwestern Law Review in 2011, asserted that prosecutors having enormous caseloads (500 cases a year) constituted an outrageous national crisis.

Why am I telling you this? Because every time you make a new crime, you give us more work to do and more work to the entire criminal justice system. This year the District Attorneys who are Democrats, Republicans and Unenrolled, are asking you to reverse this trend. This year we are asking you to take crimes off the books. I have had discussions with legislators where I am asked why we approve cases for operating after suspension when the person's license is suspended because of an unpaid fine. The answer: because you told us to approve it. You gave us the law. If you do not think OAS for failure to pay a fine should be a crime, then please, change the statute. The District Attorneys are supporting a bill to decriminalize many class E crimes this year. We hope you will take it seriously. We need to focus on the crime that is hurting people. The only way we can do this is to have more prosecutors, or fewer crimes, or a combination of both.

I have provided additional detailed information in case you are interested. I am also happy to share with you my Policy Manual and Attorney Handbook if you would like even more information. Thank you for your service to our great state. I am happy to answer any questions.

Maeghan Maloney

From the Street to the Office – How an Incident Becomes a Case

All cases that come to us are generated by a law enforcement agency. A case begins with an incident or a crime. When we become involved and to what extent depend upon the nature of the incident or crime.

There are generally three kinds of cases: traffic infractions, civil violations, and crimes. We handle traffic tickets in the Violations Bureau. Civil violations, we do not see until after the arraignment or initial appearance, and criminal cases must be reviewed by an ADA before they are submitted to the Court.

A. Traffic Infractions

The most common traffic infractions are Speeding, Operating after Suspension (OAS), Operating Without a Seatbelt, Texting While Driving, and Expired Inspection Sticker.

If an officer stops and tickets someone for a traffic infraction, s/he will give the operator a Violation Summons and Complaint ("the ticket") along with an addressed envelope. A fine schedule is included and the operator can either pay the "waiver fine" (so-called because the operator is waiving his/her right to a hearing) or contest the ticket. Those operators that checked the box on the ticket saying they would contest are the people that will show up to Violations Bureau.

The Violations Bureau is part of the Judiciary, not the Department of Motor Vehicles. The DMV may also impose a sanction (points against a license or suspension of license) based on the same conduct. However, neither the DA's Office, nor the Court has anything to do with that particular process.

The burden of proof in traffic infractions is by a preponderance of the evidence, and there is no right to a jury trial or appointment of counsel.

B. Civil Offenses

The most common civil offenses include animal cruelty or neglect, dangerous dogs, possession of drug paraphernalia, and possession of alcohol by a minor.

An officer may summons a defendant for a civil offense by providing him or her with a Uniform Summons and Complaint (USAC). The USAC advises the defendant of the charge; the date, time, and location of the incident; and the date to appear in court for arraignment. We do not review the police paperwork or approve the charge ahead of time, but if the defendant enters a "denial" at the arraignment, we will prosecute the case from that time forward.

Like traffic infractions, the burden of proof is by a preponderance of the evidence, there is no right to a jury trial and there is no right to a court appointed attorney. The animal cases, however, frequently result in a week or longer trial and even Law Court appeals.

C. Criminal Offenses

Criminal offenses consist of murder and Class A, B, C, D, and E crimes. Class A, B, and C offenses are "felonies" and Class D and E offenses are "misdemeanors." Those terms are commonly used, however, under the UCD system, all types of cases are dealt with in one unified criminal court. The statute of limitations for a Class A, B, or C offense is 6 years, and 3 years for D and E offenses. (There are some extensions for some sexual assault crimes and murder.)

The maximum jail/prison sentence for Class A crimes is 30 years; 10 years for Class B; 5 years for Class C; 364 days for Class D, and 6 months for Class E. The maximum fine amount for Class A crimes is $50,000; $20,000 for Class B; $5,000 for Class C; $2,000 for Class D; $1,000 for Class E; and $500 for civil infractions.

There are 3 ways to initiate a criminal case and secure the appearance of a defendant in court: an arrest by a police officer, a summons issued by a police officer or by the Court, and a writ (which is an order from the court to the custodian of an inmate to produce that person at a certain time and place).

The DA's Office has the final say on criminal charges – whether to charge and what to charge. So even when a police officer charges someone with a crime through an arrest or issuance of a summons, unless and until we file a charging instrument (a complaint, information, or indictment) with the Court, there is no case.

For all felonies (Class A, B, and C offenses) and many misdemeanors (Class D and E offenses), an officer may arrest without a warrant when he or she has probable cause to believe that the offender has committed or is committing the offense. For offenses where a warrantless arrest based upon probable cause is not authorized, the officer may arrest if the offense has been committed in his or her presence.

When a defendant is arrested, he or she will be transported to the police station where they will be "booked," that is, informed of the charges, photographed and fingerprinted. A bail commissioner will review any paperwork accompanying the arrest and set bail, which is designed to secure the defendant's appearance at Court on the appointed day. Sometimes, the mere promise of the defendant is enough (this is called Personal Recognizance bail, aka PR), or by the posting of cash or putting up of property. The bail may include conditions, such as no contact with the victim or not to use or possess alcohol or drugs. In Maine, a defendant may not be held without bail except for a charge of murder. There is no ability to hold an individual in custody because the Court finds the person "dangerous." Thus, money bail becomes the substitute for a dangerousness assessment.

Defendants may be summonsed by the police officer to appear in court for arraignment, on a date which is typically 6-8 weeks from the date of the incident. This is accomplished by the use of a Uniform Summons and Complaint (USAC).

If the defendant does not make bail, probable cause to hold him or her must be found by a judge within 48 hours of the arrest, including weekends and holidays. This means that a judge or justice of the peace goes into the jail on weekends and holidays to review the arresting officers' affidavits that have been left at the jail for that purpose. If probable cause is not reviewed or not found, the defendant must be released on PR bail once the 48 hours are up. A defendant who does not make bail must be brought to court and arraigned as soon as possible after the arrest, even if a judge has already made an initial determination of probable cause. This applies to felonies as well as to misdemeanors.

If the defendant is neither arrested nor summonsed, or the officer is not sure that there is enough evidence to charge the defendant, the officer may submit a report to the DA's Office, requesting that we "review" the charge and request that the court issue an arrest warrant or a summons. We will frequently request a warrant in cases involving violent offenses; or when there is risk of continuing criminal conduct, a risk of flight, or other indicators that an urgent response is necessary. Otherwise, we ask the court to issue a summons (which the police then serve on the defendant).

From the Office to the Court – Intake Process

A. Office Procedure

For us, a case starts when the police department (either the officer involved or that department's court officer) submits to us a police report with any supporting documents, like a driving history, witness statements, body camera videos, etc.

Whenever police reports are submitted, the paperwork or electronic filing goes to the staff person for the ADA that is assigned to that department. The staff person logs the case into our computer system, called Justware, and then sends the information to the attorney handling that department by its arraignment date. Case screenings are due 2 weeks before the scheduled arraignment date, which means that the ADA must have reviewed the case and made a decision, completed the necessary documents, and returned it back to the applicable staff member for processing.

B. General Principles of Case Review

There are four potential outcomes of case review – Approving charges, (but not necessarily the same ones as the police submitted), Decline, (not prosecuting the case), Requested Information (send the case back to the police department for more information) and No Further Action (usually limited to situations where the defendant has been in custody and no further value is added by prosecution of the case).

Generally, unless the conduct is de minimus, (in which event it will be declined as de minimus), a case is charged if there is a *reasonable probability of conviction* following a jury trial. The reports, as they are written, must be sufficient to describe a chargeable and provable offense. There must be facts and evidence available at the time of case review which would support a conviction after trial. In other words, there must be *legally admissible evidence* to establish each and every element of the crime. So you have to think through the evidentiary issues that may arise in pretrial hearings and at trial. Some of the most common evidentiary issues are:

1. In any case involving a motor vehicle stop, reasonable, articulable suspicion (RAS) by the police office must exist for the stop. Is it described in the report?
2. If there was warrantless arrest, does probable cause exist to support it? If not, any evidence flowing from the arrest will be suppressed, and the case may not be able to be prosecuted.
3. If there is a confession or admission, does *Miranda* apply? Was there custody and interrogation? If so, were the warnings given? If not, how strong is the case without the confession or admission?
4. Is there a corpus delicti problem? Before a defendant's statement can be admitted at trial, the State must present sufficient credible evidence to support a substantial belief that the crime charged has been committed by someone. The reason for this rule is to safeguard the accused against the possibility of being convicted for a crime that was never committed. (There have been instances where people suffering from a mental disease or defect confess to crimes that were never committed). This rule does not apply to any statement by a defendant that he was the operator of a motor vehicle. This exception is most often used in cases involving Operating Under the Influence (OUI), Operating After Suspension (OAS), and Leaving the Scene of an Accident (LSOA).
5. Is it a case that involves a victim or a civilian witness? If so, there must be a written or recorded statement from that person included in the report.
6. What officers are needed for trial or hearing? Are they all identified? Also, make sure to check the intoxilyzer report in OUI cases. Often, the arresting officer is not the officer who operated the intoxilyzer, and if that is the case, s/he must be identified.

7. Are expert witnesses needed at trial? For instance, in OUI cases, sometimes the BAC test is a blood test (or a urine test if drugs are involved). In these cases, you must know the chemist who analyzed the blood or urine if requested by the Defense. You also need the identity of the blood technician who drew the blood and/or the individual who obtained the urine sample. Similarly, in forgery and bad check cases, you generally need a custodian from the bank in order to admit the bank records into evidence.

C. Documents to be Prepared

There are several documents that need to be prepared. Before documents are generated, a lot of information needs to be entered into the system. Most identifying information will be entered when the case is logged in by support staff. Other information like review or screening notes will be entered by the ADA reviewing the case. After the needed information has been entered into the database, the ADA will generate certain documents including Screening Sheets, Complaints, Decline Letters, Requests for Additional Information, Initial Plea Offer, or any other letters to be sent to officers, victims, or witnesses.

The ADA is responsible for the language contained in the document. It is very important that the ADA check the allegation in the Complaint against the statute that defines the crime. The ADA must also check the statutory citation of the Complaint to ensure that it is accurate.

D. Policy Guidelines for Approving Complaints

The most important rule is: Read the statute!

Every element of the crime must be present and able to be proved in order for a case to be approved. For example, in theft cases, you must be able to prove that the Defendant passed all points of sale. This is often able to be proved by video surveillance given by the victim/store. Also, in order for an Assault to constitute a Domestic Violence Assault, there must be proof of the relationship. This is a critical element that must be proved by the facts of the case.

As you can see, the most important rule cannot be stressed enough, that you must read the statute when reviewing and deciding whether or not to approve charges.

Introduction to the Court Process – The Unified Criminal Docket

A. Types of Proceedings

Grand Jury – All felony cases are presented to the Grand Jury by an ADA or AAG. The purpose of the Grand Jury is to determine whether there is probable cause to believe that a particular crime was committed and that the Defendant committed the crime. The quantity of evidence presented is less than what would be presented at trial, hearsay evidence may be presented, and the Defendant does not have a right to testify. The Grand Jury is a very secretive proceeding. No witnesses, advocates, judges, defendants, defense attorneys, or even prosecutors are allowed in the Grand Jury room when the Grand Jury is deliberating.

Arraignments – A "Lawyer of the Day" (LOD) appointed by the Court is scheduled to handle each arraignment day. Discovery consisting of police reports and any ancillary documents like criminal history, witness statement, or driving history, is provided by the ADA handling arraignments that day to each Defendant. Attached to every discovery packets should be an "Offer Sheet" drafted by the ADA.

For defendants who are in custody, there are in-custody arraignments every Monday, Wednesday, and Friday. The schedule for "walk in" arraignments varies by district but is generally twice a week.

Dispositional Conference – The purpose of dispo conferences is to resolve those cases which were not resolved at arraignment, with the Judge assisting in the process. Each case not resolved between the prosecutor and the defendant or defense attorney will be conferenced by a UCD Justice in chambers. Cases not resolved at Dispos are scheduled either for a Motion Hearing or a Trial.

Jury Selection – Each month there will be 1 day to select a jury for the cases that have been put on that month's trial list. It is important that ADA's do not speak with any potential jurors.

Trials – Each month has 2 to 3 weeks for Jury Trials. Once cases have been put on the trial list for a particular month, there will be a Docket Call and 1 day for Jury Selection. The cases that pick juries that day will proceed to trial. Any cases left that did not pick juries, get bumped to the next month.

Motions – The 4th week of each month will have up to 2 motion days. 1 day for motions such as bail reductions, continuances, amendments to complaints, etc. and 1 day specifically for probation violation (PV) motions. Files need to be gone through before motion days and witness lists need to be finalized and subpoenas sent out (if they have not been already) for anyone needing to testify on a motion day (these will often be officers, probation officers, witnesses, and victims).

Pleas – A Rule 11 hearing is for felony guilty pleas. Unlike for misdemeanor guilty pleas, the Judge must ask the Defendant certain additional questions to ensure that his/her guilty plea is knowing and voluntary.

Sentencing – After a Defendant has been convicted in a Jury Trial, the Judge will hold a sentencing hearing. For felony sentencing, a *Hewey* Analysis must be done in which the mitigating and aggravating factors are weighed. The ADA and Defense Attorney will argue their respective recommendations and the Judge will announce the sentence that s/he is imposing.

Law Court Appeal—Every jury trial resulting in a criminal conviction is appealed to the Law Court. This requires legal research and the drafting of a legal brief as well as an oral argument before the Court. If the defense is successful in the Law Court appeal, the case will be given another jury trial.

Post-Conviction Review—After the conclusion of the Law Court appeal, or upon the finding of new evidence, a defendant can file another appeal referred to as post-conviction review. In this appeal the defendant asks the court to overturn his or her conviction on the basis of the defense attorney being inadequate or on the basis of new information. In 2017, I had a post-conviction case from a trial in 2010. If the post-conviction is successful, then the case has to be retried to a jury.