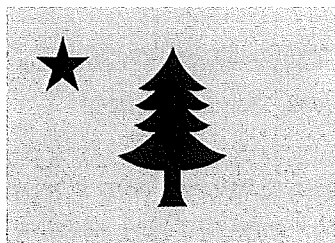


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District Attorney

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STATE OF MAINE
OFFICE OF THE DISTRICT ATTORNEY
PROSECUTORIAL DISTRICT IV

February 27, 2023

Senator Rotundo, Representative Sachs, and Honorable Members of the Committee on Appropriations and Financial Affairs, my name is Maeghan Maloney. I am the District Attorney for Kennebec and Somerset Counties and President of the Maine Prosecutors Association. I am here today in support of LD 258 and to ask you to keep prosecutors in mind as you add to the budget for defense counsel and the Court.

Maine has 8 prosecutorial districts with assistant district attorneys (“ADAs”) who prosecute all state crimes except for homicides and drug crimes (which are handled by the AG’s Office). ADAs start at a salary of \$29.40 an hour and are only paid for 40 hours a week. ADAs prosecute sexual assault, domestic violence, stalking, strangulation, burglary, OUIs, and many other crimes—so many in fact that the DAs have been trying unsuccessfully for 8 years to decriminalize multiple class E crimes.

Today the court released new statistics: from 2019 to today criminal cases are up 66.8%; but notably civil violations are down 32.7% and felonies are up 87.3%. We cannot dismiss our way out of the backlog.

The best way to understand the backlog is not with statistics but with the words of the people doing the work. I have brought with me today letters from ADAs talking about the well over 40 hours a week that they work and how their jobs have changed since 2019. I will provide a few highlights here but I encourage you to read the full letters:

In general, I feel overwhelmed on a daily basis. It is becoming increasingly difficult to competently do my job. ADA Kate Marshall, Cumberland County

I am in court either in person or virtually every day of the week. I am often double booked for court appearances. When do I prepare my cases you might be wondering? Well, that is what nights and weekends are for! The prosecutor has a special role in the criminal justice system to make sure justice is served. Justice involves all the parties to

the case – victims, society and the defendant. To do the job well takes care, attention, and time. Deputy DA Justina McGettigan, York County

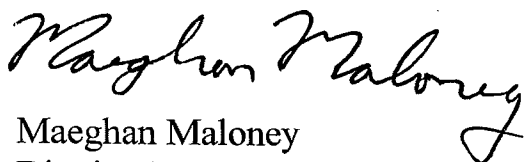
ADA Christina Reese, Androscoggin, Oxford, and Franklin counties. As I am writing this, I currently have 729 active cases for which I am responsible. To give a sense of what working on over 700 cases looks like, I can point to the next scheduled dispositional conferences date. Dispositional conferences take place for every defendant to determine whether a matter should be set for plea, or proceed toward trial. On the next dispositional conference date, I have 67 scheduled conferences, with 61 different defendants. In order to meaningfully engage in these conferences require that I be familiar with the facts of each case, understand its strengths and weaknesses, and be ready to discuss any potential evidentiary issues or shortcomings. These conferences come just a week after the previous dispositional conferences on other cases. In addition, I have a full day in court dedicated to arraignments. The week just prior to last, I had two jury trials which required significant trial preparation, above and beyond my other weekly obligations.

The time needed to ethically represent the State on a daily basis does not exist in a normal 8-hour work day. There is no time management strategy that allows any one person to manage a caseload of this size in a 40-hour week, nor even a 50 or 60 hour week.

[T]he harm that excessive prosecutorial caseloads work on criminal defendants. . . . [resulting] in longer sentences for less culpable offenders, longer delays in the dismissal of charges against the innocent, fewer disclosures of exculpatory evidence by prosecutors, and more guilty pleas by innocent defendants in exchange for sentences of time served and release from jail. Somewhat counterintuitively, overburdening prosecutors is more harmful than helpful to criminal defendants.

Adam M. Gershowitz and Laura R. Killinger, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, 105 Nw. U. L. Rev. Online 261, 279 (2011), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1184&context=nulr>.

Thank you for your time and I am happy to answer any questions.



Maeghan Maloney
District Attorney

Change in Pending UCD Cases, February 2019 to February 2023

Pending cases as of February 24 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2019	2023	% Diff	2019	2023	% Diff	2019	2023	% Diff	2019	2023	% Diff
Androscoggin	362	683	88.7%	1,250	2,151	72.1%	17	9	-47.1%	1,629	2,843	74.5%
Aroostook	324	728	124.7%	582	1,036	78.0%	34	32	-5.9%	940	1,796	91.1%
Caribou	60	173	188.3%	130	229	76.2%	7	6	-14.3%	197	408	107.1%
Fort Kent	36	135	275.0%	110	205	86.4%	3	9	200.0%	149	349	134.2%
Houlton	103	207	101.0%	127	278	118.9%	3	9	200.0%	233	494	112.0%
Presque Isle	125	213	70.4%	215	324	50.7%	21	8	-61.9%	361	545	51.0%
Cumberland	766	1,237	61.5%	2,382	3,726	56.4%	113	70	-38.1%	3,261	5,033	54.3%
Bridgton	10	24	140.0%	186	306	64.5%	16	11	-31.3%	212	341	60.8%
Portland	737	1,189	61.3%	1,880	2,920	55.3%	77	38	-50.6%	2,694	4,147	53.9%
West Bath	19	24	26.3%	316	500	58.2%	20	21	5.0%	355	545	53.5%
Franklin	85	152	78.8%	264	481	82.2%	20	32	60.0%	369	665	80.2%
Hancock	204	408	100.0%	428	688	60.7%	42	51	21.4%	674	1,147	70.2%
Kennebec	315	657	108.6%	1,029	1,748	69.9%	51	20	-60.8%	1,395	2,425	73.8%
Augusta	303	628	107.3%	584	1,077	84.4%	33	16	-51.5%	920	1,721	87.1%
Waterville	12	29	141.7%	445	671	50.8%	18	4	-77.8%	475	704	48.2%
Knox	126	233	84.9%	277	580	109.4%	1	21	2000.0%	404	834	106.4%
Lincoln	94	135	43.6%	207	348	68.1%	4	6	50.0%	305	489	60.3%
Oxford	204	456	123.5%	445	1,065	139.3%	20	17	-15.0%	669	1,538	129.9%
Bridgton	29	42	44.8%	74	122	64.9%	5	2	-60.0%	108	166	53.7%
Rumford	92	167	81.5%	167	394	135.9%	6	7	16.7%	265	568	114.3%
South Paris	83	247	197.6%	204	549	169.1%	9	8	-11.1%	296	804	171.6%
Penobscot	344	878	155.2%	1,031	1,771	71.8%	138	55	-60.1%	1,513	2,704	78.7%
Bangor	332	851	156.3%	790	1,345	70.3%	78	27	-65.4%	1,200	2,223	85.3%
Lincoln	6	9	50.0%	73	217	197.3%	41	12	-70.7%	120	238	98.3%
Newport	6	18	200.0%	168	209	24.4%	19	16	-15.8%	193	243	25.9%
Piscataquis	16	45	181.3%	45	105	133.3%	25	9	-64.0%	86	159	84.9%
Sagadahoc	77	184	139.0%	235	494	110.2%	27	12	-55.6%	339	690	103.5%
Somerset	135	233	72.6%	503	513	2.0%	56	14	-75.0%	694	760	9.5%
Waldo	104	188	80.8%	221	318	43.9%	4	6	50.0%	329	512	55.6%
Washington	105	178	69.5%	175	334	90.9%	40	24	-40.0%	320	536	67.5%
Calais	30	78	160.0%	73	139	90.4%	6	6	0.0%	109	223	104.6%
Machias	75	100	33.3%	102	195	91.2%	34	18	-47.1%	211	313	48.3%
York	775	1,163	50.1%	2,561	3,908	52.6%	93	83	-10.8%	3,429	5,154	50.3%
Alfred	722	1,111	53.9%	71	89	25.4%	0	1	0.0%	793	1,201	51.5%
Biddeford	28	26	-7.1%	1,183	2,111	78.4%	33	54	63.6%	1,244	2,191	76.1%
Springvale	18	15	-16.7%	818	1,170	43.0%	41	23	-43.9%	877	1,208	37.7%
York	7	11	57.1%	489	538	10.0%	19	5	-73.7%	515	554	7.6%
TOTAL	4,036	7,558	87.3%	11,635	19,266	65.6%	685	461	-32.7%	16,356	27,285	66.8%

Columns

2019	Number of cases having at least one charge without a disposition, and without a currently active warrant as of February 24, 2019
2023	Number of cases having at least one charge without a disposition, and without a currently active warrant as of February 24, 2023
% Diff	Percent change in pending cases from 2019 to 2023. Red percentages represent an increase, green percentages a decrease.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the courts are not included in the reported counts.

William J. Barry
Assistant District Attorney

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Portland, Maine 04101
(207) 871-8384

M E M O R A N D U M

To: Maine Prosecutors Association
From: Will Barry
Date: February 25, 2023
RE: Need for more prosecutors

I have been an Assistant District Attorney in Cumberland County for over twenty-two years. Until about five years ago, I thoroughly enjoyed my work. There was a period when it was possible to have sufficient time to review cases, talk with victims, witnesses, officers and defense counsel. Today's environment is 180° different. Cases have become more complex, but desk time has become scarcer. There are more cruiser cams, body cams, and security cameras which means more videos to watch. And, there is always the need for legal research. I am reminded of a car dealer commercial where the owner would say, "We have too much inventory so we're marking them down and moving them out." This is what being a prosecutor feels like today.

At one time, it was possible to keep up with my workload. Now, even though I frequently work two or three weeknights and one or two weekend days per month, I am always behind.

Since COVID, the number of court lists requiring the presence of prosecutors has increased exponentially. Sometimes, we have to be in two or more court rooms at the same time. And the number of cases on these lists has gone from around 30 +/- to around 60 or more. These have not only increased my stress level, but have occasionally forced me to reschedule a medical or dental appointment.

A sometimes overlooked ramification of excessive caseloads, is the harm to defendants. In a Northwestern University Law Review article, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, the authors wrote that

Excessive prosecutorial caseloads result in serious problems throughout the criminal justice system. Most obviously . . . excessive caseloads harm crime victims, who feel ignored by busy prosecutors, and the public at large, which is disserved when overwhelmed prosecutors lack the time and resources to handle