

STATE OF MAINE

KATHRYN SLATTERY
DISTRICT I

JACQUELINE SARTORIS
DISTRICT II

NEIL MCLEAN
DISTRICT III

MAEGHAN MALONEY
DISTRICT IV



R. CHRISTOPHER ALMY
DISTRICT V

NATASHA IRVING
DISTRICT VI

ROBERT GRANGER
DISTRICT VII

TODD R. COLLINS
DISTRICT VIII

OFFICES OF THE DISTRICT ATTORNEYS

March 28, 2023

Dear Chairs Carney and Moonen 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”) and I am submitting this written testimony in support of LD 186—an act to provide funding for prosecutors.

As I have stated previously, every one of the 8 districts in Maine needs a Sexual Assault/DV “SADV” prosecutor. There are 9 drug prosecutors. We should have at least the same number for sexual assault and domestic violence. Two SADV prosecutors were added to the budget to replace the STOP money we are losing. We need 7 more in this category.

Treatment courts and mental health dockets take more time. These courts have approximately 75 cases per prosecutor instead of 500 cases. We have 7 Treatment Courts in the state without a legislatively funded treatment court prosecutor. And Chief Justice Stanfill wants to expand the mental health dockets. Not one mental health docket has a legislatively funded prosecutor. This becomes another court event where no one has the time to dedicate to preparation.

Red flag law. The red flag law passed the legislature with no additional prosecutor positions. No one has the time to develop the expertise in this new civil area of the law.

Backlog. The backlog is stagnant. Justice Stanfill described the problem in her legislative address on Thursday the 23rd of March. She explained the criminal justice system needs additional judges. With each additional judge, we need additional prosecutors in order to keep up with all the extra court events that we will need to cover. Plus she described how every case now has video which increases the time needed. The Chief Justice said, “The backlog in criminal cases is 65 percent higher than it was pre-pandemic. While the backlog of civil violations is down about 35 percent, misdemeanors are up 60 percent and pending felony cases are up about 87 percent.” Remember misdemeanors include domestic violence and OUIs.

In total we need 22 more prosecutors. Realistically, we are asking for less than half: we are asking for 10. Defense attorneys and the judiciary are being given more

resources. We cannot be kept at status quo and professionally handle child sexual assault, domestic violence, strangulation, stalking, child pornography, robbery, OUI, vehicle manslaughter, attempted murder, and so many more crimes that impact public safety. All three legs of the stool have to grow together.

I have included testimony from assistant attorneys generals describing their jobs. Remember, they start at \$29.40 an hour and they are only paid for 40 hours a week even when they work far longer. This puts them at a competitive disadvantage to the defense attorneys.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Maeghan Maloney", with a long, sweeping flourish extending to the right.

Maeghan Maloney

District Attorney

Kennebec and Somerset Counties

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.

To Whom It May Concern:

My name is Christina Reese and I am an Assistant District Attorney in Prosecutorial District 3. As I am writing this, I currently have 729 active cases for which I am responsible. Perhaps that number alone gives an idea of the workload I carry. However, I would like to expand on what this means in practice.

Typically, I am in court three to four days a week. With multiple court lists on any given day, our office is "all-hands-on-deck" to cover the matters being heard. This results in very little office time. Office time that is essential for screening new cases, discussing matters with defense attorneys, speaking with victims and witnesses, following up with law enforcement, all in constant preparation for the next day in court. Unfortunately, I believe the extraordinary number of cases makes this impossible to accomplish without working well outside 40-hours a week, every week.

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 negotiations – as is my ethical obligation as an ADA - 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 require 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. Rather, I work through lunch breaks and return home from work, generally to work more. There is no catching up. 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.

I am cognizant to keep boundaries from work for my own well-being, and keep certain days clear of case screening and court preparation. However, these efforts always results in my simply having to work more hours the next day if I wish to do my job appropriately in each of these 729 cases.

If our office were to hire one additional ADA tomorrow to split my caseload alone, I believe that new ADA and myself would each have full caseloads. Possibly, we would have the time to dedicate ourselves to truly becoming familiar with our cases, and to adequately prepare for hearings, court proceedings, and trials within more typical work hours. Unfortunately, even that one additional ADA would not be enough to solve the overload of criminal matters on the shoulders of the other ADAs in my office.

I long pursued my dream of becoming a prosecutor. I am dedicated to this position, and have no plans to leave. I'll put in the hours and effort required. However, I do hope that progress can be made toward investing in additional ADAs to make the job more manageable – to allow us, as prosecutors, to work toward justice at our full potential instead of merely scraping by hoping that somehow next week might be better.

Thank you for your time in reading this.

Sincerely,

Christina A. Reese, Esq.

William J. Barry
Assistant District Attorney

142 Federal Street
Portland, Maine 04101
(207) 871-8384

MEMORANDUM

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

cases against clearly guilty defendants. Less apparent, but even more pernicious, is the 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>.

Finally, I know a number of prosecutors from different counties who, in the past five years, have left prosecution because of the stress level and the feeling that with their ever increasing caseload, they can no longer do justice.

Thanks you.

**DEPUTY DISTRICT ATTORNEY
JUSTINA A. MCGETTIGAN**

**VICTIM/WITNESS ADVOCATES:
PAMELA A. ROBERTS, Director
DOREEN STAPLES
RACHEL SHERMAN**



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My name is Justina McGettigan and I serve as the deputy district attorney for District 1 (York County). I have worked as an attorney at the district attorney's office since October of 1991. I have worked in both the district and superior court.

Right now, my office in Alfred where our superior court is located but I have worked in every court in York County during my career. My caseload includes all felony and domestic violence cases investigated by the York County Sheriff's Office, as well as any crimes investigated by the York County jail, the fire marshal's office, the warden service, the department of motor vehicles, and the labor department. I also litigate any active probation violation case filed in York County. That caseload is about 530 cases split between probation matters and new cases.

I am in court either in person or virtually every day of the week. I am often double booked for court appearances. On Mondays, Wednesdays and Friday mornings I am reading district court prisoner arrest reports and approving complaints to be filed with the court by a 10:30 deadline while I am simultaneously in court in Alfred handling felony arraignments, dispositional conferences, sentencings, motions to amend bail, and first appearances for probation matters.

On Tuesday mornings, I handle conferences on open probation revocation matters. These conferences are scheduled with the judge, defense counsel, and the probation officer and we discuss how to help the

probationer meet his or her probation obligations. Sometimes the probationer has a new criminal charge, sometimes they are not engaging in their required counseling, or are struggling with mental health issues. We work cooperatively to try to reach a reasonable resolution. Sometimes we can, if not we proceed to a court hearing. Tuesday afternoon I appear for a docket call and every hour cases are scheduled to either plea, or to be set for jury selection. Meanwhile there is a simultaneous mental health docket held one Tuesday a month and scheduled at the same time as the docket call. It is not unusual to be required to be at both court proceedings.

Wednesday afternoon and all day Thursday I am scheduled for conferences with the court and defense counsel to discuss open cases and direct those cases to either a plea, a motion hearing (to address a constitutional challenge raised by defense) or docket call for a potential jury selection. Friday morning the court schedules us for treatment court, pleas, arraignments in the morning and the afternoons are set aside for complicated pleas or motions to suppress.

I also share duties with other ADAs in the office for "on call" weeks. For an "on call" week, the attorney must be available to answer questions from any department that wants advice after hours. That could include reviewing arrest warrants, consulting about court orders, reviewing search warrants and the like. We are not paid overtime for this work; it is just part of our duties as an attorney for the state.

As you can see, I am in court all the time. When do I prepare my cases you might be wondering? Well, that is what nights and weekends are for! I must follow the deadlines provided by the court to screen domestic violence cases on a priority basis, and meet the summons dates for the felony matters.

"Screening cases" has changed dramatically since I started working back in 1991. Then, I would have been provided with a several page police report to read that might include a written witness/victim statement. Now, screening means reading a police report from every officer involved in the case and viewing their body cam footage that can be hours long. This footage includes interviews with witnesses and victims and interviews of the suspect. Viewing this information one must ensure that the video matches the written summaries. I then read the statute to make sure that the conduct alleged includes all elements of the crime so I know the conduct can be proved beyond a reasonable doubt. If it cannot be proven, I need to decide if there is more investigation

needed and what that investigation should entail. If there is enough evidence, I look at it to find out if there is anything about the information provided that is inculpatory or exculpatory concerning the defendant. I consider the defendant's history and the victim's situation when planning what charge to bring and what sentence to recommend to defense and the court. I seek victim input. I also look to see why the crime was committed and can the defendant be rehabilitated with a deferred disposition or a probated sentence.

As part of our case screening process, I attend child interviews conducted by the Child Advocacy Center. The forensic interviewers question alleged child victims about crime involving physical or sexual abuse. I attend those interviews (or view the tape after) as part of the screening process for crimes involving child victims. These interviews often take many hours to complete.

I am also spending time writing sentencing memoranda to present to the court. The court routinely requests in felony cases a memorandum outlining a sentencing recommendation with supporting case law. One recent weekend I found myself writing two such memoranda: one for a manslaughter case in which the Defendant killed a little girl by driving tired, and the second for a robbery case where a 19-year-old man broke into a young man's home and beat him with a baseball bat while two accomplices stood by one armed with an AK-47 and another with a semi-automatic pistol.

The court expects us to "know" our cases. So if, for example, I have six motions to amend bail on domestic violence cases (defendants wanting to change the bail or conditions that have been imposed upon them as a condition of their release) scheduled among my morning cases-- the court will want to know the basic facts of the case, what the victim's position is regarding the motion, the defendant's history, and the ODARA score. There is no one size fits all for this colloquy and the court expects us to differentiate among our cases. These motions will only be some of the cases on my docket. Whatever the case is before the court, the judge expects a prosecutor to provide a fair, cogent and detailed analysis of the case and its procedural posture.

Preparing for trial is another matter entirely. Trials can involve expert testimony that requires extra study in a particular area of science – DNA, for example. Trials take longer than they did when I started. Before the Unified Criminal Docket, a trial in the district court on a misdemeanor would take an hour or two. A similar

case now will often take several days of trial time in the superior court. As part of my trial preparation, I meet with witnesses either in person or by phone. Often fragile victims need the confusing court process explained.

Speaking of victims, I do not just meet with victims when preparing for trial. I am often scheduled for meetings with our domestic violence victims and our felony victims. I update families of manslaughter victims as the cases wend through the court system. I also meet with victims of fraud, robbery, arson, aggravated assault, sexual assault, and burglary. We have a great victim advocate's office but the victims regularly want to hear from the prosecutor assigned to their case.

If I receive a conviction after trial, I can expect an appeal. I then write a brief and argue the case before our Law Court. In addition, I and the other attorneys in the office, handle post-conviction reviews that incarcerated defendants file with the courts seeking to have their cases or sentences revisited.

I also, along with my coworkers, provide training to area police departments on various criminal law topics. Additionally, I meet with SARSSM and Caring Unlimited to address victim safety.

This is not a forty-hour a week job. It is often a fifty or more likely, a sixty-hour a week job depending on whether I have a trial or need to catch up. I always need to catch up. Again, this is very different from the job thirty or even five years ago. When I started, I was in court three and half days a week. Now it is five full days. When I started, I could be a generalist. Now I am a generalist and a specialist. The cases take more time at each stage of the process: arguing bail, arguing motions, discussing plea offers, meeting with the court, going to trial or appearing for a sentencing, arguing an appeal or post-conviction matter. In the not so distant past, there was time to do the work during work hours. There was time to prepare for trials and motions. Now the demands of job are unceasing. 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. Time is always in short supply.

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Paige E. Bebus
Asst. District Attorney

Robert Granger, District Attorney

To whom it may concern,

I have been prosecuting cases in District 7 for approximately two years now. It is a highly rewarding position but demands a great deal of time and focus. As the first point of contact regarding MDEA calls in Hancock County, I am virtually always on call. This is in addition to my general on call weeks where I am the main point of contact for law enforcement in Hancock County. There have been many times where I have to come into the office and prepare for court on very little sleep because of the demands and number of phone calls I need to field. I know I am not the only one in this situation.

In addition to the issues stated above, vacations, weekends, holidays, or snow days are not really days off. I attempted to take a week to visit family out of state and was still answering emails. Even then I came back to work with nearly 400 emails that I needed to sift through as well as an overflowing inbox. I have spent snow days and holidays attempting to catch up and make sure nothing has been overlooked. These are days that I choose to work just keep up even though I am not specifically required to do so.

I recently took over as the representative for the Hancock County Adult Drug Treatment Court Program (ADTC). This requires me to be familiar with multiple cases quickly. It also requires I keep other prosecutors informed when their cases are being discussed for admission. While participating in meetings I often have to quickly draft motions and other paperwork. In addition, there are times when I am on call and have a meetings for ADTC. During this time I have to either

request help from others in the office or will have to attempt to do intake while in the team meetings for ADTC, as I did on 2/24/23.

The demands of the position also mean that I answer time sensitive emails and phone calls even when I take my children to the doctor or when I am trying to be involved in their extracurricular activities. These demands require that I obtain child care for my two children. The costs of insurance, even with the State's contribution, as well as childcare and other life expenses requires that both my husband and I work outside the home. We pay more for child care then we do for our mortgage. Not to diminish the experience or worth of my husband but he makes nearly as much as I do without the education and licensing requirements I have for this position as an ADA. He is a project estimator at a manufacturing company and is being paid within the norms of his position. It is disheartening that the demands both of education, licensing, and mental health of our positions are not equal yet we have equal pay.

I continue to do this job as it is fulfilling and I enjoy it to some extent. However I do not feel I am adequately compensated for the demands on me. Especially considering the possible raise being considered for MCILS attorneys. The simple fact is when they are overwhelmed with clients they can say no to appointments. They are able to manage the demands on their time. This position does not allow it to the same extent. The lack of prosecutors in the state means that every prosecutor has well over 300 cases and more than likely over 500 including both misdemeanor and felony cases. The ABA recommendation is "[t]he prosecutor should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers the interests of justice in fairness, accuracy, or the timely disposition of charges, or has a significant potential to lead to the breach of professional obligations." ABA Standard 3-1.8(a). In some cases, the lack of more prosecutors is because the office does not have a position to hire for, despite having enough cases to warrant another position. Here in Hancock County we have every position filled but there are days we cannot spare a prosecutor due to the demands of the court schedule. On those days there is no prosecutor at his or her desk to handle questions from law enforcement or draft paperwork for court. At this point we have two prosecutors handling Washington County who are overloaded with large caseloads to make up for the vacuum of having one open position. They also have two courts which creates all the more juggling that needs to happen for us to staff them.

The fact is that the most are hyper aware of the need for defense attorney's due to the lack of ones rostered for court appointment. However, the need for prosecutors is less apparent because of the nature of how the offices work. The simple fact is DA's offices across the state are understaffed, underpaid and overwhelmed. Offering more compensation to MCILS attorneys only could make the issue worse as it becomes more beneficial to be a defense attorney on the roster than a prosecutor. I have a very real and most likely shared concern that the already overloaded prosecutors will move to defense work due to the appeal of high pay and more control over their case load. There is a very serious risk of this happening if nothing is done to address these issues.

Sincerely,

Carly M.R. Reger

District 7

Hancock and Washington Counties

My name is Kate Marshall and I am a resident of Cape Neddick in York County. I have been a prosecutor for ten years in two different districts in the State of Maine.

I began my career in early 2013 and since that time there has been a dramatic shift of needs within the criminal justice system. For example, our education and experience in the areas of substance use and mental health have evolved. As a result, the system as a whole has focused on addressing these areas – with limited resources and tools – as part of a criminal case. This requires a lot of collaboration and time. I have increasingly spent more time attempting to accurately understand root causes of underlying criminal behavior in an effort to fashion proposed next steps or outcomes to appropriately address that behavior. This requires communication and information sharing with defense counsel, victims, and sometimes peripheral participants such as case workers, licensed social workers and substance counselors, and family members. This work does a lot of good but it takes a lot of time.

In general, I feel overwhelmed on a daily basis. It is becoming increasingly difficult to *competently* do my job. I no longer have the capacity to be as thoughtful as I want to be and that presents difficulties for me professionally and personally. As lawyers we deal in a world of nuances. We issue spot, we problem solve, and that takes time and mental energy. We're relied upon to serve as a source of guidance for law enforcement and each other on a daily basis. To do our jobs effectively, we need time to thoughtfully engage with our own work, our law enforcement partners, victims, the court, our colleagues representing defendants, and each other. I speak for myself, but my prosecutorial colleagues may agree, that the lack of sustainability will get to a point that we will decide to move on. I will move on to protect myself from the inevitable mistakes that will be caused by incapacity and to offer myself a new opportunity to engage thoughtfully in my work. If others similarly follow for their own reasons, the State will lose more years of institutional knowledge and experience.

STATE OF MAINE

Neil E. McLean Jr
District Attorney

Kate Bozeman
Deputy District Attorney



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Nathan R. Walsh
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February 26, 2023

To Whom It May Concern,

My name is Katherine Hudson-MacRae. I have the honor of being an Assistant District Attorney in Androscoggin County, where I have worked since the Spring of 2019. Prior to that, I was an Assistant District Attorney in Wiscasset. In my current position, I am on a team of four prosecutors exclusively handling domestic violence and sexual assault cases. I am currently handling around 150 active felony and misdemeanor cases.

This job is immensely rewarding; every single day I know that I strive to do justice. I work to ensure that victims of domestic violence and sexual assault are not forgotten. I work to protect defendants' constitutional rights while ensuring the public and victims' rights to safety with equal measure.

At a time where, appropriately so, the focus is on the crumbling court-appointed attorney system, it is hard to imagine asking this Legislature and our Governor for help as a prosecutor—but I ask nevertheless. More often than not, the person in the courtroom trying to balance the seemingly impossible task of ensuring that victims are heard, defendants' constitutional rights are preserved, and that justice is done, is the prosecutor. And to prosecute the right way—the just way—in the current system, with its current resources, is burning out prosecutors.

I am, simply put, exhausted. Since August of 2021, I have had 13 trials. On February 22nd, at 8:45pm, I finished a two-day trial involving 32 counts, including Burglary (Class B), Domestic Violence Stalking (Class D), and 25 counts of Violation of a Protection Order (Class D). The same day that that trial began, I had a brief due with the Law Court for an appeal in a felony Domestic Violence Stalking and

Violation of Protection Order case. I am now preparing for a Domestic Violence Assault (Class D) trial scheduled to begin tomorrow, February 27th. As these trials happen, the work does not stop. My colleagues are left to cover my other cases—set for dispositional conferences, in-custody arraignments and initial appearances, victim meetings, and miscellaneous bail and motion hearings. This is my normal work schedule.

I have spent almost five years as a prosecutor trying to do the impossible: trying to do justice for the people of the State of Maine, for victims and defendants, while also protecting my personal life and physical and mental health. I have watched as prosecutors that I admire leave because of the stress of the crushing caseloads. This job quite literally keeps me up at night. It consumes my weekends and takes me away from precious time with my loved ones.

Three times a week, I make charging decisions about people who are in-custody. I prepare for bail or motion hearings that occur multiple times a month and sometimes in two different courthouses on the same day. I meet with victims. I prepare for week-long dispositional conferences, a time to attempt to settle cases, which require a thorough understanding of the evidence, history, and strengths, and weaknesses of cases. In what I consider my “spare work time,” I have also worked to reform the written jury questionnaires to ensure that they account for racial and gender bias.

While all of this happens, I also prepare for trial. Because the State is, appropriately, held to the highest burden of proof, and because the State gets one chance to try a case the right way, the just way, it is the most stressful part of my job. Each month, in Androscoggin County, the court produces a list of about 20 cases that may go forward to trial that month. On average, I am the prosecutor for approximately eight cases on each of these trial lists. These cases include, for instance, allegations of Unlawful Sexual Touching, Domestic Violence Assault, and Domestic Violence Aggravated Assault.

I am responsible for preparing each case on the trial list as if it will go to trial. For every case on the trial list, subpoenas are sent to every victim and civilian witness and each law enforcement officer involved is notified. The trials that will actually move forward each month are confirmed at jury selection, typically the Thursday before trials begin the following Monday. At some point, amongst all of this, trial preparation actually begins, which requires meeting with all witnesses and victims, preparing exhibits, and more.

While the stress of managing the volume of cases on each trial list can be overwhelming for prosecutors, cases being continued month after month creates chaos for victims. Victims are asked to mentally prepare to relive what is often the

worst experience of their life many times over without any clear understanding whether the trial will take place that month.

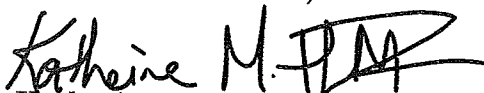
Asking defense attorneys to carry excessive caseloads violates their ethical obligations. Asking prosecutors to do the same violates their equally important ethical *and* constitutional obligations. A prosecutor must have adequate time to prepare. How else can they review all of the discovery? How else can they determine whether a traffic stop was constitutional or *Miranda* warnings were appropriately provided? If they should even charge the case? Or prepare a victim or witness to testify?

Often, the response that I hear to concerns about overworked prosecutors is that prosecutors should “charge fewer cases.” How do you tell a victim of domestic violence that—although I believe we could prove the case at trial, I believe their partner assaulted them—I have too many cases? The simple answer is that I don’t. I charge the case. This means that I come in early, stay late, work weekends, and take few vacations where, even then, I still work.

Providing more support for prosecutors throughout the State ensures that the other equally important components of our justice system continue to function. Our system of justice depends on the balancing of interests—criminal defendants, public safety, and victims of crimes. Prosecutors form an essential part of that balance by ensuring that people who commit crimes are held accountable.

Please consider providing more prosecutorial resources throughout the State.

With sincere thanks,

A handwritten signature in black ink that reads "Katherine M. Hudson-MacRae". The signature is stylized and written in a cursive-like font.

Katherine M. Hudson-MacRae, Esq.
Assistant District Attorney

My name is Molly Butler Bailey, I have been a prosecutor for three years (in two separate districts). Prior to that I was a defense attorney for 14 years. There have been two major changes over the course of my career that I believe are currently impacting prosecutor's ability to do their jobs fully and ethically.

Due to the increase in body camera and cruiser footage (both good things!) the volume of discovery that needs to be reviewed has grown exponentially. Even simple cases come with hours of footage any of which could include exculpatory evidence.

The second big change and that is that due to the COVID backlog, the amount of time that the Court expects each prosecutor to be in Court has expanded drastically.

My caseload is around 300 cases - I believe this to be pretty normal for most prosecutors. Between all of the additional time in court and the expanded discovery, it is nearly impossible to keep a caseload of that magnitude and also be thorough - meaning, watch all the footage, proactively look for Brady material, follow up with necessary witnesses and victims, discuss cases with law enforcement and defense attorneys and most importantly, pursue defendant specific rehabilitative solutions to cases.

Additionally, working in criminal law involves a lot of vicarious trauma. I know a lot of my current and former colleagues struggle mightily with having time for the self care that keeps people from burning out. It can be very hard in this position to strike a balance between work life and home life - something that makes these jobs harder to fill with quality candidates.

Representing the State of Maine is an honor and doing so ethically and in a way that promotes Justice is essential. It's vitally important that we attract good people and that we make sure that the people doing this work have the time to so in a manner that upholds the integrity of our State.

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Sincerely,

Molly Butler Bailey
Assistant District Attorney
Cumberland County District Attorney's Office
142 Federal Street
Portland, Maine 04101
207-871-8384

My name is Michelle McCulloch, I am from Sebago, Maine and I have been a Juvenile Prosecutor in Cumberland County for over twenty years. I love my job and am devoted the work that I do here, as I believe is the case for all of my fellow prosecutors in the State of Maine. On a personal note, I am very recently widowed and have a fifteen year old son, two rambunctious dogs, and also care for my 90 year old grandmother in my home. When I first began this work, Cumberland County had four Assistant District Attorneys devoted to handling juvenile matters. Many years ago, due to the loss of a grant-funded position within our office, we went from four to three ADAs in our unit. Just this past year, due to the loss of another grant-funded position within our office, we went from three to just two ADAs handling the Juvenile caseload in Cumberland County. I have seen my colleagues in the UCD struggling for the past few years to stay afloat with a backlog of cases, constant lists, and increasing discovery demands. We are now experiencing that same level of stress within our Juvenile Unit. Rather than being able to devote the time and resources to each individual case that we would like, we are forced to triage whatever surfaces as the most imminent crisis of the day.

At the same time that our prosecutorial resources have dwindled, we have seen increasingly concerning behaviors and issues arise in the juvenile population. Where we were once concerned with a youth shooting at a car with a BB gun on the highway, we are now concerned with teenagers having real guns and being involved in drug trafficking. Where we were once concerned with girls being "out of control" at home, we are now concerned with increasingly young girls becoming involved in human trafficking. The availability of resources within our system for juveniles has deteriorated to the extent that there are waiting lists for almost every resource to address the significant mental health needs of our juvenile population. In short, while the resources have decreased, the needs of so very many have increased. All of us who work in the juvenile system have experienced the reality of system dysfunction for years and, although my perspective is focused on juveniles, I know that the same realities exist for adults. Having fewer prosecutors, especially within the juvenile realm, who are able to meet the demands of increased workloads and more significant issues will continue to compound the inability of our system to effectively manage these cases and help some of the most vulnerable members of our society – whether they be victims, juveniles or adult defendants. While I know that myself and my fellow prosecutors will continue to do what we can with the resources we have, because we care so very much about the work that we do, our ability to devote ourselves to not just getting the cases charged and processed, but ensuring truly just resolutions would be significantly benefitted by funding for additional prosecutors throughout the State.