

MAINE STATE LEGISLATURE

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MEMORANDUM

TO: Members, Joint Standing Committee on Appropriations and Financial Affairs
Members, Joint Standing Committee on the Judiciary

FROM: Janet T. Mills, Attorney General
Stephanie Anderson, President Maine Prosecutors Association

RE: Policy on Allocation of Assistant District Attorney positions

DATE: September 14, 2015

Section FFFF-1 of the Budget, c. 267, requires the Attorney General and the 8 District Attorneys to jointly submit a written report to the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on the Judiciary containing a policy on the distribution of assistant district attorney positions and a description of the process used to develop the policy.

The policy on the distribution of Assistant District Attorney positions across the state is as follows:

Requests for new positions are made through the Attorney General by the President of the Maine Prosecutors Association on behalf of the District Attorneys, and the allocation of the positions shall be described in the budget request documents.

If fewer than the number of requested positions are authorized and funded, the District Attorneys, in concert with one another shall determine by consensus the distribution of the new Assistant District Attorney positions.

If the District Attorneys are unable to reach a consensus on one or more positions, the Attorney General, after consultation with the District Attorneys, will make the final decision.

The determination of positions needed and the allocation of those positions is governed by the following principles:

The first priority is to achieve average caseload numbers that are within recommended national and ABA standards and ethical rules and obligations.

Average prosecutorial district caseloads are calculated by dividing cases filed (according to court statistics) divided by all prosecutor personnel, including District Attorneys, Deputy District Attorneys, and Assistant District Attorneys, regardless of special assignments or funding sources.

Average caseloads, however, tell only part of the story. For example, DAs' offices screen out 20% of the cases submitted for review, and those cases not approved for prosecution also constitute part of the workload. But since "average caseload" is the only objective measure available, and since it is likely that the District Attorneys are all proportionally affected by work that falls outside of filed cases, the District Attorneys agree that this is a fair, albeit imperfect, measure.

We also recognize that landscape has changed a great deal since 1968 when the recommendation for maximum caseloads was first pronounced by the American Bar Association. (150 Felony or 200 Juvenile or 400 misdemeanors or 25 Appeals) and since 1973, when they were confirmed by the National Advisory Commission established by the Department of Justice. Academicians and social scientists suggest that these numbers should be adjusted downward because the complexity of the cases and the obligations of the prosecutor have grown exponentially. However, barring any other objective measures, the District Attorneys agree that caseload figures will be a primary consideration for the allocation of new positions.