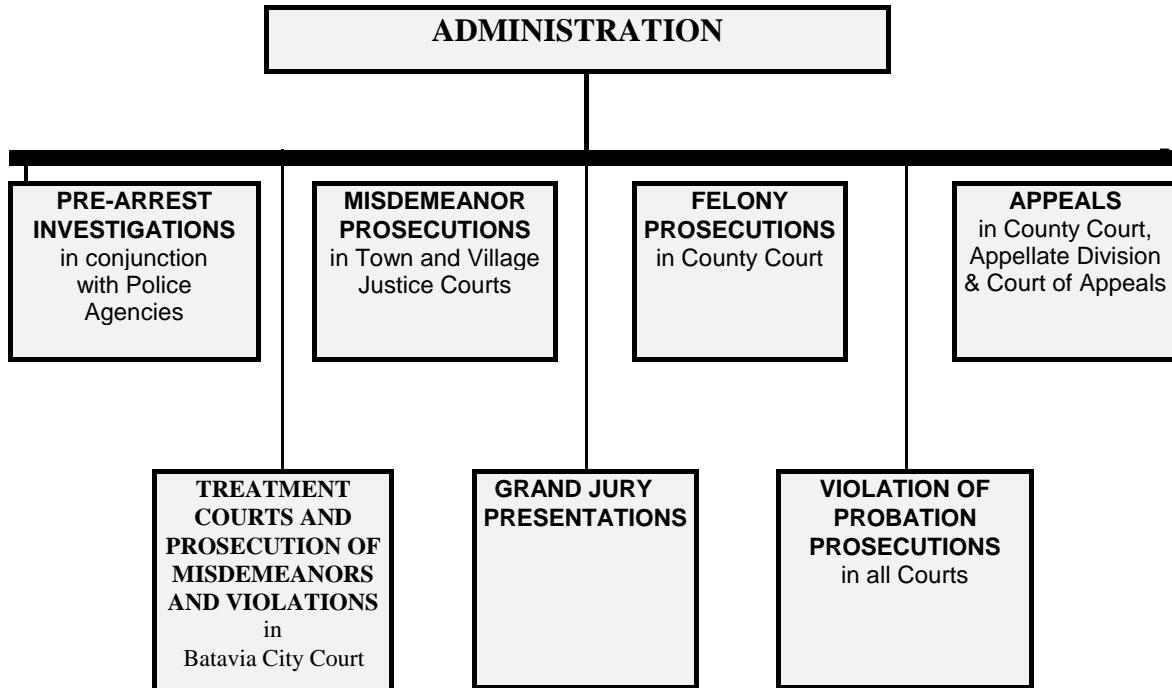


# GENESEE COUNTY DISTRICT ATTORNEY'S OFFICE

## ORGANIZATIONAL CHART



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## DEPARTMENT DESCRIPTION

The District Attorney's Office prosecutes all criminal charges brought to this office by various law enforcement agencies in Genesee County. We assist the police agencies in pre-arrest investigations and applications for Search Warrants and in conjunction with them we prepare applications for eavesdropping warrants or pen register orders; we do legal research; we consult with the police agencies and courts regarding bail; we meet with victims and witnesses and prepare felony cases for Preliminary Hearings and presentation to the Grand Jury. After a case had been indicted by the Grand Jury, the Prosecuting Attorney is present at all court appearances scheduled for the case. We draft all legal documents, prepare for and participate in hearings, negotiate pleas, prepare for trials, select juries and prosecute cases through the verdict and sentencing. At sentencing we must address the issue of restitution for losses sustained by the victims. Proof of losses must be obtained by the District Attorney's office and, if a resolution can not be agreed upon, a hearing is conducted to resolve the matter. After a defendant has been sentenced, the D. A.'s office prepares appeal briefs and argues appeals in the Genesee County Court, the New York State Appellate Division and the New York State Court of

Appeals. We also defend all post-judgment applications to vacate criminal convictions on the grounds of newly discovered evidence (or other grounds).

The District Attorney's office prosecutes all misdemeanor cases in every Town, Village and City Court in the County. Pursuant to a contract between Genesee County and the City of Batavia, we also prosecute Vehicle and Traffic Law violations and Penal Law violations (non-criminal offenses) in the Batavia City Court and provide additional services to this Court and the Batavia Police Department which are not available to the other Local Criminal Courts and Police agencies in the County. Misdemeanor cases are handled in much the same way as felony cases, except that they do not go through the Preliminary Hearing and Grand Jury processes.

The District Attorney's Office also prosecutes all Violations of Probation at both the County and City/Town/Village levels, as referred to the office by the Genesee County Probation Department. Furthermore, our Office represents the interests of the People of the State of New York in the County's Drug, DWI, Veterans and Mental Health Treatment Courts, held in the Batavia City Court and the IDV (Integrated Domestic Violence) Court held in the Genesee County Supreme Court.

## DEPARTMENT: DISTRICT ATTORNEY

### STRATEGIC FRAMEWORK

#### Mission

The District Attorney is elected by the voters of Genesee County and is responsible to them for carrying out the prosecution of criminal cases referred to the District Attorney's Office by the various police agencies within the County, including the New York State Police, the Genesee County Sheriff's Office, the Batavia Police Department, the LeRoy Police Department, the Corfu Police Department and the New York State Park Police.

#### Key 2016 Accomplishments

##### **COMMUNITY EDUCATION, PUBLIC OUTREACH AND ADVISORY POSITIONS:**

Recognizing the need to bring about positive change in the field of criminal justice and educate members of the community with respect to our legal system, District Attorney Lawrence Friedman:

1. Participated in the 8<sup>th</sup> Annual Bivona Child Abuse Summit.
2. Appeared on the WBTA "County Spotlight" radio program.
3. Hosted two law school students and one college student as interns in our office.
4. Served on the STOP-DWI Advisory Board, the Justice for Children Team, the Genesee Community College Criminal Justice Advisory Committee, the New York State District Attorney's Association Executive Committee and the Crime Victims Rights Week planning committee and worked on the planning and presentation of the annual Criminal Justice Day program sponsored by the Mental Health Association in Genesee County and the annual Law Day Observance and Criminal Justice Awards Dinner.
5. Assistant District Attorney William G. Zickl continues to act as a liaison to the Genesee County Sheriff's Office on use of force issues and met members of the Genesee County Sheriff's Office and other law enforcement agencies (New York State Police, New York State En Con, Batavia City Police) several times in the past year to discuss use of force issues.
6. Three of the Assistant District Attorneys in our office volunteered their time working with the New York State Bar Association High School Mock Trial Competition. Assistant District Attorneys Robert R. Zickl and Kevin

T. Finnell served as the Attorney Advisors for the Notre Dame High School Mock Trial Team and Assistant District Attorney William G. Zickl serves as an Attorney Advisor for Batavia High School.

7. One of the Assistant District Attorneys, Melissa Cianfrini, is continuing to chair the Young Victims Committee, a multi-county committee, which was formed to address the challenges and needs of prosecuting offenders of young victims. This committee's membership consisted of individuals with diverse backgrounds to address the needs in these special prosecutions and included members from law enforcement, DSS, CPS, JFCAC, Mental Health Care Providers, County Attorney's Offices, and District Attorney's Offices from the GLOW region (Genesee, Livingston, Orleans, and Wyoming Counties). This committee recently finalized a Recantation Policy to assist law enforcement, DSS/CPS, District Attorney's Offices and County Attorney's Offices in identifying and dealing with accurate and inaccurate recantations of child abuse with child victims. This policy will greatly assist various agencies in the GLOW region with addressing child recantation cases. The committee is currently designing a database to track sexual offenses involving young victims. The database will assist law enforcement and CPS with investigation of cases.
8. Assistant District Attorney Melissa Cianfrini and Genesee County Sheriff's Office Chief Deputy Jerry Brewster have formed a multi-agency Cold Case Committee ("CCC"), which is comprised of members from the Genesee County Sheriff's Office, including Youth Officer Tim Wescott and the City of Batavia Police Department. This committee will review and re-open investigations into unsolved cases in Genesee County where investigative leads have been previously exhausted. The CCC is currently establishing protocols for review and inclusion of cases into the CCC and selecting cases for re-investigation.
9. Assistant District Attorney Melissa Cianfrini is currently serving as a member of a JFCAC subcommittee, the JFCAC Guideline Group, which is tasked with reviewing and updating the JFCAC's written guidelines and policies regarding the process for the multi-disciplinary team. It is comprised of members from law enforcement, DSS/CPS, County Attorney's Office, JFCAC, Mental Health Victim Advocacy and the District Attorney's Office.
10. Our office has experienced an exponential increase in both misdemeanor and felony level charges regarding transporting unstamped (that is, untaxed) cigarettes through the Town of Pembroke. These cases present significant challenges in addition to the increased caseload with regard to suppression issues and the large amounts of restitution (the amount of the tax avoided) to be collected. They also present an opportunity to seek forfeiture of the vehicles used in transporting the contraband which represents a significant benefit to the County, and specifically the Sheriff's Department. Four

vehicles, deemed suitable for forfeiture based on analysis of lien amount to value and mechanical condition, have been turned over to the Sheriff's Department since the beginning of 2015. Involvement in these forfeiture issues has resulted in significant additional time for this Office in research, negotiation and attendant paperwork.

## **MAJOR APPELLATE CASES**

### People v. Scott Doll:

Assistant District Attorney William Zickl has coordinated with the Monroe County Crime Lab and the Buffalo Legal Aid Bureau (who now represents the Defendant) since April of 2015 to facilitate Judge Noonan's Order for additional DNA testing of the victim's clothes. Those tests revealed no complete DNA profile other than the victim's. A further Motion on behalf of the Defendant was filed in the Genesee County Court which requested 'enforcement' of Judge Noonan's Order and even more DNA testing. ADA Zickl filed an Affirmation opposing the Defendant's Motion and the matter was argued before Judge Pietruszka on January 25, 2016. On March 22, 2016, Judge Pietruszka denied the Defendant's Motion for 'enforcement' of Judge Noonan's original Order and also denied the Defendant's Motion for further DNA testing. The Defendant still has the option of filing a further CPL 440 motion based upon the results of the DNA tests conducted on the victim's clothing. The Defendant continues to serve a 15 year to life sentence in the Department of Corrections and Community Supervision.

### People v. Jonathan Connolly:

On March 31, 2016, ADA William Zickl argued the case of People v Jonathan Connolly in the New York State Court of Appeals. ADA Zickl urged the panel of Judges to find that the procedure utilized by the Genesee County Court to establish the Defendant's restitution obligation was proper and fair to the Defendant. On May 10, 2016, the Court of Appeals issued a decision which denied the Defendant's request for a new restitution hearing.

### People v. Earl Sprague:

A 37 page Brief was filed by Buffalo Legal Aid challenging the Defendant's multiple convictions for molesting his two daughters. ADA's William Zickl and Melissa Cianfrini submitted a 23 page Brief in response, arguing that the Defendant had received a fair trial and that the convictions should be affirmed. The Appellate Division, 4th Department remanded one issue back to the Genesee County Court, and otherwise reserved decision [argued before Judge Pietruszka]. On August 19, 2016, Judge Pietruszka issued a decision denying the Defendant's Motion for a trial order of dismissal. The Appellate Division, 4<sup>th</sup> Department will next issue a decision on the remaining issues before it. The Defendant continues to serve a 21 year determinate sentence in the Department of Corrections and Community Supervision.

## People v. Dashawn Butler:

The Defendant, by his attorney from Buffalo Legal Aid, filed a 69 page Brief challenging his conviction for Criminal Use of a Weapon in the Second Degree, Attempted Assault in the First Degree and Criminal Possession of a Weapon in the Fourth Degree. ADA William Zickl filed an 18 page Brief in response, arguing among other issues, that the use of the Grand Jury testimony of a witness that the defendant had rendered unavailable at trial was proper. The case has yet to be scheduled for argument before the Appellate Division, 4th Department. The Defendant continues to serve an 8 year determinate period of incarceration in the Department of Corrections and Community Supervision.

## **Key 2017 Goals**

### **First Assistant District Attorney position**

Going back for several decades, this County continuously had a First Assistant District Attorney. When Ronald L. Fancher was District Attorney, Robert C. Noonan held that position before he became District Attorney and then Lawrence Friedman held that position before he became District Attorney, whereupon he promoted David E. Gann to that position.

When David E. Gann decided to retire early in 2010, he was earning \$93,000 per year. He was asked to return as a part-time Senior Assistant District Attorney and agreed to do so for a salary of \$30,000 per year, the maximum amount that he could earn without having his pension affected. We used the remaining money from his previous salary to hire Melissa L. Cianfrini as a new Assistant District Attorney.

We were told that we needed to make significant cuts in our budget request for 2011. Therefore, we cut everything we could from our contractual services lines, leaving ourselves with a "bare bones budget" for that year.

When we were asked to do the same thing for 2012, there was nothing left to cut but our payroll. Senior Assistant District Attorney David Gann then indicated that he was not going to let anyone else in the office lose their job, so he decided to retire once again. As a result, we eliminated his \$30,000 salary in order to satisfy our contribution to the County's need for 2012 budget cuts.

In other words, the County itself never eliminated the First Assistant District Attorney position. The loss of that position was simply the result of a cost cutting measure by our office, one that we envisioned as being temporary.

During the time that we have gone without having a First Assistant position in our

Office, the County's other two legal departments, the Public Defender's Office and the County Attorney's Office, have respectively gained a Senior Assistant and First Assistant position.

Even more startling is the fact that Genesee County now has the dubious distinction of being one of only two counties in New York State to not have a First Assistant, Chief Assistant or equivalent position. The other is Montgomery County.

Of New York's 62 counties, 18 have smaller populations than ours. Some of these smaller counties have more Assistant D.A.s than we do and some have Investigators employed by their offices, positions that help to alleviate the work load of the prosecutors.

When former First Assistant DA David E. Gann worked with us, he handled asset forfeitures (which serve to bring revenue to the County), computer crimes and child pornography cases. Those specialties have yet to be added to anyone else's workload. With respect to asset forfeitures and the addition of this position, this Office can increase its efforts in the area of Asset Forfeitures. Asset forfeiture is an important tool in law enforcement for several reasons. First, criminals should not benefit from their crimes. As such, any proceeds (such as drug money) or instrumentalities (such as vehicles, cellular phones, etc.) used in the commission of crimes should be subject to forfeiture. Second, we, as part of law enforcement, should undertake any measures at our disposal, which decrease a criminal's ability to engage in criminal conduct. Seizure of instrumentalities increases public safety, removes the tools of the trade from the criminal, and deters future illegal conduct. Last, the distribution of certain types of forfeited assets can be distributed by statute to the District Attorney (27%), law enforcement agencies (41%) and NYS OASAS (32%). These assets can be taken from criminals and converted into proceeds used by law enforcement for training, equipment, and community outreach efforts. Having a First ADA again would allow us to task someone with these additional responsibilities and to compensate that person for the additional time that such will entail.

During the time that this office had a First Assistant DA, when defense attorneys requested exceptions to our plea policies or otherwise asked for a review of plea offers made by our A.D.A.'s (something that occurs on a regular basis), if the D.A. had a conflict regarding the case, the First ADA resolved such matters. Now, there is nobody in our office who is in a position to do so.

The lack of a First Assistant means that, if the District Attorney is away, there is no attorney serving in a supervisory position in our office. It means that no other attorney in our office has any training or experience with respect to the myriad of administrative responsibilities that go with the position of being a department head including budgetary and human resource matters. It means that, as things stand, no one will be prepared to take over the responsibilities of running the office when the current District Attorney retires or if he became incapacitated or otherwise unable to serve.

We are asking the County to add the aforementioned \$30,000 back into our budget for 2017, so that when we add said amount back to the salary for the position that was "spun off" in 2010, we will once again be able to have a First Assistant District Attorney.

- a. Trend Indicators: Our caseloads vary on a yearly basis.
- b. Programs That Have Been Added or Deleted: No Change.
- c. Number of Staff – Anticipated Changes: This office consists of the District Attorney, four Assistant District Attorneys and four clerical staff members. Except as indicated above, we do not expect any changes in 2017.

### **BUDGET SUMMARY**

<b><u>Appropriation By Object</u></b>	<b><u>Adopted 2015</u></b>	<b><u>Actual 2015</u></b>	<b><u>Adopted 2016</u></b>	<b><u>Proposed 2016</u></b>	<b><u>Adopted 2017</u></b>
Salary/Fringe	833,731	839,134	850,003	723,485	865,127
Equipment	3,000	-0-	-0-	16,100	953.00
Contractual	<u>53,271</u>	<u>52,078</u>	<u>55,252</u>	<u>38,353</u>	<u>58,381</u>
Total Appropriation	890,002	891,212	905,255	777,938	924.461
Revenue	<u>225,996</u>	<u>262,860</u>	<u>221,805</u>	<u>107,975</u>	<u>222,563</u>
Net County Support	664,006	628,352	683,450	669,963	701.898
FTE's	8.75	8.75	8.75	8.75	8.75

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### **BUDGET HIGHLIGHTS**

#### **Salary/Fringe:**

Listed below are the salaries that are covered in part or completely by the Revenues generated by this office.

Stop DWI (\$52,425.00): This amount represents funding that is applied toward the salaries all of Assistant District Attorneys (\$41,200.00), as well as Court Reporting Services (\$11,000.00) and one publication (\$225.00). Funding is applied for annually.

City Court Prosecutorial Services (\$58,900.00): A portion of the salaries of Robert R. Zickl, William G. Zickl and Rhonda Natalizia is paid by the City of Batavia for Prosecutorial Services.

Aid to Prosecution (\$29,200.00): A portion of the salaries of Robert R. Zickl, William G. Zickl, Lacie M. Snell and Kathleen Schrider salaries and



fringe benefits are paid from this grant. Funding is applied for annually.

DA Salary Reimbursement (\$72,189.00): Lawrence Friedman.

DSS (\$8125.00): Melissa L. Cianfrini

**Equipment:** No new equipment is being requested.

**Contractual:** Other than the proposed increases from Information Technology and the County contract with Westlaw, we have increased three line items. The line item for paper was increased by \$300.00. This is due to the increase in paperwork being generated from an increase in the number of arrests. The line item for postage was also increased by \$500.00. This is due to meeting the legal requirements of CPL Section 30.30 which require us to declare readiness for trial within a specified time frame. We accomplish this by sending letters to defendants and defense counsel, if known. The number of letters has increased as the number of cases increases. The five year trend shows we have exceeded our allotment every year. The last increase (\$200.00) is for the personnel mileage line item. As the number of cases increases, so do appearances on those cases. This requires an increase in driving by our attorneys. The District Attorney and the Assistant District Attorneys also travel for trainings to meet their CLE requirements. Where possible, the attorneys carpool to trainings to keep the mileage expenses reasonable. These increases have been offset by a decrease in the line item for Program Expense, resulting in an overall decrease in the amount requested by our Office for Contractual Services (not counting the IT and Westlaw increases, which were not controlled by us).

<b><u>INDICATORS (Cases Opened)</u></b>	<b><u>Actual 2014</u></b>	<b><u>Actual 2015</u></b>	<b><u>Current 2016</u></b>
New Felonies (including felony Violations of Probation)	468	497	274
Misdemeanors, Violations, Infractions and misdemeanor Violations of Probation	1866	1897	693
Indictments	67	80	56
Superior Court Informations	125	126	83