

Coronavirus crisis poses obstacles for Massachusetts public defenders as they represent their clients remotely

By Jackson Cote *Posted May 15, 2020* **MassLive.com**

Kate Malone was on the phone when she began to choke up. The person on the other end of the line was a client who had been bounced around the system, and who was going to spend a couple more weeks in jail than he needed to, and there was nothing she could do. The courts were closing that Friday in April. Legally, she was trapped. Malone's client had been shuffled between courts shortly after in-person legal proceedings were being halted due to the coronavirus pandemic. She is one of the many defense attorneys whose work has been completely altered by the public health crisis. "Every day I'm filing motions, I'm calling people, I'm doing everything I can, and I just feel so helpless," she said.

Over the course of two months, criminal legal proceedings have moved from the courtroom to the phone - and Malone's typical day of representing defendants has changed regularly along the way. The attorney, who became a public defender just last year, said that she and other lawyers are constantly tuning into webinars about how to adapt their advocacy efforts to the COVID-19 outbreak.

The pandemic has posed a slew of challenges for defense attorneys who are finding themselves encountering new problems every week. Concerns have arisen about how to effectively communicate with clients in jail, how to bring translators onto telephonic court proceedings to aid defendants who cannot speak English and how to get sheriffs' offices to set up video conferencing between the incarcerated and their lawyers. Courthouses in Springfield County have also had to temporarily shut down multiple times after staff members tested positive for the virus and many private practices have been forced to grind to a halt because of the health crisis. Throughout it all, public defenders like Malone have had to adapt to the ever-evolving situation.

Under normal circumstances, public defenders' work lives are unpredictable. They have to be ready for their day to change at a "drop of a hat," Malone said. But with the current public health crisis, work conditions have grown strange and unprecedented. "I miss the courtrooms," she said. "I just can't wait to stand up in a courtroom again."

With attorneys working from home and public defender offices remaining largely closed, facilitating communication between county sheriffs so defense attorneys can effectively and privately talk with their clients has proven difficult. Law enforcement officials have an ethical responsibility to ensure communications are confidential, but that is sometimes hard to guarantee.

Public defenders are also concerned about how effectively they can represent individuals over the phone. Under normal circumstances, family members can come to court to provide support. Defense attorneys will then be able to meet their client's family and potentially talk with them to get background information and improve their argument. Having people who support a defendant may bolster a person's case before a judge as well, Malone said. "If we're in court and this person has their mom, their dad, their sister, their girlfriend, other family members showing support, that's really compelling to argue to a judge," she said. "Obviously, with this transition to how hearings are happening, we don't have that contact necessarily with the people who support our clients." Malone is hoping that court hearings will eventually transition to Zoom and that families will then be able to at least observe hearings to show their concern. While she does not like video conferencing "at all," she said "It's better than nothing and probably better than a telephone hearing at this point, but it should be temporary."

As the COVID-19 outbreak continues, Malone is pointing out an array of rights that are being thrown into question. The right to be present in court, the right to confront and cross-examine one's witnesses, the right to have a jury trial and the right to present one's own witnesses: All are being impacted by the public health crisis, "These are the fundamental rights." Malone said "Defense attorney's work is important now more than ever "