

 Bruins 3, Penguins 4, Final

Stopping injustice or putting the public at risk? Suffolk DA Rachael Rollins's tactics spur pushback

By [Andrea Estes](#) and [Shelley Murphy](#) Globe Staff, July 6, 2019, 5:57 p.m.



Suffolk District Attorney Rachael Rollins said, "I represent not just the victim, but the defendant and the community." CRAIG F. WALKER/GLOBE STAFF/FILE/GLOBE STAFF

Rachael Rollins came into office promising to shake things up at the Suffolk district attorney's office.

Armed with a list of 15 “low-level” nonviolent offenses that her office would no longer prosecute, Rollins said she planned to help stop a “freight train moving toward mass incarceration of poor people and black and brown people.”

Now, less than six months into her tenure as the first African-American woman to serve as Suffolk County's top prosecutor, Rollins is making good on her promise, but getting strong pushback as her office increasingly dismisses charges at the very beginning of a case, sparing defendants a criminal record.

Some fellow prosecutors as well as police officials fear that Rollins is compromising public safety by letting criminals off the hook, while some judges have scolded her assistants in open court for letting repeat offenders go and sometimes not requesting bail in serious cases.

But Rollins's new policy has supporters as well, including some who are pushing Rollins to go even further in dismissing cases and setting lower bail.

Rollins, for her part, said that she's simply taking a more holistic approach to law enforcement than her predecessors.

“I represent not just the victim, but the defendant and the community,” Rollins said during a lengthy sit-down interview about the changes she has pushed. She said her focus is not only on what the victim wants, but on who the defendant is and whether he or she may need help more than prosecution.

A Globe review of Rollins's record reveals that, not only is the Suffolk DA dropping more cases than before, but some of the cases don't seem “low-level” at all, involving serious bodily injury, major thefts, and career criminals.

In one case that Rollins inherited from her predecessor, a lawyer was attacked while walking her dog in Charlestown, suffering a traumatic brain injury that she is still recovering from more than two years later. Yet, Rollins's prosecutors

cut a deal with her attacker that allowed him to plead to a lesser charge and avoid prison time.

In April, a state trooper found bags of heroin, an assortment of pills, and a young child in the back seat when he stopped a married couple driving in the breakdown lane in Brighton. A prosecutor dropped all charges, even though the man had been convicted of selling heroin and methamphetamine last year.

That same month, a prosecutor surprised a judge twice when she said she hoped to resolve criminal charges against defendants with restitution rather than prosecution. One defendant was allegedly caught breaking into a Roxbury building while carrying a crowbar and 39 stolen credit and debit cards; the other was a repeat offender accused of stealing two guitars worth \$8,000.

'Low-level' crimes

DA Rachael Rollins' decision not to prosecute certain offenses has stirred controversy. Here are some of the cases at issue:

Aaron Souza, 41

- Accused of punching his wife in the face on March 3.
- Prosecutors' action: A prosecutor told the judge, "I

Rusbel Ruiz-Santana, 24

- Accused of assaulting a lawyer as she walked her

Arthur Winn, 79

- Accused of witness intimidation. A nurse alleged that Winn tried to strangle her and that when

Marquis Davis, 26

- While an inmate in the Nashua Street jail, he was arrested Feb.12 for allegedly having 33

K
M
•

asked my supervisor for permission to set bail and that was denied." The judge set bail on her own, at \$1,000.

Stopping injustice or putting the public at risk? Suffolk DA Rachael Rollins's tactics spur pushback - The Boston Globe

dog in Charlestown, fracturing her skull and causing permanent injuries.

- Prosecutors' action: Allowed Ruiz-Santana to plead guilty to a reduced misdemeanor charge of assault and receive a suspended sentence. Rollins said he had mental health issues and no prior criminal record.

she reported it, he retaliated by filing a complaint against her with the board that licenses nurses.

- Prosecutors' action: Dismissed the witness intimidation case without first talking to the victim. They wrote in a court filing that pursuing the case would have a "chilling effect" on a citizen's right to complain to the nursing board or other oversight agencies.

individually wrapped chunks of what investigators believe was crack in his sock.

- Prosecutors' action: The prosecutor and the defense lawyer jointly requested a postponement so that they could "better understand" the charges. Judge Kelly denied the request, saying the "allegations are clear." The defense lawyer appealed her action to the Supreme Judicial Court, saying she overstepped her authority. The case is pending.

HEATHER HOPP-BRUCE/GLOBE STAFF

 A Flourish data visualisation

The Globe reviewed more than 1,000 district court cases, of which nearly 300 have been dismissed since Rollins took office. Most involved motor vehicle offenses, but her office also dismissed 18 drug cases, including cases of possession of heroin and crack cocaine, possession with intent to distribute, and 11 assault or assault and battery charges, including one case alleging assault and battery on a police officer.

Some police, court clerks, and fellow prosecutors say they fear her policy is putting the public at risk and emboldening criminals to believe they can commit crimes with impunity. They acknowledge that many criminal cases are ultimately

dismissed, but say failing to prosecute certain crimes is as counterproductive as prosecuting every crime, without taking into account individual circumstances.

“District attorneys should pursue justice for their communities without any pre-determined agenda,” wrote Michael O’Keefe, Cape and Islands district attorney, in a [Globe Op-Ed](#) that referred to Rollins’s policy without naming her.

Police in several Suffolk County communities have expressed misgivings about Rollins’s approach, including Boston Police Patrolmen’s Association president Mike Leary. He said city police officers disagree with the policy and will continue to arrest people who break the law.

“We have a country of laws,” Leary said. “You can’t have open drug dealing. It drives cities and towns down. It grinds them into the ground. Crime will go up. Shootings will occur.”

On the other side, a group called Court Watch MA is pushing Rollins to drop more charges and set lower bail amounts that people can afford. High bails, they say, have resulted in too many poor and minority defendants being jailed while awaiting trial, while the more affluent can afford to buy their freedom.

“We’ve seen a change in degree,” but not enough, said Atara Rich-Shea, a former public defender and cofounder of the group, which tracked Rollins’s performance in her first 100 days by sending monitors into courthouses. “We want this to happen faster.”

Rollins said she feels she’s been subjected to far more scrutiny than her male predecessors.

“I would love to know whether this level of inquiry went into the first five months of Dan Conley’s term or Ralph Martin’s or Newman Flanagan’s,” Rollins said, naming former Suffolk DAs. “It’s been five months and the system has

been working in a freight train speeding toward mass incarceration for 70 years.”

Rollins said, “we need time to see how it’s working” and said she’ll be “tweaking” her policy if necessary.

But largely missing from the debate so far have been the voices of the victims.

A devastating attack

People who saw her thought she was dead. On the afternoon of April 20, 2017, a lawyer was taking photos while walking her little dog in the Charlestown Navy Yard when a young man knocked her to the ground and flung the dog into the air.

She hit the pavement hard and lay bloodied and unconscious, suffering a fractured skull and multiple injuries along the right side of her body. Her dog lay cowering on top of her. Construction workers held the attacker, 22-year-old Rusbel Ruiz-Santana, until police arrived. He said he thought she was recording him and his brother smoking marijuana and he was just trying to grab her phone.

More than two years later, the victim, who requested anonymity, works daily to recover from the devastating effects of the attack: a traumatic brain injury, speech and vision impairments, permanent hearing loss in one ear, vertigo, and other serious medical issues.

Yet, the evening before Ruiz-Santana was finally scheduled to stand trial in April, Rollins’s office notified the victim that prosecutors had cut a deal. They were dropping an animal cruelty charge and letting him plead guilty to a misdemeanor for the assault, instead of a felony — assault and battery causing serious bodily injury — that could carry prison time.

The victim begged prosecutors not to cut the deal, which she called “flagrant, appalling, and disgusting,” in an e-mail to the prosecutor.

Prosecutors went ahead with it anyway, writing in a court filing that they believed they could prove the case, but reducing the charges was “in the best interests of justice.” Ruiz-Santana received a two-year suspended sentence with three years probation, and was ordered to stay away from the victim and the Navy Yard. Also, the judge ordered him to wear an electronic monitoring bracelet and to pay restitution. The prosecutor had requested only a one-year suspended sentence with a year probation and a limited stay-away order, but the judge toughened the sentence.

Rollins said prosecutors reduced the charge to a misdemeanor because Ruiz-Santana had no prior criminal record and was being treated for a diagnosed mental health issue. She acknowledged the attack was “egregious,” but said she also considered the defendant’s situation.

“I hear that this victim is unhappy,” Rollins said. “I own that.”

Ruiz-Santana’s lawyer, Todd Pomerleau, acknowledged that the deal wouldn’t have been possible while Conley was district attorney.

“Her office was willing to listen to his side of the story and fashion a resolution of the case that we thought was fair and equitable,” he said. “The prior administration was unwilling to consider such a disposition.”

Campaign promise kept

Rollins ran for Suffolk district attorney as a social justice reformer, vowing to dismiss many cases involving low-level, nonviolent crimes that she said are “most commonly driven by poverty, substance abuse, or other social problems.”

During the campaign, she vowed to forgo prosecution of 15 crimes ranging from shoplifting and trespassing, possession of drugs with intent to distribute, and resisting arrest. In March, she issued a 64-page memo, directing prosecutors to drop those charges, except in rare circumstances, or delay arraignments so they can resolve the matter without moving forward in court.

A recent analysis by the ACLU of Massachusetts supported Rollins's concerns about unequal enforcement, finding that black people in Suffolk County are three to four times more likely to be charged with the 15 offenses. Moreover, the ACLU found 60 percent of the charges on the list were ultimately dismissed anyway. The study examined cases in 2013 and 2014, during the tenure of Conley, Rollins's predecessor.

Rollins said hers is not a "blanket policy" and that prosecutors look at each case individually. Her policy indicates that prosecutors may consider pursuing charges from Rollins's list if the defendant has a history of violence or making threats or is facing drug charges and committed prior offenses within the last three years.

But she said her policy is to know more about the challenges faced by defendants before deciding on whether or how to prosecute.

"If the person presents with mental health issues, substance use disorder, homelessness, or poverty, we're going to pause just for a moment to see who is this person in front of us," Rollins said. "Before branding someone with a criminal record, we just want to pause if they have some of those characteristics."

All prosecutors decide not to prosecute some cases, either because they believe the evidence is weak or for other reasons. But Rollins appears to be dropping cases at a faster pace than Conley, her predecessor. In her first month in office, she dismissed 40 percent more cases in the Boston Municipal Court's busiest courthouse, located downtown,

than Conley's office did during the same period in the previous year, though the sample size is small. Conley's office dismissed 33 of the first 200 cases while Rollins's office dismissed 46.

Two cases that Rollins's office dismissed this spring involved a husband and wife with a young child in the back seat who were stopped by a state trooper in Brighton with several bags of what he believed were heroin and pills. The husband, Craig Leaf, had recently been arrested for allegedly selling methamphetamine, while on probation for selling heroin and meth. His wife, Sylvanwillow Leaf, suggested she had no prior record.

When the Leafs appeared in court for their arraignment, the assorted drug possession and traffic charges were dropped at the request of the prosecution because they were on Rollins's list of "low-level" offenses.

But dismissing cases is only part of the new approach: Rollins's prosecutors sometimes decline to ask for bail in cases where other prosecutors usually seek it. In one case, a Suffolk County prosecutor even allowed a defendant involved in a gang shootout to delay going to jail after conviction. During that interval, the defendant allegedly committed more crimes.

The change in approach has not gone unnoticed by judges, several of whom have scolded Rollins's prosecutors in open court for their leniency.

Roxbury Municipal Court Judge Kenneth Fiandaca was incredulous in April when a prosecutor asked to postpone arraignments in two unrelated, but seemingly serious, cases.

One involved Rodney Black, who has a long criminal record and was facing new charges that he stole two guitars — one valued at \$6,200 and another valued at \$1,799 — from a store in the Fenway. The prosecutor said she hoped to resolve the matter with restitution, based on the new office policy.

“I can’t believe that your policy suggests that in this case,” Fiandaca said.

Minutes later, the prosecutor asked to delay the arraignment of Gregory Jolliemore, who was caught breaking into a Roxbury commercial building at 1 a.m. His lawyer claimed he was just looking for a place to sleep and the prosecutor said she hoped to “resolve this matter prior to arraignment pursuant to a new policy.”

Fiandaca was astonished.

“He was trying to break in . . . with a crowbar to find a place to sleep, and with 39 stolen credit cards and debit cards in various names in his possession?” said the judge. “I’m not sure I follow the logic in a case like this.”

Rollins bristled at the pushback from both judges and police, saying, “The police think it’s OK for them to have their discretion, right? And judges think it’s OK for them to have their discretion . . . but I don’t get any? And by the way, are judges elected?”

Rollins said she firmly believes that drug addiction should be treated as a health issue, not targeted for criminal prosecution.

“We don’t hold people accountable for their cancer or diabetes and I don’t think we should hold them accountable by sending them to jail because they suffer from a substance use disorder,” Rollins said.

She also said people should not face criminal charges for an assortment of motor vehicle infractions, including driving with a suspended license, or no license, registration, or insurance. Those cases are routinely dismissed under her policy, without any fines, even when motorists were involved in accidents or failed to show up in court for arraignment.

Some defense lawyers said Rollins's policies aren't all that different from her predecessors'. They're just spelled out in writing.

"It's fine with me if they don't arraign them," said Steven Sack, a longtime criminal defense lawyer in Suffolk County. "They arraign far too many people for economic crimes. Jail should be for violent people. A lot of these property crimes, eh, so what? It takes up a jail cell."

But some violent criminals have been given a break under Rollins's watch, including one case in which leniency may have resulted in more alleged crime.

On June 10, Keyarn Richardson, was convicted of assault and firearms charges stemming from a 2015 shootout in Dorchester and faced a mandatory minimum sentence of five years in prison.

But prosecutors agreed to a defense request to delay sentencing for 10 days while Richardson got his affairs in order, which several prosecutors said is extremely unusual. During that time, Richardson was arrested in Quincy for allegedly selling crack cocaine and fentanyl.

Norfolk District Attorney Michael Morrissey, whose jurisdiction includes Quincy, said the postponement of Richardson's sentence "allowed him to come out and sell drugs and continue his illegal activity. How does that make any sense?"

Richardson's lawyer, Steven Boozang, said his client had not been in trouble in the four years he was out on bail awaiting trial on the incident. He was working two jobs and had received glowing recommendations from his bosses. "He was doing phenomenal," said Boozang, who said he was deeply disappointed when his client was arrested for the alleged drug offenses.

Richardson ended up receiving a five-to-seven-year prison sentence, which was increased because of his arrest in Quincy, his lawyer said.

Some judges have begun overruling Rollins's prosecutors when they think the assistant DAs are being too lenient.

Judge Richard Sinnott ordered Efrain Rivera held for 90 days after he was arrested for shoplifting at The Gap in Copley Place even though prosecutors wanted to set him free on bail. At the time of his April 2 arraignment, Rivera had 11 open cases pending against him, was using numerous aliases, and had been warned five times by judges that he would be jailed if he were arrested again.

His lawyer argued that Rivera, who had a long criminal record, should nonetheless be allowed to go free because he was getting treatment for a substance abuse problem.

“While commendable that the defendant has sought treatment, plainly his attendance at the program has not stopped the defendant from committing thefts to ostensibly fuel his drug habit,” wrote Sinnott. “Simply put, the court finds the defendant is incapable of confining his behavior to the law no matter what conditions of release this court could impose.”

Rollins defended her bail decisions, saying they are guided by a state Supreme Judicial Court ruling that said bail should generally be imposed only to make sure people show up in court.

She said critics may fault her office's handling of individual cases, but they should not lose sight of a larger truth.

“We have the ability to take away your liberty,” said Rollins. “I don't care if that's for a day or for the rest of your life. It is an incredibly powerful position that we're in. I really want to make sure we get it right.”

Matthew Rocheleau of the Globe staff contributed to this report. Andrea Estes can be reached at andrea.estes@globe.com. Shelley Murphy can be reached at shelley.murphy@globe.com.

 [Show 270 comments](#)

©2020 Boston Globe Media Partners, LLC