

Philadelphia Coalition for a Just District Attorney

2017 DA Candidate Questionnaire

The Philadelphia Coalition for a Just District Attorney is comprised of a diverse set of groups representing tens of thousands of Philadelphia voters and communities. This coalition is working to hold all the District Attorney candidates accountable to their communities' fundamental need for justice and respect. More about the coalition and its platform is available here:

www.phillydaforthethepeople.org

Members of the Philadelphia Coalition for a Just District Attorney include: ACLU of Pennsylvania, Youth Art & Self-empowerment Project, The No215Jail Coalition, Juntos, The Center for Returning Citizens, Asian Americans United, Media Mobilizing Project, New Sanctuary Movement of Philadelphia, Techbook Online, VietLead, Reconstruction, Inc., X-Offenders for Community Empowerment, 215 People's Alliance, Project HOME, Vote for Homes Coalition, Coalition to Abolish Death By Incarceration (CADBI), Frontline Dads, Inc., Color of Change, and DecarceratePA.

Please email your responses to Sara Mullen at smullen@aclupa.org on or before April 15, 2017.

Immigration

1. Do you support Mayor Kenney's executive order prohibiting city authorities from cooperating with Immigration and Customs Enforcement (ICE) without a warrant or court order?

I support Philadelphia remaining a "sanctuary city" despite state and federal efforts to coerce Philadelphia into abandoning that status. First, these coercive efforts are unjust to citizens and undocumented immigrants alike---they are one more example of Trump-era bullying that disproportionately affects people based upon race, national origin, and religion. Second, these coercive efforts endanger undocumented immigrants and citizens alike by encouraging crimes against immigrants, including hate crimes. By deterring undocumented immigrants from reporting crimes committed against them (or even reporting and testifying about crimes they witness), these efforts make us all less safe. Third, both federal and state efforts appear to be unconstitutional. Finally, these bullying efforts against Philadelphians (its undocumented immigrants and citizens alike) are immoral. Philadelphians have always stood up to bullies. As DA, I will do no less.

2. Despite Mayor Kenney's executive order, ICE still has access to the Preliminary Arraignment Reporting System (PARS), a real-time arrest database used by the Philadelphia Police Department, the district attorney's office, and the courts. Advocates say the data sharing is prone to abuse. What steps would you take to end collaboration with ICE? Do you commit to voting against renewing the city's contract that shares the PARS database with ICE?

To the extent that ICE uses its access to the PARS system to deprive any individuals of their rights, I would oppose that access with all tools I would have at my disposal as District

Attorney.

3. How would you work to eliminate the physical presence of ICE from inside our courts and probation and parole departments?

There is a right of public access to access that limits the ability of the District Attorney to exclude people from the court system. In addition, the District Attorney's Office does not control the probation and parole departments. With that disclaimer, I would make it the explicit and required policy of my office that employees of the District Attorney's Office not provide information, collaborate or assist ICE in their efforts.

4. What steps would you take to ensure the DA's office consistently takes into consideration the immigration consequences of arresting and/or convicting people at risk of deportation?

I will collaborate with appropriate legal rights groups to develop training programs that will be required for all ADAs in departments where they may deal with people at risk of deportation, so they will be aware of the possible immigration consequences. ADAs will be required to affirmatively identify these situations and weigh the possible consequences, in consultation with a designated specialist within the DA's Office prior to finalizing offers or proceeding to trial.. The DA's Office should not consider each case as if it exists in a vacuum. If the costs of prosecuting a case include the risk of alienating a sector of our population, then they include the risk of reducing law enforcement effectiveness. That risk is real and it must be a factor in our decision-making. Where we can minimize that risk without jeopardizing public safety we will do so.

Racial Disparities

1. Do you support stop-and-frisk? Why or why not?

Illegal 'stop and frisk' results in recovery of illegal items only 2% of the time while simultaneously alienating 98% of the people who are targeted (overwhelmingly they are male, young, poor and mostly people of color who move in poor neighborhoods). It results in finding a firearm 0.25% of the time---1 in 400 stops. The consequences of illegal 'stop and frisk' are devastating for law enforcement because they turn capable young people away from becoming police officers and turn neighborhoods away from providing information about crime to police, who are perceived as an occupying army because of illegal 'stop and frisk'. Simultaneously, rank and file police officers often do not want to engage in illegal 'stop and frisk' both because they know it is used against non-white police officers who are out of uniform (and their family members) and because they know that persistently and illegally rousting 49 young people to find something on one of them creates repeated, hostile and dangerous interactions involving mostly young men when there is at least one gun (the officer's gun) present during the interaction. A prosecutor has discretion and the ethical obligation to uphold the Constitution by not prosecuting cases that are based upon illegal 'stop and frisk'. By doing so, and working with the PPD to use other methods of

policing, a reconciliation between police and the neighborhoods they protect becomes possible, thereby re-opening lines of communication of intelligence between neighborhoods and law enforcement about crime that are now closed due to illegal 'stop and frisk' but that are crucial to re-open for smart policing by law enforcement. Intelligence obtained on criminal activity is vital to reducing crime and apprehending criminals.

2. Currently, people of color make up over 70 percent of the city's jail population, though they only account for 54 percent of Philadelphia's population overall. What steps would you take to reduce these disparities?

Today we have more people of color in jail, prison, on probation, or in parole than in slavery at the start of the Civil War. Right now the police are part of a system that casts a wide net which is primarily designed to bring black and brown people from less prosperous parts of the city into custody. I firmly believe that this is neither just nor safe. I will work for a District Attorney's office that is fair to everyone and holds police accountable, both by refusing to prosecute cases where evidence was obtained improperly, and by holding officers to the same legal standards as everyone else.

Many practices, including the illegal 'stop and frisk' policy (that is actually more like a military occupation) have caused a profound division between police and residents. This impedes proper law enforcement and creates unnecessary dangers on both sides. This, among other practices, needs to change and a prosecutor's discretion provides pathways to modify police behavior. Prosecutors are obligated not to pursue cases where constitutional violations should lead to the exclusion of essential evidence. If/when this is true of illegal 'stop and frisk', those cases must be rejected. In addition, Commissioner Ross shows many indications of being a fairly progressive and forward-thinking Police Commissioner who will be a real ally to a truly progressive District Attorney who wants to cooperate in elevating the best officers and their best practices within the PPD.

3. The city of Philadelphia is contracting with a Penn criminologist to design a risk assessment computer algorithm meant to determine who is at high risk for re-arrest if released pretrial, and who would not be a "danger to the community." If algorithms make their predictions based on historical data, then they are at risk of embedding decades of racist criminal justice data into our pre-trial supervision decisions. Would you support community members being involved in the design, validation, and continued oversight of a risk assessment algorithm of this kind?

Yes. I am in favor of evidence based policing models, not algorithms that reinforce historical racial biases. For example, algorithms that fail to exclude the neighborhood of residence or of the criminal incident are proxies for race. Algorithms that identify youth as a factor indicating higher risk run contrary to crucial principles of justice for younger offenders laid out in three seminal U.S. Supreme Court opinions and ignore the higher capacity of younger offenders for reform. Algorithms that rely on mere association with

other offenders are even worse. If elected, I will advocate for, testify in favor of, and lobby with City Council and the Pa. legislature for criminal justice reforms that will push law enforcement toward a more focused, intelligence-based system that seeks out and captures the 6% of criminals who commit 60% of serious crimes for appropriate sentencing. Justice means looking at each person as a unique individual, not a statistic.

Transparency and Accountability

1. Would you agree to appoint an independent prosecutor to investigate shootings involving police officers?

I would create a unit of prosecutors ideally from outside the office whose sole case load would be police and/or public officials in order to insure their independence. Bringing in people from outside of Philadelphia would be a plus. However, in my case I would not divorce this unit entirely from my oversight due to the fact that I have been a civil rights lawyer bringing Section 1983 actions against police abuse for 25 years. As such, I have great experience in the field and no fear about pursuing appropriate cases. I would want to be involved and am willing to commit to actually taking to trial myself at least some appropriate cases against police or around public corruption in order to help reconcile the District Attorney's Office with distrustful members of the public who rightly believe this District Attorney's Office has been an apologist for police abuse.

2. Would you agree to make all policies of the district attorney publicly available on the office's website, including those regarding charging and plea bargaining decisions, and would you agree to post quarterly data regarding all critical decisions made by the DA's office, including charging, pre-trial recommendations, plea bargains and sentencing recommendations, including demographic information?

In terms of policy, I believe the public has the right to know nearly all of the policies that affect them and I would make all such policies publicly available. I would further make all statistical data available for the public and for researchers. I believe that study of this data can reveal important patterns and help us improve our criminal justice system. However, there are a few exceptions. There may be instances where certain data sets are too narrow to provide a legally required level of confidentiality to individuals. There may be other policies that are in the nature of investigative strategy and work product which are inappropriate for publication as they may compromise proper investigation. On rare occasions, juvenile privacy issues or witness/victim safety issues may overwhelm the value in revealing specific policies.

3. How would you involve neighborhoods and community groups in determining the priorities of the DA's office?

Every Philadelphian deserves a seat at the table for this discussion. Crime is not a comic book. Older residents being ripped off by fraudulent contractors are important. Victims of

identity theft in the era of credit and ATM cards are no less important than the people who used to be robbed of payday cash before everyone carried plastic. People whose houses are stolen via fraudulent deeds (an enormous problem in Philadelphia) are also important, yet all three of these groups have been mostly ignored by the last District Attorney. I know this from speaking to victims and witnesses and their friends and advocates. But I will need to know more about how and where crime is affecting people in ways that are unexpected or unfamiliar in order to make real change. I will vigorously pursue working with community groups and neighborhood groups to obtain this information and find real solutions.

Decarceration

1. Do you support ending the use of cash bail in Philadelphia, and for which people accused of what kinds of crimes? If so, what would be the timeline for these reforms?

Yes. Our jails are filled with people who have not been found guilty of a crime, but cannot afford to make bail while their cases are pending (unlike their more affluent counterparts). This punishes the poor for their economic status, not any relevant issue pertaining to bail.

Sixty percent of the city's jail population comprises individuals who are awaiting trial, the vast majority of whom were detained for nonviolent offenses. Over the last 20 years in Philadelphia, we have seen the average bail amount double from \$25,400 to \$55,400. On top of this, 70 percent of felony defendants are now assigned bail amounts greater than \$5,000.

I am in favor of eliminating cash bail entirely consistent with the way D.C. has don't this, but that will require an infrastructure to support that system and interim approaches as well to make real gains immediately. That infrastructure will take time and money (and save money), so moving in that direction requires great attention to detail and strategic planning.

2. Will you work to end the practice of overuse of electronic monitors as an alternative to incarceration, which only creates prisons in people's' homes, often at their own expense, providing profit to private companies?

While electronic monitors can provide a less restrictive means of custody than incarceration, less costly to the state and less costly to family and community integrity, these they should not be overused. I see no reason why anyone should profit from them just as I see no reason why anyone should profit from jails and prisons. I am against all profit-based forms of restricting liberty in criminal justice and will oppose them.

3. Right now, individuals on probation or parole who are arrested are not eligible for release before their trial. What steps would you take to reform the current use of detainers to incarcerate people awaiting trial?

Unfortunately, violations of probation and parole are a constant issue in Philadelphia. Judges sometimes view a positive drug test for cannabis (or a moderate period of failing to

report or a period of non-payment or unemployment) as the equivalent of a serious violation and react reflexively rather than rationally. As District Attorney, I will carefully evaluate violations for their significance and recommend no hearing and/or no judicial finding of violation where the violations pose no public danger. Ultimately, public resources cannot be wasted on unnecessary incarceration when they are so much more effective in reducing crime via prevention (e.g. education, addiction treatment, job training, etc.) in the long term.

4. The MacArthur grant received by the city of Philadelphia has a goal of reducing the population in jail by 33 percent within three years. Are you committed to this goal? What is your plan to achieve this goal?

The U.S. incarcerated population has increased 500% since the 1970's; the Pennsylvania incarcerated population has increased 700% since the 1970's; the Philadelphia incarcerated population is even worse. Therefore, the MacArthur Foundation's goal in Philadelphia, to reduce the incarcerated population by 34% (where \$300 million is spent each year on jail/prison facilities) is modest and conservative compared with a return to the incarceration levels of the 1970's and prior decades.

Fixing over-incarceration requires several methods: a) declining to prosecute more cases that are presented by police (the current rate of about 97% is way too high, inconsistently high with other jurisdictions, and effectively a rubber stamp for police in all investigations); b) diverting far more non-serious cases and young offenders away from charging and court and toward programs that provide a path to avoiding charging via community service, treatment and other methods; c) ending the cash bail system and substituting a model more like the highly successful one in Washington, D.C.; d) not seeking mandatory sentences where possible; e) not seeking excessive sentencing guidelines where appropriate; f) treating juveniles as juveniles in court and in custody; g) resolving all outstanding juvenile life sentences via re-sentencings expeditiously with appropriate consideration of each individual defendant's crime, history pre- and post-crime, and other characteristics---one sentence does not fit all; h) not seeking 'laddering' for offenses where the District Attorney has discretion to decide and where appropriate (e.g. not seeking '2nd strike' or '3rd strike' sentences where they are draconian and inappropriate; not seeking to make a second retail theft a misdemeanor and a third retail theft a felony where appropriate---charging all non-serious retail thefts as low level offenses as has been done recently in Chicago); i) turning away from the culture of seeking the highest and most charges and the longest sentences that has existed in the Philadelphia District Attorney's Office for at least the last 30 years.

5. Will you decline to prosecute low-level offenses committed by people who pose no harm or threat to the community?

Such cases should be declined, diverted, or charged in their lower/lowest forms (e.g. minor offenses like Retail Theft that 'ladder' from summary offenses to misdemeanors to felonies

with each subsequent conviction should be charged as summaries absent high value). I will commit to reducing the number of misdemeanors charged where there is no threat to public safety.

There is no question that Philadelphia's declination rate (declining to bring the case), diversion rate, and rate of sub-Sentencing Guidelines sentencing are all far too low. It is also apparent to me that these rates could increase very substantially with no negative impact on crime rates. It's very possible that moving these ways would cause a decrease in crime immediately, and certainly over time as the resources are used for long term crime prevention measures, such as education, job training, addiction counseling, etc.. I would institute policies specifically directed at increasing all of these rates and then measure them in order to see the difference as compared to rates in the prior administrations.

6. What are your plans for expanding the use of diversionary programs?

I am in favor of creative and new approaches that allow appropriately defined first offenders, young offenders, non-serious offenders to avoid criminal convictions. The collateral consequences of convictions often impede rehabilitation and create a cycle of poverty that becomes irreversible. Currently, the programs are narrow and admission to the programs is denied too frequently.

7. Some state legislators have proposed abolishing life without parole sentencing and instead allowing parole eligibility once the individual has served 15 years. What is your position on this proposed legislation?

I am in favor of it. There is no situation in which we should arbitrarily deny ourselves the ability to consider new circumstances. There is a difference between a prisoner who stabs a guard for no reason, and a prisoner who saves that guard's life. Having the opportunity to consider parole does not mean that everybody or anybody will be paroled after 15 years. Historically, parole in serious and violent criminal matters has been given sparingly. There are people who should not be released. This is about treating people as the unique individuals that they are.

8. A bill has been introduced in the state legislature that would reinstate mandatory minimums for some crimes. Do you support bringing back mandatory minimums?

Hell, no (except maybe for conservative state legislators). The proposed bill is a disastrous throwback to the 1980's War on Drugs mentality that has devastated this country. In the first year alone, the bill would cost \$20 Million; in subsequent years, \$80 Million. These costs are the equivalent of 500 young public school teachers per year (at \$20 Million) and 2,000 young public school teachers per year (at \$80 Million), assuming a \$40,000 salary per year. This effort to re-up mandatory sentencing is beyond misguided, astoundingly expensive, and shows no reduction in recidivism.

9. The Pennsylvania District Attorneys Association often lobbies for tough-on-crime laws in the state legislature. As the Philadelphia district attorney, how would you attempt to influence the association's agenda?

We need to fundamentally change the culture within the Philadelphia District Attorney's Office. As the chief law enforcement attorney in Philadelphia County, the District Attorney has tremendous/transformatory power. Given the current D.A.'s problems, he has no sway in the most important chair in the Pennsylvania District Attorneys Association. And he hasn't been very progressive when he did have sway. I will use that position to educate, to cajole, to persuade, to bring people to the table and, only if necessary, to flip the table by using media and other means to resist and push back against throwback policies.

10. Philadelphia has a Post-Conviction Review Unit, but it was only staffed with four people this February. What are your plans to fully staff this unit with independent lawyers who have both defense and prosecutorial experience? And what do you think the purview of the unit should be – only looking for cases of “actual innocence” or also looking at prosecutorial or police misconduct as it impacts the conviction?

The Post-Conviction Review Unit should be fully staffed with as many people as necessary to review cases where there is evidence of innocence and/or evidence that the conviction lacks integrity. Reviewing and, where appropriate, supporting the reversal of these cases is just as important as prosecuting new cases. They are one and the same in the pursuit of justice. As District Attorney I would reverse the current policy of the DA's Office to oppose any effort to reinvestigate cases even where newer methods, such as DNA testing, would make such a reinvestigation meaningful. I will not fight to keep innocent people in prison while actual perpetrators may remain free to commit other crimes.

Youth Justice

1. Do you support housing youth under 18 in adult jails? Will you commit to removing youth from Philadelphia adult jails pre-trial?

Juveniles do not belong in adult prisons or jails. They should be kept with other juveniles, in all cases.

2. Do you believe that children should be prosecuted as adults? What steps will you take to change the current district attorney's practice of trying young people as adults?

Having spent a few years working in the juvenile justice system, mostly as a public defender, and many years since returning to represent people in juvenile court on occasion, I would use my discretion to oppose certification to adult court as well as support de-certification from adult court to juvenile court where appropriate, at a rate far higher than what is done now. Overwhelmingly, juvenile matters would be handled in juvenile court. In addition, I view the District Attorney's Office as a bully pulpit and would advocate in many ways to

separate juveniles and juvenile court from adults and adult court, which is exactly how it used to operate.

3. What will be your strategy for managing the re-sentencing hearings for people serving juvenile life without parole, and will you commit to not seeking LWOP (life without parole) either in re-sentencings or in new cases involving juveniles?

I am not surprised that this District Attorney's Office via its first assistant, Tariq El-Shabazz, personally stood up in federal court and argued in January, 2017 in favor of a uniform or nearly uniform 35-year offer for all juvenile lifers without regard for individualized consideration. The Supreme Court's three seminal decisions on juveniles in the last 10 or so years (all the result of McArthur-funded psychological research) make clear that individualized consideration of everything that has occurred in the former juvenile's life since the sentencing, as well as the circumstances prior to the crime, and the crime itself committed by the former juvenile, are required. I would carefully engage in that consideration. The prior sentencings were often perfunctory since only one sentence was possible. Much like the preparation necessary for a death penalty phase, sometimes voluminous records must be gathered and reviewed with input from victims and defense counsel with an eye toward completing re-sentencings expeditiously with all the detailed information necessary to make proper recommendations.

Re-entry

1. How would you support people given LWOP as juveniles in re-entering their communities?

Mentor programs and re-entry programs must be expanded for all people coming out of custody, including juvenile lifers. Juvenile lifers are a particularly challenging group due to their youth when their sentences began and the length of their custody. I will invite input from all stakeholders and carefully consider their recommendations on further addressing the issue.

2. Do you support re-entry programming that seeks to reduce recidivism? How would you engage returning citizen-led re-entry programs in this effort?

My wife, the Honorable Lisa Rau, and another judge are in charge of Philadelphia's re-entry program in the Court of Common Pleas, the Mentor program. Although it has been very successful in reducing recidivism and helping rebuild the lives of re-entering mid-risk and high-risk offenders, it and additional programs like it can do more with a truly progressive District Attorney cooperating with them rather than fighting against them.

I have extremely strong support in the re-entry community because of their knowledge that my connection to re-entry is real and credible based upon my life's work. I could not be more dedicated to promoting rehabilitation and rebuilding lives and communities via pretrial and post-trial methods.

Civil Asset Forfeiture

1. A 2015 study of civil asset forfeiture in Philadelphia found that almost one-third of cash forfeiture cases involve money owned by people who have not been found guilty of a crime – about 1,500 Philadelphians each year. Will you adopt a policy requiring a criminal conviction before forfeiting property? If not, would you agree not to pursue forfeitures of property less than \$5,000?

Civil asset forfeiture must be changed to prevent forfeiture unless there is a conviction and to shield innocent overwhelmingly poor owners of property from having to defend their property against forfeiture. All funds derived from proper civil asset forfeiture belong to taxpayers, not the D.A.'s Office (which has been motivated to take as much as possible from the poor by receiving the proceeds of forfeiture) and should go into a general fund rather than going to the District Attorney's Office as they do now.

Death Penalty

1. Would you be willing to commit to not pursuing the death penalty during your tenure in office?

Yes. I will not seek the death penalty in any case while District Attorney, unlike all other candidates' commitments in this race (please understand that the other candidates' platforms morph daily...and in my direction...so this may change).. In Pennsylvania, District Attorneys have the discretion to decide when, if ever, to seek the death penalty. I will exercise that discretion not to seek the death penalty. Other candidates in this race couch their supposed anti-death penalty positions as support for a moratorium that they know will disappear (if the Governor is not re-elected or via appeals court intervention) or use other conditional and evasive terminology that ultimately means they will/would seek death under some circumstances. Nothing in their careers supports their claims to being opposed to the death penalty, while my record for representing anti-death penalty protesters and defending individuals against the death penalty as court-appointed counsel is known. Although no one has been executed against his or her will in Pennsylvania since 1962, Pennsylvania has spent \$1 billion since 1976 pursuing death sentences that have never been carried out, except for a few cases in which the inmate consented to it. Meanwhile, six people were exonerated from death row during the same time period. We could have spent that \$1 billion on 500 more public school teachers (at \$40,000 salary) per year every year since the 1970's across Pennsylvania. Easily 200 of those teachers could have been teaching in Philadelphia, for all those years. The death penalty does not deter crime. It jams the courts by doubling and tripling the length of already time-consuming homicide trials, which increases court delay and mass incarceration. It is also immoral. Therefore, I will not seek the death penalty. I am not alone in this position. In New Jersey, the District Attorneys came together and eliminated the death penalty years ago. In Orlando, progressive prosecutor Aramis Ayala is under attack for taking the same position.

And in the northeastern United States, Philadelphia is the only city that still has a death sentence. It is time for a truly progressive District Attorney in Philadelphia to decide not to seek the death penalty in all cases.

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