

20 Questions for Delaware Attorney General Candidates

CANDIDATE: CHRIS JOHNSON (D)

The Coalition for Smart Justice is committed to cutting the number of prisoners in Delaware in half and eliminating racial disparities in the criminal justice system. Prosecutors are essential to achieving those goals. Since the attorney general is the leading law enforcement officer in the state and oversees the work of all the career prosecutors in Delaware, we are prioritizing a campaign to communicate with voters about attorney general candidates' positions on issues related to criminal justice reform. This questionnaire is the focus of that effort.

Leadership

1. Will you pledge to articulate and implement a vision for the Department of Justice that recognizes Delaware's mass incarceration problem, supports criminal justice reform and aligns the work of the Department—including internal and external communications, training, policies, and hiring and promotion practices—to reflect that vision? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

My top policy priority is to end mass incarceration, because I believe that this is the first critical step to making Delaware safer. Our state has one of the higher incarceration rates in the country--certainly the highest in the region. Reducing our prison population by even a small percentage will save the state millions each year. This effort will be focused on nonviolent offenders who do not need to be wasting taxpayer dollars behind bars and could instead be productive members of society. I will be a lead proponent for rewriting our criminal code, improving our community policing procedures to facilitate trust and curtail the use of abused practices such as civil forfeiture, and modernizing our sentencing laws to be simpler and fairer.

2. How should the success of a prosecutor in Delaware be measured?

I can tell you how it should not be measured: conviction rates. I believe that the success of a prosecutor can be demonstrated by factors such as decreased recidivism and crime rates.

3. What would you do to reduce the racial disparities at various stages of the Delaware criminal process?

First and foremost, I believe that a focus on ending mass incarceration--which disproportionately affects communities of color--frees up much-needed resources for targeted interventions that can prevent an individual from getting involved in the criminal process at all. More directly, I am in favor of a number of measures to address this disparity. First, we know that all proposed legislation is required to disclose its fiscal impact; I believe that the state should pursue requiring racial impact statements as well. These tools are beginning to be used in more jurisdictions to measure the potential racial disparities of proposed legislation. I am also in favor of increasing diversity of personnel at every level--from the Attorney General's office, to the public defenders, to the volunteer court-appointed advocates, it is imperative that those working in the justice system reflect the communities they serve. Lastly, I am in full support of implementing 21st Century Policing practices that seek to rebuild trust between the community and law enforcement.

Mass Incarceration

4. Do you believe Delaware incarcerates too many people? What would you do to substantially reduce the number of prison admissions in Delaware?

Yes. Delaware incarcerates more people than our neighbors in the mid-Atlantic, and far more than the national average. I will work to strengthen our diversion and restorative justice programs because incarceration will be the last resort under my administration. Front-end investments on education, drug- and gang-prevention measures, and access to substance abuse and mental health treatment will prevent many folks from getting cycled into the criminal justice system in the first place.

5. Do you believe that prosecutors' practices have contributed significantly to mass incarceration? Why or why not?

Yes. The DOJ is full of many talented and justice-minded prosecutors; the complexity with which our laws are written, however, allows for prosecutorial overreach. Furthermore, as an athlete, I'm well aware of the win-at-all-costs mentality that infects many prosecutors' offices across the country. This has more of a place on a playing field than in an agency for justice. Prosecutors that view all convictions as wins are less likely to show compassion when the circumstance calls for it. As a defense attorney, I have seen time and time again the needless stacking of charges against an individual in order to entice them into taking a plea bargain. We have to change the culture from one focused on winning to one focused on producing the best social outcomes possible, including for those under correctional supervision.

6. Do you support pre-arrest and pre-trial diversion programs? What steps would you take to increase the number of people who are diverted, including diversion to programs and resources outside the criminal justice system?

I am extremely supportive of diversion programs. As more funding becomes available through the reduction of our prison population, it is my plan to advocate for dramatic increases in access to quality diversion programming in Delaware. I would also like to see an expansion of probation before judgment, and more leniency in allowing former offenders to exit probation.

7. Will you pledge to support increased involvement of prosecutors at the charging stage in order to ensure that cases prosecutors do not wish to pursue are dismissed early or never get charged in the first place? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Yes; early involvement and intervention on the part of the AG's office will only help to increase engagement and minimize needless charging. By shifting attention away from insignificant cases, prosecutors will have more bandwidth to focus on appropriately addressing the most severe and dangerous offenders. I would encourage prosecutors to avoid charging crimes except where no alternative is available.

8. Will you pledge to adopt policies and training so that prosecutors in Delaware only file charges that would lead to fair punishment if the defendant were sentenced on all charges and not to use the threat of less-supported or duplicative charges to secure plea bargains? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Yes; as stated above, I am against the stacking of charges. Stacking time to coerce plea bargains perpetuates systemic oppression and greatly increases the chance of an innocent person going to jail. Instead of coercing defendants, prosecutors should work with defense attorneys to establish parameters on what fair charges would look like.

9. Will you pledge to advocate for the elimination of the automatic issuance of warrants for failures to pay fines? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Yes; the criminalization of poverty contributes significantly to mass incarceration.

Sentencing

10. Do you support shortening the average length of sentences served in Delaware? What steps will you take to make that happen?

Yes. I believe that shifting our criminal justice system from a more punitive system to one which focuses on rehabilitation will have many benefits: from reducing our recidivism rate to re-stabilizing our communities. The less time and resources required for someone to spend behind bars to learn their lesson and serve their debt to society, the better. I am supportive of concurrent sentencing, which will minimize the incentive for a prosecutor to stack charges.

11. Will you pledge that you will advocate for the elimination of all mandatory minimum sentences? Please give a yes or no answer, and any explanation you believe is necessary. If there are any mandatory minimums you support, please identify them specifically.

Yes No

All mandatory minimums should be off the table so that judges have more discretion and can sentence in a case-by-case manner. Only the most serious and dangerous offenders should receive the harshest sentences; prosecutors should prioritize rehabilitation with all others--even if that means no sentence time in cases that currently fall under a mandatory minimum. I will seek to eliminate sentences for low-level offenses better dealt with by probation or diversionary programs.

12. Will you pledge to oppose efforts to bring back the death penalty in Delaware, and to instruct prosecutors not to seek the death penalty if it is reinstated? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Under my leadership, the state will never seek the death penalty regardless of any legislation that may arise which would attempt to reinstate it. It poses a high cost to the state, has never been shown to be an effective deterrent to crime, and disproportionately affects low-income and minority communities.

Pre-trial Detention

13. Do you support substantially reducing the number of people detained pre-trial in Delaware? What steps will you take to make that happen?

Yes; nearly 25% of individuals currently behind bars in Delaware are pretrial detentioners. Estimates show that it can cost \$45,000 a year to house an inmate, yet 1 in 4 have not even been convicted of a crime. Pre-trial detention that is unnecessary--i.e., where the subject is not a flight risk or danger to society--should be eliminated. As a longtime board member for the Delaware Center for Justice, I served on the policy team which had a hand in crafting and now advocating for the following pretrial reforms and best practices: "bail reform; upholding the presumption of innocence; increased use of citations over arrest; presence of defense counsel at the earliest hearing at which one may be detained; early review of charges by a seasoned prosecutor."

14. Will you pledge to support changes in the law that eliminate or radically reduce the use of monetary payment as a condition of pretrial release? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

I am in full support of the current efforts to make Delaware's bail system fairer. I would instruct prosecutors to never seek cash bail except in the case of kingpins, other white-collar criminals, and violent offenders.

15. Some people have proposed allowing for up to 10 days of pretrial detention without any possibility of release before certain people charged with crimes have a full evidentiary hearing on whether they should be detained. Do you support shortening that period to 3 days like other states? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Yes. Consider all the possible collateral consequences that can befall someone who is detained: failure to secure childcare, failure to pay bills, job loss, and more. Even if they were innocent before, suffering under pretrial detention and its consequences increases the likelihood that they will conduct criminal activity later. Our main job should be keeping people safe, which includes keeping them from being incarcerated or detained whenever possible.

Transparency and Accountability

16. Will you pledge to collect and publicize statistical information disaggregated by race and gender on charging decisions, plea bargaining and sentence recommendations, convictions, declinations and diversion program placements? Please give a yes or no answer, and any explanation you believe is necessary. If you only support publicizing some of this data, please specify.

Yes No

Yes, I am a proponent of the use of open data. In order to effectively combat against mass incarceration, it is imperative that the public be made aware of the racial disparity among those who are being incarcerated and how they are being charged.

17. Will you pledge to publicize all policies, protocols, and MOUs regarding prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture, and immigration considerations? Please give a yes or no answer, and any explanation you believe is necessary. If you only support publicizing some of these policies, please specify.

Yes No

Yes. Leaders should be held accountable to what they promise--I would publish as many policies as possible to show the public that I am doing the job they elected me for, and to facilitate transparency and build trust.

18. Will you pledge to require all Delaware prosecutors to share police reports and witness statements with defense attorneys at or before preliminary hearings? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Yes. If a prosecutor cannot convict someone without hiding relevant evidence from the defense, that prosecutor should not be seeking charges that are out of reach. Fully disclosing all relevant evidence maximizes the likelihood that justice is at the forefront of every judicial decision. I believe that both sides deserve to know all relevant facts of the case.

19. Will you pledge to reform DOJ's Actual Innocence Project to expand it into a fully staffed Sentence Review Unit whose mission to review the cases of people who may be actually innocent of a crime for which they were convicted (without other eligibility restrictions), and to include in the mission the review of lengthy sentences that there is good cause to modify under 11 Del. C. § 4217 (and support legislative

change to allow for Deputy Attorneys General to move to modify sentences)? Please give a yes or no answer, and any explanation you believe is necessary.

Yes No

Yes, this division as it exists is under-resourced and under-utilized. I would create a Conviction Review Unit with substantial ability to comb through old convictions and recommend new trials and other corrective action where evidence was insufficient to support a conviction in the past.

Juvenile Justice

20. Under what circumstances, if any, do you believe people under 18 should be prosecuted as adults? Will you pledge to support changes in the law consistent with your answer?

I absolutely pledge to support changes that would ensure that no person under 18 would be prosecuted as an adult.