20 Questions for Delaware Attorney General Candidates

CANDIDATE: KATHY JENNINGS (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☐

   I have and will continue to support criminal justice reform that reduces the high level of incarceration in our State while not sacrificing public safety in the process. I have spent decades defending and prosecuting criminal cases and am well equipped to continue to reform the criminal justice system so that it is fair and just for everyone. My experience in criminal defense provided me with a unique insight into the inequities. For example, when I returned to the Department of Justice to serve as State Prosecutor under then Attorney General Beau Biden and later under Attorney General Matt Denn, I spearheaded criminal justice reform, such as the reform of the habitual offender law that mandated a life sentence for repeated felony convictions that included drug crimes. This reform returned discretion to judges. Additionally, I worked with the Governor’s Office to secure bipartisan support for legislation that enabled judges to sentence certain crimes concurrently instead of consecutively, a reform that put us more in line with the overwhelming majority of states that permit concurrent sentencing. I advocated for the restoration of driving privileges for people convicted of drug crimes to remove a barrier we know negatively affects returning citizens. There is more work to do to reform the system, and that work begins with a clear vision that includes internal and external communication, training and policies. In terms of hiring, the office should reflect the diversity of the people we serve. This is critical to creating a culture of excellence in the pursuit of justice.
2. How should the success of a prosecutor in Delaware be measured?

The success of a prosecutor should be measured by a commitment to seek justice in each case. A prosecutor should take into account the individual circumstances of each case, including the strength of the evidence, the harm done to the victim, and the individual circumstances of the defendant to determine a just resolution. Prosecutors additionally have an ethical obligation to protect the rights of persons accused of crime.

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

It is imperative that prosecutors receive training on the drivers of racial disparity in our criminal justice system and on the role of implicit bias in decision making. Additionally, legislative changes are necessary to reduce racial disparities at each stage as well. For example, black children who grow up in a low-income, urban settings, are more likely to be arrested for drug offenses than white children in the suburbs. It is also more likely that the possession of drugs in a city becomes a more serious crime due to its proximity to parks, schools, etc. This law should be changed because it disproportionately impacts low-income communities. Bail reform is also needed. One of the chief factors in whether a person receives a sentence of incarceration is whether they are detained prior to trial. Detention prior to trial should not be based upon whether a person can pay for bail. It should be based on risk and likelihood of appearance. These are but two examples that require change to reduce racial disparities. Enabling judges to exercise guided discretion at sentencing by eliminating the unnecessary stacking of criminal sentences is another needed change. I have supported bail reform, changes to the criminal code and sentencing reform and would continue this important work if elected Attorney General.

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. I would start by continuing to reform the bail system so that poverty alone does not cause someone to be imprisoned prior to trial. I support revising our criminal code to avoid the stacking of charges on top of one another for a single crime. I would restore guided judicial discretion at sentencing so that the length of a sentence is not dictated by the stacking of minimum mandatory sentences and instead is dictated by what is just under all of the circumstances. Additionally, there are those who have been incarcerated for years who may also suffer from physical infirmities or health issues whose sentences could safely be reduced, provided the institutional history would justify early release.
Do you believe that prosecutors’ practices have contributed significantly to mass incarceration? Why or why not?

I believe that system fixes are needed to reduce mass incarceration. As I have indicated, there needs to be further modification of our mandatory sentencing laws which currently mandate consecutive sentences for too many crimes. Our judges are in the best position to make sentencing decisions based upon their wisdom and experience. Of course, judicial discretion should be informed by guidelines that ensure that people are treated equally and that sentences are proportionate.

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 support the increased use of diversion programs that provide treatment in lieu of incarceration when it is safe to do so. In fact, I helped to establish the Hero Help program with the New Castle County Police Department. This program provides drug treatment to qualifying individuals in lieu of arrest and I will work to expand such programs statewide.

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☐

There should be an increased emphasis on screening cases at the earliest stage practical following arrest. Unlike many jurisdictions, there is no centralized arrest processing location in Delaware. This means that, except in the most serious cases, prosecutors review the cases post arrest. If a charge should be dismissed, it should be done early, and the Felony Screening Unit of the Department works diligently to do so. Early decision making is important. For this to happen prior to arrest, substantial additional resources would be needed.

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.
Unsupported charges and redundant charges are not appropriate ways to secure plea bargains.

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☐

The issuance of warrants for non-payment of fines needs to be reviewed because it disproportionately impacts low-income individuals.

Sentencing

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

I support increased judicial discretion in sentencing. The number of years should be determined by a judge after a careful review of the individual circumstances of the case, the safety of the victim and the public and the individual needs of the defendant.

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☐

I support a reduction in minimum mandatory sentences when it is in the interest of public safety and furthers the rehabilitation of the defendant. I fully support increased judicial discretion by permitting sentences in more crimes to run concurrently and by amending and simplifying the criminal code.

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☐
I do not personally support the death penalty. It has not proven to be an effective deterrent, and the process by which it has been imposed has been ruled unconstitutional. If the legislature chooses to reenact the death penalty, as Attorney General, I am sworn to uphold the law and cannot categorically refuse to enforce it.

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, see my answers above. Decisions, however, should be risk-based, upon the danger to the public presented by a particular defendant.

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 support the use of a risk-based bail system that does not depend upon ability to pay.

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 ☐

As long as the period can be extended depending upon justified circumstances.

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 ☐
Without some increase in personnel, this would be a substantial undertaking as it would require extensive record compilation of statistics in all the courts. There are tens of thousands of cases coming through all the courts and this could not be accomplished without additional personnel.

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 ☐

I support transparency in the operations of the Department of Justice and will make the prosecution policies of the office publicly available, provided there is no legal impediment.

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 ☐

I will pledge to provide discovery that is available at the time of the preliminary hearing. Victim and witness names and identifying information must be redacted by law. One of the most serious problems, particularly in cases involving violent crimes, is the reluctance of witnesses to come forward. Unless the identity of those persons can be kept out of the defendant's possession they are likely to be even less willing to help and would be subjected to violence. It is a known fact that witnesses have been murdered in Delaware for cooperating with law enforcement.

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, I support all efforts to review unjust sentences and would request that additional resources necessary to do so be included in the Department of Justice budget.

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?

There are certain individuals under the age of 18 who should be tried as adults. Such decisions need to be carefully reviewed, taking into account many critical factors, including the seriousness of the crimes, especially those crimes where members of the public are seriously victimized, the actual age of the juvenile charged with committing the crime, his/her mental capacity, and social history.