

20 Questions for Delaware Attorney General Candidates

CANDIDATE: BERNARD PEPUKAYI (R)

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

The criminal justice system needs to be rebuilt, not just reformed. Having been tested on both sides of the law, I have personally and professionally experienced the deficiencies in the system. A non-traditional change is necessary to move Delaware forward.

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

By integrity, understanding of the community, legal competence, and the ability to achieve justice in any given situation.

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

The Department of Justice must hold true to its name. The Department personnel should be reflective of all Delawareans at all levels. Office personnel would be more sensitive to the nuisances that challenge various communities. It would create a greater understanding. The Attorney General's role is limited as it relates to other departments and branches of government.

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 believe Delaware incarcerates too many people. The focus should be on preventing people from entering the criminal justice system. Once a person enters the system, there is a chain reaction that creates a greater likelihood of remaining in the system.

Additionally, charging decisions should not be based upon the maximum of all conceivable charges. Charging decisions should primarily focus on a proper lead charge.

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

Yes. Prosecutors, along with others, have contributed to this problem. There is a favorable perception of a "tough" prosecutor. As a result, a prosecutor can pursue more charges than is warranted without criticism or question. This must change.

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?

Yes, I support pre-arrest and pre-trial diversion programs. I do not believe the issue is the number of people who enter diversion. But rather, diversion is often being used for matters where there is insufficient evidence to support a conviction. The focus should be on whether it is proper to criminally charge. If a charge is not supported by the evidence, the person should not be in the system. Thus, diversion space is reserved for those who are properly in the system and diversion is warranted. If this is done, I am uncertain whether there is a need to increase the number of people who are diverted.

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

The focus should be whether it is proper to criminally charge a person.

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

My platform deals with the fair punishment of those whose actions may have constituted a crime. I believe duplicative charges have led to increase jail sentences and have unjustly subjected some individuals to harsher penalties than their actions warranted. As a result of the wasted resources associated with over-prosecution, there are dangerous individuals whose prosecution fails to receive the attention and penalty it deserves.

- 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

I support the elimination of the automatic issuance of warrants for failure to pay fines that are not associated with a public safety threat.

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 the position that persons who are properly in the criminal justice system receive a proper sentence. A proper sentence is a sentence that is not based on an over/ excessive charging decision. I believe our system is over-inclusive because it arrest and incarcerates some who do not belong. However, those who do belong, and are properly incarcerated, should serve their sentence.

- 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

Mandatory sentencing for non-violent crimes does not make our communities safer or address any of the underlying problems such as a lack of education, poverty and lack of employment. In the case of drug offenses, an approach that includes treatment is the better way.

I do support mandatory sentences for violent crimes.

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

As a fundamental principle I support life. I do not support the death penalty as an appropriate punishment for crime. Currently, Delaware does not have a death penalty law. However, the General Assembly is considering legislation that would allow for the death penalty in extreme cases of murder. If the law passes and requires the state to seek the death penalty, I will enforce the law.

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?

I support reducing the number of people who do not belong in the criminal justice system in the first place. Also, I support pre-trial detention only when there is a threat to public safety.

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

Threat to public safety, not financial ability, should be the determining factor for pretrial detention.

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

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

If such information can be collected within the financial constraints of the office.

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 will not support publicizing information that could jeopardize witness and victim safety.

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 would not jeopardize the safety of a credible victim or witness.

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

I do not pledge to expand the staffing of the office without having reasonable assurances that such financial resources are available. I do support efforts for Deputy Attorneys General to move to modify sentences if appropriate.

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?

Only in the most unusual set of circumstances should a child be prosecuted as an adult. I do pledge to support changes in the law that are consistent with this answer.