

PROSECUTING ATTORNEY CANDIDATE QUESTIONNAIRE

End the Use of Money Bail

The continued use of unjust cash bail policies contributes to the overall incarceration of poor people and people of color by keeping them incarcerated simply because they are too poor to pay bail. Locally elected prosecutors should adopt the following policies or engage in the following actions to reduce the use of cash bail.

- What changes would you make to St. Louis County's bail system, in light of the Safety and Justice Challenge?

As Prosecutor, my office will work to change St. Louis County's current ineffective and overly burdensome bail system by moving from a cash-based process to a risk-based process. This move will not only improve cost-effectiveness for taxpayers, but will also preserve safety needs, and protect due process. Incarceration is expensive and too often unnecessary and ineffective. I recognize that the majority of people in jail are presumed innocent – i.e. they have not faced trial and been found guilty. Most are there for nonviolent offenses; and many are simply too poor to post bail. Our overuse of jails carries significant psychological, safety, and financial costs—to individuals, families, communities, and society at large. Also, even pre-trial detention increases the likelihood that a defendant will commit crimes in the future, because it exposes the defendant to prison culture. The move from a cash-based to a risk-based process will: 1) ensure that non-violent offenders, and those who merely need treatment (i.e. drug or mental health), will not be needlessly incarcerated (at taxpayers' expense); and 2) protect the public from those defendants who pose an actual threat to public safety or a flight risk.

- Will you support litigation aimed at prohibiting money bail for low-level misdemeanors?

Yes. I will both support and advocate for such measures.

- Will you support the complete abolition of money bail? Why or why not?

Yes. As Prosecutor, I will support the complete abolition of money bail because, as the American Bar Association has long pointed out, money bail undermines the integrity of the criminal justice system, is unfair to poor defendants, and is ineffective in achieving the key objectives of the pretrial release/detention decision. The purpose of bail is to ensure the defendant's appearance throughout the court proceedings. However, there is no data to suggest that money bail is actually effective at producing this result. Moreover, bail or jail need not be the only means to produce appearance at court. For example, pilot initiatives in New York City, and the experience of pretrial services agencies across the country, have shown that there are other ways to secure defendants' appearance in court. Systems that employ court date notification and pretrial monitoring and supervision, graded in intensity as warranted by the circumstances, all promote a defendant's return to court while respecting the right to liberty and the presumption of innocence.

- Will you support litigation aimed at prohibiting money bail for low level misdemeanors.

Yes. I will support and advocate for such measures.

- In the absence of legislation overhauling Missouri's money bail system, will your office commit to taking a default position of release on recognizance for all defendants accused of misdemeanors and nonviolent felonies, unless there is a substantial risk to the community of high likelihood of flight?

Yes.

Keep People Out of Jail for Drug-Related Offenses

Years of experience with ineffective drug laws and the latest medical research on addiction suggest that treating drug use as a public health issue, as opposed to a criminal justice issue, is a more effective approach to reducing harm.

- Will you support diversion programs for all low-level drug offenses?

Yes. I will support diversion programs and advocate for them in cases of low-level drug offenses. My intention in this office is to create a better, safer, ethical and more community-oriented St. Louis County. A system functioning from out dated practices that simply punish people for habits, poverty, or circumstance will not get us to my goal for our region. Approximately 90% of women in Missouri prisons now, are there for a drug addiction. They may have been convicted of shop-lifting or bouncing a bad check or even aggravated assault, but they committed those crimes, likely to support a drug habit. Additionally, young men we see on the street selling marijuana or cocaine are typically doing so to keep a roof over their heads in neighborhoods where, for generations, they have experienced poor schooling, lack of secure employment, subpar housing and environmental infractions that go unchecked – all of which was imposed on earlier generations to segregate schools. Given these realities, if we want drugs off our streets – resulting in safer communities, we need serious reform, not criminalization of addiction.

The Bell plan is to increase the use of our diversion programs. I'm excited to partner with local non-profit organizations to get professional opinions of people in designated fields of study to assess these types of non-threatening crimes for other social ills that may be attended to for resolution. Our goals include getting resources and services to people who need them rather than increasing recidivism rates. My office will focus on rehabilitating people struggling from addiction, and determine by certified and licensed professionals, those individuals who are offending due to mental and emotional disturbances.

- Will you decline to prosecute drug possession or distribution in small amounts?

My office will fully commit to the implementation of diversionary programs emphasizing alternatives for drug possession, and will take the facts into consideration in each individual case involving distribution.

- In the absence of sufficient evidence of intent to cause death, will you commit to not charging drug overdose cases as homicides?

Although this is something that should be taken seriously, as a policy, charging low-level distributors with homicide does not appear to be a policy that works. I am open to hearing more about this issue.

- Will you publicly support the creation of safe injection sites in your county, to provide those suffering from drug addiction with access to clean supplies, naloxone, and medical or addiction treatment?

Yes. Additionally, I believe that it is important that health care community partners are on-hand to encourage treatment and education.

Adopt Policies to Avoid the Criminalization of Poverty

Local justice systems disproportionately harm people living in poverty. Whether through the imposition of fines and fees as a condition to resolving cases, or through laws that effectively criminalize homelessness, local actors have imposed a poverty penalty on many within the community.

- Will you implement a policy providing that an individual's inability to pay fines, fees, or costs will not play a role in determining eligibility for bail, a plea agreement, the appropriate sentence, or entrance to a diversionary program?

Yes.

- Will you adopt fee waiver programs for those diversionary programs that currently require fees?

Yes.

- Will you oppose incarceration based upon the failure to pay fines or fees, unless there is uncontroverted proof that the individual is able but willfully refusing to pay?

Yes.

- Will you establish a strong presumption against prosecuting sit-sleep-lie laws, public urination violations, and other conduct that is a byproduct of homelessness or poverty?

Yes.

Treat Kids Like Kids

Recognizing that children's brains continue developing until around the age of 25, and that research supports their enhanced capacity for rehabilitation, children should neither be prosecuted in adult court nor given punishments that preclude the opportunity for redemption.

- Will you support HB 1255 and SB 793 which will require that all 17-year olds start in juvenile court instead of having them automatically prosecuted as adults? Will you decline to ask for sentences that are de facto life-without-parole for any person under 18 at the time of the offense?

Yes.

- How will you ensure that juveniles are not needlessly confined? What steps will your office take to make certain that the juvenile justice system operates in a rehabilitative, rather than punitive, manner?

The juvenile justice system is not under the purview of the St. Louis County Prosecuting Attorney's office. "Prosecutors" in the juvenile justice system are not even considered prosecutors, but are "Legal Officers." I support, and will advocate for, the current philosophy of rehabilitation rather than a philosophy of punishment in the juvenile courts.

- Will you commit to never seeking detention for juveniles charged with misdemeanors or non-violent offenses?

I would not seek detention for juveniles charged with misdemeanors or non-violent offenses. In situations where the child is at risk (i.e. parental neglect, drug use), we will look to placement with family members or residential facilities -- but not detention.

- Will you commit to never seeking transfer to adult court for juveniles 16 and younger?

Absent extreme and aggravating circumstances, my policy will be to never seek transfer.

- For juveniles who are 16, will you commit to never seeking transfer to adult court unless the charged offense is a capital felony, and the juvenile already has a conviction for a prior first degree or capital felony?

Absent extreme and aggravating circumstances, my policy will be to never seek transfer.

- The human brain does not reach maturity until approximately age 25. Will you commit to

creating diversion programs for defendants between 17-24, who are legally adults but are not developmentally mature?

Yes.

- Will you decline to seek life-without-parole sentences for young people between the ages of 18 and 25?

Absent extreme and aggravating circumstances, Yes.

- Children are less able to make an informed decision when deciding to talk to the police. Will you vocally support a policy that prohibits the interview or interrogation a child--either as a witness, suspect, complainant, or respondent--by law enforcement without the presence of a parent or guardian?

Yes.

- Will you establish a strong presumption against prosecuting school suspension or expulsion cases where there is no use or threat of force resulting in physical harm?

Yes, and advocate for such a policy.

Do Not Seek the Death Penalty

The use of the death penalty has become increasingly isolated to a handful of jurisdictions within the United States. California's death penalty is routinely identified as one of the most dysfunctional, broken systems in the country. There is mounting evidence that the death penalty is fraught with error, provides no additional public safety benefit over other available sentences, and is routinely used against individuals with diminished culpability, including persons with intellectual disabilities and severe mental illness, youthful offenders under the age of 21, and those who have experienced extreme childhood trauma.

- Each death prosecution cost taxpayers an average of \$2.3 million. Minorities are more likely to be selected for death prosecutions, and more likely to be sentenced to death. The death penalty is disproportionately used against black people in St. Louis County. Will you commit to ending this racist and expensive practice, and commit to never seeking the death penalty?

Yes.

- Knowing what you do about the racist and error-ridden history of the death penalty in St. Louis, will you support the commutation of current death row inmates out of St. Louis to life without parole?

Yes, the State of Missouri has a history of racial disparities in decisions made to execute. Additionally, since 1973 there have been 157 individuals in the United States sentenced to death, and later exonerated. Thus far, four of these exonerations occurred right here in Missouri.

- How will your office avoid wrongful convictions, and what steps will you take to ensure that no one in St. Louis County is convicted of a crime they did not commit?

We will avoid wrongful convictions by, among other things, reviewing past discovered wrongful convictions and identifying the factors that led to those wrongful convictions. I will create a specific unit tasked with this analysis, which is known as "root cause analysis" (RCA). The office will work to remedy the root cause identified by the process, including creating a remedial/corrective action plan and a method for assessing whether the plan solves the problem. A report evaluating whether the remediation efforts were successful will be made available to the public. The lessons learned, and the solutions identified will be folded in to ongoing training, the

orientation of new staff, and policy development in the office.

- How will you minimize the negative consequences for those that have been wrongfully convicted?

We will minimize the negative consequences for those that have been wrongfully convicted by removing many of the barriers to re-investigation that may draw out the process and make it harder for those individuals to get relief. Main components of our plan include: 1) creating a conviction integrity unit to review wrongful convictions claims; and 2) being transparent with all evidence, including exculpatory evidence.

- Will you commit to creating and properly resourcing a conviction integrity unit in St. Louis County?

Yes. Wrongful convictions do not only affect those who spend time in prison for a crime they did not commit, they undermine the integrity of our criminal justice system. Thus, my office will take the view that a properly run and funded conviction integrity unit is not only the human thing to do, but simply makes sense in seeking to pursue justice and garner trust from the community it serves.

Key elements of our proposed Conviction Integrity Unit will include: 1) dedication of prosecutors and investigators assigned to the CIU; 2) The CIU will report to and be supported by the Prosecuting Attorney Wesley Bell himself, and other executive level staff; 3) prosecutors who originally tried or participated in the prosecution of the case will not be allowed to re-investigating themselves; 4) the CIU will have written policies and procedures; 5) CIU staff will receive appropriate training for their special assignment.

- Where DNA or other evidence that may lead to exoneration is in your possession, will you commit to always making that evidence available for independent testing should the defense ask to test?

Yes.

- In cases involving false confessions or witness recantations, will you commit to agreeing to allowing a judge to hear and assess the value of that evidence, even after conviction?

Yes.

Promote Proportionate Sentencing and Provide Pathways to Second Chances

People are more than their worst acts, and even people who commit the most serious offenses often change their lives profoundly over time. To recognize the worth and potential for growth in all people, it is important for locally elected prosecutors to provide individualized consideration to the character and background of each person and to the circumstances surrounding the commission of the offense. It also is critical for elected prosecutors to promote opportunities for release, through parole or clemency, and to help remove barriers to reentering society for those who are released from incarceration.

- Prosecuting attorneys across the country have routinely adopted policies of charging the most serious readily provable offenses, to make it easier to charge bargain when seeking a guilty plea. Will you adopt a policy to charge the least severe acceptable charge, so that the charge more accurately reflects the alleged conduct and does not create artificial incentives for a defendant to plead guilty?

Yes, we will adopt a policy to file the most appropriate charge based on a fair and impartial assessment of the facts. We will not charge the more serious offense to force the defendant into a plea.

- Will you use pretrial intervention/diversion strategies in a significantly higher proportion on cases involving nonviolent, low-level, offenders? If yes, which offenses would you

make eligible for diversion? Would you make any state jail felonies or 3rd degree felonies eligible for diversion? Will you make diversion available to all defendants willing to participate, irrespective of their criminal histories?

We are fully committed to pre-trial intervention/diversion strategies. All non-violent low-level offenders will generally be eligible for these programs.

- Will you commit to a policy seeking the least severe acceptable punishment in all cases?
Will you commit to never seeking a jail sentence for misdemeanors? Non-violent offenses? Drug possession? Prostitution?

We will commit to seeking the appropriate punishment in all cases, taking into consideration the specific facts of the case. Absent aggravating circumstances, we will commit to never seeking jail sentences for misdemeanants, non-violent offenders, drug possession, and prostitution.

- Will you commit to reducing the percentage of cases where a maximum sentence is sought by prosecutors?

Yes.

- Will you pledge to establish an office policy against increasing or threatening to increase the number or severity of charges in order to secure more favorable plea dispositions or waivers of rights?

Yes, I believe that it is unethical and against public policy to use charges as leverage to force favorable plea dispositions.

- Will you publicly oppose any proposed legislation that would create new mandatory minimum sentences or lengthen existing minimum sentences?

Yes. I have seen that mandatory minimum sentences do not reduce crime rates, and instead needlessly take discretion away from judges who are in the better position to determine the most appropriate sentence in any individual case.

- Will you publicly support the repeal of gang and other sentencing enhancements?

I am in support of an analysis of the effectiveness, or lack thereof, with regard to these sentencing enhancements.

- Will you pledge to support second chances by both limiting parole opposition and committing to affirmatively advocate for parole on behalf of those who demonstrate outstanding growth and maturity during their incarceration?

Yes.

- Will you use pre-plea diversion programs and create explicit benchmarks to reduce the number of people incarcerated pre-plea and pretrial?

Yes.

Promote Policies that Aid Undocumented Communities

In the last year, undocumented communities have come under increasing attack because of increasingly vicious federal immigration laws. These policies not only allow for deportation because of minor allegations like possession of drugs, but they also make communities less safe, as undocumented victims fear going to court or speaking to law enforcement.

- Many individuals end up in immigration detention based on arrests for quality of life

offenses, which are never charged and are often eligible for ticketing (as Class C offenses). Will you commit to directing law enforcement to ticket, instead of arrest, for class c misdemeanors including marijuana possession, disorderly conduct, public intoxication, "hot" checks less than \$20, simple assault, and criminal trespassing?

Yes.

- Even expunged and sealed convictions can carry immigration consequences under federal law. Will you allow pretrial diversion without an admission of guilt, so as to avoid deportation based on diverted offenses?

Yes.

- If permitted under state law, will you direct law enforcement officers to not inquire about immigration status?

Yes.

- Will you decline to require a guilty plea before admission to a diversion program?

Yes.

- Will you refuse to cooperate and liaise with ICE?

I have no intention of allocating St. Louis County resources to enforce customs and immigration law.

- Do you commit to vacating convictions that are making immigrants deportable, or preventing immigrants from seeking asylum or some sort of immigration relief?

I will commit to working with the immigrant community and local organizations to create common sense protections for immigrants and asylum seekers in St. Louis County.

Policies that Promote Transparency and Accountability to the Community

Enhancing transparency and accountability within the district attorney's office is critical to ending the win-at-any-cost pursuit of high conviction rates that is failing our communities. Our elected prosecutors must build a culture focused on seeking justice for victims, and ensuring that justice is equal. This requires being open to community scrutiny and feedback, paying close attention to racial disparities, and prioritizing the needs of victims and their families.

- Will you maintain and publish regular statistics about prosecution, including the number of misdemeanor and felony cases filed each month, disposition statistics, pretrial incarceration rates and length of stay by offense category, and average bond for each class of offense, to measure the effectiveness of policies aimed at efficacy and reform?

Yes. I firmly believe that transparency is a prerequisite to justice. Moreover, we cannot make effective policy without intelligence-driven data to measure such policies.

- Will you include racial information at all steps, committing to publicly report any significant racial disparities at any stage of the process?

Yes.

- Will you help to end both explicit and implicit racial bias in policing by refusing to file charges that result from racial profiling?

Yes.

- Will you build a staff that reflects the diversity of the community the office serves?

Yes; and I have a proven track record of building diverse staffs.

- Will you commit to regular communication with community members and organizations, including regularly scheduled open sessions?

Yes. I intend to fully engage the community by opening field offices in different parts of St. Louis County to promote community engagement. I will also assign specific prosecutors to each specific field office so that they are able to fully engage their assigned community.

- Will you prioritize the needs of the victims of violence by expanding support of victim/witness service programs and improving communication with victims and family members?

Yes.

- Will you make office policies--like criteria for pretrial diversion and policies governing sentencing recommendations--public?

Yes.

- Will you gather, maintain, and make public data about prosecutions, diversions, plea offers, and sentencing?

Yes.

- Will you commit to the creation of an independent unit, or to bring on an independent prosecutor, in all cases involving police misconduct?

Yes.

- Will you commit to a full investigation including presentation before a grand jury of all cases involving police-involved shootings or other violence resulting in death or bodily injury?

Yes.

- Will you commit to a full investigation including presentation to a grand jury of all cases involving police-involved corruption or fraud?

Yes.

- Access to information promotes fairness, congeniality, and the early resolution (either through pleas or dismissals) of criminal cases. Will you create an open-file discovery system, to provide information to defense counsel as you receive it?

Yes.

- Prosecutors have an obligation under the *Brady* doctrine to provide exculpatory information to defense counsel. What do you think the *Brady* doctrine requires of prosecutors?

The *Brady* doctrine requires that prosecutors must disclose any and all evidence that will prove the innocence of the defendant, or any evidence that would aid in the defendant's ability to defend himself or herself; including evidence that mitigates the alleged crime.

- What specific changes would you implement (to the discovery process, to supervision within your agency, to communication channels with law enforcement) to ensure that *Brady* information is disclosed in a timely fashion?

I would implement check lists as well as written office policy requiring disclosure over concealment.

- What specific training would you implement to ensure that your employees understood how and in fact do comply with their *Brady* obligations. What topic areas would that training cover?

I would require periodic trainings and updates on the law, with an emphasis on erring on the side of transparency.

Policies that Guard the Community Against Abuse of Power by Officials

Fraud and public corruption undermine public trust in government. There's also the inevitability of mistakes that, in the case of public prosecutions, are as inevitable as their impacts are life-altering. It is crucial that elected prosecutors serve as one of the first lines of defense to protect the less powerful in our society from exploitation, especially when it comes to abuse of power by those in government who are supposed to act in the public interest.

- Will you commit to using asset forfeiture only after a conviction has been obtained, and ensure that there is a meaningful opportunity for members of the community to contest the seizure?

Yes. Justice and due process requires it.

- What is your position on the Prosecuting Attorney's role, if any, in ensuring that indigent defendants in St. Louis County receive competent and diligent representation?

As a former public defender, I will not only support, but advocate for appropriate budgetary increases for the public defender's office. I know that justice cannot be served without public defenders having proper resources, and each defendant deserves the guarantee of competent and zealous representation.

- Will you support statewide legislation to end the use of civil asset forfeiture?

Yes.

- Will you advocate for a fully funded Public Defender's office?

Yes. As a former public defender, I understand the importance of having access to quality representation. As St. Louis County prosecutor, I will support and publicly advocate for a fully funded public defender's office.

- Recognizing that prosecutive mistakes are inevitable and the consequences are life-altering, will you create mechanisms for a second look at charging decisions, plea bargains, and convictions?

Yes.

- Will you work with the community and law enforcement to charge and convict those who criminally defraud the public or abuse public office for personal gain?

Yes.

