

ACLU Questionnaire Submission
District Attorney Marian Ryan

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General

1.)

I bring a deep commitment to criminal justice reform to this job. I began my legal career as a student at Greater Boston Legal Services representing indigent clients and children in CHINS cases. I continued that work during the summers of both my second and third year at Boston College Law School. I then served as a 3:03 student-attorney with the CPCS criminal defense clinic at the Dorchester District Court. My familiarity with the defense perspective began at the outset of my legal education and I continue to benefit from that experience to this day.

I began my work at the Middlesex District Attorney's Office as a line Assistant District Attorney in the Cambridge District Court. I later became a regional District Court supervisor and then a Superior Court ADA, working in a number of different units, including our child protection unit. While working as a trial ADA, I also briefed and argued numerous cases before the Appeals Court and the Supreme Judicial Court. I held a variety of leadership positions within the Office prior to becoming District Attorney. These leadership positions included serving as a Superior Court Team Captain, heading our Office's training unit, and leading our domestic violence unit and our elder and disabled unit.

Immediately prior to becoming District Attorney, I served as General Counsel, where I oversaw the Office's community outreach work. As District Attorney, I have expanded our Office's work in this area. Several times a week I personally present programs in different parts of the county. I also lead our hospital-based task forces, which are the hub of our opioid initiative. Our Office's leadership role in this area has received national attention. More importantly, there has been a significant decline in fatal opioid overdoes in Middlesex and we are proud of any small part our efforts and partnerships have played in that decline.

Each session, I work closely with the legislature to identify areas where the criminal law can be reformed and improved. I independently assess the merits of potential changes to the law and have been willing to stand alone when I believe that change is necessary. Ninety days after my swearing-in, I made the decision *not* to add my name to a letter by other District Attorneys offering strong support for the retention of mandatory minimum sentences.

I am proud to have supported the recently-enacted criminal justice reform legislation. My Office helped to write the restorative justice provisions in this law. I continue to be an outspoken advocate of criminal justice reform. My public and sustained advocacy for these issues would seem improbable to some given my career choice to be a prosecutor and my experience as a victim of a violent crime.

As a young attorney, I was the victim of an armed robbery in which my boyfriend was shot and killed. That life-altering experience and the trials that followed taught me many things about different perspectives on the process and the collateral impact of crime.

I have also taught criminal law and related courses at the undergraduate level for many years. Teaching changes one's perspective and provides insight into the complex ethical and practical issues that prosecutors confront on a daily basis.

I have spent my entire life living and practicing in Middlesex County and I have built deep and lasting relationships here. Those relationships are at the heart of my Office's successful community outreach and opioid prevention efforts. My decades of experience in the criminal justice system and my leadership in criminal justice reform demonstrate my deep commitment to making the justice system in Massachusetts work for everyone.

2.)

Our Office is a statewide leader in progressive reform, innovative partnerships, and prosecutions that protect the public safety. While we aggressively prosecute violent crime, in many ways we have become a non-traditional Office that provides education and prevention programs that reduce the need for prosecutions in the first place.

Systemic change relating to incarceration has been the area in greatest need of transformation both in my Office and in the criminal justice community as a whole. Prosecutors have historically focused on the goals of punishment and deterrence. These remain important considerations in the most serious violent felonies. However, in the vast majority of cases, it is essential to move to a prosecutorial model that presumes and emphasizes diversion, drug treatment and mental health care rather than one that focuses first on jail.

To accomplish this, I have worked to create a culture in which Assistant District Attorneys carefully assess those limited circumstances where defendants should be held on bail and/or in which the Commonwealth should seek committed time. I believe that the ADAs in my Office have embraced this new approach.

Since I firmly believe the District Attorney's Office should reflect the community it serves, we continue our efforts to increase the diversity in our ranks.

3.)

The Middlesex District Attorney's Office has been a statewide leader in both the development of education and prevention efforts and in criminal justice reform. Our many diversion programs, particularly Restorative Justice, have served as a model for the new Criminal Justice legislation. I have expanded the number and variety of diversion programs (both pre-arrangement and post-arrangement). I have also made entrance requirements more flexible to increase the number of offenders who are eligible to participate.

Our Young Adult Diversion (YAD) program is charged with creating additional partnerships that will increase diversionary options for emerging adults. Since it is often difficult for young people with criminal records to find employment, I am working on developing partnerships to provide work opportunities for these young adults.

I also support the Columbia University Justice Lab's Future of Community Corrections Statement regarding additional step-down services that should be provided by probation and parole departments. As described below, I have changed our policy regarding cash-bail in order to lessen the impact of pre-trial detention on minorities and the poor.

4.)

Since late 2012, I have been focused on substance abuse disorder issues. One of my first steps was to create a Mobile Policy Forum composed of people who have lived experience of addiction and incarceration. Their input, as well as input I have gained from families and loved ones at "Learn to Cope" and other such organizations, has resulted in our creating additional partnerships that increase diversionary options for those struggling with addition issues who are facing potential criminal charges. I have also created a pre-arrangement diversion program, and have participated in a collaboration that led to the creation of the Lowell Drug Court.

To ensure that our staff is well-educated about substance use disorder, we have conducted training sessions with Dr. Ruth Potee and other nationally recognized experts. Our Assistant District Attorneys factor substance abuse treatment into their recommendation in any case where drug or alcohol addiction appears to be a issue. I have been a strong leader in efforts to have substance use disorder seen as a public health and public safety issue.

5.)

To improve access to and opportunities for mental health treatment, I have partnered with the Massachusetts Community Justice Project, an organization that is doing "sequential intercept mapping" of behavioral health services. This mapping will highlight needs and deficiencies in mental health treatment and make service access more seamless and efficient.

I continue to support and participate in Mental Health and Homeless Court. These courts have greatly improved access to mental health services. As Chief of the Middlesex Elder and Disabled Unit for almost twenty years, I gained a deep knowledge of DMH, DPPC, and MRC services. Much of our work included helping seniors and those in the disability community to obtain good evaluations and effective mental health treatment in their community. That experience informs my participation in these efforts.

I am very interested in the role that trauma plays in future behavior. We have based many of our efforts on the Adverse Childhood Experience Study (ACES) and have attended and presented trainings about the impact of trauma. One of the programs of which I am most proud is Project Care. This partnership with mental health providers allows our first responders to quickly access mental health trauma care for children who witness or are affected by overdoses, suicides or other significant trauma.

6.)

I believe that public safety is best protected when we have a criminal justice system that works fairly, when there is more focus on rehabilitation than on punishment and when we aim to prevent crime rather than just react to it. In Middlesex, we have a robust and expanding menu of diversion programs for both juveniles and adults. We have partnered with many treatment programs that are components of either our pre-arrangement diversion option or are included as part of our disposition recommendations.

Middlesex also offers education/prevention programs to students, parents, seniors, the healthcare community, law enforcement partners and community members on a variety of topics. I have been a supporter of restorative justice practices, which are used widely in Middlesex County. I partnered with Senator Jamie Eldridge to help write the Restorative Justice bill. I promoted and testified in support the bill. With the additional support of Representative Sean Garballey it was finally included in the 2018 criminal justice reform law.

Racial Justice

1.)

There is no question that the criminal justice system has a disparate impact on racial minorities and the poor. The District Attorney plays an integral role in the criminal justice system. The challenge, therefore, is to continually work to identify biases in law enforcement and prosecution and to openly and honestly confront the issue. Implicit bias can unconsciously effect prosecutorial decisions of all types. Accordingly, I have sponsored an implicit bias training for our staff and police departments in Middlesex County. The training was conducted by United States District Court Judge Mark Bennett, who is a nationally-recognized expert on implicit bias and its impact in the criminal justice community.

We have also reexamined our own policies to see if they were having a disproportionate impact on minorities and the poor. We determined that our practice of requesting cash bail was having such an impact. In determining whether to ask for cash bail, prosecutors' offices historically

emphasized a defendant's history of defaulting for prior court appearances. Although there was a logic to seeking cash bail when defendants had failed to appear for court appearances in the past, the poor are by definition less likely to be able to afford cash bail. The result was that members of these communities were more likely to be held pending trial, often leading to job loss or loss of housing. This type of pretrial detention often led to educational interruption for young people.

In light of the disproportionate impact that existing practices were having on minorities and the poor, we no longer request cash bail in low level non-violent cases even when defendants have a long history of default. We recognize that this will result in an increase in the default rate, but the alternative is unacceptable. We will continue to actively examine our policies and procedures to identify any areas where we can reduce or eliminate the disparate impact of the criminal justice system on minorities and the poor.

2.)

I believe that the employees of a District Attorney's Office should reflect the communities that they serve. Our Office's hiring coordinator is a woman of color, with deep roots in the diversity bar community. She has conducted extensive outreach efforts at law schools and colleges, both inside and outside of Massachusetts to recruit diverse candidates. In order to demonstrate our Office's deep commitment to increase diversity among our attorneys, our Hiring Coordinator is often accompanied by a retired Superior Court judge who is also a member of our staff.

Additionally, we have an affinity group in our Office for employees who identify as members of underrepresented communities. The affinity group serves to attract and retain a talented workforce that is diverse in terms of perspective, including, ethnicity, gender, sexual orientation, background, and experience. Such diversity enriches our workplace and broadens our perspective on the important work we do.

Among the affinity group's functions are to encourage mentoring, provide a safe space to discuss sensitive issues, brainstorm ways to address challenges diverse individuals face, and to help recruit and maintain a diverse staff. The affinity group includes VWAs and paralegals in addition to ADAs. We also reimburse membership fees for diversity bar association groups. We continue to be in contact with external leaders in these communities to encourage them to direct candidates to employment opportunities at the Middlesex District Attorney's Office.

3.)

Our Office currently collects and analyzes a range of race and other demographic information relating to defendants. This data includes a wide range of information including bail requests, recommendations for diversion, charges, and sentences.

As set forth in my answer in Transparency 1, there is clearly a statewide need for an improved statewide data-tracking system.

Transparency

1.)

All of the District Attorneys in Massachusetts recognize the importance of improving the current state-funded data collection system. This system (DAMION) is essentially an internal case-tracking system that is not well-suited to collecting and reporting demographic data.

Accordingly, we have sought additional funds to update and modernize our data collection system. To help alleviate the problem in the meantime, I have forged several partnerships to collect and analyze data in different areas. These partners include the American Institutes for Research, which is conducting a year-long study of our opioid work, and U-MASS Lowell School of Public Health, which is focusing on our trauma-informed child programs. We are also in the process of implementing a broader partnership with Northeastern University to study case data.

2.)

I will collect and make available such data.

3.)

I will regularly share and make available reports on civil asset forfeiture funds.

Accountability

1.)

I have experience in both personally prosecuting officers for misconduct and in supervising investigations into alleged police misconduct. We are one of the only Offices in Massachusetts that has created and maintained a database of police misconduct resulting in the issuance of so called “Brady” letters. Our Office takes steps to ensure that investigations into police-involved shootings are initially reviewed by the Chief of Homicide and are further reviewed by the most senior prosecutors in the Office. On all such cases, I personally make the final determination as to whether charges are appropriate.

I work to avoid any appearance of bias. Toward that end, complaints against police officers are transferred to a geographically different region from the one in which the police officer works. If that is not feasible, our Office transfers the case to another prosecuting Office to avoid any conflict.

2.)

I believe – and have always believed – in open-file discovery in criminal cases. It is the policy of the Middlesex District Attorney’s Office to disclose all exculpatory evidence in every case that our Office handles. The Middlesex District Attorney’s Office has worked closely with the Innocence Project and the Crime Lab to create Memoranda of Understanding to ensure that all defendants have complete access to all of the evidence related to their cases.

3.)

My Office has been a leader in implementing an effective conviction integrity program. Shortly after becoming District Attorney in 2013, I created the Middlesex Conviction Integrity Committee. Our Office's Conviction Integrity Committee adheres to the four recognized principles that define an effective conviction integrity unit: independence, flexibility, transparency, and prevention. I, along with Attorney General Healey, have been asked to co-chair the MBA Working Group on Conviction Integrity.

My Office has collaborated with the Innocence Project and the defense bar to provide training on ways to avoid implicit bias while reviewing forensic evidence. We continue to join with the Innocence Project to conduct trainings on how to improve the effectiveness of claims that are presented to the Conviction Integrity Committee.

Community Engagement

1.)

I would support the creation of such an advisory board.

2.)

We currently have very strong partnerships with the following organizations (and others) to increase diversion, lower recidivism and/or provide education, training, and treatment as an alternative to incarceration:

- a.UTEC
- b.C4RJ
- c.Lowell House
- d.Gavin Foundation
- e.More Than Words
- f.Our RJ
- g.Southeast Middlesex Opportunity Council (SMOC)
- h.Holy Family Hospitals' Family Safety Project
- i.Emerge (Massachusetts Certified Batterer Intervention Program)
- j.Common Purpose

3.)

We currently have very strong partnerships with the following organizations (among others) to increase support to victims of crimes in the form of counseling, relocation or other financial services and/or restorative justice opportunities:

- a.Domestic Violence Service Network
- b.REACH Beyond Domestic Violence
- c.Boston Area Rape Crisis Center

- d.C4RJ
- e.Mental Health Association of Great Lowell
- f.Elliott Human Services
- g.Melrose Alliance Against Violence
- h.The Immigrant Learning Center
- i.Portal to Hope
- j.Transition House
- k.Southeast Middlesex Opportunity Council
- l.Alternative House
- m.RESPOND
- n.Voices Against Violence
- o.Jewish Children and Family Services
- p.Cambodian Mutual Assistance Association
- q.Massachusetts Alliance of Portuguese Speakers
- r.International Institute
- s.Cambridge Legal Services and Counseling Center (CLSAC)
- t. Victim's Rights Law Center
- u.Center for Hope and Healing
- v.Various Legal Services Offices, such as: MetroWest Legal Services & Cambridge/Somerville Legal Services
- w.Massachusetts Legal Assistance Corporation

4.)

Formerly incarcerated people have played and will continue to play an important role in the Middlesex District Attorney's Office. They have been of great assistance to us in shaping some of our Office's trainings and developing new programs, including the pre-arrainment drug diversion program, our mobile policy forums, and our hospital grand-round training.

These programs, which have been presented across the county, have brought new insights about addiction, stigma and paths to recovery. Many of these same individuals often accompany me to trainings at senior centers in various cities and towns. There, they speak powerfully about the impact that their addiction had on their lives and the lives of their families. These insights help to educate our seniors about warning signs and ways to seek help for their loved ones.

Formerly incarcerated individuals have appeared with me at screenings of Jenny Phillip's wonderful film, *Beyond the Wall*. One such presentation was held for both our staff and for Middlesex County's Chiefs of Police. Formerly incarcerated individuals have participated and will continue to participate in our ADA Trainings so that our ADAs can better fashion their sentencing recommendations and understand the effects of incarceration.

Immigration

1.)

ICE's policy of detaining defendants facing criminal charges in Massachusetts is unacceptable because it denies those defendants their right to a trial. Individuals should not be detained by ICE solely because they happen to be facing criminal charges for which they are presumed to be

not guilty. This practice by ICE also denies victims the opportunity to see their cases resolved. On April 9, 2018, I submitted a letter to the Supreme Judicial Court supporting a pending petition and urging it to prohibit ICE from engaging in this practice.

Additionally, we have created the Immigrant RIGHTS Project (Reaching Immigrants, Gaining Trust). This project focuses on providing education to those likely to have trusting relationships with members of refugee and immigrant communities, including the clergy and ESL tutors. In particular, we provide information about the legal rights, protections, ways to avoid victimization, and resources that are available to immigrants.

In December of 2016, I hired an attorney who had extensive experience doing immigration work in her position at a legal services office. She now advises me on immigration policy matters.

Those who face potential immigration consequences are encouraged to avail themselves of our Office's many diversion options. Finally, I have had the opportunity to connect with ACLU attorneys and bar advocates about how we can best ensure that those with immigration issues who are involved in the criminal justice system are connected with capable immigration attorneys.

Privacy

1.)

I would make such a report available.

2.)

I would support appropriate privacy legislation.

3.)

I would support appropriate privacy legislation addressing these issues.

4.)

I would support an expansion that is limited to solving gang-related homicides and human trafficking cases.

Bail

1.)

As the Supreme Judicial Court held in Brangan v. Commonwealth, 477 Mass. 691, 706 (2017), a defendant's alleged dangerousness should not be considered in setting bail. To the extent that the Commonwealth believes that the defendant should be held without bail before trial because he poses a danger to the community, the Commonwealth "is required to proceed under G.L.c.

276, § 58A, and comply with that statute's procedural requirements." Our Office is committed to complying with the court's holding.

2.)

As I noted in Racial Justice Question No. 1 (above), in January 2018, our Office implemented a new policy of no longer seek bail for defendants in low level cases even where such a defendant has a long history of default. Although there was a logic to seeking cash bail when defendants had failed to appear for court appearances in the past, the poor are by definition less likely to be able to afford cash bail. One result was that members of these communities would be more likely to be held pending trial or they would plead guilty only to avoid being held further. This policy is intended to address that concern.

Parole

1.)

I bring a unique perspective to this issue because I have testified before the parole board, not only as an Assistant District Attorney but also as the victim of a violent crime. I know well the issues presented, the stakes involved for all and the complex nature of these decisions.

Remorse is one of a number of important factors that should be considered in determining whether to support or oppose an offender's application for parole. It is not, however, the *only* factor. The parole board must also weigh any public safety risk presented by the offender as reflected by the nature of the offense for which he was convicted, his criminal record, his behavior inside the institution, whether he has participated in rehabilitative programming, the viability of his plan for release, the age and physical circumstances of the offender, and the perspective of the victim.

Juvenile Justice

1.)

I would release such non-identifying prosecution and diversion data.

2.)

I am sensitive to considerations about adolescent brain development and the need to avoid the generation of a criminal record for young people whenever this is possible. I supported the Senate version of the Criminal Justice Bill, which would have raised the age of Juvenile Court jurisdiction. Although that effort was ultimately unsuccessful, I will continue to advocate for its passage in the future. Additionally, I have increased the opportunities for emerging adults to have their cases diverted away from the criminal justice system or resolved through restorative justice programs.

In March of 2018, I was fortunate enough to be invited to join the Columbia University Justice Lab trip to Germany to learn more about their approach to emerging adults. Insights which I gained there will be incorporated into our programs.

Mandatory Minimums

1.)

I have been public about my opposition to mandatory minimum sentences. I believe that my advocacy played a part in the change in mandatory minimums for a number of drug offenses. I will continue to advocate for a system in which more discretion is given to the judiciary. I believe that such a change in the law would dramatically reduce the incarceration rate and would have a significant impact on racial disparity in our prison population.

Criminal Law Reform

1.)

Yes. See previous answer.

2.)

No. Considering the significant number of deaths and human tragedy that have been caused by heroin and fentanyl, I believe that those who engage in the *large-scale* trafficking of deadly narcotics should face certain incarceration. As I explained above, I do not support mandatory minimum sentences for low level drug dealers who are selling to support their addiction.

3.)

In Middlesex County, I have abolished the practice in seeking cash bail in low level cases even when the defendant has a long history of defaulting for court appearances. Cash bail, however, remains appropriate in certain circumstances. For example, cash bail may be the only way to ensure the appearance at trial of a defendant, charged with a non-58A eligible offense, who faces a likely, lengthy state prison sentence creating a strong incentive to flee and who has a long history of refusing to appear in court when ordered to do so.