



ARIZONA COUNTY ATTORNEY CANDIDATE BRIEFING BOOK

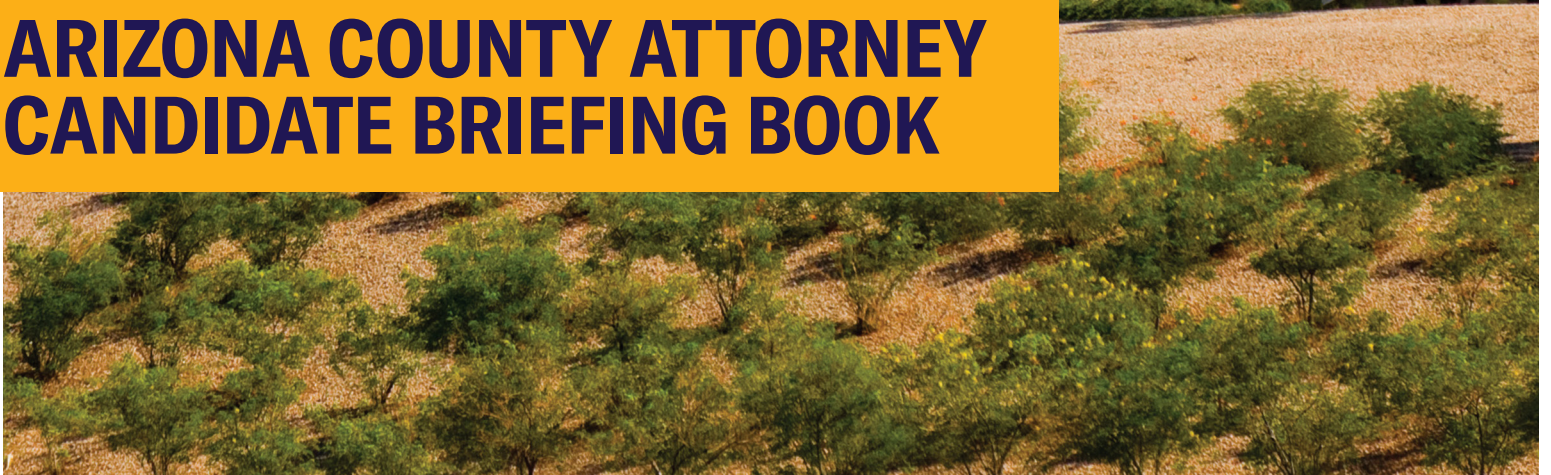


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Dear Candidate

Arizona is in the midst of an incarceration crisis that is tearing apart families, costing the state billions, and not improving public safety. No single person in Arizona has as much power to bring this crisis to an end as a county attorney.

As a candidate for county attorney, you have the unique power to bring Arizona into an era of smart, just policies that will safely and effectively reduce Arizona's prison population.

Daily decisions made by prosecutors have caused Arizona to stand out among other states for its overreliance on prison, long prison sentences, and lack of opportunities for people to access diversion or treatment programs. As a result, the state prison population has grown by 60% since 2000.

Communities of color in Arizona are disproportionately impacted by incarceration. We have the highest rate of incarcerated Latinx people in the country and the sixth highest rate of incarcerated Black people in the country.

This briefing book is being sent to all candidates running for county attorney in Arizona. It outlines a number of policy reforms that lay out an achievable pathway to ending mass incarceration and racial injustice in the criminal legal system.

Voters are ready for these changes.

A February 2020 poll conducted by Change Research and the ACLU of Arizona shows that voters statewide overwhelmingly support county attorney candidates who will commit to end mass incarceration and challenge racism in the criminal legal system.

Through its Campaign for Smart Justice, the ACLU of Arizona is working to educate voters about their power to elect a reform-minded county attorney who aligns with our values. Our goal is to ensure all candidates are challenged on their commitment to pursuing justice, not just convictions. We look forward to working with the elected county attorneys to make our vision a reality.

Sincerely,

Alessandra Navidad
Executive Director, ACLU of Arizona

Who We Are

The ACLU of Arizona Campaign for Smart Justice is an unprecedented, multiyear effort to reduce Arizona’s jail and prison population by 50% and to combat racism in the criminal legal system. Our team consists of people who’ve been incarcerated in Arizona, people who have loved ones currently in prison, community leaders, organizers, attorneys, policy experts, and ACLU supporters. The ACLU of Arizona reaches nearly 80,000 supporters, most of whom are registered voters, communicating with them consistently about critical civil liberties issues and mobilizing them to action. In 2019, the ACLU of Arizona drove our supporters to send nearly 6,000 emails to lawmakers advocating on behalf of civil liberties.

Why We Must End Mass Incarceration

Imprisonment is a brutal and costly response to crime that traumatizes incarcerated people and hurts families and communities. Since 2000, Arizona’s prison population has grown nearly twice as fast as the state population.¹ In 2017, Latinx people comprised 31% of Arizona’s state population but 37% of people admitted to prison.² Black people were overrepresented at an even higher rate, comprising 5% of the state population but 13% of prison admissions. In three decades, Arizona’s spending on corrections has grown 241%. Taxpayers pay more than \$1 billion a year to maintain the prison system — more than they spend on higher education.³

Vonda's Story

After Vonda Bennett was arrested for having a small amount of methamphetamine in her car, her fate was in the hands of a prosecutor. Vonda was a business owner, providing for seven kids, and struggling with a substance abuse disorder.

The prosecutor could use their discretion in a variety of ways. One option could be to charge Vonda with a low-level drug offense, making her eligible for probation or possibly a treatment program. Or, the prosecutor could choose to pursue the harshest possible charge against Vonda — ensuring she'd be sent to prison under the state's mandatory minimum sentencing laws.

"I begged the prosecutor on my knees in shackles not to tear my family apart," Vonda said.

The prosecutor chose to use their discretion to throw Vonda behind bars.

"Because it was packaged into two different packages, the prosecutor considered it transportation of a dangerous drug for sale," she said.

Vonda was offered a deal: plead guilty and receive a prison sentence of five and a half years, slightly longer than the mandatory-minimum prison sentence for the charge.

If she rejected the deal and exercised her right to trial, Vonda faced the possibility of receiving a longer sentence. She took the deal.

"The hardest part was I didn't even get a chance to explain to my children about my illness of addiction," she said.⁴



Vonda's story demonstrates how prosecutors wield their unchecked power. In any given case, they can use their discretion to seek justice or they can use it to secure a conviction, regardless of whether it's the right thing to do.

What happened to Vonda is just one example of the thousands of similar decisions prosecutors make every year — handing out long prison sentences, rather than prioritizing rehabilitation, public health and community safety. The combined effect of these prosecutorial decisions has been a major driver of incarceration.⁵

County Attorneys Can Embrace Smart Justice Values

County attorneys in Arizona have more power than any other elected official to make immediate changes to ensure cases like Vonda's stop happening and to have a real impact on reducing the prison population. A county attorney is the primary decision-maker for policies and procedures that dictate how cases are prosecuted in a county, how diversion programs are implemented, how plea deals are negotiated, and so much more.

County attorneys also have an influential voice at the state legislature and should use that power to encourage lawmakers to pass bipartisan, sensible, and effective criminal legal reforms while advocating against laws that will only take us backward — like mandatory minimum sentences, harsh repetitive offender statutes, and sentencing enhancements.

Many prosecuting attorneys across the nation are doing exactly this.

A movement of reform-minded county and district attorneys have implemented bold policies on day-one of their administrations. These positive changes within powerful prosecuting offices are leading to immediate reductions of jail and prison populations.

This new wave of transformational prosecutors is supported nationally by numerous groups that provide policy advice and networking to prosecutors committed to a reform agenda. Organizations like [Fair and Just Prosecution](#), [the Institute for Innovation in Prosecution](#), [Prosecutor Impact](#), and others are helping newly elected prosecutors succeed in reducing incarceration and tackling racial injustice.

Voters Demand that Prosecutors Embrace Smart Justice Values

In a statewide poll of likely Arizona voters conducted in February 2020, respondents showed overwhelming support for county attorney candidates who commit to reform. 79% of Arizonans agree that county attorneys should reduce incarceration by prioritizing treatment for substance abuse and mental health issues as well as reducing extremely long prison sentences.⁶

ACLU
SMART
JUSTICE
Arizona



85%
OF VOTERS WANT THEIR
COUNTY ATTORNEY
TO COMBAT RACISM IN
THE CRIMINAL JUSTICE SYSTEM.

85% of Arizonans want their county attorney to prioritize combating racism in the criminal legal system, and this support is firmly bipartisan with 73% of Republicans calling this issue important.

A large majority of Arizonans, 77%, want their county attorney to ensure that police officers are held accountable for misconduct.

ACLU
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79% OF VOTERS
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SMART JUSTICE POLICY RECOMMENDATIONS FOR COUNTY ATTORNEY CANDIDATES

The ACLU of Arizona recommends county attorneys focus on implementing reforms in six areas: decarceration, racial justice, law enforcement accountability, immigration, transparency, and legislative advocacy. For each of these areas, we suggest specific commitments and policy reforms, and provide examples of where similar policy reforms have been undertaken by other local prosecutors across the country.

Decarceration

A county attorney should be responsible for meaningfully reducing Arizona’s prison population. This requires a dedicated, intentional, and aggressive effort.

PATHWAYS TO REFORM

- Commit to a specific, measurable decarceration goal.
- End the prosecution of certain low-level crimes, including marijuana possession and other drug offenses.
- Expand diversion programs and ensure diversion is utilized for at least 9% of felony cases.
- Implement a plan to fund diversion programs for indigent defendants.
- Eliminate “Plead to the Lead” policies.
- Eliminate requests for cash bail.
- End the practice of using prior felony convictions to enhance prison sentences.
- Commit to not seeking sentences of more than 20 years for any crime.

WHERE IT’S BEEN DONE

Philadelphia District Attorney Larry Krasner stopped seeking cash bail for most offenses. In one year, 1,750 people, who otherwise would have been held in jail until they could pay their way out, were released without bail. Philadelphia’s jail population fell by 24%.⁷

Dallas County District Attorney John Creuzot ran on a promise to decrease jail and prison admissions by 15-20% within four years.⁸ Shortly after his election, his office stopped prosecuting theft of necessary items under the value threshold of \$750.⁹ An overwhelming majority of Arizona voters support the following means to reduce incarceration rates:

TREATMENT NOT PRISON

Seventy-nine percent of Arizona voters, including 62% of Republicans, agree that county attorneys should “reduce incarceration by prioritizing treatment for problems like substance abuse and mental health problems and reducing extremely long prison sentences.”¹⁰



ENDING THE PROSECUTION OF NON-VIOLENT DRUG CRIMES

Eight in 10 Arizonans agree that county attorneys should stop prosecuting minor marijuana cases and clear the records of people with old marijuana cases.¹¹



Racial Justice

Arizona’s criminal legal system has a disparate impact on people of color and the actions of prosecutors can exacerbate these disparities. A recent study found 57% of people sent to prison for marijuana possession in Arizona are Latinx even though Latinx people make up 31% of the state population.¹² Additionally, Black people sent to prison in Arizona serve an average sentence of about 62 months compared to 54 months for white people.

PATHWAYS TO REFORM

- Publicly acknowledge that racial disparities exist in the criminal legal system.
- Begin uniform and consistent collection, analysis, and publication of race and ethnicity data.
- Commit to implementing policies that will reduce racial disparities caused by prosecutorial decision-making discovered from the data collection.
- Decline to prosecute low-level crimes that have a disparate impact on people of color.
- Decline to prosecute cases where arrests are tainted with significant racial disparities and work with police departments to reduce those disparities.
- Stop seeking the death penalty.

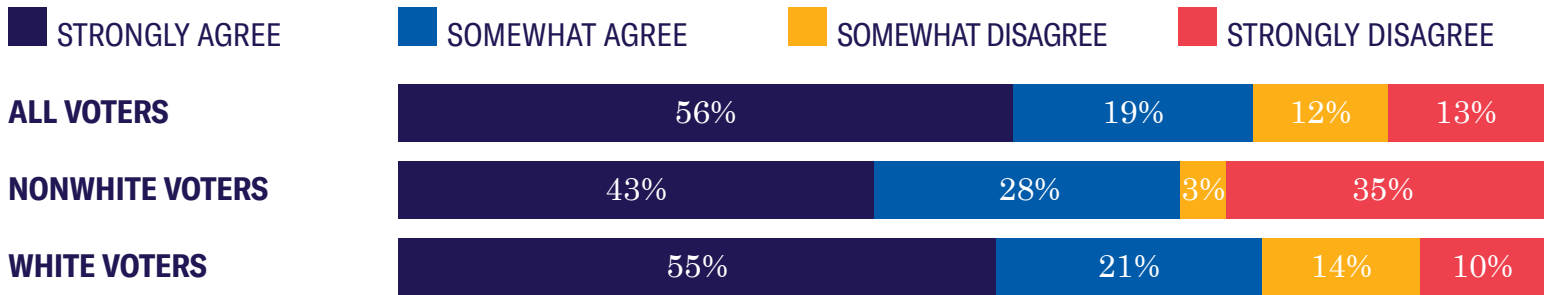
WHERE IT’S BEEN DONE

In 2007, Milwaukee County District Attorney John Chisholm joined forces with the Vera Institute of Justice to examine how his office had been contributing to issues of racial disparities in the criminal legal system. After studying the office’s data, Vera analysts determined that prosecutors had declined to prosecute 41% of white people arrested for possession of drug paraphernalia, compared with 27% of Black people. Considering these findings, Chisholm created a new policy: decline drug paraphernalia charges across the board and offer referrals to treatment whenever reasonable. The racial disparity diminished as a result, cutting in half the number of Black people who have been imprisoned in Milwaukee County by 2015.¹³

A strong majority of Arizonans view racism in the criminal legal system as a real threat and support reforms to reduce racial disparities.

COMBATING RACISM

Seventy-five percent of Arizonans agree that racism and racial bias are a problem in our criminal legal system, and a county attorney should take steps to identify and eliminate racial disparities.¹⁴



Law Enforcement Accountability

On average, an Arizona police officer shoots someone every five days, according to a report from *The Arizona Republic*.¹⁵ In 2018, Phoenix had more police shootings than any other major city in the United States. The report also revealed that police officers are almost never prosecuted for shooting or killing people. Similarly, county attorney’s offices in Arizona have a long history of avoiding accountability for instances of prosecutor misconduct.¹⁶ In the wake of this crisis, the onus is on law enforcement to earn the trust of communities they serve.

PATHWAYS TO REFORM

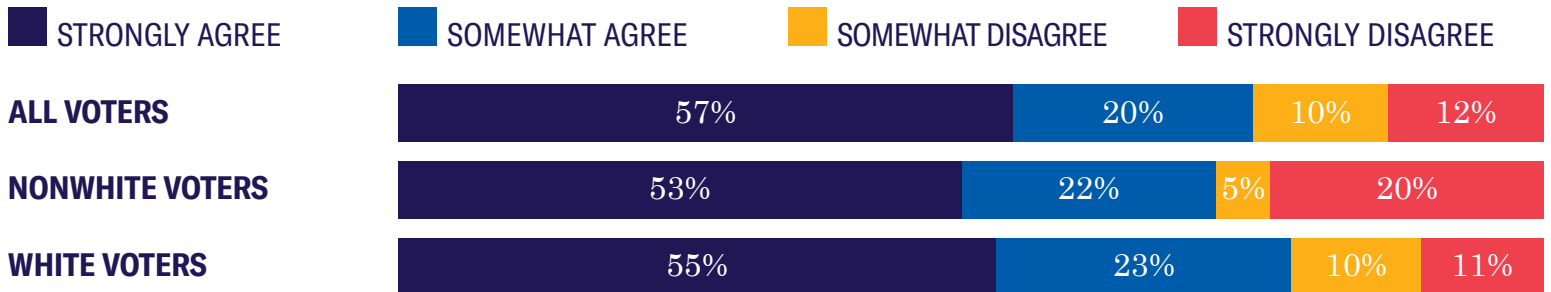
- Decline to prosecute cases based on unconstitutional policing, including racial profiling, and provide written notification to the police department. These notices should be tracked in a database that is made available to the public.
- Assign all investigations of police shootings, police brutality, and other police misconduct to an independent prosecuting unit with civilian oversight.
- Create a “No-Call” list of police officers who’ve committed misconduct, exhibited racist or biased views, been dishonest, or otherwise endangered their credibility and refuse to rely on these officers’ testimony or reports.
- Create a Case Integrity Unit to investigate possible legal or ethical misconduct within the county attorney’s office including, but not limited to, wrongful convictions.
- Refer all allegations of prosecutorial misconduct to the State Bar for independent review.

WHERE IT’S BEEN DONE

Seattle Prosecuting Attorney Dan Satterberg has adopted a policy to review the cases of people in prison who are serving life sentences for relatively minor crimes to determine whether to seek re-sentencing to more appropriate punishments. If a case meets the review’s standards, the office signs onto their clemency petition. So far, this committee has supported re-sentencing 16 people that were unfairly incarcerated.¹⁷

HOLDING POLICE ACCOUNTABLE

Seventy-seven percent of Arizona voters want their county attorney to assign an independent prosecutor to investigate cases where officers hurt or kill civilians to ensure officers are held accountable when misconduct is found.¹⁸



Increase Transparency

County attorney’s offices have a reputation of operating in the shadows away from public scrutiny. Data is typically not easily accessible or understandable for the general public, making it difficult for voters to adequately assess the performance of their elected county attorney and for lawmakers to assess whether the criminal legal system is working fairly for all.

PATHWAYS TO REFORM

- Gather and publish quarterly statistics on race, ethnicity, and gender of defendants along with information about charging decisions, convictions, deferred prosecutions, and diversion program placements.
- Publish all office policies and protocols online.
- Develop and implement a plan to personally, regularly and meaningfully engage and communicate with the community in the county you represent, including communities of color, the immigrant community, community-based organizations, and criminal legal reform advocates.
- Include people most impacted by incarceration, community leaders, and criminal legal reform advocates in the development and implementation of your first-100 day plan.
- Implement a policy of open file discovery through which defendants or their attorneys have access to the prosecutor’s entire file.

WHERE IT’S BEEN DONE

Cook County State’s Attorney Kim Foxx released six years’ worth of case-specific prosecutorial data from her office. The data was released in easily accessible online data tables allowing the public to sort through a case from beginning to end.¹⁹

PROMOTING TRANSPARENCY

Ninety-four percent of Arizona voters said it’s important for their county attorney to prioritize transparency by sharing data, public information, and policies with the public.²⁰



Immigration

The decisions that prosecutors make can trigger deportation proceedings. Arizona is home to many families of mixed-immigration status and the state has an entrenched history of targeting immigrants and remorselessly tearing families apart. County attorneys should ensure that families are kept together and that victims of crime can interact with law enforcement without fearing the threat of deportation.

PATHWAYS TO REFORM

- Implement a written policy requiring prosecutors to consider ways to avoid negative immigration consequences before prosecuting a case.
- Require prosecutors to find immigration-neutral outcomes wherever possible.
- Implement a written policy which prohibits questions about the immigration status of crime victims or witnesses.
- Vocally oppose local law enforcement's collaboration with ICE.

WHERE IT'S BEEN DONE

In 2017, Brooklyn District Attorney Eric Gonzalez announced that his office would implement a policy aimed at minimizing collateral immigration consequences of convictions, particularly for misdemeanors and other low-level offenses. He has since hired two immigration attorneys to train all staff on immigration issues and advise prosecutors when making plea offers and sentencing recommendations on cases of non-citizen defendants in an effort to avoid disproportionate collateral consequences.²¹



Legislative Advocacy

County attorneys have long been powerful voices at the Arizona State Capitol. Unfortunately, they've historically used that power to advocate for bills that increase sentences and further criminalize communities. County attorneys have been staunch opponents to almost every criminal legal reform effort proposed at the Legislature.

PATHWAYS TO REFORM

- Proactively support legislation that would reduce the prison population and challenge racism in the criminal legal system, including earned release credit legislation.
- Proactively support legislation to provide reentry support for people returning to their families and to their communities, including housing support, expungement, job placement, and more.
- Proactively support investing in programs that prevent crime, including youth programs, addiction treatment, victim services, mental health care, and employment and educational opportunities for communities disproportionately impacted by incarceration.
- Proactively oppose legislation that creates new crimes, new sentencing enhancements, or increases sentences.
- Encourage the Arizona Prosecuting Attorneys' Advisory Council, the Arizona Criminal Justice Commission, and any other boards or commissions to take similar pro-reform stances on legislation.

WHERE IT'S BEEN DONE

Law Enforcement Leaders to Reduce Crime & Incarceration brings together over 200 current and former police chiefs, sheriffs, federal and state prosecutors, and attorneys general from all 50 states to urge a reduction in crime and incarceration. The network brings together law enforcement reform champions from all levels of government with the strong belief that the goals of reducing crime and reducing incarceration are not only compatible, but mutually necessary. They actively advocate for reforms across the country, using their platforms and expertise on public safety to urge legislators to adopt laws that would rely less on incarceration. For example, in April 2019, dozens of members from 17 states signed a letter supporting the North Carolina First Step Act, which allows judges discretion to depart from certain mandatory minimums.²²

In some cases, prosecutors are quitting district attorney's associations altogether. The Republican District Attorney of San Joaquin County, Tori Salazar, quit the California District Attorneys Association due to its opposition to criminal legal reforms at the state level.²³

Endnotes

- 1 Fwd.Us, [Arizona's Imprisonment Crisis: The High Price of Prison Growth](#), page 2.
- 2 Fwd.Us, [Arizona's Imprisonment Crisis: The Cost to Communities](#).
- 3 Fwd.Us, [Arizona's Imprisonment Crisis: The High Price of Prison Growth](#), page 4.
- 4 ACLU of Arizona Interview with Vonda Bennett and Review of Court Records.
- 5 John Pfaff, The True Causes of Mass Incarceration and How to Achieve Real Reform.
- 6 Change Research, [ACLU of Arizona Poll on Criminal Justice Reform](#), Feb. 14, 2020.
- 7 The Philadelphia Inquirer, [Philly DA Larry Krasner stopped seeking bail for low-level crimes. Here's what happened next](#), Feb. 19, 2019.
- 8 [ACLU of Texas Comment on Dallas County District Attorney-Elect John Creuzot Victory](#), Nov. 6, 2018.
- 9 The Atlantic, [A Texas Prosecutor Fights for Reform](#), Oct. 14, 2019.
- 10 Change Research, [ACLU of Arizona Poll on Criminal Justice Reform](#), Feb. 14, 2020.
- 11 Change Research, [ACLU of Arizona Poll on Criminal Justice Reform](#), Feb. 14, 2020.
- 12 Fwd.us, [Arizona's Imprisonment Crisis: The Cost to Communities](#).
- 13 The New Yorker, [The Milwaukee Experiment](#), May 4, 2015.
- 14 Change Research, [ACLU of Arizona Poll on Criminal Justice Reform](#), Feb. 14, 2020.
- 15 The Arizona Republic, [Every 5 days, an Arizona officer shoots someone, a Republic analysis finds](#), Jan. 30, 2020.
- 16 ACLU, [We Are Fighting Maricopa County's Rampant Prosecutorial Misconduct](#), April 4, 2019.
- 17 The Marshall Project, [The DAs Who Want to Set the Guilty Free](#), March 30, 2018.
- 18 Change Research, [ACLU of Arizona Poll on Criminal Justice Reform](#), Feb. 14, 2020
- 19 [Cook County State's Attorney](#).
- 20 Change Research, [ACLU of Arizona Poll on Criminal Justice Reform](#), Feb. 14, 2020
- 21 [The Brooklyn District Attorney's Office](#).
- 22 [Law Enforcement Leaders to Reduce Crime and Incarceration](#).
- 23 San Francisco Chronicle, [Central California DA quits state association over its opposition to criminal justice reforms](#), Jan. 16, 2020.



For more information about the ACLU of Arizona Campaign for Smart Justice, visit smartjusticeaz.org.

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